

Robbins Schwartz

Circuit Court Grants TRO in Schools: Now What?

Webinar
February 6, 2022

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Circuit Court Grants TRO in Schools: Now What?

Joseph J. Perkoski, Caroline A. Roselli, Todd K. Hayden, Laura M. Sinars,
Nikoleta Lamprinakos, Susan E. Nicholas, and Dennis Weedman

12:00 p.m. – 1:30 p.m. | February 6, 2022

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Summary of Decision

- TRO Impacts Two Consolidated Cases
 - Parents/Students (*Austin*)
 - Employees (*Allen*)
- Class certification denied
- ISBE/IDPH Emergency rules “deemed null and void”

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Summary of
Decision
(cont.)

“Defendants” are temporarily restrained from enforcement of:

- EO18 (indoor masking in schools)
- EO24 and EO25 (exclusions for close contacts and contact tracing); and
- Emergency Rules issued by the IDPH and ISBE.

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Summary of
Decision
(cont.)

“Defendants” are temporarily restrained from ordering school districts to:

- Require the use of masks for students and teachers who occupy their buildings, if they object, except during the terms of lawful order of quarantine issued from their respective health department, in accordance with the IDPH Act;
- Require persons who are both unvaccinated and work in Illinois schools to provide weekly negative results of an approved COVID-19 test or be vaccinated if they object in order to occupy the school building without first providing them due process of law; and

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Summary of Decision (cont.)

“Defendants” are temporarily restrained from ordering school districts to:

- Refuse admittance to their buildings for teachers and students for specified periods of time if the teacher or student is deemed a “close contact” of a confirmed probable COVID-19 case without providing due process to that individual if they object, unless the local health department has deemed the individual a close contact after following the procedures outlined in 20 ILCS 2305 and 77 Ill. Adm. Code 690 1330.

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Timing of TRO order and next steps

- Issued end of the day Friday, February 4th, effective immediately
- Attorney General filed motion for stay with the Judge who entered the TRO
- Attorney General plans to file appeal on Monday
- Deadline for school districts to appeal is Monday
- Timeline for decision on appellate matters
 - Stay
 - Decision on appeal of merits of TRO

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General
Impact on
Named
Districts

- Compliance with TRO
 - Narrow Application
 - Broad Application
 - Contempt Petitions
- Communication with Stakeholders
- Policy/Resolution Review
- Bargaining Implications

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General
Impact on
Non-Named
Districts

- Lack of Jurisdiction
- Executive Orders Remain in Effect
- Practical Considerations on Continued Implementation
- Communication to Stakeholders
- Policy/Resolution Review
- Bargaining Implications

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FAQs - For All School Districts

- Are there options for a school district for short term alternatives to in-person learning?
 - Emergency or e-learning days?
 - Remote learning?

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FAQs – For All School Districts (cont.)

- What impact does this ruling have on masking while on school transportation?

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FAQs – For All School Districts (cont.)

- How does this ruling impact mask wearing and close contact exclusions for extracurriculars?

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FAQs - For school districts continuing to enforce mandates

- What process should a school district use if students show up to school not wearing a mask?
- What should a school district do if employees show up to school not wearing a mask?

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FAQs - For school districts continuing to enforce the mandates

- What process should a school district follow for exclusion of students due to close contacts?
 - What should a school district do if a parent continues to send their student to school despite being told to exclude due to a close contact?

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FAQs - For school districts continuing to enforce the mandates

- What should a school district do if unvaccinated employees refuse to submit a weekly test?
- What collective bargaining obligations do we have?

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FAQs - For school districts temporarily **not** enforcing the mandates

- Can a school district still exclude symptomatic students/staff?

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FAQs - For school districts temporarily **not** enforcing the mandates

- What if parents refuse to send their students to school due to safety concerns?
 - How do we treat their absences?
 - Do we have to provide these students remote learning?

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FAQs - For school districts temporarily **not** enforcing the mandates

- What obligations does a school district have for students with disabilities or health related conditions?
 - What if a parent indicates or submits a physician letter that the student cannot be around unmasked individuals?

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FAQs - For school districts temporarily **not** enforcing the mandates

- What if employees refuse to come to work due to safety concerns?
- What obligations does a school district have for employees with disabilities or medical conditions?

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Questions?



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JOSEPH J. PERKOSKI

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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

Illinois Leading Lawyer, Employment, Labor and School Law

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)

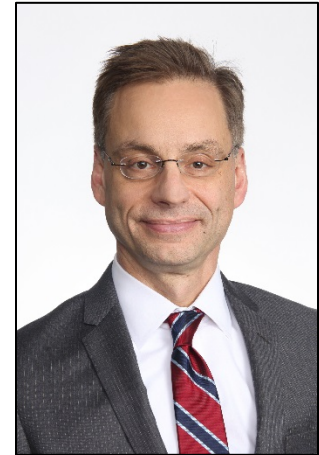
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

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, ICCCF Spring Conference (April 2019)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

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

M.A., The Ohio State
University

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
Attorneys

Federal Bar Association

Illinois Association of
School Business Officials

Illinois Bar Association

National School Boards
Association

Wisconsin Bar Association

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

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

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

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

RECENT PUBLICATIONS

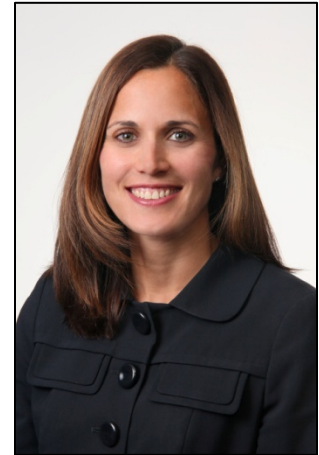
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

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

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

RECENT PRESENTATIONS

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



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

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

B.A., University of Notre Dame

ADMITTED TO PRACTICE

Supreme Court of the United States

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Bar Association

Illinois Council of School Attorneys

National Council of School Attorneys

Seclusion, Restraint, and Time Out 2020, Illinois Alliance of Administrators of Special Education Region 1 Roundtable (November 2019)

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

Legal Issues Related to School Safety and Security: Addressing the Complex Challenges Facing Schools, Large Unit District Association, (May 2019)

Responding to Requests for Homebound Instruction, Illinois Alliance of Administrators of Special Education Webinar (April 2019)

Tips for Preparing Legally Defensible Eligibility Determinations for Specific Learning Disability, Illinois Alliance of Administrators of Special Education Roundtable Presentation (March 2019)

Absenteeism, School Refusal, and Truancy in Special Education: Legal Issues when Students Don't or Can't Come to School, Illinois Alliance of Administrators of Special Education Roundtable Presentation (March 2019)

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

The Ins & Outs of Residential Placements: Rules, Regulations, & Recommendations, Illinois Alliance of Administrators of Special Education Fall Conference (October 2018)

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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 (2021)

RECENT PRESENTATIONS

Collective Bargaining 2021, LUDA Spring Conference (June 2021)

Legislative Update, ED-RED (June 2021)

Remote Work or Leave of Absence Due to Covid-19?, LUDA Fall Conference (October 2020)

Workplace Liability in the Post Pandemic Era, LUDA Spring Conference (June 2020)

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)



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 Courts of the
United States and Illinois

U.S. Court of Appeals for
the Seventh Circuit

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

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Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations, services and placement of special education students in due process hearings. She has successfully prevailed in hearings to defend against parents' unilateral private placements. In the area of student rights, Laura has assisted clients with routine student issues related to records, discipline, health and 504 questions. She has also assisted clients with building strong residency and discipline cases which proceed to hearing and has successfully defended districts' decisions in state and federal courts. Laura has represented districts before federal and state agencies including the Illinois State Board of Education, the Illinois Guardianship and Advocacy Commission and the Office for Civil Rights.

AWARDS

Illinois Super Lawyers, 2005-2018

RECENT PUBLICATIONS

Contributing author, "Special Education," *Illinois School Law*, IICLE (2005, 2010, 2012 and 2015)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., University of Notre
Dame Law School

B.A., University of Notre
Dame

ADMITTED TO PRACTICE

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

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Nikoleta Lamprinakos is an experienced trial lawyer who concentrates her practice in the defense of government officials and governmental entities in civil rights, employment and tort claims against both governmental bodies and officials, including municipal entities, school districts, police departments and park districts. She has handled a multitude of complex litigation matters in both the federal and state courts.

Nikoleta has successfully represented governmental entities and their employees at the trial and appellate level in both state and federal court. She has successfully litigated cases before the Federal District Court for the Northern, Central and Southern District of Illinois as well as the Circuit Courts of Cook, DuPage, Lake and Will, Kane, Kendall and various downstate venues as co-lead counsel and second chair counsel.

Most recently, Nikoleta was co-lead counsel in a civil rights excessive force and unreasonable search case brought by a mother and daughter against five police officers where she obtained a not guilty jury verdict on all counts on behalf of all officers. Nikoleta also leads the firm's litigation practice group for associates and helps mentor new associates.



PRACTICE AREAS

Education Law
Labor & Employment
Litigation
Municipal Law

EDUCATION

J.D., Chicago Kent College
of Law

M.P.A., University of
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B.A., University of Illinois
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U.S. District Court for the
Central District of Illinois

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

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Defense Research
Institute (DRI)

Hellenic Bar Organization

Illinois State Bar
Association

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Susan E. Nicholas focuses her practice on serving employers, educational entities, municipalities and other public bodies in all aspects of labor and employment law and general student matters.

Susan is the former President and Treasurer of the Decatur Bar Association's Executive Board. She also served as a Macon County Teen Court Moderator.

Prior to joining Robbins Schwartz, Susan practiced in a variety of areas including family law, criminal defense, estate planning, and civil litigation. Susan is also a former Assistant State's Attorney in the Macon County State's Attorney Office.

AWARDS

Illinois "Emerging Lawyer" by *Emerging Lawyers Magazine* (2015)

RECENT PUBLICATIONS

Contributing author, "Employment Discrimination," *Illinois School Law*, IICLE (2010, 2012 and 2014)

RECENT PRESENTATIONS

Ethics and Conflicts of Interest for Municipal Elected Officials, Illinois Municipal League Newly Elected Officials Workshop (June 2017)

Navigating the FLSA: Compliance and Avoiding Common Pitfalls, Illinois Association of School Board Administrators Workshop (October 2017)

Western Illinois Administrator's Roundtable (2016, 2017, 2018)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

J.D., *magna cum laude*,
Southern Illinois
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B.A., Illinois Wesleyan
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Supreme Court of Illinois

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ORGANIZATIONS

Illinois State Bar
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Decatur Bar Association

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Dennis Weedman represents school districts, community colleges, county boards and other units of local government in labor negotiations and employment related matters, including complaints and charges of discrimination, wrongful termination litigation, claims of sexual harassment, civil rights violations and unfair labor practice charges. Dennis also advises clients on the handling of grievances, as well as represents public entities in labor arbitration hearings. He has represented employers in more than 200 arbitration hearings and has handled more than a hundred union organizational cases before the various public sector labor relations boards. Following certification of the bargaining unit, Dennis also serves as a negotiator and advisor for collective bargaining agreements, having negotiated several hundred labor contracts for public employers.

Dennis's area of practice extends well beyond just labor and employment matters. He counsels clients in all areas of personnel management, including employee leave rights, overtime obligations, and employee disciplinary matters, as well as in the areas of board governance, general education law and student rights and responsibilities. Dennis has served on the Illinois State Bar Association's Labor and Employment Section and is a frequent presenter for the Illinois Association of School Boards and at statewide conferences, including the Chicago-Kent School of Law Public Sector Labor Relations Conference.

Dennis has over twenty-eight years of experience representing public entities in labor and employment disputes. Prior to joining Robbins Schwartz, Dennis served as an Administrative Law Judge with the Illinois Labor Relations Board and was Labor Relations Counsel for Governor James Edgar through the Illinois Department of Central Management Services.

Dennis 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 PRESENTATIONS

Collective Bargaining Workshop, Regional IASBO Conference (April 2021)

Legislative and Decisional Law Update, Illinois Community College Presidents' Council (March 2021)



PRACTICE AREAS

Education Law
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EDUCATION

J.D., Southern Illinois
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Illinois Council of School
Attorneys

Illinois Local Government
Lawyers Association

Illinois State Bar
Association

Collective Bargaining Update, Large Unit District Association (February 2021)

Legal Ethics: Ethical Considerations during the Pandemic, Illinois Kent School of Law 36th Annual Public Sector Labor Relations Conference (December 2020)

Pre-K to Grade 12 Return to School, Southwest Leadership Council (September 2020)

Collective Bargaining Workshop, Regional IASBO Conference (March 2020)

Nuts and Bolts of Grievance Handling and Pre-Arbitrations Strategies, 35th Annual Kent School of Law Public Sector Labor Relations Conference (November 2019)

New College Board of Trustee Member Training, Illinois Community College Board (September 2019)

Managing Creditable Earnings under TRS New 3% Limitation Threshold, Annual and Regional IASBO Conferences (April 2019)