

## Return to School: Legal and Practical Considerations as Students and Staff Return to School with Restrictions

Webinar  
June 17, 2020

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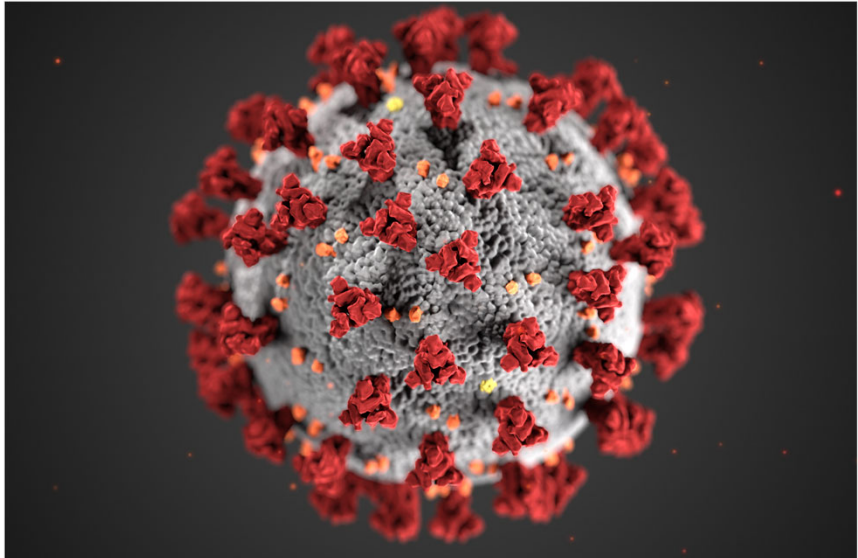
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<h1>Return to School:</h1> <p>Legal and Practical Considerations as Students and Staff Return to School with Restrictions</p> <p>Webinar presented by Joseph Perkoski, Catherine Locallo, Caroline Roselli and Matthew Gardner June 17, 2020</p>	<p>Robbins Schwartz</p>
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<h2>The Current State of Affairs</h2>	
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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.

## Recently Published COVID-19 Guidance

### June 4, 2020 ISBE and IDPH Updated Guidance

- Provides recommendations for transitioning to in-person learning.
- Leaves discretion regarding in-person activities to local control.
- Indicates that schools should:
  - Limit capacity in any space to 10 or fewer people;
  - Develop procedures to ensure 6-foot physical distance from other persons at all times;
  - Ensure the wearing of face coverings for all, and PPE appropriate to staff duties.
  - Conduct temperature and symptom screenings before entering the school building; and
  - Regularly clean and sanitize buildings and equipment.

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## Recently Published COVID-19 Guidance

### Updated Allowable In-Person School Activities Based on Phase 3:

- Return to Play Athletics
- Behind-the-Wheel Instruction
- Child Find/Early Childhood, Special Education, and English Learner Screenings
- Special Education Evaluations
- Extended School Year
- Summer School
- Summer Camps and Other Programs.
- Individualized Education Program Meetings
- Staff Meetings and Professional Development
- Registration
- Summer Meal Distribution



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## Legislative Update: Remote Learning and Hybrid In-Person Remote Instruction

- Senate Bill 1569, related to Remote Learning Days and Blended Remote Learning Days and development of plans, passed by both the House and Senate on May 22, 2020.
- Sent to the Governor on June 15. Governor has 60 days to take action (sign into law or veto). If 60 days pass with no action, becomes law.

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Where will we be Beginning the 2020-21 Academic Year?



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## Legal and Practical Return to School Considerations

- Health Concern or Fear of Returning to School
- Screening Upon Entry to School
- Safety Measures at School
- COVID Impact Services

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## Health Concern or Fear of Returning to School

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## Health Concern or Fear of Returning to School

- Student, parent and employee perspectives.
- Balancing risk of exposure with need to deliver effective instruction.
- The importance of planning and communication.

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## Student- Related Issues with Health Concern or Fear of Returning to School

- Homebound or Remote Learning Obligations?
  - Students with Health Conditions and Unable/Unwilling to Attend School
    - ISBE/IDPH Guidance: medically fragile and immunocompromised students should consult their medical provider prior to attending school.
  - Students Residing with Household Member with Health Condition and Unwilling to Attend School
  - Students/Parents with Fear of Return
  - Students in Short or Long Term Dismissal
    - COVID Exposure at School
    - Community Increase
- Formation of District Remote Learning Team for Design & Delivery of Remote Learning Activities

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Labor and  
Employment  
Issues with  
Health  
Concern or  
Fear of  
Returning to  
School

- Employee resistance to returning to work
- Accommodation considerations
- Assertion of leave rights

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Labor and  
Employment  
Issues with  
Health  
Concern or  
Fear of  
Returning to  
School

- Is fear of contagion a basis for leave?
  - Employer-Provided Leave
  - Families First Coronavirus Response Act Leave
    - Emergency Paid Sick Leave Act
    - Emergency Family and Medical Leave Expansion Act
  - Existing Leave laws

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Labor and  
Employment  
Issues with  
Health  
Concern or  
Fear of  
Returning to  
School

- Employee resistance to returning to work
  - Potential Need for Accommodation
    - ADA Obligations
    - Accommodation due to family member at high risk of severe illness?
    - Advanced planning considerations for potential flexible work arrangements

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Questions?



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## Screening Upon Entry to School



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## Screening Upon Entry to School

- ISBE/IDPH Guidance: Schools should conduct temperature and symptom screenings for all staff, students, and visitors daily.
- Methods of performing screenings
  - Temperature Checks
  - Symptom Screening Questionnaire / Checklist
- Frequency of screenings
- Results of screening follow-up

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## Screening Upon Entry to School

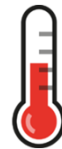
- Establish a Plan
  - Use of technology
  - Symptom screens
- Educate all Stakeholders
  - Students, Employees, Parents, Vendors, Visitors, Third Parties
- Adhere to the Plan

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## Student- Related Issues with Entry Screenings

- Privacy Considerations
  - Separate location
  - ISBE/IDPH Guidance: Designate a safe area to quarantine those who are experiencing symptoms and may be awaiting pickup/evaluation. Students must always be supervised while maintaining necessary precautions.
- Student Records
- Timing and Place of Screenings
- Requirements for Re-entry after Positive for High Temperature or Symptom Screening



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## Labor and Employment Issues with Entry Screenings

- Permissibility of Entry Screenings of Employees
  - Individual rights
  - Bargaining duty
- Potential Claims of Discrimination
  - Avoiding disparate treatment
- Protecting Private Information

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## Employee or Student COVID Positive

- COVID Positive Result for Student, Employee or Household Member
  - Length of Exclusion
  - Notice and Contact Tracing
  - Privacy Considerations
  - Communication Plan
  - Closure Length
  - Cleaning

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Questions?



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Safety Measures at School



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## Safety Measures at School

- Five Components:
  1. Screening;
  2. Protective Gear;
    - a. Face Coverings
    - b. PPE for Screeners and Certain Staff (i.e. nurses, aides with particular duties)
  3. Hand Washing;
  4. Social Distancing; and
  5. Facility Safety.

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## Employee Face Coverings at Work

- What are Face Coverings?
- Can Employers Mandate that Employees Wear Face Coverings at Work?
- Special Considerations if Requiring Employees to Wear Face Coverings
  - ISBE/IDPH guidance requires provision of face coverings to all district employees who cannot maintain 6 ft of social distance as part of their duties.

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## Labor and Employment Issues with Safety Measures at School

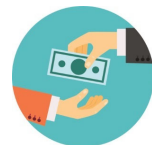
- Union demands to bargain school safety measures.
  - Review current CBA to ensure compliance with existing contractual obligations related to health and safety
  - Notice to union if change in working conditions
  - Duty to mid-term bargain with union, if requested
    - Have a plan – consider involving union in discussions over safety measures *before* you get a demand to bargain
    - Understand current guidance and responsibilities and be prepared to discuss those
    - Be flexible

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## Labor and Employment Issues with Safety Measures at School

- Union demands to bargain school safety measures.
  - What is Hazard Pay in the School Setting?
  - Who is Entitled to Hazard Pay?
  - Individuals More Likely to Perform Hazardous Duties



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## Student-Related Issues with Safety Measures at School

- Face Coverings and Social Distancing
  - Age of Students
  - Special Education Needs
  - Medical Needs
- Limitations on Classroom Access
- Visitors to School/Classrooms
  - Meeting Attendance
    - ISBE/IDPH Guidance: Discipline meetings, IEP and 504 meetings, and other meetings between staff and visitors/families should be held remotely, to the greatest extent possible. If parents/guardians are unable to engage in a required meeting remotely, socially distanced in-person meetings may be held.
- Evaluators and Observations

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## Social Distancing Considerations

- Potential Strategies and Legal Considerations for General Social Distancing
  - Smaller Class Sizes
  - Moving Teachers between Classrooms
  - Blended In-Person and Remote Instruction
    - A and B days; last name alphabetical
  - Block Scheduling
    - Impact on IEP minutes
    - Amendment and Written Notice with input/feedback.
  - Delayed/Staggered Schedules

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## Social Distancing Considerations

- ISBE/IDPH Guidance: Students and staff may break social distance if face coverings and other appropriate PPE is utilized.
- Social Distancing in Specialized Circumstances
  - Transportation
  - Entry and Exit from Building
  - Cafeterias/Lunchrooms
  - Hallways/Lockers
  - Restrooms
  - Physical Education
  - Sports/After School Events
  - Music Courses
  - Assemblies
  - Staff Meetings



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## Facilities and Operations Considerations

- Procurement of PPE, Hand Sanitizer, and Cleaning Supplies
- Plexiglass Partitions and Social Distance Barriers
  - One Way Travel Paths
  - Six Feet Standing Locations
- Cleaning and Disinfection
  - Facilities
  - Equipment
- Facility Use Agreements and Policy Modifications regarding Building Use

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## COVID Impact Services

### Upon return to in-person attendance:

1. Collect data to measure the impact of COVID-19 on skill levels and gaps for all students, and specifically for special education students.
  - Use universal screening data, goal and objective data, survey data
2. Plan instruction for all students to address grade level gaps in learning due to COVID-19.

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## COVID Impact Services


### 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. Develop a MTSS-like plan to determine what services will be provided to the student to address the impact of COVID-19.
5. Provide COVID-19 Impact Services to address individual skill gaps.
  - Such are not compensatory services so long as the district provided the redefined FAPE to the student during the COVID-19 remote learning period

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Recommendations



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Recommendations

1. Develop Remote Learning Plan and Blended Remote Learning Plan
2. Create Safety Measures Procedure
3. Develop COVID Impact Services Plan
4. Consider Adjustments to CBA/MOU
5. Train and inform employees

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Recommendations

6. Assess and respond accordingly to a “reluctant” employee v. employee with need for accommodation.
7. Evaluate Current Contracts
  - Technology
  - Transportation
  - Food Service
  - Facility Use Contracts
  - Liability Insurance

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Recommendations

8. Evaluate Status of Conflicting Board Policies, Procedures and Handbook Provisions with Pandemic Circumstances
  - Board Meetings
  - Attendance
  - Visitors to School Property
  - Community Use of School Facilities
  - Breakfast and Lunch Program
  - Acceptable Use
  - Immunizations/Physical/Dental
  - Administering Medication to Students

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Questions?



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# Robbins Schwartz

## JOSEPH J. PERKOSKI

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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)

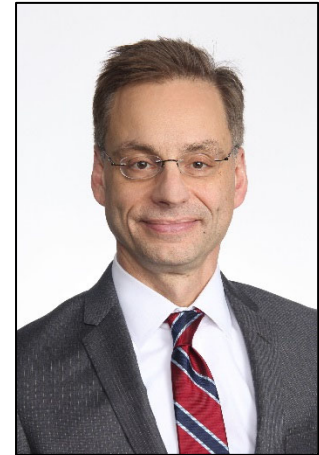
### RECENT PRESENTATIONS

*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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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)

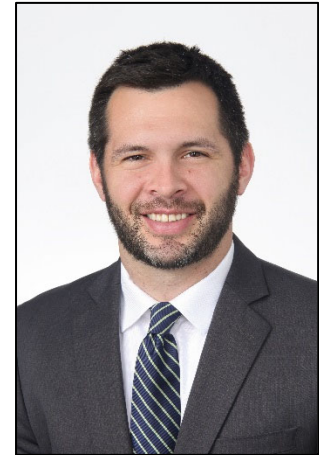
"The Good, The Bad and The Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"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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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)

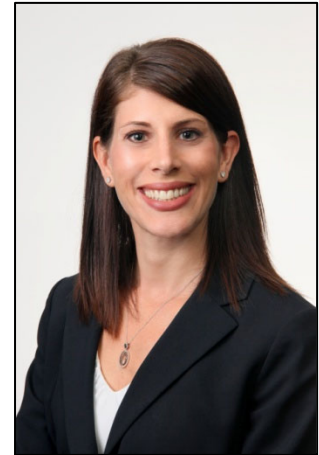
"Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award 'Drew Its Essence' from the CBA," *Justinian Society Newsletter* (2014)

"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,  
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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**

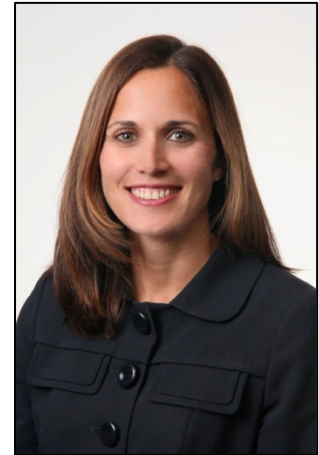
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"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 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)