

**THE ASSOCIATION OF CHIEF
HUMAN RESOURCE OFFICERS
(ACHRO)
2026 ANNUAL CONFERENCE**

**Settlement Boundaries in Sexual
Harassment Complaints: Applying
California Education Code
Requirements**

9/30/2026

PRESENTED BY:

MiraCosta CCD: Hayley Schwartzkopf,
Superintendent/Vice President, Human Resources

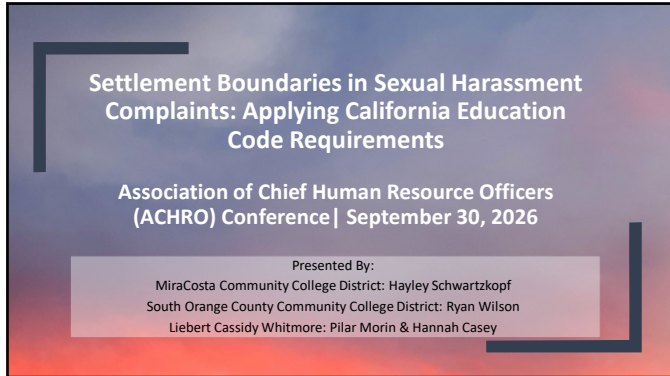
South Orange County CCD: Ryan Wilson,
District Director, Employee Relations & Title IX Officer

Liebert Cassidy Whitmore:
Pilar Morin, Partner & Hannah Casey, Associate

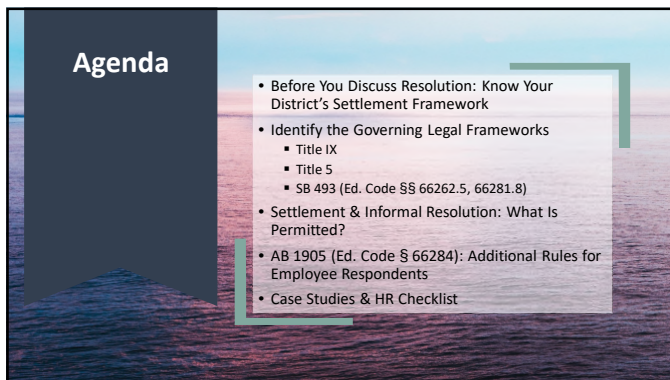
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Why Informal Resolution is Appealing

- A complainant may want the matter resolved quickly.
- A respondent may be willing to resign or accept conditions.
- The District may see settlement or informal resolution as reducing litigation and operational risk.

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Informal Resolution: Know the Legal Limits

- But sexual harassment complaints are subject to statutory and regulatory restrictions that do not necessarily apply to ordinary employment disputes.
- A resolution permissible under one framework may be prohibited under another.

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Legal Frameworks Regarding Sexual Harassment Complaints

- Federal Title IX
- California Title 5
- California Education Code - Equity in Higher Education Act
 - SB 493
 - AB 1905

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When Does Title IX Apply?

- Title IX prohibits discrimination
 - In the United States
 - On the basis of sex
 - In educational programs or activities
 - Receiving federal financial assistance

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When Does Title IX Apply?

- Specific definition of sexual harassment (34 C.F.R. § 106.30)
 - Quid Pro Quo by Employee
 - Severe, Pervasive & Objectively Offensive Conduct
 - Sexual Assault, Dating Violence, Domestic Violence or Stalking
- Complainant must be participating in or attempting to participate in the District's education program or activity when filing a formal complaint
- Under the current federal enforcement position, "sex" does not include gender identity or expression

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When Does Title 5 Apply?

- Applies to California Community Colleges
- Applies to unlawful discrimination based on a much **broader** list of protected classifications – includes sex, gender, gender identification, gender expression, sexual orientation
- If Title IX does not apply, look to Title 5

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When Does SB 493 Apply? Sexual Harassment Involving Students

- Applies to CCDs and other postsecondary institutions receiving state financial assistance
- Student-focused: addresses sexual harassment when student is a party
- Requires a response to conduct: On or off campus
- Within or outside the District's education programs or activities, when it could affect a student's educational environment or access

Ed. Code § 66281.8(b)(3)-(4)

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Before You Settle: Check AB 1905

- California imposes restrictions on resolving sexual harassment complaints involving employee respondents
- A resolution permitted under Title IX, Title 5, or SB 493 may still be restricted or prohibited by AB 1905
 - AB 1905 sets rules for:
 - Settlements and informal resolutions
 - Required approvals
 - Retreat rights
 - Official letters of recommendation

Ed. Code § 66284

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When does AB 1905 Apply?

- Applies to public postsecondary institutions, including California Community Colleges
- Applies to sexual harassment complaints where the respondent is an employee
- Requires as a condition of receiving state financial assistance, to adopt policies governing:
 - Settlements and informal resolutions
 - Retreat rights
 - Official letters of recommendation
 - Establishes specific prohibitions and approval requirements for settlements and informal resolutions

Ed. Code § 66284

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Informal Resolution Under Title IX

Informal resolution may include:

- Mediation, restorative justice, or other voluntary resolution processes

Permitted only if:

- A formal complaint has been filed
- The process occurs before a determination regarding responsibility
- Both parties voluntarily consent in writing
- The District provides the parties written notice of the process and consequences
- Either party may withdraw before agreeing to a resolution and resume the formal grievance process

Not permitted if allegations involve employee sexually harassing a student

34 C.F.R. § 106.45(b)(9)

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Informal Resolution Under Title 5

The District may attempt informal resolution:

- With the complainant's consent; it is voluntary
- May occur before or after a written or verbal complaint
- May, but need not, include an investigation

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Informal Resolution Under Title 5

After a complaint:

- Informal resolution efforts must be completed within 90 days
- Administrative determination timelines are tolled during good-faith informal-resolution efforts
- Investigation must be completed unless the matter is informally resolved and the complainant dismisses the complaint
- District may continue investigating despite an informal resolution

5 C.C.R. § 59327

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Case Study #1

- A student employee files a sexual harassment complaint against her supervisor, a District employee. She alleges that he repeatedly made sexual comments and sent sexually suggestive text messages after work. The student asks HR to resolve the matter without an investigation. The supervisor agrees to apologize, complete training, and accept a no-contact directive. HR believes the matter can be resolved informally under Title 5.

Can the District proceed with informal resolution?

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Case Study #1 Questions

Can the District proceed with informal resolution?

Does the fact that she is also an employee make a difference?

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Informal Resolution Under SB 493

Mediation

- Cannot be **required** to resolve allegations of sexual harassment
- Cannot be used **even voluntarily** to resolve allegations of **sexual violence**

Other Voluntary Resolution

- SB 493 does **not prohibit every form of voluntary informal resolution** of sexual harassment
- Other voluntary resolution may be available, **subject to other applicable law**
- District cannot require a complainant to agree to a resolution as a condition of receiving **remedial measures** that **safeguard access to education**

Key Distinction:

- **Sexual harassment:** mediation may be voluntary
- **Sexual violence:** mediation is prohibited—even if both parties want it

Ed. Code § 66281.8(b)(4)(A)(xxi)(I)–(II)

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Informal Resolution Under AB 1905

Settlement

- Agreement between the District and respondent
- For the purpose of resolving a sexual harassment complaint
- Does not include settlement of a civil action brought by the respondent against the District

Informal Resolution

- Agreement between the District, respondent, and complainant
- For the purpose of resolving a sexual harassment complaint
- Must occur before a final administrative decision

Ed. Code § 66284(d)(4), (8)

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AB 1905: When Resolution Is Prohibited

For sexual harassment complaints against an employee respondent, a settlement or informal resolution cannot be offered or entered into if:

- The complainant is a student
- The employee respondent is accused of sexual assault, sexual violence, or sexual battery
- The settlement or informal resolution includes a nondisclosure agreement

Ed. Code § 66284(c)(1)(A)–(C)

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AB 1905: Who Must Approve the Resolution?

Informal Resolution

- Must be approved by the campus Chief Executive Officer
- Approval authority cannot be delegated

Settlement

- All settlement offers require preliminary approval by the campus Chief Executive Officer
 - Preliminary approval authority cannot be delegated
 - "Chief Executive Officer" means the president of the campus.
- Settlement offer must then be approved by the governing board

Ed. Code § 66284(c)(2)–(4)

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Case Study #2

- A classified employee files a sexual harassment complaint against an administrator. The allegations do not involve sexual assault, sexual violence, or sexual battery. The parties wish to enter into a settlement agreement whereby the administrator gets training and apologizes to his subordinate before a final administrative decision is issued. The Superintendent/President is on vacation.

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Case Study #2

Can this be settled right away?

What should the President consider in approving the settlement?

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Case Study #3

- Rose and Monica are students who were previously in a consensual relationship. During their relationship, Rose consented to Monica taking intimate photographs of her. After their relationship ended, Monica began texting the photographs to others and posting them on Instagram without Rose's consent.

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Case Study #3

- Rose is embarrassed and wants the photographs removed. She tells the District she does not want a lengthy process, she just wants the posting to stop. Monica agrees to:
 - Remove the photographs from Instagram and other platforms
 - Stop sharing the photographs; and
 - Apologize to Rose
- Rose is happy with this proposal and agrees to these terms

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Case Study #3

Can the District resolve the complaint informally?

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Case Study #3

- Sam, a faculty member, agrees to resigns while under investigation for sexual harassment allegations filed against him by his colleague, Dana, another faculty member. Sam has had other.

Can Dean Garcia give him the letter? What steps must she take?

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Case Study #4

- Professor Grimes went out with Rose when she was in his class. He learns about Rose's photographs on Instagram and becomes very angry and jealous about Rose's relationship with Monica, which took place while they were also going out. He begins to call her on her cell and call her names. He tells her, now I know the real reasons you broke up with me.

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Case Study #4

- Rose filed a complaint and upon receiving the notice of allegations, Dr. Grimes immediately offer to resign in an email to Rose. Rose takes the email to the Title IX Coordinator and says that she will withdraw her complaint if Grimes resigns. Professor Grimes has a history of inappropriate relationships with students.

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Case Study #4 questions

1. Can Rose and Professor Grimes agree that he will resign in exchange for Rose withdrawing her sexual harassment complaint?
2. If Professor Grimes resigns voluntarily and Rose withdraws her complaint, can the District close the investigation?
3. What should HR do if Professor Grimes tenders his resignation, particularly given his history of inappropriate relationships with students?

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Case Study #5

- Jordan, a classified employee, files a sexual harassment complaint against Dr. Lee, a District administrator. The allegations involve repeated sexual comments but do not involve sexual assault, sexual violence, or sexual battery. Before the investigation is completed, Dr. Lee offers to resign and waive all employment claims if the District pays him \$40,000, and resolves the sexual harassment complaint.

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Case Study #5

- Jordan is not a party to the agreement or discussions. HR has delegated authority under District policy to resolve employment matters up to \$50,000. The campus President approves the proposed terms by email. HR tells Dr. Lee, "We have a deal," and prepares the agreement for signature. The next Board meeting is two weeks away.

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Case Study #5 Questions

1. Can the District agree to Dr. Lee's proposal without Jordan's consent?
2. Can the District agree that its settlement with Dr. Lee resolves Jordan's sexual harassment complaint?
3. HR has settlement authority up to \$50,000 and the President approved the proposed terms. Does the District have a deal, or is additional approval required?

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HR Checklist for Informal Resolution and Settlement

- Who are the complainant and respondent?
- What conduct is alleged?
- Which legal framework(s) apply?
- What type of resolution is being considered?
- Is the resolution permitted under the applicable framework?
- Whose consent and approval are required?
- What happens to the complaint, and what consequences follow?

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Questions?

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Thank You!

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Thank You!

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