



Robbins Schwartz
One Team. Making Your Mission Ours.

FOUNDATIONAL TRAINING FOR TITLE IX TEAM MEMBERS

July 9, 2024 & July 11, 2024

Emily P. Bothfeld
ebothfeld@robbins-schwartz.com

Holly E. Jacobs
[hjacobson@robbins-schwartz.com](mailto:hjacobs@robbins-schwartz.com)

Chicago
190 South LaSalle St, Suite 2550
Chicago, IL 60603
p 312.332.7760
f 312.332.7768

Champaign
301 North Neil St, Suite 400
Champaign, IL 61820
p 217.363.3040
f 217.356.3548

Collinsville
510 Regency Centre
Collinsville, IL 62234
p 618.343.3540
f 618.343.3546

Lisle
550 Warrenville Rd, Suite 460
Lisle, IL 60532
p 630.929.3639
f 630.783.3231

Rockford
2990 North Perryville Rd, Suite 4144B
Rockford, IL 61107
p 815.390.7090

The materials on this webpage are the property of Robbins Schwartz and may not be copied, adapted, shared, or displayed without the express written permission of Robbins Schwartz.





Foundational Training for Title IX Team Members: A Webinar for K-12 Institutions

Presented by:

Emily P. Bothfeld & Holly E. Jacobs

July 9, 2024 & July 11, 2024

1

Robbins Schwartz 2024 Title IX Compliance Training

- Part 1 – Foundational Training
 - Tuesday, July 9 from 9:00-11:00
 - Thursday, July 11 from 1:00-3:00
- Part 2 – Implementing the Title IX Grievance Process
 - Tuesday, July 16 from 1:00-2:30
 - Thursday, July 18 from 9:00-10:30
- Part 3 – Pregnancy and Parenting Requirements
 - Tuesday, July 30 from 9:00-10:00
 - Thursday, August 1 from 1:00-2:00



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.

Foundational Training – Agenda

- The Title IX Team
- Relevant Laws and District Policies
- Title IX Coordinator's Role
- Key Definitions
- Jurisdiction
- Reporting and Notification Requirements
- District Response to Allegations
- Title IX Grievance Process
- Informal Resolution
- Recordkeeping

The Title IX Team



The Title IX Team

- Title IX Coordinator
- Investigator
- Decisionmaker
- Appellate Decisionmaker
- Impartial Employee (Supportive Measures Challenges)
- Informal Resolution Facilitator



5

Relevant Laws and District Policies



6

Relevant Laws

- 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”)



7

Board Policy 2:265, *Title IX Grievance Procedure*

- Updated versions of Policy 2:265 and corresponding Administrative Procedures and Exhibits anticipated to be released in early August 2024.
- Expected key components of updated materials:
 - Prohibition on sex discrimination, including sex-based harassment, as defined under 2024 Title IX Regulations.
 - Prohibition on retaliation (including peer retaliation) against anyone for the purpose of interfering with any right or privilege secured by Policy 2:265, or because the person reported information, made a complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under Policy 2:265.
- Stay tuned for Robbins Schwartz analysis of Policy/Procedure updates.



8

Title IX Coordinator's Role



 Robbins Schwartz
One Team. Making Your Mission Ours.

9



Designation of Title IX Coordinator

- Title IX Regulations require the District to designate and authorize at least one employee to coordinate its efforts to comply with Title IX.
- Title IX Coordinator may be (but is not required to be) the same person as the Nondiscrimination Coordinator.

10

Responsibilities of Title IX Coordinator

Coordinating the District's Title IX compliance efforts.

Ensuring that students, employees, applicants for employment, and unions and professional organizations holding collective bargaining or professional agreements with the District are appropriately notified of the District's prohibition on sex discrimination.

Overseeing the District's response to all sex discrimination reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports or complaints.

Ensuring the prompt and thorough investigation of all sex discrimination complaints.

11

Responsibilities of Title IX Coordinator

- Offering and coordinating appropriate supportive measures and ensuring the effective implementation of any remedies.
- Ensuring that appropriate protocols are in place for working with law enforcement and coordinating services with local victim advocacy organizations and services providers.
- Ensuring that adequate training is provided to District employees on Title IX and related issues.
- Monitoring students' participation in academic programs and extracurricular activities, including athletics, to identify and proactively address issues related to possible sex discrimination.
- Maintaining appropriate records of sex discrimination reports and complaints.

12

Key Definitions

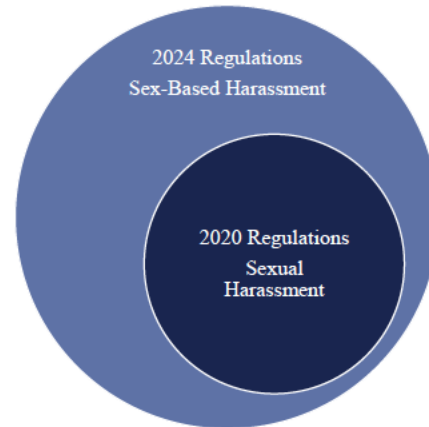


Title IX Sex Discrimination

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

Sex-Based Harassment

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



15

Types of Sex-Based Harassment

Quid Pro Quo

When an **employee, agent, or other person** authorized by the institution 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.

16

Types of Sex-Based Harassment

Hostile Environment

Unwelcome 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 recipient's education program or activity.



17

Types of Sex-Based Harassment

Sexual Assault

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

See <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr>.



18

Types of Sex-Based Harassment

Dating Violence

Violence committed by a person:

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 2) Where the existence of such a relationship shall be determined based on a consideration of:
 - a) The length of the relationship;
 - b) The type of relationship; and
 - c) The frequency of interaction between the persons involved in the relationship.



19

Types of Sex-Based Harassment

Domestic Violence

Felony or misdemeanor crimes committed by a person who:

- 1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the State of Illinois, or a person similarly situated to a spouse of the victim;
- 2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- 3) Shares a child in common with the victim; or
- 4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the State of Illinois.



20

Types of Sex-Based Harassment

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- 1) Fear for the person's safety or the safety of others; or
- 2) Suffer substantial emotional distress.

21

Application



22

Application

- Board Policy 2:265 applies to all Title IX sex discrimination occurring under the District's education program or activity in the United States.
- Includes, but is not limited to, conduct that is subject to District's disciplinary authority.
- See Policy 7:190 and employee discipline policies.

Application

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



Reporting and Notification Requirements



Making a Report

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

Employee Notification Requirements

- A District employee who receives information about conduct that may reasonably constitute Title IX sex discrimination must:
 - Immediately report a suspicion of child abuse or neglect to DCFS.
 - Promptly notify the Title IX Coordinator.
 - Note exception for confidential employees, as defined under 2024 Regulations, but Regulations do not require school districts to designate confidential employees and there are practical considerations that should be considered before doing so.
- See Document N



27

Confidentiality of Reports

- Under Board Policy 2:265, reports of alleged Title IX sex discrimination will be kept confidential to the greatest extent possible, subject to the District's duty to investigate and maintain an educational program or activity that is productive, respectful, and free of Title IX sex discrimination.



28

District Response to Allegations of Title IX Sex Discrimination



Title IX Coordinator Response

- Upon receipt of a report, Title IX Coordinator should analyze the allegation(s) to determine whether the conduct as alleged could constitute Title IX sex discrimination.
- Title IX Coordinator should consider whether action under any of the following policies is required, either in lieu of or in addition to any action under Policy 2:265:
 - 2:260, Uniform Grievance Procedure
 - 5:10, Equal Employment Opportunity and Minority Recruitment
 - 5:20, Workplace Harassment Prohibited
 - 5:90, Abused and Neglected Child Reporting
 - 5:120, Employee Ethics; Code of Professional Conduct; and Conflict of Interest
 - 7:180, Prevention of and Response to Bullying, Intimidation, and Harassment
 - 7:10, Equal Educational Opportunities
 - 7:20, Harassment of Students Prohibited
 - 7:185, Teen Dating Violence Prohibited
 - 7:190, Student Behavior

Title IX Coordinator Response

See Documents A, B, C, G

Where Title IX Coordinator determines that conduct as alleged could constitute Title IX sex discrimination, Title IX Coordinator must:

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



31



Supportive Measures

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

32

Supportive Measures

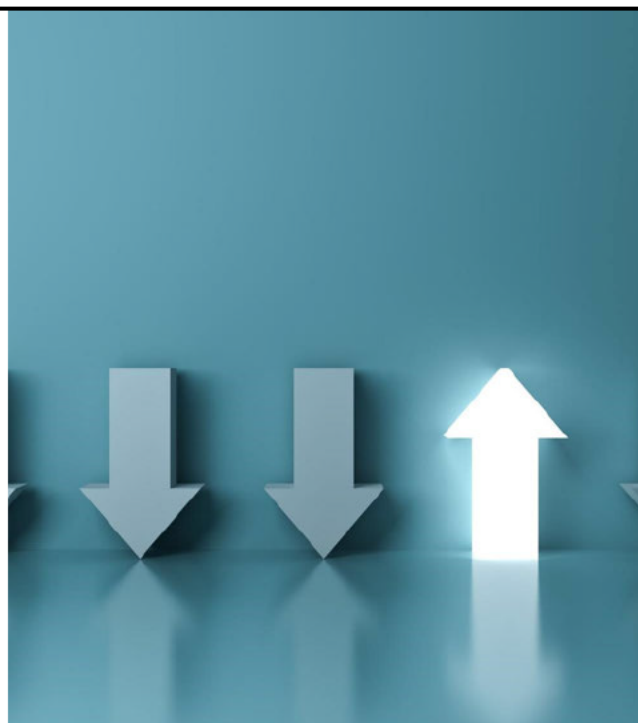
- May vary depending on what District deems reasonably available.
- Examples:
 - Counseling
 - Extensions of deadlines and other course-related adjustments
 - Campus escort services
 - Increased security and monitoring
 - Restrictions on contact applied to one or more parties
 - Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
 - Training and education programs



33

Supportive Measures

- 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.
- See Document F



34

Emergency Removal of Student Respondent

- Student respondent may be removed from District's education program on an emergency basis only where, based on an individualized safety and risk analysis, District determines that an immediate and serious threat to the health or safety of a complainant or other persons arising from the allegations of Title IX sex discrimination justifies the removal.
- District must provide respondent with notice and an opportunity to challenge the decision immediately following the removal.
- **Be mindful of SB 100 requirements.**



35

Administrative Leave for Employee Respondent

- If respondent is identified and is a non-student employee, District may consider whether to place employee respondent on administrative leave in accordance with Title IX, relevant District policies and procedures, and any applicable collective bargaining agreements.



36

Title IX Grievance Process



Who Can Initiate a Complaint?

- Complainant
- Parent/guardian or other legal representative, with legal right to act on behalf of a complainant
- Title IX Coordinator, in certain circumstances
- For complaints of Title IX sex discrimination other than sex-based harassment, in addition to those listed above:
 - Any student or employee; or
 - Any person other than a student or employee who was participating or attempting to participate in the District's education program or activity at the time of the alleged Title IX sex discrimination.

Determining When to Initiate a Complaint

Title IX Coordinator must weigh the following factors:

- | | |
|--|--|
| (1) Complainant's request not to proceed with initiation of a complaint. | (5) Age and relationship of the parties, including whether respondent is an employee of the District. |
| (2) Complainant's reasonable safety concerns regarding initiation of the complaint. | (6) Scope of the alleged sex discrimination. |
| (3) Risk that additional acts of sex discrimination would occur if a complaint is not initiated. | (7) Availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred. |
| (4) Severity of the alleged sex discrimination | (8) Whether the District could end the alleged sex discrimination and prevent its recurrence without initiating the Grievance Process. |



39

Complaint Evaluation

- When complaint is filed, Title IX Coordinator must evaluate whether to investigate or dismiss the complaint.
 - Similar to pre-complaint analysis of allegations
- Where Title IX Coordinator determines that alleged conduct could constitute Title IX sex discrimination, Title IX Coordinator should initiate the Grievance Process.
- Where Title IX Coordinator determines that alleged conduct would not constitute Title IX sex discrimination, Title IX Coordinator should dismiss the complaint.
 - See Document H



40



General Guidelines for Grievance Process

- 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.

41

Grievance Procedures

- Confidentiality
 - District must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the Grievance Process.



42

Notice of Allegations

- Must include:
 - Explanation of Grievance Process
 - Explanation of informal resolution process, if any
 - Identities of parties
 - Description of alleged conduct, including dates and locations (if known)
 - Prohibition on retaliation and on knowingly providing false information
 - Equal opportunity to access relevant evidence or description of relevant evidence
- Must be amended if new allegations are added.
- See Document G



43

Consolidation of Complaints

- When allegations of Title IX sex discrimination arise out of the same facts or circumstances, Title IX Coordinator may consolidate complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party.



44

Dismissal of Complaint or Allegations

- District is permitted to dismiss a complaint when:
 - District is unable to identify respondent after taking reasonable steps to do so
 - Respondent no longer enrolled in or employed by the District
 - Complainant voluntarily withdraws any or all complaint allegations
 - Alleged conduct would not constitute Title IX sex discrimination, even if proven
- Upon dismissal, Title IX Coordinator must offer supportive measures to complainant and/or respondent, as appropriate.
- Either party may appeal dismissal decision.
- See Document H

Complaint Investigation

- Title IX Coordinator may conduct investigation or appoint separate Investigator.
- Burden is on District to gather sufficient evidence to determine whether Title IX sex discrimination occurred.
- Must provide equal and reasonable opportunity for parties to:
 - Provide fact witnesses and evidence
 - Access relevant and not otherwise impermissible evidence in the form of an accurate description (summary) and notice of right to access the evidence
 - Respond to summary and/or evidence gathered
- Must include process that enables Decisionmaker to assess credibility of parties and witnesses when relevant.
- See Documents I and J



Written Determination

- Decisionmaker may be same or different person than Investigator.
- Must notify both parties simultaneously of the determination as to whether sex discrimination occurred
- Preponderance of the evidence standard
- Rationale for determination
- Procedures and permissible bases for appeal
- Disciplinary sanctions for respondent, if any (must notify complainant)
- Remedies for complainant, if any (must not notify respondent of specific remedies to be implemented)
- See Document K

47

Appeals

- Appeal process must, at minimum, be the same as the appeal process offered in all other “comparable proceedings.”
- Either party may appeal by submitting a written request to the TIXC.
- Appeal must be based on one of the following grounds:
 - Procedural irregularity that would change the outcome
 - New evidence now available that would change the outcome but that was not reasonably available at the time of the determination
 - TIXC, Investigator or Decisionmaker had a conflict of interest or bias that would change the outcome

48

Appeals

- Upon receipt of appeal, TIXC must notify both parties in writing that an appeal has been filed and forward all relevant materials to Appellate Decisionmaker.
- Parties must be given a reasonable opportunity to make statement in support of, or challenging, the outcome.
- See Document L



49

Appeals

- Appellate Decisionmaker may not be same person as TIXC, Investigator or initial Decisionmaker
- Must affirm, reverse, or modify written determination and provide written notification of the appeal determination to both parties simultaneously
- Determination is final on either:
 - Date on which an appeal is no longer timely
 - Date Appellate Decisionmaker provides written notice of appeal decision
- See Document M



50

Informal Resolution



 Robbins Schwartz
One Team. Making Your Mission Ours.

51

Informal Resolution

- 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.
- See Documents C and D.

 Robbins Schwartz
One Team. Making Your Mission Ours.

52

Informal Resolution

- Overseen by Informal Resolution Facilitator who cannot be same person as Investigator or Decisionmaker
- Parties may withdraw at any point prior to agreement
 - If either party withdraws, any Grievance Process that was pending will resume.
- Agreement precludes the parties from initiating grievance procedures arising from the same allegations
- Potential terms: restrictions on contact, restrictions on the respondent's participation in a program/activity, disciplinary sanctions, etc.
- See Document E.

Recordkeeping Requirements



Recordkeeping

- District must maintain for a period of at least seven years:
 - Informal resolution process records (and outcome)
 - Records of Grievance Process (and outcome)
 - Records of actions taken to meet obligation to respond to information about conduct that reasonably may constitute sex discrimination for each notification TIXC receives
 - All materials used to provide TIX training



55



56



Follow Us on Twitter!

@RSchwartzLaw



EMILY P. BOTHFELD

PARTNER, CHICAGO

312.332.7760

ebothfeld@robbins-schwartz.com

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)





Robbins Schwartz
One Team. Making Your Mission Ours.

HOLLY E. JACOBS

ASSOCIATE, CHICAGO

312.332.7760

[hjacobson@robbins-schwartz.com](mailto:hjacobs@robbins-schwartz.com)

Holly counsels employers on many aspects of labor and employment law, including employee discipline, internal investigations, federal and state employment discrimination matters, labor relations, and Title IX investigations and compliance. She represents both private and public sector employers and advises school districts, municipalities, and institutions of higher education.

Prior to joining Robbins Schwartz, Holly clerked at a private higher education firm, interned with the Equal Employment Opportunity Commission and Chicago Public Schools, and served as a judicial extern for the Honorable Judge Virginia M. Kendall of the United States District Court for the Northern District of Illinois. She received her Juris Doctor from Loyola University Chicago, where she also completed a master's degree in Cultural and Educational Policy Studies. Her master's thesis focused on legal reparations and decolonization efforts regarding Indigenous boarding schools in Canada and the United States. During law and graduate school, she served as the Editor-in-Chief of the Loyola International Law Review, and published articles at Loyola University Chicago and Columbia University. Prior to law school, Holly taught English as a Second Language in Nordhorn, Germany.

Holly is a member of the American Educational Research Association, which is a national research society dedicated to advancing knowledge about education and promoting the use of research to improve education and serve the public good. She was selected as a peer reviewer for research paper submissions to AERA's 2024 Annual Meeting.

AWARDS

American Educational Research Association - selected reviewer for submissions to AERA 2024 Annual Conference; Panels reviewed: De/Colonization and Transformative Curriculum Studies; Legal and Judicial Issues for Equity and Access; Decolonial, Postcolonial, and Anti-Colonial Studies in Education; Indigenous Peoples of the Americas; and Law and Education.

RECENT PUBLICATIONS

Jacobs, H (2023). Decolonizing a Settler Colonial State: How Canada and the United States Have Approached Investigations into Indigenous Boarding and Residential Schools



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., *cum laude*, Loyola University Chicago

M.A., Loyola University Chicago

B.A., *magna cum laude*, University of Montana

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Member, American Educational Research Association

