

Far From Resolved: ISBE's May 19th Resolution and Remote Learning Options

Webinar
June 15, 2021

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Far From Resolved: ISBE's May 19th Resolution and Remote Learning Options

Presented by Caroline A. Roselli and Jessica A. Milligan

June 15, 2021

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ISBE's May 19 Resolution



- THEREFORE, BE IT RESOLVED that the Illinois State Board of Education supports the following declaration of Illinois State Superintendent of Education:
- Beginning with the 2021-22 school year, all schools must resume fully in-person learning for all student attendance days, provided that:
- Pursuant to 105 ILCS 5/10-30, remote instruction be made available for students who are not eligible for a COVID-19 vaccine **and** are under a quarantine order by a local public health department or the Illinois Department of Public Health.

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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.

Legal Mechanism and Timing

A State Superintendent declaration is required for remote learning under Section 10-30.

ISBE's resolution supports the Superintendent's declaration, to be made at the end of 2020-2021 school year.

The declaration will go into effect for the 2021-2022 school year.

It has no effect on this year's summer school programs

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The General Rule

- "all schools must resume fully in-person learning for all student attendance days"
- In other words, default to pre-pandemic rules.
 - Removing Section 10-30 flexibility (mostly)
 - But **not** removing pre-pandemic flexibility

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The Exception

- Remote learning under Section 10-30 of the School Code must only be provided as detailed in the declaration.
- “provided that ... remote instruction be made available for students who are not eligible for a COVID-19 vaccine **and** are under a quarantine order.”
- Both conditions are required.
 - Vaccine Eligible: Look to CDC guidance. Everyone 12 years of age and older are eligible.
 - Quarantine order: “the student meets the requirements for quarantining under guidance from IDPH or the appropriate public health department that is in effect at that time.”

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The Exception

- Example: 5-year-old immunocompromised student is not ordered to quarantine.
 - No “remote learning” under Section 10-30
- Example: 11-year-old student is ordered to quarantine after a close contact with an individual positive for COVID-19.
 - Yes “remote learning” under Section 10-30
- Example: 16-year-old student is not vaccinated and is ordered to quarantine after testing positive for COVID-19.
 - No “remote learning” under Section 10-30
- What options, then?



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Pre-Pandemic Options

- Home/hospital instruction, under Section 14-13.01
 - For when a student will, or is anticipated to be, absent from school for 2+ consecutive weeks or at least 10 intermittent days during the school year, due to a medical condition.
 - Requires a written statement from a physician licensed to practice medicine in all of its branches, physician assistant (PA), or Advanced Practice Registered Nurse (APRN).
 - Minimum of 1 hour instruction per day or 5 hours per week for full reimbursement.

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Pre-Pandemic Options

- Blended learning programs, under Section 10-19.05(k)(4)
 - Combines in-person and online learning
 - Participation counts toward required 5 clock hours of school work per day under Section 19.05
 - Must be approved by the district
 - Course content, student evaluation, and instructional methods must be supervised by a licensed educator

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Pre-Pandemic Options



- Remote Educational Programs, under Section 10-29
 - School district Board of Education must adopt a policy with specified elements. (PRESS Policy 6:185)
 - Example 1: Criteria for determining that the remote program will best serve individual learning needs must include consideration of, at a minimum, a student's prior attendance, disciplinary record, and academic history.
 - Example 2: Description of the process the district will use to approve participation, and any limitations on the number of students and/or grade levels who can participate.
 - Each clock hour of instruction attended counts as 1/5 day of attendance.
 - Policy and data on student participation must be submitted to ISBE.

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Pre-Pandemic Options

- Seven requirements for remote educational programs under Section 10-29
 - Under board policy, the district and legal guardian determine it "will best serve the student's individual learning needs."
 - Curriculum is aligned to state learning standards; experiences are consistent with those for grade-level peers.
 - Instructors meet listed qualifications.
 - Each student's participation is classified as year-round or non-year-round
 - Each student has a written plan with listed elements, approved by the District and legal guardian, which include, at a minimum: student achievement goals, the assessments that will measure student progress, the method for reporting progress, expectations for student/teacher interactions, family and school material responsibilities, procedures for extracurricular participation, the individual who will supervise the program, and the location of the program.
 - Students must be enrolled in an attendance center and tested as part of assessments.
 - Participation is limited to 12 months unless renewed after an evaluation of student's progress and determination that continuation in the program will best serve the student's individual learning needs.

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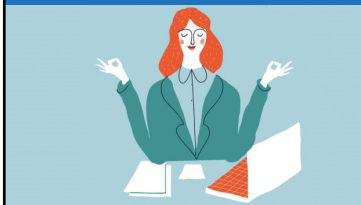
Considerations

- What will remote look like in your school district for 2021-22?
- Does your school district wish to expand remote to more than the ISBE Resolution allows under Section 10-30?
 - Which groups of students do you want to reach?
 - Students with medical conditions under Section 10-29 or homebound?
- What will homebound services look like now in your district?
 - Precedent setting?
 - Does vaccination status come into play for students requesting homebound?

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Continuing Personnel Challenges



With schools returning to in person instruction, the number of requests for leave and remote work accommodations have again heightened.

Widely available COVID-19 vaccines have raised concerns about monitoring employees' vaccination status and responding to accommodation requests.

Modified instructional and safety requirements may lead to union mid-term bargaining demands.

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COVID-19 Vaccine Considerations

- Must the District provide employees paid leave to obtain a COVID-19 vaccine and for the recovery period?
- May the District inquire about an employee's vaccination status?
- May the District ask employees for documentation proving they are fully vaccinated?
- What if an employee refuses to receive the COVID-19 vaccine for health or religious reasons?

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Post-FFCRA Leave and Accommodation Requests

- The Families First Coronavirus Response Act (FFCRA) expired on December 31, 2020. Employers may voluntarily continue providing FFCRA leave benefits through September 30, 2021.
- The traditional rules and guidance under the FMLA and the ADA provide the baseline obligations.
- Board policies, employment contracts, and collective bargaining agreements may provide additional leave rights.

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Scenario #1

- During the 2020-2021 school year, the District granted a remote work accommodation to a tenured teacher with an asthma condition based in part on the fact that all students were learning remotely at that time. Students begin in-person learning effective September 1, 2021.
- Can the District change its prior accommodation?
- May the District consider the fact that the teacher has been fully vaccinated in determining what accommodation is appropriate?
- What if the tenured teacher refuses to return to work after the District declines to offer a remote work option?



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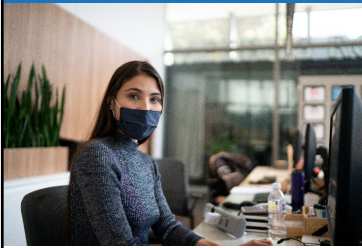
Scenario #2

- A paraprofessional requests FMLA leave to care for her child who will continue remote learning in the Fall.
- Is the paraprofessional entitled to use FMLA leave for childcare purposes in the Fall?
- Is the paraprofessional entitled to a remote work accommodation?

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Scenario #3



- A fifth-grade teacher who is pregnant requests to continue working remotely in the Fall because she is four months away from her delivery date and is fearful of contracting COVID-19. The teacher has not presented any documentation to indicate that the pregnancy is high risk.
- Is the teacher qualified for an ADA accommodation based on pregnancy?
- Is the teacher qualified for an ADA accommodation based on fear or anxiety?
- How should the District respond to this request?

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Mid-Term Bargaining

- Review current CBA to ensure compliance with existing contractual obligations.
- Notice to union if change in working conditions.
- Duty to mid-term bargain with union, if requested:
 - Have a plan – consider involving union in discussions over new instructional or safety requirements before you receive a demand to bargain.
 - Understand current guidance and responsibilities and be prepared to discuss those.

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Questions?



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

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

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

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

RECENT PUBLICATIONS

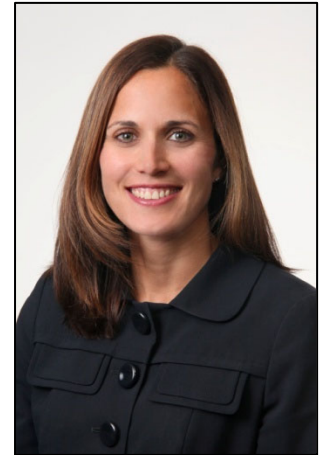
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

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

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

RECENT PRESENTATIONS

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



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

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

B.A., University of Notre Dame

ADMITTED TO PRACTICE

Supreme Court of the United States

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Bar Association

Illinois Council of School Attorneys

National Council of School Attorneys

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

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

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

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

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

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

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

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

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Jessica counsels school districts and community colleges in all aspects of labor and employment law, including employee investigations, discipline and termination, civil rights, 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, and Title VII. Jessica also advises employers regarding collective bargaining, contract interpretation, grievance arbitrations, and unfair labor practices. Jessica represents clients in a variety of venues including both federal and state court, as well as the U.S. Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

RECENT PUBLICATIONS

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

RECENT PRESENTATIONS

Navigating Payroll Laws: Wages and Recordkeeping Requirements, Illinois ASBO (March 2021)

Leave and Accommodation Requests: A Panel Discussion, Large Unit District Association (February 2021)

Employee Misconduct Investigations and Discipline During a Pandemic: Best Practices to Minimize Employer Liability, IASPA Annual Conference (January 2021)

Leave and Accommodation Rights in the COVID-19 Workplace, Illinois Council of School Attorneys and Illinois Association of School Boards (October 2020)

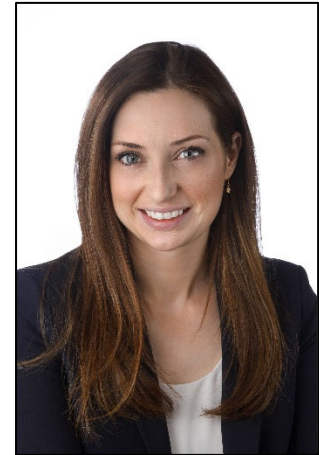
Free Speech on Campus, Illinois Community College Chief Student Service Officers (March 2020)

Navigating Payroll Laws, Illinois ASBO Bookkeepers Conference (March 2020)

Administrators Legal Update, Concordia University (December 2019)

Navigating Background Checks in Today's Environment, Illinois ASBO (May 2019)

Employee Misconduct Issues: Effective Management Strategies for Defensible Discipline/Discharge, Concordia University (April 2019)



PRACTICE AREAS

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

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

U.S. District Court for the Eastern District of Michigan

U.S. District Court for the Western District of Michigan

Supreme Court of Illinois

Supreme Court of Michigan

ORGANIZATIONS

American Bar Association

Illinois Bar Association

Illinois Council of School
Attorneys

Michigan Bar Association

National Council of School
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