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2024 Title IX Regulations: Training for Administrators and Managers

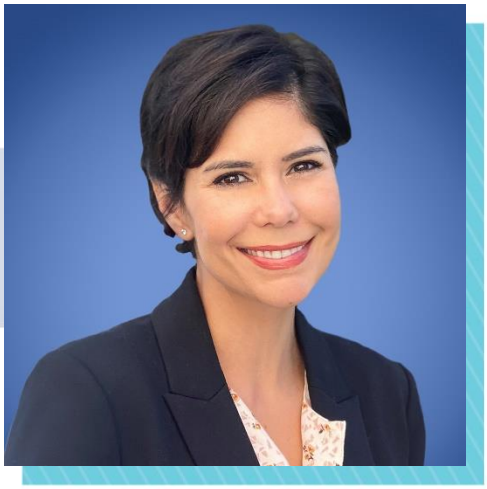
Presented by: Monica D. Batanero

TORRANCE UNIFIED SCHOOL DISTRICT
August 8, 2024

Lozano Smith
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Monica D. Batanero

Senior Counsel



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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 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 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

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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

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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.

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2024 Title IX Regulations: Training for Administrators and Managers

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TORRANCE UNIFIED SCHOOL DISTRICT
August 8, 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 co-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.



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Topics

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

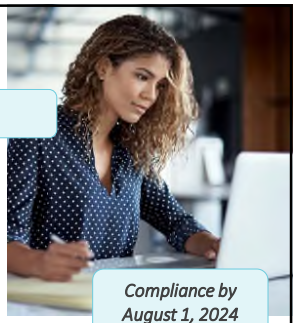
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Notice of Nondiscrimination

Must be posted on:

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



Compliance by August 1, 2024

34 C.F.R. §106.8(c)(2)

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Overview of the 2024 Regulations

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Scope of Sex Discrimination

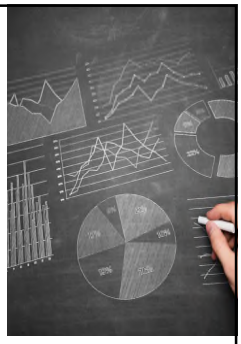
- Title IX prohibits sex discrimination, including based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- The 2024 Regulations are NOT retroactive
- Only applies to sex discrimination that **occurred on or after August 1, 2024.**
- All incidents that take place between August 14, 2020 and July 31, 2024, must be processed through the 2020 Title IX Regulations.

§ 106.10

6

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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.
- Now that you know all about the 2024 regulations, should you adjust your current investigation to comply with the 2024 regulations?

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Definition of Sex-Based Harassment

- **Quid Pro Quo**
  - person authorized by the District
- **Hostile Environment Harassment ["HEH"]**
  - "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**

34 C.F.R. § 106.2

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Sex-Based Harassment - HEH

Factors to consider:

- Affect 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.

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Sexual Assault

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

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Hypothetical

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.

Does this fall under Title IX?

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Hypothetical

Michelle, a 7th grader, comes to you and complains that another 7th grader, Brady, keeps following her in the hallway and calling her names, such as "dyke," and "lesbian." Michelle is extremely upset and is requesting that she be transferred to a new school.

Does this fall under Title IX?

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Title IX Jurisdiction

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Title IX Jurisdiction

Must address all sex discrimination occurring under the district'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**.



§ 106.11

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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)

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Sex-Based Distinctions or Separation - Exemptions

- Religious institutions
- Military and merchant marine educational institutions
- Social fraternities and sorororities
- Housing
- Athletics **



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Definitions

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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 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

18

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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)(4))

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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)

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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

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Responding to Complaints

Initial Evaluations

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Responding to Sex Discrimination

- The District must respond **promptly and effectively** *and must* **prevent the recurrence** of any sex discrimination and remedy its effects.
- Title IX reporting is separate from mandated reporting requirements.



34 C.F.R. § 106.44 (c)(2)

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Hypothetical

Over lunch, one of your eighth-grade students, Jenn, stops by your classroom/office to chat. Jenn tells you that her on-again off-again boyfriend, who sits next to her in English, keeps rubbing her thigh during class. She's tried to tell him to stop but he insists that it's no big deal, so she has been letting the behavior slide. However, Jenn said that when she was wearing a skirt earlier this week, he touched all the way up to her underwear. Now she seems uninterested in attending English class, which is historically her strongest and favorite subject.

How do you respond?

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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)

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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.

§ 106.2

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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)

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Confidential Employees



- Only confidential when providing those services.
- Must specify who they are in policies.
- Must provide specific training to them about their reporting requirements.

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Hypothetical

Jesus is a principal at Hypo High School and hears from a teacher, Mr. Snowden, that Raven was raped by Lincoln in the locker room. Jesus knows both of these students personally and believes that it is in the best interest of the students for Jesus to handle this internally.

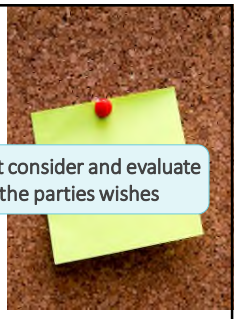
Does Jesus need to notify the Title IX Coordinator?

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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)

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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)

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Complaint Initiated by Title IX Coordinator

May initiate if alleged conduct:	If initiating, must:
▪ 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	▪ Notify complainant prior to initiation ▪ Address safety concerns o Complainant o Others

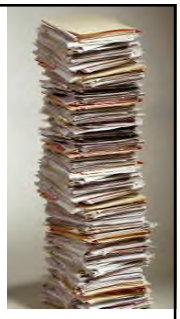
34 C.F.R. § 106.44(f)

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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



34 C.F.R. § 106.45(d)

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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)

34

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Dismissal Appeal

- Must offer appeal of dismissal
- Basis for appeal
  - Procedural irregularity
  - New evidence
  - Conflict of interest or bias



34 C.F.R. § 106.45(d)

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Dismissal Appeal Procedures

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

- Notify parties of the appeal
- Implement appeal procedures equally for all parties
- Ensure decisionmaker for appeal did not take part in the investigation
- Ensure decisionmaker 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

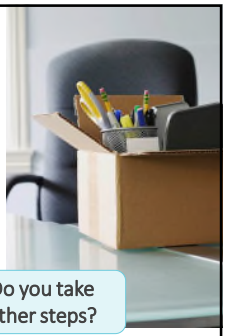
34 C.F.R. § 106.45(d)

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Hypothetical

The District receives an email alleging that Mr. Cromwell had a sexual relationship with a student during the summer school program at Hypo High School. You take the initial steps to evaluate the claim and decide to initiate Title IX. You provide a notice letter to Mr. Cromwell. The following day Mr. Cromwell resigns effective immediately.



Do you dismiss the complaint?

Do you take other steps?

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Responding to Complaints

Supportive Measures

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Supportive Measures

Must offer supportive measures to both Complainants and Respondents

→

Parties have the right to challenge supportive measures

§ 106.44(g)

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Supportive Measures

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

§106.44(g) and (k)

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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



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Supportive Measures

Examples:

- No-Contact Orders
- Change Of Class Or Work Schedules
- Modified Lunch Schedules
- 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

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Hypothetical

A Principal from one of your middle schools calls you after school and tells you that an 8th grade student, June, came to her and told her that a 7th grade student, Cheyenne, has been making her feel uncomfortable at school. June told her that Cheyenne has been staring at her in the locker room, and that one of her friends overheard Cheyenne call her "sexy" when she was changing in the locker room. The Principal is unsure what to do and is looking to you for assistance.

Is this Title IX?

What Supportive Measures Do You Offer?

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Students with Disabilities

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

§ 106.44(g)(6)



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Hypothetical

Isaiah, a junior, comes to you and says that he saw Dallas, a sophomore, forcibly kiss Destiny, a sophomore, several times yesterday out by the bleachers. Today, Isaiah saw Dallas following Destiny to class. Isaiah is worried about Destiny and asks for your assistance. You know that Dallas is on a Section 504 plan and Destiny is on an IEP.

Do you need to consult with Dallas' Section 504 team?

Do you need to consult with Destiny's IEP team?

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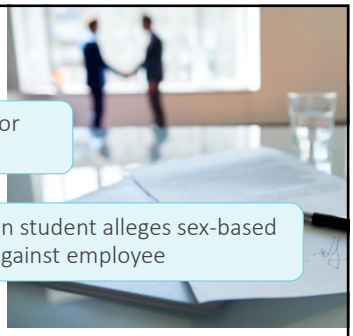
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Responding to Complaints

Informal Resolution

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Informal Resolution



Expanded discretion for informal resolution

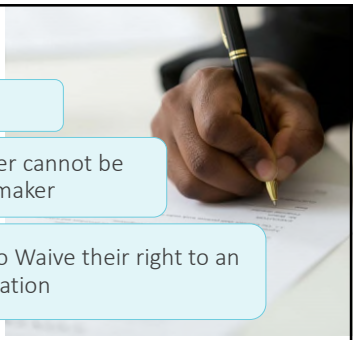
(K-12) Not available when student alleges sex-based harassment against employee

34 C.F.R. § 106.44(k)

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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

34 C.F.R. § 106.44(k)

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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.

34 C.F.R. § 106.44(k)

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Hypothetical



You are a Title IX Coordinator and you are investigating an allegation of sexual harassment between two employees. Both employees agree to informal resolution of the complaint.

Can you facilitate the informal resolution session?

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Hypothetical

Jordan, a 12th grader, comes to you and says that Noah, an 11th grader, has been sexually harassing them for months in person and via text message. This has occurred both on campus during class and off campus after school. Jordan cannot deal with it anymore and wants it to stop. However, Jordan does not want this to be a big deal and just wants to do informal resolution quickly and get it over with.

Can you offer an informal resolution session?

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Responding to Complaints

Investigation Procedures

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Title IX Grievance Procedures

- Apply to all complaints of sex discrimination
- No longer require written investigation reports or two separate ten-day periods
- Exchange of evidence is still required but can be summary of evidence.

§ 106.45

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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?

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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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Exchange of Evidence

Review the District's Administrative Regulation for your process

- Must you send a report of evidence that provides an accurate description of the relevant and permissible evidence? OR
- Are you instead providing access to the relevant and permissible evidence?

Note: if you provide a description of the evidence, you must further provide the parties an equal opportunity to access the relevant and permissible evidence.

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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 have [#] days to review and respond to the evidence.
  - Parties must send their responses to the Investigator.
- This may include:
  - Interview Summaries (Parties and Witnesses)
  - Documentary Evidence (Text messages, emails, social media, etc.)
  - Photos/Videos
  - Any other relevant evidence
  - Summary of disputed and undisputed evidence

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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

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Relevant Evidence

- "Relevant" means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45
- Questions are relevant when they seek evidence that may aid in showing whether the alleged conduct occurred.
- Evidence is relevant when it may aid a decisionmaker in determining whether the alleged conduct occurred.

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Impermissible Evidence

Evidence privileged under Federal or State law.

Evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.

Records that are made/maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection treatment, unless the recipient obtains that voluntary, written consent for use in the recipient's grievance procedures.

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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)

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Responding to Complaints

Written Determination

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Written Determination

- Follows an evaluation of all relevant evidence
- Use the preponderance of evidence standard, unless the recipient uses the clear and convincing evidence standard in other comparable proceedings
- Notify the parties whether sex discrimination occurred to include:
  - The rationale for such determination; and
  - Procedure and bases to appeal, if applicable.

34 C.F.R. § 106.45(h)

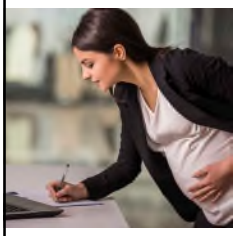
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Pregnancy and Parenting

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Discrimination Based on Pregnancy or Related Conditions



- Discrimination based on a person's parental, family, or marital status or a person's current, potential or past pregnancy is prohibited.
- The District is required to make modifications to educational programs/schedules to ensure equal access for all students and employees.
- Employees must provide all students and/or persons with the legal right to act on behalf of a student with the Title IX coordinator's information.

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Pregnancy and Related Conditions – Students



- 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

34 C.F.R. § 106.40

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Pregnancy and Related Conditions – Students



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

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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

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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
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Senior Counsel

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

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