



Sexual Misconduct Complaints: Part 1

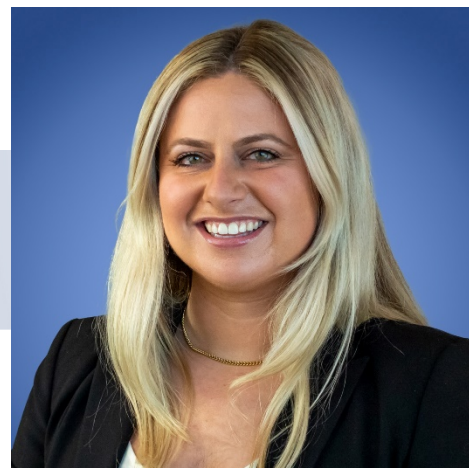
How to Spot if it's Title IX

Presented by:
Emma J. Sol

West Contra Costa Unified School District
January 19, 2023

Emma J. Sol

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Overview

Emma J. Sol is an Associate in Lozano Smith's Walnut Creek office. Ms. Sol focuses her practice primarily on Title IX, student and investigations issues.

Experience

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

Education

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

Practices

Title IX
Student
Investigations

Education

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

Admissions

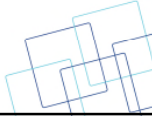
California



Sexual Misconduct Complaints: Part 1 How to Spot if it's Title IX

Presented by: Emma J. Sol

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AT LOZANO SMITH

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Poll Time:
Who has conducted an
investigation before?

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

Title IX

The Plain Language

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 *et seq.*



What Does Title IX Cover?

1. Education Programs or Activities
2. Sports
3. Employment
4. Equal Access to Facilities
5. Admissions and Recruitment
6. **Sexual Harassment***

(34 C.F.R. Part 106)

*New regulations that have the full force and effect of law



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Title IX Sexual Harassment and the 2020 Regulations

Key Terminology

Actual Knowledge (K-12)

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

Formal Complaint

- A document filed by a **complainant** or signed by the **Title IX Coordinator** alleging sexual harassment against a respondent, and requesting that the recipient (District) investigate the allegation

Complainant

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

Respondent

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



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New Terminology – Title IX Sexual Harassment

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

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

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

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



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Group Activity

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

1

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

2

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

3

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



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Group Activity

A junior, Jordan, keeps private messaging another junior, Charlotte, over the Zoom chat function during independent study classes, saying things like, "Your breasts look really good in that top" and "You should send me pictures after class." One Saturday, Jordan uses her cell phone to text Charlotte a link to pornography.

Charlotte used to like Jordan but has recently become uncomfortable with Jordan's constant messaging and texting. Charlotte comes to you to report the conduct.

Is this Title IX?



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Title IX Jurisdiction

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

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

1) the *respondent* and

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

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

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The Roles and Responsibilities of District Administrators and Employees

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What are the Roles in a Title IX Team?


Title IX Coordinator

Appeals Officer

Investigator

Decision Maker

Informal Resolution Officer



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Who is your Title IX Coordinator?

Jose Espinoza,
Director,
Office of Educational Equity

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Responsibilities of Administrators

- Have the initial conversation with parents/Complainants about filing a Title IX complaint.
- Be the link between the OEE office and your school site
- Help organize interviews with students
- Help coordinate and implement supportive measures

Thorough and detailed investigations promote a safe school and work environment.

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Responsibilities of All Employees:



Identify potential sexual harassment

Report potential sexual harassment

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

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Receiving a Complaint

Receiving Complaints (In General)

WHERE COMPLAINTS COME FROM

Student

Parent

Employee

Member of Public

Anonymous Person

FORM OF COMPLAINTS

Verbal

Written

No Complaint (Rumor or Observation)



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Group Activity

You are outside in the morning to greet students as they arrive to school. You see two 8th grade students, Casey and Julie, talking by the bathrooms. Casey appears to try and pull Julie against him for a kiss, placing his hands on her buttocks. Julie keeps trying to pull away. After three attempts, Casey pushes Julie away and leaves. Julie appears upset for the remainder of the day.

Is this a complaint?

What do you do?



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STOP before you discipline



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



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Do You Have a “Formal” Title IX Complaint?

Document
filed by
Complainant

OR

Signed by
Title IX
Coordinator



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Mandatory Dismissal

Does not meet
definition of sexual
harassment under
Title IX

OR

Does not fall within
Title IX Jurisdiction



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So, you received a Title IX complaint – now what?

Informal Resolution

Formal Grievance Procedure

- Exchange of Evidence
- Investigation Report
- Written Determination

NO Student Discipline - This comes later!


We will give you a plan!

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

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



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Policies and Procedures for Investigating Title IX Complaints

BP/AR 1312.3 – Uniform Complaint Procedures

BP 4030 – Nondiscrimination in Employment

AR 4031 – Complaints Concerning Discrimination in Employment

BP/AR 4119.11 – Sexual Harassment (Employee)

AR 4119.12* – Title IX Sexual Harassment Complaint Procedures (Employee)

BP/AR 5145.7 – Sexual Harassment (Students)

AR 5145.71* – Title IX Sexual Harassment Complaint Procedures (Student)

*New District policies

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Group Activity

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

- Is this Title IX?
- What supportive measures do you offer?
- What do you do next?



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Title IX and Discipline

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Supportive Measures

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

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



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Supportive/Protective Measures for both parties

Examples:

No-contact orders

Change of class or work schedules

Modified lunch schedules

Campus escort services

Change in work locations

Increased security/monitoring

Extensions of deadlines or other course-related adjustments

Counseling

Offer independent study (must be voluntary)

Emergency
Removal &
Administrative
Leave

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Title IX and Student Discipline

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 must be provided with notice and an opportunity to challenge the decision immediately after removal.

Supportive Measures

Changing seating chart

Changing class schedule

No contact orders

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Group Activity

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

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

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Administrative Leave

Placing an employee on Administrative Leave is not disciplinary

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Group Activity: Police Investigation

Katie comes into your office and tells you she was sexually assaulted by Mason in the bathroom last week. She explains that she has been avoiding Mason, but that his friends are taunting her; asking her when she is “meeting him in the bathroom again.”

Katie tells you she went to the police, and they are doing an investigation. You contact the police to coordinate, and they tell you they have not yet spoken to Respondent, and they ask that you NOT contact Respondent until they do.

What do you do?

What supportive measures do you offer Katie?

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Contacting Law Enforcement

- Was a crime potentially committed?
- Title IX does not alleviate employees of their mandated reporting obligations.
- Police investigation does not alleviate the District of its duties.



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Duties of a Mandated Reporter



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

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



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Plan of Action

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Could it be Title IX?

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- An **employee** conditioning the provision of an aid, benefit, or service of the district on the complainant's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the district's education program or activity; or
- Big 4: "**Sexual assault**", "**dating violence**", "**domestic violence**", "**stalking**"

Ed. Code, §§ 48900 (a)(2), 48900(n), 48900 (r), 48900.2



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Who do you call/e-mail?

Jose Espinoza

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Initial Conversation the Victim/Complainant

Conduct initial discussion with complainant/victim

- Discuss supportive measures
- Ask what will support them
- Provide them options
- Explain options for filing a formal complaint with the District and the Title IX grievance process
- Ensure they know supportive measures will be offered even if no formal Title IX complaint is filed
- Discuss the District's policy that prohibits retaliation

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Tips for Initial Discussion with Victim/Complainant

If a complainant/victim comes to you, ask the questions needed to better understand the complaint and to determine if it rises to the level of sexual harassment under Title IX.

- Ask open-ended questions to understand what happened
- Listen attentively and actively without interrupting
- Display compassion and sincerity
- Do NOT victim blame
- Do NOT promise confidentiality
- Ask how the school or District can best support them

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What if the Complainant says, “Do Nothing”?

- Mandated Reporting Obligations
- Duty to respond in a manner that is not deliberately indifferent.
- Must inform them of their options
 - This includes supportive measures without filing a formal complaint
 - The Title IX Coordinator can sign a formal complaint on the complainant’s behalf



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Group Activity: Part One

Paige, a 10th grade student, comes to your office and informs you that one of her classmates, Mark, sexually assaulted her in the bathrooms during lunch. Paige is extremely upset and does not want to go to her 5th period class that she has with Mark.

What do you do?



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Group Activity: Part Two

Con’t: One of Paige’s friends, Kylie, tells you that Mark has been following her around before and after school, telling people that she is his girlfriend, and recently threatened to beat her little brother up if she didn’t hang out with him and “be his girlfriend”. Kylie hasn’t been to school all week and does not want to come back if Mark is there.

Is this Title IX?
What do you do?



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Questions



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See you next month for Part II!



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

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*Or any of the attorneys
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