



Robbins Schwartz
One Team. Making Your Mission Ours.

Harrisburg School District No. 3

Title IX Training

April 28, 2023

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1

Background on Title IX Regulations



2

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Background on Title IX Regulations

- May 6, 2020 – U.S. Department of Education released new Title IX regulations establishing how education programs that receive federal funding must respond to sexual harassment under Title IX.
- Among other changes, new regulations prescribe a narrower definition of sexual harassment than in previous Title IX guidance, and they require schools to follow detailed procedures when adjudicating formal Title IX sexual harassment complaints.
- Regulations went into effect on August 14, 2020.



3

Changes on the Horizon

- President Biden's Administration released a Notice of Proposed Rulemaking (NPRM) on June 23, 2022, seeking to amend current Title IX Regulations.
- Proposed regulations went through 60-day public comment period, resulting in 210,000+ comments.



4

Changes on the Horizon

- On January 5, 2023, U.S. Department of Education released updated regulatory agenda, which indicates that amendments to Title IX regulations will be finalized in May 2023.
- Effective date of new regulations: TBD



5

So... What Now?

For now, 2020 Regulations remain in effect:

- Narrower definition of sexual harassment
- Jurisdictional limitations
- Procedures for responding to reports of alleged sexual harassment
- Formal Title IX sexual harassment grievance process
- Training for all personnel involved in school district's investigation and grievance process, including Title IX Coordinator(s), investigators, decision-makers, appellate decision-makers, and informal resolution facilitators
- Recordkeeping requirements
- Publishing of information and training materials.



6

Overview of Relevant Laws



Relevant Laws

The below laws are relevant to the District's policies and procedures that address sexual harassment:

- Title IX of the Education Amendments of 1972 ("Title IX")
- Title VII of the Civil Rights Act of 1964 ("Title VII")
- Illinois Human Rights Act ("IHRA")
- Abused and Neglected Child Reporting Act ("ANCRA")
- Every Student Succeeds Act ("ESSA")

Relevant Laws

- Title IX:
- Prohibits sex-based discrimination, including sexual harassment, in educational programs and activities receiving federal financial assistance.
- Title VII:
- Prohibits discrimination, including discrimination based on sex, in employment.
- IHRA:
 - Prohibits discrimination in Illinois, including in employment.
 - Also prohibits sexual harassment in elementary, secondary and higher education



9

Relevant Laws



- ANCRA
 - Requires immediate reporting when a school employee has reasonable cause to believe that a child known to them in their professional or official capacities may be an abused child or a neglected child.
- ESSA
 - Requires states and districts to have in place policies prohibiting the “aiding and abetting of sexual abuse.”



10

Key Definitions



Title IX Sexual Harassment

Sexual harassment includes:

- Quid pro quo harassment by a District employee
- Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access
- Any instance of sexual assault, dating violence, domestic violence or stalking

Title IX Sexual Harassment

Quid Pro Quo

When an employee of the District conditions aid, benefits, pay, a position or other opportunities for advancement on an individual's submission to unwelcome sexual conduct.

- Example: Mr. Jones promises his student, Jane, that he will give her an A on her midterm if she engages in sexual conduct after class.



13

Title IX Sexual Harassment

Hostile Environment

Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access

- Severe and pervasive and objectively offensive
- Denial of equal educational access

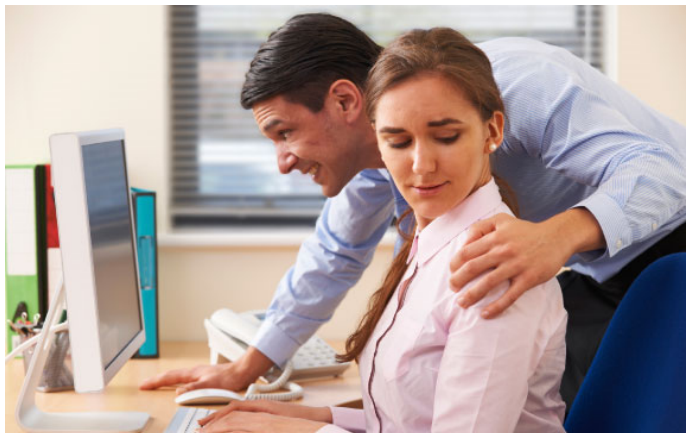


14

Title IX Sexual Harassment Hostile Environment

Compare with Title VII definition for workplace hostile environment claims:

- Unwelcome sexual advances and other conduct of a sexual nature having the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.



Title IX Sexual Harassment Hostile Environment

Compare with IHRA definition:

- Any conduct of a sexual nature exhibited by an education representative toward a student, when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment.

Title IX Sexual Harassment

Specific Acts

Title IX's definition of sexual harassment also includes:

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Sexual Assault, Dating Violence, & Stalking

Sexual Assault:

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

Dating Violence:

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Stalking:

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

Key Definitions: Hypothetical



- You receive a report of a student being punched repeatedly by her ex-boyfriend, another student, while on an overnight school-sponsored field trip.
 - Which kind(s) of sexual harassment might this be?
 - Do you need to evaluate the severity, pervasiveness, and offensiveness of the assault?

Key Definitions: Hypothetical

- You have been assigned to investigate a formal complaint alleging that a student was sexually harassed by his history teacher.
 - What types of evidence/information would be relevant to determining whether the alleged harassment was severe, pervasive and objectively offensive?

Jurisdiction



Jurisdiction under Title IX

The Title IX regulations apply only to sexual harassment that occurs “in the district’s education program or activity, against a person in the United States.”

Title IX Jurisdiction

Scope of District's Education Program or Activity

Includes locations, events, or circumstances over which the school district exercised substantial control over both the Respondent and the context in which the sexual harassment occurred.

Title IX Jurisdiction

Scope of District's Education Program or Activity

Examples for discussion:

- On the school bus?
- Local business where students are participating in school fundraising activities?
- Teacher's home?
- Social media?



Jurisdiction: “... in the United States”

To fall under Title IX, the alleged misconduct must have occurred in the United States.

Title IX Jurisdiction

Other Relevant Policies

If the alleged misconduct was outside the U.S. or not in the District’s education program or activity, look to other applicable District policies, such as:

- 2:260, *Uniform Grievance Procedure*
- 5:20, *Workplace Harassment Prohibited*
- 5:90, *Abused and Neglected Child Reporting*
- 5:120, *Employee Ethics; Conduct; and Conflict of Interest*
- 7:20, *Harassment of Students Prohibited*
- 7:180, *Prevention of and Response to Bullying, Intimidation and Harassment*
- 7:185, *Teen Dating Violence Prohibited*
- 7:190, *Student Behavior*

Jurisdiction: Hypothetical

- Compare:
 - A student athlete allegedly fondles another student athlete while off-campus at a sporting event with their team and coach
 - A student athlete allegedly fondles another student athlete while at a friend's home
- Which type of alleged misconduct falls under Title IX?
- What are the District's response obligations with regard to each type of alleged misconduct?

Board Policy 2:265 – Title IX Sexual Harassment Grievance Procedure



Policy 2:265

Prohibitions

- Prohibits sexual harassment, as defined under Title IX.
- Prohibits retaliation against anyone who, in good faith, has made a report or complaint, assisted, or participated or refused to participate in any manner in a proceeding under the policy.

Policy 2:265

Applicability

- The District complies with Title IX and its implementing regulations concerning everyone in the District's education programs and activities, including:
 - Applicants for employment
 - Students
 - Parents/guardians
 - Employees
 - Third parties

Policy 2:265

Enforcement

District employees found to have engaged in Title IX sexual harassment will be subject to disciplinary action, up to and including discharge

Students found to have engaged in Title IX sexual harassment will be subject to disciplinary action, up to and including suspension and expulsion

Title IX sexual harassment by third parties (e.g., vendors, parents, visitors) will be addressed in accordance with the authority of the Board, in the context of the relationship with the third party



33

Policy 2:265

Key Definitions

Complainant:

- Individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent:

- Individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment



34

Policy 2:265

Key Definitions

Formal Title IX Sexual Harassment Complaint:

- Document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment in violation of Title IX and requesting that the District investigate the allegation.
- Note: Parent/guardian may file a formal complaint on behalf of their child. In such a case, the student is still the “Complainant” for purposes of Title IX.

Policy 2:265 Key Definitions

Supportive Measures:

- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge
- Offered to the Complainant or the Respondent before or after a formal Title IX sexual harassment complaint is filed or where no formal Title IX sexual harassment complaint has been filed

Policy 2:265

Other Elements

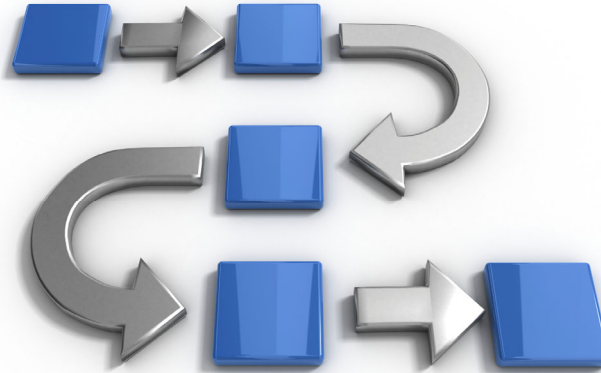
- Requires the Superintendent and/or designee to ensure that the District prevents and responds to allegations of Title IX Sexual Harassment
 - Curriculum components
 - Education and training for school staff
 - Notice of policy and contact information of Title IX Coordinator
- Reporting and confidentiality of reports
- Initial processing of reports

Policy 2:265

Key Principles for Procedures

- Treat Complainant and Respondent equitably
- Objective evaluation of relevant evidence
- Presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility
- Compliance with grievance process before any disciplinary actions against a Respondent.
- Include reasonably prompt timeframes for conclusion of the grievance process
- Base all decisions upon the preponderance of evidence standard

Administrative Procedures for Board Policy 2:265



Purpose of Procedures

- Implement Board Policy 2:265
- Establish the District's required response to reports of sexual harassment that may violate Title IX (2:265-AP1)
- Establish the District's investigation and response process in response to a formal Title IX sexual harassment complaint (2:265-AP2)

Role of Title IX Coordinator

- Upon receiving knowledge of sexual harassment allegation, promptly contacts Complainant to discuss supportive measures and explain the process of filing a formal complaint.
- Analyzes reports under other relevant Board policies to determine appropriate method for processing and reviewing reports.
- Maintains the confidentiality of the sexual harassment allegation, to the greatest extent practicable.
- May sign a Formal Title IX Sexual Harassment Complaint.



41

Role of Title IX Coordinator

- When a Formal Complaint is filed, follows the Formal Title IX Sexual Harassment Grievance Process (2:265-AP2).
- Ensures a determination is made about whether an emergency removal or administrative leave is necessary, pending the investigation outcome.
- Creates and maintains, for at least seven years, records of any actions and supportive measures taken and provided in response to the report of sexual harassment.



42

Role of All District Employees

Immediately report any suspicion of child abuse or neglect.

Promptly forward all reports of sexual harassment (including anonymous reports) to the Title IX Coordinator.

Reporting Alleged Sexual Harassment



Reporting

The Who and to Whom

Who can report?

- Anyone – including students, employees and third parties
- Need not be the person who is alleged to be the victim of the misconduct

To whom should reports be made?

- Title IX Coordinator
- District administrator (Principal, AP, Dean of Students)
- Any employee with whom the person is comfortable speaking

Reporting

Employee Obligations

- Under Policy 2:265:
 - All District employees must report allegations of sexual harassment, including anonymous reports.
 - School employees must respond to incidents of sexual harassment by promptly making or forwarding a report to the Title IX Coordinator.
 - An employee who fails to promptly make or forward a report may be disciplined, up to and including discharge.



Reporting: Confidentiality of Reports

Do not promise confidentiality.

Under Policy 2:265, reports of alleged sexual harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain an educational program or activity that is productive, respectful, and free of sexual harassment.

Abused and Neglected Child Reporting Act

- Provides for the reporting and investigation of child abuse and neglect.
- Education personnel are required to immediately report when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused child or a neglected child.
- All reports of suspected child abuse or neglect made under this Act must be made immediately.

Initial Response to Reports Alleging Sexual Harassment



“Actual Knowledge” under Title IX

Notice of sexual harassment or allegations of sexual harassment to any District employee or to the District’s Title IX Coordinator

“Deliberate Indifference” under Title IX

Once the District has actual knowledge of alleged sexual harassment, the District must respond to the allegations:

- Promptly
- In a manner that is not “clearly unreasonable in light of the known circumstances”

Overview of Initial Response Process

- Analyze report to determine the appropriate method for processing/reviewing it.
- For any report alleging Title IX sexual harassment, promptly contact the Complainant to:
 - discuss and offer supportive measures,
 - consider the Complainant’s wishes with respect to supportive measures,
 - explain that supportive measures are available with or without filing a formal complaint, and
 - explain the process for filing a formal complaint.

Initial Response Process Analyze Report

The Title IX Coordinator will analyze the report to determine whether there is another or an additional appropriate method(s) for processing and reviewing it.



53

Initial Response Process Analyze Report

Step 1: Analyze the Report

- Does Title IX apply?
- Does another District policy apply?



54

Title IX Jurisdiction Analysis

Allegations received

1. Did alleged misconduct occur **in District's program or activity**?

2. Was the alleged misconduct against someone **in the United States**?

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

If YES to 1, 2 and 3:

Promptly contact the Complainant to discuss supportive measures and options for filing a formal complaint

If NO to 1, 2 or 3:

Title IX does not apply. Check other District policies. Send Notice of Applicable Policies.

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55

Initial Response Process

Contact Complainant

Step 2: Contact the Complainant

- Reminder: Complainant is the individual who is alleged to be the victim of alleged sex-based misconduct



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56

Initial Response Process

Contact Complainant

When meeting with the Complainant, the Title IX Coordinator should:

- discuss and offer supportive measures;
- consider the Complainant's wishes with respect to supportive measures;
- explain that supportive measures are available with or without filing a formal complaint; and
- explain the process for filing a formal complaint.

Questions?

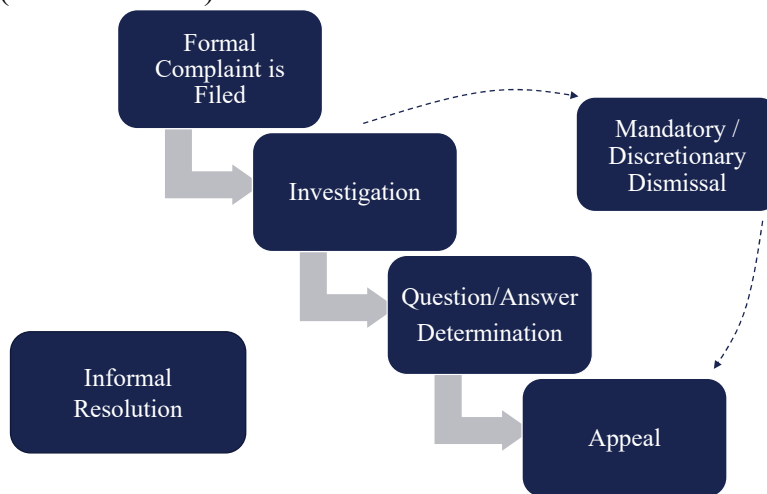


Grievance Process for Formal Title IX Sexual Harassment Complaints



Grievance Process

Overview (See 2:265-AP2)



Grievance Process for Formal Complaints

Formal complaint:

- Document filed by a Complainant or signed by Title IX Coordinator alleging sexual harassment in violation of Title IX and requesting that the District investigate the allegation.
- At the time of filing a formal complaint, the Complainant must be participating in or attempting to participate in the District's education programs or activities.

Formal Complaint Hypothetical

A student graduates from high school in June. In September, the former student contacts the Title IX Coordinator to report that she was sexually harassed by another student (who is now a current senior) the previous February. The former student indicates that she would like to file a formal complaint.

Can the former student file a formal complaint?
If no, what options does the former student have?

Same scenario as above, but the former student was just hired by the District to serve as a tutor for 9th grade students. Now can the former student file a formal complaint?

Grievance Process

Notice of Allegations

- Must be sent simultaneously to both parties (or the parties' parent(s)/guardian(s)) after Title IX Coordinator's receipt of formal complaint.
- Informs the parties of:
 - The grievance process, including informal resolution
 - Notice Letter Regarding Informal Resolution should be enclosed
 - The allegations
 - The presumption of non-responsibility on the part of the Respondent
 - The parties' right to an advisor
 - The parties' right to inspect and review evidence
 - The District policies prohibits knowingly making false statements or submitting false information during the grievance process.



63

Grievance Process

Emergency Removals and Administrative Leave

- The District may remove a Respondent from its education program or activity on an emergency basis before completing the grievance process if:
 - Based on an individualized safety and risk analysis, an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment justifies removal.
- Respondent must receive notice and an opportunity to challenge the decision immediately following the removal.
 - For students: Be mindful of SB 100 requirements.
 - For employees: Be mindful of any CBA requirements, but Title IX allows placing a Respondent on administrative leave.



64

Conflicts of Interest and Bias



Conflicts of Interest & Bias

- Any Title IX Coordinator, Investigator, Decision-Maker, or Appellate Decision-Maker must not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.
- Can be a basis for appeal

Conflicts of Interest & Bias

Conflict of interest:

- In the decision-making context, a situation in which an individual is “subject to two coexisting interests that are in direct conflict with one another.”
 - Not: “I know one of the parties.”

Bias:

- “Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.”



67

How to Address Implicit Bias

- Slower, more deliberate or conscious thinking
- Create a checklist or other objective framework beforehand
 - E.g., a pre-made checklist of allegations to be proven/disproven
- Consider whether any immediate reaction relies on a stereotype
- Focus attention on specific elements described in policies and procedures, and away from characteristics that may bias or improperly influence decision-making
- Document equitable treatment of both parties (i.e., opportunities to provide evidence, interview procedures, response to requests for extensions)



68

Informal Resolution



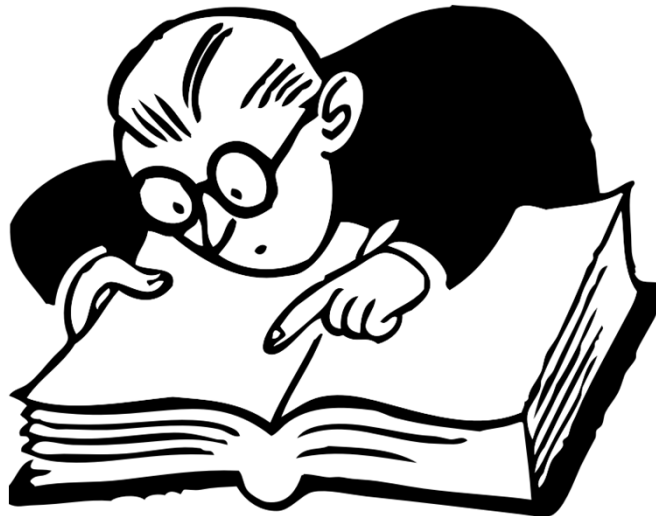
Informal Resolution

- Requires parties' voluntary, written consent
 - Consent to Participate in Informal Resolution
 - Resolution Documentation / Agreement Template
- May occur at any time after the parties receive the initial notice of allegations and prior to a determination regarding responsibility being reached.
- May not be required as condition of:
 - Enrollment/continuing enrollment,
 - Employment or continuing employment,
 - Enjoyment of any right, or
 - Waiver of the right to a formal investigation/adjudication

Informal Resolution

- Party may withdraw at any time prior to a resolution
 - Withdrawal triggers resumption of grievance process.
- Not permitted in allegations of employee sexual misconduct toward a student

Consolidation and Dismissal of Formal Complaints



Consolidation of Formal Complaints

- Title IX Coordinator may consolidate formal complaints where the allegations of sex-based misconduct arise out of the same facts or circumstances.

Dismissal of Formal Complaints

- Dismissal does not preclude action altogether – just for purposes of Title IX.
 - Notice Letter to Complainant/Respondent of Dismissal of Allegations
- **Mandatory** dismissal if Title IX Coordinator or Investigator determines that conduct alleged in the formal complaint does not meet:
 - (a) Title IX's definition of sexual harassment and/or
 - (b) Title IX's jurisdictional requirements.

Dismissal of Formal Complaints

- **Discretionary** dismissal if:
 - Complainant gives written notification of desire to withdraw formal complaint or certain allegations;
 - Respondent is no longer enrolled in or employed by the District; or
 - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination.
- A party may appeal a decision to dismiss a formal complaint or allegations therein.

Investigation of Formal Complaints



Investigations

Written Notice

Written notice required to both parties:

- Allegations (upon receipt of a formal complaint)
 - Notice Letter to Complainant/Respondent of Allegations
- Investigative interviews or meetings
 - Notice Letter of Investigative Interview
- Mandatory or discretionary dismissal
 - Notice Letter to Complainant/Respondent of Dismissal of Allegations



77

Investigations

Evidence

- Equal opportunity for parties to provide:
 - Fact witnesses
 - Expert witnesses
 - Inculpatory/exculpatory evidence
- Avoid “gag orders,” but notify parties of limitations on re-disclosing records and evidence.



78

Investigations

Advisors

- Both parties may select an advisor of their choosing
 - May, but need not be, an attorney
- Advisor's role is to provide support, guidance, advice
- May not speak on behalf of the party



Investigations

Access to Evidence

- Equal access for parties to inspect and review all evidence that is directly related to the complaint allegations.
 - Be mindful of FERPA, ISSRA and student privacy considerations.
 - Consider whether redactions are necessary.

Investigations

Evidence

Notice of
Investigation
Evidence

- At the end of the investigation and before completing the investigator's report, the investigator must send both parties a copy of all relevant evidence.
- The parties will have 10 school business days to submit a written response to the evidence, which the investigator must consider prior to completing the investigative report.
- Investigator must also send a copy of each party's written response to the other party.



81

Investigation

Preparation of Investigation Report

After receiving/reviewing the parties' written responses, the investigator must create an investigative report that fairly summarizes the relevant evidence, which the investigator will forward to the initial decision-maker.

- Investigation Report Template



82

Investigation

Preparation of Investigation Report

At least 10 school business days prior to the initial decision-maker's determination, the investigator must send to each party (and their advisors) the investigative report and allow the parties 10 school business days to submit a written response to the report.

- Notice Letter to Complainant/Respondent of Final Investigation Report and Right to File Response

Exchange of Written Questions and Answers



Written Questions

Process

- Alternative to live hearing
- Opportunity given to both parties by the decision-maker after investigator sends investigative report
 - Notice Letter to Complainant/Respondent of Opportunity to Submit Written Questions
- Parties may only submit written, relevant questions they want the initial decision-maker to ask of any party or witness
- Parties must submit questions within five (5) school business days after they receive the Notice of Opportunity to Submit Written Questions.



85

Written Questions

Process

- The initial decision-maker must:
 - Exclude any irrelevant questions
 - Forward relevant questions to the appropriate party or witness
 - Notice Letter to Party or Witness of Questions Requiring Answers
 - Give party or witness five (5) school business days to respond
 - Provide asking party with answers and explain any decision to exclude questions
 - Notice Letter to Complainant/Respondent of Exclusion of Submitted Questions
- Allow both parties limited follow-up questions



86

Written Questions

Rape Shield Protections

- Questions about the Complainant's sexual pre-disposition or prior sexual behavior are not permitted unless:
 - Offered to prove that someone other than the Respondent committed the alleged conduct; or
 - Questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Determination Regarding Responsibility



Issues for Decision

- Initial decision-maker's role is to determine:
 - Whether facts presented establish that the alleged conduct occurred;
 - Whether that conduct constitutes Title IX sexual harassment; and
 - If the answers to the above are "yes," which sanctions (if any) and remedies are appropriate.

Considering Evidence

- Relevant documents may include, but are not limited to:
 - The formal complaint
 - The initial written notice of the allegations
 - Written statement(s) and responses by the parties and/or witnesses
 - The investigation report
 - The parties' written questions and answers
 - Police reports, photographs and/or video footage (if any)
 - Prior discipline records
 - Only relevant to issue of appropriate sanction



Preponderance of the Evidence Standard

- “More likely than not”
- Whether the facts supporting the allegations have greater weight/strength than the facts presented in denial of the allegations
- If 50/50, no violation.

Written Determination

- Determination of Responsibility Letter must include:
 - Identification of allegations potentially constituting Title IX sexual harassment
 - Description of procedural steps taken
 - Findings of fact supporting determination
 - Conclusions regarding application of conduct standards
 - Statement & rationale for result of each allegation, including:
 - Determination of responsibility
 - Disciplinary sanctions being recommended
 - Whether any remedies will be provided to the Complainant
 - Procedures and permissible bases for Complainant and Respondent to appeal

Remedies

- The Title IX Coordinator is responsible for implementing any remedies for the Complainant, as ordered by the decision-maker.

Appeals



Appeals

Both parties have right to appeal any:

- Determination regarding responsibility
- Dismissal of any formal complaint or allegations therein

Party must submit written appeal request to Title IX Coordinator

- Within 10 school business days of receipt of written determination or dismissal

Title IX Coordinator must forward request to designated appeals administrator



95

Appeals

Grounds to Appeal

- Procedural irregularity that affected the outcome
- New evidence or information exists that could affect the outcome but that was not reasonably available at the time the determination was made
- Conflict of interest or bias that affected outcome, amongst:
 - Title IX Coordinator, Investigator, or Initial Decision-Maker



96

Title IX Coordinator

- Notifies the other party in writing that an appeal has been filed.
 - Notice Letter to Complainant/Respondent of Appeal
- Provides both parties five (5) school business days to submit a written statement in support of, or challenging, the outcome.
- Promptly forwards all materials relative to the appeal to the Appellate Decision-Maker.

Appellate Decision Maker

- Affirms, reverses, or amends the written determination regarding responsibility or the notice of dismissal.
 - 2:265-AP2 requires this to occur within 30 school business days of the appeal.
- Written decision issued to both parties simultaneously within 5 school business days after conclusion of the review.
 - Appeal Determination Letter

Record-Keeping



Record-Keeping

- For at least seven (7) years, create and maintain records of:
 - The sexual harassment investigation, including any determination regarding responsibility, any sanctions imposed on the Respondent and any remedies provided to the Complainant;
 - Any appeal and its result; and
 - Any informal resolution and its result.
- Compare with ISSRA requirement for maintenance of temporary school student records.

Questions?

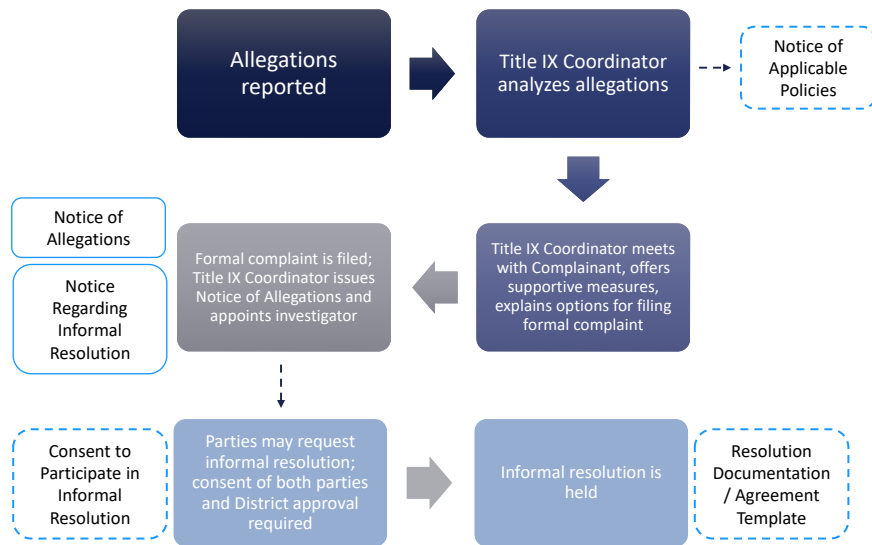


Final Review and
Hypothetical



Prepare for
Success

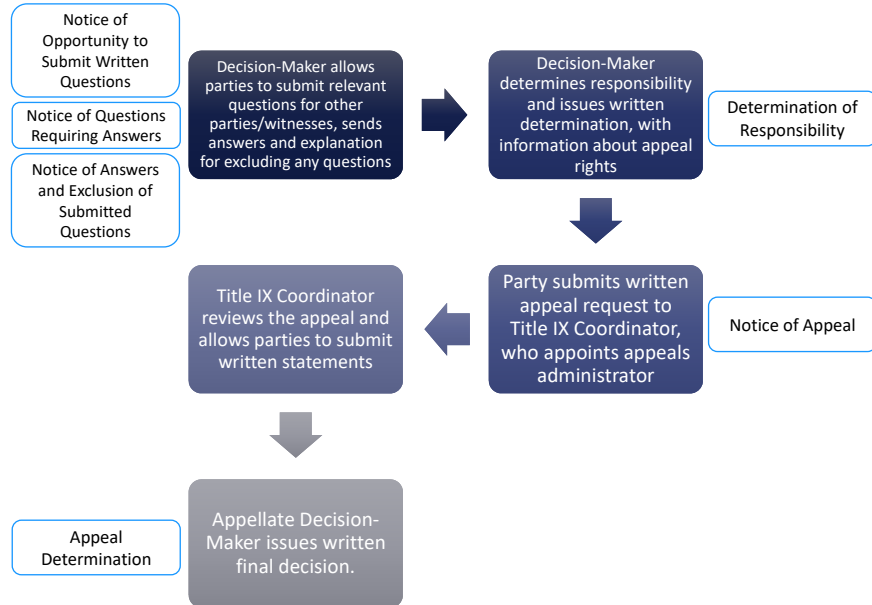
Review of Process and Forms



Review of Process and Forms



Review of Process and Forms



Hypothetical

- Jen, a student, reports to her teacher that a classmate, Steve, has been making inappropriate sexual jokes and innuendos.
 - She and Steve both attended the same virtual summer school course.
 - They were assigned to work on a project together, much of which was to be done on their own time, and required the exchange of personal phone numbers.
 - After the project was complete, Steve allegedly texted Jen and asked her out. Jen said no.
 - Jen states that Steve began teasing her on Snapchat and telling all of their mutual friends that Jen “is a prude.”

Hypothetical

- The teasing became increasingly more offensive, and Steve allegedly began making false statements that Jen stuffs her bra and that Jen sent him sexually explicit photos.
- Jen alleges that Steve's comments took place over the course of the summer through Snapchat, sometimes during virtual class meetings.
- Most recently, Steve and Jen both attended the same pool party at a mutual friend's house.
- While in front of a crowd of classmates at the pool party, Steve told Jen, "Stop being so prude and take off your clothes so we can see that hot bikini body."

Hypothetical

- Jen reports that she told Steve to leave her alone. Steve allegedly responded, "I'd like to see you try to stop me."
- Jen is distraught. Steve and Jen have both been involved in the school newspaper club. Jen is considering dropping out of that club so she will not have to interact with Steve.
- The teacher documents her discussion with Jen. What should the teacher do with these allegations? Discuss.

Hypothetical

- Based on these facts, analyze the jurisdiction under Title IX.
- Reminder:
 - Steve's behavior began after the completion of their virtual project. He teased her by spreading false information to her friends.
 - Steve's behavior continued on social media, sometimes during virtual class meetings.
 - Steve's most recent actions were at a friend's house during a pool party that was not part of a District-recognized activity.
- Do Steve's actions constitute Title IX sexual harassment?
- Reminder: Three types of sexual harassment:
 - Quid pro quo harassment by a District employee
 - Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access
 - Any instance of sexual assault, dating violence, domestic violence or stalking



109

Hypothetical

- Jen files a formal complaint. The parties proceed to submitting written questions to the decision-maker.
- After a full grievance process, the District's appointed decision-maker (who is close friends with the teacher to whom Jen made her initial report) finds that Steve is responsible for engaging in Title IX sexual harassment.
 - After receiving the decision-maker's determination, Steve feels that the decision-maker had a conflict of interest that affected the outcome of the grievance process. He submits an appeal request to the Title IX Coordinator.
- What steps does the Title IX Coordinator need to take with respect to the appeal?



110



111

A graphic designed for a Twitter promotion. On the left, there is the blue Twitter bird logo. Below it, the text "Follow Us on Twitter!" is written in a black serif font, followed by the handle "@RSchwartzLaw" in a smaller, black sans-serif font. To the right of this text is a word cloud where the words "THANK YOU" are the largest and most prominent, surrounded by smaller words in various colors representing different languages: "HVALA", "OBRIGADO", "RAHMET", "GRAZIE", "谢谢", "KIITOS", "DANK JE", "DANKE", "SHUKRAAN", "TAK", "ευχαριστώ", "GRACIAS", "BARKA", "СПАСИБО", "MERCİ", "ARIGATO", "TAKK", and "TACK". The word cloud is set against a white background with a subtle shadow.

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112

EMILY P. BOTHFELD

PARTNER, CHICAGO

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Emily Bothfeld counsels higher education institutions and K-12 school districts on various issues, including student discipline, Title IX, free speech and expression, student disability rights, board governance, and policy development. In her role leading the firm's Title IX practice, Emily performs extensive work with educational institutions to ensure compliance with Title IX and related laws in all aspects of employment and education, including recruitment, admissions, academic programs, counseling, financial assistance, athletics and extracurricular activities, and facilities access. Emily was instrumental in Robbins Schwartz's development of policies, procedures, and training materials for school districts and higher education institutions in response to the United States Department of Education's 2020 amendments to the Title IX regulations, and Emily has significant experience working closely with Title IX Coordinators and administrators tasked with investigating and adjudicating sexual harassment reports and complaints.

Emily also represents both educational institutions and private companies in matters related to student privacy. She regularly advises school districts regarding privacy considerations and compliance requirements associated with the use of educational technology platforms. She has significant experience negotiating data privacy agreements and education-related service agreements on behalf of schools and organizations. In 2020, Emily co-drafted the Illinois addendum to the National Data Privacy Agreement ("NDPA"), a standardized agreement used by school districts and educational technology vendors throughout the United States to streamline the contracting process and establish a consistent framework for protecting and managing student data. The NDPA is currently being utilized by approximately 750 school districts in Illinois and over 11,000 nationally to facilitate compliance with state and federal student privacy and security laws.

Emily has extensive experience representing educational institutions in responding to complaints filed with the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General, and Illinois Department of Human Rights. Emily regularly defends educational entities in state and federal court in defending against constitutional, civil rights, and breach of contract claims.

Before joining Robbins Schwartz, Emily represented students with disabilities in special education matters. Emily attended the George Washington University Law School, where she was a member of the George Washington International Law Review and the GW Law Moot Court Board. Prior to attending law school, Emily taught high school mathematics and science in Hangzhou, China.



PRACTICE AREAS

Education Law
Higher Education
Special Education
Student Discipline

EDUCATION

J.D., *with honors*, George
Washington University
Law School

B.S., *cum laude*,
Vanderbilt University

ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

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

Supreme Court of Illinois

ORGANIZATIONS

Trustee, Associated
Colleges of Illinois

Chicago Bar Association

Illinois Council of School
Attorneys

National Council of School
Attorneys

RECENT PUBLICATIONS

“College Admissions Under Fire as Top Court Takes Affirmative Action Case,”
Chicago Daily Law Bulletin (2022)

“Disabled Athlete Can’t Support ADA Claims,” *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Legal Gymnastics in the Age of COVID and Other Challenges, Illinois Council of Community College Presidents Retreat (January 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA, and PIPA and Strategies for Compliance, Secured Schools K-12 Data Privacy and Cybersecurity Conference (January 2022)

Preparing for Implementation of the New Title IX Regulations: Recommendations for Human Resources Professionals, Illinois Association of School Personnel Administrators (November 2020)

Legislative Update: A Review of New (and Proposed) Laws Affecting Illinois Community Colleges’ Risk Management Practices, Illinois Community College Chief Financial Officers Fall Conference (October 2019)



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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.

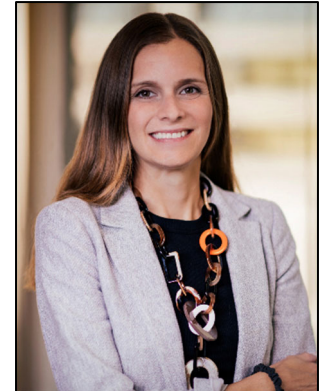
RECENT PUBLICATIONS

“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

Chicago Bar Association

Illinois Council of School
Attorneys