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# Title IX

# Investigator Training

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**2021 Title IX Training Academy**  
**Module 2 | Part 1**  
**Nov. 17, 2021**

**Presented by:**

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**aa/rr** Title IX

## Module 2: Title IX Investigator Training

**Title IX Training Academy**  
November 17, 2021 | 8:00 a.m. – 10:30 a.m. (Part 1)  
November 18, 2021 | 3:00 p.m. – 5:30 p.m. (Part 2)  
*Attendees must attend both sessions*

PRESENTED BY:  
Alexandria M. Davidson, Partner  
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## Agenda

- Definitions for Training
- Review Title IX Investigator Roles
- Introduce the Hypothetical & Investigation Plan
- Plan the Investigation & Prepare for Interviews
- Interviewing Tips
- Weigh the Evidence & Determine Disputed and Undisputed Issues
- Application to Hypothetical



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## Definitions for Training

- Complainant
- Respondent
- Parties
- Witness
- Advisor
- Grievance Process
- Other

## Review Title IX Investigator Roles

### Investigator Role:

- Must be trained, knowledgeable, impartial, unbiased & free from general or specific conflicts of interest
- Reviews formal complaint & interviews parties and witnesses; gathers, reviews & synthesizes evidence
- Assesses relevance, credibility & weight of evidence
- Provides **Draft Report of Evidence** to Complainant/Advisor & Respondent/Advisor for review and comment; investigator revises as needed
- After considering responses, provides **Final Investigative Report** to parties/advisors for review and comment; report includes disputed and undisputed facts & summary of relevant evidence
- Investigator does **not** make decision about whether Respondent has engaged in sexual harassment

## Review Title IX Investigator Roles

- Presume Respondent is *not responsible* for the alleged conduct
- Complainant and Respondent do *not* have the burden of proof or the burden to gather sufficient evidence
- Provide written notice for all interviews with sufficient time for a party to prepare to participate with advisor
- Do not give confidentiality admonishments to Complainant or Respondent; consider advising against tampering with evidence or witnesses
- Provide parties with equal opportunity to present witnesses, including expert witnesses and other inculpatory and exculpatory evidence
- Do not gather privileged information without voluntary, written consent (e.g., physician or psychiatrist records, etc.)

## REVIEW HYPOTHETICAL & INVESTIGATION PLAN

## Promptly Review the Complaint

- Review **Hypothetical Complaint** and **Notice of Allegations**
  1. Who are the **parties**?
  2. Who are potential **witnesses**?
  3. Identify other potential **evidence**?
  4. What general **claims** are asserted or described?
  5. What **policies** are potentially violated?
  6. What **allegations** should you ask questions about?
  7. What's the **chronology**?
- Create an **Investigation Plan**

## PLAN THE INVESTIGATION & PREPARE FOR INTERVIEWS

## Create an Investigation File

- Paper file, binder with tabs, electronic file, etc.
  - Section for Formal Complaint, Supportive Measures, Notice of Allegations, Policies/Regulations, Definitions, etc.
  - Section for Investigation Plan and updates
  - Section for communication with Complainant/Advisor, Respondent/Advisor, Witnesses, Title IX Coordinator
    - Phone/email log
    - Notice of Interview for parties/advisors
    - Notice to extend timelines
  - Section for each party and witness with interview notes, draft witness summary, final witness summary, and list of evidence submitted
- Create a timeline for investigation, calendar important dates, and foresee holidays, office closures, and busy times

## Create a Timeline for the Hypothetical

- Looking at a calendar, assume you have **45 calendar days from October 6, 2020**, to complete your investigation, exchange evidence (10 days), and deliver the Final Investigative Report to the parties and their advisors (if any) to review and provide written responses (10 days)
- Calendar your goals to complete the following tasks:
  - Date to complete all interviews and gather evidence
  - Date to complete witness statements (signed statement process optional)
  - Date to send Draft Report of Evidence to the parties and their advisors
  - Date to send Final Investigative Report to parties and their advisors
  - Date to send Final Investigative Report with attached written responses to Title IX Coordinator & Decision-Maker

## Prepare Interview Environment

- General Location or Platform (school office, county office, district office, Zoom?)
- Waiting Area
- Interview Room
  - Private
  - No distractions
  - Choices
  - Easy access to exit
  - Enough room for more than one advisor
  - Clear visual of interviewee
  - Water, tissues, paper, and pencil
- Exiting considerations

## Prepare Notice of Interview

- Provide written notice of the investigative interview to each **party** with sufficient time for the party to prepare to participate.
  - Query: Will Title IX Coordinator or Investigator prepare and/or send notice?
- The Notice shall include:
  - Date
  - Time
  - Location
  - Participants
  - Purpose
  - A party may bring advisor of choice
- Consider reiterating what evidence to bring, if any

## Prepare Interview Introduction & Advisements

- Sample Introductory **Comments by Investigator**
  - Introduce yourself and your role:
    - Review the complaint and relevant policies
    - Interview witnesses
    - Gather and review relevant and directly related evidence on all sides
    - Ask follow-up questions, as needed
    - Weigh the evidence and determine what is undisputed or in dispute
    - Maintain confidentiality **outside** of the complaint process
    - **For Complainant and Respondent:** Provide the parties and advisors with a Draft Report of Evidence and then a Final Investigative Report which fairly summarizes the relevant evidence, both for review and comment

## Prepare Interview Introduction & Advisements

- Sample **Introductory Instructions** for Parties and Witnesses
  - Listen carefully to questions, answer truthfully, and be forthcoming with relevant information
  - We want evidence in its best, most original form, so do not tamper with any evidence (give examples of tampering)
  - Retaliation is against the law and policy. Please report retaliation to Title IX Coordinator or Supt and do not retaliate against anyone involved in this process
  - **For witnesses only:** Maintain confidentiality about the identities of the parties or witnesses and the information revealed during the interview
  - **For advisors only:** Discuss protocols established by educational institution, such as not answering for a party, not interrupting questions or answers, asking for a break after an answer and before next question, confidentiality, etc.

## Prepare Scope of Questions

- For Complainant, prepare for the interview by outlining subjects to cover and/or questions to ask
  - **Review Hypothetical**
- After interview with Complainant, prepare an outline or list of questions for each Witness based on their likely scope of knowledge
- After interviews with Complainant and Witnesses, prepare an outline of subjects to cover, general questions, **and** specific questions for the Respondent
- Provide Respondent with a full and fair opportunity to respond to all of the allegations
- Prepare specific follow-up questions as needed

## INTERVIEWING TIPS

## Trauma-Informed Interviewing Tips

- Complainant, Respondent, and/or Witnesses may experience some type of discomfort or trauma related to the allegations or involvement in a Title IX complaint and investigation
- Consider the tone of your communications and questions
  - Are you showing respect to all people involved in the investigation?
  - Are you empathetic about the difficulty of this process?
  - Are you compassionate about what it's like to be in this situation?
  - Are you exhibiting patience?
- Investigator's **goal is to objectively and thoroughly gather relevant evidence with a respectful and compassionate demeanor**

## Initial Questions

- After the introduction and advisements, consider asking routine **questions to “warm-up”** and provide an opportunity to observe any baseline communication patterns. Sample questions:
  - What grade/year are you? What are you studying? What class are you missing right now? What are your plans after graduation?
  - What is your job title? How long have you worked in that position? Who is your supervisor? What are your general job responsibilities?

## Narrative Questions

### Explain you have reviewed the Complaint and the NOA

- Tell me what happened on August 21, 2020, with Respondent
  - Allow for a narrative and, generally, do not interrupt
  - Take copious notes and identify areas for follow-up questions
- Acknowledge their story (e.g., “Thank you for explaining this to me.”)
- Explain you will now go back and ask follow-up questions for additional information and/or a better understanding
- Ask all relevant follow-up questions

## Open-ended Questions

- Ask **Who, What, Where, When, Why, and How** questions for **every allegation**, as well as any follow-up questions to understand the alleged incidents
- If there are multiple allegations, consider asking the Complainant to start from the first incident or start with the most recent incident and work in chronological order. *Caveat:* Some witnesses do not recall or think in a chronological fashion; follow witness’s lead
- For each allegation, start broad but circle back for additional details

## Listen Closely & Follow-up

### Example:

- Q: When did it happen? A: Yesterday.
- Q: What time yesterday? A: Fourth period.
- Q: What time of day was that exactly? A: About 11:50 a.m.
- Q: Where did it happen? A: At school.
- Q: Where at school? A: On the yard.
- Q: Where on the yard? A: Right by the hopscotch court.
- Q: Who was there? A: My friends.
- Q: What are your friends' names? A: Quentin and Jeremy.
- Q: What are their last names? A: Quentin James and Jeremy Brown.

## Listen Closely & Follow-up

- When you listen closely, you may notice gaps in the Party's or Witness's statements. Ask follow-up questions to fill in those gaps. Some examples:
  - “**Before I knew it**, Respondent was fondling my breast.”
  - “**Eventually**, Respondent told me what I was supposed to do.”
  - “**After a while**, I knew what Complainant wanted.”
  - “**One thing led to another**, and Respondent touched my private area.”
- Ask questions to elicit additional information

## Listen Closely & Follow-up

- When you hear conclusory language, ask more questions:
  - “***It happens all the time.***”
    - Ask, “How often?”
    - “Over what time period?”
  - “***Sam never made that statement.***”
    - Ask, “How much time do you work together during the day and over the week?”
    - “How long have you been in the same classes?”
    - “Is it possible Sam said something like that?”
  - “***Sam can’t stand me.***”
    - Reply, “Tell me more about that.”
    - “How did you come to know that?”
    - “Can you give me some examples?”

## Do Not Avoid Difficult Questions

- Learn to note and address the following:
  - Repetitive use of “I don’t remember” or “I don’t recall”
  - Evasive, rambling responses
  - Refusals to answer
  - Answers that are self-contradictory or obviously false
- Ask questions about authenticity of electronic evidence
  - Are texts, videos, photos, or screenshots altered?
  - Ask for properties information for photos, date taken, etc.
- May need to explain potential effect of editing their testimony or changing a written witness summary after interview

## Types of Questions for Investigator to Avoid

- Avoid **leading** questions
  - “You felt helpless, didn’t you?”
  - “You wanted to be there, didn’t you?”
  - “They are treating you this way because of your gender and skin color, right?”
- Avoid **negative** questions
  - “You don’t know the password, do you?”
- Avoid **compound** questions
  - “What time did you arrive, and how long were you there?”
- Avoid **vague** questions
  - “Why is that?”

## Summary: How to Get the Most Out of an Interview



## Problem Solving Common Issues

- Unavailable Witness
  - Document attempts to contact; use various methods (e.g., phone message, email, text, etc.)
- Reluctant Witness or Witness Refusal to Participate
  - Acknowledge, answer questions, explain role in process, explain not likely only witness
- Difficult Advisors
  - Remind of protocols
  - Answer or refer questions
  - Give warning
  - Stop interview and notify Title IX Coordinator
- Recover from change in direction of interview
- Capture electronic evidence in best form

## Close the Interview

- Ask closing questions:
  - “Is there anything else you think I **should know**?”
  - “Is there anything else I should have **asked** you?”
- Explain your **follow-up** process:
  - “I may need to ask you follow-up questions at some point during the investigation. How would you like me to contact you?”
  - “Are there any times of the day that are off-limits to call or text you?”
  - “Do you want your advisor present for any further communications?”
- Consider acknowledging the difficulties of this important process, especially if you observed stress during the interview
- **Thank** each and every person for their participation

## Prepare Interview Notes and/or Summaries

- **Review interview notes** as soon as possible
  - Schedule time after each interview to review notes
  - Fill-in abbreviated words & sentences, correct spelling & grammar, clarify vague pronouns, add correct names, note your relevant observations
  - Do not add or embellish information that was not discussed
  - Make a list of any questions missed or areas needing clarification; seek follow-up information
- **OPTIONAL:** Create a typed, double-spaced witness summary for Complainant, each Witness, and Respondent; consider using a format with numbered lines in margin
  - Send Draft Witness Summary to Complainant/Advisor, each Witness, and Respondent/Advisor with directions to review, edit mistakes, sign, and return
  - Keep track of any substantive changes and/or comments

**WEIGH THE EVIDENCE &  
DETERMINE DISPUTED AND  
UNDISPUTED ISSUES**

## Review All of the Evidence Gathered

- Review the formal complaint, NOA, and policies again to refresh your memory of allegations and the policy definitions for the type of sexual harassment allegations
- Review all documents, photos, texts, videos, or other evidence gathered
  - Determine and set aside any evidence provided to you which is irrelevant and will not be considered

## Identify Undisputed and Disputed Issues

- **Common Undisputed Issues**
  - Nature of relationship, age, how met, prior communications
  - Date, general time, location, who was present
  - Sexual or intimate relationship
- **Common Disputed Issues**
  - Sexual activity
  - Consent
  - Force, duress, or threats
  - Incapacitation
  - Intent
  - Words
  - Tone

## Important Definitions Regarding Evidence

- **Direct Evidence**
  - Evidence in the form of testimony from a **witness who actually saw, heard, touched, tasted, or smelled the subject of questioning**. Evidence, which if believed, proves existence of a fact in issue without inference or presumption.
- **Circumstantial Evidence**
  - Testimony which is *not* based on actual personal knowledge or observation of the facts in dispute, but testimony of **other facts from which deductions are drawn, showing indirectly the facts sought to be proved**. Inferences drawn from facts proved.
- **Corroborating Evidence**
  - Evidence **supplementary** to that already given and **tending to strengthen or confirm it**. Additional evidence of a different character to the same point.

## Credibility Factors to Weigh Disputed Evidence

- Actual Knowledge/Opportunity to Observe or not Observe
- Inherently Plausible or Implausible
- Direct or Indirect Corroboration
- Consistent or Inconsistent Statements
- Material Omission or Material Admissions

## APPLICATION TO HYPOTHETICAL

## Undisputed and Disputed Material Evidence

- Review the hypothetical and compare Complainant's version of events (1-7) with Respondent's version of events (A-I)
  - What material information is **not** in dispute or **UNDISPUTED**?
    - Example: The Parties both attend pull-out speech sessions at the same time.
    - Example: The Complainant and Respondent went to the library after school on August 21, 2020, and the Librarian was present when the parties were there.
  - What material information is in dispute or **DISPUTED**?
    - Example: Respondent was flirting vs. Respondent was friendly like a sibling.
    - Example: Respondent chose a table far away from the Librarian to avoid bothering the Librarian vs. Respondent did not want the Librarian to observe/hear them.
  - Create a list of **UNDISPUTED** and **DISPUTED** evidence.....**for Session Two.**

# Question & Answer Session

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# Thank You

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Alexandria Davidson represents California public school districts as general counsel. She has experience with employment-related matters, including certificated and classified employee discipline, reductions of force, certificated layoffs, and collective bargaining agreement interpretation. Ms. Davidson's practice also includes student discipline and general student matters, complaint processes, including Title IX, and well as general governance issues, the California Public Records Act, and the Brown Act. She has represented employers before the Public Employment Relations Board, Department of Fair Employment and Housing, California Department of Education, Office for Civil Rights, and the Office of Administrative Hearings. Ms. Davidson is an experienced trainer, including in FRISK, PROOF, and Title IX.

While attending Chapman University, Ms. Davidson received the CALI Award of Excellence in Client Counseling.

### Firm News

AALRR Announces 2021 Equity and Non-Equity Partners  
01.15.2021

Law Firm Expands Eminent Education Practice with Arrival of New Associates  
04.04.2012

### Events & Speaking Engagements

Ms. Davidson has spoken at CSBA (California School Boards Association) conferences and has conducted PROOF® and FRISK® trainings.

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Education

Investigations

Labor & Employment Law

Litigation

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Student Discipline Academy | Other Means of Correction, Suspension, Expulsion, and Appeals  
At Your Desk, 04.16.2021

### Alerts & Articles

California Department of Education Proposes New Uniform Complaint Procedure Regulations  
04.22.2019

Guidelines and Suggestions to Help Prepare for and Respond to Student Protests  
02.27.2018

Former Administrator Entitled to Salary Placement under Faculty Salary Schedule  
09.14.2016

### Publications

Ms. Davidson contributes to the firm's publications.

### Blog Posts

Sworn Witness Declarations in Student Discipline Cases  
*EdLawConnect Blog*, 05.16.2018

New Data Breach Notification Requirements Now in Effect  
*EdLawConnect Blog*, 01.05.2016

Requesting Accommodation Is a Protected Activity  
*EdLawConnect Blog*, 09.28.2015

Requesting Accommodation Is a Protected Activity  
*Labor & Employment Law Blog*, 09.28.2015

Significant Private Sector Wage and Hour Decision Provides Guidance Regarding Employee Breaks and Meal  
Periods  
*EdLawConnect Blog*, 04.23.2012

Nonreelections and Year-End Performance Evaluations: Now is the Time to Think Ahead  
*EdLawConnect Blog*, 02.01.2012

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Through the power of teamwork, diverse minds can achieve greatness together.

Jacqueline Hang represents California public school districts, community college districts, and county offices of education in all areas of general education law; employment matters such as discrimination, harassment, dismissal, and reasonable accommodation requirements; student discipline issues such as harassment and bullying charges; and First Amendment rights. Ms. Hang conducts workplace investigations for public school districts, and provides legal counsel on matters involving human resources and student services. She is also a member of the firm's Title IX group. In addition, she provides counsel for a full range of legal issues relating to charter schools, including operational compliance review and monitoring, complaint investigations, petitions and appeals, and operating agreements.

During college, she cofounded the Berkeley chapter of the International Justice Mission, a human rights organization. In law school, she received the Outstanding Student Service Senior Award, as well as the Witkin Award for earning the highest grade in Advanced Appellate Advocacy and Global Lawyering Skills II. In addition, she served as President of McGeorge Women's Caucus. Ms. Hang earned extensive recognition for her moot court skills, including being selected for the Order of Barristers and the Moot Court Honors Board, winning the Best Brief Award in the ABA National Appellate Advocacy Competition, and being named Best Advocate in the Regional NYC Bar Association National Competition.

### Community & Professional

- Sacramento County Bar Association, Member
- Asian Pacific Bar Association of Sacramento, Member

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