

Title IX Hearing Officer Training for Higher Education Institutions

August 13, 2026

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Agenda

Background
Key Definitions
Jurisdiction
Conflicts of Interest and Bias
Preparing for the Live Hearing
Conducting the Live Hearing
Determination

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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.

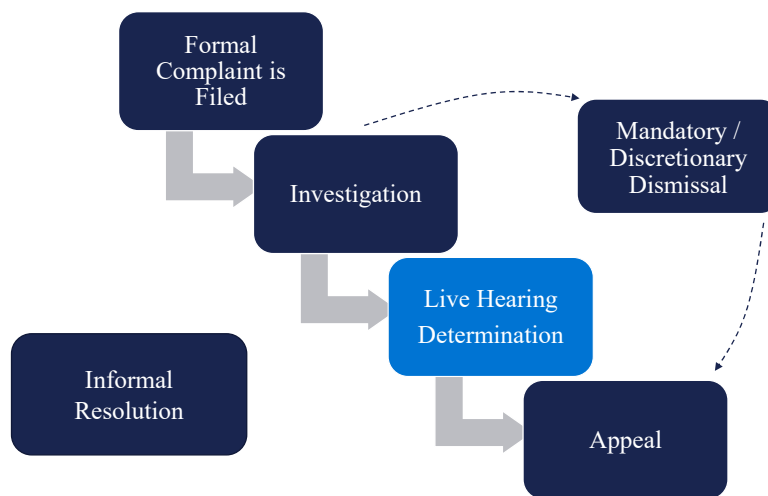
What About Sexual Harassment?

- Although Title IX does not expressly mention sexual harassment, Congress, federal agencies, and courts have interpreted the statute to prohibit sexual harassment in education programs and activities.



Grievance Process

Overview





Background on the Title IX Hearing Officer Role



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Role of Hearing Officer

1

Oversee the live hearing where the parties present evidence relevant to the allegations contained in the formal complaint

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Determine responsibility by finding: (1) whether the testimony and evidence establish by a preponderance of the evidence that the alleged conduct occurred; and (2) if so, whether the conduct constitutes Title IX sexual harassment or a Preventing Sexual Violence in Higher Education Act offense or a violation of other College policies



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Key Definitions



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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

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Title IX Sexual Harassment: Quid Pro Quo

- When an employee of the college conditions aid, benefits, pay, a position, grades, discipline, or opportunities for advancement on unwelcome sexual conduct.
- Example: Mr. Jones promises his student, Jane, that he will write a strong recommendation letter for her if she engages in sexual conduct after class.
- Example: Ms. Smith tells her subordinate, Bob, that he should “just play along” with a vendor’s sexual advances and “take one for the team” since his performance review is coming up.



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Title IX Sexual Harassment: Quid Pro Quo

- When accepting or performing unwanted sexual conduct is required:
 - To access some benefit, or
 - To avoid some negative consequence
- Key elements:
 - Employee Respondent
 - Exchange of “this for that”
- Can be explicit or implicit



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Hypothetical

- John is a basketball player and was recently placed on academic probation. The Athletic Director told John that she could “fix” the situation if John agreed to take her daughter on a date.
- What type of evidence is relevant to a quid pro quo analysis?

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Title IX Sexual Harassment: **“Hostile Environment”**

Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to the education program or activity



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Title IX Sexual Harassment: “Hostile Environment”

- Key elements:
 - Unwelcome conduct
 - Severe and pervasive and offensive
 - Severity factors: age of Respondent, relationship of the parties, physical contact, etc.
 - Pervasiveness factors: affecting other school/work relationships, incidents in multiple contexts, conduct repeated over time, etc.
 - Offensiveness: humiliation, threats, physical safety, interference with work/learning, “hostile or abusive,” etc.
 - Denial of equal access
 - Examples: falling grades, limiting enrollment in classes, student group participation, positions or assignments, job benefits, etc.



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Hypothetical

- Jenna is classmates with Steve. Jenna alleges that Steve has sent a series of sexually explicit emails through the college’s email server.
- What type of evidence is relevant to a hostile environment analysis?



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Title IX Sexual Harassment: **Sexual Assault**

- **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
- Generally, forcible sexual contact or sexual contact without consent due to incapacitation, intoxication, or age
- Incest: sexual contact between individuals with a familial relationship of a degree prohibiting marriage



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Title IX Sexual Harassment: **Dating Violence & Stalking**

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: 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 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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Hypothetical

- A student alleges that her former partner, who is also a student, physically abused them while they were on campus.
- What type of evidence is relevant?

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Hypothetical

- A student alleges that a coach has been telling the student that the student reminds the coach of a former spouse. The student also says the coach refers to the student by the former spouse's name when they make a mistake, and calls the student "Doll," the former spouse's nickname, when they do something well.
- The student alleges that the coach's taunts have gotten raunchier and are distracting, and the coach is keeping the student on the bench more as the student's performance deteriorates.
- What kind(s) of sexual harassment is at issue?
- What additional facts are relevant?



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More Key Definitions

Complainant:

- Individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent:

- Individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment



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Jurisdiction

The 2020 Title IX regulations apply only to alleged sexual harassment that occurs in the College's "education program or activity, against a person in the United States."



Title IX Jurisdiction

"Education Program or Activity"

Locations, events, or circumstances over which the College exercised substantial control over both:

- the Respondent and
- the context in which the sexual harassment occurred.

Avoiding Conflicts of Interest & Bias



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Conflicts of Interest & Bias

- Title IX Regulations provide that any individual designated to serve as the Title IX Coordinator, Investigator, **Hearing Officer**, or Appellate Decision-maker must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Can be a basis for appeal if the conflict of interest or bias affects the outcome.

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Conflicts of Interest



- Key question:
 - Does the Hearing Officer's prior or existing relationship with or knowledge of a party prevent them from serving impartially?

Conflicts of Interest

- Where you self-identify a conflict of interest, notify the Title IX Coordinator that you will need to recuse yourself.
- Where a party believes that you have a prohibited conflict of interest, the party must contact the Title IX Coordinator to request a substitution.
 - The Title IX Coordinator may request information from you to help them evaluate the claim.

How to Address Implicit Bias



- More deliberate or conscious thinking
 - Allow time to fully think through a scenario before coming to a decision / conclusion
- Create and follow checklists
 - Procedural requirements
 - Allegations to be proven / disproven
- Document treatment of both parties and ensure it remains equitable
 - Opportunities to provide evidence
 - Details of the parties' interviews (time to prepare, breaks, advisors' roles, etc.)
 - Access to relevant evidence
 - Offering flexibility or granting requests for accommodations

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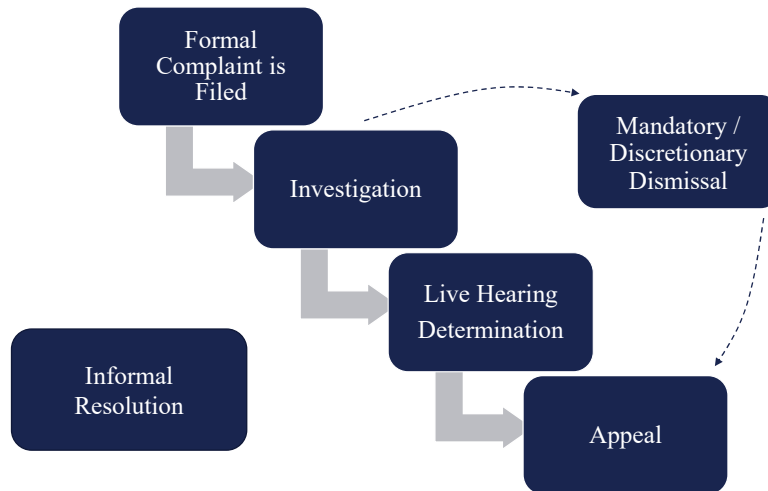
Preparing for the Live Hearing



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Grievance Process

Overview



Investigations

- Title IX Coordinator or Investigator (may be same person) will send Notice of Allegations to both parties
- Investigator conducts interviews of both parties and any relevant witnesses
- Equal opportunity for parties to provide evidence
- At conclusion of investigation, will send both parties a copy of all relevant evidence with opportunity to respond
- Investigator will prepare an investigative report that summarizes the relevant evidence and send to Title IX Coordinator and Hearing Officer

Preparing for Hearing

- Upon receipt of the investigator's report, the Title IX Coordinator will schedule a hearing
 - At least 10 business days prior to the hearing, will provide written notice of the hearing date, time, location, participants, and purpose of the hearing
 - Will send parties the investigation report with opportunity to respond
- Title IX Coordinator will identify the Hearing Officer who will preside over hearing
 - A party may request a substitution if the participation of the Hearing Officer poses a conflict of interest.
 - Must contact the Title IX Coordinator within 3 business days* after the party's receipt of the hearing notice to make such a request.



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Preparing for Hearing

- Though not required, best practice is for the Hearing Officer to send an introductory email to the parties and their advisors scheduling a Pre-hearing Meeting
- At the Pre-hearing Meeting:
 - Identify parties and their advisors
 - Review the location and format of the hearing
 - Confirm the issues to be addressed at the hearing
 - Address any accessibility needs
 - Review the hearing procedures
 - Review expectations for decorum during the hearing
 - Review the determination timeline post-hearing



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Conducting the Live Hearing



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Live Hearing Hearing Officer Role

- Oversee the hearing
- Evaluate questions for relevance and resolve objections
- 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.
- The evidence presented must be relevant to one or more of the issues above.

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Live Hearing Format

- Hearing must be recorded or transcribed
- Upon request, parties can be separated – requires appropriate technology
 - Must be requested at least 3 business days* prior to hearing
 - Must allow parties to simultaneously see and hear each other
- Parties and Hearing Officer must be able to view evidence being presented
 - Consider screen-sharing and/or sending documents electronically in advance
- Parties should have the ability to communicate with their respective advisors in private
 - Consider breakout rooms



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Live Hearing Advisors

- Party may bring an advisor of their choosing to hearing
- Advisor from the College appointed if none available
 - 3 business days' notice required
- Role is to provide support, guidance, advice
- Not there to represent the party or speak on their behalf other than to cross-examine the other party or witnesses

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Live Hearing

Typical sequence of hearing is:

1. Investigator testimony
2. Complainant testimony
 - Questions from Hearing Officer and cross-examination from other party's advisor
3. Respondent testimony
 - Questions from Hearing Officer and cross-examination from other party's advisor
4. Questioning of witnesses
5. Closing statement from Complainant
6. Closing statement from Respondent



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Live Hearing

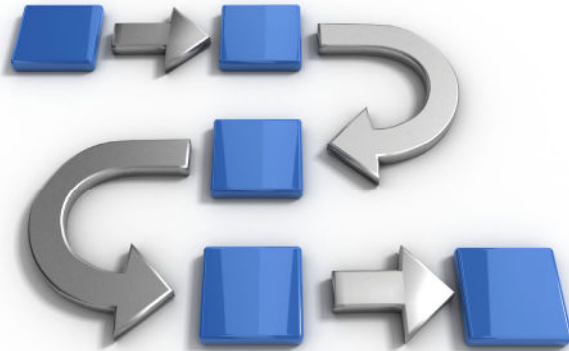
Cross-Examination

- Advisors are permitted to ask 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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Relevant Evidence



Relevant Evidence

- “Relevant” includes relevant to determining:
 - The truth or falsity of specific factual allegations
 - Evidence about nature and circumstances of misconduct
 - Evidence affecting credibility
 - Whether the facts establish an element of the relevant type(s) of sexual harassment
 - Evidence about intent or consent
 - Evidence about impacts of any misconduct
 - Other evidence that would inform a reasonable person’s perception of the conduct
 - What potential sanctions/discipline or remedies are appropriate

Relevant Evidence

- Relevant documents may include, but are not limited to:
 - The formal complaint
 - The initial written notice of the allegations
 - Written statement(s) and responses by the parties and/or witnesses
 - The investigation report
 - The parties' written questions and answers
 - Police reports, photographs, video footage (if any)
 - Prior discipline records
 - Only relevant to issue of appropriate sanction



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Relevant Evidence

- Generally irrelevant:
 - Information protected by a legally recognized privilege
 - A party's medical, psychological, or other similar treatment records (without written consent)
 - Prior disciplinary history (except to determine potential sanctions/discipline)
 - A Complainant's sexual predisposition or sexual history



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Rape Shield Protections

- During the live hearing, certain questions are irrelevant and not permitted. As a result, investigators also should consider evidence about the following topics irrelevant:
 - the Complainant's sexual pre-disposition, and
 - the Complainant's prior sexual behavior, unless:
 - the evidence is offered to prove that someone other than the Respondent committed the alleged conduct; or
 - the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent



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Written Determination



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Preponderance of the Evidence Standard

- “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.



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Written Determination

- Must include:
 - Identification of allegations
 - Description of procedural steps taken
 - Findings of fact supporting determination
 - Conclusions regarding application of conduct standards
 - Statement & rationale for result of each allegation, including:
 - Determination of responsibility
 - Disciplinary sanctions being imposed
 - Whether any remedies will be provided to the complainant
 - Procedures and permissible bases for Complainant and Respondent to appeal



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Written Determination

Issued to both parties simultaneously within 7 business days of decision being reached.



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QUESTION & ANSWER

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Contact Us



Kevin P. Noll, Partner

knoll@robbins-schwartz.com

Claire E. Bufalino, Associate

cbufalino@robbins-schwartz.com

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

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

Lisle
2443 Warrenville Road, Suite 310
Lisle, IL 60532
p 630.929.3639
f 630.783.3231

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

X @RSchwartzLaw | LinkedIn Robbins Schwartz | Facebook Robbins Schwartz Law | Instagram robbinsschwartz





KEVIN P. NOLL

Partner, Chicago

312.332.7760

knoll@robbins-schwartz.com

PRACTICE AREAS

Board Governance
Education
Labor & Employment
Litigation

EDUCATION

J.D., The University of
Illinois Chicago School
of Law

B.A., Indiana
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

Kevin P. Noll's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, park districts and municipalities with issues involving employee discipline, internal investigations, employee leaves of absences, and alleged discrimination and harassment claims. Kevin also defends clients in litigation and administrative charges in federal and state court, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Labor. In addition to his experience in labor and employment law, Kevin has trained school districts and community colleges pursuant to Title IX of the Education Amendments Act of 1972.

As an attorney, Kevin strives to cut through complexity to provide clients with practical answers and pragmatic solutions.

Beyond his legal work, Kevin's interests include golf and spending quality time with family and friends.

Recognitions

Illinois Emerging Lawyers

Illinois "Rising Star," by Super Lawyers Magazine

Publications

Contributing author, "Employee Discrimination," *Illinois School Law: Personnel and Student Issues*, IICLE (2021, 2024)

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

Presentations

Collective Bargaining/Contract Negotiations: Best Practice Strategies and Trends, ISDLAF+ School Finance Seminar (January 2026)

Federal Reform Initiatives: Updates and Guidance, Illinois Council of Community College Presidents Annual Retreat (October 2025)



ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

LEADERSHIP

Higher Education Team
Leader

Calculating Overtime & FLSA Update, Illinois ASBO Bookkeepers Conference (March 2025)

Addressing Employee Mental Health Conditions, IAPD/IPRA Soaring to New Heights Conference (January 2025)

Hiring Employees in an Age of New Regulations: Salary and other Job Posting Requirements, Application and Interview Do's and Don'ts, Background Screening Parameters, and More, IAPD Legal Symposium (November 2024)

Benefit or Burden: Navigating Ever-Expanding Employee Leave Rules, IAPD Legal Symposium (November 2023)

Managing Employee Leave Rights Under the FMLA, ADA, and Illinois Law, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Best Practices for Responding to Harassment and Discrimination Complaints, IAPD/IPRA Soaring to New Heights Conference (January 2023)





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)

