



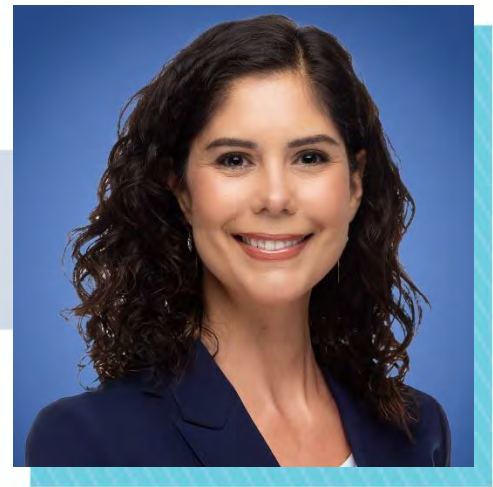
Title IX: Foundations and Investigations

Presented by: Monica D. Batanero and Gail Zurek

Tulare County Office of Education
August 27, 2025

Monica D. Batanero

Senior Counsel



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Overview

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

Experience

Ms. Batanero is chair of the firm's Title IX Practice Area and specializes in Title IX compliance, as well as conducting complex investigations into claims of sexual misconduct and harassment (including Title IX), discrimination, bullying, retaliation, and other issues that may arise in an educational setting.

Ms. Batanero provides legal counsel to community college districts and K-12 school districts on day-to-day issues involving Title IX compliance, sexual harassment, discrimination/harassment, Section 504, IDEA, governance, Public Records Act, and student discipline. She regularly conducts workplace and school investigations involving alleged misconduct in violation of board policy and/or law, including Title IX, sexual harassment, professional standards, and code of student conduct.

Ms. Batanero has represented school districts in all phases of special education matters, including Individualized Education Plan meetings, resolution meetings, mediations, and due process hearings conducted by the Office of Administrative Hearings.

She also frequently develops and provides trainings to clients on Title IX, Section 504, IDEA, workplace and school investigations, sexual harassment prevention, student discipline, and first amendment issues.

Education

Ms. Batanero earned her Juris Doctor from the University of San Francisco, School of Law. She earned both an M.S. and B.S. in Gerontology from the University of Southern California.

Practices

Student
Special Education
Labor and Employment
Investigations

Title IX
Governance

Education

J.D., University of San Francisco, School of Law
M.S., University of Southern California
B.S., University of Southern California

Admissions

California

Gail Zurek

Associate



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Overview

Gail Zurek is an Associate in Lozano Smith's Fresno office. Ms. Zurek specializes in public agency law, providing comprehensive legal guidance to school districts, cities, counties, and special districts.

Experience

Ms. Zurek has advised clients on a range of labor and employment issues, including disability accommodations, collective bargaining agreements, employee record retention policies, and disciplinary matters. Her experience extends to facilities and charter school issues. She has prepared memos for school boards on legal compliance and charter school policy implications, advised school bond committees, and drafted facility use agreements.

Related to governance and municipal law, Ms. Zurek assists clients with contracts, ordinance changes, and considerations for various governance models.

Education

Ms. Zurek earned her Juris Doctor from San Joaquin College of Law. She earned her Bachelor of Arts in Communication from California Lutheran University.

Practices

Labor and Employment
Facilities and Business
Charter Schools
Municipal

Education

J.D., San Joaquin College of Law
B.A., California Lutheran University

Admissions

California

WHO WE ARE & WHAT WE DO

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

AREAS OF EXPERTISE

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

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

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

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

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ATTORNEYS AT LAW


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1

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

2

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Gail Zurek

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3

Content Advisory

Please note that some of the topics and content of this presentation is explicit and may be triggering for some individuals.

Viewer discretion is advised. If at any time you need to step away, please feel free to do so.

Thank you for your understanding and participation in this important conversation.



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4

4

What is Title IX?

5

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."*



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20 U.S.C. § 1681 et seq.

6

6

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****



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(34 C.F.R. Part 106)

7

7

Vacatur of the 2024 Title IX Regulations

- The Department of Education released new Title IX Regulations, referred to as the 2024 Title IX Regulations, that went into affect on August 1, 2024.
- However, on January 9, 2025, a federal district court in Kentucky vacated those 2024 regulations, essentially wiping the slate clean as though those regulations never existed.



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8

Back to the 2020 Title IX Regulations

Because the 2024 Title IX Regulations were vacated, Districts must:

- Ensure their policies and procedures comply with 2020 Title IX Regulations; and
- Reassess any Investigations that began under the 2024 Title IX Regulations.



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Why Do We Care About Title IX?

10

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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GROUP ACTIVITY - Case Study



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12

12

Case Study – Jen & Haley

Jen and Haley are 10th graders, both on the varsity volleyball team. They also have two classes together. They dated briefly over the summer, but Haley broke up with Jen soon after the school year began. Jen still has feelings for Haley and texts her asking to get back together, as well as talking to teammates about the relationship. Haley is uncomfortable and wants Jen to stop.

What do you do?

Is this Title IX?



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13

13

Sexual Misconduct in Schools

14

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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15

15

Title IX Regulation Highlights

Title IX Coordinator	Notice to parties of initiation, outcome and appeal rights	Identify and promptly investigate
Prevent recurrence	Clear policies	Remedy effects

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16

Title IX Definitions

Actual Knowledge	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 District investigate the allegation.
Complainant	An individual who is alleged to be the victim of the conduct that could constitute sexual harassment.
Respondent	An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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17

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" - Capacity

Age

- What if Respondent is really young?

Disability

- What if the Respondent has a disability?

Reasonable person standard.



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19

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
 - Sex Offenses:
 - Rape**—(Except Statutory Rape)
 - Sodomy**
 - Sexual Assault With An Object**



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20

Title IX Definitions – Sexual Harassment (Forcible Fondling)

Fondling, meaning the **touching of the private body part(s)** (buttocks, groin, breasts), of the complainant, causing another person to touch the private body part(s) of **complainant**, or causing complainant to touch another person's private body part(s), **for the purpose of sexual gratification, forcibly, and/or against their will (non-consensually)**, or not forcibly or against their will in instances in which the complainant is **incapable of giving consent** because of age or because of temporary or permanent mental or physical incapacity.



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21

Title IX Definitions – Sexual Harassment

Sexual assault (continued):

- 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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“Red Flag” Conduct of Potential Sexual Harassment

Flirtations or propositions

Derogatory comments

Sexual jokes or gestures

Spreading sexual rumors

Massaging, grabbing, or touching

Comments on a person's body

Sexual acts without consent or based on coercion

Non-consensual “sexting”

Sexploitation



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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

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



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Case Study – Jen and Haley

Haley has asked Jen to stop texting her and has reiterated that they are “just friends.” Haley does what she can to avoid Jen both at school and at practice.

Is this Title IX?



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26

Hypothetical

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

Is this Title IX?



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27

The Title IX Team

28

Responsibilities of All Employees

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



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29

What are The Roles?



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What Can Be Outsourced?

Investigator	Decision-maker
Informal Resolution Officer	Appeals Officer

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31

Title IX Team

What Roles Can Overlap	What Roles Cannot Overlap
<ul style="list-style-type: none"> Title IX Coordinator/Investigator Title IX Coordinator/Informal Resolution Officer 	<ul style="list-style-type: none"> Title IX Coordinator/Decision-Maker Title IX Coordinator/Appeals Officer Investigator/Decision-Maker Investigator/Appeals Officer Investigator/Informal Resolution Officer Decision-Maker/Appeals Officer Decision-Maker/Informal Resolution Officer

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32



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.



34

Decision-Maker's Duties (K-12)

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

Cannot be the Title IX Coordinator or Investigator.



35

35

Informal Resolution Officer's Duties

Facilitates the informal resolution process.

Verifies a complaint meets the criteria.

Verifies voluntary, written consent.

Ensures the parties know their rights.

May be the Title IX Coordinator.

Cannot be the Investigator.



36

36

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.

37



38


GROUP ACTIVITY – Case Study – Casey & Robert

On Friday, June 13th, around 11:15 a.m., you are in your office answering some emails, and Casey (a female junior) comes in and shows you a video of Robert (a male junior) rubbing her back and shoulders. Casey said she asked a friend to record the video yesterday during group work in fourth period. She says that Robert has been touching her in this manner all week, but yesterday she was seated, and he squeezed her above the knee to get her attention. She says the first time Robert touched her was when she ran into him over the holiday break at a resort in Mexico, except that time was under her swimsuit.

39

GROUP ACTIVITY – Case Study – Casey & Robert

What actions might you consider taking right away?



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40

Title IX Complaint Procedures



41

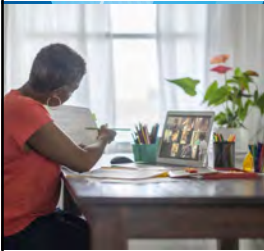


Receiving a Title IX Report

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Receiving a Report



- Notify the Title IX Coordinator.
- Title IX Coordinator (may ask site admin) should promptly schedule an Intake meeting with the Complainant.

43

Urgent Considerations



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

44

Receiving Reports (In General)

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

45

Hypothetical

- You are monitoring lunch at a high school when you overhear Julie tell Amanda that Carol's boyfriend broke her phone while they were fighting.
- ADD: In response, Amanda tells Julie that she saw a bruise on Carol's arm recently.**

Is this a Report?

What are the next steps?



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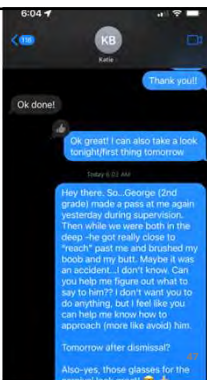
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Hypothetical

You get the following text message from a teacher.

Is this a Report?

Can you "do nothing"?



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47

Case Study – Jen & Haley

Remember Jen and Haley..

The volleyball team is at a travel tournament and is staying in a hotel. Jen and Haley are not assigned to the same room; however, they end up alone together at the vending machines. Jen kisses Haley, who immediately pushes Jen away. The next morning Haley tells her coach about the kiss. Haley says she doesn't want him to do anything, just wanted to let him know why she is avoiding Jen.

What should the coach do?



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48

Case Study – Jen & Haley

When Haley tells her coach about the kiss, she says she doesn't want her to do anything, just wanted to let him know why she is avoiding Jen.

What should the coach do?



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49

What if the Complainant Says, "Do Nothing?"

Inform of Options

- "You may file a complaint."
- Supportive measures.

Title IX Coordinator

- Assess if need to file a Title IX complaint.

Other District Policies

- UCP.
- Bullying.
- Nondiscrimination in employment.
- Complaint against employee.



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50

Reporting under AR 5145.7 (CSBA Model)

"A student or a student's parent(s)/guardian(s) who believes that the student has been subjected to sex discrimination, including sex-based harassment, in a district program or activity or who has witnessed sex discrimination, including sex-based 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 workday 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 sex discrimination or sex-based harassment shall, **within one workday**, report the observation to the Title IX Coordinator as specified in the accompany board policy. The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality."



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51



52

Investigation Timelines

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

 A slide titled "Investigation Timelines" with a list of items: "Title IX - 'reasonably prompt time frame'" and "District policies". To the right is an image of a spiral-bound calendar with a pen resting on it. The slide includes the LS logo and the website LozanoSmith.com in the bottom left corner, and the number 53 in the bottom right corner.

53

Rights of Parties

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

 A slide titled "Rights of Parties" with a bulleted list of rights. The slide includes the LS logo and the website LozanoSmith.com in the bottom left corner, and the number 54 in the bottom right corner.

54



55

Title IX Coordinator's Duties

- Receives and oversees.
- Explains options and process to complainant.*
- Offers supportive measures.*
- Determines dismissal of complaints.
- Evaluates corrective actions.*

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Title IX Coordinator - Contact the Complainant

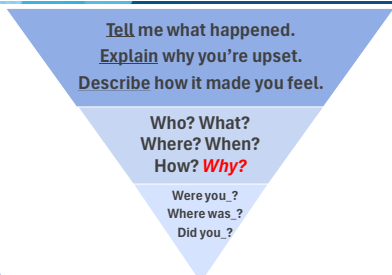
Intake Meeting with Complainant

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

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Have a Plan/Outline



Tell me what happened.
Explain why you're upset.
Describe how it made you feel.


Who? What?
Where? When?
How? **Why?**

Were you ?
Where was ?
Did you ?

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Intake Meeting with Complainant



- Ask open-ended questions.
- Listen and “hear” the concern without judgement.
- Do not ask “why” questions, unless necessary to determine allegations, or assess Title IX.
- Get complaint in writing or confirm allegations in writing if not already received.
- Do not promise confidentiality.
- Determine whether Complainant would be interested in resolving informally.*

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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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60

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)



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62

62

Case Study – Jen & Haley

- Back to Haley and Jen...
- What supportive measures do you offer?

Haley

Jen



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63

63


Document your Intake Meeting

Dear [Name],

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

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

Warmly,



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64

Do You Have a “Formal” Title IX Complaint?

Document filed by Complainant.

OR

Signed by Title IX Coordinator.



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Formal Title IX Complaint – Filed by Title IX Coordinator

Analysis

- Deliberate Indifference
 - Threats
 - Serial predation
 - Violence
 - Weapons

Questions

- Will Complainant participate?
- How do we prioritize agency and autonomy, especially for adult Complainants?



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66

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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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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Corrective Actions



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




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71

Policies and Procedures for Investigating Sexual Harassment Complaints

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



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72

Hypothetical

Eli, a senior in high school, comes to you to tell you that when he was a freshman, his classmate Drew sexually assaulted 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?



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73

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 Title IX complaint.



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74

74

Investigators

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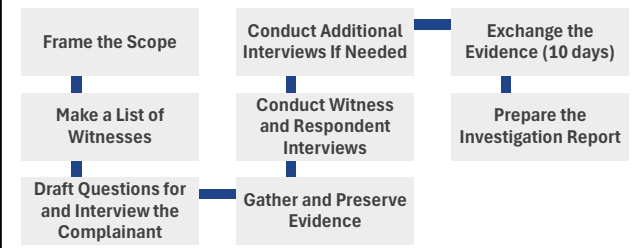
Investigator's Duties

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

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76

How to Conduct an Effective Title IX Investigation




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graph TD
    A[Frame the Scope] --> B[Make a List of Witnesses]
    B --> C[Draft Questions for and Interview the Complainant]
    C --> D[Gather and Preserve Evidence]
    D --> E[Conduct Witness and Respondent Interviews]
    E --> F[Conduct Additional Interviews If Needed]
    F --> G[Exchange the Evidence 10 days]
    G --> H[Prepare the Investigation Report]
  
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Frame the Scope

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Frame the Scope of the Investigation

What are the allegations?

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

Practice Tip: If you are not sure, have someone from the District Office review your allegations before proceeding. This will save you time in the long run.



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Frame the Scope of the Investigation

- **Problematic:** Did Suzie create a hostile work environment for Joe?
 - *****Break this up into separate allegations focusing on whether or not the alleged conduct occurred.**
- **Best Practice:** On May 15, 2021, did Suzie tell Joe that she wanted to go on a date with him?
- **Best Practice:** On May 17, 2021, did Suzie touch Joe on his thigh?
- **Best Practice:** On May 20, 2021, did Suzie deny Joe’s vacation request?



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80

Frame the Scope of the Investigation

Factual Findings v. Legal Considerations

- Don’t focus allegations for your on whether Respondent committed “sexual harassment” or violated some other law; instead, focus on what it is alleged the Respondent did or did not do.
 - **Example:**
 - **Factual Findings:** “Mr. Smith caressed Bella’s back on one occasion, and the conduct was unwelcome.” vs.
 - **Legal Conclusions:** “Mr. Smith sexually harassed Bella.”




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GROUP ACTIVITY – Case Study – Casey & Robert

Write out allegations for this investigation.



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Make a Witness List

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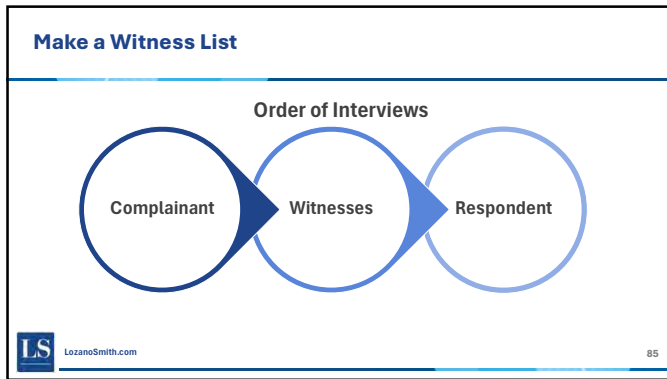
Make a Witness List

Considerations {

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


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Make a Witness List



Lybarger/Spielbauer Warning/Rights

- Fifth Amendment Protection Against Self-Incrimination.
- Spielbauer/Lybarger Warning – Public employees may be compelled to answer potentially incriminating questions about their job performance as long as they are not required to waive their constitutional protections in a criminal matter.

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86

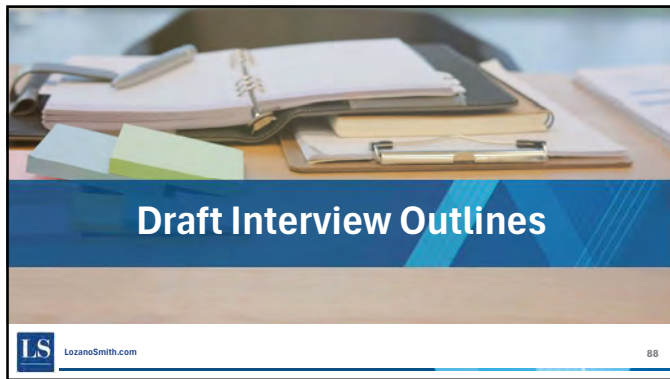
GROUP ACTIVITY – Case Study – Casey & Robert

Who are the people you expect to interview?



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88

Outline Interviews

- Start with an outline of questions but be flexible!
- Use the outline as more of a roadmap for issues you need to touch on with each party or witness.
- If there are a series of incidents, consider a linear roadmap.
- Keep in mind big picture goals.
- If possible, have a 2nd administrator in the room.**

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Outline Interviews

Tell me what happened. Explain
why you're upset. **Describe** how it
made you feel.

Who? What? Where?
When? How? Why?

Were you ___?
Where was ___?
Did you ___?

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Outline Interviews

Wrap up questions:

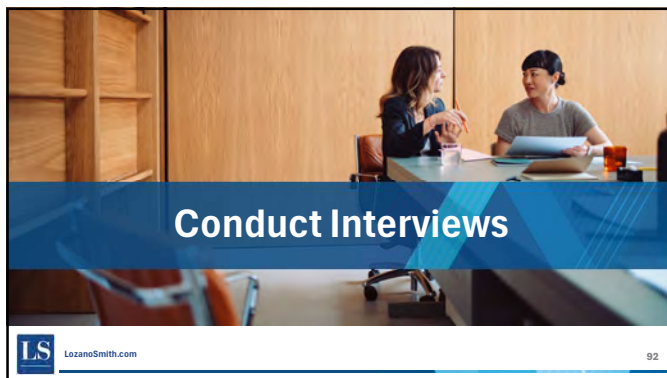
- Is there anything else I should know?
- Do you have any documents that I might find helpful/that are related to anything we talked about?
- Who else do you think it would be helpful for me to speak with?



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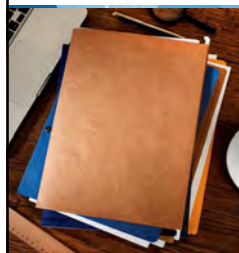


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Conduct Interviews – Do Not Promise Confidentiality



Confidentiality cannot be promised.

All evidence will be shared with the parties.

Both parties will have an equal opportunity to inspect, review, and respond to the evidence.



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Conduct Interviews

Common Questions and Issues:

- What if the witness is underage?
- What if the witness is biased or lies?
- Do all witnesses get a union representative or support person?
- What if the witness refuses to be interviewed or wants their identity to remain confidential?
- What if the police are investigating?



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Conduct Interviews – Trauma-Informed Approach

- Do NOT Victim-Blame.
- Choose a Comfortable Setting That is Not Triggering.
- Build Rapport.
- Allow the Witness to Freely Speak and Then Ask Follow Up Questions.
- Display compassion and sincerity.
- Listen attentively and actively without interruption.
- Ask Difficult Questions With Care - Explain Why You're Asking the Question.



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Outline Interviews – Trauma-Informed Approach

Sample Interview Questions:

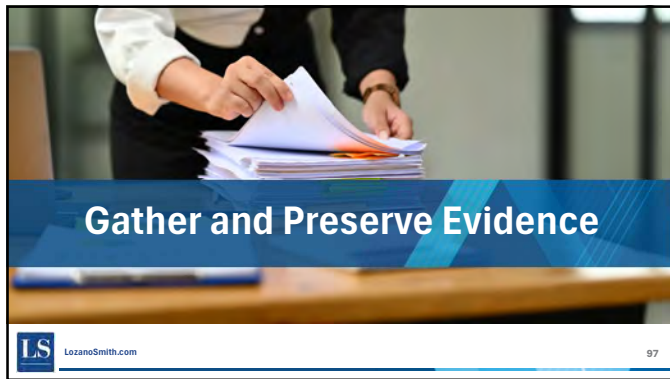
- “Did you tell anyone about what happened to you?”
- “Tell me how that made you feel.”
- “Did you ever feel like this before?”
- “What was your thought process at that time?”
- “I’m asking you this to try to understand...”



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97

Gather and Preserve Evidence



- The Title IX investigator gathers evidence.
 - The Decision-maker makes the findings.
 - The Investigator may be asked to make recommended findings of fact.



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Gather and Preserve Evidence

Emails	Attendance Records
Security Records	Social Media
Complaint	Internet Usage and Websites Visited
Voicemail Messages/Text Messages	Pictures
Audio/Video	Observing Locations

***Note:** If you receive a document from a witness, make sure you note who provided the document and how it was received.


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Gather and Preserve Evidence

District cannot access or use a party's medical, psychological or other similar records unless they obtain the party's voluntary, written consent.

District cannot restrict parties from discussing allegations or gathering and presenting relevant evidence.

District must provide an opportunity for parties to present fact and expert witnesses and other exculpatory or inculpatory evidence.



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Gather and Preserve Evidence

Child Pornography:

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

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



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GROUP ACTIVITY – Case Study – Casey & Robert

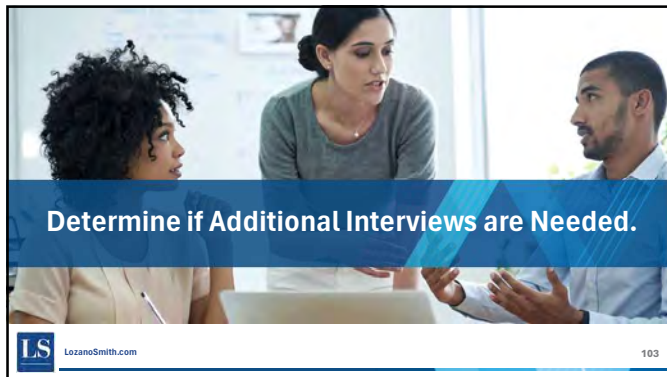
During the investigation, Robert submits text messages that he says demonstrate that Casey was flirting with him. Do you need a follow-up interview with Casey?



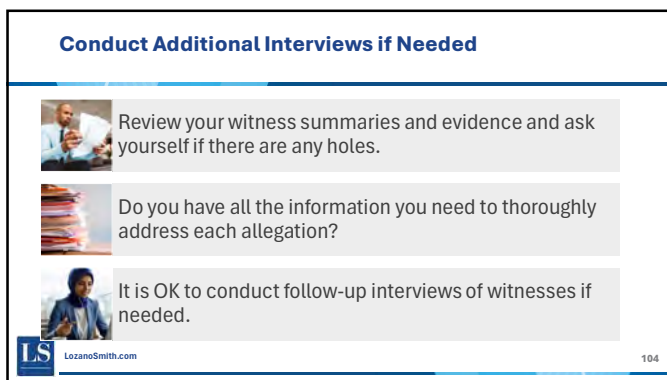
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102



103



104



105

Exchange Evidence

- Send the parties **all evidence** directly related to the allegations raised in the formal complaint.
 - Includes evidence the District does not intend to rely on in reaching its decision regarding responsibility.
 - Use of a **draft** investigation report or report of evidence.
- Must be done prior to the completion of the investigation report.
- Parties must be given at least **10 days** to respond to the evidence, which must be considered by the investigator.

Note: The investigator should work with the Title IX Coordinator to securely transmit the evidence to the parties, and to assess whether redactions may be appropriate.



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106

Investigation Report



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107

Investigation Report

The final investigation report should be prepared by the investigator and must **summarize relevant evidence**.

Parties must be offered the opportunity to provide a written response to the investigation report.

Must be sent to the parties at least 10 days before a written determination regarding responsibility is issued by the decision-maker.



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Investigation Report – Recommended Content

- Identify the **date** the investigation commenced.
 - Identify the **investigator**.
 - Identify **supportive measures** offered to and accepted by the parties.
 - Summary of the investigation **process**.
 - Identify the **legal standard** of review applied to the review of evidence/ applicable policies.
 - Identify number of/identity of **witnesses**.
 - Summary of **evidence** – documents and witness statements.
- You may be asked to make recommended, non-binding findings of fact and responsibility under District policies and codes of conduct.



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109

Decision-Makers

110

Decision-Maker's Duties

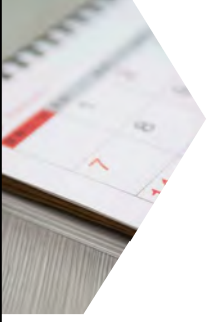
- Reviews investigation report.
- Allows parties to submit relevant written questions.
- Asks questions they deem relevant or provides an explanation as to why when a question is deemed irrelevant.
- Makes determination about responsibility.
- Prepares written determination.



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Submission of Written Questions

- The decision-maker must allow parties **10 days** to submit written, **relevant** questions that they want to ask any other party or witness.
- Once the parties are provided with the answers, the decision-maker must allow for additional, limited follow-up questions from each party.
- Decision-maker determines relevancy or explains why questions were deemed irrelevant.

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Written Determination

Identification of the **allegations** potentially constituting sexual harassment.

A description of the **procedural steps** taken from formal complaint through the determination of responsibility.

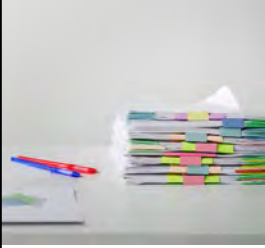
Findings of Fact supporting the determination.

Conclusions regarding the application of the recipient's code of conduct to the facts.

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Written Determination



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

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Written Determination

- Focus on whether the alleged conduct occurred.
- Avoid legal conclusions.
- **Examples:**
 - **PROBLEMATIC:** Sustained. "Cathy harassed Holly."
 - **BEST PRACTICE:** Sustained. Cathy told Holly "If you going on a date with me, I will promote you next month."



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Legal Framework

Preponderance of the Evidence.



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Writing the Analysis

- Topic sentence.
- Summarize Complainant's version of events (address credibility).
- Summarize Respondent's version of events (address credibility).
- Summarize independent evidence (witness statements, documents, etc.) and explain how it corroborates or contradicts the parties' version of events.
- Factual Finding (i.e., sustained, not sustained, partially sustained).



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117

GROUP ACTIVITY – Case Study – Casey & Robert

Before the Decision Maker makes a determination about responsibility, Robert leaves the District to do an independent homeschooling program.

What should the District do?



118

Assessing Credibility

119

Credibility Factors

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?

120

Credibility Factors

- **Past record:** Did the alleged harasser have a history of similar behavior in the past?
- **Opportunity and capacity to observe/actual knowledge:** Did the person see it themselves, or are they recounting what someone else told them?
- **Consistent or inconsistent statements:** Is the person changing their story? Did the person say the same thing to three other witnesses?
- **Reputation for veracity or deceit:** Does this person have a reputation of lying, cheating, etc.?
- **Bias:** Is this person the Complainant's best friend? Does the person have their own complaint against Respondent?



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121

GROUP ACTIVITY – Case Study – Casey & Robert



Discuss whether the following facts impact your assessment of Casey's credibility in this matter:

- Casey's teacher shares that Casey previously fabricated a story to get out of turning in an assignment.
- The District is aware that Casey's father has been in and out of rehab, and that Casey was subjected to abuse as a young child.
- Casey's friend shares that Casey recently broke up with Robert's friend. When Casey broke up with Robert's friend, there was a lot of animosity between them.



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122

Counteracting Bias

123

Implicit Bias

- Our unconscious mind makes shortcuts based on culture, backgrounds, and experiences.
- These shortcuts can sometimes be perceived as instinct.
- Those shortcuts can be fallible and based on biases.
- Fallible shortcuts can lead to fallible judgements of people based on irrelevant markers.



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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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Confirmation Bias

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

Implicit/Affinity Bias



Confirmation Bias



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126

Suggestions to Counteracting Bias



- Actively consider an alternative hypothesis or why a favored hypothesis could be wrong.
- The process of writing might challenge the investigator to assess a decision more carefully.
- Have findings peer-reviewed.
- Good investigative skills and practices.
- Open-ended and non-leading questions.



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127

Understanding Relevancy

128

Relevant Evidence

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

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

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

Relevant evidence must be **objectively evaluated** by investigators and decision-makers.



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129

Limitations on Relevance

Information protected by any legally recognized privilege cannot be used; no party's treatment records may be used without that party's voluntary, written consent.

When evidence is duplicative of other evidence, it may be deemed not relevant.

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



130

130

Limitations on Relevance

A complainant's prior sexual behavior is **irrelevant** unless used:

To prove that someone other than the respondent committed the conduct alleged by the complainant, or

To prove consent, if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent.



131

131

GROUP ACTIVITY – Case Study – Casey & Robert

Discuss whether the following facts are relevant to the investigation:

- Robert's teacher shares that Robert is known for being a very kind and helpful student to everyone in class.
- A student reports that there is a rumor that Casey and Robert "made out" during a school dance earlier in the year.
- Casey and Robert were seated next to each other in class and there was approximately 2 feet between their seats.



132

132

Appeals Officers

133

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.



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134

Appeal Rights for Both Parties at the District

Parties may appeal the written determination on the following bases:

1. Procedural irregularity;
 2. New evidence that was not reasonably available earlier;
 3. Title IX personnel had a conflict of interest or bias.
- ❖ Students/employees may also be afforded the right to file a complaint or an appeal with federal and/or state agencies (e.g. OCR, CDE, DFEH, EEOC).

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135

GROUP ACTIVITY – Case Study – Casey & Robert

Robert is found responsible for inappropriate touching that constitutes sexual harassment under Title IX. He appeals the determination. Which of the following can serve as the appeals officer?

- Title IX Coordinator
- Investigator
- Decision-maker



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136

Title IX and Student Discipline

137

STOP Before You Discipline

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



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138

138

Emergency Removals (Students)

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

EXCEPTION: Emergency Removal

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



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139

Hypothetical

- Eli, a senior in high school, comes to you to tell you that when he was a freshman, his classmate Drew sexually assaulted him in the bathroom at the school.

Should the Title IX Coordinator consider emergency removal?



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140

Administrative Leave

Placing an employee on Administrative Leave is not disciplinary.



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141

Case Study – Jen & Haley

- Think back to our first case study....
- Haley wants to file a formal Title IX complaint. She and her parents are demanding that Jen be removed from the volleyball team and the classes Jen and Haley have in common.

What steps do you take?

Is this appropriate for
Emergency Removal?

- What if the facts change that Jen snuck into Haley's room, and kissed Haley in her room?



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142

Student Discipline



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



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143

Takeaways

- Be aware of the responsibilities of your role on the Title IX team.
- Work with the Title IX Coordinator to assess complaint procedure.
- Offer supportive measures as appropriate.
- Use a trauma-informed approach.
- Consider potential biases.
- Ask for help! Don't go at it alone, seek help from your Title IX response team.



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149


149

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151

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