

# HK School Law Monthly Newsletter



Greetings!

Thank you for your interest in the HK School Law Monthly Newsletter.  
We look forward to hearing from you soon!

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July 2015 | Issue 23

## QUICK LINKS

### **We're growing! Visit us at our newest location!**

In addition to our Lake Arrowhead offices, we're pleased to announce a second office location in Upland, California. Our second office will be located at: 1425 W. Foothill Blvd., Suite 100, Upland, CA 91786. Our office phone numbers remain the same. Toll Free: 1-800-577-0663. Direct: 909-744-8775.

Please continue to address all correspondence to our secure PO Box at PO Box 1352, Blue Jay, CA 92317-1352.

### **California Assembly Approves Mandatory Vaccine Law**

As many of you are no doubt aware, California's Assembly has just sent a bill to Gov. Jerry Brown for signature that would eliminate the personal belief exemption for vaccinations. Under the new rules, only children with serious health problems (such as a compromised immune system) would be exempt from mandatory vaccination schedules, and those who opt out will have to be homeschooled.

While it is still unclear if Brown will sign the bill, we will provide an update once we know for certain. In particular, we plan to review if and how the new law would impact school enrollment this coming fall.

### **US Supreme Court Upholds Right To Same-Sex Marriage**

Educators have been watching *Obergefell v. Hodges* (Case No. 14-556) closely because the debate over gay marriage holds various implications for the nation's schools, which could include employee benefits, parental rights of access, and the effect on school atmosphere for gay youths and parents.

Among the gay couples involved in the suit were one in which one partner is a school counselor and parent in Louisville, Ky., and others who are parents of school-age children. Some are seeking to marry so they can fully adopt all the children in their households.

The dissent from the Justices opposing the ruling was fierce. Roberts read his dissent from the bench, the first time he has done so in 10 years. Roberts said, "Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law." Justice Scalia's dissent labeled the ruling a "threat to American democracy." The ruling, Scalia claimed, "says that my ruler and the ruler of 320 million Americans coast-to-coast is a majority of the nine lawyers on the Supreme Court."

## **Online Training Opportunities – [www.schoollawtraining.com](http://www.schoollawtraining.com)**

Does your board need Brown Act training to ensure legal compliance and strengthen their operational abilities? At [www.schoollawtraining.com](http://www.schoollawtraining.com), your board members can get in on free Brown Act training. Find out more today by visiting the site!

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# **NEWSLETTER**

## **TITLE IX REMINDER**

Most charter schools – heck, most K-12 school districts – don't recognize or understand fully their obligations under Title IX. We are of the opinion that's all about to change.

Title IX was enacted into law over 40 years ago, yet to this day many educational organizations simply fail to meet their compliance obligations pursuant to Title IX or don't even recognize that it applies to their school. The bottom line is this: All public and private elementary and secondary schools, school districts, colleges, and universities receiving any type of Federal funds are subject to Title IX.

Charter schools are not exempted from this list.

### **What is Title IX?**

On June 23, 1972, Title IX of the Education Amendments of 1972 ([20 U.S.C. §1681 et seq.](#)) was signed into law. The Department of Education's Title IX regulations are found at [34 C.F.R. § 106.1 et seq.](#)

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Among its provisions, Title IX states that 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 education program or activity receiving Federal financial assistance.

### **Who Enforces Title IX?**

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX. Recently, the OCR issued a statement claiming that "some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX". The OCR has said it is currently investigating more than 100 colleges and universities over allegations that they have failed to meet the requirements of Title IX.

OCR evaluates, investigates, and resolves complaints alleging sex discrimination. OCR also conducts proactive investigations, called compliance reviews, to examine potential systemic violations based on sources of information other than complaints.

### **Does Title IX Apply To Me?**

A recent court ruling held that federal subsidies received by a K-12 institution for a school lunch program subjected it to Title IX compliance.

But even more recent guidance from the Department of Education specifically states: "If any part of a school district or college receives any Federal funds for any purpose, all of the operations of the district or college are covered by Title IX." This guidance would apply to charter schools receiving federal funds for any purpose.

According to the Department of Education, Title IX applies to approximately 16,500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums. Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories and possessions of the United States.

Accordingly, we are urging all of our schools to proactively determine whether they are subject to Title IX and, if so, to take the necessary steps to ensure full compliance under the law. Failure to comply could [expose your school to damaging allegations](#).

### **What Are My Obligations Under Title IX?**

Educational programs and activities that receive federal funds must operate in a nondiscriminatory manner. Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.

Also, a recipient may not retaliate against any person for opposing an unlawful educational practice or policy, or made charges, testified or participated in any complaint action under Title IX.

There are other responsibilities for educational institutions under Title IX, which include, but are not limited to:

- Published notice of non-discrimination
- Assignment of a dedicated Title IX Coordinator who is adequately trained under federal guidance in order to fulfill their responsibilities under the law
- Quick and competent investigation and adjudication of claims of sexual assault
- A clear grievance procedure for sex discrimination

Perhaps the most important requirement, however, involves a school's actions after a report of sexual harassment or abuse.

Sexual harassment can take two forms: *quid pro quo* and hostile environment.

*Quid pro quo* harassment occurs when a school employee causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct. For example, when a teacher threatens to fail a

student unless the student agrees to date the teacher, it is quid pro quo harassment.

Hostile environment harassment occurs when unwelcome conduct of a sexual nature is sufficiently serious that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational environment. A hostile environment can be created by a school employee, another student, or even someone visiting the school, such as a student or employee from another school.

Regardless of which type of harassment occurs, a school must take immediate and appropriate steps to stop it and prevent it from happening again. Ultimately, the school is responsible for taking all reasonable steps to ensure a safe and nondiscriminatory learning environment.

### **What Resources Are Available?**

The Department of Education's Office for Civil Rights recently released a new guidance package to help schools understand the requirements and expectations of their Title IX coordinators. The package includes:

- A new Dear Colleague letter, reminding institutions to hire a coordinator and explaining what their duties would be.
- A separate more detailed letter addressed to Title IX coordinators.
- A Title IX resource guide providing an overview of topics frequently handled by coordinators, including recruitment, admissions, counseling, athletics, sex-based harassment, pregnant and parenting students, discipline, single-sex education, employment and retaliation along with information collection and reporting.

[Click here to access these resources on the Department of Education's website.](#)

In addition to its enforcement activities, OCR provides technical assistance and information and guidance to schools, universities and other agencies to assist them in voluntarily complying with the law.

Please refer to the [OCR's Title IX Resource Guide](#).

The OCR Title IX Resource Guide is a helpful aid for schools and their Title IX coordinators.

### **WHAT YOU NEED TO DO**

If you haven't reviewed your school's Title IX compliance lately or are wondering if your school is even obligated to comply with Title IX, now is the time to do so. Our firm has seen an increase in the number of complaints regarding Title IX violations to both the OCR and charter authorizers.

As always, if you have questions about your Title IX obligations, contact your counsel to review.

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*Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!*

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★ **This is a Test Email only.**

This message was sent for the sole purpose of testing a draft message.