

Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees

Rancho Santiago Community College District | March 28, 2025

Presented By: Jenny Denny

LIEBERT CASSIDY WHITMORE

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Jenny Denny / March 28, 2025

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AGENDA

Mandatory training requirements:

1. Law & regulations regarding nondiscrimination
2. The educational benefits of workforce diversity
3. The elimination of bias in hiring decisions
4. Best practices for selection/screening committees

Crafting questions that get the information you seek

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Equal Employment Opportunity Plan Requirements

What training is required?

- All of the following:
 - Law & regulations regarding nondiscrimination
 - The educational benefits of workforce diversity
 - The elimination of bias in hiring decisions
 - Best practices for selection/screening committees
- No time or frequency requirements
 - Best practice = every two years

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**Nondiscrimination in Employment:
Law & Regulations**

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Federal/State Anti-Discrimination Laws

Overview:

- Prohibition against employment discrimination isn't new
- What constitutes unlawful discrimination has changed

BUT

- *Expectations have not changed*

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Federal/State Anti-Discrimination Laws

- Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1974
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Fair Employment and Housing Act (FEHA)

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Federal/State Anti-Discrimination Laws

Employment Discrimination Includes:

- Refusal to hire*
- Rejection from training program
- Discharge from employment/training program
- Any decision affecting compensation, terms, conditions, privileges

(*If based on a protected status)

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Federal/State Anti-Discrimination Laws

No discrimination on basis of:

- Sex/Gender (including gender identity/gender expression)
- Reproductive health decision making
- Genetic Information
- Race
- National Origin
- Hair texture/hairstyles associated w/particular race/national origin
- Color
- Ancestry
- Physical/Mental Disability, Medical Condition
- Marital Status
- Age
- Sexual Orientation
- Military and Veteran Status
- Religious Creed

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Equal Employment Opportunity In California

Proposition 209 (Cal. Const. Art. 1, Sec. 31)*

- Prohibits "preferential treatment" on basis of:
 - Race
 - Sex
 - Color
 - Ethnicity
 - National Origin
- In public:
 - Employment
 - Education
 - Contracting

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Equal Employment Opportunity In California

Prop 209: Legislative Response

- Funding contingent on:
"Each district employer *shall* commit to sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities . . ."

* EC 87101(c)

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Equal Employment Opportunity In California

Title 5 Regulations:

- Require EEO Plans covering a 3-year period, that now must be reviewed annually to assess progress toward meeting EEO program goals
- Require districts to take steps to eliminate underrepresentation based on protected status.
- Title 5 regulations recently amended**

5 CCR, §§ 51010 et seq., 53000 et seq.

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The Hiring Challenge

3 Principles for Lawful EEO Hiring:

- Protected status of candidates is *never* a factor
- Infusing a commitment to diversity & equity into the hiring process **does not** involve lowering standards
- Infusing a commitment to diversity & equity into the hiring process **does** involve assessing candidates against job-related criteria that:
 - Eliminate irrational barriers
 - Beware the false predictors of performance
 - Expand and update "job-related" criteria
 - Be curious

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The Educational Benefits Of Workforce Diversity

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It's Not Just The Law...

Why does diversity matter to CCDs?

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It's Not Just The Law...

Core Mission:

- Serve California's diverse community of learners
- Prepare all students for success in a global society

Longstanding Expectation:

- Identify and address underrepresentation in the workforce

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Equal Employment Opportunity in California

Academic & administrative applicants must demonstrate:
"sensitivity to and understanding of the diverse academic, socioeconomic, cultural, and ethnic backgrounds of community college students."*

**EC 87360*

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CCCCO's Vision for Success Diversity Equity and Inclusion Task Force

- Established 2018
- Ultimate goals: Improve student outcomes and meet California's future workforce needs;
- Critical component: Increase faculty and staff diversity across the system;
- Report confirming that lack of diversity among campus leadership, faculty and staff can negatively impact student success.

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Key Findings

Task force/success center key findings

1. Diversity increases student achievement
2. Diversity impacts student and employee retention
3. Faculty and staff diversity reduces the likelihood of implicit bias
4. Faculty and staff diversity increases the ability to integrate multicultural and culturally responsible pedagogy into teaching practices

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Task Force Integration Plan

- Organizational strategy and living document
- Systemic approach to addressing faculty and staff diversity at three levels
 - Institutional (policy changes)
 - Interactional (changes to existing procedures)
 - Individual (activities that promote supportive and inclusive behavior)
- Two basic principles
 1. Faculty and staff diversity is a driver for social mobility and educational achievement for students
 2. Community colleges must shift to an intentional practice of compliance to partnerships across systems/departments/divisions in order to design, implement and reinforce policies, procedures and behaviors that serve and cultivate an inclusive ecosystem
- → Theory of Change
- Identified proposed strategies (69 total) aimed at dismantling the implicitly and explicitly systemic barriers that negatively impact faculty and staff of color

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**Elimination of Bias in Decision Making:
Why We Need “Interrupters”**

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Bias Defined

A particular tendency, trend, inclination, feeling, or opinion, especially one that is preconceived or unreasoned.

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Unconscious vs. Conscious

Two distinct psychological systems:

Unconscious:
"Operates automatically and quickly, with little or no effort and no sense of voluntary control."

Conscious:
"Allocates attention to the effortful mental activities that demand it, including complex computations."

— *Thinking, Fast and Slow* by Daniel Kahneman

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What is Unconscious Bias?

We evolved to be biased

- Humans' "fast brain" helped us survive
- Our "danger detector" is unconscious and hard-wired

But....

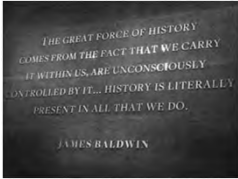
- We use this "fast brain" to reach all sorts of conclusions it isn't equipped to make
- And we do it all the time

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Where Do Our Biases Come From?

1. Our identities
2. Our experiences
3. History



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Our Biases Impact:

- **Our Perception** – How we see people and perceive reality
- **Our Attitude** – How we react towards certain people
- **Our Behaviors** – How receptive/friendly we are toward certain people
- **Our Attention** – Which aspects of a person we pay most attention to
- **Our Listening Skills** – How much we listen to what certain people say
- **Our Micro-affirmations** – How much we comfort certain people in certain situations

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The Bias Blind Spot

People underestimate the influence that self-interest has on their own judgments

People overestimate the influence that self-interest has on other people’s judgments

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Examples of Common Biases

- **Bandwagon effect:** The tendency to do (or believe) things because many other people do (or believe) the same thing
- **Confirmation:** The tendency to confirm what we already believe is true
- **Negativity Effect:** The tendency to allow things that are negative to have a more significant effect than things that are positive or neutral
- **Affinity Bias:** The tendency to have an affinity for people or behaviors that are similar to you
- **Name bias:** The tendency to prejudge someone based on their name

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**Addressing Unconscious Bias:
Beware the “Good Fit” Myths**

Myth #1:
Whether a candidate resonates with me on a personal level provides a reliable predictor of whether the candidate will do a good job

Myth #2:
How someone performs in an interview setting provides a reliable predictor of how that person will interact with me in the work setting

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**Strategy for Interrupting
Unconscious Bias**

1. Awareness of self
2. Awareness of others
3. Institutional commitments

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Awareness of Self

1. Know your biases
2. Interrogate your biases
3. Avoid assumptions
4. Be curious

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Awareness of Others

1. Historical context
2. What you say vs. how they hear it
3. Be attentive to reactions

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Institutional Commitments

- Consider whether there are decision points where bias can be "interrupted"
- *Examples from the hiring process:*
 - Remove identifying information (name, address, etc.) from applications
 - Identify desirable interview answers ahead of the interview
 - Utilize a structured hiring process
 - Utilize skill-based testing where applicable
 - Conduct anonymous/blind interviews

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Let's Practice Interrupting Bias

A candidate has a heavy accent. After the interview, the committee discusses the ratings. One member states, "I had to rate him low because I couldn't understand his answers."

Are there any biases at play?

How would you handle the situation?

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Hiring Committee Best Practices for Promoting Equity & Diversity

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Role of Selection Committees

- Identify the most qualified candidates to recommend forward to next level
- Using a process that is
 - Objective
 - Job related
 - Curious

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REMEMBER!

- Best practices apply at all levels of the hiring process:
 - Recruitment
 - Consultants should understand District's legal obligations
 - Paper screening
 - First round interviews
 - Second, third, final round interviews
- Including Board of Trustees

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Committee Formation

- Diverse to the extent possible
- Committee must be trained
- Don't participate if:
 - Can't fairly and objectively evaluate candidates
 - Appearance of bias to a reasonable person
 - Can't give full attention/attend all meetings

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Committee Process — Roles & Responsibilities

- Review job announcement/job description
 - This is your touchstone!
- Develop forms and procedures
 - Paper screening criteria/process to select interviewees
 - Interview questions
 - Demonstration component (if applicable)
 - Rating form/process
 - Model answers

Practice tip: Make sure you are rating what you intend the question to measure

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Phase 1: *Who* gets interviewed? Screening The MQ Applicants

Who gets the interview?

- Critically important step
- Where diversity of pool often dwindles
- Important at this phase:
 - Written application questions
 - Focus on currency of knowledge
 - Assess global knowledge (if job related)
 - Initial sensitivity to diversity review
 - Rating criteria

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Screening Applications

What do you think?

A screening committee for a math instructor position institutes this screening step: eliminate all applications with spelling or grammatical errors.

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Screening Applications

Assuming the job announcement includes “doctorate preferred,” how can the hiring committee protect against liability in this scenario?

A screening committee is hiring a new instructor in the early childhood development program. The job announcement includes: “Doctorate preferred.” A Hispanic male with a masters, who has an impressive work history and excellent application, gets an interview. He gets high marks in the interview and ultimately is hired. A white female with a doctorate sues.

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Committee Process — Best Practices

- **Protect integrity and credibility of process**
 - Assess all candidates using same criteria
 - Don’t bring in “outside knowledge”
 - Reference checks shouldn’t be a committee function because:
 - Occurs after finalist selected...and only for finalist
 - Requires particular expertise
 - Committee may provide content expertise in fashioning reference check
 - Maintain confidentiality!

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Screening Process — Best Practices

- Neutral
- Objective
- Meaningful consideration of “sensitivity to diversity”
- Job-related criteria only
- Do it right the first time!
- Monitor processes

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Screening Process — Best Practices

- **Collaborate with Human Resources throughout process**
 - Title 5 compliance
 - Anti-discrimination laws and rules
 - Elimination of bias

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Screening Process — Demographic Data

- **Role of demographic data**
 - Districts required to collect and analyze data as part of EEO Plans
 - Underrepresentation analysis
 - Adverse impact analysis
- **Strategies**
 - Provide demographic data when it is not tied to a specific search
 - Make it part of common knowledge and discourse, tied to EEO plan analyses
 - Risk of providing data within a particular hiring process, or specific to the position district is hiring for = hiring becomes suspect

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The Interview—Best Practices

- Robust content ... but it's not a gauntlet
 - Be transparent: Use introductions to explain process
 - Provide questions in writing as well as orally
 - Avoid questions with subparts!
 - Helps committees prioritize & elicit what candidates know
 - Consider using a "soft" opening question that is not rated
- Create opportunity for candidates to shine
- Remember you are being interviewed

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The Interview—Best Practices

Rating form for interview:

- Rate each question and response individually
 - Ideally based on a "model answer"
- Base rating only on what the question was intended to measure
- Anything committee intends to rate during the interview should be
 - Job related
 - Reasonably predictive of performance
 - Included on rating form

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Problems in the Interview Room

How would you handle the following?

You are on a screening committee for a new DSP&S counselor. Another committee member has an apparent disability. During one interview, the candidate would not look at the member with a disability, even if she asked the question.

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Crafting Questions

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Asking Questions: The Basics

Use your time wisely- don't use interview for matters better handled through other parts of the selection process

- Does candidate meet minimum qualifications?
 - Review documentation
- Does the candidate possess any of the preferred qualifications?
 - Answers to written questions
- Does candidate have an engaging teaching style?
 - Demonstration
- Does the candidate work well with others?
 - Reference check
- Does the candidate have deep knowledge in their field?
 - Response to interview questions

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Making the Most of the Interview

Developing appropriate *and useful* questions

1. Look at the job description:

What do you want the successful candidate to do?

- What courses must candidate be qualified to teach?
- What students will candidate serve?
- What professional activities will candidate engage in?
- What current knowledge, skills, and abilities are relevant to the position?

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Making the Most of the Interview

Developing appropriate *and useful* questions

2. Plan the interview:

- What are the *critical* job functions, knowledge, skills & abilities that you want to make sure to cover in an interview?
- How much can you realistically cover?

Remember: Using your time wisely includes NOT spending time covering areas that the interview format isn't well designed to evaluate

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Making the Most of the Interview

Developing appropriate *and useful* questions

3. Craft questions consistent with critical areas identified

- For each question:
 - FIRST decide which critical area(s) the specific question is intended to measure
 - THEN, craft the question

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Making the Most of the Interview

Developing appropriate *and useful* questions

3. Craft Questions (con't):

- Give meaningful consideration to candidates' "sensitivity to diversity" by assessing multiple ways, such as:
 - Question(s) specific to this criterion
 - As a rating sub-component of questions
 - Professional, collegial engagement with the committee
- Give candidates opportunity to highlight job-related KSAs that:
 - Reflect current/recent developments in the field
 - Show a global perspective

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Making the Most of the Interview

Developing appropriate and useful questions

3. Craft Questions (con't):

- No questions—direct or indirect—about protected status
- Example: May you ask?
 - "I don't see when you graduated on your resume, when did you graduate?"
- Assuming a legitimate, job-related concern, what could you ask?

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Making the Most of the Interview

- Use different question formats for different purposes
 - **Open-ended** →
 - to understand candidate's depth of knowledge, skills, and abilities
 - **Hypothetical** →
 - for creativity and problem-solving
 - **Hypothetical/experience-based hybrid** →
 - for creativity/problem-solving, while assessing experience of seasoned candidates
- Plan ahead how committee will evaluate answers
- As a committee, outline the components of an excellent answer

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Making the Most of the Interview

Infuse diversity commitment into hiring process by conducting meaningful inquiry into candidates' sensitivity to diversity

--Exercise: The Hypothetical Question--

Develop 1 question for position of your choice that:

- Assesses the candidate's sensitivity to the diversity of community college students; and
- Gives you insight into the candidates' (job-related) creativity and/or problem-solving skills

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Thank you!

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