



# Title IX Overview

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Presented by:  
Sarah E. Fama  
Emma J. Sol

Calaveras Unified School District  
March 21, 2022

## Sarah E. Fama

Senior Counsel



Walnut Creek Office  
sfama@lozanosmith.com  
925.953.1620

### Overview

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

### Experience

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

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

### Education

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

#### Practices

Labor & Employment  
Litigation  
Title IX  
Investigations

#### Education

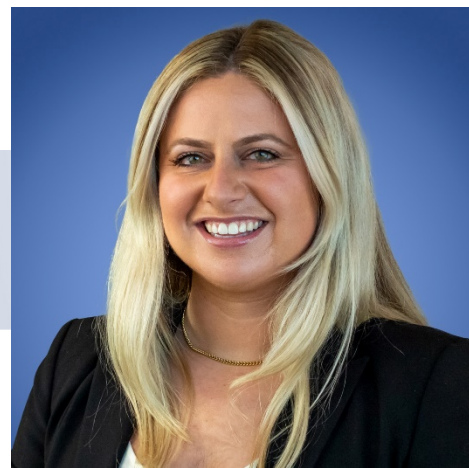
J.D., University of the Pacific,  
McGeorge School of Law  
B.A., University of Alberta

#### 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, student and investigations issues.

### Experience

Ms. Sol frequently assists clients in all aspects of Title IX compliance, including completing investigations and drafting policy. She also utilizes her knowledge and expertise in the area to present trainings on Title IX topics to assist clients in understanding this complex law. Ms. Sol is also familiar and experienced in guidance on student-related issues, such as constitutional student matters, and assisting clients in responding to California Public Records Act Requests. She applies her background and knowledge in college athletic compliance in many areas of her representation of clients.

### Education

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

#### Practices

Title IX  
Student  
Investigations

#### Education

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

#### Admissions

California

## WHO WE ARE & WHAT WE DO

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

## AREAS OF EXPERTISE

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

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

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

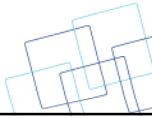
**DIVERSITY IS KEY** and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the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



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Calaveras Unified School District  
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### Presenter

#### Sarah E. Fama

##### AT LOZANO SMITH

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**CONNECT**  
sfama@lozanosmith.com  
925.953.1620



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#### Emma J. Sol

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Emma J. Sol is an Associate in Lozano Smith's Walnut Creek office. Ms. Sol's focuses her practice primarily on Title IX, student and investigations issues. Ms. Sol frequently assists clients in all aspects of Title IX compliance, including completing investigations and drafting policy. She also utilizes her knowledge and expertise in the area to present trainings on Title IX topics to assist clients in understanding this complex law.



**CONNECT**  
esol@lozanosmith.com  
925.953.1620



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Poll Time:  
Who has conducted or  
participated in an  
investigation before?

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Poll Time:  
Who has participated in  
a Title IX investigation?

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Title IX and the  
New Regulations

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## 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.



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## 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



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## Sexual Misconduct in Schools

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## 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



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## Activity

A 12th grade student, Riley, reported that Ms. Skyler, a new social studies teacher who Riley is a TA for, requested they exchange cell phone numbers so they could communicate about the work Riley would be doing as a TA. At first the text messages were just that. However, as the semester went on, Ms. Skyler would joke around with Riley about other teachers and students, Ms. Skyler would ask Riley about soccer (a passion of Riley's), and eventually personal questions about the types of relationships Riley has been in. The texts happened at all hours of the day/night. Riley did not think much of their conversations because Ms. Skyler is 25 and "gets high school students." Riley felt like Ms. Skyler was "like a close friend." However, when Ms. Skyler showed up to Riley's soccer game and proposed taking Riley out for ice cream to celebrate a victory, Riley felt uncomfortable and comes to you, a District employee.

What do you do?

What is this?

simply inappropriate conduct

sexual harassment

Title IX



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## What's New Under the Title IX Regulations?

1. The definition of "sexual harassment"
2. "Actual knowledge" for notice
3. Procedural requirements for due process
  - a. Roles
  - b. Exchange of Evidence
4. "Deliberate indifference" standard



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## What Hasn't Changed Under Title IX?

Duty to identify and promptly investigate and address allegations of sexual harassment

Duty to adopt and publish clear policies on how to file complaints and how complaints will be promptly addressed

Notice to parties of the initiation of the investigation and the outcome of investigation and appeal rights

Duty to prevent recurrence and remedy effects

Obligation to have a Title IX Coordinator



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## New Definitions

### Actual Knowledge (K-12)

- When **any employee** has notice of sexual harassment or allegations of sexual harassment

### Formal Complaint

- 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

### Complainant

- An individual who is alleged to be the **victim of the conduct** that could constitute sexual harassment

### Respondent

- An individual who has been reported to be the **perpetrator of conduct** that could constitute sexual harassment



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## New 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;

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

"**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).



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## New Definitions – Sexual Harassment

### Sexual assault:

- Actual or intentional physical sexual acts against a person **without consent** that may include:
  - Rape, rape and seduction, sodomy, lewd and lascivious acts, oral copulation, sexual penetration, sexual battery, and sexual assault.
- "No consent" may include:
  - Force, duress, violence, fear of immediate harm, inability to consent (including statutory rape).

### 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.  
(34 U.S.C. 12291(a)(10).)



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## New Definitions – Sexual Harassment

### Domestic violence:

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



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## New Definitions – Sexual Harassment

### 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.
- (34 U.S.C. 12291(a)(30).)



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Title IX Jurisdiction

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

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

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

1) the *respondent* and

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

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The New Regulations Are NOT Retroactive



- The new regulations do NOT apply to any alleged sexual harassment that occurred prior to August 14, 2020
- The Federal Rule governs how schools must respond to sexual harassment that allegedly occurs ON or AFTER August 14, 2020

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GROUP ACTIVITY

Which of the following is considered “Sexual Harassment” under Title IX?

1

A student conditioning the provision of an aid or benefit on the complainant’s participation in unwelcome sexual conduct

2

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

3

Unwelcome conduct determined by a reasonable person to be severe and pervasive

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### GROUP ACTIVITY

#### True or False

- Under the new Title IX Regulations...
 

The District must conduct a formal Title IX investigation into an incident that occurred between two students over the weekend, at a student's home.
- Under the new Title IX Regulations...
 

The District must conduct a formal Title IX investigation into an incident in which a coach communicated with a current student athlete via text message, multiple times over the course of three months, using personal cell phones, about subjects of a personal and sexual nature.
- Under the new Title IX Regulations...
 

The District must conduct a formal Title IX investigation into a complaint submitted by a former student against a teacher regarding an incident that took place three years ago.

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### Group Activity

Caroline, a 7<sup>th</sup> grade student, reported to her principal that Robert, an 8<sup>th</sup> grade student, is harassing her during PE. Caroline explains that Robert stares at her while she runs, and she thinks he is specifically looking at her breasts and bottom. Caroline has overheard Robert talking with his friends about famous women's breasts and bottoms during PE. Caroline tells the principal that she is uncomfortable around Robert, and nervous about attending PE.

What is this?

simply inappropriate conduct

sexual harassment

Title IX

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## The Roles and Responsibilities of District Administrators and Employees

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## What are the Roles?



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## Who are your Title IX Coordinators?

Erika Cotta,  
Director of Personnel



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## Responsibilities of the Title IX Coordinator:

- Provides or coordinates Title IX trainings and preventative measures
- Offers supportive measures to complainant and respondent
- Explains the complaint/grievance process to the complainant
- Receives all complaints and oversees the complaint/grievance or informal resolution process
- May sometimes investigate complaints, but is never the decision-maker
- Determines mandatory and discretionary dismissals
- Evaluates corrective actions
- Addresses patterns or problems



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### Responsibilities of the Investigator:

Administers a fair investigation of formal complaints

Interviews parties and witnesses

Reviews evidence

Provides parties the opportunity to inspect, review, and respond to all evidence gathered, and considers their responses

Creates an investigative report that summarizes relevant evidence

Does not make a determination of responsibility

Must be trained

Must be impartial, unbiased, and free of any conflicts of interest

**May be asked to recommend findings to the decision-maker**



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### Responsibilities of the Decision-Maker:

Reviews the investigation report, but does not investigate

Gives parties the opportunity to submit written relevant questions for the other party/witnesses, and asks those questions they deem relevant or provides an explanation as to why a question was deemed irrelevant

Makes a determination about responsibility

Prepares the written determination that is issued to each party

May recommend sanctions and/or corrective actions



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### Responsibilities of the Informal Resolution Officer:

Facilitates the informal resolution process

Trained, unbiased, and without conflict

May be the Title IX Coordinator or another unbiased person

Verifies a complaint meets the criteria for informal resolution, and that the parties have given voluntary, written consent

Ensures the parties know their rights, including their right to withdraw at any time prior to a resolution being reached



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### 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 to each party that states the decision and rationale

Must be unbiased and without conflict

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



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### Group Activity

RECALL: A coach communicated with a current student athlete via text message, multiple times over the course of three months, using personal cell phones, about subjects of a personal and sexual nature.

This student approached her English teacher, and tells her about it, but asks that she not tell anyone.

Can the teacher keep the student's secret?



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### Responsibilities of All Employees:



Report to the District's Title IX Coordinator, as well as any additional designated individuals (school site administrators), any known claims of potential sexual harassment

All employees should be trained on how to identify potential sexual harassment issues and report it

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



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## Duties of a Mandated Reporter



**The duties of a Mandated Reporter, when there is Reasonable suspicion of child neglect or abuse, are to:**

- Call CPS
- File a report within 36 hours
- Cooperate with an investigation
- Testify in proceedings that result from the report, if requested to do so



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## Group Activity

A junior, Michelle, keeps private messaging another junior, Charlotte, over the Zoom chat function during independent study classes, saying things like, "Your breasts look really good in that top" and "You should send me pictures after class."

Charlotte used to like Michelle but has recently become uncomfortable with Michelle's constant messaging. Charlotte comes to you, a District employee, to report the conduct. What do you do?

Is this Title IX?



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## "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 student's or employee's body
- Sexual acts without consent or based on coercion
- Non-consensual "sexting"
- Exploitation



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## GROUP ACTIVITY

A transgender student comes into your office tells you that two students in her math class have been asking her how she has sex with her boyfriend since she "isn't a real girl?"

Is this Title IX?

SEVERE?

PERVASIVE?

OBJECTIVELY OFFENSIVE?



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## Retaliation Prohibitions

- Retaliation is prohibited against anyone who has attempted to participate in the Title IX process
- The District cannot use the student conduct process as a way to avoid the Title IX complaint/grievance process
- Retaliation complaints must be filed under the same complaint/grievance process
- The District must keep the identities of all involved parties confidential, unless disclosure is required by law or necessary to carry out Title IX proceedings
- Exercising a First Amendment right is not retaliation
- Charging an individual with making a false statement in bad faith during a Title IX process is not retaliation



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## What questions do you have about the various roles



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# 12-Step Investigations for Title IX Complaints

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## 12 Steps for Effective Investigations

- Receiving the Complaint
- Urgent/Supportive Measures
- Assessing the Nature of the Complaint
- Send Notice of 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
- Prepare the Report and Findings
- Corrective Action and Tying up Loose Ends



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## 12 Steps for Effective Title IX Investigations

### Step 1 Receiving and Assessing Complaints



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## Receiving Complaints (In General)

### WHERE COMPLAINTS COME FROM

Student

Parent

Employee

Member of Public

Anonymous Person

### FORM OF COMPLAINTS

Verbal

Written

No Complaint (Rumor or Observation)



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## GROUP ACTIVITY

RECALL: A coach communicated with a current student athlete via text message, multiple times over the course of three months, using personal cell phones, about subjects of a personal and sexual nature.

This student approached her English teacher, and tells her about it, but asks that she not tell anyone. The English teacher comes to you (Vice Principal) to tell you what is going on.

What do you do?



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## Receiving a Complaint



- Notify the Title IX Coordinator
- Assess whether a CPS report should be filed (continue to reassess)
- Title IX Coordinator should promptly schedule a meeting with the victim



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Notify

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graph LR; A[Title IX Coordinator: Erika Cotta] --- B[Supervisor]; A --- C[Assess mandated reporting obligations]; A --- D[Report to Law Enforcement];
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GROUP ACTIVITY

A group of senior football players have been harassing a junior football player in the locker room. One of the seniors sexually assaulted the junior in the showers after practice.

The junior asks you not to tell anyone because he is concerned about his reputation and what his teammates might do.

What do you tell him?

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Tips for Discussion with Complainant

- Ask open-ended questions
- Listen attentively and actively without interrupting
- Display compassion and sincerity
- Ask how the school or District can best support them
- Explain that you must report to supervisor or Title IX Coordinator
- Do not promise confidentiality

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Confidentiality & Preserving the Integrity of the Investigation

Confidentiality cannot be promised

All evidence will be shared with the complainant/victim and the respondent

Both parties will have an equal opportunity to inspect and review any evidence that is directly related to the allegations

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12 Steps for Effective Investigations

Step 2  
Supportive/Urgent Measures



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Urgent Considerations



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

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Contact the Victim/Complainant

Conduct initial discussion with complainant/victim to better understand the complaint and if it rises to the level of sexual harassment under Title IX

- Discuss options for supportive measures
- Explain options for filing a formal complaint with the District
- Discuss the District's policy that prohibits retaliation

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Supportive Measures

"Non-disciplinary, non-punitive individualized services offered [...] to the complainant or respondent before and after the filing of a formal complaint or where no formal complaint has been filed."

- Designed to restore or preserve equal access to the educational program without unreasonably burdening either party
- Should be determined on a case-by-case basis
- Cannot be retaliatory

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GROUP ACTIVITY

RECALL: A coach communicated with a current student athlete via text message, multiple times over the course of three months, using personal cell phones, about subjects of a personal and sexual nature.

You are having your initial discussion with the complainant.

What supportive measures would you offer?

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Supportive Measures

Examples:

Counseling

Medical services

Academic support

No-contact orders

Increased security

Changed schedules

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

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Emergency Removals (Students)

School districts are prohibited from disciplining a student for alleged sexual harassment until a full Title IX investigation has been completed.

EXCEPTION: An 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.

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Administrative Leave

Placing an employee on Administrative Leave is not disciplinary

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12 Steps for Effective Investigations

Step 3

Assessing the Nature of the Complaint



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Do You Have a “Formal” Title IX Complaint?

**Formal Complaint:** Document filed by a complainant (who is also the victim or the victim’s parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation.

If no formal complaint is filed by the complainant, the Title IX Coordinator should assess whether to independently initiate a complaint based on a threat to safety.

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When MUST you dismiss a complaint under Title IX?

If it doesn’t meet the three-part definition of sexual harassment under Title IX

If it did not occur in the recipient’s education program or activity

If it did not occur against a person in the United States

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## Discretionary Dismissals

Districts *MAY* dismiss a formal complaint, or any allegations therein if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the district; or
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.



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## Dismissals (Mandatory and Discretionary)

The decision to dismiss a complaint should be made in consultation with the Title IX Coordinator.

Notice of dismissal must be issued 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.



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## Group Activity

You (a Vice Principal) receive a phone call from a woman named Lauren. Lauren says she is a former student of your District, and that she wants to report a sexual assault that occurred while she was a student. Lauren's report is against a current teacher, Mr. Boyd. Lauren alleges that Mr. Boyd assaulted her during lunch when she was a junior in high school.

Is this Title IX?

Do you investigate?



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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



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### Policies and Procedures for Investigating Title IX Complaints

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)

\*New District policies

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### Investigation Timelines



- Title IX - “reasonably prompt time frame”
- District policies

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### 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



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### Group Activity

RECALL: A coach communicated with a current student athlete via text message, multiple times over the course of three months, using personal cell phones, about subjects of a personal and sexual nature.

The text messages occurred during school and were explicit, meaning this falls under Title IX.

Would it matter if the coach and the student were the same sex?



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### 12 Steps for Effective Investigations

Step 4

#### Send Notice of the Investigation



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## Notice of Investigation

- Identify complaint/investigation process, including informal resolution process;
- Identify allegations with sufficient details;
- Include a statement that respondent is presumed not responsible and that a determination is made at the conclusion of the process;
- Explain that they may have an advisor of their choice inspect and review the evidence; and
- Identify the District's code of conduct that prohibits knowingly making false statements or submitting false information.
- Do not restrict either party's ability to discuss the allegations under investigation.



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## Informal Resolution

Informal resolution is a process that does not involve a full investigation and adjudication.

Either party can withdraw from the informal resolution process at any time, and should be notified of this right.

Cannot be used for allegations where an employee is alleged to have sexually harassed a student.

### It can only be offered when:

- A formal complaint is filed;
- The school district has sent a written notice about the allegations and the informal resolution process;
- A written determination has not yet been made; and
- Both parties have provided voluntary, written consent to the process.



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## 12 Steps for Effective Investigations

### Step 5 Frame the Scope



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## Understand the Scope - Frame the Allegations

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



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## Legal Framework

Preponderance of  
the Evidence



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## 12 Steps for Effective Investigations

*Step 6*  
**Gather, Review, and Preserve  
Evidence**



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### Title IX Evidence Requirements

- District has the burden of gathering 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 facts and expert witnesses and other exculpatory or inculpatory evidence



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### Where to Find Evidence

- The Complaint, and subsequent statements or interview notes from Parties and Witnesses are considered evidence
- Common places to look for documentary evidence include:
  - Social Media (posts, direct messages, chats)
  - Text Messages
  - Emails
  - Zoom Chat Logs
  - Phone Records
  - Collective Bargaining Agreement



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### 12 Steps for Effective Investigations

#### Step 7 Make a List of Witnesses



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## Preparing to Conduct Interviews

Consider potential conflicts of interest

Consider location, timing, and order

How to make initial contact

Age of the party being interviewed

As you conduct interviews, be sure to ask each witness if there are other witnesses you should speak with



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## 12 Steps for Effective Investigations

### Step 8 Draft Interview Questions and Apply a Trauma-Informed Approach



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## 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 witness.
- If there are a series of incidents, consider a linear roadmap.
- Keep in mind big picture goals.
- At the end, ask: "Is there anything else?"



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### Statements/Questions to Avoid

Questions to avoid:

- Why did you...?
- Why didn't you...?
- Didn't you consider...?

Questions that may be helpful:

- How did that make you feel?
- What was your thought process at that time?
- Do you remember smelling/hearing anything?

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?"

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### Group Activity

Shelby, a sophomore student, came to you to report that she feels like her boyfriend, Ben, another sophomore, hasn't been listening to her when they are together. Shelby says she is okay with kissing, but Ben will take it too far and start to finger her, or make her perform oral sex, which makes Shelby upset. Shelby likes Ben a lot, but she doesn't like it when he does sexual things that she isn't comfortable with. Shelby's friends told her that because she's dating Ben, it's expected that they do sexual things together.

Is this Title IX?

What do you do?

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### 12 Steps for Effective Investigations

Step 9

Conduct Interviews

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### Take Notes

Take detailed notes and/or have a second administrator or confidential employee involved to take notes.

Consider signed witness statement summaries.



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## 12 Steps for Effective Investigations

### *Step 10* Conduct Additional Interviews If Needed



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### Conduct Additional Interviews



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.



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## 12 Steps for Effective Investigations

### Step 11 Exchange Evidence and Prepare the Investigation Report and Written Determination



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### Exchange of 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
- Parties must be given at least 10 days to respond to the evidence, which must be considered by the investigator

**\*\***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

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### Investigation Report



- The final investigation report should be prepared by the investigator and must summarize all relevant evidence
- Must be sent to the parties at least 10 days before a written determination regarding responsibility is issued by the decision-maker

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## Submission of Written Questions

The decision-maker must allow parties the opportunity to submit written, relevant questions that they want to ask any other party or witness

Once the parties are provided with the answers, they are permitted to submit additional, limited follow-up questions from each part

Decision-maker determines relevancy

- Explains why questions were deemed irrelevant

Complainant's sexual history is irrelevant unless offered to prove someone else committed the conduct or for proof of consent



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## Written Determination

The decision-maker prepares a written determination with the determination regarding responsibility.



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## Appeal Rights for Both Parties at the District

Parties may appeal the written determination on the following bases:

Procedural irregularity;

New evidence that was not reasonably available earlier; or

Title IX personnel had a conflict of interest or bias.

Students/employees are also afforded the right to file a complaint or an appeal with federal and/or state agencies (e.g. OCR, CDE, DFEH, EEOC)



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## 12 Steps for Effective Investigations

### Step 12 Corrective Action and Tying Up Loose Ends



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## 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



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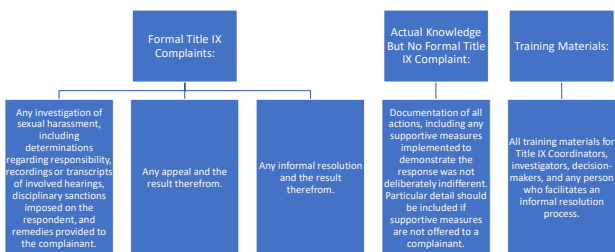
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## Recordkeeping – Records Must Be Maintained for 7 Years



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Questions



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

**Sarah E. Fama**

Senior Counsel

Tel: 925.953.1620

[sfama@lozanosmith.com](mailto:sfama@lozanosmith.com)

**Emma J. Sol**

Associate

Tel: 925.953.1620

[esol@lozanosmith.com](mailto:esol@lozanosmith.com)

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



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