

Robbins Schwartz School Administrators' Conference

October 4, 2023
8:00 a.m. – 3:00 p.m.

Hotel Arista
2139 City Gate Lane
Naperville, IL 60563

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

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SCHOOL ADMINISTRATORS' CONFERENCE

October 4, 2023

AGENDA

8:00 a.m. – 8:30 a.m.	REGISTRATION/BREAKFAST
8:30 a.m. – 10:00 a.m.	GENERAL SESSION
Grand Ballroom A/B	Investigations into Employee-on-Student Sexual Misconduct and Grooming Complaints <i>Presented by: Joseph J. Perkoski and Emily P. Bothfeld</i>
10:00 a.m. – 10:15 a.m.	Break / Switch Rooms
	<i>PLEASE SELECT ONE TOPIC TO ATTEND</i>
10:15 a.m. – 11:15 a.m.	Session 1
Grand Ballroom A	General Updates and Managing Employee Leave Rights <i>Presented by: Catherine R. Locallo and Kevin P. Noll</i>
Grand Ballroom B	The Three R's: Recognizing, Reporting and Responding to Student Bullying Incidents <i>Presented by: Zaria N. Udeh and Michelle L. Weber</i>
Mykonos Room, Floor 2	Purchasing and Bidding from the Basics to the Advanced <i>Presented by: Howard A. Metz and Kenneth M. Florey</i>
11:15 a.m. – 11:30 a.m.	Break / Switch Rooms
11:30 a.m. – 12:30 p.m.	Session 2
Grand Ballroom A	Section 504: Here Today, Revised Tomorrow <i>Presented by: Laura M. Sinars and Hannah M. May</i>
Grand Ballroom B	Design-Build Contracts: Strategies for Using this Construction Project Delivery Method and Understanding the Procurement Requirements of the School Design-Build Authorization Law <i>Presented by: Matthew J. Gardner and Christopher R. Gorman</i>
Santorini Room, Floor 2	Lunch 1
12:30 p.m. – 12:45 p.m.	Break / Switch Rooms
12:45 p.m. – 1:45 p.m.	Session 3
Grand Ballroom A	Changes to the Teacher Tenure Process and It's Effects on the Evaluation Process <i>Presented by: Todd K. Hayden</i>
Santorini Room, Floor 2	Lunch 2
1:45 p.m. – 2:00 p.m.	Break / Switch Rooms
2:00 p.m. – 3:00 p.m.	Session 4
Grand Ballroom A	A Fresh Look at Bargaining Teacher and ESP Contracts: Best Practices for Responding to Union Proposals, Traditional Bargaining v. Interest-Based Methods, and Strategies for Success <i>Presented by: Philip H. Gerner III and Thomas C. Garretson</i>
Grand Ballroom B	Best Practices for Navigating Student Residency and Homelessness <i>Presented by: Zaria N. Udeh and Michelle L. Weber</i>



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Investigations into Employee-on-Student Sexual Misconduct and Grooming Complaints

October 4, 2023

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Introduction



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Nature and Scope of Educator Sexual Misconduct

- Large-scale survey of 6,632 recent high school graduates in four states; results published in 2022.
- **11.7%** of participants reported having experienced at least one form of educator sexual misconduct in grades K-12.
- Most frequent perpetrators were academic teachers (**63%**), followed by coaches and gym teachers (**20%**).
- Educators who engaged in sexual misconduct were primarily male (**85%**), whereas students who reported experiencing educator misconduct were primarily female (**72%**).

Source: Jeglic et al., *The Nature and Scope of Educator Misconduct in K-12*, Sexual Abuse 2022 35:2, 188 – 213



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Nature and Scope of Educator Sexual Misconduct

- Rates of disclosure to authorities were very low (**4%**).
- Sexual grooming behaviors like gift-giving (**12%**) and showing special attention (**29%**) were also reported.
- Those who reported misconduct showed significantly more difficulties in current psychosocial functioning than those who did not report educator misconduct.

Source: Jeglic et al., The Nature and Scope of Educator Misconduct in K-12, Sexual Abuse 2022 35:2, 188 – 213



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Agenda

- Relevant Laws and Policies
- Identifying Prohibited Conduct
- Reporting Requirements and Procedures
- Processing Reports and Complaints
- Uniform Grievance Investigations
- Q&A



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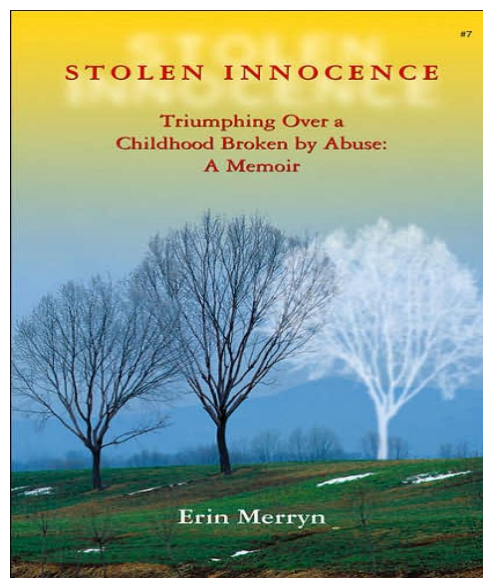


Relevant Laws and Policies

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Relevant Laws

- Erin's Law
 - Passed in 2011 and amended in 2021.
 - Requires school districts to adopt and implement a policy addressing sexual abuse of children.



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Relevant Laws

- Faith's Law
 - Based on P.A. 102-676 (eff. 12/3/2021) and P.A. 102-702 (eff. 7/1/2023).
 - Expands Erin's Law by focusing on awareness and prevention of child sexual abuse and grooming behaviors.
 - Key provisions/requirements relevant to school districts:
 - Expanded definition of "grooming" in Criminal Code
 - Addition of grooming to list of conduct that qualifies child as "abused child" under ANCRA
 - Definition of "sexual misconduct"
 - Development/implementation of employee code of professional conduct policy



Relevant Policies

- Board Policy 4:165, *Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors*
- Board Policy 5:90, *Abused and Neglected Child Reporting*
- Board Policy 5:120, *Employee Ethics, Conduct, and Conflict of Interest*
- Board Policy 2:260, *Uniform Grievance Procedure*
- Board Policy 2:265, *Title IX Sexual Harassment Grievance Procedure*



Identifying Prohibited Conduct

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Hypothetical – Ashley and Mr. F

- Alicia, a high school junior, tells the Dean of Students that she is concerned her friend Ashley is spending too much time with their physics teacher, Mr. Frederickson. According to Alicia, Ashley goes to Mr. Frederickson's classroom multiple times a week before school. Sometimes Mr. Frederickson helps Ashley with her physics homework, but most of the time, they just "talk." Ashley's boyfriend of two years recently broke up with her, and Ashley says that Mr. Frederickson went through something similar and is the "only person who understands what she is going through." Alicia has also seen texts on Ashley's phone from someone named "Freddie" who she believes is Mr. Frederickson (there are no students at the high school named Freddie), but she can't be sure and says she is afraid to ask Ashley who she has been texting.

Could Mr. Frederickson's relationship with Alicia violate District policy?

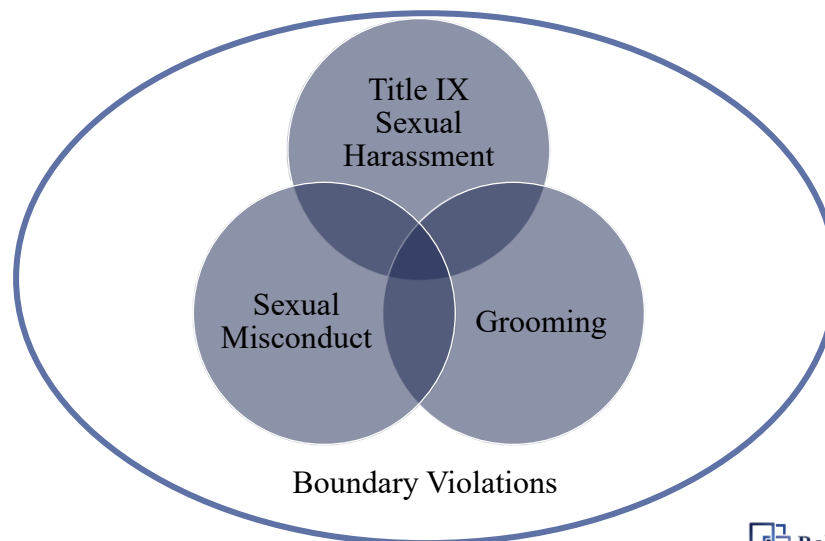
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Identifying Prohibited Conduct

- Board Policy 5:120 establishes Code of Professional Conduct under Faith's Law. It requires, in relevant part, that all school district employees:
 - Comply with the Code of Ethics for Illinois Educators, if applicable.
 - Receive training on educator ethics, child abuse, grooming behaviors, and employee-student boundary violations.
 - Maintain professional relationships with students, including maintaining employee-student boundaries based upon students' ages, grade levels, and developmental levels.
 - Report prohibited behaviors and/or boundary violations.
- Policy 5:120 further provides that any employee who violates an employee conduct standard or engages in prohibited conduct will be subject to discipline, up to and including dismissal.

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Types of Prohibited Conduct



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Title IX Sexual Harassment

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

Sexual Misconduct

- Any act, including but not limited to any verbal, nonverbal, written, or electronic communication or physical activity, by an employee or agent of a school district with direct contact with a student that is directed toward or with a student to establish a romantic or sexual relationship with the student. Such an act includes, but is not limited to, any of the following:
 1. A sexual or romantic invitation.
 2. Dating or soliciting a date.
 3. Engaging in sexualized or romantic dialog.
 4. Making sexually suggestive comments that are directed toward or with a student.
 5. Self-disclosure or physical exposure of a sexual, romantic, or erotic nature.
 6. A sexual, indecent, romantic, or erotic contact with a student.

Grooming

- When a person knowingly uses a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission, performs an act in person or by conduct through a third party, or uses written communication to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child (defined as a person under 17 years of age), child's guardian, or another person believed by the person to be a child or child's guardian, to commit any sex offense as defined in Section 2 of the Sex Offender Registration Act, to distribute photographs depicting the sex organs of the child, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.



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Recognizing Grooming Behaviors

(Obvious) Examples of Grooming Behaviors	
Sexual or romantic invitations	Dating or soliciting a date
Engaging in sexualized or romantic conversations	Making sexually suggestive comments
Self-disclosure or physical exposure of a sexual, romantic, or erotic nature	Sexual, indecent, romantic, or erotic contact
Engaging in unwanted touching	Expressing unusual interest in a student's sexual development



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Recognizing Grooming Behaviors

(Less Obvious) Examples of Grooming Behaviors	
Repeated boundary violations	Trying to be a student's friend rather than filling an adult role
Talking about personal problems or relationships	Spending time alone with a student outside one's typical role
Giving gifts without occasion or reason	Restricting access to other adults

Boundary Violations

- All District personnel, employees, volunteers, and visitors are expected to maintain professional and appropriate relationships with students based upon students' ages, grade levels, and developmental levels.
- Adults in schools breach adult-student boundaries when they misuse their position of power over a student in a way that compromises the student's health, safety, or general welfare.

Boundary Violations

- Even where a breach of staff-student boundaries does not rise to the level of criminal behavior, it may nonetheless pose a potential risk to student safety.
- Repeated violations of staff-student boundaries can indicate grooming of a student for sexual abuse.



Recognizing Boundary Violations

- Which of the following could be considered a boundary violation?
 - A teacher inviting a student to hang out in the teacher's classroom during lunch?
 - A staff member giving a student a ride home from school?
 - A teacher texting a former student in July to ask how the student's summer vacation is going?
 - A coach giving their star player the key to the school gym so the student can get in some extra practice time on the weekends?
 - An employee visiting a student at the restaurant where the student works?

Returning to the Hypo – Ashley and Mr. F

- Alicia, a high school junior, tells the Dean of Students that she is concerned her friend Ashley is spending too much time with their math teacher, Mr. Frederickson. According to Alicia, Ashley goes to Mr. Frederickson's classroom multiple times a week before school. Sometimes Mr. Frederickson helps Ashley with her math homework, but most of the time, they just "talk." Ashley's boyfriend of two years recently broke up with her, and Ashley says that Mr. Frederickson went through something similar and is the "only person who understands what she is going through." Alicia has also seen texts on Ashley's phone from someone named "Freddie" who she believes is Mr. Frederickson (there are no students at the girls' high school named Freddie), but she can't be sure and says she is afraid to ask Ashley who she has been texting.

Could Mr. Frederickson's relationship with Alicia violate District policy?

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Reporting Requirements

- Employee reporting obligations:
 - DCFS reporting (Policy 5:90)
 - Title IX reporting (Policy 2:265)
 - Reporting of alleged violations of Employee Code of Professional Conduct (Policy 5:120)



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Reporting Under Policy 5:90

- School employee must immediately report to DCFS when the employee has reasonable cause to believe that a child known to them in their professional or official capacity may be an abused child or neglected child.
 - Remember: Grooming is among the types of conduct that qualifies a child as an “abused child” under ANCRA.
- Employees are subject to discipline for willful or negligent failure to report.



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Reporting Under Policies 2:265 and 5:120

- Board Policy 2:265
 - School district employees must report any instance of alleged sexual harassment (as defined under Title IX) of which they become aware to the Title IX Coordinator.
- Board Policy 5:120
 - All district employees must report boundary violations and other prohibited conduct.
 - To whom should reports be made?

Ashley and Mr. F (Continued)

- The Dean of Students documents the information that Alicia shared about Ashley's relationship with Mr. Frederickson.

What, if any reporting obligation(s) does the Dean of Students have?



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Processing Reports and Complaints

- 1) If alleged conduct could constitute child abuse or neglect, a DCFS report should be made immediately.
- 2) If alleged conduct is sexual or sex-based in nature, it should be reported to the Title IX Coordinator.
- 3) The Title IX Coordinator will analyze the report to determine whether it must be processed under Board Policy 2:265, *Title IX Sexual Harassment Grievance Procedure*.
 - ✓ Alleged conduct could constitute sexual harassment, as defined under Title IX.
 - ✓ Alleged conduct occurred in the district's education program or activity against a person in the United States.

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Processing Reports and Complaints

- If Title IX applies:
 - Title IX Coordinator will meet with Complainant to discuss/offer supportive measures and explain the process for filing a formal Title IX sexual harassment complaint.
 - If formal complaint is filed, district will conduct investigation pursuant to Board Policy 2:265.
- If Title IX does not apply, next steps depend on whether there is an identified individual seeking to file a complaint.
 - If yes → Conduct investigation pursuant to Board Policy 2:260, *Uniform Grievance Procedure*.
 - If no → Process according to standard employee discipline procedure.

Ashley and Mr. F (Continued)

- The Dean of Students forwards Alicia's report to the Title IX Coordinator, who meets with Ashley and her parents to confirm the information that Alicia shared about Ashley's relationship with Mr. Frederickson. Ashley admits that she and Mr. Frederickson have a "close" relationship, but says she thinks of him as an older brother. She says Mr. Frederickson told her she could visit his classroom before school whenever she wants, and that they usually work on math homework or hang out and watch TikTok videos, but recently, they've been talking more about Ashley's breakup. At this point, Ashley's father interjects and tells Ashley to show the Title IX Coordinator her phone. Ashley pulls up a long string of text messages with Mr. Frederickson (AKA "Freddie"), discussing topics like Ashley's weekend plans, her favorite movie, and whether she plans on trying out for the volleyball team. One of the messages is a selfie of Mr. Frederickson which appears to have been taken from his bedroom. Ashley's parents are outraged. They ask how the District could allow a "pedophile" to work with teenage girls and demand that an investigation be conducted.

How should the Title IX Coordinator proceed?



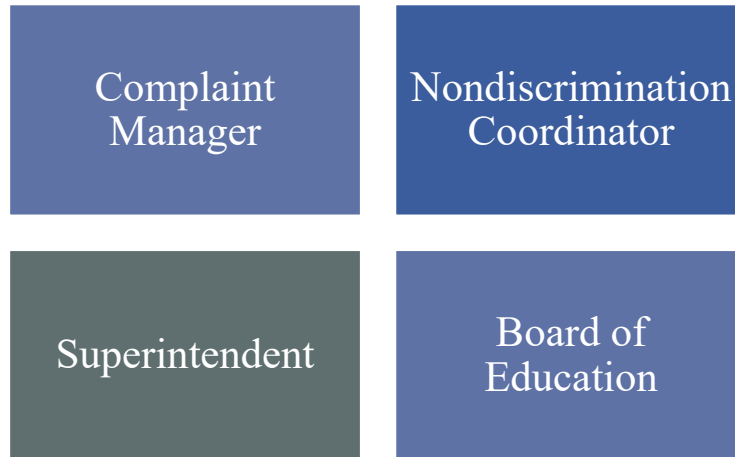
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Board Policy 2:260, *Uniform Grievance Procedure*

- Who can file a complaint?
 - Students, Parents/Guardians, Employees, Community Members
- UGP is triggered when a formal complaint is filed alleging that the Board, District employees, or its agents have violated rights guaranteed by Illinois or U.S. Constitution, state or federal statute, Board Policy, and more.

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Board Policy 2:260 – Key Players



The Procedure

- Use of 2:260 is not a prerequisite to the pursuit of other remedies.
- Complaint Manager should first try to resolve the complaint informally without resorting to formal grievance procedure.
 - But note limitations for complaints filed by students and parents/guardians.
- Complaint Manager may request that Complainant provide a written statement regarding the nature of their complaint and/or require a meeting with a student's parent/guardian.

The Procedure – Investigation, Decision, Appeal

- Complaint Manager must file written report of findings with Superintendent within 30 school business days of date complaint was filed.
 - Complaint Manager may request extension of time.
 - Complaint Manager should inform complainant about status of investigation at regular intervals.
- After Complaint Manager's report is received...
 - Within 5 school business days, Superintendent must mail written decision to complainant and accused.
- After Superintendent's decision is received...
 - Within 10 school business days, either party may appeal written decision to the Board by making written request to Complaint Manager, who will forward all relevant materials to the Board.
 - Within 30 school business days, Board will affirm, reverse, or amend decision or direct Superintendent to gather additional information.





Basic Principles

- Investigations must be prompt, thorough, and confidential.
 - Document each step of the process.
 - Individuals not involved in the investigation or not charged with determining results of the investigation should not be aware of the investigation.
 - Be mindful of parameters around disclosing identity of Complainant and student witnesses.
- Investigations should comply with any internal investigatory guidelines and should follow any processes required by applicable CBA(s).



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Additional Factors

- If allegations relate to potential criminal conduct, consider updating criminal background check and review initial criminal history records; check report in personnel file.
- If employee is alleged to have engaged in sexual assault, abuse, or harassment, review list of child sex offenders on file with the local police department.
- If there is any suspicion or knowledge that a student is an abuse or neglect child, satisfy mandated reporter obligations.
 - Section 7.4(c)(10) of ANCRA allows DCFS to recommend that a school district remove an employee who is the subject of an investigation pending the outcome of the investigation.
 - Review potential suspension pending investigation and discuss with legal counsel beforehand.





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Investigation Steps

1. ASK – Is there a potential for immediate harm related to the complaint?
2. Consider implementation of safety measures and/or other supports while investigation is pending.
3. Conduct records review, suspend any scheduled purging of potentially relevant records, and create confidential administrative investigatory file.
4. Review relevant Board policies.
5. Contact attorneys and apply attorney/client privilege, if and as required.
6. Provide notice to accused wrongdoer.
7. Conduct investigatory interviews and obtain additional evidence.
8. Prepare confidential investigation report, including findings and recommendations (with rationale).
9. Submit investigation report to Superintendent.



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Written Determination

- Generally made by Superintendent
- Preponderance of the evidence standard
- Must be mailed to Complainant and accused by registered mail, return receipt requested, and/or personal delivery.
- Copy should be provided to Complaint Manager.
- Should notify parties of appeal rights and procedures.



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Disciplinary Consequences and Remedies

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Guidelines for Issuing Employee Discipline

- An employee's employment status or category of employment impacts the disciplinary process and, often, the level of discipline issued.
- Determine Employment Status:
 - Tenured Teachers
 - Contractual Employees
 - "At Will" Employees
 - Probationary Employees

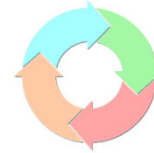
Note: Discipline cannot be discriminatory, retaliatory or otherwise in violation of the law. All public employees, including "at-will" employees, are entitled to claim that their discipline or discharge was discriminatory, retaliatory, or otherwise violated state or federal discrimination or civil rights statutes or their constitutional rights.

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Guidelines for Issuing Employee Discipline

- Follow Progressive Discipline

- Definition: A sequence of increasingly more severe disciplinary sanctions culminating in discharge.
- Examples:
 - Verbal warning;
 - Written reprimand;
 - Suspension without pay;
 - Discharge
- District may reserve the right to bypass and skips steps in the progressive discipline sequence depending upon the seriousness of employee misconduct.
- “At-will” employees are generally not subject to progressive discipline.



Guidelines for Issuing Employee Discipline

- Advantages of Progressive Discipline Approach

- District can more successfully defend grievance, discrimination charge, or lawsuit.
- Focuses on the impact of employee misconduct or poor performance on District

- Additional Remedial Actions for Employees:

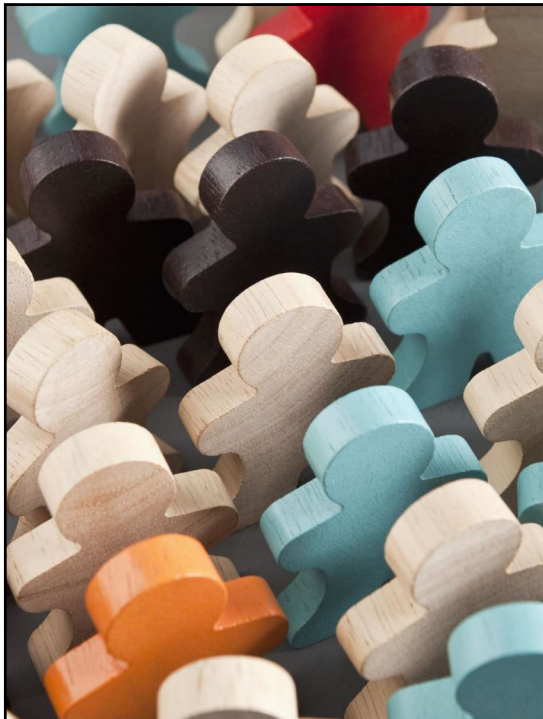
- Counseling;
- Training and Workshops;
- Directing the employee to have no contact with the victim.

Guidelines for Issuing Employee Discipline

- Give Specific Warning Before Discharge
 - General Principle – Employees must receive warning from District that their continued misconduct may result in additional disciplinary action or discharge prior to notice of termination for cause.
 - Exception – “At will” employees may be terminated without previous warning or notice.
 - Risk of no prior pre-discharge warning
 - Arbitrator or court can rule against district and order the employee be reinstated if supervisor never informed employee that further misconduct or poor performance could result in discharge.
 - Reason: Pre-termination warning is generally a required element of “just cause” discharge standard, unless the employee’s misconduct is so serious that no previous warning is necessary (e.g., physical assault on supervisor).
 - Recommend: All written disciplinary warnings and suspensions should specifically warn the employee that: *“Any additional misconduct or violation of District policies, work rules, supervisory directives or employee conduct standards may result in further disciplinary action, up to and including termination of employment.”*



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Guidelines for Issuing Employee Discipline

- Apply Consistent Standard in Determining Level of Discipline
 - Purpose – Allows Districts to successfully defend claims of discrimination, unequal treatment, and retaliation.
 - Exceptions – Employees with different employment status or disciplinary records can lawfully be issued different levels of discipline.



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Remedial Action for Student Victim

- Potential remedies for a student victim may include:
 - Counseling;
 - Withdrawal from a class or schedule change;
 - Safety plan (to ensure the student's continued safety);
 - Reassessment of the student's work and grade received; and/or
 - Allowing the student to take a course again with an alternate teacher.



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Hypothetical – Mark and Coach T.

- Audrey Tomeeter, assistant swim coach, shares pictures on her phone of team members from practices with a fellow coach, Miles Fretter, to discuss various swimmers' strokes. Most of the pictures are of team members engaging in swimming, but Fretter notices that some of the pictures on Tomeeter's phone are casual shots of swimmers on the pool deck between drills. Fretter also notices that there are a number of close-up photos of one swimmer, Mark S., in particular.

What should Fretter do?



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Mark and Coach T. (Continued)

- The Athletic Director, Sid Luck, mulls over his conversation with Coach Fretter about the picture he saw on Coach Tomeeter's phone. He reluctantly decides to ask Tomeeter about the pictures on her phone. Tomeeter readily shares the photos and explains that Mark and his family are her neighbors, that she has known Mark since he was little and that she is friends with his parents. Tomeeter explains how she has often had cookouts and has gone on family outings with Mark and his family. She also tells Luck that Mark's parents have asked Tomeeter to drive Mark home from practices from time to time. Concluding that it all sounds innocent enough, AD Luck decides to take no further action.



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Mark and Coach T. (Continued)

- Several weeks later, AD Luck is leaving school and is approached by a student who says she is a friend of Mark S. She explains that she is concerned with how much time Mark is spending with Coach Tomeeter and that Mark is just not his usual self lately. She says she thinks Mark is depressed. Not sure whether to be concerned or attribute the comments to a dating relationship gone bad, AD Luck finally decides to talk to the Building Principal. The Principal decides to first talk to Mark. Before they can meet, Mark's mother calls the Principal and says there is no need to interview Mark about Tomeeter, that she is a family friend and that they should "stay out of the family's personal business."

What can the Principal do?



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General Updates and Managing Employee Leave Rights

October 4, 2023

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Introduction

- **Catherine R. Locallo**
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1

Agenda

- Sick Leave under the Illinois School Code
- Family and Medical Leave Act
- Americans with Disabilities Act
- Family Bereavement Leave Act
- Victims' Economic Security and Safety Act



2

Sick Leave under the Illinois School Code



Sick Leave – Generally

- Sick leave is governed by Section 24-6 of the Illinois School Code.
- Sick leave can be used for:
 - Personal illness;
 - Mental or behavioral health complications;
 - Quarantine at home;
 - Serious illness or death in the immediate family or household; and
 - Birth, adoption, placement for adoption, and the acceptance of a child in need of foster care.

Sick Leave – Medical Notes

- Districts can require an employee to produce a medical note as a basis of pay after an absence of 3 days for personal illness.
- Districts can also require an employee to produce a medical note as a basis of pay for absences less than 3 days for personal illness, however the district is responsible for the expenses incurred by the employee to obtain the medical note.



Sick Leave – Baby Bonding Leave

- Employees can use up to 30 days of paid sick leave following the birth of a child for baby bonding, *i.e.*, not dependent on a medical need to recover from childbirth.
 - May be taken any time within the 12-month period following the birth of the child.
 - No right under the Illinois School Code to take leave for baby bonding intermittently, *e.g.*, employee takes every Monday and Friday off for baby bonding.
 - Summer, spring, and winter break do not diminish the right to take the 30 paid sick days.
 - Example: The baby is born May 5. Teacher uses 10 paid sick days through the last day of school, May 15. The teacher can use 20 paid sick days at the start of the following school year.

Sick Leave – Adoption Related Leave

- For paid sick leave for adoption, placement for adoption, or the acceptance of a child in foster care, a district can require the employee to provide certification that the process is underway.
- In such circumstances, the paid sick leave is limited to 30 days absent a more generous CBA provision.
- May be taken intermittently.



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The Family and Medical Leave Act



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The FMLA – Generally

- An eligible employee is entitled to 12 weeks of unpaid leave during a 12-month period for the employee's own serious health condition that renders the employee unable to perform the essential functions of the job.
 - Tip: Check the CBA or Board Policy (5:185) to determine the 12-month FMLA period.
- Also entitled to leave for the care of a son, daughter, spouse, or parent with a serious health condition.
- Eligible employees are entitled to unpaid leave for the birth or placement of a child for adoption, foster care, or to care for the child.



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The FMLA – Eligibility

Eligible Employees

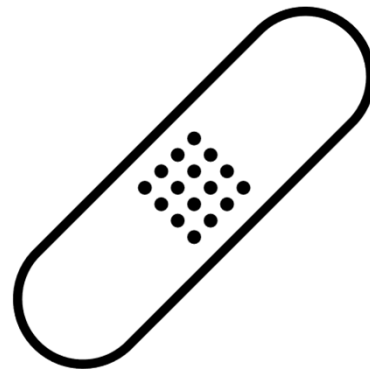
- Employed by a covered employer (districts are covered employers);
- Employed for at least 12 months; and
- Worked at least **1,000 hours** in the 12-month period immediately preceding the request for leave.



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The FMLA – Covered Conditions

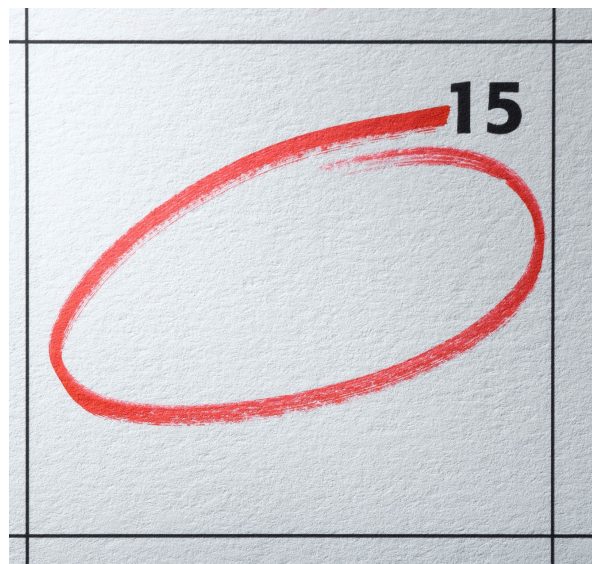
- A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:
 - Inpatient care; or
 - Continuing treatment by a healthcare provider



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The FMLA – Notice Requirements

- An employee is generally required to give notice of their need to take FMLA leave but not need specifically reference the FMLA.
- Notice is sufficient if the employee provides enough information to let the employer know that the FMLA may apply.
- Notice of the need for unforeseeable leave must be given as soon as practicable under the circumstances.



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The FMLA – Notice Requirements

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

The FMLA – Notice Requirements

- Districts must provide a notice of eligibility to employees who request FMLA leave.
- Districts must provide designation notices to employees stating whether the leave has been designated as FMLA leave.



The FMLA – Medical Certification

- An employee has 15 calendar days after receipt of the medical certification to submit the information.
- A district must advise an employee of an incomplete or insufficient certification and give them an opportunity to correct.



The FMLA – Leave Entitlements

- Districts may, with notice, require employees to use any paid leave they may have as part of their FMLA leave.
 - Tip: Check the CBA or Board Policy (5:185).
- Although FMLA leave is unpaid, districts must continue all health insurance and other benefit coverage during the FMLA leave on the same basis as the employee received prior to the leave.

The FMLA – Common Question

- Can a district delay the designation of FMLA leave by permitting employees to exhaust sick leave prior to designating leave as FMLA leave?
- **No**, per the U.S. Department of Labor’s March 14, 2019 Opinion Letter.
- “Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, neither the employee nor the employer may decline FMLA protection for that leave.”
- “The employer may not delay designating leave as FMLA-qualifying, even if the employee would prefer that the employer delay the designation.”

The FMLA – Intermittent Leave

The Intermittent Leave Predicament

- The FMLA allows for intermittent leave or a reduced schedule if medically necessary.
- Unplanned intermittent leave, especially for a chronic serious health condition, can pose problems for employers.



The FMLA – Intermittent Leave

Managing Intermittent Leave Abuse

- Require certification and re-certification as often as legally possible.
- Require the employee to make reasonable efforts to schedule treatment as to not disrupt the workplace.
- Consider temporary transfer of an employee that better accommodates recurring periods of intermittent leave (when foreseeable).
- Enforce call-in procedures.
- Be prepared to ask questions when an employee requests time off.



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The FMLA – Rights Upon Return

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



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The Americans with Disabilities Act



The ADA – Generally

- An employee is protected under the ADA if the employee is a qualified individual with a disability.
- Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- A qualified individual with a disability is an employee who can:
 - Satisfy the requisite skills, experience, education, and other job-related requirements of the position; and
 - Perform the “essential functions” of the position with or without a reasonable accommodation.

The ADA – Interactive Process

- The ADA interactive process is the process of determining:
 - Whether the employee has a disability under the ADA; and
 - Whether a reasonable accommodation is available that would allow the employee to safely return to the workplace to perform the essential functions of their position.
- Districts may seek documentation verifying:
 - The employee has a disability as defined by the ADA;
 - The functional limitations of the disability; and
 - The nature of the recommended accommodation.



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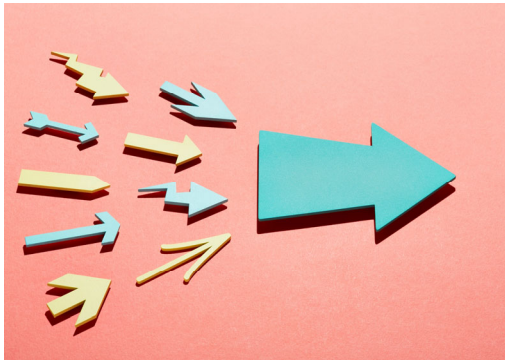
The ADA – Leaves of Absences

- Under the ADA, an unpaid leave of absence can be viewed as a reasonable accommodation.
- However, unlike the FMLA, an employee may only take leave for their own disability and not to care for others.
- An employee is not entitled to leave where the employer can demonstrate the leave will constitute an undue hardship.
- An employee is not entitled to an indefinite leave.
- An employer has no duty to continue insurance or other benefits while the employee is on an ADA leave of absence.



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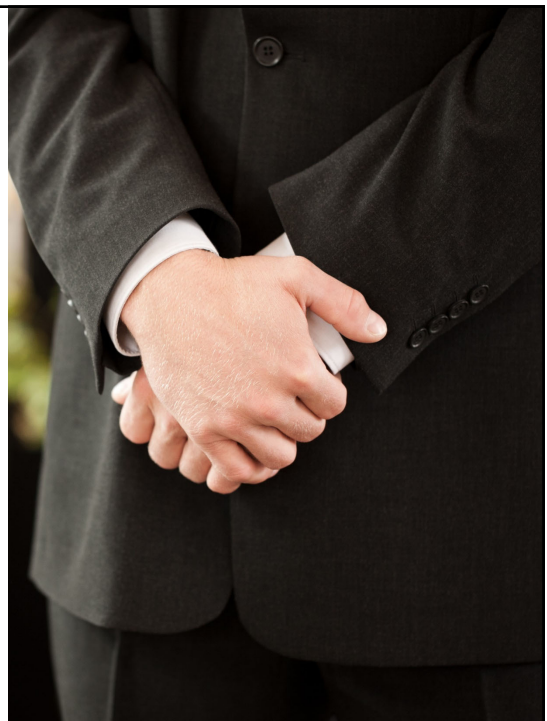
The ADA – Rights Upon Return



- The employee is entitled to the position they held prior to the leave, assuming they are still qualified for the position.
- The district may be required to suspend or modify attendance requirements as a reasonable accommodation.

25

Family Bereavement Leave Act



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The FBLA – Generally

- Effective January 1, 2023
- Amends the Child Bereavement Leave Act
- Provides up to 10 working days of unpaid leave time for any event covered by the Act to grieve, attend a funeral, or make arrangements necessitated by the death of the family member
- Eligibility = same eligibility requirements as the *federal* FMLA



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The FBLA – Covered Family Member

Covered Family Member:

- Child or stepchild
- Spouse or domestic partner
- Sibling
- Parent or step-parent
- Mother-in-law or father-in-law
- Grandchild
- Grandparent



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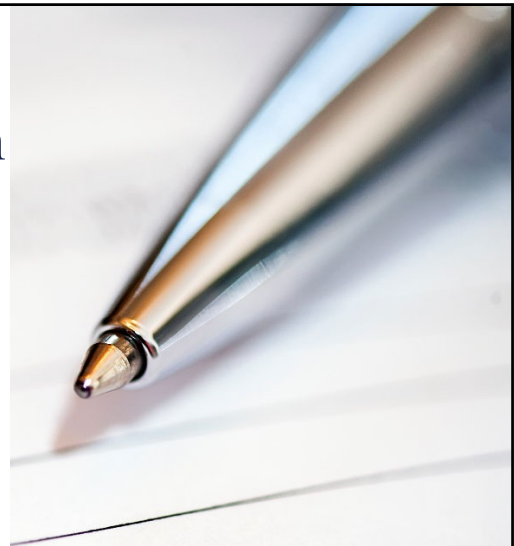
The FBLA – Events Covered

Funeral	Arrangements	Grieve	Absence
Attend the funeral (or alternative to funeral) of a covered family member	Make arrangements necessitated by the death of a covered family member	Grieve the death of a covered family member	Absence due to miscarriage, unsuccessful IVF, failed adoption match, failed surrogacy agreement, diagnosis that negatively impacts pregnancy or fertility, stillbirth

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The FBLA – Documentation

- Districts may request documentation to verify the need for leave
 - Death certificate
 - Published obituary
 - Documentation from health care provider



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Victims' Economic Security and Safety Act



VESSA – Generally

- Governor Pritzker signed HB 2493 on July 28, 2023, which amends VESSA, effective January 1, 2024
- Protects employees who are victims of domestic, gender, sexual violence, **or any crime of violence**, or whose family or household member is a victim
- Applies to part-time employees with no employment time requirement (*i.e.*, probationary period)

VESSA – Coverage

- Eligible employees are entitled to unpaid leave under VESSA for one or more of the following reasons:
 - Seek medical attention for or recovery from physical or psychological injuries
 - Obtain services from a victim services organization or psychological or other counseling
 - Participation in safety planning, temporarily or permanently relocating, or taking other actions to address safety issues
 - Seek legal assistance or remedies



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VESSA – Coverage, continued

- **Effective January 1, 2024**, eligible employees are entitled to unpaid leave under VESSA for one or more of the following reasons:
 - Attending the funeral or alternative to a funeral or wake of a family or household member who is killed in a crime of violence
 - Making arrangements necessitated by the death of a family or household member who is killed in a crime of violence
 - Grieving the death of a family or household member who is killed in a crime of violence



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VESSA – Overlap with the FBLA

If an employee is entitled to leave under FBLA, VESSA does not create a right for the employee to take bereavement leave that exceeds or is in addition to leave to which the employee is entitled under FBLA.



VESSA – Length of Leave

- Eligible employees are entitled to:
 - 4 weeks of unpaid leave for an employer with at least 1 but no more than 14 employees
 - 8 weeks of unpaid leave for an employer with at least 15 but no more than 49 employees
 - 12 weeks of unpaid leave for an employer with at least 50 employees

VESSA – Leave Entitlements

- Employers may require certification
- Employees are not entitled to accrue seniority or other benefits while on leave
- Employees returning from VESSA leave have the same rights as if they are returning from FMLA leave



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The Three R's: Recognizing, Reporting and Responding to Student Bullying Incidents

October 4, 2023

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Introduction



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1



Agenda

- Legislative Update
- Recognizing Bullying
- Reporting Bullying
- Responding to Bullying
- Bonus “R”



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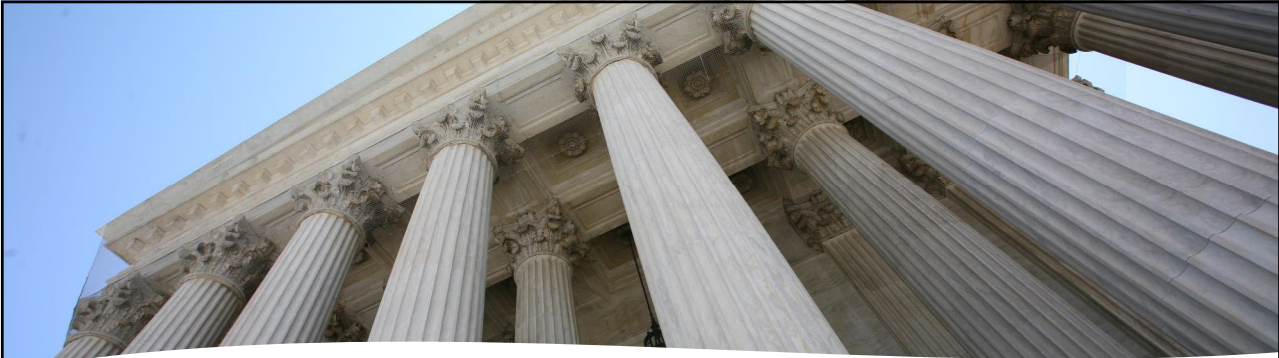
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Legislative Update

- HB 3425 signed into law on 6/9/2023 as Public Act 103-0047
- Effective Immediately
- Amends School Code provision 105 ILCS 5/27-23.7 Bullying Prevention
- Adds new categories to the definition of bullying
- New notice requirement for informing parents
 - Notice must include instances/potential instances of self-harm
- Collect data and report to ISBE

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Legislative Update | ISBE Template

- State board is required to create a template for a model bullying prevention policy and districts are required to implement the policy based on the ISBE template. Such must be posted by January 1, 2024.
- ISBE and IASB collaboration on the template and model policy.
- ISBE shall adopt rules regarding notification of districts that fail to comply.
- Each school district may provide evidence based professional development and youth programming on bullying prevention that is consistent with this section.

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Notification to Guardians

 **New Requirement:** 

- The school must make diligent efforts to notify a parent/guardian of all students involved in an alleged incident of bullying by utilizing all contact information the school has available or that can be reasonably obtained by the school **within 24-hours** of the **administration** being made aware of the alleged incident of bullying.
- Also requires that all threats, suggestions, or instances of self-harm **determined to be the result of bullying** be reported to parents/guardians within the 24-hour period.



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Notification to Guardians

- Parents/guardians of students who are parties to the investigation shall:
 - Be provided with information regarding the investigation.
 - ✓ Be careful of other students' privacy rights when providing information regarding the investigation.
 - Have an opportunity to meet with school administration or designee to discuss the investigation, findings and steps taken to address the incident.
 - ✓ Do not release information related to the discipline of other students.
 - Be provided with information regarding the availability of social work services, counseling, school psychological services, and other interventions and restorative measures, as appropriate.



New Protected Categories

- In addition to the categories already specifically protected in the bullying statute, the following categories were added to the definition of bullying:

-  Physical Appearance
-  Socioeconomic Status
-  Academic Status
- Pregnancy
- Parenting Status
- Homelessness

- Note: The current 'PRESS' policy does not include physical appearance, socioeconomic status, or academic status.



Recognizing Bullying

Differentiating the legal definition of bullying from misconduct



Identifying Bullying

- Bullying, including *cyber-bullying*, is defined as any **severe** or **pervasive** physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student(s) that has or reasonably can be predicted to have the effect of one or more of the following:
 - Placing the student(s) in reasonable fear of harm to his/her person or property;
 - Causing a substantially detrimental effect on the student's or students' physical or mental health;
 - Substantially interfering with the student's or students' academic performance; or
 - Substantially interfering with the student's or students' ability to participate in or benefit from the services, activities or privileges provided by the District.
- It includes conduct such as: harassment, threats, intimidation, stalking, physical violence, sexual harassment, theft, public humiliation, destruction of property, or retaliation for asserting or alleging an act of bullying.



No student shall be subjected to bullying:

- During any school-sponsored education program or activity;
 - While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities;
 - Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment; or
 - Through the transmission of information from a computer that is accessed at a non-school related location, activity, function or program or from the use of technology or an electronic device that is not owned, leased, or used by a school district or school if the bullying causes a substantial disruption to the educational process or orderly operation of a school.
- ✓ Note: This item applies only in cases in which a school administrator or teacher receives a report that bullying through this means has occurred and does not require a district to monitor any non-school-related activity, function or program.



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School Code Section and Policy 7:180 → Bullying Prevention

I. Assess

- Consider forming a bullying prevention committee;
- Consider administering an anonymous questionnaire to students to assess the nature, frequency and location of bullying;
- Meet with staff members to determine how they perceive the school climate and what strategies or interventions staff is currently utilizing to prevent or address bullying;
- Solicit parent feedback (e.g. through surveys or meetings); and
- Review data regarding incidents of past misconduct.

II. Train

- Provide in-service training to staff so they can learn the definition and signs of bullying, what to do when they see bullying, and how they can help students who are bullied.



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School Code Section and Policy 7:180 → Bullying Prevention

III. Teach

- Teach students not only to specifically prevent/respond to bullying but also how to generally treat each other with respect through the implementation of programs such as:
 - ✓ Positive Behavioral Interventions and Supports (PBIS).
 - ✓ Instruction in social/emotional learning.
 - ✓ “Lunch buddies” or similar coordinated peer interaction groups.

IV. Coordinate

- Coordinate with school resource officers and staff to ensure they monitor areas where bullying may be more prevalent (such as the cafeteria, hallways, bathrooms, locker rooms).



Scenarios

- I. Student A and Student B are best friends. They get into an argument and Student A now claims Student C is her best friend. Student B is hurt.



Scenarios

- II. James, a high school student, is approached by Susie, who invites him to the movies for a date. James likes Susie, but is not interested in her romantically, so he declines. The next week, Susie asks him out again, and he makes up an excuse that he is busy because he is not interested. After the third encounter, Susie starts telling their friends that James is a jerk because he will not go to the movies with her. Susie's friends start approaching James in the hallway asking him why he won't go out with Susie. Some of them make comments that they would make such a cute couple. James is beginning to feel harassed by Susie and her friends and makes an appointment to meet with the school counselor.



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Reporting Bullying

Who can/should report?



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Student Reporting

- Students are encouraged to immediately report bullying.
- A report may be made orally or in writing to the District's Complaint Manager or any staff member with whom the student is comfortable speaking.
- A student will not be punished for reporting or supplying information.

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Parent/Guardian Reporting

- Anyone, including staff members and parents/guardians, who has/have information about actual or threatened bullying is encouraged to report it to the District Complaint Manager or any staff member.
- Affirmative duty to watch out for bullying, not just report when it is brought to your attention.
- More than just a societal duty.

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Anonymous Reporting

Anonymous reports are also acceptable.

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Responding to Bullying

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Interventions

- Interventions should be considered for both the alleged victim and the alleged perpetrator.
- Interventions can be put in place both during the pendency of an investigation and/or as a result of the investigation.



Possible Interventions

- Possible interventions and responses to incidents of bullying can include:
 - Social work services
 - Restorative measures
 - Social emotional skill building
 - Counseling
 - Implementing a safety plan
 - Behavior intervention plan
 - Staff training
 - Check in Check out
 - Separation
 - Increased supervision

FAQs | Notice Requirement

1. If a parent emails, on Monday, stating their child has been bullied by Student A, can the district wait and investigate, to determine whether Student A's parents need to be contacted, or do they need to contact Student A's parents within 24 hours without looking into the situation based on the other parent report?



FAQs | Notice Requirement

2. If the district receives information on Saturday morning via email saying Student C has been bullying Student D (either from a parent, teacher, or student), is the district required to contact parents within 24 hours (on Saturday or Sunday) before talking to anyone involved to gather more information? How does this work over a holiday break?
3. Does an email work when contacting a parent regarding the 24-hour parent notification requirement, or does contact need to be made via phone?



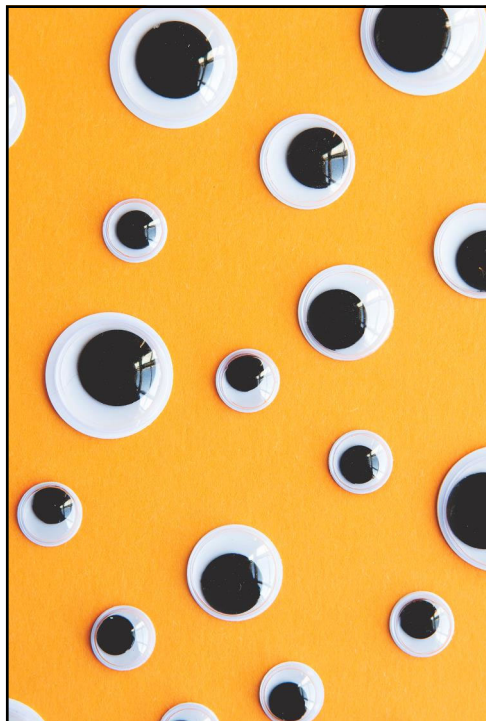


Investigation Procedures

- Investigations of bullying shall be consistent with District procedures for investigating student misconduct generally, pursuant to Board policy (but be careful!).
- When a bullying allegation suggests a potential discriminatory basis for the bullying, the District Coordinator for Nondiscrimination shall be notified and may participate or lead the investigation.
- Reasonable efforts will be made to complete the investigation within ten (10) school days after the date the report of bullying was received.



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Investigation Process

- When bullying occurs, investigate and document what happened as promptly as possible. Doing so enables the responsible administrators to:
 - Give students who may be charged with violating school rules, and who may face immediate suspension from school, a preliminary opportunity to explain their version of the incident or events in question.
 - Provide accurate and timely written notice of misconduct allegations and pending/proposed disciplinary consequences to the student.
- When disciplining students for bullying, consider alternatives or supplements to traditional discipline (e.g., social probation, restorative measures).



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Notification of Investigation Outcome

- Provide parents/guardians with a brief letter detailing the findings of the investigation.
- Make sure you keep a copy of the letter in the student's file.



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Disability-Based Bullying

- OCR would find a disability-based harassment violation when (*Davis* standard):
 - A student is bullied based on disability;
 - The bullying is sufficiently serious to create a hostile environment;
 - School officials know or should know about the bullying; and
 - The school does not respond appropriately.



OCR consider whether the district violated Section 504 and/or Title II by analyzing the school district's response (timely, comprehensive, appropriate) and implementation of supportive measures.

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Special Education Implications

- If it is determined that a student with a disability was involved (perpetrator or victim) in an incident of bullying, convene the IEP team or the Section 504 team to determine whether, and to what extent:
 1. The student's educational needs have changed;
 2. The bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and
 3. Explore additional or different services to ensure the student continues to receive a FAPE.
- Look out for: a sudden decline in grades, onset of emotional outbursts, increase in the frequency of behavioral disruptions or a rise in missed classes as evidence of academic or behavioral changes.



Bonus “R” Record Keeping

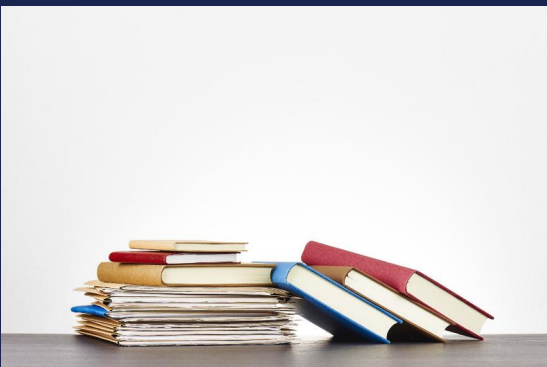
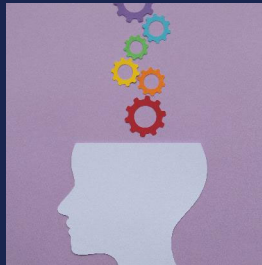
An Additional Legislative Update

Data Tracking

- **What:** Data regarding verified allegations of bullying within the school district
- **How:** Track (I) each verified allegation of bullying and action taken; and (II) whether the instance of bullying was based on actual or perceived characteristics identified and, if so, list the relevant characteristics.
- **When to Report:** Submit data in an annual report to ISBE no later than August 15 of each year starting with the 2024-2025 school year



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Summary

- ISBE Template in Q4 2023 or Q1 2024
- **24 HOUR NOTICE REQUIREMENT**
- Expansion of definition for protected categories
- Investigation tips and notice of outcome
- Special Education implications

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Purchasing and Bidding from the Basics to the Advanced

October 4, 2023

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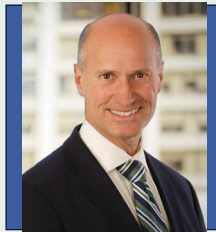
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Introduction



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1



Agenda

- The Duty to Publicly Bid
- The Bidding Process
- Unique Bidding Procedures and Exemptions



2

The Duty to Publicly Bid



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The Duty to Publicly Bid

- Section 10-20.21 of *The School Code*, 105 ILCS 5/10-20.21, provides school districts with the authority:
 - To award **all** contracts for purchase of supplies, materials or work or contracts with private carriers for transportation of pupils involving expenditures in excess of **\$35,000 (Effective 1/1/24) or a lower amount as required by board policy** to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability...

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To Bid Or Not To Bid

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

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To Bid Or Not To Bid

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

Check Board Policy!



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To Bid Or Not To Bid

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

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

Contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important role

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To Bid Or Not To Bid

A \$60,000 annual contract for milk?

Contracts for the purchase of perishable foods and beverages



9

To Bid Or Not To Bid

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

Contracts for materials and work which have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price



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To Bid Or Not To Bid

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

Contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with manufacturer or authorized service agent of that equipment where the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized service agent

11

To Bid Or Not To Bid

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

Purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services

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To Bid Or Not To Bid

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

Purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services



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To Bid Or Not To Bid

A \$100,000 contract to purchase gasoline for district vehicles?

Contracts for the purchase of fuel, including diesel, gasoline, oil, aviation, natural gas, or propane, lubricants, or other petroleum products



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To Bid Or Not To Bid

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

Contracts for duplicating machines and supplies

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To Bid Or Not To Bid

A \$75,000 contract with your local municipality for snow removal?

Contacts for goods or services procured from another governmental agency

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To Bid Or Not To Bid

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

Contracts for goods or services which are economically procurable from only one source such as the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph

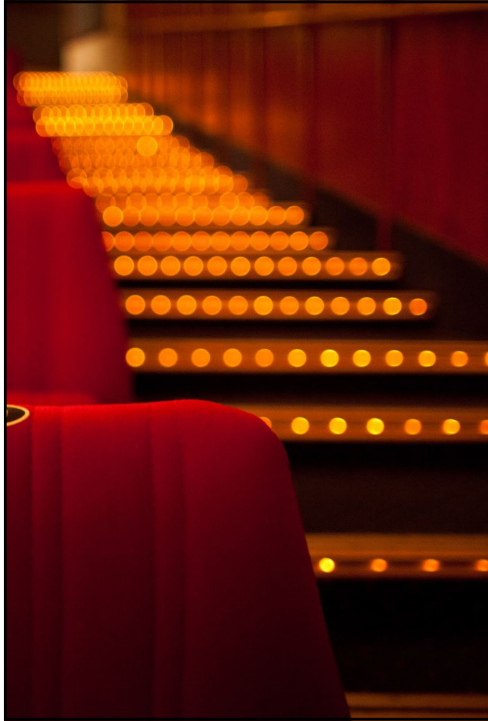
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To Bid Or Not To Bid

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

Purchases of equipment previously owned by some entity other than the district itself

18



To Bid Or Not To Bid

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

Contracts for repair, maintenance, remodeling, renovation or construction, or a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type or extent of an existing facility



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To Bid Or Not To Bid

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

Where funds are expended in an emergency and such emergency expenditure is approved by $\frac{3}{4}$ of the members of the Board (6 yes votes)



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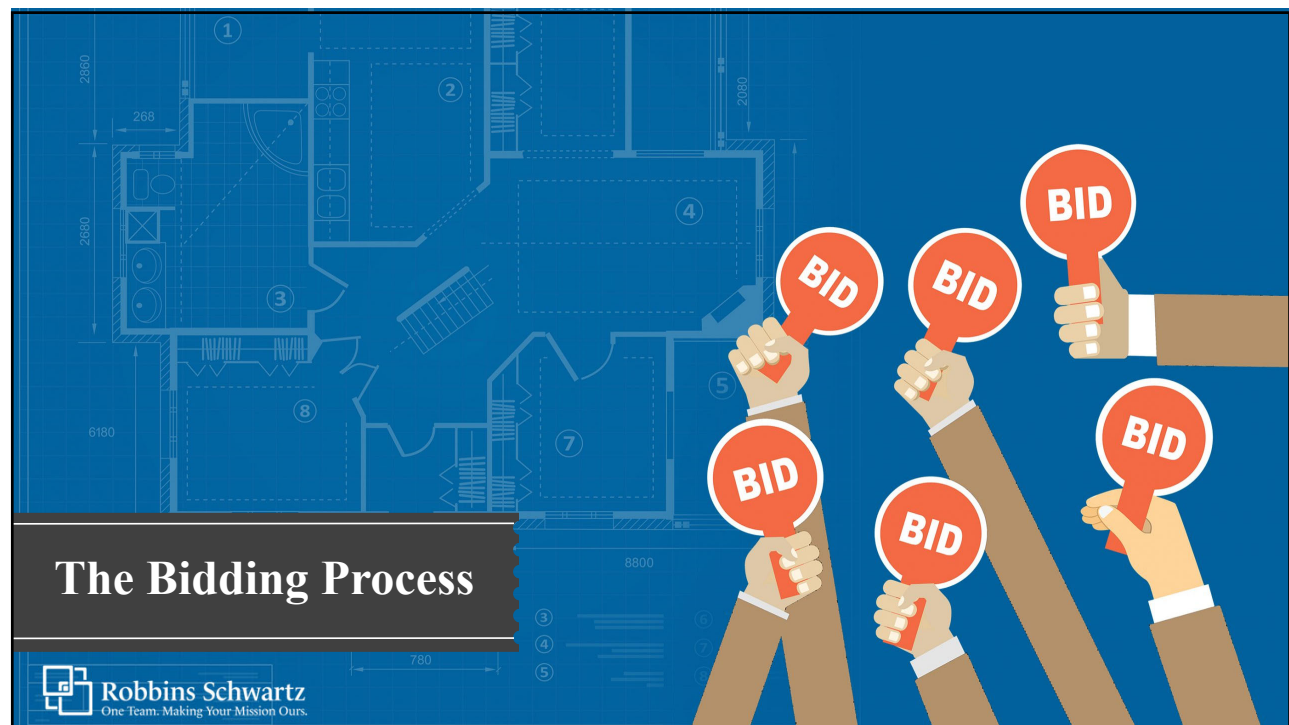
To Bid Or Not To Bid

A contract for both regular and special education transportation services?

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



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22

The Bidding Process

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

The Bidding Process

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

The Bidding Process

Awarding the Bid – Criteria

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

25

The Bidding Process

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



26

Unique Bidding Procedures and Exemptions

EXEMPT

27

Transportation Contracts

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

28

Food Service Contracts

Contracts for goods, services, or management in the operation of a school's food service, including a school that participates in any of the United States Department of Agriculture's child nutrition programs if a good faith effort is made on behalf of the school district to give preference to:

- (1) contracts that procure food that promotes the health and well-being of students, in compliance with United States Department of Agriculture nutrition standards for school meals. Contracts should also promote the production of scratch made, minimally processed foods;
- (2) contracts that give a preference to State or regional suppliers that source local food products;
- (3) contracts that give a preference to food suppliers that utilize producers that adopt hormone and pest management practices recommended by the United States Department of Agriculture;
- (4) contracts that give a preference to food suppliers that value animal welfare; and
- (5) contracts that increase opportunities for businesses owned and operated by minorities, women, or persons with disabilities.



29

Professional Services

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



30

Guaranteed Energy Savings Contracts

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



31

Governmental Cooperative Purchasing

- The Joint Purchasing Act is a stand-alone statute that supersedes any other individual bidding requirements. 30 ILCS 525/2(a).
 - The cooperative must be run by a government body.
 - The school district must join the cooperative by a board approved agreement.
 - Bids and proposals must be based on competitive solicitations.
 - Bids and proposals must be solicited by public notice as specified by the Joint Purchasing Act.



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Governmental Cooperative Purchasing

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



33

Governmental Cooperative Purchasing

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



34

Governmental Cooperative Purchasing

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



35

Governmental Cooperative Purchasing

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



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Section 504: Here Today, Revised Tomorrow

October 4, 2023

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Introduction



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1



Agenda

- Brief Overview of Standards for Identifying of Students Under Section 504 & Title II of ADA
- Accommodations Required for Noneducational and Extracurricular Activities
- What's New with 504? New Regulations and Impact of *Perez v. Sturgis*



2

Section 504: Identification of a Student with a Disability

3

Section 504 and Title II of the ADA



- School districts must comply with Federal civil rights laws that prohibit discrimination based on disability.
 - Section 504 of the Rehabilitation Act of 1973, as amended.
 - Title II of the Americans with Disabilities Act (ADA) of 1990, as amended.
 - Another relevant federal law is the Individuals with Disabilities Education Act (IDEA).
 - Students with disabilities under IDEA also have rights under Section 504 and Title II.
- **Prohibition Against Discrimination:** “No otherwise qualified individual with a disability shall, solely by reason of their disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity.”

4

Disability Defined

- Under Section 504 of the ADA and Title II, the term disability is a “**physical or mental impairment that substantially limits one or more major life activities.**”
 - The definition of a disability should be interpreted “broadly.”
- Is an impairment that is episodic or in remission a disability?
 - An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- Is an impairment transitory or minor?
 - A transitory impairment is an impairment with an actual/expected duration of 6 months or less. A transitory impairment is not considered to be a disability.



5

What is a Physical or Mental Impairment?

- “**Physical or mental impairment** that substantially limits one or more major life activities”
 - Medical diagnosis(es) may be considered among other sources in evaluating whether a student is an individual with a disability or who is believed to have a disability.
 - A medical diagnosis, without other information, is not enough for Section 504 protections.
 - Other sources include, but are not limited to: aptitude and achievement tests, teacher information, physical condition, parent information, social and adaptive behavior.



6

What is a Substantial Limitation and What are Major Life Activities?

- “Physical or mental impairment that substantially limits one or more major life activities”
- “Substantially Limiting” is described by the following:
An impairment need not prevent, or significantly or severely restrict an individual from performing a major life activity to qualify.
- Major Life Activities include Caring for oneself, Seeing, Hearing, Speaking, Sleeping, Eating, Walking, Bending, Lifting, Breathing, Learning, Reading, Concentrating, Thinking, Communicating and Major Bodily Functions.



7

Effects of Mitigating Measures

- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.
 - Mitigating Measures still considered are ordinary eyeglasses and contact lenses.
- Mitigating measures can be considered in determining what accommodations are appropriate based on a student's needs.
- A student may be eligible for 504 protections but not a 504 plan once a team considers mitigating measures.



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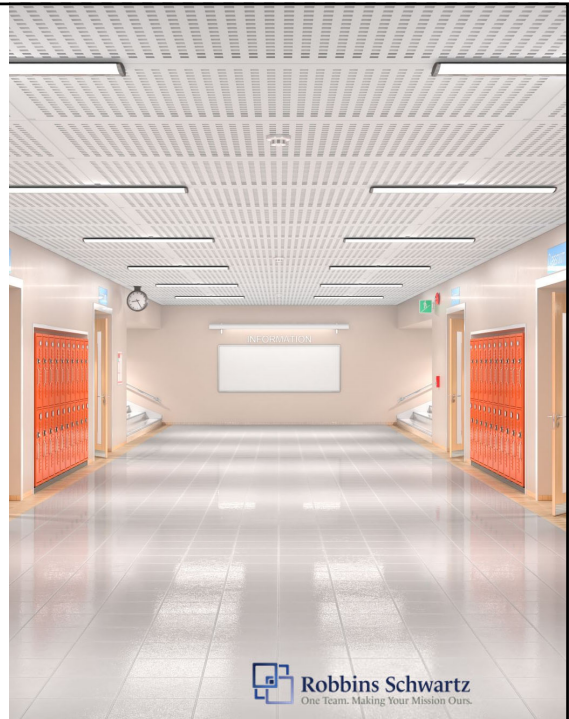
Accommodations for Extra Curricular Events or Activities: An Interactive Process Considering the Individual Student's Needs

Accommodations for Extracurricular Activities/Programs

- School districts must ensure that they provide non-academic and extracurricular services and activities in such manner as is necessary to afford disabled students an equal opportunity for participation in such services and activities and/or to receive a FAPE under Section 504.
- FAPE under Section 504 is defined as “regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met” and that are developed in accordance with the procedural requirements of Section 504. 34 CFR 104.33(b)
- School districts must make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination and/or denial of FAPE on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

Is the Accommodation or Modification Reasonable?

- An accommodation is unreasonable if it fundamentally alters the nature of the service or activity.
- An accommodation is unreasonable if it places an undue burden on the school district.
- The district is not obligated to provide students with “optimal” accommodations, accommodations that give the student an unfair advantage or accommodations of the student or parent’s choosing, but rather the district must provide the student with meaningful access to its programs and services.
- An accommodation is not warranted where the accommodation would pose a direct threat to the health and safety of others or would provide the student with a competitive advantage.



11

When is an Accommodation a Fundamental Alteration?

- Districts are not prohibited from imposing skill and ability requirements for an activity.
- Districts are required to consider accommodations and supports which allow students with disabilities to participate in educational and extracurricular activities to the maximum extent appropriate, but they do not have to provide modifications that fundamentally alter the activity.
- The determination of what is reasonable should be made on a case-by-case basis.
- Section 504 does not mandate that districts create separate or different activities to create additional opportunities for students with disabilities but, when they do, they must be equally supported.

12

What Constitutes an Undue Burden?

- Undue burden is defined as an action requiring significant difficulty or expense.
- Factors to be considered in assessing whether a burden is undue, include the following:
 - The nature and cost of the accommodations needed;
 - The overall financial resources of the facility or facilities involved;
 - The number of persons employed at such facility;
 - The effect on expenses and resources;
 - The impact otherwise of such accommodation upon the operation of the facility;
 - The overall size of the entity;
 - The type of operation(s) of the entity, including the composition, structure and functions of the work force; and
 - The geographic separateness, administrative or fiscal relationship of the facility in question to the covered entity.



13

Dear Colleague Letter January 2013; Supplemented by Dear Colleague Letter December 2013

- Noting that extracurricular athletics offer benefits such as socialization, fitness, and teamwork and leadership skills, OCR observed that districts must make more of an effort to ensure that students with disabilities have an equal opportunity to participate in athletic programs.
- As an initial matter, OCR cautioned districts not to act on generalizations and stereotypes about a particular disability.
- While students with disabilities do not have a right to join a particular team or play in every game, decisions about participation must be based on the same nondiscriminatory criteria applied to all prospective players.



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*Dear Colleague Letter January 2013;
Supplemented by Dear Colleague Letter
December 2013*

- OCR's primary focus is the obligation to offer reasonable modifications.
- If a particular modification is necessary, the district must offer it unless doing so would fundamentally alter the nature of the activity or give the student with a disability an unfair advantage.
- For example, using a visual cue to signal the start of the 200-meter dash would not fundamentally alter a track meet or give a student with a hearing impairment an unfair advantage over other runners.
- If a district does determine that a requested modification is unreasonable, it must consider whether the student could participate with a different modification or accommodation.



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*Dear Colleague Letter January
2013; Supplemented by Dear
Colleague Letter December 2013*

- OCR recognized that some students might be unable to participate in traditional athletic activities, even with modifications and supports. In such instances, districts should offer athletic opportunities that are separate or different from those offered to nondisabled students.



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OCR Findings Regarding Accommodations for Extracurricular Activities

- *LA School District, October 2014*
- A parent complained to OCR that the district denied the teen FAPE by failing to consider his participation in athletics as part of his educational placement. Under Section 504 and Title II, OCR explained, a district must ensure that students with disabilities
 - have an equal opportunity to participate in all district services, including extracurricular activities; and
 - must provide FAPE to all students with disabilities who are eligible for IDEA or Section 504 services.
- FAPE under Section 504 is defined as “regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met” and that are developed in accordance with the procedural requirements of Section 504. 34 CFR 104.33(b)



17

OCR Findings Regarding Accommodations for Extracurricular Activities



- *Baltimore School District, May 2021*
- The duty to provide students with disabilities equal educational opportunities does not end in the classroom. Districts must also ensure that all students, regardless of the severity of their disability, can participate in and benefit from nonacademic and extracurricular activities and events. When this teenager sought to join his high school band program, school officials improperly discouraged the student from participating. Instead, the district should have promptly evaluated the student to determine what accommodations he needed to play in the band alongside his peers, revised his IEP, and trained the band instructors to properly implement those services and supports.



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OCR Findings Regarding Accommodations for Extracurricular Activities

- *Georgia School District, May 2020*

- Districts can't deny students with disabilities the opportunity to participate in nonacademic or extracurricular activities.
- They should train staff to implement the provisions of a 504 plan and ensure that they are available during extracurricular activities to enable students with 504 plans to participate in the same manner as their nondisabled peers.
- This district should have designated several staffers who could administer insulin to a young student during a Saturday test prep program and field trips rather than conditioning her participation in those activities on her parent's attendance for the purpose of administration of insulin.



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OCR Findings Regarding Accommodations for Extracurricular Activities

- *Albuquerque School District, April 2020*

- A district's duty to provide students with disabilities equal access to its programs and activities doesn't end when the dismissal bell rings.
- The student wanted to attend optional club activities that occurred on weekends and at off-campus locations.
- Because the district organized those activities in collaboration with community organizations, it should have assigned a staff member to supervise the student so he could volunteer in those events with other club members.



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Responding to Requests to Participate in Extracurricular Activities

- Evaluate the student's needs related to the activity
- Those with knowledge of the student and the student's disability and the extracurricular event for activity should consider the need for accommodation.
- Identify the supplementary aid or service necessary to allow the student If the same opportunity as nondisabled students to access and/or participate in the extracurricular activity
- Provide training to the staff operating/supervising the extracurricular activity regarding the student's need for supplementary aids, accommodations or services
- If try outs are a part of the activity, provide the accommodations, supplementary aids, services in the try out process & apply criteria neutrally to all students who try out.



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Student B and the School Play

- Student B is a 7th grade student in the District. Student B is eligible under Section 504 and receives accommodations due to severe anxiety and mild depression. Although Student B is not currently prescribed medication, Student B receives social work services through a 504 plan and several accommodations to help with anxiety.
- Student B recently auditioned for the lead role in the school play. Student B was not selected for the lead role, but was offered a smaller role in the ensemble. Student B's Parent is irate, claiming that the play staff did not provide Student B with accommodations during rehearsal and demands that Student B be given the lead role.
- *As the principal, what are your next steps?*



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Student B and the School Play

- Next, the principal contacts the play director regarding the Parent's concerns. The play director replies, "This is my play and I will select the students that are best for each role. Student B is lucky that they even have a part in the play because Student B's audition was a disaster."
- *As the principal, what are your next steps?*



23

Student B and the School Play

- Instead, when the principal contacts the play director, the play director responds that Student B was provided several accommodations. The play director met with Student B on two separate occasions to rehearse her lines prior to the audition. The play director also worked with Student to help select a monologue that Student B would be comfortable reading for the audition, while all other students had to read a monologue randomly selected by the play director.
- *As the principal, what are your next steps?*



24

What's New with 504?

New Regulations and Impact of *Perez v. Sturgis*



25

Plans to Update 504 Regulations



26

Section 504 Regulation Review Announced by OCR

- In May, 2022, forty-five years after publication of the regulations implementing Section 504 of the Rehabilitation Act of 1973, the U.S. Department of Education announced plans to gather public input on possible amendments to those regulations in order to strengthen and protect the rights of students with disabilities.
- OCR noted that the work that OCR would do to listen to and solicit public input regarding improvements to the Department's disability rights regulations will include input from those people with disabilities who also have mental health needs and their advocates.



27

Section 504 Regulation Review Announced by OCR

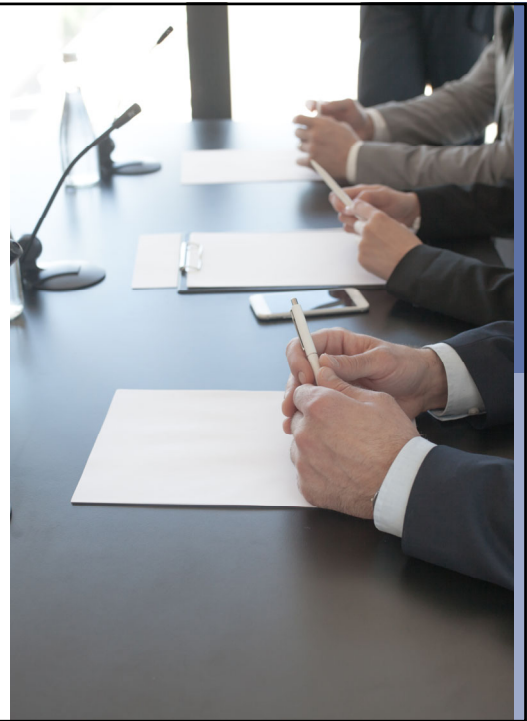
- The unified agenda outlined the priorities of the amendments:
 - Advancing equity for persons with disabilities,
 - Addressing persistent barriers to access for students with disabilities in education,
 - Focus on the need for accommodations for individuals with mental health needs,
 - Updating outdated language,
 - Aligning the current regulations with intervening laws protecting the rights of people with disabilities, includes the ADA and its 2008 Amendments.



28

Subject of Public Comments Submitted

- Public Comments by Disability Rights Organizations
 - Need to clarify and strengthen obligations entities have under 504. Suggestions that the clarifications be similar in nature to those found in IDEA.
 - Need for explicit requirements concerning MDRs prior to changes in placement.
 - Need to explicitly require parental consent for evaluations and re-evaluations every three years.
 - Suggesting that Section 504 should be more like the IDEA.



29

Subject of Public Comments Submitted

- Public Comments by Organizations Representing School Administrators
 - Definition that makes clear that Section 504 is solely related to providing **access** to the educational environment compared to nondisabled peers.
 - Make a clear distinction between Section 504 and IDEA.
 - *Stressed in that Section 504 is meant to focus on access to public education, while IDEA focuses on progress and benefit of public education.*



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Impact of *Perez v. Sturgis*

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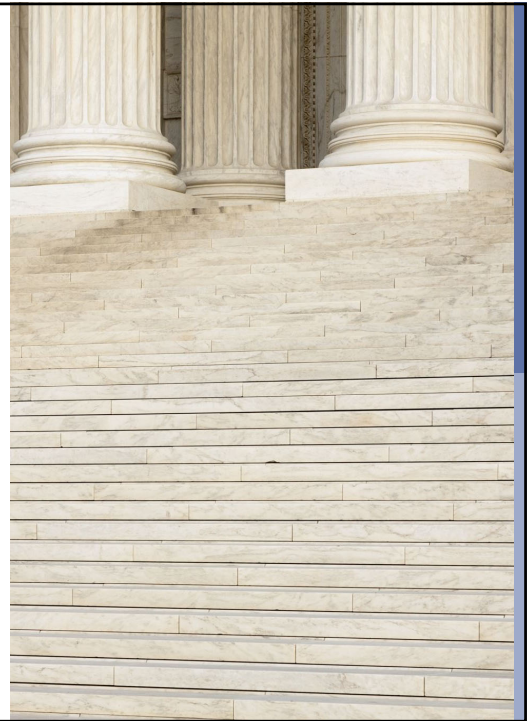
Takeaways from *Perez v. Sturgis*

- In *Perez v. Sturgis*, the U.S. Supreme Court unanimously held that ‘a suit admittedly premised on the past denial of a free and appropriate education may nonetheless proceed without exhausting IDEA’s administrative processes if the remedy a plaintiff seeks is not one the IDEA provides.’ *Perez* at 865.
- “The phrase “seeking relief” under §1415(l), refers to the remedies a plaintiff requests in his prayer for relief, and not to the character of the underlying harm. “*Perez* at 864.
- In *Perez*, the Plaintiffs had already resolved their IDEA claims with the school district via a settlement agreement which provided for additional services and compensatory education services.

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Takeaways from *Perez v. Sturgis*

- *Perez* will make it easier for families of special education students to move forward with federal civil rights lawsuits seeking compensatory damages (i.e. monetary damages) before exhausting the less formal administrative processes under the IDEA.
- *Perez* also makes it more likely that Parents will raise claims for compensatory damages in settlement discussions related to all disability based claims.



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Post-*Perez* Caselaw: *Farley v Fairfax County* (4th Cir.)

- Plaintiffs' complaint alleged claims under § 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act and sought both injunctive relief and compensatory damages. The district court determined that Plaintiffs were required to exhaust the administrative processes under the IDEA before pursuing 504 and ADA claims. As they had not done so, the case was dismissed.
- On appeal, citing *Perez*, Plaintiffs argued that the IDEA's exhaustion requirement did not apply to their 504 and ADA claims as they were seeking compensatory damages which are not available under the IDEA.
- The Court remanded the case to the district court citing the *Perez* decision finding that exhaustion of the IDEA's administrative processes is not required "where a plaintiff brings a suit under another federal law for compensatory damages—a form of relief [the] IDEA does not provide."



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Post-*Perez* Caselaw: *Li v. Revere Local School District* (6th Circuit)

- In a complicated case arising out of the expulsion of a Middle School student, the Sixth Circuit reviewed claims brought by Plaintiffs under the IDEA, Section 504 and the ADA.
- In the complaint, Plaintiffs' stated that the District's actions "deprived [student] of the right to FAPE under Section 504 and the ADA," and as result of such actions, the Plaintiffs' "suffered damages, continue to suffered extreme emotional distress, the loss of educational opportunities, as well as other damages as a matter of law, attorney's fees, costs, and expenses."



35

Post-*Perez* Caselaw: *Li v. Revere Local School District* (6th Circuit)



- The Sixth Circuit reviewed the *Perez* decision noting that the Supreme Court held that a suit "admittedly premised on the past denial of a free and appropriate education may nonetheless proceed without exhausting IDEA's administrative processes if the remedy a plaintiff seeks is not one IDEA provides." *Perez* at 865
- The Court noted, however, that the relief Plaintiffs' seek pursuant to the ADA and Section 504 is unclear. The Court noted that while the *Lis* claim they seek compensatory damages, the Complaint states that Defendants' actions "deprived T.L. of the right to a free appropriate public education under Section 504 and the ADA," and as a result of such actions the *Lis* "suffered damages, continue to suffer extreme emotional distress, the loss of educational opportunities, as well as other damages as a matter of law, attorney's fees, costs, and expenses."



36

Post-*Perez* Caselaw: *Li v. Revere Local School District* (6th Circuit)

- Because the Complaint does not explicitly ask the court for compensatory damages under the ADA and Section 504, as opposed to some other form of relief like a compensatory education, reimbursement for T.L.'s educational expenses, or equitable relief like expunging the expulsion from T.L.'s disciplinary record, the Court distinguished the complaint from that in *Perez*.
- In *Perez*, the plaintiff fully resolved his administrative complaint under the IDEA, obtained all forward-looking equitable relief he requested (including additional schooling), and later, in an independent action, unambiguously sought "backward-looking relief in the form of compensatory damages."
- It is unclear from the Lis' complaint whether they seek compensatory damages—a form of relief not available under the IDEA and therefore not required to be exhausted—or some other form of relief like a compensatory education, reimbursement, or equitable relief like expungement of T.L.'s disciplinary record—all remedies available under the IDEA, and therefore subject to its exhaustion requirement.
- In light of these findings, the Court upheld the dismissal of the Plaintiffs' claims brought pursuant to the IDEA, the ADA and Section 504 for failure to exhaust their administrative remedies.



37

Post-*Perez* Caselaw: *Chavez v. Brownsville Independent School District* (5th Circuit)

- Student has cerebral paralysis and is nonverbal. Student is identified as a student with a disability and has an IEP. As part of his educational program, the student receives support from a 1:1 aide.
- While being supported by the 1:1 aide, the student was injured at school.
- Parent filed a Due Process Complaint Notice pursuant to the IDEA alleging that the District failed to provide the student with a free appropriate public education ("FAPE").
- The parties settled the Due Process claims and, in the parties' formal settlement agreement, released the school district from "any and all claims, demands, [and] causes of actions pursuant to IDEA" that occurred "prior to the finalization" of the agreement "arising out of any alleged failure on the part of [BISD] to provide [J.C.] a [FAPE], including, but not limited to any claims articulated in their request for a due process hearing."



38

Post-*Perez* Caselaw: *Chavez v. Brownsville Independent School District* (5th Circuit)

- One year later after the student left the district at age 22, Parent filed a lawsuit against the district alleging that the Defendants violated J.C.'s Fourteenth Amendment due process rights to bodily integrity and equal protection, as well as his rights under the *Americans with Disabilities Act*. Chavez sought compensatory damages, equitable relief to enjoin the Defendants, and attorney's fees.
- The district court had dismissed Chavez' claims for failure to exhaust them via the IDEA administrative process.
- On appeal, the Court cited *Perez* and remanded the matter to the district court for additional proceedings on the complaint related to the claim for compensatory damages.



39

Post-*Perez* Caselaw: *Chavez v. Brownsville Independent School District* (5th Circuit)

- While the Court allowed for the claims for compensatory damages to proceed, the Court dismissed the Parent's claim for equitable relief noting that "[As in *Perez*], a plaintiff who files an ADA action seeking both damages and the sort of equitable relief IDEA provides may find [her] request for equitable relief barred or deferred if [she] has yet to exhaust under the IDEA.
- The Court cited language from *Li v. Revere Loc. Sch. Dist* (6th Cir. 2023) in which the Court described the difference between forward-looking equitable relief and backward-looking compensatory damages in the light of *Perez*.



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Design-Build Contracts: Strategies for Using this Construction Project Delivery Method and Understanding the Procurement Requirements of the School Design-Build Authorization Law

October 4, 2023

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Introduction

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1

Agenda

- Overview of Allowable Project Delivery Methods Prior to P.A. 103-0491
- History and Impact of P.A. 103-0491
- Procurement Requirements and Contracting for Design-Build Projects
- Benefits and Drawbacks of Design-Build Project Delivery Compared to Other Project Delivery Methods
- Questions & Answers



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Overview of Allowable Project Delivery Methods Prior to P.A. 103-0491



Traditional Approach to School District Construction

- Design – Bid – Build
 - Design: Engage a design professional, typically through the Local Government Professional Services Selection Act
 - Architectural, engineering or land surveying services related to capital improvements
 - Procurement: Notice and request for statement of qualifications. Public body negotiates price with highest ranked firm
 - Exemptions for firms with existing relationships, for federally funded projects, emergencies, and for projects where the cost of the design fees is less than \$40,000
 - Bid: Bid construction work
 - Public body can structure this work through a general contractor, construction manager-at-risk, or a construction advisor

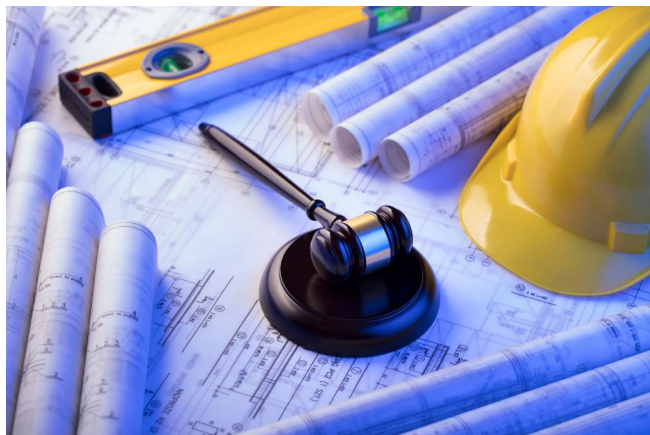
Exceptions to Traditional Approach

- Exempt Purchases
 - Projects under thresholds established by the School Code or Board policies
- Joint or Cooperative Purchasing
 - Design-build contracts resulting from joint or cooperative purchasing (hypothetically)
- Guaranteed Energy Savings Contracts
 - Specifically allowed by the School Code but subject to its own RFP selection procedure *and* contracting requirements that require firms to guarantee savings



5

Legislative History and Intended Impact of P.A. 103-0491



6

Enactment of “School Design-Build Authorization Law”

- Signed into law by Governor Pritzker as P.A. 103-0491 on August 4, 2023
- The purpose of the law is “to increase efficiency and effectiveness of delivering public projects” by school districts and other local governmental bodies
- Though P.A. 103-0491 affected other local governmental bodies, the act aligns school district authority with that of other governmental bodies:
 - Public Building Commission (through 2023)
 - Park Districts
 - Regional Transportation Authorities
 - State Universities (for energy conservation)
 - Forest Preserve Districts and Conservation Districts



7

Enactment of “School Design-Build Authorization Law”

- Supported by various municipal and county authorities, including the Illinois Municipal League, at the time of its introduction (as the “Municipal Design-Build Authorization Act”)
 - Witness Slips for SB1570
 - 27 Proponents
 - 1 Opponent
 - 1 No Position
- Later amended in the House to include School Districts
 - Witness Slips for House Amendment 001
 - 5 Proponents:
 - Performance Services, Inc.
 - Illinois Municipal League
 - American Council of Engineering Companies of Illinois
 - Representative of Performance Services, Inc. (x2)



8

Introduction of New Delivery Method for School Districts



ALLOWED AFTER
JANUARY 1, 2024



REMOVES BARRIERS
TO DESIGN-BUILD
CONTRACTING



LEGISLATION
PRIMARILY
ADDRESSES THE
PROCUREMENT
REQUIREMENTS FOR
A DESIGN-BUILD
PROJECT



SCHOOL DISTRICTS WILL
NEED TO EVALUATE THE
PROS AND CONS OF
USING A DESIGN-BUILD
DELIVERY METHOD FOR
THEIR INDIVIDUAL
PROJECTS

9

Procurement Requirements and Contracting for Design- Build Projects



10

Important Definitions under the School Design-Build Authorization Law

- **“Design-build”**: a delivery system that provides responsibility within a single contract for the furnishing of architecture, engineering, land surveying, and related services, as required, and the labor, materials, equipment, and other construction services for the project.
- **“Request for proposal” or “RFP”**: the document used by the school district to solicit proposals for a design-build contract (*i.e.*, not an invitation for bids).
- **“Scope and performance criteria”**: the requirements for the public project, such as the intended usage, capacity, size, scope, quality and performance standards, life-cycle costs, and other programmatic criteria that are expressed in performance-oriented and quantifiable specifications and drawings that can be reasonably inferred and are suited to allow a design-build entity to develop a proposal.
- **“Evaluation criteria”**: means the requirements for the *separate phases* of the selection process as set forth in the Act and may include the specialized experience, technical qualifications and competence, capacity to perform, past performance, experience with similar projects, assignment of personnel to the project, and other appropriate factors.

Solicitation of Proposals (Section 15 of the Act)

- Notice of Intent to Receive Proposals:
 - **Time for Posting**: Must be published at least **14** days before issuing the request for proposals
 - **Where to Post**:
 - Must be posted on the school district’s website
 - May publish in construction industry publications or on construction industry websites
 - **Required Contents**: A brief description of the proposed procurement



Preparing the Request for Proposal: Initial Information (Section 15 of the Act)

- **Request for Proposals:** Must be prepared for each project and must contain certain information including:
 - Preliminary schedule for completion of the contract and a proposed budget (including source of funds and the currently available funds)
 - Prequalification requirements, including its normal qualifications, licensing, and registration
 - Material requirements of the contract (such as terms and conditions, performance and payment bonds, insurance, and utilization goals)
 - Performance and evaluation criteria (not including price during Phase I...we'll get to that) for each phase of the project
 - Number of entities to be considered for the technical and cost evaluation (we'll get to that, too)
- **Proposal Deadlines:**
 - At least 21 calendar days after the RFP is issued (unless the estimated cost exceeds \$12 million, in which case 28 days)
 - RFP must include a minimum of 30 days to develop Phase II submissions after the selection of entities from the Phase I evaluation.



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Preparing the Request for Proposal: Scope and Performance Criteria (Section 20 of the Act)

- **“Programming Phase” - Scope and Performance Criteria**
 - With the assistance of either a licensed design professional or public art designer, the school district must develop an RFP that includes scope and performance criteria, including:
 - Sufficient detail and contain adequate information to “reasonably apprise” a qualified respondent of the project requirements (including programmatic needs and goals, general budget parameters, schedule, and delivery requirements)
 - Identifying the “level of design” (scope and type of renderings, drawings, and specifications that, at a minimum, will be required by the school district)
 - Performance criteria prepared by a design professional or public art designer who is an *employee of the District* or contracted under the *Local Government Professional Services Selection Act*
 - Design professional or public art designer cannot participate in any proposals
 - Revisions are allowed



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Preparing the Request for Proposal (Section 25 of the Act)

- School district must use two-phase approach to select a design-build entity
 - Phase I: Evaluates proposals and establishes a “shortlist” of design-build contractors based on qualifications alone
 - Phase II: Evaluates technical and cost proposals
- If a “small project” is anticipated to be \$12,000,000 or less, the school district can combine the two-phase procedure into a combined step, if all requirements of evaluation are performed
- RFP must include evaluating factors that the school district will use for both phases, and the relative importance assigned to each evaluation factor, including the weighing of any criteria.



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Preparing the Request for Proposal: Phase I Qualification Criteria (Section 25(b) of the Act)

- Phase I qualification criteria *must* be included in the RFP:
 - experience of personnel;
 - successful experience with similar project types;
 - financial capability;
 - timeliness of past performance;
 - experience with similarly sized projects;
 - successful reference checks of the firm;
 - commitment to assign personnel for the duration of the project and qualifications of the entity's consultants; and
 - ability or past performance in meeting or exhausting good faith efforts to meet the utilization goals for business enterprises established in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act and with Section 2-105 of the Illinois Human Rights Act.
- Additional, relevant criteria may be included



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Preparing the Request for Proposal: Phase II Technical and Cost Criteria (Section 25(c) of the Act)

- Phase II evaluation requirements *must* be included in the RFP:
 - compliance with objectives of the project;
 - compliance of proposed services to the RFP requirements;
 - quality of products or materials proposed;
 - quality of design parameters;
 - design concepts;
 - innovation in meeting the scope and performance criteria; and
 - constructability of the proposed project
- Phase II cost evaluations must include total project cost, the construction costs, and the time of completion (total project cost criteria weighting factor may not exceed 30%)
- The school district may include any additional relevant technical evaluation factors it deems necessary for proper selection



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Requirements for Phase I Design-Build Proposals (Section 35 of the Act)

- Proposal Requirements:
 - Properly identified and sealed
 - Bid bond
 - Sealed envelope with the cost information within the overall proposal submission
 - List all design professionals, public art designers, and other entities that may be subcontracted to perform work
 - All material requirements of the request for proposal
 - Entity's plan to comply with the requirements of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/1, *et seq.*), for both the design and construction areas of performance, and with Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105)
- Drawings and specifications of the proposal may remain the property of the design-build entity



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Review of Phase I Design-Build Proposals for “Responsiveness” (Section 35 of the Act)

- Responsiveness Requirement?:
 - “Proposals must meet all material requirements of the request for proposal, or they may be rejected as nonresponsive.”
 - The school district does have the right to reject any and all proposals
- Ability to Withdraw or Change Proposal:
 - Proposals may be withdrawn prior to evaluation for any cause
 - After evaluation begins by the school district, clear and convincing evidence of error is required for withdrawal
 - After a response to a request for qualifications or a request for proposal has been submitted under this Section, a design-build entity may not replace, remove, or otherwise modify any firm identified as a member of the proposer's team unless authorized to do so by the school district.
- School District’s Review of Proposals:
 - The school district must review the proposals for compliance with the performance criteria and evaluation factors



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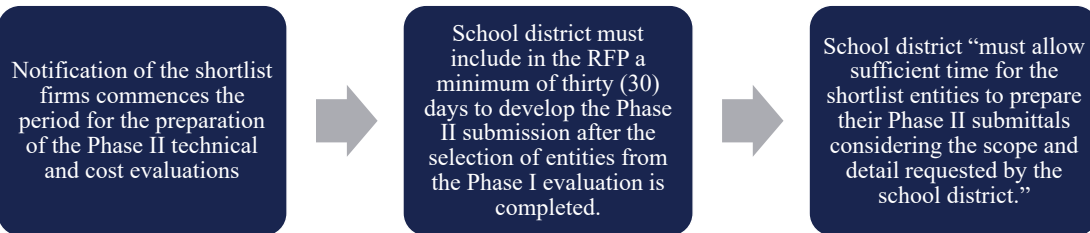
Phase I: Evaluating and Short-Listing Design-Build Entities (Section 25(b) of the Act)

- Phase I Evaluation Criteria: School district evaluates the qualification criteria listed in the RFP (experience of personnel, successful experience with similar projects, financial capability, timeliness, etc.)
- No Price Evaluation: Price may not be as a factor in the evaluation of Phase I proposals
- Scoring Matrix: Must maintain a record of the evaluation scoring
- Shortlist: Must create a shortlist of the most highly qualified design-build entities if at least six entities are selected to submit Phase II proposals
- Notify Shortlist: Must notify in writing entities selected for the shortlist; this commences the period for the preparation of Phase II technical and cost evaluations
- No Pecuniary Interest: A design-build contractor may not be considered if it has any pecuniary interest in the project or “other relationships or circumstances” that may give the contractor an advantage



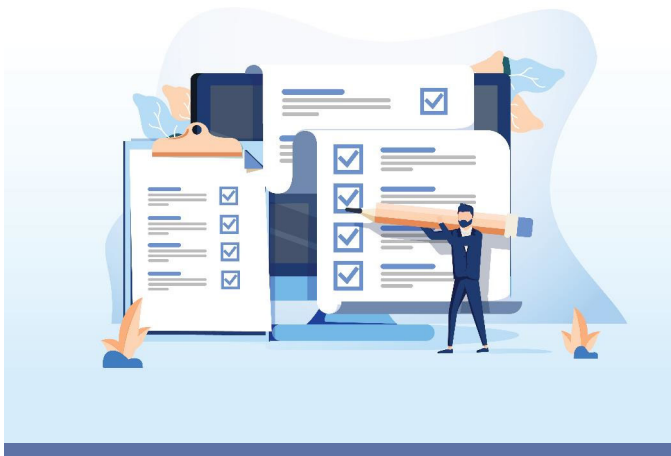
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Phase II: Submissions (Sections 15(d) and 25(b) of the Act)



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Phase II: Technical Evaluation (Section 25(c) of the Act)



- Phase II Evaluation Criteria: School district must directly employ or retain a licensed design professional or a public art designer to evaluate the technical and cost submissions to determine if the technical submissions are in accordance with generally accepted industry standards
- Scoring Matrix: Must maintain a record of the evaluation scoring

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Awarding Design-Build Contract (Section 40 of the Act)

- The school district may award the contract to the “highest overall ranked design-build entity”
- Notice of award must be made in writing
- Unsuccessful design-build entities must also be notified in writing
- The school district may not request a best and final offer after the receipt of proposals of all qualified design-build contractors
- The school district may negotiate with the selected design-build entity after the award, but prior to contract execution, for the purpose of securing better terms than originally proposed if the “salient features” of the request for proposal are not diminished
- The selected design-build entity and associated design professionals must conduct themselves in accordance with the relevant laws of this State and the related provisions of the Illinois Administrative Code governing their professional obligations



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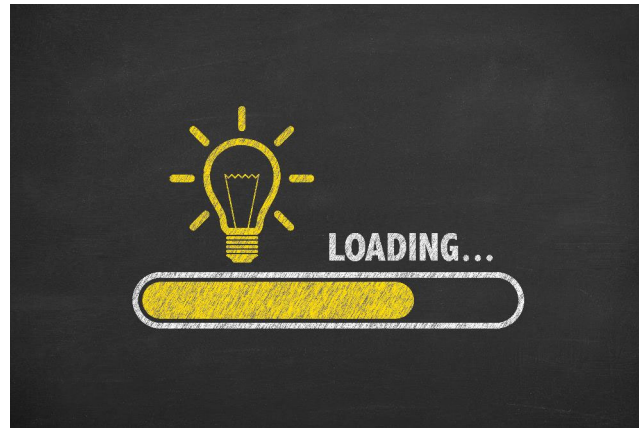
Post-Award Reporting on BEP Compliance (Section 45 of the Act)

- At the end of every six-month period following the contract award, and again prior to final contract payout and closure, the selected design-build contractor must detail, in a written report submitted to the school district, its efforts and success in implementing the contractors' plan to comply with the utilization goals for business enterprises established in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act and the provisions of Section 2-105 of the Illinois Human Rights Act.



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Benefits and Drawbacks of Design-Build Compared to Other Project Delivery Methods



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Benefits of Design-Build Contracts

- Statutory Declared Benefits:
 - “increase efficiency and effectiveness of delivery public projects.”
- Other Benefits of Design-Build:
 - One contract, one “team”, and direct accountability for construction issues (no finger pointing if there is an issue)
 - Shorter timelines
 - Direct communication between the design/builder teams
 - One procurement process
 - Less risk of defects (design and construction are united)

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Risks and Drawbacks of Design-Build Contracts

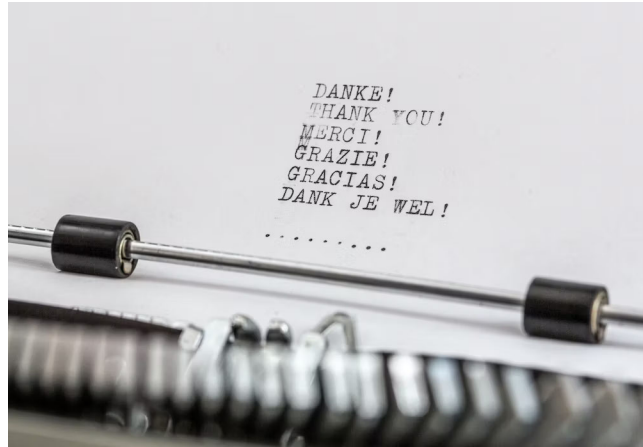
- No oversight / checks & balances from the architect
- Less flexibility for substituting a new contractor or taking over a project
- Costs (bidding can result in better prices and design-build is usually more expensive)
- Creative options from design-build team? Owner involvement?
- No guaranteed energy savings



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Changes to the Teacher Tenure Process and It's Effects on the Evaluation Process

October 4, 2023

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Introduction



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1

Agenda

- Public Act 103-0500
- Changes to Tenure Accrual Timelines
- Retroactivity?
- Potential problems – Practical Solutions
- Impact on evaluations



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Public Act 103-0500

Signed into law August 4, 2023

New tenure and accelerated tenure timelines:

- Hired on or after July 1, 2023
- Portable tenure still available?

Changes for those hired prior to July 1, 2023

- Retroactivity?

New deadline for non-renewal notices

3



Public Act 103-0500 – New Tenure Timelines

- First employed on or after July 1, 2023
 - **REGULAR TENURE**
 - Three years
 - Rated at least “Proficient” in 2nd and 3rd years
 - **ACCELERATED TENURE**
 - Two years
 - Rated “Excellent” each year

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Public Act 103-0500 – New Tenure Timelines

- First employed on or after July 1, 2023
 - **PORTABLE TENURE (compare to accelerated tenure)**
 - Two years
 - Rated “Excellent” each year
 - Tenured acquired in prior Illinois district
 - Voluntarily left or honorably dismissed immediately prior to current position
 - Two most recent evaluation ratings were “Proficient” or better from prior district (post PERA implementation)



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Public Act 103-0500 – New Tenure Timelines

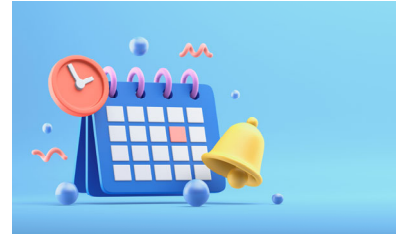
- Employed after PERA but before July 1, 2023
 - **REGULAR TENURE (no changes)**
 - Four years
 - Rated at least “Proficient” in 4th year and either 2nd or 3rd year
 - **ACCELERATED TENURE**
 - Three years
 - Rated “Excellent” in two of the three years



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Public Act 103-0500 – New Tenure Timelines

- Employed after PERA but before July 1, 2023
 - **PORTABLE TENURE (no changes)**
 - Two years
 - Rated “Excellent” each year
 - Tenured acquired in prior Illinois district
 - Voluntarily left or honorably dismissed immediately prior to current position
 - Two most recent evaluation ratings were “Proficient” or better from prior district (post PERA implementation)



Public Act 103-0500 – Retroactivity?

- Employed after PERA but before July 1, 2023
 - **ACCELERATED TENURE - RETROACTIVITY**
 - Rated “Excellent” in two of three years of service
 - Which years can count?
 - Prior to effective date of law or only after?

Public Act 103-0500 – Retroactivity?

- Employed after PERA but before July 1, 2023
 - **WHO’S TENURED NOW?**
 - Completed 3rd year in 2022-23 with 2 of 3 ratings being “Excellent”
 - Tenured now?
 - Completed 2nd year in 2022-23 with 2 ratings of “Excellent”
 - Tenured after completion of 2023-24?



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Public Act 103-0500 – Retroactivity?

- Employed after PERA but before July 1, 2023
 - **WHO’S TENURED NOW?**
 - Completed 2nd year in 2022-23 with ratings of “Proficient” and “Excellent”
 - Tenured after 2023-24 if rated “Excellent?”
 - **WHO DECIDES?**

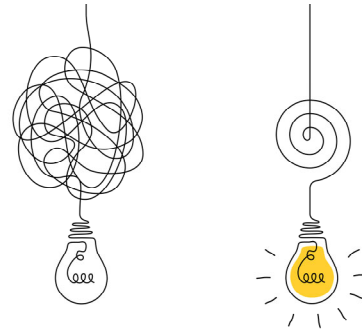


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Public Act 103-0500 – Potential Problems – Practical Solutions

- Employed after PERA but before July 1, 2023
 - **CONCERNS WITH POSSIBLE RETROACTIVE TENURE**

- Discipline
 - Notice to Remedy?
- Dismissal for cause
 - Tenured teacher dismissal process?
- Non-renewal
 - Notice with reasons?



Public Act 103-0500 – Potential Problems – Practical Solutions

- Employed after PERA but before July 1, 2023
 - **CONCERNS WITH POSSIBLE RETROACTIVE TENURE**
 - Conservative approach if tenure status is unclear:
 - Consider affording tenured teacher processes for discipline and dismissal for cause
 - For discipline – issuance of Notice to Remedy (instead of written reprimand)
 - For dismissal for cause – follow tenured teacher dismissal process, including right to hearing

Public Act 103-0500 – Potential Problems – Practical Solutions

- Employed after PERA but before July 1, 2023
 - **CONCERNS WITH POSSIBLE RETROACTIVE TENURE**
 - Conservative approach if tenure status is unclear:
 - For non-renewal – Provide notice of non-renewal with reasons if unclear whether teacher would otherwise attain tenure at end of that year
 - More assertive approach if tenure status is unclear:
 - Consult legal counsel – options and risks depend on exact facts and circumstances



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Public Act 103-0500 – Notice of Non-Renewal Deadline

- For all teachers (regardless of hire date):
 - April 15 is new deadline
 - Eliminates the old 45 days prior to end of school term
 - Applies to non-renewals and RIF's (honorable dismissals)
 - Delivery of notice should occur by April 15
 - Board takes action prior to that date to allow for timely notice



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Public Act 103-0500 – Impact on Evaluations

- Ratings are extraordinarily important to tenure timeline
- Evaluators should act judiciously
 - Avoid “over rating” a good, but not necessarily excellent teacher
- Consistency between evaluators within a district
 - All should evaluate with the same rigor



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Public Act 103-0500 – Impact on Evaluations

- Evaluation Joint Committee
 - Carefully assess any proposed changes to evaluation plan
 - Ensure reasonable allocation of weight assigned to student performance v. professional practice
 - NOTE: ISBE requires student growth to represent at least 30% of the rating assigned
 - Carefully consider the types of assessments used to measure student growth



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A Fresh Look at Bargaining Teacher and ESP Contracts: Best Practices for Responding to Union Proposals, Traditional Bargaining v. Interest-Based Methods, and Strategies for Success

October 4, 2023

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Introduction



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1

Collective Bargaining

- Traditional Bargaining
- Interest Based Bargaining
- Trends at the Table
- Strategic Considerations



2

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Traditional Bargaining v. IBB Format



3

Negotiations Strategies and Techniques

- Planning for bargaining using **traditional bargaining** format:
 - Composition of bargaining teams
 - Ground rules
 - Review language issues
 - Financial modeling
 - The first proposal
 - Responding to proposals
 - Tentative agreements
 - Board action

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Traditional Bargaining

- Building a Team – Chief Spokesperson
 - Provides rationale for proposals, responses, and rejections
 - Maintains a consistent message throughout negotiations
 - Provides operational knowledge

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Traditional Bargaining

- The Initial Proposal
 - The first proposal at the bargaining table should come from the Union
 - The District may wish to base its response on the extent and complexity of the Union's proposal
 - The District should insist on receiving a complete proposal from the Union so that it will not bargain in a piecemeal fashion (particularly on economic issues)

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Traditional Bargaining

- Responses to Proposals
 - The District, as a first response, may not propose a “take it or leave it” proposal
 - However, the District is not required to accept any proposal made by the Union



Traditional Bargaining

- The parties will alternate responses until an 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 for approval and the Union’s membership for ratification



Interest Based Bargaining

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Interest Based Bargaining

- Interest based bargaining (IBB) goes by a variety of 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

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Interest Based Bargaining

- IBB Process steps:
 - Each party submits their non-economic, economic, and contract language housekeeping issues.
 - The parties organize the list of issues, determine the process to negotiate the housekeeping issues, and negotiate the non-economic issues on an issue-by-issue basis.
 - Economic issues are typically addressed in a one-day “Affinity” bargaining session after all non-economic issues are negotiated.



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Interest Based Bargaining

- Non-economic Issues--IBB Process
- **Identify Interests:** Why is this issue important to address?
- **List and Brainstorm Options:** What is the solution to the problem?
- **Discuss and Negotiate Options:** Is the option feasible, beneficial, and acceptable “FBA”)?
- **Apply IBB Standards:**
 - Feasible: Is the option legal and can it be done?
 - Beneficial: Does the option resolve the problem?
 - Acceptable: Is the option ratifiable by the membership and the board?
- **Reach Consensus:** Can all participants agree to or live with the option? If so, the option is labeled “FBA”



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Interest Based Bargaining

- IBB Strategies:
 - Board team preparation is critical to success. Review and discuss Board interests, options, and “deal-breakers” before each session.
 - Consider combining viable options to reach consensus on an issue.
 - **Example:** Option 15—Option 1, 4, 7, 10, and 12.
 - **Rationale:** This approach can expedite the IBB negotiation process by “packaging” acceptable options presented by both parties.
 - Economic Options: Board should make sure to negotiate economic options as a total package (rather than separately) during the Affinity process.



13

Interest Based Bargaining

- IBB format:
 - The process uses experienced facilitators to train the participants in the IBB techniques and help the parties in negotiation sessions work towards consensus solutions on which have been mutually identified by the parties.
- Training providers:
 - Federal Mediation and Conciliation Service (FMCS) free of charge
 - The Illinois Education Association and other unions will also provide facilitators
 - Private facilitators are an option



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Interest Based Bargaining

- The IBB process relies on:
 - Extensive training of the bargaining teams in problem solving and listening techniques
 - Commitment of the District's bargaining team to participate in the training and interest based bargaining negotiation sessions
 - A willingness of all the participants to follow the IBB format and principles



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Interest Based Bargaining

- Time commitment:
 - Generally, the training lasts 1-2 days
- Focus of the training:
 - The facilitators will stress keeping an open mind
 - The District and Union will practice listening techniques and participate in group exercise and negotiation scenarios to demonstrate the benefit of the techniques



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Interest Based Bargaining

- Advantages to IBB:
 - Open exploration and discussion of issues may promote better understanding and relationships
 - The Union may develop a better appreciation of the District's limitations and interests
 - The process may help dissipate bitterness built up over previous difficult negotiations
 - The process usually entails an expedited process with a deadline



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Interest Based Bargaining

- Disadvantages to IBB:
 - Unrealistic expectations may cause problems
 - Multiple participants in discussion raise possible contract language problems
 - Bargaining history is more challenging to discern and verify
 - Individuals may be subject to personal attacks if parties do not adhere to the IBB principles
 - The process demands a significant time commitment on all participants



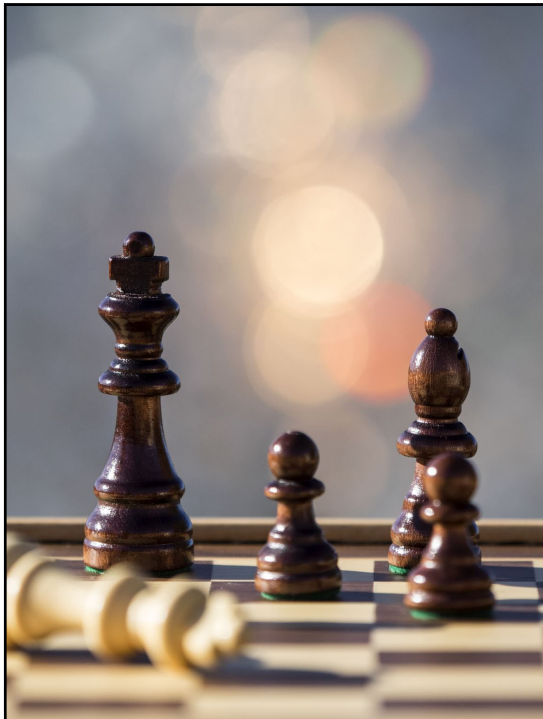
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Negotiation Strategies and Techniques

- Strategic considerations:
 - Use the bargaining table to solve problems
 - For wage matters, work off the same data points
 - Be careful of regressive bargaining
 - Use “package proposals”
 - Note: Packages tend to be more useful in the later stages of the process
 - Use “supposal” or “what if” scenarios



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Negotiation Strategies and Techniques

- Additional strategic considerations:
 - Use the “sidebar”
 - Focus on diminishing expectations
 - Know your audience
 - Cost each financial proposal



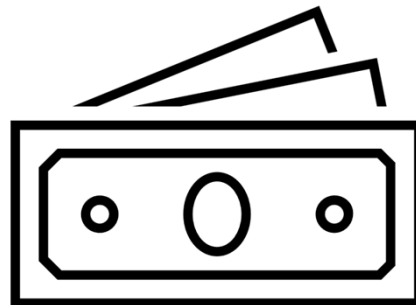
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Negotiation Strategies and Techniques

- Additional strategic considerations:
 - Know how each proposal directly affects each member of the Union's bargaining team, particularly in terms of compensation
 - "Sleeping dogs" and "sacred cows"
 - Sleeping dogs: avoid proposing changes when the District arguably has retained the right in question
 - Sacred cows: contract provisions that appear to be minor but are likely to provoke a disproportionately charged response

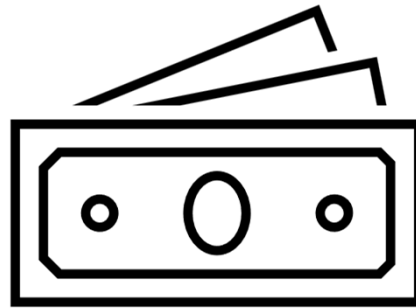
Trends at the Table - Salary

- Higher salary increases than prior contract years are common
 - Range: 3.5 – 5.5% increases as opposed to 2.5 – 3.5% increases
- Why?
 - High CPI-U
 - Staff shortages
 - Hiring and retention challenges
- Response options?



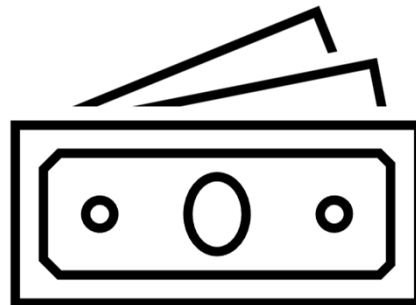
Trends at the Table - Salary

- Key factors in determining the level of annual salary increase:
 - The District's current and projected financial condition
 - The District's revenue limitations and constraints
 - Comparable wage data, salary schedules, benefits packages, and contracts
- The problem with salary schedules:
 - The combination of horizontal and vertical schedule movement can yield significant salary increases
 - Calculate the cost of schedule movement and consider elimination of schedules



Trends at the Table - Salary

- Many school districts have eliminated or phased-out intermediate lanes within the salary schedule due to challenges in administration and as a cost-savings measure.
 - **Ex:** Move from eight lanes to four lanes – BA, MA, MA+30, PhD
- Negotiating the elimination of intermediate salary schedule lanes is difficult and often requires that teachers occupying such lanes be “grandfathered” or continue to receive some additional benefit after the lane is eliminated.



Management Negotiation Strategies – Increased Prep Time

- Unless valid concerns exist, school districts should resist proposals to increase guaranteed preparation and planning time.
 - Districts should be especially cautious of guaranteeing a daily minimum amount of planning and preparation time due to operational issues.
- Districts should respond that increasing the guaranteed preparation and planning time would reduce the amount of direct instructional time provided to students.
- **Option:** “The District will provide effective and sufficient collaborative planning and individual preparation time based on a master schedule designed by the Administration, in consultation with teaching staff.”



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Management Negotiation Strategies – Retirement

- Some school districts have eliminated traditional retirement benefits provisions that granted eligible employees with 6% salary increases in final years of employment.
- Recommended alternatives?
 - One-time voluntary retirement incentives if an employee retires during a limited “window” period during term of CBA
 - Post-retirement service bonus payment
 - Contributions to alternative health insurance plans



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Management Negotiation Strategies - Teacher Evaluation

- Many teacher unions have proposed to modify the teacher evaluation process to provide that tenured teachers be evaluated only once every three years based upon a recent School Code amendment.
- **Union Rationale:** The IEA takes the position that the School Code “mandates” that districts evaluate tenured teachers no more frequently than once in a 3-year period.
- **Recommended Management Response:** Retain existing 2-year cycle for tenured teacher evaluations. The School Code amendment is an option—not a statutory mandate.
- **Rationale:** More frequent formal and informal teacher observations and summative evaluations and ratings enable the teacher to more promptly address and implement any suggestions to improve their teaching performance and receive a higher evaluation rating.



Management Negotiation Strategies – Teacher Workday

- Unions increasingly submit proposals to reduce the length of the teacher workday or student contact time, often citing concerns regarding teacher “burnout”.
- **Caution:** Union proposals often add restrictions on the administration’s ability to schedule meetings before or after school or right to require teachers to arrive at school a reasonable time before classes start.
- **Management Counter:** *The student day will begin at 8:00 am and end at 3:30 pm. Teachers are expected to arrive at school at least 15 minutes before the end of the student day and shall remain at school for at least 15 minutes after the end of the student day and their professional obligations are completed.*

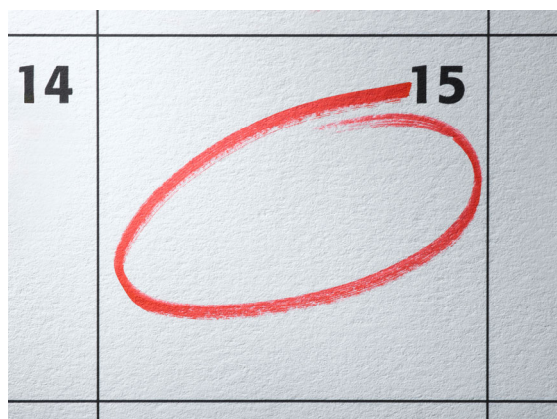
Management Negotiation Strategies - Class Size

- Teacher unions are increasing proposals to add class size limits to the contract to address teacher concerns with staff shortages and larger classes.
- **Union Proposal:** *Teachers in grades K-5 shall have a class size cap of 25 students and a maximum of 8 special education students. If either of these limits is exceeded during the school year, the administration will immediately assign an additional teacher aide to the classroom.*
- **Management Counter:** *The District will use its best efforts to limit K-5 class sizes consistent with staffing levels, cost constraints, and classroom space limitations. If a teacher's class size increases substantially during the school year, the teacher can request a meeting with the principal to discuss a potential plan of action to address the class size concern.*
- **Recommend:** Avoid numerical class size limits which can result in additional staffing costs and are difficult to administer due to enrollment changes and transfer students. Non-compliance with such limits can also result in union grievances.

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Trends at the Table – Flex/Hybrid Schedules

- Unions increasingly proposing alternative work assignments and flexible scheduling, including remote and hybrid options
- Key Considerations
 - Can the position's responsibilities be performed effectively without 100% on-site work?
 - Does the flex scheduling create an operational disruption?
- Recommendation = reserve management rights to greatest extent possible



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Management Negotiation Strategies – Flex/Hybrid Schedules

- Options?
 - The District can agree to review and determine which positions are eligible for remote or hybrid schedules based upon the job description and the need for the employee to be on-site to perform their essential duties.
 - Any agreement should reserve the supervisor's right to approve the assignment and direct the employee to return on-site if needs change.
 - Reject any Union proposals to allow the parties to jointly determine whether a position qualifies for remote or hybrid work – exclusive management right.
 - Resist any Union proposals to allow employees to work an alternative or flex schedule at their option. Counter: *A bargaining unit employee may be assigned an alternate or flex work schedule (e.g., change in scheduled workweek or work shift hours) with the supervisor's pre-approval. The supervisor reserves the right and discretion to modify the alternate or flex work schedule depending upon departmental or staffing needs.*



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Management Negotiation Strategies – Paid Leave Benefits

- Unions frequently proposing enhancement to existing paid leave benefits and new benefits
 - 12-weeks of paid parental leave
 - Sick leave banks
 - Bereavement leave
- Considerations?
 - Overall costs associated with enhanced leave benefits
 - Think about unintended consequences if agreed to only for teachers, such as equity issues involving other employee groups and impact on other bargaining tables



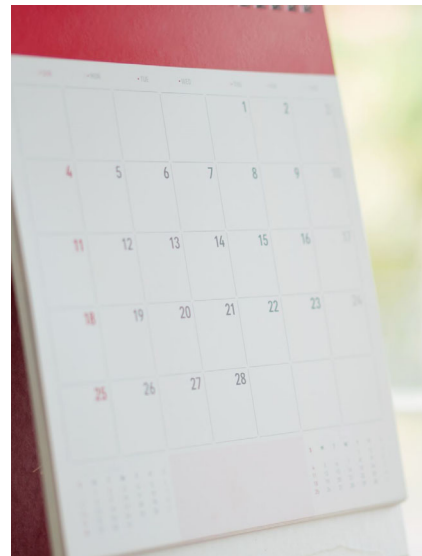
32

Management Negotiation Strategies – Probationary Period

- Districts should not agree to any proposals which limit the probationary period for new employees to an unreasonably short timeframe without the right to extend the probationary period.
- *New employees must complete a probationary period of thirty (30) days. Upon completion of the 30-day probationary period, the District will provide a written evaluation of the employee's performance. If the employee's performance is rated "satisfactory" or "meets expectations", the employee will be designated on permanent, non-probationary status. Non-probationary employees will be evaluated annually and cannot be disciplined or discharged without just cause and prior progressive discipline.*

Management Negotiation Strategies – Probationary Period

- Districts should propose a longer probationary period with the right to extend the probation if necessary to ensure that it has sufficient time to evaluate the new employee.
- *Newly hired employees must complete a probationary period of ninety (90) days worked. The employee's performance will be reviewed prior to completion of the probationary period. The District may extend the probationary period for an additional forty-five (45) days if necessary to assess whether the employee has successfully completed the probationary period and should be promoted to non-probationary status. Probationary employees are considered "at-will" and may be dismissed for any reason without prior notice.*



Management Negotiation Strategies – Discipline/Discharge

- Districts should reject Support Staff Union proposals which overly limit the right to discharge ESPs for unsatisfactory performance or serious misconduct.
 - *Employees shall not be disciplined or discharged except for just cause after prior verbal and written warnings, suspension without pay, and a pre-termination hearing before the Board. Any disciplinary reprimands will be expunged and removed from the employee's personnel file after one (1) year absent a recurrence of similar documented misconduct.*
- Possible response?
 - *Non-probationary employees may be suspended or discharged for sufficient cause, including but not limited to unsatisfactory performance and documented misconduct.*



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Management Negotiation Strategies – Discipline/Discharge

- Districts should ensure that any contract language does not mandate progressive discipline but reserves the right to bypass any steps in the progressive discipline sequence if appropriate depending on the seriousness of the misconduct.
 - *The District agrees to the principle of progressive discipline but reserves the right to bypass any step in the progressive discipline sequence set forth above and terminate immediately depending upon the nature and seriousness of the employee's misconduct.*



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Robbins Schwartz
One Team. Making Your Mission Ours.

Best Practices for Navigating Student Residency and Homelessness

October 4, 2023

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Introduction



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1

Student Residency



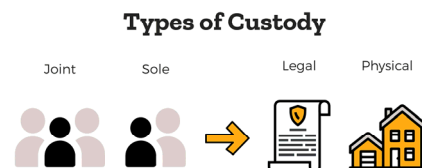
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Student Residency

- Students are presumed to reside where their parents reside.
- Exceptions:
 - Parents have relinquished control and custody of the student; and
 - The primary reason for the parental relinquishment of custody and control is not for the purpose of accessing the educational programs of the District.

“Legal Custody”

- “Legal custody” means one of the following:
 - Custody exercised by a natural or adoptive parent.
 - Custody granted by court order.
 - Custody exercised under a statutory short-term guardianship, provided that within 60 days of the student’s enrollment a court order is entered establishing permanent guardianship.
 - Custody exercised by an adult caretaker relative who is receiving aid under the Illinois Public Aid Code for the student who resides with that adult caretaker.
 - Custody exercised by an adult who demonstrates that they have accepted responsibility of the student and provides the student with a regular, fixed, night-time abode.



Case Law: Suspected “Sham” Residence

- *Gwozdz v. Bd. Of Educ. of Park Ridge-Niles Sch. Dist. No. 64*, 2021 IL App (1st) 200518 (Mar. 5, 2021).
 - Plaintiffs owned a single-family home in Des Plaines (out of District) and a commercial building in Niles (in District), the first floor of which contained a flower shop run by the family, and the second floor contained eight apartments. Plaintiffs rented seven of the eight apartments to others and kept one of the apartments (one bedroom, one bathroom) for themselves.
 - Plaintiffs enrolled the student using the Niles apartment address. The District conducted a residency investigation and determined that the student and her family were residing in the out-of-District single-family home and not in the in-District apartment.



5

Case Law: Suspected “Sham” Residence

- *Gwozdz v. Bd. Of Educ. of Park Ridge-Niles Sch. Dist. No. 64*, 2021 IL App (1st) 200518 (Mar. 5, 2021).
 - Following a residency hearing, hearing officer determined that the student was not a legal resident of the District. The Board adopted the hearing officer’s findings, student was not permitted to attend on a tuition free basis.
 - The parents appealed the Board’s decision to the Regional Superintendent, the Circuit Court of Cook County, and the Illinois Appellate Court, all of which affirmed the Board’s decision.



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Case Law: Suspected “Sham” Residence



- *Gwozdz v. Bd. Of Educ. of Park Ridge-Niles Sch. Dist. No. 64*, 2021 IL App (1st) 200518 (Mar. 5, 2021).
- Appellate Court noted that, when determining one’s residence for school purposes, it “consider[s] not only the dwelling place of the family, but also whether that place is the family’s intended ‘home base’ for day to day living and care of the child.”
- Court also noted that “the establishment of the residence must not be for the sole intent of attending free school in the District,” and that in determining intent, “a person’s acts are to be given more weight than his or her declarations.”



7

Nonresident Students - Tuition



- Nonresident students may attend District schools if they are charged tuition (and if permitted by Board policy).
- Tuition may not exceed 110% of the per capita cost of maintaining District schools for the preceding school year.



8

Children of Non-Resident District Employees

- *School Code* amended in June 2023
- A school district may now adopt a policy to waive tuition costs for a non-resident pupil if the pupil is a child of a district employee.
- Note: requires Board action!

Determining Whether Transfer of Custody was to Enable Attendance in the District

- Practice Tips
 - **Affidavit of Residence, Custody, Control, and Responsibility**
 - To be completed by the person who has assumed responsibility for a child and provides the child with a regular, fixed, night-time abode.
 - **Affidavit of Transfer of Custody and Control**
 - To be completed by parent or legal guardian when the parent or legal guardian has transferred the custody of their child to another person.

Determining Whether Transfer of Custody was to Enable Attendance in the District

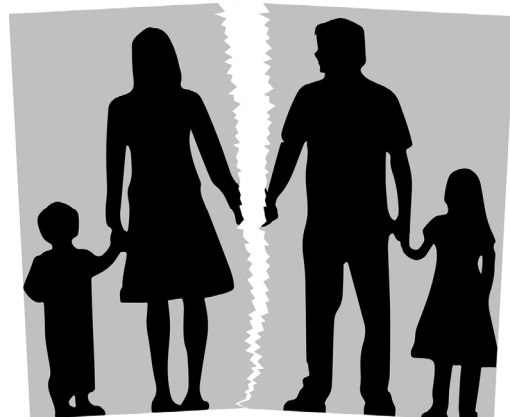
- Practice Tips

- Examine registration materials, court documents transferring legal guardianship, and any affidavits of control, custody, and responsibility.
- Review the date that the transfer occurred and the estimated length of the transfer of custody.
- Consider whether the student's other siblings are in a different residence or attend school outside of the District's boundaries.

Hypothetical Scenarios

- Divorced Parents with Joint Custody

- Q: In an effort to achieve extreme equity, Leia and Han's joint custody agreement calls for their children to switch off each week. Accordingly, Ben and Chewy live with Leia in Alderaan from Sunday through Saturday night one week, and then live with Han in Coruscant from Sunday through Saturday night the following week. Which district is Ben and Chewy's resident school district?



Hypothetical Scenarios

- Feuding Families

- Q: 11-year-old Arya lived with her mother in Winterfell and has attended Winterfell Elementary School since kindergarten. Arya's father lives in King's Landing. Over the summer, Arya moved in with her Grandma who lives in Riverrun because she was not getting along with her mother. School is starting and Grandma wants to enroll Arya in Riverrun Elementary School. Is Riverrun Arya's resident school district?



Hypothetical Scenarios

- Feuding Families

- Q: Grandma successfully enrolled Arya in Riverrun Elementary School. By October, Arya and her Mother have made up and Arya has moved back in with her mother in Winterfell. Arya really liked her French class at Riverrun and her old school in Winterfell does not offer French. Can Arya still attend Riverrun tuition-free for the remainder of the school year?



Residency Investigations



Residency Investigations: 10 Areas to Cover

1. Enrollment/Registration paperwork, court documents and affidavits related to custody, control, and responsibility.
2. Proof of residency, including leases, bills and other documentation.
3. Enrollment/Registration paperwork and proof of residency for prior school years.
4. Public database searches: driver's license information, vehicle registration, tax records, and more.
5. Interviews with individuals who may have relevant information about the family's residency status: landlord, property management company, neighbors, etc.

Residency Investigations: 10 Areas to Cover



6. Information related to the student's arrival/departure from school: pick-up/drop off patterns, attendance records, social media, and mail returned to the district.
7. Surveil both the in-District address and the suspected out-of-District address at least 3-4 times.
8. Surveil the addresses on different days of the week, observing what people and vehicles are on the property, taking photos of the student if possible.
9. After all other investigatory components are completed, conduct an impromptu home visit at the in-District address where the family claims to be residing.
10. Gather and maintain all relevant documents the District intends to submit as evidence at a potential hearing.

Residency Challenge Procedures

- Student currently attending school vs. prior to enrollment and attendance.
- Parent entitled to request a residency hearing if student is attending school.
- Board action required following residency hearing.
- Option to appeal to the Regional Superintendent.
- Student remains enrolled pending final determination.

Special Circumstances

- Homeless Students
- Youth in Care/Students in Foster Care



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Homeless Students

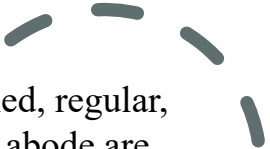
McKinney-Vento Homeless Assistance Act

Illinois' Education for Homeless Children Act

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Homeless Student – Defined

- 
- Children who lack a “fixed, regular, and adequate” nighttime abode are eligible for McKinney-Vento services.

Homeless Student Rights

- Choice of school
- Immediate enrollment, even if medical or other records, birth certificates, or transcripts cannot be produced at time of enrollment
- Transportation
- Preschool: Priority consideration to preschool programs
- Free lunch & fee waivers
- Supplemental tutoring or other resources, if needed

Homeless Students – School of Choice

- When a child loses permanent housing and becomes homeless, or when a homeless child changes their temporary living arrangements, the parents/guardians of the homeless child may:
 - Enroll the child in any school in which he or she was last enrolled (or permanently housed); or
 - Enroll the child in any school that non-homeless students who reside in the attendance area in which the child is actually living are eligible to attend.

Homeless Students – Practice Tips



- Homeless students do not need to produce typical proof of residency.
- Registrar or homeless liaison may ask preliminary questions to determine the specific circumstances and basis for the student's homeless status.
- If a District has concerns regarding a student's homeless status, the District should enroll the student and initiate an investigation.
- Be careful with delaying the enrollment of students claiming homeless status.
- Consider incorporating 18-month and annual review process to periodically reassess homeless students' status.
- If any disputes exist, consider homeless dispute process.

Homeless Dispute Process

- Pre-Dispute Meeting
- Dispute Meeting with ROE Ombudsman
- Option to Appeal ROE Ombudsman determination to State Superintendent of Education or Designee
- Student remains enrolled pending final determination

Youth In Care

Every Student Succeeds Act
("ESSA")



Youth In Care: Key Provisions

- Presumption that children in foster care should remain in the school of origin, unless determination that it is not in the child's best interest.
- If it is in the best interest of the child to leave their school of origin, the child must be immediately enrolled in the new school.
- LEAs must collaborate with child welfare agencies to develop and implement clear written procedures for how transportation will be provided, arranged, and funded.

Best Interest Determination

- The “BID” is a meeting to determine school placement for Youth in Care
 - Child-centered criteria used to determine educational setting.
 - Decisions made on a case-by-case basis.
 - Cost of transportation not considered in the decision-making process.
 - BID must be documented by the school.



LEA Participants:

- Foster Parent
- School Administrators
- Transportation Coordinator
- Social Worker/Counselor
- IEP Team
- Other Relevant Stakeholders

Request Presence or Gather Input from:

- School Counselors
- Teachers
- Coaches
- EL Staff
- Student
- Advocate
- Guardian
- Foster Parent

Best Interest Determination: Factors

How long is the placement expected to last and what is the permanency plan/goal?

How many schools has the child attended this year? Past few years?

How strong is the child academically?

Which school does the child prefer? Why?

Does the child have siblings placed in the same school?

Does the child have positive peer relationships?
Connection to staff?

Would the timing coincide with a logical juncture, such as end of the semester?

How would the length of the commute impact the child?

Does the child have any anxieties about the upcoming move or changes in his/her life?

Are there safety issues to consider?

Is the youth involved in any extracurricular activities that would be impacted by moving into the new school?

Does the new school district offer comparable education services as the prior school district?

Best Interest Determination

- LEAs are required to keep records of all BID meetings and decisions
 - ISBE's website has a BID Checklist
 - All reviewed information should be notated and/or included within the record
 - All BID meeting participants should be listed
- If there is a dispute about the BID decision, each school district has an outlined process for mediating the dispute
 - DCFS has the final say
 - School of origin must provide transportation to and from the school of origin while any disputes are being resolved



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Hypothetical

- Billy is a 3rd grader at Forest Grove Elementary in Forest Grove School District. During the school year, he is placed in DCFS custody. His grandmother is appointed the foster caregiver and Billy transitions to living with her. Grandma is a resident of Oak Tree School District, which is an hour bus ride from Forest Grove.
- Billy has attended school at Forest Grove since Kindergarten and would like to continue attending Forest Grove.
- The staff at Forest Grove has concerns about the length of commute and believes that Billy should transfer to Oak Tree.
- What are Forest Grove's next steps?



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As managing partner, Joseph Perkosi 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

Fellow, The College of the Labor & Employment Lawyers

Illinois Super Lawyers, 2008-2020

Illinois Leading Lawyer, Employment, Labor and School Law

RECENT PUBLICATIONS

"Have You Had Your Shot? Legal Consideration in Mandating Employee Vaccination," IASBO (2021)

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)

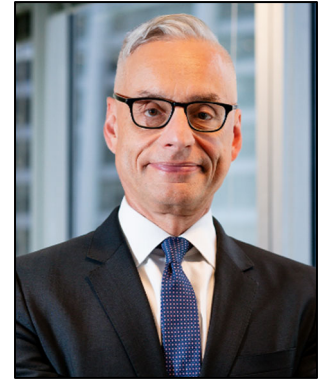
RECENT PRESENTATIONS

Legal Update, ICCCFQ Spring Conference (April 2022)

Legal Update, ICCCFQ Spring Conference (April 2021)

Hot Legal Topics, Bargaining in a Post-Covid World, ICCCFQ (April 2021)

Will it Count? Teacher Evaluations in a Hybrid and Virtual World, Large Unit District Association Virtual Fall Conference (October 2020)



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

EDUCATION

J.D., The Ohio State
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U.S. Court of Appeals for
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U.S. District Court for the
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U.S. District Court for the
Eastern District of
Wisconsin

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

Leaves and Absences During a Pandemic, Illinois Association of School Administrators (October 2020)

Leaves and Absences During a Pandemic, Illinois Association of School Administrators (September 2020)

Supreme Court of Illinois

Supreme Court of Wisconsin

Superior Court for the District of Columbia

ORGANIZATIONS

American Bar Association

Trustee, Associated Colleges of Illinois

Fellow, College of Labor and Employment Lawyers

Council of School Attorneys

Federal Bar Association

Illinois Association of School Business Officials

Illinois Bar Association

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Emily Bothfeld counsels higher education institutions and K-12 school districts on various issues, including student discipline, Title IX, free speech and expression, student disability rights, board governance, and policy development. In her role leading the firm's Title IX practice, Emily performs extensive work with educational institutions to ensure compliance with Title IX and related laws in all aspects of employment and education, including recruitment, admissions, academic programs, counseling, financial assistance, athletics and extracurricular activities, and facilities access. Emily was instrumental in Robbins Schwartz's development of policies, procedures, and training materials for school districts and higher education institutions in response to the United States Department of Education's 2020 amendments to the Title IX regulations, and Emily has significant experience working closely with Title IX Coordinators and administrators tasked with investigating and adjudicating sexual harassment reports and complaints.

Emily also represents both educational institutions and private companies in matters related to student privacy. She regularly advises school districts regarding privacy considerations and compliance requirements associated with the use of educational technology platforms. She has significant experience negotiating data privacy agreements and education-related service agreements on behalf of schools and organizations. In 2020, Emily co-drafted the Illinois addendum to the National Data Privacy Agreement ("NDPA"), a standardized agreement used by school districts and educational technology vendors throughout the United States to streamline the contracting process and establish a consistent framework for protecting and managing student data. The NDPA is currently being utilized by approximately 750 school districts in Illinois and over 11,000 nationally to facilitate compliance with state and federal student privacy and security laws.

Emily has extensive experience representing educational institutions in responding to complaints filed with the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General, and Illinois Department of Human Rights. Emily regularly defends educational entities in state and federal court in defending against constitutional, civil rights, and breach of contract claims.

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



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Attorneys

National Council of School
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RECENT PUBLICATIONS

"College Admissions Under Fire as Top Court Takes Affirmative Action Case,"
Chicago Daily Law Bulletin (2022)

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

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED
Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

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

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



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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.

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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)

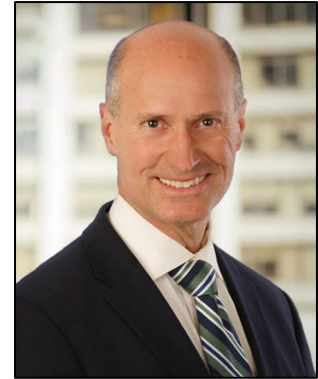
Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

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)



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J.D., DePaul University
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U.S. District Court for the
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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)

RECENT PRESENTATIONS

Alternative Dispute Resolution Section MCLE Program, DuPage County Bar Association (February 2023)

Cooperative Purchasing: Are We Doing it Right?, Illinois Association of School Personnel Administrators and Illinois Association of School Business Officials Regional Conference (October 2022)

Building a Construction Team and So Much More to Achieve Success with Your Project, Association of School Business Officials International (August 2022)

Ethics and ADR: Meditation and Arbitration Issues, DCBA (June 2022)

Cooperative Purchasing: Are You Doing it Right?, Illinois ASBO Annual Conference (June 2022)

Bidding Processes & Procedures: Best Practices in a Changing Environment, Illinois ASBO Annual Conference (May 2022)

Contracts and Conflicts: How Did We Get Here & Where are We Going?, Illinois ASBO Annual Conference (May 2022)

Wrapping Up the Year End in the Business Office: Do's and Don'ts, Illinois ASBO School Business Essentials (April 2022)

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

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

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

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

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



MATTHEW J. GARDNER

PARTNER, CHICAGO

312.332.7760

mgardner@robbins-schwartz.com

Matt Gardner is a partner at Robbins Schwartz where he is a member of the firm's construction, commercial transactions, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims, and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and material suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights, and defending defect claims.

In addition to his construction and real estate practice, Matt represents school districts, colleges, and educational technology companies in matters relating to student records and data privacy. Matt regularly drafts and negotiates data privacy agreements, software license agreements, and other service agreements that comply with applicable federal and state privacy laws and regulations while simultaneously protecting his clients' interests. He was part of a team of Robbins Schwartz attorneys that drafted the Illinois addendum to the National Data Privacy Agreement and frequently advises clients on the evolving legal landscape for education privacy matters and risks associated with data breaches or ransomware attacks. Matt has worked with educational technology clients to successfully complete responses and bid submissions as part of the procurement process for some of the largest school districts in the nation resulting in significant contracts. He also works with education technology clients to prepare subcontracts, policies, and procedures to address data security and compliance with the multitude of state and federal data privacy laws.

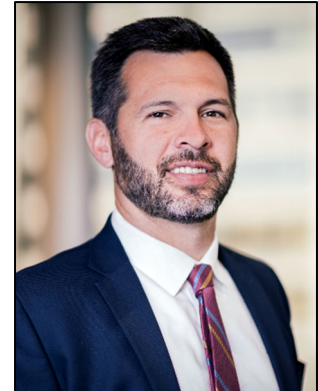
Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2021-2022)

RECENT PUBLICATIONS

Contributing author, "Environmental Issues" *Construction Law: Transactional Considerations*, IICLE (2021)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Contributing author, "School Property and Environmental Issues" *School Law: Organization, Finance, and Property*, IICLE (2017, 2021)

Contributing author, "Turner on Illinois Mechanics Liens," *Chapter III – Making a Lien Against Private Property Enforceable* (2019)

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)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Bidding 101, IASBO Emerging SBO Summit (July 2022)

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

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

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



THOMAS C. GARRETSON

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Tom advises and counsels employers in the public and private sectors in all areas of labor and employment law, including workplace investigations, disciplinary action, leaves and accommodation requests, contract disputes, wage and hour issues, and general human resources compliance. Tom has significant experience working closely with management in traditional labor matters, including union organizing, collective bargaining and contract negotiations, grievances, and unfair labor practices. Tom also defends employers in state/federal court and before administrative agencies involving claims of discrimination, harassment, retaliation, and breach of contract.

Prior to joining Robbins Schwartz, Tom worked as a labor relations attorney for the Cook County Health System. During law school, Tom interned with the U.S. Equal Employment Opportunity Commission's Enforcement Unit.

RECENT PUBLICATIONS

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

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

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

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

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

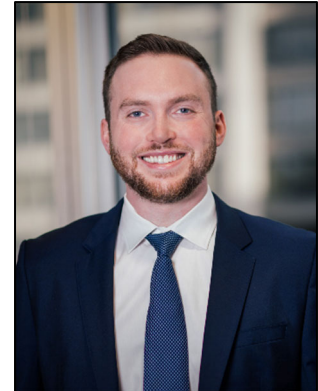
"Heading Into the New Year with New Employment Laws," *Employment and Labor Law Flashpoints*, IICLE (January 2019)

RECENT PRESENTATIONS

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

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

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



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., Chicago-Kent College of Law

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

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

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

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



PHILIP H. GERNER III

PARTNER, CHICAGO

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

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

AWARDS

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

RECENT PUBLICATIONS

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

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

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

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

RECENT PRESENTATIONS

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

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



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation

EDUCATION

J.D., Washington
University School of Law

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

ADMITTED TO PRACTICE

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

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

Supreme Court of Illinois



CHRISTOPHER R. GORMAN

SENIOR COUNSEL, CHICAGO & LISLE

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

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

RECENT PUBLICATIONS

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

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

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

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

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

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



PRACTICE AREAS

Commercial Transactions
Construction Law
Labor & Employment
Real Estate Development

EDUCATION

J.D., University of
Minnesota Law School

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

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association



TODD K. HAYDEN

PARTNER, LISLE

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Todd Hayden practices in the areas of school and municipal law. He provides governmental employers with guidance and counseling regarding labor and employment, including employee discipline and termination, board governance, collective bargaining, contract, public finance and transactional matters.

Todd has represented employers in various employer-employee disputes including federal and state litigation, EEOC/Department of Human Rights charges, State Labor Board Proceedings and grievance and arbitration proceedings. Todd has extensive experience in collective bargaining, including unit formation proceedings, negotiations, mediation and interest arbitration. He has performed construction contract reviews, served as local bond counsel and worked on school boundary changes.

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

AWARDS

Illinois Leading Lawyer, Employment Law: Management, Labor Law: Management, School Law and Governmental, Municipal, Lobbying & Administrative Law, 2015

RECENT PUBLICATIONS

Contributing author, "Civil Rights Litigation," *Illinois School Law*, IICLE (2021)

RECENT PRESENTATIONS

Collective Bargaining 2021, LUDA Spring Conference (June 2021)

Legislative Update, ED-RED (June 2021)

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



PRACTICE AREAS

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

EDUCATION

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

B.A., University of
Michigan

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

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

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

Supreme Court of Illinois



CATHERINE R. LOCALLO

PARTNER, CHICAGO

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Catherine Locallo's practice focuses on labor and employment law and board governance matters. She counsels employers in all aspects of employment law including hiring, employment contracts, employee discipline issues, terminations and reductions in force, collective bargaining and labor relations, nonimmigrant worker visas and employment discrimination matters. She also counsels public bodies on compliance with Illinois' Freedom of Information Act and Open Meetings Act. Catherine has extensive experience representing clients in court and administrative agency proceedings involving discrimination, retaliation, and harassment claims.

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

AWARDS

Honorable Gerald L. Sbarbaro Mentoring Award (2023)

Illinois "Rising Star," Employment & Labor Law (2015-2018)

RECENT PUBLICATIONS

Co-Author, "Seventh Circuit Addresses Employer Liability for Coworker and Supervisor Harassment and Challenges in Establishing Claims For Retaliation, Defamation, and IIED," *Employment and Labor Law Flashpoints*, IICLE (2023)

"Each Discrete Statutory Violation of Biometric Information Privacy Act is Actionable by Employees" *Employment and Labor Law Flashpoints*, IICLE (2023)

"Illinois Employers Ring in New Year with Five New Laws," *Employment and Labor Law Flashpoints*, IICLE (2022)

"Recent Seventh Circuit Case Addresses Declaratory Judgment, Equivalent Job, and Attorney's Fee Awards Under FMLA," *Employment and Labor Law Flashpoints*, IICLE (2022)

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

"Anticipated Amendment To Equal Pay Act of 2003 Would Require Pay Scale and Benefit Information To Be Included in Job Postings," *Employment and Labor Law Flashpoints*, IICLE (2023)



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

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

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

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

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

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

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

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

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

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

"Will 'Scabby the Rat' Live To Fight Another Day?" *Employment and Labor Law Flashpoints*, IICLE (2020)

"Superintendent's Police Report is Protected Speech" *Employment and Labor Law Flashpoints*, IICLE (2020)

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

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

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

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

RECENT PRESENTATIONS

Legal, Legislative and Ethics Update, ICCTA Illinois Council of Community College Presidents Meeting (November 2022)

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

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Second Vice President, Justinian Society of Lawyers

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

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

President, Board of Directors, Glenview Stars Hockey Association

UNICO National



HANNAH M. MAY

ASSOCIATE, CHICAGO

312.332.7760

hmay@robbins-schwartz.com

Hannah practices in the area of education law with a focus on special education and student rights. She counsels school districts regarding IDEA and Section 504, student discipline, Title IX, student records issues and policy development. She assists school districts in responding to complaints from the Office for Civil Rights, Office of the Attorney General and Illinois State Board of Education, and she represents public school districts at IEP meetings, due process hearings, mediations, student discipline hearings and residency hearings.

While in law school at Loyola, Hannah was a Civitas ChildLaw Fellow with a concentration in education law. Hannah received her 711 license and represented students with disabilities in special education matters and served as a child representative in domestic relations and child protection proceedings. Additionally, Hannah was a senior editor on the Loyola University Chicago Law Journal, externed for the Honorable Anna Loftus of the Cook County Circuit Court, Chancery Division, and clerked for the Southern Poverty Law Center in the Children's Rights Practice Group in Miami, FL and the U.S. Department of Education Office of Civil Rights in Chicago, IL.

RECENT PUBLICATIONS

"Buried Alive: *Gay v. Baldwin* and Unconstitutional Solitary Confinement for Prisoners with Mental Illness" 52 Loy. U. Chi. L.J. 1179 (2021)



PRACTICE AREAS

Education Law
Student Discipline
Special Education

EDUCATION

J.D., Loyola University of
Chicago School of Law

B.A., University of
Michigan

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association



HOWARD A. METZ

PARTNER, CHICAGO

312.332.7760

hmetz@robbins-schwartz.com

Howard Metz counsels and represents school districts, community colleges, park districts and municipalities with respect to real estate, commercial transactions, construction law and land use and zoning matters. He has resolved construction cases involving issues such as disputed architectural fees, construction defects, bidding disputes and construction delays. Howard has also litigated issues involving zoning laws and municipal control over school property.

RECENT PUBLICATIONS

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

Contributing author, "Public Body Social Media Rules Make Retention, Ready Retrieval Imperative," *Chicago Daily Law Bulletin* (2019)

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

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

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

"Look Before You Leap: Evaluating Your Joint Purchasing Options," *UPDATE Magazine*, Illinois ASBO (2016)

Contributing author, "School Property and Environmental Issues," *Illinois School Law*, IICLE (2010 and 2012)

RECENT PRESENTATIONS

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

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



PRACTICE AREAS

Commercial Transactions
Construction Law
Education Law
Finance
Municipal Law
Real Estate Development

EDUCATION

J.D., IIT Chicago-Kent
College of Law

B.S., University of Iowa

ADMITTED TO PRACTICE

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

Supreme Court of Illinois



KEVIN P. NOLL

PARTNER, CHICAGO

312.332.7760

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

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

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine

RECENT PUBLICATIONS

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

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

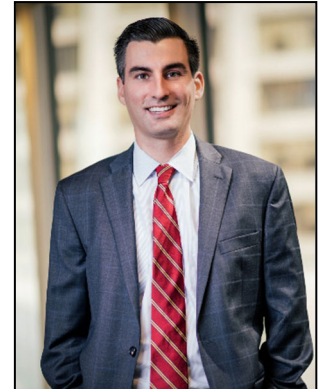
"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

RECENT PRESENTATIONS

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

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

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



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., The John Marshall
Law School

B.A., Indiana University

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Kane County Bar
Association



LAURA M. SINARS

PARTNER, CHICAGO

312.332.7760

lsinars@robbins-schwartz.com

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

AWARDS

Illinois Super Lawyers, 2005-2018

RECENT PUBLICATIONS

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



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., University of Notre
Dame Law School

B.A., University of Notre
Dame

ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

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

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

Supreme Court of Illinois



ZARIA N. UDEH

PARTNER, CHICAGO

312.332.7760

zudeh@robbins-schwartz.com

Zaria practices in the area of education law focusing in the areas of special education and students issues. Zaria counsels school districts with respect to IEP meetings, 504 accommodations, OCR, ISBE, and IDHR complaints, due process hearings, residency and homeless dispute hearings, student discipline matters, board policy and student handbook review, FOIA requests, student record compliance and contract review. Zaria also counsels community colleges on student related issues.

Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

RECENT PUBLICATIONS

"Medical Cannabis at School Wins Legislative OK," Chicago Daily Law Bulletin (2018)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., DePaul University
College of Law

B.A., Yale University

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

Supreme Court of the
Commonwealth of
Massachusetts

ORGANIZATIONS

Chicago Bar Association



MICHELLE L. WEBER

PARTNER, CHICAGO

312.332.7760

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Michelle practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding the IEP process, due process, Section 504, student discipline, board policy and student records.

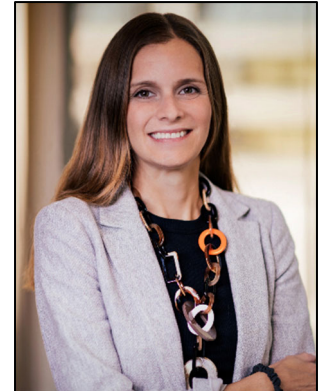
Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Removals to Interim Alternative Educational Setting for 45 School Days... Who, What, Where, When, Why, and How?, Illinois Alliance of Administrators of Special Education Winter Conference (February 2022)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., Loyola University
College of Law

M.A., Loyola Marymount
University

B.A., Trinity College

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School
Attorneys

