

Title IX Advisor Training for Higher Education Institutions

August 28, 2026

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Agenda

- Title IX Sexual Harassment Overview
- The Grievance Process and the Role of an Advisor
- Appointment of Advisor
- Preparing for the Live Hearing
- Hearing Procedures
- Cross-Examination, Relevance, and Other Evidentiary Issues
- Post-Hearing Procedures
- Title IX Consortium



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Background on Title IX

- “No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31(a).



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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.

Title IX Sexual Harassment

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

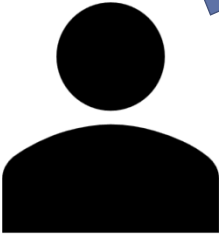
Title IX Sexual Harassment: Quid Pro Quo

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



"My math teacher offered extra credit if I sent him inappropriate sexual pictures of myself."

Title IX Sexual Harassment: “Hostile Environment”

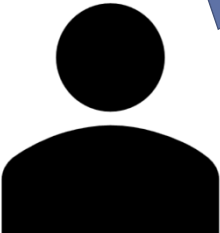


“My classmate is always making sexual comments and gestures at me. It’s so bad that I am considering switching sections, so I won’t have to interact with him in class.”

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

Title IX Sexual Harassment: Specific Acts

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



“The athletic trainer touched me in a sexual manner even though I told her to stop.”

**As defined under the Clery Act/VAWA*

Title IX Sexual Harassment: **Specific Acts**

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.



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Title IX Sexual Harassment: **Specific Acts**

Domestic Violence

- 1) Felony or misdemeanor crimes committed by a current or former spouse or intimate partner under the laws of the jurisdiction and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse.
- 2) A pattern of any other coercive behavior (not necessarily criminal) committed, enabled, or solicited to gain or maintain power and control over a victim, by a person who:
 - is a current or former spouse or intimate partner, or is a person similarly situated to a spouse of the victim;
 - is cohabitating or has cohabitated with the victim as a spouse or intimate partner;
 - shares a child in common with the victim; or
 - commits acts against an adult or youth victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



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The Grievance Process and the Role of an Advisor

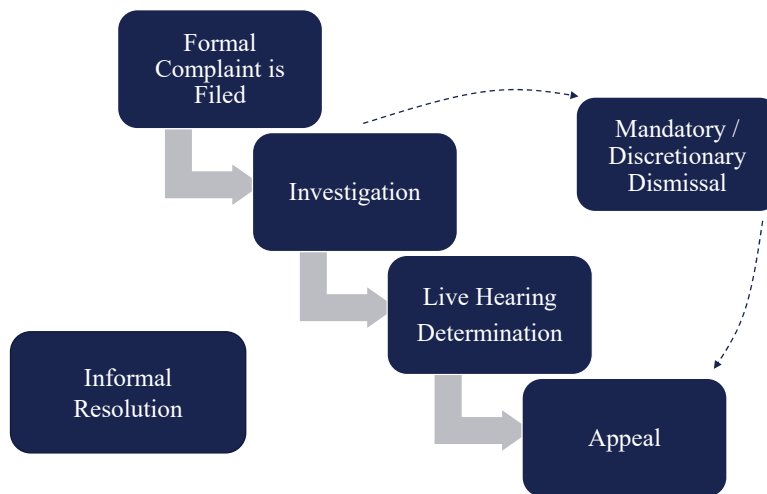


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Grievance Process

Overview



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Grievance Process for Formal Complaints

- Formal complaint – Document filed by a complainant or signed by Title IX Coordinator alleging
 - (a) sexual harassment in violation of Title IX and/or
 - (b) sexual violence, domestic violence, dating violence or stalking in violation of the PSVHEA.
- At the time the complainant files a formal complaint, the complainant must be participating in or attempting to participate in the College's education programs or activities (either as a student or an employee).

Informal Resolution

- Requires both parties' voluntary, written consent.
- May occur at any time after the parties receive the initial notice of allegations and prior to a determination regarding responsibility being reached.
- Party may withdraw at any time prior to reaching a resolution.
- Not permitted in allegations of employee sexual misconduct toward a student.



Dismissal of Formal Complaints

Mandatory Dismissal

- The College must dismiss a formal complaint for Title IX purposes where the Title IX Coordinator or designated investigator determines that the conduct alleged in the formal complaint:
 - (a) Does not meet Title IX's definition of sexual harassment; and/or
 - (b) Does not satisfy Title IX's jurisdictional requirements.
- *Note: Dismissal does not preclude action altogether—just for purposes of Title IX.*



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Dismissal of Formal Complaints

Discretionary Dismissal

- The College may dismiss a formal complaint, but is not required to, where:
 - The complainant gives written notification of their desire to withdraw the formal complaint or certain allegations;
 - The respondent is no longer enrolled in or employed by the College; or
 - Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.



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Investigations

- Equal opportunity for parties to provide:
 - Fact and expert witnesses
 - Inculpatory and exculpatory evidence
- Both parties have equal access to inspect and review all evidence
 - 10 business days to respond to evidence
- Investigation Report



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Live Hearings



- Purpose is for hearing officer to determine:
 - Whether facts presented establish that the alleged conduct occurred;
 - Whether that conduct constitutes Title IX sexual harassment, sexual violence, domestic violence, dating violence or stalking; and
 - If the answers to the above are “yes,” which sanctions (if any) and remedies are appropriate.
- Presentation of evidence and cross-examination of parties

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Role of an Advisor

- Parties have a right to an advisor of their choice
- General role is to support, guide, and advocate for the party throughout the Title IX process
- May accompany the party to any meeting or proceeding
- College may establish restrictions regarding the advisor's participation, as long as they are applied equally
 - In general, may not speak on behalf of Party
- Investigation and Appeal Stages – may have advisor present
- Hearing Stage – must have advisor present



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Hearing Requirement

- The 2020 Title IX Regulations require that a post-secondary institution's Title IX sexual harassment grievance process must include a live hearing.
- At the live hearing, each party must be accompanied by an advisor.
- The decision-maker/hearing officer must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.



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Who Can Serve as an Advisor?

- A family member/friend
- An attorney
- A College employee
- Any other individual the party chooses

... but what if a party does not have an advisor?



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Appointment of Advisor



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Advisor Appointment Requirement

Per the 2020 Title IX Regulations, if a party does not have an advisor to conduct cross-examination at the live hearing, the institution must provide, without fee or charge to that party, an advisor of the institution's choice, to conduct cross-examination for that party.



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Consortium Appointment Process

Party notifies Title IX Coordinator that they do not have an advisor to conduct cross-examination during the hearing.

Title IX Coordinator contacts Chair of Consortium to request appointment of an advisor.

Chair of Consortium appoints advisor and provides advisor with contact information for their advisee and the Title IX Coordinator



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Conflicts of Interest

- If an advisor self-identifies a conflict of interest, they should notify the Consortium Chair as soon as possible so that a substitution can be made.
- Key question - Does the advisor's prior or existing relationship with or knowledge of a party prevent them from participating on behalf of the Advisee?

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Hypothetical

Wanda files a formal Title IX sexual harassment complaint against her supervisor. Wanda finds out that the Respondent has hired a well-known criminal defense attorney to serve as his advisor at the live hearing. Wanda requests that the college appoint an advisor on her behalf and asks that the appointed advisor either be a licensed attorney or have a background in criminal justice. The college is a member of the Consortium.

How should the college and Consortium handle Wanda's request?

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Preparing for the Live Hearing

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Preparing for the Hearing

- Review your institution's Title IX/Sex- Based Misconduct Policy and Procedures
- Review relevant records, including:
 - Formal complaint
 - Initial notice of allegations
 - Investigation report
 - Parties' written responses to the investigation report
- Schedule a time to meet with advisee in advance of the hearing

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A quick note on student privacy...

- Advisors must comply with FERPA's student privacy and confidentiality requirements.
 - FERPA permits disclosure of education records and information therein to officials within the institution who have "legitimate educational interests" in the records/information.
 - FERPA permits an institution to outsource institutional services or functions that involve the disclosure of education records to a contractor, consultant, volunteer, or other third party, provided that certain criteria are met.



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Preparing for the Hearing

Meeting with Advisee

- Review hearing procedures and discuss advisor's role
- Review relevant records and list of witnesses to be presented at hearing
- Identify key areas of questioning for opposing party and any witness to be questioned
- Work with advisee to develop outline of questions for opposing party and any witnesses



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Other Tips for Hearing Preparation

- Review all relevant evidence closely
- Create a timeline or outline of events, including a list of witnesses who may be called to testify
- Create a checklist of issues to be proven/disproven, noting evidence gathered relative to each allegation
- Identify information that may be missing or holes in the opposing party's story
- Identify any information that may be contradictory to what the opposing party or witness reported during the investigation
- Consider potential bias or conflicts of interest of opposing party and/or witnesses
- Attend any scheduled pre-hearing meeting/conference with the hearing officer, other advisor, and/or parties
- Keep in mind that only relevant questions will be permitted (more on this later)



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Hearing Procedures



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Hearing Participants

- Hearing participants should include:
 - Hearing Officer
 - Complainant
 - Complainant's advisor
 - Respondent
 - Respondent's advisor
 - Title IX Coordinator
 - Investigator
 - Witnesses, if requested to attend by either party
 - Court reporter, if using one



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Live Hearings *Procedures*

- 1) Hearing Officer will go “on the record”
 - Title IX Regulations require that an institution create an audio or audiovisual recording, or transcript of any live hearing and make it available to the parties for inspection and review.
- 2) Hearing Officer Introduction
- 3) Identification of Individuals Present



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Live Hearings *Procedures*

- 4) Preliminary review of hearing procedures by Hearing Officer. Hearing Officer will:
- Explain how the hearing will progress from start to finish.
 - Review expectations regarding behavior and being respectful of all individuals present.
 - Review role of the advisor and expectations regarding advisors' conduct and remind parties that they may not cross-examine each other directly.
 - Explain procedures for presenting documents – ensure that copies are provided to the Hearing Officer and opposing party for review.
 - Remind parties that only relevant questions may be asked and explain the process for how relevancy determinations will be made (i.e., the answering party/witness should pause before answering each question so the Hearing Officer may interject if question is deemed not relevant).



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Live Hearings *Procedures*

- 5) Complainant's presentation
- "Direct" testimony by complainant
 - Cross-examination of complainant by respondent's advisor
 - "Direct" testimony by complainant's invited witnesses
 - Cross-examination of complainant's witnesses by respondent's advisor
- 6) Respondent's presentation
- "Direct" testimony by respondent
 - Cross-examination of respondent by complainant's advisor
 - "Direct" testimony by respondent's invited witnesses
 - Cross-examination of any witnesses presented by respondent by complainant's advisor



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Live Hearings

Cross-Examination

- Advisors are permitted to ask the opposing party and witnesses all relevant questions and follow-up questions.
 - Relevance determined by Hearing Officer.
- August 2021 Letter to Stakeholders: A hearing officer may rely upon statements by an individual who does not submit to cross-examination in reaching a determination.



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Live Hearings

Procedures

- 7) Questioning by Hearing Officer
 - May occur after each party or witness testifies, or at the end after all parties and witnesses have testified.
- 8) Brief closing statements by parties
 - Complainant's closing statement
 - Respondent's closing statement
- 9) Hearing officer concludes the hearing and goes "off the record."



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Live Hearings: Q&A

May the parties' advisors cross-examine the Investigator about his/her investigation report or the investigation process?



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Live Hearings: Q&A

Is the advisor required to ensure that the potential witnesses identified by the advisee appear at the live hearing?



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Hypothetical

- After Suzy's testimony wraps, Robert's advisor announces that Robert is calling a witness who is not listed in the investigation report and was not on the list of witnesses provided to Suzy prior to the hearing.
- Is this witness's testimony permissible? What options does Suzy have to respond?

Cross Examination, Relevance, and Other Evidentiary Issues



Evidentiary Standard

- Preponderance of the Evidence
 - “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
- Types of evidence
 - Direct
 - Corroborating
 - Circumstantial



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Issues for Determination

1. Does the testimony and/or evidence presented establish that the alleged conduct occurred?

Relevant Factors	
Admission or denial by the Respondent	Witness Corroboration
Physical evidence (i.e. photographs, video footage)	Prior consistent (or inconsistent) statements by parties and witnesses
Post-incident conduct of the parties	Credibility of parties and witnesses



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Issues for Determination

2. Does the conduct constitute Title IX sexual harassment (or a Preventing Sexual Violence in Higher Education Act offense)?
 - Title IX sexual harassment includes:
 - Quid pro quo harassment by a college 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 (as defined in Clery Act/VAWA)
 - Sexual violence includes physical sexual acts attempted or perpetrated against a person's will or when a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual abuse and sexual coercion.



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Issues for Determination

3. If the answers to questions 1 and 2 are “yes,” hearing officer must determine what sanctions and/or remedies are appropriate



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Questioning Credibility

- Identify gaps in the opposing party's witness recollection and supporting evidence
- When questioning a party or witness' credibility:
 1. Confirm – Ask the party to reiterate their prior statement
 2. Compare – Compare to prior statements or prior evidence provided by the party/witness
 3. Confront – Ask questions to confront the inconsistencies

Objections to Know

Relevance

Harassing/arguing with the witness

Asked and answered

Relevance

Rape Shield Protections

- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - Offered to prove that someone other than the Respondent committed the conduct alleged; or
 - Are offered to prove consent



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Other Relevance Issues

Evidence Excluded:

- Lines of questioning that are not relevant to the underlying allegations
- Redundant questions/questions that pertain to facts already established
- Any party's medical, mental health or similar records (unless the party has consented in writing to such)



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Hypothetical

You are serving as an advisor for Suzy (Respondent) who has been accused of sexual harassment by another student, Robert (Complainant). During the hearing, Robert's advisor begins arguing with Suzy about her responses, repeatedly asking questions that have already been answered, and raising his voice at her. You feel his conduct is becoming overly aggressive. You have raised objections, which the hearing officer acknowledged, but the advisor continues engaging in the same conduct.

How do you respond?



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Hypothetical

You are serving as an advisor for Respondent Tom (student athlete) whom Complainant Sharon (employee) alleges sexually harassed her over a four-month period while she was working as a manager for the College's basketball team. During the pre-hearing meeting, Tom tells you that Sharon has had relationships with several other student athletes and wants you to question Sharon about these relationships. *How do you respond?*

During the hearing, while you are questioning Sharon, Tom pulls you aside and tells you that he heard Sharon has falsely accused other student athletes of sexual harassment. He wants you to ask her about these prior accusations. *How do you respond?*



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Hypothetical

You have been assigned to serve as an advisor for Bill. Bill is alleging that his Physics Instructor, Jamie has sexually harassed him throughout the course of the semester. During your pre-hearing meeting with Bill, he tells you that he is traumatized by the sexual harassment, scared of Jamie and does not want to participate in the hearing.

How would you advise Bill? What options does Bill have?



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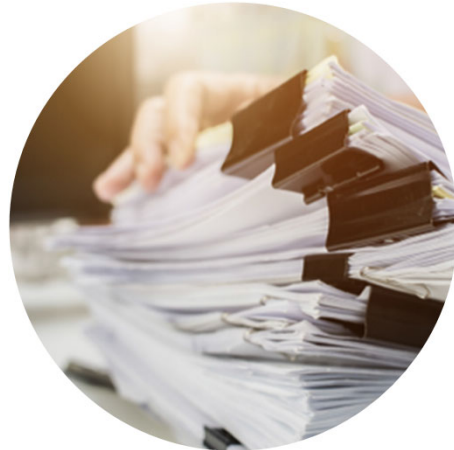
Post-Hearing Procedures



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Record-Keeping

- Any records generated or maintained by the advisor should be returned to the college's Title IX Coordinator.
- Consult with the college's Title IX Coordinator regarding any other specific record-keeping procedures.



Written Determination

- Issued to both parties simultaneously within 7 business days of decision being reached.
- Will include:
 - Allegations
 - Procedural steps taken
 - Findings of fact
 - Conclusion and rationale for each allegation, including
 - Determination of responsibility
 - Disciplinary sanctions being imposed
 - Remedies provided to complainant, if applicable
 - Procedures and permissible bases for complainant and respondent to appeal

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 7 business days* of receipt of written determination or dismissal

Title IX Coordinator must forward request to appellate decision-maker



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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 on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome
- Sanction disproportionate to violation



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Appeals *Process*

- Appellate decision-maker must afford both parties the opportunity to submit a statement
- Written decision issued to both parties simultaneously within 7 business days of conclusion of the review
 - Describes outcome and rationale
- Includes statement that decision is final



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Hypothetical

Following Bill's live hearing, the decision-maker determines that Jamie is not responsible for the alleged conduct. Bill contacts you to let you know that he received the decision and disagrees. He would like to appeal and wants your help.

How should you respond?



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Hypothetical

Several months after Bill's Title IX hearing, you receive a subpoena from an attorney representing Jamie demanding "any and all materials in your possession from the Title IX hearing" and "any and all communications regarding the Title IX complaint, investigation and/or hearing."

How should you respond?



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Title IX Consortium Information Amy Pawlik, Heartland College



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Contact Us



Michelle L. Weber, Partner

mweber@robbins-schwartz.com

Claire E. Bufalino, Associate

cbufalino@robbins-schwartz.com

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

Champaign
301 North Neil Street, Suite 400
Champaign, IL 61820
p 217.363.3040

Lisle
2443 Warrenville Road, Suite 310
Lisle, IL 60532
p 630.929.3639

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

 @RSchwartzLaw |  Robbins Schwartz |  Robbins Schwartz Law |  robbinsschwartz

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MICHELLE L. WEBER

Partner, Chicago

312.332.7760

mweber@robbins-schwartz.com

PRACTICE AREAS

Board Governance
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

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

Supreme Court of Illinois

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.

Publications

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

Presentations

The Last Word: Discipline, Residency, and UGP Complaints, IASB/IASA/IASBO Joint Annual Conference (November 2025)

Friend or Foe? Collaborating with Educational Advocates in the IEP Process, IAASE Fall Conference (October 2025)

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, IAASE Winter Conference (February 2023)



ORGANIZATIONS

Chicago Bar Association

Hellenic Bar Association

Illinois Council of School
Attorneys

Illinois Local Government
Lawyers Association

Illinois State Bar
Association

LEADERSHIP

Student Rights and Special
Education Practice Group
Leader





CLAIRE E. BUFALINO

Associate, Chicago

312.332.7760

cbufalino@robbins-schwartz.com

PRACTICE AREAS

Education
Special Education
Student Rights

EDUCATION

M.P.P., Loyola University
Chicago

J.D., Loyola University
Chicago

B.F.A., New York
University

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Claire E. Bufalino is an attorney at Robbins Schwartz, focusing on Special Education and Student Rights. She counsels school districts regarding IDEA and Section 504, student discipline, Title IX, student records issues 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, mediations, student discipline hearings and residency hearings.

Before practicing law, Claire worked as a program analyst at the U.S. Department of Housing and Urban Development, where she researched federal housing policy and worked in legislative and regulatory analysis and development. This role strengthened her ability to analyze complex legal and policy issues and reinforced her commitment to ensuring institutions have the knowledge and tools to stay compliant while supporting their communities.

Her interest in education law grew from early experiences working with children in nonprofits, music education, and childcare roles. Seeing how institutions shape opportunities, she pursued a legal career to support schools in creating equitable learning environments. In law school, she worked with students with disabilities in special education matters, which deepened her commitment to education law.

Outside of work, Claire is a dedicated runner who has completed the Chicago Marathon twice. She also enjoys exploring new restaurants across the city. A lesser-known fact about Claire is that she originally studied music, which shaped her understanding of how storytelling influences law, policy, and institutions.

Presentations

Clarity in Crisis: Understanding ISBE's Updated RTO Guidance, IAASE Winter Conference (March 2026)

Lessons Learned from ISBE Cyclical Monitoring & Compliance, IAASE Fall Conference (October 2025)

