

Frequently Asked Questions on Interpreting the ISBE/IDPH Joint Guidance A Continued Panel Discussion: Fall Return to School Transition

Webinar
July 1, 2020

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Frequently Asked Questions on Interpreting the ISBE/IDPH Joint Guidance


A Continued Panel Discussion: Fall Return to School Transition

Webinar presented by Joseph J. Perkoski, Frank B. Garrett, III,
Caroline A. Roselli, Matthew J. Gardner and Catherine R. Locallo
July 1, 2020

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Introduction



BACK TO SCHOOL

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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

- Transitioning to In-Person Instruction Through the Lens of Equity
 - 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 then issued an FAQ document on June 29, 2020.
 - 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

- Transitioning “while holding paramount the health and safety of students and communities.” Districts must:
 - 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

- Underpinnings
 - The direction to transition to in-person instruction appears based on the rationale that distance learning has resulted in a significant learning deficit aggravated by economic inequities and the digital divide and that this must be addressed by balancing the risks in favor of having in-person instruction despite the continuing Pandemic.

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Introduction

- Use of Transition Planning Teams to assess the outcome of the spring remote learning plans “through an equity lens” to determine what groups need greater support.
- Much is delegated to the local districts to make this work.
- The Guidance is heavily dependent on enforcing safety measures and on the hope that there is no resurgence of the Pandemic.

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Introduction

- **Key Issues arising from the Guidance and the FAQs**
 - What happened to the hybrid approach?
 - Must districts throw out plans to return on a predominantly remote basis
 - Screening Confusion?
 - The use of self-certification forms
 - Masks and shields
 - Liability Concerns

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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

- Is a plan with primarily remote instruction still an option for the fall?

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Instruction

- If a parent does not want to send their child to school, what obligations do districts have for instruction?

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Instruction

- How should districts utilize assessments and data to guide fall planning?

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Instruction

- How should districts document our plans to address the grade level and individual learning gaps and social emotional needs as students return to school in the fall?

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Instruction

- Should districts include union leadership in developing the return to school plan?

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Instruction

- Once a return to school plan is developed, is there a duty to bargain implementation of the plan?

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Instruction

- How does a district respond if the union asserts that the COVID-19 pandemic makes it inherently unsafe for any type of in-person instruction in the fall?

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Instruction

- Is it an option for districts to live stream classroom lessons or record live instruction to allow for synchronous learning?

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Questions?



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Screening



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Screening

- How can a district satisfy the requirement for temperature and symptom screening, or self-certification and verification for all students, staff and visitors entering school buildings?

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Screening

- Can a district require COVID-19 testing before allowing employees to return to in-person teaching this fall?

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Questions?



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Safety Measures

CORONAVIRUS (COVID-19) PREVENTIVE MEASURES AT SCHOOL



WASHING HANDS WITH SOAP OR SANITIZER



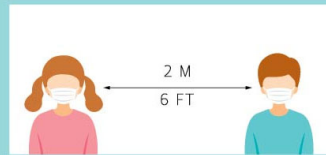
CLEANING HANDS WITH ALCOHOL



SPRAYING TO DISINFECT



BODY TEMPERATURE MEASUREMENT



SOCIAL DISTANCING AND USE SURGICAL MASK OR FACE SHIELD



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Safety Measures

- Must face coverings be worn at all times when individuals are inside a school building, including when an employee may be alone in their classroom or office?

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Safety Measures

- Can face shields be worn in lieu of or in addition to a face covering?

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Safety Measures

- Should a district implement a policy or procedure requiring face coverings?

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Safety Measures

- What options does a district have if an employee refuses to wear a face covering?

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Safety Measures

- How should districts respond if a student refuses to wear a face covering or if a parent refuses to allow their child to wear one ?
 - Are districts required to offer remote instruction in such scenarios?

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Safety Measures

- Are exceptions for face coverings permissible for special education students with identified needs, such as those with significant communication disorders, sensory needs or autism?

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Safety Measures

- COVID-19 Return to School/Work Scenarios

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Safety Measures

- Individuals who had close contact with someone who tested positive for COVID-19 or someone who is suspected of having COVID-19?
 - *Return after 14-day quarantine period from the date of last contact with the individual.*

Source: IDPH "Releasing COVID-19 Cases and Contacts from Isolation and Quarantine" (5/26/20) and stated in ISBE FAQ (6/30/20).

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Safety Measures

- Individuals who test positive for COVID-19 or are suspected of having COVID-19, **AND** had symptoms.
 - *Symptom-based strategy. May return after: (1) at least 10 days have passed since symptom onset; and (2) at least 72 hours since resolution of fever (w/out medicine) and improvement of respiratory symptoms.*
 - *Test-based strategy. May return after: (1) Fever free (without medicine); (2) improvement in respiratory symptoms; and (3) two negative COVID-19 tests in a row, with testing done at least 24 hours apart.*

Source: CDC "Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Setting" (5/29/20) linked in ISBE FAQ (6/30/20), and IDPH "Releasing COVID-19 Cases and Contacts from Isolation and Quarantine" (5/26/20).

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Safety Measures

- Individuals who test positive for COVID-19, but have **NO** symptoms.
 - *Time-based strategy.* May return after at least 10 days have passed since date of first positive COVID-19 test.
 - *Test-based strategy.* May return after two negative COVID-19 tests in a row, with testing done at least 24 hours apart.

Source: Source: CDC "Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Setting" (5/29/20) linked in ISBE FAQ (6/30/20).

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Safety Measures

- An individual exhibits one or more symptoms of COVID-19, but is not suspected of having COVID-19.
 - *Example: A teacher experiences allergies every September, including a cough and runny nose. She experiences the same symptoms this September.*
 - *May be possible to return in fewer than 10 days after onset of symptoms.*

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Safety Measures

- How should districts respond to union demands for PPE for certain types of employees like nurses and custodians?

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Safety Measures

- Can the district require custodians to clean and disinfect classrooms after a COVID-19 exposure?
 - What should districts keep in mind if it wants to hire an outside vendor to perform this service?

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Safety Measures

- Are partitions between desks required under the guidance from ISBE and IDPH?

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Safety Measures

- Can a school divide its gyms, field house, cafeteria or auditorium to allow more than 50 students to use the room at one time? How about outdoor areas?

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Safety Measures

- How do school districts transport their students if students cannot maintain IDPH recommended social distancing on school buses?

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Safety Measures

- What strategies should school districts consider to protect themselves through the Illinois Tort Immunity Act?

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Questions?



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Fear of Returning



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Fear of Returning

- How should a district respond to an employee who has a general fear of returning to work, but no underlying medical condition or other vulnerability?

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Fear of Returning

- How should districts address employees it knows are experiencing medical conditions that may make them more vulnerable if exposed to COVID-19?

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Fear of Returning

- As a means to mitigate liability should districts consider not allowing employees over a certain age (say age 50 and older) to return to work if there will be in-person instruction?

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Fear of Returning

- What leave applies first if a teacher is unable to work or telework because of a requirement to self-isolate after testing positive for COVID-19?

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Fear of Returning

- If an employee is able to telework and the duties they perform can be done remotely, do any leave laws apply?

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Fear of Returning

Scenario:

- A school secretary needs to be absent every Tuesday and Thursday because those are remote learning days at her son's school, so she cannot send him to school on those days. What, if any, leave applies to this situation? Must the District permit intermittent leave under this scenario?

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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)

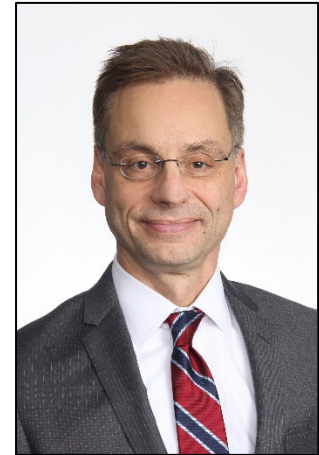
RECENT PRESENTATIONS

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
Association

Wisconsin Bar Association

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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
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Chicago Bar Association

Cook County Bar
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Illinois Council of School
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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)

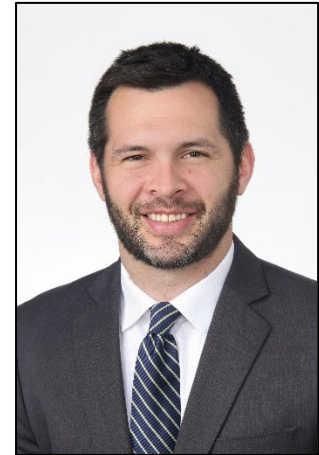
"The Good, The Bad and The Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"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
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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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Catherine Locallo's practice focuses on labor and employment law and board governance matters. She counsels employers in all aspects of employment law including hiring, employment contracts, employee discipline issues, terminations and reductions in force, collective bargaining and labor relations, nonimmigrant worker visas and employment discrimination matters. She also counsels public bodies on compliance with Illinois' Freedom of Information Act and Open Meetings Act. Catherine has extensive experience representing clients in court and administrative agency proceedings involving discrimination, retaliation and harassment claims.

Catherine is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois "Rising Star," Employment & Labor Law (2015-2018)

RECENT PUBLICATIONS

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

"Regulatory Changes to the Illinois Wage Payment and Collection Act," *Justinian Society Newsletter* (2015)

"New FOIA Amendments to Ease Burden on Public Bodies," *Justinian Society Newsletter* (2015)

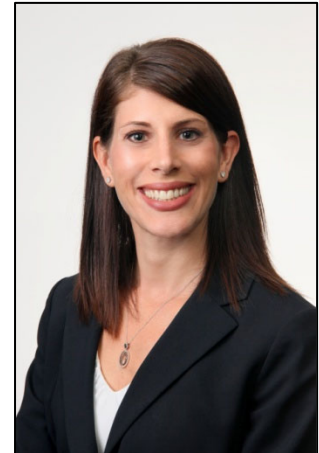
"Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award 'Drew Its Essence' from the CBA," *Justinian Society Newsletter* (2014)

"When the Music Stops, Why Not Require Certain Title VII Plaintiffs to Find a Chair on Which to Rest Their Complaint," *The John Marshall Law Review*, (2009)

RECENT PRESENTATIONS

Is PERA Dead?? Implementation of a Local Appeals Process for Unsatisfactory Ratings, IASPA Annual Conference (January 2020)

A Workshop on Compliance with the Open Meetings Act and Illinois Freedom of Information Act, LUDA Annual Conference (October 2019)



PRACTICE AREAS

Education Law
Labor & Employment
Litigation

EDUCATION

J.D., *cum laude*, The John Marshall Law School,
Order of John Marshall

B.S., Southern Illinois
University

ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

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

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

Supreme Court of Illinois

Community College Trustees Training Session, ICCTA (June 2019)

Community College Trustees Training Session, ICCTA (June 2017)

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

Justinian Society of Lawyers; Scholarship Committee, Co-Chair

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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

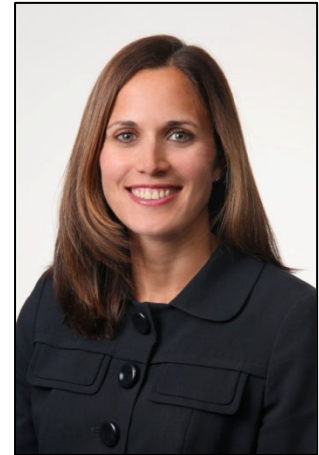
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"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
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Dame

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Supreme Court of the
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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)