

## (More) Synchronized Swimming for Schools: How to Implement the Statewide Mandates

August 9, 2021

**Caroline A. Roselli**  
[crocelli@robbins-schwartz.com](mailto:crocelli@robbins-schwartz.com)

**Laura M. Sinars**  
[lsinars@robbins-schwartz.com](mailto:lsinars@robbins-schwartz.com)

**Todd K. Hayden**  
[thayden@robbins-schwartz.com](mailto:thayden@robbins-schwartz.com)

**Catherine R. Locallo**  
[clocallo@robbins-schwartz.com](mailto:clocallo@robbins-schwartz.com)

**Chicago**  
55 West Monroe Street, Suite 800  
Chicago, IL 60603  
p 312.332.7760  
f 312.332.7768

**Champaign-Urbana**  
301 North Neil Street, Suite 400  
Champaign, IL 61820  
p 217.363.3040  
f 217.356.3548

**Collinsville**  
510 Regency Centre  
Collinsville, IL 62234  
p 618.343.3540  
f 618.343.3546

**Lisle**  
550 Warrenville Road  
Suite 460  
Lisle, IL 60532-4311  
ph: 630.929.3639  
fax: 630.783.3231

**Rockford**  
2990 North Perryville Road, Suite 4144B  
Rockford, IL 61107  
p 815.390.7090

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# (More) Synchronized Swimming for Schools: *How to Implement the Statewide Mandates*

Presented by Todd K. Hayden, Catherine R. Locallo,  
Caroline A. Roselli, and Laura M. Sinars,

August 9, 2021

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Just Keep  
Swimming



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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... Just Keep Swimming

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Updated CDC Guidance, issued July 27, 2021, and adopted by IDPH, recommending indoor masking regardless of vaccination status, in K-12 schools.

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August 4, 2021, Governor Pritzker's Executive Order 2021-18 mandating indoor universal masking in all pre-kindergarten through grade 12 public and nonpublic schools immediately.

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Continues to emphasize that students should return to full-time in-person learning.

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## Introduction... Just Keep Swimming

- The Executive Order requires the indoor use of face coverings by students, staff, and visitors who are over the age of two and able to medically tolerate a face covering, regardless of vaccination status and consistent with the CDC guidance.
- The July 27, 2021 updated CDC guidance recommended universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status.
  - *In contrast to July 9, 2021, CDC guidance which stated that masks should be worn indoors by all individuals who are not fully vaccinated.*
- The mask mandate is in addition to implementing other layered prevention strategies, such as physical distancing, screening testing, ventilation, and additional cleaning.
- The mask mandate also extends to pre-kindergarten through grade 12 indoor recreational sports.
- The Governor noted that he will watch for significant reduction in transmission, an increase in vaccination rates, and availability of the vaccine to those under age twelve in evaluating the continuation of the mask mandate.
- The Governor indicated he will take action to enforce the mandate as needed.

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## Introduction... Just Keep Swimming

- The August 2, 2021, IDPH/ISBE Guidance titled “Centers for Disease Control and Prevention (CDC) for COVID-19 Preventions in K-12 Schools.”
  - Promotion of vaccination as the leading public health prevention strategy
  - Alignment with CDC guidance for universal indoor masking K-12 schools, regardless of vaccination status
  - Emphasis on in-person learning regardless of whether all prevention strategies such as social distancing can be implemented at school
  - Revised definition of close contact to guide quarantine
  - Introduction of Test to Stay alternative to quarantine
- The ISBE/IDPH Revised Public Health Guidance for Schools – Part 5: Supporting the Full Return to In-Person Learning for All Students (August 2021)
  - Issued at the end of last week but the link is now removed
  - Anticipate that ISBE/IDPH are making additional changes and will reissue shortly

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## The 411 on Face Masks in Schools



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## Breaking Down the Governor's Mask Mandate

- How long will the mask mandate be in place?
- Can a school district choose not to comply with the Governor's mask mandate?

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## Breaking Down the Governor's Mask Mandate

- What is the impact on a school district's tort immunities if it does not comply with the mask mandate?



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## Breaking Down the Governor's Mask Mandate

- What is a school district's liability if our policy or return to school plan requires masks, but masking is not enforced?
- Can board members and/or administrators be held personally liable if it does not require and/or enforce masking?

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## Face Covering Board Policy

- Should school districts adopt a mask or face covering policy?
  - What should a school district communicate to employees, parents, students and visitors related to the mask expectations and consequences for non-compliance with the mandate?

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## Exceptions to the Mask Policy

### EXCEPTIONS

- What are the exceptions to wearing a mask for students and employees?
  - Medical Diagnosis? Religious?
- What documentation should a school district require if a student or employee is requesting not to wear a mask?

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## Refusals to Mask

- How should a school district respond if a student refuses to wear a mask on the bus?
- How should a school district respond if a student comes to school not wearing a mask and/or refuses to comply with mask wearing throughout the school day?

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## Refusals to Mask

- How should a school district respond if a large group of parents indicate they will be sending their students to school without a mask?
- What options does a school district have if a group of students, in a planned protest to mask wearing, all remove their masks during a certain time of the school day?

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## Refusals to Mask

- Should a school district have parents fill out waivers and then allow those students with waivers to not wear masks during the school day?



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## Refusals to Mask

- What is Awake Illinois?
- Should a school district respond to an Awake notice if sent by a parent?
  - If so, what is a recommended response?

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## Refusals to Mask

- How should a school district plan to respond to Awake Illinois strategies for planned protests at or near school grounds on the first days of school?
- How should school districts prepare to respond to the Awake Illinois strategy of placing daily calls to administration asking about masking policies for lunch? For recess? And the behavioral and disciplinary interventions or consequences for violations of the masking policy?

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## Refusals to Mask

- How should a school district respond if an employee refuses to wear a mask or is not compliant with mask wearing during the school day?



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## Mulling Over the COVID-19 Vaccine



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## COVID-19 Vaccine

- Can school districts require employees to be vaccinated? What exceptions do we have to allow?

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## COVID-19 Vaccine

- If a school district wants to encourage vaccination for employees but not require it, what options might a school district consider to further vaccination without a mandate?
- Can a school district advise employees that they either get vaccinated or they must submit to the District's COVID-19 testing program?

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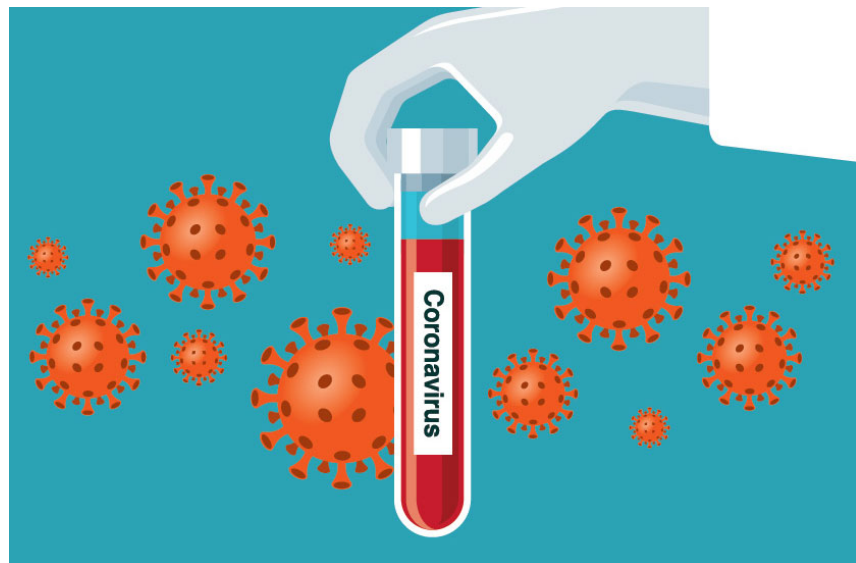
## COVID-19 Vaccine

- Can a school district still request proof of vaccination status for students, teachers, and staff?
  - If yes, why should we do this if there is universal masking?
  - Is it permissible for a school district to access the statewide immunization database to confirm which students and employees are vaccinated?

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## Sorting Through Quarantine Protocols



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## Quarantine Protocols

- Has the definition of close contact changed in the school setting?
- Are there exceptions to the close contact and contact tracing rules which impact quarantine requirements?
- Who has the final say regarding quarantine requirements?

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## Quarantine Protocols... Test to Stay



- Are there any conditions on a school district's ability to implement the Test to Stay strategy?
- Are any close contact exposures excluded from this strategy?
- Does the school district have to do the testing under the Test to Stay strategy?
- Does this strategy apply in the transportation setting?

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## Quarantine Protocols

- Is a school district obligated to comply with contact tracing, and isolation/quarantine protocols?
- What should a school district do if a student is required to quarantine, and the student's parent/guardian continues to send the student to school?

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## Alternatives to In-Person Learning



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## Alternatives to In-Person Learning

- Given the delta variant and other factors, what alternative options to in-person learning exist?

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## Clarity on Other Considerations



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## Clarity on Other Considerations

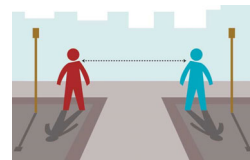
- Is there any update on how to measure 3 – 6 feet or more of physical distancing?
- Is there guidance regarding required or recommended physical distancing in the lunchroom/cafeteria?

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## Clarity on Other Considerations

- Is there guidance regarding physical distancing on school buses?
- Are there recommendations regarding additional layered prevention strategies while students are being transported on school buses?



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## Clarity on Other Considerations

- How can testing be used to support participation in extracurricular activities?

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## Questions?



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# Robbins Schwartz

## **CAROLINE A. ROSELLI**

**PARTNER, CHICAGO**

312.332.7760

[croselli@robbins-schwartz.com](mailto:croselli@robbins-schwartz.com)

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)

# Robbins Schwartz

## **LAURA M. SINARS**

**PARTNER, CHICAGO**

312.332.7760

lsinars@robbins-schwartz.com

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

B.A., University of Notre  
Dame

### **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



# Robbins Schwartz

## **TODD K. HAYDEN**

**PARTNER, LISLE**

630.929.3639

thayden@robbins-schwartz.com

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)



### **PRACTICE AREAS**

Commercial Transactions  
Education Law  
Employee Benefits  
Labor & Employment  
Litigation  
Municipal Law  
Public Finance & Taxation  
Student Discipline

### **EDUCATION**

J.D., *cum laude*, Indiana  
University School of Law

B.A., University of  
Michigan

### **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

Supreme Court of Illinois

**ORGANIZATIONS**

Illinois Council of School  
Attorneys

Illinois State Bar  
Association

Will County Bar  
Association – Local  
Government Committee

# Robbins Schwartz

## CATHERINE R. LOCALLO

PARTNER, CHICAGO

312.332.7760

clocallo@robbins-schwartz.com

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

"Plaintiff's Cat's Paw Theory of Liability Failed To Scratch Surface," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Walmart Need Not Change Shift Rotation Practice To Accommodate Religious Beliefs" *Employment and Labor Law Flashpoints*, IICLE (2021)

"CBA Provision Clearly Rebutted At-Will Employment Presumption for IT Employee," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Employer's Judgment and Job Description Defeat Failure To Accommodate Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Sexual Harassment Prevention Training Compliance Required Before New Year," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Will 'Scabby the Rat' Live To Fight Another Day?" *Employment and Labor Law Flashpoints*, IICLE (2020)

"Superintendent's Police Report is Protected Speech" *Employment and Labor Law Flashpoints*, IICLE (2020)



### 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



“Changing the Landscape: Abusive Conduct Not Protected Under NLRA”  
*Employment and Labor Law Flashpoints*, IICLE (2020)

“COVID-19 Changes to Claims for Unemployment Benefits in Illinois”  
*Employment and Labor Law Flashpoints*, IICLE (2020)

“Seventh Circuit: Jury, Not Judges, Must Decide Coach’s Sex Discrimination Claim”  
*Employment and Labor Law Flashpoints*, IICLE (2020)

“Examining DOL Rule on New Employee Leave Rights”  
*Employment and Labor Law Flashpoints*, IICLE (2020)

“Better Safe Than Sued – Issuing Timely FMLA Notices”  
*Employment and Labor Law Flashpoints*, IICLE (2020)

“Unions Strike Back Through Amendments to Illinois Public Labor Acts”  
*Employment and Labor Law Flashpoints*, IICLE (2020)

“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)

## **ORGANIZATIONS**

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Treasurer, Justinian Society of Lawyers

Co-Chair, Justinian Society of Lawyers Endowment Fund Scholarship Committee

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

Member, Board of Directors, Glenview Stars Hockey Association

UNICO National

## **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)

*Community College Trustees Training Session*, ICCTA (June 2019)