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Title IX Coordinator Webinar for Higher Education Institutions

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Title IX Coordinator Training for Higher Education

Presented By: Kevin P. Noll and Michelle L. Weber
August 15, 2022

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1

Title IX Coordinator

- "...[A]t least one employee to coordinate [the school's] efforts to comply with its responsibilities under [Title IX]."
- What does this entail?



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Overview

- **Part I:** Title IX Coordinator Administrative Duties
- **Part II:** The College's Response Pre-Investigation
 - Reviewing and Analyzing the Allegations
 - Offering and Coordinating Supportive Measures
 - The Formal Complaint
- **Part III:** Grievance Procedure: Investigation and Beyond
 - Role in the Investigation
 - Coordinating Informal Resolution
 - Role at the Hearing
 - Notice of Appeal
 - Implementing Remedies

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Part I: Administrative Duties



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Required Postings/ Notifications

- Name or title and contact information
 - Published on website, and handbook or catalog
- Respond to inquiries regarding application of Title IX
- Training materials

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Monitoring

- Monitor students' participation in athletics and across academic fields to ensure that sex discrimination is not causing any disproportionate enrollment based on sex, or otherwise negatively affecting a student's access to equal educational opportunities
- Promote an educational and employment environment which is free of sex discrimination and gender bias

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Monitoring

- Survey the school climate and coordinate the collection and analysis of information from that survey
 - PSVHEA requirements: “Each higher education institution shall annually conduct a sexual misconduct climate survey of all students at the institution.”
 - New VAWA requirements: higher education institutions must administer a campus climate survey developed by the Department of Education every two years.

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Training and Planning

- Address patterns or systemic problems revealed by Title IX reports or complaints;
- Track Title IX-specific position vacancies to ensure appropriate staffing;
- Ensure that appropriate policies and procedures are in place for working with law enforcement and coordinating services with local victim advocacy organizations and services providers, including rape crisis centers.

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Training

- Provide adequate training to students, faculty, and staff on Title IX issues.
- Maintain records of all such training.

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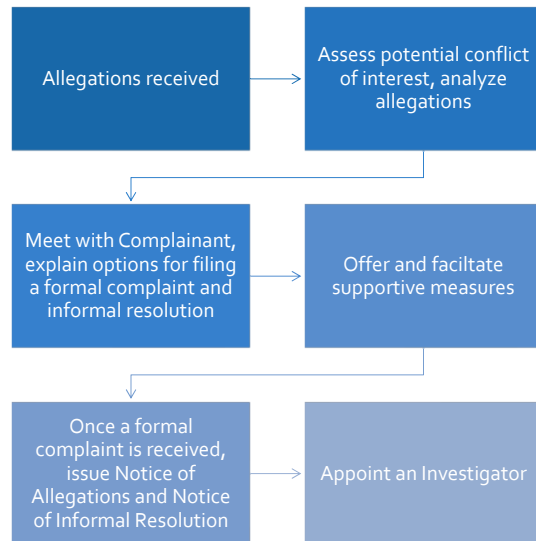
Title IX Complaints

- Maintain all documents and records related to Title IX responses for 7 years.
- Appropriately analyze allegations of sexual harassment.
- Conduct and oversee Title IX complaint responses.
 - Partner with HR where employee involved.
 - Coordinate supportive measures.
 - Document outcome and implement remedies.

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Part II: The College's Response Pre- Investigation



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Review and Analyze Allegations



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Allegations

- You are made aware of allegations of sexual harassment.
- Now what?

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Identify Potential Conflict of Interest

- The Title IX regulations require that a Title IX Coordinator "...not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."



Conflict of interest

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Potential Conflict of Interest

- **Key question:** Does the Title IX Coordinator's prior or existing relationship with or knowledge of a party prevent the Title IX Coordinator from serving impartially?
 - If yes: Recuse yourself
 - Remember: A Title IX Coordinator's conflict of interest which affected the outcome is a permissible basis for appeal

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Gather Information and Review Allegations

- Review the information you have
- Contact the Complainant (person alleged to be the victim) if you need more information
- Review the allegations



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Analyze Allegations

- Upon reviewing allegations, analyze whether they should be processed under Title IX/Sex-Based Misconduct Policy & Procedures, or another policy
- **Tip:** Start with jurisdiction
- Analyze whether allegations (if true) would constitute sexual harassment under the College's Title IX/Sex-Based Misconduct Policy & Procedures

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Analyze Allegations: Title IX Harassment

If true, do the allegations meet at least one of the **definitions of Title IX sexual harassment?**

- 1 Quid Pro Quo Harassment
- 2 Hostile environment
- 3 Specific Acts (Sexual assault, dating violence, domestic violence, or stalking as defined by VAWA/Clery Act)

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Title IX: Jurisdiction Analysis



If NO to any:

Proceed to PSVHEA analysis; check the College's Policy, other applicable laws.

If YES to all:

Promptly contact the complainant to discuss (1) supportive measures and (2) options for filing a formal complaint.

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Preventing Sexual Violence in Higher Education Act: Jurisdiction Analysis



If NO to either:

Check College's Policy, other applicable laws.

If YES to both:

Promptly contact the complainant to discuss (1) supportive measures and (2) options for filing a formal complaint.

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Jurisdiction under Sex- Based Misconduct Procedures

- Procedure applies to alleged sex-based misconduct whenever the alleged misconduct occurs:
 - On campus; or
 - Off campus property if:
 - The conduct was in connection with a College or College-recognized program or activity; or
 - The conduct may have the effect of creating a hostile environment for a member of the College community.
- Broader than Title IX jurisdiction

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Analyze Allegations: Scenario 1

- You receive an email from a Psychology professor detailing a conversation she had with a student. The student, Alex, claimed that another student in the class, Sam, was making inappropriate sexual remarks in a private Zoom chat during a remote class session.
- Sam also allegedly messaged Alex on Instagram after class, and said, "Can't wait till we are back on campus... I'll have a seat saved for you, on my lap."
- Should you process the allegations under the College's Title IX/Sex-Based Misconduct Policy?

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Analyze Allegations: Scenario 2

- A student, Charlie, comes to you to report that Professor X gave them a hug unexpectedly at an on-campus school sponsored event.
- Should you process the allegation under the College's Title IX/Sex-Based Misconduct Policy?

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Analyze Allegations

If some or all of the allegations meet the Title IX/Sex-Based Misconduct jurisdiction and harassment threshold:

Schedule initial meeting with the Complainant

Issue Notice Letter to Complainant of Policies Applicable to Investigation of Allegations of Sexual Harassment for any allegations that do not meet Title IX/Sex-Misconduct requirements

If none of the allegations meet the Title IX/Sex-Based Misconduct threshold:

Issue Notice Letter to Complainant of Policies Applicable to Investigation of Allegations of Sexual Harassment

Follow applicable Policy and Procedures for investigating non-Title IX harassment

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Formal Complaint



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Meeting with Complainant

- Schedule a meeting with the Complainant
- Explain the potential courses of action
 - Formal Grievance Procedure
 - Informal Resolution*

**Remember that Informal Resolution is not available when the Respondent is an employee and the Complainant is a student.*

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Supportive Measures

- Supportive measures
 - Schedule changes, counseling, dorm reassignment, leaves of absence, assignment extensions, etc.
 - **Key:** Non-punitive towards Respondent



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Coordinating Supportive Measures

- Contact appropriate personnel
 - Counselor, Registrar, etc.
- Make appropriate arrangements

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Supportive Measures: Scenario 1

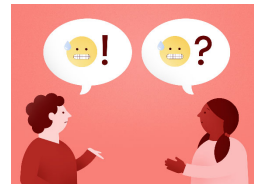
- Alex claimed that another student in the class, Sam, was making inappropriate sexual remarks in a private Zoom chat during a remote class session.
- Sam also allegedly messaged Alex on Instagram after class, and said, "Can't wait till we are back on campus... I'll have a seat saved for you, on my lap."
- Do you need to offer supportive measures?
- If so, what types of supportive measures would be appropriate to offer Alex?

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Supportive Measures: Scenario 2

- A student, Charlie, comes to you to report that Professor X gave them a hug unexpectedly at an on-campus school sponsored event.
- Do you need to offer supportive measures?



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Supportive Measures: Scenario 2

- Charlie calls you a week after visiting your office to tell you that Professor X asked for Charlie's cell phone number.
- Although Charlie said no, Professor X still was able to find the number and send Charlie a text asking, "Hey, dinner this weekend?" According to Charlie, Professor X also texted him a number of elicited photos of himself on multiple occasions.
- Do you need to offer supportive measures? If so, what supportive measures might be appropriate?

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Emergency Removals

- Individualized safety and risk analysis determines an immediate threat to the physical health or safety of any student or other individual arising from allegations.
 - Applies to student Respondents.
 - Issue notice prior to removal.
 - Respondent must be allowed opportunity to challenge removal.

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Administrative Leave

- Applies to employee Respondents
- Administrative leave throughout pendency of a grievance process
- Check applicable CBAs
- **Caution**: Length of leave

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Signing a Formal Complaint

- Once a formal complaint has been signed by Complainant, issue:
 - Notice Letter to Complainant/Respondent of Complaint Allegations
 - Notice Letter Regarding Informal Resolution
- Both parties should receive notices simultaneously

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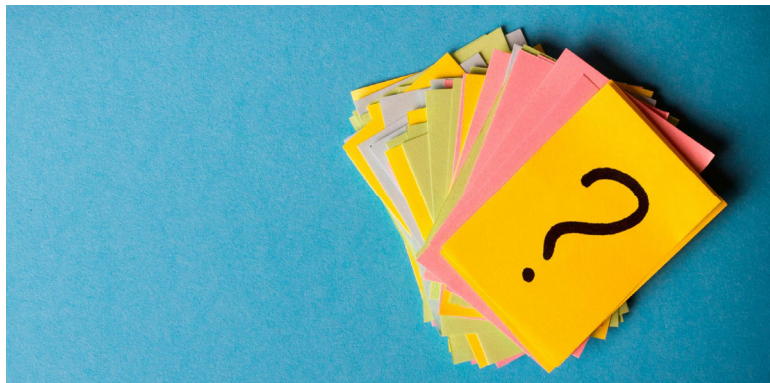
No Formal Complaint Signed

- If a Complainant decides against signing a formal complaint, the Title IX Coordinator may sign a formal complaint to initiate the grievance process.
- Use caution when making this decision.

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Part III: Grievance Procedure: Investigation and Beyond



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Role in Investigation

- Investigator should be appointed following receipt of a signed Formal Complaint
- Provide copies of any relevant documents
- Maintain all notices sent by Investigator
- Assist Investigator with witness and party contact and information

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Role in Investigation

- Stay apprised of all investigatory notices issued
- Assign Advisor if party does not have one
- Contact legal counsel if needed

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Coordinating Informal Resolution

- Informal resolution is a detour in the formal grievance process
- If parties agree, issue Consent to Participate in Informal Resolution
- Coordinate with Informal Resolution Facilitator, set up date and time for Resolution



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Returning to Grievance Process

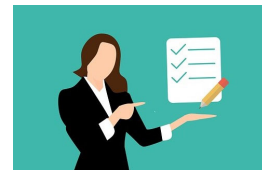
- If a party withdraws consent, Informal Resolution Facilitator will refer complaint back to you
- At this time, process must be re-routed to wherever it was in the grievance process

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Role Pre-Hearing

- Appoint Hearing Officer
- Coordinate schedules of all appropriate Title IX personnel and notify them of hearing
- Schedule hearing



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Role Pre-Hearing

- Send **Notice of Hearing, Final Investigation Report, and Right to File Response** to both parties at least 10 days prior to the hearing
- Appoint Advisor(s), if appropriate
- Notify legal counsel of attorney Advisor, if appropriate
- Attend the hearing

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Post-Hearing Role

- Make audio or audiovisual recording available to parties for inspection and review upon request
- Facilitate communication between Hearing Officer and Investigator, if necessary
- Provide any relevant documents



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Appeals

- Both parties have the right to appeal any determination regarding responsibility, and any dismissal of a formal complaint or allegations
- Appeal must be submitted after party's receipt of written determination or dismissal notice

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Appeals

- Appeal should be based on one or more of the following grounds:
 - Procedural irregularity occurred
 - New evidence or information exists that could affect the outcome
 - Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter
 - Sanction is disproportionate with the violation



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Appeals

- Upon receipt of an appeal request, Title IX Coordinator should promptly forward the appeal request to Appeals Determination Officer.
- Issue [Notice of Appeal](#) to the parties, includes notice of right to submit a written statement.

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Implementing Remedies

- Once a determination has been reached, and any timely appeals have been resolved, the Title IX Coordinator is responsible for implementing remedies;
- The Title IX Coordinator is also responsible for coordinating sanctions; including coordinating disciplinary action with the appropriate individuals, initiating the removal process for a club, adjusting class schedules, etc.

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Questions?



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Michelle practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding the IEP process, due process, Section 504, student discipline, board policy and student records.

Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

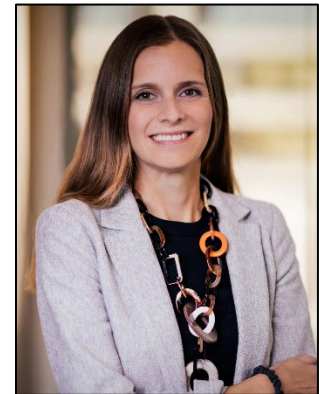
RECENT PUBLICATIONS

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Removals to Interim Alternative Educational Setting for 45 School Days... Who, What, Where, When, Why, and How?, Illinois Alliance of Administrators of Special Education Winter Conference (February 2022)

Risk Assessments, Threat Assessments and the Impact on Students with Disabilities, Illinois Alliance of Administrators of Special Education Fall Conference (October 2019)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., Loyola University
College of Law

M.A., Loyola Marymount
University

B.A., Trinity College

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

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Kevin's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, and municipalities with issues involving employee discipline, internal investigations, employee leaves of absences, and alleged discrimination and harassment claims. Kevin also defends clients in litigation and administrative charges in federal and state court, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Labor. In addition to his experience in labor and employment law, Kevin has trained school districts and community colleges pursuant to Title IX of the Education Amendments Act of 1972.

Prior to joining Robbins Schwartz, Kevin represented individuals with employment matters, civil rights claims, and consumer protection litigation.

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine

RECENT PUBLICATIONS

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

Contributing author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (2021)

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

RECENT PRESENTATIONS

Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Illinois Minimum Wage: Nutz and Bolts Overview, IGFOA Payroll Seminar (October 2019)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., The John Marshall Law School

B.A., Indiana University

ADMITTED TO PRACTICE

U.S. District Court for the Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar Association

Kane County Bar Association