



2024 Title IX Regulations Training

Presented by:
Emma J. Sol and Danielle E. Potestio

Northern California Labor Law Personnel Consortium
October 17, 2024

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.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

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.

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

Danielle E. Potestio

Associate



Walnut Creek Office
dpotestio@lozanosmith.com
925.953.1620

Overview

Danielle E. Potestio is an Associate in Lozano Smith's Walnut Creek Office. Her legal practice is focused primarily on litigation, student, and labor and employment matters for public agencies.

Experience

Danielle Potestio is an Associate in Lozano Smith's Walnut Creek Office. Her legal practice is focused primarily on litigation, student, and labor and employment matters for public agencies. Ms. Potestio has advised public agency clients on various legal matters, including the California Public Records Act, student record requests, governance, workplace violence restraining orders, Pitchess Motions, criminal and civil subpoenas, code enforcement, and notices of dangerous conditions. She has extensive experience with the California Public Records Act where she has advised public entity clients on daily requests, assisted in the review and redaction process of responsive records, evaluated applicable exemptions, and corresponded with requesters. Additionally, she has provided counseling in all stages of litigation including drafting and filing motions, discovery, contract review, settlement negotiations, mediation, trial preparation, dispute resolutions, and claims investigations.

Education

Ms. Potestio received her Juris Doctorate from the University of San Francisco School of Law where she was awarded the McFetridge Award for Excellence in Trial Advocacy. She received her Bachelor of Science in Public Administration with a minor in Business Administration from the University of Arizona.

Practices

Litigation
Labor and Employment
Student
Title IX

Education

J.D., University of San Francisco School of Law
B.A., University of Arizona

Admissions

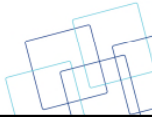
California



2024 Title IX Regulations Training

Presented by: Emma J. Sol and Danielle Potestio

Northern California Labor Law Personnel Consortium
October 17, 2024



Presenter

Emma J. Sol

AT LOZANO SMITH

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. 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.



CONNECT
esol@lozanosmith.com
925.953.1620



Presenter

Danielle Potestio

Danielle Potestio is an Associate in Lozano Smith's Walnut Creek Office. She represents clients in the labor & employment, litigation, student, and Title IX practice groups. Ms. Potestio has advised public agency clients on various legal matters, including the California Public Records Act, governance, gun violence restraining orders, workplace violence restraining orders, criminal and civil subpoenas, code enforcement, notices of dangerous conditions, and Pitchess Motions. She has extensive experience with the Public Records Act where she has advised public entity clients on daily requests, assisted in the review and redaction process of responsive records, evaluated applicable exemptions, and corresponded with requesters. Additionally, she has provided counseling in all stages of litigation including drafting and filing motions, discovery, contract review, settlement negotiations, mediation, trial preparation, dispute resolutions, and claims investigations.



CONNECT
dpotestio@lozanosmith.com
925.953.1620



Lozano Smith
LS




Topics

- Overview of 2024 Title IX Regulations
- Definitions to Know
- Responding to Complaints
 - Initial Evaluation
 - Supportive Measures
 - Informal Resolution
 - Investigation Procedures
 - Written Determination
 - Appeals
- Pregnancy and Parenting

4


The 2024 Regulations are NOT Retroactive



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


5

Knowledge Check



- Before you came to this presentation, you were working on a Title IX investigation from a complaint that came in on June 6.
- Should you adjust your current investigation to comply with the 2024 regulations?

6



Title IX Across August 1, 2024

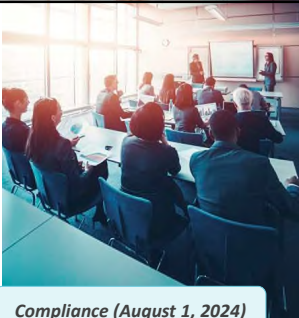
OCR will evaluate compliance against both the 2020 Title IX regulations and the 2024 Title IX regulations

LS

7

Trainings

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




Compliance (August 1, 2024)

LS

8

Trainings

- Annually
- Promptly when an employee changes positions that alters duties under Title IX



LS 34 C.F.R. § 106.8(d)

9

Overview of the 2024 Regulations

Sex Discrimination

- 2024 Title IX Regulations prohibit sex discrimination, including but not limited to sex-based harassment.
- “Sex” = sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- This is an expanded scope in comparison to the 2020 Title IX Regulations.



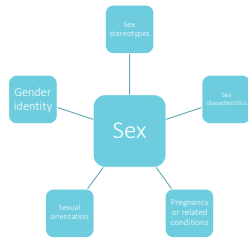
34 C.F.R. § 106.10

11

Title IX



Title IX - Sex



Group Activity

Does this violate Title IX?

Not promoting because of pregnancy.

Firing because of gender identity.

Paying employees differently based on their marital status



34 C.F.R. § 106.45

14

Sex-Based Harassment

- **Quid Pro Quo**
 - Employee, Agent, or **Person authorized by the District**
- **Hostile Environment Harassment ("HEH")**
 - 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
- **Specific Offenses:** Sexual Assault, Dating Violence, Domestic Violence, and Stalking



34 C.F.R. § 106.2

15

Sex-Based Harassment - HEH

Factors to consider:

- Effect on the complainant's ability to access the district's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles, previous interactions, and other individual factors;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment.



16

Sexual Assault

- Rape
- Sodomy (meaning forcible oral or anal sexual intercourse with a complainant)
- Sexual assault with an object
- Fondling
- Incest
- Statutory rape



17

Let's Practice...

Principal Jones tells Claire, a student teacher at his site, "If you spend your lunch hour with me every day for the rest of the year, I will make sure you get a job here next year." When Claire doesn't join him for lunch, Principal Jones threatens that he will make sure she never has a job in this District.

Would the alleged conduct fall within the definition of Sex Discrimination under the 2024 Title IX Regulations? Why or why not?



18

Title IX Jurisdiction

Must address all sex discrimination occurring under the district's education program or activity in the United States. Includes, but is not limited to:

- Conduct that is subject to the recipient's **disciplinary authority**.



34 C.F.R. § 106.11

19

Title IX Jurisdiction vs. Impact

Location and Impact	Is it Title IX?
Off campus conduct with no impact on campus and the District has no jurisdiction in policy	No Title IX Jurisdiction
Off campus conduct with impact that is not a Title IX violation (i.e., complainant is upset by seeing respondent)	No Title IX Jurisdiction, but District must remedy/provide supportive measures
Off campus conduct with impact that is within Title IX (i.e., hostile environment harassment from rumors, bullying, retaliation, etc.)	Yes , Title IX jurisdiction over HEH
Off campus conduct when District has jurisdiction over off campus conduct in policy	Yes , Title IX jurisdiction

Group Activity

Gemma and George are both new teachers at the East Elementary School. Their kids play on the same soccer team. Gemma tells you that she is uncomfortable around George. When you ask why, she says that over the last few months at the kids soccer games, he has been talking to her about more and more personal matters and that this last weekend he told her a dirty joke and asked her out. She said he also sent her some inappropriate videos on Instagram.

Is this Title IX?

Sex-Based Distinctions or Separation

- Recipients can impose sex-based distinctions or separation in their educational programs **if they do not impose more than a *de minimis* harm.**
- More than *de minimis* harm is any harm that **is genuine and objectively non-trivial**, from a reasonable person's perspective.
- Prohibiting a student from participating in an education program or activity consistent with their gender identity **violates this standard** and is thus prohibited.



§ 106.31(a)(2)

22



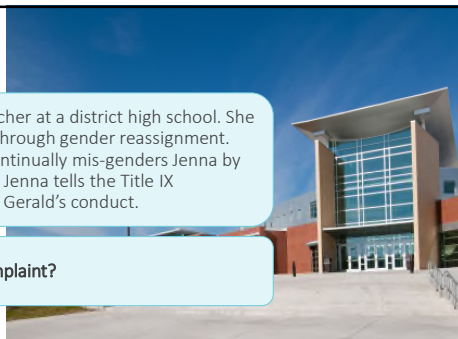
Group Activity

Jenna is a new teacher at a district high school. She is currently going through gender reassignment. Gerald, a senior continually mis-genders Jenna by calling her "Mr. J." Jenna tells the Title IX Coordinator about Gerald's conduct.

Is this a Title IX complaint?



23



Definitions To Know

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 district's education program or activity.

Respondent

- A person who is alleged to have violated the recipient's prohibition on sex discrimination.



34 C.F.R. § 106.2

25

2024 Title IX Definitions

Knowledge

- Knowledge of conduct that reasonably may constitute sex discrimination requires **prompt and effective response**.

(34 C.F.R. § 106.44)

Evaluation:

- The district's decision to dismiss or investigate a complaint.

(34 C.F.R. § 106.45(b)(2))



26

2024 Title IX Definitions

Complaint:

- May be oral or written, as long as the complaint can be objectively understood as a request for the district to investigate.

(34 C.F.R. § 106.45(a)(2))

Pregnancy or Related Conditions

- Pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(34 C.F.R. § 106.2)



27

2024 Title IX Definitions

Retaliation:

- Retaliation means intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized to provide aid, benefit, or service, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has participated in any manner in a Title IX process.

Peer Retaliation:

- Peer retaliation means retaliation by a student against another student.



34 C.F.R. § 106.2

28

Let's Practice...

On September 15, 2024, Allison's Supervisor made a side comment to a colleague as he was leaving a staff meeting, "I am so tired of hearing excuses from working moms that they can't get to work on time because of their kids. They need to work it out. Allison was late twice last week."

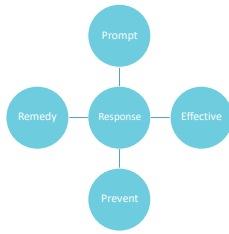
Would the alleged conduct fall within the definition of Sex Discrimination under the 2024 Title IX Regulations? Why or why not?



29

Basic Requirements

Basic Requirements



- Must treat parties equitably.
- Title IX team trained and free of conflicts of interest or bias.
- Presumption that respondent is not responsible.
- No discipline until grievance procedure complete.



34 C.F.R. § 106.45

31

Basic Requirements

Reasonably prompt timeframes for all major stages.

Reasonable steps to protect the privacy of parties and witnesses.

Objective evaluation of all relevant and not otherwise impermissible evidence.

Consolidation is permitted for complaints arising out of the same facts or circumstances.

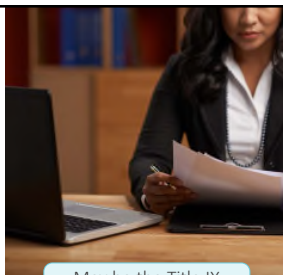


34 C.F.R. § 106.45

32

Investigator's Duties

- Interviews parties and witnesses
- Gathers and reviews evidence
- Prepares investigation report
- Allows parties to inspect, review, and respond to all relevant evidence
- Considers all parties' responses



May be the Title IX Coordinator



33

Responding to Complaints

Initial Evaluations

Responding to Sex Discrimination

Title IX reporting is separate from mandated reporting requirements.



34 C.F.R. § 106.44 (c)(2)



35

Responding to Sex Discrimination

All non-confidential employees **must** notify the Title IX Coordinator of conduct that could reasonably be considered sex discrimination.

Supervisors must report up to the Title IX Coordinator.



34 C.F.R. § 106.44 (c)(2)



36

Confidential Employees



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



§ 106.2

37

Confidential Employees

Under Law

- School counselor
- Licensed psychologist
- Licensed clinical social worker
- School psychologist with credential
- Licensed marriage and family therapist (MFT)
- Licensed professional clinical counselor
- Licensed educational psychologist (Evid. Code 1010.5)

Designated



38

Confidential Employees

- Only confidential when providing those services.
- Must provide specific training to them about their reporting requirements.



39

Confidential Employees



Must explain to any person who informs them of conduct that reasonably may constitute sex discrimination:

- Their status as confidential
- Title IX Coordinator's contact information
- How to make a complaint
- That supportive measures, informal resolution and an investigation may be available



§ 106.44(d)

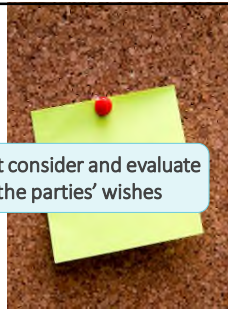
40

Initial Evaluation

Upon notice, Title IX Coordinator must:

- Treat parties equitably
- Supportive measures
- Inform Complainant of processes
- Initiate process

Must consider and evaluate the parties' wishes



34 C.F.R. §106.44(f)

41

Factors to Consider when Complaint is Initiated by Title IX Coordinator

- Complainant request
- Complainant's reasonable safety concerns
- Risk of additional acts
- Severity
- Age and relationship
- Scope (i.e., pattern, ongoing acts, or impact on multiple individuals)
- Availability of evidence
- Whether the alleged sex discrimination can be stopped



34 C.F.R. § 106.44(f)

42

Complaint Initiated by Title IX Coordinator

May initiate if alleged conduct:

- Presents an imminent and serious health or safety threat
- Prevents the district from ensuring equal access on the basis of sex to its education program or activity

If initiating, must:

- Notify complainant prior to initiation
- Address safety concerns
 - Complainant
 - Others



34 C.F.R. § 106.44(f)

43

Confidentiality

Prohibited from disclosing personally identifiable information, **except:**

- Prior written consent
- Disclosure to parent, guardian, or other authorized legal representative with the legal right to receive disclosures
- To carry out Title IX grievance procedure
- As required by law



34 C.F.R. §106.44(j)

44

Responding to Complaints

Supportive Measures

Supportive Measures

Must be

- Must be designed to protect the safety of the parties or environment
- May be modified or terminated at the end of the resolution process
- May include emergency removal and administrative leave

Must not be


- Must not unreasonably burden either party;
- May not be imposed for punitive or disciplinary reasons

LS


§106.44(g) and (k)

46

Supportive Measures



Must offer supportive measures to both Complainants and Respondents




Parties have the right to challenge supportive measures

LS

§ 106.44(g)

47

Supportive Measures



- Parties may challenge a decision regarding their supportive measures
- Challenge heard by an impartial employee with the ability to modify or reverse the original decision

LS

34 C.F.R. §106.44(g)

48

16

Supportive Measures

Examples:

No-Contact Orders

Change Of Class Or Work Schedules

Modified Lunch Schedules

Campus Escort Services

Change In Work Locations

Increased Security/Monitoring

Extensions Of Deadlines Or Other Course-Related Adjustments

Counseling

Independent Study (Must Be Nonpunitive/Nondisciplinary)

Emergency Removal & Administrative Leave

LS

49


Students with Disabilities

MUST consult with a member of the student's IEP/Section 504 team.

§ 106.44(g)(6)

LS

50



Responding to Complaints

Notice of Investigation

Notice to the Parties

- Identify grievance procedure;
- Identify allegations with sufficient details;
- Statement that retaliation is prohibited;
- Parties will be provided access to evidence.
- Prohibition of knowingly making false statements or submitting false information*
- Providing right to an advisor of their choice*

Responding to Complaints

Informal Resolution

Informal Resolution

Expanded discretion for informal resolution

Not available when student alleges sex-based harassment against employee

Informal Resolution

Must be Voluntary

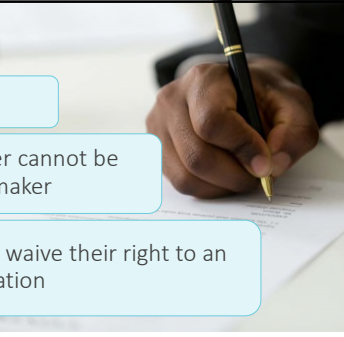
Informal resolution officer cannot be investigator or decision-maker

Cannot require a party to waive their right to an investigation & determination


LS

34 C.F.R. § 106.44(k)

55



Informal Resolution



- Must provide notice to both parties including:
 - Allegations,
 - Requirements of informal resolution process,
 - Right to withdraw and initiate investigation,
 - Resolution would preclude an investigation,
 - Potential terms of resolution,
 - What information the District will maintain and how the District could disclose such information.

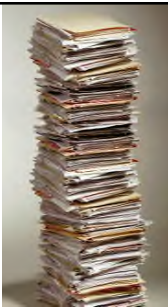
LS

34 C.F.R. § 106.44(k)

56

Discretionary Dismissals

- Title IX Coordinator may dismiss when:
 - District is unable to identify the respondent after taking reasonable steps to do so
 - The respondent is no longer enrolled or employed by the District
 - The complainant voluntarily withdraws any or all allegations
 - The alleged conduct would not constitute sex discrimination, if proven



LS

34 C.F.R. § 106.45(d)

57

Discretionary Dismissals

- Must still offer supportive measures to complainant (and respondent as appropriate)
- Take prompt and effective steps to stop discrimination and prevent recurrence



34 C.F.R. § 106.45(d)

58

Dismissal Appeal

- Must offer appeal of dismissal to complainant and respondent if respondent was notified of complaint
- Basis for appeal
 - Procedural irregularity
 - New evidence
 - Conflict of interest or bias



34 C.F.R. § 106.45(d)



59

Dismissal Appeal Procedures

If dismissal is appealed, the District **must**:

- Notify parties of the appeal
- Implement appeal procedures equally for all parties
- Ensure decision-maker for appeal did not take part in the investigation
- Ensure decision-maker for appeal is trained
- Provide parties a reasonable opportunity to make a statement in support of or challenging the outcome
- Notify the parties of the result of the appeal and rationale for result



34 C.F.R. § 106.45(d)

60

Let's Practice...

Ms. Parke, a 10th grade English teacher, filed a Title IX Complaint against the high school athletic director, Mr. Brown, alleging that Mr. Brown sexually assaulted her on campus after a football game. When Mr. Brown received the notice of investigation, he immediately resigned.

Is this Title IX?
Should you dismiss this complaint?



61

Responding to Complaints

Investigation Procedures

Grievance Procedures

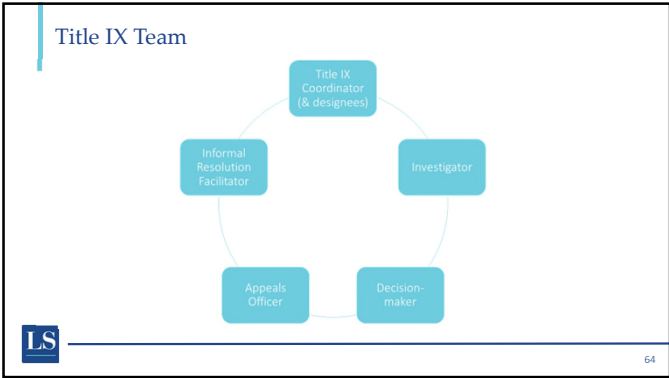
Apply to all complaints of sex discrimination.

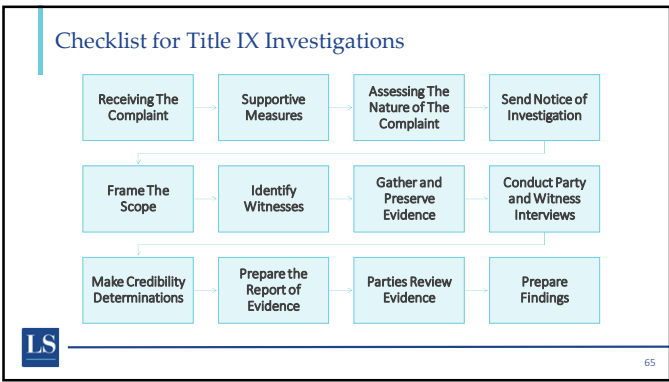
No longer requires two separate ten-day periods to review and respond to evidence.

34 C.F.R. § 106.45



63





Potential Investigator Models

Model Name	Description
Single Investigator	T IX Coordinator = Investigator = Decision-maker
Single Investigator +	T IX Coordinator = Investigator → Decision-maker
Title IX Coordinator/Decision-maker	T IX Coordinator → Investigator → Title IX Coordinator/Decision-maker
Investigator/Decision-maker	T IX Coordinator → Investigator = Decision-maker
2020 Model	T IX Coordinator → Investigator → Decision-maker

LS

66

Investigation Procedures

- **Exchange of Evidence**
 - Method of exchange
 - Description or access
 - If using a description, must offer access if requested
 - *Best Practice:* Investigation report
 - Parties are given opportunity to review and respond.
- **Confidentiality**
 - District must take reasonable steps to prevent unauthorized disclosure of information obtained solely through investigation (34 C.F.R. § 106.45(f)(4)(iii))
- Questioning the parties and witnesses to evaluate credibility by decision-maker



67

Understand the Scope - Frame the Allegations

- Prepare clear and concise “yes or no” questions or statements that the investigation will answer or address.
- Do not include legal terms such as “discriminated,” “harassed,” or “retaliated.”
- Avoid ambiguous and subjective words such as “inappropriate” and “unfair.”
- Make sure all relevant claims are included in the allegations. (Or, if you excluded something, be prepared to explain why.)



68

Recognize Trauma-related Dissociation



- Some complainants may express fears and concerns
- Some complainants may exhibit signs of detachment and disconnection (dissociation)
- Triggering past trauma can result in severe forms of dissociation including losing time, forgetting who/where you are, going blank



69

Recognize Trauma-related Dissociation

- Some complainants may express fears and concerns
- Some complainants may exhibit signs of detachment and disconnection (dissociation)
- Triggering past trauma can result in severe forms of dissociation include losing time, forgetting who/where you are, going blank
- Signs of dissociation include:
 - glazed/fixed gaze
 - no eye contact
 - crying
 - confusion
 - rapid speech
 - sudden mood changes
 - flat affect
 - change in tone
 - monotonous voice
 - silence for long periods of time
 - loss of time
 - "I'm so ashamed..."
 - "This is all my fault..."
 - "People won't believe me..."
 - "How can I trust anyone again..."
 - "I'm overwhelmed and afraid..."
 - "What are my parents/teachers/supervisors/friends going to think..."



- Reporting students/employees need to be heard without skepticism or judgment

70

Child Pornography



71

Responding to Complaints Drafting the Report

Report of Evidence (*Best Practice*)

- Provide the parties with a report of the relevant and permissible evidence to the allegations
- This should include a cover letter explaining:
 - Parties can review and respond to the evidence.
 - Parties must send their responses to the Investigator.



73

Report of Evidence (Recommended Content)

- Identify the date the investigation commenced
- Identify the investigator
- Identify supportive measures offered to and accepted by the parties
- Summary of the investigation process
- Admonish the parties regarding confidentiality
- Identify the legal standard
- Identify number of/identity of witnesses
- Evidence – documents and witness statements



74

Responding to Complaints

Relevancy

Relevancy

- Prove or disprove
- Cannot exclude relevant evidence because
 - May be unduly prejudicial,
 - Concern prior bad acts, or
 - Constitute character evidence.
- Objectively evaluated and considered



76

Relevancy Considerations

- Recipients have discretion governing how admissible, relevant evidence must be evaluated for weight or credibility by the decision-maker.
- The weight assigned to evidence depends on the type of evidence and its credibility:
 - Direct evidence (personal observation or experience)
 - Real evidence (weapon)
 - Documentary evidence (emails, texts, photos, videos, etc.)
 - Circumstantial evidence (not direct observation, but compelling)
 - Hearsay evidence (something heard from another person)



77

Limitations On Relevancy

- Evidence protected by any legally recognized privilege
- Evidence provided to a confidential employee
- Records maintained by a physician, psychologist, or other recognized professional for treatment
- When evidence is duplicative of other evidence, it may be deemed not relevant



78

Limitations on Relevance

A complainant's sexual interests or prior sexual conduct is irrelevant, unless prior sexual conduct evidence is offered to prove:

that someone other than the respondent committed the conduct alleged by the complainant, or

consent (evidence about specific incidents of complainant's prior sexual conduct with respondent)

LS

79

Responding to Complaints

Written Determination

Written Determination

Follows an evaluation of all relevant evidence

Weigh Evidence

Credibility Determination

Evidentiary Standard

Preponderance of evidence standard or

Clear and convincing

Notify the parties whether sex discrimination occurred to include:

The rationale for such determination; and

Procedure and bases to appeal, if applicable.

LS

34 C.F.R. § 106.45(h)

81

27

Writing the Analysis

Summarize Complainant's version of events (address credibility)

Summarize Respondent's version of events (address credibility)

Summarize independent evidence (witness statements, documents, etc.) and explain how it corroborates or contradicts the parties' version of events.

Address the not-so-good facts.

Factual Finding (i.e., sustained, not sustained, partially sustained.)



82

Common Challenges to Complainant's Credibility



Incomplete, inconsistent
and untrue statements

Lack of physical
resistance

Delayed reporting



83

Factual Findings v. Legal Conclusions

Factual Findings

Focus on whether or not the alleged conduct occurred.

Policy Violation

Apply the factual finding to the policy/legal conclusion.



84

Responding to Complaints Appeals

K-12 Appeal Procedures



- Optional for determinations
- Must be offered if offered in comparable hearings
 - Check your AR

LS

86

Bias and Impartiality

Bias

Implicit Bias

Unconscious bias towards or against certain groups of people.

Often based on social stereotypes.

Many (if not most) are unaware.

Affinity Bias

Tendency to favor those with similar interests, background or experiences.

Leads to preferential treatment.

Leads to credibility determinations.

LS

88

Confirmation Bias

Selective collection of evidence

Subconscious tendency to seek and interpret information

Implicit/Affinity

Confirmation

LS

89

Suggestions to Counteracting Bias

Actively consider an alternative hypothesis or why a favored hypothesis could be wrong.

The process of writing might challenge the Investigator to assess a decision more carefully.

Have findings peer-reviewed.

Good investigative skills and practices

LS

90

Recordkeeping

Record Keeping

Keep the following for 7 years:

1. A record of the informal resolution process for formal investigation procedures; and resulting outcome for all complaints of sex discrimination under Title IX;
2. Record of any actions, including supportive measures, taken in response to each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX; and
3. All Title IX trainings materials.



92

Record Keeping

For complaints containing allegations of childhood sexual assault, keep the following indefinitely:

1. A record of the allegation(s);
2. A record of the investigation procedures followed;
3. A record of the written determination;
4. A record of corrective action implemented, if any;
5. A record of any appeals and outcome of the same; and
6. All training materials addressing the prohibition and investigation of childhood sexual assault.



93

Pregnancy and Parenting

Discrimination Based on Pregnancy or Related Conditions



Discrimination Prohibited

Reasonable Modifications

Employee Notice



95

Title IX – Pregnancy and Parenting

Pregnancy or related conditions

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Parental status

- A biological parent;
- An adoptive parent;
- A foster parent;
- A stepparent;
- A legal custodian or guardian;
- In loco parentis with respect to such a person; or
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person



34 C.F.R. § 106.2

Pregnancy and Related Conditions – Students



34 C.F.R. § 106.40



97

- Reasonable modifications according to policies, practices or procedures
 - Cannot fundamentally alter the education program or activity
 - Student can accept or decline
- Limitation on requiring supporting documentation

Let's Practice...

Tina, a pregnant sophomore in high school, comes to you, the Title IX Coordinator and asks for the following accommodations:

- Going to the restroom anytime
- Time out of class to go to doctor's appointments
- Counseling
- Not have to take the final because its around the time she is set to give birth.

How would you respond? Can you ask Tina for a doctor's note?



98

Pregnancy and Related Conditions – Students



99

- Voluntary access to a separate and comparable portion of the education program or activity
- Voluntary leaves of absence
- Lactation space
- Certification to participate

Pregnancy and Related Conditions - Employees

- Comparable treatment to other temporary medical conditions for all job-related purposes
- Voluntary leaves of absence
- Lactation time and space



34 C.F.R. § 106.57



100

Reminder
2020 Regs Still Apply

2020 Title IX – Sexual Harassment

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

An **employee** conditioning the provision of an aid, benefit, or service of the district on the complainant's participation in unwelcome sexual conduct;

Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the district's education program or activity; or

"Sexual assault," "dating violence," "domestic violence," or "stalking."



102

2020 Title IX Jurisdiction

The conduct occurs against a person **in the United States**;

The conduct occurs in an education program or activity over which the District exercised **substantial control** over both:

1) the **respondent** and

2) the **context** in which the sexual harassment occurs; and

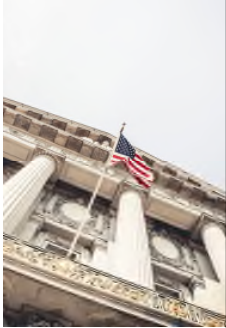
The complainant was **participating/attempting to participate in** the educational program or activity at the time the complaint was filed.

LS

103

Takeaways


- Doing nothing is not an option, if there is suspected harassment or discrimination, you must act.
- 2020 regulations are still in place for conduct which occurred before August 1, 2024.
- Ask for help! Don't go at it alone, seek help from your Title IX response team.



LS

104

Questions



LS

105

35

Transform Your Training With LSI

Designed to meet the growing list of mandatory employee trainings, Illuminate simplifies the process with on-demand access to essential legal curriculum and compliance reporting.

Featured Courses:

- Title IX All-Employee Training
- Workplace Violence Prevention Program

Your go-to source for streamlined employee training programs.

illuminate.lozanosmith.com

Subscribe on your favorite app or device.

Stay informed on your time.

Lozano Smith Podcast

lozanosmith.com/podcast

107

Thank you from Lozano Smith.

Together with you, we're impacting communities and lives through:

- Professional development
- Volunteer projects
- Sponsorships and award programs
- Scholarships

#BlueHatProject
#LozanoSmithFoundation

108

Contact

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

Emma J. Sol

Associate

Tel: 925.953.1620

esol@lozanosmith.com

Danielle Potestio

Associate

Tel: 925.953.1620

dpotestio@lozanosmith.com



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

109

@LozanoSmith

Disclaimer: These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in service programs presented, please contact clientservices@lozanosmith.com or call (509) 431-5400.

Copyright © 2024 Lozano Smith
All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license. 48775-0000-8883



110

37

Disclaimer:

These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservices@lozanosmith.com or call (559) 431-5600.

Copyright © 2024 Lozano Smith

All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.