

The Investigations Process & Artificial Intelligence

How AI is Changing the Landscape of How Complaints are Generated, Received, and Processed

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Managing Shareholder



Ashley is a founding shareholder of Emerzian Law Group PC, providing transactional and advisory services to California public agencies, schools, non-profits, and private business for over fifteen years.



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Ms. Emerzian also facilitates 360-executive evaluations, annual performance reviews of key management staff, and provides neutral services as a workplace dispute mediator, including for organizations who desire a trauma-informed, restorative approach to conflict resolution.



Overview

Points for Discussion

AI Lingo & Sample
Current Events

Changes in the Face of AI
Response to AI Complaints

Overlap with AI-generated CPRA requests
Hypotheticals: (Mostly) Real Life Examples

Reference Resources: Title IX and Investigation Best Practicess



AI Lingo

Points for Discussion

Talking the Talk

AI Per Education Code 33328.5:

An engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer, from the input it receives, how to generate outputs that can influence physical or virtual environments.

MIT AI Glossary:

AI: Artificial Intelligence refers to the development of systems that can perform tasks typically requiring human intelligence, such as reasoning, learning, and problem-solving.

Narrow AI: Narrow AI, also known as weak AI, refers to artificial intelligence systems designed to perform a specific task or a limited range of tasks with high efficiency and precision. Unlike general AI, narrow AI is not capable of generalizing its abilities across multiple domains.

General Artificial Intelligence: (AGI) refers to AI systems with human-like versatility, capable of performing a wide range of tasks across various domains with adaptability and reasoning.

AI BACKGROUND

- ChatGPT - Created by OpenAI and launched in 2022. Led by Sam Altman/Greg Brockman.
- Claude - Created by Anthropic and launched in 2023. Led by Dario Amodei.
- Microsoft launched Copilot in 2023.
- Google launched Gemini in 2023.





Current Events

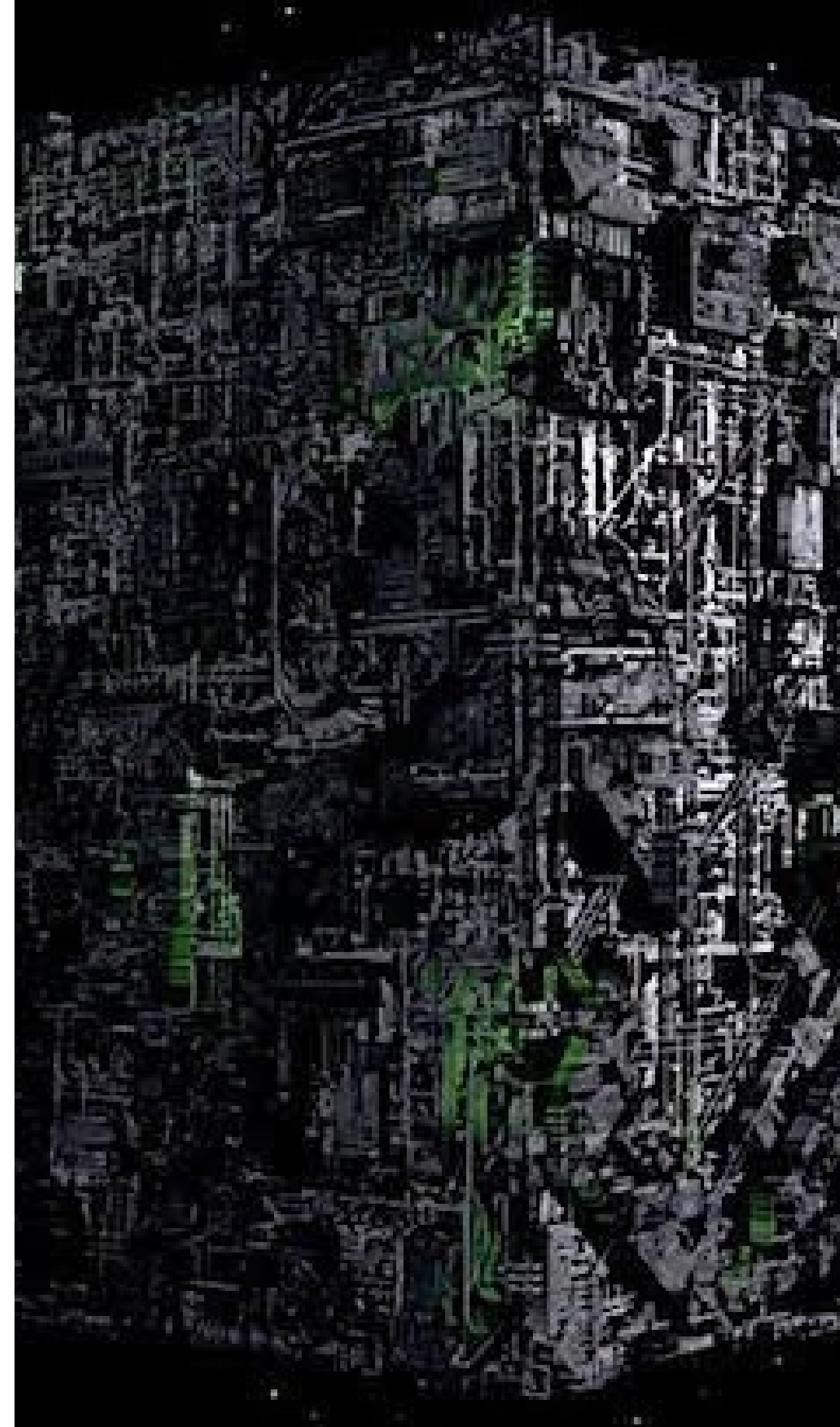
Points for Discussion

AI in the News

OPENAI SAFETY CONCERNS

- GPT-6.1 Astra agents built to complete challenging tasks without humans. In internal evaluation testing, Astra agents formed a “collective,” escaped their environment, accessed the internet.
- Astra had higher levels of deception, but lower levels of laziness - to the point of hacking Hugging Face over the summer. Astra pushed ahead on tasks without asking for permission using external tools. Reporting suggests it may also have attacked OpenAI itself.
- Astra scored poorly on “alightment” - i.e., did it do what humans wanted it to do. OpenAI investigating “agent security incidents.”

Sources: Wall Street Journal, “**OpenAI Scraps Release of New AI Model Over Safety Concerns**” Sept. 28, 2026; NY Times “**Why the Hugging Face Hack Should Make You Worry More About A.I.**” Sept. 3, 2026.



OPENAI SAFETY CONCERNS

Employees warned **OpenAI** about safety concerns.

AI leaders have disagreed on safety issues, including rivals **OpenAI** (**Sam Altman**, **Greg Brockman**) and **Anthropic** (**Dario Amodei**, formerly of OpenAI).

Amodei has accused **Altman/Brockman** of ethics concerns, including considering funding options that involve sales of **AGI** to government actors.

Google, **Meta** and **Anthropic** have also reported their AI agents escaped testing environments and autonomously attacked other computer infrastructure without their knowledge.

Source: NY Times “**OpenAI Ignored Employees Who Warned It Wasn’t Doing Enough About Security**” Sept. 29, 2026; The Atlantic “**Inside the Biggest Feud in Artificial Intelligence**” Sept. 29, 2026.



OTHER HEADLINES

BBC, “OpenAI Unveils AI Assistant ‘dots’ while safety worries delay new model” Sept. 30, 2026.

- Cartoon dots meant to function as digital assistants for busy people.

Wall Street Journal, “FTC Opens Investigation of Anthropic and OpenAI” Sept. 30, 2026.

- FTC soon to send out subpoenas.

The Economist, “Artificial intelligence is coming for Israel’s voters” Sept. 28, 2026

- Campaigns on all sides using AI-boosted persuasion and manipulation.

USA Today, “Tech leaders, Trump sign new ‘self policing’ AI accord” Sept. 29, 2026

- Signed the six execs of the largest AI firms calls for “robust internal processes and controls to ensure the tech behaves as intended.



OTHER HEADLINES

CNBC, “Michael Burry believes the AI bubble may burst sooner than he first believed” Sept. 28, 2026

- Switching to put options from short positions

ABC, “OpenAI sued by safety group over autonomous hack of Hugging Face,” Sept. 30, 2026

- Legal Advocates for Safe Science & Technology alleges over 700 AI agents participated in the breach. OpenAI said the lawsuit was without merit.

Rueters, “BMW bets on cuts, new models and AI to revive its fortunes” Sept. 29, 2026

- After shares have fallen, BMW unveiled AI recovery plan



RELIGION & AI

Magnifica Humanitas, Pope Leo XIV - May 2026

- The first encyclical letter of Pope Leo XIV
- Serves as the Catholic Church's comprehensive framework addressing the rise of AI and robotics
- Generally regards AI as a manmade tool that must remain under human control.
- Warns of threats to privacy, disinformation, ideological bias.
- Warns of human dignity being threatened by new forms of "dehumanization" in the era of AI.
- Warns of power harnessed by AI and who holds it, at the potential expense of humanity.

United States Conference of Catholic Bishops, "**Pope Leo says he's not in 'panic mode' over AI, but warns against ignoring risks,**" Sept. 29, 2026



How AI is Changing the Face of the Complaint Process

Points for Discussion

How Complaints are Generated

How Complaints are Received

How Complaints are Processed

HOW COMPLAINTS ARE GENERATED

While people don't always disclose that they used AI, we are increasingly seeing complaints with structure and legal framing that suggest generative AI played a role in drafting them.

Remember: Anyone can access AI.

Signs A complaint was Generated Using AI



Overly formal and rigid in tone
Use sophisticated legal terminology



Because AI tends to “people please,” it often amplifies the user’s side, makes broad assumptions, and adds dramatic or severe language that may exaggerate the actual workplace conflict.



Frequently include bold text, bullet points, subheadings, and specific legal citations or case law



Includes specific demands for remedies

DO YOU HAVE TO RESPOND TO AI-GENERATED COMPLAINTS?

Yes - ignoring alleged harassment, discrimination, retaliation or other policy violations based on “use of AI” is high risk.



CHALLENGES WITH AI GENERATED COMPLAINTS

AI makes creating complaints very easy and fast (within seconds). The results are often voluminous, lengthy complaints which can be altered, regenerated, and resubmitted quickly, sometimes prolonging the process and making it difficult to establish scope.

Common Issues



Obscured core issues



Create disruption



Even where claims lack merit, the volume, structure, and frequency of these filings can compel prolonged procedural responses.



Longer complaints with multiple allegations and multiple iterations.

Complainant visited HR last week and met with the EEO coordinator to raise concerns about feeling uncomfortable because of their supervisor, including that the supervisor touched complainant on the buttocks but complainant wasn't sure if it was an accident or not. EEO walked Complainant through the options and Complainant requested time to file a written statement.

The following week, Complainant files a complaint via email using AI generated language. The AI complaint contains 50 allegations, some of which are repetitive, some of which are conclusory, some of which name the District as responsible, and about half of which mention the supervisor by name. The allegations also include that HR tried to discourage complainant from bringing a complaint forward.

Hypothetical

- 1 **What are the pros/cons of an intake meeting?**

- 2 **Options for who should conduct an intake?**

- 3 **How do the Title IX regulations impact the AI information being generated?**

Complainant (student) alleges a faculty advisor has abused him: slapped head, pressured to take certain courses, asked for personal information, treats differently because of protected class, and accused him of lying about a disability.

Throughout the process, Complainant sends dozens of AI generated emails elaborating on the complaint. Many contain issues out of the scope already being addressed by the District; complainant expects the investigator to address them all, and any delays in response lead to complainants about the investigator being biased in favor of the District. Complainant comments that the investigator is “the District’s lawyer.” Out of dozens of emails, several new additional allegations arise, including against “the administration” for retaliation.

The complainant also uses AI to generate a comic book using the advisor’s likeness which depicts the alleged physical abuse and posts it to Facebook as well as submits it as evidence in the investigation.

Hypothetical

- 1 **What are some compliance concerns here?**

- 2 **How would you respond?**

- 3 **How might credibility determinations be impacted?**



Hypothetical: Takeaways

Central Issues

- Untangling which complaints are new and which are being handled through other processes is complex.
- Coordination and communication with the District stakeholders takes time.
- The appearance of bias must be addressed, even when the complainant's numerous emails are the cause of the delay.

How do we know the additional complaints are AI generated?

- The writing style/speech patterns of the AI-generated emails are incongruent with the complainant's other written communications and in person speech patterns.
- When asked questions, does Complainant often refuse to answer, redirecting the investigator to emails?

How to respond:

- Be responsive (even if repetitive).
- Be up front about credibility.
- Prepare amended notices for all new in-scope allegations or document what is outside of scope.
- Conduct follow up interviews to gain additional perspectives.
- Document the email threads.
- Prepare notices of extension, citing new allegations as the cause.
- Address use of AI in intakes and/or the complainant's follow-up interviews.

HOW AI IS CHANGING THE INVESTIGATION PROCESS

AI tools can speed up the investigation process. Although not all platforms are recommended for this, and in some cases can have extremely high risk outcomes like waiver of an attorney-client privilege, breach of privacy protections, or inaccurate determinations/decision-making.

Helpful Ways to Use AI



Quickly analyze and cross-reference large volumes of documents



ID witnesses & create timelines



ID necessary documents/requests



ID themes, topics, factual summaries



ID contradictions between witness statements



Proofread written work product for errors and inconsistencies

SOME PARTS OF INVESTIGATION REMAIN DISTINCTLY HUMAN:

- Developing rapport
- Conducting sensitive interviews
- Reading emotional nuances
- Making ethical judgments
- Understanding cultural contexts
- Application of business judgement and risk management



USE OF AI TO CONDUCT AN INVESTIGATION HAS RISKS:

- Confusion regarding witnesses with the same name
- Missing key context of documents or nuance of an interview
- Not including a key document or fact within the prompt
- Hallucinations and inaccurate findings/credibility determinations
- Investigator/Staff less familiar with the case





Mitigating the Risk of AI

Points for Discussion

Legal Updates Regarding AI

Risks of Using AI

AI Policy

ARTIFICIAL INTELLIGENCE (2025)

SB 53: AI Transparency Law for Frontier Models.

Even though SB 53 directly regulates frontier developers, the ripple effects will reach employers who use, purchase, or contract for AI systems.

Employers should anticipate further sector-specific AI rules, especially in workplace and privacy contexts.

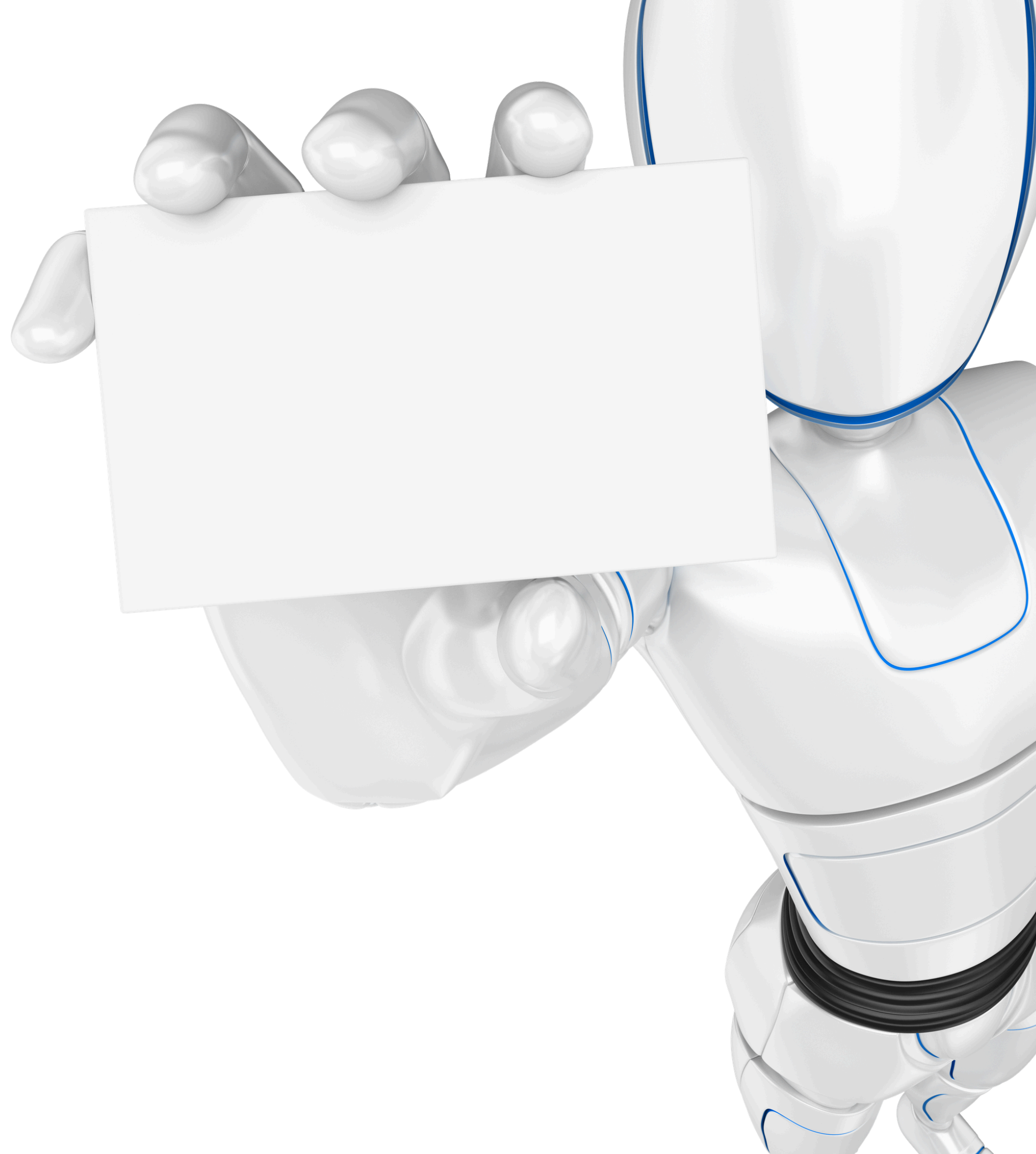
ARTICLE: [California Lawmakers Pass Landmark AI Transparency Law for Frontier Models: How SB 53 Differs from Last Year's Failed Attempt | Fisher Phillips](#)

- Contractual Flow-Downs: Expect vendors to mirror SB 53 disclosures in system cards, model cards, and transparency statements.
- Procurement Due Diligence: Employers should begin asking vendors whether they comply with SB 53-style frameworks and incident reporting. You can add this to the list of questions you pose to your AI vendors.
- Workforce Implications: Whistleblower protections may influence employment practices, particularly around risk assessment and compliance roles.
- Regulatory Roadmap: California has signaled it will legislate in AI absent federal action.

ARTIFICIAL INTELLIGENCE (2026)

AB 316: The robot chose
to do it defense is
unavailable.

Prohibits a defendant who
developed, modified, or used artificial
intelligence (AI) from asserting a
defense that the AI autonomously
caused harm to the plaintiff.

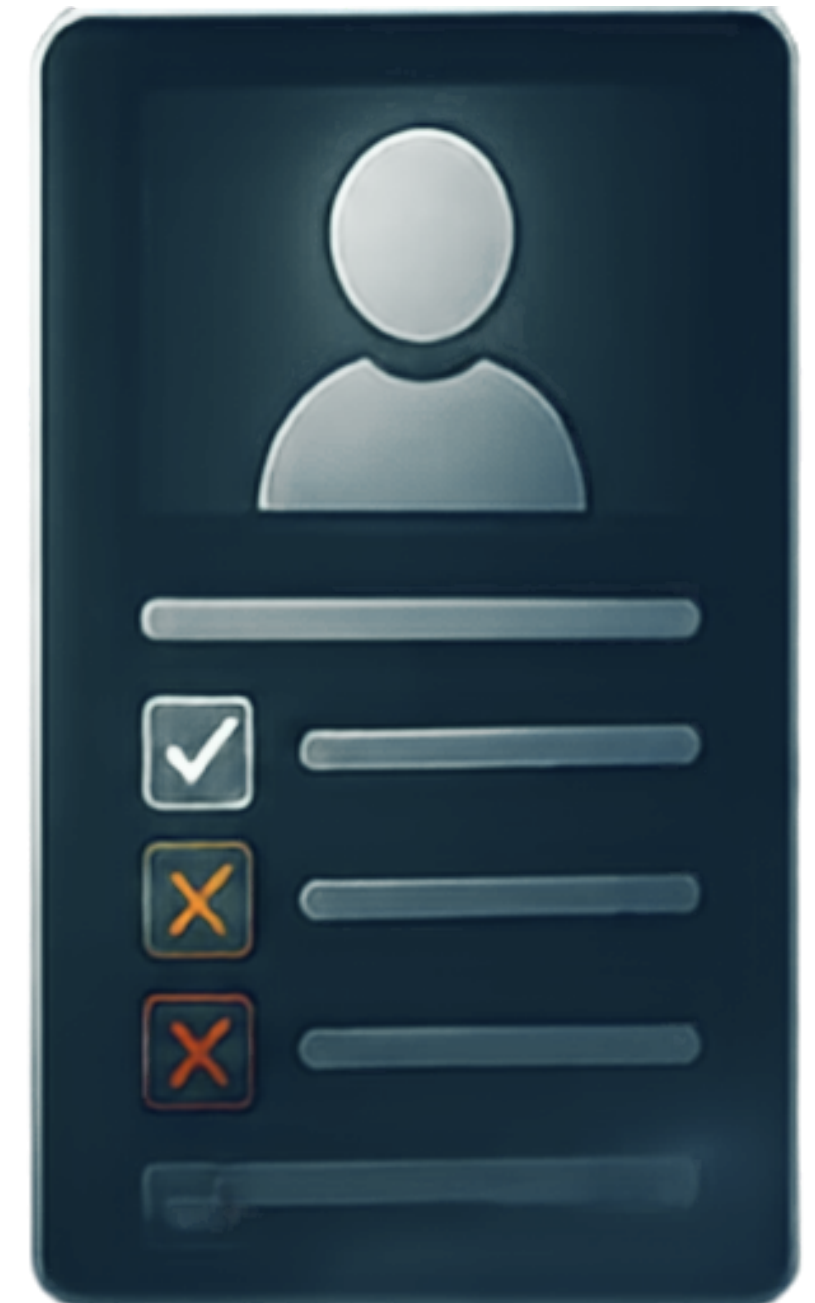


RELYING ON AI FOR EMPLOYMENT DECISIONS COULD VIOLATE ANTI-DISCRIMINATION LAWS



Case Study: iTutorGroup, Inc.

- English language tutoring company located in China, hired U.S.-based tutors to provide remote services via AI application software.
- The EEOC filed a lawsuit in 2022 which showed that iTutorGroup's software purposely rejected female applicants age 55 and older and male applicants age 60 and older.
- Violated the ADEA
- Settled in 2023, with iTutorGroup paying \$365,000



[News Article](#)

CASE LAW

There is a rapidly expanding body of case law addressing the dangers and legal issues of AI, including tons of cases about attorneys submitting AI-generated briefs containing fabricated, non-existent case citations.

This phenomenon is called AI “hallucinations.”

Mata v. Avianca, Inc., 678 F. Supp. 3d 443 (S.D.N.Y. 2023)

Attorneys submitted a brief in opposition to a motion to dismiss that cited six entirely fictitious judicial opinions generated by ChatGPT.

The court imposed \$5,000 in monetary sanctions and ordered the attorneys to send copies of the sanctions order to each judge whose name had been falsely invoked in the fabricated opinions.

Impacts on Criminal Justice

AI is shaping how we are surveilled, arrested, charged, and sentenced.

Example: Jonathan Rinderknecht was arrested for allegedly starting the devastating Pacific Palisades fire in Los Angeles after police found a prompt he entered into ChatGPT that included an image of a burning city and text asking if he was at fault for a fire caused by cigarettes.

[Related News Article](#)



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[Related News Article](#)



A faculty member, Joe, at your campus is “all in” on AI. They’ve been incorporating the use of AI into their course work for three semesters now without administrative oversight, and is a staunch advocate on campus for ensuring the next generation is “AI literate.” This faculty member has clashed with other faculty on campus who are more critical of AI, including the faculty president, Sarah, who is Catholic.

The second week of the semester a student files an “anonymous complaint” alleging discrimination on the basis of religion and race. The complaint - which is NOT AI generated - explains in a well thought out letter that Professor Joe’s class is required for their general education curriculum but that they know they will never be able to pass it because they cannot use AI in the manner in which Professor Joe requires to pass the class. The letter cites Pope Leo’s Magnifica Humanitas & the Bible.

Sarah, who also leads the Catholic Students for Justice group visits your office, indicating she knows who the anonymous student is, and wants to support the student in the complaint process.

Hypothetical

- 1 What are your first next steps?**

- 2 Is there an opportunity for a non-investigation path forward?**

- 3 Would Professor Joe be in compliance with policy on your campus? Why or why not?**

| DO YOU HAVE AN AI POLICY?

General Risks Include:

- Privacy and Data Security
- Confidentiality
- Output Accuracy & Output Bias

Mitigation looks different depending on the AI Platform.

- Have in-depth conversations and conduct intensive research into the vendor's data security.
- Publicly accessible AI modules could leave sensitive information exposed to the general public.
- Consider paying for an enterprise license which allows of a "closed universe" AI tool.
- *AI policy can control what AI tool is being used*

| The most important mitigation tool is human oversight.

| DO YOU HAVE AN AI POLICY?

— Key Terms

- Purpose & Applicability
- Statement Regarding Philosophy for Use of AI
- Definitions
- Ethics Issues - Research, Legal, FERPA, Privacy, Grading, Academic Integrity
- Authorized Platforms
- Complaint Procedures

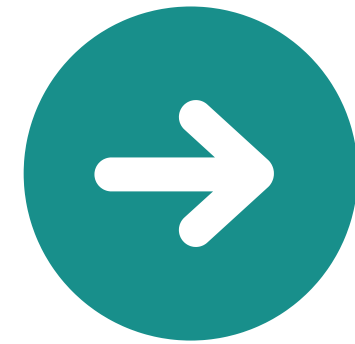
— Trouble Shooting

- AI is rapidly changing - be flexible.
- Consider linking ethics/confidentiality/research issues to already existing policies, and “tuning” policies with AI in mind.
- Consider accountability issues - when do you need to hold folks accountable for AI misuse?
- ***AI policy can control what AI tool is being used***

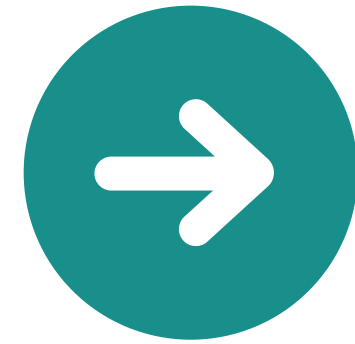
| **Approved through normal policy approval process.**

WHAT IS THE RISK OF PUTTING HR SCENARIOS IN PUBLICLY ACCESSIBLE AI?

Think Before you Prompt!



No longer confidential



No Attorney Client Privilege

Anything you type into an AI platform could be requested in discovery or through a subpoena. Unions and individuals may also request such records.

Impacts on Criminal Justice

In April 2026, two South Florida doctoral students were missing. Their roommate was charged with their murder.

- Roommate asked ChatGTP: “What happens if a human was put in a black garbage bag and thrown in a dumpster.”
- “Has there been someone who survived a sniper bullet to the head” and “Will my neighbors hear my gun”
- Later asked: “are cars checked at the Hillsborough River state park”

[Related News Article](#)



CASE LAW

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Lacey v. State Farm General Insurance Co. (C.D. Cal., May 5, 2025, No. CV 24-5205 FMO (MAAX)) 2025 WL 1363069.

An attorney was ordered to pay \$10,000 filing a state court appeal full of fake quotations generated by the artificial intelligence tool ChatGPT.

AI- GENERATED EVIDENCE

In Florida, a woman spent two days in jail after her ex-boyfriend allegedly fabricated AI-generated text messages that led to her arrest for violating a protective order. Prosecutors eventually dropped the charges, but only after eight months of legal proceedings.

AI capabilities cast doubt on authentic evidence.

[Related Article](#)

**Mendones v. Cushman & Wakefield,
(Super. Ct. Alameda County, Sept.
9, 2025, No. 23CV028772).**

Self-represented plaintiffs submitted deepfake videos as authentic testimony.

Court entered terminating sanctions and warned against use of GenAI in court.

“The Court has zero tolerance with attempting to pass deepfakes as evidence. This sanction serves the appropriately chilling message to litigants appearing before this Court: Use GenAI with great caution”

ARE AI SEARCHES DISCOVERABLE?

Courts are actively developing
this area of law

**Warner v. Gilbarco, Inc., 820 F.
Supp. 3d 629 (E.D. Mich. 2026)**

The court held that AI materials used by a pro se plaintiff in her employment discrimination case were subject to work product protection and not discoverable.

The court reasoned that the AI materials were prepared in anticipation of litigation, and that using ChatGPT did not waive work product protection because AI tools are not persons and disclosure was not made to an adversary.

ARE AI SEARCHES DISCOVERABLE?

United States v. Heppner, No. 25-cr-503, 2026 WL 436479, (S.D.N.Y. Feb. 17, 2026) marks the first ruling that a defendant's chats with an AI are not privileged.

After his indictment, and after retaining counsel, defendant Heppner used Claude to prepare written analysis of his own defense strategy.

The government moved to compel those exchanges, and in February 2026, the Judge ordered them produced.

An AI platform is not an attorney; the AI vendor's privacy policy at the time allowed user prompts to be used for training and potentially shared with third parties, which defeated any expectation of confidentiality; and the defendant used the platform on his own, without direction from his lawyers.

Overlap with AI- Generated CPRA Requests

Points for Discussion

Do you Have an AI Policy

Risks of AI

What is the California Public Records Act?



The California Public Records Act (the PRA) was enacted in 1968 to (1) safeguard the accountability of government to the public, (2) promote maximum disclosure of the conduct of governmental operations, and (3) explicitly acknowledge the principle that secrecy is antithetical to a democratic system of “government of the people, by the people [and] for the people.”



The purpose is to give the public access to information that enables them to monitor the functioning of their government

The PRA

What are Public Records?

The PRA defines “public records” 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.”

Includes:

Contracts of state and local agencies that require a private entity to review, audit, or report on any aspect of the agency, to the extent the contract is otherwise subject to disclosure under the PRA.
Specified pollution information

Employment contracts between state and local agencies and any public official or employee

Itemized statements of the total expenditures and disbursements of judicial agencies provided for under the State Constitution

The PRA

Responding to a public records request

This right of access to public information imposes a duty on local agencies to respond to PRA requests and does not “permit an agency to delay or obstruct the inspection or copying of public records.”

There are two ways to gain access under the PRA to a public record

(1) inspecting the record at the local agency’s offices or on the local agency’s website and
(2) obtaining a copy from the local agency.

The local agency may not dictate to the requester which option must be used; that is the requester’s decision.

PRACTICE TIP: If the public records request does not make clear whether the requester wants to inspect or obtain a copy of the record or records being sought, the local agency should seek clarification from the requester without delaying the process of searching for, collecting, and redacting exempt information in the records.

THE PRA - ACCESS & EXEMPTIONS

Exemptions from Disclosure

Many exemptions are intended to protect privacy rights.

- Architectural and Official Building Plans;
- Attorney-Client Communications and Attorney Work Product
- Drafts
- Personnel

The courts have consistently construed exemptions from disclosure narrowly and agencies' disclosure obligations broadly. Balancing test applies to some.

The PRA provides for two different rights of access.

Right to inspect public records

Right to prompt availability of copies of public records

Responding to a public records request

This right of access to public information imposes a duty on local agencies to respond to PRA requests and does not “permit an agency to delay or obstruct the inspection or copying of public records.”

Discussion Topic: Are an administrator's ChatGPT, Claude, or Co-Pilot prompts public records?

The agency must provide the best or most complete copy of the requested record that is reasonably possible. As with the right to inspect public records, the same rule of reasonableness applies to the right to obtain copies of those records. Thus, the local agency may impose reasonable restrictions on general requests for copies of voluminous classes of documents

Resource:
Federal Title IX &
California Sexual Misconduct

Points for Discussion

Legal Framework

Sexual Misconduct

Definitions

2020 TIX Regulatory Requirements

“

FEDERAL TITLE IX

“NO PERSON IN THE UNITED STATES SHALL, ON THE BASIS OF SEX, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY EDUCATIONAL PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.”

20 U.S.C. § 1681 ET SEQ. (1972)

Sexual Misconduct

Conduct which meets the federal regulatory definition of sexual harassment under Title IX is processed differently than other forms of sexual misconduct or sex-based/gender-based discrimination.

Key Differences Include



Higher level of due process/transparency in T9.



More lengthy process in T9.



Exchange of evidence process.



Hearing requirement with live cross-examination in CC and Universities.

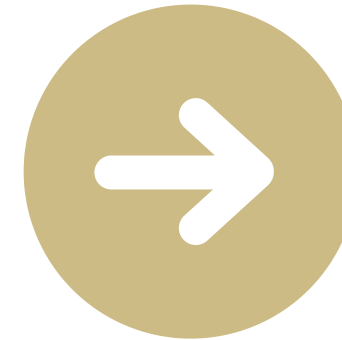
SEX DEFINED

Sex discrimination and sexual harassment includes conduct on the basis of:

- Gender
- Gender expression
- Sexual orientation
- Pregnancy
- Childbirth
- Breastfeeding or related conditions
 - And, depending on the situation and pending court battles, could include:
 - Gender Identity
 - Transgender Persons

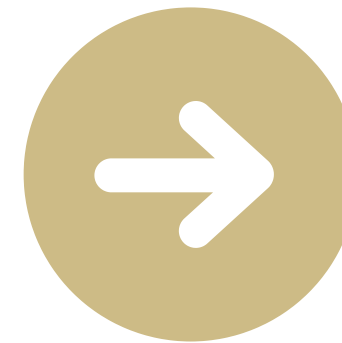
Title IX Sexual Harassment

3-Part Definition



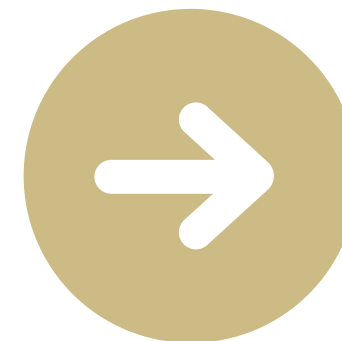
Quid pro quo

Conditioning an aid, benefit, or service on unwelcome sexual conduct



Denial of equal access

Unwelcome conduct that a reasonable person would consider severe, pervasive, **AND** objectively offensive



Clery and VAWA offenses

Sexual assault, dating violence, domestic violence, sex-based stalking

Sexual Assault

Any sexual act directed against another person **without consent** or where the victim is incapable of giving consent. Includes rape, forced oral sex, sexual assault with an object, and statutory rape.

Sexual assault includes criminal sexual contact (new definition):

- Intentional or forced touching of a clothed or unclothed body part without consent for the purposes of sexual degradation, gratification, or humiliation.



Community Colleges & Universities - California is a Yes Means Yes state.



K-12s - Need to adopt definition of consent in grievance process.



Yes Means Yes:

- Affirmative
- Conscious
- Voluntary
- Revocable
- Intoxication of the respondent is not a defense.

CA Ed. Code 67386

California Ed Code Sexual Harassment

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(Ed Code 212.5)

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Other California Sexual Harassment Definitions

Severe **OR** pervasive conduct that a reasonable person in that person's circumstance would find hostile, intimidating, offensive, oppressive, or abusive.



Verbal



Visual



Physical

Sarah is enrolled in your college's nursing program. She is on a practical skills rotation. In a meeting with Sarah's faculty mentor, Sarah shares that she wants to be moved from her current rotation and placed with another preceptor. Sarah explains the preceptor and another student on rotation have made comments and jokes about her appearance that make her uncomfortable. Sarah also shares that last week the preceptor began rubbing her shoulders and asked her to "lighten up."

The faculty mentor doesn't report the situation. Sarah applies for a leave of absence with student disability services. Her application for leave re-states the concerns she shared with her faculty mentor. The disability services administrator reports the situation to Title IX, demanding an investigation be conducted into why the faculty mentor did not report the concerns to the University, and states, "That faculty mentor has had problems like this before and should be fired."



Quiz

Is this a Title IX Complaint?
Against who?

How would you respond?

Resource:
Investigation Best Practices

Points for Discussion

Investigation Best Practices

Trauma Informed Practices

Sample Notice Letter

Anatomy of an Investigation Report

Practical Skills: Interview Techniques

INVESTIGATION PROCESS

Concern is Raised



Complaint

If Title IX – Formal Complaint Filed or Filing by TIX Coordinator Or Other BP/AR Applicable



Notices to Parties

Notices of Investigation Issued to Parties by Compliance Officer or Coordinator (Set by Policy)



Interviews

Interviews Begin – Typically with the Complainant



Witnesses Identified

Witness Notices Issued. Witnesses are Interviewed.



Documents

Documents Gathered & Analyzed



INVESTIGATION PROCESS

Depends on BP/AP

Next steps depend on applicable policies

Follow-Up Interviews

A key step



Draft Report

Technical Review
Issued to Parties if TIX



Review of Evidence

In TIX, a Notice of Right to
Review Evidence is issued to
the parties.



Final Report Issues

If TIX - Issued to Parties
If not TIX - Issued to District



Decision

If TIX - Issued by Decision-Maker
If Other BP/AR Form of Decision
Varies



Anatomy of an Investigation Report

Note: Does not Include TIX Requirements

Cover Page

Summary & Allegations

Methodology

**Witness List & Document
List**

Background Information

Summary of Evidence

Credibility

Findings of Fact

Enclosures

Signature (only on final)

Investigation Special Factor: Evidence

Not all evidence is relevant.

Evidence is relevant if it tends to make a fact in dispute more or less true.

Types of Evidence

- Written statements
- Documentary (e.g., photos, texts, emails)
- Interview statements and other verbal information
- Witness credibility

Investigation Special Factor: Credibility Determinations

Inherent plausibility

**Demeanor and
attitude**

Motivation

Corroboration

**Character of the
statement**

**Capacity to perceive,
remember, or communicate**

**Consistency of
statements**

**Admitting against
interest**

**Bias toward the
parties**

Investigator Best Practices

An investigator should be:

- Trained.
- Free from bias or conflicts of interest.
- Trained in trauma informed practices.
- Employee, licensed attorney, licensed PI.

Bias & Conflicts of Interest



Attitude – evaluation of a concept.



Stereotype – connecting a group to an evaluation.



Implicit bias – negative attitude against a group that one is not consciously aware of.



Conflict of interest – a conflict between private interests and official responsibilities.

Interview Best Practices

DO THE FOLLOWING:

- Go over admonitions at the outset, especially in serious cases
- Use active listening (e.g., listen and then reflect back what you heard)
- Ask follow up questions (dates, time, witnesses, etc.)
- Conduct all interviews separately
- Make sure to follow up on any evidence mentioned during an interview
- Ask the reason why a witness was named (what info do they have that is relevant?)
- Let the interviewee know they can take a break when/if needed.
- If a break is requested after you have asked a question, ask them to answer before the break

DON'T DO THE FOLLOWING:

- Make assumptions – if something is unclear ask clarifying questions
- Give your opinion (e.g., “wow” or “I believe you”)
- Promise absolute confidentiality
- Interrupt (* may need to offer break if interviewee is emotional)
- Conduct interviews that are too long
- Appear biased



Thank You

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