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



Session Two

October 18, 2024

Presented by:

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

Training Pursuant to 2024 Title IX Regulations
Capistrano Unified School District

October 18, 2024

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





Agenda

- Brief Overview of Session One & Goals for Session Two & Mock Investigation Report
- Discuss a Questioning Process
- Weigh the Relevant Evidence
 - Make Factual Findings
 - Make Policy Determinations
- Prepare a Written Decision for the Parties
- Discuss the Hypothetical Report



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QUESTIONING PARTIES AND WITNESSES

Questioning Parties and Witnesses

A District must provide a process that enables the Decision Maker to question parties and witnesses to adequately assess a Complainant, Respondent, and/or Witness credibility to the extent that credibility is ***both*** in dispute ***and*** relevant to evaluating ***one or more*** allegations of sex discrimination.

Questions Process with the Parties

Guidelines for Questions

- Questions should not be repetitive
- Questions should be clear
- Avoid compound questions
- Avoid questions with difficult words
- Avoid argumentative questions
- Consider questions requested by one or both Parties

**WEIGH THE RELEVANT
EVIDENCE**

Determination of Responsibility

Under 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.

The Standard of Proof to weigh the evidence is the Preponderance of the Evidence Standard

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 standard evaluates whether the evidence on “one side” outweighs, or is more than, the evidence on the “other side.” For example:

- 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

Informal Resolution Process

Investigator/ Decision Maker Role

REMINDER

The Parties may ask for an Informal Resolution process right before you make your decision

If so, coordinate with the Title IX Coordinator to implement that process

Weigh the Evidence & Make a Decision

Investigator/ Decision Maker Role:

- Once the investigation is complete, a questioning process has been implemented with the Parties, and the Parties have not reached an Informal Resolution, review the applicable policy definitions, and make a Decision within the Investigation Report
- The Decision must address whether there is a preponderance of evidence that the alleged conduct occurred, and if so, whether the substantiated conduct is prohibited under Title IX

Weigh the Evidence & Make a Decision

Investigator/ Decision Maker Role:

– Prepare a separate written determination to provide to the parties that includes the following:

- Findings of fact
- Policy conclusions, and
- Rationale to explain the weight of the relevant evidence and the decision of responsibility or no responsibility
- If applicable, recommend sanctions for Respondent & remedies for Complainant
- Include appeal rights for the Complainant & Respondent

Discuss *Hypothetical* Investigative Report

- Tips for what to evaluate in the Investigative Report:
 - Compare the evidence from Complainant and Respondent
 - Pay attention to **timing** of statements (e.g., What's in the NOA vs. the Formal Complaint? When Respondent know of allegations?)
 - Pay attention to **content** of statements (e.g., vague, offering too much or too little information, full or partial denial, conditional denial - "I would never")
 - Pay attention to where they **disagree** about what happened
 - Pay attention to what makes one more **credible** than the other
 - Credible: The person offers reasonable grounds for being believed
 - You must articulate your credibility observations in a deliberate, systematic, and objective process (e.g., look at corroboration; consistency/inconsistency; admissions against interest; plausibility; motive to lie/falsify, etc.)

Discuss *Hypothetical* Investigative Report

- How would you weigh the evidence and determine whether Respondent was flirty or friendly with Complainant before the August 21 incidents?
 - If you find that Respondent was flirty, write factual findings to demonstrate the flirting.
 - If you find the Respondent was friendly in a non-sexual way, write factual findings to demonstrate the non-sexual friendliness.
 - Your factual findings should include who, what, where, when, why & how of what happened that was flirty and/or friendly.
 - Explain why you made that finding; what was your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

Discuss *Hypothetical* Investigation Report

- Review the evidence surrounding the touching of the knee and determine if the touch was based on “sex.”
- Review the evidence related to Respondent touching the Complainant’s groin area and determine whether that touching occurred.
 - If you find that Respondent touched Complainant’s groin, determine if the touch was sexual in nature **and** if Complainant permitted the touch **and** if the touch was for the purpose of sexual gratification.
- Write factual findings about the touching of the knee and whether or not the Respondent touched the Complainant’s groin for sexual gratification.
- Explain why you made that finding; what was your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

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.

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