
Title IX Training – How to Investigate and Make a Decision for K-12 Districts & COEs



December 3, 2024


Session One

Presented by:

Rebeca Quintana, Senior Associate

rebeca.quintana@aalrr.com • (562) 653-3200





Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Title IX Training – How to Investigate and Make a Decision for K-12 Districts & COEs

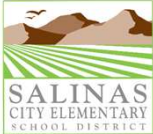
Training Pursuant to 2024 Title IX Regulations
Salinas City Elementary School District


December 3, 2024

SESSION ONE

PRESENTED BY:
Rebeca Quintana, Senior Associate


Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego






Agenda

- Scope & Definitions for Training
- Title IX Investigator/Decision Maker Responsibilities
- Review Hypothetical & Investigation Plan
- Plan the Investigation & Prepare for Interviews
- Interviewing Tips
- Weigh the Evidence & Make a Decision
- Prep Next Session: Application to Hypothetical





1

SCOPE & DEFINITIONS FOR TRAINING

Scope of **Session One**

- Discussion of an educational entity's obligation to address sex discrimination, sex-based harassment, and discrimination related to pregnancy or pregnancy related conditions
- How to serve impartially as an investigator and decision maker, including avoidance of prejudgment of the facts at issue and being free from conflicts of interest and bias
- Discuss the meaning and application of the term "relevant" and the types of impermissible evidence regardless of relevance
- How to conduct a prompt, thorough & impartial investigation

Definitions for Training

- **Complaint**
 - Oral or written request to investigate and receive a determination
- **Complainant + Respondent = Parties**
- **Witness**
- **Sex Discrimination**
 - Disparate treatment on the basis of sex, including pregnancy and pregnancy related conditions
 - Sex-based harassment is a type of sex discrimination
- **Grievance Procedures**

Definitions for Training

- **Pregnancy or related conditions means:**
 - (1) Pregnancy, childbirth, termination of pregnancy, or lactation
 - (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
 - (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

Required Training for Investigators & Decisionmakers

Under Title IX, Investigators & Decisionmakers must be trained in the following areas:

- (i) Employee reporting requirements
- (ii) Response to sex discrimination set forth in §106.44(a)-(k)
- (iii) The District's grievance procedures under §106.45
- (iv) How to serve impartially, without prejudgment, conflicts, and bias
- (v) Know the meaning & application of **relevance** regarding questions and evidence. Recognize **impermissible** evidence regardless of relevance

TITLE IX INVESTIGATOR AND DECISION MAKER RESPONSIBILITIES

Title IX Investigator/Decision Maker Responsibilities

- Treat Complainant and Respondent equitably
- Avoid ***prejudgment*** of the facts at issue
- Presume that Respondent is *not responsible* for the alleged conduct
- Follow reasonably prompt timeframes for the grievance procedures
- Allow for an extension of time on case-by-case basis for good cause, and notify parties of the reason for delay

Title IX Investigator/Decision Maker Responsibilities

- Implement reasonable steps to **protect the privacy of parties and witnesses** *during the grievance process*, but do not restrict the parties' ability to obtain and present evidence, speak to witnesses, consult family, confidential resources/advisors, and/or prepare to participate
- Undertake an objective evaluation of all relevant and permissible evidence

Title IX Investigator/Decision Maker Responsibilities

- Exclude impermissible evidence and questions seeking impermissible evidence, including:
 - Evidence protected under a Federal or State law deemed to be **privileged** unless the privilege has been voluntarily and expressly waived in writing by the person who “is owed” that privilege.
 - A party’s or witness’s **records maintained by a physician, psychologist, or other recognized professional** or paraprofessional in conduction to treatment to the party or witness, unless received voluntary, written consent for use in the District’s grievance procedures

Title IX Investigator/Decision Maker Responsibilities

Also exclude evidence related to the **Complainant’s** sexual interests or prior sexual conduct, **unless** the evidence about the Complainant’s prior sexual conduct is offered to:

- *Prove that someone other than the Respondent committed the alleged conduct, or*
- *The offered evidence relates to specific incidents of the Complainant’s prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment.*

Title IX Investigator/Decision Maker Responsibilities

The fact of **prior consensual sexual conduct** between the Complainant and Respondent **does not by itself demonstrate or imply** that the Complainant **consented** to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

See §106.45(b)(7)(iii)

Title IX Investigator/Decision Maker Responsibilities

- Provide written notice **for all interviews** with sufficient time for a party to prepare to participate with an advisor
- Remind Complainant and/or Respondent not to tamper with any evidence or witnesses
- Provide parties with equal opportunity to present witnesses, including expert witnesses and other inculpatory and exculpatory evidence

Title IX Investigator Roles

**Investigator/
Decision
Maker
Role**

- The investigative duties include conducting an **adequate, reliable & impartial** investigation
- Review the complaint, gather **relevant evidence**, and conduct interviews of the parties & witnesses
- Provide an equal opportunity for the parties to present fact witnesses & other relevant and permissible evidence
- Remember, the burden of proof is on the Investigator/Decision Maker, **not** the parties

aa/rr

14

Overview of Title IX Investigator/Decision Maker Role

**Investigator/
Decision
Maker Role:**

Relevant Evidence per §106.2

- Relevant means “***related to the allegations of sex discrimination under investigation***” under §106.45 and §106.46
- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred (or didn’t occur), and
- Evidence is relevant when it may aid a decisionmaker in determining whether (or not) the alleged sex discrimination occurred.

aa/rr

15

Overview of Title IX Investigator/Decision Maker Role

Investigator/ Decision Maker Role:

- If a party requests an opportunity to access the **relevant evidence**, **provide all parties with equal access** and an ability to assess the relevant, permissible evidence **OR provide an accurate description** of that evidence
- The Investigator/Decision maker must take reasonable steps to **prevent & address any unauthorized disclosure** of information or evidence obtained solely through this process
- The Investigator/Decision Maker implements a process to question parties and witnesses in order to evaluate allegations and assess credibility


Overview of Title IX Investigator/Decision Maker Role

Investigator/ Decision Maker Role:

- After the party review and any questioning process, the investigator/decision maker:
 - Reviews & weighs the relevant, permissible evidence and makes credibility assessments
 - Prepares the written investigative report which includes
 - Summary of procedures used for the investigation and decision-making
 - Factual findings
 - Decision whether sex discrimination occurred based on a preponderance of the evidence standard
 - Rationale for the decision
 - Description of the appeal procedure



Overview of Title IX Investigator/Decision Maker Role

**Investigator/
Decision
Maker Role:**





–The Investigator/Decision Maker then provides the parties with the written report and decision

- Whether sex discrimination occurred based on a preponderance standard
- The rationale for the decision
- A summary of procedures used for the investigation and decision making
- A description of the appeal procedure



18

REVIEW COMPLAINT & CREATE INVESTIGATION PLAN



19

Promptly Review the Complaint

- Review **Complaint** and **Notice of Allegations**
 1. Who are the **parties**?
 2. Who are potential **witnesses**?
 3. Identify other potential **evidence**?
 4. What general or specific **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

- May include a paper file, binder with tabs, electronic file, etc.
 - Section for Supportive Measures, Informal Resolution process/efforts (if any), Written Complaint, Notice of Allegations with Policy Definitions, etc.
 - Section for Investigation Plan and updates and/or amendments to plan
 - Section documenting communication with Complainant/Advisor, Respondent/Advisor, Witnesses, Title IX Coordinator, including but not limited to:
 - Communication log with parties/advisors and others
 - Notice of Interview for parties/advisors
 - Notice to extend timelines
 - Section for each party and witness with interview notes, draft witness summary and/or final witness summary, list of evidence submitted, and summary of relevant evidence
- Create a timeline for investigation, calendar important dates, consider holidays, office closures, and busy times

Prepare Interview Environment

- General Location or Platform (school office, county office, district office, Zoom?)
- Waiting Area (public or discrete? Will parties and witnesses see each other?)
- Interview Location
 - Private
 - Minimal distractions
 - Provide choices
 - Easy access to exit
 - Have enough room advisor(s)
 - Maintain a clear visual of interviewee
 - Consider providing water, tissues, paper, and pencil
- Consider exiting options

Prepare Notice of Interview

- **Best practice is** to provide **written notice of the investigative interview** to each **party** with some time for the party to prepare to participate.
 - Query: Will Title IX Coordinator or the Investigator/Decision Maker prepare and/or send notice?
- The Notice should include:
 - Purpose of interview
 - Date, time, and location
 - Description of Participants
 - Allowed to bring an advisor and/or support person
 - 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
 - Gather and review relevant evidence on all sides
 - Interview complainant, respondent, and witnesses
 - Ask follow-up questions, as needed
 - Weigh the evidence and determine what is undisputed or in dispute
 - District will maintain confidentiality **outside** of the complaint process, but the parties and advisors will review evidence or summary of evidence

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 or alter any evidence (give examples of tampering)
 - Retaliation is against the law and policy. Please report retaliation to Title IX Coordinator 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 support people or family members:** Discuss common protocols, 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.

aa/rr

26

Prepare Scope of Questions

- For Complainant, prepare for the interview by outlining subjects to cover and/or questions to ask
- 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

aa/rr

27

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 30, 2024, 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 and note answers

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

Simple 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: By the student lockers.
- Q: Which section of lockers? A: Senior lockers.
- Q: Who was there? A: My friends.
- Q: What are your friends' names? A: Sawyer and Alex.
- Q: What are their last names? A: Sawyer Smith and Alex Anderson.

Listen Closely & Follow-up

- When you listen closely, you may notice gaps in a 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 impact of changing their testimony or changing a written witness summary after interview

aa/rr

36

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 **confusing** questions
 - “You don’t know why 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?”

aa/rr

37

Summary: How to Get the Most Out of an Interview


Ask the right questions	Be a good, impartial listener and keen observer	Ask witness to demonstrate	Document	Be prepared to assess credibility
<ul style="list-style-type: none">Begin with narrative questionsAsk who, what, where, when, why, and how questionsAsk specific questions to elicit key information	<ul style="list-style-type: none">Notice vague answersAsk follow-up questionsRepeat the questions if witness fails to answerObserve unusual non-verbal cues & ask more questions	<p>If appropriate:</p> <ul style="list-style-type: none">Have witness demonstrate the behaviorTour the scene of the incident with youAsk witness to draw a diagram	<ul style="list-style-type: none">Take thorough notes of questions and answersConsider creating written summaries for parties & witnesses to review & sign, (depending on policy, regs, or procedures)	<p>Make note of:</p> <ul style="list-style-type: none">Consistent and inconsistent statementsCorroborationInherent plausibility or lack thereofRecognize bias, motive to falsify



38

Problem Solving Common Issues

- Unavailable Witness
 - Document attempts to contact; use various methods (e.g., phone message, email, text, etc.)
- Reluctant Witness and/or Witness Refusal to Participate
 - Acknowledge concerns, answer questions, explain roles in process, explain not likely the only witness; provide safe space
- Difficult Advisors
 - Remind of protocols
 - Answer or refer questions
 - Give warning
 - Stop interview and notify Title IX Coordinator
- Remember to recover from change in the direction of interview



39

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 contact you?”
 - “Do you want your advisor present for our future 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 your interview notes** as soon as possible:
 - Schedule time immediately 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

WEIGH THE EVIDENCE & MAKE A DECISION

Overview of Title IX Decisionmaker Role

- The Title IX Decisionmaker may be the same person as the Title IX Coordinator and/or the Title IX investigator.
- As Decisionmaker, review the formal complaint, NOA, and policies to refresh your memory of allegations and the policy definitions for the type of sexual or gender 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**

- Age, how met, prior written communications
- Date, general time, location, who was present
- Existence of current or prior 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.

- **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.

- **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.

Important Definitions Regarding Evidence

- **Disputed** Evidence

- The Complainant's evidence is significantly different than the Respondent's evidence or evidence from the witness(es) is significantly different from the information and evidence provided by Complainant, Respondent, and/or other witnesses.
 - ***In other words, there is no agreement as to what occurred and/or there are no admissions as to what occurred.***
- When there is a dispute in the evidence, the Investigator should ask follow-up questions and document any observed or discovered credibility concerns with the Complainant, Respondent and/or witnesses.

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

Preponderance of the Evidence Standard

The evidence is reviewed, compared and analyzed under a **“preponderance of the evidence”** standard to determine whether the allegations are with or without merit. This means that the evidence on “one side” outweighs, or is more than, the evidence on the “other side.”

- More likely than not; over 50% or more than 50% weighs on one side
- There is a greater than 50% chance that the allegations are accurate
- This is a qualitative, not quantitative, standard
- Qualitative evidence includes interviews with Complainant, Respondent, or witnesses; data or information that is expressed in terms of the meaning of acts or events

Determination of Responsibility

In the 2024 Title IX Regulations, the Decision Maker may be the same person as the Title IX Coordinator or the Investigator. See §106.45(b)

The Investigator/Decision Maker determines whether the Respondent is responsible for a violation of the District’s Title IX policy.

**SCOPE OF NEXT SESSION:
WEIGH EVIDENCE, ASSESS
CREDIBILITY, MAKE FACTUAL
FINDINGS, MAKE POLICY
DETERMINATIONS, & PREPARE A
WRITTEN DECISION**

Question & Answer
Session

Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The firm is not responsible for inadvertent errors that may occur in the publishing process.



© 2024 Atkinson, Andelson, Loya, Ruud & Romo



52

Thank You

For questions or comments, please contact:

{
Rebeca Quintana
(562) 653-3200
rebeca.quintana@aalrr.com
}



Rebeca Quintana

Senior Associate

562-653-3200

Rebeca.Quintana@aalrr.com



Rebeca Quintana represents school districts, community college districts, and county offices of education in all labor and employment law matters, including employee evaluation, discipline and dismissal, reasonable accommodation, and interactive meetings. She also assists with California Public Records Act responses; collective bargaining issues; and defending employers against allegations of discrimination with the California Civil Rights Department and the Equal Employment Opportunity Commission. Ms. Quintana also conducts investigations regarding complaints of discrimination, harassment and retaliation, including Uniform Complaints, Office of Civil Rights, Title 5, and Title IX investigations for both K-12 school districts and higher education institutions. She also serves as Decision-Maker for Title IX complaints.

Ms. Quintana provides trainings for K-12 school districts and higher education institutions on topics including employee sexual harassment prevention (in both English and Spanish), student records, search and seizure, investigation compliance, employee leaves and reasonable accommodations. Prior to becoming an attorney, Ms. Quintana was an elementary school teacher and has used her experience in the classroom to develop a sexual harassment prevention and reporting training for students.

Community & Professional

- Latina Lawyers Bar Association, Member
- Mexican American Bar Association, Member

OFFICE

12800 Center Court Drive
Suite 300
Cerritos, CA 90703

INDUSTRIES

Public Educational Agencies & Institutions

EDUCATION

J.D., Loyola Law School
B.A., University of California, Berkeley

ADMISSIONS

2019, California

PRACTICE AREAS

Board Governance
Contract Enforcement & Collective
Bargaining
Discrimination & Harassment
Education
Education Litigation
Employee Performance & Evaluation

LANGUAGES

Spanish