

Robbins Schwartz
One Team. Making Your Mission Ours.

IMPLEMENTING THE SECTION 106.45 GRIEVANCE PROCESS

July 16, 2024 & July 18, 2024

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Implementing the Grievance Process Training for Title IX Team Members: A Webinar for K-12 Institutions

Presented by:
Michelle Weber & Michael Barracato
July 16, 2024 & July 18, 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.

Implementing the Grievance Process – Agenda

- General Guidelines
- Informal Resolution
- Conflicts of Interest and Bias
- Complaints and Complaint Evaluation
- Notice of Allegations
- Complaint Investigation
- Determination
- Appeal



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3

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.



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4

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 of participation in an informal resolution
- Not permitted in K-12 employee-on-student cases
- Documents C and D



5

No Conflict of Interest or Bias

- Any person designated as the Title IX Coordinator, Investigator, or Decisionmaker must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
 - Upon receiving a report of a conflict or bias, must take interim measures to ensure the Title IX process remains impartial
 - May require temporarily reassigning duties or suspending involvement



6

Complaints and Complaint Evaluation



7

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
 - 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

8

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 |



9

Complaint Evaluation

- When complaint is filed, Title IX Coordinator shall, within 10 school business days, evaluate whether to investigate or dismiss the complaint
- If Title IX Coordinator determines that alleged conduct could constitute Title IX sex discrimination, Title IX Coordinator should initiate the Grievance Process
- If Title IX Coordinator determines that alleged conduct would not constitute Title IX sex discrimination, Title IX Coordinator should dismiss the complaint
 - Document H



10

Dismissal of Complaint/Allegations

- May dismiss a complaint for any of the following:
 - District is unable to identify Respondent after reasonable steps
 - Respondent no longer enrolled in or employed by 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.
- Document H



11

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
- Notice of Investigator, if appointed
- Document G



12

Notice of Allegations

- When Complainant's Identity Is Unknown:
 - Grievance Process may proceed if the Title IX Coordinator determines complaint needs to be initiated
 - Written notice will not include Complainant's identity
 - If Complainant's identity is later discovered, another written notice is provided



13

Notice of Allegations

When Respondent's Identity is Unknown:

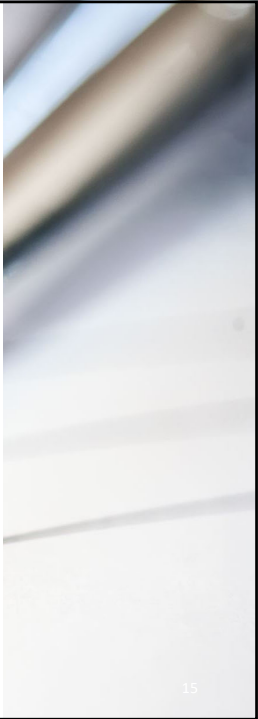
- Grievance Process shall proceed to reveal the Respondent's identity potentially
- Written notice will not include the Respondent's identity
- If Respondent's identity is later discovered, another written notice is provided



14



Complaint Investigation



15

15

Investigator

- Title IX Coordinator may conduct investigation or appoint separate Investigator
- Flexibility to use District employees or outsource investigations
- May involve more than one Investigator

16

Evidence

- Objective evaluation of relevant evidence, including inculpatory and exculpatory evidence, not otherwise impermissible
- Equal opportunity for the parties to present fact witnesses, other inculpatory and exculpatory evidence
 - Expert witnesses (optional)
 - Evidence must be relevant and not otherwise impermissible



17

Burden to Gather Evidence

- Burden of sufficient gathering evidence on the District, not the parties
- Both parties have the right to provide evidence and witnesses, but it is not their responsibility
- Must not restrict the parties' ability to discuss the allegations or gather evidence



18

Evidence – Not Relevant

- Rape shield protections – Evidence concerning complainant's sexual interests or prior sexual conduct, absent exceptions
- Evidence that is protected under a privilege, under state or federal law, unless waived

Confidentiality

- Reasonable steps to prevent unauthorized disclosure information and evidence obtained through the Grievance Process
- ISSRA/FERPA considerations

Access to Evidence

- Parties must have equal opportunity to access evidence that is relevant to the allegations and not otherwise impermissible (or an accurate description of the evidence)
- If description of evidence is provided, parties must be provided equal opportunity to access evidence, upon request of any party
- Reasonable opportunity to respond to the evidence
 - 15 school business days from receipt of evidence
 - 5 school business days to request review evidence
- Documents I and J



Determination

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Determination of Sex Discrimination

- Reasonable efforts to complete investigation and issue written determination within 30 school business days
 - May be extended for “good cause”
- Preponderance of the evidence standard – more likely than not

Credibility Assessment

- Must include a process that enables Decisionmaker to question parties and witnesses to assess credibility
- If credibility is at issue and relevant



Written Determination

- 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)
- Document K



25

Appeals



26

Appeals

- Either party may appeal by submitting a written request to the Title IX Coordinator, within 5 school business days of receipt of notice of dismissal or determination
- Appeal process must, at minimum, be the same as the appeal process offered in all other comparable proceedings
- May not be the same person as the Investigator/Decisionmaker or the Title IX Coordinator

Basis for Appeal

Appeal must be based on one of the following grounds:

1. Procedural irregularity that would change the outcome
2. New evidence now available that was not reasonably available at the time of the determination, that would change the outcome
3. Title IX Coordinator, Investigator or Decisionmaker had a conflict of interest or bias that would change the outcome

Appeal Process

Title IX Coordinator:

- Upon receipt of appeal, notifies both parties in writing that an appeal has been filed and forward all relevant materials to Appeal Decisionmaker
- Provides five (5) school business days to submit a written statement and/or new evidence in support of or challenging the outcome
- Promptly forwards all materials relative to appeal to the Appeal Decisionmaker.
- Document L



29

Appeals

- Appeal Decisionmaker may not be same person as Title IX Coordinator, Investigator or initial Decisionmaker
- Must affirm, reverse, or modify written determination
 - Within 30 school business days
- Provide written notification of the appeal determination to both parties simultaneously
- Document M

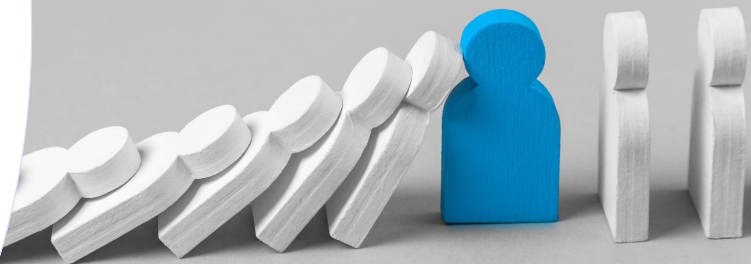


30

Final Determination

- Determination is final on either:
 - Date on which an appeal is no longer timely
 - Date Appeal Decisionmaker provides written notice of appeal decision

Disciplinary Sanctions and Remedies

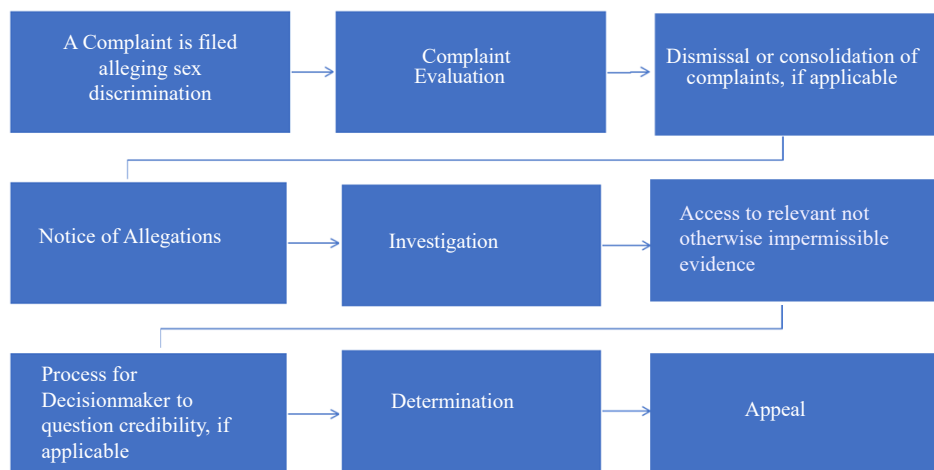


Disciplinary Sanctions and Remedies

If determination that sex discrimination occurred, Title IX Coordinator:

- Coordinates and provision and implementation of remedies
- Coordinates the imposition of disciplinary sanctions, and notice to Complainant of disciplinary sanctions
- Takes other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur

Grievance Process Overview





35

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-  @Robbins Schwartz Law
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-  @robbinsschwartz

A word cloud of "Thank You" in various languages. The words are arranged in a circular pattern around the central text "THANK YOU". The languages include: HVALA, OBRIGADO, GRAZIE, 谢谢, DANKE, SHUKRAAN, TAK, DANK JE, KIITOS, RAHMET, TAKK, ARIGATO, GRACIAS, BARKA, СПАСИБО, MERCİ, and TACK. The words are in different colors and sizes, creating a vibrant and multicultural display.

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36

MICHELLE L. WEBER

PARTNER, CHICAGO

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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

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)



PRACTICE AREAS

Education
Special Education
Student Rights

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

National Council of School
Attorneys

Board of Directors, North
Park Elementary School

MICHAEL A. BARRACATO

ASSOCIATE, CHICAGO

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Michael A. Barracato is an Associate within the Student Rights group at Robbins Schwartz. His commitment to making a difference is reflected in his dedication to serving clients and upholding the principles of justice and equity. Michael's journey into the legal profession has been shaped by his unique background and experiences.

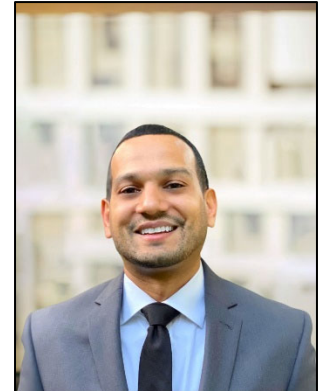
As an attorney, Michael excels in crafting creative solutions to intricate legal problems. His background in education has equipped him with a unique perspective and insight into the intersection of education and law. He is committed to providing knowledgeable and empathetic advocacy for educational institutions, families, and students.

Michael's strengths as an attorney include his ability to navigate complex educational regulations, handle disciplinary proceedings, and ensure the rights of students and staff are upheld. His innovative approach to problem-solving has led to successful outcomes for his clients.

Michael's career path was inspired by his firsthand experience with the impact of legal issues on educational settings. Motivated to merge his knowledge of educational systems with legal advocacy, he pursued a career in law. Michael's decision to specialize in educational law was driven by his desire to address the unique challenges faced by schools, students, and families.

Prior to embarking on his legal career, Michael served as an Assistant Principal, where he navigated a wide range of issues, from student discipline to staff management. Through this role, Michael gained invaluable experience in critical thinking, conflict resolution, and effective communication. His experience provided him with a deep understanding of the complexities of educational environments, preparing him to handle diverse client needs with empathy and expertise. These skills have been instrumental in his transition to the legal field.

Michael's upbringing in New York's diverse cultural landscape has instilled in him a deep appreciation for various perspectives and backgrounds. This diversity informs his legal practice, particularly in education law, where inclusivity and understanding are paramount.



PRACTICE AREAS
Student Rights

EDUCATION
J.D., The John Marshall
Law School

ADMITTED TO PRACTICE
Supreme Court of Illinois
(pending admission)

ORGANIZATIONS
American Bar Association

Chicago Bar Association