



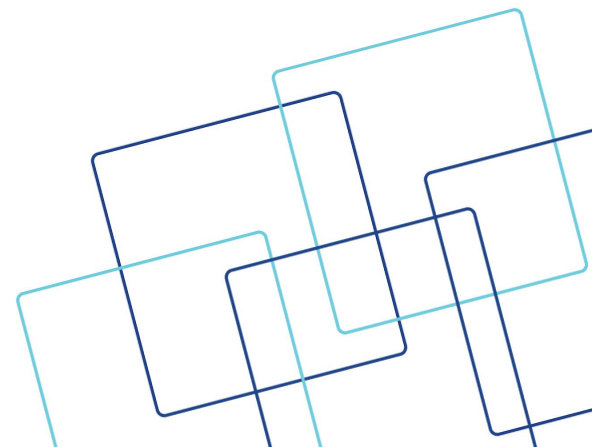
# Sexual Misconduct Complaints: Part II

## What to Do if it is Title IX

Presented by: Emma J. Sol

West Contra Costa Unified School District

February 16, 2023



# Presenter

## Emma J. Sol

### AT LOZANO SMITH

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. 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.



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# What We Will Cover

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Title IX Investigation Steps and Considerations

Title IX and Student Discipline



# Title IX Steps



# Refresher

## Jurisdiction

Any location, event or circumstance over which the school exercises substantial control of both the alleged harasser and the “context” in which the harassment occurred.

## Quid Pro Quo

Between employees ONLY.

**Severe, Pervasive,  
and Objectively  
Offensive**

**Sexual  
Assault,  
Domestic  
Violence,  
Dating  
Violence, and  
Stalking**

# Follow Site Steps

## 1. Do the Initial Intake:

- Gather statements from the victim(s), perpetrator(s), witness(es) and collect evidence. Utilize the intake form.

## 2. Email Jose Espinoza:

- Write your school's name in the subject line and "Possible Title IX." Send the intake form, and any additional information, such as photos, videos, etc.
- [jespinoza2@wccusd.net](mailto:jespinoza2@wccusd.net)

# Follow Site Steps

## 3. Institute Supportive Measures:

- A student can not be disciplined until the Title IX process is complete. Determine how to separate the perpetrator(s) from the victim(s) in the least punitive way possible while waiting for the Title IX determination.
- You will be notified by Jose Espinoza whether emergency removal is necessary.

# Follow Site Steps

## 4a. If it is Not Title IX

- If you receive a notification that the conduct is not Title IX, continue with the proper investigation procedure and, if necessary, the student discipline process.

## 4b. If it is Title IX

- Work with Jose Espinoza regarding next steps, including the initial conversation with Complainant regarding the Title IX process. From there, Notice of Investigations will go out, and a team will be assigned to investigate the matter.



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# The Work of the Investigator

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# Investigation Timelines

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- Title IX - “reasonably prompt time frame”
  - Uniform Complaint Procedures: 60 days

# Initiate an Investigation into the Complaint

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

# Understand the Scope - Frame the Allegations

- Bad example: Did Suzie bully Joe?
- Good example: Did Suzie repeatedly call Joe a derogatory name and publicly tease him because of his height?
- Bad example: Did Suzie act mean and unfairly toward Joe?
- Good example: Did Suzie tell Joe “Go to Hell?”

## Preponderance of the Evidence



# Gather, Review, and Preserve Evidence

Emails

Phone records

Attendance records

Security records

Computer  
records/files

Complaint

Internet usage and  
websites visited

Voicemail messages

Pictures

Audio/Video

Credit Card Receipts

Observing Locations

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

# 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.

# Draft a List of Witnesses

Develop a  
Witness List

Potential  
Conflicts of  
Interest

Location,  
Timing, and  
Order

Best Practices



# Trauma-Informed Approach

Schedule interview at convenient time and place

Listen attentively and actively without interrupting

Exhaust open-ended questions first and save technical ones for later

Display compassion and sincerity

Interview without judgment or skepticism

*Use of trauma-informed techniques during the complainant's interview can facilitate rapport building, cooperation and complainant's emotional recovery.*

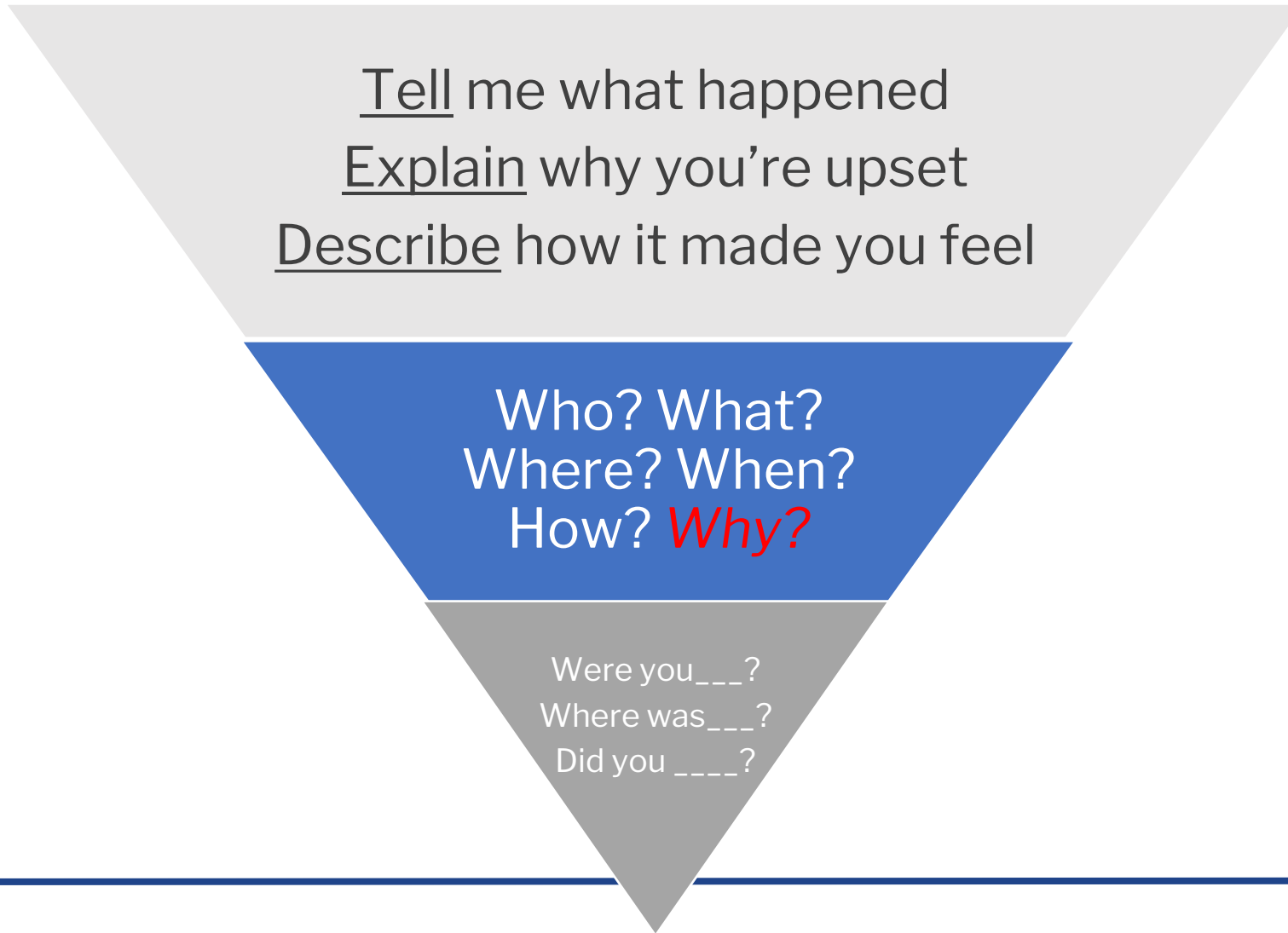
Do NOT Victim-Blame

Permit student/employee to control information flow

Suggest breaks as needed

Explain the need/context when asking sensitive questions

# Framing the Questions



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 \_\_\_\_?

# Evaluate the Witness's Responses

Credibility

Implicit Bias

Confirmation  
Bias

# Common Issues when Conducting Interviews

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The reluctant complainant – “I don’t want to get anyone in trouble”

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The hostile respondent

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The witness refuses to be interviewed

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The witness is a minor

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Parent demands to be present while child is being interviewed

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The difficult representative

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The witness is biased

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The witness lies

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Conflicts of interest

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## Group Activity

A 3rd grade female student comes to your office with allegations that a male student touched her between her legs, touching her genitalia over her pants.

Is this Title IX?

What, if any, discipline can you impose on the male student?

What if these are high school students?



# Take Notes

Take detailed notes and/or have a second administrator or confidential employee involved to take notes.

Consider signed witness statement summaries.



# Investigation Report



- The final investigation report should be prepared by the investigator and must summarize all relevant evidence
- Must be sent to the parties at least 10 days before a written determination regarding responsibility is issued by the decision-maker

# Investigation Findings

## Documenting Findings with Complainant and Respondent

- Best practice is to document the outcome of the investigation in separate findings letters to each party.
- Content of the findings letters will depend on which Board Policy you are processing the complaint under.



# Responsibilities of the Investigator:

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Administers a fair investigation of formal complaints

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Interviews parties and witnesses

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Reviews evidence

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Provides parties the opportunity to inspect, review, and respond to all evidence gathered, and considers their responses

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Creates an investigative report that summarizes relevant evidence

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Does not make a determination of responsibility

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Must be trained

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Must be impartial, unbiased, and free of any conflicts of interest

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May be asked to recommend findings to the decision-maker

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# The Decision-Maker

# Written Determination

The decision-maker prepares a written determination with the determination regarding responsibility.



# Responsibilities of the Decision-Maker:

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Reviews the investigation report, but does not investigate

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Gives parties the opportunity to submit written relevant questions for the other party/witnesses, and asks those questions they deem relevant or provides an explanation as to why a question was deemed irrelevant

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Makes a determination about responsibility

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Prepares the written determination that is issued to each party

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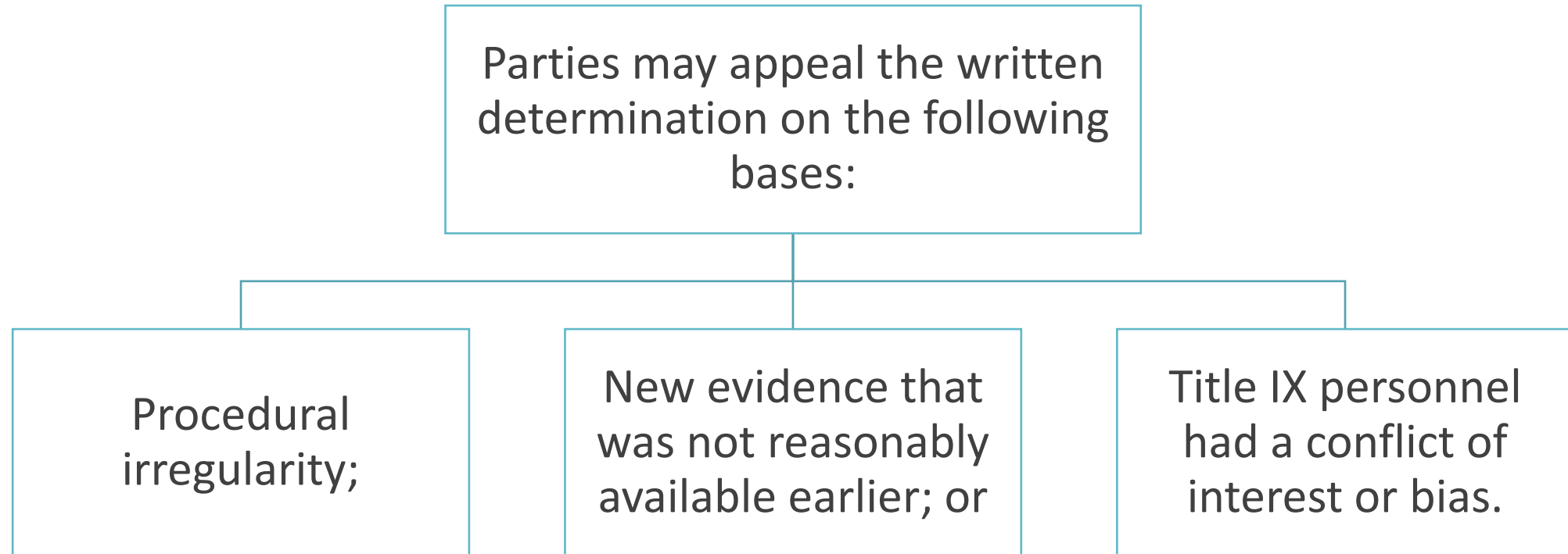
May recommend sanctions and/or corrective actions



# The Appeals Officer



# Appeal Rights for Both Parties at the District



Students/employees are also afforded the right to file a complaint or an appeal with federal and/or state agencies (e.g. OCR, CDE, DFEH, EEOC)

# Responsibilities of the Appeals Officer:

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Evaluates any appeal request made by the complainant or respondent

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Makes a decision on the appeal and issues a written decision to each party that states the decision and rationale

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Must be unbiased and without conflict

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Cannot be the Title IX Coordinator, investigator, or decision-maker

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# Application – Title IX and Student Discipline

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## Group Activity

Over winter break, an 8<sup>th</sup> grader, Ryder, begins sending his classmate, Audrey snapchat messages. He sends her a picture of himself coming out of the shower and a picture of his genitalia. When the students return after break, Ryder moves to an open seat next to Audrey in History. Ryder begins touching Audrey's thigh; she pushes his hand away, but he continues. This goes on for a few weeks. Ryder places his hand inside the cargo pocket of Audrey's pants, and she reports the conduct.

Is this Title IX?

Can Ryder be disciplined?

## Group Activity

Kylie, a 10<sup>th</sup> grade student, tells you that Mark, another student, 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?

## Group Activity

A 9<sup>th</sup> grade student, Alexis alleges she, and a 10<sup>th</sup> grade student, Julian, were watching a TikTok video on his phone in the cafeteria. He moved the phone to show her his erection. The next day, while passing each other in the hallway, Julian looked at Alexis' chest and said "Damn!!" A few days later, while in class together, Julian again pointed out his erection to Alexis and asked her if she wanted to touch it.

Is this Title IX?

What steps do you take?

# Discipline after Final Written Determination



If the final written determination concludes that Respondent committed sexual harassment, sexual assault, or sexual battery, the date the school site can suspend the Respondent depends on if an appeal is filed.

# Corrective Actions

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Staff/student discipline

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Ensuring no retaliation

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Additional support for involved parties

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Generalized training for staff/students in class, school, or district-wide

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Generalized notification of policies/ rules

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Increased monitoring and check-ins

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Changes to District practice

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# Questions







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*For more information, questions and  
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**LS**



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