



# Foundations of Title IX

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Presented by:  
Sarah E. Fama  
Monica D. Batanero

Lozano Smith Webinar  
October 30, 2023

## Sarah E. Fama

Senior Counsel



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### 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

# Monica D. Batanero

Senior Counsel



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## Overview

Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office. Ms. Batanero advises educational institutions on student, special education and personnel issues.

## Experience

Ms. Batanero 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

## 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.

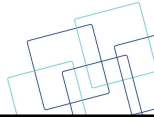
**CLIENT SERVICE** is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

**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.

## Foundations of Title IX

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### Presenter

#### Sarah E. Fama

##### AT LOZANO SMITH

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### Presenter

#### Monica D. Batanero

##### AT LOZANO SMITH

Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office. Ms. Batanero represents California public school districts, county offices of education, and community college districts in all aspects of education law. She is 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 also specializes in student discipline and special education.



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Let us get to know you...

Rate your experience with Title IX:

- 1.No Experience
- 2.Some Experience
- 3.Extensive Experience

What is your role in the Title IX team (if any)?

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Hypothetical

Gianna, a 10<sup>th</sup> grader, has not been to class in two weeks. Gianna says she was being bullied every day over a rumor that she slept with two seniors. Gianna said she was being bullied in person and on social media. She has deleted all her social media accounts. She feels embarrassed and humiliated and does not want to come back to school.

What do you do?

Is this Title IX?

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Title IX and the 2020 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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### Title IX Regulation Highlights

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

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### Title IX Regulation Highlights

- 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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### Title IX Definitions

Actual Knowledge	Formal Complaint	Complainant	Respondent
<ul style="list-style-type: none"> <li>• <b>(K-12)</b> When <i>any employee</i> has notice of sexual harassment or allegations of sexual harassment</li> <li>• <b>(Higher Ed)</b> 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</li> </ul>	<ul style="list-style-type: none"> <li>• A document filed by a <i>complainant</i> or signed by the <i>Title IX Coordinator</i> alleging sexual harassment against a respondent, and requesting that the recipient (District) investigate the allegation</li> </ul>	<ul style="list-style-type: none"> <li>• An individual who is alleged to be the <i>victim of the conduct</i> that could constitute sexual harassment</li> </ul>	<ul style="list-style-type: none"> <li>• An individual who has been reported to be the <i>perpetrator of conduct</i> that could constitute sexual harassment</li> </ul>

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### Title IX Definitions – Sexual Harassment

Sexual Harassment is conduct on the basis of sex:

- Employee Quid Pro Quo;
- Severe, pervasive **and** objectively offensive; or
- “Sexual assault,” “dating violence,” “domestic violence,” or “stalking.”

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### “On the basis of sex”

- *Bostock* and Title IX
  - *Bostock* (U.S. Supreme Court, 2020)
  - Notice of Interpretation (OCR)
  - Encompasses sexual orientation and gender identity
- *Grabowski v. Arizona Board of Regents*
  - Ninth Circuit decision (2023)
  - Title IX encompasses a perception of a person’s sexual orientation

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“On the basis of sex” - Capacity

<b>Age</b>	<b>Disability</b>
<ul style="list-style-type: none"> <li>• What if Respondent is really young?</li> </ul>	<ul style="list-style-type: none"> <li>• What if the Respondent has a disability?</li> </ul>

Reasonable Person standard

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Title IX Definitions – Sexual Harassment

**Sexual assault:**

An offense classified as a sex offense or nonforcible sex offense under the FBI uniform crime reporting system

i. Sex Offenses

1. **Rape**—(Except Statutory Rape)
2. **Sodomy**
3. **Sexual Assault With An Object**

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Title IX Definitions – Sexual Harassment

**Sexual assault (continued):**

4. **Fondling**

ii. Sex Offenses, Nonforcible—(Except Prostitution Offenses)

1. **Incest**
2. **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.

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**Title IX Definitions – Sexual Harassment**

**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 safety or the safety of others; or
- Suffer substantial emotional distress.

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**Hypothetical**

Elizabeth regularly sits with a male student, Josh, in Social Studies. Elizabeth reported to you that although she initially would flirt with Josh and liked the attention, he recently put his hand on her inner thigh in class and pulled her leg closer to him. She is uncomfortable sitting next to Josh and does not want to sit next to him anymore.

**Is this Title IX?**

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**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

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

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The 2020 Regulations Are NOT Retroactive



Effective August 14, 2020

Still in effect

- Proposed changes with unknown date of implementation

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Hypothetical  
True or False

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.
- in which an administrator allows an office manager to leave early and office manager from home in exchange for the TOSA going on a date with the administrator.
- that occurred last year, and the Complainant has graduated.

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The Roles and Responsibilities of District Administrators and Employees

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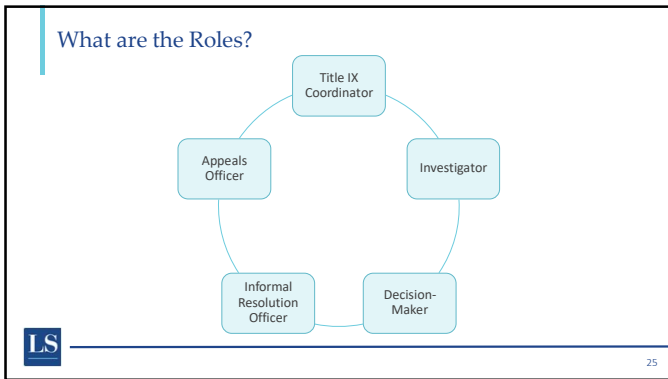
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- ### Title IX Coordinator's Duties
- Receives and oversees
  - Explains options and process to complainant\*
  - Offers supportive measures \*
  - Determines dismissal of complaints
  - Evaluates corrective actions\*
  - Identifies systemic issues
  - Ensures overall Title IX compliance
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- ### Investigator's Duties
- Interview
  - Gather evidence
  - Parties to review evidence
  - Consider responses
  - Prepare investigation report
- May be the Title IX Coordinator
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**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

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**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

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**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

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**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

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**Hypothetical**

Two students, Diana and Steve, plan to meet in the bathroom. Both students begin to kiss in the stall. While in a stall Steve asks Diana to perform oral sex on him. Diana allegedly refuses but continues to kiss Steve. A few days later, Diana hears from a friend that Steve was telling students that Diana "went down on him." While in class together, Steve looked at Diana and pointed at his erection.

Diana comes to your office upset about Steve's behavior, and says she wants to file a complaint. You speak to Steve and he informs you Diana asked to "go down on him" and she is the one who keeps asking to see his erection. He says he has text messages to prove it and that he is now uncomfortable around Diana.

Is this Title IX?      What supportive measures would you offer?

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**Responsibilities of All Employees (K-12)**



Identify and Report

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

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Responsibilities of Officials with Authority (Higher Ed.)



Identify and Report

**Still have mandated reporter duties!**

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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 person’s body
- Sexual acts without consent or based on coercion
- Non-consensual “sexting”
- Exploitation



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Hypothetical

During PE, a 3rd grade male, Lincoln, slaps a male classmate, Harrison on the buttocks after Harrison runs the bases while they are playing softball or while they are playing basketball. This has happened every day for the past few weeks.

ADD: When Lincoln was in 1<sup>st</sup> grade, it was reported that he was calling one his classmates gay and homosexual.

Is this Title IX?

Does your answer change if these are high school students?

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# Title IX Complaint Procedures

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### Contacting Law Enforcement

Was a crime potentially committed?

Title IX **does not** relieve employees of their mandated reporting obligations.

**Police investigation does not** relieve the District of its duties.



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### 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

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### 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



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### Must Use Title IX

The district cannot use the student conduct process as a way to avoid the Title IX complaint/grievance process.



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### Checklist for Effective Investigations

- |   |   |
|---|---|
| Receiving the Complaint                           | Gather and Preserve Evidence              |
| Urgent/Supportive Measures                        | Conduct Witness and Respondent Interviews |
| Assessing the Nature of the Complaint             | Conduct Additional Interviews if Needed   |
| Send Notice of Investigation                      | Prepare the Report and Findings           |
| Frame the Scope                                   | Corrective Action and Tying up Loose Ends |
| Make a List of Witnesses                          |   |
| Draft Questions for and Interview the Complainant |   |



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### Hypothetical

You are outside in the morning to greet students as they arrive to school. You see two 8<sup>th</sup> grade students, Casey and Julie, walking towards the school. Casey appears to be trying to hold Julie's hand, and Julie keeps pulling it away. Julie is looking down and appears upset.

Is this a complaint?

What do you do?

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### Receiving Complaints (In General)

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

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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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**Hypothetical**

You get the following text message from a teacher.

Can you “do nothing”?

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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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**Reporting a Complaint under AR 5145.7 (Model AR)**

“A student or parent/guardian who believes that the student has been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to a teacher, the principal, the district’s Title IX Coordinator, or any other available school employee. **Within one school day of receiving such a report**, the principal or other school employee shall forward the report to the district’s Title IX Coordinator. Any school employee who observes an incident of sexual harassment involving a student shall, **within one school day**, report the observation to the principal or Title IX Coordinator. The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality.

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## Hypothetical

An 8<sup>th</sup> grade student, Erica, comes and tells you that a 7<sup>th</sup> grade student, Natalie, has been making her feel uncomfortable at school. Erica tells you that Natalie has been staring at her in the locker room, and that one of her friends overheard Natalie call her “sexy” when she was changing in the locker room.

Is this Title IX?

What supportive measures do you offer?

What do you do next?



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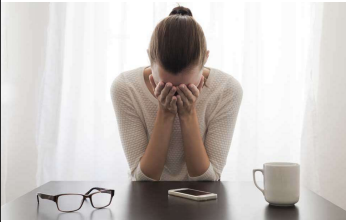
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## Urgent Considerations



- 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

Initial discussion with complainant

- Gather facts
- Supportive measures
- Explain options for filing
- Discuss the District's policy that prohibits retaliation



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### Initial Discussion With Victim/Complainant

- Ask open-ended questions
- Get complaint in writing or confirm allegations in writing if not already received
- Do not promise confidentiality
- Determine whether matter can be resolved informally
- Listen and “hear” the concern



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### Interview Relevant Witnesses and the Accused

Conduct Further Interviews

- Ask open-ended questions to understand what happened - Use 5 W's
- Ask more specific questions to fill in gaps or address statements that don't add up or are contradictory
- Ask if there are additional witnesses
- Ask if they are aware of any evidence, e.g., video, photo, text, social media posting
- Identify relation of witness to the complainant and/or accused
- 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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### 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!*

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### Emergency Removals (Students)

Title IX Regulations contemplate 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.

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### Administrative Leave

Placing an employee on Administrative Leave is not disciplinary

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Do You Have a "Formal" Title IX Complaint?

Document  
filed by  
Complainant

OR

Signed by  
Title IX  
Coordinator

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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.**

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**Hypothetical**

Eli, a senior in high school, comes to you to tell you that when he was a freshman, his classmate Drew raped him in the bathroom of the park across the street from the school.

Is there Title IX jurisdiction?

Does the school exercises substantial control over

- The respondent; and
- The context in which the sexual harassment occurred?

**If it is determined there is no Title IX jurisdiction, do you still investigate?**

LS 62

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**Mandatory Dismissals**

- Does not meet definition;
- Did not occur in District education program or activity; or
- Did not occur in the United States.

LS 63

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### Discretionary Dismissals

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



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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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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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### Deliberate Indifference

A recipient is *deliberately indifferent* only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Deliberate indifference may require the Title IX Coordinator to sign a formal complaint in situations involving threats, serial predation, violence, or weapons.



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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
- AR 4031 – Complaints Concerning Discrimination 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)



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### Investigation Timelines



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



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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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### Formal Grievance Procedure (K-12)

- Investigator gathers evidence and interviews parties/witnesses
- Investigator shares evidence with the parties
- 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

LS 71

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### Formal Grievance Procedure (Higher Education)

- Investigator gathers evidence and interviews parties/witnesses
- Investigator shares evidence with the parties
- 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 facilitates the exchange of written questions
- Decision-maker makes decision and prepares a Written Determination
- Both parties have right to appeal

LS 72

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**Rights of Parties**

- Receive detailed notice of investigation
- Can have advisor present throughout the Title IX grievance process
- At least 10 days to review directly related evidence
- 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 (Higher Ed)
- Right to appeal decision

LS 73

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**Informal Resolution**

Formal Title IX complaint;

Written notice of allegations;

No written determination; and

Voluntary, written consent.

Can include stipulated discipline in the resolution agreement.

LS 74

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**Informal Resolution**

Right to withdraw.

Cannot be used for employee v. student.

Sexual Assault?

LS 75

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### Conducting Informal Resolution

- Identify ground rules for the chosen resolution process
- 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

LS 76

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### Informal Resolution Agreements

<p><b>Agreement</b></p> <ul style="list-style-type: none"> <li>Reduce agreement to writing</li> <li>May look like a summary of commitments, or a contract</li> <li>Can include discipline, supportive measures, etc.</li> </ul>	<p><b>No Agreement</b></p> <ul style="list-style-type: none"> <li>Voluntary process: parties may withdraw at any point prior to reaching a determination of responsibility and resume a formal grievance process</li> </ul>
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LS 77

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### Hypothetical

High school freshman, Tanner is talking to and flirting with multiple girls at school. One of the girls, Chelsea, believes she is in a monogamous relationship with Tanner. When she finds out he is flirting with other girls, she is upset, and stops talking to him. To try and get Chelsea back, Tanner texts her nude pictures of himself, and frequently invites her to hook up during lunch and after school. Chelsea is no longer interested and wants him to stop bothering her.

Is this Title IX?

Is this a good option for informal resolution?

LS 78

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**Hypothetical**

Kayla is a paraeducator, assigned to work in Peter’s classroom. Kayla likes Peter and thinks Peter might like her back. Kayla starts flirting with Peter during class, which includes touching his back and shoulders while he’s at his desk or working with students. Peter doesn’t react. One day, after class, Kayla tries to kiss Peter. Peter, upset, pushes her away, and informs her that he’s married.

Is this Title IX?      Is this a good option for informal resolution?

LS 79

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**Title IX and Student Discipline**

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**Hypothetical**

Over winter break, two eighth graders begin “talking.” They meet up a few times on campus during the break (school is not in session). During one of their meet ups, they begin kissing. Student A then moves his hand inside of Student B’s shirt and under her bra. Student B goes along with it, but then stops the action.

Student B’s parents come to you with a complaint against Student A.

Is this Title IX?      What do you say to Student B’s parents?

LS 81

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81

**Hypothetical**

Recall: Student A and B. Change the facts such that they met up on campus after basketball practice and that Student A digitally penetrated Student B.

Is this Title IX?      Can you suspend Student A?

LS 82

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**STOP Before You Discipline**



A . . . response must treat complainants and respondents equitably ... by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.

LS 83

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83

**Hypothetical**

Recall: Student A and B. Based on the facts about them meeting on campus after basketball practice and Student A digitally penetrated Student B.

Would you implement an Emergency Removal?

LS 84

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**Title IX ?**

4<sup>th</sup> grade transgender student Charlie, alleges that while in the restroom, another student crawled under the stall, forced Charlie to take his pants down and the student rubbed their penis against Charlie's buttocks.

Is this Title IX?      Would you implement Emergency Removal?

LS 85

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**Formal Investigation and Student Discipline**

<p><b>Emergency Removal</b></p> <ul style="list-style-type: none"> <li>▪ Respondent must be an <u>immediate threat</u> to the physical health or safety of any student or individual;</li> <li>▪ The immediate threat must arise from the allegations of sexual harassment; and</li> <li>▪ Respondent must be provided with notice and an opportunity to challenge the decision immediately after removal.</li> </ul>	<p><b>Supportive Measures</b></p> <ul style="list-style-type: none"> <li>▪ Changing seating chart</li> <li>▪ Changing class schedule</li> <li>▪ No contact orders</li> <li>▪ Increased security</li> </ul>
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LS 86

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**Student Discipline**

After the Formal Grievance procedure is complete, the student discipline timeline begins, and discipline can be imposed.



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## Site Admin/Manager Plan

### Sexual Harassment Complaint Intake and Title IX Assessment

I, \_\_\_\_\_, as a District administrator performed a preliminary assessment of the attached/below complaint. In doing so, I ascertained the following information:

Name of Complaining Party and Victim (if different): \_\_\_\_\_

Complainant/Victim is a:  Student  Employee

Date of Complaint: \_\_\_\_\_ Date of Incident: \_\_\_\_\_

Name of Respondent(s): \_\_\_\_\_

Respondent is a:  Student  Employee  Other (specify) \_\_\_\_\_

I offered Complainant the following supportive measures<sup>1</sup>: \_\_\_\_\_

The following supportive measures were implemented: \_\_\_\_\_

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**Step 1: Definition of Sexual Harassment under Title IX**

The alleged conduct may meet the definition of sexual harassment under Title IX. If this box is checked, move to **Step 2: Jurisdiction**.

➤ Only one box below needs to be checked, but check all that apply.

- 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<sup>2</sup>, Sodomy<sup>3</sup>, Sexual Assault with an Object<sup>4</sup>, or Fondling<sup>5</sup> directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse. 20 U.S.C. § 1092(f)(6)(A)(v)

<sup>1</sup> Schedule change, no contact order, counseling, academic support, voluntary home instruction, voluntary transfer, campus safety escort, increased security, and monitoring of certain areas on campus.  
<sup>2</sup> Rape is the sexual knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.  
<sup>3</sup> Sodomy is oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.  
<sup>4</sup> Sexual assault with an object is to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.  
<sup>5</sup> Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

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- 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)

The alleged conduct does not meet any of the above definitions of sexual harassment under Title IX. (If this box is checked move to **Step 3b**, proceed under appropriate BP/AR and you may proceed with discipline.)

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**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.

**Step 3a: Moving Forward under Title IX**

If the accused is a student, do NOT suspend the student until you have spoken to the Title IX Coordinator or designee.

Call and e-mail the District's Title IX Coordinator and let them know you have a potential Title IX matter.

Complete this form, and attach all notes, statements and evidence you have gathered regarding the incident. Provide a copy of this form and all attachments to the District's Title IX Coordinator.

**Step 3b: Non-Title IX Sexual Harassment**

If the alleged conduct does not meet the definition of sexual harassment or the jurisdictional requirements, the school site can move forward with discipline, and an investigation under the appropriate BP/AR.

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**Proposed Title IX Regulations**

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**Major Changes Proposed**

Definition of Sexual Harassment	Title IX Jurisdiction	Responding to Sex Discrimination
Ensuring Recipients Learn of Possible Sex Discrimination	Title IX Grievance Procedures	Discrimination Based on Pregnancy and Related Conditions

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The 2020 Title IX Regulations remain in effect!

- *New Title IX regulations are undergoing the rulemaking process; however, these new regulations are NOT finalized and are NOT in effect at this time.*



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Questions



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




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