

Robbins Schwartz School Administrators' Conference

October 5, 2022
8:00 a.m. – 3:00 p.m.

Hotel Arista
2139 City Gate Lane
Naperville, IL 60563

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice.
If you have an individual problem or incident that involves a topic covered in this document, please seek
a legal opinion that is based upon the facts of your particular case.

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SCHOOL ADMINISTRATORS' CONFERENCE

OCTOBER 5, 2022

AGENDA

8:00 a.m. REGISTRATION/BREAKFAST

8:30 a.m. GENERAL SESSION

Grand Ballroom A/B Speech and Expression in Today's Social and Political Climate
Presented by: Joseph J. Perkowski, Caroline A. Roselli, Frank B. Garrett, and Todd K. Hayden

CONCURRENT SESSIONS

10:15 a.m. SESSION 1

Grand Ballroom A Student and Employee Diversity, Equity and Inclusion Initiatives: Considerations for DEI Planning & Surviving DEI Legal Challenges
Presented by: Frank B. Garrett and Zaria N. Udeh

Grand Ballroom B Common Construction Problems and Disputes
Presented by: Kenneth M. Florey, Matthew J. Gardner, and Christopher R. Gorman

11:30 a.m. SESSION 2

Grand Ballroom A Addressing Employee Mental Health Conditions in the Post COVID-19 Workplace
Presented by: Catherine R. Locallo and Kevin P. Noll

Grand Ballroom B Protecting Your Tax Base and Revenue: PTAB and Tax Rate Objection Intervention
Presented by: Matthew J. Gardner and Katie N. DiPiero

Santorini Room, Floor 2 Lunch 1

12:45 p.m. SESSION 3

Grand Ballroom A Addressing Staffing Shortages and Ensuring FAPE to Students with Disabilities
Presented by: Laura M. Sinars and Zaria N. Udeh

Grand Ballroom B Public Bidding and Procurement: Meeting the Legal Requirements and Strategies for Purchasing the Goods and Services that You Want
Presented by: Kenneth M. Florey and Christopher R. Gorman

Santorini Room, Floor 2 Lunch 2

2:00 p.m. SESSION 4

Grand Ballroom A Bargaining Update: The Impact of Staffing Shortages and Inflation
Presented by: Philip H. Gerner and Thomas C. Garretson

Grand Ballroom B Best Practices and Legal Considerations when Conducting Student Investigations
Presented by: Emily P. Bothfeld and Susan E. Nicholas

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SPEECH AND EXPRESSION IN TODAY'S SOCIAL AND POLITICAL CLIMATE

October 5, 2022

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Introduction



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Agenda

1. Speech and Expression in the News
2. Legal Background
3. Scenarios
4. Guidance and Takeaways
5. Q&A





Complaint About Pride Flag in Indiana Middle School Classroom Could Lead to District Ban



Black Georgia students suspended for wearing Black Lives Matter T-shirts file lawsuit



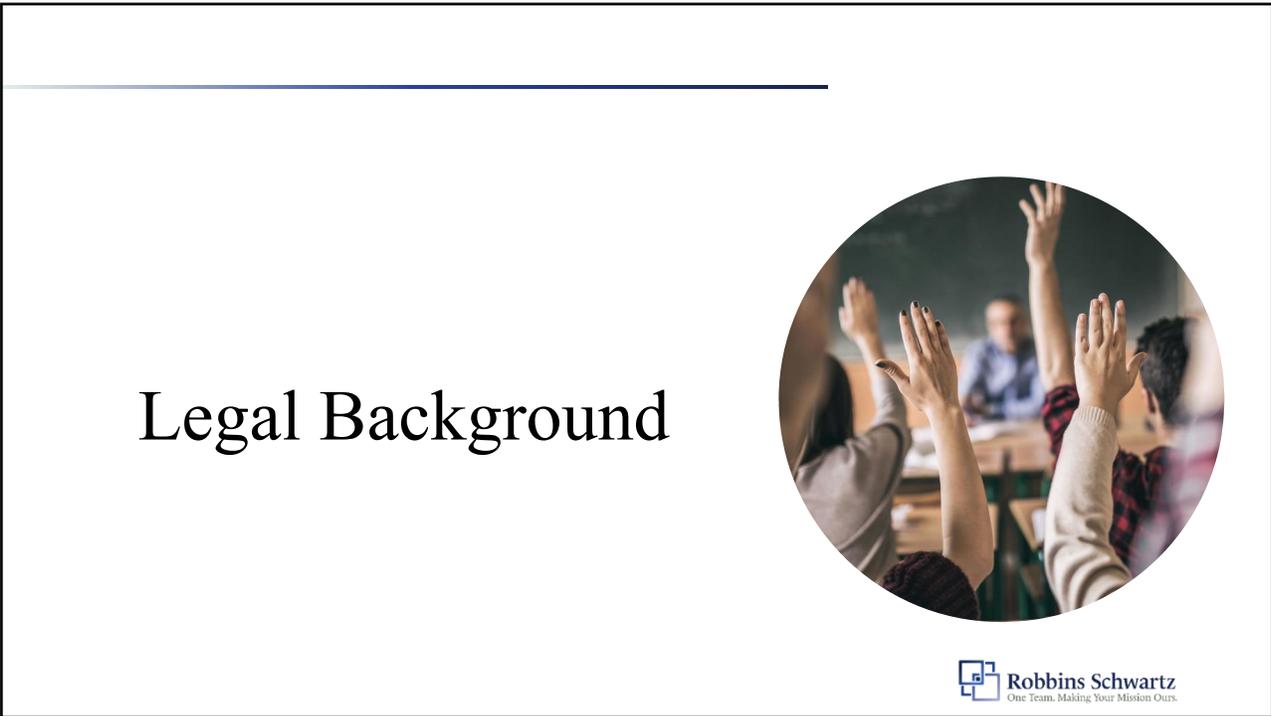
'The new Confederate flag': Teacher slams boy, 13, for Thin Blue Line mask in honor of cop dad



Teacher gets \$95,000 to settle lawsuit over refusal to use student's preferred name



Parents divided as OC school board considers ban on critical race theory



Legal Background



The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech...



The First Amendment

Public schools are considered governmental entities.

Public educational institutions must adhere to the First Amendment's free exercise and free speech clauses.



Supreme Court Precedent: Students

Tinker v. Des Moines School Dist., 393 U.S. 503 (1969)

- Seminal Supreme Court decision on student speech.
- Students were suspended after wearing armbands in protest of the Vietnam war.
- “Can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”



Supreme Court Precedent: Students

Tinker v. Des Moines School Dist., 393 U.S. 503 (1969)

- Schools cannot seek out “the prohibition of expression of one particular opinion.”
- “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” or “an urgent wish to avoid the controversy which might result from the expression” are insufficient to justify banning student speech.



Supreme Court Precedent: Students

Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986)

- Student was suspended after giving a speech at school which contained repeated references to explicit and sexually-charged metaphors.
- No First Amendment Violation: “it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.”
- Presence of children heightens permissibility of regulating speech that contains such language.



Supreme Court Precedent: Employees

Garcetti v. Ceballos, 547 U.S. 410 (2006)

- After Ceballos criticized his employer’s handling of a case in a memo, testimony at a hearing, and public speech, he was allegedly transferred to an inferior position.
- Speech was unprotected; no First Amendment violation.
- “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the U.S. Constitution does not insulate their communications from employer discipline.”



Seventh Circuit Precedent: Employees

Mayer v. Monroe County Community School Corporation, 474 F.3d 477 (7th Cir. 2007)

- In response to a student question about political demonstrations, non-tenured teacher said she honked her car horn to show support for nearby anti-Iraq War protest.
- Parents complained and teacher's contract was not renewed.
- First Amendment "does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system."



Time, Place, Manner Regulations

Limitations imposed by the government (the school) on student expressive activity:

1. Must be content neutral.
 - Can't pick and choose topics to regulate
2. Must be narrowly tailored to serve a significant governmental interest.
3. Must leave open ample alternative channels for communicating the intended message.



Time, Place, Manner Regulations

- ✓ During school hours
- ✓ Not in the middle of a classroom
- ✓ Reservation requests
- ✓ Noise level
- ✓ Size and placement of signs on school property

Unprotected Speech

Courts have interpreted the First Amendment as not protecting the following speech or expression:

- Obscenity
- Fighting Words
- Child Pornography
- Defamation
- Perjury/Blackmail/Fraud
- True Threats
- Incitement to imminent lawless action
- Solicitations to commit crimes

Scenarios



Scenario #1

During a History unit on protest and social unrest, a teacher at Alderaan Middle School displays as part of their presentation a slide that features a variety of different flags with historical significance. Included on the slide is a Black Lives Matter flag. A student asks the teacher if the inclusion of the flag means the teacher supports the Black Lives Matter movement. The teacher responds, “yes, I stand in solidarity with all marginalized and oppressed groups.” A parent calls the school to complain about both the flag on the slide and the teacher’s response to the student’s question.

How should the school respond to the parent’s complaint?



Scenario #2

Pick up is the busiest time at Tatooine Elementary. Once the bell rings, there is an exodus of students heading to their parents' cars. Often, as it takes time for the procession of cars to make their way through the circle drive, children gather outside the front steps. One child notices a bumper sticker that reads: "F*ck Roe, She was a Hoe" and includes a cartoon graphic of a baby in a coffin. The child points it out to their parent and asks what it means. The parent, outraged, calls the school to complain.

How should the school respond to the parent's complaint?



Scenario #3

Moira is a student at Hoth High School. She identifies as transgender, and her preferred pronouns are she/her/hers. Her A.P. Biology teacher deadnames her, or calls her by her old name before she transitioned. Moira initially doesn't say anything, but when the teacher deadnames her again, Moira requests that the teacher call her by her correct name. The teacher refuses, saying, "I'm sorry, but doing so would violate my religious beliefs." Moira complains to the principal.

How should the school respond to Moira's complaint?





Scenario #4

A parent of a fifth-grade student at Naboo Elementary School reviews their student's class schedule and syllabus, which includes a unit on sex education and weekly social emotional learning lessons. The syllabus for the sex education unit lists a book about self-esteem, which includes a chapter on the importance of authentic self-expression. The book specifically includes images of a boy wearing a dress and a girl wearing a suit and tie. The parent immediately complains to the principal that the book must be removed from the curriculum and indicates verbally and in writing that they are opting their child out of all units on sex education and all social emotional learning lessons. Additionally, the opt out letter from the parent states that their child may not speak with the social worker at any time, and may not engage in any discussions around sex, sexual identity or gender identity while at school.

How should the school respond to the parent's complaint and letter?



Scenario #4

- Illinois: sex education courses include “gender identity and expression” and “sexual orientation and identity”, but parents can submit opt-out requests. 105 ILCS 5/27-9.1a(d).
- Note: other curriculum mandates may be relevant.
 - Ex. U.S. History courses are required to include “study of the role and contributions of lesbian, gay, bisexual and transgender people in the history of this country and state.” 105 ILCS 5/27-21.
- Schools cannot guarantee students won't be exposed to curriculum requirements related to social and emotional development.





Scenario #5

National Police Week always falls near the end of the semester at Dagobah High School. In recognition of the week and the police officers in the community, one student wears a black sweatshirt with the thin blue line flag symbol across the front. A teacher also shows support by wearing a black polo with a small thin blue line flag in the upper right corner. A student complains to the principal about both the teacher and the other student's clothes.

How should the school respond to the student's complaint about the other student and the teacher?



Guidance and Takeaways



Student Speech

- Institutions can regulate student speech that causes (or is likely to cause) a substantial and material disruption, or is unprotected speech (ex. incitement, fighting words, obscenity)
 - But note: establishing that speech falls outside the purview of the First Amendment can be difficult.
 - When the administration can intervene, censorship should be a last resort.



Student Speech

- Public schools may not regulate student speech or expression based on the content or viewpoint of the speech, even if extreme or hateful.
- It not sufficient for student speech to be regulated or restricted simply because other students or parents are uncomfortable and complain.
- Public schools can place reasonable time, place, and manner restrictions on student speech and expression.
 - Ensure that restrictions are applied uniformly and consistently across all types of speech, and that students are aware of the restrictions.



Employee Speech

- Schools can regulate employee speech that is delivered in the course of their official duties (ex. teaching)
- Schools have less ability to regulate employee speech when not delivered pursuant to their job duties (ex. private spaces)



Employee Speech

- To determine whether an employee is acting pursuant to their official duties, a factual inquiry is required—not just reliance on the job description for the employee in question.
- Teachers should be reminded not to discuss their personal viewpoints as part of their instruction.
- Schools should ensure teaching staff are aware of any speech restrictions before imposing any disciplinary action.



Parent or Community Member Speech

- Schools lack ability to direct regulate parent or community member speech.
- But, schools have right to shield students from vulgar or offensive language.
- Schools can use relevant Board policies (ex. visitor policy) to ensure parent or community member speech remains civil and respectful and not disorderly or disruptive.



Question and Answer





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STUDENT AND EMPLOYEE DIVERSITY, EQUITY, AND INCLUSION INITIATIVES: CONSIDERATIONS FOR DEI PLANNING & SURVIVING DEI LEGAL CHALLENGES

October 5, 2022

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Introductions



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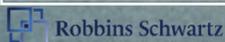


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Introduction

- DEI initiatives are being designed and implemented more frequently by educational institutions as a way to create a more diverse and inclusive workforce. However, these initiatives must be carefully drafted to avoid violating non-discrimination laws and the U.S. Constitution.
- This presentation will discuss student and employee DEI initiatives, the legal and community challenges these initiatives face and provide guidance on minimizing those challenges.



Scenario One School District's DEI Initiatives

School District Want-To-Do Better #001 has developed DEI initiatives designed to increase and maintain diverse teachers and administrators. The initiatives developed were based on personal observations, statements from District students, teachers and members of the community expressing the need for more Black and male teachers and building principals to match the racially diverse nature of District #001's student population. The District DEI initiative includes:

- Increased and focused recruitment at colleges and universities with a large percentage of Black students
- Discrimination and Implicit Bias training of all hiring team members
- Payment of relocation costs for Black and/or male new teacher hires
- Requiring that a final interview for Building Principals include at least one Black and one male applicant



Illinois School Code Requirements

- **Minority Recruitment**

Minority recruitment policy. To develop and implement...a policy of recruitment and hiring of minority teachers, other certificated employees and non-certificated employees, including custodians, lunch room staff and teacher aides. 105 5/10-20.7(a)

- **Implicit Bias Training**

Each school board shall require in-service training for school personnel to include training to develop cultural competency, including understanding and reducing implicit racial bias. 105 5/10-20.61



Defining “Diversity”, “Equity” and “Inclusion”

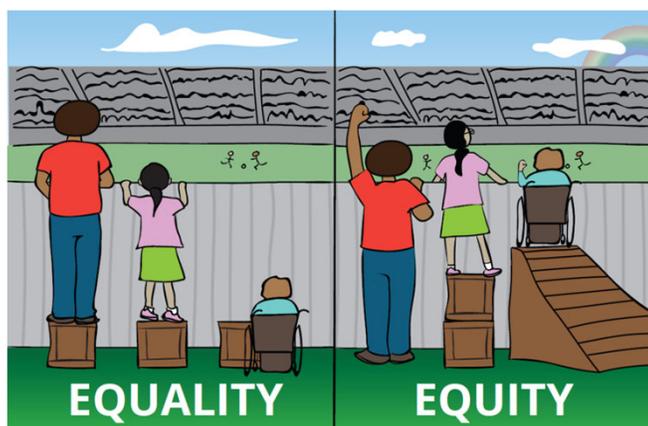
Diversity refers to the individual differences that sets one person apart from another. These include demographics such as race, national origin, sex, religion, sexual orientation, ableism, age and more.



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Defining “Diversity”, “Equity” and “Inclusion”

Equity speaks to fairness and a leveling of the playing field. Equity can mean employers offering diverse employees a variety of supportive measures to ensure they have an opportunity at being successful, and are treated fairly.



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Defining “Diversity”, “Equity” and “Inclusion”

Inclusion refers to bringing traditionally excluded individuals into programs, processes, leadership positions and decision-making roles whereby they feel valued, respected and included in the organization.

“Diversity is being invited to the party, inclusion is being asked to dance.” Verna Myers, Diversity Advocate.



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The Benefits of Workplace Diversity and Inclusion



Leads to better creativity and problem-solving



Schools are better equipped to work with diverse students



Leads to increased retention of diverse employees



Improvement in hiring of diverse and younger applicants as these applicants seek and expect a diverse workplace



Improvement in student and community relationships

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Relevant Laws Related to DEI Programs and Initiatives



DEI plans should be drafted and implemented in compliance with federal civil rights laws, and the U.S. Constitution including:

- Title VII of the Civil Rights Act (Employment);
- Title VI of the Civil Rights Act (Entities receiving federal funds);
- U.S. Constitution's Equal Protection clause.

Additionally, schools should review and be mindful of their state's anti-discrimination laws and relevant provisions of their School Code.



Legal Challenges to Workplace DEI Initiatives

Workplace DEI initiatives face legal challenges including, but not limited to:

- DEI is a form of unlawful discrimination against employees or applicants for employment based on protected categories such as race or sex;
- DEI creates preferential treatment for certain employees based only on race or sex,
- DEI initiatives violate the Constitution's equal protection clause: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process..."; and
- DEI initiatives create an unfair advantage for minority and *women job applicants and employees.*



Non-Legal Challenges and Objections to Employer DEI Initiatives

- Community and “outside” pressures may present challenges to DEI plans often based on:
 - A fundamental misunderstanding of what DEI is and why its being implemented;
 - Lack of transparency and communication with community members and employees;
 - A belief that DEI means race based hiring quotas and preferential treatment;
 - A belief that DEI initiatives requires the district to hire “unqualified” teachers, administrators and staff;
 - Current cultural and political divisions in our society.



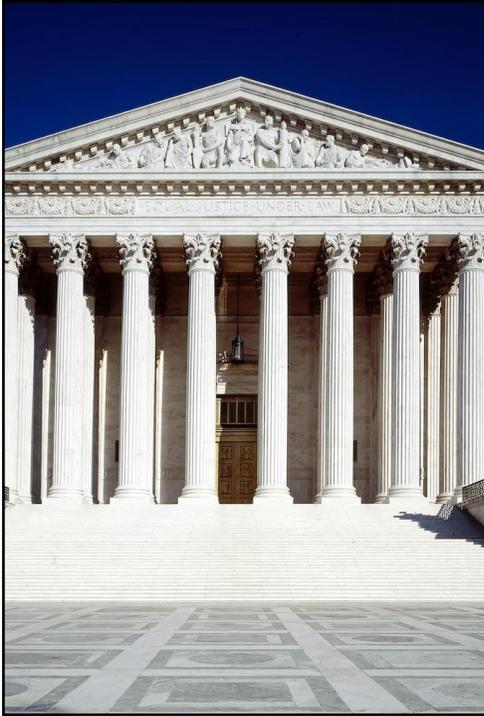
Relevant Legal History Of Workplace DEI Initiatives (Affirmative Action)

United Steel Workers of America v. Weber (1979)

United Steel Workers of America implemented an “Affirmative Action Plan” reserving 50% of the eligible positions in its training program for black employees. The plan was implemented to rectify the historic and systemic refusal to include black employees in the training program precluding their eligibility for promotion and salary increases.

- Brian Weber, a white employee, applied for and was passed over for the training program. He filed suit alleging the training program was a form of race discrimination in violation of Title VII.
- In a 5 – 2 decision, the Supreme Court upheld the training program as a valid method of eliminating prior racial segregation and discrimination at the company.
- The Court noted that the plan did not prohibit white employees from advancing in the company because they were still eligible to participate in the training program.





Wygant v. Jackson Board of Education **(U.S. Supreme Court 1986)**

In response to community and school racial tension, the school board and teachers' union agreed to add a provision to their collective bargaining agreement (“CBA”), stating that at no time will there be a greater percentage of minority personnel laid off than the current percentage of minority personnel employed at the time of lay-off.

The CBA provision, according to the district, was designed to align with the District’s hiring goal to increase and maintain the percentage of minority teachers.

- Certain white teachers who were laid off, although more senior to minority teachers retained, filed suit alleging the CBA provision violated the Equal Protection Clause of the Constitution.



Wygant v. Jackson Board of Education **(1986)**

- Although unable to reach a majority decision, five justices of the Supreme Court did agree that the layoff provision violated the equal protection clause. According to these justices, in order to avoid an equal protection claim, the District must show that it had a **compelling governmental interest** for using race as a part of its lay-off provision.
- Additionally, in rejecting the District’s reliance on racial tension, in the community and society at large, the court stated “societal discrimination” alone is not a compelling governmental interest.
- However, the Court agreed with the District’s argument that a voluntary Affirmative Action Plan need not be preceded by a court decision that the school district engaged in past discriminatory acts.



Minneapolis Public Schools' Teacher Lay-Off Initiative

- On March 25, 2022, the Minneapolis Public Schools and Minneapolis Federation of Teachers (MFT) reached agreement on a new collective bargaining agreement (“Agreement”).
- The new Agreement, in part, contains a “layoff” provision similar to Wygant. The “layoff” or “reduction-in-force” provision in the Minneapolis School’s Agreement exempts from lay-off, “teachers from under-represented populations” as a way to remedy the effects of past discrimination.



Legally Compliant Workplace DEI Initiatives

- Revising job descriptions and employment ads to attract more diverse talent and removal of non-inclusive language from school districts media and publication;
- Placing job advertisements in publications, and online/social media sites focused on a more diverse audience;
- Recruitment at school districts at which more diverse students are enrolled;
- Requiring that a qualified diverse candidate(s) be included at each stage of the hiring/interview process;
- Train screening and hiring team members on the school district’s DEI goals, non-discrimination policies and implicit bias;
- Creating workplace practices, procedures and supports to help retain, mentor and promote diverse employees within the school district; and
- Extend the on-boarding process for diverse hires.



Scenario One

School District's DEI Initiatives

School District Want-To-Do Better #001 has developed DEI initiatives designed to increase and maintain diverse teachers and administrators. The initiatives developed were based on personal observations, statements from District students, teachers and members of the community expressing the need for more Black and male teachers and building principals to match the racially diverse nature of District #001's student population. The District DEI initiative includes:

- Increased and focused recruitment at colleges and universities with a large percentage of Black students
- Discrimination and Implicit Bias training of all hiring team members
- Payment of relocation costs for Black and/or male new teacher hires
- Requiring that a final interview for Building Principals include at least a Black and male applicant



Equal Educational Opportunity Requirements, Policies & Practices Impacting Students

- Illinois Human Rights Act
 - Protects individuals from unlawful discrimination and guarantees freedom from discrimination against any individual because of their race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service
- Board Policies
 - Uniform Grievance Procedure Policy provides a complaint mechanism for individuals that believe their rights, including their civil rights, have been violated by the School Board, its agents, or employees
 - Educational Philosophy and Objectives Policy provides for the development of student awareness of and appreciation of cultural diversity.
 - School Accountability Policy provides for the continuous assessment of the District's and each school's overall performance in terms of academic success and equity.
 - Equal Educational Opportunities Policy provides for equal educational and extracurricular opportunities for all students.
- Culturally Responsive Teaching and Leading Standards (CRT)
 - These standards will be implemented in educator preparation programs to assist aspiring educators in building the skills they need to engage students who may come from a different backgrounds and cultures than them, in order to create an environment most conducive to learning.



Illinois School Code: Curricular Requirements

- State curriculum requirements as mandated by the Illinois School Code
 - Revised social science learning standards inclusive and reflective of all individuals in the country. 105 ILCS 5/2-3.25.
 - All public elementary and high schools to include in their curriculum a unit of instruction studying the events of Asian American history, including the history of Asian Americans in Illinois and the Midwest, as well as the contributions of Asian Americans toward advancing civil rights from the 19th century onward. 105 ILCS 5/27-20.8.
 - US history instruction to include (105 ILCS 5/27-21):
 - Contributions made to society by Americans of different faith practices, including but not limited to: Muslim, Jewish, Christian, Hindu, Sikh, Buddhist, and any other collective community of faith.
 - Role and contributions of lesbian, gay, bisexual and transgender persons in the history of this country and State.



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Illinois School Code: Other Equity Based Requirements

- Demographic data collection and reporting requirements impacting school information collected by ISBE was expanded by Public Act 102-0543, with the intention of being implemented in the 2022-2023 school year.
- School districts report demographic data to ISBE through the Student Information System (“SIS”) and reporting requirements now include age, sex, disability status, sexual orientation, gender identity, and primary or preferred language.
- The Illinois legislature emphasized the need to expand demographic data collection to assist researchers, lawmakers, and community stakeholders address education, health, and other social disparities facing people in Illinois, including the LGBTQ community.
- ISBE initially issued guidance on these new reporting requirements and then rescinded it noting that “ISBE will form a working group of educators, LGBTQ+ advocates, families, and students from across the state to ensure the data are collected with all students’ safety and privacy in mind. ISBE will conclude this stakeholder engagement by October 2022 in order provide the field with revised guidance or to propose legislation to amend the requirement before school registration begins for the 2023-24 school year.”

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Expansion of DEI Initiatives in Illinois

ISBE Equity Journey Continuum

- In its 2020-2023 Strategic Plan ISBE announces its Equity Continuum Journey
- “Illinois has an urgent and collective responsibility to achieve educational equity by ensuring that all policies, programs, and practices affirm the strengths that each and every child brings within their diverse backgrounds and life experiences, and by delivering the comprehensive supports, programs, and educational opportunities they need to succeed.”
- The Strategic Plan offers a definition of “Equity” in Illinois education as “having high expectations for every learner and providing supports and resources so each learner can meet those expectations.”

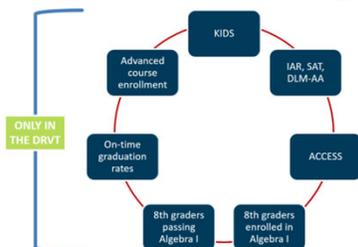


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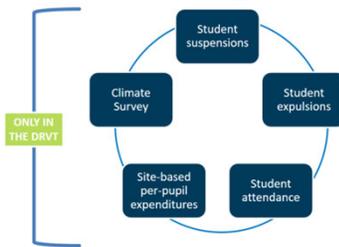
Equity Journey Continuum Measures

- Student Learning
- Learning Conditions
- Elevating Educators

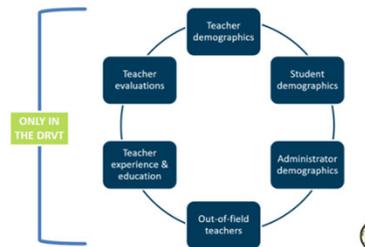
Focus area 1: Student Learning



Focus area 2: Learning Conditions



Focus area 3: Elevating Educators



Development and Reporting on Student Equity

- As part of its Equity Journey Continuum, ISBE will use the Illinois School Report Cards to include each district's location on a continuum of equity (Step 1, large gaps, through Step 4, minimal gaps), starting with this October 2022 publication of school report cards.
- Reporting will occur at the district level and not the school level.
- For this first year, because of gaps in data collection and verification during COVID, school districts will be assigned a level descriptor (large, moderate, small, minimal gaps in equity) based on data from the 2018-2019 school year.
- In each future year, the data will be based on the previous school year.
- School districts may preview their step for each data element in the continuum and the district's overall step for each category in ISBE's Data Review and Verification Tool (DRVTool). They may also submit a narrative, which can address all or any area of the continuum or provide any other context and information the district would like to provide, at www.illinoisreportcard.com.



Common Areas of Interest for Student DEI Initiatives & Creating Legally Sound DEI Initiatives



- English language learner identification and support
- Access for students with disabilities and pregnant students
- Inclusive teaching strategies and curricular coverage of areas related to diversity, equity and inclusion
- Exclusionary and other discipline practices and their impact on students by demographic
- Training of recruitment team members and faculty on best practices to avoid discrimination and implicit bias



Challenges to Student DEI Initiatives

School districts are receiving challenges from parents and community members concerning the following:

- Opposition to the teaching of Critical Race Theory (CRT)
- Form Opt Out requests from parents indicating that they do not consent to student participation in sexual education, critical race theory, and mental health supports
- Library Book Challenges
- Requests to modify board policies to prohibit instruction on diversity, equity and inclusion



Student DEI Scenario

School District Want-To-Do Better #002 has developed a “Latinx Heritage Mentee and Scholarship Program” to increase outcome and success rates of Latinx students.

Through the brand new “Latinx Mentorship Program,” the school encourages students who identify as Latinx to apply to receive a spot in the program where the recipients would receive both group and one-on-one mentorship from staff members and post-secondary scholarship monies through the school district’s educational foundation.

The application process requires prospective and current students who wish to participate to write a 500-word essay about their Latinx heritage and provide some sort of documentation that provides evidence of that heritage. The school and educational foundation refuses to accept any students into the program where it finds that their Latinx heritage is “too attenuated” or nonexistent.

Thoughts on the School’s DEI plan?





Final Thoughts on Employee & Student DEI Planning

Creating Legally Sound DEI Initiatives

- What is the current reality at the school district? Examine demographics, past history, hiring, promotion data, student enrollment, achievement and discipline data;
- Evaluate the success, or lack thereof, of current DEI initiatives. Where are the gaps between your goals and the results;
- Communicate with all stakeholders the benefits of diversity, equity and inclusion to obtain more “buy-in” and support for the initiatives;
- Carefully review and analyze employee and student data used to support your DEI initiatives. Make sure your metrics support your initiatives;
- Understand and be aware of the legal constraints on DEI initiatives;
- Remember, “neutral” DEI policies and practices are more likely to withstand legal challenge;
- Include a process within the DEI Plan for regular review and assessment;
- Establish end date(s) for your DEI initiatives.





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COMMON CONSTRUCTION PROBLEMS AND DISPUTES

October 5, 2022

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Introduction



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Construction Problems??

Let's Find Solutions!





Agenda

- Problems and Headaches at the Beginning of a Project and Practical Planning Considerations
- Managing and Resolving Construction-Phase Problems to Keep Your Project on Track
- Close Out Considerations
- Construction Claims and Litigation
- Questions



Problems and Headaches at the Beginning of a Project

Practical Planning Considerations



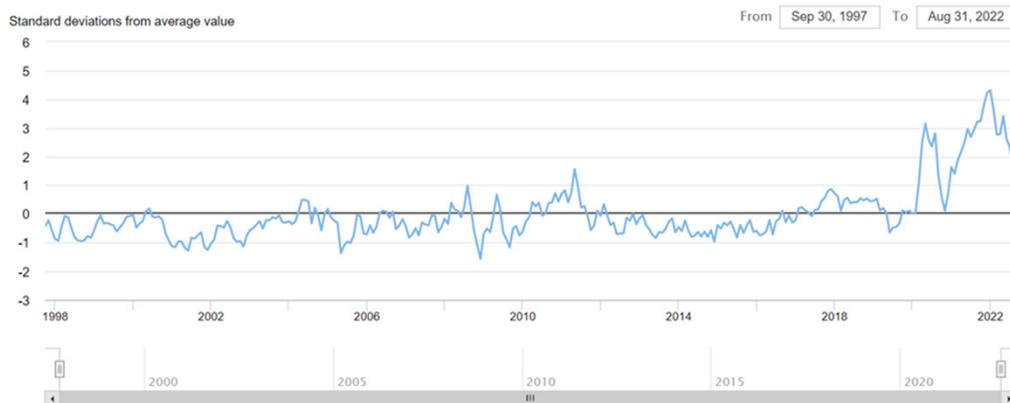
Common Problems on Construction Projects Before the Shovel Hits Dirt

- Imprecise scope and budget
- Board of Education uncertainty and/or political issues
- Acquiring property and financing a project in the current market volatility
- Inexperienced internal administrative team
- Absence of a relationship with external construction team
- Setting unreasonable project timelines that are destined for failure



New Pre-Construction Problems: Supply Chain Issues

- Supply chain disruptions have eased over the last year but are still historically high



(See Federal Reserve Bank of New York, Global Supply Chain Pressure Index, <https://www.newyorkfed.org/research/gscpi.html>.)



What is the Economic Climate? Are we Done with Supply Chain Issues?

<p>+40 weeks Roofing insulation</p>	<p>Lead times for roofing insulation (along with other roofing materials), are currently among the longest in the entire construction industry.</p>	<table border="1"> <thead> <tr> <th>Material</th> <th>Current lead time</th> <th>Two-year change</th> </tr> </thead> <tbody> <tr> <td>Paint</td> <td>2-3 weeks</td> <td>+200%</td> </tr> <tr> <td>Steel beams & decking</td> <td>10-14 weeks</td> <td>+75%</td> </tr> <tr> <td>Drywall & metal studs</td> <td>14-16 weeks</td> <td>+600%</td> </tr> <tr> <td>Lighting & controls</td> <td>14-20 weeks</td> <td>+100%</td> </tr> <tr> <td>Wood doors & frames</td> <td>18-20 weeks</td> <td>+233%</td> </tr> <tr> <td>Open web joists</td> <td>18-30 weeks</td> <td>+125%</td> </tr> <tr> <td>Aluminum storefront glazing</td> <td>16-32 weeks</td> <td>+300%</td> </tr> <tr> <td>Appliances</td> <td>20-30 weeks</td> <td>+400%</td> </tr> <tr> <td>Electrical panels</td> <td>30-40 weeks</td> <td>+433%</td> </tr> <tr> <td>Roofing membranes</td> <td>35-45 weeks</td> <td>+800%</td> </tr> <tr> <td>HVAC equipment</td> <td>36-50 weeks</td> <td>+250%</td> </tr> <tr> <td>Roofing insulation</td> <td>40-50 weeks</td> <td>+667%</td> </tr> </tbody> </table>	Material	Current lead time	Two-year change	Paint	2-3 weeks	+200%	Steel beams & decking	10-14 weeks	+75%	Drywall & metal studs	14-16 weeks	+600%	Lighting & controls	14-20 weeks	+100%	Wood doors & frames	18-20 weeks	+233%	Open web joists	18-30 weeks	+125%	Aluminum storefront glazing	16-32 weeks	+300%	Appliances	20-30 weeks	+400%	Electrical panels	30-40 weeks	+433%	Roofing membranes	35-45 weeks	+800%	HVAC equipment	36-50 weeks	+250%	Roofing insulation	40-50 weeks	+667%
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<p>+36 weeks HVAC equipment</p>	<p>Lockdowns in China have significantly reduced manufacturing output for HVAC equipment, while hot weather continues to boost demand. Semiconductor shortages are also contributing to delays.</p>																																								
<p>+18 weeks Wood doors & frames</p>	<p>Shutdowns and strained labor pools in manufacturing and shipping have lead to a major backlog in the supply of wood doors, as well as hardware and hollow metal door frames.</p>																																								

- (See CBRE Econometric Advisors, CBRE Strategic Investment Consulting, April 2022, <https://www.cbre.com/insights/books/2022-us-construction-cost-trends/03-supply-chain-disruption>)



What are the Causes of the Supply Chain Disruption?

- Logistics, shipping, and trucking costs (often due to labor shortages)
- Goods and producer price inflation in the U.S. and E.U.
 - Material prices
 - Chip shortages
 - Increase global demand
- Energy prices
- Climate change
- Global events (war in Ukraine, factory shutdowns in China, tariffs, etc.)



Practical Planning Considerations: Initial Questions to Ask

- Have we reasonably defined the scope of the project, proposed programming, and budget?
- Does the Board of Education support the project? The community?
- Where is the project going to be located? Do we need to acquire property?
- Are there intergovernmental challenges such as zoning? Can we turn this into an intergovernmental opportunity?
- How are we financing this project? Cash on hand? Bonds? Grants? What are the applicable legal requirements and timelines?



Practical Planning Considerations: Selecting Your External Project Team

- Work with legal counsel for applicable procurement requirements
- Ask for list of comparable projects and make sure they have enough manpower to complete the work
- Project team members: Does the economic uncertainty change the considerations?
 - Architect/Engineer - Performs design services
 - Construction Manager – Professional services (CM-advisor v. CM-at-Risk)
 - General Contractor – Selected through bid process and performs the construction services
 - Owner’s Representative – Unburdens school district staff and has a fiduciary duty
 - Commissioning Agent – Works on behalf of the school district to confirm that the building operates as designed
 - Specialty Consultants – Hired by the school district to consult about the design & construction of specialty projects



Practical Planning Considerations: Setting an Achievable Timeline

- Setting the timeline
 - Programming 3 months
 - Space Planning 3 months
 - Schematic Design 3 months (many factors drive)
 - Design Development 3 months (many factors drive)
 - Construction Documents 3 months (many factors drive)
 - Bid Time Frame 2 months
 - Board Approval 1-2 months
 - Physical Construction 4-12 months



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Managing and Resolving Construction-Phase Problems to Keep Your Project on Track

Considerations for Limiting Risk



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Common Problems During the Construction-Phase

- Supply chain and labor market issues:
 - Equipment
 - Labor shortages
- Change Orders:
 - Statutory considerations: Bidding requirements? Public Construction Contract Act?
 - Unforeseen or latent conditions
 - Delays due to third-party or the District
- Failure to perform and breach of contract
- Injuries and safety



Keeping Your Project on Schedule: Key Tools

- Include owner-friendly contracts in your bid packets
- Use allowances, contingencies, and bid alternates to keep the project under budget
- Pre-order equipment: discuss lead times before issuing bid and consider having owner purchase directly and/or establishing deadlines to order
- Performance bonds
- Communication!

Contract Terms for a Timely and Successful Project: AIA Contracts

- AIA Contract Documents from Design to Closeout
 - Contract Sum and Change Orders
 - Progress Meetings
 - Requirements for Ordering Materials/Equipment
 - Allowances and Contingencies
 - Progress Payments & Retainage
 - Substantial Completion
 - Liquidated Damages
 - Owner Takeover



Owner Takeover and Termination:

- Problems Will Arise: Try to minimize through communication and consider the ramifications of termination
- Taking Over Portions of the Project:
 - Can a new contractor complete the work?
 - Will it cost more? Will it take longer? Will it be the same quality or better/worse? Bidding requirements?
 - Warranties with multiple contractors on site?
 - Potential litigation?
 - Will the current contractor ever be able to complete the work?
 - Will it be good workmanship? Create dangers/hazards?
 - Trustee of public money – does the contractor deserve to be able to finish and be paid?
- Termination for Cause Necessary for Bond Claim

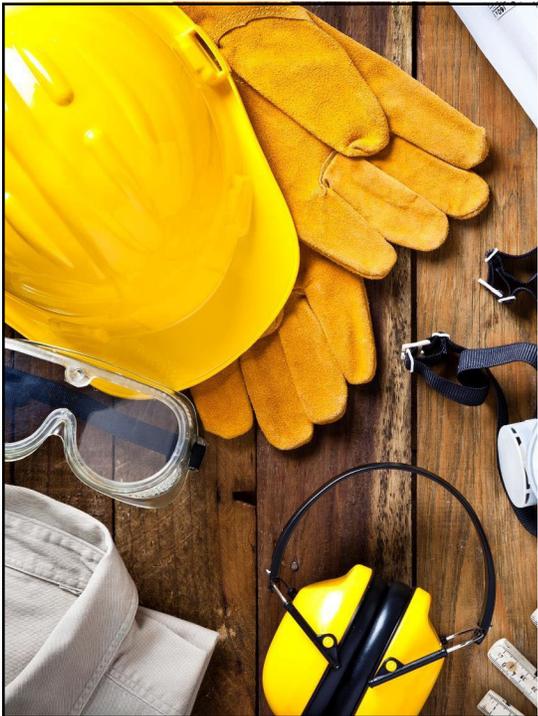


Closing Out Construction

Addressing and Resolving Ongoing Problems



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Mitigating Future Construction Claims at Closeout

- Punch List Problems
- Payment Issues:
 - Retainage
 - Sworn Lien Waivers and Liens
- Commissioning
- Warranty Documents
- 12 Month Walk-Through

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Construction Claims and Litigation

- Common Construction Claims
 - Payment Claims
 - Defect Claims
 - Design Defects Claims
 - Construction Defect Claims
 - Personal Injury / Worker's Comp Claims



Payment Claims

- Generally arise in three circumstances (often overlapping):
 - Work outside the scope of the contract, *i.e.* “extras”
 - Unforeseen conditions
 - Payment withheld due to construction defects
- Contractors may file a lien action under Section 23 of the Illinois Mechanics Lien Act (“Lien on Public Funds”)
- Payment bonds
- Local Government Prompt Payment Act:
 - Provide written notice if rejecting claims for payment due to defects

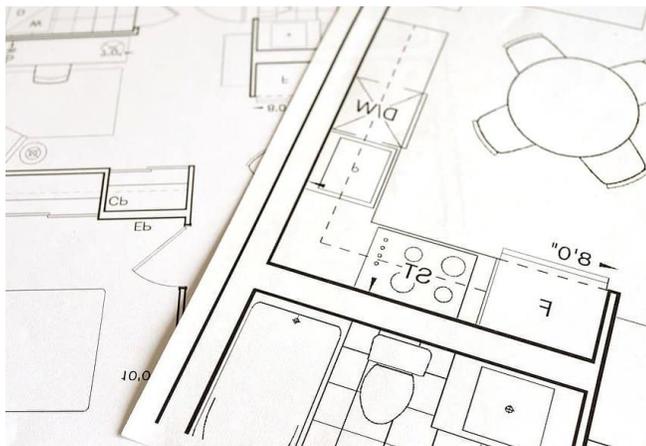
Design and Construction Defect Claims

- Defects in both the design and construction of a project can give rise to claims during and after construction
- What is a defect claim?
 - Defect claims arise when an element of a construction project does not:
 - Function as intended
 - Meet the requirements of the contract documents
 - Meet the owner's reasonable expectations
 - Design professional or contractor breached their contractual duties
 - Owner suffered damages (aesthetic or cosmetic issues?)



Design and Construction Defect Claims

- Architect and Design Professionals' Duties:
 - Design the project in accordance with contract and/or the standard of care
- Contractor(s) Duties:
 - Construct the project in strict accordance with project specifications
 - Responsible for means and methods
 - Consider warranties



Defect Claim Procedures and Best Practices

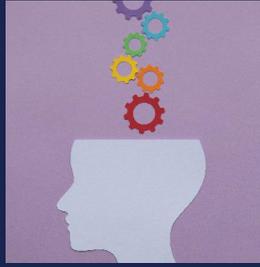
- Time limitations on filing a claim (735 ILCS 5/13-214)
 - Statute of limitations – 4 years from discovery of claim
 - Statute of repose – No claims after 10 years except that if defect is discovered within the 10 years, owner still has 4 years to bring claim (up to 14 years total)
- Tolling agreements
- Memorialize defective conditions and prevent spoliation claims
 - Notice to potential defendants and inspection



Dispute Resolution

- Mediation
 - Non-binding alternative to litigation often involving a third-party neutral with experience
- Arbitration
 - Private dispute resolution proceeding which may allow for some discovery but generally a quicker process
 - Downsides include the inability to appeal
- Litigation
 - Usually in the circuit court of the county where the property was constructed
 - Timely and costly





Summary

- Construction is complicated and can result in a number of problems
- Planning and communication can prevent future headaches
- Spend time on good contracts
- Consider reaching legal counsel involvement before problems elevate to claims or lawsuits
- Keep good records, document defective conditions, and provide written notices





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ADDRESSING EMPLOYEE MENTAL HEALTH CONDITIONS IN THE POST COVID-19 WORKPLACE

October 5, 2022

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Introductions



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Overview

Expanded Definition of Sick Leave

Prevalence of Mental Health Issues in the Workplace

Challenges with FMLA Leaves of Absences for Mental Health Issues

Challenges with Reasonable Accommodations for Mental Health Issues

Fitness for Duty Examinations



New Reasons to Use Sick Leave

Public Act 102-0866 (eff. 5/13/22)

- Amends 105 ILCS 5/24-6
- Adds “mental or behavioral health complications” as permissible basis to use sick leave.
- Adds “mental health professional licensed in Illinois providing ongoing care or treatment to the teacher or employee” to list of those from whom school can require certification from employee as basis for pay.



Prevalence of Mental Health Issues in the Workplace Post COVID-19



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Prevalence of Mental Health Issues in the Workplace Post COVID-19

National Alliance of Mental Illness

- 2020 Data
- Pandemic had a significant impact on mental health.
- Need to recognize importance of access to timely and effective care.
- 1 in 5 adults report that the pandemic had a significant negative impact on their mental health.
- 1 in 20 experienced a serious mental illness.
- 1 in 15 experienced a substance use disorder and mental illness.

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Prevalence of
Mental Health Issues
in the Workplace
Post COVID-19

Equal Employment Opportunity Commission (EEOC)

- Investigates charges of discrimination, including charges of disability discrimination.
- 37.2% of charges filed in 2021 alleged disability discrimination – the highest percentage among the protected classes (not including retaliation).

Prevalence of
Mental Health
Issues in the
Workplace

Equal Employment Opportunity Commission (EEOC)

In December 2016, the EEOC issued a publication titled, *Depression, PTSD, and Other Mental Health Conditions in the Workplace: Your Legal Rights*, in an effort to raise awareness of discrimination based on mental health issues.

Prevalence of Mental Health Issues in the Workplace

Department of Labor
(DOL)

Congress established the DOL's Office of Disability Employment Policy (ODEP) in 2001 to establish a focus on disability within the DOL's overall work.

Prevalence of Mental Health Issues in the Workplace

Department of Labor (DOL)

In 2019, the ODEP and its partners created a Mental Health Toolkit to educate employers about mental health issues in the workplace.

The four A's of a Mental Health Friendly Workplace:

- **Awareness** – build awareness and a supportive culture
- **Accommodations** – provide accommodations to employees
- **Assistance** – offer employee assistance
- **Access** – ensure access to treatment

Challenges with Leaves of Absences for Mental Health Issues

1. Deciphering constructive notice; and
2. Managing intermittent leave.



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FMLA Generally

An eligible employee is entitled to 12 weeks of unpaid leave during a 12-month period for:

- the employee's own serious health condition that renders the employee unable to perform the essential job functions, or
- to care for the employee's spouse, son, daughter, or parent who has a serious health condition.



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FMLA Generally

“Eligible Employees”:

- Employed by a covered employer;
- Employed for at least 12 months; and
- Worked at least **1,000 hours** in the 12-month period immediately preceding the request for leave. *See Public Act 102-335 (eff. 1/1/22)*

FMLA Generally

A serious health condition is a condition which involves:

1. Inpatient care; or
2. Continuing treatment by a health care provider.

The term “health care provider” can include clinical psychologists, clinical social workers, as well as physicians.

FMLA Generally

An employee's mental health issue may be a qualifying reason for a leave of absence under the FMLA.



FMLA Leave to Avoid Getting COVID-19?

Can an employee stay home under FMLA leave to avoid getting COVID-19?

- No, per the Department of Labor.
 - *The FMLA protects eligible employees who are incapacitated by a serious health condition, as may be the case with COVID-19 in some instances, or who are needed to care for covered family members who are incapacitated by a serious health condition.*
 - *Leave taken by an employee solely for the purpose of avoiding exposure to COVID-19 is not protected under the FMLA.*
 - *However, anxiety, PTSD, obsessive-compulsive disorder or similar mental health conditions may qualify for FMLA leave.*



Deciphering Constructive Notice

- Employees are required to provide employers with notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave.
- The employee is not required to directly reference the FMLA to put the employer on notice.



Deciphering Constructive Notice

- An employee's change in behavior could be enough to place an employer on constructive notice of the need for FMLA leave.
- Clear abnormalities in the employee's behavior may constitute constructive notice of a serious health condition.

Valdivia v. Township High School District 214, No. 19-1410 (7th Cir. 2019)



Managing Intermittent Leave



An employee is entitled to take FMLA leave on an intermittent or reduced schedule leave when medically necessary.

Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason.

Reduced scheduled leave is a leave schedule that reduces an employee's usual working hours per workweek, or hours per workday.

Requests for intermittent leave or reduced schedule leave are more prevalent for mental health issues because mental health issues often involve sporadic episodes or counseling sessions.



Managing Intermittent Leave

Curbing Intermittent Leave Abuse

- Require re-certification.
- Require the employee to make reasonable efforts to schedule treatment so as not to disrupt the workplace.
- Consider a temporary transfer.
- Enforce call-in procedures.
- Be prepared to ask questions when an employee requests time off.





Managing Intermittent Leave

Re-certification – how often?

1. Every leave year;
2. Every time the reason for leave changes;
3. Every time there is a request for an extension of leave;
4. When the employer receives information that casts doubt on the certification; and
5. When an employee exceeds the frequency or duration of the leave.



Rights Upon Return - FMLA



- An employee is entitled to reinstatement to the same or equivalent position as the employee held at the commencement of the leave.
- An employee is entitled to reinstatement even if a replacement employee is hired or the job has been restructured to accommodate the employee's absence.
- Fitness for duty certifications may be required so long as it's part of a uniformly-applied policy or practice.



Challenges with Reasonable Accommodations for Mental Health Issues



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Reasonable Accommodations for Mental Health Issue

Challenges for employers when assessing accommodation requests for a mental health condition:

Engaging in the interactive process; and

Selecting a reasonable accommodation.

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ADA Generally

- An employee is protected under the ADA if the employee is a qualified individual with a disability.
- “Disability” is defined as a **physical or mental** impairment that substantially limits one or more of the major life activities of an individual.



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ADA Generally

“Mental impairment” is broadly defined to include any mental or psychological disorder, such as intellectual disability, emotional or mental illness, or specific learning disabilities.

A mental health condition that is episodic, in remission, or mitigated by medication is a “disability” if the condition would substantially limit a major life activity when active.

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ADA Generally

A qualified individual with a mental health issue may be entitled to a reasonable accommodation under the ADA.

A “qualified individual” is an employee who can:

- Satisfy the requisite skills, experience, education, and other job-related requirements of the position; and
- Perform the “essential functions” of the position with or without a reasonable accommodation.

Engaging in the Interactive Process

- The ADA “interactive process” is the process of determining:
 - Whether the employee has a “disability” under the ADA; and
 - Whether a reasonable accommodation is available that would allow the employee to safely return to the workplace to perform the essential functions of his or her position.

COVID-19: ADA Requests for General Fears and Anxiousness



- Are employees entitled to accommodations based on a general fear of exposure to COVID-19?
 - *General fear or worry about returning to work due to COVID-19 is not a legal basis for an employee to remain off campus. However, certain pre-existing mental health conditions could qualify as ADA disabilities, such as anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder.*



COVID-19: ADA Requests

- In response to accommodation requests based on a general fear or anxiety, the employer should first determine whether the condition is a disability under the ADA, including requesting medical documentation if needed.



Engaging the Interactive Process

- Generally, the individual with the disability must request the accommodation related to a mental health disability.
- The request is the first step in the interactive process.
- The individual does not need to mention the ADA or even use the phrase “reasonable accommodation.”
- A family member, friend, or physician can make the request on behalf of the individual.
- The request does not need to be in writing.
- However, employers can follow-up in writing confirming the request.



Engaging the Interactive Process

Critical Note for Mental Health Issues

An employer should initiate the interactive process without being asked when the employer:

1. Knows the employee is disabled;
2. Knows, or has reason to know, the employee is experiencing workplace problems; and
3. Knows, or has reason to know, that the disability prevents the employee from requesting an accommodation.



Engaging the Interactive Process

During the interactive process, an employer may make a disability-related inquiry.

The purpose of the inquiry is to gain an understanding of the disability and assess the need for any accommodation.



Selecting a Reasonable Accommodations

Reasonable Accommodations

- Modification to a job application process to a qualified applicant with a disability;
- Modification to the work environment that enable an employee with a disability to perform the essential functions of the job; or
- Modifications that allow an employee to enjoy equal benefits of employment as are enjoyed by employees without disabilities.



Selecting a Reasonable Accommodation

Reasonable Accommodations can include:

1. Unpaid leave of absence (not indefinite or open-ended);
2. Job-restructuring;
3. Reassignment to a vacant position;
4. Acquisition or modification of devices; or
5. Modification of examinations

Selecting a Reasonable Accommodation

Employers do not need to eliminate an essential function of the position.

Employers are not required to lower production standards that are applied uniformly.

Employers are not required to provide personal use items needed in accomplishing daily activities both on and off the job (e.g. wheelchair, hearing aids, etc.).

Selecting a Reasonable Accommodation

Exceptions to the reasonable accommodation requirement:

- The accommodation will impose an undue hardship on the operation of business;
- The employer may refuse to accommodate someone who poses a direct threat to the health or safety of himself or others in the workplace.

Selecting a Reasonable Accommodation

Factors courts consider when assessing an undue hardship:

- Nature and cost of the accommodation;
- Overall financial resources of the employer;
- Type of operation of the employer; and
- Impact of the accommodation on the operation of the employer.



Selecting a Reasonable Accommodation

- “Direct threat” means a significant risk of substantial harm that cannot be eliminated or reduced by a reasonable accommodation.

Selecting a Reasonable Accommodation

- If more than one accommodation will allow the employee to perform the essential function of the job, then the employer has the right to choose the accommodation.

Refusing a Reasonable Accommodation

What if an employee with a disability that puts them at higher risk from COVID-19 asks for an extended leave of absence as an accommodation but there are other reasonable accommodations that can be provided in the workplace which would allow the employee to continue working?

- The ADA provides that an employer cannot require a qualified individual with a disability to accept an accommodation that is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may be considered not qualified.



Fitness for
Duty
Examinations





Fitness for Duty Examinations

- An employer may wish to send an employee to a fitness for duty examination if the employer believes the employee is not mentally or psychiatrically fit to perform the job duties.
- First, check the applicable collective bargaining agreement to determine any agreed upon procedure.
- Any fitness for duty examination must comply with the ADA's limitations on medical examinations.



Fitness for Duty Examinations

ADA Limitations

After employment begins, an employer may require medical examinations only when they are job-related and consistent with business necessity.

“Job-related and consistent with business necessity:”

- An employee’s ability to perform the essential job functions will be impaired by the medical condition; or
- An employee will pose a direct threat due to a medical condition.



Fitness for Duty Examinations

- What happens if the employee is determined to be mentally unfit?
- Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. 105 ILCS 5/10-22.4

Fitness for Duty Examinations

When an employee is deemed mentally unfit, then the employer should consider granting a leave of absence as an accommodation.

- Leaves of absences pursuant to the ADA are generally unpaid.
- Indefinite leaves of absences are not reasonable.
- The employee must be able to provide (through their healthcare provider) reasonable assurance that they will be able to return to work at a specified time.



QUESTION & ANSWER



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A word cloud featuring the phrase "THANK YOU" in the center, surrounded by various international expressions of gratitude in different colors and sizes. The words include: HVALA, OBRIGADO, RAHMET, GRAZIE, 谢谢, KIITOS, DANKE, SHUKRAAN, TAK, DANK JE, THANK YOU, TAKK, ARIGATO, GRACIAS, BARKA, СПАСИБО, MERCI, and TACK.



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PROTECTING YOUR PROPERTY TAX BASE AND REVENUE: PTAB AND TAX RATE OBJECTION INTERVENTION

October 5, 2022

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Introductions



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Protecting Your Property Tax Base and Revenue:

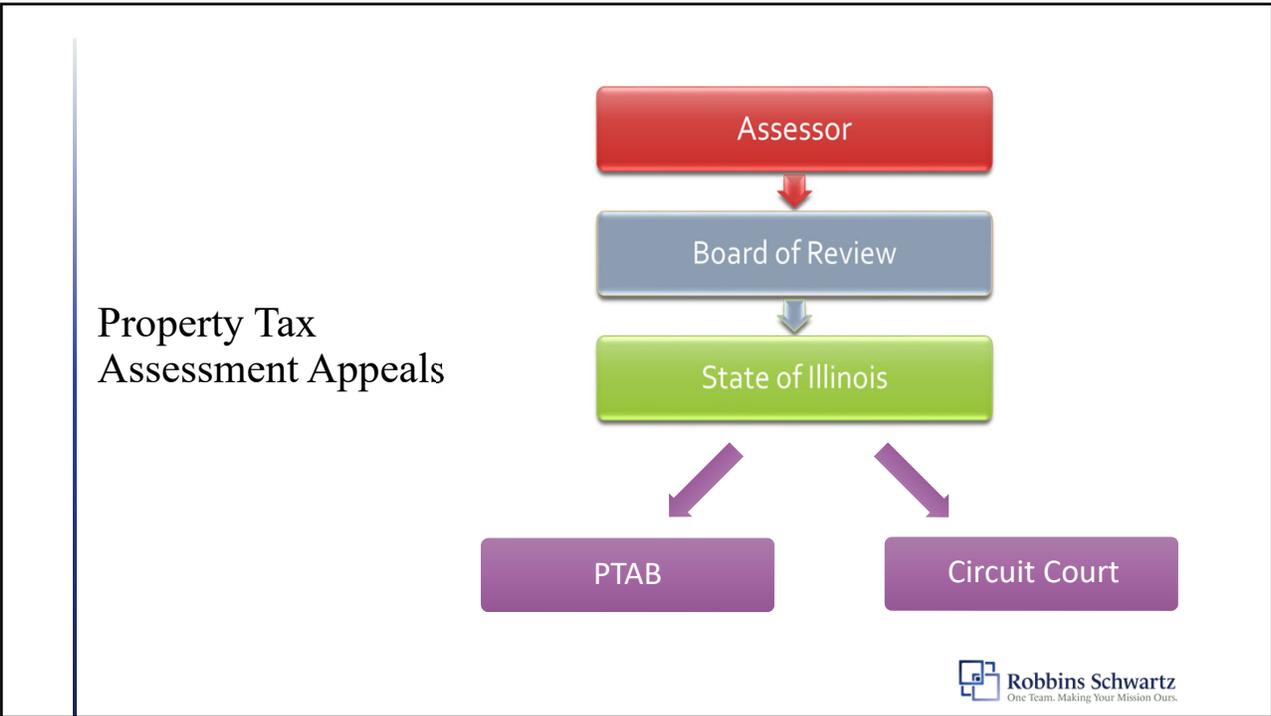
- Property Tax Appeal Process
- Impact and Implementation of Refund Recapture
- Tax Rate Objections
- New PTELL Law
- Management of Fund Balances and Transfers
- Property Tax Exemptions



Property Tax Appeal Process



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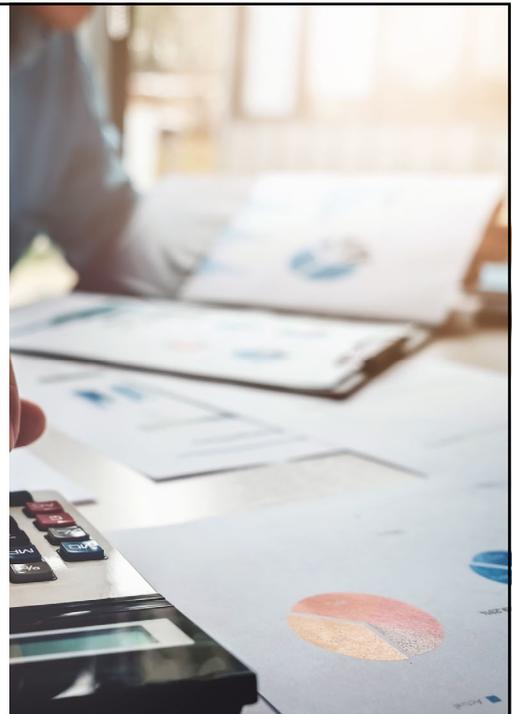
School District Intervention in Assessment Appeals

Taxing District intervention in assessment process is anticipated and supported by the Supreme Court, the Property Tax Code and the PTAB's Rules

- Get to the Reasonable Value
- Settle Property Tax Appeal Board (“PTAB”) Appeals
- Minimize Refunds
- Long-Term Settlement



Impact and Implications of Refund Recapture



What is the Refund Recapture?

- Adjustments for certificates of error, certain court orders, or final administrative decisions of the Property Tax Appeal Board - 35 ILCS 200/18-233
 - Beginning levy year 2021, annual refunds automatically added to levy.
 - PTAB Decisions, Circuit Court Assessment Objections, and Certificates of Error.
 - Aggregate refunds over past 12-months certified by County Treasurer by November 15.
 - For purposes of the PTELL, excluded from net year's aggregate extension base.
- Recaptured refunds are distributed by county to a separate fund or pro-rata.



Which Refunds are Included in Recapture?

- PTAB Decisions
- Specific Objections in Circuit Court
- Certificates of Error
- Not Tax Rate Objections

Bill could set up wave of property tax hikes

Legislation headed to Pritzker addresses over-assessment errors

By Rick Pearson
Chicago Tribune

Legislation headed to Gov. J.B. Pritzker's desk could set the stage for a wave of annual real estate tax increases across Illinois by giving local taxing bodies the ability to make up for refunds they've issued due to erroneous prop-

erty over-assessments by shifting those costs onto the rest of their taxpayers.

In Cook County alone, refunds issued by local taxing bodies during the 2020 calendar year in categories covered by the legislation total \$176.3 million — an amount roughly in line with annual refunds issued since 2015, based on statistics obtained through a Freedom of Information Act request from the county treasurer's office.

Under the measure, starting

with next year's property tax bills, a taxing district levy shall be increased to reflect refunds through rulings of the Property Tax Appeals Board, a court-ordered assessment correction or a certificate of error. Because such appeals can often take years, and due to annual assessment errors, the recapture provision means likely annual future increases in property tax bills regardless of current limits in state law.

Turn to Legislation, Page 2

Legislation on Page 1

The legislation points to the power of the education levy in Springfield, from local school districts and administrators to teachers' unions, amid Illinois' city-dependent system of funding schools at the local level through property taxes rather than through state funding. Property taxes for schools traditionally make up the biggest line item on real estate tax bills and propo-



The Illinois State Capitol on Jan. 13 in Springfield. BRIAN CASSELLA/CHICAGO TRIBUNE

property assessment."

DeWitte said he believed the legislation would put more pressure on assessors to deliver more accurate assessments to avoid constant property tax increases driven by mistaken calculations. "That definitely was one of the byproducts of this legislation," he said.

Cook County Assessor Fritz Kasig's office said he took no position on the bill when it was being considered in the General Assembly and had no comment on its passage — though the



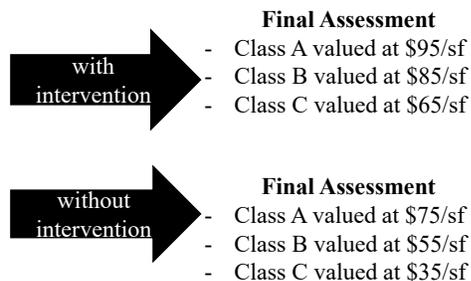
Which Taxing Districts are Affected?

- Applies to all taxing districts on a property's tax bill.
- PTELL v. Non-PTELL
 - Section is part of PTELL, but Illinois Department of Revenue guidance interprets statutory intent applying to both PTELL and non-PTELL districts.
- Certain counties have removed collection loss extensions from levy due to refund revenue recaptured under the new law.
 - Loss in collection is an annual estimate of revenue that cannot be collected from taxpayers.
 - Based on historical collection rates.
 - Clerk calculates rate sufficient to fund the levy.
- Although the language of the statute is automatic, some counties are offering the option to abate the funds by filing a resolution directing the county clerk to abate.



Protecting the Tax Base via Participation in PTAB and Assessment Appeals

- Defending the assessments of the highest valued properties prevents a cascading depreciation of lower valued properties.



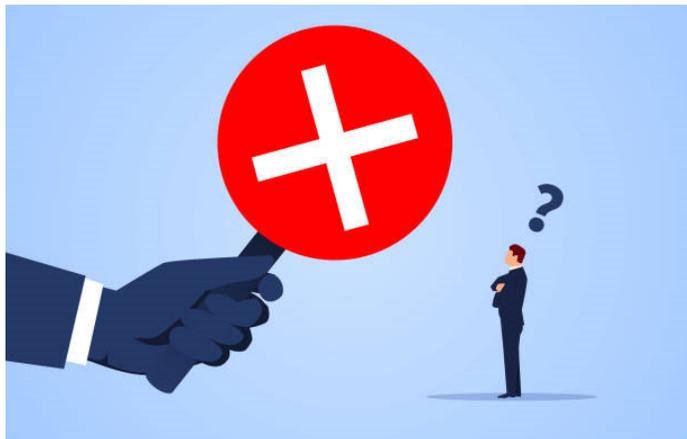
Other Refund Recapture Challenges

- Potential rider bills, revisions, or amendments
- Proposed replacement – HB 4130
 - Repeals P.A. 102-0519
 - Taxing district option: requires additional levy
 - Abatement for taxpayers receiving refunds
 - Applies to all taxing districts
- Challenges to constitutionality.



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Tax Rate Objections



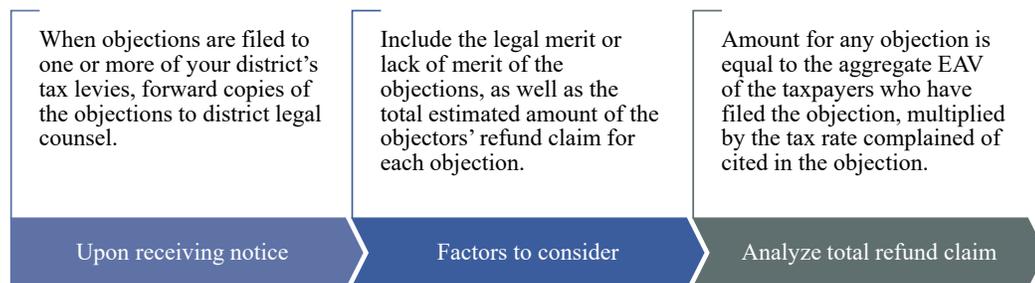
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Tax Rate Objections

- A would-be objector must
 - pay its entire tax bill within 60 days after the 1st penalty date for the final installment of taxes for that year, and
 - file its objection complaint within 75 days after the 1st penalty date for the final installment – typically, in October or early November, in counties other than Cook.



Defending or Otherwise Resolving Tax Objections – Recommended First Steps



Common Objections – “Excessive Accumulation”

- Doing the CIPS v. Miller math:
 - Compute “available assets” of the fund, by adding together the fund balance at the end of the FY preceding the challenged tax levy, plus prior year taxes still to be received.
 - Compute the fund’s average annual expenditure for the three FYs preceding the levy.
 - Divide available assets by three-year average annual expenditure. If the resulting “funds/average expenditure” ratio is > 2.0 , objector may have a prima facie case.

Common Objections – “Excessive Accumulation”

- Typically assert that the challenged levy resulted in an excess accumulation of assets in the levied-for fund because, at the time the levy was made, the fund’s available assets exceeded two times its average annual expenditure.
- Excess accumulation claims are analyzed according to the guidelines set out in *Central Illinois Public Service Co. v. Miller*, 42 Ill.2d 542, 248 N.E.2d 89 (1969) (“CIPS v. Miller”).
- If available assets of that magnitude are shown, the taxing body can defeat the objection by presenting credible evidence as to why it needed to make an additional levy.

Common Objections – Improper Expenditures of “Tort” funds

- Allege that taxing district financial records show that it made “improper expenditures” from proceeds of levies for tort/liability insurance purposes, and that the tort levy should be reduced by the amount by which the fund would be replenished if reimbursed for the alleged wrongful “diversions of assets”.
- To support plaintiffs’ allegations, the text of these objections often cite budget line items for unemployment compensation and workers compensation.



Common Objections – Loss in Collection

- Allege that County Clerk improperly added % for anticipated loss in collection when historical collection rate did not justify the additional tax.
- Taxing Districts should evaluate potential collection loss in light of current events.



New PTELL Law



Flexibility in Levying - Changes to PTELL

- New Section 18-190.7 of the Property Tax Code
 - Amends PTELL by eliminating the inadvertent tax extension reduction that districts receive in future tax extensions when reducing levies.
 - Redefines the aggregate extension base as the greater of
 - last year's aggregate extension, or
 - what the aggregate extension would be if the District had levied the maximum amount available for the past three years.



Flexibility in Levying - Changes to PTELL

- New Section 18-190.7 - Limitations to Recapture:
 - May not exceed prior year's aggregate extension by more than 5% without voter approval.
 - However, if a district is unable to recapture the entire unrealized levy amount in a single levy year due to the 5% limitation, the district may increase its aggregate extension in each immediately following levy year until the entire levy amount is recaptured.
 - District must certify to county clerk not more than 60 days after filing levy resolution.



Changes to PTELL

Example: If a district reduced its 2022, 2023, or 2024 levy:

- Within 60 days of that levy resolution being filed with the county clerk, the district would also certify to the clerk that the district did not levy the max in that particular year.
- The aggregate extension base for 2025 would be equal to what it would have been if the district had levied the max all three years 2022-2024.



Management of Fund Balances and Transfers



23

How Can We Spend the Funds?

- Recaptured refunds are distributed by county to separate fund or pro-rata
- Excessive accumulation concerns
- Fund transfers
- Permissible transfers under 17-2A
 - Educational to Operations and Maintenance (O&M*)
 - Educational to Transportation
 - O&M to Educational
 - O&M to Transportation
 - Transportation to Educational
 - Transportation to O&M
 - Tort to O&M
- Sunset extended – After June 30, 2024 transfer must be to meet one-time, non-recurring expense.



How Can We Spend the Funds?

- ISBE Rule 100.10
- Transfers to Capital Projects Fund:
 - “When revenues or other sources of funds are pledge to pay for a capital project or acquisition, the moneys shall be transferred into the Capital Projects Fund.
 - “All other inter-fund transfers shall be accomplished in accordance with the applicable provision of Section 17-2A of the School Code.”
- ISBE Audit Form Account Number 8840 – “Fund balance transfer to pay for Capital Projects.”
- Statutory authority for ISBE Rule 100.10 is unclear
- ***Safe approach is to transfer to O&M under 17-2A***



Property Tax Exemptions



Property Tax Exemptions

What types of property are exempt from paying property taxes?

- Schools
- Religious organizations
- Charities

What is the process for obtaining an exemption?

Can schools challenge whether a property is exempt?





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ADDRESSING STAFFING SHORTAGES AND ENSURING FAPE TO STUDENTS WITH DISABILITIES

October 5, 2022

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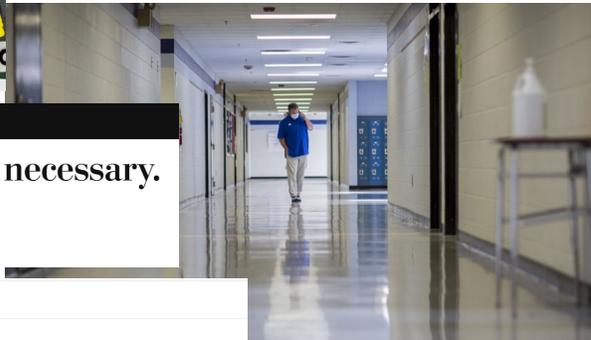


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Introduction

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TEACHING & CLASSROOM TEACHER TRAINING

Illinois school staffing shortages could persist for years, a new report finds

By Samantha Smylie | Jan 18, 2022, 3:51pm CDT



General FAPE Principals

- The cornerstone of the Individuals with Disabilities Education Act (“IDEA”) is the entitlement of each eligible student with a disability to a **free appropriate public education (“FAPE”)**
- Consisting of special education and related services designed to meet the student’s unique needs and prepare the student for further education, employment and independent living.

Addressing Missed Services: *School Code* Requirements

If a student’s IEP team determines that a certain service is required for the student to receive a FAPE and that service is not implemented within 10 school days after the service was to be initiated as set forth by the student’s IEP, the district shall provide the student’s parent/guardian with written notification that the service has not yet been implemented.

The notification must be provided to the student’s parent/guardian within 3 school days of the district’s non-compliance with the student’s IEP and must inform the parent/guardian about the district’s procedures for requesting compensatory services.

IEP Implementation: Lessons from Case Law

Regardless of whether a staffing shortage exists, a school is still responsible for providing services and may be required to make up any missed services through compensatory education

However, districts can establish substantial compliance by showing progress towards IEP goals, improvement in grades, social-emotional and behavioral progress and progress on state/district assessments.

IEP Implementation: Lessons from Case Law

- Several circuit courts have held that only a **material implementation** failure will qualify as a denial of FAPE.
- The failure to provide services to a student must have resulted in a student's lack of progress or inability to derive a benefit from their educational program.
- Where a district substantially implements a student's IEP, its failure to comply with a single component of the IEP will typically not constitute a denial of FAPE.

Hypothetical 1

- Johnny is a 3rd grader, and a student with Autism, who receives his special education supports and services primarily in the general education setting.
- During lunch, recess and the PE special, Johnny is supposed to receive 1:1 paraprofessional support due to concerns with Johnny's behavior in unstructured settings.
- The past two weeks, due to staffing shortages, Johnny's teacher reassigned the paraprofessional to support other students.
- Would this be considered a "material implementation" failure?
- You, the building principal, become aware of this issue. How should you respond?

Hypothetical 2

- The District is experiencing staffing shortages and two special education teaching positions are vacant.
- Eight 6th grade students in the district fail to receive their special education supports and services outside of the general education setting, required in their IEP, because the District was unable to hire replacements for the licensed special education teacher.
- Would this be a "material implementation" failure?
- How should you respond?
 - You are able to cover the resource positions for the remainder of the semester, but with a substitute who does not have an LBS1, now what?
 - Same scenario, but in a self-contained classroom environment, does anything change?

Hypothetical 3

- Jane, a medically complex student, requires the district to transport her to and from school on an air-conditioned bus with a wheelchair lift and nurse.
- However, the district is facing a shortage of bus drivers and nurses to accompany the student.
- Jane is unable to access virtual learning because of her medical needs.
- You are left with a diversion dilemma: Either divert resources from other students or divert funds to provide greater incentives for nurses and bus drivers so the District can meet its obligations to comply with Jane's IEP.
- What do you do? Other alternatives?

Case Example: *Steamboat Springs (CO) Sch. Dist. Re-2, (OCR 04/12/22)*

- Issue: Did the school district violate Section 504 and Title II when it used middle school aides and teachers to fill in for missing high school paraprofessionals.
- The school's classroom had ten students with disabilities and staffed two full-time special education teachers & nine full-time paraprofessionals to be fully compliant with the IEPs.
- According to the Director and Principal, to alleviate the paraprofessional shortage in the Classroom, the District:
 - a) had paraprofessionals at Steamboat Springs Middle School provide coverage when students who the paraprofessionals typically served at were absent;
 - b) paid special education teachers at the School to provide coverage in the Classroom during their planning periods;
 - c) had general education teachers voluntarily provide coverage in the Classroom during their planning periods; and
 - d) had a paraprofessional substitute on specific school days.
- Additionally, the Principal told OCR that he occasionally provides support in the Classroom.

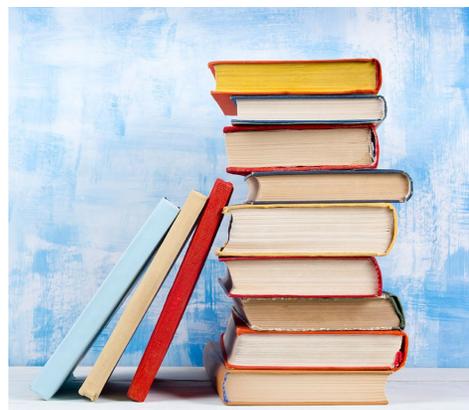
Case Example: *Steamboat Springs (CO) Sch. Dist. Re-2*, (OCR 04/12/22)

- OCR Determination: Colorado district's creativity in trying to make up for a severe paraprofessional shortage with teachers and substitutes didn't negate the fact that the shortage may have denied FAPE to the high schoolers attending a substantial needs classroom.
- OCR is concerned about whether the District was able to provide a FAPE to all students in the Classroom, given the stated paraprofessional staffing needs for the Classroom relative to the actual paraprofessional staffing levels for the Classroom during the 2021-2022 SY with the classroom special education teachers out for different parts of the year.
- It entered into a resolution agreement with OCR because it could not demonstrate that the individuals who filled in were properly trained to act as paraprofessionals.



Compensatory Services: General Definition

- Compensatory education (or compensatory services) is not a remedy which is expressly identified or defined in the IDEA.
- Courts and administrative hearing officers have the authority to order such services by exercising their authority to “grant such relief as the court determines appropriate.”
- Compensatory education is meant to remedy a denial of FAPE.



Compensatory Services: Purpose

- Compensatory services are not meant to punish the district for denying the student FAPE.
- The purpose is to place the student in the position that the student would be in had the district provided the appropriate services in the first place.
- Typically, compensatory services are thought to be services above and beyond what is normally due to the student.
- Keep in mind procedural vs. substantive issues.
 - A procedural error typically only results in a denial of FAPE if the student was harmed by the error.
 - Example: A student's IEP calls for counseling services, but social work services were accidentally provide instead vs. a student's IEP calls for counseling services and they received none.



Compensatory Services: Factors Considered

- Courts and hearing officers consider a variety of factors in determining whether compensatory services are owed to the student. For example:
 - Length of denial
 - Student progress towards IEP goals/benchmarks
 - Student progress on district/state assessments
 - Other academic, functional and/or behavioral data demonstrating progress
- Compensatory education can be in the form of reimbursement for out-of-pocket educational expenses, additional services or supports, and/or an extended placement or more restrictive educational setting than that to which the student would otherwise be entitled.



Hypothetical 4

- The staffing issues involving Johnny do not resolve, and Johnny's paraprofessional is reassigned on five additional occasions during Johnny's recess period.
- Johnny's IEP team convenes his annual review meeting.
- During the meeting, the classroom teacher mentions that Johnny has had some issues on the playground this year and has had to sit out and miss portions of recess due to his behavior.
- The team also reports that Johnny did not meet his quarterly benchmark in several goal areas, including his social-emotional and functional goals.
- Johnny's mother becomes upset, claiming that this is all the teacher's fault for reassigning Johnny's paraprofessional.
- She demands that the team provide Johnny with a full-time 1:1 paraprofessional and additional after-school tutoring to address the missed services.
- How should the team respond? Is Johnny owed compensatory services?



Hypothetical 5

- Your school Speech Pathologist has given notice that she will be going on maternity leave at the end of the month.
- She intends to be out for three months.
- The District has tried to contract with an outside agency to deliver services to the impacted students during the period of maternity leave, but the agency has not been able to guarantee the availability of a substitute Speech Pathologist.
- Several parents have reached out to you asking if they can hire their own private speech therapist for three months and receive reimbursement for the services while the Speech Pathologist is out on leave. What is your response?
- How should the District address this issue if the District is unable to secure an alternative Speech Pathologist to deliver the special education services?



Tips for Addressing Staffing Shortages

- During staffing shortages, services must remain appropriately tailored to the student.
- Substitute lesson plans should incorporate details regarding any accommodations, modifications or other supports needed for students with disabilities.
- Communicate with District-level administration regarding staffing and/or IEP implementation issues right away. Do not wait until parents start complaining!



Tips for Addressing Staffing Shortages

- Consider alternative ways to provide services when a staff member is out (e.g., Can the special education teacher work on social- emotional goals while the social worker is out?)
- Maintain robust progress monitoring data for all students. This information will help determine whether compensatory services are warranted.
- Avoid adding unnecessary services that may increase the likelihood of implementation hiccups.
 - Services in the IEP should be determined based on the student's academic and functional needs.
 - Avoid use of “boilerplate” language/services in IEPs.



Tips for Addressing Implementation Issues

- Document IEP team discussions in the meeting notes, particularly where there is disagreement among the team.
- Keep documentation of any missed services and how those missed services were/will be addressed (e.g., provided by a substitute, provided at a later time).
- Ensure you are complying with the notice requirements for missed services in the event that implementation issues cannot be resolved.
- Work with District-level Administration to communicate with parents/guardians regarding missed services.





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**PUBLIC BIDDING AND PROCUREMENT: MEETING THE
LEGAL REQUIREMENTS AND STRATEGIES FOR
PURCHASING THE GOODS AND SERVICES THAT YOU
WANT**

October 5, 2022

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Introduction



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Agenda

- The Duty to Publicly Bid
- The Bidding Process
- Unique Bidding Procedures and Exemptions
- To Bid or Not to Bid



The Duty to Publicly Bid



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The Duty to Publicly Bid

- Section 10-20.21 of *The School Code*, 105 ILCS 5/10-20.21, provides school districts with the authority:
 - To award **all** contracts for purchase of supplies, materials or work or contracts with private carriers for transportation of pupils involving expenditures in excess of **\$25,000 or a lower amount as required by board policy** to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability...

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The Duty to Publicly Bid

- Except the following:
 - Contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important role;
 - Contracts for the printing of finance committee reports and departmental reports;
 - Contracts for the printing or engraving of bonds, tax warrants and other evidences of indebtedness;
 - Contracts for the purchase of perishable foods and beverages;
 - Contracts for materials and work which have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures **not in excess of 10% of the contract price**;



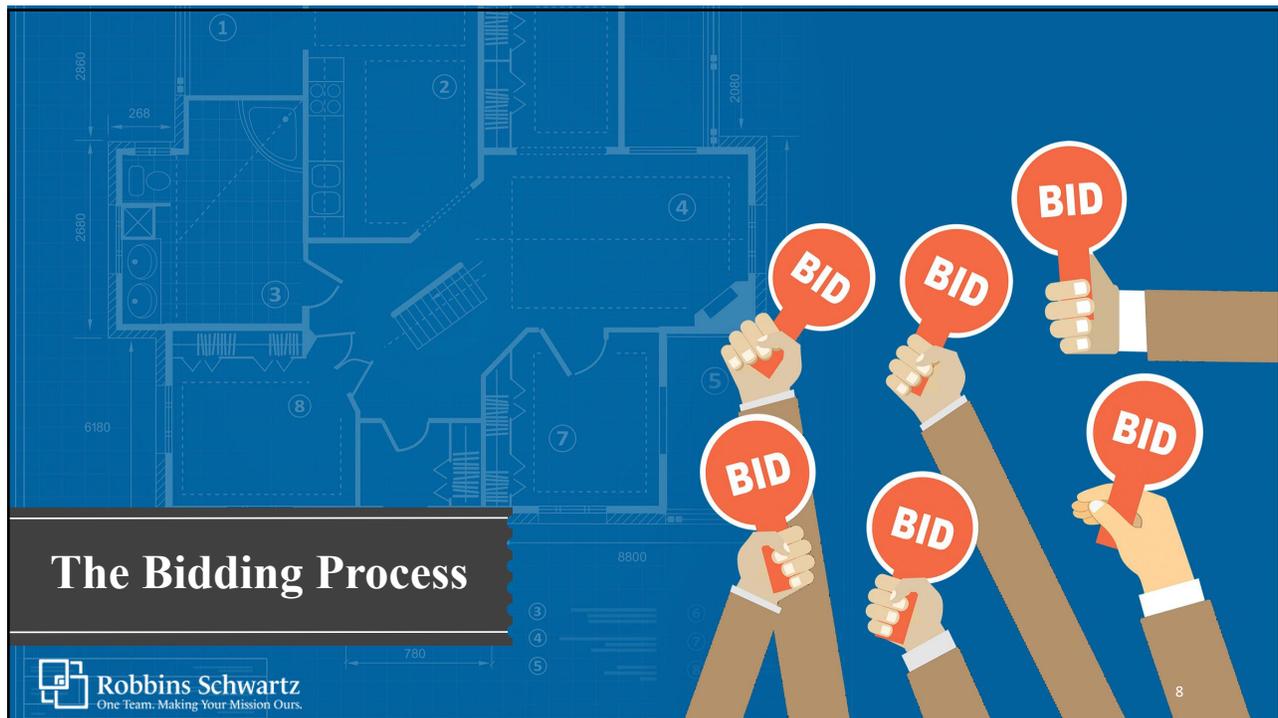
The Duty to Publicly Bid

- Except the following:
 - Contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with manufacturer or authorized service agent of that equipment where the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized service agent;
 - Purchases and contracts for the use, purchase, delivery, movement, or installation of **data processing** equipment, software, or services and telecommunications and interconnect equipment, software, and services;
 - Contracts for **duplicating machines** and supplies;
 - Contracts for the purchase of **natural gas** when the cost is less than that offered by a public utility;
 - Purchases of equipment **previously owned** by some entity other than the district itself;



The Duty to Publicly Bid

- Except the following:
 - Contracts for repair, maintenance, remodeling, renovation or construction, or a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type or extent of an existing facility;
 - Contracts for goods or services procured from another governmental agency;
 - Contracts for goods or services which are economically procurable from only one source such as the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph;
 - Where funds are expended in an emergency and such emergency expenditure is approved by $\frac{3}{4}$ of the members of the Board (6 yes votes);
 - State master contracts authorized under Article 28A of the School Code;



The Bidding Process

- Bid Specifications
 - Certainty Required
 - Sole Sourcing
 - Bid Addendum & Questions
 - Pre-Bid Meeting

The Bidding Process

- Bid Submittals
 - Sealed Bids
 - Electronic Bids
 - Timeliness of Bids
 - Modification, Withdrawal or Re-submittal of Bids Before Bid Opening
- Public Opening and Reading of the Bids
 - Withdrawal or Modification after the Bids Are Received

The Bidding Process

Awarding the Bid – Criteria

- Lowest
 - Alternate Bids
- Responsive
 - Material Defects – Nonwaivable
 - Minor Variances – Waivable
- Responsible
 - Pre-qualification of Bidders
- Post-Bid Pre-Award Negotiations

The Bidding Process

- Rejecting the Bid
 - Discretion “to reject any and all bids.”
 - Documenting the Basis for Awarding/Rejecting Bid



The Bidding Process

- Bid Mistakes - Circumstances Warranting Judicial Relief from a Bid Mistake
 - Material Feature of the Contract
 - Neglect in the Preparation of the Bid
 - Maintaining the *Status Quo*
 - The Owner's Knowledge of the Mistake
 - Unconscionability



Unique Bidding Procedures and Exemptions

EXEMPT



Transportation Contracts

- Contracts providing for the **transportation of pupils**, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder or bidders most able to provide safety and comfort for the pupils, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price. However, at no time shall a cause of action lie against a school board for awarding a pupil transportation contract per the standards set forth in this subsection (a) unless the cause of action is based on fraudulent conduct.



Professional Services

- RFQ process required to select **Architects, Engineers & Land Surveyors** under **Local Government Professional Services Selection Act - 50 ILCS 510/0.01**.
 - RFQ can be solicited by posting notice on website, publication or sending notice to firms who have a current statement of qualifications with the public body.
 - RFQ not required if the public body has a previous satisfactory relationship with the firm.
 - Board can waive the RFQ process for contracts less than \$40,000+ based on CUP index.
 - Emergency situations.



Guaranteed Energy Savings Contracts

- An RFP process is required for school districts to enter into **Guaranteed Energy Savings Contracts**
 - An RFP must be submitted to the administrators of the Capital Development Board Procurement Bulletin for publication
 - A public notice must be published in a newspaper 30 days before the date proposals are due
 - *Sealed* proposals must be evaluated based on an analysis of:
 - Costs of installation, modification or remodeling
 - An analysis of whether either the energy consumed or operating costs, or both, will be reduced as a result of the proposed conservation measures
 - The Contract must be awarded at a public meeting with at least 10 days notice
 - Award of guaranteed energy savings contract must include a written guarantee that energy or operational cost savings will be met within 20 years



Governmental Cooperative Purchasing

- At least two statutes authorize **Governmental Cooperative Purchasing**
 - Joint Purchasing Act (30 ILCS 525/1)
 - Article 28A of the School Code (105 ILCS 5/28A)
- The Joint Purchasing Act is a stand-alone statute that supersedes any other individual bidding requirements. 30 ILCS 525/2(a).
 - The cooperative must be run by a government body.
 - The school district must join the cooperative by a board approved agreement.
 - Bids and proposals must be based on competitive solicitations.
 - Bids and proposals must be solicited by public notice as specified by the Joint Purchasing Act.



Governmental Cooperative Purchasing

- What are the legal requirements to engage in cooperative purchasing?
- The cooperative must be run by a government body.
- The school district must join the cooperative by a board approved agreement.
- Bids and proposals must be based on competitive solicitations.
- Bids and proposals must be solicited by public notice as specified by the Joint Purchasing Act.



Governmental Cooperative Purchasing

- What selection criteria can a cooperative use?
- All purchases, orders or contracts shall be awarded to the lowest responsible bidder or **highest-ranked proposer**, taking into consideration:
 - The **qualities** of the articles or services supplied;
 - Their **conformity** with the specifications;
 - Their **suitability** to the requirements of the participating governmental units; and
 - The **delivery** terms.



Governmental Cooperative Purchasing

- Consult with legal counsel on whether participation in a particular cooperative will meet the requirements of Illinois law.
- Examine the terms for participation:
 - Is there an entry fee?
 - Is there a participation fee?
 - Are there other costs of participation?



Governmental Cooperative Purchasing

- Examine the proposed contract (or have your counsel examine it). Identify any unacceptable business or legal terms and conditions.
- Confirm in advance that you will be able to amend terms and conditions to meet your business expectations, and to comply with Illinois law.
- Investigate the actual vendor, contractor, or service provider and its products.



Governmental Cooperative Purchasing

- What are some strategies for success with Cooperative Purchasing options?
- Make sure you leave yourself enough time.
- Obtain informal quotes or estimates from local vendors/contractors first. It may be cheaper to use the traditional bidding method.
- Look at the offerings of all of the cooperatives before deciding to select one particular cooperative.



Food Service Contracts

- The School Breakfast and Lunch Program Act (105 ILCS 125/.05 et seq.) requires that all school districts have a free lunch program for eligible students, either through participation in the National School Lunch Program or by providing such lunches independently.
- Participation in the National School Lunch Program (NSLP) requires schools districts to comply with ISBE procurement procedures.
 - Food Service Management Company
 - Vended Meals by FSMCs
 - Vended Meals
- School districts not participating in the NSLP must comply with its own bidding requirements.





To Bid or Not to Bid

To Bid Or Not To Bid

- The following are a list of various types of contracts. For each example, the question is “to bid or not to bid?”
- In other words, are these contracts required to be publicly bid pursuant to Section 10-20.21 of the School Code?

To Bid Or Not To Bid

A contract for the purchase of paper goods and supplies totaling \$24,000?



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To Bid Or Not To Bid

A service contract totaling \$50,000 for the following individuals:

- a. A CPA retained to audit the district's financial records?
- b. A local artist retained to paint a mural in the district cafeteria?
- c. A local painter hired to paint all the district's lockers?

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To Bid Or Not To Bid

A \$60,000 annual contract for milk?



To Bid Or Not To Bid

During a large construction project, a change order totaling \$75,000?



To Bid Or Not To Bid

A \$150,000 annual maintenance contract
for the district's HVAC system?



To Bid Or Not To Bid

A \$300,000 contract for the installation of a district-wide security
system?



To Bid Or Not To Bid

A \$300,000 contract for the purchase of copying machines for the district office and resource centers?

To Bid Or Not To Bid

A \$500,000 contract for the purchase and installation of “smart” boards in all district classrooms?

To Bid Or Not To Bid

A three-year contract for the purchase of electricity totaling over \$100,000 per year?



To Bid Or Not To Bid

A contract for \$500,000 to purchase a used mobile classroom?





To Bid Or Not To Bid

A \$48,000 contract for the renovation of the stage in the district auditorium?



To Bid Or Not To Bid

A \$75,000 contract for repair work to the roof which was severely damaged during a recent storm?



To Bid Or Not To Bid

A contract for both regular and special education transportation services?



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BARGAINING UPDATE: THE IMPACT OF STAFFING SHORTAGES AND INFLATION

October 5, 2022

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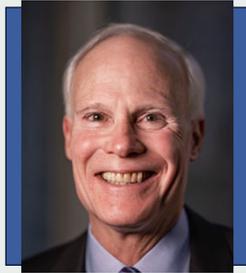
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Introduction



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What's the Problem?

- COVID-19 → the “Great Resignation”
 - In 2021, more than 47 million workers quit their jobs – CNBC
- Difficulties attracting and retaining employees
- Rising inflation



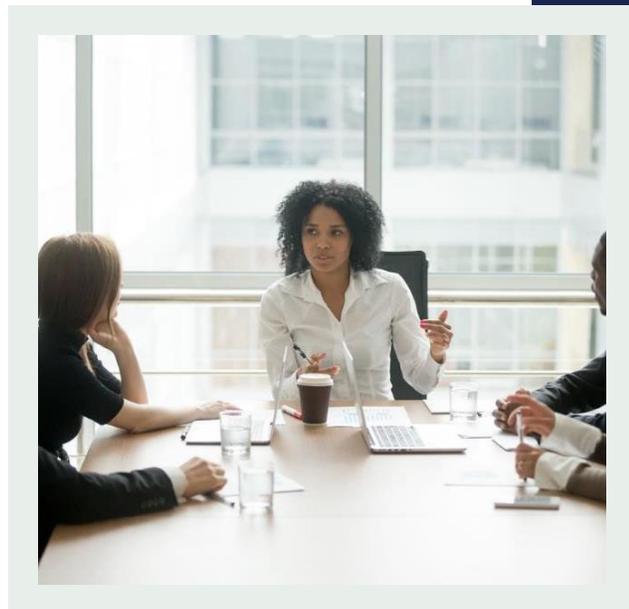
Unique Problems Faced by School Districts

- As of August 2022, there are 5,301 open and unfilled school positions throughout Illinois. Source: ISBE.
 - “Lack of Qualified Applicants.”
- Increased competition from non-educational employers for individuals holding school support personnel positions.
- Collective bargaining obligations in order to attract new candidates and retain current staff.



How to Address the Staffing Shortage Problem?

- Mid-Term Bargaining
 - Wage/Benefit Adjustments
- Subcontracting
- Successor CBA Negotiations



Mid-Term Bargaining Generally

- Section 10 of the Illinois Educational Labor Relations Act sets forth the scope of an educational employer’s duty to bargain:
 - “An educational employer and the exclusive representative have the authority and the duty to bargain . . . with respect to wages, hours, and other terms and conditions of employment, . . .”
- The Illinois Educational Labor Relations Board has held that an employer has a duty to mid-term bargain over issues not fully bargained over covered by the parties’ CBA, absent an express waiver of mid-term bargaining or “zipper” clause.



What Mid-Term Changes Must be Bargained?

- “Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of service, its overall budget, the organizational structure and selection of new employees and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives . . .”



What if We Cannot Agree with the Union?

- You are not stuck. School districts have the right to propose changes to bargaining unit employees' wages or benefits during the term of the CBA provided it notifies the union and bargains in good faith to agreement or impasse. Should an impasse be reached, the employer may implement its last best offer.
- What is impasse?
 - A stalemate in negotiations process which may prevent an agreement.
 - The IELRB will review each negotiation on a case-by-case basis to determine whether impasse exists.
- Can the union strike if it does not like the implemented terms?
 - Short answer – no, not during the term of the CBA.



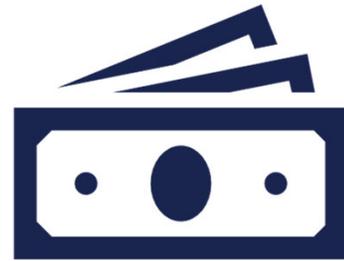
Mid-Term Bargaining Options & Strategies

- Consider market value for the position(s) in question
- Targeted wage adjustments
 - Contact union representatives to begin discussions for mid-term adjustments.
 - Explain nature of the problem, proposed adjustment, and rationale.
 - Make clear this is targeted based upon the problem and not for all union members.
 - Option – negotiate a one-time adjustment to the starting wage rate for the position category and extend the maximum wage range or top salary step.
 - Memorialize the adjustments via memorandum of agreement.



Mid-Term Bargaining Options & Strategies

- Signing bonuses
 - Consider the specific bonus terms.
 - Still have a bargaining obligation even though it is to be paid to new hires. Notify the union of the proposed plan and bargain upon request.
 - Be prepared for union proposal of a concurrent “retention” bonus for current staff.
 - Memorialize any plan and include a “sunset” provision.



Subcontracting Non-Instructional Services

- Districts may turn to third parties to provide non-instructional services, but there are both statutory and bargaining obligations when doing so.
- Section 10-22.34c of *The School Code* outlines procedural requirements for districts that contract with a third-party for non-instructional services.



Subcontracting Non-Instructional Services

- A school district may enter into a contract with a third party for non-instructional services currently performed by any employee upon 90 days written notice to any affected employee.
- However, a third-party contract may not be entered into or become effective during the term of a CBA covering any employees who perform the non-instructional services.
- Thus, such a contract may only take effect upon the expiration of an existing CBA.
- Districts must also comply with other procedural requirements (e.g., bidding) before a contract can be awarded.



Subcontracting Non-Instructional Services

- Emergency Exception
 - The statute contains a provision which allows a school district to enter into third-party contracts for non-instructional services currently performed by an employee or bargaining unit member for the purpose of augmenting the current workforce in an emergency situation that threatens the safety or health of the school district's students or staff.
 - In such cases, the contract may last no longer than three months.
 - Districts must also comply with all of its obligations under the IELRA before awarding emergency contracts.



Subcontracting – Labor Considerations

- Subcontracting is a mandatory subject of bargaining if members of the bargaining unit have a reasonable expectation of performing the subcontracted work.
- A school district should not subcontract any services which could be performed by union staff without negotiations unless:
 - The CBA specifically reserves the employer’s right to unilaterally subcontract services; or
 - The union expressly waives its right to bargain over the subcontracting decision.



Subcontracting – Labor Considerations

- To satisfy bargaining obligations, a school district must:
 1. Notify the union that the district may consider subcontracting services.
 2. Meet with the union to provide an opportunity to discuss proposed decision.
 3. Provide necessary information to the union to allow it to prepare any alternative proposals.
 4. Give appropriate consideration to any union counterproposals.
 5. Memorialize any agreement to limit exposure to grievance or ULP charge.



Successor CBA Negotiations

- Planning for Bargaining
 - Reviewing comparable school district compensation packages is critical due to staffing shortages and high annual inflation rate.
 - Consider strategies to address high union wage and benefits demands given current CPI-U increases and greater number of retirements and resignations.
 - Options?
 - Add or adjust range of annual CPI-U formula for salaries (*i.e.*, CPI-U “floor” and ceiling”).
 - Adjust starting salary if non-competitive with comparable school districts.
 - Consider longevity stipends to retain more senior employees.
 - Review post-retirement benefits to incentivize employees to remain with district and reward longevity.
 - Review and consider annual HSA contributions or addition of high deductible PPO/HSA plan.



Successor CBA Negotiations

- Planning for Bargaining
 - Share comparability data with the union – provided it supports the district’s negotiation position and strategy.
 - Be prepared to respond to union contention that the district is understaffed and that employees are overworked and underpaid.



Successor CBA Negotiations



- Use this as an opportunity to address staffing shortages and employee turnover and retention problems if applicable to the district.
- Be armed with data to explain why targeted wage adjustments or signing bonuses are necessary for certain hard-to-fill positions.
- Review and consider any contract language changes which could address the employee staffing issue. Examples:
 - Increase internal sub compensation rate to ensure class coverage when substitutes are unavailable - but reserve administration's right to assign internal substitution if necessary.
 - Tighten personal leave restrictions if data shows high percentage of teachers taking personal leave on certain days (e.g., Fridays).



Successor CBA Negotiations

- Tips and Pitfalls:
 1. Avoid long-term structural changes to contract to address current high inflation rate and staffing shortage. Example—Adding CPI-U formula with 5% ceiling if CBA has no CPI-U salary adjustment provision.
 2. Reject union proposals which demand high percentage annual salary increases for each year of a multi-year contract based upon current high inflation rate.
 3. Share any available data with union which shows that the employee turnover rate is lower and wages are higher compared to comparable districts.
 4. Do not accept union bargaining table statements that the district will be unable to hire high quality employees unless there are significant salary adjustments or annual increases.
 5. Consider other non-contractual options to address the short-term staffing shortage and high inflation (e.g., MOU, changes to current hiring practices).
 6. Consider any contingent reopener provisions which could address the union's concern with potential continuation of an unusually high inflation rate.





QUESTION & ANSWER



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A word cloud featuring the phrase "THANK YOU" in the center, surrounded by various international expressions of gratitude in different colors and sizes. The words include: HVALA, OBRIGADO, RAHMET, GRAZIE, 谢谢, DANKE, SHUKRAAN, TAK, DANK JE, KIITOS, BARKA, SPASIBO, TACK, ARIGATO, TAKK, GRACIAS, and MERCI.



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BEST PRACTICES AND LEGAL CONSIDERATIONS WHEN CONDUCTING STUDENT INVESTIGATIONS

October 5, 2022

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Introduction



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Agenda

9 Common Questions About Student Investigations

Board Policies

Timelines

Reviewing Records

Interviews

Parent
Participation/Notice

Concurrent Law
Enforcement
Investigations

Supportive/Interim
Measures

DCFS/Clear and
Present Danger
Reporting

Recordkeeping and
Maintenance



Question #1

What policies should a school district consider when it receives an initial report of student misconduct?

Relevant Board Policies

Board Policy 2:265,
*Title IX Sexual
Harassment
Grievance Procedure*



Board Policy 7:180,
*Prevention and
Response to Bullying,
Intimidation and
Harassment*



Board Policy 7:190,
Student Behavior

What Is Sexual Harassment?

Title IX Sexual Harassment

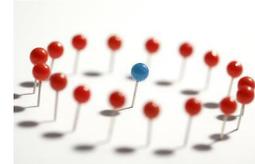
1. Quid pro quo harassment by a District employee
2. Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access
3. Any instance of sexual assault, dating violence, domestic violence or stalking

...that occurs “in the District’s **education program or activity**, against a person in the **United States.**”

34 C.F.R. §§ 106.30, 106.44



What Is Bullying?



- Any **severe or pervasive** physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the **effect** of:
 - Placing the student/students in **reasonable fear of harm** to their person or property;
 - Causing a **substantially detrimental effect** on the student’s/students’ **physical or mental health**;
 - **Substantially interfering** with the student’s/students’ **academic performance**; and/or
 - **Substantially interfering** with the student’s/students’ ability to **participate in or benefit from the services, activities, or privileges** provided by a school.

105 ILCS 5/27-23.7(b).



If Not Title IX Sexual Harassment or Bullying...

- Administration is authorized to discipline students for “gross disobedience or misconduct,” as defined under Board Policy 7:190.
- See Board Policy 7:190 and Student Handbook for examples of types of prohibited conduct.
- 7:190 “catch-all” provision
 - “Engaging in any activity, on or off campus, that interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function...”

Question #2

Are there required timelines for completing student investigations?

Timelines

- Title IX Sexual Harassment and Board Policy 2:265
 - “Reasonably prompt”
 - 90 school business days under PRESS 2:265-AP2
 - Other timeframes for parties to review and respond to evidence and investigation report (required by Title IX) and to submit and respond to written questions (required by PRESS 2:265-AP2)



Timelines

- Bullying and Board Policy 7:180
 - “All reasonable efforts” to complete investigation within 10 school days after date bullying report is received
- SB 100
 - Exclusionary discipline exceeding 10 school days requires a hearing.
 - Note special education considerations
 - Is manifestation determination review required?



Question #3

What records should a district be reviewing in connection with a student investigation?



Relevant Records

- ✓ Referral or incident report
- ✓ Interview notes
- ✓ Written statements
- ✓ Photographs and/or video footage, if any
- ✓ Police report(s), if any
- ✓ Other documentary evidence (text messages, social media posts, etc.)
- ✓ Prior disciplinary/behavioral intervention records of accused student
- ✓ Relevant Board Policy/Student Handbook provisions
- ✓ Acknowledgment of receipt of Student Handbook

Question #4

Who should conduct interviews with students?

Staffing Considerations for Student Interviews

How many interviewers?

Same gender as student?

Note-taking considerations?

Conflict of interest?

Training requirements?

Police Interviews on School Grounds

- **Before** a law enforcement officer, school resource officer, or other school security person **detains and questions** a student under 18 years of age suspected of committing a criminal act, the District must:
 1. Notify (or attempt to notify) the student’s parent/guardian and document the time and manner in writing;
 2. Make reasonable efforts to ensure the parent/guardian is present during questioning or, if not present, ensure that school employees are present during the questioning; and
 3. If practicable, make reasonable efforts to ensure a “trained law enforcement officer to promote safe interactions and communications with the student” is present during the questioning.

105 ILCS 5/22-88.



Question #5

Must a school district allow a student’s parent/guardian or attorney to be present during the student’s investigative interview?



Student Interviews: Third-Party Participation

Title IX

- Parent/guardian and advisor (who may be an attorney) permitted to sit in on party interviews.
- Advance written notice of date, time, location, participants and purpose of interview required.

Bullying

- No advance notice or participation by parents/guardians required.
- BUT must provide parents/guardians of parties with information about investigation and opportunity to meet with administration to discuss investigation, findings, and actions taken to address reported incident of bullying.



Interviews in General Student Discipline Matters

- No parent/guardian consent or advance notice required, and no general parental right to be present for student interview.
- Unless student is suspected of criminal activity and SRO or security personnel will be involved in student interview. In such a case, Illinois School Code Section 22-88 requirements apply.
- If parent/guardian requests that attorney be present with student, consider:
 - If non-criminal in nature, and SRO or security not involved, no requirement to allow attorney presence.
 - If criminal in nature, and SRO or security are involved, then arguably student has Constitutional right to attorney presence.



Question #6

Where a concurrent law enforcement investigation is taking place, should a district postpone or delay initiating (or completing) its investigation?

Implications of Concurrent Law Enforcement Investigations

- Title IX
 - Temporary delay or limited extension of timeframes permitted with “good cause,” such as **absence of a party** or **concurrent law enforcement activity**.
 - Whether delay/extension is appropriate should be evaluated on a case-by-case basis.





Allegations of Sexual Misconduct

- Every child reported to DCFS or law enforcement to be a victim of sexual assault or sexual abuse whose case is accepted by either agency for investigation has the right to have that child's forensic interview conducted by a forensic interviewer from a children's advocacy center accredited by the Children's Advocacy Center Act. 725 ILCS 115/3.5 (created by P.A. 102-0477, eff. 1/1/2022).



Question #7

What supportive measures should be considered while a student investigation is pending and after the investigation concludes?



Supportive Measures

- Title IX
 - Upon receipt of report alleging conduct potentially constituting Title IX sexual harassment, Title IX Coordinator must consider implementation of *supportive measures*.
 - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to *complainant* or *respondent* before or after filing of formal complaint or where no formal complaint has been filed.
 - Where there is finding of responsibility, decision-maker must consider whether ongoing remedies will be provided to complainant.
- Bullying
 - Superintendent or designee must promptly inform parent(s)/guardian(s) of every student involved in an alleged incident of bullying and discuss, as appropriate, availability of social work services, counseling, school psychological services, other interventions, and restorative measures.



Supportive Measures

- Student Discipline
 - Student subject to discipline
 - Suspended students must have the opportunity to make up missed work for equivalent academic credit.
 - Students suspended out-of-school for 5 or more school days must be provided “appropriate and available support services” during period of suspension.
 - Expelled students may be referred for appropriate and available support services.
 - “Appropriate and available support services” determined at the discretion of school officials.
 - Student victim(s)
 - Consider safety plan, counseling/social work services, and other interim and/or ongoing supports.



Question #8

When would a student discipline matter trigger a report to DCFS or a clear and present danger report to the Illinois State Police?

DCFS Reporting

- Any employee with “reasonable cause” to believe that a student may be an abused or neglected child must immediately report to DCFS. *See Board Policy 5:90 and 325 ILCS 5/1 et seq.*
 - If employee believes student is in imminent danger of harm, must first call 911.
- DCFS hotline worker will determine whether information given by reporter meets legal requirements to initiate an investigation.
 - Alleged victim is under 18.
 - Alleged perpetrator is parent, foster parent, relative, caregiver, paramour, individual residing in same home, person responsible for child’s welfare at time of alleged incident(s), or person who came to know student through official capacity or position of trust.
 - Set of circumstances that would lead reasonable person to suspect abuse or neglect.





Clear and Present Danger Reporting

- “Person who demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by physician, clinical psychologist, qualified examiner, **school administrator**, or law enforcement official.”
- School administrators must report directly to ISP within 24 hours of making CPD determination.

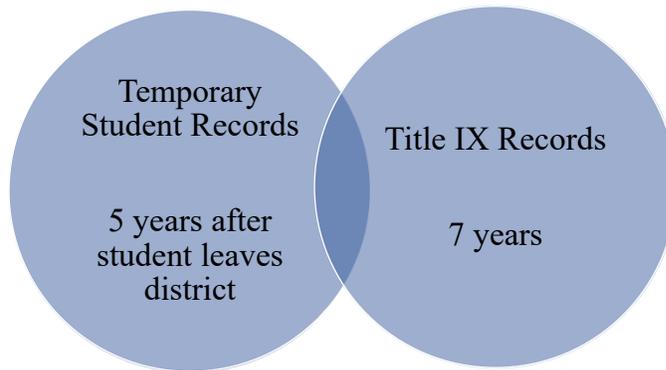


Question #9

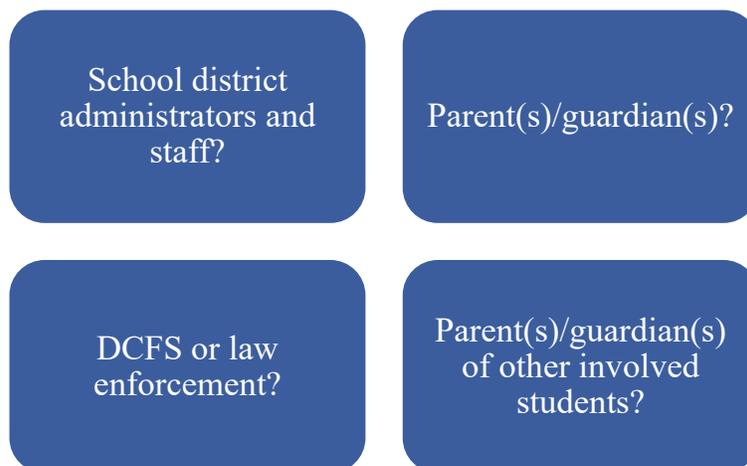
How should student investigation records be maintained, and who has a right to obtain copies of student investigation records?



Record Maintenance Requirements



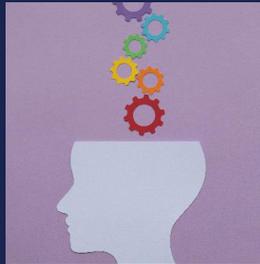
Access to Confidential Student Records





What About DCFS and CPD Reports?

- CPD reports are privileged and confidential
- Requirements for treatment of DCFS records depend on outcome of DCFS investigation



Final Tips

- Consult with Title IX Coordinator or other appropriate personnel if unsure which policy and procedures apply.
- Be careful when involving your SRO or security personnel in student investigations.
- Make sure to properly and promptly document investigation process, including notes from investigative interviews, witness statements, etc.





QUESTION & ANSWER



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A word cloud featuring the phrase "THANK YOU" in the center, surrounded by various international expressions of gratitude in different colors and sizes. The words include: HVALA, OBRIGADO, RAHMET, GRAZIE, 谢谢, KIITOS, DANKE, SHUKRAAN, TAK, DANK JE, THANK YOU, BARKA, СПАСИБО, MERCI, ευχαριστώ, GRACIAS, TACK, ARIGATO, and TAKK.



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Biographies

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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, ICCCFQ 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

Trustee, Associated
Colleges of Illinois

Fellow, College of Labor
and Employment Lawyers

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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Ken Florey concentrates his practice representing public and private clients, including municipalities, school districts, community colleges, townships, libraries, private owners, contractors and design professionals regarding land use, municipal law, construction, tax, finance and litigation. Ken has also started offering his services as a mediator with an emphasis on construction disputes.

Ken was the Chair of the DuPage County Bar Association's Local Government Committee. He was appointed Special Assistant Attorney General to prosecute and defend construction litigation claims on behalf of the Illinois Capital Development Board. Ken is also a member of the Illinois ASBO Service Associate Advisory Committee. He served as a Trustee for the Village of Lombard for eight years and is a member of the Lombard Fire and Police Commission.

MEDIATOR CERTIFICATE: Northwestern University 2017

AWARDS

Illinois Leading Lawyer, Construction Law; Governmental, Municipal, Lobbying & Administrative Law; Land Use, Zoning & Condemnation Law; and School Law

Illinois Association of School Business Officials, Above and Beyond Award

Illinois Institute for Local Government Law, Litigation Award

RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions & Solutions" *UPDATE Magazine*, Illinois ASBO (2018)

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)



PRACTICE AREAS

Commercial Law
Construction Law
Education Law
Energy Law
Litigation
Mediation
Municipal Law
Public Finance & Taxation
Real Estate Development
Zoning, Planning & Land Use

EDUCATION

J.D., DePaul University
College of Law; Managing
Editor, *DePaul Journal of
Art and Entertainment
Law*

B.A., University of Illinois
at Urbana Champaign

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

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

"Construction Project and Contract Pitfalls" *Update Magazine*, Illinois ASBO (2017)

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

"Settlement Crumbles; Appeals Court Declines to Put Pieces Back Together," *Chicago Daily Law Bulletin* (2015)

"On Public Display: Advertising in Schools," *UPDATE Magazine*, Illinois ASBO (2015)

RECENT PRESENTATIONS

School Construction and Purchasing Scenarios: Common Problems with Practical Solutions, ASBO International and AC&E (October 2021)

Using ESSR Funds for Facilities Improvements: School Construction from Start to Finish, Illinois ASBO and IASPA (October 2021)

Prevailing Wages and Bidding, Northeastern Illinois Facility Professionals (November 2021)

No Weak Links: Fostering Positive Intra-Board Relationships, IASB/ISA/IASBO (November 2021)

No Weak Links: Fostering Positive Intra-Board Relationships, IASB (July 2021)



FRANK B. GARRETT III

PARTNER, CHICAGO

312.332.7760

fgarrett@robbins-schwartz.com

Frank B. Garrett III represents public and private employers in all aspects of employment law, including defense of complaints and charges of unlawful discrimination, wrongful termination, sexual harassment, civil rights violations, employee discipline and termination. Frank also counsels and provides training to employers in the following areas: ADA and FMLA compliance, avoiding claims of unlawful discrimination and harassment in the workplace: evaluation and discipline of employees, and diversity in the workplace.

Frank practices regularly in both state and federal courts at the trial and appellate levels. He also practices before various administrative agencies such as the Illinois Human Rights Commission and the Equal Employment Opportunity Commission. Frank is a regular speaker on employment law at both the state and national levels.

He is an active member of the American Bar Association and Illinois Council of School Attorneys.

AWARDS

Illinois Leading Lawyer, Government and Regulatory-Related
Illinois Leading Lawyer, Employment and School Law
Illinois Super Lawyers

RECENT PUBLICATIONS

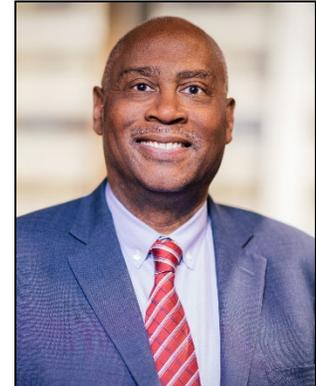
Contributing Author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (1996, 1999, Supp. 2001, 2005, 2010, 2012, 2015, and 2021)

"Extended Medical Leave Under ADA Soundly Rejected by 7th Circuit,"
Chicago Daily Law Bulletin (2017)

"First Amendment Protections Get Broader for Government Employees,"
Chicago Daily Law Bulletin (2016)

"Big-box Employee's Attempt to 'Scam' Company Undercuts FMLA Claims,"
Chicago Daily Law Bulletin (2015)

Employers Must Rethink Employee 'Look' Policies After High Court Decision,"
Chicago Daily Law Bulletin (2015)



PRACTICE AREAS

Education Law
Labor & Employment
Litigation

EDUCATION

J.D., DePaul University
College of Law

B.A., Oberlin College

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

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

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

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

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

Supreme Court of Illinois

“Using Social Network Screening as Part of the Hiring Process: Employers Should Proceed with Caution,” *Inquiry & Analysis*, National School Boards Association’s Council of School Attorneys (2013)

RECENT PRESENTATIONS

A Review of Important New Laws Impacting Illinois School Districts, Illinois Association of School Boards (January 2022)

Sexual Violence and Harassment on Campus, Illinois Community College Trustee Association (June 2021)

Responding to COVID-19 Related Employee Accommodations and Leave Requests, American Association of School Personnel Administrators (October 2020)

Workplace Liability in the Post Pandemic Era, Large Unit District Association (June 2020)

Debunking Some Common Employee FMLA Leave Myths, IASPA Annual Conference (January 2020)

Legal Updates for Illinois Community College Chief Student Services Officers’ Meeting, Illinois Community College Student Services Officers (June 2019)

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

Understanding New Changes to the Minimum Wage Law and Other Wage-Related Statutes, Illinois GFOA Annual Conference (September 2019)

ORGANIZATIONS

American Bar Association,
Section on Labor and
Employment

Chicago Bar Association

Illinois Council of School
Attorneys



PHILIP H. GERNER III

PARTNER, CHICAGO

312.332.7760

pgerner@robbins-schwartz.com

Phil Gerner counsels and represents school districts and community colleges in collective bargaining negotiations, union representation petitions and IELRB proceedings, teacher evaluations, remediations and dismissals, employee discipline and discharge issues, labor contract administration and grievance arbitration and other labor and employment issues. Phil has represented school districts and community colleges in numerous labor arbitrations, unfair labor practice hearings, tenured teacher dismissals and IDHR and EEOC proceedings. Phil has successfully handled a number of appellate court appeals on issues of significance for educational employers, including short-term employee bargaining unit exclusion standards, teacher evaluation plan bargaining obligations and RIF/seniority rights of tenured teachers.

Phil is a frequent presenter for IASB, IASA, Illinois ASBO, ICCTA and other educational employer associations on a full range of labor and employment issues, including collective bargaining negotiations, teacher evaluation and remediation, school administrator employment contracts, employee discipline and discharge, and public employee speech and concerted activity issues.

AWARDS

Illinois Leading Lawyer, Employment and School Law, 2004-2012

RECENT PUBLICATIONS

"Collective Bargaining During COVID-19" IASA Leadership Matters Magazine (2021)

"Hot Topics in Collective Bargaining," IASB.COM, IASB (2014)

Contributing author, "Labor Relations: Contract Administration Including ULPs," Illinois School Law, IICLE (2005, 2010 and 2012)

"Collective Bargaining Implications of the Performance Evaluation Reform Act of 2010 (SB 315) and the Education Reform Act (SB 7)," UPDATE Magazine, Illinois ASBO (2011)

RECENT PRESENTATIONS

Legal Issues Regarding Mandatory Employee Vaccinations, Illinois Association of School Personnel Administrators Webinar (September 2021)

COVID-19 HR Webinar: Vaccine Mandate for Staff, 2021 Illinois Association of School Business Officials Conference (September 2021)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation

EDUCATION

J.D., Washington
University School of Law

B.A., *cum laude*, St.
Lawrence University

ADMITTED TO PRACTICE

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

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

Supreme Court of Illinois

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TODD K. HAYDEN

PARTNER, LISLE

630.929.3639

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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)



PRACTICE AREAS

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

EDUCATION

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

B.A., University of Michigan

ADMITTED TO PRACTICE

Supreme Court of the United States

U.S. Court of Appeals for the Seventh Circuit

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

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

Supreme Court of Illinois

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CATHERINE R. LOCALLO

PARTNER, CHICAGO

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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

"Employee's Loss of Ability To Maintain Privacy Rights Is Not Injury Compensable Under Workers' Compensation Act," *Employment and Labor Law Flashpoints*, IICLE (2022)

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Chicago Teachers Union Claim Doesn't Survive Summary Judgment on Race Discrimination Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Effective January 1, 2022: Vast Expansion of VESSA," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Illinois Committed to Restrictive Covenant Reform Through Passage of Senate Bill 672," *Employment and Labor Law Flashpoints*, IICLE (2021)

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

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

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



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

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

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

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

“Will ‘Scabby the Rat’ Live To Fight Another Day?” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Superintendent’s Police Report is Protected Speech” *Employment and Labor Law Flashpoints*, IICLE (2020)

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

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

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

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

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

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

RECENT PRESENTATIONS

You’re On the Board, Now Elevate Your Game, ICCTA Annual Conference (November 2021)

Is PERA Dead?? Implementation of a Local Appeals Process for Unsatisfactory Ratings, IASPA Annual Conference (January 2020)

A Workshop on Compliance with the Open Meetings Act and Illinois Freedom of Information Act, LUDA Annual Conference (October 2019)

Community College Trustees Training Session, ICCTA (June 2019)

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Third Vice President, Justinian Society of Lawyers

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

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

President, Board of Directors, Glenview Stars Hockey Association

UNICO National



CAROLINE A. ROSELLI

PARTNER, CHICAGO

312.332.7760

croselli@robbins-schwartz.com

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

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

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

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

RECENT PUBLICATIONS

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

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

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

RECENT PRESENTATIONS

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



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

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

B.A., University of Notre Dame

ADMITTED TO PRACTICE

Supreme Court of the United States

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Bar Association

Illinois Council of School Attorneys

National Council of School Attorneys

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

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

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



LAURA M. SINARS

PARTNER, CHICAGO

312.332.7760

lsinars@robbins-schwartz.com

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

AWARDS

Illinois Super Lawyers, 2005-2018

RECENT PUBLICATIONS

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



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., University of Notre
Dame Law School

B.A., University of Notre
Dame

ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

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

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

Supreme Court of Illinois

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EMILY P. BOTHFELD

PARTNER, CHICAGO

312.332.7760

ebothfeld@robbins-schwartz.com

Emily practices in the area of education law with a focus on student and higher education matters. She counsels school districts and higher education institutions on a variety of issues, including matters related to student discipline, Title IX, free speech, student disability rights, student data privacy and policy development. She has extensive experience representing educational institutions in responding to complaints filed with the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General and Illinois Department of Human Rights. Emily regularly represents school districts and higher education institutions in state and federal court on civil rights and constitutional claims and breach of contract claims.

Prior to joining Robbins Schwartz, Emily represented students with disabilities in special education matters. Emily attended the George Washington University Law School, where she was a member of the George Washington International Law Review and the GW Law Moot Court Board. Prior to attending law school, Emily taught high school mathematics and science in Hangzhou, China.

RECENT PUBLICATIONS

"Disabled Athlete Can't Support ADA Claims," *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Legal Gymnastics in the Age of COVID and Other Challenges, Illinois Council of Community College Presidents Retreat (January 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA, and PIPA and Strategies for Compliance, Secured Schools K-12 Data Privacy and Cybersecurity Conference (January 2022)

Legislative Update: A Review of New (and Proposed) Laws Affecting Illinois Community Colleges' Risk Management Practices, Illinois Community College Chief Financial Officers Fall Conference (October 2019)

A Student's "Right" to a College Education: Due Process Rights in Academic and Non-Academic Discipline, Illinois Community College Chief Student Services Officers' Summer Meeting (June 2019)



PRACTICE AREAS

Education Law
Higher Education
Special Education
Student Discipline

EDUCATION

J.D., *with honors*, George Washington University Law School

B.S., *cum laude*,
Vanderbilt University

ADMITTED TO PRACTICE

U.S. Court of Appeals for the Seventh Circuit

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

Supreme Court of Illinois

ORGANIZATIONS

Trustee, Associated Colleges of Illinois

Chicago Bar Association

Illinois Council of School Attorneys

National Council of School Attorneys

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MATTHEW J. GARDNER

PARTNER, CHICAGO

312.332.7760

mgardner@robbins-schwartz.com

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

Legal Considerations Related to Renewable Energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (May 2022)



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

Illinois State Bar
Association

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Legal considerations related to renewable energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (November 2021)

Construction Law 101, National Business Institute (December 2019)

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



SUSAN E. NICHOLAS

PARTNER, CHAMPAIGN

312.332.7760

snicholas@robbins-schwartz.com

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)



PRACTICE AREAS

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

EDUCATION

J.D., magna cum laude,
Southern Illinois
University School of Law

B.A., Illinois Wesleyan
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

Supreme Court of
Missouri

ORGANIZATIONS

Illinois State Bar
Association

Decatur Bar Association

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ZARIA N. UDEH

PARTNER, CHICAGO

312.332.7760

zudeh@robbins-schwartz.com

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)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., DePaul University
College of Law

B.A., Yale University

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

Supreme Court of the
Commonwealth of
Massachusetts

ORGANIZATIONS

Chicago Bar Association

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CHRISTOPHER R. GORMAN

ASSOCIATE, CHICAGO

312.332.7760

cgorman@robbins-schwartz.com

Chris practices in the firm’s commercial, construction, and real estate practice groups, representing public sector clients in commercial transactions, contracting, construction and related transactional matters. Chris has also served in the firm’s labor and employment practice group and counseled employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Chris also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Prior to joining Robbins Schwartz, Chris served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing.

RECENT PUBLICATIONS

Contributing author, “Labor Issues in the Transactional Side of the Project,” *Construction Law: Transactional Considerations 2021 Edition*, IICLE (2021)

“Continuing Controversy Over FCC’s Efforts to Improve Broadband Connectivity,” *Energy, Utilities, Telecommunications and Transportation Newsletter*, Illinois State Bar Association (2021)

“The Future of For-Profit Online Charter Schools,” *Labor and Employment Law Quarterly*, American Bar Association (2016)

RECENT PRESENTATIONS

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA and PIPA, The Learning Technology Center of Illinois SecurED Schools Annual Conference (January 2022)

Staffing Shortages Following the Pandemic: Strategies and Legal Considerations for Subcontracting, IASBO SupportCon (December 2021)



PRACTICE AREAS

Commercial Transactions
Construction Law
Labor & Employment
Real Estate Development

EDUCATION

J.D., University of
Minnesota Law School

B.A., University of
Minnesota – Twin Cities;
Presidential Scholar

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

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THOMAS C. GARRETSON

ASSOCIATE, CHICAGO

312.332.7760

tgarretson@robbins-schwartz.com

Tom counsels employers in all aspects of labor and employment law, including internal misconduct investigations, disciplinary action, labor relations, collective bargaining, and federal and state employment discrimination matters under the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Illinois Human Rights Act, Title VII, and other federal and state anti-discrimination and wage laws. Tom represents employers in a variety of venues, including federal/state courts, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and federal/state labor boards.

Prior to joining Robbins Schwartz, Tom worked in Labor Relations for the Cook County Health System. During law school, Tom interned with the U.S. Equal Employment Opportunity Commission's Enforcement Unit.

RECENT PUBLICATIONS

"Seventh Circuit Certifies Question to Illinois Supreme Court Regarding When BIPA Claim Accrues" *Employment and Labor Law Flashpoints*, IICLE (2021)

"Get off my Property: SCOTUS Limits Union Access to Employer Premises," *Employment and Labor Law Flashpoints*, IICLE (2021)

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

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

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

"Heading Into the New Year with New Employment Laws," *Employment and Labor Law Flashpoints*, IICLE (January 2019)

RECENT PRESENTATIONS

Never a Dull Moment - Case Studies and Tales from HR, IASPA Annual Conference (January 2022)

Updates from the Department of Human Rights, IAPD/IPRA Soaring to New Heights Conference (January 2022)

The Nuts and Bolts of Employee Leave Rights Under the FMLA, ADA, and Illinois Law, IAPD/IPRA Soaring to New Heights Conference (January 2022)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., Chicago-Kent College of Law

B.A., *with honors*, Michigan State University

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Mid-Term and Successor Bargaining Trends Post-COVID-19, IASA Legal Workshop (December 2021)

Employee Misconduct Investigations and Discipline During a Pandemic, IASPA Annual Conference (January 2021)

Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA, IAPD/IPRA Soaring to New Heights Conference (January 2020)



KEVIN P. NOLL

ASSOCIATE, CHICAGO

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Kevin's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, and municipalities with issues involving employee discipline, internal investigations, employee leaves of absences, and alleged discrimination and harassment claims. Kevin also defends clients in litigation and administrative charges in federal and state court, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Labor. In addition to his experience in labor and employment law, Kevin has trained school districts and community colleges pursuant to Title IX of the Education Amendments Act of 1972.

Prior to joining Robbins Schwartz, Kevin represented individuals with employment matters, civil rights claims, and consumer protection litigation.

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine

RECENT PUBLICATIONS

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

Contributing author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (2021)

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

RECENT PRESENTATIONS

Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Illinois Minimum Wage: Nutz and Bolts Overview, IGFOA Payroll Seminar (October 2019)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., The John Marshall Law School

B.A., Indiana University

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar Association

Kane County Bar Association

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KATIE DIPIERO

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Katie practices in the firm's public finance and taxation, commercial, construction, and real estate practice groups. Katie represents school districts, community colleges, and municipalities before the Property Tax Appeal Board and the circuit court. She represents clients in the areas of real property taxation, valuation, tax rate objections, and assessment appeals. Katie also represents clients in the areas of commercial transactions, including drafting and negotiating contracts, litigation, and alternative dispute resolution.

Prior to joining Robbins Schwartz, Katie concentrated her practice in tax planning and represented clients in corporate reorganizations. She also has experience working for government entities and non-profits.



PRACTICE AREAS

Commercial Transactions
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., *cum laude*, Seattle
University

M.B.A., Seattle University

B.A., University of Kansas

ADMITTED TO PRACTICE

Supreme Court of Illinois

Supreme Court of
Washington

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