



Robbins Schwartz
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Fall 2023 Legal Updates for Higher Education Institutions

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Agenda

- 1) Emergency Contraception
- 2) Student Debt Assistance
- 3) Students with Disabilities
- 4) Uniform Admissions
- 5) Out of District Tuition
- 6) Remediation Data
- 7) Affirmative Action
- 8) Title IX Update



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Emergency Contraception (SB 1907)

- Status: Sent to Governor
- Creates the Public Higher Education Act
- Adds provisions requiring each public institution of higher ed to make emergency contraception available for purchase through at least one wellness kiosk located on each campus under its jurisdiction.
- The wellness kiosk must be located in an area of campus where students can access the wellness kiosk during class hours.



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Definitions – Emergency Contraception

- “Emergency Contraception” means medication approved by the federal FDA that can significantly reduce the risk of pregnancy if taken within 72 hours after unprotected sexual intercourse.
- "Wellness kiosk" means a mechanical device used for retail sales of wellness products that may include, but is not limited to, prophylactics, menstrual cups, tampons, menstrual pads, pregnancy tests, and nonprescription drugs. Must also include discounted emergency contraception.



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Student Debt Assistance (SB 49)

- Status: Signed by Governor, effective June 9, 2023
- Amends the Student Debt Assistance Act
- Provides that an a higher ed institution must provide official transcript of a current or former student to a current or former student, under certain conditions.
- Beginning 2023-2024 SY, each higher ed institution must adopt a policy that outlines the process by which current or former student may obtain a transcript or diploma that has been withheld due to the student’s debt.
- On or before July 1, 2024, each higher ed institution shall report to the Board of Higher Ed information regarding financial based transcript or registration holds.



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Students with Disabilities (SB 99)

- Status: Signed by Governor, effective January 1, 2024
- Creates the Removing Barriers to Higher Ed Success Act
- Requires a public institution of higher education to adopt a policy that makes certain documentation submitted by an enrolled or admitted student sufficient to establish that the student is an individual with a disability.
- Requires the policy to be transparent and explicit regarding information about the process by which the institution determines eligibility for accommodations.
- Requires higher ed institutions to disseminate such information to students, parents, and faculty in accessible formats and make the information available on the institution's public website.



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Documentation Sufficient to Establish Student with a Disability

- 1) Documentation that a student has an IEP
- 2) Documentation that a student has received services or accommodations pursuant to a Section 504 plan
- 3) Documentation of a plan or record of service for the individual from a private school, a LEA, a State educational agency, or an institution of higher ed provided under a Section 504 plan.
- 4) A record or evaluation from a relevant licensed professional finding that the individual has a disability.
- 5) A plan or record of disability from another institution of higher ed.
- 6) Documentation of a disability due to military service in the uniformed services.



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Uniform Admissions (HB 3670)

- Status: Signed by Governor, effective January 1, 2024
- Amends the Public University Uniform Admission Pilot Program Act
- Beginning the 2024-2025 academic year, each institution shall create a 4-year uniform admission system pilot program to admit community college transfer students for each semester of the pilot program.
- Exempts a university that already has a uniform admission policy for transfer students equal to or less restrictive than the amendatory Act.



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Out of District Tuition (HB 2503)

- Status: Signed by Governor, effective January 1, 2024
- Amends Public Community College Act
- Provides that if a resident of a community college district wants to attend the community college maintained by the district of residence, but the student wants to enroll in a program not offered by that community college, then the student may attend any recognized public community college in any other district and shall pay tuition and fees at the in-district rate of the receiving college.



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Remediation Data (SB 2240)

- Status: Sent to Governor
- Amends the Public Community College Act
- Provides that, beginning the 2023-2024 academic year, each community college board must provide, on an annual basis, its member high schools with remediation data for all students that previously attended a member high school and have enrolled in the community college for any term in an academic year.
- Sets forth specifications of data to be provided and how the data shall be shared.
- A signed remediation data sharing agreement between the school district and the community college district must be entered into before sharing remediation data.
- ISBE and ICCB will develop a model remediation data sharing agreement that will be developed by January 1, 2024



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Affirmative Action

- The Supreme Court, in two separate decisions on June 29, 2023, held that college admission policies at Harvard College and the University of North Carolina (UNC) that included race as a factor were unconstitutional and, therefore, not lawful under the Equal Protection Clause of the Fourteenth Amendment.
- The decisions, one by a vote of 6-2 in the case of Students for Fair Admissions v. Harvard College and another framed by a 6-3 vote in the case of Students for Fair Admissions v. the University of North Carolina (UNC), effectively ended the practice of affirmative action.



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Affirmative Action

- No impact on community colleges from an enrollment standpoint but may be future challenges to other special programs or scholarships, that restrict or give preference based on race or other legally protected categories.
- Consider conducting an inventory of current programming and scholarship programs. Determine potential impact of recent case law on current admission or selection processes.
- Consult with legal counsel as needed.



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Title IX Athletic Eligibility

- Status: Anticipated date to be finalized October 2023
- Proposed rule provides that if an educational agency or institution receiving federal funding “adopts sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition and grade or education level:
 - (i) be substantially related to the achievement of an important educational objective; and
 - (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be denied or limited.”



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Title IX Athletic Eligibility

- NJCAA bi-laws have not established criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity.
- NCAA has specific sport-by-sport guidelines for transgender student participation on male or female athletic teams.

Changes on the Horizon – 2023 Title IX Regulations?

- Department of Education is finalizing review of public comments to proposed amendments to Title IX regulations that were released in Summer 2022.
- Finalized amendments anticipated to be released in October 2023.
- Effective date: TBD (but in 2020, effective date was ~90 days after release).



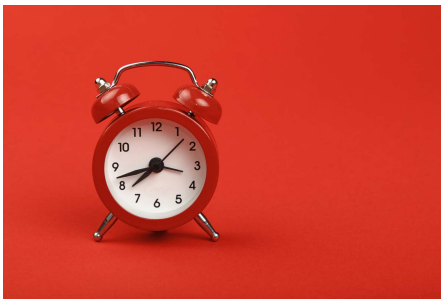
Changes on the Horizon – 2023 Title IX Regulations?

- Likely changes:
 - Broader definition of “sex-based harassment”
 - Expanded jurisdiction
 - Single investigator model permitted
 - Live hearings permitted, but not required
 - Expanded protections for transgender and nonbinary students and pregnant and parenting students



Changes on the Horizon – 2023 Title IX Regulations?

- So long as the Department of Education’s review of the current Title IX regulations is ongoing and until any new regulations go into effect institutions must continue to comply with the existing regulations.





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A slide with a white background. On the left, there is a blue Twitter bird icon, followed by the text "Follow Us on Twitter!" and "@RSchwartzLaw". On the right, there is a word cloud of "THANK YOU" in various languages, including: HVALA, OBRIGADO, RAHMET, GRAZIE, 谢谢, DANKE, SHUKRAAN, TAK, DANK JE, KIITOS, THANK YOU, BARKA, SPACIBO, MERCI, ευχαριστώ, GRACIAS, ARIGATO, TAKK, and TACK. The Robbins Schwartz logo is in the bottom right corner.

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Michelle practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding the IEP process, due process, Section 504, student discipline, board policy and student records.

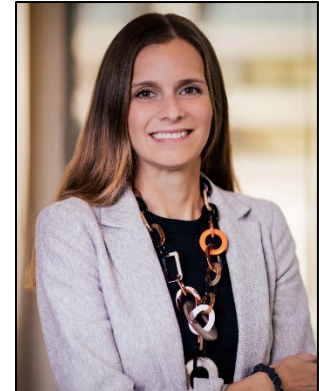
Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

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

RECENT PRESENTATIONS

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)



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