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Student Discipline and SB100... Where Are We Now?

Webinar
November 5, 2021

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Student Discipline and SB100... Where Are We Now?

Presented by Zaria N. Udeh & Michelle L. Weber

November 5, 2021

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1

Introduction



- Nearly six years ago, Senate Bill 100, or Public Act 99-456, made significant changes to student suspension and expulsion authority and procedures. The rationale for the overhaul of Section 10-22.6 related to Illinois school districts' use of exclusionary discipline:
 - Among the many possible disciplinary interventions and consequences available to school officials, school exclusions, such as out-of-school suspensions and expulsions, are the most serious.
 - Limit the number and duration of expulsions and suspensions to the greatest extent practicable, and it is recommended that they use them only for legitimate educational purposes.
 - Ensure that students are not excluded from school unnecessarily, by considering forms of non-exclusionary discipline prior to using out-of-school suspensions or expulsions. 105 ILCS 5/10- 22.6(b-5).

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2

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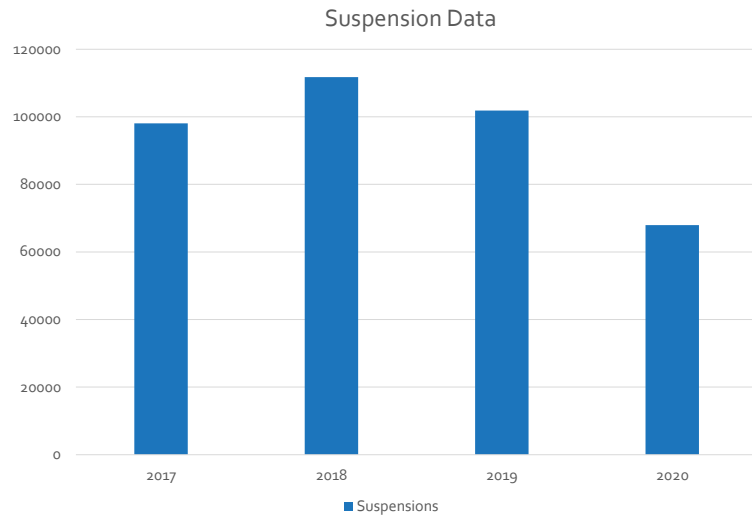
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3

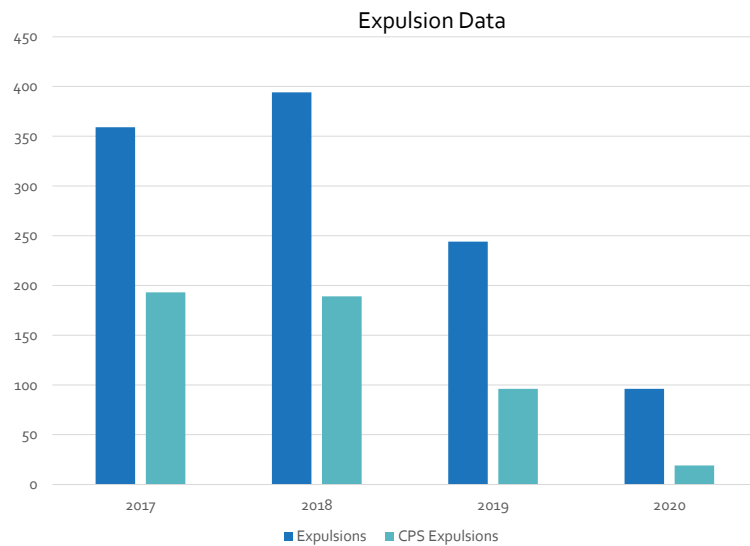
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5

Exclusionary Discipline and the Right to Due Process

Exclusionary Discipline and Due Process

- 105 ILCS 5/24-24 Maintenance of Discipline
 - There is an obligation to maintain discipline in schools including a safe and orderly environment
 - A student may be excluded from school pursuant to behavior and discipline policies
 - A student must be afforded due process
 - Review meeting, suspension review hearing, expulsion hearing

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Standards for Suspension and Expulsion



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Standards for Suspension and Expulsion



- Out of School Suspensions for Three Days or Less
 - May be used only if the student's continuing presence in school would pose:
 - A threat to school safety; OR
 - A disruption to other students' learning opportunities.
 - Whether a student's continuing presence in school would pose a threat to school safety or a disruption to other student's learning opportunities "shall be determined on a case-by-case basis by the school board or its designee."
 - School officials "shall make all reasonable efforts to resolve such threats, address such disruptions, and minimize the length of suspensions to the greatest extent practicable."

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Standards for Suspension and Expulsion

- Out of School Suspensions for Four or More Days, Expulsions and Disciplinary Removals to Alternative Schools
 - May be used only if:
 - The student's continuing presence in school would either:
 - Pose a threat to the safety of other students, staff or members of the school community; OR
 - Substantially disrupt, impede or interfere with the operation of the school; AND
 - Other appropriate and available behavioral and disciplinary interventions have been exhausted.
 - The determination of whether "appropriate and available behavioral and disciplinary interventions have been exhausted shall be made by school officials."

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Threat to Safety Considerations During COVID

- When considering whether a student's conduct is a threat to safety, schools may consider the added safety considerations caused by COVID
 - Use of face coverings
 - Ability to maintain social distancing and impact on close contacts
 - Disruption to orderly operations and staffing

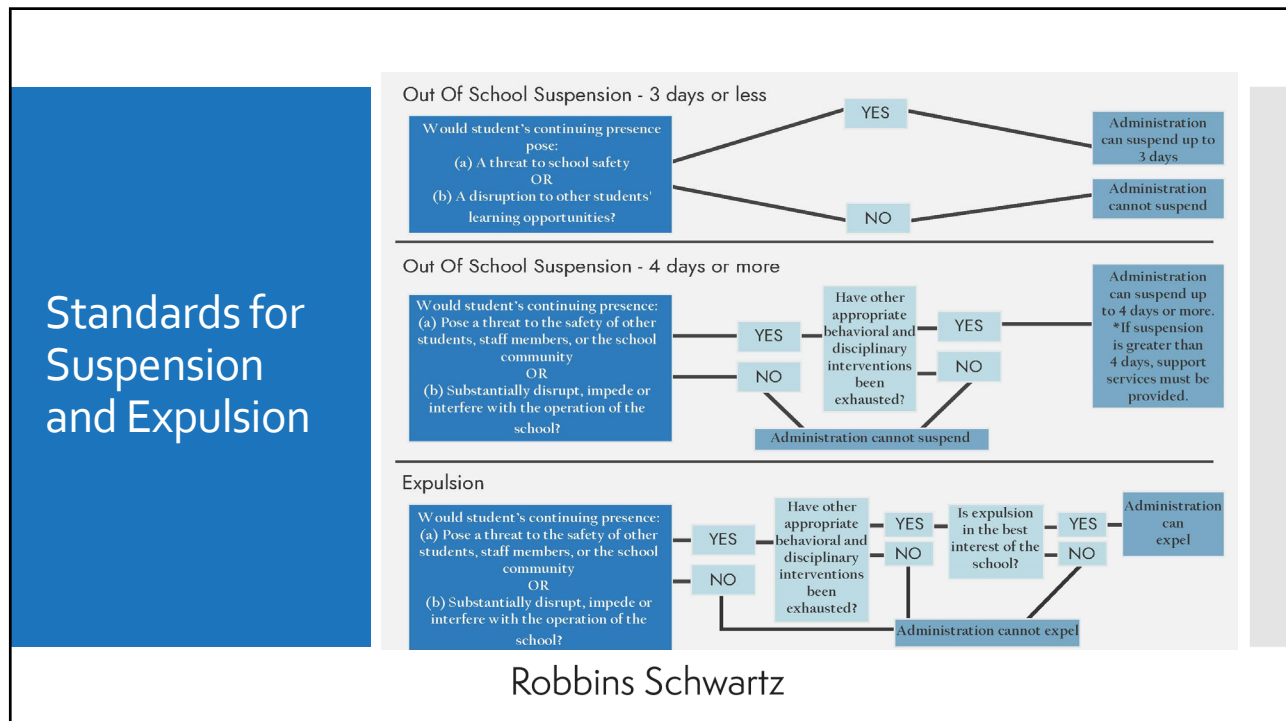
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Comparison: OSS up to 3 Days v. 4 or More Days

Up to Three Days	Four or More Days
<ul style="list-style-type: none"> ■ A threat to <u>school safety</u>; OR ■ A <u>disruption</u> to other students' learning opportunities. ■ School officials "shall make all <u>reasonable efforts</u> to resolve such threats, address such disruptions, and <u>minimize</u> the length of suspensions to the greatest extent practicable." 	<ul style="list-style-type: none"> ■ Pose a threat to the <u>safety of other students, staff or members of the school community</u>; OR ■ <u>Substantially disrupt</u>, impede or interfere with the operation of the school; AND ■ Other appropriate and available behavioral and disciplinary interventions have been <u>exhausted</u>. <p style="text-align: center;">More than Four Days:</p> <ul style="list-style-type: none"> ■ Students must be provided appropriate and available <u>support services</u> during the period of their suspension.

11



12

THE HEAT IS ON: SB100 COMPLIANT SUSPENSION, ALTERNATIVE SCHOOL PLACEMENT, EXPULSION OR SOMETHING ELSE?

- Possession of Firearm
- Violence toward Staff or Students
- Bomb Threat
- Sale and Distribution of Drugs
- Lesser Weapon Offenses
- Threats of Violence
- Extreme Cyberbullying
- Fighting
- Gang Activity
- Possession or Under the Influence of Drugs
- Possession or Under the Influence of Alcohol
- Bullying and Harassment
- Vandalism, Destruction of Property, Theft
- Profanity, Disrespect, Insubordination
- Cell Phone Policy Violation
- Dress Code Violation

Note: This diagram is intended only to provide examples of offenses and corresponding interventions and consequences. Districts should determine appropriate interventions and consequences on a case-by-case basis upon careful consideration of all relevant facts.

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BEHAVIORAL AND DISCIPLINARY INTERVENTIONS SPECTRUM

<p><u>Schoolwide Interventions</u> e.g., Schoolwide Curriculum Schoolwide Behavior System Team Building Activities Assemblies</p>	<p><u>Partnering with Parents</u> e.g., Phone Call E-mail Meeting</p>	<p><u>Restorative Justice Measures</u> e.g., Letter of Apology Peer Mediation Peer Jury Community Service</p>	<p><u>Exclusionary Discipline</u> Out-of-School Suspension Expulsion Alternative School Placement</p>
<p><u>Classroom Interventions</u> e.g., Classroom Behavior System Conference with Teacher</p>	<p><u>Tiered Interventions</u> e.g., Behavioral Contracts Social Work Groups Check In/Check Out Assignment Instruction</p>	<p><u>In-School Discipline</u> e.g., Detention Saturday School In-School Suspension Social Suspension</p>	

Note: While the above diagram is visually depicted as a spectrum, districts should remember that multiple interventions and consequences can be utilized simultaneously in order to promote pro-social behavior.

14

Support Services for Suspension and Expulsion

- Support Services for Students Suspended for More than Four School Days and for Expelled Students
 - Students who are suspended out-of-school for longer than four school days must be provided appropriate and available support services during the period of their suspension.
 - A school district may refer students who are expelled to appropriate and available support services.
 - The determination of “appropriate and available support services shall be determined by school authorities.”

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Behavioral and Disciplinary Interventions

- The terms “behavioral intervention” and “disciplinary intervention” are not defined in SB 100.
- Per SB 100, the determination of whether “appropriate and available behavioral and disciplinary interventions have been exhausted” is made by school officials.

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Re- engagement Policy for Suspension and Expulsion

- Facilitating the Re-engagement of Students Who Are Suspended, Expelled or Returning from Alternative School
- Districts must “create a policy to facilitate the re-engagement of students who are suspended out-of-school, expelled, or returning from an alternative school setting.”



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17

Missed Assignments for Suspension and Expulsion

- Requirements Related to Missed Assignments
 - Students who are suspended from school must have the opportunity to make up work for equivalent academic credit.
 - Students who are suspended from the school bus who do not have alternate transportation to school must have the opportunity to make up work for equivalent academic credit. It is the parent’s responsibility to notify school officials that a student suspended from the school bus does not have alternate transportation to school.

homework

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18

Bus Suspensions

- Bus suspension are not considered out-of-school suspensions, for purposes of SB100.
 - But note: FAPE considerations for students with disabilities who receive transportation as a related services.
- Students who are suspended from the school bus who do not have alternate transportation to school must have the opportunity to make up work for equivalent academic credit.
- It is the parent's responsibility to notify school officials that a student suspended from the school bus does not have alternate transportation to school.

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19

Standards for Suspension and Expulsion

- Specific Prohibitions
 - School officials may not advise or encourage students to drop out voluntarily due to behavioral or academic difficulties.
 - A student may not be issued a monetary fine or fee as a disciplinary consequence, though this shall not preclude requiring a student to provide restitution for lost, stolen, or damaged property.
 - School boards may not institute "zero tolerance" discipline policies which require administrators to suspend or expel students for particular behaviors unless specifically required by federal or state law.

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Notice of OSS



- Detail the specific act of gross misconduct resulting in the decision to suspend.
- Includes information about an opportunity to make up work missed during the suspension for equivalent academic credit.
- Provides notice to the parent(s)/guardian(s) of their child's right to review of the suspension.
- For students who are suspension greater than 4 days, the notice should document what, if any, appropriate and available support services will be provided during the period of suspension.

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Notice of Suspension Review Hearing

- Provides the date/time/location of suspension review hearing
- Procedures for suspension review hearing
- Notifies parent(s)/guardian(s) of their right to appear and be represented by counsel
- Sent via certified mail

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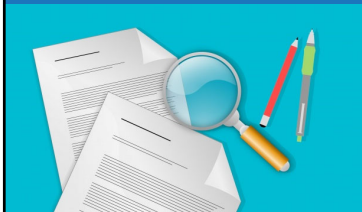
Notice of Expulsion Hearing

- Provides date/time/location of expulsion hearing
- Briefly describes what will happen during the hearing (or can send Expulsion Hearing procedures as enclosure with notice)
- Details the specific act of gross misconduct resulting in the decision to recommend expulsion
- States that the School Code allows the School Board to expel a student for a definite time period not to exceed 2 calendar years, on a case-by-case basis
- Notifies parent(s)/guardian(s) of their right to appear and be represented by counsel
- Sent via certified mail

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23

Board Motions & Written Decisions: Suspension Review



- If a suspension review hearing is requested for a suspension of **three days or less**, the Board of Education's written decision and the school administrator's letter to the parents/guardians confirming the decision of the Board of Education must:
 - Detail the specific act of gross misconduct resulting in the decision to suspend; and
 - Include a rationale as to the specific duration of the suspension.
 - Consider student confidentiality when formulating the Board motion.

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24

Board Motions & Written Decisions: Suspension Review

- If a suspension review hearing is requested for suspension of **four days or more**, the Board of Education's written decision and the administrator's letter to the parents/guardians confirming the decision of the Board of Education must:
 - Detail the specific act of gross misconduct resulting in the decision to suspend;
 - Include a rationale as to the specific duration of the suspension;
 - Document whether other behavioral and disciplinary interventions were attempted or whether it was determined that there were no other appropriate and available interventions; and
 - Document whether appropriate and available support services were provided during the period of suspension, or whether it was determined that there are no such appropriate and available services; and
 - Consider student confidentiality when formulating the Board motion.

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Board Motion and Written Decision: Expulsions



- If a student is **expelled**, the Board of Education's written decision and the school administrator's letter to the parents/guardians confirming the decision of the Board of Education must:
 - Detail the specific reasons as to why removing the student from the learning environment is in the best interest of the school;
 - Include a rationale as to the specific duration of the expulsion; and
 - Document whether other behavioral and disciplinary interventions were attempted or whether it was determined that there were no other appropriate and available interventions.
 - Consider student confidentiality when formulating the Board motion.

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26

Sample Exhibit List for Expulsion Hearing

- ✓ Administrator Memo/Timeline/Summary of Events
- ✓ Investigation Documents/Witness Statements
- ✓ Incident Referral/Misconduct Form
- ✓ Notice of Suspension
- ✓ Record of Prior Interventions (Individual and School-Wide)
- ✓ Discipline Log
- ✓ Student Grades & Attendance
- ✓ Board Policy on Student Behavior (7:190)
- ✓ Student Handbook
- ✓ Notice of Hearing & Expulsion Hearing Procedures
- ✓ Other Relevant Records: Police Report, Security Video Footage, Injury Reports

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27

Student Discipline FAQs



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28

Question 1

- Can a district still expel a student for one year for a weapons offense, even if the district has not exhausted other appropriate and available behavioral interventions?

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Answer 1

- Yes. Both the *Illinois School Code* and the *Gun Free Schools Act* provide for a one-year expulsion for students who bring a weapon to school.

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Question 2

- **What is the definition of a weapon under SB100?**



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Answer 2

- A firearm, meaning any gun, rifle, shotgun, or weapon as defined by Section 921 of Title 18 of the United States Code (18 U.S.C. § 921), firearm as defined in Section 1.1 of the *Firearm Owners Identification Card Act* (430 ILCS 65/1), or firearm as defined in Section 24-1 of the *Criminal Code of 1961* (720 ILCS 5/24 1); and
- A knife, brass knuckles, or other knuckle weapon regardless of its composition, a billy club, or any other object if used or attempted to be used to cause bodily harm, including “look alikes” of any firearm as defined above.

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Question 3

- Does a district have to provide homebound or other tutoring to meet the requirements related to providing appropriate and available support services?

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Answer 3

- No. SB 100 does not define “appropriate and available support services.” SB 100 does state that “appropriate and available support services” are determined by school authorities.
- While tutoring would certainly be considered a support service, it is not required to be provided pursuant to SB 100.



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Question 4

- **What are appropriate and available support services?**

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Answer 4

- Appropriate and available support services could include a variety of supports, including, but not limited to;
 - a phone conference
 - check-in from a school staff member
 - email communications between the student and his/her classroom teacher related to classwork and assignments
 - provision of missed classwork and assignments
 - access to online tutorials or materials
 - tutoring or counseling from a school social worker or school counselor
- However, the services that are appropriate and available must be provided during the period of time the student is prohibited from attending school.

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Question 5

- Are there special procedures for suspending students with an IEP up to ten school days?



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Answer 5

- No. A student with an IEP may be suspended for up to ten school days per school year without triggering additional protections/procedures of the *Individuals with Disabilities Education Act*.
- To suspend a student with an IEP, a district must comply with the SB 100 standards for suspension.

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38

Coming Soon!

- Available for purchase Student Discipline Administrator Toolbox. Toolbox will include:
 - Template for parental notice letters
 - Template of procedures for suspension review hearing and expulsion hearing
 - Template for determination letters
 - Sample Board Motions
 - Procedural Tools and References

*To purchase a Student Discipline Administrator Toolbox, please send an email to creihle@robbins-schwartz.com

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39

Questions?



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40

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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)

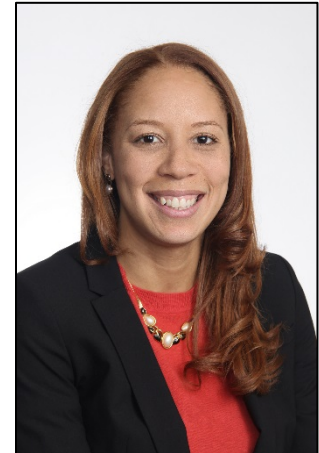
RECENT PRESENTATIONS

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)



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U.S. District Court for the
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Michelle practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding the IEP process, due process, Section 504, student discipline, board policy and student records.

Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Risk Assessments, Threat Assessments and the Impact on Students with Disabilities, Illinois Alliance of Administrators of Special Education Fall Conference (October 2019)

Escalating Student Behavior and Safety Concerns: Legal Options and Considerations, Illinois Alliance of Administrators of Special Education Winter Conference (February 2019)

Student Bullying Legal Framework & Recommended Practices, In-Service (August 2018)



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Supreme Court of Illinois

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