

Frequently Asked Questions on the July 9, 2021 CDC Guidance for K-12 Schools (Adopted by ISBE and IDPH)

Webinar
July 15, 2021

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Frequently Asked Questions on the July 9, 2021 CDC Guidance for K-12 Schools Adopted by ISBE and IDPH

Presented by Joseph J. Perkoski, Laura M. Sinars, Caroline A. Roselli and Todd K. Hayden

July 15, 2021

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Introduction

Updated CDC Guidance for 2021-22 school year issued July 9, 2021 and adopted by ISBE and IDPH

Emphasizes benefits of full in-person learning and safely returning to in-person instruction

Highlights need for local agencies to monitor certain metrics to determine COVID-19 prevention strategies

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Introduction

- The new CDC guidance gives more local control and discretion, but notes that decisions about prevention strategies should be data driven
- Consultation with local health departments is a key component to local decision making
- School and local health officials should consider multiple factors when deciding about implementing layered prevention measures, including:
 - Community transmission levels
 - Local vaccine coverage
 - Screening testing
 - Occurrence of outbreaks

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Introduction

- Guidance revised to emphasize most important strategies to allow for in-person learning
 - Notes that students should not be excluded from in-person learning even if a district cannot strictly comply with recommendations (e.g., physical distancing), but recommends layering of multiple other prevention strategies, such as indoor masking, screening testing, cohorting, improved ventilation, handwashing and covering coughs and sneezes, staying home when sick and regular cleaning
- Updated to align with current guidance for fully vaccinated individuals
- Updated to align with current mask guidance

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COVID-19 Vaccine



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COVID-19 Vaccine

- Can a school district request proof of vaccination status for students, teachers and staff?
 - What type of proof can we require?
 - If yes, what are the recommendations related to timing of when to request proof of vaccination status?
 - If we don't want to request proof, can we use the honor system?

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COVID-19
Vaccine

- If an individual carries the antibodies, can a school district treat them as vaccinated when determining whether they are required to mask?



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COVID-19
Vaccine

- Can a school district mandate that a student, teacher or staff member get vaccinated as a condition for attending school or returning to work?

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To Mask or Not
to Mask



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To Mask or
Not to Mask

What are the current CDC
recommendations regarding the
wearing of masks in public schools?

What is the masking requirement
for school transportation?

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To Mask or Not to Mask

- Has the CDC identified circumstances when the wearing of masks is particularly important?



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To Mask or Not to Mask

- Can a school district implement a mask optional policy for all students and employees?
- Has the CDC identified factors to weigh if a school district is considering opting to making mask use optional regardless of vaccine status?

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To Mask or Not to Mask

- Does a school district need to bargain a mask optional policy with its union?



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To Mask or Not to Mask

- What are the legal liability considerations in implementing a mask optional policy?
 - What about the liability in removing other mitigation measures?

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To Mask or Not to Mask

- Do school districts and board members have tort immunity for claims arising from their decision to not require masks or reduce other mitigation measures?

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To Mask or Not to Mask

- In addition to legal liability risks, are there any other factors school districts should be considering in removing masks or other mitigation measures?



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To Mask or Not to Mask

- If an unvaccinated individual cannot wear a mask due to a medical or disability related condition, can a school district restrict them from attending school in-person?
- Can a school district remove an unvaccinated student or employee if they refuse to wear a mask or refuse to keep it on throughout the school day?

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To Mask or Not to Mask

- In situations where students and staff are indoors and social distancing of three feet is not possible, what does the CDC recommend regarding masks?

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To Mask or Not to Mask

- How should a school district deal with visitors and mask requirements dependent on vaccination status?
 - Proof of vaccine?
 - Signage?



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To Mask or Not To Mask

- What information should be communicated to the district stakeholders and community regarding mask requirements?
- Should districts adopt or revise policies related to mask requirements?

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Social
Distancing and
Space
Limitations



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Social
Distancing and
Space
Limitations

- Is it 6 feet or 3 feet or less of physical distancing between students for the 2021-2022 school year?
 - May districts allow less than three feet of separation if that is the only way to return to full in-person instruction?

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Social Distancing and Space Limitations

- Are there situations where school districts must still provide at least six feet of separation between students and/or staff?

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Social Distancing and Space Limitations

- What are the requirements and/or recommendations regarding lunch and spacing in the cafeteria?



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Social Distancing and Space Limitations

- What are some of the factors school districts should consider when deciding whether to allow students to be seated in the classroom less than three feet apart in a specific situation?

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Social Distancing and Space Limitations

- Are there any capacity limits in individual rooms or spaces or on transportation?

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Quarantine and Close Contact Protocols



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Quarantine and Close Contact Protocols

- What is the current quarantine protocol for “close contact” to a confirmed or probable COVID-19 case?

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Quarantine and Close Contact Protocols

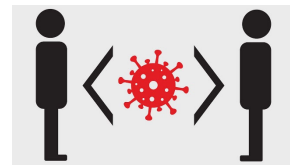
- Is the close contact definition still the same even though the physical distancing recommendations in schools have been altered?

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Quarantine and Close Contact Protocols

- Are there any exceptions to the quarantine protocol for a “close contact”?



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Quarantine and Close Contact Protocols

- Should school districts track individuals with COVID-19 symptoms?

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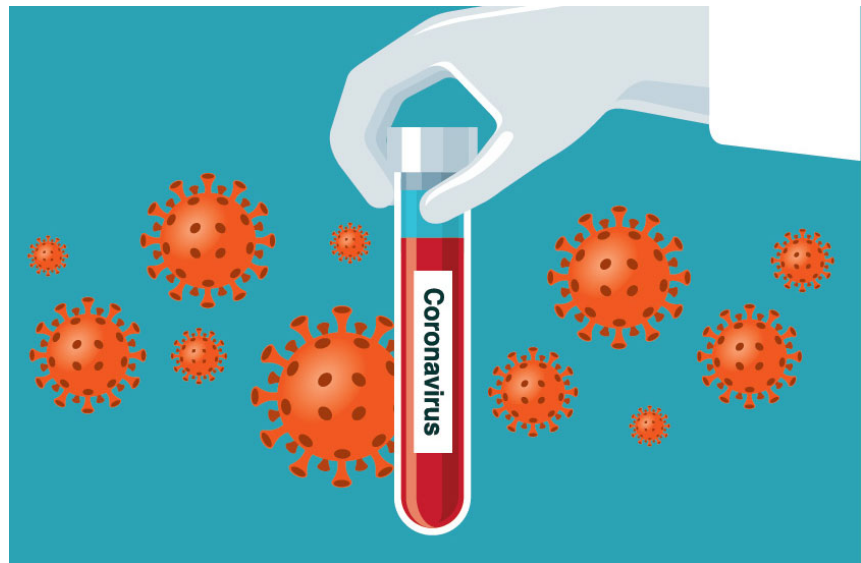
Quarantine and Close Contact Protocols

- Are there any options for an unvaccinated individual to test out of quarantine or have a reduced quarantine?

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Symptom Screenings and School Based COVID-19 Testing



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Symptom Screenings and School Based COVID-19 Testing

- If school districts are no longer doing symptom screenings and temperature checks at the door, what options do they have for self-certification?
 - Is self-certification required for the 2021-2022 school year?

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Symptom Screenings and School Based COVID-19 Testing

- Can school districts require students and employees to submit to weekly school based saliva or COVID-19 testing?
 - Vaccinated vs. Unvaccinated?

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Symptom Screenings and School Based COVID-19 Testing

- If a school district is offering an optional weekly COVID-19 testing program, can they require unvaccinated students and employees to participate as a condition of not wearing a mask?

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Remote Learning



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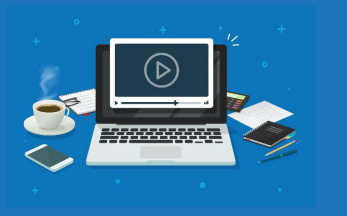
Remote Learning

- Are school districts required to offer remote instruction for students?
 - State Superintendent July 9, 2021 Declaration expands remote offerings
 - Students with medical conditions qualifying for homebound

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Remote Learning



- What options does a school district have if they want to offer remote instruction to a larger group than the State Superintendent's declaration allows for?
- Illinois School Code Section 10-29 Policy

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Remote Learning

- What does remote instruction need to look like for the 2021-2022 school year?

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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)

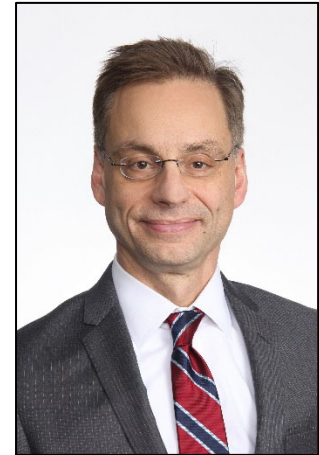
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

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)



PRACTICE AREAS

Education Law
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Student Discipline

EDUCATION

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

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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

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
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Federal Bar Association

Illinois Association of
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Todd Hayden practices in the areas of school and municipal law. He provides governmental employers with guidance and counseling regarding labor and employment, including employee discipline and termination, board governance, collective bargaining, contract, public finance and transactional matters.

Todd has represented employers in various employer-employee disputes including federal and state litigation, EEOC/Department of Human Rights charges, State Labor Board Proceedings and grievance and arbitration proceedings. Todd has extensive experience in collective bargaining, including unit formation proceedings, negotiations, mediation and interest arbitration. He has performed construction contract reviews, served as local bond counsel and worked on school boundary changes.

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

AWARDS

Illinois Leading Lawyer, Employment Law: Management, Labor Law: Management, School Law and Governmental, Municipal, Lobbying & Administrative Law, 2015

RECENT PUBLICATIONS

Contributing author, "Civil Rights Litigation," *Illinois School Law*, IICLE (2017)

RECENT PRESENTATIONS

Collective Bargaining for School Board Members and Administrators, IASB/IASA/Illinois ASBO Joint Annual Conference (November 2018)

Employee Free Speech and the Public Employer, HR Source Employment Law Conference at Northern Illinois University (September 2018)

Practical Advice for Maintaining a Harassment Free Workplace, IASA (February 2018)



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

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

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

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

RECENT PUBLICATIONS

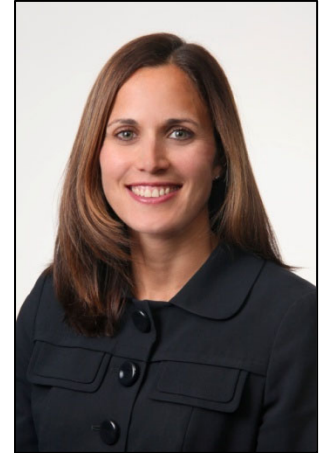
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

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

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

RECENT PRESENTATIONS

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



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

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Supreme Court of the United States

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Chicago Bar Association

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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)

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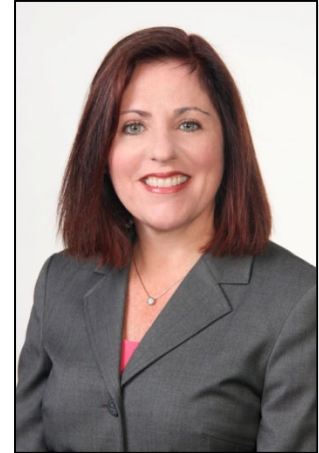
Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations,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