



2024 Title IX Regulations: Practical Guidance for Timely Implementation

Presented by: Monica D. Batanero, Sarah E. Fama, and Emma J. Sol

LOZANO SMITH WEBINAR

May 21, 2024

Monica D. Batanero

Senior Counsel



Los Angeles Offices
mbatanero@lozanosmith.com
213.929.1066

Overview

Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office. Ms. Batanero advises educational institutions on student, special education and personnel issues.

Experience

Ms. Batanero provides legal counsel to community college districts and K-12 school districts on day-to-day issues involving Title IX compliance, sexual harassment, discrimination/harassment, Section 504, IDEA, governance, Public Records Act, and student discipline. She regularly conducts workplace and school investigations involving alleged misconduct in violation of board policy and/or law, including Title IX, sexual harassment, professional standards, and code of student conduct.

Ms. Batanero has represented school districts in all phases of special education matters, including Individualized Education Plan meetings, resolution meetings, mediations, and due process hearings conducted by the Office of Administrative Hearings.

She also frequently develops and provides trainings to clients on Title IX, Section 504, IDEA, workplace and school investigations, sexual harassment prevention, student discipline, and first amendment issues.

Education

Ms. Batanero earned her Juris Doctor from the University of San Francisco, School of Law. She earned both an M.S. and B.S. in Gerontology from the University of Southern California.

Practices

Student
Special Education
Labor and Employment
Investigations

Title IX
Governance

Education

J.D., University of San Francisco, School of Law
M.S., University of Southern California
B.S., University of Southern California

Admissions

California

Sarah E. Fama

Senior Counsel



Walnut Creek Office
sfama@lozanosmith.com
925.953.1620

Overview

Sarah E. Fama is Senior Counsel in Lozano Smith's Walnut Creek office. She represents public agencies through various aspects of employment and general liability issues.

Experience

Ms. Fama represents public employers at California Superior Court, California Labor Commission, California Unemployment Insurance Appeals Board, California Workers' Compensation Appeals Board, Department of Fair Employment and Housing, and Equal Employment Opportunity Commission. She regularly defends employers against claims of harassment, discrimination, wrongful termination, and wage and hour violations. Clients seek her out to provide guidance, education and training to employers regarding employment law compliance, in areas of harassment, discrimination, separation, accommodation, and wage and hour compliance.

She is routinely involved in investigations, either by guiding employers through the investigation process or by acting as an investigator herself. She also advises employers and provides training on various topics including investigations, Title IX, sexual harassment, Uniform Complaint Procedure, retaliation, discrimination and other complaints that may arise in an education setting.

Education

Ms. Fama received her Juris Doctor degree from the University of the Pacific, McGeorge School of Law, where she was named to the Dean's Honor List. Her J.D. concentration was focused on International Legal Studies. She earned her Bachelor of Arts in Sociology from the University of Alberta.

Practices

Labor & Employment
Litigation
Title IX
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Education

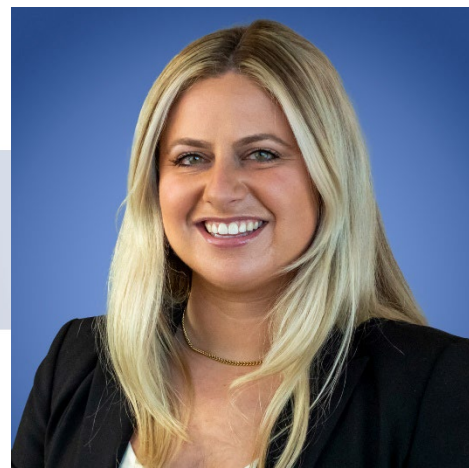
J.D., University of the Pacific,
McGeorge School of Law
B.A., University of Alberta

Admissions

California

Emma J. Sol

Associate



Walnut Creek Office
esol@lozanosmith.com
925.953.1620

Overview

Emma J. Sol is an Associate in Lozano Smith's Walnut Creek office. Ms. Sol focuses her practice primarily on Title IX, labor and employment, student and investigations issues.

Experience

Ms. Sol frequently assists clients in all aspects of Title IX compliance, including completing investigations and drafting policy. She also utilizes her knowledge and expertise in the area to present trainings on Title IX topics to assist clients in understanding this complex law. Ms. Sol also provides related Title IX services, including serving as an investigator, decision-maker, and appeals officer for Title IX grievance procedures. Ms. Sol works frequently with clients to assist on Title IX sports equity concerns and represents clients throughout Office of Civil Rights investigations.

Ms. Sol provides legal guidance to clients on personnel matters, including investigations, discrimination, retaliation, and sexual harassment claims, and employee discipline. Ms. Sol is also familiar and experienced in guidance on student-related issues, such as student investigations, discipline, constitutional student matters, and assisting clients in responding to California Public Records Act Requests. She applies her background and knowledge in college athletic compliance in many areas of her representation of clients.

Education

Ms. Sol earned her law degree from Santa Clara University School of Law. She was a Dean's List graduate and received a High Tech Law Certificate, with honors. She also received CALI Awards in both Contracts and Negotiations. While in law school, she mentored first year law students as an Academic Support Program Fellow, and was the President of the Sports and Entertainment Law Society. Ms. Sol graduated magna cum laude from Texas Christian University, where she earned a Bachelor of Science in Sports Broadcasting, with an English minor and emphasis on Women & Gender Studies.

Practices

Title IX
Labor & Employment
Student
Investigations

Education

J.D., Santa Clara University School of Law
B.S., Texas Christian University

Admissions

California

WHO WE ARE & WHAT WE DO

Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Sacramento, Walnut Creek, Fresno, Monterey, Bakersfield, San Luis Obispo, Los Angeles, and San Diego.

AREAS OF EXPERTISE

- Administrative Hearings
- Charter School
- Community College
- Facilities & Business
- Governance
- Investigations
- Labor & Employment
- Litigation
- Municipal
- Public Finance
- Public Safety
- Special Education
- Student
- Technology & Innovation
- Title IX

COST CONTROL is important for public agencies and an area we have mastered. We recognize and understand your financial restraints and work tirelessly to provide the best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you updated on changing laws affecting education. In addition, we offer extensive workshops and legal seminars providing the tools needed to minimize liability, reducing the need for legal assistance down the road.

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DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.

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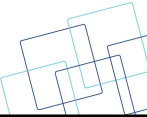
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LOZANO SMITH WEBINAR
MAY 21, 2024



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Presenter

Monica D. Batanero

AT LOZANO SMITH

Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office. Ms. Batanero represents California public school districts, county offices of education, and community college districts in all aspects of education law. She is chair of the firm's Title IX Practice Area and specializes in Title IX compliance, as well as conducting complex investigations into claims of sexual misconduct and harassment (including Title IX), discrimination, bullying, retaliation, and other issues that may arise in an educational setting. Ms. Batanero also specializes in student discipline and special education.



CONNECT

mbatanero@lozanosmith.com
213.929.1066

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sfama@lozanosmith.com
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esol@lozanosmith.com

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Overview of the
Changes with the 2024
Regulations

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2024 Title IX Definitions

Complainant:

Includes person(s) other than student(s)/employee(s) who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX ***at a time when that individual was participating or attempting to participate*** in the recipient's education program or activity.

Complaints:

May be made orally or in writing, as long as the complaint can be objectively understood as a request for the school to investigate.



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Scope of Sex Discrimination

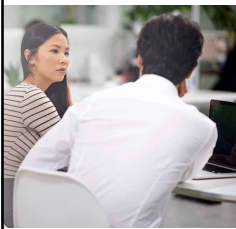
- Title IX includes sex discrimination.
- Based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.



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Definition of Sex-Based Harassment



Form of sex discrimination that includes the following:

- Quid Pro Quo
- Hostile environment harassment (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 recipient's education program or activity)
- Sexual Assault, Dating Violence, Domestic Violence, and Stalking

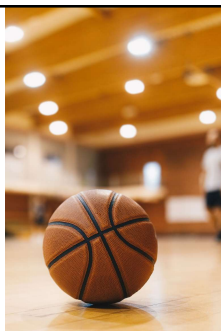


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Sex Separation

- Recipients can impose sex-based distinctions or separation in their educational programs **if they do not impose more than a *de minimis* harm.**
- Prohibiting a student from participating in an education program or activity consistent with their gender identity **violates this standard** and is thus prohibited.



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Title IX Jurisdiction

Must address all sex discrimination occurring under the Recipient's education program or activity in the United States.

Includes, but not limited to:

- Conduct that occurs in any building owned or controlled by a student org. that is officially recognized by a postsecondary institution; and,
- Conduct that is subject to the recipient's **disciplinary authority**.



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Responding to Sex Discrimination

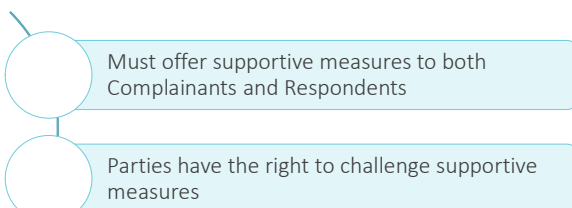
- A recipient with knowledge . . . must respond **promptly and effectively** and **must prevent the recurrence** of any sex discrimination and remedy its effects.
- K-12: non-confidential employees must notify the Title IX Coordinator.
- Postsecondary: employee's reporting requirements will depend on their status.
 - Public awareness events disclosures do not obligate reporting



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Supportive Measures



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Informal Resolution

Expanded discretion for a Title IX Coordinator to allow for informal resolution



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Title IX Grievance Procedures (§ 106.45)

K-12 (EEs and students) & Postsecondary (not involving student)

- Adequate, reliable and impartial
- Flexibility in form of notice, investigator model, exchange of evidence and appeals

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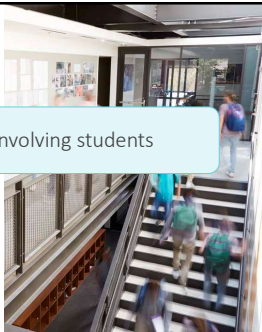
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Title IX Grievance Procedures (§ 106.46)

Postsecondary sex-based harassment involving students

- Live hearings are optional



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Appeals of Dismissals

- Dismissal appeals are required
- Higher standard for dismissal appeals



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Discrimination Based on Pregnancy or Related Conditions

Prohibited from discriminating against students/employees for their parental, family, or marital status

Must take actions to prevent discrimination and ensure equal access for students and employees

Employees must provide any students who disclose pregnancy/related conditions with the Title IX Coordinators contact and inform them of their rights

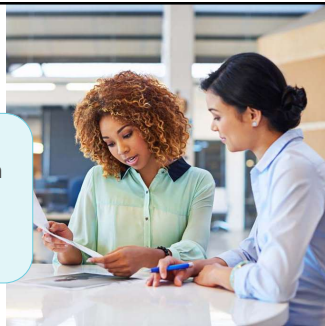


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Students with Disabilities

K-12 district **MUST** consult with a student's IEP/Section 504 team to determine appropriate accommodations.



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Implementation by August 1, 2024

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The 2024 Regulations are NOT Retroactive

- Only applies to sex discrimination that **occurred on or after August 1, 2024**.
- All incidents that take place on or before July 31, 2024, must be processed through the 2020 Title IX Regulations.



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Policies/Procedures

Adding and Updating

- 2020 Title IX Regulations still in effect



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Notice of Nondiscrimination (34 CFR §106.8(c)(2))

Must be posted on:

- Website
- Handbook
- Other means of notifying students/parents/employees etc.



Compliance by
August 1, 2024



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Title IX Team

- Title IX Coordinator (& designees)
- Investigator
- Decision-maker
- Appeals Officer
- Informal Resolution Facilitator

Will you have Title IX Coordinator designees at each site?

What investigation model will you use?



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Potential Investigator Models

Name of Model	Process	Options
Single Investigator	T IX Coordinator = Investigator = Decision-maker	Can have someone else sign off on decision
Single Investigator +	T IX Coordinator = Investigator → Decision-maker	Inv. makes recommended findings
Title IX Coordinator/Decision-Maker	T IX Coordinator → Investigator → T IX Coordinator/Decision-maker	Have Inv. make recommended findings
2020 Regs	T IX Coordinator → Investigator → Decision-maker	Have DM collaborate with Investigator regarding questions DM may have



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Confidential Employees



An employee whose communications are privileged or confidential under Federal or State law or an employee that has been designated as a confidential employee for the purpose of providing services to persons related to sex discrimination.

Will you have confidential employees?

If so, they must be identified and trained



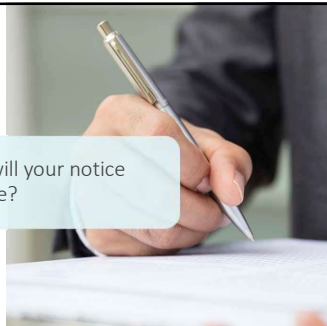
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Notice of Complaint

106.45: Does not have to be in writing

What will your notice look like?



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Exchange of Evidence

§106.45

- Description of Relevant Evidence
- OR
- Access to Actual Relevant Evidence

Will you still use an investigation report?

§106.46

- If conducting a live hearing, must provide evidence to review before or during the live hearing

Will you have live hearings?



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Appeals

§106.45

- Optional for determinations
- Must be offered if offered in comparable hearings

Will you offer appeals?

§106.46

- Appeal the determination on the following basis
 - Procedural irregularity
 - New evidence
 - Conflict of Interest Bias

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Trainings (§106.8(d))

- All employees
- Investigators, Decision-makers, Informal Resolution Officers and persons implementing supportive measures
- Title IX Coordinators and designees



*Implementation
August 1, 2024*

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Questions



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Lozano Smith Hosted Trainings:
Title IX Training Series:
2024 Regulations, Conducting Investigations
& Title IX Coordinator

Online Series | Starting @ 9:00 am
July & August | Multiple Dates Available
lozanosmith.com/titleixtraining.php

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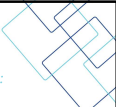
Contact

For more information, questions and comments about the presentation, please contact:

Monica D. Batanero <i>Senior Counsel</i>	Tel: 213.929.1066	mbatanero@lozanosmith.com
Sarah E. Fama <i>Senior Counsel</i>	Tel: 925.953.1620	sfama@lozanosmith.com
Emma J. Sol <i>Associate</i>	Tel: 925.953.1620	esol@lozanosmith.com



Or any of the attorneys in one of our 8 offices.



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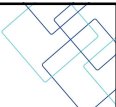
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District Checklist for Timely Implementation of 2024 Title IX Regulations



☐ STRATEGIZE REGARDING STAFFING (May/June)

- > Title IX Coordinator designees
- > Investigation model
- > Confidential employees

☐ STRATEGIZE ABOUT PROCEDURE (May/June)

- > Initial notices in writing
- > Investigation Reports/Exchange of Evidence
- > Appeals

☐ PROCEDURES/POLICIES (adopt before Aug 1, 2024)

- > New AR for 2024 Title IX Regulations
- > Revise policies and regulations that implicate or refer to Title IX
- > Pregnancy/parenting policies and regulations

☐ NOTIFICATIONS §106.8(c) (prepare before Aug 1, 2024)

- > Students
- > Employees
- > Unions

☐ WEBSITE, HANDBOOKS, POSTINGS §106.8(c)(2) (prepare before Aug 1, 2024)

- > Website requirements
- > Update handbooks, brochures, etc.
- > Website does not need to post training materials for 2024 Title IX Regulations, but must have those related to 2020 Title IX Regulations

☐ TRAINING §106.8(d) (districts are expected to be compliant with 2024 Regulations by Aug 1, 2024)

- > All employees
- > Administrators (all persons with authority to modify or terminate supportive measures)
- > Title IX Coordinators
- > Confidential employees

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