



# Roles and Responsibilities of the Title IX Team

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Presented by: Monica D. Batanero & Sarah E. Fama

Lozano Smith Webinar  
November 14, 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.

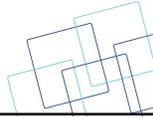
**CLIENT SERVICE** is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

**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.

## Roles and Responsibilities of the Title IX Team

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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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### Presenter

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# Overview of Duties of Title IX Coordinator, Investigator, and Decision-Maker

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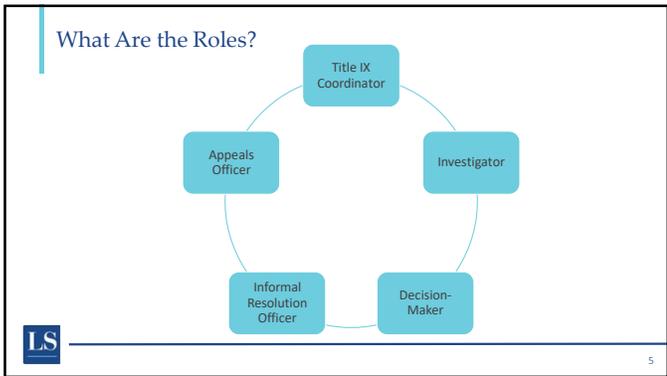
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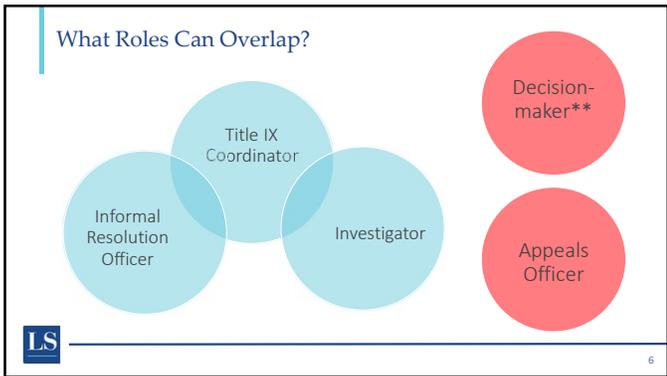
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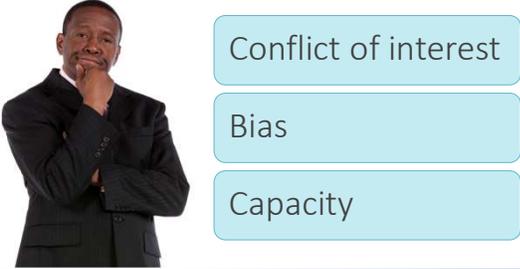
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What to Consider When Roles Overlap



Conflict of interest

Bias

Capacity

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What Can Be Outsourced?

Investigator

Decision-Maker

Informal Resolution Officer

Appeals Officer

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Responsibilities of All Employees (K-12)



Identify Title IX

Report Title IX

Be a mandated reporter.

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Responsibilities of Officials with Authority (Higher Ed.)



- Identify Title IX
- Report Title IX
- Still have mandated reporter duties!

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Title IX Coordinator

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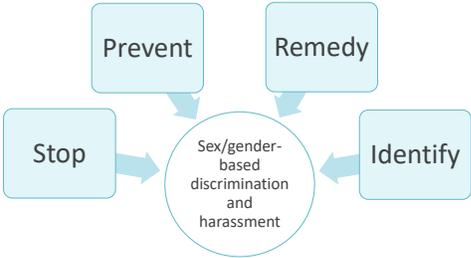
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Title IX Coordinator Duties



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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
- May determine if emergency removal or administrative leave is appropriate
- Evaluates corrective actions\*
- Identifies systemic issues
- Ensures overall Title IX compliance



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### Title IX Grievance Procedure

Receive Complaint	Is It Title IX?	Formal Investigation & Report	Determination	Appeal & Corrective Action
<ul style="list-style-type: none"> <li>• Complaint or notice to the Title IX Coordinator</li> <li>• Intake</li> <li>• Offer supportive measures to both parties</li> <li>• Discuss options to file a formal complaint</li> </ul>	<p><i>Following a formal complaint:</i></p> <ul style="list-style-type: none"> <li>• Definition of sexual harassment?</li> <li>• Title IX jurisdiction?</li> <li>• Mandatory/ discretionary dismissal                             <ul style="list-style-type: none"> <li>◦ Consider UCP/ 4030 process</li> </ul> </li> <li>• Emergency removal?</li> <li>• Administrative leave?</li> <li>• Determine if informal resolution is an option</li> </ul>	<ul style="list-style-type: none"> <li>• Identify timeline</li> <li>• Notice to parties</li> <li>• List of witnesses</li> <li>• Plan interviews</li> <li>• Gather evidence</li> <li>• Draft investigation report</li> <li>• Exchange evidence</li> <li>• Investigation report finalized and shared</li> </ul>	<ul style="list-style-type: none"> <li>• Exchange of written questions and answers OR Live hearing</li> <li>• Determine if relevant</li> <li>• Written determination</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal decision and rationale drafted and shared</li> <li>• Determine if discipline is appropriate once appeal window is closed</li> <li>• Corrective action</li> <li>• Systemic change</li> </ul>



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### Notices that Title Coordinator Is/May Be Responsible For

- Initial notice of investigation to the parties
- Notice of administrative leave to employee
- Notice of emergency removal to student
- Dismissal notice to the parties and right to appeal dismissal
- Agreement to engage in informal resolution
- Notice of new allegations



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**Title IX Coordinator - Complaints**

<p><b>Receives Complaints</b></p> <ul style="list-style-type: none"> <li>▪ Can come from anywhere</li> <li>▪ Can be received by any employee</li> <li>▪ Mandated reporter obligations</li> <li>▪ Notify law enforcement</li> <li>▪ Supportive Measures</li> </ul>	<p><b>Oversees Complaints</b></p> <ul style="list-style-type: none"> <li>▪ Keep a log</li> <li>▪ Oversee Grievance Procedure               <ul style="list-style-type: none"> <li>▪ Send notices and communicate with parties</li> <li>▪ Timeline</li> <li>▪ Keep a file</li> </ul> </li> <li>▪ Oversee Informal Resolution</li> </ul>
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**Hypothetical**

You receive an anonymous note on your desk. It appears to be student handwriting and it says that B. Collins, in 7<sup>th</sup> grade is sexually harassing the other boys in Band. There is no name on the note, and no one saw who left it.

What do you do? *(Submit answers in Chat.)*

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**Title IX Coordinator and Signing a Formal Complaint**

<ul style="list-style-type: none"> <li>▪ Title IX Coordinator discretion</li> <li>▪ Is signing a complaint necessary to not be deliberately indifferent?</li> </ul>	<ul style="list-style-type: none"> <li>▪ What to consider               <ul style="list-style-type: none"> <li>▪ Threats</li> <li>▪ Serial predation</li> <li>▪ Violence</li> <li>▪ Weapons</li> </ul> </li> </ul>
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### Hypothetical

A paraeducator who works in a class that supports students with autism comes to the Principal to complain that two of the students in her class have on multiple occasions touched her between the legs. The paraeducator does not want to file a formal Title IX complaint but would like the behavior to stop.

Is it necessary for the Title IX Coordinator sign a Title IX formal complaint?



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### Hypothetical : Part One

You are the Title IX Coordinator at a small K-8 district. Paige, a 7<sup>th</sup> grade student, comes to your office and informs you that one of her classmates, Mark, has been making "gross" comments to girls for a couple of weeks. She shows you Mark's Instagram, which is mostly pictures of guns, scantily clad women, and misogynistic language. Paige says she and her friends are very uncomfortable around Mark, and do not want to be near him.

Is this Title IX?

Do you investigate?



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### Hypothetical : Part Two

Con't: One of Paige's friends, Kylie, tells you that Mark followed her into the girl's bathroom and tried to force her to perform oral sex on him. Kylie says Mark told her he would beat up her little brother if she refused. Kylie is very distraught and does not want to be around Mark ever again. Kylie does not want to file a formal Title IX complaint she just wants to transfer schools or go to independent study.

Is it necessary to file a Title IX formal complaint on Kylie's behalf?



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### Establish a Game Plan for “Discipline”

Title IX Regulations contemplate that the Title IX grievance procedure be completed prior to any discipline being imposed.

- Establish a game plan.
  - Emergency removal?
  - Administrative leave?
  - Are supportive services enough to separate the parties?
  - Is voluntary independent study a possibility?
- Document and communicate the plan.
- Be prepared to move quickly.

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### Game Plan

Supportive Measures

Emergency Removal

Administrative Leave

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### Hypothetical : Police Investigation

Katie comes into your office and tells you that Nico has been sending her nude pictures of himself, and videos of himself masturbating. He is sending her these pictures during school. Katie said she has gone to the police, and they are investigating.

That same day, the police contact you and say they are investigating the matter. They tell you not to talk to Respondent, as they are wanting to get his phone for evidence, and do not want him to be alerted that there is a complaint.

What do you do?

What supportive measures do you offer Katie?

Submit answers in Chat.

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Criminal Investigation

District duty

Brief delay

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Dismissals



Mandatory

Discretionary

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Dismissal Only When There Is a "Formal" Title IX Complaint

Document filed by Complainant

OR

Signed by Title IX Coordinator

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### Mandatory Dismissal

Does not meet  
definition of sexual  
harassment under  
Title IX

OR

Does not fall within  
Title IX Jurisdiction

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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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### Hypothetical

Jimmy, a second-grade student, tells his teacher that his classmate, Paul, pulled Jimmy’s pants down in the bathroom stall and slapped his butt. Jimmy said this has happened three times already. The teacher reports the incident to the Title IX coordinator.

Is this Title IX?

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### Balancing Title IX and the 1st Amendment (Free Speech)

- Title IX is intended to protect students from invidious discrimination, not to regulate content of speech
- The offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment.
- LEGAL STANDARD → The “severe, pervasive and objectively offensive” conduct must effectively deny a person equal access to the district’s education program or activity to create a hostile environment
- Must balance a student’s 1<sup>st</sup> amendment rights with a student’s right to equal educational access



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### Hypothetical

Emma tells the Title IX Coordinator that Rick, a fellow student in Emma’s U.S. history class, made comments in class against women’s suffrage and argued that women should not be permitted in the military. Emma stated that this was devastating to her because she interpreted this as an attack on her and other women in the class.

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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### Hypothetical

Samantha and Trevin, high school seniors, agreed to walk home together after school. Samantha was hesitant but reluctantly agreed since Trevin was being somewhat aggressive and had kept asking her to hook up with him. On their way home, Trevin convinced Samantha to take a break at the park.

Samantha shared with her cheerleading coach the next day that Trevin forced her to have sex in the park bathroom.

Is this Title IX?



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### Discretionary Dismissals

Request to withdraw;

Respondent no longer in district; or

Unable to gather evidence.



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### Notice of Dismissals (Mandatory and Discretionary)

Both parties

In writing

Right to appeal



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Dismissal under Title IX, still pursue under a different policy



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### Corrective Action

<p>Student</p> <ul style="list-style-type: none"> <li>Training/counseling</li> <li>Stay away order</li> <li>Schedule change</li> <li>Denial of privileges</li> <li>Discipline</li> </ul> <p>Employee</p> <ul style="list-style-type: none"> <li>Training</li> <li>Schedule change</li> <li>Transfer</li> <li>Change in location</li> <li>Stay away order</li> <li>Discipline</li> </ul>	<p>Work with</p> <ul style="list-style-type: none"> <li>▪ Site admin</li> <li>▪ HR</li> <li>▪ Student Services</li> </ul>
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### Systemic Issues

Education

Training

Policies

Continued monitoring

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### Title IX Compliance

Trainings      Policies  
 Website      Notifications  
 Prevent retaliation      Recordkeeping  
 Athletics  
 Pregnant and Parenting students  
 LGBTQIA+ students  
 Single-Sex Programs and Activities

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### Title IX Training Requirements

**Title IX Team**

- The scope of the recipient's education program or activity
- The definition of sexual harassment
- How to conduct:
  - Investigations
  - Grievance process
  - Informal resolution process
  - Appeals
- How to serve impartially

**Investigator and Decision-Maker**

- Relevancy of questions and evidence
  - Including when the complainant's sexual predisposition or prior sexual behavior are not relevant

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### Title IX Policies/Postings/Notifications

Policies
Postings
Notifications

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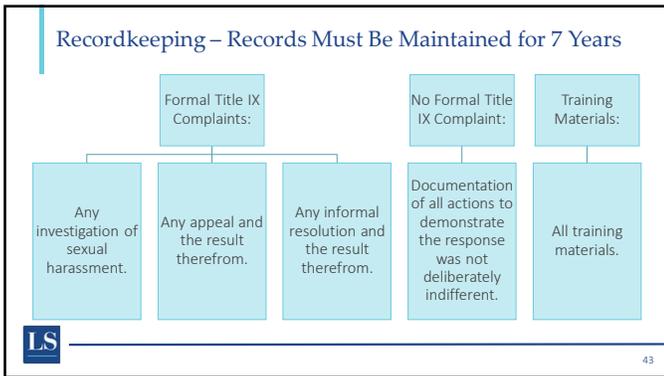
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- ### Athletics (Equal Access)
1. Opportunities for males and females substantially proportionate to their respective enrollments; or
  2. Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; or
  3. Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program.
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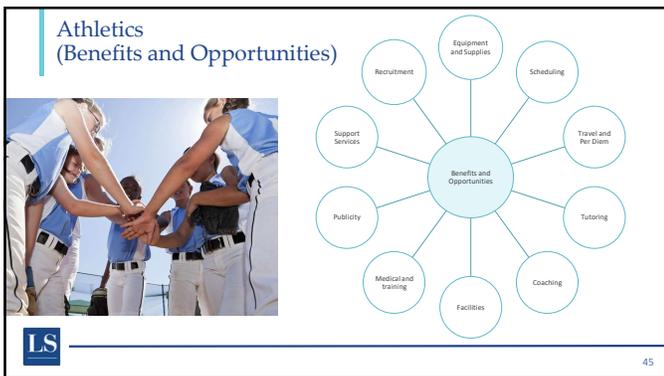
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### Pregnant and Parenting Students

- Cannot require a separate school program
- Must provide same special services
- Must excuse a student's absences
- Sex-based harassment



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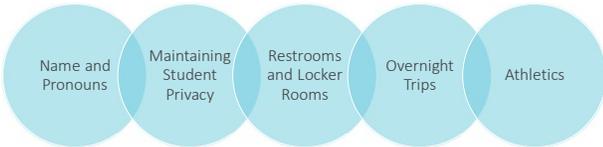
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### LGBTQIA+ Students



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# Advisors

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**Advisors**

Parties have the right to an advisor of their choice, who may be, but does not have to be, an attorney.

May establish equal restrictions.



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# Informal Resolution Officer

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**Informal Resolution Officer's Duties**

- 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
- Facilitates the informal resolution process

May be the Title IX Coordinator

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Before you get started

- Formal Title IX Complaint
- Notice of Complaint
  - Include right to withdraw
- No written determination
- Voluntary, written consent

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Informal Resolution

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



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Investigator

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### Investigator's Duties

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

May be the Title IX Coordinator



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### How to Conduct an Effective Title IX Investigation



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### Confidentiality & Preserving the Integrity of the Investigation



Confidentiality cannot be promised

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### Exchange of Evidence

All evidence directly related to the allegations

Prior to the completion of the investigation report

10 days to respond

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### Investigation Report

All relevant evidence

10 days before a written determination is issued

Parties respond and exchange written questions

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### Hypothetical

James allegedly air dropped a nude photo of Janet during class. Janet submits written questions to two witnesses to ask if they overheard James threaten to share a nude photo of Janet during an argument at lunch.

Is this question relevant?

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

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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 (indirect questioning)
  - Explains if irrelevant
- Makes determination about responsibility
- Prepares written determination

Cannot be the Title IX Coordinator\*\*

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### Exchange of Written Questions (K-12)

- 10 days for parties to submit written, relevant questions
- Limited follow-up questions
- Decision-Maker determines relevancy
  - Explains if excluded



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### Hypothetical

Molly alleged Jeff sexually assaulted her at a high school tailgate.  
 Jeff submits the following written question for Molly:  
*“Did you respond to texts from Jeff after the tailgate about making plans to hangout the weekend after?”*

Not Directly Related

Directly Related and Relevant

Directly Related and Not Relevant



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### Live Hearing (Higher Ed.)

- Written notice
- Live hearing required
- In-person or virtual
- Recorded or transcribed
- Advisors
- Cross-examination\*



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



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Live Hearing (Higher Ed.)

- Decision-Maker
  - Determines relevancy of questions
  - Can ask own questions
  - Objectively evaluates evidence

Hearing Officer  
vs.  
Decision-Maker


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Live Hearings (Higher Ed.)



Rules of  
Decorum


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Written Determination Regarding Responsibility

Assessment for the Decision-Maker

1. Based on the factual findings, does the alleged conduct constitute sexual harassment, as defined by Title IX or district policy?
2. Was the complainant denied equal access to the education program or activity?
  - Would a reasonable person in the complainant's position be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged sexual harassment.


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**Hypothetical**

Parent files a formal complaint and alleges that their child, Sydney, is being harassed by another student, Tim. The complaint states that Tim has followed Sydney home on multiple occasions, has sent numerous threatening messages throughout the school day, and has even physically assaulted Sydney. Parent says that this behavior has made Sydney fearful of returning to school.

Was Sydney denied equal access to an Education Program or Activity?

Is this Title IX?

LS 70

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**Written Determination Regarding Responsibility**

- Identification of the allegations
- A description of the procedural steps
- Findings of Fact
- Conclusions
- Rationale
- Potential disciplinary sanctions
- Appeal rights

LS 71

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**Writing the Analysis**

Topic sentence

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Summarize Complainant's version of events (address credibility)

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Summarize Respondent's version of events (address credibility)

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Summarize independent evidence (witness statements, documents, etc.) and explain how it corroborates or contradicts the parties' version of events

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Factual Finding (i.e., sustained, not sustained, partially sustained)

LS 72

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### Example: Findings/Rationale

Following a complete and thorough investigation, and based on the factual findings, there was sufficient evidence to find that Respondent engaged in conduct that met the definition of sexual harassment under Title IX and violated District policy BP/AR 5145.7 and AR 5145.71 by touching Complainant on her thighs and crotch. Complainant's crotch is her private body part. The preponderance of the evidence supports a finding that Respondent touched Complainant's crotch without her consent. The evidence showed that Respondent had at least some sort of sexual interest in Complainant, and the preponderance of the evidence showed he engaged in this conduct "for the purpose of sexual gratification." This conduct meets the definition of fondling under Title IX. Furthermore, the preponderance of the evidence supports a finding that Respondent touched Complainant's thighs without her consent on several occasions. While her thighs are not private body parts, this action, coupled with her asking him to stop, his refusal and his actions on or about January 24, 2023, lend to a finding that Respondent engaged in physical conduct of a sexual nature that denied Complainant equal access to her program. Respondent's conduct meets the definition of sexual harassment.



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## Appeals Officer

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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

Cannot be the Title IX Coordinator, Investigator, or Decision-Maker



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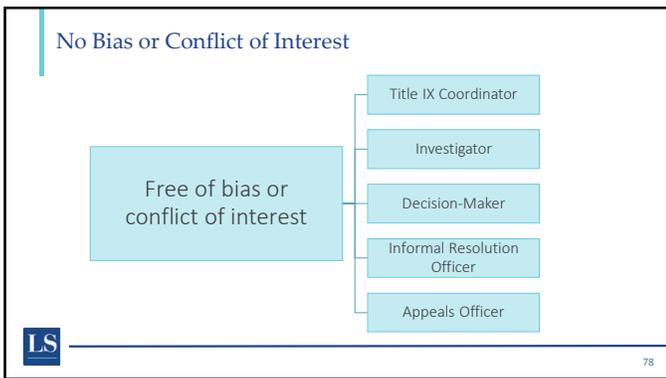
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**Who is on the team?**

For each role consider bias and conflict of interest

Caution against

- Sex-stereotypes
- Prior affiliations
- Bias based on outcomes



LS 79

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**Avoid implications of bias and conflicts of interest**

- Treat parties equitably
  - Supportive measures to both parties
  - Presumption of non-responsibility
  - Opportunity to present evidence
- Avoid sex-stereotypes in training materials, policies, & procedures
- Objectively examine relevant evidence before reaching determination
- Continue to evaluate bias throughout grievance process

LS 80

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**Understanding Bias - Implicit Bias**

- Unconscious bias towards or against certain groups of people
- Often based on social stereotypes that have led to an association between a group and a trait
- Numerous studies have demonstrated that certain traditionally disadvantaged groups are treated differently, to their detriment
- Many (if not most) of the people treating others differently are unaware of doing so (e.g. microaggressions)

LS 81

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### Understanding Bias - Affinity Bias



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



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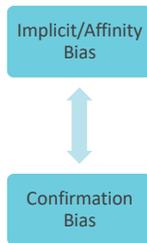
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### Understanding Bias - Confirmation Bias

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



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### Intersectionality

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



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### Suggestions to Counteracting Bias

- Recognize it
- Identify it
- Consider it
  - Avoid early hypothesis
  - Alternative hypothesis
  - Chart out the evidence
- Write it
- Talk about it
- Good investigation skills



LS 85

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### Hypothetical

Charlie tells you that a TA in the class said Charlie would receive an "A" in the course in exchange for providing sexual favors throughout the semester.

What gender did you ascribe to Charlie?

What gender did you ascribe to the TA?

Submit answers in Chat.

LS 86

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### Bias and Credibility Factors

- Inherent plausibility
- Demeanor
- Motive to falsify
- Corroboration
- Past record
- Opportunity and capacity to observe/actual knowledge
- Consistent or inconsistent statements
- Reputation for veracity or deceit
- Bias

LS 87

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### Bias and Challenges to Credibility

Incomplete, inconsistent and untrue statements

Lack of physical resistance

Delayed reporting

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### Hypothetical

Riley is an English teacher at the high school. They are transgender. Riley comes to you to tell you that for that past 3 years they have been feeling harassed, threatened and intimidated by a majority of the students on campus and some employees. Riley gives the example that an employee told them 2 years ago they were using the wrong restroom.

How would you ask about and consider the fact that Riley is reporting this 2 years after the incident? *(Submit answer in Chat.)*

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## Relevant Evidence

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Relevant Evidence

Evidence is relevant if the information helps to prove or disprove a fact at issue and should be admitted.

LS 91

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Relevant Evidence

Relevant evidence includes evidence that is "inculpatory" or "exculpatory"

Relevant evidence must be **objectively evaluated** by Investigators and Decision-Makers

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

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

LS 92

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Irrelevant

- Privileged information
- Duplicative
- Complainant's sexual predisposition
- Complainant's or prior sexual behavior, unless used to prove
  - Consent, or
  - Someone other than Respondent

LS 93

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**Hypothetical**

Charlie tells you that a TA in the class said Charlie would receive an "A" in the course in exchange for providing sexual favors throughout the semester. In support of the complaint, Charlie submitted racially insensitive social media posts from the TA's Instagram page. The posts do not mention Charlie.

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

LS 94

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**Hypothetical**

Bella reported sexual assault by Jason, a classmate, in a bathroom on campus. As part of the investigation process, Jason has submitted witness statements from other classmates who claim that Bella has a reputation for giving male students oral sex in the school bathroom in support of the Respondent's defense that their encounter was consensual.

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

LS 95

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**Hypothetical**

Frank reported that a teammate sexually assaulted him while they were sitting in Frank's car in the school parking lot. In response to the charge, Joey has presented text messages and testimony suggesting a consensual sexual relationship existed between Joey and Frank.

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

LS 96

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**Hypothetical**

Diana reports that a coach has made sexually harassing comments throughout the team's season. In support of her claim, Diana presents witness testimony from two other teammates who state they heard the coach call players, including Diana, "baby maker," "foxy," and "cutie" during practices throughout the season.

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

LS 97

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**Hypothetical**

Anna files a Title IX sexual harassment complaint alleging that a classmate, Kody, sent nude pictures of himself to Anna during classes. In response to the complaint, Kody presents evidence from another classmate, AJ, that Anna regularly sends nude photos of herself to AJ. Kody claims Anna's text messages with AJ prove that Kody's messages were not harassing and that Anna was not offended/or harassed by sexually explicit messages he sent.

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

LS 98

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**Hypothetical**

Cole files a Title IX complaint alleging that his bandmate, Zoey, inappropriately kissed and groped him in the music room. In response to the claim, Zoey presents text messages between her and Cole where they discuss having feelings for each other and discuss planning a date for the weekend.

Not Directly Related      Directly Related and Relevant      Directly Related and Not Relevant

LS 99

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**Hypothetical**

RECALL: Molly alleges that Jeff sexually assaulted her at a high school tailgate.

Molly wants to bring in evidence that Jeff got in two fist fights last year, one of them being over a girl.

Not Directly Related

Directly Related and Relevant

Directly Related and Not Relevant

**LS** 100

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**Questions**



**LS** 101

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

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