Lozano Smith
ATTORNEYS AT LAW

Title IX Basics and Foundations

Presented by:
Monica Batanero & Sarah E. Fama

Title IX Training Series
August 12, 2026

Lozano Smith
ATTORNEYS AT LAW

Monica D. Batanero

Partner



Los Angeles Offices
mbatanero@lozanosmith.com
213.929.1066

Overview

Monica D. Batanero is a Partner in Lozano Smith's Los Angeles office and co-chair of the firm's Title IX Practice Area. Ms. Batanero advises educational institutions on student, special education and personnel issues.

Experience

Ms. Batanero 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.

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

Lozano Smith
ATTORNEYS AT LAW

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
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J.D., University of the Pacific, McGeorge School of Law

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Lozano Smith



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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, LSI 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.

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Presenter



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Ms. Batanero also represents school districts in a variety of special education matters, including at IEP meetings, mediations, and due process hearings. She also advises clients on student matters including student discipline, expulsion hearings, free speech, and Uniform Complaint Procedures.

mbatanero@lozanosmith.com
213.929.1066

Presenter



Sarah E. Fama

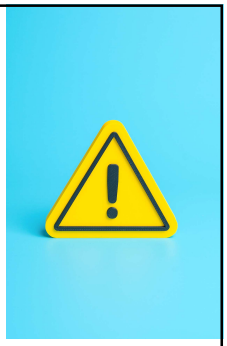
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Ms. Fama is a co-chair of the firm's Title IX practice group and routinely advises client on Title IX and all types of investigations. She also regularly conducts investigations and provides extensive trainings on Title IX, investigations, employment and other matters.

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Content Advisory

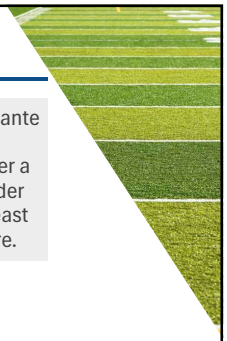
- Please note that some of the topics and content of this presentation is explicit and may be triggering for some individuals.
- Viewer discretion is advised. If at any time you need to step away, please feel free to do so.
- Thank you for your understanding and participation in this important conversation.



Hypothetical

Josh, a high school senior, is best friends with Dante and has known Dante's sister Beth, a freshman, since she was little. Josh saw Beth at a party after a football game and threw his arm over her shoulder to give her a hug and his hand landed on her breast where he kept it. This has never happened before.

- **Is this Title IX?**



Title IX and the 2020 Regulations

The Plain Language



"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 et seq.

What Does Title IX Cover

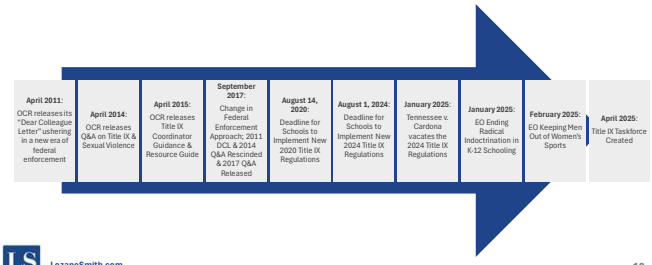


1. Education Programs or Activities
2. Sports
3. Employment
4. Equal Access to Facilities
5. Admissions and Recruitment
6. **Sexual Harassment***
   - (34 C.F.R. Part 106)
   - *New regulations that have the full force and effect of law

2020 vs. 2024 Title IX Regulations

- 2024 Title IX Regulations
  - Went into affect on August 1, 2024
  - Vacated January 9, 2025 (*Tennessee v. Cardona*)
- 2020 Title IX Regulations are the effective Regulations.

A Brief History of Title IX Regulations



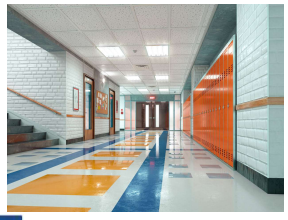
Sexual Misconduct in Schools

Why Title IX is Important - Potential Impact of Sexual Misconduct on Students and Employees

Shame, Humiliation, Stress, Anxiety, Depression, Loss of Sleep	Impaired Learning/Poor Work Performance	Absenteeism/Turnover	Culture of Discrimination
Civil Liability (Monetary Damages, Attorney Fees)	Negative Media Attention and Public Outcry	OCR Resolution Agreement	Loss of Federal Funds

Title IX Regulations Highlights

Requirements Specific to the 2020 Regulations:



1. The definition of "sexual harassment."
2. "Actual knowledge" for notice.
3. Procedural requirements for due process:
   a. Roles; and
   b. Procedure.
4. "Deliberate indifference" standard.

Title IX Regulations Highlights

Title IX Coordinator	Notice to Parties of Initiation, Outcome and Appeal Rights	Identify and Promptly Investigate
Prevent Recurrence	Clear Policies	Remedy Effects

Title IX Definitions

Actual Knowledge	Formal Complaint	Complainant	Respondent
▪ **(K-12)** When ***any employee*** has notice of sexual harassment or allegations of sexual harassment. ▪ **(Higher Ed)** When the Title IX Coordinator or any official who has the authority to institute corrective measures has notice of sexual harassment or allegations of sexual harassment.	▪ A document filed by a ***complainant*** or signed by the ***Title IX Coordinator*** alleging sexual harassment against a respondent and requesting that the recipient (District) investigate the allegation.	▪ An individual who is alleged to be the ***victim of the conduct*** that could constitute sexual harassment.	▪ An individual who has been reported to be the ***perpetrator of conduct*** that could constitute sexual harassment.

"On the Basis of Sex" - Capacity

Age	Disability
▪ What if Respondent is really young?	▪ What if the Respondent has a disability?

Reasonable Person Standard

Actual Knowledge and Deliberate Indifference

Actual Knowledge

"Deliberate indifference" standard: *A recipient with **actual knowledge** of **sexual harassment** in an **education program or activity** of the recipient against a **person in the United States**, must respond promptly in a manner that is not deliberately indifferent. A recipient is **deliberately indifferent** only if its response to sexual harassment **is clearly unreasonable in light of the known circumstances**.*

Title IX Definitions: 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; — **"Quid pro quo"**
- 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 — **"Hostile Environment"**
- "***Sexual assault***" [20 U.S.C. 1092(f)(6)(A)(v)], "***dating violence***" [34 U.S.C. 12291(a)(10)], "***domestic violence***" [34 U.S.C. 12291(a)(8)], or "***stalking***" [34 U.S.C. 12291(a)(30)]. — **"Specific Offenses"**

Sexual Assault

Rape

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object without their consent.
- No consent includes incapacity.
- Physical resistance is not required.



Sexual Assault

Criminal Sexual Contact (replaced forcible fondling)

- The intentional touching of clothed or unclothed body part,
- Without consent,
- For purpose of:
  - Sexual gratification,
  - Sexual humiliation, or
  - Sexual degradation.



Title IX Definitions – Specific Offenses

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Title IX Definitions – Specific Offenses

Domestic Violence

Felony or misdemeanor crimes of violence committed by a qualified person.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

Hypothetical

Paige, a 7th grade student, comes to your office and informs you that one of her classmates, Asher, has been making "gross" comments to girls around school for a couple of weeks. She shows you Asher's Instagram, which is mostly pictures of guns, scantily clad women, and misogynistic language. Paige says she and her friends are very uncomfortable around Asher, and do not want to be near him.

- **Is this Title IX?**
- **Do you investigate?**

Title IX Jurisdiction

In the United States;

The District exercised ***substantial control*** over both:

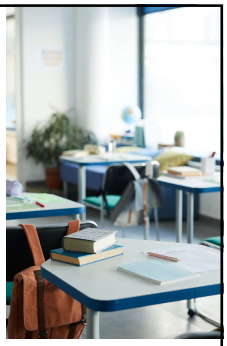
1) the ***Respondent*** and
2) the ***context*** in which the sexual harassment occurs; and

The ***Complainant*** was ***Participating/attempting to participate*** at the time the complaint is filed.

Hypothetical

Marie met her long-distance boyfriend over the summer. Marie's classmate, Parker, found videos of Marie's boyfriend discussing details about his intimate encounters with Marie. Parker is telling everyone in class about the videos. Marie reports Parker's behavior.

- **Do we have Title IX Jurisdiction?**



The Roles and Responsibilities of District Administrators and Employees

What are the Roles?

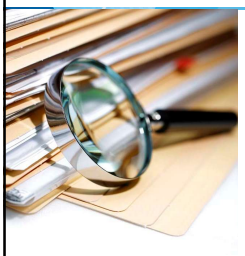




Title IX Coordinator's Duties

- 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

Investigator's Duties



- Interview
- Gather evidence
- Parties to review evidence
- Consider responses
- Prepare investigation report

Decision-Maker's Duties (K-12)

- Reviews investigation report
- Facilitates exchange of questions
- Asks relevant questions
  - Explains if questions are irrelevant
- Makes determination about responsibility
- Prepares written determination

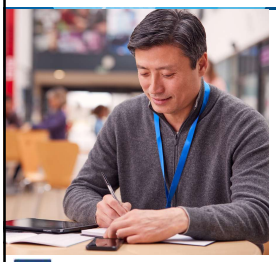
Cannot be the Title IX Coordinator or Investigator

Decision-Maker's Duties (Higher Education)

- Reviews investigation report
- Conducts hearing
- Reviews questions for relevancy
  - Explains if irrelevant
- Makes determination about responsibility
- Prepares written determination

Cannot be the Title IX Coordinator or Investigator

Decision-Maker / Hearing Officer (Higher Education)



- Decision-Maker may act as hearing officer.
- May have distinct hearing officer.

Informal Resolution Officer's Duties

- Facilitates the informal resolution process.
- Verifies a complaint meets the criteria.
- Verifies voluntary, written consent.
- Ensures the parties know their rights.

May be the Title IX Coordinator

Cannot be the Investigator

Responsibilities of the Appeals Officer

- Evaluates any appeal
- Makes a decision on the appeal
- Issues a written decision

Cannot be the Title IX Coordinator, investigator, or decision-maker

Hypothetical



You receive an anonymous email with a video of Ms. Juliette (English teacher) thrusting her pelvis against a student who is backed up against the wall. The student has their hands covering their face. You can hear Ms. Juliette say, "Take her maidenhood." The caption on the video reads, "Ms. Juliette is at it again...."

- **Is this Title IX?**
- **What is your first step?**

Responsibilities of All Employees (K-12)

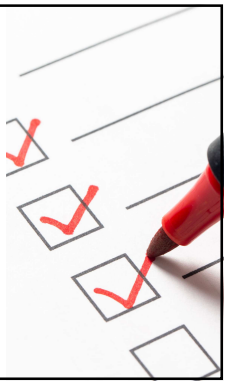


Identify and Report

This does not relieve an employee of their mandated reporter duties!

Responsibilities of Officials with Authority (Higher Ed.)

- Identify and Report
- Still have mandated reporter duties, IF the conduct involves a minor!

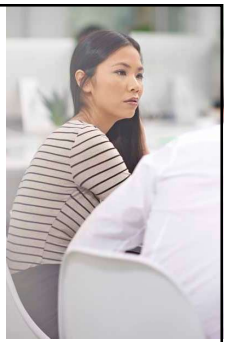


The Clery Act & Violence Against Woman Act (Higher Ed Only)

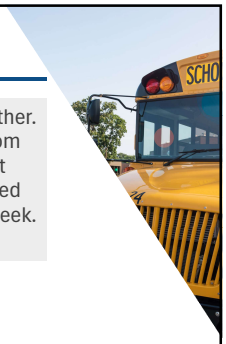
- If the conduct involves persons is OVER the age of 18, then it is the Complainant's right to choose whether to report to police.
- The Title IX Coordinator, or person doing a Title IX Intake, has the responsibility of informing the Complainant that they have the option to involve police.
- The Title IX Coordinator, or Office, **CANNOT** contact the Respondent without the Complainant's consent, UNLESS certain criteria are met.

"Red Flag" Conduct of Potential Sexual Harassment

Flirtations or Propositions	Derogatory Comments	Sexual Jokes or Gestures
Spreading Sexual Rumors	Massaging, Grabbing, or Touching	Comments on a Person's Body
Sexual Acts Without Consent or Based on Coercion	Non-Consensual "Sexting"	Sexploitation



Hypothetical

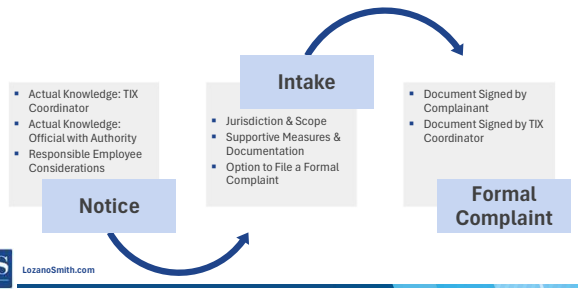


Fred and Sam ride the bus every afternoon together. Both students have a disability. After a report from another student, the Transportation Department reviews video footage from bus and sees that Fred has been touching Sam's penis everyday for a week. Sam is nonverbal and in a wheelchair.

- **Is this Title IX?**

Title IX Complaint Procedures

What Happens When We Get a Report



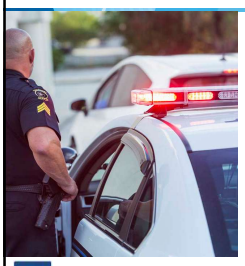
Retaliation Prohibitions

- Retaliation is prohibited.
- Retaliation complaints under the same process.
- Confidential, unless required by law.
- First Amendment rights.
- Cannot make false statement in bad faith.



Receiving a Title IX Report

Contacting Law Enforcement



- Was a crime potentially committed?
- Title IX **does not** relieve employees of their mandated reporting obligations **for minors.**

Criminal Investigation

A police investigation does ***not*** relieve a district of its obligations under Title IX or state laws.

Gathering evidence:

- A brief delay is permissible, but it is not good cause to delay sending the written notice of the investigation.
- Criminal reports may be useful for fact gathering.
- Coordinate with local law enforcement.

Cephus v. Blank (2025)

- Districts have "**obligations imposed by Title IX itself to investigate and resolve such allegations promptly.**" (*Cephus v. Blank* (2025)).
- In *Cephus v. Blank*, the respondent in a sexual assault matter asked for the investigation to be delayed until after the criminal charges against him had been resolved, however, the school continued with its Title IX investigation because of their "duty to promptly resolve the matter." The court held that a school may proceed with a Title IX investigation despite ongoing concurrent criminal proceedings.

Hypothetical

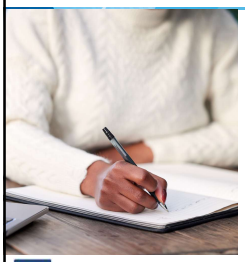
On Friday afternoon, you get an email from Jo's parent that they were sexually assaulted at the High School baseball game on Thursday night. Jo is a freshman did not come to school on Friday. That same afternoon, the police department calls you to tell you they received the same report, and they do not want you to talk to Jo or the Respondent (a District student) until they can do a forensic exam. They expect to do the forensic exam next Thursday.

- **Is this Title IX?**
- **What do you do?**

Receiving Reports (In General)

WHERE REPORTS COME FROM	FORM OF REPORTS
Student	Verbal
Parent	
Employee	Written
Member of Public	
Anonymous Person	No Complaint (Rumor or Observation)

Receiving a Report



- Notify the Title IX Coordinator;
- Assess whether a CPS report should be filed (continue to reassess); and
- The Title IX Coordinator should promptly schedule an Intake meeting with the Complainant.

Hypothetical

It is the second week of school. Felicia comes to you and tells you that Connor has been rubbing her back, making "inappropriate" comments, giving her "sexual" looks and generally making her uncomfortable. She says she does not want you to do anything but asked if she can switch classes so they are not together.

- **Is this Title IX?**
- **Can you do nothing?**

What if the Complainant Says, "Do Nothing"?

The Title IX Coordinator must inform them of their options.

- This includes supportive measures **without** filing a formal complaint.

The Title IX Coordinator can sign a formal complaint on the complainant's behalf:

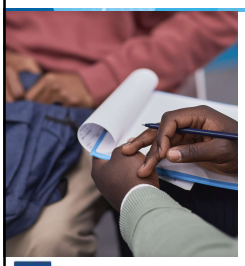
- Assess the conduct!
- If NOT filing a formal complaint would be deliberately indifferent, the Title IX Coordinator has the discretion to sign a formal complaint on the complainant's behalf.

Hypothetical

Violet comes to your office to tell you that a group of girls have dragged her into the bathroom stall, locked the door, then groped and "humped" her. She says the group has done it to at least two of her friends, and to her before. She says the girls are popular and she does not want them to know she told on them so asks you not to do anything or say anything, but instead just wants to know if she can use the bathroom in the office.

- **Is this Title IX?**
- **What do you do?**

Urgent Considerations



- Is there a threat of imminent harm to others?
- Was a crime potentially committed?
- Have mandated reporting obligations been triggered?

Contact the Complainant

Intake Meeting with Complainant

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

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.

Supportive Measures

Examples:

- Counseling
- Medical services
- Academic support
- No-contact orders
- Increased security
- Changed schedules
- Independent study (voluntary)

Document the implemented supportive measures, but don't stop there!

Document your Intake Meeting

Dear [Name],

Thank you for sharing your experience with me. We covered a lot during our meeting, so I wanted you [and Parent] to have an email, as a reference. During our meeting you shared [brief description of reported conduct]. I want to make sure we minimize the impact of this experience on your time here at school. To do that we offered the following Supportive Measures: [List]. You decided that you want us to [list Supportive Measures agreed on].

I spoke to you about the different types of investigations, including Title IX, and asked if you wanted to file a Formal Title IX Complaint. You said that you are unsure but will get in touch when you make a decision. Please let me know how you would like to proceed, or if you have more questions about the investigation processes.

Warmly,

Pause Before Discipline

The Title IX framework requires that the formal grievance procedure be concluded before any disciplinary measures are implemented.



Do You Have a "Formal" Title IX Complaint?

Document filed by Complainant

OR

Signed by Title IX Coordinator

Does it Meet the Tests?

Definition of Title IX Sexual Harassment

AND

Title IX Jurisdiction

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.**

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.**

Emergency Removals (Students)

Title IX Regulations require that the full Title IX grievance procedure be completed prior to discipline being imposed.

EXCEPTION: Emergency Removal

- Respondent must be an **immediate threat** to the physical health or safety of any student or individual;
- The immediate threat must arise from the allegations of sexual harassment; and
- Respondent is provided with notice and an opportunity to challenge the decision immediately after removal.

Hypothetical

You receive an email from a parent that their student John, is not coming to school on Monday because of an incident that occurred during a volleyball tournament over the weekend. At the tournament, Hudson cornered John after the game, tried to remove John's pants and grabbed John's genitals over his pants. John got away before anything else happened. Hudson texted John multiple times the next day saying he is looking forward to Monday and PE class, saying he will finish what they started.

- **Is this Title IX?**
- **Is this appropriate for Emergency Removal?**

Administrative Leave

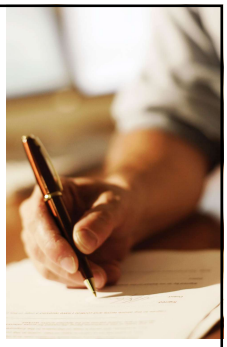
Placing an Employee on Administrative Leave is NOT Disciplinary

Mandatory Dismissals

- Only required if Complainant files a **Formal Title IX Complaint.**
- Not required for a Report.
- Does not meet definition;
- Did not occur in District education program or activity; or
- Did not occur in the United States.

Discretionary Dismissals

- Request in writing to withdraw;
- Respondent is no longer enrolled or employed; or
- Inability to gather sufficient evidence.



Dismissals (Mandatory and Discretionary)

The decision to dismiss a complaint should be made by the Title IX Coordinator.

Notice of dismissal must be issued contemporaneously to both parties in writing.

Parties must be informed of their right to appeal the dismissal on the basis of:

- Procedural irregularity;
- New evidence that was not reasonably available earlier; or
- Involved personnel had a conflict of interest or bias.

Even if you determine Title IX is NOT triggered or the complaint should be dismissed, do NOT stop there!

Consider whether the alleged conduct may otherwise violate District policy or employee/student conduct standards.

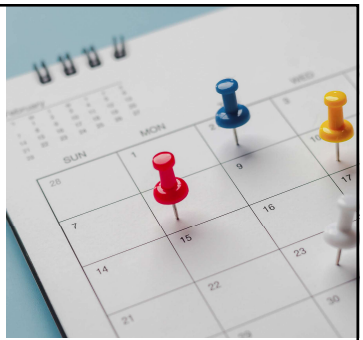


Policies and Procedures for Investigating Title IX Complaints (K-12 Model policies)

- **BP/AR 1312.3** – Uniform Complaint Procedures
- **BP/AR 4030** – Nondiscrimination in Employment
- **BP/AR 4119.11** – Sexual Harassment (Employee)
- **AR 4119.12** – Title IX Sexual Harassment Complaint Procedures (Employee)
- **BP/AR 5145.7** – Sexual Harassment (Students)
- **AR 5145.71** – Title IX Sexual Harassment Complaint Procedures (Student)

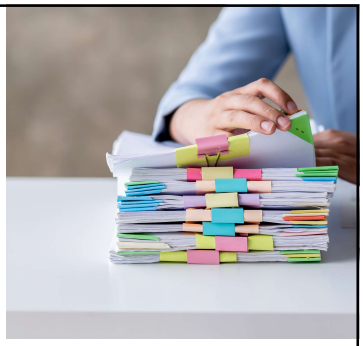
Investigation Timelines

- Title IX - "reasonably prompt time frame."
- District policies.



Notice of Investigation

Send the parties notice of the allegations



Formal Grievance Procedure (K-12)

- Investigator gathers evidence and interviews parties/witnesses
- Investigator shares evidence with the parties in a written report
- Parties have 10 days to respond to the evidence
- Investigator conducts any necessary follow up
- Investigator prepares Investigation Report
- Investigation Report is sent to the parties
- Parties have 10 days to respond to the Investigation Report and/or submit written, relevant questions to the other party or any witness
- Decision-maker facilitates the exchange of written questions
- Decision-maker makes decision and prepares a Written Determination
- Both parties have right to appeal

Formal Grievance Procedure (Higher Education)

- Investigator gathers evidence and interviews parties/witnesses.
- Investigator shares evidence with the parties in a written report.
- Parties have 10 days to respond to the evidence.
- Investigator conducts any necessary follow up.
- Investigator prepares Investigation Report.
- Investigation Report is sent to the parties.
- Live Hearing with cross-examination (indirect questioning only).
- Decision-maker makes decision and prepares a Written Determination.
- Both parties have right to appeal.

Grievance Process: Rights of Parties

- Receive detailed notice of investigation (names, dates, times, locations).
- Have a support person or advisor present throughout the Title IX grievance process.
- At least 10 days to review directly related evidence in preliminary report.
- At least 10 days to review relevant evidence in the final investigation report and submit written questions to the decision maker (K-12) or Live Hearing (can be through videoconference) (Higher Ed).
- Right to appeal decision.

Checklist for Beginning Effective Investigations

- Receiving the Report
- Conducting an Intake
- Urgent/Supportive Measures
- Receive or File Formal Title IX Complaint
- Assessing the Nature of the Report
- Frame the Scope
- Send Notice of Investigation

Informal Resolution

Informal Resolution

Formal Title IX Complaint;

Written notice of allegations;

No written determination; and

Voluntary, **written** consent.

Informal Resolution

Right to withdraw.

Cannot be used for employee v. student.

Sexual Assault?

Conducting Informal Resolution

- Identify ground rules for the chosen resolution process:
  - This does not need to include Complainant and Respondent interacting, and
  - This does not need to include mediation.
- Allow both parties to share their side of the story without interruption:
  - Feel free to prompt the parties with open-ended questions (i.e., "How did this make you feel?," "Help us understand…" etc.).
- Ask clarifying questions to fill in any details.
- The facilitator should be able to objectively summarize what each party has shared.
- Let the parties propose their own possible solutions first.

Informal Resolution Agreements

Agreement	No Agreement
▪ Reduce agreement to writing. ▪ May look like a summary of commitments, or a contract. ▪ Can include discipline, supportive measures, etc.	▪ Voluntary process: parties may withdraw at any point prior to reaching a determination of responsibility and resume a formal grievance process.

Title IX and Student Discipline



STOP Before You Discipline

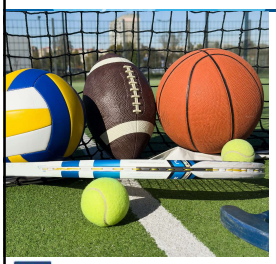
The Title IX framework requires that the formal grievance procedure be concluded before any disciplinary measures are implemented.

Hypothetical

Casey (a female junior) comes in and shows you a video of Robert (a male junior) rubbing her back and shoulders. Casey said she asked a friend to record the video yesterday during group work in fourth period. She says that Robert has been touching her in this manner all week, but yesterday she was seated, and he squeezed her above the knee to get her attention. She says the first time Robert touched her was when she ran into him over the holiday break at a resort in Mexico, except that time was under her swimsuit.

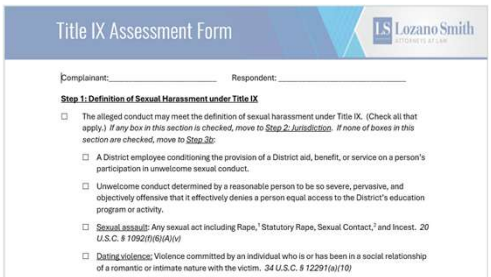
- **What are your next steps?**

Legal Update: Title IX and Gender Identity



- Supreme Court decision – *B.P.J./Hecox:*
  - No impact on California Law; and
  - Limited to sports.
- In California, students are permitted to play on sports team, use facilities, etc. in accordance with their gender identity.

Title IX Assessment Form



Title IX Assessment Form

Lozano Smith

Complainant:_____ Respondent: _____

Step 1: Definition of Sexual Harassment under Title IX

☐ The alleged conduct may meet the definition of sexual harassment under Title IX. (Check all that apply.) *If any box in this section is checked, move to Step 2: Jurisdiction. If none of boxes in this section are checked, move to Step 3b:*

☐ A District employee conditioning the provision of a District aid, benefit, or service on a person'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.

☐ Sexual assault: Any sexual act including Rape,[1] Statutory Rape, Sexual Contact,[2] and Incest. *20 U.S.C. § 1092(f)(6)(A)(v)*

☐ Dating violence: Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim. *34 U.S.C. § 12291(a)(10)*

☐ Domestic violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by an individual with whom the victim shares a child in common, by an individual who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws. *34 U.S.C. § 12291(a)(8)*

☐ Stalking: Engaging in a course of conduct directed at a specific individual that would cause a reasonable individual to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. *34 U.S.C. § 12291(a)(30)*

Step 2: Jurisdiction under Title IX

Check all that apply. *If all boxes are checked move to Step 3a. If not all boxes are checked move to Step 3b.*

☐ The District had substantial control over the respondent at the time of the alleged harassment.
☐ The District had substantial control over the context in which the alleged harassment occurred.
☐ The conduct occurred against a person in the United States.
☐ The complainant was participating/attempting to participate in the educational program at the time the complaint was filed.

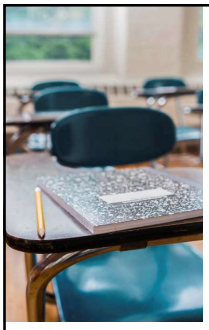
[1] Rape is the penetration, or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by sex organ of another person without affirmative consent of Complainant.
[2] Sexual contact is the intentional or forced touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Step 3a: Title IX

If the allegations could meet the definition of sexual harassment under Title IX, and the jurisdiction requirements of Title IX, reach out to Title IX Coordinators. Do NOT implement discipline. Title IX Coordinators will work with you to assess next steps, including a conversation with complainant regarding their right to file a Formal Title IX complaint.

Step 3b: Non-Title IX Sexual Harassment

If the alleged conduct does not meet the definition of sexual harassment under Title IX, or the jurisdictional requirements of Title IX are not met, the complaint/allegations will be investigated in accordance with other applicable Board Policies. It may still be necessary to provide Title IX Coordinators, with information regarding the alleged conduct, the supportive measures taken, and other information for the Title IX log (consult with Title IX Coordinators regarding same).



Takeaways

- Schools have an obligation to address sexual misconduct.
- Title IX Regulations outline definitions and procedures.
- Report to the Title IX Coordinator.
- Supportive Measures.

Questions?





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



Sarah E. Fama

Attorney at Law

925.953.1620 | sfama@lozanosmith.com



Monica D. Batanero

Attorney at Law

213.929.1066 | mbatanero@lozanosmith.com

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

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ATTORNEYS AT LAW

Title IX Formal Grievance Procedures

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

Title IX Training Series | August 19, 2026

Lozano Smith
ATTORNEYS AT LAW

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

Lozano Smith
ATTORNEYS AT LAW

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

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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.

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- *Student*
- *Title IX*

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Title IX Formal Grievance Procedures

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

Title IX Training Series | August 19, 2026

Presenter



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sfama@lozanosmith.com
925.953.1620

Presenter



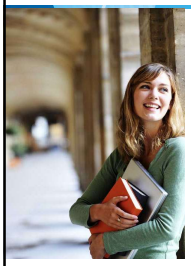
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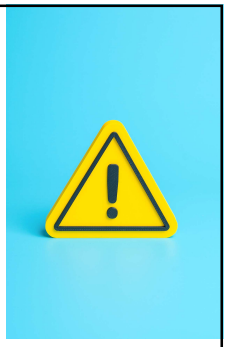
What We Will Cover



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

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.



Title IX Team

What are the Roles in the Title IX Grievance Process?



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7

Title IX Team

What Roles Can Overlap	What Roles Cannot Overlap
▪ Title IX Coordinator/Investigator ▪ Title IX Coordinator/Informal Resolution Officer	▪ 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

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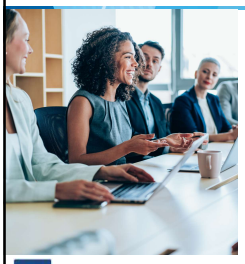
What Can Be Outsourced?

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



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Responsibilities of All Employees



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

Case Study: Trinity and Ian

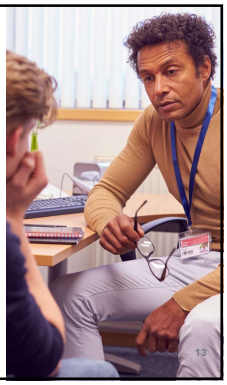
Trinity, a 9th grade female student, tells you that Ian, a 12th grade male student, has been making her uncomfortable. Trinity says Ian routinely makes sexually explicit jokes and comments to her in person in class and over text, including, "You're so sexy I can't control myself around you." She said 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?**

Title IX Coordinator

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.



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13

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.

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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.

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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.

Do You Have a "Formal" Title IX Complaint?

Document filed by Complainant.

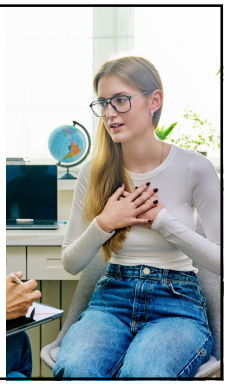
OR

Signed by Title IX Coordinator.

Formal Title IX Complaint – Filed by Title IX Coordinator

Analysis	Questions
▪ Deliberate Indifference ○ Threats ○ Serial predation ○ Violence ○ Weapons	▪ Will Complainant participate? ▪ Do you need to discipline? ▪ How do we prioritize agency and autonomy, especially for adult Complainants?

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?

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Does it Meet the Tests?

Definition of Title IX Sexual Harassment.

AND

Title IX Jurisdiction.

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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.**

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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.

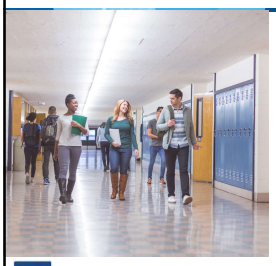
***If the answer is no, you must dismiss the complaint or allegations therein.**

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?**

Corrective Actions

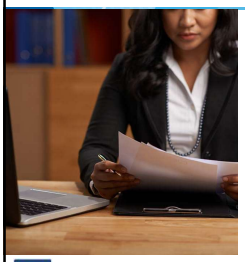


- Staff/student discipline.
- Ensuring no retaliation.
- Additional support for involved parties.
- Generalized training for staff/students in class, school, or district-wide.
- Generalized notification of policies/rules.
- Increased monitoring and check-ins.
- Changes to District practice.

Investigators

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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.

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How to Conduct an Effective Title IX Investigation

- Frame the Scope
- Make a List of Witnesses
- Draft Questions for and Interview the Complainant
- Gather and Preserve Evidence
- Conduct Witness and Respondent Interviews
- Conduct Additional Interviews If Needed
- Exchange the Evidence (10 days)
- Prepare the Investigation Report

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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.

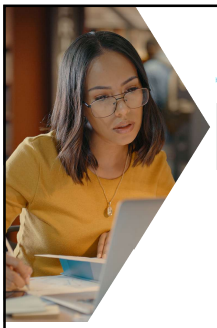
Frame the Scope of the Investigation

- **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?

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***."



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.**

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."

Case Study: Trinity and Ian

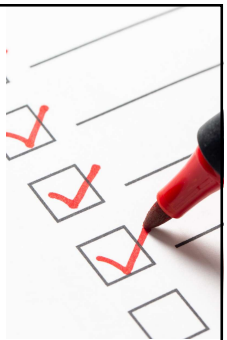
Needs Improvement	Good examples
▪ Ian sexually harassed Trinity.	▪ Ian touched Trinity's shoulder in a sexual manner, without her consent, on at least one occasion. ▪ On at least one occasion, Ian made sexual comments to Trinity about her body, including that she has a "good butt and chest." ▪ On at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



Make a Witness List

Considerations

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

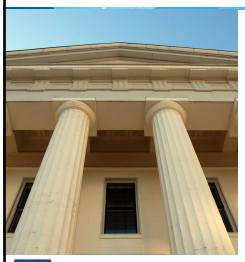


Make a Witness List

Order of Interviews



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.

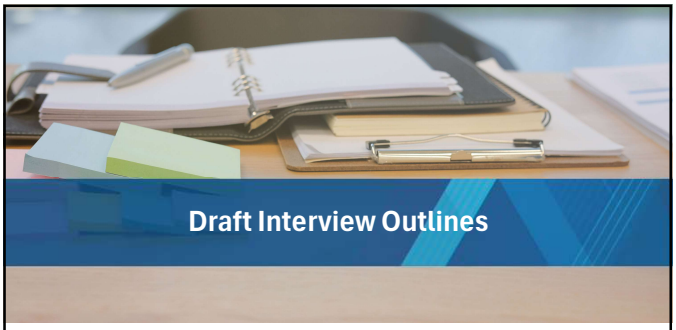
Case Study

Who would you interview?



Case Study: Witness List

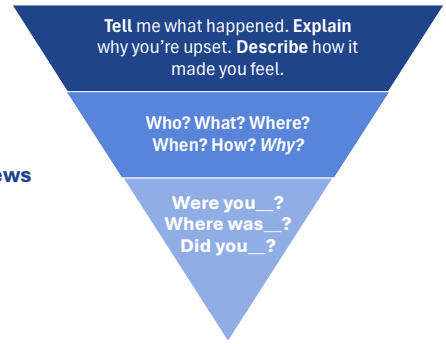
Name of Witness	Relevance / Title	Date of Interview	Notes
Trinity	Complainant		
Ian	Respondent		
Josh	Witness		Trinity said he heard the joke on 8.27.26
Anne	Witness		Trinity's best friend Get the 9.10.26 text



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.***

Outline Interviews



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

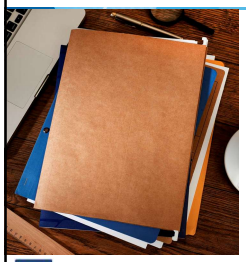
Wrap up questions:

- 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?



Conduct Interviews

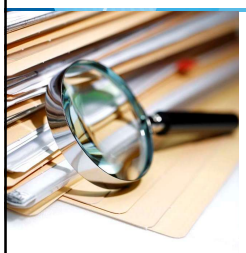
Conduct Interviews – Do Not Promise Confidentiality



Confidentiality cannot be promised.

- All evidence will be shared with the parties.
- Both parties will have an equal opportunity to inspect, review, and respond to the evidence.

Conduct Interviews

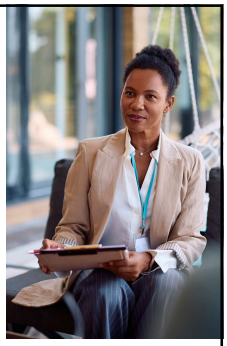


Common Questions and Issues

- 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?

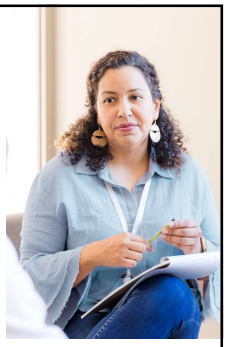
Conduct Interviews – Trauma Informed Approach

- 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.



Conduct Interviews – Trauma-Informed Approach

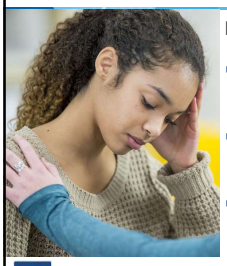
- Do **NOT** victim-blame.
- Choose a comfortable setting that is not triggering.
- Build rapport.
- Allow the witness to freely speak and then ask follow up questions.
- Display compassion and sincerity.
- Listen attentively and actively without interruption.
- Ask difficult questions with care - explain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



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?"

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.

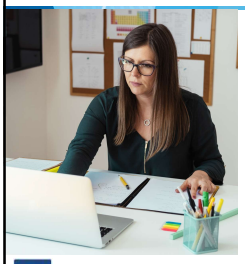
Trauma-Informed Questioning

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





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.

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?**

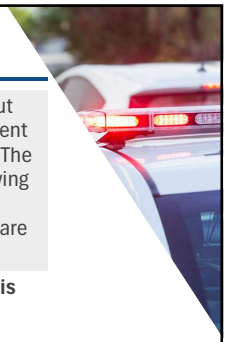
Gather and Preserve Evidence

Child Pornography

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

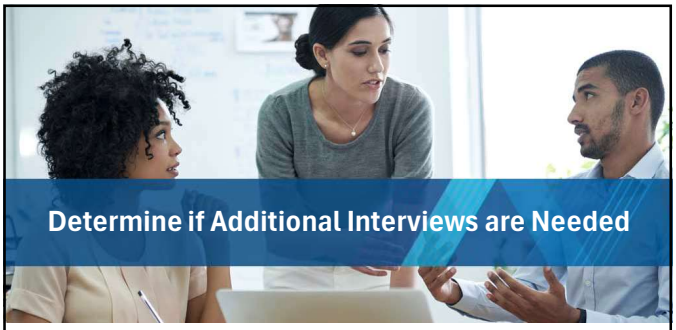
Warning: It is a state and federal crime to possess and/or distribute child pornography. There's no exception for school administrators or investigators.

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?**



Determine if Additional Interviews are Needed

Conduct Additional Interviews if Needed



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



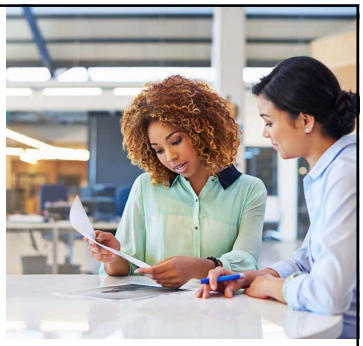
Do you have all the information you need to thoroughly address each allegation?



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

Reviewing the Evidence

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





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.



Investigation Report

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.

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.**

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.

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.

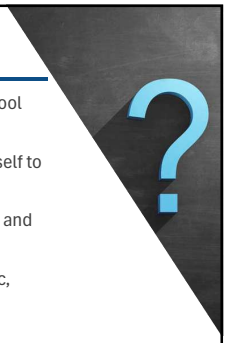
A complainant's sexual predisposition or prior sexual behavior are not relevant.

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.

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?

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.



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.

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.

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.

Written Determination

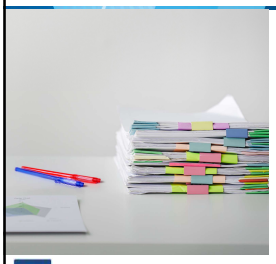
Identification of the allegations potentially constituting sexual harassment.

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.

Written Determination



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

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."

Legal Framework

Preponderance of the Evidence.



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).

Assessing Credibility

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?

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?

Common Challenges to Complainant's Credibility



- Incomplete, inconsistent and untrue statements
- Lack of physical resistance
- Delayed reporting

Credibility Challenge: Incomplete, Inconsistent and Untrue Statements

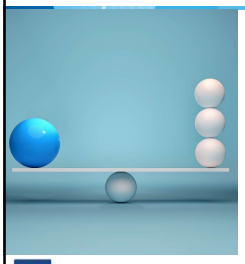
- Common neurobiological effects of trauma: perceptual narrowing, loss of cognitive and motor skills.
- Discomfort providing sexual or other personal details during interview.
- Having to describe sexual assault to many different people.
- Fear of being blamed and/or doubted.
- Fear of punishment for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

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.

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?**

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.

Implicit Bias



(Hollie, 2015)

- 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.

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

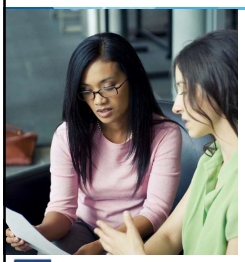


Confirmation Bias

Intersectionality

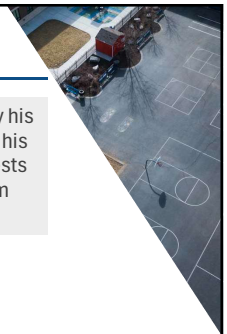
- Intersectionality is the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect, especially in the experience of marginalized individuals or groups.
- Many cases involve complainant's word against respondent's 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.

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.

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?**

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?**

Appeals Officers

Appeal Rights for Both Parties

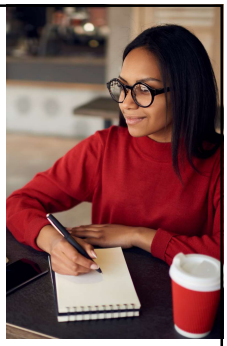
Parties may appeal the written determination on the following bases:

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).

Notice of Appeal

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



Responsibilities of the Appeals Officer:

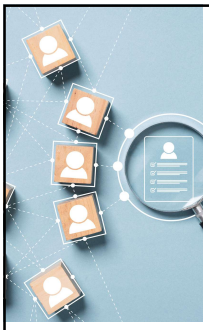
- Evaluates any appeal request made by the complainant or respondent.
- Makes a decision on the appeal and issues a written decision.



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?**



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.

Questions?

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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

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