

New Legislation and Guidance Regarding Community Colleges and Title IX Matters



ACBO 2017 Fall Conference
October 23, 2017

Prepared by:
Eve Peek Fichtner, Partner
Laura Cyphers Benson, Consultant

•
Ison

INVOLUNTARY PAID ADMINISTRATIVE LEAVE

Investigations of Faculty Misconduct

- AB 1651/Chapter 765
- Signed on October 13, 2017
- Adds Education Code section 87623
- Effective January 1, 2018
- Applies to Involuntary Paid Administrative Leave for Academic Employees at Community Colleges facing misconduct allegations

Investigations of Faculty Misconduct

Education Code section 87623:

- Definition of Paid administrative leave: temporary leave from a job assignment with pay and benefits intact
- Subdivision (a): Provide general nature of allegations of misconduct in writing to academic employee(s) at least 2 business days before the involuntary paid administrative leave

Investigations of Faculty Misconduct

Education Code section 87623, continued:

- (b) Requirements of subdivision (a) do not apply in the event of a serious risk of physical danger or other necessity arising from specific allegations.
 - Instead, provide academic employee with general nature of allegations within 5 business days of being placed on involuntary paid administrative leave

Investigations of Faculty Misconduct

Education Code section 87623, continued:

- (c) Within 90 days of placing on leave, the employer should complete the investigation and initiate discipline or reinstate employee
- (d) This law does not supersede the rights of labor organizations or employees under EERA/Gov't Code 3540 et seq.

Investigations of Misconduct

Practical Application

- Balance rights and protections of complainant and respondent
- Academic institutions experiencing an increase in sexual harassment and sexual misconduct allegations against academic employees at college level
- Other

GOVERNOR'S VETO OF SB 169 SEX EQUITY IN EDUCATION

Veto SB 169: Sex Equity in Education

- SB 169
- Vetoed by Governor Brown on October 15, 2017
- Intended purpose was to codify a combination of federal regulations and guidance on sexual harassment and sexual misconduct

Veto SB 169: Sex Equity in Education

Veto Message

“This is not a simple issue. Sexual harassment and sexual violence are serious and complicated matters for colleges to resolve.”

Veto SB 169: Sex Equity in Education

Message of **Balancing** Interests:

- “On the one side are complainants who come forward to seek justice and protection”
- “On the other side stand accused students, who guilty or not, must be treated fairly and with the presumption of innocence until the facts speak otherwise.”

RESCISSION AND ISSUANCE OF OCR GUIDANCE ON SEXUAL MISCONDUCT

Federal Guidance on Title IX

The Department of Education and the Office for Civil Rights (OCR) **rescinded:**

- Dear Colleague Letter (DCL) on Sexual Violence, April 4, 2011
- Questions and Answers on Title IX and Sexual Violence, April 29, 2014

Federal Guidance on Title IX

- The Department of Education and OCR **issued** Interim Guidance Documents:
 - DCL on Student-on-Student Sexual Misconduct Allegations, September 22, 2017
 - Questions and Answers on Campus Sexual Misconduct, September 2017

Federal Guidance on Title IX

- Message of **Balancing Interests**
 - Federal guidance reiterates need to balance the rights and protections for student complainants and student respondents
- Remember
 - Federal guidance sets the minimum standards
 - State laws governing student-on-student sexual misconduct allegations still apply and require higher standards

CLOSING EQUITY GAPS FOR STUDENTS

CCD Student Equity Plans

- AB 1018/Chapter 751 and AB 504/Chapter 742
- Signed on October 13, 2017
- Amends Education Code sections 78220 and 78221
- Effective January 1, 2018
- Potential mandated costs
- Applies to Student Success and Support Program funding

CCD Student Equity Plans

- AB 1018/Chapter 751 adds to the categories of students required to be addressed in student equity plans, including:
 - Homeless students
 - Lesbian, gay, bisexual and transgender students

CCD Student Equity Plans

- AB 1018/Chapter 751 requires student equity plans to include:
- Whether significant underrepresentation of any of the specified categories of students is found to exist in terms of:
 - Access and retention
 - Degree and certificate completion
 - English as a Section Language and basic skills completion, and
 - Transfer

CCD Student Equity Plans

- AB 1018/Chapter 751 requires the Chancellor of the CCC to:
 - Establish a standard methodology for measurement of student equity and disproportionate impact for disaggregated subgroups
 - Assist the CCD in maintaining student equity plans

INTERNAL QUESTIONS FOR EACH CCD

CCD Internal Questions Regarding Title IX and New Laws

Does your CCD have:

- Updated policies?
- Clear objectives and procedures?
- Regular Training?
- Students who understand how to seek help?

If the answer is NO to any of the questions, your CCD could be at risk.

Question & Answer
Session

Thank You

For questions or comments, please contact:

{ Eve P. Fichtner
(916) 923-1200
EPeekFichtner@aalrr.com }

{ Laura C. Benson
(562) 653-3200
lbenson@aalrr.com }

aalrr

Atkinson, Andelson
Loya, Ruud & Romo

A Professional Law Corporation

Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The firm is not responsible for inadvertent errors that may occur in the publishing process.



© 2017 Atkinson, Andelson, Loya, Ruud & Romo