



# Queering Up the Title IX Process

Responding to Reports of Discrimination Based on Sexual Orientation  
and Gender Identity Under the 2024 Regulations

October 30, 2024

**DAN SCHORR, LLC**



# OUR SERVICES

- Title IX, Civil Rights, and Misconduct Investigations
- Decision Makers and Hearing Officers
- Hearing and Process Advisors
- Trainings
- Policy and Program Reviews
- Interim Title IX Coordinator Coverage
- Mediations and Informal Resolution Facilitation
- Expert Witness Testimony

[MORE INFO AT DANSCHORRLLC.COM](https://danschorrllc.com)

# ALYSSA-RAE MCGINN, ESQ.

Vice President

Boston



Alyssa-Rae McGinn has extensive experience serving as an investigator, decision maker, hearing chair, mediator/informal resolution facilitator, and interim Title IX Coordinator, with particular expertise in applying regulatory requirements and best practices in complex matters of sexual misconduct and identity-based harassment at educational institutions. Alyssa-Rae balances a compassionate understanding of the difficulty parties face being involved in such matters with the importance of remaining compliant with relevant law and policy. Alyssa-Rae was previously a Senior Associate at Ankura, where she and Dan Schorr established the firm's Title IX and Civil Rights Investigations practice and grew it to assist institutions nationwide. Prior to Ankura, Alyssa-Rae was an Associate Director in Kroll's Business Investigations & Intelligence practice, where she co-founded the Women's Network at Kroll.

# JENNA FARRELL

Investigator

New York



Jenna Farrell specializes in investigations of sexual misconduct and discrimination allegations based on sex, gender, and race. She was previously an intern in Kroll's Business Investigations & Intelligence practice where she worked on a wide array of investigations including due diligence, fraud investigations, and pro bono human rights matters. Prior to Kroll, Jenna interned at the Washington County District Attorney's Office in New York State focusing on cases of sexual misconduct and domestic violence. She is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

# DAN SCHORR, LLC

# 2024 TITLE IX REGULATIONS

“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, **sexual orientation**, and **gender identity**.” (§ 106.10)

# 2024 TITLE IX REGULATIONS

“*Sex-based harassment* prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the **bases described in § 106.10.**” (§ 106.2)

# 2024 TITLE IX REGULATIONS

“*Nondiscrimination policy.* Each recipient must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and **prohibits sex discrimination** in any **education** program or activity that it operates, as required by Title IX and this part, including in **admission** [...] and **employment.**” (§ 106.8(b)(1))

# 2024 TITLE IX REGULATIONS

*“Training.* The recipient must ensure that the persons described [...] receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, and annually thereafter. This training must not rely on sex stereotypes.

- (1) **All employees.** All employees must be trained on:
  - (i) The recipient’s **obligation to address** sex discrimination in its education program or activity;
  - (ii) The **scope of conduct** that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and
  - (iii) All applicable **notification and information requirements** under [...] 106.44.
- (2) *Investigators, decisionmakers, and other persons who are responsible for **implementing the recipient’s grievance procedures** or have the authority to modify or terminate supportive measures[...]*
- (3) *Facilitators of informal resolution process[...]*
- (4) **Title IX Coordinator and designees.”** (§ 106.8(d))

# A NEW REPORT COMES IN...

Sage (she/her) is a trans femme first-year who reports the following to the Title IX Office:

- Sage was in a sexual relationship with senior Bella (they/them) from Orientation in August until the end of September.
- During the relationship, Sage felt uncomfortable about some of their sexual encounters. In particular, there was one occasion when Bella anally penetrated Sage with a strap-on dildo, even though Sage had said she was not interested in doing that. There was another occasion when Sage woke up to find Bella touching her penis. Finally, Sage ended the relationship at the end of September because Bella told her that they had shared nude photos of Sage with Bella's other partner and insisted that this was normal among their other relationships.
- Since the end of the relationship, Bella has been texting Sage approximately ten times per day, even though Sage told them that she wanted to cut off contact. In these texts, Bella threatened to socially isolate Sage, share her photos around campus, and "come find" Sage so they can "finally have it out."
- Sage is feeling scared and last weekend, she called campus safety. However, when the officer arrived at her dorm, he looked at her "skeptically" and said, "You're pretty big, you can probably handle a girl" and asked why she was even scared when Bella was probably "more scared of someone like you."



# REPORT INTAKE

- As with every intake, be kind, empathetic, transparent, and open-minded
- Reporting is always difficult, but LGBTQ+ folks may face additional barriers:
  - Fear of being dismissed, not taken seriously, or not believed
  - Fear of being blamed as the aggressor
  - Fear of being judged as deviant or abnormal
  - Hesitation to go against a member of the community
  - Concern about social isolation
  - Imposter syndrome/doubts about whether their reaction is “normal”
- Only ask for necessary details at this stage
- Check in about safety and support
- Review range of options – from support only to formal process
- Remember that a *formal* complaint is no longer needed to initiate a formal process

# INITIAL ASSESSMENT

- **If true, would these allegations meet any policy definitions?**
- Avoid evaluating through the lens of your own knowledge or experience, even if you share identities with Sage or Bella
- Be aware of both positive and negative bias
  - Don't evaluate the report as less credible, less serious, etc. just because of the parties' identities, BUT
  - Don't evaluate the report as *more* credible, *more* serious, etc. just because of the parties' identities either
- Consider consulting campus resources if you are confused or uncertain about anything
- If you need more information in order to assess the report, go back to the complainant

# INITIAL ASSESSMENT OF SAGE'S REPORT

## **What policies are implicated by Sage's report?**

- Sexual Assault – Rape
- Sexual Assault – Fondling
- Stalking
- Dating Violence
- Sex-Based Harassment
- Sex Discrimination (Campus Safety Officer)

# RESPONDENT NOTIFICATION

- As with every respondent, be kind, empathetic, transparent, and open-minded
- Being accused of misconduct is extremely difficult
- LGBTQ+ respondents may have particular challenges:
  - Fear of being dismissed, not taken seriously, or not believed
  - Fear of being blamed as the aggressor, seen as predatory
  - Fear of being judged as deviant or abnormal
  - Sense of betrayal by member of the community
  - Concern about social isolation
- Keep in mind that LGBTQ+ relationships may look different from other relationships and participants may have fewer models for healthy relationships
- Check in about safety and support
- Be clear about respondent's rights and options

# INVESTIGATION

- Make sure investigators are informed about the specific issues, identities, and types of sexual activity involved in the case
- Investigative interviews should always be conducted kindly, transparently, and comfortably, but should also be thorough and not avoid hard questions
- Investigators must get comfortable with concepts and terminology, including knowing how to ask for clarification in a sensitive manner
- Defer to the self-identification language used by individuals (i.e, “front hole” instead of “vagina;” “queer” instead of “homosexual”; preferred names and pronouns)



# INVESTIGATING LGBTQ+ BASIS FOR CONDUCT

- Sex Discrimination and Sex-Based Harassment require the conduct to be based on sex, including sexual orientation and gender identity
- Investigation should seek evidence to answer:
  - Was the conduct *because of* the complainant's sexual orientation/gender identity?
  - Would it have occurred *but for* the complainant's sexual orientation/gender identity?
  - How were others of the *same and different* sexual orientations/gender identities treated?
- Investigators should look for evidence of overt expressions of animus based on sexual orientation/gender identity, direct comments or actions about sexual orientation/gender identity accompanying negative conduct, and subtle signs of bias
- Signs of bias can include microaggressive conduct, “dogwhistles,” and negative assumptions applied only to people of a particular group

# HEARING

- Make sure hearing officer(s)/panelists are informed about the specific issues, identities, and types of sexual activity involved in the case
- Exclude evidence about “complainant’s sexual interests or prior sexual conduct,” including as it relates to sexual orientation and gender identity, unless:
  - Offered to prove conduct was by someone other than the respondent or
  - Involves previous sexual history between the specific parties in the case and offered to prove consent between them
- Exclude medical and mental health records, including gender affirming care, unless party consents
- Exclude irrelevant questions, especially about sensitive topics
- Maintain an appropriate atmosphere of respect and civility

# DECISION MAKING

- As in every decision, decision-makers should be fair and unbiased
- Limit consideration to the relevant evidence and the Noticed scope
- Avoid relying on stereotypes or assumptions, both negative and positive
- In writing the decision rationale, write for the parties – avoid legalese and jargon, and fully explain standards and concepts used in evaluating the evidence
- Consider the impact of the decision on the parties, especially where a party's understanding of a certain concept doesn't line up with policy

# CONTINUING TO SUPPORT LGBTQ+ PARTIES

- Check in with parties after the case is complete to discuss ongoing safety and support needs
- LGBTQ+ parties may face unique challenges and should continue to be fully supported in meeting those challenges
- Coordinate support with on-campus resources, especially if the parties prefer to disengage from the Title IX office
- Part of supporting past, current, and future parties is ensuring that general campus programming is inclusive of LGBTQ+ experiences and identities
  - Don't default to programming centering non-LGBTQ+ experiences and identities

# THE TITLE IX AND CIVIL RIGHTS

PODCAST



WEEKLY EPISODES  
AVAILABLE ON ALL  
STREAMING SERVICES

DAN SCHORR, LLC



---

## **ALYSSA-RAE MCGINN**

Vice President

alyssarae@danschorrllc.com

Boston, MA

+1.516.382.3043 Mobile

## **JENNA FARRELL**

Investigator

jenna@danschorrllc.com

Denver, CO

+1.315.632.8056 Mobile

**DAN SCHORR, LLC**

[MORE INFO AT DANSCHORRLLC.COM](https://danschorrllc.com)