

NEW ISBE & IDPH JOINT GUIDANCE – PART 3: A Legal Panel Q&A: Fall Return to School Transition Guidance and Discussion

**Webinar
June 25, 2020**

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NEW ISBE & IDPH JOINT GUIDANCE – PART 3

A Legal Panel Q & A: Fall Return to School Transition
Guidance and Discussion

Webinar presented by Frank B. Garrett III, Matthew J. Gardner,
Joseph J. Perkowski, and Caroline A. Roselli
June 25, 2020

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Introduction



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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.

Introduction

The Way Forward?

- On June 23rd, ISBE and IDPH published its latest installment of COVID-19-related guidance—addressing the transition back to in-person instruction during the fall 2020 semester.
- ISBE is “strongly encourag[ing]” that districts throughout the state return to in-person instruction during Phase 4 of the Governor’s Restore Illinois plan.

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Introduction

- At the same time, The Guidance mandates that, during Phase 4, all Illinois schools serving pre-K through 12th grade students:
 - Require use of appropriate personal protective equipment (PPE), including face coverings;
 - Prohibit more than 50 individuals from gathering in one space;
 - Require social distancing be observed, as much as possible;
 - Conduct symptom screenings and temperature checks or require that individuals self-certify that they are free of symptoms before entering school buildings; and
 - Increase schoolwide cleaning and disinfection.

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Introduction

- The direction to return to predominantly in-person instruction is based on the rationale that remote learning has resulted in significant learning and social emotional gaps and the only way to address the deficit is to run the risk of bringing students back in the midst of the Pandemic.
- The State has effectively weighed the risks of exposure to COVID-19 against the harm to student learning and is balancing toward addressing the harm to student learning despite the risk.
- Much is delegated to the local districts to make this work.
- The Guidance is heavily dependent on use of preventative safety measures and on the hope that there is no resurgence of the Pandemic.

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Introduction

The 4 Areas of Focus:

- Instruction
- Screening
- Safety Measures
- Fear of Returning

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Instruction



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Instruction

- Since ISBE has allowed each district to determine the extent to which to return to in-person instruction, can a district decide to go with a complete or predominantly in-person platform with remote learning reserved for students with a health conditions, or during periods of long term closure?
 - Options for students who live with individuals with health conditions?

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Instruction

- Can school districts have students back in-person even if the district cannot meet social distancing guidelines throughout the entire school day?

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Instruction

- What implications are there from a personnel management perspective if a district goes with a predominantly in-person instructional approach? What about a blended learning approach?

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Instruction

- Is there increased liability exposure for a district that decides to go with a predominantly in-person instructional plan where surrounding districts have a more significant remote learning approach and where a COVID case occurs?
 - Options for mitigating measures ?

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Instruction

- To what extent must a district include the union(s) in planning the amount of in-person versus blended remote instruction, and generally developing the return to school plan?
 - Is it sufficient to have teachers and ESPs on planning committees in order to meet bargaining obligations?
 - What if any notices should a district be providing to the union now regarding the return to school plan?

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Instruction

- What does 5 clock hours of daily instruction or schoolwork for each student mean?

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Instruction

- Are districts required to provide in-person instruction for all special education students?
 - Students under 13?

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Instruction

- If a district brings back all special education students but proceeds with a blended or remote plan for other students, how does that impact special education placements, least restrictive environment mandates, and the 70/30 class make-up requirement?

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Instruction

- How should districts utilize reintegration assessments to target learning gaps?

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Instruction

- What is the difference between a Grade Level Reintegration Plan and an Individual COVID Impact Transition Plan?

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Instruction

- Do districts have an obligation to provide special education students with compensatory education due to the Spring 2020 remote programming, or in light of the likelihood that there will be some form of ongoing remote learning this coming school year?

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Questions?



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Screening



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Screening

- What are the screening requirements under the new ISBE guidance?

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Screening

- What are the screening requirements for transportation?

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Screening

- Does a district which uses a daily or annual certification form and does not conduct daily temperature checks at entry have increased liability exposure if its surrounding districts are conducting daily temperature checks?

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Screening

- What if a staff member or student has one or two symptoms but suspects that it is unrelated to COVID-19?

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Screening

- What happens if a staff member or student is diagnosed with COVID-19 or is suspected of having COVID-19?

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Questions?

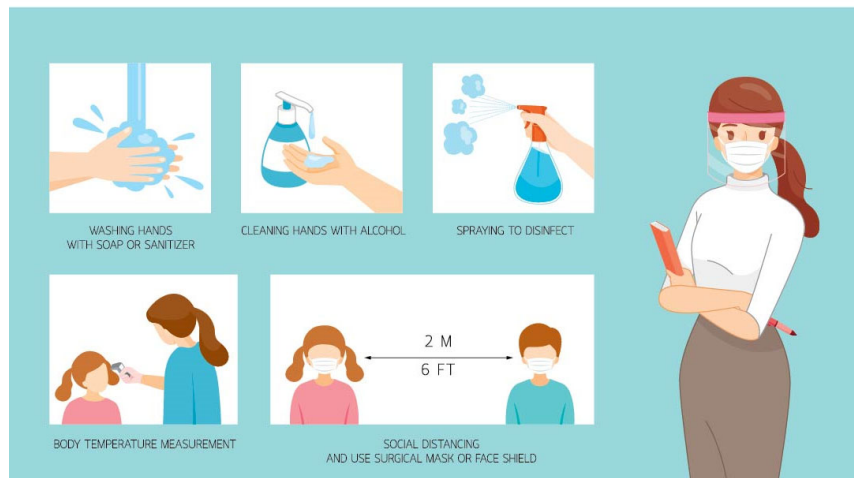


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Safety Measures

CORONAVIRUS (COVID-19) PREVENTIVE MEASURES AT SCHOOL



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Safety Measures

- What is a “space” for purposes of the prohibition of “more than 50 individuals from gathering in one space?”

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Safety Measures

- What kind of face coverings are required?
 - Do they need to be worn all day?
 - What are the school's options if a student or employee refuses to wear a face covering?

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Safety Measures

- What safety measures and precautions are required for school buses and transportation?

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Safety
Measures

- How should school districts modify their school buildings and facilities?

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Safety
Measures

- Did the new guidance change school districts' procurement options for PPE, hand sanitizer, and cleaning supplies?

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Safety Measures

- What are school districts' requirements for cleaning and disinfecting school buildings, equipment, and supplies?

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Safety Measures

- Should districts allow third-parties to use school facilities and, if so, what precautions should districts take?

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Safety Measures

- Do school districts have potential exposure to liability if an employee claims that they have contracted COVID-19 at work or through contact with a sick colleague or student?

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Questions?



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Fear of Returning



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Fear of Returning

Staff members who were working remotely in the spring and the summer will now be required to physically return to the district. One such staff member expresses a desire to continue working remotely due to their discomfort/fears surrounding the virus.

Although the plan to return and all of the safety precautions have been communicated by the district, the staff member feels her age (or a health condition) places her at risk.

The staff member has not submitted any medical information to support the request.

The staff member has been successfully working remotely.

- Should the district accommodate the request to continue working from home?

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Fear of Returning

The district's teachers union expresses objection to the return to in-person teaching plan on the basis that the district has not taken proper precautions to ensure social distancing in the classrooms. The union asserts that because of their members' fear of contracting the virus in the "cramped" and "overcrowded" classrooms they will not allow their members to come to work until the district decreases the number of students in each classroom.

- What are the district's options?

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Fear of Returning

- If a district decides to go with a predominantly in-person instructional plan and a parent refuses to send to school their otherwise healthy student out of fear, should a district offer an alternative (i.e. in-person instructional options that limit the student's interaction with others, remote learning)?

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Follow Up
Questions



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As managing partner, Joseph Perkoski represents educational institutions and public sector employers with a focus on board and executive leadership. Joseph also represents his clients on a broad range of labor and employment issues including collective bargaining, grievance arbitration and contract interpretation. Joseph has defended employers in unfair labor practice charges before the Illinois Education Labor Relations Board, the Illinois State and Local Labor Relations Boards and the National Labor Relations Board. In addition, Joseph has litigated on behalf of management claims involving civil rights, discrimination, wrongful discharge, and harassment issues.

AWARDS

Illinois Super Lawyers, 2008-2020

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations*, IICLE (2017)

Contribution author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

"Finding a New Way: Subcontracting Revisited," *UPDATE Magazine*, Illinois ASBO (2011)

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

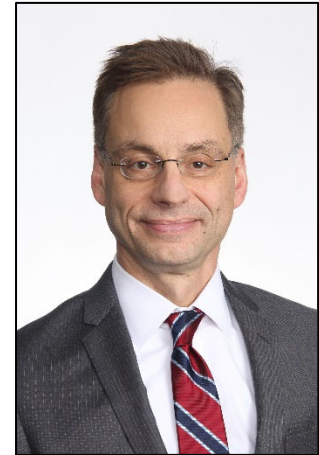
RECENT PRESENTATIONS

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Court Cases and Other Legal Updates for the Higher Education Workplace, Illinois CUPA-HR Spring Conference (May 2019)

Legal Update, ICCCFQ Spring Conference (April 2019)

Bargaining Updates, 3%, and Q & A, Northwest Personnel Administrators (October 2018)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

J.D., The Ohio State University, The Mortiz College of Law

M.A., The Ohio State University

B.A., *with honors*, The Ohio State University

ADMITTED TO PRACTICE

U.S. Court of Appeals for the Seventh Circuit

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

U.S. District Court for the Eastern District of Wisconsin

U.S. District Court for the Western District of Wisconsin

Recent Amendments and Changes to State and Federal Employment Laws,
Illinois CUPA-HR Spring Conference (May 2018)

SURS Legislation Update, ICCCFD Spring Conference (April 2018)

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

ORGANIZATIONS

American Bar Association

Associated Colleges of
Illinois, Trustee

Council of School
Attorneys

Federal Bar Association

Illinois Association of
School Business Officials

Illinois Bar Association

National School Boards
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Wisconsin Bar Association

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Matthew Gardner is a member of the firm's construction, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights and defending defect claims.

Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

RECENT PUBLICATIONS

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

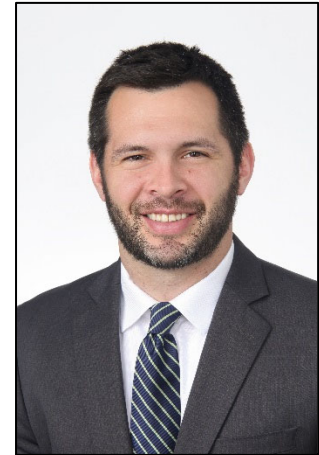
"The Good, The Bad and The Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"School District and Zoning Exemptions," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

Construction Purchasing & Bidding Common Problems & Solutions, Illinois ASBO (March 2019)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Construction Contracts: Boilerplate Language Landmines You May Not Know,
NBI (February 2019)

*The Anatomy of a Mechanics Lien Claim: Preparing, Serving and Filing Notices
and Claims*, Illinois State Bar Association Continuing Legal Education (May
2018)

Lead Testing Update: Everything You Need to Know, Illinois ASBO Conference
(May 2018)

Community College Funds – Lawful Expenditures and Practical Considerations,
Spring ICCCFD Conference (April 2018)

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Frank B. Garrett III represents school districts, community colleges, local governmental bodies and public and private companies in all aspects of employment law, including complaints and charges of unlawful discrimination, wrongful termination, sexual harassment, civil rights violations, employee discipline and termination. Frank also counsels and provides training to employers in the following areas: ADA and FMLA compliance, avoiding claims of unlawful discrimination and harassment in the workplace: evaluation and discipline of employees, and diversity in the workplace.

Frank represents and defends clients in both state and federal courts, at the trial and appellate levels. He also practices before various administrative agencies such as the Illinois Educational Labor Relations Board, the Illinois Human Rights Commission and the Equal Employment Opportunity Commission. Frank is a regular speaker on employment law topics at both the state and national level.

Frank is approved by the Illinois State Board of Education to provide school board member training. He is an active member of the American Bar Association and Illinois Council of School Attorneys.

AWARDS

Illinois Leading Lawyer, Government and Regulatory-Related
Illinois Leading Lawyer, Employment and School Law
Illinois Super Lawyers

RECENT PUBLICATIONS

"Extended Medical Leave Under ADA Soundly Rejected by 7th Circuit,"
Chicago Daily Law Bulletin (2017)

"First Amendment Protections Get Broader for Government Employees,"
Chicago Daily Law Bulletin (2016)

"Big-box Employee's Attempt to 'Scam' Company Undercuts FMLA Claims,"
Chicago Daily Law Bulletin (2015)

Employers Must Rethink Employee 'Look' Policies After High Court Decision,"
Chicago Daily Law Bulletin (2015)



PRACTICE AREAS

Education Law
Labor & Employment
Litigation

EDUCATION

J.D., DePaul University
College of Law

B.A., Oberlin College

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

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

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

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

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

Supreme Court of Illinois

“Using Social Network Screening as Part of the Hiring Process: Employers Should Proceed with Caution,” *Inquiry & Analysis*, National School Boards Association’s Council of School Attorneys (2013)

Contributing author, “Employment Discrimination,” *ILLINOIS SCHOOL LAW*, IICLE (1996, 1999, Supp. 2001, 2005, 2010 and 2012)

RECENT PRESENTATIONS

Debunking Some Common Employee FMLA Leave Myths, IASPA Annual Conference (January 2020)

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Understanding New Changes to the Minimum Wage Law and Other Wage-Related Statutes, Illinois GFOA Annual Conference (September 2019)

Navigating the Legal Liability Minefield in the Recruitment, Interview and Selection of Qualified Applicants, AASPA Personnel Administrator Boot Camp (June 2018)

The Ever-Changing Landscape Under Title IX, Joint meeting of Illinois Community College Presidents, Chief Academic Officers and Chief Student Services Officers (January 2017)

Practical Guidance on Employee Misconduct Investigations and Discipline, Illinois Association of School Personnel Administrators, Tenth Annual State Conference (January 2017)

ORGANIZATIONS

American Bar Association,
Section on Labor and
Employment

Chicago Bar Association

Cook County Bar
Association

Illinois Council of School
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Caroline Roselli practices in the areas of special education law and student rights. She counsels school districts and colleges concerning student discipline, student records, policy development, students' rights and other student-related matters. She assists school districts in responding to complaints from the Illinois State Board of Education and Office of Civil Rights and she regularly represents public school districts at IEP meetings, due process hearings, mediations, student expulsion and suspension hearings and residency hearings. Caroline has successfully defended school district decisions and prevailed at due process hearings on issues regarding eligibility, requests for residential placements and denial of FAPE claims.

Caroline has presented at annual conferences for both the Illinois Association for School Boards and for the Illinois Alliance of Administrators of Special Education. She is a co-author of the "Special Education" chapter of the Illinois Institute of Continuing Legal Education's School Law treatise. Caroline also regularly conducts workshops and in-service programs on a variety of special education related topics, including IEP compliance, response to intervention and child find, evaluation procedures, eligibility determinations, autism litigation and discipline of special education students.

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

Illinois "Rising Star," Super Lawyers Magazine, Schools and Education Law (2012-2017)

RECENT PUBLICATIONS

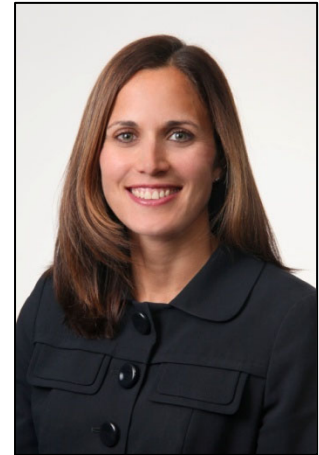
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"What Does State Law Say about Measles Prevention and Control in Schools?" *Chicago Daily Law Bulletin* (2015)

Contributing author, "Special Education," *Illinois School Law*, IICLE (2010, 2012 and 2015)

RECENT PRESENTATIONS

Due Process: To Go or Not to Go? Special Education Update, Illinois Council of School Attorneys, 33rd Annual Seminar on School Law (November 2019)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., *cum laude*, Loyola University Chicago School of Law

B.A., University of Notre Dame

ADMITTED TO PRACTICE

Supreme Court of the United States

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Bar Association

Illinois Council of School Attorneys

National Council of School Attorneys

Seclusion, Restraint, and Time Out 2020, Illinois Alliance of Administrators of Special Education Region 1 Roundtable (November 2019)

Risk Assessment, Threat Assessments and the Impact on Students with Disabilities, Illinois Alliance of Administrators of Special Education Fall Conference (October 2019)

Legal Issues Related to School Safety and Security: Addressing the Complex Challenges Facing Schools, Large Unit District Association, (May 2019)

Responding to Requests for Homebound Instruction, Illinois Alliance of Administrators of Special Education Webinar (April 2019)

Tips for Preparing Legally Defensible Eligibility Determinations for Specific Learning Disability, Illinois Alliance of Administrators of Special Education Roundtable Presentation (March 2019)

Absenteeism, School Refusal, and Truancy in Special Education: Legal Issues when Students Don't or Can't Come to School, Illinois Alliance of Administrators of Special Education Roundtable Presentation (March 2019)

Escalating Student Behavior and Safety Concerns: Legal Options and Considerations, Illinois Alliance of Administrators of Special Education Winter Conference (February 2019)

The Ins & Outs of Residential Placements: Rules, Regulations, & Recommendations, Illinois Alliance of Administrators of Special Education Fall Conference (October 2018)

Just What the Doctor Ordered: Responding to Increasing Requests for Homebound Instruction, Illinois Alliance of Administrators of Special Education Winter Conference (February 2018)