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IMPLEMENTING THE SECTION 106.45 GRIEVANCE PROCESS

July 15, 2024 & July 16, 2024

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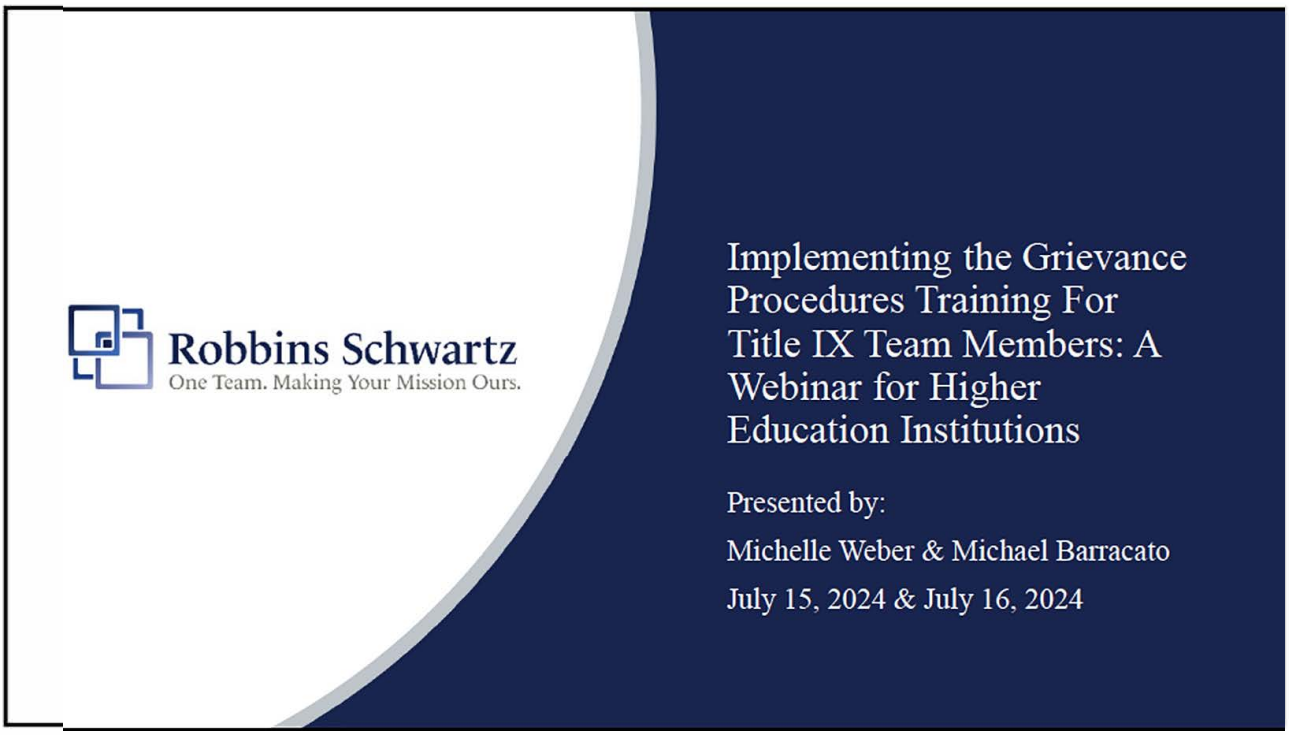

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Robbins Schwartz 2024 Title IX Compliance Training

- **Part 1 – Foundational Training**
  - Tuesday, July 9 from 1:00-3:00
  - Thursday, July 11 from 9:00-11:00
- **Part 2 – Implementing the Title IX Grievance Procedures (Section VII.A)**
  - Monday, July 15 from 1:00-2:30
  - Tuesday, July 16 from 9:00-10:30
- **Part 3 – Implementing the Title IX Grievance Procedures (Section VII.B)**
  - Tuesday, July 23 from 9:00-10:30
  - Thursday, July 25 from 1:00-2:30
- **Part 4 – Pregnancy and Parenting Requirements**
  - Tuesday, July 30 from 1:00-2:30
  - Thursday, August 1 from 9:00-10:30
- **Part 5 – Illinois Preventing Sexual Violence in Higher Education Act**
- Tuesday, August 6 from 9:00-10:30
- Thursday, August 8 from 1:00-2:30

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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.

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Implementing the Grievance Procedures – Agenda

- General Guidelines
- Informal Resolution
- Complaint Initiation and Complaint Evaluation
- Complaint Dismissal Criteria and Process
- Notice of Allegations
- Investigation
- Decisionmaker Review and Determination
- Appeals
- Disciplinary Sanctions and Remedies

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General Guidelines

- Equitable treatment of both parties
- Employees serving in designated roles must be trained
- No conflicts of interest or bias
- Presumption of non-responsibility
- No discipline imposed on the respondent until a determination has been made
- Reasonable steps to protect privacy of all parties
- Objective evaluation of evidence
- Impermissible evidence will not be accessed, considered, disclosed, or otherwise used
- Credibility determinations will not be based on a person's status as a complainant, a respondent, or a witness
- Prompt and equitable implementation of all grievance procedures, including appeal procedures
- Description of range of supportive measures and list/description of range of possible disciplinary sanctions.

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Informal Resolution



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Informal Resolution

- Permitted whenever the College receives complaint of sex discrimination **or has information about** conduct that reasonably may constitute sex discrimination
- Participation must be voluntary
- The College cannot require parties to waive the right to investigation and determination as a condition of participation in informal resolution
- Not permitted in K-12 employee-on-student cases
- See Documents C and D

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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 that the process remains impartial
  - May require temporarily reassigning duties or suspending involvement

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Complaints and Complaint Evaluation



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Who can initiate a complaint?

- A complainant
- A parent, guardian, or other authorized legal representative
- The Title IX Coordinator, in certain circumstances
- For complaints of sex discrimination other than sex-based harassment, in addition to the above:
  - Any student or employee
  - Any person other than a student or employee who is participating in or attempting to participate in the College's education program or activity at the time of the alleged sex discrimination

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Determining When to Initiate a Complaint

Title IX Coordinator must weigh the following factors:	
(1) Complainant's request not to proceed with initiation of the complaint.	(5) Age and relationship of the parties, including whether the respondent is an employee of the College.
(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 College could end the alleged sex discrimination and prevent is recurrence without initiating the grievance procedures.

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Complaint Evaluation

- When complaint is filed, Title IX Coordinator evaluates the complaint
  - 10 business days of receipt
- 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 <u>not</u> constitute Title IX sex discrimination, Title IX Coordinator should dismiss the complaint
  - See Document H

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Complaint Dismissal Criteria and Process

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Dismissal of Complaint/Allegations

- College cannot identify Respondent after reasonable steps
- Respondent is not part of College's program/activity or not employed by the College
- Complainant withdraws allegations, Title IX Coordinator declines complaint, and remaining conduct wouldn't constitute sex discrimination
  - Note: College must receive complainant's withdrawal in writing
- Alleged conduct wouldn't constitute sex discrimination; College will clarify before dismissal

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Dismissal Process

- Prompt written notification of dismissal grounds to complainant and, if applicable, to all parties
  - Notice includes right to appeal and permissible bases for appeal
  - Document H
- Post-Dismissal:
  - Offer supportive measures to complainant
  - Offer supportive measures to respondent, if notified of allegations
  - Title IX Coordinator ensures no recurrence of sex discrimination in College's program/activity

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Notice of Allegations

- 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 and respond to the investigation report* and the relevant and not otherwise impermissible evidence
  - Statement that prior to a determination being made, the parties have an opportunity to present evidence to an impartial and trained Decisionmaker
  - Statement that the respondent is presumed not responsible for the conduct alleged
  - *Statement that the parties may have an advisor of their choice
  - *Statement that knowingly making false statements is prohibited by the Code of Conduct
- See document G

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Additional Allegations

- If additional allegations arise during the investigation:
  - Investigate new allegations
  - Provide written notice of additional allegations

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Complaint Investigation

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Complaint Investigation

- Title IX Coordinator may appoint trained Investigators
  - Can have more than one Investigator
- College is responsible for conducting an impartial and thorough investigation
- College, not the parties, must gather sufficient evidence to determine if sex discrimination occurred
- Investigation phase completed within 30 business days after notice of allegations, unless extended for good cause

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Investigative Interviews



- Written notice provided to parties for interviews/meetings
- Date, time, location, participants, and purpose
- Sufficient time for preparation
- Document I

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Advisors

- Parties may be accompanied by an advisor of their choice (attorney not required)
- Advisor provides support, guidance, and advice
- Advisor may not speak on behalf of the party
- Advisors must follow all behavioral rules and expectations

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Evidence

- Equal opportunity for each party to present fact witnesses, and other inculpatory and exculpatory evidence
- Evidence must be relevant and otherwise not impermissible
- Discretion whether to allow expert witnesses

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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
- Evidence provided to a Confidential Employee

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Confidentiality

- College ensures reasonable steps to prevent unauthorized disclosure of information and evidence by parties and their advisors
  - FERPA privacy obligations



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Access to Evidence/Investigation Report

- Notice to both parties (and advisors, if applicable) of right to access relevant evidence or investigation report summarizing the evidence
- Opportunity for parties to review and respond to the evidence or report
  - Within 15 business days of receipt of report
- Written report access includes right to request relevant evidence review
  - Within 5 business days of receipt of report and notice letter
- Documents J and K

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Decisionmaker Appointment and Process

- Title IX Coordinator appoints an impartial Decisionmaker at the conclusion of the investigation phase
- Title IX Coordinator provides Decisionmaker investigative materials:
  - Investigation report (if any) and/or relevant evidence gathered
  - Parties' responses to the report or evidence

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Credibility Assessment

- Must provide a process that enables Decisionmaker to question parties and witnesses to assess credibility if:
  - Credibility is in dispute; and
  - Relevant to evaluating the one or more allegations



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Credibility Assessment – Students

- For non-sex-based harassment complaints, questioning can be in person, by phone, remote means, or in writing
- For sex-based harassment complaints, process must allow parties to propose and ask relevant and permissible questions, including credibility challenges
  - Live hearing (Document L(a)) or
  - Questioning proceeding (Document L(b))

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Determination

- Preponderance of the evidence standard applies – more likely than not
- 15 business days after receipt of investigatory materials

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Determination Regarding Responsibility

- Within 7 business days of determination, notice to the parties in writing:
  - Description of the alleged sex discrimination
  - Policies and procedures used to evaluate allegations
  - Evaluation of evidence and determination
  - Recommended disciplinary sanctions for respondent
  - Remedies for complainant, if any
  - College's appeal procedures and permissible bases for appeal
- See Document M

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Appeals Process

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Appeals Process

- Parties may appeal any determination regarding responsibility or dismissal
- Must submit written request to Title IX Coordinator within 7 business days of receipt of written determination or notice of dismissal
- Appeal process must, at minimum, be the same as appeal process offered in all other comparable proceedings
- Appellate Decisionmaker must not be the same person as the Title IX Coordinator or the Investigator/Decisionmaker

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Grounds for Appeal

- Procedural irregularity that would change the outcome.
- New evidence that was not reasonably available and would change the outcome
- Conflict of interest or bias by Title IX Coordinator, Investigator, or Decisionmaker affecting the outcome
- For sex-based harassment complaints involving a student party only: the sanction is disproportionate to the violation

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Appeals

- Within 7 business days of receiving an appeal request, the Title IX Coordinator will:
  - Forward the appeal request and relevant materials to the Appellate Decisionmaker
  - Notify both parties in writing of the appeal
  - Provide the respondent with notice of the allegations if not previously provided
  - Inform parties of their opportunity to submit statements supporting or challenging the determination or dismissal
  - Document N

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Appeals

- Within 10 business days after the deadline for submitting statements, the Appellate Decisionmaker will:
  - Review the appeal and relevant materials
  - Affirm, reverse, or modify the dismissal or determination regarding responsibility

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Appeals

- Within 7 business days after the review, the Appellate Decisionmaker will notify both parties in writing of the result and rationale
- Appellate Decisionmaker's determination is final
- Document O

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Final Determination

- Determination of Responsibility becomes final on:
  - Date of written appeal determination, or
  - Date on which an appeal would no longer be considered timely if no appeal is filed

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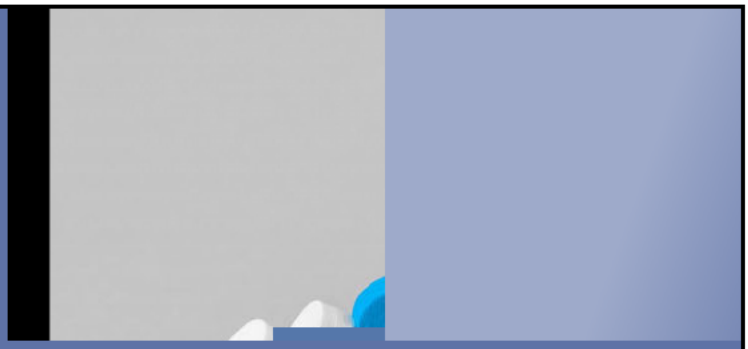
Disciplinary Sanctions and Remedies



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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

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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

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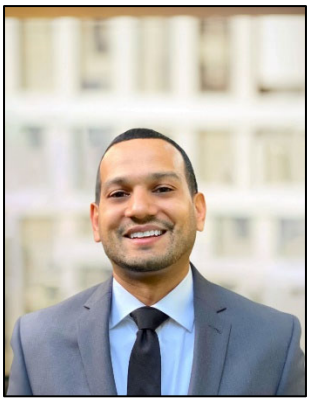

Michael A. Barracato is an Associate within the Student Rights group at Robbins Schwartz. His commitment to making a difference is reflected in his dedication to serving clients and upholding the principles of justice and equity. Michael's journey into the legal profession has been shaped by his unique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