



Title IX Formal Grievance Procedures

Presented by: Sarah E. Fama and Emma J. Sol

Title IX Training Series | August 19, 2026

Sarah E. Fama

Partner



Walnut Creek Office
sfama@lozanosmith.com
925.953.1620

Overview

Sarah E. Fama is a Partner in Lozano Smith's Walnut Creek office and co-chair of the firm's Title IX Practice Area. 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
Investigations

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, community college, and investigations issues.

Experience

Ms. Sol frequently advises clients on Title IX compliance, conducts investigations, drafts policy, and serves as an investigator, decision-maker, appeals officer, and informal resolutions officer in Title IX grievance procedures. An Association of Workplace Investigators Certificate Holder (AWI-CH), Ms. Sol brings specialized training to conducting and advising clients on workplace investigations. Ms. Sol takes a trauma informed approach to all investigations, and frequently assists on high profile, complex investigation matters. She regularly advises on Title IX sports-equity issues and represents clients in Office for Civil Rights investigations. Ms. Sol also supports community colleges on Title IX and Title 5 investigations, including serving as a Title IX hearing officer. Beyond Title IX, she counsels on personnel issues—including investigations, discrimination, retaliation, sexual harassment claims, and employee discipline—and handles student matters such as investigations, discipline, and constitutional issues, drawing on her background in college athletic compliance.

Presenter Experience

Ms. Sol leverages her expertise to provide comprehensive trainings on Title IX, and develops and delivers programs on sexual-harassment prevention, Uniform Complaint Procedures, and workplace and misconduct investigations. Ms. Sol has presented at CASBO, ACBO, and various webinars and workshops across the state.

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, served as a representative for the Student Bar Association, 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, and served as Assistant Vice President of Recruitment for the Gamma Phi Beta sorority.

Practices

Title IX
Investigations
Labor & Employment
Student
Community College

Education

J.D., Santa Clara University School of Law
B.S., (*magna cum laude*), Texas Christian University

Admissions

California

Lozano Smith

FIRM OVERVIEW

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. Currently representing over 600 public agencies of all types throughout the State of California, our attorneys understand the intricacies and range of ever-changing laws affecting local public agencies.

AREAS OF EXPERTISE

- > Administrative Hearings
- > Charter Schools
- > Community Colleges
- > Construction Advice and Litigation
- > Facilities & Business
- > Governance
- > Investigations
- > Labor & Employment
- > Litigation
- > Municipal
- > Public Finance
- > Special Education
- > Student
- > Title IX

COST CONTROL

We recognize and understand the financial constraints placed on public agencies. Our team works tirelessly to provide the very best legal representation with those limitations in mind. We are mindful of costs and focus on getting our clients the best possible product in a cost-effective manner.

PODCAST, PUBLICATIONS, AND LEGAL UPDATES

One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs which provide an immediate summary of new laws, cases, or other developments. In addition, we provide a range of publications and podcast episodes which provide the tools to minimize liability, thus reducing the need for legal assistance down the road. All of these offerings can be found on our mobile app and website.

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 for each of our offices statewide. 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.

ONE FIRM, STATEWIDE

Our team of more than 100 attorneys span multiple offices and practice areas to cover all aspects of public agency law. With our statewide office locations, clients have the benefits of a large firm and comfortable relationships of a small firm.

- > Sacramento
- > Fresno
- > San Diego
- > San Luis Obispo
- > Walnut Creek
- > Los Angeles
- > Monterey
- > Bakersfield

GIVING BACK TO THE COMMUNITY

Lozano Smith's signature "Blue Hat" Project symbolizes our team's hands-on pledge to engage in our communities. With involvement by more than 150 Lozano Smith employees, we have assembled care kits, volunteered on campuses, and invested in our communities through partner projects. Lozano Smith has partnered with school districts, several statewide associations and various community agencies to help impact hundreds of students and many communities throughout California. Featured programs include, for example:

- > Art Scholarships
- > Backpack Giveaways
- > Bullying Prevention Awards
- > Campus Beautifications
- > Distribution of Care Kits
- > Leadership Academies
- > Mentoring Program Awards
- > Music Scholarships

MODEL WORKSHOPS AND SEMINARS

Lozano Smith is a recognized leader statewide for its successful development and implementation of topical seminars designed to provide practical advice and training. Lozano Smith's robust client training program is focused on cost control and ensuring preventative measures are in place. We invite you to explore our [Frequently Requested Workshop Listing](#).

DIGITAL LEARNING BY LOZANO SMITH

We are also proud to offer LS Illuminate (LSI), Lozano Smith's digital training platform. Designed to meet the growing list of mandatory employee trainings, SSI simplifies the process with on-demand access to essential legal curriculum and compliance reporting. For more information, including exploring enrollment options, visit illuminate.lozanosmith.com.



Title IX Formal Grievance Procedures

Presented by: Sarah E. Fama and Emma J. Sol

Title IX Training Series | August 19, 2026

Presenter



sfama@lozanosmith.com
925.953.1620



Sarah Fama

Sarah E. Fama is a Partner in Lozano Smith's Walnut Creek office and co-chair of the firm's Title IX Practice Area. She represents public agencies through various aspects of employment and general liability issues.

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.

2

Presenter



esol@lozanosmith.com
925.953.1620



Emma Sol

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, community college, and investigations issues.

Ms. Sol frequently advises clients on all aspects of Title IX compliance, including conducting investigations and drafting policies. She leverages her expertise to provide comprehensive trainings on Title IX topics, helping clients navigate this complex legal landscape. Additionally, she develops and delivers training on sexual harassment prevention, Uniform Complaint procedures, and workplace and misconduct investigations. Ms. Sol also serves as an investigator, decision-maker, and appeals officer, and informal resolutions officer in Title IX grievance procedures. She regularly assists clients with Title IX sports equity concerns and represents them in Office for Civil Rights investigations.

3

What We Will Cover



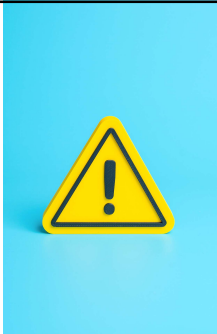
- Title IX Team
- Investigators
- Understanding Relevancy
- Decision-Makers
- Assessing Credibility
- Counteracting Bias
- Appeals Officers

LozanoSmith.com

4

Content Advisory

- Please note that some of the topics and content of this presentation is explicit and may be triggering for some individuals.
- Viewer discretion is advised. If at any time you need to step away, please feel free to do so.
- Thank you for your understanding and participation in this important conversation.



LozanoSmith.com

5

Title IX Team

LozanoSmith.com

6

What are the Roles in the Title IX Grievance Process?



Title IX Team

What Roles Can Overlap

- Title IX Coordinator/Investigator
- Title IX Coordinator/Informal Resolution Officer

What Roles Cannot Overlap

- Title IX Coordinator/Decision-Maker
- Title IX Coordinator/Appeals Officer
- Investigator/Decision-Maker
- Investigator/Appeals Officer
- Investigator/Informal Resolution Officer
- Decision-Maker/Appeals Officer
- Decision-Maker/Informal Resolution Officer

What Can Be Outsourced?

- Investigator
- Decision-maker
- Informal Resolution Officer
- Appeals Officer



Responsibilities of All Employees



- Identify conduct.
- Report conduct.
- **This does not relieve an employee of their mandated reporter duties!**



LozanoSmith.com

10

Case Study: Trinity and Ian

Trinity, a 9th grade female student, tells you that Ian, a 12th grade male student, has been making her uncomfortable. Trinity says Ian routinely makes sexually explicit jokes and comments to her in person in class and over text, including, "You're so sexy I can't control myself around you." She said on more than one occasion Ian has rubbed her shoulder and has told her she has a "good butt and chest."

- Is this Title IX?
- What are your next steps?



LozanoSmith.com

11

Title IX Coordinator

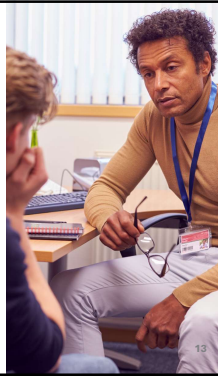
12

Title IX Coordinator's Duties

- Receives and oversees.
- Explains options and process to complainant.
- Offers supportive measures.
- Determines dismissal of complaints.
- Evaluates corrective actions.
- Identifies systemic issues.
- Ensures overall Title IX compliance.



LozanoSmith.com



Title IX Coordinator - Contact the Complainant

Intake Meeting with Complainant

- Gather facts (think about scope & notice).
- Supportive measures.
- Explain Title IX options.
- Discuss the District's policy that prohibits retaliation.



LozanoSmith.com

14

Supportive Measures

Designed to restore or preserve equal access to the educational program.

Cannot be disciplinary/punitive.

Cannot be retaliatory.

Offered to Complainant and Respondent.

Determined on a case-by-case basis.



LozanoSmith.com

15

Case Study: Trinity and Ian

- What supportive measures should Trinity be offered?
- Should the Title IX Coordinator consider emergency removal?
- What if:
 - Ian texted Trinity that he was going to “be sure they had a good time at the football game this Friday.”
 - Trinity told you she knows Ian raped another girl 2 years ago.
 - Trinity shows you pictures of Ian waiting by her car the last 3 days at lunch, even though she asked him to leave her alone.



LozanoSmith.com

16

Do You Have a “Formal” Title IX Complaint?

Document filed by
Complainant.

OR

Signed by Title IX
Coordinator.



LozanoSmith.com

17

Formal Title IX Complaint – Filed by Title IX Coordinator

Analysis

- Deliberate Indifference
 - Threats
 - Serial predation
 - Violence
 - Weapons

Questions

- Will Complainant participate?
- Do you need to discipline?
- How do we prioritize agency and autonomy, especially for adult Complainants?



LozanoSmith.com

18

Case Study: Trinity and Ian

Trinity says she does not want to file a Title IX Complaint.

- Should the Title IX Coordinator file one on her behalf?



Does it Meet the Tests?

Definition of Title IX Sexual Harassment.

AND

Title IX Jurisdiction.



20

TEST 1: If the Alleged Conduct is True, Does it Rise to the Level of Sexual Harassment Under Title IX?

Employee Quid Pro Quo;

SPOO (severe, pervasive and objectively offensive); OR

Sexual assault, dating violence, domestic violence or stalking.

***If the answer is no, you must dismiss the complaint or allegations therein. If yes, move to Test 2.**



21

TEST 2: Is there Title IX Jurisdiction Over the Conduct?

Substantial control over both

- Respondent; and
- Context.

Within the United States.

Participating/attempting to participate at the time the complaint is filed.

***If the answer is no, you must dismiss the complaint or allegations therein.**



LozanoSmith.com

22

Case study: Trinity and Ian

Trinity contacts you and lets you know that she is willing to talk about filing a formal complaint but is interested in informal resolution since she does not want to make it a “big deal.”

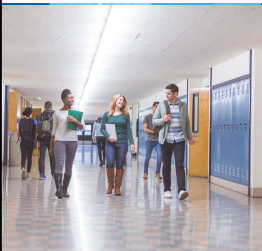
- What is your response?



LozanoSmith.com

23

Corrective Actions



- Staff/student discipline.
- Ensuring no retaliation.
- Additional support for involved parties.
- Generalized training for staff/students in class, school, or district-wide.
- Generalized notification of policies/rules.
- Increased monitoring and check-ins.
- Changes to District practice.



LozanoSmith.com

24

Investigators

25

Investigator's Duties



- Interviews parties and witnesses.
- Gathers and reviews evidence.
- Allows parties to inspect, review, and respond to all evidence directly related to the complaint.
- Considers all parties' responses.
- Prepares investigation report that summarizes relevant evidence.

LS

LozanoSmith.com

26

How to Conduct an Effective Title IX Investigation

Frame the Scope

Make a List of Witnesses

Draft Questions for and Interview the Complainant

Conduct Additional Interviews If Needed

Conduct Witness and Respondent Interviews

Gather and Preserve Evidence

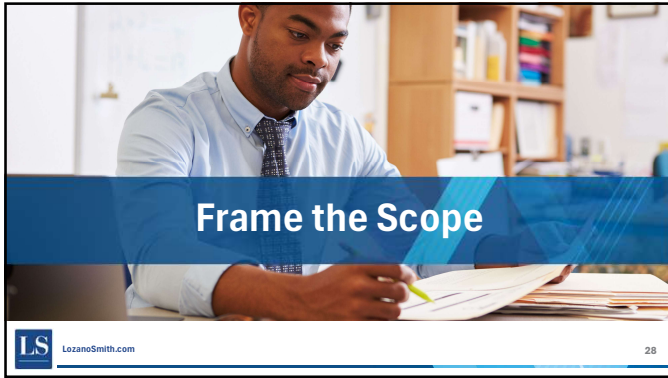
Exchange the Evidence (10 days)

Prepare the Investigation Report

LS

LozanoSmith.com

27



Frame the Scope of the Investigation

What Are the Allegations?

- Prepare clear and concise “yes or no” questions that the investigation will answer.
- 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.)

Practice Tip: If you are not sure, have someone from the District Office review your allegations before proceeding. This will save you time in the long run.

LozanoSmith.com29

Frame the Scope of the Investigation

- **Problematic:** Did Suzie create a hostile work environment for Joe?
 - *****Break this up into separate allegations focusing on whether or not the alleged conduct occurred.**
- **Best Practice:** On May 15, 2021, did Suzie tell Joe that she wanted to go on a date with him?
- **Best Practice:** On May 17, 2021, did Suzie touch Joe on his thigh?
- **Best Practice:** On May 20, 2021, did Suzie deny Joe’s vacation request?

LozanoSmith.com30

Frame the Scope of the Investigation

Factual Findings v. Legal Considerations

- Don't focus allegations for your on whether Respondent committed "sexual harassment" or violated some other law; instead, focus on what it is alleged the Respondent did or did not do.
 - Example:**
 - Factual Findings: "Mr. Smith caressed Bella's back on one occasion, and the conduct was unwelcome." vs.
 - Legal Conclusions: "Mr. Smith sexually harassed Bella."



LozanoSmith.com

31

Group Activity - Case Study: Trinity and Ian

Please draft allegations for Trinity's formal Title IX Complaint against Ian.

- Put 1 or 2 allegations in the chat.
- We will show the slides with her complaint again so that you can read her report.



LozanoSmith.com

32

Refresh on Facts: Trinity and Ian

Trinity, a 9th grade female student, tells you that Ian, a 12th grade male student, has been making her uncomfortable. Trinity says Ian routinely makes sexually explicit jokes to her in person in class and over text, including, "You're so sexy I can't control myself around you." She said on more than one occasion Ian has touched her without consent, and has told her she has a "good butt and chest."



LozanoSmith.com

33

Case Study: Trinity and Ian

Needs Improvement

- Ian sexually harassed Trinity.

Good examples

- Ian touched Trinity's shoulder in a sexual manner, without her consent, on at least one occasion.
- On at least one occasion, Ian made sexual comments to Trinity about her body, including that she has a "good butt and chest."
- On at least one occasion, Ian made sexual jokes to Trinity, including [INSERT DETAILS].



LozanoSmith.com

34



Make a Witness List



LozanoSmith.com

35

Make a Witness List

Considerations

- Consider potential conflicts of interest.
- Consider location and timing.



LozanoSmith.com

36

Make a Witness List

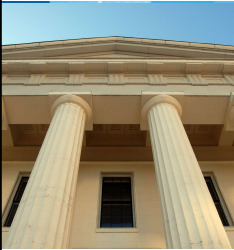
Order of Interviews



LozanoSmith.com

37

Make a Witness List



Lybarger/Spielbauer Warning/Rights

- Fifth amendment protection against self-incrimination.
- Spielbauer/Lybarger Warning – Public employees may be compelled to answer potentially incriminating questions about their job performance as long as they are not required to waive their constitutional protections in a criminal matter.



LozanoSmith.com

38

Case Study

Who would you interview?



LozanoSmith.com

39

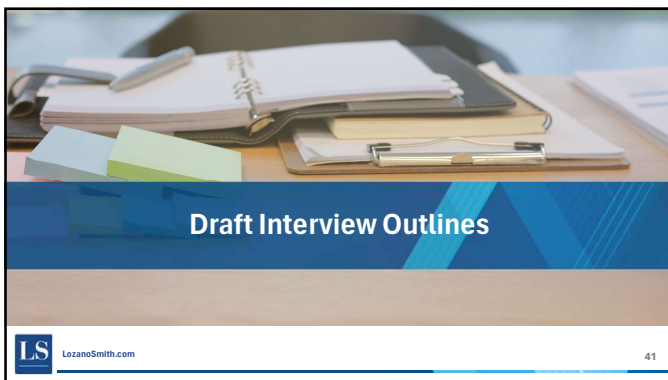
Case Study: Witness List

Name of Witness	Relevance / Title	Date of Interview	Notes
Trinity	Complainant		
Ian	Respondent		
Josh	Witness		Trinity said he heard the joke on 8.27.26
Anne	Witness		Trinity's best friend Get the 9.10.26 text



LozanoSmith.com

40



Draft Interview Outlines



LozanoSmith.com

41

Outline Interviews

- Start with an outline of questions, but be flexible!
- Use the outline as more of a roadmap for issues you need to touch on with each party or witness.
- If there are a series of incidents, consider a linear roadmap.
- Keep in mind big picture goals.
- ***If possible, have a 2nd administrator in the room.***



LozanoSmith.com

42

Outline Interviews

Tell me what happened. Explain
why you're upset. **Describe** how it
made you feel.

Who? What? Where?
When? How? Why?

Were you __?
Where was __?
Did you __?

LS
LozanoSmith.com

43

[illegible]

Interview Outline	
Admonitions	Follow up for detail
▪ Honesty ▪ Confidentiality ○ For Title IX inform witnesses evidence will be shared ▪ Retaliation ▪ Breaks	▪ Who ▪ What ▪ Where ▪ When ▪ How

Outline Interviews

Wrap up questions:

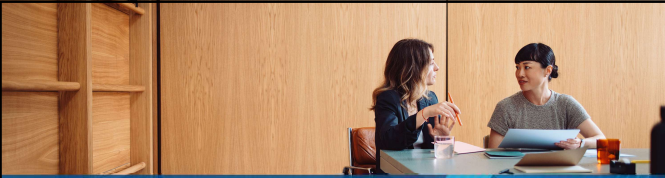
- Is there anything else I should know?
- Do you have any documents that I might find helpful/that are related to anything we talked about?
- Who else do you think it would be helpful for me to speak with?



LozanoSmith.com

45

[illegible]



Conduct Interviews

LS LozanoSmith.com 46

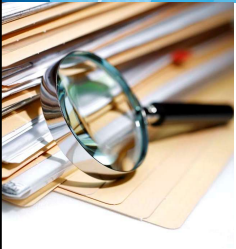
Conduct Interviews – Do Not Promise Confidentiality



```
graph TD; A[Confidentiality cannot be promised.] --> B[All evidence will be shared with the parties.]; A --> C[Both parties will have an equal opportunity to inspect, review, and respond to the evidence.];
```

LS LozanoSmith.com 47

Conduct Interviews



Common Questions and Issues

- What if the witness is underage?
- What if the witness is biased or lies?
- Do all witnesses get a union representative or support person?
- What if the witness refuses to be interviewed or wants their identity to remain confidential?
- What if the police are investigating?

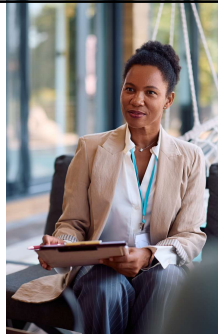
LS LozanoSmith.com 48

Conduct Interviews – Trauma Informed Approach

- Scientific evidence has established that a person who is subjected to a traumatic situation experiences a change in brain function that can materially affect the person's response to the situation and how memories of the event may be stored and recalled.
- A trauma-informed approach also considers that a complainant in a sexual violence case may have suffered a traumatic incident that may impact their participation during the investigation.



LozanoSmith.com



49

Conduct Interviews – Trauma-Informed Approach

- Do **NOT** victim-blame.
- Choose a comfortable setting that is not triggering.
- Build rapport.
- Allow the witness to freely speak and then ask follow up questions.
- Display compassion and sincerity.
- Listen attentively and actively without interruption.
- Ask difficult questions with care - explain why you're asking the question.



LozanoSmith.com



50

Conduct Interviews – Trauma-Informed Approach

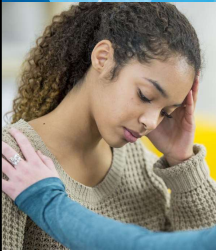
- **Don't** insert your opinion into the victim's experience.
- **Don't** make assumptions about what the victim needs or wants.
- **Avoid** questions that can be answered with one-word or short responses.
- **Avoid** leading questions.
 - "And then you did this..." v. "What happened next?"



LozanoSmith.com

51

Conduct Interviews



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.

LS

LozanoSmith.com

52

Trauma-Informed Questioning

- Why did you sit next to him the next day?
- What was the joke he said and who heard it?
- Tell me how you were feeling about going to the football game with him the next night?
- Why didn't you just leave?
- Did you communicate in any way that you were not ok with what was happening?
 - How did you communicate that?



LS

LozanoSmith.com

53



Gather and Preserve Evidence

LS

LozanoSmith.com

54

Gather and Preserve Evidence



- The Title IX investigator gathers evidence.
 - The Decision-maker makes the findings.
 - The Investigator may be asked to make recommended findings of fact.

Gather and Preserve Evidence

Emails	Attendance Records
Security Records	Social Media
Complaint	Internet Usage and Websites Visited
Voicemail Messages/Text Messages	Pictures
Audio/Video	Observing Locations

***Note:** If you receive a document from a witness, make sure you note who provided the document and how it was received.

Case Study: Document List

Document Title	Document Received from	How document received	Notes
Text message Trinity to Anne 9.10.26	Trinity	Screenshot from Trinity provided in person	Trinity describes what Ian said to her in class
Text message Ian to Trinity 9.17.26	Trinity	Screenshot from Trinity provided in person	"You're so sexy I can't control myself around you."

Gather and Preserve Evidence

- District **cannot** access or use a party's medical, psychological or other similar records unless they obtain the party's voluntary, written consent.
- District **cannot** restrict parties from discussing allegations or gathering and presenting relevant evidence.
- District **must** provide an opportunity for parties to present fact and expert witnesses and other exculpatory or inculpatory evidence.



LozanoSmith.com

58

Case Study: Trinity and Ian

The day after discussing informal resolution options, Trinity tell you that Ian has not stopped his inappropriate conduct and earlier that morning, posted synthetic nude photos of her on his public social media account with the caption "All mine." She states that she is no longer interested in informal resolution and wants to a formal investigation. She offers to send you the photos.

- What are your next steps now that she has come to you with this new information?



LozanoSmith.com

59

Gather and Preserve Evidence

Child Pornography

- Call School Resource Officer, Police Department, or Safety & Security Department right away before touching anything.
- Third party witness.
- Track chain of custody.

Warning: It is a state and federal crime to possess and/or distribute child pornography. There's no exception for school administrators or investigators.



LozanoSmith.com

60

Case Study: Trinity and Ian

You contacted the local police department about the photos Trinity told you about. Trinity never sent the photos to your device or showed you them. The police department tells you to hold off interviewing any of the parties until they have accessed the photos. They said it could take 2 weeks as they are short staffed.

- What are your next steps after receiving this communication from the police?



LozanoSmith.com

61

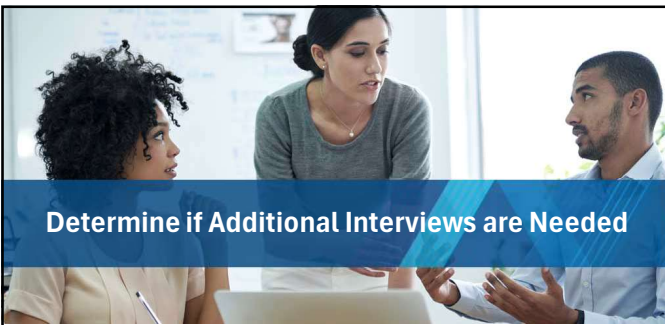


Determine if Additional Interviews are Needed



LozanoSmith.com

62



Conduct Additional Interviews if Needed



Review your witness summaries and evidence and ask yourself if there are any holes.



Do you have all the information you need to thoroughly address each allegation?



It is OK to conduct follow-up interviews of witnesses if needed.



LozanoSmith.com

63

Reviewing the Evidence

- Allegation
 - Complainant statement
 - Respondent statement
 - Witness statements
 - Evidence



64

Exchange of Evidence



65

Exchange Evidence

- Send the parties **all evidence** directly related to the allegations raised in the formal complaint.
 - Includes evidence the District does not intend to rely on in reaching its decision regarding responsibility.
 - Use of a **draft** investigation report or report of evidence.
- Must be done prior to the completion of the investigation report.
- Parties must be given at least **10 days** to respond to the evidence, which must be considered by the investigator.

Note: The investigator should work with the Title IX Coordinator to securely transmit the evidence to the parties, and to assess whether redactions may be appropriate.



66



Investigation Report

LS LozanoSmith.com 67

Investigation Report

The final investigation report should be prepared by the investigator and must **summarize relevant evidence**.

Parties must be offered the opportunity to provide a written response to the investigation report.

Must be sent to the parties at least 10 days before a written determination regarding responsibility is issued by the decision-maker.

LS LozanoSmith.com 68

Investigation Report – 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**.
- Identify the **legal standard** of review applied to the review of evidence/ applicable policies.
- Identify number of/identity of **witnesses**.
- Summary of **evidence** – documents and witness statements.

→ You may be asked to make recommended, non-binding findings of fact and responsibility under District policies and codes of conduct.

LS LozanoSmith.com 69

Understanding Relevancy

Relevant Evidence

Relevant evidence includes evidence that is “inculpatory” or “exculpatory.”

Inculpatory Evidence:
Evidence that shows or tends to show, a person's involvement in an act .

Exculpatory Evidence:
Evidence tending to excuse, justify, or absolve an alleged act or guilt.

Relevant evidence must be **objectively evaluated** by investigators and decision-makers.

LS

LozanoSmith.com

71

Limitations on Relevance

Information protected by any legally recognized privilege cannot be used; no party's treatment records may be used without that party's voluntary, written consent.

When evidence is duplicative of other evidence, it may be deemed not relevant.

A complainant's sexual predisposition or prior sexual behavior are not relevant.

LS

LozanoSmith.com

72

Limitations on Relevance

A complainant's prior sexual behavior is **irrelevant** unless used:

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

To prove consent, if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent.



LozanoSmith.com

73

Case Study: Trinity and Ian

1. Is evidence of Ian stalking a student at another school within the District two years ago relevant?
2. Is evidence of Trinity sending explicit photos of herself to other students in middle school relevant?
3. Is evidence that Ian has been held back two grades and is 19 years old relevant?
4. Is a rumor that Trinity has a tendency to be dramatic, relevant?



LozanoSmith.com

74



Decision-Makers

Decision-Maker's Duties (K-12)

- Reviews investigation report.
- Allows parties to submit relevant written questions.
- Asks questions they deem relevant or provides an explanation as to why when a question is deemed irrelevant.
- Makes determination about responsibility.
- Prepares written determination.



LozanoSmith.com

76

Submission of Written Questions (K-12)

- The decision-maker must allow parties **10 days** to submit written, **relevant** questions that they want to ask any other party or witness.
- Once the parties are provided with the answers, the decision-maker must allow for additional, limited follow-up questions from each party.
- Decision-maker determines relevancy or explains why questions were deemed irrelevant.



LozanoSmith.com

77

Decision-Maker's Duties (Higher Education)

- Reviews investigation report.
- Conducts hearing.
- Reviews questions for relevancy (indirect questioning).
 - Explains if irrelevant.
- Makes determination about responsibility.
- Prepares written determination.



LozanoSmith.com

78

Live Hearing (Higher Education)



- May use hearing officer.
- Written notice.
- Live hearing required.
- In-person or virtual.
- Recorded or transcribed.
- Advisors.
- Cross-examination.*

*SB 493 prohibits direct cross-examination by a party or their advisor.



LozanoSmith.com

79

Written Determination

Identification of the allegations potentially constituting sexual harassment.

A description of the procedural steps taken from formal complaint through the determination of responsibility.

Findings of Fact supporting the determination.

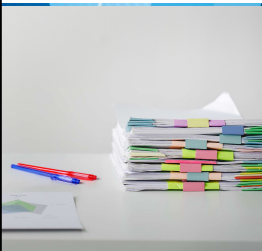
Conclusions regarding the application of the recipient's code of conduct to the facts.



LozanoSmith.com

80

Written Determination



- **Rationale** for each finding and conclusion, including a **determination of responsibility** for each allegation.
- Statement of **potential disciplinary sanctions**.
- **Appeal rights**.



LozanoSmith.com

81

Written Determination

- Findings of fact focus on whether the alleged conduct occurred.
- Avoid legal conclusions.
- Examples:**
 - PROBLEMATIC:** Sustained. "Cathy harassed Holly."
 - BEST PRACTICE:** Sustained. Cathy told Holly "If you going on a date with me, I will promote you next month."



LozanoSmith.com

82

Legal Framework

Preponderance of the Evidence.



LozanoSmith.com

83

Writing the Analysis

- Topic sentence.
- 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.
- Factual Finding (i.e., sustained, not sustained, partially sustained).



LozanoSmith.com

84



Credibility Factors

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?

LozanoSmith.com

86

Credibility Factors

- **Past record:** Did the alleged harasser have a history of similar behavior in the past?
- **Opportunity and capacity to observe/actual knowledge:** Did the person see it themselves, or are they recounting what someone else told them?
- **Consistent or inconsistent statements:** Is the person changing their story? Did the person say the same thing to three other witnesses?
- **Reputation for veracity or deceit:** Does this person have a reputation of lying, cheating, etc.?
- **Bias:** Is this person the Complainant's best friend? Does the person have their own complaint against Respondent?

LozanoSmith.com

87

Common Challenges to Complainant's Credibility



Incomplete, inconsistent and untrue statements

Lack of physical resistance

Delayed reporting



LozanoSmith.com

88

Credibility Challenge: Incomplete, Inconsistent and Untrue Statements

- Common neurobiological effects of trauma: perceptual narrowing, loss of cognitive and motor skills.
- Discomfort providing sexual or other personal details during interview.
- Having to describe sexual assault to many different people.
- Fear of being blamed and/or doubted.
- Fear of punishment for illegal behavior e.g. underage drinking, drug use.



LozanoSmith.com

89

Credibility Challenge: Lack of Physical Resistance

Majority of sexual assaults are committed by someone known to the complainant.

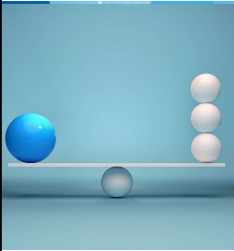
Most common response is not physical resistance but often feelings of betrayal, confusion, disorientation, shame and self-blame.



LozanoSmith.com

90

Credibility Challenge: Delayed Reporting



- Victims need time to process what has happened to them.
- Perpetrators of sexual assault are often known to victims.
- Fear.
- Self-blame.

Case Study: Trinity and Ian

Trinity has a history of dating 11th grade and 12th grade students, even though she is in 9th grade. A few of her peers call her “promiscuous” and say that she is “reckless” about who she has romantic relationships with.

- How does this impact her credibility?
- BONUS: Is this relevant?

Case Study: Trinity and Ian

Ian shows you text messages that show Trinity was texting him and send tapback responses laughing at his jokes. He says this shows that his conduct was not unwanted.

- How does that impact Trinity's credibility?

Case Study: Trinity and Ian

4 weeks after her initial interview, Trinity went back to the investigator and asked to meet again. She changed her story and said everything was consensual.

- How does that impact Trinity's credibility?



LozanoSmith.com

94

Counteracting Bias

Implicit Bias

- Our unconscious mind makes shortcuts based on culture, backgrounds, and experiences.
- These shortcuts can sometimes be perceived as instinct.
- Those shortcuts can be fallible and based on biases.
- Fallible shortcuts can lead to fallible judgements of people based on irrelevant markers.

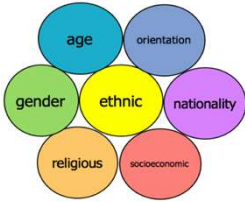


LozanoSmith.com

96

Implicit Bias

Rings of Culture



(Hollie, 2015)



LozanoSmith.com

97

- Culture, background, and experiences shape our perception & socialization.
- Socialization starts at birth and continues throughout life.
- It is often based on social stereotypes that have led to an association between a group and a trait.
- Numerous studies have demonstrated that certain traditionally disadvantaged groups are treated differently, to their detriment.
- Many (if not most) of the people treating others differently are unaware of doing so.

Affinity Bias

- Tendency to favor people who share similar interests, backgrounds, and experiences with us.
 - Impact your interaction with parties and witnesses.
 - Impact your credibility analysis.
 - Impact the weight you give their statement.



LozanoSmith.com

98

Confirmation Bias

Confirmation bias, or the selective collection of evidence, is our subconscious tendency to seek and interpret information and other evidence in ways that affirm our existing beliefs, ideas, expectations, and/or hypotheses.

Implicit/Affinity Bias



Confirmation Bias



LozanoSmith.com

99

Intersectionality

- Intersectionality is the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect, especially in the experience of marginalized individuals or groups.
- Many cases involve complainant's word against respondent's word.
- Intersectionality of categories to which complainant, respondent and witnesses belong may inadvertently affect Investigator's/Decision-maker's credibility assessments.
- **Bias check:** Has the race/ethnicity/sexual orientation of complainant, respondent and/or witnesses influenced your assessment of credibility.



LozanoSmith.com

100

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.
- Open-ended and non-leading questions.



LozanoSmith.com

101

Case Study: Trinity and Ian

Ian is on the basketball team and is well liked by his coaches and teachers. He struggles in some of his classes but always submits assignments and tests on time. He also volunteers in a mentor program with students at the middle school.

- **How does that impact his credibility?**



LozanoSmith.com

102

Case Study: Trinity and Ian

You know that around campus Ian is considered a gentleman and he always opens the door for the female students and teachers.

- How does this impact you as an investigator?
- How does this impact you as a decision-maker?
 - Is that evidence in the report?



LozanoSmith.com

103

Appeals Officers

Appeal Rights for Both Parties

Parties may appeal the written determination on the following bases:

1. Procedural irregularity;
 2. New evidence that was not reasonably available earlier;
 3. Title IX personnel had a conflict of interest or bias.
- ❖ Students/employees may also be afforded the right to file a complaint or an appeal with federal and/or state agencies (e.g. OCR, CDE, DFEH, EEOC).

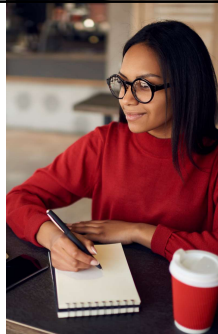


LozanoSmith.com

105

Notice of Appeal

- Send notice of the appeal to both parties
- Both parties have right to submit written response to appeal
 - If Respondent notified



LezanoSmith.com

106

Responsibilities of the Appeals Officer:

- Evaluates any appeal request made by the complainant or respondent.
- Makes a decision on the appeal and issues a written decision.



LezanoSmith.com

107

Case Study: Trinity and Ian

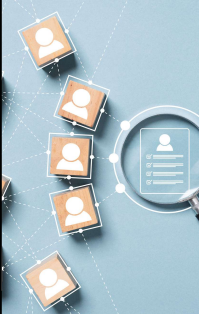
Ian states that he wants to appeal the Title IX findings determination because he thinks that the District investigator “did not like him” and was biased against him because of his race and gender.

- How should you handle Ian’s appeal request?



LezanoSmith.com

108



Takeaways

- Be aware of the responsibilities of your role on the Title IX team.
- Work with the Title IX Coordinator to assess complaint procedure.
- Offer supportive measures as appropriate.
- Use a trauma-informed approach.
- Consider potential biases.
- Ask for help! Don't go at it alone, seek help from your Title IX response team.



LozanoSmith.com

109

Questions?

110



Lozano Smith Podcast

Balancing law and public agency applications.

Stay informed on your time!

Check out the latest episode:

E104 Supreme Court Weighs In on States Limiting Transgender Participation in Girls' School Sports





lozanosmith.com/podcast

Subscribe on your favorite app or device.

111



Thank you from Lozano Smith!

Together with you, we are impacting communities and lives through:

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

#BlueHatProject
#LozanoSmithFoundation



LozanoSmith.com

112

For more information or questions about the presentation, please feel free to contact:

Emma J. Sol Attorney at Law	925.953.1620	esol@lozanosmith.com
Sarah E. Fama Attorney at Law	925.953.1620	sfama@lozanosmith.com



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

113

Transform Your Training With LSI

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

Featured Courses:

- Ethics Training for School Board Members
- Special Education Training Series
- Title IX Training Series
- Workplace Violence Prevention Program

Your go-to source for streamlined employee training programs.





illuminate.lozanosmith.com



114

Connect with us on social media for the latest updates.



@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 (559) 433-6600.

Copyright © 2020 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 intranet 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.

115

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 © 2026 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.