



# Title IX Recalibration:

## Differences Between 2024 and 2020 Title IX Regulations and How to Process Complaints

Presented by:

Sarah E. Fama

Monica D. Batanero

Lozano Smith Webinar

February 20, 2025

## Sarah E. Fama

Senior Counsel



Walnut Creek Office  
sfama@lozanosmith.com  
925.953.1620

### Overview

Sarah E. Fama is Senior Counsel in Lozano Smith's Walnut Creek office and co-chair of the firm's Title IX Practice Area. 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

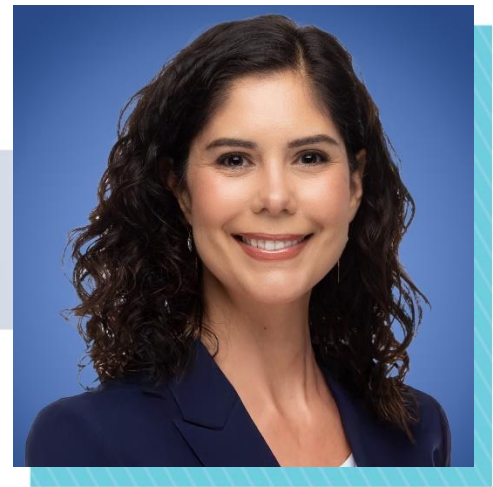
J.D., University of the Pacific,  
McGeorge School of Law  
B.A., University of Alberta

#### Admissions

California

# Monica D. Batanero

## Senior Counsel



Los Angeles Offices  
mbatanero@lozanosmith.com  
213.929.1066

### 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

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- > Investigations
- > Labor & Employment
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- > Municipal
- > Public Finance
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- > Student
- > Title IX

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### Presenter



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[sfama@lozanosmith.com](mailto:sfama@lozanosmith.com)  
925.953.1620



[LozanoSmith.com](https://www.LozanoSmith.com)

## Presenter



[mbatanero@lozanosmith.com](mailto:mbatanero@lozanosmith.com)  
213.929.1066



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### Monica D. Batanero

Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office and is co-chair of the firm's Title IX Practice Area. Ms. Batanero represents California public school districts, county offices of education, and community college districts in all aspects of education law. She 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 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.

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## Topics



- Current Status of Title IX Regulations
- Scope of the 2020 Title IX Regulations
- Important Definitions
- Title IX Jurisdiction
- 2020 Title IX Grievance Procedures
  - Formal Title IX Complaints
  - Separation of Roles and Responsibilities
  - Exchange of Evidence
  - Relevance
  - Standard for Appeals



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# Current Status of the Title IX Regulations

## Where are we now?

### *Tennessee v. Cardona*

- On January 9, 2025, a Kentucky federal district court ***vacated*** the 2024 Title IX Regulations.

Office for Civil Rights: “*Consistent with the court’s order, the 2024 Title IX regulations and these resources are not effective in any jurisdiction.*”



## Where do we go from here?



1. Prepare to adopt/publish 2020 Title IX Grievance Procedures
  - K-12: 5145.71 or 4119.12
  - CCD: 3434
2. Consider whether other policies were updated to align with 2024 Regulations
3. Re-familiarize yourself with the 2020 Regulations and grievance process



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## Scope of the 2020 Title IX Regulations



## 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.”*



## Differences Between 2024 and 2020 Regulations: Scope

### 2024 Regulations

Prohibited conduct falling within the broad scope of “sex discrimination,” including “sex-based harassment”

- Prohibited discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity

### 2020 Regulations

**Prohibits conduct falling within the narrow definition of “sexual harassment”**

- **Conduct on the basis of sex including (1) quid pro quo; (2) hostile environment; or (3) specific offenses**



## 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



## 2020 Title IX Regulations – Highlights

- Duty to identify and promptly investigate and address allegations of sexual harassment
- Duty to adopt and publish clear policies on how to file complaints and how complaints will be promptly addressed
- Notice to parties of the initiation of the investigation and the outcome of investigation and appeal rights
- Duty to prevent recurrence and remedy effects
- Obligation to have a Title IX Coordinator



# Important Definitions

## Differences Between 2024 and 2020 Regulations: Definitions

### 2024 Regulations

- Complainants included *persons other than students and employees*
- Hostile environment harassment included unwelcome sex-based conduct that was subjectively and objectively offensive, and was “sufficiently severe or pervasive” (Expanded scope)
- Must respond promptly and effectively

### 2020 Regulations

- Complainants are limited to students or employees
- Hostile environment harassment includes unwelcome sex-based conduct that is “severe, pervasive, and objectively offensive” (Limited scope)
- Must not be deliberately indifferent

## Key Definitions

### 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



## Key Definitions – Actual Knowledge

### Actual Knowledge (K-12)

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

- “Deliberate indifference” standard:
  - A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.





## Key Definitions – 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;

**"Quid pro quo"**

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

**"Hostile Environment"**

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

**"Specific Offenses"**



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## Key Definitions – Specific Offenses

### Sexual assault:

- An offense classified as a sex offense or nonforcible sex offense under the FBI uniform crime reporting system
  - i. Sex Offenses
    1. **Rape**—(Except Statutory Rape)
    2. **Sodomy**
    3. **Sexual Assault With An Object**
    4. **Fondling**



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## Title IX Definitions – Specific Offenses

### 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.



## Title IX Definitions – Specific Offenses

### 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.

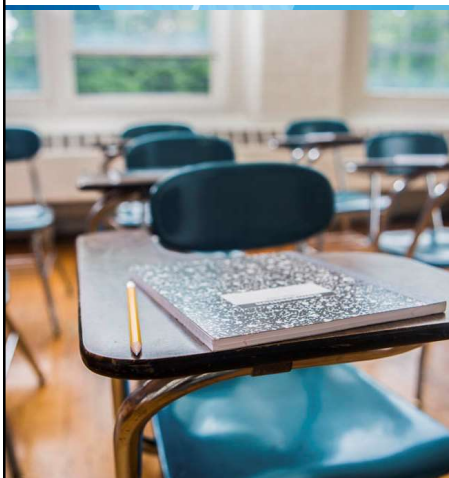


## Hostile Environment: Analyzing the “Severe, Pervasive and Objectively Offensive” Threshold

- All 3 elements required to trigger Title IX.
- Pervasiveness is an indispensable element of a Title IX offense.
  - Single incident often not enough to meet this element, even if severity and objective offense can be demonstrated.
- Objectively offensive and severe are indispensable elements of a Title IX offense.
  - Verbal conduct often not enough to meet these elements, unless the frequency and severity of these statements are objectively offensive, and they hinder access to education.



## Hypothetical



Elizabeth regularly sits with a male student, Josh, in Psychology. Elizabeth reported to you that although she initially would flirt with Josh and liked the attention, he recently put his hand on her inner thigh in class and pulled her leg closer to him. She is uncomfortable sitting next to Josh and does not want to sit next to him anymore.

1. What do you do?
2. Is this Title IX?



## Hypothetical



Gianna, a 10<sup>th</sup> grader, has not been to class in two weeks. Gianna says she was being bullied every day over a rumor that she slept with two seniors. Gianna said she was being bullied in person and on social media. She has deleted all her social media accounts. She feels embarrassed and humiliated and does not want to come back to school.

1. What do you do?
2. Is this Title IX?



# Title IX Jurisdiction



## Differences Between 2024 and 2020 Regulations: Jurisdiction

### 2024 Regulations

- Jurisdiction over all sex discrimination under the Recipient's education program or activity in the United States, including: (1) conduct occurring in buildings owned or controlled by a student organization; and (2) conduct subject to the Recipient's disciplinary authority

### 2020 Regulations

- Jurisdiction over conduct occurring (1) in the United States; (2) in which the District exercised substantial control over the respondent and context in which harassment occurs; and (3) student/employee are participating or attempting to participate in the District's education program or activity when the complaint was filed



## 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.***



## Hypothetical – True or False

The District **must** conduct a Formal Title IX investigation into an incident...

1. That occurred between two students over the weekend, at a student's home.
2. In which an administrator allows an office manager to leave early and work from home in exchange for the office manager going on a date with the administrator.
3. That occurred last year, and the Complainant has graduated.



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## Hypothetical



Marie met her long-distance boyfriend over the summer. Marie's classmate, Parker, found videos of Marie's boyfriend discussing details about his intimate encounters with Marie. Parker is telling everyone in class about the videos. Marie reports Parker's behavior.

- **Do we have Title IX jurisdiction?**



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## 2020 Title IX Grievance Procedure: Formal Complaints

### Differences Between 2024 and 2020 Regulations: Complaints

#### 2024 Regulations

- Complaints made orally or in writing, so long as the complaint could objectively be understood as a request to investigate
- Title IX Coordinator must consider certain factors when determining whether to initiate a complaint

#### 2020 Regulations

- Complaints made in writing and signed by complainant
- Title IX Coordinator should assess whether to initiate a complaint based on a threat to safety

## Receiving Complaints

### 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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## Receiving Complaints



- Notify the Title IX Coordinator
- Assess whether a CPS report should be filed (continue to reassess)
- Title IX Coordinator should promptly schedule a meeting with the victim



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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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## What if The Complainant Says, “Do Nothing”?

The Title IX Coordinator 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

- Assess the conduct!
- If NOT filing a formal complaint would be deliberately indifferent, the Title IX Coordinator has the discretion to sign a formal complaint on the complainant’s behalf



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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?**



## Complaint Dismissals

### Mandatory Dismissals

- Does not meet the definition of “sexual harassment”;
- Did not occur in District’s education program or activity; or
- Did not occur in the United States.

### Discretionary Dismissals

- Request in writing to withdraw;
- Respondent is no longer enrolled or employed at the District; or
- Inability to gather sufficient evidence.



## Dismissals (Mandatory and Discretionary)

The decision to dismiss a complaint should be made in consultation with the Title IX Coordinator.

Notice of dismissal must be issued to both parties in writing.

Parties must be informed of their right to appeal the dismissal on the basis of:

- Procedural irregularity;
- New evidence that was not reasonably available earlier; or
- Involved personnel had a conflict of interest or bias.



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## Hypothetical

You get the following text message from a teacher.

- Can you “do nothing”?



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# 2020 Title IX Grievance Procedure: Separation of Roles and Responsibilities

## Differences Between 2024 and 2020 Regulations: Roles

### 2024 Regulations

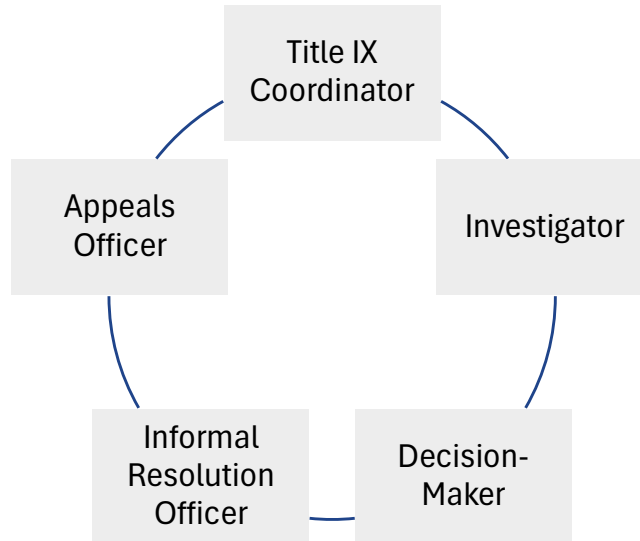
- The roles of Title IX Coordinator, investigator, and decisionmaker could simultaneously be performed by the same person

### 2020 Regulations

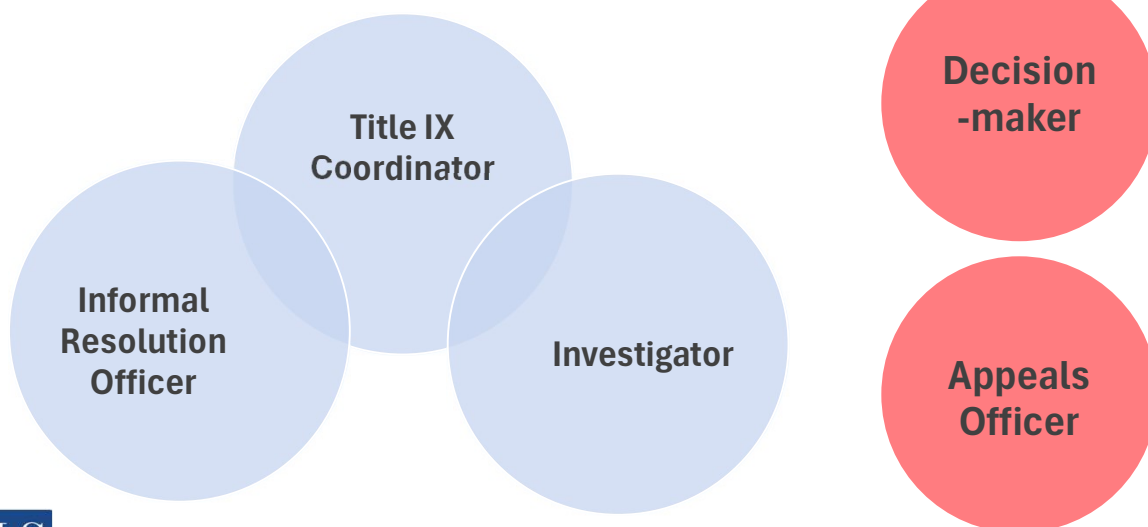
- The decisionmaker must be a different person from the Title IX Coordinator or investigator



## What are the Roles in the Title IX Grievance Process?



## What Roles Can Overlap?



## Title IX Coordinator Duties

**Cannot be the  
Decisionmaker**



- 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

\*Role may be designated



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## Investigator's Duties

- Interview
- Gather evidence
- Parties to review evidence
- Consider responses
- Prepare investigation report

**Cannot be the Decisionmaker**



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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 or Investigator**



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## Decision-Maker's Duties (Higher Education)

- Reviews investigation report
- Conducts hearing
- Reviews questions for relevancy
  - Explains if irrelevant
- Makes determination about responsibility
- Prepares written determination

**Cannot be the Title IX  
Coordinator**



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## 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**



## Appeals Officer's Duties

Evaluates any  
appeal

Makes a  
decision on  
the appeal

Issues a  
written  
decision

**Cannot be the Title IX Coordinator,  
Investigator, or Decision-maker**



## Responsibilities of All Employees:



- Report to the District's Title IX Coordinator, as well as any additional designated individuals (school site administrators), any known claims of potential sexual harassment.
- All employees should be trained on how to identify potential sexual harassment issues and report it.
- **This does not relieve an employee of their mandated reporter duties!**



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## 2020 Title IX Grievance Procedure: Exchange of Evidence

## Differences Between 2024 and 2020 Regulations: Exchange of Evidence

### 2024 Regulations

- Parties given one period of time to review and respond to evidence before a determination was made
  - Duration of the period chosen by the Recipient

### 2020 Regulations

- Parties given two separate 10-day periods of time to review and respond to evidence before a determination is made**



## Title IX Evidence Requirements

- District has the burden of gathering evidence
- District cannot access or use a party's medical, psychological or other privileged 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





## Review of Evidence By the Parties

- 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



## 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



# 2020 Title IX Grievance Procedure: Relevance

## Differences Between 2024 and 2020 Regulations: Relevance

### 2024 Regulations

- Complainant's sexual interests

### 2020 Regulations

- Complainant's predisposition

## Relevancy

- Evidence is relevant if the information helps to prove or disprove a fact at issue and should be admitted
- Evidence cannot be excluded because such evidence may
  - Be unduly prejudicial,
  - Concern prior bad acts, or
  - Constitute character evidence



## 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 predisposition is never relevant



## 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



## 2020 Title IX Grievance Procedure: Standard for Appeals

## Differences Between 2024 and 2020 Regulations: Appeals

### 2024 Regulations

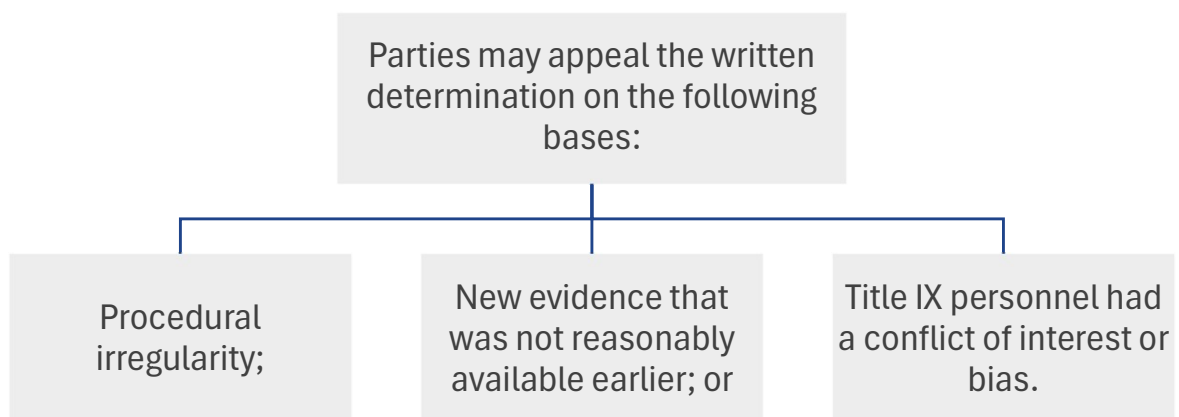
- Appeal process required to be the same as offered in comparable proceedings
- That would change the outcome

### 2020 Regulations

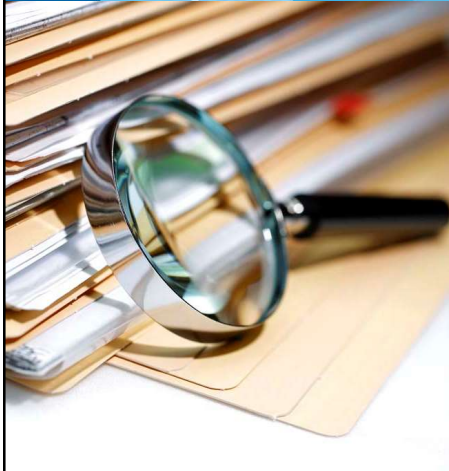
- **Parties may appeal the written determination based on:**
  - Procedural irregularity;
  - New evidence;
  - Conflict of interest/bias.
- That may affect the outcome



## Appeal Rights for Both Parties



## Hypothetical



Mr. Smith 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?

- 1. Title IX Coordinator**
- 2. Investigator**
- 3. Decision-maker**



# Questions?





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

**Sarah E. Fama**

Attorney at Law

925.953.1620

[sfama@lozanosmith.com](mailto:sfama@lozanosmith.com)

**Monica D. Batanero**

Attorney at Law

213.929.1066

[mbatanero@lozanosmith.com](mailto:mbatanero@lozanosmith.com)



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