

Title IX Investigator Training for K-12 Districts & COEs

2022 Title IX Training Academy Module 2 (Session 1)

October 10, 2022

Presented by:

Alexandria Davidson, Partner adavidson@aalrr.com • (949) 453-4260

Mellissa Gallegos, Senior Associate mgallegos@aalrr.com • (562) 653-3200

Jacqueline Hang, Senior Associate jhang@aalrr.com • (916) 923-1200







Module 2 Title IX Investigator Training for K-12 Districts & COEs

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SESSION ONE

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Alexandria M. Davidson, Partner Mellissa Gallegos, Senior Associate Jacqueline Hang, Senior Associate

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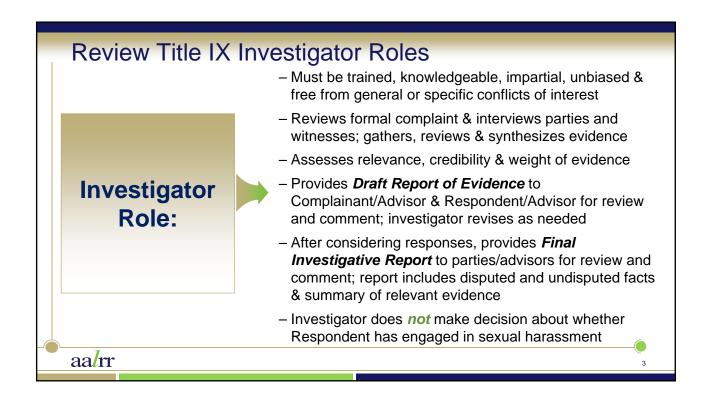
Agenda

- 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





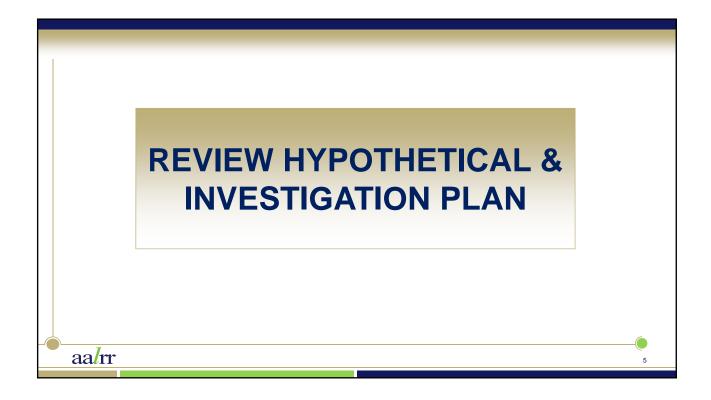
Definitions for Training Complainant Respondent Parties Witness Advisor Grievance Process Other





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.)





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





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

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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

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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

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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.

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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
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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

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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

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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.

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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?"

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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

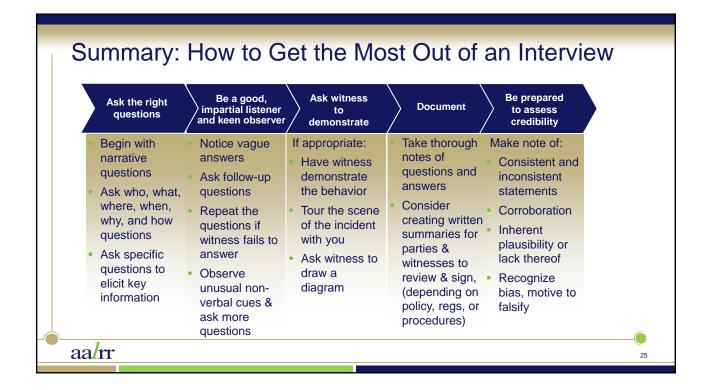
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Types of Questions for Investigator to Avoid

- 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?"





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

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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

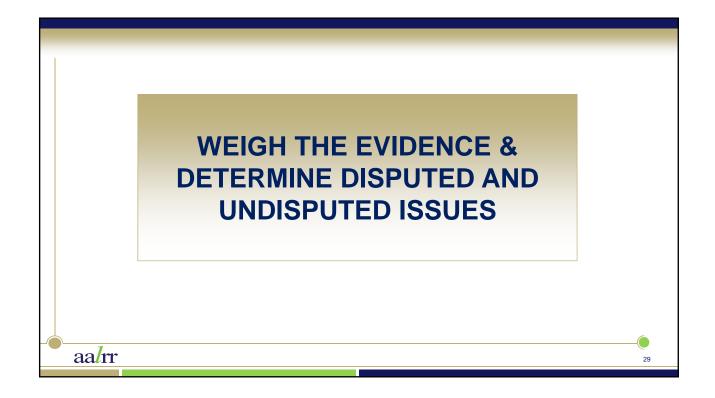
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Prepare Interview Notes and/or Summaries

- 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

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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

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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

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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.

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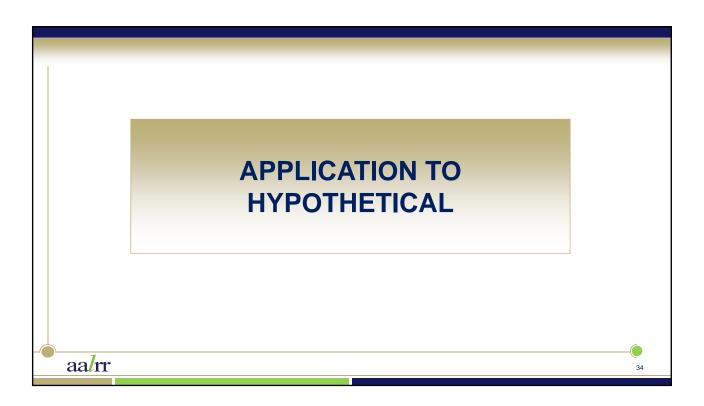
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Credibility Factors to Weigh Disputed Evidence

- 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

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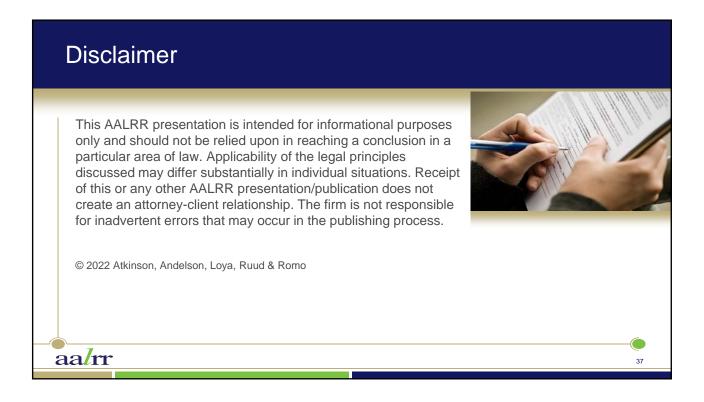


Undisputed and Disputed Material Evidence

- 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.**aalrr















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.

Events & Speaking Engagements

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

Publications

Ms. Davidson contributes to the firm's publications and blog posts.

OFFICE

20 Pacifica Suite 1100 Irvine, CA 92618

EDUCATION

J.D., Chapman University, Dale E. Fowler School of Law B.A., University of California, Santa Barbara

ADMISSIONS

2007, California

PRACTICE AREAS

Contract Enforcement & Collective Bargaining

Education

Investigations

Labor & Employment Law

Litigation





Mellissa Gallegos represents and advises California school districts, community college districts, and county offices of education in all education and employment law matters, including employee evaluation, discipline and dismissal, reasonable accommodation, interactive meetings, and restraining orders. She also assists with Uniform Complaint investigations and responses; California Public Records Act responses; collective bargaining issues; and defending employers against allegations of discrimination with the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission. Ms. Gallegos also has significant experience in conducting prompt, thorough, and effective investigations.

While in law school, Ms. Gallegos was Networking Co-Chair and Co-President with La Raza de Loyola, Treasurer of the Immigration Law Society, and a member of the Public Interest Law Foundation. Ms. Gallegos also served as Production Editor of the *Loyola of Los Angeles International and Comparative Law Review*. Ms. Gallegos was awarded scholarships from Loyola Law School, the Mexican American Bar Foundation, the Latina Lawyers Bar Association, and the Loyola Marymount Jesuit Community.

Events & Speaking Engagements

Ms. Gallegos has co-presented on topics such as sexual harassment, mandated reporting, and workplace investigations. She has spoken before an audience of over 400 staff and administrators at a district-wide meeting and has presented at ACSA (Association of California School Administrators) Personnel Academy.

Publications

Ms. Gallegos contributes to the firm's publications.

OFFICE

12800 Center Court Drive Suite 300 Cerritos, CA 90703

INDUSTRIES

Technology

EDUCATION

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

CLERKSHIPS

California Department of Justice, Office of the Attorney General Equal Employment Opportunity Commission Legal Aid Foundation of Los Angeles

ADMISSIONS

2015, California U.S. District Court, Central District of California

PRACTICE AREAS

Education

LANGUAGES

Ms. Gallegos is proficient in Spanish.





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.

Publications

Ms. Hang contributes to the firm's school law publications.

Community & Professional

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

OFFICE

2151 River Plaza Drive Suite 300 Sacramento, CA 95833

EDUCATION

J.D., University of the Pacific, McGeorge School of Law B.A., University of California, Berkeley

ADMISSIONS

2015, California

PRACTICE AREAS

Board Governance

Charter Schools

Discrimination & Harassment

Education

Employee Performance & Evaluation

Equity in Education/Office for Civil Rights

Investigations

Student Discipline