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Unpacking the 2024 Title IX Regulations: A Webinar for K-12 School Districts

Webinar
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Introductions



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Background on Title IX Regulations



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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.

How Did We Get Here?



- Record-breaking 240,000 comments
- Final Regulations were expected in May 2023... then October 2023... then January 2023... then March 2023...

Finally!

- Final Regulations issued on April 19, 2024.
- 1,561-page document consists of 1,504 pages of Preamble and 57 pages of actual Regulations.
- Regulations go into effect on **August 1, 2024**. But note:
 - 2024 Regulations apply to incidents occurring **on or after August 1, 2024**
 - Incidents occurring **before August 1, 2024** must be resolved using current (2020) Regulations*...regardless of when the incident is reported.*

Unpacking the 2024 Regulations



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Scope of Prohibited Conduct: Sex Discrimination

§ 106.10

- Includes discrimination based on:
 1. Sex stereotypes
 2. Sex characteristics
 3. Pregnancy or related conditions
 4. Sexual orientation
 5. Gender identity

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Gender Identity

§ 106.31(a)(2)

- Prohibition on adopting policies/practices that **prevent a person from participating** in district's education program or activity **consistent with their gender identity**.

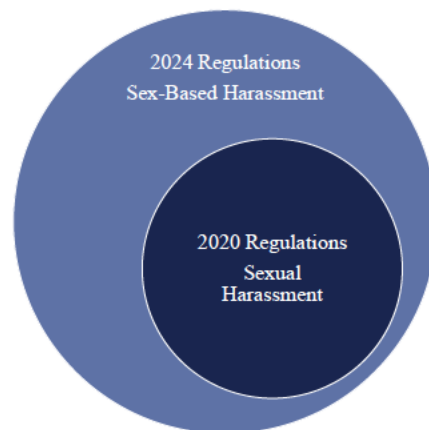


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Scope of Prohibited Conduct: Sex-Based Harassment

§ 106.2

- Includes:
 - Quid pro quo harassment
 - Hostile environment harassment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking



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Types of Sex-Based Harassment

§ 106.2

Quid Pro Quo

When an **employee, agent, or other person** authorized by the district to provide an aid, benefit or service **explicitly or implicitly** conditions that aid, benefit or service on a person's participation in unwelcome sexual conduct.



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Types of Sex-Based Harassment

§ 106.2

Hostile Environment

Unwelcomed sex-based conduct that, based on the totality of the circumstances, is **subjectively and objectively** offensive and is so severe **or** pervasive that it **limits or denies** a person's ability **to participate in or benefit from** the district's education program or activity.



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Jurisdiction § 106.11

- Conduct that occurs under a school district's education program or activity
 - Subject to the district's disciplinary authority
 - *See, e.g.*, Board Policies 5:120 and 7:190

Jurisdiction § 106.11

An institution has an obligation to address a sex-based **hostile environment in its education program or activity in the United States**, even where the sex-based harassment contributing to the hostile environment occurred outside the education program or activity or outside the U.S.



Other Key Terms

Complainant

Complaint

Confidential
Employee

Evaluation

Knowledge

Peer
Retaliation

Employee Notification Requirements §§ 106.44(c)(1) & 106.44(c)(2)(i)&(ii)

Employee Category	Requirement(s)
Any employee who is not a confidential employee	Report to Title IX Coordinator
Confidential employees	Explain confidential status, how to contact TIXC and make a complaint, and that TIXC may be able to offer and coordinate supportive measures, as well as initiate informal resolution process or investigation under grievance procedures

Title IX Coordinator Response Obligations

§ 106.44(f)

Title IX Coordinator must take the following steps upon being notified of conduct that reasonably may constitute sex discrimination:

- (1) Treat complainant and respondent equitably.
- (2) Offer and coordinate supportive measures to complainant and respondent.
- (3) Notify complainant of district's grievance procedures and informal resolution process.
- (4) If complaint is made, notify respondent of grievance procedures and informal resolution process, if any.
- (5) In response to a complaint, initiate grievance procedures or informal resolution process.
- (6) In absence of complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination if necessary to address conduct that may constitute sex discrimination.
- (7) If the Title IX Coordinator initiates a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others.
- (8) Regardless of whether a complaint is initiated, take other prompt and effective steps to ensure that sex discrimination does not continue to recur, in addition to providing remedies.



Supportive Measures § 106.44(g)

- May not unreasonably burden either party and must be designed to:
 - Protect the safety of the parties;
 - Protect the district's educational environment; and/or
 - Provide support during the district's grievance procedures or informal resolution process.
- May not be imposed for punitive or disciplinary reasons.

Supportive Measures

§ 106.44(g)

- Examples:
 - Counseling
 - Extensions of deadlines and other course-related adjustments
 - Increased supervision and/or adult accompaniment during transition times
 - Increased security and monitoring of certain areas of school grounds
 - Restrictions on contact applied to **one or more parties**
 - Leaves of absence
 - Changes in class, work, housing, or extracurricular or any other activity, **regardless of whether there is or is not a comparable alternative**
 - Training and education programs related to sex-based harassment

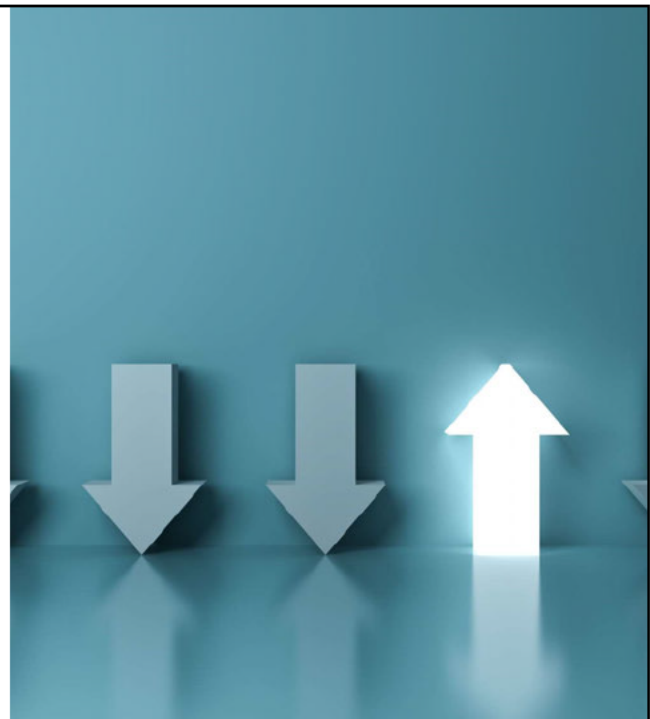


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Supportive Measures

§ 106.44(g)

- May be modified or terminated at conclusion of resolution process.
- Either party may challenge any decision to provide, deny, modify or terminate supportive measures applicable to that party.
- Challenge must be reviewed by impartial employee with ability to modify or reverse original decision.



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Informal Resolution

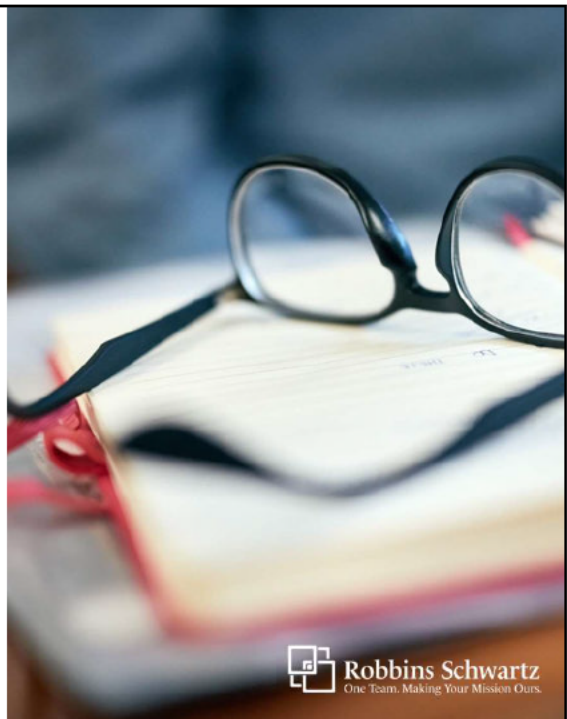
§ 106.44(k)

- Permitted whenever district receives complaint of sex discrimination or has information about conduct that reasonably may constitute sex discrimination under Title IX.
- Participation must be voluntary.
- District cannot require parties to waive right to investigation and determination as condition on participation in informal resolution.
- Not permitted in K-12 employee-on-student cases.

Grievance Procedures

§ 106.45

- **Section 106.45** is applicable grievance procedure for elementary and secondary schools and school districts.
- Additional grievance procedure contained in Section 106.46 only applies to complaints of sex-based harassment involving a **higher education** student party.



Grievance Procedures

§ 106.45

- General requirements:
 - Equitable treatment of both parties
 - No conflicts of interest or bias
 - Presumption of non-responsibility
 - Reasonably prompt timeframes
 - Reasonable steps to protect privacy of all parties
 - Objective evaluation of evidence
 - For sex-based harassment complaints, description of range of supportive measures and list/description of range of possible disciplinary sanctions.
- Decisionmaker may be the same person as Title IX Coordinator or Investigator



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Grievance Procedures

§§ 106.45

- Confidentiality
 - District must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.

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§ 106.45 Procedures

- Notice of allegations
 - Not required to be in writing
 - Must be amended if new allegations are made or allegations are dismissed
 - Must include:
 - Grievance procedures
 - Informal resolution process, if any
 - Identities of parties
 - Description of alleged conduct, including dates and locations (if known)
 - Prohibition on retaliation
 - Equal opportunity to access relevant evidence or description of relevant evidence



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§ 106.45 Procedures

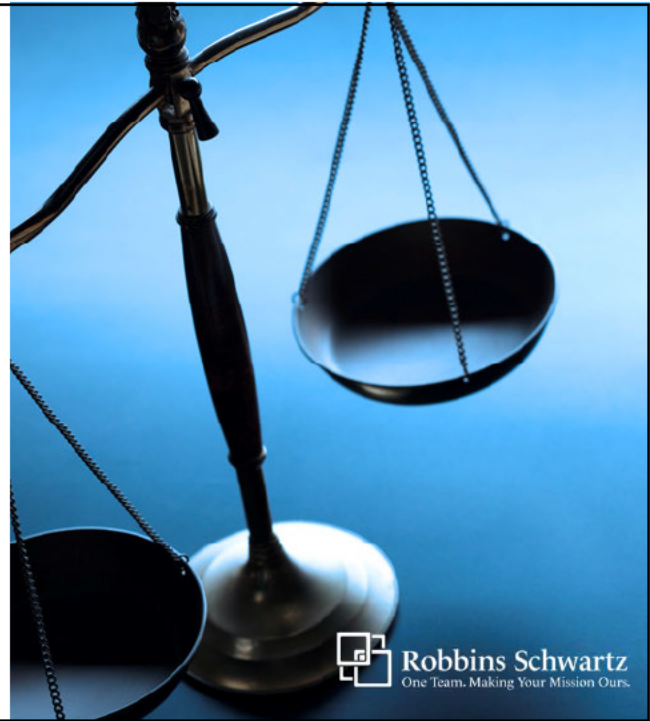
- Dismissals permitted (but not required) when:
 - District is unable to identify respondent after taking reasonable steps to do so
 - Respondent is not enrolled in or employed by district
 - Complainant voluntarily withdraws any or all complaint allegations
 - Alleged conduct would not constitute sex discrimination, if proven
- Either party may appeal dismissal decision
- Appellate decisionmaker must not have had prior involvement in investigation or dismissal



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§ 106.45 Procedures

- Consolidation of complaints permitted
- Investigation must be adequate, reliable and impartial
- Burden is on the district to investigate and gather sufficient relevant evidence



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§ 106.45 Procedures

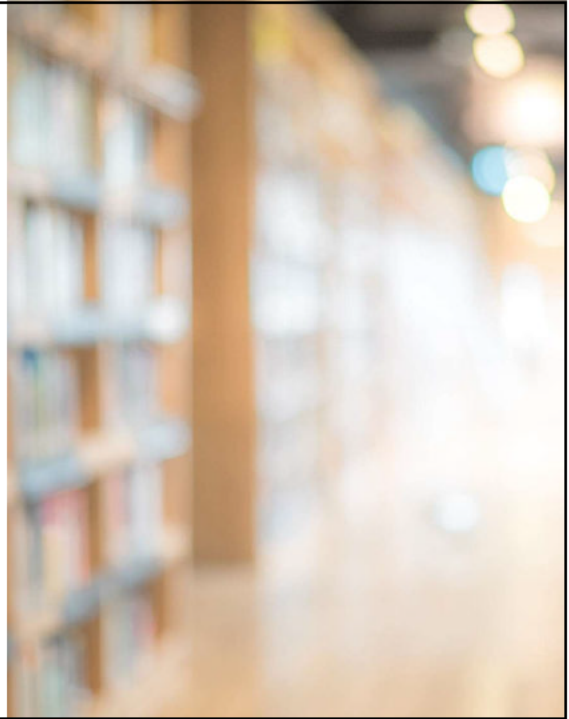
- Must provide an equal and reasonable opportunity for parties to:
 - Provide fact witnesses and evidence
 - Access relevant and not otherwise impermissible evidence
 - Respond to evidence gathered
- Must include process that enables decisionmaker to assess credibility of parties and witnesses when relevant.



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§ 106.45 Procedures

- Written determination
 - Preponderance of the evidence standard
 - Rationale for determination
 - Procedures and permissible bases for appeal
 - Disciplinary sanctions (must notify complainant) and remedies



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Pregnancy or Related Conditions – Students § 106.40

- When student notifies employee of student's pregnancy or related condition, employee must notify person that they may inform TIXC and must provide TIXC's contact information.



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Pregnancy or Related Conditions – Students

§ 106.40

- After receiving notice of student's pregnancy or related condition, TIXC must:
 - Notify student of the district's obligations concerning pregnancy and related conditions
 - Provide voluntary reasonable modifications
 - Allow voluntary leave of absence for medical reasons and reinstatement upon return
 - Provide clean, private space for lactation

Pregnancy or Related Conditions – Employees

§ 106.57

- Comparable treatment to other temporary medical conditions for all job-related purposes
- Voluntary leaves of absence
- Reasonable break time for lactation and clean and private lactation space



Training Requirements

§ 106.8(d)

- All employees must receive training upon hiring, upon change of position that alters their duties under Title IX, and annually. Training must cover, at a minimum:
 - District's obligation to address sex discrimination in its education program or activity
 - Scope of conduct that constitutes sex discrimination
 - Applicable notification requirements
- Other training requirements largely mirror 2020 Regulations.

Final Dos and Don'ts

- Don't
 - Panic!
 - Throw away Board Policy 2:265.
 - Wait until August (or even July) to start on your Title IX implementation checklist.
- Do
 - Determine who will oversee your district's preparation and compliance efforts.
 - Develop a plan and timeline for updating policies and procedures and providing training to employees.
 - Designate key players for grievance procedures.
 - Utilize external resources as a guide (e.g., PRESS policies).

Coming Soon from Robbins Schwartz

Analysis of Applicable
PRESS Policies and
Procedures

Trainings



Updated Title IX
Toolkit

To receive Title IX updates and other legal development alerts from Robbins Schwartz, sign up for our newsletter by emailing marketing@robbins-schwartz.com.



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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
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B.S., *cum laude*,
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U.S. Court of Appeals for
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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)



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Michelle L. Weber practices in education law, with a primary focus on special education and student matters. Michelle brings a wealth of experience to her role at Robbins Schwartz, representing educational institutions, including school districts, community colleges and private schools. Michelle works with clients on a wide range of student-related legal issues, including special education, student discipline, student records, free speech, and board policy development. Michelle is also a member of the firm's *Freedom of Information Act* and Title IX working groups and provides counsel to clients in these areas as well.

Michelle is passionate about education and her strengths lie in finding creative and practical solutions to complex legal issues. Prior to joining Robbins Schwartz, she served as an in-house attorney for Waukegan Public Schools and Chicago Public Schools, focusing on special education. Michelle began her career as a Teach for America Corps Member and middle school language arts teacher; an experience that significantly influenced her career trajectory. Drawing on her experience as a classroom teacher, Michelle offers clients a unique perspective, aiming to partner with them to achieve their goals while prioritizing the best interests of students.

Beyond her legal practice, Michelle actively contributes to the community. She serves on the Board of Directors of North Park Elementary School, expanding her commitment to education and experience in the field. Outside of her professional pursuits, Michelle enjoys running, yoga, hiking, and spending quality time with her family.

RECENT PUBLICATIONS

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

RECENT PRESENTATIONS

The Three R's: Recognizing, Reporting and Responding to Student Bullying Incidents, Robbins Schwartz School Administrators Conference (October 2023)

Addressing Student Mental Health Concerns and Threats to Campus Safety, Robbins Schwartz Virtual Legal Update for Illinois Higher Education Institutions Conference (September 2023)



PRACTICE AREAS

Education Law
Special Education
Student Related Issues

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College of Law

M.A., Loyola Marymount
University

B.A., Trinity College

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Supreme Court of Illinois

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Chicago Bar Association

Illinois Council of School
Attorneys

National Council of School
Attorneys

Board of Directors, North
Park Elementary School

Student Discipline and Trauma-Informed Practices for School Boards, Illinois State Board of Education Approved Professional Leadership Development Training (May 2023)

Navigating the IEP Process when DCFS is Involved, Illinois Alliance of Administrators of Special Education (February 2023)

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)





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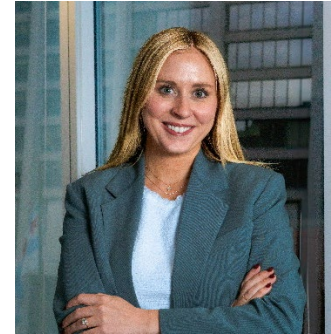
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Hayley counsels K-12 school districts and higher education institutions on various issues, including IDEA, student discipline, Title IX, free speech and expression, student disability rights, board governance, and policy development. She assists school districts in responding to complaints from the Office for Civil Rights, Office of the Attorney General and Illinois State Board of Education, and she represents public school districts at IEP meetings, due process hearings, and student discipline hearings.

Prior to joining Robbins Schwartz, Hayley clerked at a private litigation firm, and interned with the Chicago Public Schools Board of Education. She received her Juris Doctor from Loyola University Chicago. During law school, she worked in the Civitas ChildLaw Clinic where she received her 711 license and served as a child representative in domestic relations and child protection proceedings.



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