

Should I Stay or Should I Go? Legal Considerations of Increasing Remote Learning

A Continued Panel Discussion: Fall Return to School Transition

Webinar
July 27, 2020

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Should I Stay or Should I Go? Legal Considerations of Increasing Remote Learning

A Continued Panel Discussion: Fall Return to School Transition


Webinar presented by Joseph J. Perkoski, Caroline A. Roselli, Matthew J. Gardner and Catherine R. Locallo

Robbins Schwartz

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Introduction

BACK TO SCHOOL



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Introduction

"This indecision's bugging me..."

- The Increasing Uncertainty of In Person Instruction
 - Has the Ever-Evolving Pandemic Derailed the June 23rd Joint ISBE/IDPH Guidance?
 - Pressure and Polarization
 - Community and Parents' Concerns
 - The Clash of Federal v. State Objectives
 - The Unions
- Many Districts are Reconsidering their Return to School Plans

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Introduction

"If I go there will be trouble..."

- The Sheer Logistical Challenges
 - Can you make your buildings safe?
 - Social distancing challenges.
 - Face covering enforcement.
 - What exactly is space, and can it be divided?
 - What to do when COVID cases occur.
 - Is bus transportation possible?

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Introduction

"If I stay, there will be double..."

Weeks Away and No Clear Direction

- The July 24th CDC FAQs for School Administrators on Reopening Schools
 - Emphasis on In Person Instruction
 - "...we know that schools can reopen safely for in-person learning in communities with low rates of COVID-19 spread if appropriate precautions are taken."
 - "In most instances, a single case of COVID-19 in a school would not warrant closing the entire school. Community spread and how much contact the person with COVID-19 had with others, as well as when such contact took place, need to be considered."
 - "Based on the available evidence, CDC does not currently recommend universal (widespread) symptom screenings be conducted by schools. Parents or caregivers should be strongly encouraged to monitor their children for signs of infectious illness, and students who are sick should not attend school."

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Introduction

"One day its fine and next its black..."

- The July 24th Disaster Proclamation and Executive Order
- The July 23rd ISBE Fall 2020 Learning Recommendations
 - "Strongly recommends in person learning" but now an acknowledgement that the ever-escalating Pandemic may make that unfeasible in certain communities.
 - Continued emphasis on the need to mitigate the learning loss of the Spring and Summer.
 - Continued Emphasis on addressing systemic inequity.
 - All students should receive 2.5 hours of Synchronous learning
 - "...strongly encourage prioritizing in person learning for students with IEPs, English learners (ELs) and students under the age of 13."

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Introduction

"So ya gotta let me know..."

Reality and Guideposts in the July 23rd ISBE Guidance

- Commitment to Local Control: "Districts should weigh these recommendations in light of the reality of their local contexts," including:
 - the opportunity for professional development,
 - access to technology,
 - the needs of their unique student populations, and
 - public health information and regulations.
- "All reopening guidance will continue to rely on what IDPH experts tell us is best..."
- Acknowledgement that some districts may need to be fully remote.
- The Guidance does not "override the existing mutual obligations" of districts and their unions.

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Introduction

"Should I stay or should I go?"

- Considerations for Reviewing the Return to School Plan
 - Assessment
 - Instruction
 - Labor and Employment
 - Commercial Contracts

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Assessment



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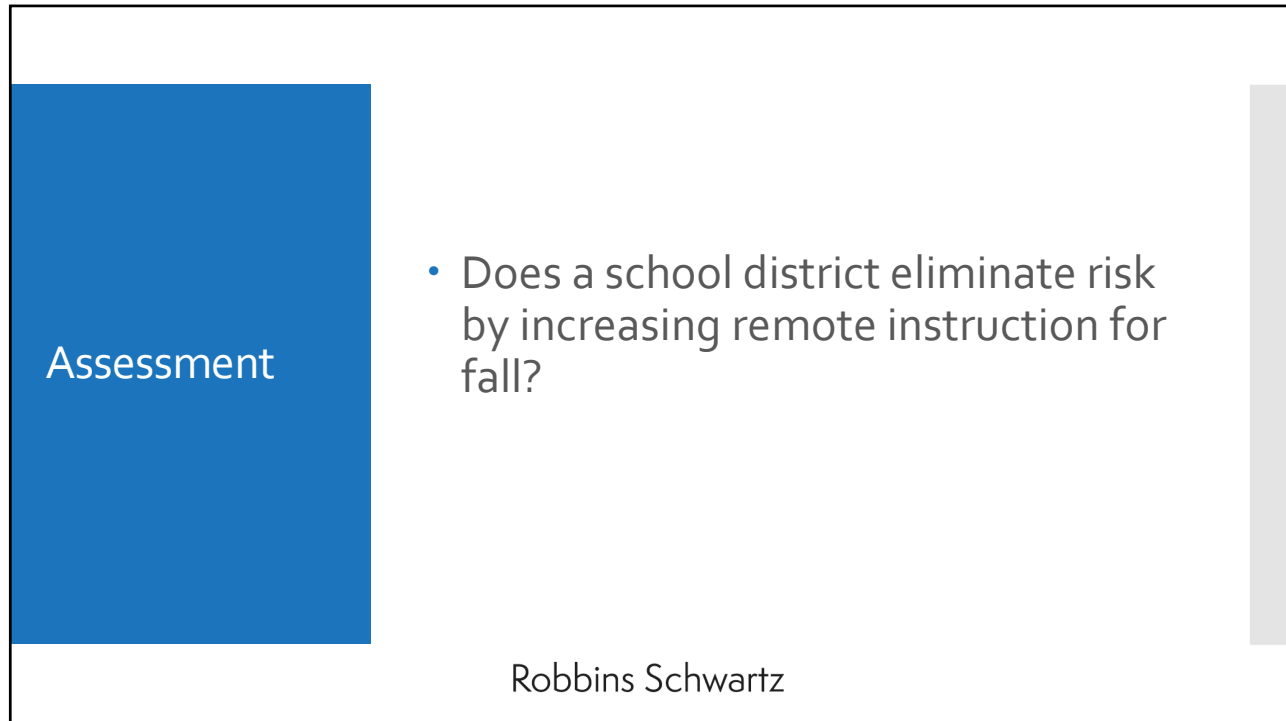
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Assessment

- What factors should a school district consider if contemplating fully remote learning for fall?

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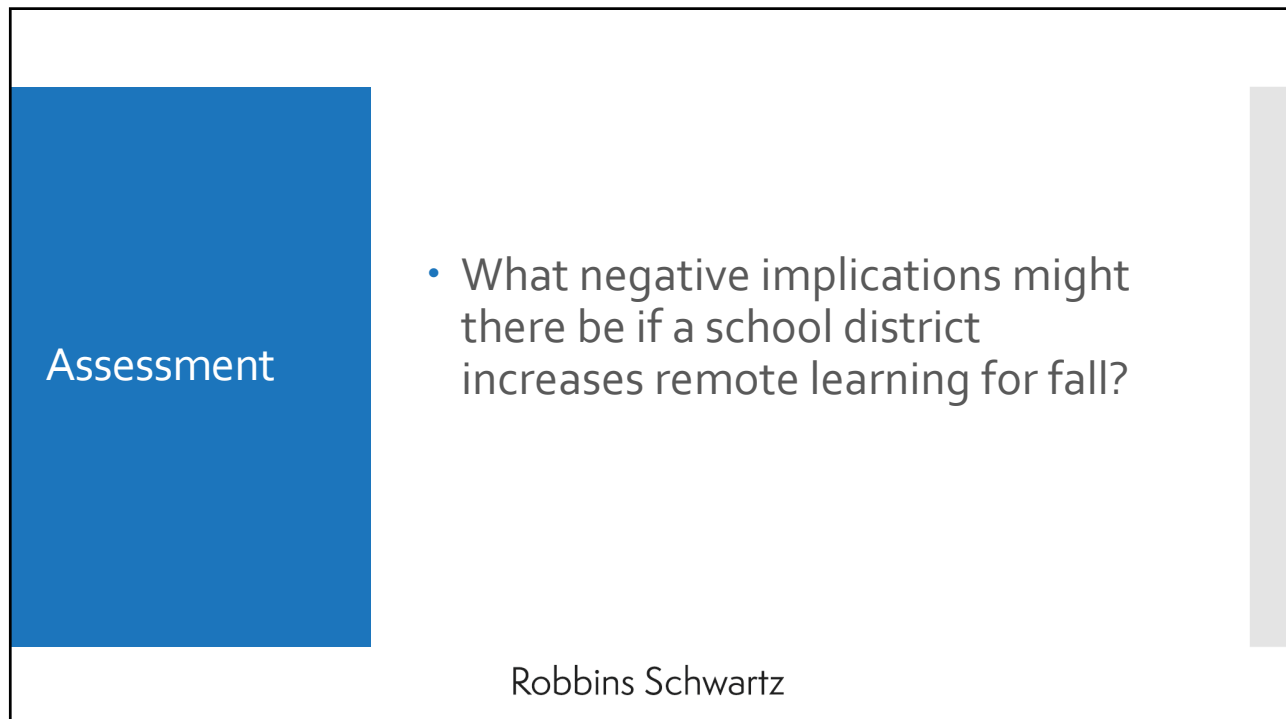


Assessment

- Does a school district eliminate risk by increasing remote instruction for fall?

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Assessment

- What negative implications might there be if a school district increases remote learning for fall?

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Assessment

- If a school district's plan for return to school changes, should the new plan be brought to the Board for approval?

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Assessment

- If a school district changes their plan to fully remote, how often should that plan be reviewed?
- Should a district outline a subsequent date for review of the plan or a date for a return to in person instruction?

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Instruction



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Instruction

- Is 2.5 hours of “synchronous learning” required for each school day if the plan calls for a fully remote or blended approach?

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Instruction

- Can a school district require a teacher to live stream their classroom for students attending remotely?

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Instruction

- Are school districts required to offer a remote learning option for any family that chooses such for their student?

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Instruction

- If a family chooses to have their student participate in the school district's remote learning program, does the school district have to allow the student to participate in after school extracurricular activities?

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Instruction

- Should a school district create individual remote learning plans for all special education students?
 - If so, how should such plans be connected to the IEP governing in-person?

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Instruction

- If a parent chooses remote instruction instead of full time in person instruction for their special education student, how should the school district document such?

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Labor and Employment



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Labor and Employment

- If a school district determines it needs to reduce support staff due to a change in the return to school plan, how quickly can action be taken?
 - Are there bargaining obligations?
 - Will these individuals be eligible for unemployment compensation benefits?

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Labor and Employment

- If instruction will be fully remote or a blended approach, can a school district require a teacher to teach from their classroom?
 - Would the teacher need to wear a face covering in their classroom under this scenario?

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Labor and Employment

- If a teacher's work day is shortened due to the new flexibility for the instructional day, can a school district reduce pay proportionally?
- Are school districts required to provide teachers with a duty-free lunch if the work day is shortened?

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Labor and Employment

- Can we require a teacher to teach in person and also prepare recorded lessons for students learning remotely?

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Labor and Employment

- If athletics and extracurriculars are not offered for fall, is a school district required to pay staff the stipends they would have earned?

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Labor and Employment

- Is a school district required to reimburse employees for use of personal internet, phone or technology when teaching remotely?

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Commercial Contracts



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Commercial Contracts

- How might a change in a school district's plan impact transportation, food service and other vendors?

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Commercial Contracts

- Should a school district amend, suspend or terminate vendor contracts based on a change in the return to school plan?
- What is the financial impact of these changes in terms of additional costs or savings?

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Commercial Contracts

- Will school districts need new products or services to support a more robust remote learning plan?
- If so, what should school districts be considering from a legal perspective?

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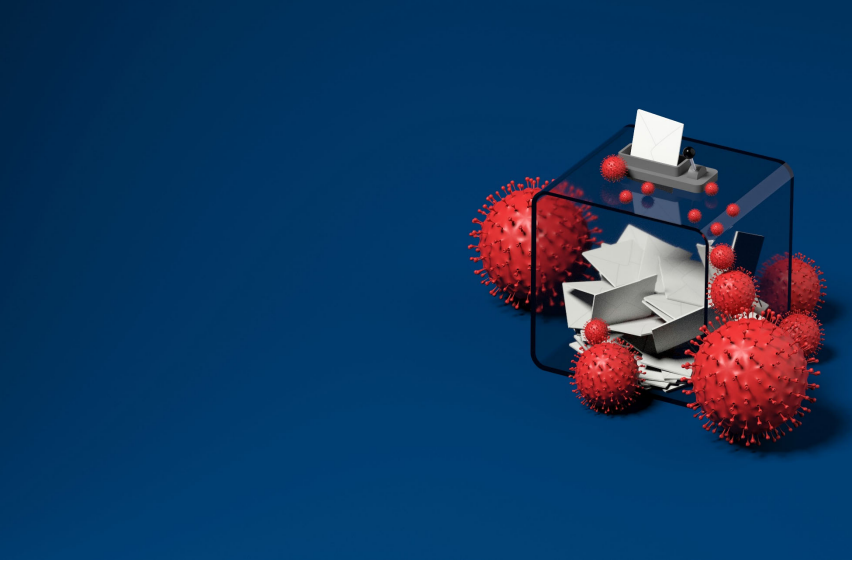
Commercial Contracts

- Can school districts that go fully remote allow community groups and other organizations to use school buildings?

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Follow Up Questions



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Follow Up Questions

- If a school district requires an employee to self-isolate because of close contact with a suspected COVID-19 case at school, how should the leave be designated? Is it paid?

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Follow Up Questions

- Are employees required to submit FMLA paperwork each time they have a COVID-related absence (i.e., because of close contact or because of symptoms, or both), given the anticipated length of the absence?

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Follow Up Questions

- What type of return-to-work paperwork is required after any type of COVID-related absence?

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Questions?



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As managing partner, Joseph Perkoski represents educational institutions and public sector employers with a focus on board and executive leadership. Joseph also represents his clients on a broad range of labor and employment issues including collective bargaining, grievance arbitration and contract interpretation. Joseph has defended employers in unfair labor practice charges before the Illinois Education Labor Relations Board, the Illinois State and Local Labor Relations Boards and the National Labor Relations Board. In addition, Joseph has litigated on behalf of management claims involving civil rights, discrimination, wrongful discharge, and harassment issues.

AWARDS

Illinois Super Lawyers, 2008-2020

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations*, IICLE (2017)

Contribution author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

"Finding a New Way: Subcontracting Revisited," *UPDATE Magazine*, Illinois ASBO (2011)

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

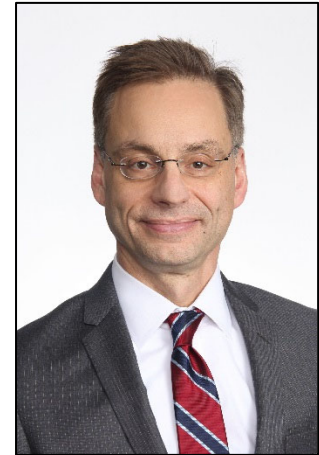
RECENT PRESENTATIONS

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Court Cases and Other Legal Updates for the Higher Education Workplace, Illinois CUPA-HR Spring Conference (May 2019)

Legal Update, ICCCFQ Spring Conference (April 2019)

Bargaining Updates, 3%, and Q & A, Northwest Personnel Administrators (October 2018)



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

Recent Amendments and Changes to State and Federal Employment Laws,
Illinois CUPA-HR Spring Conference (May 2018)

SURS Legislation Update, ICCCFD Spring Conference (April 2018)

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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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.

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)

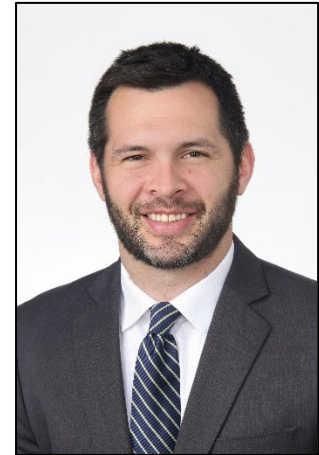
"The Good, The Bad and The Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"School District and Zoning Exemptions," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

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

Construction Purchasing & Bidding Common Problems & Solutions, Illinois ASBO (March 2019)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Construction Contracts: Boilerplate Language Landmines You May Not Know,
NBI (February 2019)

*The Anatomy of a Mechanics Lien Claim: Preparing, Serving and Filing Notices
and Claims*, Illinois State Bar Association Continuing Legal Education (May
2018)

Lead Testing Update: Everything You Need to Know, Illinois ASBO Conference
(May 2018)

Community College Funds – Lawful Expenditures and Practical Considerations,
Spring ICCCFD Conference (April 2018)

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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

"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)

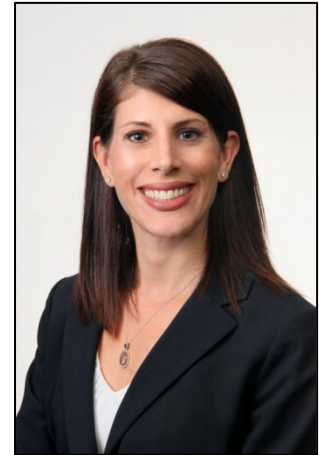
"Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award 'Drew Its Essence' from the CBA," *Justinian Society Newsletter* (2014)

"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)

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)



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

Community College Trustees Training Session, ICCTA (June 2019)

Community College Trustees Training Session, ICCTA (June 2017)

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

Justinian Society of Lawyers; Scholarship Committee, Co-Chair

National Council of School Attorneys

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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

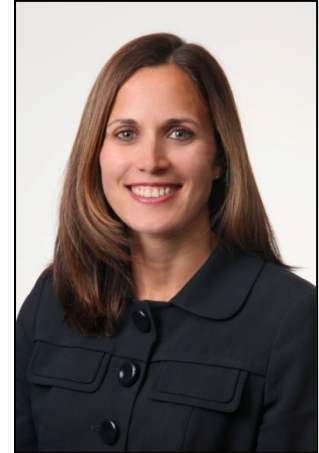
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"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)

Just What the Doctor Ordered: Responding to Increasing Requests for Homebound Instruction, Illinois Alliance of Administrators of Special Education Winter Conference (February 2018)