

NEW ISBE SPECIAL EDUCATION GUIDANCE A Special Education Legal Panel Q&A: Transition Back to In-Person Instruction Guidance and Discussion

**Webinar
July 10, 2020**

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NEW ISBE SPECIAL EDUCATION GUIDANCE

A Special Education Legal Panel Q & A: Transition Back to In-Person Instruction Guidance

Presented by Laura M. Sinars, Caroline A. Roselli, and Zaria N. Udeh

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The Constant Stream of Guidance

- 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 a FAQ document on June 25, 2020, with updated versions on June 29, June 30, and July 9, 2020.
- On June 30th, ISBE published an FAQ for Special Education on the Transition to In-Person Instruction
- June 30th and July 6th DOE Guidance

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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.

The Constant Stream of Guidance

- Focus on in-person learning and equity.
- 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.
- High priority on providing in-person daily instruction for IEP, 504 and EL students.

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Agenda

- Health and Safety Factors
- Compensatory Service Requests
 - Individual Remote Learning Plans
 - COVID Impact Transition Plan
- Scheduling Impact and Documentation
- IEP Meetings and Evaluations

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Health and Safety Factors



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Health and Safety Factors

- In-person instruction is strongly encouraged; however, this does not signify a return to pre-pandemic operations.
- Social distancing, face coverings, enhanced sanitation measures, and other accommodations will be necessary to ensure the safety of students, staff, and the community.

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Health and Safety Questions

- If a student is not typically eligible for homebound, but now will not be attending school because he/she is medically fragile, has a trach, asthma, seizures, etc., then do we call it “homebound” or can we refer to instruction as *remote* due to documented health needs?
 - How should this be documented?
 - Can a parent request or demand homebound versus remote learning?

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Health and Safety Questions

- If a student is not medically fragile or high risk, but the parents are afraid for their student to return to school - are they allowed to keep them home with the option of continued remote learning?

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Health and Safety Questions

- Are exceptions for face coverings permissible for special education students with identified needs, such as those with significant communication disorders, sensory needs or autism?
- Would an accommodation regarding face coverings for a special education student also require medical documentation?

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Health and Safety Questions

- If the child cannot wear a face covering such as a mask or a face shield, and does not understand or comply with social distancing requirements due to their cognitive ability, is it reasonable for the IEP team to determine that in-person learning is not appropriate?

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Health and Safety Questions

- Would it be appropriate to have the SLP's utilize a classroom set of face shields that students can wear in the speech room during speech sessions and then sanitize them between classes to be used again by another group of students? Students would be wearing their mask to and from sessions in the hallway, etc.
 - Can the SLP also wear a face shield during sessions?

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Health and Safety Questions

- Under CDC/IDPH/ISBE guidance, how do school staff safely service students with significant needs who require hand over hand, toileting, eating, and hygiene assistance?
 - What about students with behavioral needs who require physical restraint or timeouts?

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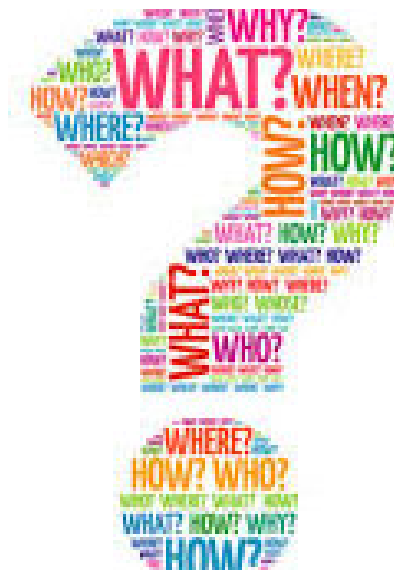
Health and Safety Questions

- Can transition students return to job placements or community outings?
 - What are the safety considerations in allowing such?
 - Do we require any type of documentation?

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Questions?



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Compensatory Service Requests: COVID Impact Transition Plans and IRLPs



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Compensatory Service Requests: COVID Impact Transition Plans and IRLPs

- Compensatory education is a remedy under the IDEA when a district has denied a FAPE to the student.
- Services to address the impact of spring remote learning are not compensatory education because the educational gaps or progress concerns are not due to a denial of FAPE by the district.
- If the district did not engage in meaningful efforts to provide the student with a FAPE in light of the COVID circumstances, the district may face compensatory education claims with some merit.

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Compensatory Service Requests: COVID Impact Transition Plans and IRLPs

- Upon return to in-person attendance:
 1. Reintegration Assessments: Collect data to measure the academic and social emotional impact of spring remote learning for all students, and specifically for special education students.
 - Use universal screening data, goal and objective data, intake survey data
 2. Grade Level Reintegration Plan: Targets standards missed and provides instruction for all students to address grade level gaps in learning due to COVID-19.

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Compensatory Service Requests: COVID Impact Transition Plans and IRLPs

- Upon return to in-person attendance:
(continued)
 - 3. Work collaboratively with the student's IEP team to determine an individualized response to address the COVID-19 impact for the student.
 - 4. COVID Impact Transition Plan: Develop MTSS-like plan to determine what services will be provided to the student to address the impact of COVID.
 - 5. Provide COVID Impact Transition Services to address individual skill gaps.

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COVID Impact Transition Plan and IRLP Questions

- If we created Individual Remote Learning Plans in the spring, do we need to update the plans?
- Should the content and/or structure of the Individual Remote Learning Plans be different than in the spring?

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COVID Impact Transition Plan and IRLP Questions

- Should Individual Remote Learning Plans be developed for students that request remote learning in the fall?
- Should Individual Remote Learning Plans and COVID Impact Transition plans be part of the IEP?

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Questions?



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Scheduling
Impact and
Documentation



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Scheduling Impact and Documentation

- Blended Forms of Instruction
 - In-Person Instruction – IEP Governs
 - Remote Learning – IRLP May Need to Be Developed if Special Education is to be Delivered Remotely
- If IEP cannot be implemented as written due to changes to schedule:
 - Prepare IEP Amendment and written notice; and
 - Share with parents and seek input/feedback

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Scheduling Impact and Documentation

- Provisions for class size and 70/30 remain in effect
 - Districts should review class composition, percentage of students with IEPs in the class period, to ensure each class has proportionate percentage of general and special ed students consistent with regs
 - If circumstances prohibit adherence to 70/30 then submit waiver/deviation

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Scheduling Impact and Documentation Questions

- Is it acceptable to not provide the same in-person amounts for all students with IEPs and provide in-person support for special education students with the more significant needs?

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Scheduling Impact and Documentation Questions

- How do we define class when determining class size for 70/30 and LRE?
 - Blended model of A/B days
 - General education students are all remote

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Scheduling Impact and Documentation Questions

- If we are doing half days in-person (morning/afternoon) or every other days in-person (A/B), how does that impact special education minutes and how do we document such?

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Scheduling Impact and Documentation Questions

- How do we expose students to LRE if general ed students are fully remote and special ed students are fully in-person?
 - What if gen ed students are only coming in-person for ELA/Math and certain special ed students are self-contained for those subjects?

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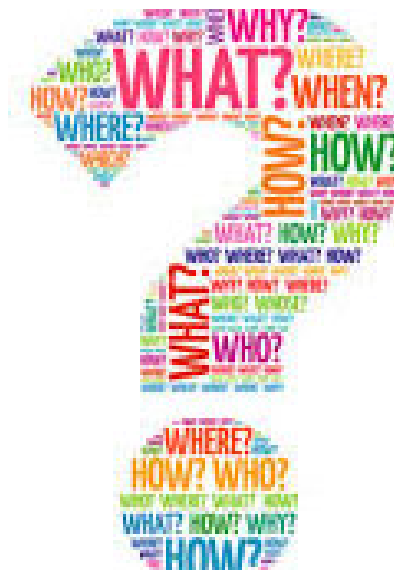
Scheduling Impact and Documentation Questions

- How do we document these minute/scheduling/LRE issues given the variety of circumstances that in-person, remote, and blended instructional models represent?

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Questions?



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IEP Meetings and Evaluations



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IEP Meetings and Evaluations

- There are no state or federal waivers from compliance with special education laws.
- All Individuals with Disabilities Education Act and Section 504 timelines remain in effect.
- There continues to be limited flexibility with compliance; however, ISBE and Dept. of Education guidance provides practical tips for facilitating IEP meetings and evaluations.

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IEP Meeting Questions

- What is the guidance on having IEP meetings in-person vs. remotely?
 - Is there a recommendation for in-person vs. remote?
 - Should we give parents a choice?

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IEP/504 Meeting Questions

- Does the ISBE's special education guidance pertain to students with 504 Plans (medical conditions, i.e. critical heart condition)?
- Should reasonable social distancing accommodations be documented in IEPs, 504 Plans, and/or health plans?

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IEP/504 Meeting Questions

- May school districts rely on electronic/digital signatures for parent consent for their child's initial evaluation, reevaluation, or the initial provision of special education and related services to their child or consent to release education records?
- How can school districts ensure that a copy of the procedural safeguards is available to parents under IDEA?

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Evaluation Questions

- What are school district obligations for conducting evaluations that were unable to be completed during the mandatory suspension of in-person instruction during the spring?
- Must evaluation assessments be conducted in-person in the fall?

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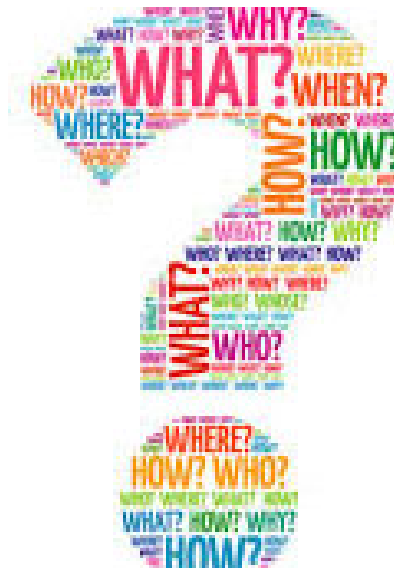
Evaluation Questions

- For school districts who may offer remote learning in the fall or in the event schools need to return to remote learning due to school closures, what are the potential implications for Child Find?

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Questions?



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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

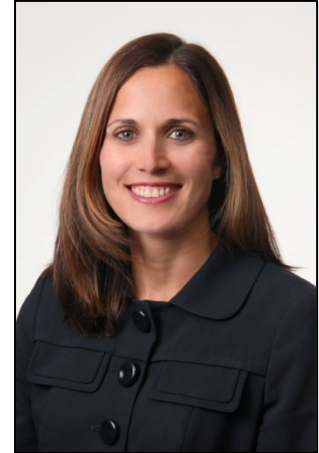
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"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)

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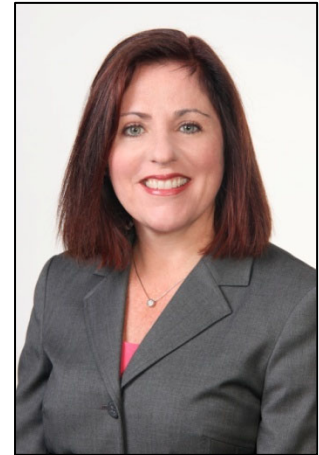
Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations, services and placement of special education students in due process hearings. She has successfully prevailed in hearings to defend against parents' unilateral private placements. In the area of student rights, Laura has assisted clients with routine student issues related to records, discipline, health and 504 questions. She has also assisted clients with building strong residency and discipline cases which proceed to hearing and has successfully defended districts' decisions in state and federal courts. Laura has represented districts before federal and state agencies including the Illinois State Board of Education, the Illinois Guardianship and Advocacy Commission and the Office for Civil Rights.

AWARDS

Illinois Super Lawyers, 2005-2018

RECENT PUBLICATIONS

Contributing author, "Special Education," *Illinois School Law*, IICLE (2005, 2010, 2012 and 2015)



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J.D., University of Notre
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U.S. Court of Appeals for
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Zaria practices in the area of education law focusing in the areas of special education and students issues. Zaria counsels school districts with respect to IEP meetings, 504 accommodations, OCR, ISBE, and IDHR complaints, due process hearings, residency and homeless dispute hearings, student discipline matters, board policy and student handbook review, FOIA requests, student record compliance and contract review. Zaria also counsels community colleges on student related issues.

Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

RECENT PUBLICATIONS

"Medical Cannabis at School Wins Legislative OK," Chicago Daily Law Bulletin (2018)

RECENT PRESENTATIONS

Use of Restraint & Seclusion: The Risks & Challenges Districts Face, IAASE (October 2018)

Legal Update in Special Education, Superintendent Leadership Conference (June 2018)

Current Trends Related to Placement and LRE: A Review of Recent Guidance from the Courts, IAASE (February 2018)

"Free Speech" Issues on Public College Campuses, ICCSSO (January 2018)

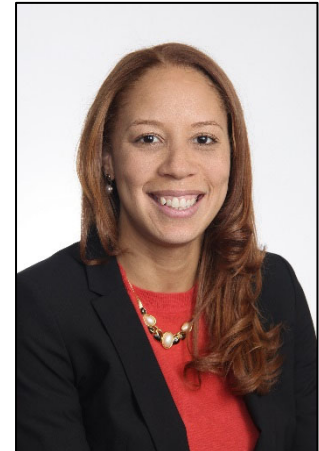
Responding to Requests & Complaints of Transgender Students, IASB/IASA/IASBO Joint Annual Conference (November 2017)

Handling IEP and 504 Plan Disputes, National Business Institute (November 2017)

SB 100...One Year Later: Lessons Learned (October 2017)

Transgender Students Update: The Ever Changing Legal Landscape (October 2017)

Unilateral Placement for Special Education Students: A Big Gamble?, IAASE (February 2017)



PRACTICE AREAS

Education Law
Special Education
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EDUCATION

J.D., DePaul University
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ADMITTED TO PRACTICE

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

Supreme Court of the
Commonwealth of
Massachusetts

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