



# MISCONDUCT COMPLAINTS

The First 48 Hours

October 28, 2020

**DAN SCHORR, LLC**

# OUR SERVICES

- Title IX, Civil Rights, and Misconduct Investigations
- Decision Makers and Hearing Officers
- Policy and Program Reviews
- Trainings

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

# DAN SCHORR

President  
New York



Dan Schorr is a former criminal prosecutor and municipal inspector general with more than 20 years of legal and investigative experience. He manages a variety of complex assignments, including investigations into sexual misconduct, Civil Rights, and fraud allegations at educational institutions, corporations, and government entities. In addition to specializing in Title IX investigations, Dan assists higher education and K-12 schools by conducting policy and program reviews, training personnel on all aspects of Title IX and Civil Rights compliance, and serving in hearing officer and decision maker roles. Dan is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

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# ALYSSA-RAE MCGINN

Vice President, Investigations  
Boston



Alyssa-Rae McGinn has extensive experience leading a variety of complex investigations, with particular expertise in conducting investigations at educational institutions and corporations into allegations of sexual misconduct and identity-based harassment involving students, faculty, staff, and corporate leadership. Alyssa-Rae was previously a Senior Associate at Ankura, where she and Dan 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.

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# RYAN THOMPSON

THOMPSON ESQUIRE PLLC

New York



After an extensive and diverse career as an attorney, journalist and higher education professional, Ryan Thompson established THOMPSON ESQUIRE PLLC a mere three days after the 2020 Title IX Regulations went into effect. Within that first week, Thompson was already profiled in Buffalo Business First and the Buffalo Law Journal (see News) as an attorney who brought a unique skillset to this practice area and was considered one of the top legal scholars in this concentration.

As the former Title IX Coordinator and Civil Rights Officer of Niagara University, Ryan Thompson has handled hundreds of cases, investigating or supervising dozens of sexual assault, misconduct and discrimination/harassment investigations into student and employee allegations. He has overseen investigations at the highest level, working with investigators and attorneys from firms across the United States. As Title IX Coordinator and Civil Rights Officer, Thompson personally conducted the intake of all reports, using objective trauma-informed best practices, and successfully administered and monitored informal resolutions involving students, faculty and staff.

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# RECEIVING A COMPLAINT

- Respond to notice of issues promptly
- Listen carefully and with compassion
- Gather basic information: Who? What? When? Where? How?
- Assure complainant that you take the matter seriously
- Offer services and accommodations
- Assist with obtaining advisor, if necessary
- Explain relevant process, including new Title IX process if relevant
- Offer informal/alternative resolution options, if permitted
- Explain anti-retaliation and amnesty policies
- Do not express opinions or make promises that may not be kept

# SECURING EVIDENCE

- Some evidence may only be available for a short period of time and must be secured immediately, including:
  - CCTV
  - Social media
  - Building entrance records
  - Additional electronic information
  - Rape kit evidence
  - Clothing
  - Bed sheets
  - Other physical evidence

# VIOLENCE RISK ASSESSMENT

- May need to conduct a Violence Risk Assessment (VRA)
- Assess potential risk posed by respondent and/or others
- Consider risk factors that escalate the potential for violence
- Evaluate influences that reduce the risk of violence
- What information supports conclusion of higher/lower risk of violence?
- This process is not a finding of responsibility or a sanction, but rather a crucial process focused on campus safety

# INITIAL ANALYSIS

- What is the nature of the allegations?
  - For sexual and gender-based misconduct:
    - Does it meet the definition of prohibited conduct under Title IX? When did it occur, and based on that, which policy applies?
    - If not, is there reasonable cause to believe that there may be a policy violation?
  - For allegations of misconduct based on race, religion, age, and other protected identities:
    - Is there reasonable cause to believe that there may be a policy violation?
    - If so, which policy applies?
- Document this analysis and decision

# PRELIMINARY INQUIRY

- For non-Title IX matters, if additional information is needed to determine whether a formal process is needed or which process to utilize:
  - Follow school policies and procedures for conducting a preliminary inquiry
  - You may need to conduct a first interview with the complainant, the respondent, and key witnesses, or review key documents
  - Inform complainant about preliminary inquiry and relevant process
  - If you will be speaking to the respondent or witnesses, inform respondent of complaint and preliminary inquiry process
  - Document process and findings

# OUTREACH TO RESPONDENT

- Must be equally respectful and compassionate with respondent
- Explain nature of complaint and alleged facts
- Listen if respondent wants to share their account of the alleged incident(s)
- Assure that respondent will be given a fair chance to be heard
- Offer services and accommodations
- Assist with obtaining advisor, if necessary
- Explain relevant process, including new Title IX process if relevant
- Explain anti-retaliation policy
- Do not express opinions or make promises that may not be kept

# NOTICE OF INVESTIGATION/ALLEGATIONS

- New Title IX regulations require written notice be provided to both parties when allegations will proceed to investigation
- Notice must include:
  - Detailed allegations, including date and location
  - Identities of parties involved
  - Statement that respondent is presumed not responsible and determination will be made at the end of the process
  - Opportunity to have an advisor of choice who may be an attorney
  - Opportunity to review evidence
  - Statement regarding prohibition on knowingly false statements or submitting false information
- However, detailed notice should be provided for non-Title IX cases as well

# MANAGING EXPECTATIONS

- Be transparent about entire process, including:
  - Scope of the investigation
  - Realistic timelines
  - Degree of participation expected from them
  - Confidentiality
  - Who will be conducting the investigation
  - Hearing procedures for Title IX cases and consequences of choosing not to participate in the hearing
  - Who will be making determinations regarding violations and sanctions
- Be available and responsive throughout the process

# ASSIGNING APPROPRIATE INVESTIGATORS

- Appropriate experience
- Comfort and fluency with subject matter
- Conflict of interest or appearance of conflict of interest
- One or two investigators?

# INTERIM MEASURES AND ACCOMMODATIONS

- Interim measures and accommodations should be considered for both the complaint and the respondent
- Can be implemented at any time during investigation when needed
- Document justification for interim measures
- Do not undertake actions that may be perceived as punishment or unequal without documenting justification
- In Title IX matters, respondent must be noticed and given an opportunity to challenge the decision
- May include:
  - No-contact orders
  - Counseling services
  - Class scheduling modifications
  - Housing accommodations
  - Work schedule changes
  - Interim suspensions

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