

Robbins Schwartz

Safe Return to School: Panel Discussion on COVID-19 Related Concerns

VIRTUAL SCHOOL ADMINISTRATORS' CONFERENCE

September 23, 2021

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Safe Return to School: Panel Discussion on the Latest COVID-19 Rules and Guidance

Presented by Caroline A. Roselli, Todd K. Hayden, Matthew J. Gardner and Matthew M. Swift

September 23, 2021

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Introduction



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Introduction: A Month of Changes

August 26: Governor Pritzker announced a mandate for COVID-19 vaccination or testing applicable to school personnel.

September 3: The initial vaccine/testing deadline of September 5 was extended to September 19 by E.O. 2021-22.

September 17: Governor Pritzker issued E.O. 2021-24 to clarify school districts' rights and obligations with regard to contact tracing and excluding students or staff from the premises.

September 17: ISBE issued emergency regulations to implement E.O. 2021-22 and E.O. 2021-24, including new rules about testing requirements during outbreaks and new record-keeping requirements.

September 17: IDPH filed emergency rules to change the definition of "quarantine" and define school rights and obligations with regard to contact tracing, excluding students or staff from the premises, and conducting or requiring vaccinations, physical examinations, and tests.

September 21: ISBE and IDPH released updated joint guidance, FAQs, and exclusion protocols. Governor Pritzker also issued E.O. 2021-25 to amend E.O. 2021-24.

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Introduction: Vaccination-or- Testing Mandate

- Executive Order 2021-22 requires vaccination for all school personnel unless one has a medical contraindication or "sincerely held" religious belief.
 - Emergency rulemaking added a section to ISBE rules titled "Mandatory Vaccinations for School Personnel."
 - The rules confirm that school districts may decide to require weekly testing in lieu of vaccinations for school personnel even if there is no religious or medical reason to opt out.
 - The rules also confirm school districts can be stricter than what the E.O. or ISBE rules require.
 - In other words, school districts can decide to require vaccinations for all employees unless there is a medical or religious opt out or they can take a less restrictive approach of requiring weekly testing for anyone who is not vaccinated.

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Introduction: Vaccination-or- Testing Mandate

- Schools may permit school personnel and students to be present on school premises while they are awaiting the results of a weekly COVID-19 test, as long as they do not have any symptoms of COVID-19 that warrant exclusion.
- ISBE rules require twice-a-week testing during an outbreak for unvaccinated personnel who may be part of the outbreak.
- ISBE rules lay out new specific requirements for documenting compliance
 - Different documentation for employees versus contractors

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Introduction: Contact Tracing, Exclusions and Quarantines

- Executive Orders 2021-24 and 2021-25 require schools to exclude students and staff who are confirmed cases, probable cases, close contacts, or symptomatic.
 - Test-to-stay is still an option for asymptomatic close contacts if they and the confirmed/probable case were both masked.
 - ISBE and IDPH emergency rules confirm these requirements and that schools must handle contacts of infectious disease cases as recommended by the local health authority.
 - Students excluded under the E.O. must receive remote instruction consistent with State Superintendent requirements.

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Introduction: Contact Tracing, Exclusions and Quarantines

- Executive Orders 2021-24 and 2021-25 require remote learning for students excluded if the student:
 - Is positive for COVID;
 - Is a close contact and test to stay is not an option; and
 - Has COVID-19 symptoms and does not have a negative test allowing them to return to school.

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Introduction: Contact Tracing, Exclusions and Quarantines

- Emergency IDPH rules state that school requirements for vaccination, testing, and use of masks shall not constitute isolation or quarantine.
- Emergency IDPH rules also confirm that school districts can exclude school personnel and students regardless of whether a local health department issued an isolation or quarantine order.
- Executive Order 2021-25 amended E.O. 2021-24 to align with IDPH emergency rules about:
 - Required exclusions of symptomatic students or staff
 - Required investigations of cases, suspect cases, and close contacts

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Introduction: New ISBE/IDPH Joint Guidance and FAQs

- ISBE/IDPH issued updated Joint Guidance dated 9/21/21
- ISBE/IDPH issued updated FAQs dated 9/21/21
- Notable mask change:
 - The updated Joint Guidance and FAQs removed the exception to mask wearing that allowed fully vaccinated staff to remove masks while meeting with each other when students were not present.
 - Only allows staff to remove masks while alone in office or classroom with door closed.

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Agenda

Vaccine and Testing Requirements

Record Keeping

Exclusion, Quarantine, and Isolation

Remote Learning

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Vaccine and Testing Requirements



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Key Points from New Guidance on Testing and Vaccinations

- **Bus Drivers as School Personnel:** School bus drivers and monitors are school personnel and are therefore subject to the vaccination or testing requirements of Executive Order 2021-22 and 23 Ill. Admin. Code 6.
- **COVID Positive Last 90 Days:** Individuals with documentation of COVID-19 infection in the past 90 days (positive diagnostic test based on specimen collection date) should be exempt from weekly testing.
- **Free Testing Program Reserved for Students:** ISBE states that the free school testing program should be prioritized for testing students and should not be used for testing unvaccinated school personnel.
- **Personnel At Home Testing:** At-home or self-tests that are fully self-administered are permissible when the school district requires proof of the test result through a video or picture of the test result to be available upon request from the school personnel.
- **Consent for Testing of Students:** IDPH recommends that schools acquire parental consent for student testing at the beginning of the school year to accommodate outbreak testing, should the need arise.

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Key Points from New Guidance on Third Party Testing and Vaccine Compliance

- **District is Responsible for Compliance:** The school district is ultimately responsible to ensure compliance with the vaccine/testing requirements, regardless of who the employer is.
- **Attestation of Compliance:** Third party employers can provide school district with attestation of compliance.
- **Testing Program:** Third party employers may request that the school district allow contracted employees to participate in testing provided by the school to its employees. Districts are encouraged, but not required, to grant this request.

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Key Points from New Guidance on Outbreak Testing

- **Outbreak Testing:** Implementation of outbreak testing should begin as soon as possible from the date the outbreak is declared and at least within three days.
 - Unvaccinated Staff Linked to Outbreak: Must be tested 2x week
 - Vaccinated Staff Linked to Outbreak: Should be tested 2x week
 - Students Linked to Outbreak (regardless of vaccination status): Should be tested 2x week
 - Students Linked to Outbreak Participating in Extracurriculars, Including Sports: Must be tested 2x week.
- Testing should continue until the school has gone two incubation periods, or 28 days, without identifying any new cases
- **Adaptive Pause:** Decisions for temporary closure of a school ("Adaptive Pause") will be made by school leaders in consultation with the local health department. Pursuant to the State Superintendent of Education's declaration on September 7, 2021, schools must provide remote learning during an Adaptive Pause.

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Key Points from New Guidance on Testing Funding

- **Personnel Reimbursement for Testing:** A school may, but is not required to, reimburse school personnel for testing performed outside of school using state or local funds, subject to applicable local collective bargaining agreement provisions.
- **Testing Funding:** Federal funds may be used to purchase appropriate tests and for test administration costs. However, a school may not use federal funds to reimburse school personnel for tests procured by them outside of the school setting.

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Key Points from New Guidance on Social Distancing and Extracurricular Activities

- **Social Distancing while Eating:** FAQs clarify that fully vaccinated staff, students and teachers do not need to physically distance while eating.
- **Indoor Singing/Band:** When indoors, school should reduce the number of singers and performers in ensembles and encourage physical distance between different ensembles. A minimum 3-foot radius should be maintained between singers and/or instrumentalists, regardless of vaccination status. Duration should also be considered.
- **Extracurricular Screening Testing:** To facilitate safe participation in extracurricular activities with elevated risk for COVID-19 transmission, such as activities that involve singing, shouting, band, and exercise that could lead to increased exhalation, especially when conducted indoors, CDC recommends that schools implement screening testing for participants who are not fully vaccinated.
- **Athletic Restrictions:** In communities with high transmission, schools should discontinue sports that involve sustained close contacts with others, unless all participants are fully vaccinated, as recommended by CDC.

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Important Dates for the Vaccine Mandate

- When did the vaccine mandate take effect?
- Is there an end date to the Governor's EO/vaccine mandate?



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Objections to the Vaccine / Testing Mandate

- Does the Health Care Right of Conscience Act (745 ILCS 70) allow for an exemption to the mandate?
 - Is this the same as a request for religious exemption?

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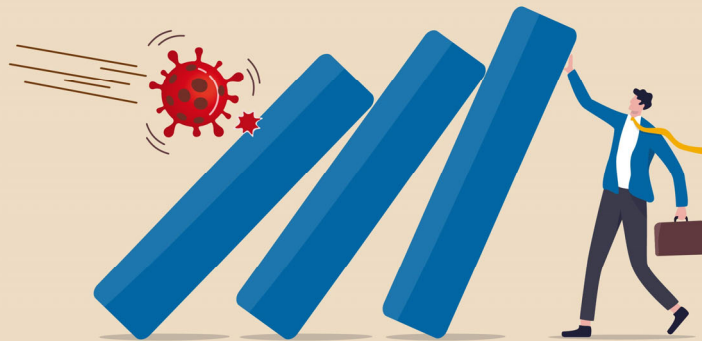
Setting the Table for Bargaining

- If the IFT and IEA unions fully support the Governor's mandate, do we have to bargain with our unionized staff over the Governor's mandate? If so, why?
- Does a school district have to bargain the decision to mandate the COVID-19 vaccine or just the impact of enforcing the Governor's vaccine mandate?
- Does bargaining have to be completed before the mandate can be implemented?

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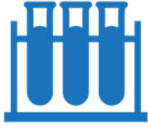
Testing Option Implementation




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Testing Option Implementation



Who is subject to testing?



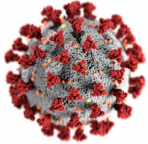
How often must routine testing occur?

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Testing Option Implementation

- How should a school district respond to an employee who refuses to get vaccinated and refuses to test?
- Does the school district have to offer a remote work option?
 - Offer any other alternative?

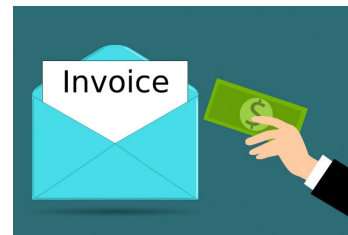


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Testing Option Implementation

- Is a school district required to pay for testing?
- Provide paid time off to get tested?



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Testing Option Implementation

- Significant increased testing may result in testing shortages or delays.
- What happens if an employee is unable to get a COVID-19 test?
- What should a school district do if it is taking multiple days for an employee to receive test results?
 - Can an employee still report to work?



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Record-Keeping Considerations



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Key Points from New Guidance on Vaccine and Testing Records

- **Vaccine and Testing Records:** Schools are required, per ISBE emergency regs, to collect and maintain vaccination records and testing results for school personnel. Personnel can access their own vaccine information through the IDPH portal, Vax Verify.
- **Employee Proof of Negative Test Result:** Such proof should include a paper or electronic copy of the negative test result for review by the school. There should be sufficient personally identifiable information on the test result to ensure the specimen and result do in fact apply to individual required to test.
- **I-CARE and Access (Personnel):** Personnel can authorize release of vaccination information from I-CARE.
- **I-CARE and Access (Students):** Parents can authorize release of vaccine information for their children from I-CARE and authorized school personnel can review state immunization database to review student immunization records.

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Record Keeping

- Who should receive test results?
- How should they be maintained?



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Record Keeping

- Do school districts need to get vaccine proof or testing confirmation from individuals attending sporting events at a school and/or outside organizations that are hosting events at a school?

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Record Keeping

- Our school district plans to provide testing onsite for staff and students. Are consent forms required?



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Exclusion, Quarantine and Isolation



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Key Points from New Guidance on Exclusion, Quarantine and Isolation

Definitions

- **Exclusion:** a school's obligation to refuse admittance to the school premises, extracurricular events or any other events organized by the school, regardless of whether an isolation or quarantine order issued by the health department has expired or has not been issued. Exclusion from school shall not be considered isolation or quarantine.
- **Quarantine:** The physical separation and confinement of an individual or groups or individuals who are or may have exposed to a contagious disease or possibly contagious disease and who do not show signs or symptoms.
- **Isolation:** The physical separation and confinement of an individual or group of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

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Key Points from New Guidance on Exclusion, Quarantine and Isolation

Definitions

- **Confirmed Case:** a person with a positive result on a COVID-19 molecular amplification diagnostic test (i.e. PCR test) irrespective of clinical signs and symptoms.
- **Probable Case:** a person with a positive result on a COVID-19 antigen diagnostic test, irrespective of clinical signs and symptoms, or with COVID-19-like symptoms who was exposed to a Confirmed or Probable case.

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Key Points from New Guidance on Exclusion, Quarantine and Isolation

Definitions

- **Close Contact:** an individual who was within 6 feet for at least 15 minutes with a Confirmed Case or Probable Case in a 24-hour period. Does not include a student who was within 3-6 feet of a Confirmed or Probable Case in a classroom setting if both Confirmed Case and Probable Case and Close Contact were consistently masked for the entire exposure period. Close Contact does not include individuals who are fully vaccinated or who tested positive for COVID-19 within prior 90 days and are currently asymptomatic.
 - **NOTE:** For students on school transportation, contacts within 3 to 6 feet of an infected student do not require exclusion as long as both the case and the contact were consistently masked and windows were open or HEPA filters were in use.

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Key Points from New Guidance on Exclusion, Quarantine and Isolation

- **Investigation Obligations:** Schools are required to investigate the occurrence of cases and suspect cases in schools and identify close contacts for purposes of determining whether students or school personnel must be excluded pursuant to EO 2021-24 and 77 Ill. Admin. Code 690.361.
- **Sibling and Household Member Exclusions:** If an ill household member is tested within 24 hours of first notification of symptoms, other household members do not need to be sent home unless there is a high suspicion the ill person has COVID-19 (e.g., they are a known close contact, they have lost sense of taste and smell).
 - Pending test results, household members can remain in school with consistent use of well-fitting masks both indoors, as required, and outdoors.
 - If the ill household member tests positive for COVID-19, then any unvaccinated household members should be removed from the school immediately. If testing does not occur within 24 hours, unvaccinated household members must be excluded.

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Key Points from New Guidance on Exclusion, Quarantine and Isolation

- **Prior Diagnosis of COVID (Last 90 Days):** CDC guidance now states that unvaccinated individuals with positive SARS-CoV-2 antibody testing within three months prior to, or immediately after, an exposure to someone with suspected or confirmed COVID-19 and who have remained asymptomatic since the current COVID-19 exposure do not need to be quarantined, provided there is limited or no contact with persons at high risk for severe COVID-19 illness (subject to LHD).
- **Student Travel:** Students who are not fully vaccinated and must travel do not need to stay home and self-quarantine after travel; they should continue to attend school in-person. Students who are not fully vaccinated and must travel should get tested 3-5 days after travel, monitor for symptoms, and follow the IDPH guidance if they test positive or if symptoms of COVID-19 develop. Schools should follow local guidance for travel restrictions that may be more stringent.

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Exclusion, Quarantine and Isolation

- Under what circumstances must a school district exclude a student or employee?

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Exclusion, Quarantine and Isolation

- Can school districts exclude students without an order of quarantine from a local health department?
- Can school districts require students to wear face coverings without an order of quarantine?

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Exclusion, Quarantine and Isolation

- Are there alternatives to excluding asymptomatic individuals?
 - Test-to-stay?



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Exclusion, Quarantine and Isolation

- Is remote work an option for employees excluded from the premises?
- Are there issues the union may want to bargain for employees subject to exclusion?

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Exclusion, Quarantine and Isolation

- What are the contractual considerations if a vendor's or contractor's employee is excluded from campus due to failure to be vaccinated or test?

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Remote Learning



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Remote Learning Considerations

- When do districts have to provide remote learning?

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Remote Learning Considerations

- What are the hour requirements for remote learning?

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Remote Learning Considerations

- Are there any additional obligations for special education students when they are learning remotely?

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Remote Learning Considerations

- Would remote learning look different if a school district was on adaptive pause?

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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

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Supreme Court of the United States

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

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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)

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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)



PRACTICE AREAS

Commercial Transactions
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Litigation
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EDUCATION

J.D., *cum laude*, Indiana
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Supreme Court of the
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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.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2020-2021)

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)

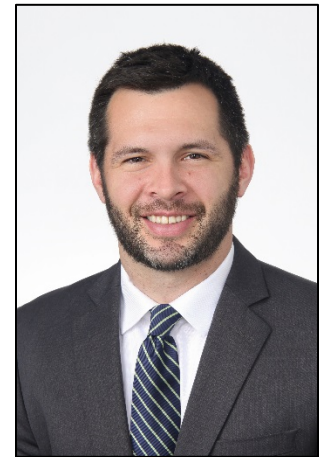
Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"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

Construction Law 101, National Business Institute (December 2019)



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Commercial Law
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Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

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

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

Construction Purchasing & Bidding Common Problems & Solutions, Illinois ASBO (March 2019 *Construction Contracts: Boilerplate Language Landmines You May Not Know*, National Business Institute (February 2019)

The Anatomy of a Mechanics Lien Claim, Illinois State Bar Association (May 2018)

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Matthew is a member of the labor and employment practice group. He counsels employers in various aspects of labor and employment law, such as employee discipline, labor relations, wage and hour, and employment discrimination matters under both federal and state laws such as the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, and Illinois Human Rights Act. He also represents clients in state and federal courts and advises on Illinois Freedom of Information Act and Open Meetings Act matters.

Before he joined Robbins Schwartz, Matthew served as in-house counsel and FOIA Officer for the Illinois Office of the Governor. In that role, he counseled dozens of agencies on compliance with sensitive FOIA requests, advised on current and potential litigation issues, and served as a legal liaison to the Illinois Department of Human Rights and the Illinois Human Rights Commission.

RECENT PUBLICATIONS

“All Together Now – Employment Law Issues in the New Title IX Rules,”
Chicago Daily Law Bulletin (2020)

“Life After Leave: Bringing Employees Back in a COVID-19 Age” *Best Practices Magazine*, American Association of School Personnel Administrators (2020)



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Labor & Employment

EDUCATION

J.D., University of Chicago
Law School

M.P.P., University of
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