

# Robbins Schwartz

## Back to School Beginnings: A Legal Panel Focusing on Student and Special Education Frequently Asked Questions

September 25<sup>th</sup>, 2020

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# Back to School Beginnings: A Legal Panel Focusing on Student and Special Education Frequently Asked Questions

Presented by Laura Sinars, Caroline Roselli, Zaria Udeh and Tabitha Hill

September 25<sup>th</sup>, 2020

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## Agenda

- Health and Safety Factors
  - Face coverings
  - Physical management
  - COVID notifications
- Instruction
  - Requests for in-person, in-home and additional services
  - Homeschool/Opt out requests
  - IEP Amendments
  - Virtual Confidentiality
  - Transitioning Between In-Person and Remote Settings
  - Student discipline and residency
  - Retention requests

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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.

## Health and Safety Factors



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## Health and Safety Questions: Face Coverings

- Are exceptions for face coverings permissible for students with identified needs, such as those with certain medical conditions, significant communication disorders, sensory needs or autism?
- What documentation should schools require for face covering exemptions/accommodations?

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## Health and Safety Questions: Face Coverings

- If the child cannot wear a face covering such as a mask or a face shield, and/or does not understand or comply with social distancing requirements, is it reasonable for the school team to determine that in-person learning is not appropriate?
  - Can the school send such students home if they are not compliant with the face covering requirement?

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## Health and Safety Questions: Face Coverings

- If a student cannot wear a face covering, should schools send notices out to parents of other students in the classroom advising of such?



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## Health and Safety Questions: Physical Management

- Can schools engage in CPI or other physical management in light of the social distancing guidelines?
- Are there any options for sending students home or transitioning students to remote if they require CPI or physical management?

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## Health and Safety Questions: COVID Notifications

- Who should be notified if a student tests positive for COVID?
  - What about the classroom teacher even if he/she was not a close contact?



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Health and  
Safety  
Questions:  
COVID  
Notifications

- May the District disclose the name of a student who has COVID-19 to the local health department?

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Questions?



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## Instruction



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## Instruction: COVID Impact Services

- If we provide additional services and supports to students with larger gaps in learning from spring 2020, how do we document such?
  - How long do we provide the services?
  - Are these compensatory education services for special education students?

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## Instruction: COVID Impact Services

- How should school districts move forward with Rtl, the referral process, and the evaluation process when students are learning and being assessed remotely?
  - If we follow recommendations to start Tier 2 for the majority of our students due to such low fall benchmark scores, is the Rtl process and timeline the same?
  - How can benchmarking be deemed valid and reliable when we cannot observe a student completing the test?

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## Instruction: Requests for In-Home Services

- We have a student who has significant attention issues and requires one to one assistance and prompting throughout the normal in-person school day. The student has difficulty accessing remote learning. Parent is requesting that we send a staff member into their home to assist with remote learning. 
- How do we respond to the request?

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## Instruction: Requests for In-Person Services

- What should all remote schools do if a parent requests in-person instruction at school for a student having difficulty during remote?
  - How do schools justify a half-day versus a full-day of in-person for special education students?

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## Instruction: Homeschool or Opt Out Requests

- Can school districts allow parents to opt their students out of certain remote classes?
- Do school districts have to honor requests for part-time enrollment due to homeschool or private school enrollment?

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## Instruction: IEP Amendments

- Should schools complete IEP amendments to document changes to the instructional plan for all special education students?
  - What if schools have already amended IEPs and now the school district has again changed the plan and schedule impacting minutes?
  - What if schools expect scheduling and minutes to keep changing during the year?

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## Instruction: Virtual Confidentiality

- Do we need parent waivers to address student confidentiality concerns during Zoom/Google Meet sessions for classes or related service sessions?

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## Instruction: Virtual Confidentiality

- Are there any concerns with teachers live streaming or recording their classroom for students attending remotely?



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## Instruction: Transitioning Between In- Person and Remote Settings

- If a student is in-person and has to go remote for quarantine reasons (but is asymptomatic and can participate in school), what is the expectation on how quickly the school must implement that remote instruction?

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## Instruction: Transitioning Between In- Person and Remote Settings

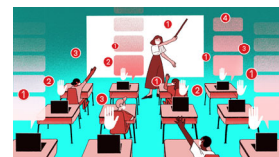
- A parent opts their student out of in-person instruction and chooses remote learning, must the district allow the student to come back to in-person whenever the parent requests it or can the school keep the student out for a semester, trimester, etc.?
  - Any different considerations if it is a special education student?
    - Student having difficulty on remote?
    - Transfer student?

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## Instruction: Transitioning Between In- Person and Remote Settings

- Can schools require a student to do in-person instruction if the student is struggling significantly during remote?
  - Are there different considerations if it is a special education student?



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Instruction:  
Transitioning  
Between In-  
Person and  
Remote  
Settings

- What should a school do if the student is not participating or engaging at all remotely and parents have been offered but refuse in-person?

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Instruction:  
Transitioning  
Between In-  
Person and  
Remote  
Settings

- Can school districts provide Physical Therapy and Occupational Therapy equipment such as a stander or wiggle seat into the home?

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## Instruction: Student Discipline

- How do we address student discipline issues in the remote learning environment?
- Does the student code of conduct still apply?
- Does SB100 still apply?



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## Instruction: Student Residency

- How should schools deal with remote option students that are residing in vacation homes or with family outside of district boundaries?
  - Should school districts proceed with residency investigations and hearing proceedings?

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Questions?



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## **CAROLINE A. ROSELLI**

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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**

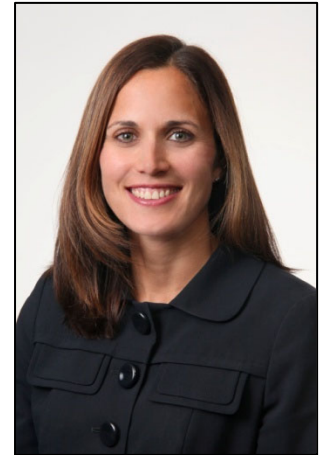
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"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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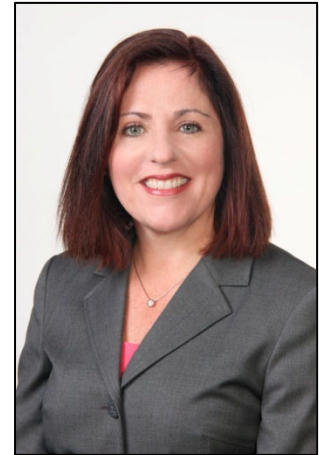
Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations, 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)



### **PRACTICE AREAS**

Education Law  
Special Education  
Student Discipline

### **EDUCATION**

J.D., University of Notre  
Dame Law School

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Dame

### **ADMITTED TO PRACTICE**

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

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

Supreme Court of Illinois

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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)

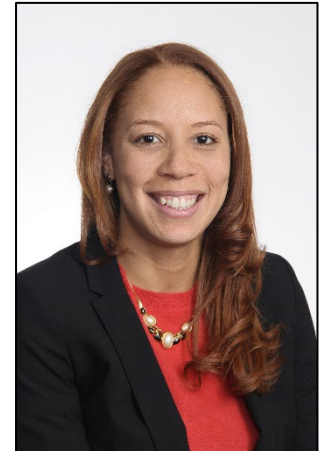
*Responding to Requests & Complaints of Transgender Students*, IASB/IASA/IASBO Joint Annual Conference (November 2017)

*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  
Student Discipline

### EDUCATION

J.D., DePaul University  
College of Law

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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

### ORGANIZATIONS

Chicago Bar Association