

Title IX: Sex-Based Discrimination



Kelly Avila: Vice President, Human Resources

Learning Outcomes

- 1) Role of Title IX Coordinator
- 2) District's obligation to address sex discrimination
- 3) What is Sex-Based Discrimination?
- 4) Title IX and Pregnancy and Parenting
- 5) Overview of applicable MCCD Policies and Procedures
- 6) Title IX Investigations Overview & Grievance Procedure
- 7) Supportive Measures

What is Title IX?

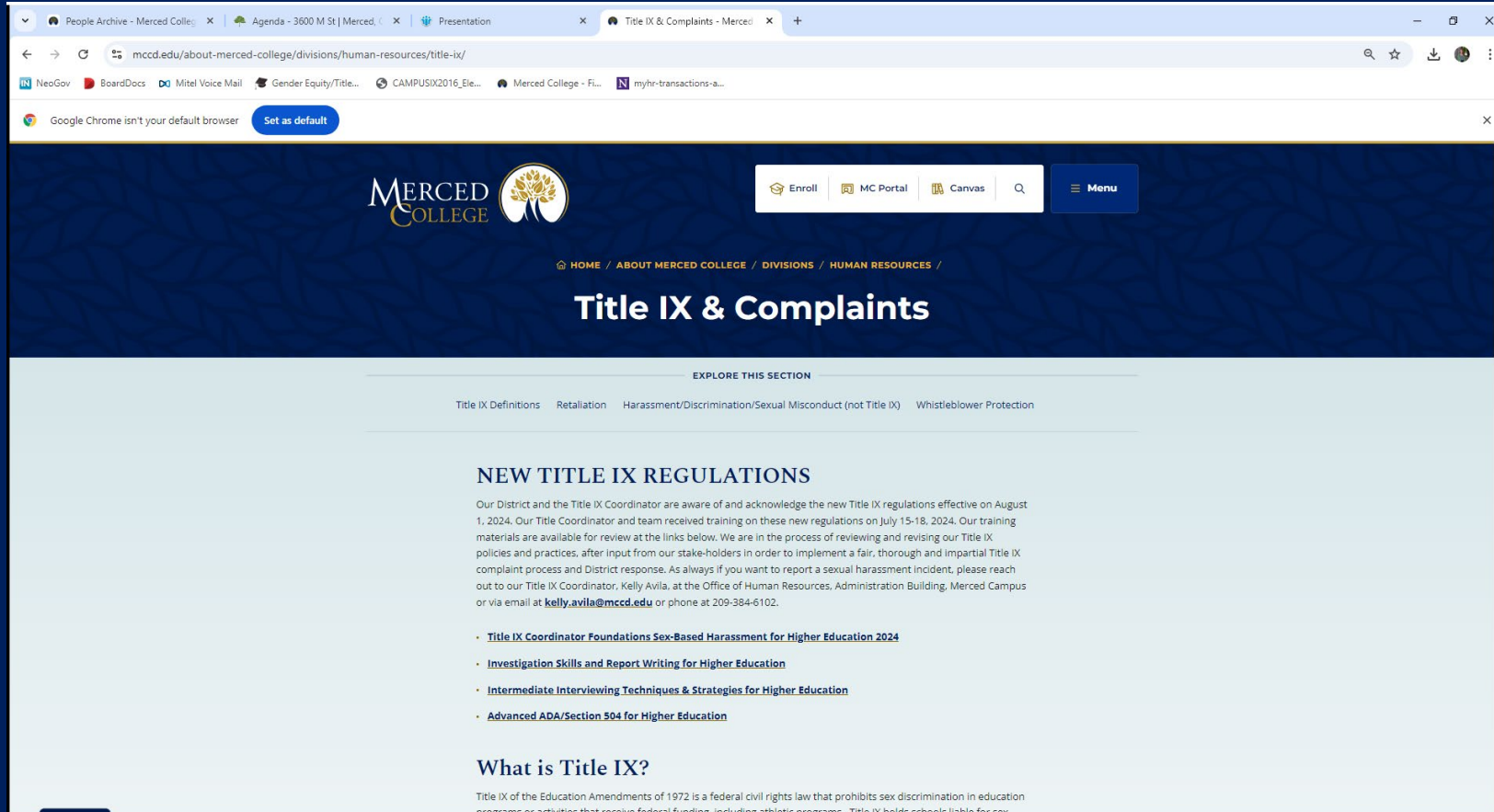
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

20 U.S.C. §1681 & 34 C.F.R. PART 106 (1972)

The History and the Myth



Where can I find Title IX information?



The screenshot shows a web browser window with the URL mccd.edu/about-merced-college/divisions/human-resources/title-ix/. The page features the Merced College logo and navigation links for Enroll, MC Portal, Canvas, and a Menu. The main heading is "Title IX & Complaints". Below this, there is a section titled "EXPLORE THIS SECTION" with links to Title IX Definitions, Retaliation, Harassment/Discrimination/Sexual Misconduct (not Title IX), and Whistleblower Protection. The "NEW TITLE IX REGULATIONS" section provides information about the new regulations effective on August 1, 2024, and lists training materials available for review. The "What is Title IX?" section explains that Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits sex discrimination in education programs or activities that receive federal funding, including athletic programs.

People Archive - Merced College x Agenda - 3600 M St | Merced x Presentation x Title IX & Complaints - Merced x +

mccd.edu/about-merced-college/divisions/human-resources/title-ix/

NeoGov BoardDocs Mitel Voice Mail Gender Equity/Title... CAMPUSIX2016_Ele... Merced College - Fl... myhr-transactions-a...

Google Chrome isn't your default browser Set as default

MERCED COLLEGE

Enroll MC Portal Canvas Menu

HOME / ABOUT MERCED COLLEGE / DIVISIONS / HUMAN RESOURCES /

Title IX & Complaints

EXPLORE THIS SECTION

[Title IX Definitions](#) [Retaliation](#) [Harassment/Discrimination/Sexual Misconduct \(not Title IX\)](#) [Whistleblower Protection](#)

NEW TITLE IX REGULATIONS

Our District and the Title IX Coordinator are aware of and acknowledge the new Title IX regulations effective on August 1, 2024. Our Title Coordinator and team received training on these new regulations on July 15-18, 2024. Our training materials are available for review at the links below. We are in the process of reviewing and revising our Title IX policies and practices, after input from our stake-holders in order to implement a fair, thorough and impartial Title IX complaint process and District response. As always if you want to report a sexual harassment incident, please reach out to our Title IX Coordinator, Kelly Avila, at the Office of Human Resources, Administration Building, Merced Campus or via email at kelly.avila@mccd.edu or phone at 209-384-6102.

- [Title IX Coordinator Foundations Sex-Based Harassment for Higher Education 2024](#)
- [Investigation Skills and Report Writing for Higher Education](#)
- [Intermediate Interviewing Techniques & Strategies for Higher Education](#)
- [Advanced ADA/Section 504 for Higher Education](#)

What is Title IX?

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits sex discrimination in education programs or activities that receive federal funding, including athletic programs. Title IX holds schools liable for sex-

Two Sets of Regs

2020 Regulations

Incidents that occurred
before August 1, 2024

2024 Regulations

Incidents that occur/occurred
after August 1, 2024

***This training focuses on the
2024 regulations**

2024 Title IX Regs (changes)

- Goal to Stop and Prevent Sex Discrimination, Including Sex-Based Harassment
- Expands Scope of Title IX – Expands “sex-based harassment” to include harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity, which includes (1) quid pro quo harassment, (2) hostile environment harassment, or (3) one of four specific offenses, namely sexual assault, dating violence, domestic violence, and stalking

Agencies Responsible for Enforcing T9 Laws

Agency	Students	Employees
OCR: Department of Education Office for Civil Rights	X	
CCCCO: California Community Colleges Chancellor's Office	X	X
CRD: Civil Right Department (was DFEH)		X
EEOC: Equal Employment Opportunity Commission		X

Responsibilities

Responsibilities of the Title IX Coordinator

Coordinator has ultimate oversight of:

- a) Oversees compliance with Title IX process
- b) Accepts reports & complaints,
- c) Sends Notice(s) of Allegations,
- d) Coordinates supportive measures,
- e) Initiates grievance procedures and/or informal resolution,
- f) Assigns investigator-decision maker;
- g) Considers dismissal options,
- h) Implements training,
- i) Maintains records,
- j) Etc.

Coordinator MAY:

- a) Facilitate an informal resolution process
- b) Consult with personnel responsible for providing supports to students with disabilities
- c) Investigate & make decision (**NOT** sanctions)
- d) Review and/or oversee process for investigative reports, written decisions, & appeal decisions
- e) Draft and/or issue letters of outcome after written decision issued
- f) Delegate specific duties to designees

Knowledge and Reporting

Under SB 493, a postsecondary institution shall be presumed to know of sexual harassment if a **responsible employee** knew or, in the exercise of reasonable care, should have known, about the sexual harassment.

You are the responsible employee!

Knowledge and Reporting

Non-Confidential Employees

Employees who (1) have authority to institute corrective measures, (2) are in administrative or leadership positions, (3) teaching positions, or (4) advising positions must report to Title IX Coordinator

All Other Employees

Must report to Title IX Coordinator

or

Provide contact information for Title IX Coordinator and information about how to file a complaint

Student Employees

Institutions must reasonably determine and specify under what circumstances a student employee must comply with reporting requirements.

****Student workers should report to their immediate supervisor for additional guidance.**

Confidential Employees

- Confidential employees are employees whose communications are privileged or confidential under Federal or State law.

Examples may include counselors, psychologists, and/or psychiatrists who receive information while performing privileged or confidential duties

Required to explain:

The employee's status as confidential and when the employee is required or not required to report;

How the reporting party can contact the Title IX Coordinator to make a complaint; and

Explain that the Title IX Coordinator can offer supportive measures, an informal resolution process, and/or an investigation.

What is Sexual Misconduct?

Per § 106.10, Discrimination on the basis of sex includes:

- Sex stereotypes
- Sex characteristics
- Pregnancy or pregnancy related conditions
- Sexual Orientation
- Gender Identity

Sex-based Harassment

1) Quid Pro Quo Harassment

An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct

– Quid pro quo harassment is not required to be offensive, severe, and/or pervasive.

2) Hostile Environment Sexual Harassment

Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively **and** objectively offensive **and** is so severe **or** pervasive that it limits **or** denies a person's ability to participate in **or** benefit from the District's education program or activity (i.e., creates a hostile environment).

Other sex-based acts under Title IX

- Sexual assault
 - Forcible: Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling
 - Nonforcible: Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest
- Dating violence
- Domestic violence
- Stalking

Pregnancy and Related Conditions

- To prevent sex discrimination and ensure equal access to its education program or activity, a District should take steps such as providing reasonable modifications for students, reasonable break time for lactation, and lactation space for students and employees.
- Districts are prohibited from requiring documentation from students to obtain reasonable modifications unless documentation is necessary and reasonable.

Notice

*Resolution on syllabus statement going to
Academic Senate.*

Employees must promptly inform a pregnant student (or person who has a legal right to act on behalf of the student) of the Title IX Coordinator's contact information and inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity.

Overview of MCCCD Policies and Procedures



Board Policies & Administrative Procedures

BP/AP 3410, Nondiscrimination

*BP/AP 3430, Prohibition of Harassment

*BP/AP 3433, Prohibition of Sexual Harassment under Title IX

AP 3435, Discrimination and Harassment Complaints and
Investigations

BP 3410, Nondiscrimination

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities.

The District, **and each individual who represents the District**, shall provide access to its services, classes, and programs without regard to national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or military and veteran status, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

BP 3430, Prohibition of Harassment

All forms of harassment are contrary to basic standards of conduct between individuals and are prohibited by state and federal law, as well as this policy, and will not be tolerated. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. **The District shall be free of sexual harassment and all forms of sexual intimidation and exploitation including acts of sexual violence.** It shall also be free of other unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation of any person, or military and veteran status, or because he/she is perceived to have one or more of the foregoing characteristics.

AP 3435, Complaints and Investigations

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in harassment, discrimination, or retaliation. Any person who has suffered harassment, discrimination, or retaliation may file a formal or informal complaint of harassment, discrimination, or retaliation, or who has learned of harassment, discrimination, or retaliation.

Investigation/ “Grievance” Procedure

Supportive Measures

- “No contact” order
- Transportation/work/class alternatives
- Increased security or monitoring
- Campus escort services
- Leaves of absence, extensions of time, or other course related adjustments

General Requirements

District must provide for prompt and equitable resolution complaints of sex discrimination against a person.

The following persons have a right to make a complaint:

- Complainant
- Parent/guardian/authorized legal representative of Complainant
- Title IX Coordinator
- For sex discrimination complaints that do not include sex-based harassment: any student, any employee, or any person other than a student or employee who was participating or attempting to participate in the education program or activity at the time of the alleged discrimination

Basic Requirements

District must treat Complainants and Respondents equitably

- Objective evaluation of all relevant evidence
- Cannot make credibility decisions based on a person's status as Complainant, Respondent, or witness
- Must presume Respondent is not responsible until a determination is made
- Establish reasonably prompt time frames for stages of process and explain delay
- Take reasonable steps to protect the privacy of the parties and witnesses, without restricting the ability of the parties to obtain and present evidence
- Exclude impermissible evidence and questions
- If have more than one grievance procedure, written grievance procedures shall explain how the district will consistently determine which procedure applies

Steps of Investigation

- Notice of Allegations
- Dismissal of a Complaint, if applicable
- Complaint Investigation
 - Questioning of Parties and Witnesses
- Live Hearing
- Written Determinations
- Appeals

Quiz

True or False

Title IX protects students, employees, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District bus, or at a class or training program sponsored by the District at another location.

Quiz

True!

Title IX protects students, employees, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District bus, or at a class or training program sponsored by the District at another location.

Title IX does not apply to misconduct that is unrelated to the College (ex. domestic violence that occurs in the home) unless a nexus exists.

Quiz

True or False

The parties to a Title IX complaint (or any other College-related complaint) are called Victim and Accused.

Answer

False!

The parties to a Title IX complaint (or any other College-related complaint) are called ~~Victim~~ Complainant and ~~Accused~~ Respondent.

Quiz

True or False

A hostile work environment includes when coworkers don't like each other and make everyone else miserable.

Quiz

Probably False:

A hostile work environment is ~~includes when coworkers don't like each other and make everyone else miserable.~~ unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (i.e., creates a hostile environment).

