



“THE COMMUNICATOR”

2022 Summer Edition

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Welcome Message ACHRO/EEO President, Julianna Mosier

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Greetings !!

It is unbelievable that two years have already passed since I stepped in as the ACHRO/EEO President. With July 1st right around the corner, it is time for me to step out of the President role and transition into Past President, but with the transition, Charo Albarán will become the ACHRO/EEO President for 2022-2024. Charo is an incredible Human Resources leader, a kind and caring human being, and someone who I have had the pleasure of working closely with the past two years. I know that our organization will be in even more capable hands with Charo at the helm.

I am proud of what we have accomplished over the past two years, from addressing the COVID pandemic, to creating comprehensive recommendations to support DEIA efforts statewide and supporting changes to Title 5, to engaging in conversations on police reform in our system, to advocating for legislation that supports our institutions and our students. As an organization, we planned two completely virtual fall conferences, we welcomed regional representatives to our Board to ensure we are hearing the voices of all our members, we welcomed our first EEO, legislative and academy chairs to support our HR professionals, we developed a partnership with UMass Global to provide discounts and scholarships to our members, we began the work to redesign our ACHRO/EEO website, and this spring we held the first of our Town Halls (more to come!!!).



It has been my privilege and my honor to serve as the ACHRO/EEO President for these past two years. Thank you for allowing me to represent our organization. In my new role as Past President, I have the opportunity to represent ACHRO/EEO on Communications Council where I promise to continue to advocate for policies and practices that will uplift and support the work that we do and to continue to foster strong collaborative relationships forged by our ACHRO/EEO leaders who have come before me.

I would like to thank the amazing ACHRO/EEO Board and Chairs for the work you have done to support our organization these last couple years. And, as always, I want to thank Ruth Cortez and Ron Cataraha. These past two years were hard... trying to plan virtual conferences during COVID was not easy, but your expert guidance and dedicated support made all the difference.

I look forward to seeing everyone in person in Lake Tahoe in October. Until then...

With immense gratitude and appreciation,

Julianna Mosier
 President, ACHRO/EEO

***Message From ACHRO/EEO Vice President/President Elect,
Charo Albarran, MPA***

We are HR Strong!!!!

For the past two years, we have experienced challenges as HR professionals that none of us could have imagined! Our shared experiences during the pandemic involved facilitating discussions that led to the development of policies and procedures around vaccinations. We all had to manage our colleges working remotely under emergency orders all the while working with unions and senates to move our services and instruction online and later returning service and instruction back to the physical campus. All the while, we still had our regular work and challenges to maintain! What a ride! Good news is, we are surviving!

I want to thank Julianna Mosier for her excellent leadership as the ACHRO President for the past two unprecedented years. I do not believe that Julianna could have predicted that she would be leading our organization during a pandemic. She has done an excellent job and I am definitely happy that I was able to serve and learn from her and as the incoming ACHRO President. I hope I can continue the important work that Julianna did so effortlessly. We have many things to look forward to and many new ideas to explore but overall, we want to continue to provide information and resources to make your jobs as HR professionals easier.



Our major event that brings together both information and resources is our annual ACHRO conference that will be held on October 25-28, 2022 at the Hyatt Regency North Lake Tahoe. This year's conference will be special for so many reasons but most of all because it is our first in person conference in two years and second, we will be celebrating the 25th anniversary as an organization! I hope you all have registered and made your reservations!!!!

Charo Albarran

ACHRO/EEO 2021-2022 Officers & Support Staff



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ACHRO/EEO 2021-2022 Chair Positions Regional Representatives

Chair Positions

Chair, EEO/Equity/Inclusion: Tre'Shawn Hall-Baker

Chair, Legislative Affairs: Diane Fiero and Julie Kossick

Chair, HR Administration & Emerging CHRO Academies: Clint Dougherty

Chair, Communications: Angela Alvarez Riggs

Regional Representatives:

North 14: Charo Albarran and Marrienne Williams

Bay 10: Nikki Harris and Eric Ramones

Central 14: Kelly Avila and Kayla Valentine

Southern 30: April Hebert, Flavio Medina-Martin, Greg Smith, and Sokha Song



HR changes around our state. . .

◆ **Retirees**

Laurie Heyman, Administrative Assistant III-Confidential, HR; Santa Monica College
Christina Rivera, Manager, Training and Development; Napa Valley College

◆ **Promotions/New Hires/Assignment Changes**

Stefani Aye, HR Analyst; Hancock College
Kyla Bentley, HR Analyst Senior; Coast CCD
David Betts, Chief HR & Employee Relations Officer;
Monterey Peninsula College
Leisa Biggers, Director, HR; Santa Monica College
Sarai Cabrera, HR Analyst; West Hills CCD
Carla Castillo, HR Technician; Hancock College
Anne Chua, District Director of EEO, Equity and Compliance
Programs; South Orange County CCD
Kimberlee Davis, Director, HR; West Hills CCD
Anisha DiGregorio, Administrative Assistant I, HR; Santa
Monica College
Gene Durand, Vice President, HR; Santa Rosa College
Corinne Ewing, Professional Development Coordinator; Shasta College
Myrna Flores, HR Specialist; Hancock College
Cecy Garcia, Assistant Superintendent/Vice President, HR; Palo Verde College
Tre'Shawn Hall-Baker, Dean, HR; Santa Monica College
Tre'Shawn Hall-Baker, Personnel Commissioner at Los Angeles CCD
Lauren Elan Helsper, Director of EEO, Leaves, and Workplace Safety Programs;
College of the Canyons
Gerardo Cardenas Hernandez, HR Specialist; Monterey Peninsula College
Sarah Hopkins, Director, HR; Santa Rosa College
Stephanie Juanillo, HR Coordinator; Rio Hondo College
Tina Kuperman, Vice President, HR; Rio Hondo College
Delia Padilla, HR Analyst-Operations; Santa Monica College
Diana Pennington, Administrative Assistant III-Confidential, HR; Santa Monica College
Makayla Perry, Executive Assistant, HR; Taft College
Savanna Petri, HR Technician; Napa Valley College
Corey Rojo, HR Technician II/Confidential; Pasadena City College
Tiffany Rowden, Director, HR; Taft College
Aileen Sandoval, HR Specialist; Monterey Peninsula College
Danielle Savage, Executive Assistant to the Associate Vice President, HR, Training and
Development; Napa Valley College
Kristina Serrano, HR Technician II/Confidential; Pasadena City College
Joann Stubitsch, HR Specialist; Napa Valley College
Melinda Trammell, Director of Employee and Labor Relations; Chabot-Las Positas CCD
Lisa Winter, Assistant Director, Compliance Administrator/Title IX Coordinator, HR;
Santa Monica College



◆ **Degrees/Certificates**

Angela Alvarez Riggs, earned a Master of Arts in Human Resources Management;
Southwestern CCD
Elena Rodriguez, earned a Masters of HR Management; Palo Verde College

ACHRO HR Academies Update

The second of four sessions was held from June 8th through the 10th for both the ACHRO HR Admin. and Emerging CHRO academies. Both sessions were held at the Herndon campus of Clovis Community College within the State Center Community College District. Thanks go out to Julianna Mosier and Lauren Lowe as well to the rest of the staff at the Herndon campus for the great hospitality and support. The focus on session two was Title IX and EEO/DEIA topics. Liebert Cassidy Whitmore provided much of the facilitation, including Laura, Eileen, Millicent, Yesenia, Monica, and their team. We thank them for their expertise, time, and generosity in support of ACHRO and the Academies. The third session will be at Mt. San Antonio College, from August 10th through the 12th and the emphasis will be on negotiations. The Academies will end with the fourth session on October 25th as part of the ACHRO pre-conference.



Hope everyone will be at the ACHRO Conference in Lake Tahoe to meet and congratulate the ACHRO Academy graduates.

Clint Dougherty

International Human Resources Day Update



This year International Human Resources Day was celebrated on May 20, 2022.

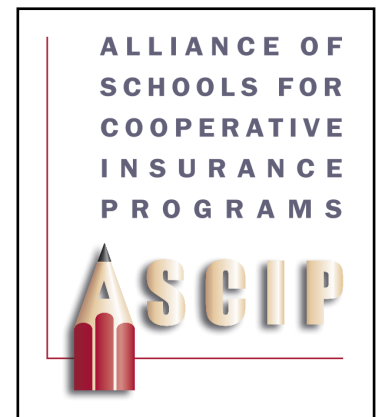
International HR Day presents an opportunity to join our profession in an international recognition of all the hardworking HR professionals around the world.

Happy International HR Day from your colleagues at ACHRO! Mark your calendars for May 20, 2023, so we can celebrate each other.

Angela Alvarez Riggs MAHRM

Thank you to our 2022 Vendors

We so appreciate your continued support and are happy to have you as part of the ACHRO/EEO family. We could not do this without you!!!



Thank you to our 2022 Vendors (continued)



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services to Florida
school districts since 1995"*



Update Town Hall — April 28, 2022

Title: “Who is Helping HR, When HR is Helping Others”

Description:

On Thursday, April 28, 2022, ACHRO hosted it’s first virtual Spring Town Hall. With almost sixty (60) participants, ACHRO members participated in an open forum/discussion on the impact that COVID-19 and the pandemic has had on human resources professionals.

Discussions circled around:

- ♦ “HR Burnout” and how this has impacted HR professionals;
- ♦ Modified Learning/Working college campus environments;
- ♦ How human resources professionals addressed challenges and barriers during the pandemic;
- ♦ There was lots of engagement, interactions and people sharing stories of challenges, triumphs and the importance of virtual interconnected-ness with others;
- ♦ The importance of understanding identities within the HR communities and how that plays a role in how HR professionals are perceived on campuses;
- ♦ Resources were also shared on developing and implementing work/life balances, as well as tips on self-care.

This town hall was led by participants representing State Center, Napa Valley College, Southwestern College, Marin College, Merced College, and College of the Canyons.

Please be on the lookout for future townhalls from members of our ACHRO E-board. Stay tuned...

Favio Medina-Martin, MPA

Director, Diversity and Inclusion
Deputy Chancellor’s Office
Santa Clarita CCD



EEO Update

ACHRO DEI Champion Award Nomination



ACHRO is committed to recognizing, supporting, and developing leaders and Institutions on a mission to provide DEIA excellence. DEIA excellence is providing exemplary service focused on continuing to improve and implement DEIA practices. We are excited to receive nominations for the SCHRO DEI Champion Award.

The ideal recipient will have a mindset and/or demonstrated efforts towards an organizational culture that maximizes every opportunity to be intentional and innovative in creating and advancing DEIA within their College, within the California Community College System, and within the community.

Those that are nominated must have effectively demonstrated achievement in DEIA areas that lead to meaningful change related institutional and employee-centered DEIA enhancements, professional development, community service, selection and recruitment practices, and through serving and developing opportunities for students, employees, and community members who are historically underserved.

Categories for nominations:

- Human Resources or DEIA professionals within the California Community College System.
- A College District (multi-college or single college), or a single College within a Multi-College district.
- Intergroup Collaborations (a group within the California Community College District strategically and intentionally addressing gaps in the efforts towards enhancing and addressing DEIA initiatives and practices within the California Community College District.

Click the link for nomination: [AWARD NOMINATION FORM](#)

*Note that individuals, institutions, or groups submitting nominations must be members and/or associates of ACHRO. Self-nominations are permitted.

The deadline for nominations is August 12, 2022 at 11:59p.m.

Please contact Tre'Shawn Hall-Baker at hallbaker_treshawn@smc.edu for questions or additional information.

Best,

Tre'Shawn Hall-Baker PhD.

Dean, Human Resources
Santa Monica College



Crossroads: Where Disability and Discipline Meet

By Rachel Shaw

It's no secret that managing under-performing employees is one of the most unenjoyable things that supervisors have to do. The only way to make this aspect of the job harder is managing these issues only to have your employee say: "my disability made me do it." When employees link their discipline to a claimed disability, either at the start of the problem or at the "11th hour," employers need to know what to do. Namely, pause discipline and get into the Disability Interactive Process. No matter how frustrating it may be, you will want to pause and deal with the claim to determine if a disability really is at play. By doing this you will be able to deal with the performance concern more effectively and efficiently. What is important to remember is, regardless of the tool – discipline or the disability interactive process – the goal is the same: successful performance. If performance cannot be fixed, the employee will see the same outcome – either termination or medical separation.

Using the wrong tools won't work. You can't help someone meet performance expectations with discipline if the issue is related to a disability. Disabilities don't listen and respond well to letters of reprimand, suspensions or counseling. Conversely, reasonable accommodations are inappropriate to implement if the employee simply is not performing due to lack of knowledge, effort or ability.

So, how do you determine the right tool to use after a claim of disability? Use the "Hallway." My Disability Interactive Process "Hallway" is a simple 4-step (or door) approach to managing claims of disability. Door # 1 is where you determine if the claim of disability is accurate. At Door # 1 you obtain clear medical information and will ask the employee's health care provider to comment on the following:

Does the employee have a serious medical condition as defined by the ADA? If so, does the disability impair their ability to fully and/or safely perform one or more of the essential functions of their job?

If yes to question # 1, did their disability cause the following performance deficiencies? (list specific performance issues in detail for the health care provider to comment on.)

If yes to question # 2, are there any reasonable accommodations that you can suggest, that if implemented, would mitigate the negative performance issue(s) or ensure that the employee does not engage in the negative behaviors/actions again?

Be specific in asking questions linking performance issues with possible accommodations. For example, if employee Amy Harris is missing deadlines and attributes it to her disability, ask her health care provider directly if Ms. Harris has a serious medical condition that would impact her ability to know when she is behind schedule on a project and communicate that issue; and if so, are there any accommodations that would eliminate that issue going forward.

If the employee's health care provider answers the above questions in a way that is acceptable to the employer, and indicates a disability, then move down the Hallway towards identifying reasonable accommodations that, if implemented, would support the employee to meet performance expectations.

If the health care provider indicates that a disability is not at play, close the Hallway and revert to discipline again.

If you don't have confidence in the employee's health care provider's opinion then consider a third party medical examination, called a Fitness for Duty Examination. This will allow you to determine, through an objective opinion, if the disability really did make them do it and what, if any work restrictions or functional limitations require reasonable accommodations. This tool can be very useful where there is objective evidence that suggests that the employee is misusing a claim of disability to circumvent discipline or when an employee's health care provider provides incomplete or unsupported opinions.

Federal courts agree reasonable accommodations do not allow for an employee to violate a workplace rule. Moreover, the American with Disabilities (ADA) Act says an organization may hold employees – those with and without disabilities – to the same performance and conduct standards. However, employers are required to respond to requests for accommodation and to determine if the wrong tool – discipline – is being used and if there are reasonable accommodations that, if implemented, would eliminate the misconduct or performance deficiency, and support the employee to be successful at work. Whether it's via discipline or reasonable accommodation it's important to remember: supporting an employee to be successful at work is the goal. Discipline is not about termination, it is about supporting successful job performance. Using the wrong tool puts an organization at risk of litigation loss. It also simply will not fix the problem. Make sure you use the right tool. It will not only give you the best chance of supporting improved performance and conduct, but it will be a more efficient road, or Hallway.

EEOC: <https://www.eeoc.gov/facts/performance-conduct.html>



Long-term Care Insurance for the State of California

Do you know that California has a task force looking at funding a long-term care entitlement benefit with a new payroll tax? This new state-wide insurance program may become a reality in 2024, impacting your district and every employer in California.

Long-term care insurance has probably not been on your mind, but it has been on the mind of the California legislature. [AB 567 \(Calderon\)](#), passed in Fall 2019, was a response to the state's awareness of its ageing population and very real impact on working families. AB 567 established a Department of Insurance [Task Force](#) focused on designing a compulsory, state-wide, long-term care insurance (LTCi) program for the State of California. And that Task Force has been working hard.

Why is this important to you and your district?

Based on the Task Force's discussions to-date, the program would be mandatory, and a key aspect of the program would require employers of any size workforce to collect additional payroll taxes from employees. During the design phase, task force members have discussed funding this benefit by requiring no salary caps and no minimum threshold; **all employees would be subject to a payroll tax based on gross wages, unless an opt-out option is provided.**

From what we learned in Washington state's recent implementation of this type of program, and from recent legislation drafted in New York State, an 'opt out' provision could be available *if the employee holds a current and active private long-term care insurance policy*. Sounds easy, right? Although long-term care insurance has been offered to California's community colleges since before 2010, few have taken advantage of the discounted group offerings.

As our population continues to age, every district in this state will be affected by increased absenteeism and reduced productivity as a result of families stepping up to care for loved ones facing long-term care illness and debilitation.

So, the question remains, how can we offer a competitive long-term care insurance policy more robust, more effective, and more sustaining than that provided by the state?

¹Assembly Bill No. 567, Chapter 746, Approved by Governor oct 11, 2019 established the Long-Term Care Insurance Task Force in the Dept of Insurance; "... to examine the components necessary to design and implement a statewide long-term care insurance program."

- Recommend options for establishing this program
- Comment on their respective degrees of feasibility in a report to be submitted to the commissioner, the Governor, and the legislature - deadline: July 1, 2021. Senate Bill 1255, Section 42, as approved by the Governor on Sept. 26, 2020 extended the deadline to January 1, 2023.
- Requires the department to produce an actuarial report of those recommendations, to be shared with the Task Force - deadline: July 1, 2022. Senate Bill 1255, Section 42, as approved by the Governor on Sept. 26, 2020 extended the deadline to January 1, 2024.
- If approved, the bill would require the report to be submitted to the Legislature.

The answer is that such policies exist, but they need to be offered by the community colleges to their faculty and staff prior to the effective date of the anticipated law. That is, a private policy would need to *be active prior to the effective date* of the law approving the new state-wide insurance.

How will this affect your district's administrative and payroll professionals?

Employers would be required to track individual employee LTCi policy status in order to establish correct payroll deductions for each employee. The greater number of employees opting out because they own private policies reduces the overall administrative costs on the employer and the less burdensome the subsequent tax bill.

How can the above scenario be optimized for your district?

You can put your employees in the best position to potentially "opt-out" of this new payroll tax by offering private, long-term care insurance as a voluntary, employee-paid benefit. Doing so creates a win-win situation for you and your district:

- There is little to no cost borne by the district.

- Provide employees with their best chance at being exempt from the potential payroll tax.

- Faculty and staff benefit from a more substantial insurance policy than available through the state.

Planning and preparation are the keys to offering a better policy of long-term care insurance to your colleagues.

The time to start this conversation with your executive team is now.

***Submitted by Karen Perry, President of Marblestone Insurance Services, LLC
kperry@armltc.com***



More than money: How to use benefits to get and keep good people

The current job market is nothing short of chaotic. Employees used the pandemic to reassess their career goals, and many are taking a hard look at what balance between work and life means. While the outlook for employees is positive and encouraging, it's presenting great challenges for employers.

Resignation numbers are soaring to never-seen-before heights, creating a top workplace challenge of retaining talent.

Almost half, or 44%, of public schools report having full- or part-time teacher vacancies, in a [nationally representative survey](https://ies.ed.gov/schoolsurvey/) <https://ies.ed.gov/schoolsurvey/> of 670 public schools conducted by the National Center for Education Statistics.

Retaining and recruiting, while related, are two distinctly different things. Retaining is all about continued satisfaction. Recruiting is all about attraction and focus. To make a difference in retaining and recruiting, organizations need to change the way they approach both and make a significant commitment to doing things differently.

One area that's often overlooked as part of retaining and recruiting is communicating total compensation including benefits.

Total Compensation Matters

The right mix of benefits can be a critical component in a successful long-term plan for attracting and retaining employees. Benefits can offer the competitive advantage employers need to help them succeed in a challenging environment.

It's not all about salary, however. Total compensation matters. But often employers don't have the time or resources to help employees individually understand their total comp.

How would retention be impacted if each of your employees knew their total value?

Get Out of Boring Benefits

An important step to making your benefits program attractive is to shake up the status quo. You likely offer medical benefits, but what else is your organization doing in the benefits space to help get and keep good people?

[Benefits you should offer to attract better employees](https://americanfidelity.com/blog/strategy/benefits-to-attract-employees) <https://americanfidelity.com/blog/strategy/benefits-to-attract-employees>

Things like on-site childcare, wellness incentives or reimbursements, employee assistance programs (EAP), and telehealth options can really boost employee satisfaction and engagement in the workplace.

And, with an emphasis on mental wellbeing, you can show support towards your employees by cultivating a positive work environment, providing mental health resources, and offering and promoting a robust employee assistance program (EAP).

Finally, layer on incentives. There are multiple ways you can incentivize your people without breaking the bank.

This article on [overcoming teacher shortages](https://americanfidelity.com/blog/general/teacher-shortages/) <https://americanfidelity.com/blog/general/teacher-shortages/> offers some creative incentives for:

- Bus driver incentives
- Substitute incentives
- Teacher and staff incentives
- Incentives for your budget

Hold Employees' Hands

Employers spend up to 30% of employee compensation on benefits, yet rarely allocate resources to make sure their employees understand and value the benefits they are offered. While a strong benefits package may help enhance your overall compensation package, explaining it in a medium your employees understand or prefer is key.

Understanding the generations and how they prefer to receive benefits communications can mean the difference between retaining talented employees and losing out on some of the top candidates. Enrollment education is an indispensable way to create benefit selection confidence and optimal understanding.

[How to delight employees and create exceptional benefits education](https://americanfidelity.com/blog/strategy/delight-employees-and-create-benefits-education/) <https://americanfidelity.com/blog/strategy/delight-employees-and-create-benefits-education/>

5 Tips to Nailing Your Communications

1. Keep messaging simple – if people perceive that it's too difficult, they won't do it. Show them what they'll get out of it. For example, if you want people to participate in open enrollment, make it easy for them. Incentivize participation.
2. Know your audience – if you're employees are mostly millennials and you're trying to communicate by email or letter, consider a text or social post instead.
3. Be creative – nobody likes dull. Use captivating, concise messaging when creating collateral and a creative combination of tools. Maybe you combine email with social media and postcards? Perhaps you use email, text messaging and a flyer?
4. Be consistent – people skip a message the first time. Creating a cadence that supports ongoing communication is a great way to keep your people engaged.
5. Don't remove the human – benefits are confusing. Don't rely on technology alone and expect that your people will understand your plans.

Inspire Loyalty with Your Benefits

Benefits can offer the security that inspires greater loyalty. And the right mix can also drive satisfaction. In the end, if employees feel they have wonderful benefits and they're happy with their compensation, all is well.

50th Anniversary of Title IX

June 23, 2022

Number 27

Written by:

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Partner

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Sarah E. Fama

Senior Counsel

Walnut Creek

Emma J. Sol

Associate

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June 23, 2022, marks the 50th Anniversary of Title IX. On June 23, 1972, President Richard Nixon signed Title IX of the Education Amendments of 1972 into law, prohibiting federally funded education institutions from discriminating against students or employees based on sex. In its entirety, Title IX states:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits from, or be subject to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX applies to local and state educational agencies and other institutions that receive federal financial assistance from the Department of Education.

Background

Since its enactment, Title IX has impacted the educational world in numerous ways. Title IX protects equal access to education, including admissions, financial assistance, athletics, and counseling. Additionally, Title IX dictates how sexual harassment and assault claims are handled and processed on school campuses. The groundbreaking case, *Alexander v. Yale Univ.* (2d Cir. 1980) 63.1 F.2d 178, was the first time a plaintiff sued an educational institution over sexual harassment under Title IX. In the *Alexander* case, the court determined sexual harassment to be a form of sex discrimination. Several other prominent court cases have followed in *Alexander's* wake, further defining Title IX and its application within the educational system.

The federal government has also had a hand in further shaping and strengthening Title IX's impact on school campuses. In 1975, the Department of Health, Education, and Welfare issued “final regulations” that prohibited sex discrimination in athletics. In 2000, the Department of Justice drafted and published Title IX Regulations that defined “program or activity.”

In recent years, Title IX has undergone various changes, administered through different guidance from the Department of Education. Starting in 2010, the Department of Education issued five “Dear Colleague” letters, providing guidance on how to handle and process claims brought under Title IX. Initial clarification included the application of Title IX to charter schools, pregnant and parenting students, and claims of retaliation. Over the past decade, the Department of Education's Title IX guidance has often been reversed and reimplemented.

Client News Brief

Title IX Regulations

One of the biggest changes to Title IX has come in the form of new grievance procedures for sexual harassment complaints. On August 14, 2022, the Department of Education implemented new Title IX Regulations (Final Rule) governing the handling and investigation of sexual harassment complaints under Title IX. The Department of Education rescinded all previous Title IX guidance and, through the Final Rule, executed several changes to the sexual harassment complaint procedures under Title IX, including the exchange of evidence and the implementation of a live hearing requirement at the postsecondary level. For more information regarding the current Title IX regulations, see [2020 Client News Brief Number 49](#). (Ctrl+click)

In June 2021, the Department of Education issued a Notice of Interpretation stating that Title IX prohibits discrimination based on sexual orientation and gender identity, reinstating the protection of LGBTQ+ people under Title IX. The Department of Education quickly followed its Notice of Interpretation with a question and answer guide to the Final Rule, which included the Office of Civil Rights' interpretation of educational institutions' existing obligations under the Final Rule, and a transcript of the public comments made during the June 2021 virtual public hearing on Title IX.

Since its release, the Final Rule has been the subject of numerous legal challenges. In August 2021, following a federal district court decision out of Massachusetts, the Department of Education announced it would not enforce what had been called the "Suppression Clause" of the Final Rule. The Suppression Clause prohibited decisionmakers from considering any statements from parties or witnesses who were not subject to cross-examination. (*Victim Rights Law Center v. Cardona*, Civil Action 20-11104-WGY (D. Mass. Jul. 28, 2021).) For more information regarding the *Cardona* decision, see [2022 Client News Brief Number 1](#). (Ctrl+click)

Currently, the Department of Education is in the process of preparing new Title IX regulations. In March 2022, the Department of Education sent its draft proposed amendments (otherwise known as a "Notice of Proposed Rulemaking" or "NPRM") to the Office of Information and Regulatory Affairs for review. These proposed regulations were initially scheduled to be released in April 2022, however, after delay, they were released on June 23, 2022, the 50th Anniversary of Title IX. (See U.S. Department of Education press release [here](#) (Ctrl+click)). The draft regulations will undergo a comment period, during which time members of the public can submit comments on the proposed regulations. (See an unofficial version of the draft regulations [here](#) (Ctrl+click)). During this rulemaking revision period, the Final Rule will remain in effect, and should continue to be followed by educational institutions that receive federal funding.

If you have any questions about Title IX, the parameters of Title IX regulations, or trainings on Title IX compliance, please contact the authors of this Client News Brief or an attorney at one of our eight offices (<http://www.lozanosmith.com/contact>).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.



ERICKSON LAW FIRM

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ACHRO Newsletter 2022

The California Fourth District Court of Appeals Provides Clarity to California Public Records Act Section 6255 (a) "Catch-All" Exemptions

In recent months, we have seen a massive surge in requests for "public records" from school districts across the state. Responding to these requests can be burdensome and time consuming, but a clear understanding of the law and what is required to comply can make it easier for a district to be ready to respond when these requests are received.

What obligation does a district have to provide records to the public?

In the interest of public access to public business, all California public school and community college districts are subject to the state's Sunshine law - the California Public Records Act ("CPRA"). The Act is intended to ensure government accountability and transparency. Under the Act a public record is defined as, "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics." (Gov. Code §§ 6452, et seq.; see also, [Summary of the Act](#) (2004).)

In 2017, the California Supreme Court laid out a four-part test to help agencies determine what constitutes a public record. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.) They held:

A communication is a public record if:

1. It is a writing,
2. It contains information relating to the conduct of the Public's business,
3. Prepared, or
4. Owned, used, or retained by any state or local agency

The Court also looked at factors to consider when evaluating electronic communications. Factors to be considered are: author, recipient, subject, content, whether it was prepared by an employee in the scope of employment, whether it includes elected officials. Crucially, the Court held that it does not matter what account or device was used in the transmission of electronic messages - personal or governmental - all are subject to the Act if they meet the other factors.

Exemptions to the CPRA

There are numerous exemptions to the requirement to disclose public records under the CPRA. (Govt. Code § 6254.) Additionally, there is what is known as the "catch all" exemption of Government Code Section 6255 (a) which permits withholding any record by demonstrating that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Govt. Code § 6255 (a).) The balancing test provided in Section 6255 (a) has recently been applied to government entities seeking to withhold the exact location of COVID outbreaks to encourage cooperation with contact tracing efforts.

On July 16, 2021, the California Fourth District Court of Appeal issued a decision whether the specificity of information a public entity is required to disclose during an emergency situation. Specifically, in *Voice of San Diego v. The Superior Court of San Diego*, San Diego County Super. Ct. No. 37-2020-00026651-CU-WM-CTL, pg. 36), the County of San Diego received CPRA requests from three separate news outlets requesting public records that include the exact location and location address of known outbreaks of COVID-19. While the County did maintain such records, it refused to disclose more detail than the applicable dates of the outbreak, the city where it occurred, the number of people involved, and whether the outbreak occurred in a community setting, a skilled nursing facility or a non-skilled congregate living facility. Any information as to the exact name and address of each outbreak location was redacted so as to encourage trust and candid cooperation from the public with the County's contact tracing efforts. Three news outlets joined in suing for the release of the redacted information.

The Court of Appeals held that the public interest in the County of San Diego conducting effective contact tracing in the midst of a deadly pandemic clearly outweighs the public's interest in obtaining information about the exact outbreak locations. Notably the decision does not require that public agencies redact such information, but rather, permits public agencies to withhold such information in similar circumstances.

Ultimately, the Courts have left it up to individual agencies to adopt policies to comply with the Act. In light of the recent increase in CPRA requests, it may be a good time for districts to ensure their policies and procedures are in compliance and up to date.



ACHRO/EEO's 25th Anniversary was 2020, but because we had to cancel the live conference, we will be celebrating in 2022. The conference will be held:

**October 25-28, 2022
Hyatt Regency Lake Tahoe
Incline Village, Nevada**

