

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

LCW LIEBERT CASSIDY WHITMORE

Title IX Obligations Before the Investigation

Presented By: Jenny Denny

This slide features a background image of a sunset over water. The title and presenter information are centered on the slide.

Agenda

- Changing Landscape: Biden Administration Order
- When Does the Institution Have Actual Knowledge
- Assessing Reports of Sexual Harassment and Determining Whether Title IX Applies (Jurisdiction)
 - Sexual Harassment Definition
 - Programs or Activities
 - In the United States
 - Options/Duties When Title IX Does Not Apply
- Supportive Measures
- Emergency Removals

LCW LIEBERT CASSIDY WHITMORE

This slide features a background image of a sunset over water. The agenda items are listed in a white box on the right side of the slide.

Agenda

- The Formal Complaint- Triggering the Grievance Process
- Advisors
- Dismissals
- Appeals
- Anti-Retaliation Protections
- Confidentiality

LCW LIEBERT CASSIDY WHITMORE

This slide features a background image of a sunset over water. The agenda items are listed in a white box on the right side of the slide.

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Changes Are Coming

Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity (Mar. 8, 2021)

LCW LIEBERT CASSIDY WHITMORE

Required Training Components

- Definition of sexual harassment
- Scope of education program or activity
- How to conduct investigation and prepare investigative report
- How to implement grievance process
 - Hearings
 - Appeals
 - Informal resolution process
- How to serve impartially
- Decision-makers: Hearing technology and issues of relevance

LCW LIEBERT CASSIDY WHITMORE

Participant Background Poll

LCW

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Participant Background Poll

- Which Title IX role do/will you hold?
 - A. Coordinator
 - B. Investigator
 - C. Decision-Maker/Panelist
 - D. Advisor
 - E. Official with Authority
 - F. Other or multiple roles

LCW LIEBERT CASSIDY WHITMORE

Participant Background Poll

Have you received a Title IX complaint since August 14, 2020?

- A. Yes
- B. No

LCW LIEBERT CASSIDY WHITMORE

Title IX

Title IX prohibits discrimination that is:

- On the basis of sex
- In education programs or activities
- Receiving federal financial assistance

20 U.S.C. § 1681 *et seq.*
34 C.F.R. § 106 *et seq.*

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Title IX Protections

- Title IX protection applies to **all** students and employees
- Protects students and employees from sexual harassment committed by:
 - Students
 - District employees
 - Third-parties

LCW LIEBERT CASSIDY WHITMORE

Assessing Reports of Sexual Harassment & Determining Title IX Obligations

LCW

Actual Knowledge

If District has actual knowledge of sexual harassment in its education program or activity against a person in the United States:

Must respond in a manner that is not deliberately indifferent.

34 CFR § 106.44(a)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Actual Notice

Notice to a Title IX Coordinator or any **official with authority** to institute corrective measures.

34 CFR § 106.30

An **official with authority** has the power to institute corrective measures on behalf of the institution.

LCW LIEBERT CASSIDY WHITMORE

Case Study: Actual Knowledge

James is the Director of Information Technology. Celia, a student who works in IT, confides in him that she has been sexually assaulted by a coach. The District's policy says that all supervisors have a duty to report sexual harassment in the workplace. Does District now have actual notice of a potential Title IX matter?

Yes, No, or Maybe

LCW LIEBERT CASSIDY WHITMORE

Sexual Harassment: Three Categories

- Quid pro quo: An *employee* conditioning an aid, benefit, or service on complainant's participation in unwelcome sexual conduct
- Unwelcome conduct so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking

34 CFR § 106.30

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Sexual Harassment

- Determining severity, pervasiveness, and offensiveness
 - Not applicable to reports of quid pro quo sexual harassment
 - Not applicable to reports of sexual assault, dating violence, domestic violence, or stalking
 - Consider surrounding circumstances, expectations, relationships
 - Reasonable person standard

LCW LIEBERT CASSIDY WHITMORE

Case Study: Sexual Harassment

Celia who is a work study student reports to the Title IX Coordinator the following:

James, the Director of Information Technology, has told her she can get more hours if she goes out with him. He only asked her out once. He did not reduce her hours when she said no.

LCW LIEBERT CASSIDY WHITMORE

Correct/Incorrect/Maybe

Celia's report does not meet the definition of sexual harassment under Title IX because a reasonable person would not find the conduct so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity?

Correct, Incorrect, or Maybe

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Case Study: Sexual Harassment

Celia also reports the following to the Title IX Coordinator the following:

Last week, Tom, another student who works with her in the Information Technology Department, kissed her in the elevator. She pushed him away and he immediately apologized. He has not bothered her again.

Is this Title IX sexual harassment?

LCW LIEBERT CASSIDY WHITMORE

Education Program or Activity

- Locations, events, or circumstances over which the District exercised substantial control over respondent and context
- Any building owned or controlled by a student organization

34 CFR § 106.44(a)

LCW LIEBERT CASSIDY WHITMORE

Location of Incident

Sexual harassment must occur against the complainant **in the United States**

- Title IX not triggered by incidents outside the U.S.

34 CFR § 106.44(a)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Case Study & Discussion

Rudy reports to the Title IX Coordinator that he recently broke up with Carlos, another student at the District, who he dated for two years. Carlos raped Rudy in their apartment as Rudy was trying to move out. Rudy and Carlos do not have classes together, but Rudy is afraid of Carlos.

Does the Title IX Coordinator have jurisdiction to file a complaint over the incident that took place in Rudy and Carlos's private apartment?

LCW LIEBERT CASSIDY WHITMORE

Preemption

- To the extent that state law already provides statutes or regulations that protect individuals from sexual harassment or discrimination, a district should comply with both the state requirements and the new regulations
- Conflicts: the Title IX regulations preempt state law

34 CFR § 106.6 (a)

LCW LIEBERT CASSIDY WHITMORE

Employee Issues

- Must respond to sexual harassment as defined by California Fair Employment and Housing Act (FEHA)
 - Sex harassment has a different definition under FEHA
 - Supervisors must report under FEHA
- Title IX obligations might conflict with collective bargaining agreements

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Student Issues

Student services – discipline/due process:

- Must be consistent with federally guaranteed due process rights
- Cannot remove, suspend, or expel a student unless discipline is related to college activity or attendance
 - Exception for sexual assault and sexual exploitation
 - Must still follow Title IX regulations

Ed. Code §§ 76033 and 76034

LCW LIEBERT CASSIDY WHITMORE

Coordinate with State Law

State Law Requirements:

- "Yes" means "Yes" Policy → Ed Code § 67386
- District Nondiscrimination → Ed Code § 220
- Student Orientation Requirements → Ed Code § 67385.7
- District / School Safety Plans → Ed Code §§ 67380 (postsecondary)
- Coordination with Law Enforcement → Ed Code § 67381
- Confidentiality of Sexual Assault Victims → Ed Code § 67385
- Mandated Reporting → Pen Code § 11164 et seq. & Ed Code § 48906
- Data Collection, Analysis, Notice → Ed Code § 67380
- Cal/OSHA → Lab Code § 6300 et seq.

LCW LIEBERT CASSIDY WHITMORE

Supportive Measures

- Individualized services offered as appropriate and reasonably available without charge
- Non-disciplinary and non-punitive
- Before or after or without formal complaint
- Available to Complainant and Respondent

34 CFR § 106.30(a)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

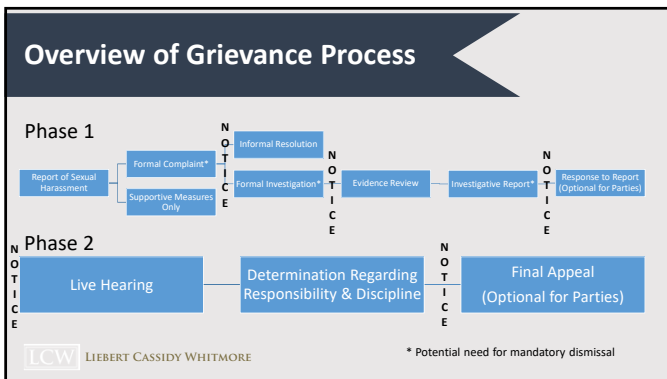
Examples of Supportive Measures

- Medical/mental health services (or referral)
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual no-contact orders
- Transportation accommodations
- Changes in work/housing locations
- Leaves of absence
- Increased security

LCW LIEBERT CASSIDY WHITMORE

Triggering the Grievance Process

LCW



Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

When Does the Grievance Process Apply?

- For formal complaints of sexual harassment under Title IX
 - Not for informal complaints
- Not for sexual harassment that falls outside of the definition in the regulations
- Not for discrimination: treating individual differently/unfavorably because of that person's sex

LCW LIEBERT CASSIDY WHITMORE

Grievance Procedures: Triggers

- A recipient must follow procedures consistent with section 106.45 in response to a **formal complaint**

34 CFR § 106.44(b)(1)

LCW LIEBERT CASSIDY WHITMORE

Formal Complaint

- Document filed by the **Complainant** OR signed by the Title IX Coordinator
- Alleging sexual harassment AND requesting investigation

34 CFR §106.30(a)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Complainant

- The alleged *victim* of sexual harassment
 - Must be participating in or attempting to participate in the district's education program or activity
 - 3rd parties can report, but no 3rd party complaints

34 CFR 106.30(a)

LCW LIEBERT CASSIDY WHITMORE

No Formal Complaint Signed by Complainant

- If the alleged conduct falls under Title IX but the Complainant refuses to submit a formal complaint, the Coordinator must:
 - Become the signatory (but will not become the complainant) OR
 - Close the report

LCW LIEBERT CASSIDY WHITMORE

Formal Complaint by Title IX Coordinator

Considerations

- Complainant's wishes
- Ability to conduct investigation without Complainant's participation
- District's need to protect campus safety
 - Respondent in position of authority
- Nature of alleged harassment
 - Multiple reports against same respondent

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Case Study & Discussion

The Title IX Coordinator receives a report from Julie who reports that Rudy is her friend and confided in her about the rape. She also reports that Carlos is stalking and harassing Rudy on and off campus, in person and via the cell phone, since they broke up two months ago. Julie has seen Carlos hit Rudy in the past and believes that Rudy is suffering from PTSD as the victim of domestic violence. The Title IX Coordinator contacts Rudy who refuses to file a complaint. Carlos is a popular student athlete and a member of the Model United Nations.

Should the Title IX Coordinator file a title IX complaint? Why?

LCW LIEBERT CASSIDY WHITMORE

Consolidating Complaints

Discretion to consolidate complaints:

- Arise out of the same facts or circumstances (so intertwined that their allegations directly relate to all parties) and
- Involve more than one complainant, more than one respondent, or counter-complaints

LCW LIEBERT CASSIDY WHITMORE

The Grievance Process – Issues Before the Investigation

LCW

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Notice of Allegations

Must provide written notice to the parties:

- Notice of the grievance process
- Presumption that Respondent is not responsible
- Statement that determination occurs at end of grievance process
- Notice of the allegations (date, location if known)
- Sufficient time to prepare before interview
- Right to advisor
- Right to Evidence Review
- Code of conduct provisions re: false statements and false information

34 CFR § 106.45(b)(2)(i)

LCW LIEBERT CASSIDY WHITMORE

Emergency Removal

- Available at any point in grievance process
- Possible after an individualized analysis
- Appropriate when **non-employee** Respondent poses immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment
- Must provide notice to Respondent & appeal
- Can be used to remove from class or campus

34 CFR § 106.44(c)

LCW LIEBERT CASSIDY WHITMORE

Emergency Removal

Considerations

- The particular Respondent and the specific circumstances;
- Whether there is an immediate threat
- Whether the threat is to the physical health or safety of one or more individuals
- Whether the emergency situation specifically arises from the allegations of Title IX sexual harassment.
- Applicability of any disability laws
- Appropriateness of other supportive measures in lieu of removal

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Case Study & Discussion

Carlos was arrested but released after a few days and has returned to school; the criminal proceedings are pending. The Title IX Coordinator considers an emergency removal against Carlos after meeting with Rudy to provide him with supportive measures. Rudy was nervous and appeared to have bruises on his arms and face.

Should the Title IX Coordinator seek an emergency removal against Carlos? Why?

LCW LIEBERT CASSIDY WHITMORE

Administrative Leave

- District has authority to place **employee** Respondents on administrative leave during Title IX grievance process

LCW LIEBERT CASSIDY WHITMORE

Mandatory Dismissal

Mandatory dismissal when:

- Conduct would not constitute sexual harassment;
- Conduct did not occur within the education program or activity; or
- Conduct did not occur against a person in the United States

34 CFR § 106.45(b)(3)(i)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Discretionary Dismissal

Discretionary dismissal when:

- Complainant withdraws complaint;
- Respondent no longer enrolled or employed; or
- Specific circumstances prevent district from gathering sufficient evidence to reach a determination

34 CFR § 106.45(b)(3)(ii)

LCW LIEBERT CASSIDY WHITMORE

Notice of Dismissal

Must provide prompt:

- Simultaneous notice of dismissal to the Parties;
- Include reasons for dismissal; and
- Appeal process

34 CFR §§ 106.45(b)(3)(iii),
106.45(b)(8)(i)

LCW LIEBERT CASSIDY WHITMORE

Appeals

- Must offer both parties an appeal from dismissal of a formal complaint/allegations based on:
 - Procedural irregularity;
 - Newly discovered evidence; or
 - A conflict of interest or bias by Title IX personnel
- May offer appeal to both parties on additional bases

34 CFR §106.45 (b)(8)(i) and (ii)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Role of Advisors

- Purpose: provide assistance and support to Party
- Individual of the party's choosing: family member, friend, an attorney, a neighbor

LCW LIEBERT CASSIDY WHITMORE

Role of Advisors Before Hearing

- Not required before hearing
 - May attend investigative interview(s), participate in evidence review, help Party prepare response to investigative report
- May not obstruct interview or disrupt grievance process
- May require confidentiality agreement

LCW LIEBERT CASSIDY WHITMORE

Retaliation

- Protects everyone who participates from retaliation
 - Such as intimidation, threats, coercion, or discrimination
- Cannot take action against anyone for refusing to participate
 - No threats of discipline for insubordination
- No additional charges for code of conduct violations that arise out of the same circumstances as Title IX report or complaint

34 CFR § 106.71

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Confidentiality

- The District must keep confidential the identity of
 - The Complainant, Respondent, or witness
 - Except as may be permitted by the FERPA; or
 - As required by law

LCW LIEBERT CASSIDY WHITMORE

Case Study: Employee Discipline

Carlos refuses to cooperate with the investigator. The Title IX Coordinator learns that Carlos, who is a talented mechanic, is now working as an adjunct at the college.

Can the District terminate Carlos as an adjunct immediately because of the pending complaint?

Yes, No, or Maybe

LCW LIEBERT CASSIDY WHITMORE

Case Study: Employee Discipline

Carlos refuses to cooperate with the investigator. The Title IX Coordinator learns that Carlos, who is a talented mechanic, is now working as an adjunct at the college.

Can the District discipline Carlos for insubordination?

Yes, No, or Maybe

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny

Case Study: Title IX Obligations

In March, campus security cameras captured an attack in a college parking structure. The Title IX Coordinator recognizes Carlos as the attacker. It appears from the footage that Carlos pulled Maria, a student from his auto mechanics class, into his car and sexually assaulted her. Maria refuses to speak to the Title IX Coordinator.

LCW LIEBERT CASSIDY WHITMORE

Discussion

Does this trigger the District's Title IX obligations?

Because Maria refuses to file a complaint, what should the Title IX Coordinator do?

If a report is filed, should the Title IX Coordinator consolidate the complaints involving Maria and Rudy?

LCW LIEBERT CASSIDY WHITMORE

Case Study: Dismissals

Carlos drops out of school and quits his adjunct job. The Title IX Coordinator learns Carlos has applied to teach at another community college district. The District must end the investigation since Carlos has left the District.

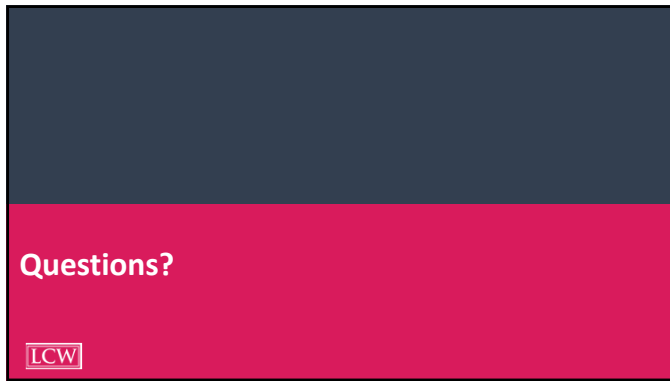
True, False, or Maybe

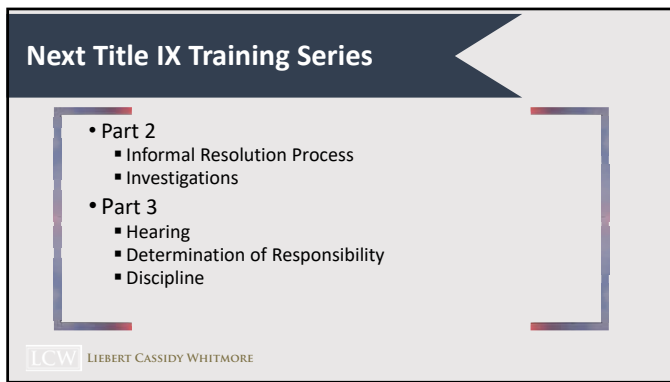
LCW LIEBERT CASSIDY WHITMORE

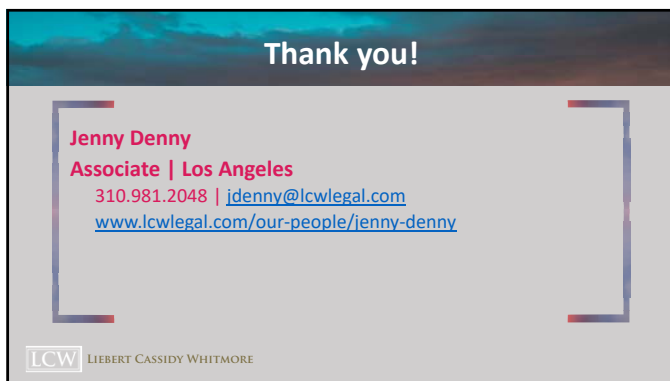
Title IX Training Series Part 1: Title IX Obligations Before the Investigation

Liebert Cassidy Whitmore | May 14, 2021

Presented By: Jenny Denny







Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series:
Informal Resolutions and
Investigations

Presented By: Jenny Denny

Agenda

- Changing Landscape
- Pre-Investigation Matters
- Training Reminders
- Impartiality
- Informal Resolution Process
- Investigations
 - Notice
 - Evidence Review
 - Investigative reports

LCW LIEBERT CASSIDY WHITMORE

Changes Are Coming...

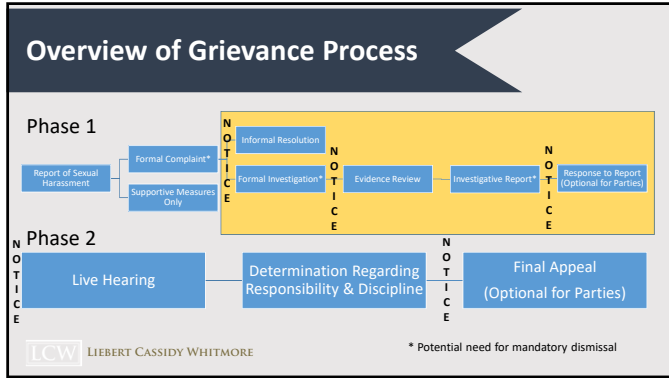
- April 2021: OCR announced comprehensive review
 - Forthcoming: Q&A guidance, formal rulemaking process
- Now scheduled: public hearing
 - June 7-11, 2021

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny



The Grievance Process – Issues Before the Investigation

Notice of Allegations

Must provide written notice to the parties:

- Notice of the allegations with sufficient detail (identity of the parties, conduct allegedly constituting sexual harassment, date, location if known)
- Notice of the grievance process, including the availability of an informal resolution process
- Presumption that Respondent is not responsible
- Statement that determination occurs at end of grievance process

34 CFR § 106.45(b)(2)(i)

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Notice of Allegations

Must provide written notice to the parties:

- Sufficient time to prepare before interview
- Right to Advisor
- Right to evidence review
- Code of conduct provisions re: false statements and false information
- **Reissue notice if new allegations are added**

34 CFR § 106.45(b)(2)(i)

LCW LIEBERT CASSIDY WHITMORE

Timeline

- Must be reasonably prompt
- Can delay for good cause
 - Must provide written notice to the Parties

34 CFR § 106.45(b)(1)(v)

LCW LIEBERT CASSIDY WHITMORE

Required Training

- Coordinators
- **Individuals Facilitating Informal Resolution**
- **Investigators**
- Decisions Makers

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Required Training Components

- Definition of sexual harassment
- Scope of education program or activity
- **How to conduct investigation and prepare investigative report**
- How to implement grievance process
 - Hearings
 - Appeals
 - Informal resolution process
- **How to serve impartially**
- Decision-makers: Hearing technology and issues of relevance

LCW LIEBERT CASSIDY WHITMORE

Required Training Components

Additionally, facilitators must also be trained on how to conduct informal resolution processes

"It is not the intent of the Department in referring to resolution processes ... as 'informal' to suggest that personnel who facilitate such processes need not have robust training and independence.."

85 CFR § 30405

LCW LIEBERT CASSIDY WHITMORE

Impartiality

LCW

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Lack Impartiality = Consequences

- Conflict of interest or bias may be grounds for appeal - 34 CFR § 106.45(b)(8)(i)(C)
- Creates lack of confidence in integrity of the process

LCW LIEBERT CASSIDY WHITMORE

Impartiality

Title IX Coordinator, **Investigator**, Decision-Maker, and **Individual Facilitating an Informal Resolution Process** must be free of:

- Conflict of interest or
- Bias

34 CFR § 106.45(b)(1)(iii)

LCW LIEBERT CASSIDY WHITMORE

Impartiality

Separation of Roles

Title IX Coordinator or Investigator cannot serve as a Decision Maker:

- Prevents influence on decision
- Avoids consideration of non-relevant information obtained/gleaned as a Coordinator or Investigator

See Preamble 30370

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Impartiality

- Serve impartially
- Without
 - Pre-judgement of the allegations
 - Conflicts of Interest
 - Bias

LCW LIEBERT CASSIDY WHITMORE

Impartiality

Free of Conflicts of Interests

- Actual or perceived conflict between personal interest and professional title IX duties
- Personal interests should not be allowed to enter the decision-making process

LCW LIEBERT CASSIDY WHITMORE

Impartiality

Treating all parties impartially without ... bias against an individual's sex, race, ethnicity, sexual orientation, gender, identity, disability or immigration status, financial ability, or other characteristic. Any person can be a complainant, and any person can be a respondent, and every individual is entitled to impartial, unbiased treatment regardless of personal characteristics.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Impartiality

Biases

- Personal feelings or attitudes that impact our actions
- Ideas, beliefs, and assumptions
- Often based on stereotypes and without full awareness
- Past experiences and current perceptions drive our perspectives and our actions
- Under stress or pressure, we gravitate even more strongly toward our unconscious bias

LCW LIEBERT CASSIDY WHITMORE

Impartiality

Types of Biases

- Anchoring
 - The tendency to rely too heavily on one piece of information when making decisions
 - Fixation on initial information and fail to adjust to later information
- Bandwagon effect
 - The tendency to do (or believe) things because many other people do (or believe) the same thing

LCW LIEBERT CASSIDY WHITMORE

Impartiality

Types of Biases

- Bias Blind Spot
 - The tendency to see oneself as less biased than other people, or to identify more bias in another than in oneself
- Confirmation
 - The tendency to confirm what we already believe is true
 - Influences

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Impartiality

Types of Biases

- Affinity/Similar to Me Effect
 - The tendency to have an affinity or get along better with people similar to you

LCW LIEBERT CASSIDY WHITMORE

Impartiality

- Be self-aware and mindful
- Assess actual or perceived conflicts of interest
- Recognize possible biases
- Use conflict checks form, self-report conflicts or bias, or recuse

LCW LIEBERT CASSIDY WHITMORE

Case Study

At a hearing, the Respondent claims the investigator had a conflict of interest because the investigator's wife works for the Complainant's father. The Respondent also claims the investigator was biased because the investigator did not speak to witnesses the Respondent identified. The investigator testifies that the surveillance video captured the entire incident and that is why he did not see the need to speak to witnesses Respondent identified who were not at the scene.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Discussion

Additionally, the investigator testifies that he could not possibly be biased because he regularly teaches and writes about equity and inclusion.

Are there issues of conflict of interest or bias in this investigation? How can these be avoided? What are the possible consequences of bias or conflicts of interest?

LCW LIEBERT CASSIDY WHITMORE

The Grievance Process – Informal Resolution

LCW

Informal Resolution

- Does not involve a full investigation and adjudication
- Possible at any time prior to determination regarding responsibility
- Cannot use for student complaint against employee

34 CFR § 106.45(b)(9)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Informal Resolution

Must provide notice of:

- Allegations
- Rules/requirements of the informal resolution process
- Circumstances under which the IRP precludes Parties from resuming formal complaint arising from the same facts
- Consequences of participating
- Records that will be maintained or could be shared
- Right to withdraw from process

34 CFR § 106.45(b)(9)

LCW LIEBERT CASSIDY WHITMORE

Informal Resolution

- Only after Formal Complaint
- Not required, totally voluntary
 - May not be appropriate for all formal complaints
 - Title IX Coordinator should determine if Informal Resolution is appropriate
 - Requires both Parties' voluntary, written consent
- Title IX Coordinator should not be facilitator
- Understand pros and cons

LCW LIEBERT CASSIDY WHITMORE

Determining Whether to Offer Informal Resolution

- Considerations
 - Outcome of an individualized safety and risk analysis
 - Nature of the alleged conduct
 - Whether allegations involve multiple victims
 - Whether allegations involve a pattern of conduct
 - Other evidence-informed factors indicative of increased risk to campus safety
 - Whether the circumstances warrant the Title IX Coordinator signing a formal complaint

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Examples of Informal Resolution Processes

- Mediation
 - Participant-focused, structured dialogue facilitated by a neutral and impartial mediator
 - Parties' needs and interests are explored without judgement to reach a mutually agreeable solution

LCW LIEBERT CASSIDY WHITMORE

Examples of Informal Resolution Processes

- Arbitration
 - Parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments
 - Different from mediation because the arbitrator has authority to make a decision about the dispute

LCW LIEBERT CASSIDY WHITMORE

Examples of Informal Resolution Processes

- Restorative Justice
 - Focuses on harm caused rather than the guilt or responsibility of the offender
 - In conference, Parties and a District representative discuss their perspectives, feelings, needs, and expectations of each
 - Intent is to acknowledge and understand the harm caused and work collaboratively to identify ways to repair that harm and restore community

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Examples of Informal Resolution Processes

Restorative Justice Resources:

- University of San Diego Center for Restorative Justice: PRISM - Promoting Restorative Initiatives for Sexual Misconduct on College Campuses
 - <https://www.sandiego.edu/soles/restorative-justice/campus-prism.php>

LCW LIEBERT CASSIDY WHITMORE

Examples of Informal Resolutions

Informal Resolution Agreements can include:

- Academic accommodations
- Apology or agreement to repair harm
- Education/Training
- Mutual restrictions/stay away orders
- Counseling/Treatment
- Other sanctions or discipline
 - Restrictions on participation in district's programs
 - Voluntary resignation, withdrawal, accepting lesser discipline

LCW LIEBERT CASSIDY WHITMORE

Case Study: Informal Resolution

Carlos reports to the Title IX Coordinator that he broke up with Rudy last semester. At the time of the breakup, Rudy was a student at the District, but he is no longer enrolled. Carlos recently realized Rudy was stalking him on campus and filed a formal complaint. Rudy is now an adjunct employee at the District. The District initiated its grievance process. Can the District offer the Parties informal resolution?

Yes, No, or Maybe?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Answer

No

- Cannot offer informal resolution process to resolve student complaints against employees
- Although Rudy was a previously a student, he is now only an employee. His employment relationship is why the District still has the ability to respond to Carlos's formal complaint
 - If Rudy was not a current student or an employee, the District has discretion to dismiss the Title IX complaint

LCW LIEBERT CASSIDY WHITMORE

Case Study: Informal Resolution of Sexual Assault Complaints

Nikhil alleges he was sexually assaulted by his ex-girlfriend, Valeria, while he was asleep. Valeria and Nikhil are both in the District's nursing program. Valeria allegedly took photos of Nikhil during the incident and posted them on social media when Nikhil broke up with her. Nikhil reported that Valeria stalked him on campus and at the hospital where they work. Nikhil claims Valeria also retaliated against him by showing the photo to doctors at the hospital after he complained. Would you recommend the District offer the Parties an opportunity for informal resolution?

Yes, No, or Maybe?

LCW LIEBERT CASSIDY WHITMORE

Answer

Maybe

- Offering informal resolution is never required
- Previous OCR guidance stated mediation is not appropriate (even on a voluntary basis) in cases involving allegations of sexual assault
 - This guidance is withdrawn, but still a best practice

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Case Study: Informal Resolution

The District began an investigation into a student's formal complaint of sexual harassment against another student. The investigator completed her interviews of the Complainant and two other witnesses. The Complainant called the Title IX Coordinator and stated she wants to engage in the informal resolution process. **Did the Complainant waive her right to participate in the informal resolution process by completing the investigative interview?**

Yes, No, or Maybe?

LCW LIEBERT CASSIDY WHITMORE

Answer

No

- A district may facilitate an informal resolution process at any time prior to reaching a determination regarding responsibility

LCW LIEBERT CASSIDY WHITMORE

Case Study: Minors on Campus

A minor student in the dual enrollment program filed a formal complaint against another minor student in the same program. The Parties are interested in informal resolution. The Complainant agrees to participate in informal resolution with the following caveat: she does not want her parents to find out about her formal complaint or the informal resolution because she was cutting class and drinking during the incident.

Discussion: Should the informal resolution process be offered to these students? What are things to consider?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Possible Outcomes of Informal Resolution

- No agreement reached
 - District begins/resumes formal complaint investigation
- Formal resolution process agreement reached
 - Parties sign agreement (parents if minors are involved)
 - District closes complaint
 - Parties cannot appeal resolution
 - District will not re-instate formal complaint process

LCW LIEBERT CASSIDY WHITMORE

Possible Outcomes of Informal Resolution

- Party withdraws from informal resolution process
 - Document withdrawal in writing; and
 - Resume/begin investigation

LCW LIEBERT CASSIDY WHITMORE

Case Study: Withdrawal

Before the Parties signed the resolution agreement, the Complainant called the Title IX Coordinator and requested to proceed with a formal investigation. Can the District enforce the resolution agreement?

Yes, No, or Maybe?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Answer

No

- Informal resolution must be voluntary
- Parties can withdraw from informal resolution at any time prior to signing the resolution agreement

LCW LIEBERT CASSIDY WHITMORE

Case Study: Documentation

After the Parties resolved a complaint of sexual harassment through informal resolution and fully executed the resolution agreement, the Title IX Coordinator closed the file. Should the Title IX Coordinator shred the original formal complaint and the informal resolution facilitator's notes since the matter was resolved?

Yes, No, Maybe?

LCW LIEBERT CASSIDY WHITMORE

Answer

No

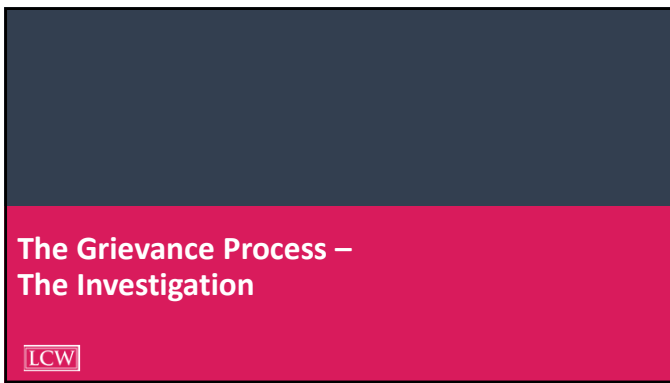
- Any information received is documented; including investigation record
- Records kept for 7 years
- If an informal resolution agreement is achieved, it will be documented
 - It will not be forwarded for further review
 - Any future misbehavior will be independently addressed regardless of previous informal resolution agreements

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

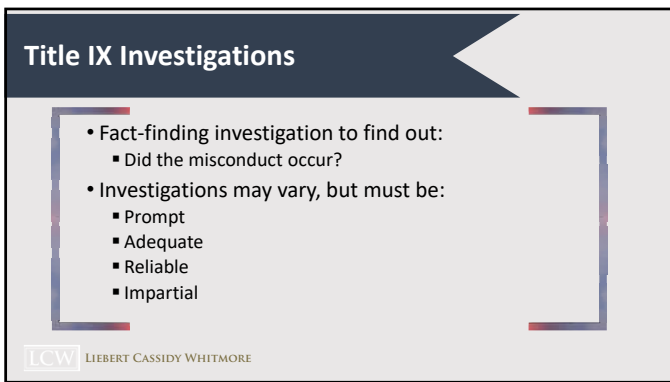
Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny



The Grievance Process –
The Investigation

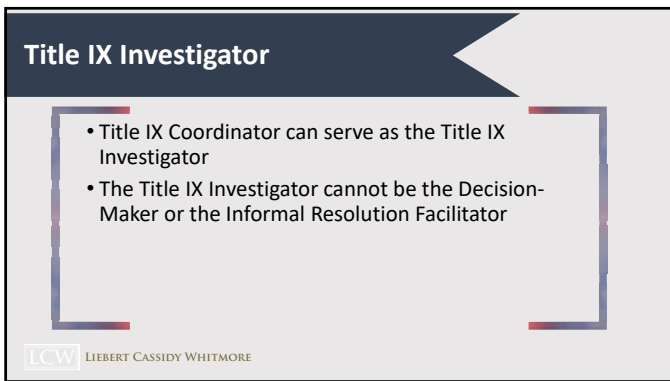
LCW



Title IX Investigations

- Fact-finding investigation to find out:
 - Did the misconduct occur?
- Investigations may vary, but must be:
 - Prompt
 - Adequate
 - Reliable
 - Impartial

LCW LIEBERT CASSIDY WHITMORE



Title IX Investigator

- Title IX Coordinator can serve as the Title IX Investigator
- The Title IX Investigator cannot be the Decision-Maker or the Informal Resolution Facilitator

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

The Investigator

The investigator must:

- Be free of biases and conflicts of interest
- Conduct the investigation– gather inculpatory and exculpatory evidence
- Be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Write the report

LCW LIEBERT CASSIDY WHITMORE

The Investigation

- Inculpatory evidence tends to support a determination that the respondent's *is* responsible for alleged conduct; evidence that tends to establish guilt
- Exculpatory evidence tends to support a determination that the respondent *is not* responsible for the alleged conduct; evidence that tends to exonerate

LCW LIEBERT CASSIDY WHITMORE

The Investigation

- Parties have right to discuss allegations, gather evidence, identify witnesses/evidence
- District can present evidence
 - “[T]he Department recognizes that the recipient is not a party to the proceeding, but this does not prevent the recipient from presenting evidence to the decision-maker, who must then objectively evaluate relevant evidence...”

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Standard of Evidence

- Title IX regulations require “preponderance of the evidence” or “clear and convincing evidence standard” 34 CFR § 106.45(b)(7)(i)
- California law requires “preponderance of the evidence” Ed. Code, § 67386
 - It is more likely than not that the fact occurred

LCW LIEBERT CASSIDY WHITMORE

Credibility Determinations

Investigator may include credibility assessment but not determination of responsibility

- If an investigator’s credibility determination is actually a determination of responsibility, it violates the regulations

LCW LIEBERT CASSIDY WHITMORE

Assess Witness Credibility – DFEH Guide’s Factors

1. Inherent plausibility
2. Motive to lie
3. Corroboration
4. Extent an individual was able to perceive, recollect or communicate about the matter
5. Evidence of dishonesty

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

**Assess Witness Credibility –
DFEH Guide’s Factors**

- 6. Habit/consistency
- 7. Inconsistent statements
- 8. Manner of testimony
- 9. Demeanor

LCW LIEBERT CASSIDY WHITMORE

Evaluating the Evidence

- Report must fairly summarize relevant evidence
- The report may include recommended findings or conclusions
- Decision-maker cannot give deference to recommended findings
- Decision-maker has obligation to objectively evaluate relevant evidence

Preamble at p. 30308

LCW LIEBERT CASSIDY WHITMORE

Relevance

- Not defined in regulations
- Evidence having any tendency in reason to prove or disprove any allegation at issue (Cal. Evid. Code CFR § 210)
- Can rely on logic, common sense, experience or science

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Relevance Considerations

Does the evidence:

- Indicate bias on the part of a witness
- Corroborate an allegation
- Provide motive/justification for an allegation
- Provide witness leads
- Provide evidence that might exonerate accused

LCW LIEBERT CASSIDY WHITMORE

Relevance of Privileged Information

The District cannot use, seek disclose, or consider legally privileged information unless the party has waived the privilege voluntarily and in writing

- Attorney/Client, Marital, other privileges
34 CFR § 106.45(b)(1)(x)
- Doctor/Patient/Therapist (Medical Records)
34 CFR § 106.45(b)(5)(i)

Info deemed not relevant per September 4, 2020, Q&A Guidance

LCW LIEBERT CASSIDY WHITMORE

Relevance of Sexual History

- Questions and evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant
- Unless
 - Questions/evidence offered to prove someone other than Respondent committed the alleged conduct; or
 - Questions/evidence concern specific incidents of the Complainant's prior sexual behavior with respect to Respondent and offered to prove consent
34 CFR § 106.45(b)(6)(i)-(ii)
- But, Ed Code section 67386, consent can be revoked at any time, past relationship by itself does not indicate consent

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Consent

- Affirmative consent standard (Ed. Code § 67386)
 - Affirmative, conscious, and voluntary agreement to engage in sexual activity

LCW LIEBERT CASSIDY WHITMORE

Relevancy Determinations

Initial steps for determining relevancy of evidence in Title IX Sex Harassment Complaint Process

- Step 1: Review the evidence being offered
- Step 2: Consider the allegations
- Step 3: Ask yourself whether the evidence being offered has the potential to prove/exonerate/explain or disprove an incident under investigation

LCW LIEBERT CASSIDY WHITMORE

Case Study

The mother of a 16-year-old student Complainant provides the investigator with medical records and a written waiver and release to use the records, to show the student told the campus medical center staff about the sex assault and later about depression and anxiety from the alleged incident. The student Complainant objects.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Yes, No, or Maybe

Can the investigator consider this information?

Not in California. In California, minors aged 12+ have the legal right to control their medical records. The investigator should only consider the medical records with the Complainant's consent in this case.

LCW LIEBERT CASSIDY WHITMORE

Evidence Review

Complainant and Respondent:

- At least 10 days time
- Right to inspect and review evidence *directly related to the allegations (note this is different from relevance)*
- Right to submit written response to evidence
- Investigator must consider response before completing report

34 CFR §106.45 (b)(5)(vi)

LCW LIEBERT CASSIDY WHITMORE

Case Study

After reviewing the evidence, a Respondent's advisor, who is a lawyer, requests that the investigator interview an expert—a medical doctor, who will provide his opinion that medication taken by the Complainant affects memory.

Are parties allowed to produce expert witnesses to provide evidence?

Yes, No, or Maybe

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Yes, No, Maybe

Yes

- District must provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

34 CFR §106.45(b)(5)(ii)

LCW LIEBERT CASSIDY WHITMORE

Investigative Report

- Introduction / statement of scope of investigation
- Methodology and persons interviewed (taped?)
- Chronology: factual and procedural steps (complaint, notices, interviews)
- Summarize allegations
- Factual findings (depends on policy)
- Relevant evidence
- Credibility assessments (depends on policy) but never determinations of fault
- Summarize policies allegedly violated
- List attachments

LCW LIEBERT CASSIDY WHITMORE

Investigative Report

- Must provide final investigative report to Parties at least 10 days prior to hearing
- Parties must have opportunity to review and provide written response

34 CFR §106.45 (b)(5)(vi) and (vii)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

How parties may raise bias or other challenges to report:

Report on its face reveals that investigation was not thorough, neutral, or fair :

- Key witness identified not interviewed
- Key document provided not reviewed
- Key questions not asked
- Findings don't seem supported by evidence

LCW LIEBERT CASSIDY WHITMORE

Breakout Room Discussion

LCW

Case Study for Discussion

Gregory, a student volunteer in the Performing Arts Division, reports that he has been in a relationship with the Division Chair, Gina. According to Gregory, Gina threatened him by stating that if he ends the relationship or tells HR, she would post several compromising pictures she took of him on the Internet.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Case Study for Discussion

Gregory says Gina made this threat when he was volunteering as an usher at the college's production of Goldilocks and that she was yelling at the time. He reported that two other student volunteers, Tracy and Morgan, were nearby when Gina made this threat. Gregory files a formal complaint.

LCW LIEBERT CASSIDY WHITMORE

Case Study for Discussion

1. Does this trigger the District's Title IX obligations? Why?
2. Should the District offer informal resolution? Why?
3. Should the District investigate? Why?
4. If the District initiates an investigation, what do you investigate?
 - a. Who should be interviewed?
 - b. List three examples of relevant evidence and irrelevant evidence
5. Must the District share the evidence collected? Why?

LCW LIEBERT CASSIDY WHITMORE

Questions?

LCW

Title IX Training Series Part 2: Informal Resolutions and Investigations

Liebert Cassidy Whitmore | June 2, 2021

Presented By: Jenny Denny

Next Title IX Training Series

- Part 3
 - Hearings
 - Determinations of Responsibility
 - Discipline

LCW LIEBERT CASSIDY WHITMORE

Thank you!

Jenny Denny
Associate | Los Angeles
310.981.2048 | jdenny@lcwlegal.com
www.lcwlegal.com/our-people/jenny-denny

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Presented By:
Pilar Morin & Jenny Denny

Future Changes to Title IX

- April 2021: OCR announced comprehensive review
 - Foreshadowed Q&A guidance, formal rulemaking process
- June 2021: OCR
 - Conducted virtual public hearings and collected written comments
 - Issued Notice of Interpretation that Title IX protects individuals from discrimination based on sexual orientation and gender identity
 - Notified the Office of Management and Budget of intent to publish new proposed Title IX regulations in May 2022

LCW LIEBERT CASSIDY WHITMORE

Agenda

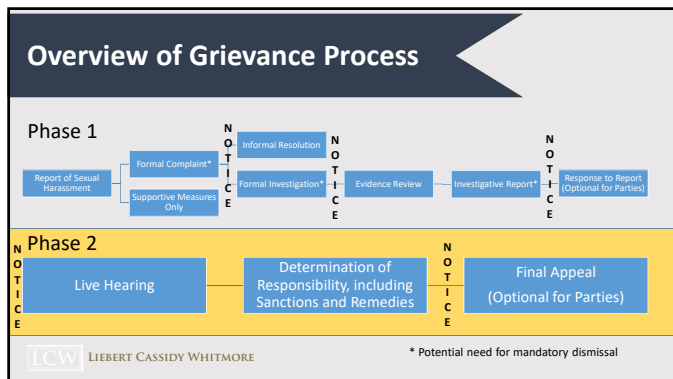
- Hearing
 - Notice
 - Format and Procedures
 - Considering Evidence
 - Preparation
 - Testimony and Questioning
- Determination Regarding Responsibility
 - Findings and Conclusions
 - Sanctions (Discipline) and Remedial Measures
- Appeals

LCW LIEBERT CASSIDY WHITMORE

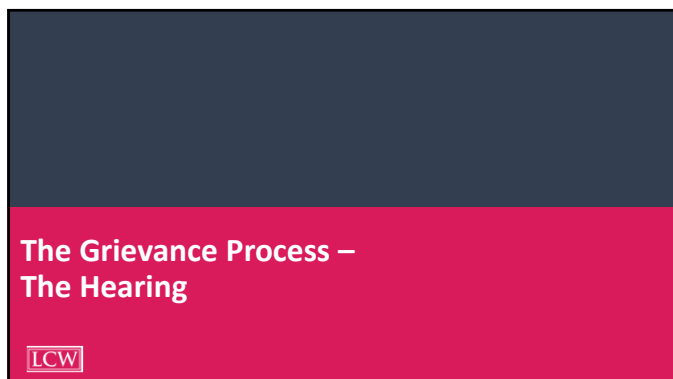
Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny







Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Hearing

- Opportunity for Parties appear before a decision maker to respond to the evidence gathered during the investigation
- Neither Party may waive the right to a live hearing
 - Can choose whether to participate in the hearing and whether to answer cross-examination questions
- Must presume Respondent is not responsible for alleged conduct

LCW LIEBERT CASSIDY WHITMORE

Case Study -No, Yes, Maybe

The decision-maker is aware that the investigator is very experienced and highly respected. The investigator made recommended findings in her report. Can the decision maker give the report deference in reaching a decision?

LCW LIEBERT CASSIDY WHITMORE

Notice of Hearing

- Must provide Parties written notice of date, time, location, participants, and purpose of hearing
 - With sufficient time for Party to prepare

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Case Study – Right to Hearing No, Yes, Maybe

After the District provided the Parties notice of the hearing, the employee Respondent contacted the Decision-Maker and stated he accepts responsibility and wants to bypass the hearing in order to expedite the disciplinary decision. Because the Respondent admitted responsibility, can the Decision-Maker issue the determination regarding responsibility without the hearing?

LCW LIEBERT CASSIDY WHITMORE

Advisor

- Only the advisor can conduct cross examine, directly, orally and in real time
- Must assign an advisor even if the party is absent

LCW LIEBERT CASSIDY WHITMORE

Role of Decision-Maker

- Conduct hearing
 - May ask Parties and witnesses questions
- Must objectively evaluate all relevant evidence
 - Including inculpatory and exculpatory evidence
 - No credibility determinations based on status as Complainant, Respondent, or witness
- Must independently reach a determination regarding responsibility
 - Without giving deference to the investigative report

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Responsibilities of Decision-Maker

- Must ensure hearing process is impartial, objective, unbiased, neutral, and independent
- Cannot have conflict of interest or bias
 - Must be independent from Title IX Coordinator and Investigator
 - No conflicts of interest with any Party or Advisor
- Can be one person or panel, internal or external

LCW LIEBERT CASSIDY WHITMORE

Case Study – Yes, No, Maybe

The Title IX Coordinator attends the hearing to serve as a hearing facilitator. She will assist in bringing witnesses into the room, running the hearing technology, and enforcing decorum rules. Is this a violation of the Title IX regulations?

LCW LIEBERT CASSIDY WHITMORE

Case Study – Yes, No, Maybe

The District policies provide for a panel of decisions-makers to reach a determination of responsibility. During the hearing, a panel member turns to the Title IX Coordinator, who is facilitating the hearing, to ask the Title IX Coordinator for her opinion of the relevance of a document. Is this a problem?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Case Study – Responsibilities of Decision-Maker

If a Decision-Maker has questions about the grievance process and needs clarification about an issue raised by a Party during the Evidence Review, the Decision-Maker can consult all of the following resources, EXCEPT:

- A. Board Policies and Administrative Procedures
- B. Training Materials
- C. Title IX Coordinator
- D. Investigative Report
- E. Panel attorney

LCW LIEBERT CASSIDY WHITMORE

Format of Hearing

- Live hearing with all Parties physically present in the same geographic location or virtual live hearing
 - Must be able to see and hear each other in real time
- Must create audio or audiovisual recording, or transcript, of any live hearing
 - Must make it available to Parties for inspection and review

LCW LIEBERT CASSIDY WHITMORE

Hearing Procedure

- May adopt rules of procedure, such as:
 - Whether Parties may offer opening or closing statements
 - Process for making relevance objections to questions and evidence
 - Whether Party/Advisor may discuss relevance determination with Decision-Maker during hearing
 - Reasonable time limitations on a hearing

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Sample Hearing Procedures

1. Introduction and Overview of Hearing Procedure
2. Opening Statements
3. Testimony and Questioning
 - a. Direct questioning by Decision-Maker
 - b. Direct examination
 - c. Cross examination
4. Closing Statements

LCW LIEBERT CASSIDY WHITMORE

Hearing Decorum

- May adopt rules of order or decorum, for example:
 - Only participants to the hearing may speak, and then only when recognized by the Decision-Maker.
 - All individuals must address remarks, arguments, or objections to the Decision-Maker, and not to the opposing Advisor or the opposing Party.
 - Individuals are to avoid making disparaging or acrimonious personal remarks toward any other participant at the hearing.
 - When a question is pending, Advisors will not, through objections or otherwise, coach the person testifying, or suggest answers.

LCW LIEBERT CASSIDY WHITMORE

Hearing Decorum

- May adopt rules of order or decorum, for example:
 - Individuals must refer to all persons, including witnesses, other Advisors, and the Parties by their surnames and not by their first or given names unless directed otherwise by the Decision-Maker.
 - Advisors and parties shall be punctual and shall timely notify the Decision-Maker when they or their witnesses will be late.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Evidence at Hearing

- The District must make the information reviewed during Evidence Review available at hearing
- Only relevant evidence is admissible
 - Evidence that tends to prove or disprove any disputed fact material to the allegations
 - Includes evidence relevant to credibility of Party or witness

LCW LIEBERT CASSIDY WHITMORE

Relevance

- Not defined in regulations
- Evidence having any tendency in reason to prove or disprove any allegation at issue (Cal. Evid. Code CFR § 210)
- Can rely on logic, common sense, experience or science
- Includes both inculpatory and exculpatory evidence

LCW LIEBERT CASSIDY WHITMORE

Relevance Considerations

Does the evidence:

- Indicate bias on the part of a witness
- Corroborate an allegation
- Provide motive or opportunity
- Provide witness leads
- Provide evidence that might exonerate accused

Direct v. Circumstantial Evidence

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Evidence at Hearing

- Cannot exclude relevant evidence because the evidence may be unduly prejudicial, concern prior or subsequent bad acts, or constitute character evidence
 - Instead: objectively evaluate relevant evidence by analyzing whether evidence warrants a high or low level of weight or credibility

LCW LIEBERT CASSIDY WHITMORE

Evidence at Hearing

Prior or subsequent bad acts may establish:

- motive
- opportunity,
- intent, preparation
- plan
- knowledge
- identity
- lack of mistake
- pattern

LCW LIEBERT CASSIDY WHITMORE

Evidence at Hearing – Privileged Information

- Cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally-recognized privilege
 - Unless person holding privilege provides voluntary, written consent to waive the privilege

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Evidence at Hearing – Privileged Information

California privileges:

- Attorney-Client Privilege
- Privilege Not to Testify Against Spouse
- Privilege for Confidential Marital Communications
- Physician-Patient Privilege
- Psychotherapist-Patient Privilege
- Clergy Penitent Privileges
- Sexual Assault Counselor-Victim Privilege
- Domestic Violence Counselor-Victim Privilege
- Human Trafficking Caseworker-Victim Privilege

LCW LIEBERT CASSIDY WHITMORE

Case Study

In the hallway on the way to the hearing, the respondent admits to his wife that he sexually assaulted the complainant. Several people are in the hallway, including the Complainant's advisor, and hear the comments. The Complainant's advisor asks the Respondent about the comments to his wife during cross examination.

LCW LIEBERT CASSIDY WHITMORE

Case Study Con't True, False, or Maybe

The comments the Respondent made to his wife in the hall are not admissible because they are privileged confidential marital communications?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Evidence at Hearing

- Police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent it contains statements of Party/witness who has not submitted to cross-examination
- May consider video evidence of incident even if Party refuses to participate in cross examination
 - But not “statements” on video.

LCW LIEBERT CASSIDY WHITMORE

Witnesses

- Must provide Parties equal opportunity to present witnesses
 - Includes fact and expert witnesses
 - Includes inculpatory and exculpatory evidence
- Witnesses not required to participate in hearing
- Written statements cannot be relied upon in absence of witness

LCW LIEBERT CASSIDY WHITMORE

Role of Advisor at Hearing

- Can be anyone
 - Not required to be attorney
 - If Party chooses Advisor who is also witness, Decision-Maker must assess how that impacts his/her/their credibility as witness
- May represent Party during entire hearing
 - May conduct direct examination
 - Required to conduct cross examination
 - If party doesn't have Advisor or Advisor fails to appear, district must provide

34 CFR 106.45(b)(6)(i)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Case Study – Problems with Advisor

The District sent the required notice of the hearing to the Parties and their Advisors. The Complainant's advisor is an attorney he hired independently. On the day of the scheduled hearing, the Complainant's Attorney Advisor failed to appear. Neither the Complainant nor the Decision-Maker can get in contact with the Advisor. What should the Decision-Maker do?

LCW LIEBERT CASSIDY WHITMORE

Case Study – Problems with Advisor

- The Decision-Maker should:
- A. Postpone the hearing
 - B. Appoint a new Advisor so the hearing can proceed as scheduled
 - C. Allow the Party to represent himself
 - D. A or B
 - E. None of the above

LCW LIEBERT CASSIDY WHITMORE

Decision-Maker Hearing Preparation

1. Review
 - Notice of allegations
 - Title IX Policy and Procedure
 - Investigative materials (report and evidence)
2. Prepare list of information needed
 - What do you need to know? Why?
 - What question gets you this information?
 - Which witness has this information?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Decision-Maker Hearing Preparation

- Consider pre-hearing meeting with Parties and their Advisors
 - Clarify purpose and logistics of hearing
 - Establish allegations and evidence that will be considered
 - Review rights and responsibilities of Parties & Advisors
 - Confirm attendance and whether accommodations are needed
- No Ex Parte Communications: Decision-Makers should not meet or communicate with parties separately

LCW LIEBERT CASSIDY WHITMORE

Decision-Maker Hearing Preparation

- Dedicate time for preparation
- Dress professionally
- Arrive early and prepared
- Bring note-taking materials
- Dedicate time to preparing determination regarding responsibility

LCW LIEBERT CASSIDY WHITMORE

Conducting the Hearing – Cross Examination

- Cannot *require* prior submission of written questions
- Decision-Maker must explain and should document why question excluded
- If a Party or witness disagrees on relevance ruling they have a choice to:
 - Abide by Decision-Maker's determination and answer question;
 - or
 - Refuse to answer question deemed relevant

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Rape Shield

- Questions or evidence of Complainant's sexual behavior are irrelevant *unless*
 - offered to prove that someone other than the respondent committed the conduct alleged or
 - concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(ii).
- If consent not at issue, all questions/evidence about Complainant's sexual behavior are irrelevant

LCW LIEBERT CASSIDY WHITMORE

Refusal to Participate or Answer

- Decision-Maker cannot draw inference based solely on Party's or witness's absence or refusal to answer question
- If a party or witness does not submit to cross-examination,
 - Cannot rely on his/her/their statement

LCW LIEBERT CASSIDY WHITMORE

Case Study

The Decision-Maker asked the Respondent a question that the Respondent refuses to answer. Must the Decision-Maker disregard all the testimony provided by the respondent?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Decision-Maker Questioning

- Eliminate missing information
- Use open-ended questions
- Don't ask compound questions
- Don't suggest an answer in question
- Listen carefully
- Clarify unclear terms or slang
- Remember, you are a neutral

LCW LIEBERT CASSIDY WHITMORE

Case Study – Excluding Statements

A Respondent secretly video taped a sexual encounter he had with Complainant. Complainant was unaware of the taping. Respondent shared the video via text with his friends. Complainant learned of the video and filed a formal complaint. The District conducted a Title IX investigation and held a hearing.

LCW LIEBERT CASSIDY WHITMORE

Case Study – Excluding Statements

Respondent refused to participate in the hearing because he heard the Decision-Maker cannot rely on his statements if he does not submit to cross examination. Respondent believes the video will be excluded as a statement since he will not appear.

Is Matt correct?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Testimony from Complainant’s classmate about what Complainant told him about the alleged stalking. (This witness was not interviewed by the investigator.)

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Pictures of Complainant’s physical injuries after alleged sexual assault.

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Attendance records of Complainant indicating Complainant was not in class on day of some alleged stalking incidents.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Complainant’s medical records submitted by Respondent’s advisor over Complainant’s objection.

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
In a case where the Respondent refuses to submit to cross examination, Police report about the sexual assault submitted by Complainant’s advisor over Respondent’s advisor’s objection.

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Security footage from College academic building where Complainant had class

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Respondent’s personnel file stored in the District’s HR office.

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
In a case where the Respondent refuses to submit to cross examination, copies of Respondent’s social media posts that depict sexual violence submitted by Complainant’s advisor.

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Written witness statements from District students who claim the Complainant is jealous of Respondent and wants Respondent to face consequences for breaking up with him.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Text messages between Respondent and Complainant suggesting a consensual sexual relationship existed between the Parties.

LCW LIEBERT CASSIDY WHITMORE

**Group Practice –
Considering Evidence at Hearing**

- Would you allow or exclude the following offered during the hearing?
Question from Respondent’s advisor to Complainant asking whether Complainant has been in a sexual relationship with another District employee since the alleged assault by Respondent.

LCW LIEBERT CASSIDY WHITMORE

**The Grievance Process –
The Determination Regarding Responsibility**

LCW

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Timing

- Must issue written determination after the hearing within timeline identified by District

LCW LIEBERT CASSIDY WHITMORE

Standard of Evidence

- Use preponderance of the evidence standard
 - After considering all the evidence, decide whether it is more likely than not that sexual harassment occurred
 - Note: Title IX regulations require “preponderance of the evidence” or “clear and convincing evidence standard” but California law requires “preponderance of the evidence”

LCW LIEBERT CASSIDY WHITMORE

Content of Determination Regarding Responsibility

To both parties simultaneously:

- Identify allegations;
- Procedural steps;
- Findings of fact;
- Conclusions;
- Statement and rationale for each determination regarding responsibility;
- Statement regarding whether district will provide remedies for Complainant;
- Appeal procedures for Complainants and Respondents.

34 CFR § 106.45 (b)(7)(ii)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Reminder: Definition of Sexual Harassment

- Quid pro quo: An *employee* conditioning an aid, benefit, or service on complainant's participation in unwelcome sexual conduct
- Unwelcome conduct so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking

34 CFR § 106.30

LCW LIEBERT CASSIDY WHITMORE

Consent

- Affirmative consent standard (Ed. Code § 67386)
 - Affirmative, conscious, and voluntary agreement to engage in sexual activity

LCW LIEBERT CASSIDY WHITMORE

Evaluating Consent

1. Did the Respondent use force before/during sexual interaction?
2. Was Complainant incapacitated?
 - a. Did Respondent know, or
 - b. Should Respondent have known that Complainant was incapacitated (e.g., by alcohol, other drugs, sleep, etc.)
3. What words or actions by Complainant gave Respondent consent for specific sexual activity?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Evaluation of Consent

- Consent must be on going
- Consent must be informed, voluntary, and mutual.
- Can be withdrawn at any time.
- No consent if there is force, coercion, intimidation, threats, or duress.
- Silence or absence of resistance does not imply consent.
- Consent to one type of sexual activity does not equal consent to other types of activity.
- Prior consent or sexual relations do not mean consent for future relations.
- Consent cannot be provided by an unconscious, intoxicated or sleeping person who cannot communicate or understand nature or extent of the sexual activity

LCW LIEBERT CASSIDY WHITMORE

Evaluating Consent

Definition of consent does not vary based upon participant's sex, sexual orientation, gender identity, or gender expression

LCW LIEBERT CASSIDY WHITMORE

Evaluating Force

- Types of Force
 - Physical violence
 - Threats
 - Intimidation
 - Coercion

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Evaluating Incapacity

- Individuals cannot make rational, reasonable decisions because they lack the capacity to give knowing consent
 - Alcohol or drugs
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious
- Very fact-dependent

LCW LIEBERT CASSIDY WHITMORE

Evaluating Incapacity

- Also consider
 - Did Respondent know Complainant previously?
 - Was Complainant acting very differently from previous similar situations?
 - Review what the Respondent observed the Complainant consume
 - Whether Respondent provided any alcohol/drugs to Complainant
 - Other relevant behavioral cues

LCW LIEBERT CASSIDY WHITMORE

Written Determination Regarding Responsibility

- Not required to address evaluation of contradictory facts, exculpatory evidence, "all evidence" presented at hearing, or how credibility assessments reached
 - Must evaluate admissible, relevant evidence for weight or credibility
- While preamble says not required do include what is necessary to support the findings

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Weighing Credibility

- Decision-Maker decides degree to which inaccuracy, inconsistency, or implausibility in Party's/witness's response affects determination
- Not based solely on observing demeanor
 - Also consider other factors

LCW LIEBERT CASSIDY WHITMORE

Weighing Credibility

- Demeanor and manner while testifying
- Character of testimony
- Extent of capacity to perceive, to recollect, or communicate
- Extent of opportunity to perceive any matter about which he testifies.
- Character for honesty or veracity or their opposites.
- Existence or nonexistence of a bias, interest, or other motive.

LCW LIEBERT CASSIDY WHITMORE

Weighing Credibility

- Statement previously made that is consistent with testimony at the hearing
- Statement made that is inconsistent with testimony at the hearing.
- Existence or nonexistence of any fact testified to by him.
- Attitude toward the action at issue
- Admission of untruthfulness.

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Determination Regarding Responsibility

- Becomes final either on:
 - Date district provides Parties with written determination of result of appeal, if Parties file appeal; or
 - Date on which appeal would not longer be timely if Parties do not file an appeal

LCW LIEBERT CASSIDY WHITMORE

**The Grievance Process –
Sanctions and Remedial Measures**

LCW

Sanctions and Remedies

Where a determination of responsibility for sexual harassment has been made against the respondent, the District has discretion regarding disciplinary sanctions but must also provide remedies to the complainant designed to restore or preserve equal access to the District's education program or activity.

§ 106.45(b)(1)(i)

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Remedies

Non-exhaustive list of remedies for Complainants:

- Providing escort
- Providing academic support services, such as tutoring
- Ensuring Complainant and Respondent do not attend the same classes or work in the same work area
- Providing counseling services or medical services or referrals
- Arranging for Complainant to re-take course or withdraw from class without penalty
- Reviewing any disciplinary actions taken against Complainant

LCW LIEBERT CASSIDY WHITMORE

Sanctions

Non-exhaustive list of sanctions for Respondents:

- Written or verbal reprimand
- Required training or counseling,
- Non-academic probation (students)
- Suspension
- Expulsion (student)
- Reduction in pay
- Demotion
- Termination of employment

LCW LIEBERT CASSIDY WHITMORE

Employee Discipline

- Follow Title IX grievance policy to reach a determination regarding responsibility and suggested discipline
- Recommend a sanction and refer for discipline determination:
 - Per Collective Bargaining Agreement (classified)
 - Per Education Code
- Remember cannot retry the facts determined by grievance procedures

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

The Grievance Process – The Appeal



Appeals

- Must offer both parties an appeal from determination regarding responsibility based on:
 - Procedural irregularity;
 - Newly discovered evidence; or
 - A conflict of interest or bias by Title IX personnel.
- May offer appeal to both parties on additional bases.

34 CFR §106.45 (b)(8)(i) and (ii)



Appeal Procedure

- Party must state grounds for appeal and statement of facts supporting those grounds
- If either Party submits appeal, district must
 - Notify other Party in writing
 - Allow non-appealing Party opportunity to submit written statement in support of, or challenging, outcome



Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Appeal Outcome

- Appeal Decision-Maker must issue written decision on whether to grant or deny appeal and rationale for decision
 - Must provide written decision simultaneously to Parties
- Appeal Decision-Maker may extend deadlines
 - Party may seek extension by submitting written request
 - Appeal Decision-Maker will respond to Party's request within 48 hours in writing and inform Parties simultaneously whether extension granted

LCW LIEBERT CASSIDY WHITMORE

Group Practice - Appeals

After the District issued the Determination, the Respondent sent the following email to the Title IX Coordinator appealing the determination of responsibility:

- *My advisor was not able to appear at the hearing because he was admitted to the hospital the morning of the hearing. My advisor spent a lot of time preparing. When he did not show, the Decision-Maker appointed another advisor to me.*

LCW LIEBERT CASSIDY WHITMORE

Group Practice - Appeals

This new advisor asked questions and represented me at the I don't think the advisor represented me very well, which contributed to the Decision-Maker finding that I was responsible for the alleged conduct.

- *I want the District to overturn the Determination of Responsibility because I think the outcome would have been different if my original advisor had represented me.*

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny

Group Practice - Appeals

- What is the Respondent appealing?
 - A. The District's dismissal of a formal complaint of harassment based on sex under Title IX.
 - B. The District's dismissal of an allegation contained in a formal complaint of harassment based on sex under Title IX.
 - C. The District's determination of responsibility of harassment based on sex under Title IX.
 - D. None of the above.

LCW LIEBERT CASSIDY WHITMORE

Group Practice - Appeals

- What are the grounds for the Respondent's appeal?
 - A. A procedural irregularity affected the outcome.
 - B. New evidence that could affect the outcome but was not reasonably available at the time the District's determination regarding responsibility or dismissal was made.
 - C. A Title IX personnel member had a conflict of interest or bias that affected the outcome.
 - D. None of the above.

LCW LIEBERT CASSIDY WHITMORE

Group Practice - Appeals

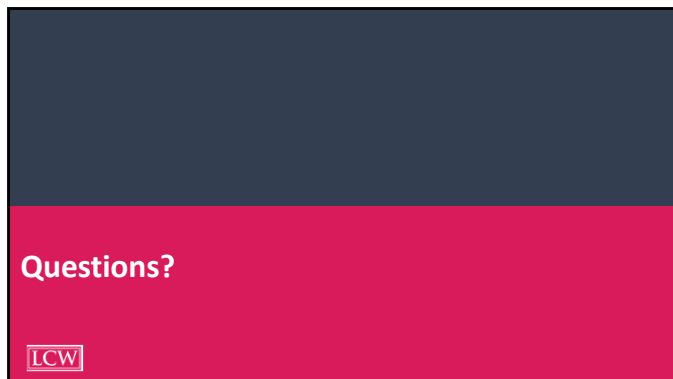
- Does the Respondent have the right to appeal?
 - A. Yes
 - B. No
- Why?

LCW LIEBERT CASSIDY WHITMORE

Title IX Training Series Part 3: Hearings and Determination of Responsibility

Liebert Cassidy Whitmore | July 20, 2021

Presented By: Pilar Morin & Jenny Denny



Questions?

LCW



Thank You!

<p>Pilar Morin Partner Los Angeles 310.981.2004 pmorin@lcwlegal.com www.lcwlegal.com/our-people/pilar-morin</p>	<p>Jenny Denny Associate Los Angeles 310.981.2048 jdenny@lcwlegal.com www.lcwlegal.com/our-people/jenny-denny</p>
--	--

LCW LIEBERT CASSIDY WHITMORE
