

Robbins Schwartz

Community College Virtual Trustee Training

Webinar
June 19, 2021

Joesph J. Perkoski
jperkoski@robbins-schwartz.com

Frank B. Garrett III
fgarrett@robbins-schwartz.com

Kenneth M. Florey
kflorey@robbins-schwartz.com

Catherine R. Locallo
clocallo@robbins-schwartz.com

Kevin P. Noll
knoll@robbins-schwartz.com

Chicago
55 West Monroe Street, Suite 800
Chicago, IL 60603
p 312.332.7760
f 312.332.7768

Champaign-Urbana
301 North Neil Street, Suite 400
Champaign, IL 61820
p 217.363.3040
f 217.356.3548

Collinsville
510 Regency Centre
Collinsville, IL 62234
p 618.343.3540
f 618.343.3546

Lisle
550 Warrenville Road, Suite 460
Lisle, IL 60532
p 630.929.3639
f 630.783.3231

Rockford
2990 North Perryville Road, Suite 4144B
Rockford, IL 61107
p 815.390.7090

The materials on this webpage are the property of Robbins Schwartz and may not be copied, adapted, shared, or displayed without the express written permission of Robbins Schwartz.

Robbins Schwartz

COMMUNITY COLLEGE TRUSTEE TRAINING WEBINAR

JUNE 19, 2021

AGENDA

8:30 a.m. – 10:00 a.m.

GENERAL SESSION

Basic Collective Bargaining Strategies and Tips
The Freedom of Information Act

10:00 a.m. – 10:10 a.m.

Break

10:10 a.m. – 11:35 a.m.

RESUME GENERAL SESSION

The Illinois Open Meetings Act
Financial Oversight & Accountability

11:35 a.m. – 11:50 a.m.

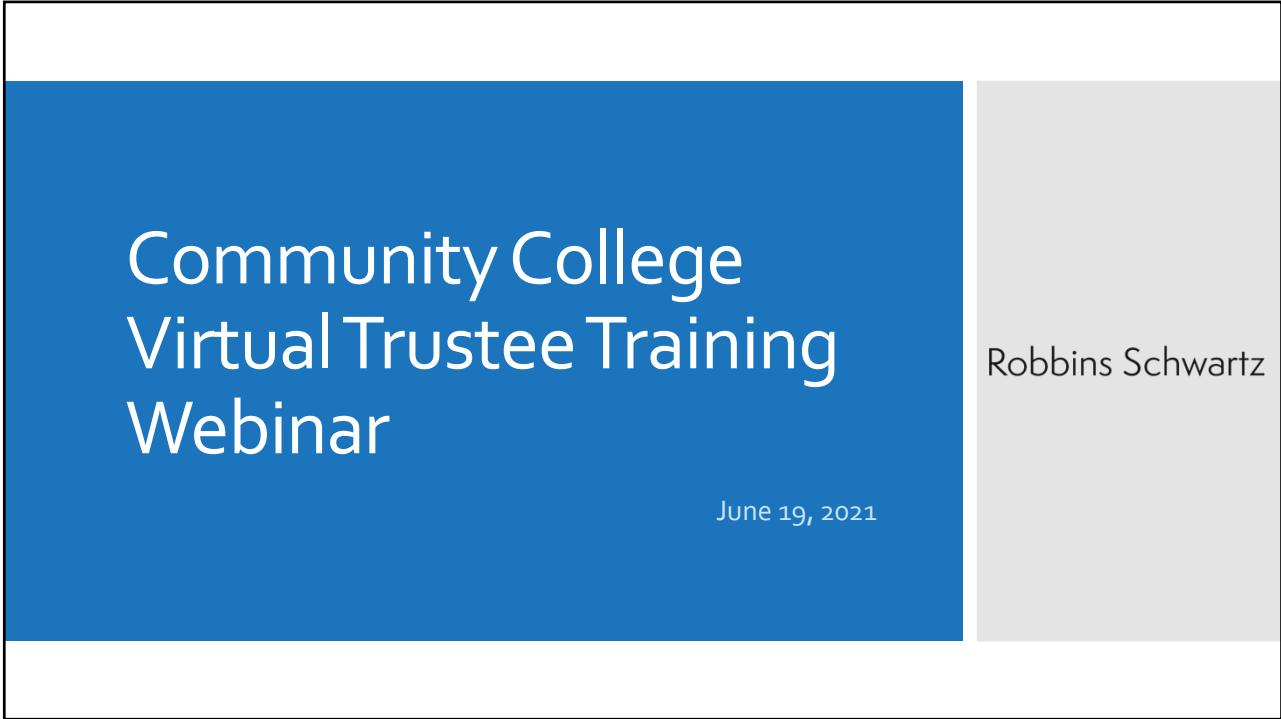
Break

11:50 a.m. – 1:30 p.m.

RESUME GENERAL SESSION

Sexual Violence and Harassment on Campus: The Continued Evolution of Title IX
Fiduciary Responsibilities and Ethics

ROBBINS SCHWARTZ	Chicago 55 W Monroe St Suite 800 Chicago, IL 60632 p 312.332.7760 f 312.332.7768	Champaign-Urbana 301 North Neil Street Suite 400 Champaign, IL 61820 p 217.363.3040 f 217.356.3548	Collinsville 510 Regency Centre Collinsville, IL 62234 p 618.343.3540 f 618.343.3546	Lisle 550 Warrenville Road Suite 460 Lisle, IL 60532-4311 p 630.929.3639 f 630.783.3231	Rockford 2990 North Perryville Road Suite 4144B Rockford, IL 61107 p 815.390.7090
---------------------	---	---	--	--	--

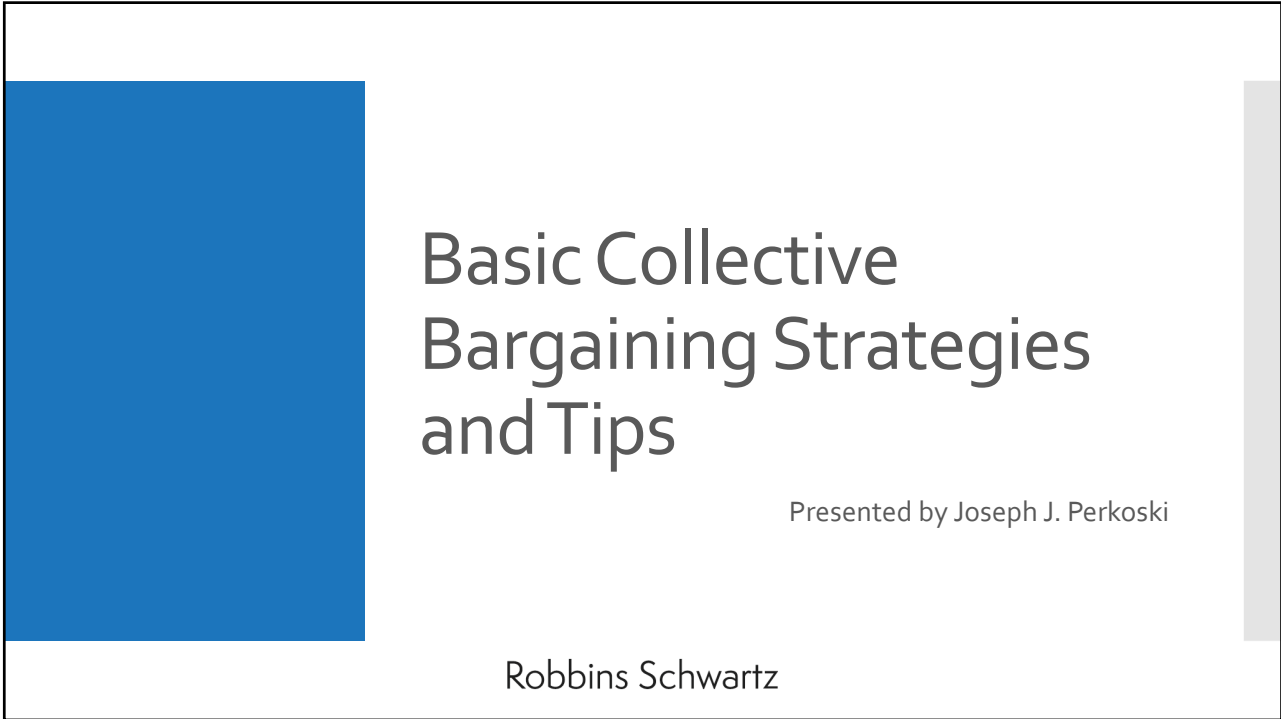
A slide with a blue background on the left and a light gray background on the right. The blue section contains the title and date in white text. The gray section contains the name in black text.

Community College
Virtual Trustee Training
Webinar

June 19, 2021

Robbins Schwartz

1

A slide with a blue vertical bar on the left and a light gray vertical bar on the right. The main content is centered in black text.

Basic Collective
Bargaining Strategies
and Tips

Presented by Joseph J. Perkoski

Robbins Schwartz

2

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.

Planning for Bargaining



Bargaining
Teams



Financial
Modeling



Review
Language
Issues



Ground
Rules



Exchange
Proposals



Tentative
Agreements



Board Action

Robbins Schwartz

3

Planning for Bargaining

- Bargaining Teams

- Neither side can dictate to the other who to include or exclude from their respective teams.
- The parties may agree to limit the number of bargaining team members.
- The bargaining teams are expected to have authority to enter into tentative agreements on contract proposals.
- The employer's team should not have a substantial Board presence so that a Board commitment to an issue cannot be immediately made at the table.
- The employer's team should include an administrator who is familiar with the day-to-day operation of the public body.

Robbins Schwartz

4

Planning for Bargaining

Financial Modeling

- Prepare a three-year or five-year financial plan showing actual and anticipated revenues from all sources and expenditures.

Include factors in addition to salary:

- Location of the employees on the pay matrix; and
- The college's entire compensation package, including insurance and retirement packages.

Comparables

- Review the comparable college's entire compensation package, including insurance and retirement packages, and consider when the most recent comparable contract was negotiated.

Robbins Schwartz

5

Planning for Bargaining

- Review Language Issues
 - Are there contract provisions that have been the subject of grievances or disputes over the past term?
 - Are there provisions that are difficult to administer – time consuming or high administrative costs?
 - Are there contract provisions that pose challenges to college objectives?

Robbins Schwartz

6

Planning for Bargaining

- Ground Rules
 - The rules may include such items as media exposure, meeting time limits and structure of proposals
 - Consider whether ground rules are necessary.



Robbins Schwartz

7

Traditional v. IBB Format



Robbins Schwartz

8

Traditional Bargaining

- Building a Team – Chief Spokesman.
 - Provides rationales for proposals, responses, rejections
 - Maintain consistent messaging
 - Provides operational knowledge

Robbins Schwartz

9

Traditional Bargaining

- Initial Proposal
 - The first proposal at the table should come from the union.
 - The employer may wish to base its response on the extent and complexity of the union's proposal.
 - The employer should insist on receiving a complete proposal from the union so that it will not bargain in a piecemeal fashion.

Robbins Schwartz

10

Traditional Bargaining



- Responses
 - The employer, as a first response, may not propose a “take it or leave it” proposal.
 - The employer is not required to accept any proposal made by the union.

Robbins Schwartz

11

Traditional Bargaining

- The parties alternate responses until agreement is reached
 - Agreements reached on particular contract terms are considered “Tentative Agreements.”
 - When all issues have been TA’d, the parties submit the new draft collective bargaining agreement to the Board and the union to consider ratifying.

Robbins Schwartz

12

IBB Format



Interest based bargaining (“IBB”) goes by various names including “win-win” and “mutual gains bargaining.”



IBB dispenses with the use of a chief spokesperson and sequential exchanges of formal written proposals in favor of participation by many individuals and reliance on interest-based problem-solving techniques.

Robbins Schwartz

13

IBB Format

- The process:
 - Participants identify issues of mutual concern.
 - Participants identify the various interests both parties have in the issue. (Participants avoid taking positions on the issues identified.)
 - Participants jointly brainstorm options and solutions. (No judging! No judging!)
 - Participants apply “standards” or criteria to evaluate possible solutions or options. (Now you judge!)
- Note: Even in well-run IBB negotiations, the parties will usually revert to traditional bargaining when trying to resolve salary and problematic economic issues.



Robbins Schwartz

14

IBB Format

- The process relies on:
 - Extensive training of the bargaining teams – generally larger bargaining teams – in problem solving and listening techniques.
 - Commitment of all or most of the members of the board to participate in the training and interest based bargaining negotiation sessions.
 - A willingness of all the participants to follow the IBB format and principles.

Robbins Schwartz

15

IBB Format

- Advantages:
 - Open exploration and discussion of issues may help promote better understanding and relationships.
 - Union may develop greater appreciation of boards limitations and interests.
 - Process may help dissipate acrimony built up over previous difficult negotiations.
 - The process usually entails an expedited process with a deadline.

Robbins Schwartz

16

IBB Format

- Disadvantages:
 - Multiple participants in discussion raise possible contract language problems and grievances. Bargaining history is more difficult to discern and verify.
 - Individuals may be subject to personal attacks if parties do not adhere to interest based bargaining principles. Failure to stay committed to the process may damage, not help, labor relations.
 - The process demands significant time commitment of all participants.

Robbins Schwartz

17

Strategic Considerations



Robbins Schwartz

18

Strategic Considerations

The parties should reach agreement on a spreadsheet of the current placement of unit members on the pay grade ranges at the beginning of negotiations

Cost each union financial proposal. Do not rely on the union's representations.

The Board should demonstrate flexibility in altering the model when the Union makes valid points to maintain credibility.

Robbins Schwartz

19

Strategic Considerations

- Be careful of regressive bargaining.
 - Regressive bargaining occurs when a party makes a subsequent proposal which is less advantageous to the other party than the preceding proposal.
- Use "package proposals."
- Use the "supposal" or "what if" convention.
- Use the "sidebar."

Robbins Schwartz

20

Strategic Considerations



Know how each proposal directly affects each member of the union's bargaining team particularly in terms of compensation.



"Sacred cows" are contract provisions that appear to be minor but are likely to engender a disproportionately charged emotional response.

Robbins Schwartz

21

Strategic Considerations

- Understand the theory of "diminished expectations."
 - This occurs when the union has inflated the expectations of its members with respect to the outcome of the negotiations. It may take multiple bargaining sessions with Board resistance to the union's proposals before the union and its members realize that their proposals will not be accepted.
 - The union may also need to have the employer's team aggressively reject the union proposals at the table, so that the union can show its members that it has fought for the employees.

Robbins Schwartz

22

Strategic Considerations

- When proposing a change, make the new language appear to be as similar to the existing language as possible.
- “Sleeping dogs” - Avoid proposing changes when the board arguably has retained the right in question.
- Resist pressure to make noneconomic language concessions.
 - Language and management rights ceded during economic downturns will not be easily recaptured.

Robbins Schwartz

23

Strategic Considerations



- Contract Duration
 - Unions and employers understandably prefer contracts of longer duration but in these uncertain economic times that may not be realistic.
 - Be prepared to agree to a contract of less than three years or one that contains a reopener after the two-year mark.
 - If the parties do agree on a reopener, try to reopen only on wages and insurance.

Robbins Schwartz

24

Salary and Benefits Issues



Robbins Schwartz

25

Salary

- Community college salary settlements continue to reflect economic challenges.
- Note: Annualized CPI will likely set the standard for upcoming college contract settlements.
- Consider backloading
 - Reduces the total expense of the contract. [A 6% - 5% - 4% wage increase averages 5.33% each year. A 4% / 5% / 6% wage increase averages 4.66% a year.]

Robbins Schwartz

26

Benefits

- Benefits issues have surpassed salary as critical and most difficult negotiations issues for colleges.
 - Benefits costs continue to increase, especially with higher numbers of employees retiring with pre- and post-retirement benefits, including retiree health insurance benefits.
- Cost-saving strategy: reduce cost of fringe benefits payments.
 - Health Insurance Plan design changes.
 - Reduced retiree health insurance benefits.

Robbins Schwartz

27

Questions?



Robbins Schwartz

28

General Compliance Guidance: Illinois Freedom of Information Act

Presented by Catherine R. Locallo

Robbins Schwartz

29

Overview of FOIA



- A public record is defined as:
 - “[a]ll records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, records, electronic data processing records, electronic communications, recorded information and all other documentary materials **pertaining to the transaction of public business**, regardless of physical form or characteristics, having been **prepared by or for, or having been used or being used by, received by, in the possession of, or under the control of any public body.**” ILCS 140/2(c).

Robbins Schwartz

30

Overview of FOIA

- All **records of funds** of...units of local government...are public records subject to inspection and copying by the public. 5 ILCS 140/2.5.
- **Certified payroll records** submitted to a public body under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying by the public, except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure. 5 ILCS 140/2.10.
- All **settlement and severance agreements** entered into by or on behalf of a public body are public records subject to inspection and copying by the public, subject to applicable redactions. 5 ILCS 140/2.20.

Robbins Schwartz

31

Overview of FOIA

- FOIA only provides access to documents; it does not require creation of a new record. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989).
- FOIA does not require a public body to answer questions, nor does it require a public body to interpret or advise requesters as to the meaning or significance of public records. See 5 ILCS 140/3.3



Robbins Schwartz

32

Overview of FOIA

- A public body can require that a request for records be in writing.
- A public body may not require that a requester use a particular form to submit a FOIA request.
- A public body may, but is not required to, respond to oral requests for records. 5 ILCS 3(c).
 - A request can be made anonymously.
 - A public body cannot ask a requester why they want the records, except to clarify whether the request is being made for a commercial purpose.

Robbins Schwartz

33

Overview of FOIA



- Each public body shall designate one or more officials or employees to act as its FOIA Officer.
- A FOIA Officer is responsible for receiving requests, ensuring that the public body timely responds, and issuing the responses.
- FOIA Officers are required to successfully complete the electronic training curriculum established by the PAC within 30 days after assuming the position, and on an annual basis thereafter. Successful completion of the required training curriculum within the periods provided shall be a prerequisite to continue serving as a Freedom of Information Officer. The electronic training is available at http://foia.ilattorneygeneral.net/electronic_foia_training.aspx.

Robbins Schwartz

34

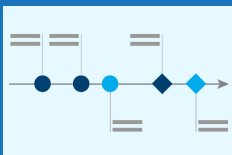
Overview of FOIA

- A public body must provide a record in electronic format requested by the requester if it is feasible to do so.
- If it is not feasible to do so, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.
- A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.

Robbins Schwartz

35

Timelines for Response



- Generally, a public body has **5 business days** after receipt of a FOIA request to respond to that FOIA request.
- Business days are Monday through Friday, and do not include Saturday or Sunday or legal holidays in Illinois (provided the public body is closed for the holiday). See 205 ILCS 630/17 for the holidays applicable to FOIA responses.

Robbins Schwartz

36

Timelines for Response

- The time for response may be extended by up to 5 additional business days from the original due date for any of the reasons specified in FOIA Section 3(e). Most often cited for extension:
 - The request requires the collection of a substantial number of specified records;
 - The request is couched in categorical terms and requires an extensive search for the records responsive to it;
 - The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure (in whole or in part); and/or
 - The request for records cannot be complied with by the public body within the time limits...without unduly burdening or interfering with the operations of the public body.

Robbins Schwartz

37

Timelines for Response

- The requester may voluntarily agree to a longer timeframe for response.
- Failure to timely respond is considered a denial, and the public body **waives the right to assert that the request would be unduly burdensome to comply with or to charge copy fees.**



Robbins Schwartz

38

Timelines for Response

- A public body shall respond to a request for records to be used for a **commercial purpose** within 21 business days after receipt. 5 ILCS 140/3.1.
 - “Commercial purpose” means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.
 - Requests from news media, not-for-profits, scientific or academic organizations are not for a “commercial purpose.” 5 ILCS 140/2(c-10).
 - If applicable, a public body may charge for search and retrieval efforts in connection with a commercial purpose request. See 5 ILCS 140/6(f).

Robbins Schwartz

39

Timelines for Response



- A public body shall respond to a request from a **recurrent requester** within 21 business days after receipt.
 - “Recurrent requester” means a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period.
 - This designation does not apply to news media, not-for-profits, scientific or academic organization. 5 ILCS 140/2(g).

Robbins Schwartz

40

Timelines for Response

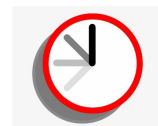
- A public body shall respond to a **voluminous request** within 5 business days after receipt. "Voluminous request" means a request that:
 - (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or
 - (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. Generally, this designation does not apply to news media, not-for-profits, scientific or academic organizations. 5 ILCS 140/2(h).

Robbins Schwartz

41

Timelines for Response

- The "voluminous request" response must notify the requester of the following:
 - That the public body is treating the request as a voluminous request;
 - The reasons why the public body is treating the request as a voluminous request;
 - That the requester must respond to the public body within 10 business days after the public body's response was sent and specify whether the requester would like to amend the request in such a way that the public body will no longer treat the request as a voluminous request;



Robbins Schwartz

42

Timelines for Response

- The “voluminous request” response must notify the requester of the following (cont’d):
 - That if the requester does not respond within 10 business days or if the request continues to be a voluminous request following the requester's response, the public body will respond to the request and assess any fees the public body charges pursuant to FOIA Section 6;
 - That the public body has 5 business days after receipt of the requester's response or 5 business days from the last day for the requester to amend his or her request, whichever is sooner, to respond to the request;

Robbins Schwartz

43

Timelines for Response

- The “voluminous request” response must notify the requester of the following (cont’d):
 - That the public body may request an additional 10 business days to comply with the request;
 - Of the requester's right to review the public body's determination by the Public Access Counselor and provide the address and phone number for the Public Access Counselor;
 - If the requester fails to accept or collect the responsive records, the public body may still charge the requester for its response pursuant to FOIA Section 6 and the requester's failure to pay will be considered a debt due and owing to the public body and may be collected in accordance with applicable law.

Robbins Schwartz



44

Timelines for Response

- If a request continues to be a voluminous request following the requester's response or the requester fails to respond, the public body shall respond, or assert the request is unduly burdensome and provide the requester with an opportunity to narrow, within the earlier of 5 business days after it receives the response from the requester or 5 business days after the final day for the requester to respond to the public body's initial response.
- A public body can charge special fees for a response to a "voluminous request" for records in electronic form. See 5 ILCS 140/6(a-5).

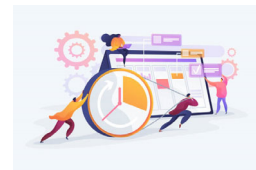
Robbins Schwartz

45

Timelines for Response

- If a **categorical request** for records would be **unduly burdensome** for the public body to comply with, the public body must notify the requester in writing of this and provide the requester with an opportunity to narrow within the first 5 business days after receipt of the request or the extended 5 business days, if applicable and an extension letter was sent.

Robbins Schwartz



46

Denials for Exempt Content or Records

- The presumption under FOIA is that all records in the custody or possession of a public body are presumed to be open to inspection and copying.
- Any public body that asserts that a record is exempt from disclosure has the burden of proving by **clear and convincing evidence** that it is exempt. 5 ILCS 1.2.

Robbins Schwartz

47

Denials for Exempt Content or Records



- Any public body that denies a FOIA request must notify the requester in writing of the decision to deny the request.
- Written denial must include the reasons for the denial, including a detailed factual basis and supporting legal authority for any exemption claims under FOIA Section 7, and the right to seek review of the denial by the Illinois Attorney General's Public Access Counselor (PAC) or in a court of law.
- **The non-existence of a responsive record is not a denial.** Rather, the public body should respond, "[t]here are no records responsive to your request."

Robbins Schwartz

48


Review of Denials for Exempt Content or Records

- A requester has 60 calendar days from the public body's final response (or the date the response was due) to file a Request for Review with the PAC regarding the denial of a FOIA request.
- The PAC may:
 - Work to resolve the dispute between the requester and the public body;
 - Issue a non-binding decision finding that the public body did or did not violate FOIA and, if warranted, direct disclosure of records to the requester; or
 - Issue a binding decision finding that the public body did or did not violate FOIA, which is published on the PAC's website.

Robbins Schwartz

49

Review of Denials for Exempt Content or Records

- Alternatively, a requester may file a civil action in circuit court for injunctive or declaratory relief within 2 years after the alleged violation took place. 
- If a requester prevails in the litigation, the court will award the requester reasonable attorney's fees.
- In addition, if the court determines that a public body willfully and intentionally failed to comply with FOIA or otherwise acted in bad faith, the Court can award a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.

Robbins Schwartz

50

Ten General
FOIA
Exemptions of
Particular
Interest to
Community
College

- **Private information:**

- Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, home address, personal license plates and personal e-mail addresses, unless disclosure is required by another provision of FOIA, a State or federal law or a court order. 5 ILCS 7(1)(b).

Robbins Schwartz

51

Ten General
FOIA
Exemptions of
Particular
Interest to
Community
Colleges

- **Personal information** contained within public records, the disclosure of which would constitute **a clearly unwarranted invasion of personal privacy**, unless the disclosure is consented to in writing by the individual subjects of the information.

- "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information.
- The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy. 5 ILCS 7(1)(c).

EXEMPT

Robbins Schwartz

52

Ten General FOIA Exemptions of Particular Interest to Community College

- Examples of information upheld by the PAC as exempt from disclosure pursuant to FOIA Section 7(1)(c) include:
 - Names of individuals who submit FOIA requests (if they request anonymity) (upheld on many occasions in pre-authorization decisions issued by the PAC).
 - Dates of birth (upheld on many occasions in pre-authorization decisions issued by the PAC), but not age.
 - Race/ethnicity (2010 PAC 5602).
 - Names, application and application-related information of unsuccessful applicants for employment (2010 PAC 5196; 2010 PAC 5602; 2010 PAC 5653; 2010 PAC 9187; and 2010 PAC 7800).

Robbins Schwartz

53

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information upheld by the PAC as exempt from disclosure pursuant to FOIA Section 7(1)(c) include:
 - Educational transcript (2010 PAC 6398, has no bearing on job performance).
 - Employer-issued cell phone numbers (2010 PAC 8685, disclosure could subject staff to excessive calls from the public at all times of the day; could also impair the ability for employees to be contacted for work related reasons).
 - An employee's or trustee's personal expenses for meals and entertainment which were not submitted for reimbursement to the public body (2010 PAC 7316, had no bearing on public duties of public employees and is not use of public funds).

Robbins Schwartz



54

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information upheld by the PAC as exempt from disclosure pursuant to FOIA Section 7(1)(c) include:
 - An employee's or trustees's personal appointments (2010 PAC 7187 and 2010 PAC 9371).
 - Names and other identifying information for persons who express opinions, concerns or complaints to a public body (2010 PAC 8559, citizens have a privacy right in the opinions they express).
 - Medical information (upheld on many occasions in pre-authorization decisions issued by the PAC).

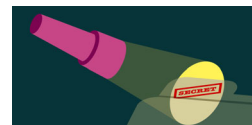
Robbins Schwartz

55

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information upheld by the PAC as exempt from disclosure pursuant to FOIA Section 7(1)(c) include:
 - Names of pension fund beneficiaries (2010 PAC 11125, not public employees, so they have a reasonable expectation of privacy).
 - Certain payroll deduction information (i.e., amounts withheld for state and federal taxes; discretionary withholdings and contributions) (2011 PAC 13034, highly personal and does not relate to the obligation, receipt and use of public funds).
 - Employee's law enforcement background check (2010 PAC 9678).

Robbins Schwartz



56

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information **not** exempt from disclosure pursuant to FOIA Section 7(1)(c) include:
 - Names, titles, salary and hire date of current or former employees.
 - Employment application and resume of current or former employees.
 - Generally, personnel files.
 - Employee discipline records.
 - Timesheets.
 - Records which reflect a current or former employee's vacation time, sick time, compensatory time, personal time, etc.

Robbins Schwartz

57

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information **not** exempt from disclosure pursuant to FOIA Section 7(1)(c) include:
 - Employee photographs.
 - Resignation letter.
 - Employer's "Do Not Hire" list.
 - Resumes and curricula vitae of candidates for public office.



Robbins Schwartz

58

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body... 5 ILCS 7(1)(f).

Robbins Schwartz

59

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information upheld by the PAC as exempt from disclosure pursuant to FOIA Section 7(1)(f) include:
 - Records in "draft" form (per se exempt from disclosure).
 - Memoranda containing recommendations of officials and/or employees of a public body about an individual's continued employment (2010 PAC 6032).
 - E-mails expressing an opinion about a job candidate (2010 PAC 7800).
 - Internal e-mails in which strategy was discussed and deliberated and courses of action were formulated (i.e., new administrator search; policy matters; steps for investigating a complaint).



Robbins Schwartz

60


Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Examples of information upheld by the PAC as exempt from disclosure pursuant to FOIA Section 7(1)(f) include:
 - Pre-decisional notes and other communications used as part of a public body's deliberative process in determining how to proceed with a specific matter (i.e., notes taken by administrators during an investigation).
 - Candidate interview questions (2010 PAC 7800).
 - Candidate rating sheets (2010 PAC 7800).
 - Chart listing candidate's strength and weaknesses (2010 PAC 7800).

Robbins Schwartz

61

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- 
- Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made. 5 ILCS 140/7(1)(h).
 - Closed session meeting minutes. See 5 ILCS 140/7(1)(l).
 - Attorney-client privileged communications. See 5 ILCS 140/7(1)(m).
 - Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying. See 5 ILCS 140/7(1)(p).
 - Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment. See 5 ILCS 140/7(1)(q).

Robbins Schwartz

62

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is administered. 5 ILCS 140/7(1)(n).\
- Note: In a 2010 non-binding opinion, the Public Access Counselor (PAC) stated that in order to properly apply FOIA Section 7(1)(n), a public body's adjudication of a disciplinary matter should include, at the very least, the **commencement of some type of formal hearing to determine the rights of the employee**. See Request for Review 2010 PAC 9662.
- In 2013 the PAC issued a binding opinion concerning documents generated as part of a public body's investigation of alleged employee misconduct and held that **records generated during a public body's internal investigation of a matter that did not result in any formal adjudicatory proceeding do not relate to an "adjudication" within the meaning of 7(1)(n)**, and, therefore, were not exempt from disclosure. See Public Access Opinion 13-011.

Robbins Schwartz

63

Ten General FOIA Exemptions of Particular Interest to Community Colleges

- In 2014, the Illinois Appellate Court in *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, held that FOIA Section 7(1)(n) applies to the adjudication of employee grievances and disciplinary cases, and adjudication requires a formalized legal proceeding that results in a final and enforceable decision.
- The records at issue in this case were the Chicago Police Department's Complaint Register files and Repeater Lists, and the Court determined that neither were exempt from disclosure under FOIA Section 7(1)(n).

Robbins Schwartz



64

Ten General
FOIA
Exemptions of
Particular
Interest to
Community
Colleges

• **Note:**

- In 2016, the Illinois Appellate Court in *Peoria Journal Star v. City of Peoria*, 2016 IL App (3rd) 140838, held that an internal disciplinary report that was created before any adjudication took place and existed independent of any adjudication was merely an investigative report, not an adjudicative one, and that the report later led to disciplinary action did not make it exempt under FOIA Section 7(1)(n).

Robbins Schwartz

65

Ten General
FOIA
Exemptions of
Particular
Interest to
Community
Colleges

- Information prohibited from being disclosed by the Personnel Records Review Act (PRRA). 5 ILCS 140/7.5(q).
- The PRRA prohibits the disclosure of performance evaluations in response to a FOIA request. See 820 ILCS 40/11.
- An employer shall review a personnel record before releasing information to a third party (except when the release is ordered to a party in a legal action or arbitration) and delete disciplinary reports, letters of reprimand or other disciplinary records which are more than 4 years old. See 820 ILCS 40/8.
- With respect to FOIA requests for discipline documents, written notice may be sent to an employee by first-class mail to the employee's last known address on or before the day the information is divulged. See 820 ILCS 40/7.

Robbins Schwartz

CONFIDENTIAL

66

The *City of Champaign* Decision

- Electronic records relating to the transaction of public business are “public records” subject to disclosure under FOIA even if generated on a public official’s private equipment and/or maintained on personal electronic accounts. 2011-006.
- The public body subject to this binding decision filed for administrative review. Ultimately, the Appellate Court held that communications via text message and e-mail between board members during a board meeting are subject to FOIA. *City of Champaign v. Madigan*, 2013 Il. App. (4th) 120662.
- Once board members/trustees convene a public meeting, they collectively become a public body. Any communication that pertains to public business and sent or received by board members/trustees when the public meeting is in session is a public record subject to FOIA.



Robbins Schwartz

67

The *CNN v. Chicago Police Department* Decision

- On January 28, 2016, CNN submitted a FOIA request to the Chicago Police Department (“CPD”) seeking “all emails related to Laquan McDonald from Police Department email accounts and personal email accounts where business was discussed” for 12 named CPD officers for specified date ranges. CNN sought review of the scope of the CPD’s search for responsive records.
- The PAC determined that the CPD violated FOIA by failing to conduct an adequate search for all emails responsive to the request.
- Among other things, the PAC concluded that CPD had a duty to search for responsive records contained in the personal email accounts of the named officers since “communications pertaining to the transaction of public business that were sent or received on the CPD employees’ personal e-mail accounts are ‘public records’ under the definition of that term in section 2(c) of FOIA.”
- The PAC directed CPD to search the personal email accounts of the 12 named officers for responsive documents but noted that CPD may initially conduct this search by asking the named officers whether they maintain any records responsive to the request, and, if so, by requiring the officers to provide copies of the records to CPD’s FOIA officer.

Robbins Schwartz

68

The *CNN v. Chicago Police Department* Decision

- The PAC's decision was upheld by the Court on administrative review.
- Because police officers can act on behalf of the City individually vis-à-vis their employment, they act for the public body whenever their actions pertain to City business.
- Individual police officers act for the public body whenever they individually do some kind of "public business" (a term that the Court did not define). Thus, any such records on their personal devices are public records of the City.
- The Court differentiated between city council members (elected officials) and police officers (employees) by explaining that, while a public body can act through its employees, agents, and elected officials, some of them (like city council members) can only act collectively while others (like police officers) act for a public body individually, without meetings or quorums.
- Thus, the holding in *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, that communications from elected officials' personal electronic devices/accounts are public records only when such communications happen during a meeting at which a quorum is present, remains intact.

Robbins Schwartz

69

Questions?



Robbins Schwartz

70

Break



Robbins Schwartz

71

The Open Meetings Act: FAQs and Answers

Presented by Catherine R. Locallo

Robbins Schwartz

72

What is a "Meeting" and What is a "Public Body"?



A majority of a quorum of a public body may not meet to discuss public business without complying with the Open Meetings Act ("OMA").



For a seven-member board, a quorum is four and a majority of a quorum is three.



A "meeting" includes communication in person or by video or audio conference, phone call, e-mail, other electronic messaging, or "other means of contemporaneous interactive communication."

Robbins Schwartz

73

What is a "Meeting" and What is a "Public Body"?

- If no public business is discussed, it is not a "meeting."
- However, if public business is discussed, then the gathering qualifies as a meeting. Notice must be posted and minutes must be kept.
- "Public body" also includes committees. If the board creates a two-member (or three-member) committee to deal with a particular topic, the committee must post notices and agendas for its meetings and keep minutes.

Robbins Schwartz



74

What Type of Meeting Notice Must be Given?

- A public body must give public notice of the schedule of its regular meetings (including dates, times, and places) at the beginning of each calendar or fiscal year.
- If a change is made in regular meeting dates, at least 10 days' notice must be given by publication in a newspaper of general circulation in the public body's service area and must also be posted in the principal office of the public body or (if no such office exists) at the building in which the meeting is to be held.
- The public body must also post an agenda for each regular and special meeting at least 48 hours in advance of the meeting, at the principal office of the public body, at the meeting location and on the public body's website.
- Public bodies are to supply a copy of the notice of their regular meetings, and of any special, emergency, rescheduled regular, or reconvened meetings, to any news medium that has filed an annual request for such notice.

Robbins Schwartz

75

Must a Topic be on the Agenda to be Discussed at that Meeting by the Board?

- The OMA states that "the requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda."
- The Illinois Appellate Court has held that this language means that items not specifically listed in a regular meeting agenda may only be deliberated and discussed by boards - not acted upon - at that meeting.
- Boards are strongly advised to be sure that any matter to be voted upon is included on their regular meeting agendas.
- An amended agenda which adds new proposed action items should be posted and sent to requesting news media at least 48 hours ahead of the meeting.

Robbins Schwartz

REQUIRED

76

What Type of Notice Must be Given for Action Items?

- The agenda must set forth the general subject matter of any final action to be taken at the meeting.
- Final action at a meeting shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

Robbins Schwartz

77

What Topics May the Board Discuss in a Closed Meeting?

- The OMA requires public bodies to meet in public, unless an exception to the requirement of open meetings applies.



Robbins Schwartz

78

What Topics May the Board Discuss in a Closed Meeting?

- The exceptions most commonly relevant for our purposes provide that a community college board hold a closed meeting to discuss the following subjects:
 - Appointment, employment, compensation, discipline, performance, or dismissal of specific employee(s), independent contractors or volunteers of the college or legal counsel for the college.
 - Collective negotiating matters between the college and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.
 - Selection of a person to fill a public office, as defined in the Open Meetings Act, or to fill a vacancy in a public office whose occupant the college has legal authority to appoint...

Robbins Schwartz

79

What Topics May the Board Discuss in a Closed Meeting?



- A board may hold a closed meeting to discuss the following subjects:
 - Purchase or lease of real property for the use of the college, including meetings held to discuss whether a particular parcel should be acquired.
 - Setting a price for the sale or lease of property owned by the college.
 - Sale or purchase of securities, investments or investment contracts.
 - Security procedures, school building safety and security, and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably possible danger to the safety of employees, students, staff or public property.

Robbins Schwartz

80

What Topics May the Board Discuss in a Closed Meeting?

- A board may hold a closed meeting to discuss the following subjects:
 - A student disciplinary case (or cases).
 - Placement of a student(s) in special education programs and other matters relating to individual students.
 - **Litigation**, when an action against, affecting or on behalf of the college has been filed and **is pending** before a court or administrative tribunal, or when the college finds that an action **is probable or imminent**, in which case the basis for the finding must be recorded and entered into the minutes of the closed meeting.

Robbins Schwartz

81

What Topics May the Board Discuss in a Closed Meeting?

- A board may hold a closed meeting to discuss the following subjects:
 - Self-evaluation, practices and procedures or professional ethics, when the board is meeting with a representative of a statewide association of which the college is a member.
 - Discussion of minutes of meetings lawfully closed under the Open Meetings Act, whether for purpose of approval by the college of the minutes or semi-annual review of the minutes.
 - Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America.

Robbins Schwartz



82

What Procedure Should the Board Follow To Go Into Closed Session?

- A motion to go into closed session must cite the OMA exceptions which authorize that particular closed session.
- A roll call vote taken in open session is needed to go into a closed meeting.
- The board may properly convene in closed session during any meeting to discuss statutorily permitted topics if it follows the above procedures, even if the agenda for that meeting does not list a closed session.

Robbins Schwartz

83

How Detailed Should Closed Meeting Minutes Be?



- The Open Meetings Act requires public bodies to keep minutes of all meetings, including at a minimum:
 - The meeting date, place, and time.
 - Trustees recorded as present or absent.
 - A "summary of discussion on all matters proposed, deliberated, or decided", with a record of any votes taken.

Robbins Schwartz

84


How Detailed Should Closed Meeting Minutes Be?

- Minutes of closed sessions are subject to these same content requirements.
- It is **not** acceptable for your closed session minutes to simply say “the Board discussed the Johnson lawsuit.”
 - The minutes must summarize the discussion about the lawsuit, as by indicating who brought the matter up and what they asked the board to consider.

Robbins Schwartz

85

How Detailed Should Closed Meeting Minutes Be?

- The OMA does not require detailed recounting of extended discussions or that every trustee’s comments be reported. 
- The minutes-taker should try to capture the gist of the discussion and focus on the most important comments.
- The OMA exceptions listed as topic headings in the closed session minutes should match the exceptions cited in the open session motion to hold the closed meeting.

Robbins Schwartz

86

What Does the OMA Say About Recording Meetings?

- The OMA allows anyone to tape record or photograph **open** meetings.
- The public body may make "reasonable regulations" governing these activities but may not selectively prohibit recording at certain times.
- The OMA requires public bodies to make and maintain audio or video recordings of their closed meetings.

Robbins Schwartz

87

How Should We Review and Release Closed Meeting Minutes and Tapes?

- The board must review closed session minutes and tape recordings every 6 months and release closed meeting minutes which no longer need to be kept confidential.
- If closed meeting minutes are not released, the board must make a specific finding in the record that the need for confidentiality still exists.
- Tape recordings may be destroyed after 18 months provided the minutes have been approved and that there is no pending litigation about a subject discussed on that particular recording.

Robbins Schwartz



88

May a Trustee Attend a Meeting by Video Conference or Telephone Call?

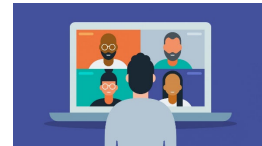
- A quorum of the board must be physically present at the actual location of the meeting. Absent trustees may not “call in” to make up a quorum.
- Absent trustees may participate electronically only:
 - In accordance with the requirements set forth in OMA Section 7(e) if the Governor or Director of IDPH has issued a disaster declaration related to public health concerns and the public body is covered by the disaster declaration; OR
 - if specifically allowed by the public body under adopted rules on the subject.
- Section 7(e) Requirements:
 - In-person meeting is not practical or prudent due to the disaster;
 - Confirm that trustees can hear one another;
 - Verify that attendees can hear all discussion, testimony or roll call vote;
 - In-person attendance of one trustee, chief legal counsel or chief administrative officer unless not feasible due to disaster;
 - All votes by roll call;
 - 48-hours notice of the meeting (unless bona fide emergency); and
 - Maintain a verbatim recording of the meeting

Robbins Schwartz

89

May a Trustee Attend a Meeting by Video Conference or Telephone Call?

- If allowed by the public body under rules adopted on the subject, an absent trustee may be permitted to participate electronically only if he/she is prevented from physically attending the meeting due to:
 - Personal illness or disability;
 - Employment purposes;
 - Business of the public body; or
 - A family emergency or other emergency.
- A trustee who wishes to attend electronically must notify the “recording secretary or clerk” of the board before the meeting unless it is “impracticable” to do so.



Robbins Schwartz

90

Trustee Electronic Communications as Public Records

- Under the Illinois Freedom of Information Act, “public records” include all records and other documentary materials pertaining to the transaction of public business, “regardless of physical form or characteristics, having been prepared by or for, or *having been used by, received by, in the possession of, or under the control of any public body*”. 5 ILCS 14/2(c)
- Electronic records relating to public business are “public records” subject to disclosure under FOIA even if they are generated on a public official’s personal electronic device or e-mail account:
 - ...[W]hether information is a ‘public record’ is not determined by where, how, or on what device that record was created; rather, the question is whether that record was prepared by or used by one or more members of a public body in conducting the affairs of government.

Robbins Schwartz

91

“Do’s and Don’t’s” of Trustee E-mail Communications

- Do's (Permitted E-mail Communications)
 - An e-mail communication involving only two trustees who do not discuss any confidential information.
 - An e-mail message broadcast to all trustees for which no response is required.
 - An e-mail communication soliciting a response but directing that response be made to the original sender only and not copied to the other trustees.
 - E-mail communications for purposes other than discussing public business (such as to confirm location of a board retreat).

Robbins Schwartz



92

"Do's and Don'ts" of Trustee E-mail Communications

- Don'ts (Prohibited or Inadvisable E-mail Communications)
 - A majority of a quorum (or more) of trustees participating in an on-line chat room for the purpose of discussing public business.
 - E-mail messages broadcast to all trustees which are made for the purpose of discussing public business and which solicit responses.
 - Discussion of any confidential information via e-mail.

Robbins Schwartz

93

What About Text Messages

- Text messages may constitute a "public record" under FOIA.
- The same do's and don'ts for email apply to text messages.
- Use caution if discussion public business via text message.

Robbins Schwartz

94

What Training is Required for Elected and Appointed Members of a Public Body Under the OMA?



- Each public body must designate employees, officers and/or trustees to receive OMA electronic training provided by the Public Access Counselor (OMA Designees).
- The annual on-line training provided by Public Access Counselor can be found at <http://foia.ilattorneygeneral.net/default.aspx>.
- Public Act 97-504, (effective January 1, 2012) extended this training requirement to each elected or appointed member of a public body subject to the OMA.
- Newly elected or appointed members of public bodies must complete the training no later than the 90th day after the date they take any required oath of office (or assume their responsibilities as a member of the public body, if no oath is required), and must file a certificate of completion issued by the PAC with the public body.

Robbins Schwartz

95

What Happens if a Board Violates the OMA?

- Private citizens can enforce the OMA by suing for a court order to enjoin a public body from violating the Act, or to void actions taken in a manner which violated the Act.
 - In such cases, a prevailing plaintiff can have his attorney's fees paid by the public body.
- Private citizens can also file a Request for Review with the Illinois Attorney General's Public Access Counselor.
- The State's Attorney can pursue civil remedies or criminal sanctions.

Robbins Schwartz

96

Questions?



Robbins Schwartz

97

Financial Oversight and Accountability

Presented By: Kenneth M. Florey

Robbins Schwartz

98

Overview: Key Issues to Consider for Financial Oversight

- Sources of Funding
- Protecting Your Property Tax Base
 - Assessment Appeals
 - Tax Rate Objections
 - Exemptions
- Budget, Fund Accounting, and Auditing Requirements
- Public Contract Requirements

Robbins Schwartz

99

Financial Planning

- Financial planning for current and future operation of community colleges shall provide for both a sound educational program and prudent use of public funds. 23 Ill. Adm. Code 1501.502.

Robbins Schwartz

100

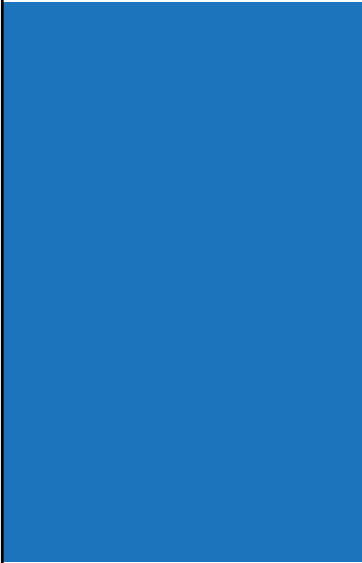


Sources of Community College Funding

- Property Taxes
- Tuition
- State Appropriations
- Grants

Robbins Schwartz

101



Financial Oversight: Property Tax Assessment Appeals

Robbins Schwartz

102

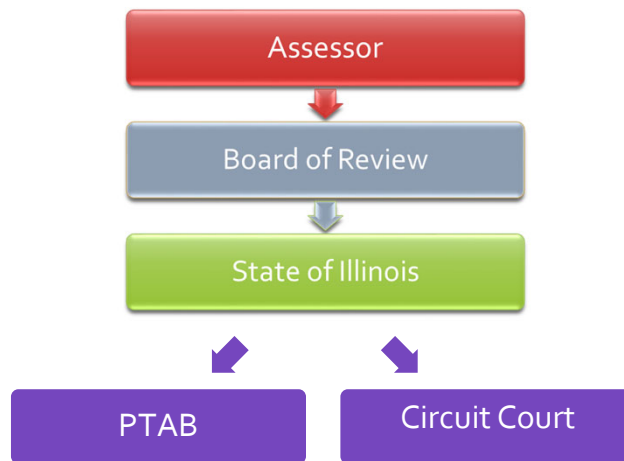
Property Tax Assessment Appeals Protecting Your Tax Base



Robbins Schwartz

103

Levels of Appeal



Robbins Schwartz

104

Getting Involved in the Assessment Appeal Process

- Intervention – Process
 - Board of Review Notice
 - Resolution
 - Intervention
 - One Page Application
 - No Filing Fee



Robbins Schwartz

105

Benefits of College Involvement

- Present Evidence
- Rebuttal
- Settlement – 99% of property tax disputes result in settlement
- Trial Participation
- Cost-Benefit Analysis
- Monitor Process
- Intergovernmental Cooperation
- Tax Increases
- Make Your Presence Known

Robbins Schwartz

106

Sample College Results – 8 Cases

- Average College Potential Refund: \$14,296
- Average College Actual Refund: \$3,468
- Average Legal Fees Per Case: \$1,353
- College Savings Per Case: \$9,475
- Total College Savings: \$66,327

Robbins Schwartz

107

Intervention Goals

- Settle PTAB Appeals
- Minimize Refunds
- Long-Term Settlement
- Get to the Reasonable Value

Robbins Schwartz

108

Sample Case -
Target



Property Details

Location: Wheaton, IL
 136,036 square feet
 12.3146 Acres
 Built in 1992

Robbins Schwartz

109

Sample Case -
Target

	Assessor	Taxpayer	College
Assessed Value	\$ 2,202,000	\$ 1,586,928	\$ 2,720,448
Fair Cash Value	\$ 6,606,661	\$ 4,761,260	\$ 8,162,160
Fair Cash Value/ Per Square Foot	\$ 48.57	\$ 35.00	\$60.00
Tax Rate	7.41%	7.41%	7.41%
Taxes	\$ 163,228	\$ 117,634	\$ 201,659
Difference from Assessor	\$ -	\$ (45,593)	\$ 84,024

Robbins Schwartz

110

Sample Case -
Target

• Appraisal Evidence

- Cost Approach – Supportive
- Income Approach – Income Properties
- Sales Comparison Approach – Preferred in Illinois

Robbins Schwartz

111

Sample Case –
Target –
Taxpayer’s
Evidence

Sale Comp #1



Naperville Wal-Mart
\$25.92 psf
Purchased for Redevelopment

Sale Comp #2



Waukegan Empty Retail
\$32.69 psf
Deferred Maintenance

Robbins Schwartz

112

Sample Case –
Target –
College’s
Evidence

Sale Comp #1



Oak Brook Jewel Osco
\$70.78 psf
Purchased by Tenant

Sale Comp #2



Naperville Burlington Coat
\$72.68 psf
25 Year Lease

Robbins Schwartz

113

Financial Oversight:
Tax Rate Objections

Robbins Schwartz

114

Tax Rate Objection Process

- Property Tax Code authorizes a taxpayer to file an objection complaint in circuit court to taxes extended against that property, on the ground that alleged unlawful acts or omissions by taxing bodies involved rendered one or more of their levies invalid in whole or part. PTC § 23-10, 35 ILCS 200/23-10.

Robbins Schwartz

115

Defending or otherwise resolving tax objections

- Recommended first steps:
 - When you receive notice that objections have been filed to one or more of your college's tax levies, forward copies of the objections to college legal counsel to review and assist you in evaluating strategic options.
 - Factors to be considered include the legal merit or lack of merit of the objections, as well as the total estimated amount of the objectors' refund claim for each objection.
 - The total refund claim amount for any objection will be equal to the aggregate EAV of the taxpayers who have filed the objection, multiplied by the tax rate complained of cited in the objection.



Robbins Schwartz

116

Defending or otherwise resolving tax objections

- Based on the consultation with college counsel, gather records as needed in order to provide a response to the State's Attorney and the plaintiffs' attorney regarding the objections, or for legal counsel to use in preparing a response on behalf of the college.
- Provide direction to college counsel regarding the approach or approaches your college wishes to take in seeking resolution of the objections.

Robbins Schwartz

117

Defending or otherwise resolving tax objections

- Options:
 - Obtaining agreement of plaintiffs (through their attorney) to voluntarily withdraw the objection as lacking merit.
 - Negotiating settlement of the objection or objections at a percentage of the tax rate complained of in the objections. Any proposed settlement should be approved by your college's governing board.
 - Moving for judgment in the college's favor on the objection(s), and proceeding to hearing in the Circuit Court.



Robbins Schwartz

118

Common objections to college tax levies

- Excessive accumulation objections
 - 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.

Robbins Schwartz

119

Common objections – improper expenditures of "tort" funds

- Allege that college 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.

Robbins Schwartz



120

Common
objections –
improper
expenditures
of “tort” funds

- However, §9-107 of the Local Government and Governmental Employees Tort Immunity Act expressly permits funds raised by the levy which it authorizes to be used for “protection against and reduction of any liability or loss...under the Workers Compensation Act...and the Unemployment Insurance Act.” 745 ILCS 10/9-107.

Robbins Schwartz

121

Financial Oversight: Property Tax Exemptions

Robbins Schwartz

122

Common Disputes

- Charitable Exemptions – Must Be In Charitable Ownership and Charitable Use
 - Hospitals
 - Performing Arts
 - Research and Science
- Religious Institutions – Must Be Used For Exclusively Religious Purposes
- Schools – Not Used With a View Towards Profit



Robbins Schwartz

123

Financial Oversight: Adopting a Budget, Fund Accounting, and the Annual Audit

Robbins Schwartz

124

Budget Requirements

- Section 3-20.1 of the Act requires a budget to be adopted within or before the first quarter of a fiscal year.
- Make a tentative budget available for at least thirty days prior to the Board's approval of the budget.
- Publish notice of the ability to inspect the tentative budget.
- Hold at least one public hearing prior to final action adopting the budget.
- File written or electronic copy with ISBE.

Robbins Schwartz

125

Fund Accounting

- Illinois Community College Board ("ICCB") fund accounting regulations require the use of funds that "shall be used for publicly reporting community college financial transactions." 23 Ill. Adm. Code 1501.511(a).



Robbins Schwartz

126

Fund Accounting

- Legal Authority for Funds – Specific community college funds, and the permitted uses of monies in these funds, are established through the Illinois Public Community College Act (110 ILCS 805/1, et seq.), ICCB regulations, and other statutes applicable to public bodies.
- Operating Funds – The Operating Funds consist of the Education Fund; the Operations, Building, and Maintenance Fund; and the Public Building Commission Operation and Maintenance Fund. 23 Ill. Adm. Code 1501.511.

Robbins Schwartz

127

Audit Requirement

- Section 3-22.1 of the Act requires an audit to be made as of the end of the each fiscal year by an accountant licensed to practice public accounting in Illinois.
- The Board must appoint a College auditor.
- Audit shall include a verification of student enrollments.
- Copies of the audit shall be filed with the State Board by October 15 following the end of the fiscal year.



Robbins Schwartz

128

Financial Oversight: Public Contracts

Robbins Schwartz

129

Public Bidding Requirements

- The Board has the authority “[t]o award all contracts for purchase of supplies, materials or work involving an expenditure 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; after due advertisement, except for”

110 ILCS 805/3-27.1

Robbins Schwartz



130

Public Bidding Exemptions

- Services of individuals possessing a high degree of professional skill
- Change orders for contracts awarded through a public bid that, due to unforeseen revisions, not the fault of the contractor, require expenditures of not more than 10% of the contract
- Information technology (use, purchase, delivery, and/or installation of data processing equipment)
- Goods and services procured from another governmental agency
- Contracts for goods or services which are economically procurable from only one source (such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services, such as water, light, heat, telephone or telegraph)
- Emergency expenditures if approved by $\frac{3}{4}$ of the members of the board

Robbins Schwartz

131

Public Bidding Exemptions

- Maintenance or servicing of equipment by the manufacturer or its authorized agent
- Construction contracts for 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.
- Equipment previously owned by another entity
- Perishable foods and beverages
- Duplicating machines or supplies
- Natural gas
- Printing of finance committee reports and departmental reports
- Printing or engraving bonds, tax warrants, and other evidences of indebtedness



Robbins Schwartz

132

Awarding the Bid Criteria

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

Robbins Schwartz

133

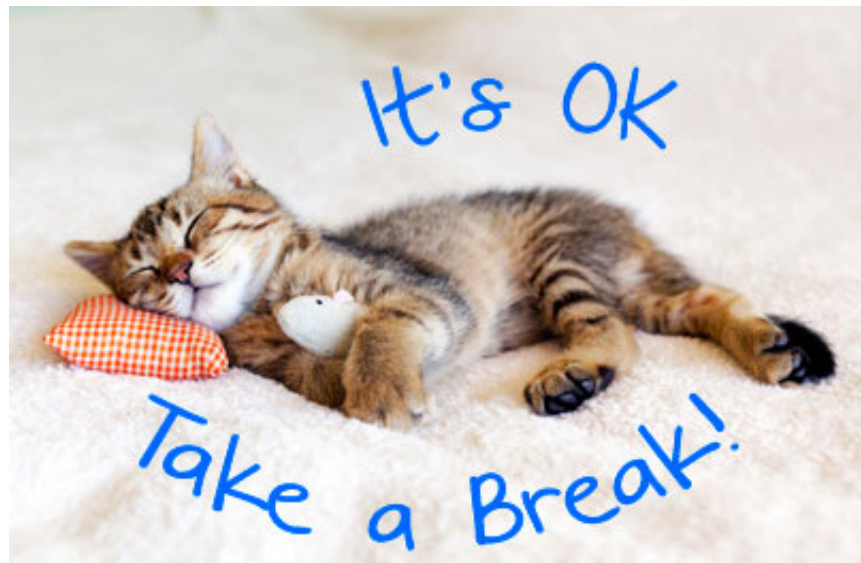
Questions?



Robbins Schwartz

134

Break



Robbins Schwartz

135

Sexual Harassment on Campus: The Continued Evolution of Title IX

Presented by: Frank B. Garrett and Kevin P. Noll

Robbins Schwartz

136

Title IX Basics

- Title IX provides that “no person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31(a).
- The Title IX Regulations expressly address institutions’ obligations to address **sexual harassment** in their educational programs and activities.

Robbins Schwartz

137

Recent Amendments to the Title IX Regulations

- The Department of Education released proposed amendments to the Title IX Regulations in November 2018.
 - 60-day public comment period yielded over 120,000 comments.
- Proposed Final Rules published in Federal Register on May 19, 2020.
- Effective date: **August 14, 2020.**



Robbins Schwartz

138

Changes on the Horizon

- Executive Order on March 8, 2021
 - Review of all existing regulations, policies, and guidance documents.
 - 100-day review period.
- Virtual public hearing on June 7-11, 2021
 - Held with students, educators, and others with interest and expertise.
 - Members of the public given an opportunity to comment on steps OCR can take to ensure that schools provide individuals with educational environments free from sexual harassment.

Robbins Schwartz

139

Current Status

- OCR makes clear: **the August 14, 2020 Regulations remain in effect today.**
- The timeline for changes by the Biden Administration is unknown.
 - Formal rulemaking process.
 - Extensive public comments are likely.

Robbins Schwartz



140

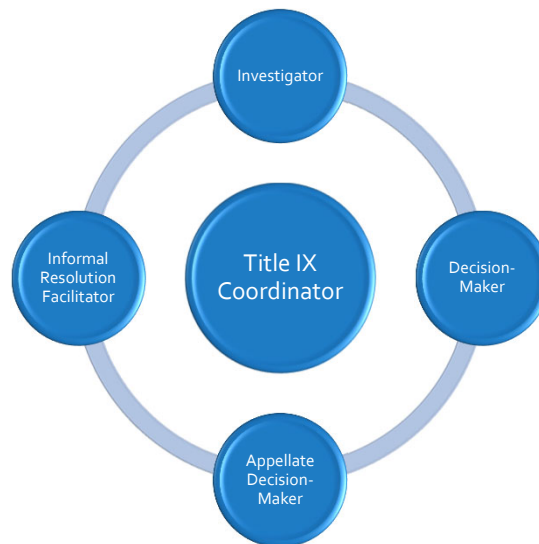
Title IX's Impact on Colleges

- The current Regulations require:
 - Revisions to institutional policies and procedures
 - Staffing determinations
 - Training for all personnel involved in an institution's investigation and grievance process, including:
 - Title IX Coordinators
 - Investigators
 - Decision-Makers
 - Appeal Decision-Makers
 - Informal Resolution Facilitators
 - Publishing of information and training materials on the institution's website

Robbins Schwartz

141

Staffing the College's Title IX Team



Robbins Schwartz

142

Staffing the College's Title IX Team

- Colleges may outsource any role other than the Title IX Coordinator role.
- The Title IX Coordinator may also serve as the Investigator or as the Informal Resolution Facilitator.
 - **Caution:** The Title IX Coordinator's responsibilities are substantial.
- The Title IX Coordinator cannot serve as the Decision-Maker or as the Appellate Decision-Maker.

Robbins Schwartz

143

Related Laws Impacting Illinois Higher Education Institutions

- Title VII of the Civil Rights Act of 1964
 - Prohibits discrimination, including discrimination based on sex, in employment.
- Illinois Human Rights Act
 - Prohibits discrimination in Illinois, including in employment.
 - Also prohibits sexual harassment in elementary, secondary and higher education.
- Preventing Sexual Violence in Higher Education Act
 - Requires Illinois higher education institutions to adopt comprehensive policies prohibiting sexual violence, domestic violence, dating violence and stalking.

Robbins Schwartz

144

Key Concepts Under Title IX



Robbins Schwartz

145

Definition of Sexual Harassment Under Title IX

- Sexual harassment includes:
 1. Quid pro quo harassment by a college 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 (as defined in the Clery Act/VAWA)

Robbins Schwartz

146

Definition of Sexual Harassment Under Title IX

1

Quid Pro Quo

"My math professor offered extra credit if I sent him inappropriate sexual pictures of myself."

2

"Hostile Environment"

"My classmate frequently made sexual comments and gestures at me during class; I switched sections to avoid seeing him."

3

Specific Acts:

"The athletic trainer touched me in a sexual manner even though I told her to stop."

Robbins Schwartz

147

Title IX Sexual Harassment: Quid Pro Quo

- When an employee conditions aid, benefits, pay, a position or other opportunities for advancement on an individual's submission to unwelcome sexual conduct.
 - **Example:** Professor Smith promises his student, Jane, that he will give her an A on her midterm if she engages in sexual conduct after class.

Robbins Schwartz

148

Title IX Sexual Harassment: "Hostile Environment"

- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access.
 - Severe and pervasive and objectively offensive.
 - Denial of equal educational access.

Robbins Schwartz

149

Title IX Sexual Harassment: Specific Acts

Sexual Assault

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

Robbins Schwartz

150

Title IX Sexual Harassment: Specific Acts

Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected.

Robbins Schwartz

151

Title IX Sexual Harassment: Hypothetical

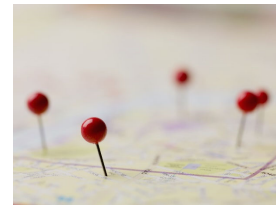
- A student, Taylor, comes to you to report that one of her instructors, Professor Jones, unexpectedly gave her a hug at a college-sponsored event a month ago. Taylor says that, a week later, Professor Jones asked for Taylor's cell phone number. Although Taylor said no, Professor Jones was able to find the number and sent Taylor a text message saying, "Hey, dinner this weekend?"
- Could Professor Jones's conduct constitute Title IX sexual harassment? If so, what type(s)?
- What information would be relevant to determining whether Professor Jones's conduct could constitute Title IX sexual harassment?

Robbins Schwartz

152

Jurisdiction

- Title IX requires that institutions respond to alleged sexual harassment that occurs “in the institution’s education program or activity, against a person in the United States.”



Robbins Schwartz

153

Jurisdiction

- “In the institution’s education program or activity” includes:
 - Locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurred; and
 - Any building owned or controlled by a student organization that is officially recognized by the institution.

Robbins Schwartz

154

Title IX Jurisdiction: Hypothetical

- A nursing student contacts the college's Title IX Coordinator to report that she was sexually harassed by a fellow student while participating in clinical rotations at a local hospital.
 - Does the college have an obligation to respond to this report under Title IX?
- Same facts, except the student reports that she was sexually harassed by an employee of the local hospital, rather than by a fellow student.
 - Does the college have an obligation to respond to this report under Title IX?

Robbins Schwartz

155

Reporting Sexual Harassment

- As a Trustee, what should I do if I learn of allegations of sexual harassment?
 - Promptly report the information to the Title IX Coordinator.
 - Reports can be made by anyone (including Trustees) and need not be made by the alleged victim of the misconduct.

Robbins Schwartz

156

Response Obligations

- Upon receipt of a report alleging Title IX sexual harassment, an institution must, at a minimum:
 - Promptly contact the complainant confidentially to discuss supportive measures and options for filing a formal complaint.
 - Where a formal Title IX sexual harassment complaint is filed:
 - Investigate the allegations; and
 - Follow a grievance process that complies with the Regulations before imposing any disciplinary sanctions against a respondent.



Robbins Schwartz

157

Elements of the Grievance Process

- Among other elements, an institution's grievance process must include:
 - Simultaneous written notice of the allegations to both parties upon receipt of a formal complaint;
 - An opportunity for both parties to be accompanied to any investigatory interview or meeting by an advisor of their choice, who may be an attorney;
 - Mutual opportunities to review relevant evidence and submit responses regarding the evidence gathered;
 - A live hearing with cross-examination; and
 - Mutual appeal rights.

Robbins Schwartz

158

Legal Standard for Response to Allegations of Sexual Harassment



Robbins Schwartz

159

Standard of Liability Under Title IX

- Generally, for an institution to be held liable under Title IX, a plaintiff must demonstrate that:
 - He/she was subjected to sexual harassment, as defined under Title IX;
 - He/she provided actual notice of the alleged harassment to an appropriate person at the institution; and
 - The institution's response to the alleged harassment amounted to deliberate indifference.

Robbins Schwartz

160

“Deliberate Indifference” Under Title IX

- A college must respond to reports of alleged sexual harassment:
 - Promptly.
 - In a manner that is not “clearly unreasonable in light of the known circumstances.”



Robbins Schwartz

161

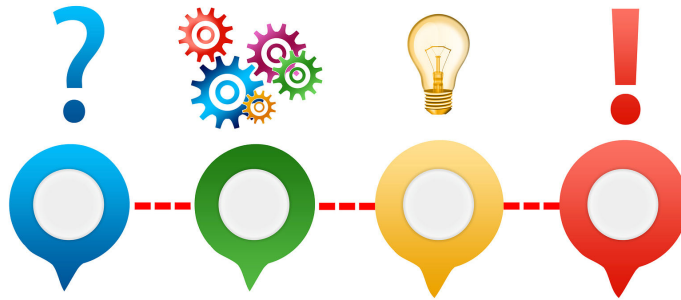
Today's Takeaways

- The new requirements in the Title IX Regulations are substantial. The college's Title IX Coordinator should ensure that the college's policies and procedures comply with the Regulations.
- What to do when you become aware of potential sexual harassment:
 - Report the alleged incident to the Title IX Coordinator(s), as required by college policy.
 - The college's investigation will vary depending on a variety of factors, including the nature of the allegations and source of the complaint.
 - The college must take steps to prevent any retaliation against the complainant and those who provide information during the investigation.

Robbins Schwartz

162

Questions?



Robbins Schwartz

163

Fiduciary Responsibilities and Ethics

Presented by: Kenneth M. Florey

Robbins Schwartz

164



Fiduciary Responsibilities of a Community College Trustee

Robbins Schwartz

165



Model Board Governance

- Illinois Public Community College Act
 - Duties of the Board of Trustees outlined in Sections 805/3-21 to 3-29.10.
 - Powers of the Board of Trustees outlined in Sections 805/3-30 to 3-43.

Robbins Schwartz

166

Model Board Governance



- Overall Ability of the Board to Act
 - Board can only act as a whole entity, by majority vote, at a legally conducted public meeting at which a quorum is physically present.
 - Quorum: A majority of full voting membership of the Board.
 - Majority of quorum determines the outcome of a measure before the Board.
 - Individual Board members lack authority or power to act unilaterally.

Robbins Schwartz

167

Public Community College Act

- Board Duties and Responsibilities Pursuant to Section 4(A)
 - Hire and work with the President.
 - Establish annual goals and evaluate the President's performance.
 - Efficient and effective development, operation, and maintenance.
 - Perform all duties and execute all powers pursuant to the Illinois Public Community College Act.
 - Direct the President to formulate and revise policies.
 - Annually review financial performance.

Robbins Schwartz

168

Public Community College Act

- Board Duties and Responsibilities Pursuant to Section 4(A)
 - Annually adopt financial plan.
 - Ensure quality of education.
 - Annually adopt a comprehensive Strategic Long Range Plan.
 - Annually review from the President a report on the Outcomes of the College.
 - Review matters recommended from the President and initiate appropriate action.
 - Appoint legal counsel as needed.



Robbins Schwartz

169

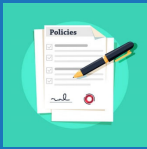
Public Community College Act

- Board Duties and Responsibilities Pursuant to Section 4(B)
 - Operate with the duties of civic trusteeship and obligation to the citizens of the College district in mind.
 - Sole governing body of the College.
 - Focus on intended long-term outcomes.
 - Utilize expertise of individual Board Members.
 - Ensure continuity of governance through retraining, redevelopment, and orientation of new members.
 - Make decisions on a consensus basis.

Robbins Schwartz

170

Board Governance Process



- Purpose and Aim of the Board of Trustees
 - Board is tasked with establishing broad policy.
 - College staff and administration tasked with implementing and administering those broad policies.

Robbins Schwartz

171

Who Does the Board Directly Oversee?

- Legal Counsel
- Auditor
 - Both report and communicate directly to the Board.
 - Liability and risk created when Board acts contrary to advice.

Robbins Schwartz

172

Striking the Right Balance

- “Rubber Stamp” v. Micromanager
 - Focus on the larger perspective and broad goals.
 - President and administration focus on day-to-day implementation of Board policies.
 - Board must keep various stakeholders in mind.
 - Micromanagement can give rise to conflict and distraction.
 - “Rubber-stamping” can give rise to distrust and loss of confidence.



Robbins Schwartz

173

Role of Individual Board Members: Acting as a Whole

- Board only has the authority to act as a collective unit, no authority to act individually.
- All Board decisions must be made by a vote in an open, public meeting.
- Outside of official public meetings, each member speaks only as an individual and cannot make decisions that bind the Board.

Robbins Schwartz

174

Role of Individual Board Members: Fiduciary Duties



- Duty of Care
 - Well-informed.
 - Ask questions necessary to exercise independent judgment.
 - Prudent person with reasonable care, skill, and caution.
 - What would an “ordinarily prudent person” do in a similar position under similar circumstances?
 - Reliance on expert knowledge.

Robbins Schwartz

175

Role of Individual Board Members: Fiduciary Duties

- Duty of Loyalty.
 - Interests of the College ahead of individual goals.
 - Prohibition on acting out of self-interest.
 - Focus on the future of the College’s reputation, mission, core values, and financial strength.
 - Commitment to institution’s long-term success.
 - Confidentiality of Board business.

Robbins Schwartz

176

Role of Individual Board Members: Fiduciary Duties

- Duty of Obedience
 - True to advancing the College's mission.
 - Act consistently with that mission to ensure that limited College resources are not utilized contrary to that mission.



Robbins Schwartz

177

Immunity in Official Capacity: Tort Immunity Act

- Local Governmental and Governmental Employees Tort Immunity Act:
 - Immunities contained in Sections 2-201 to 2-214.
 - Immunities apply to the Board as an entity as well as to individual Board Members.

Robbins Schwartz

178

Immunity in Official Capacity: Tort Immunity Act



- Immunities include, but are not limited to:
 - Section 2-201—Absolute immunity for discretionary actions that fall within official discretion as a member of the Board.
 - Section 2-103 and 2-205—Immunity for adopting or failing to adopt an enactment.
 - Section 2-104, and 2-206—Immunity for claims that arise from the issuance, denial, suspension, or revocation of a permit, license, or certificate as well as for the failure to issue, deny, or revoke, any such license.
 - Section 2-107 and 2-210—Immunity for alleged libelous or slanderous statements.
 - Immunity extends to negligent misrepresentations while acting within scope of employment.
 - Immunity is not extended to intentionally false statements.
 - Immunity protection will not extend to “Willful and Wanton Conduct”.

Robbins Schwartz

179

Indemnification

- Illinois Public Community College Act, Section 3.29
 - Board shall indemnify and protect Board Members from claims where damages are sought for alleged negligent or wrongful acts while such Board Member is acting within their official capacity.
- Tort Immunity Act, Section 2-302
 - If a lawsuit is filed against a Board Member arising out of conduct which occurred within their official capacity, the College may elect to do one or more of the following:
 - Appear and defend against the claim.
 - Indemnify the employee for the employee’s court costs incurred in defense.
 - Pay or indemnify the employee for a judgment based on the claim.
 - Pay or indemnify the employee for settlement of the claim.

Robbins Schwartz

180

Acting Within the Scope of the Role of a Board Member

- Intentional Acts of Misconduct
 - Personally liable for intentional acts of misconduct.
 - Immunity protections do not extend to “willful and wanton conduct”.
- Limiting Communications on Board Business
 - Fiduciary duty requires maintaining confidentiality of Board business.
 - Board can only act as a whole.
 - Action and communication as an individual may fall outside of a Board Member’s official capacity and therefore, may not be protected.

Robbins Schwartz

181

Acting Within the Scope of the Role of a Board Member

- Avoid Assuming the Role of a “Super-Administrator”
 - Danger of micromanaging and stepping outside of the purpose of the Board.
- Speaking as a Board Member or as a Member of the Community
 - No prohibition on speaking as a private citizen.
 - However, cannot speak on behalf of the Board unless specifically authorized to do so.
 - The role of the Chairperson is to act, or designate another person to act, as spokesperson for the Board in communication to the public.
 - Avoid committing yourself or the Board as a whole to any specific viewpoint or course of action.

Robbins Schwartz



182



Ethics: Ethical Laws Governing Trustee's Conduct

Robbins Schwartz

183



Prohibited Interests in Contracts

- Public Officer Prohibited Activities Act, 50 ILCS 105/3(a)
- Common law

Robbins Schwartz

184

Exceptions Allowing Interests in Contracts

- Interested members may contract with an entity in which the interested member has less than a 7 ½% share in the ownership.
- Interested member may contract when the amount of the contract does not exceed \$2,000 and the total amount of all contracts is not over \$4,000.
- Any contract where interested member has less than a 1% share in the ownership.
- See statute for other specific exceptions.
- For each exception:
 - The member must publicly disclose the nature and extent of the interest prior to or during the deliberations concerning the proposed award of the contract.
 - Must abstain from voting on the award of the contract.
 - The award of the contract must be approved by a majority vote of the governing body of the municipality.



Robbins Schwartz

185

Common Law Conflicts of Interest

- Faithful performance of official duties is best secured if governmental officers, like any other persons holding fiduciary positions, are not called upon to make decisions that could result in a personal advantage or disadvantage to their individual interests.
- Direct conflict of interest cases. Public officers may not have an interest directly in their own names in any contract work, or business of the public body, with a few limited exceptions.

Robbins Schwartz

186

The State
Officials and
Employees
Ethics Act
(5 ILCS 430/1 et
seq.)

- The State Ethics Act governs:
 - Prohibited Political Activity:
 - During compensated time.
 - Includes use of government property or resources.
 - Gift Ban



Robbins Schwartz

187

State Ethics
Act – Gift Ban

- Gift Ban:
 - Employees, their spouses and family members living at home may not intentionally solicit or accept gifts from prohibited sources. Employees who receive gifts in violation of the ban should attempt to return them or donate an amount equal to the value of the gift to an appropriate charity. 5 ILCS 430/10-30.
 - The Act contains a specific definition of a “gift.”
 - A “gift” is defined as “any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an employee, member, or officer.”

Robbins Schwartz

188

State Ethics Act – Gift Ban



- 5 ILCS 430/1-5. - A “prohibited source” includes any person or entity:
 - Who is seeking official action by the officer or employee who does business or seeks to do business with an officer or employee.
 - Who conducts activities regulated by an officer or employee.
 - Who has interests that may be substantially affected by the performance of the official duties of the officer or employee.
 - Is registered under the Lobbyist Registration Act.
 - A person who is living with a “prohibited source”.

Robbins Schwartz

189

Exceptions to the Gift Ban

- Gifts available on the same conditions to the general public.
- Anything for which market value is paid.
- Lawfully made campaign contributions.
- Educational material or missions.
- Travel expenses for a meeting to discuss business.
- Gifts from a relative.
- Gifts given on the basis of personal friendship.
- Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered.

Robbins Schwartz

190

Gift Ban Act Clemency Clause

- Sec. 10-30. Gift ban; disposition of gifts. A member, officer, or employee does not violate this Act if the member, officer, or employee promptly takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

Robbins Schwartz

191

Local Government Travel Expense Account Act



- The Act: PA 99-604 regulates the reimbursement for all travel, meal and lodging expenses for employees and board members.
- The Regulations: At a minimum, governing boards of community colleges must adopt regulations by resolution on the reimbursements of all travel, meal and lodging expended for its officers and employees which includes the following elements:
 - The types of official business for which travel, meal, and lodging expenses are allowed;
 - The maximum allowable reimbursement for such expenses; and
 - A standardized form for use in obtaining reimbursement.
- The law contemplates that public bodies will adopt more stringent rules and restrictions on travel related expenses for officials and board members.

Robbins Schwartz

192

Local Government Travel Expense Account Act

- Documentation of Expenses: The regulations should provide that the form submitted for reimbursement must be supported by at least the following information:
 - The name and title of the individual seeking reimbursement;
 - A cost estimate of expenses not yet incurred or a receipt if expenses have been incurred; and
 - The dates and the nature of the official business in which the expenses were or will be incurred.
- Approval of Expenses: a roll call vote of the Board is required for approval of the expenses of an officer or employee that exceeds the maximum allowable reimbursement.
 - Additionally, all expenses for any member of the Board, regardless of amount, must be approved by roll call vote.
 - No travel, meal, or lodging expenses can be approved or paid unless regulations have been adopted by the Board.
- No Entertainment: The Act prohibits local public agencies from reimbursing expenses for "entertainment".

Robbins Schwartz

193

Criminal Offenses



- Official Misconduct - 720 ILCS 5/33-3
- A public officer or employee commits misconduct when, in his official capacity he commits any of the following acts:
 - Intentionally or recklessly fails to perform any mandatory duty as required by law; or
 - Knowingly performs an act which he knows he is forbidden by law to perform; or
 - With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
 - Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.
- A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his office or employment or position as a special government agent. In addition, he commits a Class 3 felony.

Robbins Schwartz

194

Public Contracts (Bid Rigging)

- The statute prohibits public officials from:
 - Knowingly disclosing to any interested person any information related to the terms of a sealed bid, unless such disclosure is also made generally available to the public.
 - Knowingly conveying, either directly or indirectly, outside of the publicly available information, to any person any information concerning the specifications for such contract or the identity of any particular potential subcontractors, when inclusion of such information concerning the specifications or contractors in the bid or offer would influence the likelihood of acceptance of such bid or offer.
 - Either directly or indirectly, knowingly informing a bidder or offeror that the bid or offer will be accepted or executed only if specified individuals are included as subcontractors, unless following procedures established (i) by federal, State or local minority or female owned business enterprise programs or (ii) pursuant to Section 45-57 of the Illinois Procurement Code.

Robbins Schwartz

195

Public Contracts (Bid Rigging)

- The statute prohibits public officials from:
 - Knowingly awarding a contract based on criteria which were not publicly disseminated via the invitation to bid, when such invitation to bid is required by law or ordinance, the pre-bid conference, or any solicitation for contracts procedure or such procedure used in any sheltered market procurement procedure adopted pursuant to statute or ordinance.
 - Knowingly either:
 - Providing, attempting to provide or offering to provide any kickback;
 - Soliciting, accepting or attempting to accept any kickback; or
 - Including, directly or indirectly, the amount of any kickback prohibited by paragraphs (1) or (2) of this subsection (a) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to any unit of State or local government for a public contract.



Robbins Schwartz

196

Public Contracts (Bid Rigging)

- The statute prohibits public officials from:
 - Receiving an offer of a kickback, or has been solicited to make a kickback, and failing to report it to law enforcement officials, including but not limited to the Attorney General or the State's Attorney for the county in which the contract is to be performed.
 - Participating, sharing in, or receiving directly or indirectly any money, profit, property, or benefit through any contract with the Community College, with the intent to defraud the Community College.

Robbins Schwartz

197

Penalties

- Violations are Class 3 and Class 4 felonies.
- The governmental body may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct which violates the kickback provision in twice the amount of each kickback involved in the violation. This does not limit the ability of the Community College to recover monies or damages regarding public contracts under any other law or ordinance.

Robbins Schwartz

PENALTY

198

Overview

- Public officers must be aware that their actions and relationships may constitute conflicts of interest.
- With a few, limited exceptions, being financially interested, either directly or indirectly, in any contract, work, or business of the public body they serve is a violation of the Illinois conflict of interest statutes and long-standing common law principles against self-dealing by public officers.
- Because predicting what particular set of facts will constitute a prohibited conflict of interest is difficult, the public officer should seek legal advice to determine if a conflict of interest exists.

Robbins Schwartz

199

Contract Law

- Approving Contracts: Board Policy Controls
 - Specific Amount
 - Budgeted Expenditures
- Approving Construction Change Order
 - Specific Amount
 - Board Sub-Committee
- Approving/Rejecting Public Bids

Robbins Schwartz

200

Questions?



Robbins Schwartz

201

Thank You!



Robbins Schwartz

202

Robbins Schwartz

JOSEPH J. PERKOSKI

MANAGING PARTNER, CHICAGO

312.332.7760

jperkoski@robbins-schwartz.com

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

AWARDS

Illinois Super Lawyers, 2008-2020

RECENT PUBLICATIONS

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

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

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

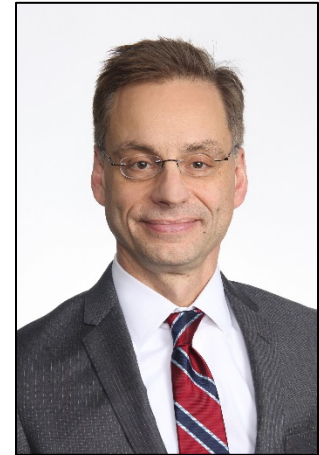
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

RECENT PRESENTATIONS

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

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

Legal Update, ICCCFQ Spring Conference (April 2019)



PRACTICE AREAS

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

EDUCATION

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

M.A., The Ohio State University

B.A., *with honors*, The Ohio State University

ADMITTED TO PRACTICE

U.S. Court of Appeals for the Seventh Circuit

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

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

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

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

ORGANIZATIONS

American Bar Association

Associated Colleges of
Illinois, Trustee

Council of School
Attorneys

Federal Bar Association

Illinois Association of
School Business Officials

Illinois Bar Association

National School Boards
Association

Wisconsin Bar Association

Robbins Schwartz

FRANK B. GARRETT III

PARTNER, CHICAGO

312.332.7760

fgarrett@robbins-schwartz.com

Frank B. Garrett III represents school districts, community colleges, local governmental bodies and public and private companies in all aspects of employment law, including 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 represents and defends clients in both state and federal courts, at the trial and appellate levels. He also practices before various administrative agencies such as the Illinois Educational Labor Relations Board, the Illinois Human Rights Commission and the Equal Employment Opportunity Commission. Frank is a regular speaker on employment law topics at both the state and national level.

Frank is approved by the Illinois State Board of Education to provide school board member training. 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

"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)

Contributing author, “Employment Discrimination,” *ILLINOIS SCHOOL LAW*, IICLE (1996, 1999, Supp. 2001, 2005, 2010 and 2012)

RECENT PRESENTATIONS

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

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

Cook County Bar
Association

Illinois Council of School
Attorneys

Robbins Schwartz

KENNETH M. FLOREY

PARTNER, CHICAGO & LISLE

312.332.7760

kflorey@robbins-schwartz.com

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

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

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

Legal, Legislative and Ethics Update, ICCTA (November 2018)

Purchasing Processes, Problems & Solutions, Illinois ASBO (September 2018)

Navigating Property Tax Assessment Complaints and the PTAB, Illinois ASBO & IASPA (October 2018)

Construction Disputes: Bring Home a Win for Your School District, ASBO International (October 2018)

Construction Project Problems or Solutions After Construction is Done, Illinois ASBO (October 2018)

Construction and Purchasing Disputes and Resolutions, ASBO International Conference (September 2018)

Construction, Bidding and Purchasing in Township Government, Township Officials of Illinois Online Seminar (August 2018)

Administrators Legal Session II, Concordia University (August 2018)

Construction Disputes and Resolutions, Illinois ASBO Conference (May 2018)

Top Solutions and Problems for Bidding and Construction, Illinois ASBO Annual Conference (May 2018)

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

Robbins Schwartz

CATHERINE R. LOCALLO

PARTNER, CHICAGO

312.332.7760

clocallo@robbins-schwartz.com

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

"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)

"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)



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

“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)

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

"Regulatory Changes to the Illinois Wage Payment and Collection Act,"
Justinian Society Newsletter (2015)

"New FOIA Amendments to Ease Burden on Public Bodies,"
Justinian Society Newsletter (2015)

“Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award ‘Drew Its Essence’ from the CBA,”
Justinian Society Newsletter (2014)

“When the Music Stops, Why Not Require Certain Title VII Plaintiffs to Find a Chair on Which to Rest Their Complaint,”
The John Marshall Law Review, (2009)

RECENT PRESENTATIONS

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

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

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

Treasurer, 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

Member, Board of Directors, Glenview Stars Hockey Association

UNICO National

Robbins Schwartz

KEVIN P. NOLL

ASSOCIATE, CHICAGO

312.332.7760

knoll@robbins-schwartz.com

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 (2017-2021)

RECENT PUBLICATIONS

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