
Title IX Investigator Training: For K-12 Districts

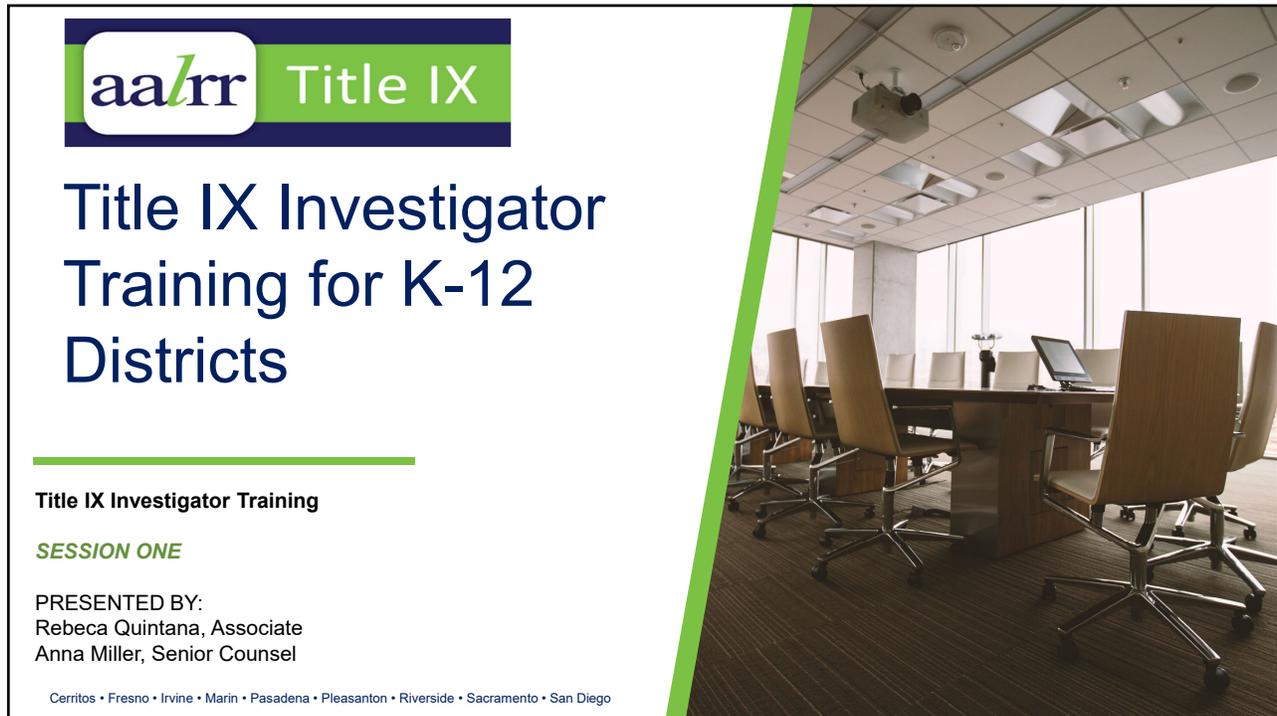
October 16, 2023

Presented by:

Rebeca Quintana, Associate
rdelatorre@aalrr.com • (562) 653-3200

Anna Miller, Senior Counsel
amiller@aalrr.com • (916) 923-1200





aa/r/r Title IX

Title IX Investigator Training for K-12 Districts

Title IX Investigator Training

SESSION ONE

PRESENTED BY:
Rebeca Quintana, Associate
Anna Miller, Senior Counsel

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



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



aa/r/r

1

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

aa/r/r

10

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

aa/r/r

11

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

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.



© 2023 Atkinson, Andelson, Loya, Ruud & Romo

Thank You

For questions or comments, please contact:

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

{ Anna Miller (916) 923-1200 amiller@aalrr.com }



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

Rebeca Quintana

Associate

562-653-3200

rdelatorre@aalrr.com



Rebeca Quintana represents school districts, community college districts, and county offices of education in labor and employment law and in general education matters. Ms. Quintana provides representation, advice, and counsel on a wide variety of matters, including certificated and classified employee discipline and dismissal, employment discrimination and harassment, and Public Records Act compliance.

While in law school, Ms. Quintana was awarded the Dean's Service Award and was part of multiple organizations, including serving as Co-President of La Raza de Loyola, Immigration Law Society and the Public Interest Law Foundation. Ms. Quintana was awarded scholarships from Loyola Law School, the Mexican American Bar Foundation, and the Latina Lawyers Bar Association. Prior to attending law school, she was an elementary school teacher at districts in both Northern and Southern California.

Publications, Events & Speaking Engagements

Ms. Quintana is an active contributor to the firm's alerts and blog posts. Ms. Quintana also presents frequently on various education topics.

Community & Professional

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

OFFICE

12800 Center Court Drive
Suite 300
Cerritos, CA 90703

INDUSTRIES

Educational Agencies

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

Anna J. Miller

Senior Counsel
916-923-1200
amiller@aalrr.com



Anna Miller represents public school districts and California community college districts in all areas of general education law; labor relations; employment matters such as discrimination, dismissal and harassment; student issues such as fraudulent receipt of federally issued financial aid, grade disputes, student discipline and harassment charges; and First Amendment rights. She is active in the firm's Title IX group, conducting Title IX investigations and giving presentations on Title IX issues.

Ms. Miller conducts complex workplace investigations for both public and private sector entities, including universities and colleges, school districts, public safety entities, counties and cities; and provides legal counsel on matters involving safety, campus police and human resources. In addition, she has a wealth of experience representing clients in court, arbitration proceedings and administrative hearings.

Events & Speaking Engagements

Ms. Miller frequently gives presentations about Title IX, employment issues, student matters, and other legal topics.

Community & Professional

- Sacramento County Bar Association, Member
- American Bar Association, Labor and Employment Section, Member
- California Council of School Attorneys, Member
- Women Lawyers of Sacramento, Member

OFFICE

2151 River Plaza Drive
Suite 300
Sacramento, CA 95833

EDUCATION

J.D., University of California, Hastings
College of Law
M.S., University of Wisconsin,
Madison
B.S., Syracuse University

ADMISSIONS

2008, California
U.S. District Courts, Central and
Northern Districts of California

PRACTICE AREAS

Education
Student Discipline
Workplace Training