

2024 College Conference & Legal Updates

Virtual Conference | September 18, 2024

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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.



2024 College Conference & Legal Updates Virtual | Wednesday, September 18, 2024

AGENDA

8:30 a.m. – 10:00 a.m.

GENERAL SESSION

Walking A Thin Line: Employee & Student Speech Rights On and Off Campus
Presented by: Joseph J. Perkoski and Caroline A. Roselli

CONCURRENT SESSIONS

10:15 a.m. – 11:15 a.m.

Session 1

Waiving Goodbye: Business Enterprise Council Changes to Good Faith Efforts Waiver Process and a Refresher on Compliance Requirements Related to the Business Enterprise Program
Presented by: Matthew J. Gardner and Christopher R. Gorman

Reality “Bytes” When Artificial Intelligence Goes Unchecked: Developing Policies in the AI World
Presented by: Zaria N. Udeh and Evan J. Deichstetter

The Investigation is Complete – Now What? An Overview of Employee Discipline Considerations and Best Practices
Presented by: Philip H. Gerner III and Thomas C. Garretson

11:30 a.m. – 12:30 p.m.

Session 2

Responding to Employee Leave and Accommodation Requests in the Evolving Modern Workplace
Presented by: Kevin P. Noll and Holly E. Jacobs

A New Frontier: Responding to Race- and Sex-Restricted Scholarship Complaints
Presented by: Aaron J. Kacel and Michael A. Barracato

Mastering the Complex World of Public Bidding
Presented by: Kenneth M. Florey, Logan K. Sweeney, and Howard A. Metz

12:45 p.m. – 1:45 p.m.

Session 3

Lessons Learned from Title IX Litigation
Presented by: Michelle L. Weber, Nikoleta Lamprinakos, and Aidan C. Falk

Labor and Union Issues Affecting College Construction Projects
Presented by: Kenneth M. Florey and Howard A. Metz





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Walking a Thin Line: Employee & Student Speech Rights On & Off Campus

September 18, 2024

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Introduction



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Agenda

1. Student and Employee Speech Issues on Campuses in the News
2. Legal Background
3. Scenarios
4. Guidance and Takeaways
5. Q&A



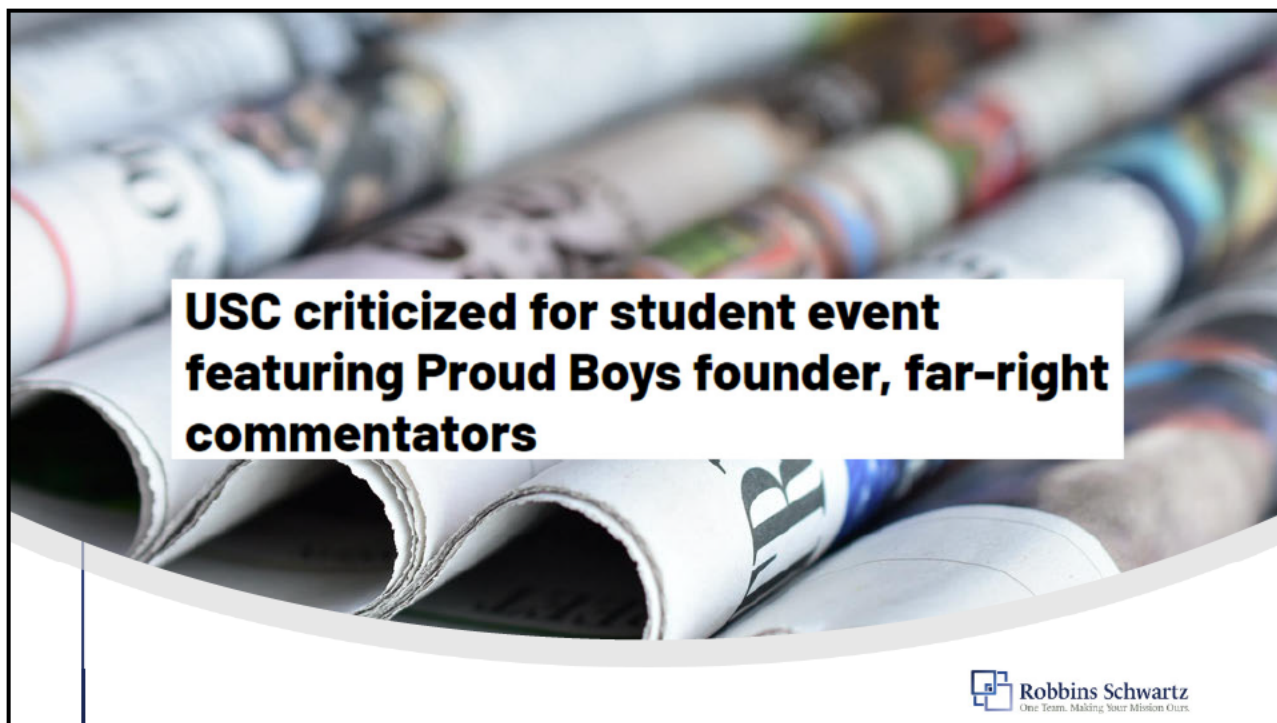
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UT System prohibits its universities from making political or social statements

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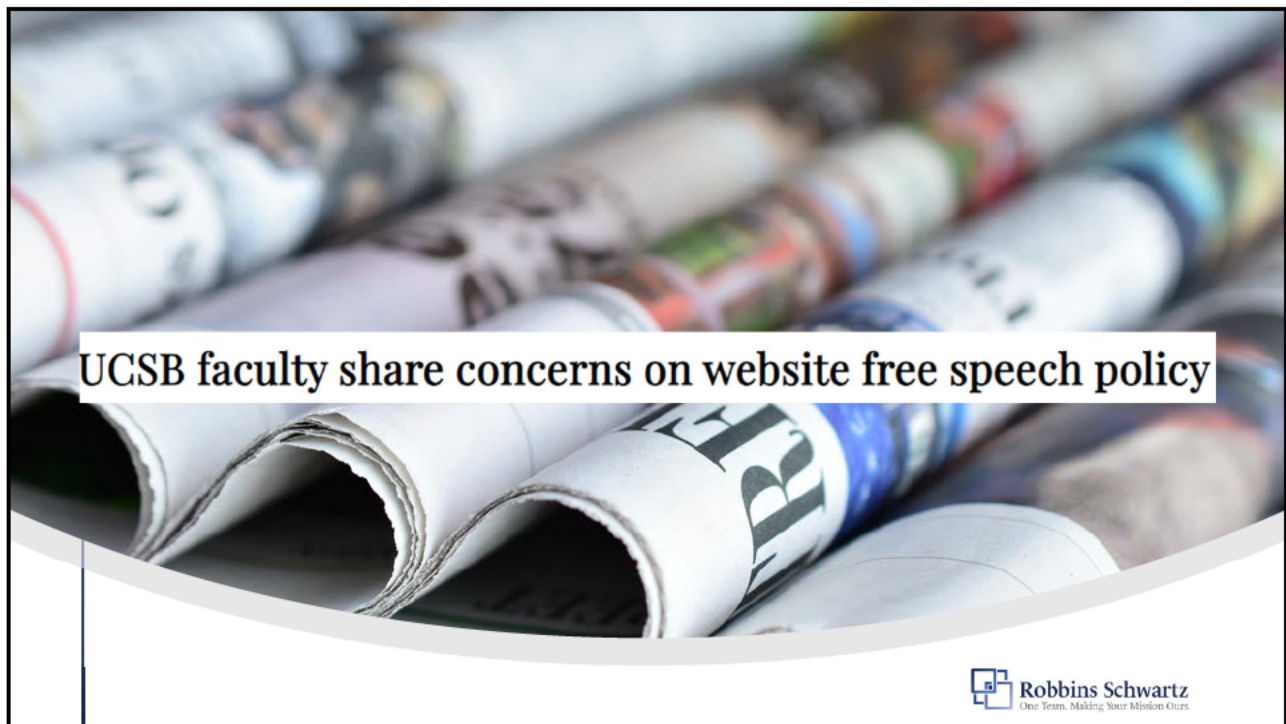
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USC criticized for student event featuring Proud Boys founder, far-right commentators

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UCSB faculty share concerns on website free speech policy

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New Rules and Familiar Challenges as
Antiwar Protesters Return to
Campuses: 'The Stakes Are
Extraordinarily High'

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Legal Background



Legal Background

The First Amendment:

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



Legal Background

- Public colleges and universities are considered governmental entities.
- Public educational institutions must adhere to the First Amendment's free exercise and free speech clauses.
- But note: The First Amendment's requirements apply only to protected speech.



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Supreme Court Precedent

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

- Seminal Supreme Court decision on student and teacher speech.
- Students wore armbands in protest of the Vietnam war.
- School officials cannot censor student expression unless it will create a substantial disruption or material interference in school activities or invade the rights of others.
- “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”



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Student Free Speech Rights

Healy v. James, 408 U.S. 169 (1972)

- The Central Connecticut State College President denied official student group status to Students for a Democratic Society (“SDS”), due to concerns that the group’s mission was “antithetical to the [College’s] policies,” that SDS was associated with a national organization that had alleged ties to violent activity, and that recognizing SDS as a student organization would be “disruptive.”
- The Court ruled in favor of SDS, affirming public college students’ First Amendment free speech rights.
- But note: The Court acknowledged that colleges could prohibit activities that “infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education.”



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Student Free Speech Rights

Papish v. Board of Curators of the University of Missouri, 410 U.S. 667 (1973)

- This case was filed by a graduate student who was expelled from the University of Missouri for handing out newspapers with cartoons and comments that were alleged “indecent speech”.
- The student argues her content in the newspaper is protected speech under the First Amendment.
- The Supreme Court held the student was inappropriately expelled because of the “disapproved content of the newspaper rather than the time, place, or manner of its distribution.”
- This case establishes that uncomfortable or vulgar speech by a college student in their own capacity is protected by the First Amendment and public universities cannot punish students for such speech that does not disrupt or interfere with the rights of others.



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Public Employee Free Speech Rights

Pickering v. Board of Education, 391 U.S. 563 (1968)

- Seminal Supreme Court decision on government employee First Amendment free speech rights.
- Pickering, a high school teacher, filed a lawsuit against his District after he was terminated for writing a letter to a newspaper criticizing a proposed tax increase for school funding. Pickering argued the content of his letter was protected by the First Amendment.
- The Court ruled in favor of Pickering, establishing that public employees have the right to speak on **matters of public concern** as long as they are not knowingly or recklessly false statements.
 - Balance employee speech rights with government employer interests.



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Public Employee Free Speech Rights

Connick v. Myers, 461 U.S. 138 (1982)

- The *Connick* case adds an element to the *Pickering* balancing test.
- An assistant district attorney created a questionnaire and distributed it to her colleagues at the district attorney's office. The questionnaire asked questions related to the office's structure, environment and policies. The assistant district attorney was terminated due to her distribution of the questionnaire, which was considered "an act of insubordination".
- Found in favor of the assistant district attorney because she was speaking as a **private citizen** on matters of "personal and internal office issues".
- Adds the "private citizen" element to the *Pickering* balancing test.



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Public Employee Free Speech Rights

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

- An employee of a District Attorney's Office believed a search warrant affidavit had incorrect information. He told his supervisors who did not dismiss the case. The employee then told the defendant's counsel about the affidavit. The employee was later subpoenaed to testify for the defendant.
 - The employee claimed he was retaliated against as a result of his actions.
- The issue was whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee's official duties.
- The Supreme Court held statements made by government employees pursuant to their official duties are **not** protected by the First Amendment.
 - Even though the speech may have been a "matter of public concern", it was not said as a "private citizen" because the speech was a part of the employee's official/professional duties.



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Time, Place, Manner Regulations

Limitations imposed by the government (the institution) on expressive activity:

1. Must be content neutral.
2. Must be narrowly tailored to serve a significant governmental interest.
3. Must leave open ample alternative channels for communicating the intended message.



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Time, Place, Manner Regulations

- ✓ During business hours
- ✓ Not in the middle of a classroom
- ✓ Reservation requests
- ✓ Noise level
- ✓ Number of participants
- ✓ Size and placement of signs on college/university property
- ✓ Use of college/university intellectual property



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Forum Considerations

(1) Public Forum

- Examples: streets, sidewalks, parks
- Speech limitations made by the government are only valid if the limitation is necessary to serve a compelling interest and the limitation is narrowly tailored to achieve that interest

(2) Designated Public Forum

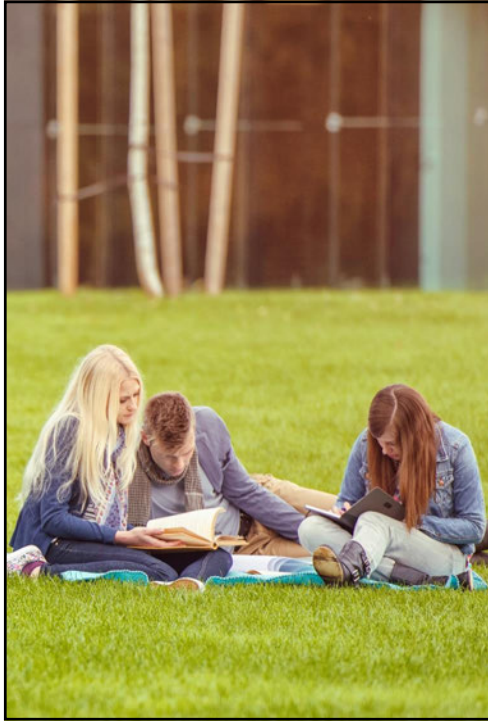
- When a traditionally nonpublic forum is opened to public speech for limited or designated reasons
- Speech limitations made by the government are only valid if the limitation is necessary to serve a compelling interest and the limitation is narrowly tailored to achieve that interest

(3) Nonpublic Forum

- A place only opened for specific purposes or specific speakers
- Government has more ability to limit speech



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Case Example

Young America's Foundation v. Stenger, 2021 WL 378005 (N.D.N.Y. Aug. 24, 2021).

- The State University of New York ("SUNY") Binghamton Young Republicans held a tabling event at a high traffic area of campus known as the Spine.
- The Young Republicans did not obtain a permit from the Student Association to table, which was required for student organization tabling events.



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Young America's Foundation v. Stenger

- The purpose of the tabling event was to promote an upcoming event by a President Trump advisor called, "Trump, Tariffs, and Trade Wars," which was to be co-sponsored by the non-profit organization Young America's Foundation ("YAF").
- After about three hours without incident, the College Progressives, another SUNY Binghamton student group, confronted the College Republicans at the tabling event, and there was a verbal and physical altercation between the two groups.
- University Police arrived at the scene and requested that the College Republicans leave.



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Young America's Foundation v. Stenger

- The Vice President of Student affairs condemned the tabling event, which took place on the same day as a school shooting, stating that the College Republicans' display which included "posters with gun imagery" was "intended to be provocative."
- SUNY Binghamton did not take any action against the College Progressives after the confrontation.



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Young America's Foundation v. Stenger

The "Trump, Tariffs, and Trade Wars" event was packed, and about two minutes into the event, protest erupted.

University Police escorted the Trump advisor out of the event, but took minimal action against the protesters.

After the event, the College Republicans were suspended by the Student Association as a result of their failure to receive a proper permit for the tabling event.



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Young America's Foundation v. Stenger

- YAF and the College Republicans filed suit against various officials of SUNY Binghamton, alleging First Amendment violations. SUNY Binghamton officials filed a motion to dismiss.
- The District Court granted the motion in part and denied the motion in part.
- 1. **Tabling Event** - the requirement for student groups to obtain a permit prior to tabling was an appropriate time-place-manner regulation, and the SUNY Binghamton officials could not be held liable for the Student Association's decision to suspend the College Republicans for failing to obtain the required permit prior to their tabling event.
- 2. **Tariff Event** - it was plausible that the SUNY officials' conduct in removing the speaker (effectively canceling the event) constituted viewpoint discrimination, in violation of the plaintiffs' First Amendment rights.



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Young America's Foundation v. Stenger

- Question for Thought:
 - Do you think the Vice President's public condemnation of the Young Republicans' tabling event impacted the Court's analysis?



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Case Example

Jones v. Matkin, 623 F. Supp. 3d 774 (E.D. Tex. 2022)

- Professor Jones at Collins College filed a lawsuit alleging violations of her First Amendment free speech rights after her contract was nonrenewed and she was terminated.
- Professor Jones argued she was retaliated against for various instances where she exercised her freedom of speech rights.



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Jones v. Matkin

- The following events contributed to Professor Jones' ultimate nonrenewal:
 - (1) She signed her name on a petition for Confederate monuments to be removed in Dallas, and she included "Collins College" in her signature.
 - (2) She contributed to a resolution issued by the Faculty Council to Collins College criticizing their response to the return to in-person learning post-COVID.
 - (3) She helped organize a chapter at Collins College for the Texas Faculty Association (TFA). The TFA listed Collins College on their website and included Professor Jones' contact information.



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Jones v. Matkin

- The College filed a Motion for Summary Judgment on Qualified Immunity.
 - A Motion for Summary Judgment is granted in favor of the party who files it if the Judge finds there is no genuine dispute about the material facts such that the party is entitled to win the case.
 - The defense of qualified immunity protects a government entity from being sued unless they clearly violated a constitutional right.
- Professor Jones argued the Motion should be denied because her constitutional rights under the First Amendment were clearly violated.



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Jones v. Matkin

- In determining whether the College violated Professor Jones' freedom of speech rights under the First Amendment, the Court found:
 - ✓ There was an adverse employment action.
 - ✓ Professor Jones spoke as a private citizen on matters of public concern.
 - ✓ **The *Pickering-Connick* balancing test weighed in favor of Professor Jones.**
 - ✓ The protected speech was a motivating factor in Professor Jones' nonrenewal.



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Jones v. Matkin

- Looking at the balancing-test element specifically:
 - *Pickering-Connick* balancing test: the plaintiff's interest in the speech outweighs the government entity's interest in efficient workplace operations.
 - The Court decided:
 - (1) there is value in encouraging public employee speech; and
 - (2) the College did not provide any evidence to show their interest in workplace operations was more important, such as evidence of any disruption.



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Jones v. Matkin

- Decision:
 - The Court determined Professor Jones sufficiently showed
 - (1) A violation of her free speech rights under the First Amendment; and
 - (2) Her free speech rights were clearly established at the time of her nonrenewal.
 - The Court also considered other factors of the case related to the freedom to associate (such as Union association).
 - Ultimately, the Court **denied** the College's Motion for Summary Judgment on Qualified Immunity.



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Jones v. Matkin

- The case was eventually settled.
- Collin College reinstated Professor Jones on a two-year \$230,000 contract plus payment of \$145,000 for her attorney fees.
- In exchange, Professor Jones is required to resign once the contract ends in 2025.

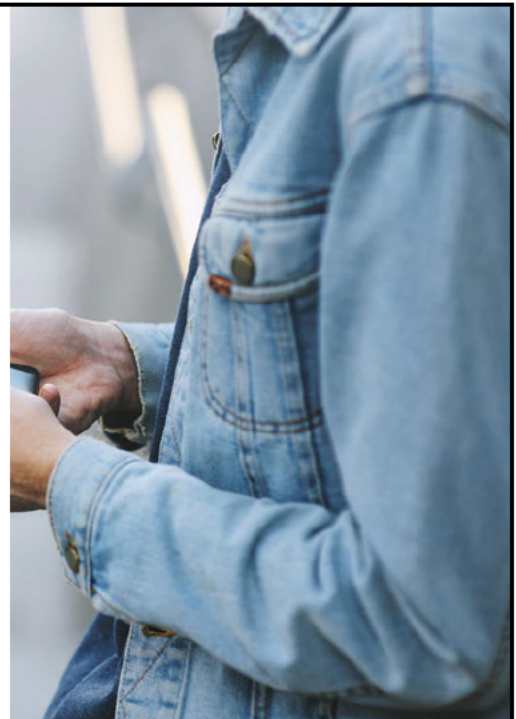


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Case Example – Pending Appeal

Krasno v. Mnookin, 638 F.
Supp. 3d 954 (W.D. Wis. 2022).

- The University of Wisconsin-Madison operates public Facebook and Instagram pages.
- The comment sections are open to the public.
- The University does not allow “off-topic” comments on their posts.



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Krasno v. Mnookin

- A former Student of the University of Wisconsin-Madison posted comments on the University's Instagram/Facebook posts.
- Her comments pertained to her strong opposition to the University's use of animals in research and testing.
- The University deleted her comments, placed a restriction on her account, and utilized a "keyword filter" to automatically hide comments with certain words.
- The former Student filed a lawsuit against the University.



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Krasno v. Mnookin

Plaintiff's Argument

- The former Student argued the University violated her First Amendment free speech rights by censoring her social media comments. She argues the social media pages are a public forum for comments about anything.

Defendant's Argument

- The University argued they did not censor the former Student's comments because of the content of her comments specifically, but rather because they reserved the right to remove "off-topic" comments in general. They argue their social media pages are a nonpublic forum, because only related comments are allowed on posts.



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Krasno v. Mnookin

- The Court determined the University's Facebook/Instagram pages equate to a nonpublic forum, because they restrict "off-topic" comments.
 - The Court reasons that a "nonpublic forum is not one that is closed to the public but is open to the public only for specific speakers or activities."
 - The University reserved the right to remove comments that were unrelated to the subject matter of the post itself, thereby limiting the permitted speech.
 - The Court also decided the "off-topic" rule was reasonable and viewpoint neutral.



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Krasno v. Mnookin

The Court decided:

- The former student's Motion for Summary Judgment was **denied**.
- The University's Motion for Summary Judgment was **granted**.

 This case was appealed to the 7th Circuit.

- The appellate court may come to a different decision.
- Use caution when relying on this case and be on the look out for a potential future decision.



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Krasno v. Mnookin

- Question for Thought:
 - Do you think the outcome of the case would have been any different if the University did not explicitly reserve the right to delete comments that were “off-topic”?



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Legal Background: Recap

- ☒ Public colleges and universities may not regulate speech, expression, or assembly based on the content or viewpoint of the speech.
- ☑ Public colleges and universities can place reasonable time, place, and manner restrictions on speech, expression, and assembly.
- ☑ Institutions can also regulate speech that causes (or is likely to cause) a substantial and material disruption.

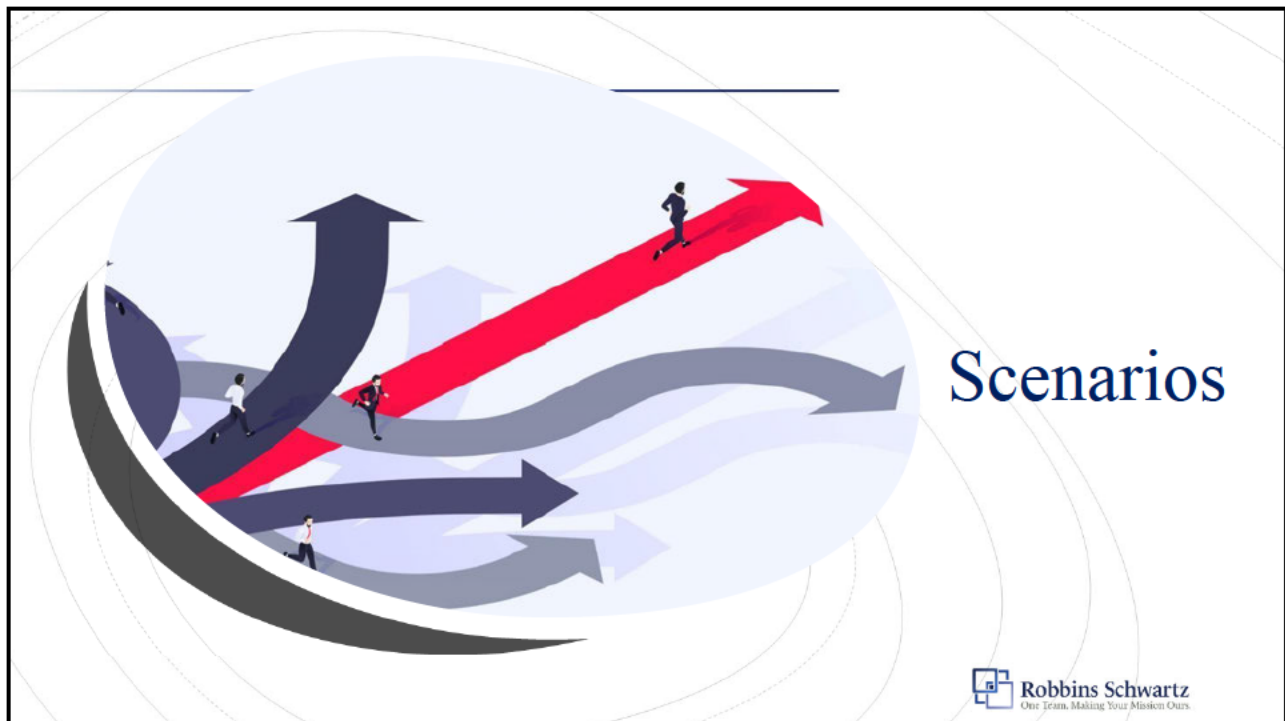


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Legal Background: Recap

- Expressive activity on a variety of subjects is protected by the First Amendment, including current events, critique of a college or university, and even speech that many may find vulgar, extreme or hateful.
- A higher education institution may restrict or prohibit unprotected speech (ex. incitement, fighting words, obscenity). . . but establishing that speech falls outside the purview of the First Amendment can be difficult.



Scenario #1:

A group of college students have decided to protest the events occurring in Gaza on the main quad of their college's campus. The group arrives to the quad daily around noon, a busy time where many students are going to or leaving their classes. The group typically stays and protests for a few hours. The group behaves peacefully, although they hold up signs and pass out leaflets with graphic photos. The college has received a few complaints about the student group from students who feel uncomfortable by the protesting and materials they hand out.

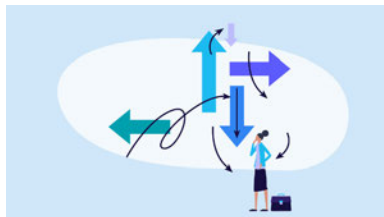
Is the college permitted to take action to stop the student group from protesting on the main quad?



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Scenario #1:

Would your answer change if the group of students decided to block entryways and exits of buildings while using megaphones to amplify speeches at high volumes that could be heard in lecture halls during class sessions?



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Scenario #2:

The English department of a college has a webpage that is run by a group of English professors. One of the professors in particular is very environmentally conscious and strongly opposes the college's investment in fossil fuel companies. Without giving notice or asking for permission, he posts a statement urging the college to divest from fossil fuels on the English department main webpage. Another English professor notifies administration. Administration removes the statement from the webpage. The professor then argues the college is engaging in censorship and violating first amendment free speech rights, because the content is of "public concern".

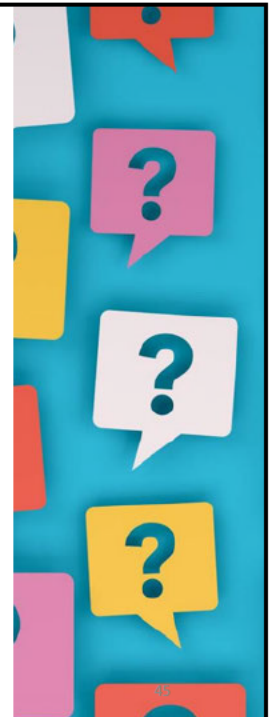
Was the college allowed to remove the statement from the webpage?



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Scenario #2:

Would your answer change if the professor posted the statement to his own personal social media account?



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Scenario #3:

A university permits student organizations to reserve the on-campus auditorium for special events. The university requires student organizations to submit a request for a reservation including the date, time, and a description of the event. A “Students for the Second Amendment” group has submitted a request to reserve the auditorium for their annual seminar event where they invite speakers from various gun-rights organizations. Many students have already complained to administration requesting they prohibit the event, as the school recently had an on-campus active shooter incident which left many in the university community traumatized.

Should administration approve the request for the event, even though the topic is very sensitive to the community?



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Guidance and Takeaways



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Guidance and Takeaways

General Principles

- In general, student speech must be disruptive or interfere with other students' rights in some way for regulation or restriction by the institution to be permissible.
- It is not sufficient for the speech to be regulated or restricted simply because other students, employees or members of the community are uncomfortable or offended.
- When speech or expression becomes disruptive or creates safety concerns or threats, the institution can intervene. But remember: Censorship should be a last resort.



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Guidance and Takeaways

Time, Place and Manner Issues

- Ensure that regulations are applied uniformly and consistently across all types of speech, including on social media.
- Work with students to make them aware of regulations (ex. timely submission of required forms, reservation requests, limitations on size and format of event, limitations on location/date/time) and build relationships with student groups.
- Think of planning as a dynamic process; active management is needed as events and responses to them evolve.



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Guidance and Takeaways

Disruptive Speech

- Notify appropriate administrators and campus police when an activity or event becomes disruptive. Include details about the specific disruptive conduct.
- Focus on the conduct, not the message.
- Do not offer any immediate response to resolve the situation; allow time to evaluate options for making an informed statement and/or taking other responsive measures.



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Guidance and Takeaways

Disruptive Speech

- When restrictions are imposed, develop a factual record that clearly demonstrates why it was reasonable to forecast a material disruption or how there was an actual disruption.
- Courts are less likely to second guess an institution's restrictions on expressive activity where there is a factual record supporting the institution's decision.
- Judicial deference is even more likely if the record also shows that the college did not opt for censorship as the first resort.



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Guidance and Takeaways

Public Employee Speech

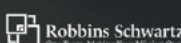
- Be mindful that public employees also have first amendment free speech protections.
- When taking an adverse employment action against an employee, consider whether the employee's freedom of speech outweighs your institution's goal of maintaining efficient operations (the *Pickering-Connick* balancing test).
- When it comes to specific instances of employee speech, determine whether the speech is a matter of public concern and if the employee was speaking as a private citizen.



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Question and Answer



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Waiving Goodbye: Business Enterprise Council Changes to Good Faith Efforts Waiver Process and a Refresher on Compliance Requirements Related to the Business Enterprise Program

September 18, 2024

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Presentation Roadmap

- Introduction
- Framework for Implementation of the Business Enterprise Act
- Key Aspects and Scope of the Business Enterprise Act
- Compliance with the Business Enterprise Act as a Community College
- Questions & Answers



3

Business Enterprise for Minorities, Females and Persons with Disabilities Act (the “Business Enterprise Act”)

30 ILCS 575/1, *et seq.*

Law requiring state agencies and public institutions of higher education including community colleges to set aspirational goals to increase the participation of businesses owned by minorities, females, and persons with disabilities in contracts that these public bodies award



4

Business Enterprise Act Legislative Background

- Amended to require community colleges to establish aspirational goals and satisfy compliance requirements on August 25, 2015
- Amended by Public Act 101-0657 to increase aspirational goals, promote community engagement and establish the Commission on Equity and Inclusion (the “Commission”) to oversee the Business Enterprise Council (the “Council”)
- On June 25, 2021, enactment of a trailer bill further amended the Business Enterprise Act (now P.A. 102-0029), clarified the role of the newly established administering agency and further revised amendments made in P.A. 101-0657
- P. A. 102-0029 reversed one of the most significant changes of P.A. 101-0657, the elimination of the “good faith effort” standard for waivers
- In May 2024, the Business Enterprise Council issued notice of a resolution issued that changed the good faith waiver process effective July 1, 2024



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Framework for Implementation of the Business Enterprise Act

- Commission on Equity and Inclusion (CEI)
- Business Enterprise Council (BEC)
- Business Enterprise Program (BEP)
- BEC Subcommittees



6

Commission on Equity and Inclusion (CEI)

- The CEI was created by enactment of 30 ILCS 574/40-10 in 2021, beginning operations in January 2022.
- Established to expand access to state contracts for minorities, women, persons with disabilities, and veterans and assist the state in enhancing the equity and inclusion throughout its workforce
- CEI shall adopt any rules necessary for the implementation and administration of the requirements of the Commission on Equity and Inclusion Act.



7

Business Enterprise Council

- The Business Enterprise Council (BEP Council) was developed to help implement, monitor, and enforce the goals of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (BEP Act). The BEP Council meets bi-monthly.
 - Implement, monitor, and enforce the goals of the BEP Act.
 - Approve (or deny) the Chairperson's BEP Council Secretary selection.
 - Review, approve, or reject agency and PIHE compliance plans.
 - Hold regular meetings to fulfill its responsibilities under the BEP Act.
 - Set aside time during regular meetings to review and discuss evidence of past or present discrimination that affects State contracting with MBEs, WBEs, and PBEs.
 - Approve any recommended rules and regulations for establishing and continuing narrowly tailored sheltered markets before the rules are submitted to the Joint Committee on Administrative Rules.
 - Report any applicable vendor that fails to submit a supplier diversity report to the Chief Procurement Officers.



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Business Enterprise Council

- The Business Enterprise Council (BEP Council) implements, monitors, and enforces the goals of the Business Enterprise Act by:
 - Approving (or denying) the Chairperson's BEP Council Secretary selection
 - Reviewing, approving, or rejecting agency and PIHE compliance plans
 - Holding regular meetings to fulfill its responsibilities under the BEP Act
 - Setting aside time during regular meetings to review and discuss evidence of past or present discrimination that affects State contracting with MBEs, WBEs, and PBEs
 - Approving any recommended rules and regulations for establishing and continuing narrowly tailored sheltered markets before the rules are submitted to the Joint Committee on Administrative Rules
 - Reporting any applicable vendor that fails to submit a supplier diversity report to the Chief Procurement Officers



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Business Enterprise Program

- Division within Commission on Equity and Inclusion responsible for operational aspects of Business Enterprise Program and having primary responsibility over:
 - Certification Process
 - Compliance Procedures
 - Outreach and Training Activities



BEP Council Subcommittees



Certification
Subcommittee



Compliance
Subcommittee



Outreach
Subcommittee

Key Aspects of the Scope of the Business Enterprise Act

- Overview
- Key Definitions
- Aspirational Goals and Goal Setting



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Overview of Business Enterprise Act

- Applies to “state contracts” and state construction contracts” entered into “by the State, any agency or department thereof, or any public institution of higher education, including community college districts”
- Not less than 30% of the total dollar amount of “state contracts” awarded by community colleges is established as an “**aspirational goal**” (with varying percentages for disadvantaged business owners)
- Not less than 20% of the total dollar amount of “state construction contracts” awarded by community colleges is established as an “**aspirational goal**” (with varying percentages for disadvantaged business owners)



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Key Definitions under the Business Enterprise Act

Disadvantaged Business– For each of the applicable categories (minority, female, and persons with disabilities), the business must be at least 51% owned by one or more persons who fits that criteria (minority, female, or person with a disability)

Business Operation Requirements – The business must also be managed and have its daily operations controlled by one or more of the persons who fits that criteria

Business Composition – Businesses that are owned by at least 51% of any combination of minority persons, females, or persons with disabilities also qualify, even if none of the classes alone hold a 51% interest on their own



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Key Definitions under the Business Enterprise Act

State Construction Contracts – “all State contracts entered into by a ... public institution of higher education for the repair, remodeling, renovation or construction of a building or structure”

Professional Service Contracts – contracts for insurance services, investment services, information technology services, accounting services, architectural and engineering services, and legal services

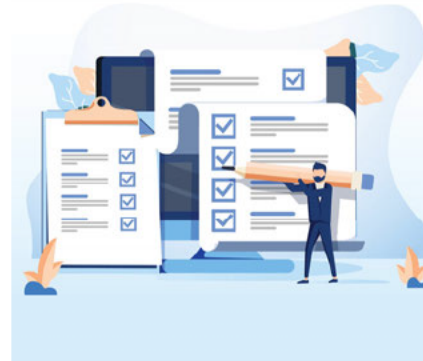
State Contracts – “all contracts entered into by ... any public institution of higher education including community college districts, regardless of the source of the funds with which the contracts are paid”



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Does the Source of Funds for the Contract Matter?

- **No.** The recently amended definition of “state contracts” explicitly states that state contracts means “all contracts entered into ... regardless of the source of funds with which the contracts are paid...” State construction contracts are defined as “state contracts” that concern construction activities.
- However, the Act acknowledges that if any contract subject to the Act becomes subject to any federal laws or regulations which conflict with the Act’s requirements, then the federal laws and regulations shall apply.



What “Aspirational Goals” are Specifically Established by the Business Enterprise Act?

Type of Contract	Total % of MFD* Contracts	Minority-Owned Businesses	Female-Owned Businesses	Persons with Disability Owned Businesses
State Contracts	30%	16%	10%	4%
State Construction Contracts	20%	11%	7%	2%
Professional Services Contracts	20%	11%	7%	2%

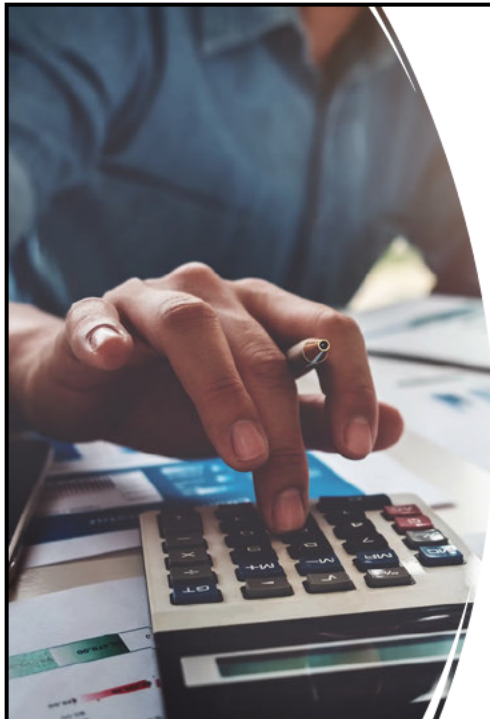
*MFD – Businesses owned by minorities, females, and persons with disabilities

Why are “Aspirational Goals” Established by the Business Enterprise Act?

- In 2015, the Business Enterprise Act was amended to add the word “aspirational” when establishing goals for the award of contracts by community colleges and other State agencies
- The term distinguished goals from quotas, which would be illegal
- As a result, the procedures and efforts of community colleges in attempting to meet the goals will be critical in gauging compliance



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How are the Percentages under the Amended Act Calculated?

- The applicable percentages are based on the “total dollar amount” for each category of contracts
- For community colleges, the Act’s aspirational goals for professional service contracts apply to the total collective amount spent on all contracts for said services
- Community colleges are free to establish utilization goals for each contract that take into consideration of the scope of work



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Are the Aspirational Goals Subject to Change?

- Yes. After the recent amendments, all aspirational goals are contingent upon the results of the most-recent disparity study conducted by the State, which community colleges will need to monitor in order to adjust their goals



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Compliance with the Business Enterprise Act as Community College

- Goal setting and utilization plans
- Requirements relating to bidding and contracting
- Waiver procedures
- Reporting requirements



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Goal Setting and Utilization Plans

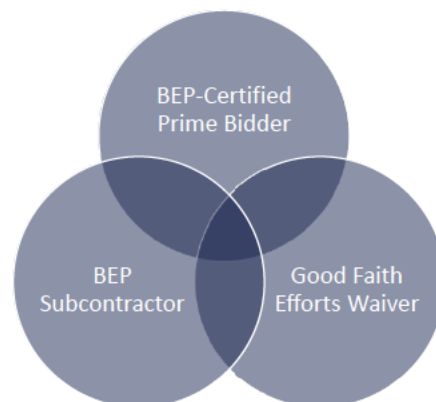
- Not all contracts that are let must include BEP participation goals, and each contract should include a goal reasonable to its scope
- All contracts that include BEP participation goals must require bidders or offerors to include BEP utilization plans along with their bid
- Failure to complete and include a utilization plan, ***including documentation demonstrating good faith efforts when requesting a waiver, shall render the bid or offer non-responsive***
- A bidder or offeror whose bid or offer is accepted and who completed a utilization plan but who fails to meet the goals set forth in the plan may cure the deficiency within 10 days



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Utilization Plans and Identifying BEP Diversity

- Means for prime bidder to demonstrate how the bidder will meet the BEP diversity goal
 - Vendor Commitment
 - Subcontractor Participation Agreement/Letter of Intent
 - Good Faith Efforts/Waiver
 - Terms and Conditions



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Standardizing and Leveraging Utilization Plans as Part of BEP Process



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STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN

Version 21.1

UTILIZATION PLAN PART I: COMMITMENT AND SIGNATURE

The undersigned Vendor submits this Utilization Plan as part of its bid or offer in accordance with the requirements of solicitation # _____ and the requirements of the Business Enterprise Program (BEP). The solicitation contains a goal that _____% of the value of the contract will be performed by BEP certified vendors as defined by the Commission on Equity and Inclusion (CEI). The solicitation contains a goal that _____% of the value of the contract will be performed by Veteran Small Business certified vendors (VSB) as defined by the Commission on Equity and Inclusion.

The Utilization Plan consists of the following parts, each of which must be completed and returned as instructed in this Commitment. No alterations of these forms will be permitted. One set of Parts I-IV must be completed for the BEP goal and one set must be completed for the VSB goal:

Part I: Vendor Commitment (with Signature)

Part II: Subcontractor Participation Agreement(s)

Part III: Good Faith Effort (Checklist, Contact Log, and Documentation)

Part IV: Utilization Plan Terms and Conditions (These terms and conditions apply to all options below but do not need to be returned.)

The undersigned Vendor acknowledges that (1) Vendor has read, understands, and agrees to BEP policies, rules, and procedures as defined in the Terms and Conditions in Part IV of this document, and (2) Vendor hereby affirms (select one of the options below):

- ☐ Vendor is a BEP certified firm and plans to fully meet the goal through self-performance or Vendor is a VSB certified firm and plans to fully meet the VSB goal through self-performance. (Return this Part I Signature Page only.)
- ☐ Vendor has identified BEP and VSB certified subcontractor(s) to fully meet the established BEP and VSB goals. Only BEP certified subcontractors may be used to meet the BEP goal and only VSB certified subcontractors may be used to meet the VSB goal if Vendor intends to meet the established goal in whole or in part through the use of subcontractors. Subcontractors that are both BEP and VSB certified may only be counted towards the BEP or VSB goal. (Return this Part I Signature page and signed Part II Subcontractor Participation Agreement(s) to equal or exceed the goal.)
- ☐ Vendor cannot fully meet the goal but has made Good Faith Effort towards meeting the goal, and hereby requests a waiver or reduction of the goal to _____% based on the completed Good Faith Effort. (If requesting a waiver, return this Part I Signature Page and completed Part III Good Faith Effort. If requesting a reduction, return this Part I Signature Page, Part II signed

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Determining Good Faith Efforts

- Determinations of a prime bidder's good faith efforts should include:
 - a clear demonstration that the contractor selected portions of the work to be performed by eligible businesses owned by minorities, women, and persons with disabilities, solicited through all reasonable and available means eligible businesses, and negotiated in good faith with interested eligible businesses
 - documentation demonstrating that businesses owned by minorities, women, and persons with disabilities are not rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities
 - documentation demonstrating that the contract proposals being offered by businesses owned by minorities, women, and persons with disabilities are excessive or unreasonable
 - A list of businesses owned by minorities, women, and persons with disabilities that the contractor has used in the current and prior fiscal years



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Curing Utilization Plan Deficiencies

- Deficiencies that may be cured include scrivener's errors; information submitted in an incorrect form or format; mistakes resulting from failure to follow instructions or to identify and adequately document good faith efforts; or a proposal to use a firm whose Business Enterprise Program certification has lapsed
- Community colleges **must notify** the Commission on Equity and Inclusion of all non-responsive bids or proposals for state contracts
- Community colleges may not allow a cure if a utilization plan is submitted that "shows a lack of reasonable effort to complete the form on time" may not be cured



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Is the Notification Requirement New?

Yes and No. The Business Enterprise Act provided the Council with the sole authority to determine whether contractor goal waiver prior to the award of a contract. However, that authority was delegated by the Council by resolution on July 12, 2013. Effective July 1, 2024, the Council rescinded the delegation of authority. As a result:

- The BEP now has "the responsibility of determining vendor goal waiver requests"
- Illinois public institutions of higher education shall be responsible for evaluating the good faith efforts made by vendors in support of goal waiver requests
- These evaluations shall be made in accordance with 30 ILCS 575/7(3) and 44 Ill. Adm. Code 30.91
- Illinois public institutions of higher education shall provide BEP with determination recommendations based on their good faith effort evaluations



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The Business Enterprise Council's New Resolution Explained?

The BEP Goal Waiver Review and Determination Process

The BEP Council delegated its waiver authority (Section 7(3) of the BEP Act) to BEP compliance unit staff in its bylaws. As a result, the BEP compliance unit handles waiver reviews, and that process is denoted below. The current process is identified in the first row. The process will change on July 1st when the new diversity certification and compliance monitoring system is ready, and will also be updated again when the BEP compliance unit adds three more staff at the end of this calendar year.

Process Name	Projected Timeline	Process Steps
GFE Waiver Review Process w/o VIVA system*	Now – July 1, 2024	56** purchasing entities are distributed amongst 5 BEP compliance officers. - The purchasing entity submits the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer. - The BEP compliance officer reviews the U-Plan with the GFE waiver request. - Within 10 business days of receipt, the BEP compliance officer makes a GFE waiver approval/denial determination*** on the U-Plan Review Form and sends it to the purchasing entity.
GFE Waiver Review Process w/ VIVA system	July 1, 2024, and beyond	108**** purchasing entities are distributed amongst 5 BEP compliance officers. - CDB/PIHE evaluates the vendor's U-Plan GFE waiver request using its prescribed internal review process. - Purchasing entities other than CDB and public institutions of higher education (PIHEs) submit the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer. - CDB/PIHE submits its approval/denial recommendation and the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer using the VIVA system. - The BEP compliance officer reviews the purchasing entity's U-Plan with the GFE waiver request. - The BEP compliance officer reviews CDB/PIHE's recommendation and the U-Plan with the GFE waiver request. - Within 10 business days of receipt, the BEP compliance officer makes a GFE waiver approval/denial determination in the VIVA system.*****
GFE Waiver Review Process w/ VIVA system and additional compliance staff	December 31, 2024, and beyond	108 purchasing entities are distributed amongst 8 BEP compliance officers. - CDB/PIHE evaluates the vendor's U-Plan GFE waiver request using its prescribed internal review process. - Purchasing entities other than CDB and PIHEs submit the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer. - CDB/PIHE submits its approval/denial recommendation and the vendor's U-Plan GFE waiver request to its assigned BEP compliance officer using the VIVA system. - The BEP compliance officer reviews the purchasing entity's U-Plan with the GFE waiver request. - The BEP compliance officer reviews CDB/PIHE's recommendation and the U-Plan with the GFE waiver request. - Within 10 business days of receipt, the BEP compliance officer makes a GFE waiver approval/denial determination in the VIVA system.

*The VIVA system is CEI's new diversity certification and compliance monitoring system.

**The 56 = agencies/boards/commissions, not including CDB and public institutions of higher education (PIHEs).

***Depending on the complexity of the waiver request, the BEP compliance officer's determination may be based on the additional review of the compliance unit manager, the CEI deputy director over compliance, the general counsel, and the executive director.

****The 108 = 57 agencies/boards/commissions (including CDB) + PIHEs (12 universities + 39 community colleges).

*****This determination is visible to CDB/PIHE in the VIVA system.

Impact of New Requirement on Bidding and Contracting

• Comply with the Bidding Requirements

- Require a utilization plan even for non-construction solicitations
- Notify the Council of proposed contracts for professional and artistic services

• Analyze Bids and Utilization Plans

- Determine whether a bid is responsive, responsible, competitive, and whether service are likely to be completed
- Determine whether the utilization plan or waiver request is included in the bid response

Impact of New Requirement on Bidding and Contracting (Continued)

- **Reporting**

- Notify the Commission of all nonresponsive bids
- Wait for determination from BEP Council regarding good faith efforts waiver

- **Accept or Reject Bids**

- Identify responsive and responsible bidders
- Assess impact of BEP Council determination regarding good faith efforts waiver
- Award contract

- **Post-Award Review**

- Review a contractor's compliance with its utilization plan by evaluating the contractor's fulfillment of contract goals for participation
- Report any contractor who is not in compliance with the contract goals to the Commission



30

Are there Additional Reporting Requirements under the Act?

- **Yes.**

- In addition to complying with the previous reporting requirements, community colleges should report all plans and implementation procedures for increasing the use of professional services *for approval to the Commission* on annual basis
- The Act requires the Business Enterprise Council to file an annual report summarizing each college's goals, expenditures subject to the goals, and goals attained
- Community colleges must notify the Commission on Equity and Inclusion of all non-responsive bids
- Community colleges must continue to notify the Council of proposed contracts for professional and artistic services



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What are the Reporting Requirements for Community Colleges?

- All community colleges must:
 - File annual compliance plans and an annual report with the ICCB
 - Notify the Council of proposed contracts for professional and artistic services
 - Use bid forms identifying the bidder's percentage of disadvantaged business utilization plans and percentage of business enterprise program utilization plan
- All annual reports must include:
 - A description of a college's utilization of businesses owned by minorities, females, and persons with disabilities during the preceding fiscal year, as well as a mid-fiscal year report on the utilization to date for the current fiscal year
 - A self-evaluation of the college's efforts to meet its goals



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Questions?



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Reality “Bytes” When Artificial Intelligence Goes Unlocked: Developing Policies in the AI World

September 18, 2024

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Introduction



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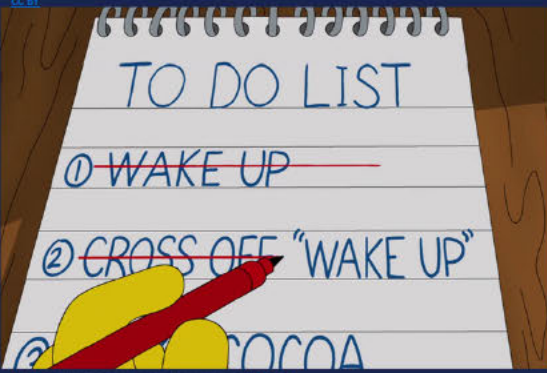
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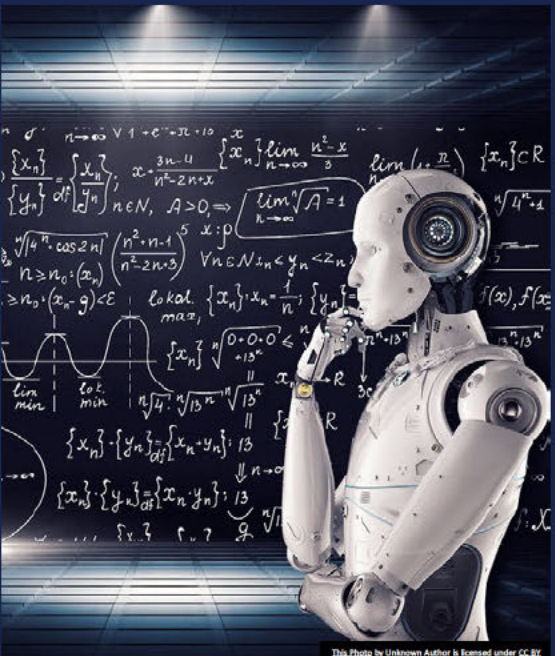
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Agenda

- A.I. Presentation
- What is Generative A.I.?
- A.I Considerations for Higher Education
- A.I. and Higher Education Policies



3



Navigating Ethical Considerations

Policies for Artificial Intelligence in Higher Education


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Transforming Higher Education with AI

- **Personalization of learning**
 - AI can tailor educational experiences to individual student needs by analyzing learning styles and performance data.
 - This allows for adaptive learning platforms that provide personalized resources and support.
- **Administrative efficiency**
 - AI streamlines administrative tasks such as scheduling, grading, and admissions, reducing the workload on faculty and staff.
 - This leads to more efficient operations and better allocation of resources.


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Transforming Higher Education with AI

- **Enhanced Research Capabilities**
 - AI tools can accelerate research by analyzing large datasets, identifying trends, and generating insights that would be time-consuming for human researchers.
- **Student Support**
 - AI-driven chatbots and virtual assistants provide 24/7 support for students, answering queries, providing guidance, and facilitating access to resources.



6

Navigating Policy Implications and Challenges

- **Ethical Considerations**
 - Institutions must address ethical issues such as data privacy, bias in AI algorithms, and the potential for exacerbating inequalities. Ensuring transparency and fairness in AI systems is crucial.
- **Data Privacy and Security**
 - With the increased use of AI comes the responsibility to protect student data. Institutions need robust policies to safeguard sensitive information and comply with regulations like FERPA.

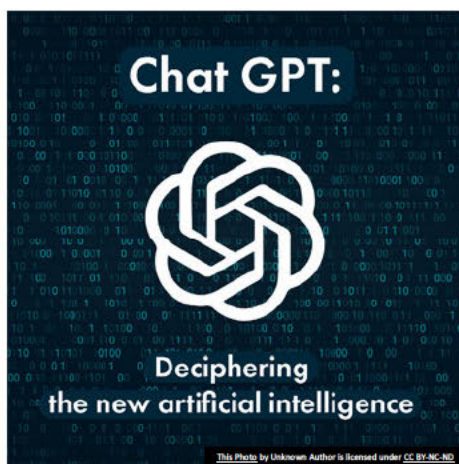


7

Navigating Policy Implications and Challenges

- Faculty and Staff Training
 - Effective integration of AI requires comprehensive training for faculty and staff. Institutions must invest in professional development to ensure that personnel can effectively use AI tools and interpret their outputs.
- Equity and Access
 - It's important to consider how AI might affect different groups within the academic community.
 - Policies should promote equitable access to AI technologies and resources to prevent widening down the line.

Generative A.I.



- Artificial Intelligence is capable of generating text, images, videos, or other data in response to prompts.
- I.e., the previous four slides!
 - “Generate two slides of a presentation on artificial intelligence in higher education institutions and policy considerations for such”
 - “What would an attorney presenting on these slides say to an audience of interested higher education administrations?”

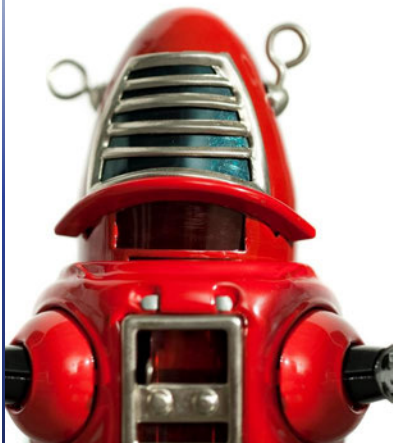
Generative A.I.

- Simulation of human intelligence to mimic human cognitive activity (i.e., learning, reasoning, perception)



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H.B. 3773: “Generative Artificial Intelligence”



- An automated computing system that, when prompted with human prompts, descriptions, or queries, can produce outputs that simulate human-produced content, including, but not limited to:
 - Textual outputs, such as short answers, essays, poetry, or longer compositions or answers;
 - Image outputs, such as fine art, photographs, conceptual art, diagrams, and other images;
 - Multimedia outputs, such as audio or video in the form of compositions, songs, or short-form or long-form audio or video; and
 - Other content that would be otherwise produced by human means.

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Traditional A.I.

- “Rule-based” or “Deterministic” Artificial Intelligence
- Relies on pre-programmed rules and algorithms to perform specific tasks.
- Follows predefined instructions and makes decisions based on logical reasoning.
- Excellent at solving well-defined problems
- Cannot adapt to new situations or novel ideas

Energy

mass

squared

$E = mc^2$

equals

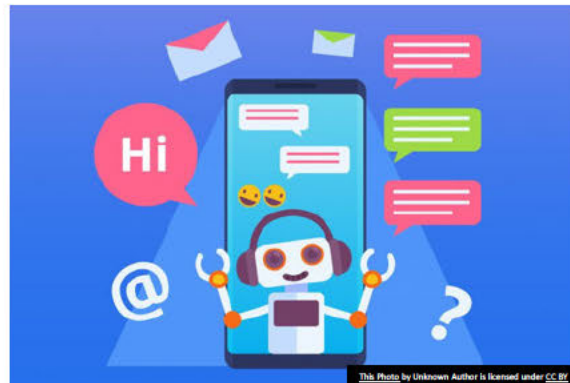
speed of light (constant)

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Emerging A.I. Tools

- Voice assistants
- Chatbots
- Language translators
- Image detection/recognition
- Video generation
- Text generation/analysis



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Areas for Consideration

Data Privacy and Security	Accuracy/Reliability
Overuse/Overreliance	Bias

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Educational Use of A.I. Tools



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Potential Uses and Benefits

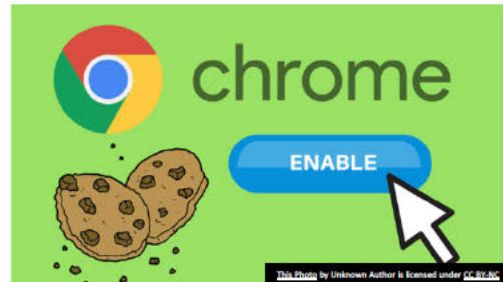
- Organization
- Time management
- Study support
- Access and exposure to resources
- Engagement

	Monday	Tuesday	Wednesday	Thursday	Friday
10:00	STT 3820		STT 3820		STT 3820
10:30		101	101		101
11:00	PE 1014	SOC 1000	PE 1014	SOC 1000	PE 1014
11:30		110	110		110
12:00					
12:30		PSY 3204		PSY 3204	
1:00		102		102	
1:30					
2:00		SPE 3360			
2:30		102			
3:00					
3:30					
4:00					
4:30					

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Potential Risks

- Student data/information
 - FERPA
- Academic dishonesty
- Student safety
- Unequal access



Employee & Employer Use of A.I. Tools



Potential Uses and Benefits

- Organization
- Time management
- Idea generation/drafting
- Task delegation
- Analytics
- Admissions



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Potential Risks

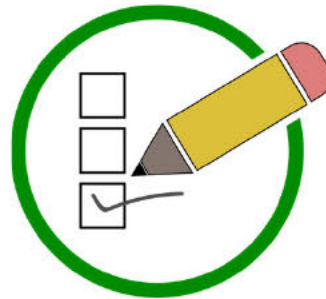
- Risk of error
- Ethical concerns
- Student data
- Uneven adoption



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A.I. and Admissions

- Georgia Tech has seen a 100% increase in applicants in the past 8 years and 50% in the last 4 years.
 - 30,000 applicants in 2016
 - 40,000 applicants in 2020
 - 60,000 applicants in 2024
- How do colleges keep up?
 - Traditional A.I. to equate GPAs
 - Generative A.I. to analyze the application and provide a summary



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Quick Hypothetical

- From an admissions perspective, is there a difference between a student using generative A.I. to create their application essay and a high school teacher using generative A.I. to create a letter of recommendation?
- Is A.I. a shortcut, depriving students of the purpose of the essay?
 - How much A.I. use deprives students of the value of writing the essay?
- Why is a teacher using A.I. for a L.o.R. more acceptable?
 - Time saving for a busy job

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How A.I. Impacts Policies

Suggestions for Higher Education



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A.I. and Policy, Generally

- Specific scenarios, specific purposes
 - “What can you know/what information can you obtain?”
- Change what people know about education
 - “What can you do?”
- At a minimum, A.I. literacy and best practices need to be considered to prepare college students for workplaces which are also increasing their A.I. integration



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A.I. and Policy, Generally

- A.I. isn't anything "new"
 - Calculators in the 1980s
 - Internet and communication devices in the 90s/00s
 - Smartphones and other smart devices in the 2010-20s
- "Traditional" A.I. programs (Grammarly, Wolfram Alpha, Calendly)



Policy Suggestions

Academic

- Consider updating academic dishonesty policy to clearly define what use(s) of A.I. are considered plagiarism/cheating.

Technology/Privacy

- Update any relevant technology or privacy related policies to inform students and employees how and when A.I. technology is used and whether any data/information is being collected.



Another Hypothetical

- A professor uses an AI-detection program, and it reports that an assignment was 65% AI-generated by a student.
 - Is this permissibly used by the professor?
 - What do AI-detection programs indicate?
 - Is this reliable?
 - Should there be consequences for the student?
 - Must educational institutions engage in these types of tools to maintain educational integrity?

Policy Suggestions

Admissions

- Ensure that employees responsible for admissions review use A.I. consistently/in the same fashion to avoid inequity.
- **Employee Conduct**
- Ensure that expectations for use of AI in grading, teaching, communicating, etc. are known.



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Legislative Update – HB 3773



BREAKINGNEWS

- HB 3773 was signed into law on August 9, 2024, by Governor Pritzker.
- Amends the IL Human Rights Act
- Civil rights violations to:
 - (1) use AI in ways that result in unlawful discrimination on the basis of protected classes or to use zip codes as a proxy for protected classes; and
 - (2) fail to notify employees that the employer is using AI in employment decisions.
- Goes into effect **January 1, 2026**

Policy Suggestions

Hiring Process and Criteria

- Notify applicants if AI will be used in the hiring process.
 - If requiring recorded video interviews, notify applicants if their video will be subject to AI analysis pursuant to 820 ILCS 42 Artificial Intelligence Video Interview Act.
- Be prepared to fully implement notification into practice starting January 1, 2026.

Employment Decisions

- Notify employees if AI will be used in employment decisions.
 - Be prepared to fully implement notification into practice starting January 1, 2026.

AI in Collective Bargaining

- Potential AI Bargaining Topics:
 - Job protection provisions
 - Rules on use of AI in hiring and employment decisions
 - Notification requirements
 - Opting out of AI use



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The Investigation is Complete – Now What? An Overview of Employee Discipline Considerations and Best Practices

September 18, 2024

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2

Why Issue Disciplinary Action?

- Conformance with work rules, supervisor directives, and general standards.
- Communicate the expectations regularly and clearly.
- Satisfy progressive discipline requirements and provide opportunities for improvement.
- Limit the College's liability.
- Encourage positive behavior and productivity.



3

Disciplinary Considerations

- What is the basis for discipline?
 - Was an investigation conducted?
 - Evaluate the facts and evidence to determine what occurred.
 - Assess the employee's conduct and whether any violations of conduct standards, rules, and/or policies occurred.
 - Determine seriousness of the conduct in question.

Disciplinary Considerations

- What is the individual's employment status?
 - Tenured Faculty Members
 - Contractual Employees
 - "At-Will" Employees
 - Probationary Employees



Tenured Faculty Members

- 110 ILCS 805/3B-4
 - If a dismissal of a tenured faculty member is sought **for cause**, the Board must first approve a motion by a majority vote of all its members.
 - The specific charges for dismissal shall be confidential but shall be issued to the faculty member upon request.
 - The Board's decision will be final unless the tenured faculty member, within 10 days, requests in writing that a hearing be scheduled.



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Contractual Employees

- Those employees whose terms and conditions of employment are covered by a collective bargaining agreement or individual employment contract.
- Discipline standard within a CBA (or termination standard within an employment contract) is typically “cause” or “just cause.”
- Employees can challenge discipline or discharge via grievance or breach of contract claim.



7

Overview of “Cause” or “Just Cause” Standard

1. Did the employee have fair notice of the rule or standard that was violated?
2. Has the employer previously enforced the rule or standard that the employee is now being penalized for violating?
3. Was the employee provided due process before making the discipline decision?
4. Is the discipline decision supported by credible evidence?



8

Overview of “Cause” or “Just Cause” Standard

5. Is the employee being treated differently than other employees that engaged in the same or a substantially similar offense?
6. Has the employee previously been issued discipline and warnings?
7. Is the level of discipline issued proportionate to the offense?



9

“At-Will” Employees

- Those employees whose terms and conditions of employment are not covered by a collective bargaining agreement or individual employment contract.
- Employment at-will can be terminated at any time, with or without advance notice, for any lawful reason.
 - **Note:** At-will employees cannot be disciplined or discharged for any discriminatory/retaliatory reason or other reason prohibited by law.



10

Probationary Employees

- Employees within the specified probationary period are generally subject to discipline or discharge in the same manner as an at-will employee.
 - **Note:** Probationary bargaining unit employees typically cannot challenge their discharge via grievance procedure as violative of “just cause” standard, but can file claim alleging College’s decision was unlawful.
- Must review the applicable CBA and/or policy to assess whether an employee is “probationary.”
- **Tip:** Closely assess the conduct and performance of employees within the probationary period to determine if continued employment beyond expiration of the period is warranted.



11

Disciplinary Considerations

- Provide employee opportunity to respond prior to issuing the discipline.
- Pre-Discharge Warning
 - “Continued misconduct may result in further disciplinary action, up to and including termination of employment.”
- Be consistent.
- Review the employee’s personnel file.
- Review the CBA.
- Document the discipline.



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Progressive Discipline

- Follow Progressive Discipline:
 - Verbal Warning
 - Written Warning
 - Unpaid Suspension
 - Discharge



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Advantages to Progressive Discipline?

- Strengthens the College's defenses against union grievances and individual claims from employees.
- Reduces the total number of grievances, charges, complaints, and/or lawsuits filed against the College.
- Puts employees on clear notice of the directives and expectations with the goal of improving the deficient conduct in question.
- Signals to unions and other employees that misconduct will not be tolerated.



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Exceptions to Progressive Discipline?

- Progressive discipline should be used as a guide, not a requirement in each case.
- Certain circumstances warrant bypassing the standard progressive discipline steps.
 - Seriousness of underlying misconduct
 - Employee's disciplinary history
 - Employee's response when confronted and questioned about the conduct in question



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Exceptions to Progressive Discipline?

- Consider bypassing progressive discipline in the following scenarios:
 - Theft
 - Insubordination
 - Fighting or threats of violence against others
 - Use of illegal drugs and/or alcohol
 - Sexual or other unlawful harassment

EXCEPTION

Exceptions to Progressive Discipline?

- Assess the impact of the employee's conduct on the College's operations, students, other employees, and the community.
- Closely consider any possible ongoing safety issues should the employee be returned to their position.
- Assess the legal exposure for the College if the employee remains employed.
- Consider whether the employee's conduct is likely to improve if issued directives via progressive disciplinary action.

Assessing Appropriate Progressive Discipline

- Is there a nexus between the recent misconduct and the previous conduct resulting in discipline?
 - If not, consider separate progressive discipline “tracks”
- Has there been a significant passage of time between the recent misconduct and the previous misconduct?
- Has the College represented to the employee that their previous misconduct was remedied?
- Was the previous discipline properly documented?



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Assessing Appropriate Progressive Discipline

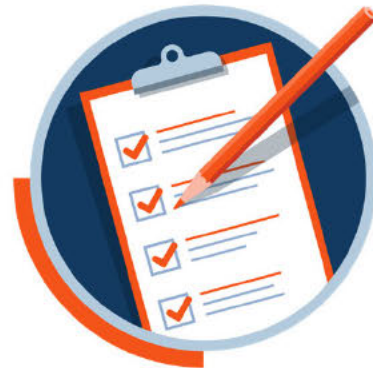
- HR issues a union employee a verbal warning due to excessive tardiness.
- The verbal warning directs the employee to “Arrive to work by 7:00 a.m. unless otherwise instructed. Continued tardiness may lead to further discipline, up to and including termination.”
- Two months later, the employee sends his direct supervisor an unprofessional email after the supervisor gave the employee negative feedback on an assignment.
- How should the College proceed?



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Documenting the Discipline

- Document the investigatory steps and confirm witnesses interviewed.
- Identify the specific factual findings based upon the evidence.
- Cite to specific employee conduct standards or policies which have been violated.
- Reference prior directives and/or discipline (if relevant).
- Specify disciplinary action or recommendation (i.e., written reprimand, suspension without pay, notice of remedial warning, discharge).
- Include specific directives that must be followed moving forward.
- Review investigatory findings and disciplinary recommendation with employee and union representative.
- Place investigatory memorandum in employee's personnel file.



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Documenting the Discipline

- Example CBA Language:
 - Any material derogatory to any employee's conduct, service, character, or personality to be placed in their personnel file shall be acknowledged by the employee by affixing their signature to the actual copy to be filed, with the understanding that such signature merely signifies that the employee has been shown material and does not necessarily indicate agreement with its contents. Refusal of the employee to sign or initial shall not prevent the material from being placed in the file with a notation to that effect.



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Sample Written Warning

- *As you know, the Administration recently conducted a fact-finding investigation into a complaint received from another employee alleging that you have engaged in bullying and harassment toward her. The Administration completed a comprehensive investigation regarding the complaint allegations. The fact-finding investigation included an interview with you to provide you with a full opportunity to respond to the allegations made. You elected to have Union representation present. After a complete review and analysis of the facts and evidence, the Administration has determined that there is insufficient evidence to substantiate the complaint allegations that you have engaged in bullying and/or harassment in violation of College policy.*



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Sample Written Warning

- *However, the facts and evidence do indicate that your behavior did not comply with the College's professional conduct standards. Specifically, you acknowledged raising your voice toward a colleague out of frustration, as well as referring to the colleague as disrespectful and untruthful. This behavior violates College Policy, which requires staff to maintain professional and appropriate relationships with other employees. Please be advised that you are expected to act appropriately and professionally in all future workplace interactions, consistent with College policy.*



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Sample Written Warning

- *Moving forward, you are directed to . . .*
- *Failure to comply with the above directives and/or engaging in future misconduct will subject you to disciplinary action, up to and including termination from employment.*
- *As evidenced by your signature below, you have received a copy of this document and have been made aware that a copy will be placed in your personnel file. Your signature below does not necessarily indicate that you agree with the contents of this document.*



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Responding to Employee Leave and Accommodation Requests in the Evolving Modern Workplace

September 18, 2024

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Agenda

- Basics – Family and Medical Leave Act
- Basics – Americans with Disabilities Act
- Scenarios – Applying the Family and Medical Leave Act and/or the Americans with Disabilities Act



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- 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.
- 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.



The FMLA – Basics

Eligible Employees

- Employed by a covered employer (colleges 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 – Basics

- 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 – Basics

Continuous Leave

- Employees have the right to take FMLA leave all at once when medically necessary
- Leave is not broken up by periods of work, (e.g., the leave is a continuous block)
- Employee is absent for three consecutive business days or longer and has been treated by a doctor
- Example: employee (a new mother) takes 8 weeks off from work to care for her newborn baby
- Example: employee takes 4 days off from work to care for their spouse, who was injured in an accident, is incapacitated, and is recovering at home

Intermittent/Reduced Schedule Leave

- Employees also have the right to take FMLA leave in separate blocks of time or by reducing the time they work each day or week, when medically necessary
- Leave is broken up by periods of work
- Can be reasonably foreseeable (e.g., medical appointments) or not foreseeable (e.g., flare-ups due to a chronic condition)
- Example: employee uses FMLA leave to attend prenatal appointments
- Example: employee occasionally uses an hour of FMLA leave to provide care for his daughter, who has asthma, when she experiences flare-ups



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The FMLA – Basics



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 – Basics

- 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.



The Americans with Disabilities Act



The ADA – Basics

- 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.



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The ADA – Basics



- 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.
- Colleges 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 – Basics

Leaves of Absence

- 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 **undue hardship** is defined as a significant difficulty or expense to the employer and is determined on a case-by-case basis.
- 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 – Basics

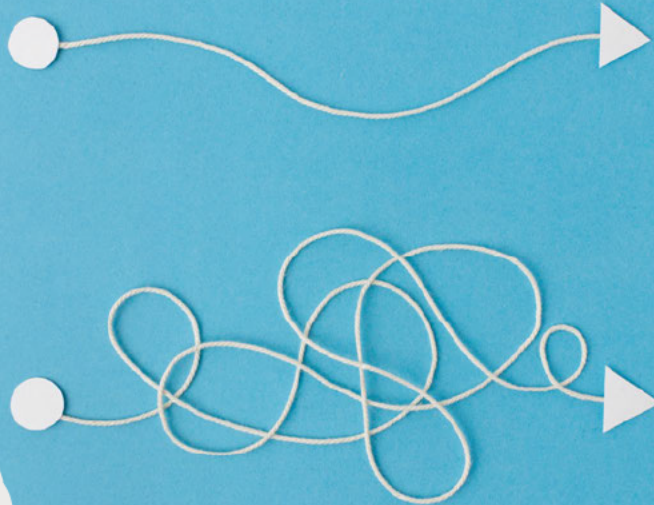


Return from Leave of Absence

- An employee is not entitled to an indefinite leave.
- The employee is entitled to the position they held prior to the leave, assuming they are still qualified for the position.

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Scenarios



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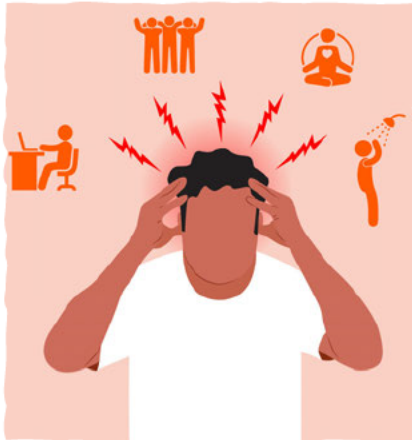
Scenario #1

- Mary, a custodial worker, injured her shoulder in a car accident three months ago. She completed FMLA paperwork and was approved for FMLA leave for her recovery. Mary had surgery on her shoulder and has been attending physical therapy twice per week to assist with her rehabilitation. Mary's doctor has cleared her for work, but states that Mary is subject to lifting restrictions and that she needs to take breaks during the day to do her physical therapy exercises. Mary also still needs to attend physical therapy once per week. Mary has used all of her FMLA leave and has indicated that she is ready to return to work.
- What is the College required to do?



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Scenario #2



- John, an Information Technician, has been recently diagnosed with a severe migraine condition, which causes vertigo. As a result, his doctor has recommended that he no longer drive, as it poses a significant safety risk. His doctor further recommends that John be able to take breaks (which could last up to an entire day) from work when he is experiencing an episode, and states that John will be more comfortable working from home. The position of Information Technician involves a significant amount of work that can be done remotely, but the College requires that John occasionally be in-person in order to assist faculty in setting up classrooms and to troubleshoot technology issues on campus. John requests to work fully remote.
- Is the College required to grant John's request?

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Scenario #2 (continued)

- Because the College will not allow him to work remote every day, John requests that he be allowed to work a split schedule and only come into Campus on Tuesdays and Thursdays. John states that because he is more comfortable at home, and because his condition usually flares up as a result of the stress of being away from home, he will be able to get more work done on the days he is remote. The College employs two other Information Technicians, Bill and Bob, who split their time between the College's two campuses. Bob works at John's campus on Mondays and Wednesdays, but no other IT employee is present at the campus on Fridays.
- Is the College required to grant John's request for a hybrid work schedule?



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Scenario #2 (continued)



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- John now requests that the College also provide him with a ride to campus on days that he is required to be in-person, as his doctor has stated he should no longer drive. Specifically, John asks that the College pay for an Uber to drive him to and from campus because he lives 15 miles away. Although public transportation is available to him, it is highly inconvenient and would take him over an hour to get to and from campus. John further states that when he takes public transportation, he runs the risk of exacerbating his vertigo because of motion sickness.
- Is the College required to grant John's request?
- If not, is the College required to provide any accommodation related to John's commute at all?

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Scenario #3

- Karen, a full-time faculty member, presents a doctor's note stating that she has been diagnosed with anxiety and often suffers acute panic attacks, which significantly impacts her ability to perform any tasks. Karen states that her anxiety is exacerbated by having to travel in inclement weather, and requests that on days the weather is bad, she be allowed to hold office hours or teach remotely. Karen asks that, in the alternative, she be permitted to take intermittent FMLA leave and arrive late on days when the weather is bad and she experiences a flare-up/panic attack.
- Is the College required to grant either of Karen's requests?
- What kind of documentation could the College require from Karen, in addition to the doctor's note she already provided?



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Scenario #4



- Jim, a full-time faculty member, tells Human Resources that his spouse is going through chemotherapy. Jim states that he needs to drive his spouse to and from chemotherapy appointments two times a week, as well as care for his spouse after the appointments. Jim has assured HR and his Department Chair that the appointments are arranged during non-work hours, but also states that he is not sure how long he will have to care for his spouse after the appointments are over. Jim also says that he does not want the time he spends helping his spouse to count as FMLA leave.
- How should the College respond?

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Scenario #4 (continued)

- This semester, Jim is assigned to teach 14 credit hours. In addition, he holds office hours twice per week. His spouse requires more care after appointments than Jim predicted, and as a result, Jim takes eight days of intermittent leave in one month. How much FMLA leave should the College deduct?



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A New Frontier: Responding to Race- and Sex-Restricted Scholarship Complaints

September 18, 2024

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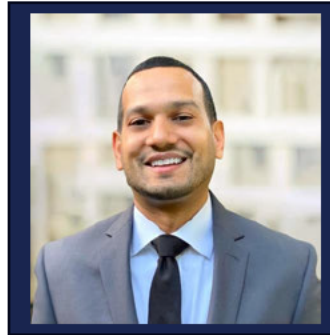
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Agenda

1. A New Frontier
2. Legal Background on Race-Restricted Scholarships
3. Legal Background Sex-Restricted Scholarships
4. The Two Defenses
5. The Foundation Piece
6. OCR Complaint Response Options
7. Consequences of Non-Compliance
8. Donor Management



3

A New Frontier: Post-SFFA Landscape

- **Supreme Court Cases: SFFA v. Harvard College & SFFA v. University of North Carolina**
- **Decision (6-3 Vote):** The Supreme Court ruled that the admissions programs at the University of North Carolina (UNC) and Harvard College violated the **Equal Protection Clause** of the U.S. Constitution.
 - **Implication:** The decision effectively limits or ends the use of affirmative action in college admissions.
 - Although the Supreme Court's ruling did not mention the use of race in financial aid or scholarships, conservative lawmakers say higher education institutions should broadly apply the court's decisions to all college race-based policies.



4

A New Frontier: Post-SFFA Landscape

- Mark Perry, an emeritus professor at the University of Michigan's Flint campus and a senior fellow at the American Enterprise Institute
- Filed **1,200+ Title IX and Title VI complaints** targeting discriminatory practices in higher education
- Led to **400+ federal investigations**
 - **200+ resolutions** in favor of his claims
- Focus:
 - **Gender and race-based restrictions on men** in scholarships, programs, and other opportunities



5

A New Frontier: Post-SFFA Landscape

- Duke University recently discontinued a 45-year-old scholarship that covered tuition, currently about \$66,000 a year, and housing costs of some Black undergraduate students.
- The University of Missouri system announced it would no longer offer or promote race-conscious scholarships.
- The University of Kentucky also announced it would stop considering race in scholarship programs.
- The University of Minnesota Twin Cities changed eligibility requirements for two women-only scholarships.
- Tulane University, resolved an investigation by the Department of Education's Office for Civil Rights late last year by promising to restructure financial and "experiential" programs for women.
- The Rochester Institute of Technology recently discontinued an engineering program for girls, ended a women's leadership retreat, and opened a dozen programs and scholarships previously earmarked for women to all genders.



6

A New Frontier: Post-SFFA Landscape



- Since the Supreme Court ruling, nearly **50 colleges and universities** (primarily public institutions) have adjusted their financial aid policies.
- **Race-Conscious Scholarships:** Hundreds of scholarships, worth millions of dollars, have been **paused, ended, or restructured**.
- Title IX investigations have led universities to revise the titles and focus of programs and scholarships to ensure compliance with non-discrimination laws.



7

Legal Background: Race-Restricted Scholarships

- **Equal Protection Clause of the Fourteenth Amendment**
 - Definition: Ensures that states must provide equal protection under the law to all individuals, prohibiting discrimination based on race, gender, or other characteristics.
 - Impact: Foundation for legal challenges in education, employment, and civil rights. Central to litigation on affirmative action and race-conscious policies.
- **Title VI of the Civil Rights Act of 1964**
 - Definition: Prohibits discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance.
 - Scope: Applies to institutions such as schools, colleges, universities, and government programs, ensuring federal funds are not used for discriminatory practices.



8

Legal Background: Race-Restricted Scholarships

- **Application to Race-Based Scholarships**
- **Equal Protection Clause of the Fourteenth Amendment**
 - Prohibits states or publicly funded institutions from using race-based criteria in the distribution of scholarships.
 - Implication: Scholarships funded or administered by public institutions must treat applicants equally, without preference or discrimination based on race.
- **Title VI of the Civil Rights Act of 1964**
 - Prohibits discrimination based on race, color, or national origin in any the distribution of scholarships.
 - Application: Even if a scholarship is privately funded, if a federally funded institution administers it, race-based preferences or restrictions are not allowed.



9

Legal Background: Sex-Restricted Scholarships

- **Title IX of the Education Amendments of 1972**
 - Title IX is a federal civil rights law that prohibits discrimination based on sex in any education program or activity receiving federal financial assistance.
 - It ensures equal opportunities in educational settings, including admissions, athletics, and employment.
- **Scope**
 - Applies to K-12 schools, colleges, universities, and any other educational institutions that receive federal funding.
- **Application to Scholarships**
 - Educational institutions cannot offer scholarships that favor or exclude individuals based on sex, unless specifically allowed by law (the two defenses).



10

Defense 1: Affirmative Action - Race

- Colleges may **"take affirmative action"** to address and overcome conditions that limit the participation of people from a particular **race, color, or national origin**. 34 C.F.R. § 100.3(b)(6)(ii).
- If a college is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its programs better known and available to these groups. This is permitted even if the college has never used discriminatory policies in the past. 34 C.F.R. § 100.5(i).
- To satisfy this standard, racial restrictions or preferences must be aimed at a **"compelling governmental interest"** and must be **"narrowly tailored"** to reach that goal.



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Defense 1: Affirmative Action - Sex

- Title IX regulations provides that “...a recipient may take **affirmative action to overcome the effects of conditions which resulted in limited participation** therein by persons of a particular sex.” 34 C.F.R. § 106.3(b)
- OCR interprets 34 C.F.R. § 106.3(b) to authorize affirmative action involving sex-based classifications where the action taken is **substantially related** to the achievement of an **important objective** (different standard as compared to race-based affirmative action)
- Ex. College might provide evidence that women had previously been disproportionately under-enrolled in a computer science program and explain that it offered a scholar for women with an interest in computer science to increase their interest in enrolling in the program.



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Defense 2: Pool and Match Safe Harbor

34 CFR § 106.37 - Financial Assistance

(1) A recipient may **administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments** or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein...

Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance **does not discriminate on the basis of sex.**



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Defense 2: Pool and Match Safe Harbor

34 CFR § 106.37 - Financial Assistance

- (i) Students are **selected** for award of financial assistance **on the basis of nondiscriminatory criteria** and not on the basis of availability of funds restricted to members of a particular sex;
- (ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is **allocated to each student** selected under paragraph (b)(2)(i) of this section; and
- (iii) **No student is denied the award** for which he or she was selected under paragraph (b)(2)(i) of this section **because of the absence of a scholarship**, fellowship, or other form of financial assistance designated for a member of that student's sex.



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The Foundation Piece



- Colleges often don't administer scholarships alone, but in collaboration with its corresponding non-profit Foundation.
- Discrimination claims under the Equal Protection Clause, Title VI and Title IX are based upon actions taken by **public entities provided federal funding for their public purpose.**
- Colleges are public entities; foundations are not.
- Private foundations, therefore, face no discrimination liability or loss of federal funding.



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The Foundation Piece

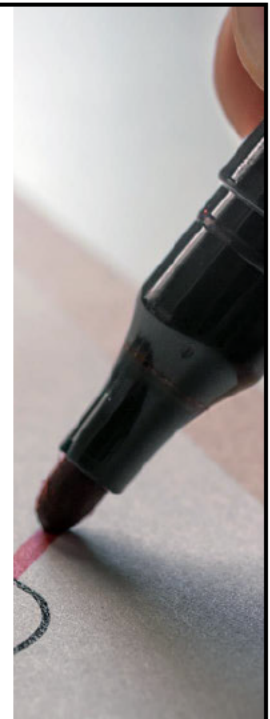
- A College's **close relationship with a foundation can support a legal claim against the College.**
- College could still face liability even if scholarship are mainly administered by Foundation; even if **College acts as trustee** of scholarships government by private trust.
- Courts may find College liable if a private **party cooperates with, performs public functions for, or is controlled by a public agency** like a College.



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So You Get an OCR Complaint

- U.S. Department of Education, Office for Civil Rights
- Enforce federal laws that prohibit discrimination based on certain protected categories in any education program or activity operated by a receipt of federal financial assistance
- Title VI
- Title IX



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So You Get an OCR Complaint

- A complaint of discrimination with OCR is not a lawsuit, but administrative complaint
- Communicate primarily with OCR investigator or attorney, not complainant or opposing counsel (if represented)
- Documentation and information is provided directly to OCR
- Case Processing Manual provides governing procedures
- Also provide Rapid Resolution Process memo governing sex-restricted scholarship complaints



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So You Get an OCR Complaint

Race-Restricted Scholarships = Investigation

1. Letter of Notification

- Indicates OCR's jurisdiction over allegations
- Brief factual description of allegations
- OCR is neutral
- OCR has right of access to records, even if records identify individual students by name pursuant to exemption in FERPA regulations (*see* 34 C.F.R. §§ 99.31(a)(3)(iii) and 99.35).
- Requests narrative response and data response (ex. description of program or policy at issue, disseminated information about program or policy, comparator data, etc.)



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So You Get an OCR Complaint

2. Narrative Response

- Highlight College's policies and practices prohibited race-based discrimination.
- Provide background on interplay with Foundation (if applicable), how scholarships are established, application process, marketing, etc.
- Discuss specific scholarship(s) identified in the complaint.
- Note, if applicable, any applicants who are not a member of the targeted group who didn't receive the scholarship.



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So You Get an OCR Complaint

2. Narrative Response

- Demonstrate, if applicable, limited overall discriminatory impact from identified scholarship(s) being just small piece of the scholarship puzzle.
- Express interest in Resolution Agreement under Section 302 of Case Processing Manual to avoid a violation finding.
- Provide all relevant materials related to the scholarship as exhibits.



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Rapid Resolution Process

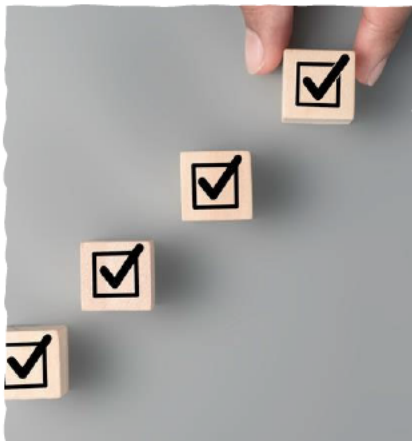
Sex-Restricted Scholarship Complaint: **Investigation OR Rapid Resolution Process**

- Opportunity to resolve a complaint prior to an investigation or resolution agreement.
- OCR provides a memorandum outlining the questions OCR will ask and the steps for a College to take to close a matter.
- Prepare a memorandum similar to a narrative response outlining all the relevant facts about the identified scholarship(s) and action taken with respect to each scholarship.



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Rapid Resolution Process



Question Checklist:

1. Is the scholarship **external or internal**?
2. Does the scholarship **treat students differently based on sex**?
3. Do either of the **available defenses apply** (affirmative action or safe harbor)?
4. If scholarship is restricted based on sex and neither of the defenses are available, **would need to remove the restriction and confirm there is no evidence of a specific individual harmed by the scholarship**, to avoid an investigation and potential violation or public Resolution Agreement.



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External Scholarships

- Title IX regulations: no **“solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient’s students in a manner which discriminates on the basis of sex.”** 34 C.F.R. § 106.37(a)(2).
- If no evidence of sex restriction, and no evidence that a prior applicant has been denied the award based on sex, allegation should be dismissed.
- If evidence exists of a sex restriction, is the scholarship permissible affirmative action?
- If sex-restricted, no affirmative action, and college continues to assist, likely Title IX violation and OCR investigation.
- If college ceases assisting with scholarship, OCR will not open an investigation



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Internal Scholarships

- Does the scholarship treat students differently based on sex?
 - OCR will examine title, description, and promotional materials
 - Restriction OR preference both prohibited
 - “Based on sex” extends to sexual orientation and gender identity
 - Ex. “for female students majoring in dance”
 - Ex. An award “with a preference for a female students from Texas”
 - Ex. “special consideration given to LGBTQ+ students”



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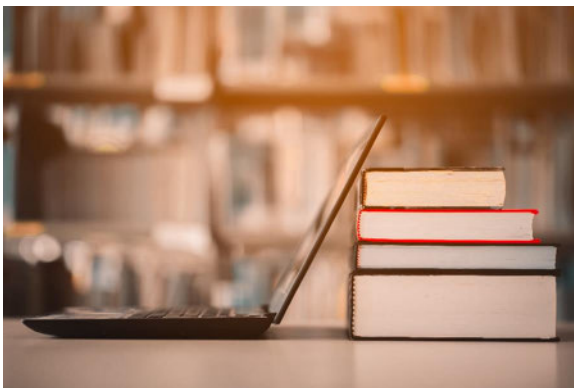
Internal Scholarships

- **Does the scholarship treat students differently based on sex?**
 - Scholarship does not contain a restriction or preference merely because the title includes a name associated with a particular sex (ex. Women in Leadership Award)
 - As long as description makes clear that the award is open to anyone (ex. “for which all students are eligible”)
- Is there evidence that an applicant has been denied an award based on sex
 - Tip: College/Foundation should attempt to determine if any male students applied but were not selected; not likely possible with automatic system- pre-screening
- Where no restriction or preference, and no evidence of individual harm, allegation should be dismissed



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Remaining RRP Questions



- Do either of the available defenses apply (affirmative action or safe harbor)?
- If scholarship is **restricted based on sex** and **neither of the defenses are available**, would need to **remove the restriction**, confirm there is **no evidence of a specific individual harmed** by the scholarship, to avoid an investigation and potential violation or public Resolution Agreement.



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Options for Mission Maintenance

- **Scholarship name or description** includes a term traditionally associated with a particular sex (ex. Reference to a history class on “Women of the Revolution”)
- Promotional measures feature **images or illustrations of individuals of a particular sex**
- A description of the scholarship **“encourages”** participation by or applications from members of a particular sex;
- Require **supplemental essay** requiring applicants to demonstrate their commitment to mission of the scholarship (ex. women in higher education, women in science, women in law enforcement, etc.)



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Consequences for Violations

• **Step One: invite the College to enter into a Resolution Agreement**

- Providing for elimination of the sex restrictions
- Monitoring by OCR to ensure compliance
- Publicly accessible on OCR's Reading Room

Step Two: if College refuses to enter into Resolution Agreement

- OCR can initiate enforcement proceedings
- Risk of loss of federal funding

Note: Resolution Agreement more favorable than enforcement proceeding



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Donor Management

- Emphasize options for mission maintenance.
- Minimize risk of mission degradation.
- Reiterate risk of legal exposure to College (not Foundation) should non-compliance continue.
- Provide written communications and/or Town Halls to clearly explain why changes are occurring.



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Mastering the Complex World of Public Bidding

September 18, 2024

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2

AGENDA

- The Duty to Publicly Bid
- The Bidding Process
- Unique Bidding Procedures and Exemptions
- New Design-Build Legislation "How-To"
- To Bid or Not To Bid
- Our Social Media Information
- Questions & Answers



3

The Duty to Publicly Bid

- Section 3-27.1 of *The Community College Act*, 110 ILCS 805/3-27.1, provides community colleges with the authority:
 - To award **all** contracts for purchase of supplies, materials or work involving an expenditure in excess of \$25,000 or a lower amount as required by board policy to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability...



4

The Duty to Publicly Bid

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



5

The Duty to Publicly Bid

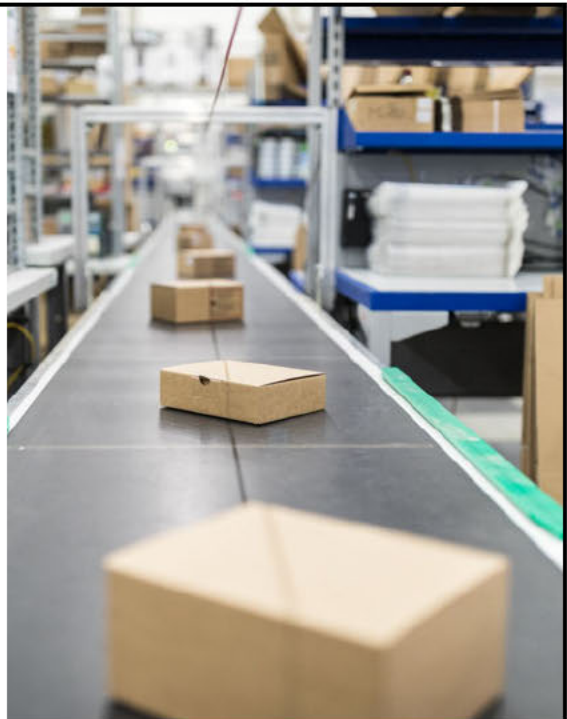
- Except the following:
 - Contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with manufacturer or authorized service agent of that equipment where the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized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



6

The Duty to Publicly Bid

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



7

Governmental Cooperative Purchasing

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



8

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 (by Coop or your School District)**, 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.



9

Governmental Cooperative Purchasing



What are some strategies for success with Cooperative Purchasing options?



Make sure you leave yourself enough time.



Obtain informal quotes or estimates from local vendors/contractors first. It may be cheaper to use the traditional bidding method.



Look at the offerings of all of the cooperatives before deciding to select one particular cooperative.

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.





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The Bidding Process

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

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The Bidding Process

- Bid Submittals
 - Sealed Bids
 - Electronic Bids (Not for construction)
 - 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



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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



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The Bidding Process

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



The Bidding Process

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

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.



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TO BID OR NOT TO BID



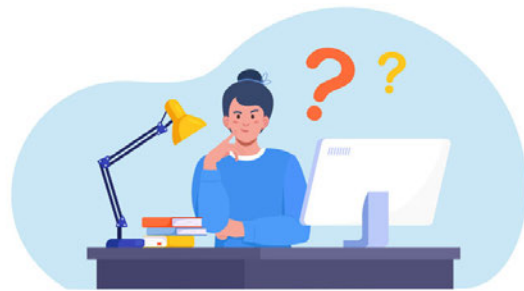
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To Bid Or Not To Bid

- 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 3-27.1 of the Community College Act?

To Bid Or Not To Bid

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



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.



23

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 college'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.

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To Bid Or Not To Bid

A \$300,000 contract for the installation of a campus-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 \$300,000 contract for the purchase of copying machines for the college office and resource centers?



27

To Bid Or Not To Bid

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



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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?



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To Bid Or Not To Bid

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



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To Bid Or Not To Bid

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



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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?



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Lessons Learned from Title IX Litigation

September 18, 2024

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2

Key Questions

1. When is a College subject to legal liability under Title IX?
2. When is conduct within a College's authority under Title IX?
 - What conduct applies and when?
3. What if a College fails to or delays in implementing the grievance procedures?
4. What is "deliberate indifference" and when is a College's response categorized as such?
5. How does Police or Campus Security involvement impact the College's response?



3

Background on Title IX

- “No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31(a).



4

2024 Regulations: Title IX Grievance Procedure

- Key components:
 - Prohibition on sex discrimination, including sex-based harassment, as defined under 2024 Title IX Regulations.
 - Prohibition on retaliation (including peer retaliation) against anyone for the purpose of interfering with any right or privilege secured by Title IX, or because the person reported information, made a complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under Title IX.



5

What About Sexual Harassment?

- Although Title IX does not expressly mention sexual harassment, Congress, federal agencies and courts have interpreted the statute to prohibit sexual harassment in education programs and activities.

When is Conduct within the College's Authority under Title IX?

Sex Discrimination

- Includes discrimination based on:
 1. Sex stereotypes
 2. Sex characteristics
 3. Pregnancy or related conditions
 4. Sexual orientation
 5. Gender identity

Sex-Based Harassment

- Includes:
 - Quid pro quo harassment
 - Hostile environment harassment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking
 - Sexual violence



Application

- Policy Prohibiting Sex Discrimination applies whenever alleged sex discrimination occurs:
 - On College property or any property owned or controlled by a College-recognized student organization;
 - Off College property if:
 - The conduct was in connection with a College or College-recognized program or activity; or
 - The conduct may have the effect of creating or contributing to the creation of a hostile environment for a member of the College community; or
 - Otherwise within the College's disciplinary authority for students or employees.



10

Application

Colleges have an obligation to address a sex-based **hostile environment in its education program or activity in the United States**, even where the sex-based harassment contributing to the hostile environment occurred outside the education program or activity or outside the U.S.



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Application – Case Example 1

Weckhorst v. Kansas State University, 241 F. Supp.3d 1154 (D. Kan. 2017)

Factual Summary:

- Plaintiff was sexually assaulted multiple times, all of which took place off campus.
- Once at a fraternity event off campus and once within the off-campus fraternity house.
- Third incident occurred at a private off campus apartment complex close to the university campus.



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Application – Case Example 2

Weckhorst v. Kansas State University, 241 F. Supp.3d 1154 (D. Kan. 2017)

Court Findings:

- Assaults that occurred at the fraternity event and in a fraternity house were within the University's authority under Title IX.
- Assault that occurred in private, off campus apartment was not within the University's authority under Title IX:
 - Plaintiff did not allege plausible facts that the assault occurred within a program or activity of the university.
 - The court could not find that the university had substantial control over the context of the assault.



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Application – Case Example 1

Weckhorst v. Kansas State University, 241 F. Supp.3d 1154 (D. Kan. 2017)

Analysis of Court Findings:

University's control over the context of an assault impacts whether Title IX applies, even if the assault took place off campus.

**BUT: How would this case apply under the 2024 regulations?
Substantial control was the standard under 2020 regulations!**



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Application – Case Example 2

Doe v. Brown University, 896 F.3d 127

Factual Summary:

- Three Brown University football players drugged Plaintiff, a Providence college student, at a local bar without her knowledge and forcefully took her to University dormitory where they sexually assaulted her.
- Plaintiff reported the incident, and an investigation was initiated at Brown.
- Plaintiff alleged, when she inquired about the investigation, she was informed that the University abandoned the investigation and did not initiate any disciplinary action against the perpetrators.



15

Application – Case Example 2

Doe v. Brown University, 896 F.3d 127

Complaint Filed:

- Plaintiff filed a suit against Brown under Title IX.
- Plaintiff withdrew from Providence College out of fear for her safety and well-being in the area.



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Application – Case Example 2

Doe v. Brown University, 896 F.3d 127

Court Findings:

- Court found that Plaintiff had no right to sue as Brown lacked any authority or capacity to take corrective action on behalf of Doe, with regards to her education at Providence College.
- Court explored scope of Title IX's "subject to discrimination under" clause and what it captures.



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Application – Case Example 2

Doe v. Brown University, 896 F.3d 127

Court Findings:

- “Subject to discrimination under” clause captures situations other than where a person has been “excluded from access to” or “denied the benefits of” an educational program.”
- Plaintiff’s complaint was dismissed because she failed to allege that she participated in or would have participated in any of Brown’s educational programs or activities.



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Application – Case Example 2

Doe v. Brown University, 896 F.3d 127

Key Take Aways:

- Scope of Title IX is bigger than we think.
- Victim does not need to be an enrolled student at the offending institution for a Title IX private right of action to exist.
- Members of the public regularly avail themselves of the services provided by educational institutions receiving federal funding: access to university libraries, computer labs, vocational services, public lectures, sporting events.



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Application Key Takeaways

- Institutions have an obligation to address sex discrimination that occurs within its educational programs or activities.
- Under 2024 regulations institutions also have an obligation to address sex-based harassment that occurs outside of the educational programs or activities if it contributes to a hostile environment within the educational program or activity.
- Complainant does not need to be enrolled within the institution to file a complaint under Title IX.



Reporting

- **Who can report?**
 - Anyone – including students, employees and third parties
 - Need not be the person who is alleged to be the victim of the misconduct
- **To whom can reports be made?**
 - Title IX Coordinator
 - Responsible Employees
 - Confidential Employees
 - Electronic/Anonymous Reporting
- Procedures Section V



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Reporting

What constitutes a report?

- 2020 regulations:
 - **Actual knowledge** of allegations of sexual harassment
 - Must respond promptly and in a manner that is not deliberately indifferent
- 2024 regulations:
 - Receipt of information about conduct that **may reasonably constitute sex discrimination**
 - Must follow specific **notification requirements**

23

Title IX Coordinator Response Obligations

Title IX Coordinator must take the following steps upon being notified of conduct that reasonably may constitute sex discrimination:

- (1) Treat complainant and respondent equitably.
- (2) Offer and coordinate supportive measures to complainant and respondent (if applicable).
- (3) Notify complainant of the College's grievance procedures and informal resolution process, including information regarding the complainant's rights and options pursuant to the Procedures.
- (4) If complaint is made, notify respondent of grievance procedures and notify parties of informal resolution process.
- (5) In response to a complaint, initiate grievance procedures or informal resolution process.
- (6) In absence of complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination if necessary to address conduct that may constitute sex discrimination.
- (7) If the Title IX Coordinator initiates a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.
- (8) Regardless of whether a complaint is initiated, effectuate remedies provided to the complainant and take other prompt and effective steps to ensure that sex discrimination does not continue or recur.

A (Very) Brief Overview of the Grievance Procedures



- *Informal Resolution may occur at any point before the determination
- *Supportive measures may be offered and/or challenged at any point

Grievance Procedures – Case Example 1

Conviser v. DePaul University, 649 F. Supp.3d 686 (N.D. Ill. 2023)

Factual Summary:

- Contract mental health provider that treated the University's student athletes and informed the University of allegations of verbal, physical, and sexual abuse against the University softball coach.
- Verbally and Physically abusive: referred to his players as gendered epithets: "f-cking whores", "sensitive b*tches."
- Rather than investigate the allegations, the University directed mental health provider to address the coach and his staff directly and educate them on Title IX.
- The mental health provider did so, and her reports were met with silence and denial. University took no further action. Soon after, University began reducing its referrals to the mental health provider.



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Grievance Procedures – Case Example 1

Conviser v. DePaul University, 649 F. Supp.3d 686 (N.D. Ill. 2023)

Factual Summary:

- A few months later, mental health provider reported the sexual assault of a student.
- Met with the Title IX Coordinator, addressing the reported sexual assault and a number of issues including the use of sex as a part of the University's athletic recruitment and the student's discomfort in reporting sexual assault and other abuses.
- Provider had additional meetings with the Title IX office about further sexual abuse specific to the softball team, yet she was again met with silence and denial. After the meeting her referral rate plummeted.
- Three years after the mental health's provider's first attempt to address issues, the University stopped referring new patients to the provider.



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Grievance Procedure – Case Example 1

Conviser v. DePaul University, 649 F. Supp.3d 686 (N.D. Ill. 2023)

Complaint Filed:

- Plaintiff brought a Title IX retaliation claim against the University.
- Claimed that due to her reporting, University decided stop referring students and staff.
- The retaliation claim involved not only Plaintiff's right to be free of retaliation, a form of sex discrimination, but also the students' rights in pursuing their education without sex discrimination.



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Grievance Procedures – Case Example 1

Conviser v. DePaul University, 649 F. Supp.3d 686 (N.D. Ill. 2023)

Court Findings:

- Mental health provider was in a position to vindicate the rights of the student-athletes she served, regardless if she was technically employed by the University.
- "There is no daylight between an independent contractor who reports the discrimination of a student and a university employee who does. The mental health provider's interest, even as an independent contractor, falls within the Title IX zone of interests."



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Grievance Procedure – Case Example 1

Conviser v. DePaul University, 649 F. Supp.3d 686 (N.D. Ill. 2023)

Analysis of Court Findings:

- Title IX protections are not limited to plaintiffs who are intended to benefit from discrete portions of an educational institution that receives federal financial assistance.
- Title IX applies to “all the operations of” a college, constitute an “education program or activity.”
- Regardless of technical employment status, plaintiff brought the University’s attention sex discrimination of the student-athletes. They are pursuing equal access to education.



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Grievance Procedure – Case Example 2

Karasek v. Regents of Univ. of Cal., 956 F.3d 1093, 1111-12 (9th Cir. 2020)

Factual Summary:

- Plaintiff student was groped by another student while sharing a bed at an overnight school club trip.
- Club president informed the University that this individual assaulted three club members.
- University discouraged the club president from removing the perpetrator from the club and to use an informal transformative justice model in response.



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Grievance Procedure – Case Example 2

Karasek v. Regents of Univ. of Cal., 956 F.3d 1093, 1111-12 (9th Cir. 2020)

Complaint Allegations:

- After an informal investigation was performed and inadequate disciplinary actions were given, the three students brought Title IX civil action.
- They alleged that the University's delay in rendering sanctions was deliberately indifferent.
- Eight and a half months elapsed between the time of receiving the written complaint and rendering sanctions.
- Thirteen months elapsed between the second plaintiff's reporting of her assault and the University's imposition of final sanctions.



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Grievance Procedure – Case Example 2

Karasek v. Regents of Univ. of Cal., 956 F.3d 1093, 1111-12 (9th Cir. 2020)

Court Findings:

- Court found that deliberate indifference was not established in both cases because University was not “sitting idle.”
 - First instance: University had communicated to the president for the best course of action, Respondent was met with to discuss charges, several administrative disposition letters were issued.
 - Second instance: University promptly met with perpetrator shortly after the written report was submitted, and was partially delayed due to the University's decision to stay its investigation until the criminal charges were resolved.
- Even though the University could have acted more quickly, delays did not constitute a deliberate attempt to sabotage the complaint or its orderly resolution.
- School's failure to comply with its own regulations was at most “negligent, lazy and careless,” but did not constitute deliberate indifference.



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Grievance Procedures – Case Example 2

Karasek v. Regents of Univ. of Cal., 956 F.3d 1093, 1111-12 (9th Cir. 2020)

Key Take Aways:

- Although there were significant delays between the filing of Complaint and final sanctions, University avoided the finding of deliberate indifference because they were not sitting idle.
- **TIP:** Even with significant delays, keep all possible pieces of the investigation moving. Inform complainant of any and all reasons for delay in writing to ensure that record can be relied on to prove the College is not sitting idle.



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Grievance Procedures Key Take Aways

- Failure to implement grievance procedures can subject an institution to liability both for deliberate indifference and retaliation.
- Timely responses and adherence to timeframes in grievance procedures will protect the institution from liability.
- Retaliation complaints can apply to students, faculty or any third party involved.



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When Can an Institution be Held Liable under Title IX?



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Deliberate Indifference

- Under 2020 regulations, upon receipt of “actual knowledge” of conduct that constitutes “sexual harassment,” the Institution must respond in a manner that is not “deliberately indifferent.”
- “Deliberate indifference” was a high standard, “clearly unreasonable in light of the known circumstances.”
- No longer standard under 2024 regulations, for administrative enforcement purposes, but still the standard in civil litigation context.

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Deliberate Indifference – Case Example 1

Kane et al v. Loyola University of Chicago, No. 1:2022cv06674

Factual Summary:

- Multiple current and former students alleged that Loyola systematically mishandled, underreported, and failed to adequately respond to their complaints of sexual harassment in violation of Title IX.
- Specifically alleged that Loyola had a *de facto* policy of systematically mishandling student complaints of sexual violence and harassment dating back to at least 2011.
 - Practice exposed in 2016 News Article
 - Apparent discrepancies in Loyola's reporting of sexual assault incidents
 - The University's alleged mishandling of their own allegation to support their allegations



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Deliberate Indifference – Case Example 1

- *Kane et al v. Loyola University of Chicago, No. 1:2022cv06674*

Complaint Filed:

- Loyola “maintained a de facto policy . . . to suppress reports of sexual violence and sexual harassment, and to support accused campus predators, resulting in a culture of deliberate indifference toward sexual misconduct at Loyola.
- Loyola “failed to provide Plaintiffs with fair, prompt, and equitable proceedings in response to complaints of sexual misconduct,” or otherwise “failed to adequately respond,” and that these failures “amounted to deliberate indifference toward the unlawful conduct that was occurring.”



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Deliberate Indifference - Case Example 1

Kane et al v. Loyola University of Chicago, No. 1:2022cv06674

Court Findings:

- Allegations are sufficient to state a claim that Loyola failed to adequately respond to complaints of sexual assault on at least ten separate occasions
- Plaintiffs have adequately alleged a policy of deliberate indifference.



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Deliberate Indifference – Case Example 1

Kane et al v. Loyola University of Chicago, No. 1:2022cv06674

Court looks for:

- Competent evidence showing a **pattern of repeated behavior** to determine whether prior incidents are sufficient to demonstrate a policy of deliberate indifference.
- Can be a **number of incidents** that are indicative.
- Can also be a **pattern of behavior** to be indicative of a policy of deliberate indifference.



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Deliberate Indifference – Case Example 2

Doe v. Yeshiva Univ., 703 F. Supp. 3d 473, 490–91 (S.D.N.Y. 2023)

Factual Summary:

- Plaintiff, a University student, went on a date with another student. After the date, Plaintiff was asked to enter her date's off campus apartment (where campus security regularly patrolled).
- Plaintiff was sexually assaulted in the apartment.
- Plaintiff informed the University Dean of the assault, and an investigation was conducted.



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Deliberate Indifference – Case Example 2

Doe v. Yeshiva Univ., 703 F. Supp. 3d 473, 490–91 (S.D.N.Y. 2023)

Factual Summary:

- Investigation determined that the evidence did not support a finding that the alleged perpetrator had violated the University's Non-Discrimination and Anti-Harassment Policy.
- Investigation did not include interviews with the nurse examiner or inspecting photographs taken as part of the rape kit conducted by nurse examiner.
- Plaintiff filed suit, alleging deliberate indifference pursuant to Title IX against the university.



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Deliberate Indifference – Case Example 2

Doe v. Yeshiva Univ., 703 F. Supp. 3d 473, 490–91 (S.D.N.Y. 2023)

Court Findings:

- Plaintiff informed agents of the University that she had undergone a rape examination, and that evidence was collected from her.
 - Plaintiff provided sufficient information for investigator to pursue the lead.
 - Burden of proof lies on the investigators, not the accuser to obtain record and witness statements.
- University's dismissal failed to provide reasons.
- A reasonable fact finder could conclude that the University was deliberately indifferent to a key lead in the investigation.

Deficiencies in the University's response and investigation of the Title IX complaint amount to unreasonable conduct.



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Deliberate Indifference – Key Takeaways

Deliberate indifference can take many forms:

- Numerous incidents of sexual assaults and improper handling.
- Failure to investigate key leads: interviewing witnesses, reviewing rape kits, etc.
- Failure to provide a statement of reasons for dismissal of a Title IX Complaint.
- Failure to inform and/or provide opportunity for appeal.



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How Does Police Involvement Impact the College's Response to Title IX Allegations?

General Rules and Considerations

- Criminal investigation may occur concurrent with a Title IX investigation.
- Title IX regulations do not explicitly address police involvement.
- Criminal charges and/or police involvement do not absolve a College from its obligations under Title IX.

Police Involvement – Case Example

Tubbs v. Stony Brook Univ., 343 F. Supp. 3d 292 (S.D.N.Y. 2018)

Factual Summary:

- Plaintiff, a student at Stony Brook University (“SBU”), was sexually assaulted while on campus.
- She gave a statement to the University Police (“UPD”).
- UPD involved SBU administration. Both entities informed Plaintiff of all possible responses, which included Title IX.
- Plaintiff presented a pattern of ambivalence in deciding whether to pursue formal charges or investigation.



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Police Involvement – Case Example

Tubbs v. Stony Brook Univ., 343 F. Supp. 3d 292 (S.D.N.Y. 2018)

Complaint Filed:

- Plaintiff alleged University was deliberately indifferent regarding her sexual assault allegations and deprived her of an equal access to educational opportunities.
- Plaintiff additionally asserted claims of assault, battery, and intentional infliction of emotional distress against the alleged perpetrator.



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Police Involvement – Case Example

Tubbs v. Stony Brook Univ., 343 F. Supp. 3d 292 (S.D.N.Y. 2018) –

Court Findings:

Court found that the University Defendants were far from unreasonable in handling Plaintiff's complaint:

- SBU responded to Plaintiff's Complaint diligently and in accordance with all required procedures.
- UPD initially responded and tried to accommodate Plaintiff and her friends and listen to their accounts of the incident:
 - UPD provided information about pursuing a criminal investigation,
 - UPD suggested that Plaintiff take the SANE exam, drove her and her friends to and from the hospital and Plaintiff's dormitory.



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Police Involvement – Case Example

Tubbs v. Stony Brook Univ., 343 F. Supp. 3d 292 (S.D.N.Y. 2018)

Court Findings:

- Hinged on the actions and involvement of UPD.
- UPD's involvement assisted the Title IX office, even if indirectly, and preserved Plaintiff's right to Title IX protections.
- **TIP: Collaboration with police/campus safety is critical in ensuring compliance with Title IX!**



51

Police Involvement – Key Take Aways

- Coordination with police and/or campus security in implementation of grievance procedures can protect a College from liability under Title IX. However, police involvement or criminal investigation does not absolve institutions of their obligations under Title IX.
- If an institution is planning to pause a Title IX investigation due to police involvement, advise all parties of such in writing.



Recommendations/Practice Tips

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Recommendations & Practice Tips

- After receipt of Title IX Complaint, timely inform the Complainant of their options and rights under Title IX, and continually update them on the status of the investigation.
- Keep written record of everything communication and step in the process.
- Timely inform all parties of any reason for delay: waiting for criminal investigation to conclude, etc.
- Always keep the Statute of Limitations in mind:
 - Title IX claims are subject to Illinois' two-year statute of limitations.
 - It is in best interest of the college to inform potential complainants of the two-year statute of limitations.
 - Proactively eliminates possible allegations of deliberate indifference.



54

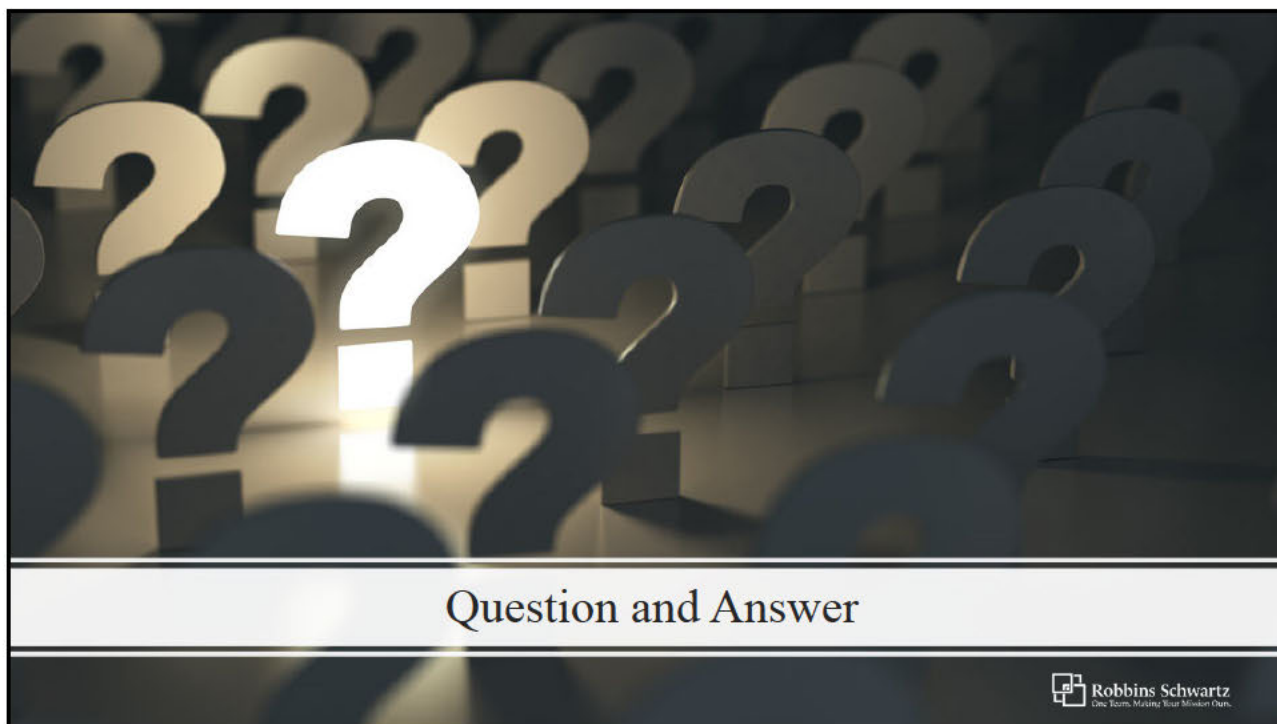
Recommendations & Practice Tips

- Inform Complainant of decisions and reasons for said decisions.
- Advise of all appeal options.
- Keep record of Complaints filed, informal/formal, and their results.
- Maintain the same structure and investigation process for all types of investigations.
 - Tailor to the investigation and the needs of each Complainant.
- Ensure investigators/those involved maintain a level of neutrality when conducting interviews and questioning.

Reach out to Robbins Schwartz for any questions or if assistance is needed.



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Labor and Union Issues Affecting College Construction Projects

September 18, 2024

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2



Agenda

- Prevailing Wage
- Responsible Bidder Ordinance
- Project Labor Agreements
- Reserve Gate System
- Questions



3

Prevailing Wage

- Introduction to the Prevailing Wage Act
 - Prevailing Wage
 - A wage of no less than the “general prevailing hourly rate”
 - as paid for the work of a similar character
 - in the county in which the work is performed;
 - Must be paid to all laborers, workers and mechanics employed by or on behalf of any public body;
 - Engaged in “public works.”



4

Prevailing Wage

- Public Works
 - All fixed works constructed or demolished by any public body, or fixed works paid for wholly or in part out of public funds.
 - All work on public works involving laborers, workers or mechanics.
 - Includes any maintenance, repair, assembly or disassembly work performed on equipment whether owned, leased, or rented.



5

Prevailing Wage

- Project-specific Requirements And Practices: Notices To Contractors.
 - Bid projects
 - No-bid projects
 - Failure to provide proper written notice:
 - as determined by IDOL;
 - the public body shall pay any interest, penalties and fines that would have been owed by the contractor if proper written notice were provided.



6

Prevailing Wage

- Ensuring Contractor Compliance
 - Notice
 - Certified Payroll (Now to be provided directly to IDOL)



7

Prevailing Wage

- Hypotheticals
 - Storm sewer repairs
 - Tree service - removal of fallen or dead tree, tree trimming
 - Fence repair and/or installation
 - Rodding plumbing lines
 - Plumbing pipe repairs
 - Roof leak repairs
 - Seal coating
 - Parking lot asphalt repairs
 - Pest control



8

Prevailing Wage

- Hypotheticals
 - Lawn care - spraying of weeds/fertilizing
 - Wood gym refinishing
 - Elevator service/repair
 - Fire alarm service/repair
 - Fire sprinkler service/repair
 - Fire extinguisher service
 - Boiler repair/re-tubing
 - Truck repair



9

Responsible Bidder Ordinance (Resolution)

- Proposed to ensure only “Responsible” Bidders can be awarded College contracts.
- Typically defines responsibility as complying with the following:
 - All applicable laws prerequisite to doing business in Illinois, and all local ordinances;
 - Certificates of insurance



Responsible Bidder Ordinance (Resolution)

- Compliance with all provisions of the Illinois Prevailing Wage Act;
- **The bidder and all bidder’s sub-contractors must participate in active apprenticeship and training programs approved and registered with the U.S. Department of Labor’s Office of Apprenticeship for each of the trades of work contemplated under the awarded contract.**

Project Labor Agreements

An Agreement entered into between the College and all local unions and all contractors/subcontractors prior to the start of a construction project.

The PLA provides that there will not be a work stoppage during the project, even if there is an area wide strike.

Project Labor Agreements

- Requirements for a PLA
 - The College must make a determination that the project timeline is critical such that any potential delay would significantly interfere with operations.
 - The PLA is approved by the College and all local trade unions for inclusion in the bid documents for the project.

Project Labor Agreements

- All bidders must agree to sign the PLA as a condition of being awarded the contract.
 - By signing the PLA, a non-union contractor would be agreeing to the terms of the applicable collective bargaining agreement with the local trade union.
- The PLA further provides that the local unions agrees to allow the project continuously operate, even if there is an area wide strike.

Reserve Gate System

- Local Unions have the right to engage in informational picketing for College projects where non-union labor is performing work.
- Location for informational picketing.
- Informational picketing can disrupt the project where multiple contractors are involved or may impact other projects on campus.



Reserve Gate System

- The College may establish a “2 Gate System” to allow projects to continue despite a Union picket.



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Reserve Gate System

- Procedures to establish a 2-Gate system:
 - Establish 2 separate “gates” to enter the jobsite
 - The non-union contractor subject to the picketing must enter through the “reserve gate”
 - All other contractors must enter through the “neutral” gate



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Reserve Gate System

- The Union picketing activity is limited to the “reserve gate” and only at such times that the non-union contractor is on-site.
- Enforcement through NLRB



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Reserve Gate System

- Alternate methods to resolve union dispute:
 - Scheduling
 - Union negotiation



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Biographies

JOSEPH J. PERKOSKI

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Joseph J. Perkosi has built his legal career with a profound focus on representing educational institutions and public sector employers, particularly in board and executive leadership matters. Known for his experience in labor and employment issues, including collective bargaining, grievance arbitration, and contract interpretation, Joseph has become a trusted counselor for his clients.

Joseph finds immense satisfaction in counseling clients to help them achieve their goals and objectives. His strengths as an attorney lie in effective listening and engagement skills and his contributions extend beyond his legal practice with notable publications and presentations. These include labor negotiations and collective bargaining agreement administration.

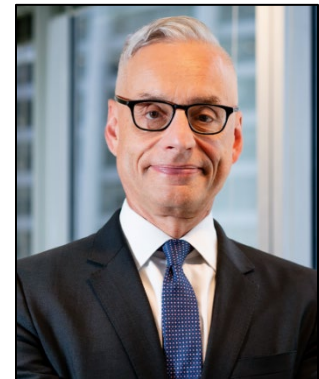
Joseph's excellence in the legal field is underscored by prestigious accolades, including being recognized as a Fellow of The College of Labor & Employment Lawyers and consistently listed in Illinois Super Lawyers from 2008 to 2020. Notably, he holds the title of an Illinois Leading Lawyer in Employment, Labor, and School Law.

Joseph's desire to provide guidance to people and entities facing legal challenges motivated him to become a lawyer. His choice to specialize in education law is rooted in his aspiration to assist educational entities in achieving their objectives.

Before becoming a lawyer, Joseph served as a Human Resources Administrator at The Ohio State University. This role significantly influenced his career trajectory, eventually leading him to become a labor and employment attorney with a specialization in serving educational entities.

Joseph's blue-collar upbringing in a community where education was seen as crucial to advancement profoundly influences his goals, outlook, and approach to the law. Being the first in his family to attend college, he has dedicated himself to education both as a student and as an attorney serving educational entities.

Apart from his legal pursuits, Joseph enjoys writing and outdoor activities. He has been an active supporter of the Chicago Rowing Foundation since 2021, showcasing his commitment to community involvement. A lesser-known fact



PRACTICE AREAS

Board Governance
Education
Employee Benefits
Labor & Employment
Litigation
Municipal
Student Rights

EDUCATION

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

M.A., The Ohio State
University

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

ADMITTED TO PRACTICE

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

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

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

about him is his love for poetry, adding a creative dimension to his multifaceted personality.

AWARDS

Fellow, The College of the Labor & Employment Lawyers
Illinois Super Lawyers, 2008-2020
Illinois Leading Lawyer, Employment, Labor and School Law

RECENT PUBLICATIONS

Contributing author, "Bargaining Implications of Statutory Leave Rights for Public Sector Employees," *State and Local Government Bargaining & Employment Law Committee Midwinter Meeting*, American Bar Association (2024)

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

Contributing author, "Labor Relations: Contract Administration Including ULPs," *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

The Nuts and Bolts of Employee Sexual Misconduct and Grooming Investigations, Large Unit District Association January 2024 Conference (January 2024)

Legal Update, Illinois Community College Chief Financial Officers Spring Conference (April 2022)

Legal Update, Illinois Community College Chief Financial Officers Spring Conference (April 2021)

Hot Legal Topics, Bargaining in a Post-Covid World, Illinois Community College Chief Financial Officers Spring Conference (April 2021)

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

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

ORGANIZATIONS

American Bar Association

Fellow, College of Labor
and Employment Lawyers

Council of School
Attorneys

Federal Bar Association

Illinois Association of
School Business Officials

Illinois Bar Association

National School Boards
Association

Wisconsin Bar Association



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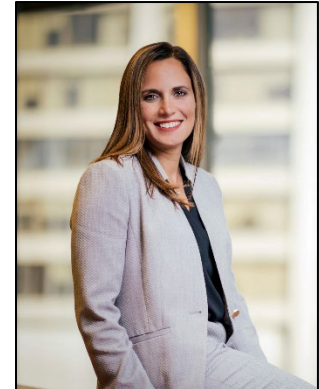
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Caroline A. Roselli is a dedicated attorney specializing in education law, special education and student related issues. Her unwavering commitment is to ensure schools receive the support, advocacy and collaboration they require to deliver quality education to students throughout their programs.

In her practice, Caroline provides invaluable counsel to schools on a broad spectrum of student-related matters. This includes advising on Title IX, discrimination, free speech, student discipline, student records, and related policy development. Caroline's expertise also extends to representation of schools in responding to complaints filed with regulatory bodies such as the Illinois State Board of Education and the Office of Civil Rights.

One of the areas where Caroline excels is representing public school districts at various critical special education proceedings. These include Individualized Education Program (IEP) meetings, due process hearings, and alternative dispute proceedings, such as mediations and resolution sessions. Her track record is notable for successfully defending school district decisions and prevailing at due process hearings, particularly on issues related to eligibility, residential placements, transition programming and denial of Free Appropriate Public Education (FAPE) claims.

Caroline's commitment to the field is further highlighted by her active involvement in the education community. She is a member of the Illinois Counsel for School Attorneys Executive Committee and has been a speaker at annual conferences for both the Illinois Association for School Boards and the Illinois Alliance of Administrators of Special Education. She is also the author and co-author of multiple publications, contributing her expertise to the legal education of her peers and the broader community.



PRACTICE AREAS

Education
Special Education
Student Rights

EDUCATION

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

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Dame

ADMITTED TO PRACTICE

Supreme Court of the
United States

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

ORGANIZATIONS

Chicago Bar Association

Illinois Bar Association

Illinois Council of School
Attorneys

National School Attorneys
Association

Beyond her legal practice, Caroline frequently conducts workshops and in-service programs on various education related topics. Her dedication to educating others within the field demonstrates her passion for promoting a comprehensive understanding of the legal issues facing education institutions.

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

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

RECENT PUBLICATIONS

Co-Author, "Special Education," 2024 Edition School Law Personnel and Student Issues, *Illinois Institute of Continuing Legal Education*

RECENT PRESENTATIONS

Dyslexia: A Panel Discussion on the Legal Requirements and Practical Implications of Servicing Dyslexic Students, Illinois Alliance of Administrators of Special Education 2022 Winter Conference (February 2022)

To Attend or Not to Attend: Chronic Absences in a Post-COVID World, Illinois Alliance of Administrators of Special Education 2022 Fall Conference (October 2022)

Navigating the IEP Process when DCFS is Involved, Illinois Alliance of Administrators of Special Education 2023 Winter Conference (February 2023)

Accommodating the High Achieving Student: Where to Draw the Line under 504, Illinois Alliance of Administrators of Special Education 2023 Fall Conference (October 2023)

Transition Programming: Preparing Students with Disabilities for Life After High School, Illinois Alliance of Administrators of Special Education 2024 Winter Conference (February 2024)



MATTHEW J. GARDNER

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Matthew J. Gardner, a distinguished partner at Robbins Schwartz, boasts a multifaceted legal career spanning various practice areas. With expertise in construction, commercial transactions, real estate, and public finance, Matthew has emerged as a trusted advisor to both private and public project owners.

Matthew's practice revolves around guiding clients through the intricacies of construction and real estate projects. From property acquisition to contract negotiation, bidding, project management, and litigation, his comprehensive approach ensures that his clients navigate each phase of their projects seamlessly. Matthew also offers representation to contractors, subcontractors, and material suppliers, addressing payment claims, lien rights preservation, and defending against defect claims.

In addition to his construction and real estate practice, Matthew extends his legal acumen to the realm of education law and data privacy. Representing school districts, colleges, and educational technology companies, he drafts and negotiates data privacy agreements, software license agreements, and service agreements. He has contributed significantly to evolving legal frameworks in education privacy matters and is renowned for his adeptness in addressing risks associated with data breaches or ransomware attacks.

Beyond his legal practice, Matthew is deeply involved in the legal community. He has served as the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee and is an active member of various legal associations, including the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt also dedicates his time to pro bono services, reflecting his commitment to serving the community.

What sets Matthew apart is his genuine passion for collaborating with colleagues to find innovative solutions to clients' challenges. His dedication to excellence and unwavering commitment to his clients have established him as a leading figure in the legal community.

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 Transactions
Construction
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
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B.S., University of Utah

ADMITTED TO PRACTICE

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

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Illinois Association of
School Business Officials

Illinois Council of School
Attorneys

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

Data Breaches and Ransomware Attacks: Strategies for Preventing and Responding to Cybersecurity Incident, Large Unit District Association 2024 March Conference (March 2024)

Legal Requirements Schools Must Consider for Data Privacy and an Update on the Evolution of Lawsuits Against Schools Arising From Data Breaches, Secured Schools: K-12 Data Privacy and Cybersecurity Conference (January 2024)

Legal Update for Illinois Community College Chief Financial Officers, Illinois Community College Chief Financial Officers Spring Conference (April 2023)

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)



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Christopher R. Gorman practices in the firm's commercial, construction, and real estate practice groups, representing public sector clients in commercial transactions, contracting, construction related transactional matters, and data & privacy law. Christopher 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. Christopher also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Christopher's strengths as an attorney are evident in his approach to law. He brings a unique perspective to the table, given his background as in-house counsel for not-for-profit organizations and public bodies as well as his comprehensive understanding of various practice areas. He values ethical principles and understands the significance of alternative dispute resolution when it aligns with his clients' best interests.

In his legal practice, Christopher finds the most joy in representing individuals who are deeply committed to their roles in public service, recognizing the significance of their contributions. This alignment of values and a shared commitment to public service underscores the core of his legal practice.

Christopher's decision to become a lawyer was deeply rooted in his passion for government and public service. Prior to joining Robbins Schwartz, Christopher served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing. In his career, Christopher has overseen labor relations for the first unionized charter school in the country, assisted in the development of state legislation and administrative rules, and influenced the U.S. and Treasury Department's decision to reintroduce the U.S. Savings Bond as a form of tax refund, promoting savings among low-income families.

Christopher's contributions extend beyond the courtroom. He has authored numerous publications, addressing critical legal issues and serving as a valuable resource for the legal community. He has also been a prominent figure in legal presentations, sharing his insights with fellow professionals.



PRACTICE AREAS

Commercial Transactions
Construction
Labor & Employment
Litigation
Municipal
Real Estate

EDUCATION

J.D., University of
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Dupage County Bar
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Illinois Local Government
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Illinois Association of
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Beyond his legal career, Christopher is a devoted coach for his children's sports activities when given the opportunity. He finds solace in the great outdoors, enjoys cooking, and maintains a commitment to regular exercise. Moreover, he possesses a deep interest in change management and organizational design, which he's cultivated through certification courses.

RECENT PUBLICATIONS

Contributing author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law*, IICLE (2024)

Contributing author, "Competency in ADR: Assuring Ethical Practice through Competency and Communication," *DCBA Brief*, The Journal of the DuPage County Bar Association (2024)

Contributing author, "School District Emergency Purchasing," *UPDATE Magazine*, Illinois ASBO (2024)

Contributing author, "Diving into ADR Ethics: Exploring the Ethical Obligations of Attorneys as Advisors, Advocates, and Third-Party Neutrals" *DCBA Brief*, The Journal of the DuPage County Bar Association (2023)

"Navigating Public Bidding Requirements under the Illinois School Code," *Update*, Illinois Association of School Business Officials (2022)

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)



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Zaria N. Udeh is a dedicated attorney who focuses her practice on education law, specifically in the intricacies of special education and student issues. Zaria is a trusted counselor for school districts, providing guidance on a broad spectrum of matters, from Individual Education Program (IEP) meetings and 504 accommodations to Office for Civil Rights, Illinois State Board of Education, and Illinois Department of Human Rights complaints. She adeptly navigates due process hearings, residency disputes, student discipline matters, and provides expertise in advising on policy and handbook review, first amendment issues, and student privacy and school records matters. Her expertise even extends to Diversity, Equity & Inclusion compliance.

In her role, Zaria finds joy in the dynamic nature of the work. She thrives on the challenges presented, helping educators and administrators to comply with the law and providing them with the legal tools they need to offer the highest quality educational experiences to students. Her strength as an attorney lies in her exceptional listening skills, problem-solving abilities, and her talent for presenting reasonable options to clients. Zaria's devotion to education and the legal aspects surrounding it has been the driving force behind her career choice. For her, there is immense satisfaction in supporting educational entities in fulfilling their missions. Her commitment to this sector has brought her into the dynamic field of education law.

Prior to joining Robbins Schwartz, Zaria's journey into the field of education law was paved by her role at Chicago Public Schools. There, she represented the district as a special education attorney, where she honed her skills in due process matters and special education disputes. Zaria's roots in New England and her multicultural background have instilled in her the value of educational opportunities. She diligently works to support clients in extending these same opportunities to the students and families they serve.

RECENT PUBLICATIONS

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



PRACTICE AREAS

Education
Special Education
Student Rights

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

Illinois Council of School
Attorneys

National Council of School
Attorneys

RECENT PRESENTATIONS

Unpacking the 2024 Title IX Regulations, Superintendents' Commission for the Study of Demographics and Diversity Summer Leadership Conference (June 2024)

How to Get Specific: Defensible SLD Eligibility, Goal Drafting & Instruction, Illinois Alliance of Administrators of Special Education 2024 Winter Conference (February 2024)



EVAN J. DEICHSTETTER

ASSOCIATE, CHICAGO

312.332.7760

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Evan practices in the area of education law with a focus on special education and student rights. He counsels school districts regarding IDEA and Section 504, student discipline, Title IX, student records issues and policy development. He 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 he represents public school districts at IEP meetings, due process hearings, mediations, student discipline hearings and residency hearings.

While attending Chicago-Kent, Evan completed the Labor and Employment law certificate. Evan was a student volunteer for Chicago-Kent's law clinic, aiding their in-house law firm with vaccine injury cases along with employment discrimination matters. Additionally, Evan clerked for Robbins Schwartz during law school.



PRACTICE AREAS

Special Education
Student Rights

EDUCATION

J.D., Chicago-Kent College
of Law

B.A., University of Illinois
at Urbana Champaign

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Justinian Society

PHILIP H. GERNER III

PARTNER, CHICAGO

312.332.7760

pgerner@robbins-schwartz.com

Philip H. Gerner III counsels and represents school districts and community colleges in collective bargaining negotiations, and Illinois Educational Labor Relations Board proceedings, teacher evaluations, remediations and dismissals, employee discipline and discharge issues, grievance arbitration, and other labor and employment issues. Phil has represented educational employers in labor arbitrations, unfair labor practice hearings, tenured teacher dismissals, and Illinois Department of Human Rights and Equal Employment Opportunity Commission 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 reduction-in-force of tenured teachers.

As a Partner of the firm, Phil's greatest asset is counseling clients how to successfully navigate difficult labor and personnel issues. His ability to provide practical, effective solutions to challenging legal and personnel problems is based upon his many years of experience in education and labor law. His skill in working effectively with negotiation teams to devise and execute strategies that fulfill the board's critical objectives is a hallmark of his strength as an attorney.

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)



PRACTICE AREAS

Education
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

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Illinois Council of School
Attorneys

THOMAS C. GARRETSON

PARTNER, CHICAGO

312.332.7760

tgarretson@robbins-schwartz.com

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. Tom also worked with the U.S. Equal Employment Opportunity Commission's Enforcement Unit while in law school.

Outside of Robbins Schwartz, Tom is a die-hard sports fan and, despite living in Chicago for over a decade, his heart still belongs to his hometown Detroit teams as well as the Michigan State Spartans.

RECENT PUBLICATIONS

"New Supervisors, Take Caution: Seventh Circuit Concludes Sudden Changes from New Management Could Constitute Age Discrimination," *Employment & Labor Law Flashpoints*, IICLE (2024)

"Illinois Employers Take Note: Expanded Bereavement Leave Requirements Now in Effect," *Employment & Labor Law Flashpoints*, IICLE (2024)

"IDOL Publishes Proposed Rules for the Illinois Paid Leave for All Workers Act," *Employment & Labor Law Flashpoints*, IICLE (2023)

"Illinois Employers Required to Provide Transportation Benefits Starting in 2024," *Employment & Labor Law Flashpoints*, IICLE (2023)

"Mandatory Paid Leave for Employees Coming to Illinois in 2024," *Employment & Labor Law Flashpoints*, IICLE (2023)

Contributing author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law*, IICLE (2024)



PRACTICE AREAS

Employee Benefits
Labor & Employment
Municipal

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

"Illinois Supreme Court – Federal Labor Law Preempts BIPA Claims Brought by Union Employees," *Employment & Labor Law Flashpoints*, IICLE (2023)

"Illinois Imposes New Pay Transparency Requirements on Employers," *Employment & Labor Law Flashpoints*, IICLE (2023)

"Illinois Department of Labor Adopts New Expense Reimbursement Rules for Employers," *Employment & Labor Law Flashpoints*, IICLE (2023)

"Seventh Circuit: Illinois Whistleblower Act Does Not Protect Those Asserting Violation of Another State's Laws," *Employment & Labor Law Flashpoints*, IICLE (2022)

"Amendments to ODRISA Impose New Requirements on Illinois Employers," *Employment & Labor Law Flashpoints*, IICLE (2022)

"First District Appellate Court Concludes Personnel Record Review Act Does Not Require Employers To Provide Copies of Records to Employee's Legal Representative," *Employment & Labor Law Flashpoints*, IICLE (2022)

RECENT PRESENTATIONS

Navigating Payroll Laws, Illinois Association of School Business Officials Bookkeepers Conference 2024 (March 2024)

Collective Bargaining Overview and Tips for Negotiations, Community College Trustee Professional Development Training, Illinois Community College Trustee Association Annual Conference (June 2023)

Navigating Payroll Laws – Wages and Recordkeeping Requirements, IASBO Bookkeepers Conference (March 2023)

Best Practices for Responding to Harassment and Discrimination Complaints, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Nuts & Bolts of Arbitration, Chicago-Kent Public Sector Labor Law Conference (December 2022)



KEVIN P. NOLL

PARTNER, CHICAGO

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Kevin P. Noll's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, park districts 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.

As an attorney, Kevin strives to cut through complexity to provide clients with practical answers and pragmatic solutions.

Beyond his legal work, Kevin's interests include golf and spending quality time with family and friends.

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine

RECENT PUBLICATIONS

Contributing author, "Employee Discrimination," *Illinois School Law*, IICLE (2021, 2024)

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

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

RECENT PRESENTATIONS

Benefit or Burden: Navigating Ever-Expanding Employee Leave Rules, Illinois Association of Park Districts Legal Symposium (November 2023)

Calculating Overtime: Am I Doing It Right? Illinois Association of School Boards Bookkeepers Conference (March 2023)



PRACTICE AREAS

Education

Labor & Employment
Litigation

EDUCATION

J.D., The University of
Illinois Chicago School of
Law

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

Managing Employee Leave Rights Under the FMLA, ADA, and Illinois Law, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Best Practices for Responding to Harassment and Discrimination Complaints, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Addressing Employee Mental Health Conditions, Illinois Association of Park Districts Legal Symposium (November 2022)

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



HOLLY E. JACOBS

ASSOCIATE, CHICAGO

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Holly counsels employers on many aspects of labor and employment law, including employee discipline, internal investigations, federal and state employment discrimination matters, labor relations, and Title IX investigations and compliance. She represents both private and public sector employers and advises school districts, municipalities, and institutions of higher education.

Prior to joining Robbins Schwartz, Holly clerked at a private higher education firm, interned with the Equal Employment Opportunity Commission and Chicago Public Schools, and served as a judicial extern for the Honorable Judge Virginia M. Kendall of the United States District Court for the Northern District of Illinois. She received her Juris Doctor from Loyola University Chicago, where she also completed a master's degree in Cultural and Educational Policy Studies. Her master's thesis focused on legal reparations and decolonization efforts regarding Indigenous boarding schools in Canada and the United States. During law and graduate school, she served as the Editor-in-Chief of the Loyola International Law Review, and published articles at Loyola University Chicago and Columbia University. Prior to law school, Holly taught English as a Second Language in Nordhorn, Germany.

Holly is a member of the American Educational Research Association, which is a national research society dedicated to advancing knowledge about education and promoting the use of research to improve education and serve the public good. She was selected as a peer reviewer for research paper submissions to AERA's 2024 Annual Meeting.

AWARDS

American Educational Research Association - selected reviewer for submissions to AERA 2024 Annual Conference; Panels reviewed: De/Colonization and Transformative Curriculum Studies; Legal and Judicial Issues for Equity and Access; Decolonial, Postcolonial, and Anti-Colonial Studies in Education; Indigenous Peoples of the Americas; and Law and Education.

RECENT PUBLICATIONS

Contributing author, "Employee Discrimination," *Illinois School Law*, IICLE (2024)

Jacobs. H (2023). Decolonizing a Settler Colonial State: How Canada and the United States Have Approached Investigations into Indigenous Boarding and Residential Schools



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., *cum laude*, Loyola University Chicago

M.A., Loyola University Chicago

B.A., *magna cum laude*, University of Montana

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Member, American Educational Research Association

AARON J. KACEL

ASSOCIATE, CHICAGO

312.332.7760

akacel@robbins-schwartz.com

Aaron has dedicated his career to guiding employers through the intricate landscape of labor and employment law. Aaron offers counsel on a spectrum of labor and employment matters, including conducting internal investigations, managing employee discipline, promoting harmonious labor relations, and devising comprehensive workplace policies. He is well-versed in navigating the complexities of state and federal labor and employment legislation, including statutes like the Illinois Human Rights Act, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Occupational Safety and Health Act, Uniformed Services Employment and Reemployment Rights Act, Title VII, and other related laws.

In addition to his advisory role, Aaron represents employers in litigation and before administrative agencies such as the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, the U.S. Department of Labor, and the Illinois Department of Labor.

Aaron's expertise also extends into traditional labor law, where he handles labor arbitrations, grievance proceedings, and the negotiation of collective bargaining agreements on behalf of employers.

A committed advocate for inclusive work environments, Aaron conducts trainings for employers on topics such as best practices for internal investigations, strategies for preventing charges of unlawful discrimination and harassment in the workplace, and identifying and managing implicit bias across various sectors.

Aaron is also an active member of the firm's DEI Compliance practice area and First Amendment Rapid Response Team.

Within Robbins Schwartz, Aaron is the Associate Representative to the firm's Diversity, Equity, and Inclusion Leadership Committee and Co-Chair of the Diversity & Awareness Planning Subcommittee. He consistently champions diversity and equity initiatives within the firm.

Before joining Robbins Schwartz, Aaron served as in-house employment law counsel for the Cook County Sheriff's Office. He has previously worked for the City of Chicago and an international law firm. During his time at Northwestern University Pritzker School of Law, Aaron served as Managing Executive Editor of the *Northwestern Journal of Law & Social Policy* and the President and Founder of the Northwestern Labor & Employment Law Society. He also served as a judicial extern for the Honorable Judge Joan B. Gottschall of the United States District Court for the Northern District of Illinois.



PRACTICE AREAS

DEI Compliance
Education
Employee Benefits
Labor & Employment
Litigation
Municipal

EDUCATION

J.D., Northwestern
University Pritzker School
of Law

B.A., Washington
University in St. Louis,
magna cum laude, high
distinction

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Secretary, Associate
Board, Lawyers for the
Creative Arts

Chair, Labor and
Employment Committee,
Chicago Bar Association,
Young Lawyers Selection

RECENT PUBLICATIONS

Contributing author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law*, IICLE (2024)

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)

"When It Happens to You: Responding to Reports of Harassment and Discrimination," Law Arts Blog, Lawyers for the Creative Arts (July 2022)

RECENT PRESENTATIONS

Navigating Payroll Laws: Wages and Record Keeping Requirements, Illinois Association of School Business Officials Bookkeepers Conference (March 2023)

The Peanut Butter and Jelly Effect: Understanding Implicit Bias and Its Impact on Educators, Illinois Association of School Administrators Legal Workshop (February 2023)

2022 Hot Topics in Labor and Employment Law, Chicago Bar Association (February 2023)

Chair, Vice Chair, Secretary, Board of Directors, About Face Theatre (2018-2021)

Co-Chair, LGBTQ+ Alumni Affinity Group, Northwestern Pritzker School of Law

Co-Chair, Washington University in St. Louis Alumni and Parents Admission Program, Chicago North Shore



MICHAEL A. BARRACATO

ASSOCIATE, CHICAGO

312.332.7760

mbarracato@robbins-schwartz.com

Michael A. Barracato is an Associate within the Student Rights group at Robbins Schwartz. His commitment to making a difference is reflected in his dedication to serving clients and upholding the principles of justice and equity. Michael's journey into the legal profession has been shaped by his unique background and experiences.

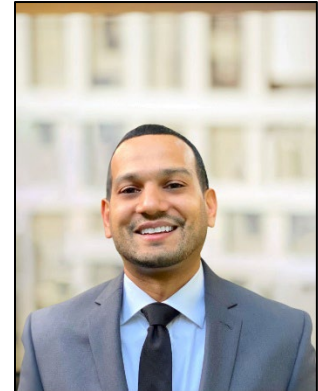
As an attorney, Michael excels in crafting creative solutions to intricate legal problems. His background in education has equipped him with a unique perspective and insight into the intersection of education and law. He is committed to providing knowledgeable and empathetic advocacy for educational institutions, families, and students.

Michael's strengths as an attorney include his ability to navigate complex educational regulations, handle disciplinary proceedings, and ensure the rights of students and staff are upheld. His innovative approach to problem-solving has led to successful outcomes for his clients.

Michael's career path was inspired by his firsthand experience with the impact of legal issues on educational settings. Motivated to merge his knowledge of educational systems with legal advocacy, he pursued a career in law. Michael's decision to specialize in educational law was driven by his desire to address the unique challenges faced by schools, students, and families.

Prior to embarking on his legal career, Michael served as an Assistant Principal, where he navigated a wide range of issues, from student discipline to staff management. Through this role, Michael gained invaluable experience in critical thinking, conflict resolution, and effective communication. His experience provided him with a deep understanding of the complexities of educational environments, preparing him to handle diverse client needs with empathy and expertise. These skills have been instrumental in his transition to the legal field.

Michael's upbringing in New York's diverse cultural landscape has instilled in him a deep appreciation for various perspectives and backgrounds. This diversity informs his legal practice, particularly in education law, where inclusivity and understanding are paramount.



PRACTICE AREAS
Student Rights

EDUCATION
J.D., The John Marshall
Law School

ADMITTED TO PRACTICE
Supreme Court of Illinois
(pending admission)

ORGANIZATIONS
American Bar Association

Chicago Bar Association

KENNETH M. FLOREY**PARTNER, CHICAGO & LISLE**

312.332.7760

kflorey@robbins-schwartz.com

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

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

MEDIATOR CERTIFICATE: Northwestern University 2017**AWARDS**

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

Illinois Association of School Business Officials, Above and Beyond Award

Illinois Institute for Local Government Law, Litigation Award

RECENT PUBLICATIONS

Contributing author, "Competency in ADR: Assuring Ethical Practice through Competency and Communication," *DCBA Brief*, The Journal of the DuPage County Bar Association (2024)

Contributing author, "Navigating Construction Disputes: *The inevitable construction disputes can be navigated with a combination of knowledge, preparation, and outside guidance*," School Business Affairs (November 2023)

Contributing author, "Diving into ADR Ethics: Exploring the Ethical Obligation of Attorneys as Advisors, Advocates, and Third-Party Neutrals," *DCBA Brief* (November 2023)

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)

**PRACTICE AREAS**

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

EDUCATION

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

B.A., University of Illinois
at Urbana Champaign

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

Contributing author, "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, "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

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)



LOGAN K. SWEENEY

ASSOCIATE, CHICAGO

312.332.7760

lsweeney@robbins-schwartz.com

Logan K. Sweeney is a member of the firm's construction, commercial transactions, public finance & taxation, and real estate practice groups. Logan represents private and public project owners, including school districts, community colleges, park districts, and municipalities. She assists with construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, and any resulting litigation.

Logan's professional journey revolves around her love for working with clients who are equally passionate about what they do. She finds immense satisfaction in collaborating with individuals and businesses to navigate complex legal matters and to chart a course toward success. Her approach to legal practice is marked by empathy, understanding, and a determination to serve her clients' best interests.

Prior to joining Robbins Schwartz, Logan worked at a transactional law, litigation, and government relations law firm in Chicago, Illinois where she gained experience in a wide array of practice areas. Logan now utilizes her diverse legal background and experience to best serve Robbins Schwartz and its clients.

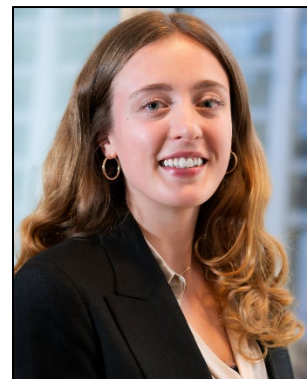
Outside of the legal realm, Logan enjoys embarking on culinary adventures by trying new restaurants, embracing the joy of running, and traveling.

RECENT PUBLICATIONS

Contributing author, "School District Emergency Purchasing," *UPDATE Magazine*, Illinois ASBO (2024)

RECENT PRESENTATIONS

Co-presenter, *Best Practices When Responding to a Data Breach or Cyber Incident*, Secured Schools: K-12 Data Privacy and Cybersecurity Conference (January 2024)



PRACTICE AREAS

Commercial Transactions
Construction
Labor & Employment
Municipal
Public Finance & Taxation
Real Estate
Zoning, Planning & Land Use

EDUCATION

J.D., Loyola University
Chicago School of Law

B.A., University of
Minnesota, Twin Cities

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 A. Metz is an experienced legal professional known for his expertise in advising and representing various private and public entities, including school districts, community colleges, park districts, and municipalities. His legal practice spans a range of areas, with a primary focus on real estate, commercial transactions, construction law, and land use and zoning matters.

Howard has made significant contributions, particularly in resolving complex construction cases. His expertise includes handling disputes related to architectural fees, construction defects, bidding issues, and construction delays. Additionally, Howard has been actively involved in litigating matters pertaining to zoning laws and municipal control over school property.

Howard's legal practice is diverse and includes areas such as commercial law, construction law, education law, energy law, litigation, municipal law, public finance and taxation, real estate law, and zoning, planning, and land use.

As a prolific writer, Howard has contributed to various publications, sharing his insights on topics crucial to his practice.

RECENT PUBLICATIONS

Contributing author, "School District Emergency Purchasing," *UPDATE Magazine*, Illinois ASBO (2024)

"Navigating Public Bidding Under the Illinois School Code" *UPDATE Magazine*, Illinois ASBO

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, Read Retrieval Imperative](#)," *Chicago 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*, Illinois ASBO (2018)

Contributing author, "Organization, Finance, and Property," Illinois School Law, Illinois Institute for Continuing Legal Education (2017)



PRACTICE AREAS

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

EDUCATION

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

B.S., Political Science,
University of Iowa

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Illinois Association of
School Business Officials

Illinois Council of School
Attorneys

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

Contributing author, *"School Property and Environmental Issues," Illinois School Law, Illinois Institute for Continuing Education Legal Education (2010 and 2012)*

RECENT PRESENTATIONS

Innovative Solutions to Student Transportation Challenges, Illinois ASBO School Business Essentials Lunch & Learn Series (January 2024)

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

Legal Considerations Related to Renewable Energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (November 2021)



MICHELLE L. WEBER

PARTNER, CHICAGO

312.332.7760

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Michelle L. Weber practices in education law, with a primary focus on special education and student matters. Michelle brings a wealth of experience to her role at Robbins Schwartz, representing educational institutions, including school districts, community colleges and private schools. Michelle works with clients on a wide range of student-related legal issues, including special education, student discipline, student records, free speech, and board policy development. Michelle is also a member of the firm's *Freedom of Information Act* and Title IX working groups and provides counsel to clients in these areas as well.

Michelle is passionate about education and her strengths lie in finding creative and practical solutions to complex legal issues. Prior to joining Robbins Schwartz, she served as an in-house attorney for Waukegan Public Schools and Chicago Public Schools, focusing on special education. Michelle began her career as a Teach for America Corps Member and middle school language arts teacher; an experience that significantly influenced her career trajectory. Drawing on her experience as a classroom teacher, Michelle offers clients a unique perspective, aiming to partner with them to achieve their goals while prioritizing the best interests of students.

Beyond her legal practice, Michelle actively contributes to the community. She serves on the Board of Directors of North Park Elementary School, expanding her commitment to education and experience in the field. Outside of her professional pursuits, Michelle enjoys running, yoga, hiking, and spending quality time with her family.

RECENT PUBLICATIONS

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

RECENT PRESENTATIONS

Student Discipline and Trauma-Informed Practices for School Boards, Illinois State Board of Education Approved Professional Leadership Development Training (May 2023)

Navigating the IEP Process when DCFS is Involved, Illinois Alliance of Administrators of Special Education (February 2023)

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
Special Education
Student Rights

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

National Council of School
Attorneys

Board of Directors, North
Park Elementary School

NIKI LAMPRINAKOS

PARTNER, CHICAGO

312.332.7760

nlamprinakos@robbins-schwartz.com

Nikoleta Lamprinakos is an experienced trial lawyer who concentrates her practice in the defense of government officials and governmental entities in civil rights, employment and tort claims against both governmental bodies and officials, including municipal entities, school districts, police departments and park districts. She has handled a multitude of complex litigation matters in both the federal and state courts.

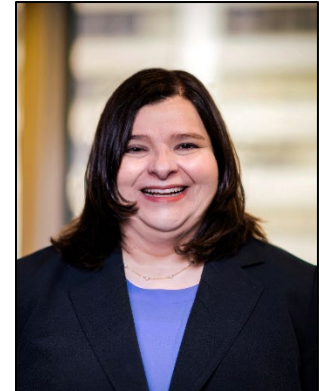
Nikoleta has successfully represented governmental entities and their employees at the trial and appellate level in both state and federal court. She has successfully litigated cases before the Federal District Court for the Northern, Central and Southern District of Illinois as well as the Circuit Courts of Cook, DuPage, Lake and Will, Kane, Kendall, and various downstate venues as co-lead counsel and second chair counsel.

Most recently, Nikoleta was co-lead counsel in a civil rights excessive force and unreasonable search case brought by a mother and daughter against five police officers where she obtained a not guilty jury verdict on all counts on behalf of all officers. Additionally, Nikoleta leads the firm's litigation practice group for associates and helps mentor new associates. She is also consistently demonstrating her professional commitment by annually contributing to the IASB Guide to New Statutes, where she plays an integral role in preparing Litigation Section.

Nikoleta's journey began as a legal secretary and paralegal fresh out of college. This strategic choice allowed her to gain a comprehensive understanding of the legal landscape from multiple vantage points. It was her way of meticulously preparing for the path she had always envisioned - becoming a lawyer.

Nikoleta's background and upbringing further enriched her perspective. Growing up as the child of immigrant parents, she witnessed their relentless pursuit of the American Dream, starting with humble beginnings and culminating in the construction of a good life. Their remarkable journey left an indelible mark on her, instilling values of hard work, determination, and the relentless pursuit of opportunities.

In her commitment to community welfare, Nikoleta is an active member of her church's philanthropic society. Here, her passion for giving back finds expression as they identify worthy causes in need of support. Together, they orchestrate fundraisers to provide meals, shelter, clothing, and financial assistance to those facing adversity.



PRACTICE AREAS

Education
Labor & Employment
Litigation
Municipal

EDUCATION

J.D., Chicago Kent College
of Law

M.P.A., University of
Illinois at Chicago

B.A., University of Illinois
at Chicago

ADMITTED TO PRACTICE

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

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

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Defense Research
Institute (DRI)

Hellenic Bar Organization

Illinois State Bar
Association

AIDAN C. FALK

ASSOCIATE, CHICAGO

312.332.7760

afalk@robbins-schwartz.com

Aidan C. Falk is an Associate Attorney renowned for her dedication to advocacy and passion for equality in the legal profession. Through focusing on Litigation, Education Law, and Student Related Issues, Aidan brings a unique perspective to her practice. With a background rooted in sports and a commitment to serving her community, she has become known for her unwavering commitment to her clients and her strong advocacy skills.

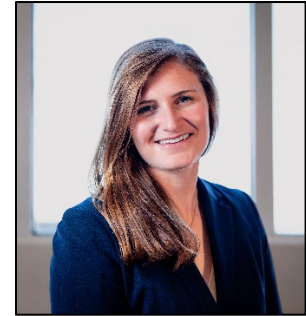
Aidan takes pride in her ability to work hard and ensure her clients receive the fullest degree of representation. Her career highlights include successful motions to dismiss and motions for summary judgment, as well as her continuous improvement in deposition and courtroom skills.

Aidan's journey into law began with a diverse range of experiences. Before attending law school, she worked as a legal assistant in a Real Estate/Estate Planning law firm in Chicago.

Inspired by her father, a litigator in New York, Aidan pursued a career in law to advocate for those who cannot advocate for themselves. She was drawn to the competitive and dynamic nature of litigation and began her journey in the medical malpractice/general liability/insurance defense world. Recently, Aidan shifted her focus to Education Law, particularly Title IX, influenced by her experiences playing softball at the University of Michigan under Coach Carol "Hutch" Hutchins, a Title IX pioneer.

Growing up witnessing her father's zealous advocacy and playing for Coach Hutch at the University of Michigan instilled in Aidan a desire to make a positive impact through her career. She approaches the law with the same dedication and discipline as she did athletics, striving to improve every day and make equality more attainable for all.

Outside of work, Aidan enjoys staying active and spending time outdoors. Her hobbies include running, rollerblading, and Pilates. She cherishes moments outdoors with her dog and finds joy in being surrounded by nature.



PRACTICE AREAS

Education
Litigation
Student Related Issues

EDUCATION

J.D., Loyola University
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

Illinois State Bar
Association