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# Title IX

# Investigator Training

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**2021 Title IX Training Academy**  
**Module 2 | Part 2**  
**Nov. 18, 2021**

**Presented by:**

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A banner for the Title IX Investigator Training. On the left, there is a logo with 'aa/rr' in a white rounded rectangle on a dark blue background, followed by 'Title IX' in white text on a green background. Below this is the title 'Module 2: Title IX Investigator Training' in large, bold, dark blue font. Underneath the title, the text reads 'Title IX Training Academy' followed by the dates and times for two sessions: 'November 17, 2021 | 8:00 a.m. – 10:30 a.m. (Part 1)' and 'November 18, 2021 | 3:00 p.m. – 5:30 p.m. (Part 2)'. A red line of text states 'Attendees must attend both sessions'. Below this, it says 'PRESENTED BY:' followed by 'Alexandria M. Davidson, Partner' and 'Jacqueline Hang, Senior Associate'. At the bottom left, a list of cities is provided: 'Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego'. On the right side of the banner is a photograph of a modern conference room with several wooden chairs around a table, a laptop, and large windows in the background.

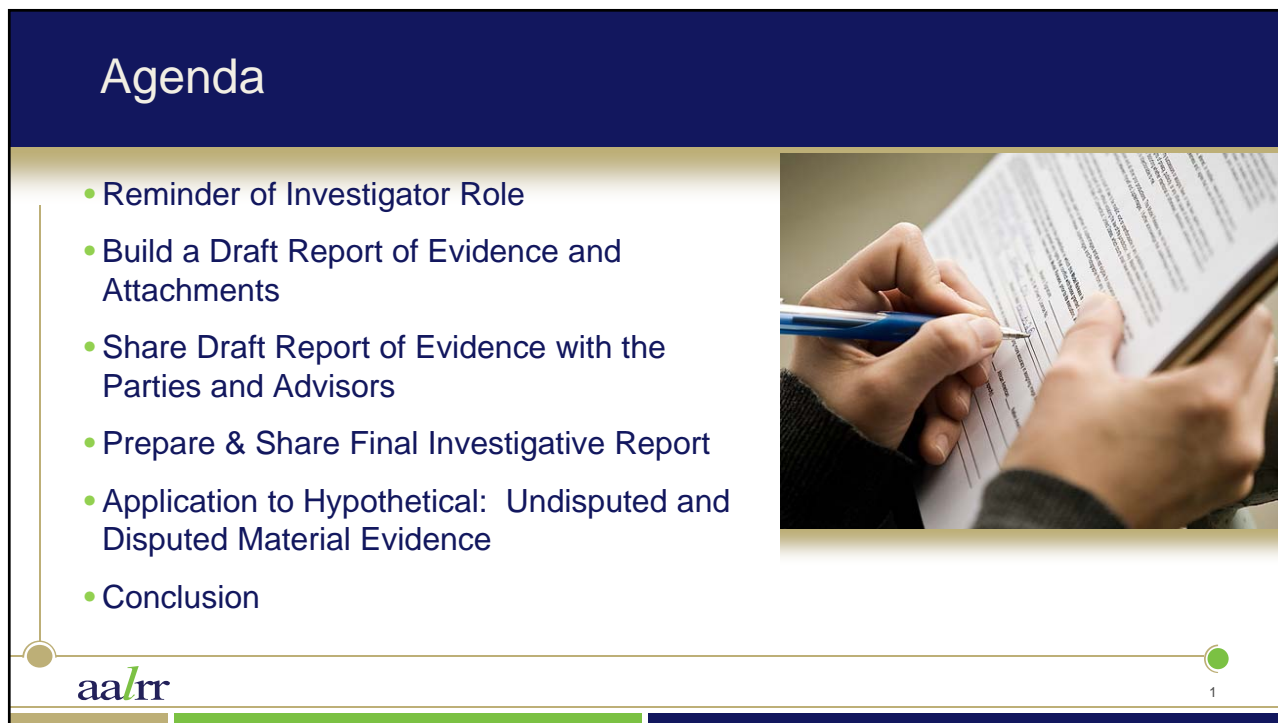
**aa/rr** Title IX

## 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  
Jacqueline Hang, Senior Associate

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

An agenda slide with a dark blue header containing the word 'Agenda' in white. Below the header is a list of seven agenda items, each preceded by a green bullet point. To the right of the list is a photograph showing a person's hands writing on a document with a blue pen. The document appears to be a form or report with various fields and text. At the bottom left of the slide is the 'aa/rr' logo, and at the bottom right is a small green circle with the number '1' inside it.

## Agenda

- Reminder of Investigator Role
- Build a Draft Report of Evidence and Attachments
- Share Draft Report of Evidence with the Parties and Advisors
- Prepare & Share Final Investigative Report
- Application to Hypothetical: Undisputed and Disputed Material Evidence
- Conclusion

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## Reminder: Title IX Investigator Roles

### Investigator Role:

- Prepares and provides a ***Draft Report of Evidence and Attachments*** to Complainant/Advisor & Respondent/Advisor for review and comment; investigator gathers more evidence and/or revises, as needed
- After considering responses, prepares and provides ***Final Investigative Report*** to Parties/Advisors for review and comment; report describes relevant disputed and undisputed material facts
- Investigator does ***not*** make factual findings or decision about whether Respondent has engaged in sexual harassment

## BUILD A DRAFT REPORT OF EVIDENCE AND ATTACHMENTS

## Draft Report of Evidence and Attachments

- Before completing the investigation, provide a ***Draft Report of Evidence and Attachments*** to both parties & advisors via electronic format or a hard copy.
  - Parties shall have an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations, including evidence which the investigator does *not* intend to rely upon, as well as inculpatory and exculpatory evidence regardless of where it was obtained, so the parties can meaningfully respond to the evidence *before* the conclusion of the investigation.
  - Prior to completion of the final investigative report, the parties must have at least 10 days to review the evidence and submit written responses for the investigator's consideration.
- During this review process, the investigator must share any new evidence with the parties and continue the investigation related to new information, if needed.  
*See 34 CFR §106.45(b)(5)(i-vii)*

## Contents of Draft Report of Evidence and Attachments

- Cover Page
- Body of Report with Headings
  - **Brief Introduction**
    - Date of formal complaint
    - Date investigator assigned
    - Name of Complainant and Respondent, with brief summary of allegation(s) against Respondent
    - Summary of scope of the investigation consistent with Notice of Allegations
    - *Type of writing:* Clear, concise, easy to read and understand; this section of the report sets the stage and provides first impression

## Contents of Draft Report of Evidence and Attachments

- Body of Report with Headings, continued
  - **Investigative Background**
    - List witnesses interviewed
      - Note unavailable witnesses & efforts to reach, refusals to participate, or decisions not to interview
      - Note advisor names, if any
      - Note any advisements, protocols, releases, and/or agreements, if any
    - List documents reviewed, released, unavailable, withheld, or not sought
    - List evidence not considered, not released, unavailable, withheld, or not sought
      - Examples may include audio/visual information, previously deleted evidence, or privileged information (e.g., mental health files, SANE evidence, etc.)

## Contents of Draft Report of Evidence & Attachments

- Body of Report with Headings, continued
  - **Investigative Background**
    - Relevant Policies and Procedures/Regulations guiding the investigation
      - Summarize and/or quote relevant parts
    - Evidentiary Standard for the Complaint Process
      - Preponderance of the Evidence or Clear and Convincing Evidence
    - Independence of the Investigator
    - Timing or Duration Issues
    - Other, if needed
    - *Type of Writing*: Demonstrates impartiality, fairness, and thoroughness of your investigation methods & your consideration of issues raised; preemptively addresses various reader questions (parties, decision-maker, appeal officer, etc.)

## Contents of Draft Report of Evidence & Attachments

- Body of Report with Headings, continued
  - **Evidence Regarding Allegations**
    - Complainant's Allegations & Perspective
      - Include interview summary and summary of documents provided by Complainant, if any
    - Respondent's Response & Perspective
      - Include interview summary and summary of documents provided by Respondent, if any
    - Witness Perspectives
      - Include interview summary and summary of documents provided, if any, by each witness

## Contents of Draft Report of Evidence & Attachments

- Body of Report with Headings, continued
  - **Evidence Regarding Allegations**
    - Documents or Other Evidence Gathered
      - Screenshots, photographs, text messages, videos, audio recordings, etc.
      - School calendars, bell schedules, and/or campus maps
      - Student or employee handbooks
    - Closing Statement
      - “This concludes the confidential Draft Report of Evidence”
    - *Type of Writing*: Write in a simple, clear, and “readable” style **without** altering the content or the meaning of the parties’ or witnesses’ testimony; use legal thinking to help identify and summarize the relevant, directly related, and material information for the parties, Decision-Maker, and other readers

## SHARE DRAFT REPORT OF EVIDENCE WITH PARTIES AND ADVISORS

## Consider Consent & Release Agreements

- Consider seeking Student/Parent Permission and Consent for the District to Share Evidence with Parties and Advisors
  - Seek written consent from Complainant for the District to speak with to the Respondent and both party advisors about the specific Title IX complaint process
  - Seek written consent for the District to provide the Parties and Advisors with the opportunity to review the Draft Report of Evidence and Attachments or other confidential documents
  - The goal is to seek permission to review confidential pupil records within the Title IX complaint process and to maintain confidentiality outside of the Title IX complaint process
  - Query: Response to refusals to consent? Deny access to information?

## Consider Consent & Release Agreements

- Consider seeking Agreement from Advisors Not to Disclose Confidential Information Outside of the Title IX Complaint Process
  - Seek agreement with Advisors to maintain the privacy and confidentiality of the records and evidence shared with Advisors during the complaint process
  - Seek agreement with Advisors not to share the records and evidence with other witnesses during the process or with the public outside of the Title IX process. Clarify that Advisors cannot use the records or evidence for purposes not explicitly authorized by the agreement
  - The District may restrict the role of any Advisor who does not respect the sensitive and confidential nature of the complaint process or who fails to abide by the District's privacy expectations; apply restrictions equitably

## Consider Redaction, Initials, or Pseudonyms

- Another tool to help protect confidentiality is to provide the Draft Report of Evidence and Attachments with:
  - Use redacted names
  - Use initials instead of full names
  - Use pseudonyms (i.e., Complainant, Respondent, Witness 1, Witness 2, etc.)
- Provide a “key” to the Parties and Advisors via a different delivery method to reduce risk of public disclosure



## Consider Logistics of Electronically Sharing Evidence

- Sharing the Draft Report of Evidence and Attachments Electronically
  - The goal is to allow the review of evidence with tools to maximize the confidentiality of the information and minimize the ability to share the confidential information or documents with people other than advisors
  - Consult IT staff about electronic options available within your organization
  - Electronic options may include, but are not limited to:
    - Dropbox
    - Google Drive
    - Adobe
    - One Hub
    - Box
    - Lock Lizard
    - One Drive

## Consider Logistics of Physically Sharing Evidence

- Sharing a Physical Copy of the Draft Report of Evidence and Attachments
  - The goal is to provide a physical review of evidence while maximizing confidentiality and minimizing the ability to share confidential information or documents with people other than advisors
  - Provide physical documents for review on-site during arranged times
  - Locations may include conference room, empty classroom, after hours in library, or other office space
- Allow multiple opportunities and lengths of time for review
- Retrieve the physical documents after each review, and provide the same physical documents for additional reviews

## Impact of Sharing Draft Report of Evidence

- During the review the evidence, the Parties or Advisors may:
  - Notice missing information
  - Review evidence that elicits an additional response, triggers a memory, helps identify other relevant documents or additional witnesses, and/or identifies additional questions for witnesses
  - Identify and understand the evidence that will **not** be relied upon during the complaint process
  - Seek informal resolution process before the determination
  - Identify potential investigator bias, conflict of interest, or lack of impartiality
- Investigator should report any issues to the Title IX Coordinator, as appropriate

**PREPARE & SHARE FINAL  
INVESTIGATIVE REPORT**

## Final Investigative Report - Overview

- Prepare a **Final Investigative Report** that **fairly summarizes the relevant evidence**
  - Relevant evidence includes the **who, what, where, when, why, and how** information for each **material** allegation within the scope of the investigation
  - Relevant evidence *may* also include pointing out the weight of the evidence related to consistency/inconsistency, corroboration/lack of corroboration, plausibility/improbability, opportunity/lack of opportunity to observe, and material omissions or admissions
- The Final Investigative Report helps the Decision-Maker understand the relevant evidence in order to help the Parties engage in written cross-examination and to ultimately make factual findings & a decision

## Contents of Final Investigative Report

- Similar Organization of Draft Report and duplication
- Amend Title of Cover Page
- Mostly the Same Headings as the Draft Report
  - **Introduction**
  - **Investigative Background**
    - Update the Investigative Background to include the Party's feedback and any new evidence
  - **Evidence Regarding Allegations**
    - Update the Evidence Section with any new evidence obtained by the Parties or Witnesses
  - **Fairly Summarize the Relevant Evidence for the Parties and Decision-Maker**
  - **Identify Undisputed and Disputed Material Facts**
    - Mention Investigator's observations about the weight of the evidence

## Share Final Investigative Report with Parties

- Provide the **Final Investigative Report** to each Party and the Party's Advisor(s) in an electronic format or hard copy for review and written response at least 10 days prior to the time of determination of responsibility by the Decision-Maker
- Investigator reviews written responses, attaches the written responses to the report, and delivers the Final Investigative Report to the Title IX Coordinator, Decision-Maker, and the Parties
- Unless the Decision-Maker has procedural questions or minor requests for additional information from the Investigator, the investigation phase of the Title IX complaint process is complete
- The Investigator could be called as a witness in a hearing, an appeal, or for a student or employee discipline hearing

## Application: Undisputed and Disputed Material Evidence

- 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.
  - **Discuss Audience Identification of Undisputed and Disputed Material Facts**

## Conclusion: Seek Assistance When Needed

- The new Title IX regulations and the Office for Civil Rights' commentary on the regulations include extensive, complex, and legalistic principles
- When in doubt, consider seeking:
  - Additional training opportunities
  - Advice from legal counsel
  - Opportunities to shadow an experienced investigator, or
  - Legal counsel review of your Draft Report of Evidence or your Final Investigative Report
  - Outside, trained professionals to investigate for your educational entity

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.



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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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Contract Enforcement &  
Collective Bargaining

Education

Investigations

Labor & Employment Law

Litigation

## Alexandria M. Davidson

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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



## Jacqueline D. Hang

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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
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