



# Title IX Awareness For Supervisors and Managers

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Presented by: Sarah E. Fama

Lozano Smith Webinar  
October 25, 2023

## Sarah E. Fama

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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

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

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### Presenter

**Sarah E. Fama**



AT LOZANO SMITH  
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### Hypothetical

7<sup>th</sup> grader Kylee comes to you and says two other girls, Jordan and Sloane, have been taunting her and teasing her. She tells you this has been going on for over 3 months and happens almost every day. Kylee describes the teasing as the girls calling her a ho. One of the girls even wrote "HO" on Kylee's backpack with a sharpie.

What do you do?

Is this Title IX?



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# Title IX – Sexual Harassment

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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)

\*Regulations that have the full force and effect of law



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### Why Title IX is Important



- 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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### New Title IX Regulations



The new Title IX Regulations came into effect on August 14, 2020

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## The Roles and Responsibilities of District Employees

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### What are the Roles in a Title IX Team?

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graph TD; A[Title IX Coordinator] --> B[Investigator]; B --> C[Decision-Maker]; C --> D[Informal Resolution Officer]; D --> E[Appeals Officer]; E --> A;
```

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### Responsibilities of All Employees:

Identify and Report

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

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## Terminology & Definitions

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2020 Title IX Terminology

**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

**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

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2020 Title IX Definitions – Sexual Harassment

**Sexual Harassment:**

- Quid Pro Quo – employee;
- Hostile Environment – *Severe, Pervasive, and Objectively Offensive*; or
- “Sexual assault,” “dating violence,” “domestic violence,” or “stalking.”*

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2020 Title IX Definitions – Sexual Harassment

**Sexual Assault – Forcible Fondling:**

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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**Prohibited Conduct Under Sexual Harassment**  
BP/AR 5145.7

1. Unwelcome leering, sexual flirtations, or propositions
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions
3. Graphic verbal comments about an individual's body or overly personal conversation
4. Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature
5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class

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**Prohibited Conduct Under Sexual Harassment**  
BP/AR 5145.7 (cont.)

7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

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**Hypothetical**

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

- 1 Student A offering to help Student B with their homework, if the Student B performs oral sex on Student A
- 2 An employee offering a student more time to complete a test, if the student goes on a date with the employee
- 3 Unwelcome conduct determined by a reasonable person to be severe and objectively offensive

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**Hypothetical**

Steven, a sixth grader, has come to you to tell you that Ellie, an eighth grader, has been harassing him at school. Steven tells you that Ellie has started to grab and smack his buttocks while walking to class. He feels very uncomfortable, and no longer wants to come to school or walk alone.

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

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**Hypothetical**

Does your answer change if Steven and Ellie are 1<sup>st</sup> graders?

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**Title IX Jurisdiction**

Conduct occurred *In the United States*;

District exercised *substantial control* over both:      1) the *respondent* and      2) the *context*; and

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

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**Hypothetical**

Over the summer, a teacher had ongoing communications with a District student via Instagram. The communications were of a personal and sexual nature. Classes have now resumed, and the student currently takes a class with the teacher.

Is this Title IX?

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**First Steps**

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Even if it is NOT Title IX,  
Do NOT Stop There!

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



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**Implicated Policies and Procedures**

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BP/AR 1312.3 – Uniform Complaint Procedures

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BP 4030 – Nondiscrimination in Employment

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AR 4031 – Complaints Concerning Discrimination in Employment

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BP/AR 4119.11 – Sexual Harassment (Employees)

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AR 4119.12 – Title IX Sexual Harassment Complaint Procedures (Employees)

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BP/AR 5145.7 – Sexual Harassment (Students)

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AR 5145.71 – Title IX Sexual Harassment Complaint Procedures (Students)

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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	

**LS** 26

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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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**Hypothetical**

While on recess duty, you overhear a group of 8<sup>th</sup> graders calling James, a flamboyant male 8<sup>th</sup> grader, homophobic slurs. You later confront James about it, and James confirms that the boys have been “messing with him” for months, but he would rather not draw more attention to it and asks you not to tell anyone. Nonetheless, you can tell that it is affecting James negatively.

Can you “do nothing”?

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**What if the Complainant says, “Do Nothing”?**



- Mandated reporting obligations
- Duty to respond in a manner that is not deliberately indifferent.
- Must report to Title IX Coordinator
  - Offer Supportive Measures
  - Title IX Coordinator may file a complaint on their behalf

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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/Protective Measures for both parties**

Examples:

- No-contact orders
- Change of class or work schedules
- Modified lunch schedules
- Campus escort services
- Change in work locations
- Increased security/monitoring
- Extensions of deadlines or other course-related adjustments
- Counseling
- Offer independent study (must be voluntary)

**DOCUMENT**

**LS** 31

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**Hypothetical**

Over winter break, a junior in high school, Ryder, begins sending his classmate, Audrey, snapchat messages. He sends her a picture of himself coming out of the shower and a picture of his genitalia. When the students return after break, Ryder moves to an open seat next to Audrey in U.S. History. Ryder begins touching Audrey's thigh; she pushes his hand away, but he continues. This goes on for a few weeks. Ryder places his hand inside the cargo pocket of Audrey's pants, and she reports the conduct.

Is this Title IX?

What supportive measures do you offer Audrey?

**LS** 32

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**STOP before you discipline**



Title IX contemplates that the Formal Grievance procedure be complete prior to discipline being imposed.

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Ensuring Safety

- Supportive Measure
- Administrative Leave
- Emergency Removal

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Emergency Removal from School (Student)

- A student shall not be disciplined for alleged sexual harassment under Title IX until the investigation has been completed.
- However, on an emergency basis, the District may remove a student from the District's education program or activity, provided that the District:
  - Conducts an **individualized safety and risk analysis** and determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations; and
  - Provides the student with notice and an opportunity to challenge the decision immediately following the removal.

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Administrative Leave (Employee)

Placing an employee on Administrative Leave is not disciplinary

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**Hypothetical**

Recall: Ryder and Audrey. Ryder sent Audrey pictures over break, and when they returned he began touching her leg. You now learn that Ryder forcefully penetrated Audrey behind the bleachers at the JV game last week. He has been texting her that "he did not get his fix" and is "looking for his next chance."

Is Emergency Removal necessary?

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**Hypothetical**

Frank is a new office assistant at the Junior High School. He comes to you (Principal) to let you know that is he uncomfortable around the VP, Stacy. He tells you Stacy has been making dirty jokes for the last few weeks, sometimes when students are in the office and he is concerned the students might hear. He tells you Stacy has made comments about how one student dresses like a whore, and probably "gives great blowjobs." Frank is uncomfortable with Stacy's conduct, and does not want to be alone with her.

What do you do with Stacy?      What supportive measures would you offer Frank?      Is this Title IX?

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**Contacting Law Enforcement**

Was a crime potentially committed?

Title IX does not alleviate employees of their mandated reporting obligations.

Police investigation does not alleviate the District of its duty to investigate.



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# Title IX Procedures

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Do You Have a "Formal" Title IX Complaint?

Document filed by a 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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How to Process a Formal Title IX Complaint

Formal  
Grievance  
Procedure

Informal  
Resolution

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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.

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Informal Resolution

Right to withdraw.

Cannot be used for  
employee v. student.

Sexual Assault?

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**Formal Grievance Procedure**

- 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 (K-12) or Parties appear at a Live Hearing (Higher Education)
- Decision-maker makes decision and prepares a Written Determination
- Both parties have right to appeal

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**Title IX and  
Student/Employee  
Discipline**

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**Student/Employee Discipline**

Discipline after the formal grievance procedure is complete.



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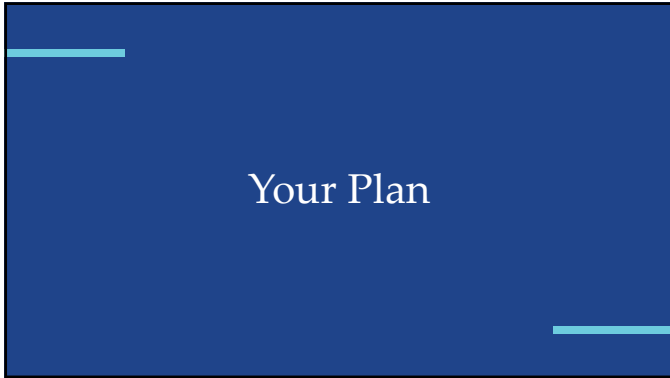
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**Step 1: If the Alleged Conduct is True, Does it Rise to the Level of Sexual Harassment Under Title IX?**

Employee – Quid Pro Quo;

Severe, pervasive, and objectively offensive; or

Sexual assault, dating violence, domestic violence or stalking.

If the answer is yes, move to Step 2. If the answer is no, proceed under other District policies.

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**Step 2: Is there Title IX Jurisdiction Over the Conduct?**

Within the United States.

The District exercised substantial control over

- The respondent; and
- The context.

Participation at time of filing.

If the answer is yes, move to Step 3. If the answer is no, proceed under other District policies.

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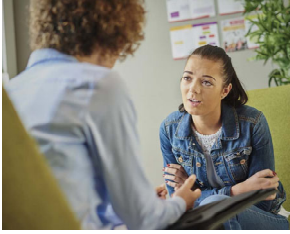
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Step 3: Moving Forward under Title IX

- ✓ Do NOT discipline
- ✓ Contact Title IX Coordinator
- ✓ Offer supportive measures



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Hypothetical

A 1st grade female student comes to your office with allegations that another female student slapped her on the butt at recess.

Is this Title IX?      Is Informal Resolution an option?      What if these are high school students?

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Hypothetical

Back to 1st grade: In your initial conversation with the 1<sup>st</sup> grader, she also tells you that the other female student touched her between the legs, touching her genitalia over her pants.

What do you do?      Is this Title IX?

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Questions



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

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