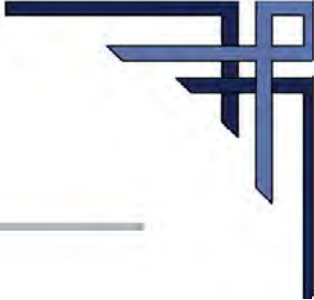



2024 School Administrators' Conference

October 9, 2024

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

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SCHOOL ADMINISTRATORS' CONFERENCE October 9, 2024

AGENDA

8:00 a.m. – 8:30 a.m.	REGISTRATION/BREAKFAST
8:30 a.m. – 10:00 a.m.	GENERAL SESSION
Grand Ballroom A/B	Walking A Thin Line: Employee & Student Speech Rights On and Off Campus <i>Presented by: Joseph J. Perkoski and Caroline A. Roselli</i>
10:00 a.m. – 10:15 a.m.	Break / Switch Rooms
	<i>PLEASE SELECT ONE TOPIC TO ATTEND</i>
10:15 a.m. – 11:15 a.m.	Session 1
Grand Ballroom A	Responding to Employee Leave and Accommodation Requests in the Evolving Modern Workplace <i>Presented by: Kevin P. Noll and Holly E. Jacobs</i>
Grand Ballroom B	Anxiety and School Refusal: Collaboratively Constructing the Path Back to School <i>Presented by: Laura M. Sinars and Hannah M. May</i>
Cyprus Room, Floor 12	Understanding Construction Litigation and Planning for Success <i>Presented by: Kenneth M. Florey and Katie DiPiero</i>
11:15 a.m. – 11:30 a.m.	Break / Switch Rooms
11:30 a.m. – 12:30 p.m.	Session 2
Grand Ballroom A	Employment Rules for Schools: 10 Legislative Updates for HR Professionals <i>Presented by: Catherine R. Locallo and Matthew M. Swift</i>
Cyprus Room, Floor 12	Mastering the Complex World of Public Bidding <i>Presented by: Howard A. Metz and Logan K. Sweeney</i>
Santorini Room, Floor 2	Lunch 1
12:30 p.m. – 12:45 p.m.	Break / Switch Rooms
12:45 p.m. – 1:45 p.m.	Session 3
Grand Ballroom B	Complex Parent Demands: Best Practices and Legal Pitfalls When Responding to Difficult Requests <i>Presented by: Zaria N. Udeh and Hayley A. Willian</i>
Santorini Room, Floor 2	Lunch 2
1:45 p.m. – 2:00 p.m.	Break / Switch Rooms
2:00 p.m. – 3:00 p.m.	Session 4
Grand Ballroom A/B	Lessons Learned from Title IX Litigation <i>Presented by: Michelle L. Weber, Nikoleta Lamprinakos, and Aidan C. Falk</i>
Cyprus Room, Floor 12	Labor and Union Issues Affecting School Construction Projects (2:00 p.m. – 2:30 p.m.) <i>Presented by: Howard A. Metz and Logan K. Sweeney</i>
	Property Tax Disputes and Protecting Your Tax Base (2:30 p.m. – 3:00 p.m.) <i>Presented by: Brittany Flaherty Theis and Scott L. Ginsburg</i>



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

October 9, 2024

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Introduction



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Agenda

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



3



4



5



6



7

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 school districts are considered governmental entities.
- Public school districts 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.
- There are also special exceptions for regulating K-12 student speech.



10

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

Bethel School District v. Fraser, 478 U.S. 675 (1986)

- Student gave a speech in front of the entire high school student body.
 - The speech included lewd innuendos and metaphors.
 - The District suspended the Student.
- The Supreme Court held a District is allowed to prohibit the use of lewd or offensive speech in schools because such speech goes against the “fundamental values of a public-school education.”
- Limits the *Tinker* rule by allowing regulation of lewd or vulgar student speech.



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Student Free Speech Rights

Morse v. Frederick, 551 U.S. 393 (2007)

- Student held up a poster at a school-supervised event that said, “Bong Hits 4 Jesus”. The District suspended the student for violating a school policy against encouraging illegal drug use.
 - The Student argued their free speech rights were violated because they were suspended for the content of the poster, and there was no showing of a disruption caused by the speech.
- The Supreme Court held a District does not violate a student’s First Amendment rights by censoring speech that encourages illegal drug use.
- Limits the *Tinker* rule by allowing a District to regulate student speech that encourages illegal activity.



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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 employer because she was speaking on matters of "personal and internal office issues", and not on "public concern".
- Adds the "public concern" 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 (a district) 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 district property
- ✓ Use of district intellectual property

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Case Example

Kennedy v. Bremerton (2022)

- A high school football coach conducted a prayer with students during and after school football games.
- The District prohibited the coach from continuing this practice, citing Establishment Clause concerns.



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Kennedy v. Bremerton

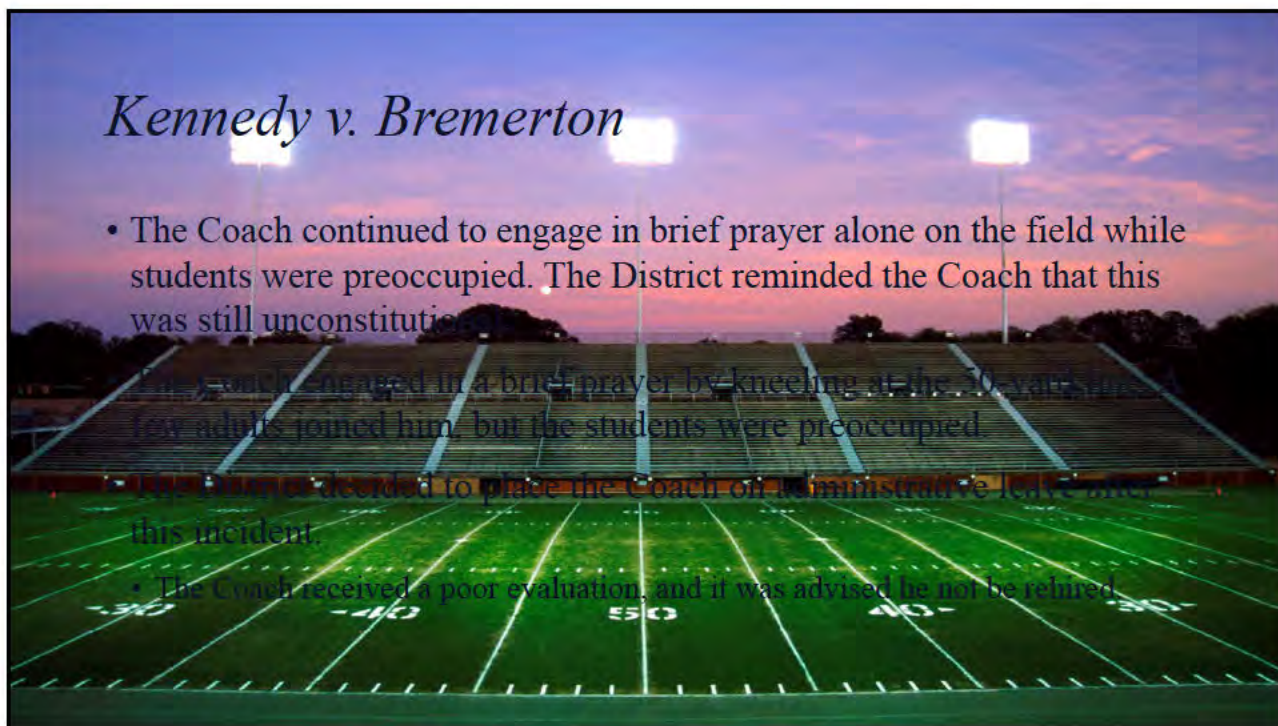
- The Coach began praying at the end of each football game.
- It started off as just the Coach doing so, but over time some of the players wanted to join.
- The Coach indicated he never pressured anyone to join.
- This practice continued for seven years.
- It wasn't until a District employee made a positive comment about the prayers to the Superintendent that the District was made aware of the practice.

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Kennedy v. Bremerton

- The District initially advised the Coach to:
 - Avoid any motivational “talks with students” that “include[d] religious expression, including prayer,” and to avoid “suggest[ing], encourag[ing] (or discourag[ing]), or supervis[ing]” any prayers of students, which students remained free to “engage in”; and
 - Ensure any religious activity by the Coach must be nondemonstrative.
- In response, the Coach:
 - Ceased the group prayers; and
 - Requested that he be allowed to privately pray on the field after students leave.
- In response to the Coach’s request, the District:
 - Prohibited the Coach from engaging in any overt act of religious expression while on duty as Coach.

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Kennedy v. Bremerton

- The Coach continued to engage in brief prayer alone on the field while students were preoccupied. The District reminded the Coach that this was still unconstitutional.
- The Coach engaged in a brief prayer by kneeling at the 50-yard line. A few adults joined him, but the students were preoccupied.
- The District decided to place the Coach on administrative leave after this incident.
- The Coach received a poor evaluation, and it was advised he not be rehired.

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Kennedy v. Bremerton

The Coach's Argument • Free Exercise Clause rights • Free Speech Clause rights • He did not encourage others to join. • He prayed during times students were involved in other activities.	The District's Argument • Permitting the prayer could result in the perception that the District endorsed the religious activity
---	--


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Kennedy v. Bremerton

- The Supreme Court relied on the First Amendment's free speech and free exercise clauses.
- They held prohibiting the Coach's "speech" in engaging in prayer was a violation of his First Amendment rights.

Free Speech Clause Analysis

- (1) The Coach was not acting in his official duties
 - The prayers occurred after the games, during which students were involved with other activities
- (2) The District's interest did not outweigh the Coach's right to exercise his free speech rights



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Question:

Do you think the decision would have been different if the Coach's prayers were more overt or perceived as compulsory by the players?



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Case Example

Hedgepeth v. Britton – Pending Appeal

- High school teacher made several social media posts in response to the George Floyd/BLM protests
 - “Now that the civil war has begun I want to move”
 - “I need a gun and training”
 - “I find the term ‘white privilege as racist as the ‘N’ word”
 - Reposting a meme that said, “Wanna stop the riots? Mobilize the septic tank trucks, put a pressure cannon on em...hose em down... the end.”



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Hedgepeth v. Britton

- District received many complaints
 - Approximately 135 emails and phone calls
 - District issued a statement apologizing and clarifying that posts “do not reflect the values of the district”.
- After investigating, the Superintendent recommended Hedgepeth be dismissed due to:
 - (1) her prior disciplinary record;
 - (2) the content of the Facebook posts themselves;
 - (3) the reaction of the community; and
 - (4) Hedgepeth’s own lack of awareness when confronted with the comments.



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Hedgepeth v. Britton

(1) The Teacher had a dismissal hearing before the IL State Board of Education.

- The hearing officer used the *Pickering* balancing test to determine there was no First Amendment free speech violation.
- The school's interest of having efficient operations outweighed the Teacher's free speech interests.

(2) The Teacher filed suit arguing a violation of her First Amendment rights.



Hedgepeth v. Britton

- The District did not dispute that the Teacher spoke as a private citizen on matters of public concern.
- The District thus had the burden of showing their interests in promoting efficient operations outweighed the Teacher's free speech interests.
 - i.e., the *Pickering-Connick* Test
- The Court held that balancing test weighed in favor of the District.
- The District provided evidence of significant disruption as a result of the Teacher's posts.

Hedgepeth v. Britton

- “Heckler’s Veto” consideration
 - The Court also considered whether the District’s dismissal of the Teacher due to the disruption amounted to a “Heckler’s Veto”.
- “Heckler’s Veto”:
 - A public institution cannot prohibit “unpopular” speech merely because of “audience reaction”
 - Usually in the context of “outsiders” commenting on their dismay of particular speech
- The Court here held there was no “Heckler’s Veto” issue because the “audience” was not outsiders, but students who attended the District and their parents.



Hedgepeth v. Britton



This case was appealed.

- 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.

Mahanoy Area School District v. B.L. (2021)

A student tried out for the varsity cheerleading team but did not make the cut.

- In response, the student was upset and posted two photos that included “vulgar language and gestures” to her Snapchat story.

The District was notified about the posts and subsequently suspended the student from the JV cheerleading team for the rest of the year.



Mahanoy Area School District v. B.L.

Student's Argument

Argued her First Amendment free speech rights were violated because there was no disruption at school as a result of her off-campus social media posts.

District's Argument

Argued the District has an interest in punishing the use of vulgar language and they were attempting to prevent disruption.

Mahanoy Area School District v. B.L.

- The Supreme Court considered the following three factors pertaining to “off-campus” speech:
 1. A school rarely takes the place of a parent when a student speaks off campus.
 2. Regulating off-campus speech in addition to on-campus speech would mean a school could regulate a student’s speech 24/7.
 3. Schools have an interest in protecting a student’s unpopular expression, especially when it takes place off-campus.



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Mahanoy Area School District v. B.L.

- The Supreme Court held in favor of the student
 - (1) The District’s interest in regulating vulgar speech did not outweigh the student’s freedom of expression off-campus; and
 - (2) There was no disturbance that arose or would rise to the level of “disruption” per *Tinker*
- However, the Supreme Court did note:
 - “[A] school’s regulatory interests remain significant in some off-campus circumstances.”
 - Ex: severe bullying or harassment, threats, security breaches



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Case Example:

L.M. v. Town of Middleborough, Massachusetts (2024)

- Nichols Middle School in Massachusetts has a dress code policy that includes:
 - Clothing must not state, imply, or depict hate speech or imagery that target groups based on race, ethnicity, gender, sexual orientation, gender identity, religious affiliation, or any other classification.
 - Any other apparel that the administration determines to be unacceptable to our community standards will not be allowed.
- **A Student wore a t-shirt to school that said, "There Are Only Two Genders"**



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L.M. v. Town of Middleborough, Massachusetts

- The Principal told the Student he could not wear the shirt because (1) students and staff had complained and (2) it violated the dress code by targeting a protected class of students.
 - The Student says he did not observe anyone upset about his shirt.
 - The Student was allowed to wear other shirts to school with messages like: "Don't Tread on Me" or "Let's Go Brandon".
- After the initial incident, the Student wore the shirt again but put tape on the words "Only Two". He was again requested to remove the shirt by administration.

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L.M. v. Town of Middleborough, Massachusetts

- The Student filed for a preliminary injunction, arguing his First and Fourteenth Amendment rights were violated.
 - o Specifically, he argued the School engaged in viewpoint discrimination by only restricting his shirt pertaining to gender identity and sexual orientation.
- In the legal action, the Student challenged the School's two actions:

March 21, 2023 Enforcement

The first instance when the Student wore the shirt to school and was requested to remove it.

May 5, 2023 Enforcement (Taped T-Shirt)

The second instance when the Student wore the shirt with tape covering the words "Only Two" and was again requested to remove it.



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L.M. v. Town of Middleborough, Massachusetts

March 21, 2023 Enforcement

- The Court agreed with the School that even though the shirt did not target a specific student, a protected group of students would not feel safe.
- The Court relied on prior decisions that Schools may consider students' safety as a factor when suppressing speech.
- The Court also cited *Tinker*: schools have a special interest in regulating speech that invades the rights of others.

May 5, 2023 Enforcement (Taped T-Shirt)

- The Court determined the taped shirt had the same underlying message as wearing the shirt without tape.
- Since the Court concluded the School was allowed to restrict the Student from wearing the shirt initially, they held the same for the taped shirt.
- The Student also argued that the act of covering up some of the words with tape was a protected form of protest. The Court did not agree with this argument, and held the act of wearing the taped shirt presented the same concerns as before.



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Legal Recap and Useful Tools

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Legal Background: Students Recap

Public School Districts:

- ✓ Can censor student speech if it creates a substantial disruption.
- ✓ Can regulate student speech that is vulgar, obscene, or promotes illegal activities.
- ✓ Generally, cannot regulate student speech off-campus except in certain circumstances.
- ✓ Can impose time, place, and manner limitations.

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Legal Background: Employee Recap

Public School Districts:

- ✓ Must balance their interests in efficient operations with the interests of employee's free speech interests.
- ✓ Cannot regulate employee speech made as a private citizen on matters of public concern (unless there is a showing of significant disruption that outweighs the employee's free speech interests).
- ✓ Cannot prohibit unpopular expression merely because of audience reaction.



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Guidance and Takeaways

Student Speech

- 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.
 - When speech or expression becomes disruptive or creates safety concerns or threats, the District can intervene. But remember: Censorship should be a last resort.
- Districts can regulate student speech that is unprotected.
 - Examples: obscenities, vulgar language, promoting illegal activities, fighting words, etc.



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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.
 - Districts have diminished capabilities in regulating off-campus speech, including on social media.
- Districts can place reasonable time, place, and manner restrictions on student speech and expression.



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Guidance and Takeaways

Public Employee Speech

- Be mindful that public employees also have first amendment free speech protections.
- 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.
- When taking an adverse employment action against an employee, consider whether the employee's freedom of speech outweighs the school's goal of maintaining efficient operations.



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Guidance and Takeaways

Public Employee Speech

- Schools can regulate employee speech when it is made during their official duties.
- Schools have less ability to regulate employee speech when not in the course of their duties (ex. on social media).
 - However, a school's interest in efficient operations may outweigh an employee's speech where the disruption is significant.
 - This is fact-specific!



Scenario #1:

A high school English teacher decided to put up a poster in her classroom with a rainbow background and the words “all are welcome here”. The District does not have any policies against posters in classrooms, and many other teachers have posters up in their own classrooms as well. Several students and their parents have complained to have the poster taken down. The District acquiesced to these complaints, and requested the teacher take the poster down. The teacher refused, and the District disciplined her for insubordination.

The teacher has now filed a lawsuit against the District for a First Amendment free speech violation.

Does the teacher have a strong argument against the District?



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Scenario #2:

A middle school student has come to school wearing a shirt that says, “Free Palestine”. The student’s seventh period teacher sees the shirt and feels that it is inappropriate to wear to school. No other student or teacher has made a comment about the student’s shirt all day. The teacher tells the student they must flip their shirt inside out or they will be sent to administration’s office. The student refused to hide the message on their shirt. The student is sent to administration. The District does not have any student dress-code policies that prohibit political messages.

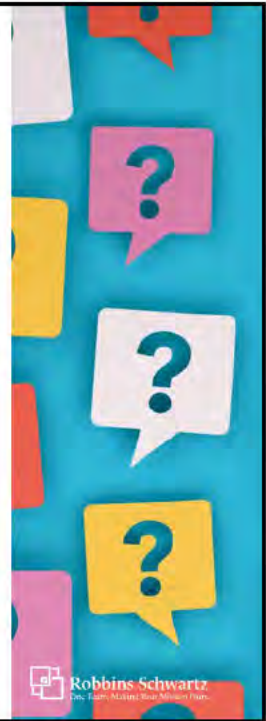
What should Administration do in this situation?



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Scenario #2:

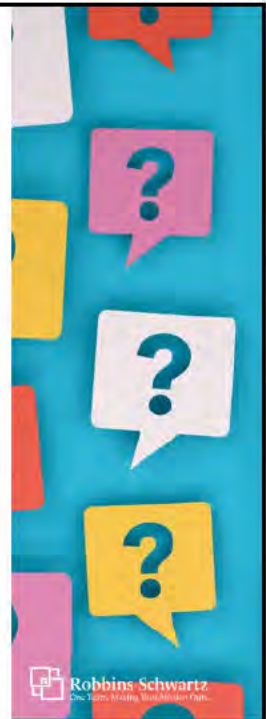
*Would your answer change if
the situation involved a
teacher wearing the shirt?*



50

Scenario #2:

*Now, what if the
teacher was wearing a
shirt with a
watermelon on it?*



51

Scenario #3:

A high school student posted a homophobic meme to their Instagram page. Beneath the photo of the meme, the student also tagged several personal accounts of openly-LGBTQ+ students. The post and comment has sparked significant controversy, with the District receiving many of complaints and concerns from students and parents. The District is not sure whether they can regulate the student's speech, because it was on social media and not made during school hours.

Can the District regulate the student's off-campus speech?



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Scenario #4:

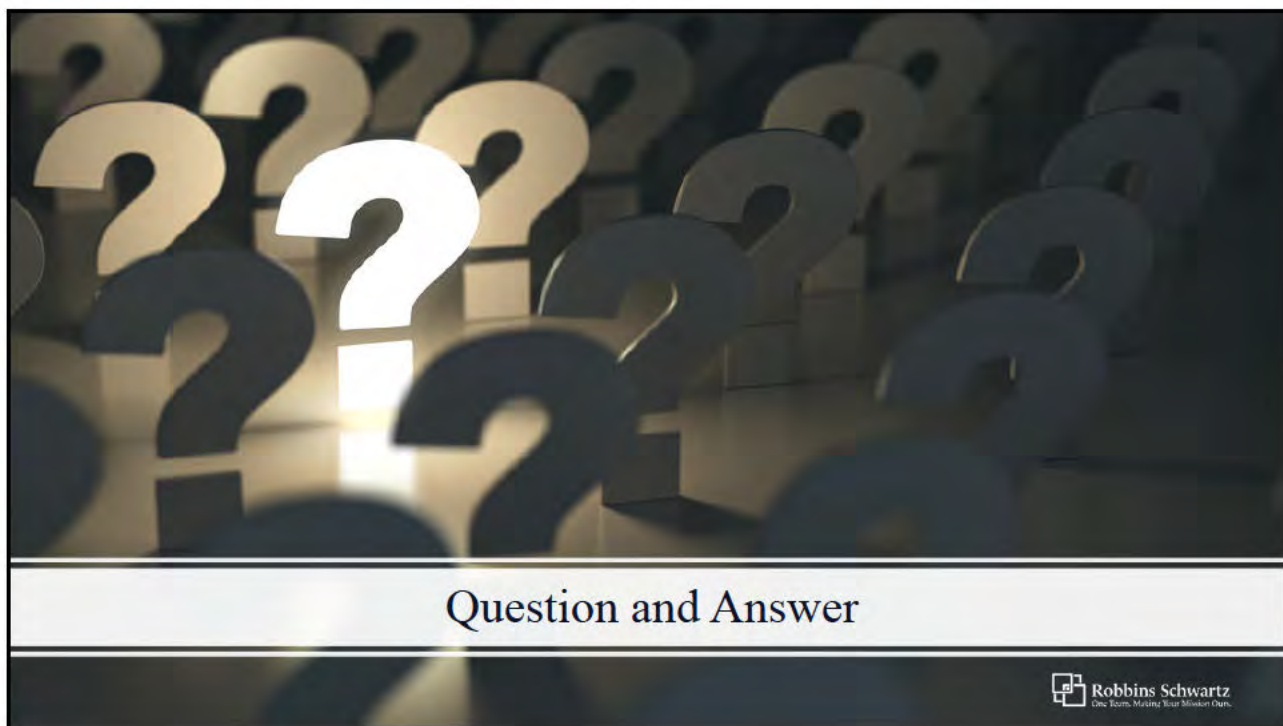
A high school U.S. History Teacher is speaking with his students before the start of class about a presidential debate that occurred the night before. The students share their thoughts on the debate with the Teacher and ask him his thoughts. The Teacher shares who he believed was the clear winner of the debate, and that he "can't wait to vote in November". The bell rings for the start of class, and the discussion ends.

One of the students later tells their parents about the discussion and what the Teacher said. The parents called Administration to express their concerns with the Teacher sharing this information.

The District wants to know what their options are for approaching this issue.



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

October 9, 2024

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1

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



2

[illegible]

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



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The FMLA – 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



7

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.



8

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.
- Districts may seek documentation verifying:
 - The employee has a disability as defined by the ADA;
 - The functional limitations of the disability; and
 - The nature of the recommended accommodation.



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The ADA – 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 District 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 District requires that John occasionally be in-person in order to assist teachers and staff in setting up classrooms and to troubleshoot technology issues onsite. John requests to work fully remote.
- Is the District required to grant John's request?

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Scenario #2 (continued)

- Because the District will not allow him to work remote every day, John requests that he be allowed to work a split schedule and only come onsite 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 District employs two other Information Technicians, Bill and Bob, who split their time among the Districts' two campuses. Bob works at John's campus on Mondays and Wednesdays, but no other IT employee is present at John's campus on Fridays.
- Is the District 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 District also provide him with a ride to work 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 District pay for an Uber to drive him to and from work 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 work. John further states that when he takes public transportation, he runs the risk of exacerbating his vertigo because of motion sickness.
- Is the District required to grant John's request?
- If not, is the District required to provide any accommodation related to John's commute at all?

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Scenario #3

- Karen, a tenured teacher, presents a doctor's note stating that she has been diagnosed with anxiety and often suffers acute panic attacks, which significantly impact 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 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 District required to grant Karen's request?
- What kind of documentation could the District require from Karen, in addition to the doctor's note she already provided?



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Scenario #4



- Jim, a teacher, 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 building principal 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 District respond?



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Questions and Answers



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Anxiety and School Refusal: Collaboratively Constructing the Path Back to School

October 9, 2024

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Agenda

- Absenteeism
 - Student Attendance Post-COVID
 - Child Find Triggers for Absent and/or Mentally Ill Students with Poor Attendance
- Case Analysis: Parents Challenging Schools' Responses to School Refusal/School Anxiety
- Tips and Best Practices: Strategies, Interventions and Plans for Offering FAPE

1

Background: Absenteeism

- As a result of the disruption to student learning during the 2020-2021 school year and the continuing mental health impact of the Covid-19 experiences, schools continue to experience a significant uptick in chronic absenteeism and school refusal
- How are chronic absenteeism, school refusal, and FAPE connected?
 - School Districts are responsible for actively seeking out and identifying all children from birth through age 21 within the district who need special education services
 - 23 Ill. Admin. Code. 226.100

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Student Attendance Post-COVID

Recent News Stories



Student Attendance Post-COVID

Chronic Absenteeism: Pre- and Post-Pandemic Data

- In 2019, approximately 15% of students were considered **chronically absent**.
- That number jumped to at least 29.7% of students in 2022 and remains around 27.9% in 2024.
- Chronic absenteeism rates have improved over the past couple of years, however, in 33 of 39 states reporting data, 75% of schools remained higher than the pre-pandemic baseline.
- All types of school districts have witnessed chronic absenteeism rates increase; however, rates are highest in districts with low achievement and higher poverty, with chronic absenteeism affecting over one in three students.



Absenteeism and Child Find



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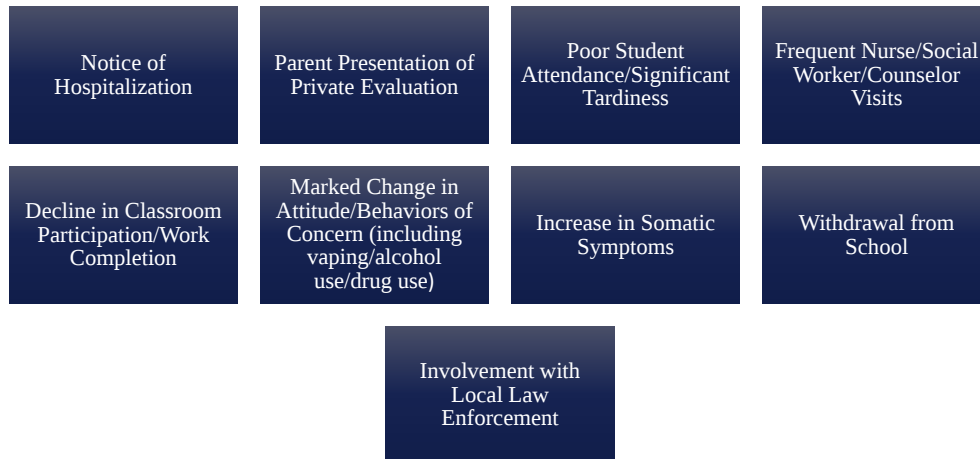
Absenteeism and Truancy

- IDEA requires that districts identify, locate, and evaluate all children with disabilities residing within the jurisdiction that either have, or are suspected of having, disabilities and need special education as a result of those disabilities. 34 CFR 300.111(a)
- Districts' child find obligations may be triggered where a student has significant absences, the school team has a reason that absences are linked to a disability, and a suspected need for services.
- Lack of attendance on its own does not qualify a student for special education.
 - However, it may help establish that the student has an impairment that results in a need for special education and related services. 34 CFR 300.8(a)(1)

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Potential Child Find Triggers for Students with Chronic Absences



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When is Excessive Absenteeism Related to Special Education Eligibility?

- When it comes to absenteeism and eligibility, emotional disturbance is the eligibility category typically at issue.
 - However, where a judge or a hearing office would view excessive absenteeism as the result of social maladjustment, family circumstances, or social circumstances, they are likely to conclude that the District does not have a duty to refer the student for an evaluation.
- If a student is already eligible under IDEA and truancy adversely affects their learning, the duty to address absences in the IEP may exist regardless of whether absences stem from a disability.

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Case Analysis: Parents Challenging Schools' Responses to School Refusal/School Anxiety



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Evaluate at Request

T.B. v. Prince George's Cnty. Bd. of Educ. (4th Cir. 2018)

- Student's poor academic performance and declining grades in high school reflected, in part, the Student's declining attendance. In his two years at the high school, he recorded a total of 68.5 days of absence. More than 90% of the absences were unexcused.
- Near the end of Student's 10th grade year, he stopped attending classes entirely. When he was in class, he was often disruptive and would ignore instructions, use his cell phone, or talk to other students during class time.
- While he failed his classes, he generally performed adequately when he attended class and completed assignments.
- Parents repeatedly requested evaluations, but the District denied.
- Parents filed for due process.



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T.B. v. Prince George's Cnty. Bd. of Educ. (4th Cir. 2018)

- District was found to have violated the IDEA when it failed to evaluate the struggling student in a timely matter.
- However, the Court found that the District did not have to provide the student with compensatory education because the student's unwillingness to attend school under any circumstances made the District's procedural violation harmless.
- **TAKEAWAY:** A district may have good reason to believe that a student's poor performance stems from factors such as frequent absences or a poor work ethic as opposed to a disability.
- Still, a district can't disregard a parent's request for an evaluation simply because it believes the student won't be found eligible.
- This District avoided liability for its failure to evaluate the student during the previous two school years only because the evidence showed the student would not take advantage of any services offered.



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Absences are Insufficient to Trigger Child Find

Doe v. Cape Elizabeth Sch. Dept. (D. Me. 2019)

- Student attended school on a consistent basis and was a strong student. Parents reported that Student displayed oppositional behaviors on a consistent basis.
- 9th and 10th grade – Student earned good grades and was well-regarded by teachers but had a tumultuous relationship with her parents.
- 11th grade – Student began to complain of significant anxiety regarding school attendance. Student's attendance began to decline, but the majority of her absences were excused by Parents. She was also involved in a car accident and diagnosed with a concussion.
- Student was eventually diagnosed with an anxiety disorder and the resulting impact on her education prompted the district to her eligible for special education.



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Doe v. Cape Elizabeth Sch. Dept. (D. Me. 2019)

- Parents requested reimbursement for costs associated with unilateral placement of Student at two out-of-state private educational and therapeutic institutions.
- Court held that the District did not violate child find duty under IDEA when it did not refer Student for special education in 9th or 10th grade
 - Student's absences from school were insufficient to trigger school's child find duty and Parents were not entitled to reimbursement of costs for unilateral placement.
- **TAKEAWAY:** A parent's reports about a student's behavioral difficulties at home will not in itself trigger a District's child find obligations.
 - Under IDEA, a district only needs to consider an evaluation if a student's in-home behavioral problems interfere with educational performance.

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Documentation is Important Evidence

C.J. v. Houston Indep. Sch. Dist. (5th Cir. 2019)

- Student with Autism, Intellectual Disabilities, and ADHD. Student has difficulty regulating his emotions and allegedly was bullied in school.
- Student had gotten into altercations with schoolmates and had anxiety about attending school due to some of those incidents.
- Parents filed for due process and claimed that the District failed to respond appropriate to concerns about bullying and denied the Student FAPE.
- Court noted that the student's teacher communicated with the parents nearly 30 times over a four-month period in an attempt to convince them to return the student to school.
 - The district arranged for the student's teacher to escort him from his parents' car into the school building each morning and allowed him to spend the first hour of each school day in the office to ease his transition to the school setting.
- Court stated that the facts belie the parents' claims that teachers and school administrators were callous and unresponsive to the student's fears about bullying.



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C.J. v. Houston Indep. Sch. Dist. (5th Cir. 2019)

- The Parents' claimed that the District should have placed the student on home instruction due to his anxiety about bullying, but the Court noted that Texas law prohibits a student's placement on home instruction absent evidence of medical need. The Court explained that the parents' failure to supply the necessary information despite multiple requests by the district prevented the IEP team from placing the student on home instruction.
- **TAKEAWAY:** Districts should document the steps they take to encourage students with a fear of bullying to return to school. Such evidence can prove valuable if a student's parents allege that the student is unable to attend school due to peer harassment.
- Not only did this district arrange for the student's teacher to escort him into the school building each day and allow him to spend the first hour in the office, but it repeatedly sought additional information in support of the parents' request for home instruction.
- Those actions showed that the district tried to address the student's bullying-related concerns.



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Academics Are Important, But Not Alone

Independent School District No. 283 v. E.D.M.H (8th Cir. 2020)

Student diagnosed with various psychological disorders, including generalized anxiety disorder, school phobia, autism spectrum disorder, panic disorder, ADHD, and severe major recurrent depressive disorder.

At the end of middle school, Student was consistently absent and placed in a psychiatric day-treatment facility.

When Student entered 9th grade, her parents alerted the guidance counselor that the Student had not been present for the latter part of 8th grade due to anxiety and school phobia.

- By spring of 9th grade, the District discussed an evaluation. The counselor told the parents that if the Student availed herself of special-education opportunities she would not be allowed to remain in her honors classes.
- The parents did not request an evaluation and one was not undertaken by the District.

During the summer between 9th and 10th grade, Student was at a treatment facility for her anxiety, depression, and ADHD.



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Independent School District No. 283 v. E.D.M.H (8th Cir. 2020)



In January of 10th grade, school staff met with the parents to reexamine the possibility of providing special education.

The parents were told that if the Student was placed in special education, she would be removed from her honors classes, effectively placing her in course work that would not challenge or stimulate her intellectually.

At the end of the first semester, the District had yet to perform a special-education evaluation.

The Student attended only one day during the second semester.



In 11th grade, Student attended three partial days of the eleventh grade in the District's program designed for students with emotional and behavioral disorders.

She ceased attending school after September 11.

At this point, the Student had earned far less than half of the 46 credits necessary to graduate. Most of the Student's credits were from instruction she received at treatment facilities, with only two credits coming from regular District coursework.



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Independent School District No. 283 v. E.D.M.H (8th Cir. 2020)

- The Court found that the District erred in finding that the student ineligible for special education, as the student's anxiety and depression prevented her from accessing the general education curriculum, even though she had above-average academic performance.
- **TAKEAWAY:** An eligibility team may, and should, consider a student's academic ability when determining their need for specialized instruction, however, it cannot solely rely on that factor.
 - Not only was this district aware that the student's absences stemmed from her mental health issues (i.e., anxiety and depression), but it knew she had earned very few core credits.
 - The district's argument that the standardized test scores and exceptional performance on the days she attended school made her ineligible for special education was short sighted.



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District Knowledge is Necessary

Northfield City Bd. of Ed. v. L.S. (3rd Cir. 2021)

- When Student began at new middle school, Parent told the school of Student's emotional difficulties, including a history of trauma. Student did well in academics.
- In January, Parent asked school to evaluate student for special education. After looking at her grades and speaking with teachers, school did not evaluate. The school did place Student into a program to address emotional issues and Student began meeting with a social worker a few times a week.
- Near the end of first year, Student was hospitalized for suicidal thoughts. When Student returned, school had a transition plan in place for Student, reevaluated Student for special education, and developed an IEP for the next school year.



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Northfield City Bd. of Ed. v. L.S. (3rd Cir. 2021)

- Parent filed a complaint that the school did not catch Student's problems earlier, and that the program the school implemented did not do enough for the Student's emotional needs.
- Court held that the school's knowledge that the Student's history of trauma was not sufficient to put the school on notice that the Student might be "disabled" such that it was required to evaluate her for special education under IDEA
 - The delayed evaluation for her educational disability was not unreasonable such that it violated the IDEA.
- **TAKEAWAY:** The district had no reason to evaluate the student based on reports of emotional difficulties that had not yet affected her learning – the obligation to evaluate only arose when the student was hospitalized for psychiatric reasons at the end of her first year.



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Interventions Can Limit Liability

D.T. v. Cherry Creek Sch. Dist. (10th Cir. 2022)

- 9th grade, Student performed well academically, but expressed difficulty connected with peers and teachers in new environment.
 - Freshman spring, Parent emailed school counselor conveying concern about Student's well-being.
- 10th grade, Student's grades declined.
 - School counselor reached out to police to conduct a welfare check in October.
 - April, Parent indicated Student's struggles with suicidal ideation and school psych conducted a suicide risk assessment and he was referred to the Colorado Crisis Center.
- 11th grade, Parent emailed school reiterating at-home behavior issues and suspicions of drug use. School Counselor then met with student and discussed strategies to approach academic and familial concerns.
 - October, Parent requested 504 plan and counselor offered an initial meeting.
 - November, Student threatened to "shoot up the school."
 - After the threat of the school shooting, District instituted special education services



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D.T. v. Cherry Creek Sch. Dist. (10th Cir. 2022)

- Court found that the District did not deny Student access to FAPE. District's "child find" duty under IDEA to assess and provide Student with special education services did not begin until the emotional dysfunction manifested in school environment by way of the school shooting threat.
 - Prior to the school shooting threat, Student did not meet elements of a serious emotional disability.
- Student's emotional dysfunction had not manifested in school environment, district actively engaged him with alternative interventions, and his struggles were readily explainable by acute, non-academic stressors, including familial disputes and engaging in regular drug use, and he maintained capacity to complete course material and meet academic standards.
- **TAKEAWAY:** This district showed that its duty to assess and provide a teen with special education services didn't begin until his ED manifested in the school environment by way of his threat. Prior to that point, the district established that struggles at home, declining grades, hospitalization, and social difficulty aren't enough to prompt an evaluation.



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Too Restrictive, Liability Limited

Doe v. Newton Public Schools (1st Cir. 2022)

- Student eligible for special education under eligibility categories of Autism and Generalized Emotional Disorder.
- 10th grade: Student reported to a teacher that he was “drowning,” “getting little sleep,” and was “often sick.” Teachers reported concerns to Student’s performance in the classroom, including his grades and emotional presentation. Student became suicidal in the spring of 10th grade. Ultimately required hospitalization that summer.
- Before start of 11th grade, school proposed public therapeutic program within the District with increased supports, but Parents unilaterally placed Student at a private, residential program and requested reimbursement.



Doe v. Newton Public Schools (1st Cir. 2022)



Court ruled that the District had to pay for some of the services he received in the out-of-district placement. District required to reimburse the parents for tuition, but not for boarding or travel expenses.

Long standing rule that a student is not entitled to a residential placement if they can receive FAPE in a day program.

LRE requirement does not apply to unilateral placements (the restrictiveness of the unilateral placement did not in itself bar the parents’ reimbursement claim).



TAKEAWAY: Districts should not expect to avoid paying for a student’s unilateral residential placement because the program is not the student’s least restrictive environment. Districts may be able to limit liability to certain expenses by showing that the placement was overly restrictive.

J.H. v. Seattle Public Schools (U.S. District Court – Washington) March 1, 2024

- Prior to COVID, a student with Autism was attending school regularly.
- Post-COVID, the student regressed and began attending partial days and having significant aggressive behaviors.
- While an FBA/BIP was put in place in October 2021, the student continued to have significant aggressive behaviors and began to complain about attending school. Parent began driving the student to school but didn't share the school attendance complaints with the school.
- In March 2022, Student's school refusal behaviors increased, and he was showing aggression in the home when Parents tried to get him on bus or to school.
- IEP meeting was convened and District increased behavior supports, including BCBA and behavioral technician support during day and in-home in the morning, different methods of transportation, and development of a new FBA and BIP to address school refusal.
- Parents provided unilateral notice of residential placement and District convened another IEP Meeting in March 2022 to consider such and was denied placement outside the district.
 - FBA was completed and shared with Parents in May 2022. BIP included many new interventions for addressing school refusal.



J.H. v. Seattle Public Schools (U.S. District Court – Washington) March 1, 2024

- Court held that the public school district could address the student's school refusal within the public school setting, therefore, the student did not require a residential placement to receive FAPE.
 - The court noted that while it is obvious that parents would want the behavioral interventions of the school to have an immediate result, especially in cases of school refusal, school districts may take a reasonable amount of time to determine whether a new BIP can meet the student's needs.
- **TAKEAWAY:** IEP is appropriate if at the time of its formation it is reasonably calculated to allow for meaningful progress ("snapshot rule").
 - BIP did that, even though it didn't call for full-time school attendance from first day.
 - Key Factor: Student was making some small initial steps to increase attendance in light of the BIP (i.e., getting dressed for school). Parents did not give the BIP and school enough time to see if the BIP would be effective.

Tips and Best Practices



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Ensure Identification of Students in Need Early

- Screen for the function of the Absences and Intervene as appropriate based on the following factors:
 - Attendance—Intermittent and/or Long-Term Absences
 - Increase in behavior/discipline issues
 - Class truancy
 - Decline in work completion/participation in classes and school generally
 - Reports of bullying, harassment or significant peer conflict
 - Depression and anxiety demonstrated by general withdrawal
 - Ongoing medical issues and health related complaints
 - Decline in grades
 - External issues: involvement with law enforcement; hospitalization; significant conflict in the home

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School Avoidance Considerations

- Develop a system for tracking attendance consistently between schools, teachers, and classes, and have clear attendance markers that require a team to dive deeper to discern if increasing absences might be linked to a disability.
- Ensure that teachers collaborate and share their concerns about students to alert staff that a screener or ultimately a 504 or special education evaluation may be necessary.
- Create a MTSS screener to determine the function of the absences
- Create a protocol to determine when students will be referred to be screened.
- Determine the information the team needs to know to ascertain the function of the absences.
- Establish how the district will utilize the data gathered from the assessment.



Considerations for Chronically Absent Students

- Attempt to intervene with school-based supports first, prior to utilizing outside assistance and prior to initiating a special education evaluation.
 - Consider developing and using a post-hospitalization transition program for students with short and long term attendance patterns.
 - Make the students school experience smaller through connections and smaller environments.
 - Utilize attendance contracts, medical documentation submissions for absences, and nurse assessments.
- Closely monitor the success of the in-school interventions and collect data so the team can return to the table promptly if the interventions are not successfully impacting attendance patterns.
- Ensure teachers are consistent in the collection of attendance data and intervention data.

Accommodate and Evaluate

- Ensure teachers and staff are implementing accommodations for an absent student consistently.
- Conduct a 504 or IDEA evaluation when trends in absence patterns are not improving. Do not rely on good grades and test scores to avoid evaluating.
- Consider the need for outside supports – i.e., homebound services, therapeutic day school, in-home behavior support, and supportive attendance.
- Regularly convene IEP meetings to make changes to the student's BIP and other supports/interventions to increase attendance. Allow time for such to work.

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Understanding Construction Litigation and Planning for Success

October 9, 2024

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Introduction



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2



Construction Problems??

Let's Find Solutions!



3

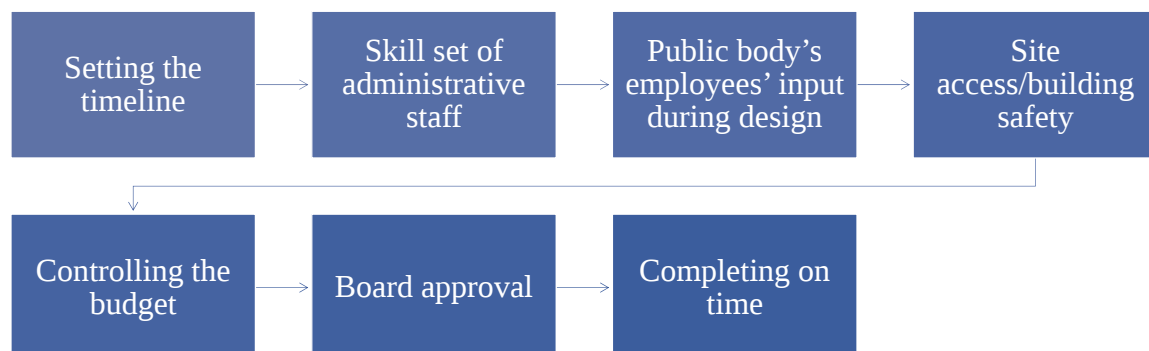
Agenda

- Planning Considerations for Construction – Problems and Headaches at the Beginning of a Project
- Managing and Resolving Construction-Phase Problems – Keeping the Project on Track and Limiting Risk
- Closing Out Construction – Addressing and Resolving Ongoing Problems
- Construction Claims and Litigation – Payment Claims, Defects, and Dispute Resolution



4

Planning Considerations for Construction:



5

Planning Considerations for Construction: Timelines

- Setting the timeline
 - Zoning 3-9 months
 - Programming 3 months
 - Space Planning 3 months
 - Schematic Design 3 months (many factors drive)
 - Design Development 3 months (many factors drive)
 - Construction Documents 3 months (many factors drive)
 - Bid Time Frame 2 months
 - Board Approval 1-2 months
 - Physical Construction 4-12 months



6

Planning Considerations for Construction: Real Estate Considerations

Land Acquisition

- Discuss with Board in closed session
- Extending offers and considering options
- Due diligence issues
- Leasing of public property

Intergovernmental opportunities and challenges

- Zoning codes
- Storm water requirements
- Site access
- Utility permits and connections

7

Planning Considerations for Construction: Paying for the Project

- Project financing and covering the (potential) cost of construction
 - Cash on hand
 - Acquiring debt
 - Purchasing bonds
- Grant funding and related requirements
- Other costs –
 - Specialty consultants
 - Controlling contingency and allowances



8

Planning Considerations for Construction: Selecting Your Team

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



9

Practical Planning Considerations: Questions to Ask

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

Contract Terms for a Timely and Successful Project: AIA Contracts

- AIA Contract Documents from Design to Closeout
 - Contract Sum and Change Orders
 - Notice Requirements (Before Contractor Performs Extra Work)
 - Progress Meetings (Include Requirements for Ordering Materials/Equipment)
 - Allowances and Contingencies
 - Progress Payments & Retainage
 - Substantial Completion
 - Liquidated Damages
 - Owner Takeover



Public Contracts: Must Consider the Prevailing Wage Act

- Bid documents must notify of, and contracts must require, compliance with the Prevailing Wage Act
- Applies to contracts for “public works”:
 - Definition: “fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds.”
 - Includes “any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.”
- Certified payrolls submitted on a monthly basis directly to the Department of Labor



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Performance and Payment Bonds

- Payment and Performance Bonds (30 ILCS 550/1)
 - Each contract for public work in Illinois exceeding \$150,000 requires the contractor to furnish performance and payment bonds in the full amount of the contract.
- A Performance Bond is:
 - A surety company’s guarantee to the owner that the contractor will complete the project in accordance with the contract, and defines the duty of the surety to the owner in the event of the contractor’s default.
- A Payment Bond is:
 - A surety company’s guarantee to the owner that the contractor will pay all contractors furnishing material and/or labor on the project, in accordance with the contract.



13

Common Construction Problems

- Problems Prior to Substantial Completion
 - Delays in Ordering Equipment: Substitutions/Change Orders
 - Unforeseen Conditions: Change Orders
 - Scheduling Problems
 - Defective Work
 - Injuries/Accidents
- Problems After Substantial Completion
 - Payment Claims and Section 23 Mechanics Liens
 - Warranty Claims
 - Defects – Construction or Design?



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14

Construction Phase Problems: When is Termination of Contractor the Right Move?

- Problems Will Arise: Try to Minimize through Communication and Consider the Ramifications of Termination
- What should owners think about before exercising the nuclear option of termination?
 - Can a new contractor complete the work?
 - Will it cost more? Will the bond cover the additional cost? Will it take longer? Will it be the same quality or better/worse? Bidding requirements?
 - Warranties with multiple contractors on site?
 - Potential litigation?
- Will the current contractor ever be able to complete the work?
 - Will it be good workmanship? Create dangers/hazards?
 - Trustee of public money – does the contractor deserve to be able to finish and be paid?
- Termination for Cause Necessary for Bond Claim



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15

Mitigating Construction Phase Problems



Small Projects:
Many rules still
apply



Contractor
Certificate of
Insurance
Review



Payment and
Performance
Bond Review



Pay Requests



Certified
Payrolls



Change Order
Issues



Delay Issues



Labor Disputes
(Picketing and
Strikes)



Injuries and
Safety

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16

Keeping Your Project on Schedule: Key Tools

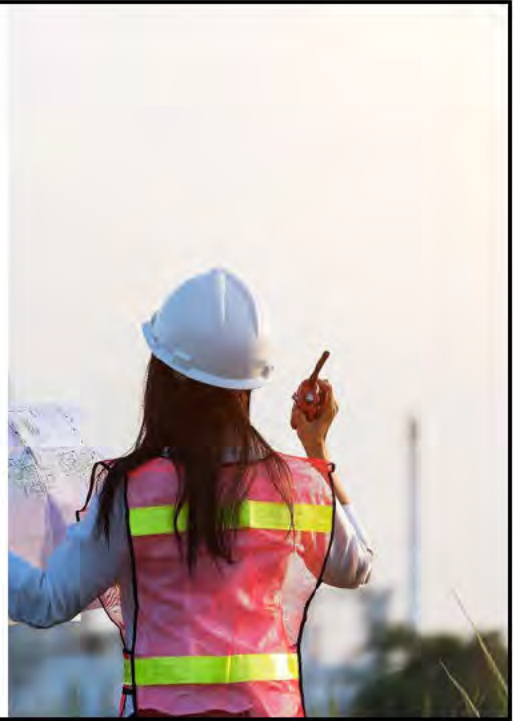
- Include owner-friendly contracts in your bid packets
- Use allowances, contingencies, and bid alternates to keep the project under budget
- Pre-order equipment: discuss lead times before issuing bid and consider having owner purchase directly and/or establishing deadlines to order
- Performance bonds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

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Closing Out Construction

- Mitigating Future Construction Claims at Closeout
- Punch List Problems
- Payment Issues:
 - Retainage
 - Sworn Lien Waivers and Liens
- Commissioning
- Warranty Documents
- 12 Month Walk-Through



18

Construction Claims and Litigation

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



19

Construction Litigation

- How long do you have to file a lawsuit? 735 ILCS 5/13-214
 - Statute of Limitations (735 ILCS 5/13-214(a)): Any action related to construction shall be commenced within 4 years from the time the person knew or reasonably should have known of the defendant's act or omission.
 - Statute of Repose (735 ILCS 5/13-214(b)): Any action related to construction shall be commenced within 10 years from the time of the defendant's act or omission.
 - "Discovery Rule" – Plaintiff shall have an additional 4 years to file lawsuit if discovered within the 10-year period.
 - Contractual Limitations: The parties can contractually agree to shorten the limitations period.
 - Tolling Agreements – Agreement with contractors, design professionals, and other potential defendants to toll or stop the running of all statutes of limitations, repose, or other time limitation defenses.



20

Payment Claims

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



21

Design and Construction Defect Claims

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



22

Design and Construction Defect Claims

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



23

Defect Claim Procedures and Best Practices



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



24

Defect Claim Procedures and Best Practices

- Evidence of Defects: How are you going to prove your case? What evidence to you have?
 - The more documents (including photographs, videos, sensor data, etc.) the better likelihood of success.
 - Use correct procedure and forms for consistency (change orders in writing, AIA forms, etc.)
 - Maintain organization to keep discovery costs low.
- Inspections, Tests, or Repairs: Consult with legal counsel first!
 - Performing any inspections, testing, or repairs of defective conditions could result in spoliation of evidence or at least another round of said inspections/testing.
 - Spoliation of evidence claim or defense can prevent the owner from using the defective conditions as evidence.



25

Construction Litigation

- General Litigation Considerations:
 - Who is included in the lawsuit?
 - The role of experts.
 - Alternative dispute resolution (ADR)
 - Arbitration or mediation?
 - What are the recoverable damages?



26

Dispute Resolution

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



27





Summary

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


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28



QUESTION & ANSWER


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29

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Employment Rules for Schools: 10 Legislative Updates for HR Professionals

October 9, 2024

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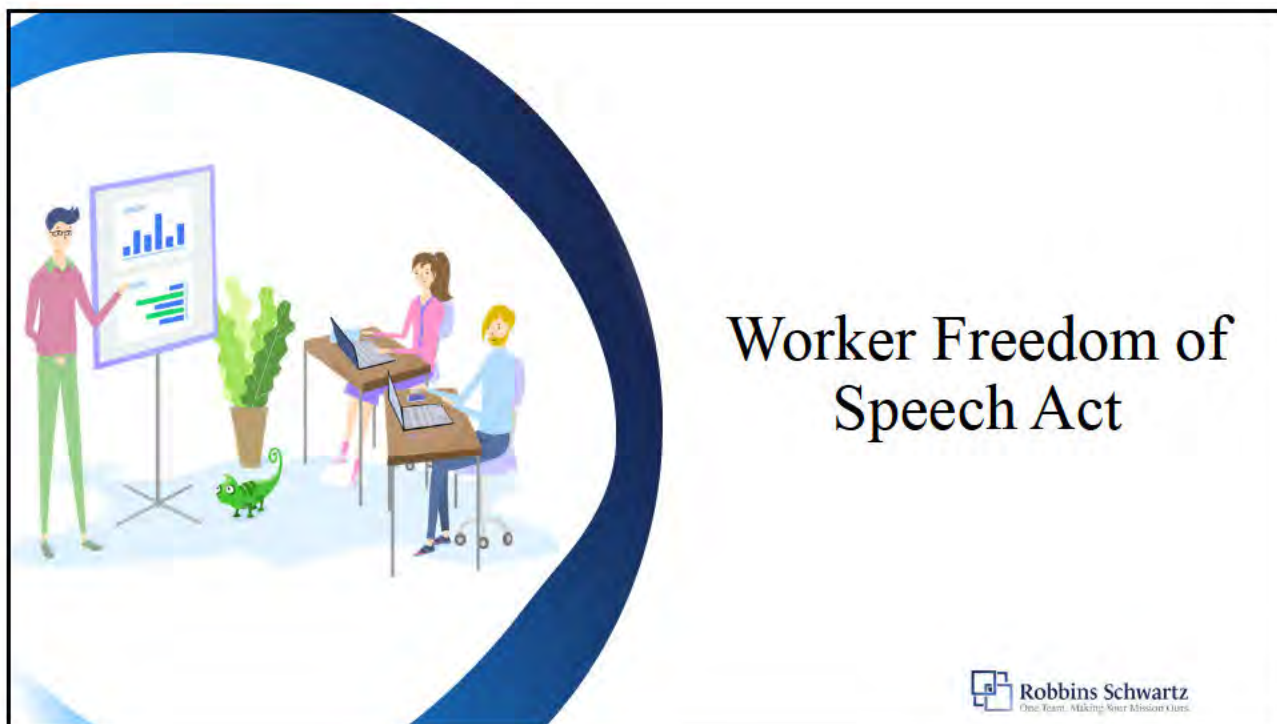
Agenda

- Worker Freedom of Speech Act
- Pay Scale and Benefits
- Illinois Human Rights Act
- Personnel Record Review Act
- Licensure and Tenure
- Illinois Whistleblower Act
- Bonus



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Worker Freedom of Speech Act

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P.A. 103-0722: Worker Freedom of Speech Act

Effective date: January 1, 2025

- Meetings or communications “to communicate the opinion of the employer about religious matters or political matters” cannot be mandatory.
- “Political matters” are matters related to:
 - elections for political office;
 - political parties;
 - proposals to change legislation/regulations/public policy; and
 - **the decision to join or support any political party or political, civic, community, fraternal, or labor organization.**

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P.A. 103-0722:
Worker Freedom of Speech Act
 Effective date: January 1, 2025

- Intended to prohibit “captive audience” meetings:
 - No mandatory “anti-union propaganda”
 - No mandatory Bible studies, prayer meetings, etc.
- Pending lawsuit claims the Act violates the First Amendment.



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6

P.A. 103-0722: Worker Freedom of Speech Act
 Effective date: January 1, 2025

Employers **must not** take (or threaten) an adverse employment action:

1. because an employee declines a meeting / communication if it is to communicate the employer’s opinion about religious or political matters;
2. as a means of inducing an employee to attend or participate in meetings or receive or listen to communications described in paragraph (1); or
3. in retaliation for making a good faith report of a (suspected) violation of the Act.



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P.A. 103-0722: Worker Freedom of Speech Act

Effective date: January 1, 2025

- The Act does not prohibit:
 - “voluntary” meetings / communications: that is, not “incentivized by a positive change in any employment condition” or “under threat of a negative change ... for non-attendance”
 - communicating any information that is necessary for the employees to perform their required job duties
 - requiring attendance at any training intended to foster a civil and collaborative workplace or reduce or prevent workplace harassment or discrimination.



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P.A. 103-0722: Worker Freedom of Speech Act

Effective date: January 1, 2025

- Employees can sue and will get attorney’s fees if they prevail.
- IDOL can assess \$1,000 civil penalty per employee, per violation that “interested parties” bring to its attention, in addition to any court-awarded damages to make employees whole.
 - Even if IDOL does not take action, “interested parties” can sue and will get 10% of the penalties if they prevail.
- Notice of rights under the Act must be posted.

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Pay Scale and Benefits



10

P.A. 103-0539: Pay Scale and Benefits

Effective date: January 1, 2025

- Covered employers (with at least 15 employees) must include the pay scale and benefits for a position in any job posting which is posted on or after January 1, 2025.
 - Linking to a public webpage that includes the relevant and up-to-date pay scale and benefits would satisfy the requirement.
 - Employers are not required to make a job posting.
- If an employer uses a third party to publish a job posting, the employer must provide the pay scale and benefit information (or a hyperlink) to the third party.



11

P.A. 103-0539: Pay Scale and Benefits

Effective date: January 1, 2025

- Employers must announce, post, or otherwise make known to all current employees all opportunities for promotion no later than 14 calendar days after making an external job posting for the position.
- Upon request, employers must disclose pay scale and benefits to an applicant for a job, promotion, transfer, or other employment opportunity, if a posting was not made available to the applicant.
- The disclosure must occur prior to making an offer or discussing compensation.



12

P.A. 103-0539: Pay Scale and Benefits

Effective date: January 1, 2025

- Employers must not retaliate against an applicant or employee for exercising their right to receive pay and benefits information.
- IDOL has jurisdiction over investigation and enforcement of alleged violations, subject to a one (1) year statute of limitations.
- The job posting, pay scale, and benefits for each position are added to the list of records an employer is required to make and preserve for at least five (5) years.
- Violations can incur civil penalties that depend upon whether the posting is active or inactive at the time IDOL issues a notice of violation and whether it is an employer's first, second, or third or subsequent offense.
 - For first and second offenses, if the posting is still active, employers will have 14 or 7 days to remedy the violation.



13

Illinois Human Rights Act



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P.A. 103-0785: Reproductive Health Decisions

Effective date: January 1, 2025

- Adds “reproductive health decisions” to the list of categories protected from unlawful discrimination under the *Illinois Human Rights Act* (IHRA).
- This means “a person’s decisions regarding the person’s use of contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care.”
- Follows the trend of many states taking steps to guarantee greater protections for reproductive health following the overturn of *Roe v. Wade* by the U.S. Supreme Court in 2022.

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Family Responsibilities



16

P.A. 103-0797: Family Responsibilities

Effective date: January 1, 2025

- Makes it a civil rights violation under the IHRA for an employer to take an adverse employment action, harass or retaliate against an applicant or employee based on “family responsibilities.”
- “Family responsibilities” are defined as “an employee’s actual or perceived provision of personal care to a family member.”



17

P.A. 103-0797: Family Responsibilities

Effective date: January 1, 2025

“Personal care” means:

- activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met; or
- to provide transportation to medical appointments, for a covered family member who is unable to meet those needs himself or herself; or
- being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.



18

P.A. 103-0797: Family Responsibilities

Effective date: January 1, 2025

- “Family member” means an employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.
- *Compare to School Code definition of family member:* parents, spouse, brothers, sisters, children, grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, and legal guardians.



19

P.A. 103-0797: Family Responsibilities

Effective date: January 1, 2025

- Expressly states that an employer is not obligated to make accommodations or modifications to reasonable workplace rules or policies for an employee based on family responsibilities.
- Nor is an employer prohibited from taking an adverse action or otherwise enforcing reasonable workplace rules/policies against an employee with family responsibilities as long as the policies are applied in accordance with the IHRA



20



This lighthearted moment brought to you by our AI ~~overlords~~ helpers:

A machine learning algorithm walks into a bar.
The bartender asks, "What will you have?"
The algorithm says, "What's everyone else having?"



21



Lawyers can be funny!

Well, funnier than AI.

For now.

Anyway, back to the law...



22

P.A. 103-0804: Predictive Analytics

Effective date: January 1, 2026

- Requires employers to provide notice if they are using AI with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or other terms, privileges, or conditions of employment.
- IDOL is charged with adopting necessary rules on the circumstances and conditions that require notice, as well as the time period and means for providing notice.



23

P.A. 103-0804: Predictive Analytics

Effective date: January 1, 2026

- For purposes of the IHRA, “artificial intelligence” is defined as a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.
- “Generative artificial intelligence” is defined as 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, the following:
 1. textual outputs, such as short answers, essays, poetry, or longer compositions or answers;
 2. image outputs, such as fine art, photographs, conceptual art, diagrams, and other images;
 3. multimedia outputs, such as audio or video in the form of compositions, songs, or short-form or long-form audio or video; and
 4. other content that would be otherwise produced by human means.



24

P.A. 103-0804: Predictive Analytics

Effective date: January 1, 2026

- Prohibits an employer from using AI that has the effect of subjecting employees to discrimination on the basis of protected classes under IHRA or to use zip codes as a proxy for protected classes under the IHRA.
- Proxy discrimination occurs when a facially neutral trait is used as a stand-in for a prohibited trait.
- The direct information about race is not given to the system, but zip code is strongly correlated with race since many neighborhoods are still segregated.



25

Personnel Record Review Act



26

P.A. 103-0727: Personnel Record Review Act

Effective date: January 1, 2025

- Employees have the right to inspect, copy, and receive copies of:
 - Personnel documents
 - Any employment-related contracts or agreements binding on the employee
 - Any employee handbooks made available to the employee (or that they acknowledged receiving)
 - Any written policies or procedures “that the employer contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.”
- If the records are already accessible by the employee, the employer may instead provide the employee with instructions on how to access that information.



27

P.A. 103-0727: Personnel Record Review Act

Effective date:
January 1, 2025

- The employee's request must include in writing:
 - if the request is for some or all records allowed by the Act
 - if the request is to inspect, copy, or receive copies of records
 - the format of the copies (hardcopy or reasonable electronic format)
 - who will inspect, copy, or receive copies of records
 - a signed waiver to release medical information to the employee's specific representative, if applicable.



28

P.A. 103-0727: Personnel Record Review Act

Effective date: January 1, 2025

- Employers have 7 working days to comply, with an extension of 7 calendar days if the deadline cannot be met.
- Employees may file a lawsuit if IDOL fails to resolve complaint about alleged violations within 180 days or certifies it is unlikely to be able to do so.



29



30



P.A. 103-0846:
Teacher Content Area Test
 Effective date: August 9, 2024

- ~~• No candidate shall be allowed to student teach or serve as the teacher of record until he or she has passed the applicable content area test.~~
- Candidates may be allowed to student teach or serve as the teacher of record before passing the applicable content area test.
- ISBE rules for scoring the test may include scoring and retaking of each test section separately and independently.

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31

P.A. 103-0617: PEL Rights for CTE Endorsements

Effective date: July 1, 2024

- A valid or provisional career and technical educator endorsement on an Educator License with Stipulations gives “all of the rights and privileges granted to a holder of a Professional Educator License.”
- Tenure accrual now based on evaluation ratings and consecutive years of service when the teacher holds a PEL or valid/provisional CTE endorsement on an Educator License with Stipulations.



32



Substantive
Amendments to
Whistleblower Act



33

P.A. 103-0867: Amendments to Whistleblower Act

Effective date: January 1, 2025

- The Whistleblower Act first took effective on January 1, 2004, with amendments made in 2008, 2009 and 2011.
- The changes made by Public Act 103-0867 apply to claims arising or complaints filed on or after January 1, 2025.



34

P.A. 103-0867: Amendments to Whistleblower Act

Effective date: January 1, 2025

- Adds a definition for “adverse action” to mean “an action that a reasonable employee would find materially adverse.”
 - An action is materially adverse when it could dissuade a reasonable worker from disclosing or threatening to disclose information protected by the Act.
- Defines “retaliatory action” as “an adverse employment action or the threat of an adverse employment action by an employer or his or her agent to penalize or any non-employment action that would dissuade a reasonable worker from disclosing information under the Act.”



35

P.A. 103-0867: Amendments to Whistleblower Act

Effective date: January 1, 2025

- A “retaliatory action” includes, but is not limited to:
 - taking, or threatening to take, any action that would intentionally interfere with an employee's ability to obtain future employment or post-termination retaliation to intentionally interfere with a former employee's employment;
 - taking, or threatening to take, any action prohibited by subsection (G) of Section 2-102 of the IHRA, which pertains to immigration related practices; or
 - contacting, or threatening to contact, immigration authorities, or otherwise reporting, or threatening to report, the suspected or actual citizenship or immigration status of the employee or their family or household member to a federal, State, or local agency (unless the employer is otherwise required to make a report).



36

P.A. 103-0867: Amendments

to Whistleblower Act

Effective date: January 1, 2025

Changes the definition of “employee” to include any individual “permitted to work” by an employer, unless the individual is what appears to be a kind of super-independent contractor.



37

P.A. 103-0867: Amendments to Whistleblower Act

Effective date: January 1, 2025

- Expands an employee's protected activity to include when an employee discloses or threatens to disclose information "related to an activity, policy, or practice of the employer where the employee has a good faith belief that the activity, policy, or practice (i) violates a State or federal law, rule, or regulation or (ii) poses a substantial and specific danger to employees, public health, or safety."
- The section on retaliation for protected disclosures was also expanded to include disclosures to others including **supervisors and board members**, not just courts, administrative hearings, or other legal proceedings.



38

P.A. 103-0867: Amendments to Whistleblower Act

Effective date: January 1, 2025

- Expands the relief available to an employee if a violation is found to include injunctive relief, liquidated damages of up to \$10,000, a civil penalty of \$10,000 payable to the employee, interest on back pay at 9%, front pay, and other compensation for costs incurred because of the violation.
- Allows the Attorney General to initiate or intervene in civil actions for alleged violations and gives broad investigatory powers before initiating an action.
- Recognizes a defense if "the retaliatory action was predicated solely upon grounds other than the employee's exercise of any rights protected by this Act."



39



Non-Regulatory Guidance

Teacher Resignations under Section 24-14 of the School Code



40

Non-Regulatory Guidance: Application of Section 24-14 of the School Code to Teacher Resignations

- [ISBE teacher resignation guidance](#) was issued on July 19, 2024, approximately one year after P.A. 103-0549 was signed into law and made significant changes addressing teacher (tenured and non-tenured) resignations and potential licensure sanctions for an untimely resignation.
- Resignation (if leaving to take another full-time teaching assignment) must be submitted a full 30 calendar days before the first day of student attendance. Also, can't resign during the school year.
- If less notice is given, school board can deny acceptance and refer to State Superintendent for action within 10 business days after it denies the resignation.
- Must give notice to teacher of referral to State Superintendent within 5 business days submission.
- Teacher right to a hearing or in lieu of hearing, can agree to a lesser licensure sanction than 1 year.



41

Non-Regulatory Guidance: Application of Section 24-14 of the School Code to Teacher Resignations

Key FAQ Answers:

- A teacher can resign at any time by obtaining the concurrence of school board.
- A teacher can resign outside of the school term, as long as it is submitted 30 calendar days prior to the first day of student attendance.
- A teacher can resign at any time if they are not resigning to accept another full-time teaching assignment that requires licensure under Article 21-B of the School Code.



42

Non-Regulatory Guidance: Application of Section 24-14 of the School Code to Teacher Resignations

Key FAQ Answers:

- DOES apply if the teacher leaves to accept a full-time administrative position requiring licensure under Article 21B of the School Code.
- DOES NOT apply to paraprofessionals or substitute teachers.
- DOES NOT apply to teachers who leaves to accept a position in another state.
- DOES NOT apply to a teacher who leaves to accept a position at a non-public school unless it is a full-time position that requires licensure under Article 21B of the School Code.



43

Non-Regulatory Guidance: Application of Section 24-14 of the School Code to Teacher Resignations

Key FAQ Answers:

- If a district intends to make a referral, ALL evidence must be submitted within 10 business days after the Board denies the resignation. Submit:
 - A dated copy of the teacher's resignation letter.
 - A copy of the reporting district's current school year calendar.
 - Proof of employment for the school year at issue.
 - Documentation showing that the district's school board did not accept the teacher's resignation.
 - Evidence that the teacher left the school district in order to accept another teaching assignment.



44

Non-Regulatory Guidance: Application of Section 24-14 of the School Code to Teacher Resignations

Key FAQ Answers:

- If a timely referral is made with all evidence, an informal evidentiary hearing will be convened by the State Superintendent no later than 90 days after receipt of the documentation (unless a settlement is reached).
- Written determination issued by State Superintendent no later than 14 days after the hearing is completed.



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Mastering the Complex World of Public Bidding

October 9, 2024

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2

AGENDA

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



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 **fuel** including diesel, gasoline, oil, aviation, natural gas, or propane, lubricants, or other petroleum products;
 - Purchases of equipment **previously owned** by some entity other than the district itself;

The Duty to Publicly Bid

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



Unique Bidding Procedures and Exemptions



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Transportation Contracts

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

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Food Service Contracts

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

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



10

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.



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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.



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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.



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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



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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
 - 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



18

The Bidding Process

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



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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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New Design-Build Legislation “How-To”



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Design-Build –“Selection”

Phase One

(105 ILCS 5/15A-20 new)

Sec. 15A-20. Development of scope and performance criteria.

(a) The school district must develop, with the assistance of a licensed design professional or public art designer, a request for proposal, which must include scope and performance criteria. The scope and performance criteria must be in sufficient detail and contain adequate information to reasonably apprise the qualified design-build entities of the school district's overall programmatic needs and goals, including criteria, general budget parameters, schedule, and delivery requirements.



Attorney Writes



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Design-Build –“Selection”

Phase Two

(105 ILCS 5/15A-25 new)

Sec. 15A-25. Procedures for selection.

(a) The school district must use a 2-phase procedure for the selection of the successful design-build entity. Phase I of the procedure must evaluate and shortlist the design-build entities based on qualifications, and

Phase II must evaluate the technical and cost proposals.



Attorney Writes



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Is Design-Build Right for You?

**District
Experience With
Design And
Construction**

**District
Architect/Artist
Available To Set
Program**

**Willing To Be
“Hands Off” In
The Process**

**BOE Willing To
Accept The
Associated Risks**

**Funds Available
With Reserve**



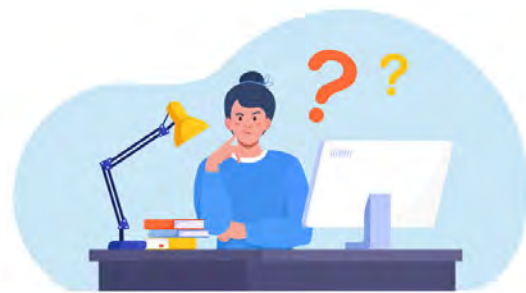
TO BID OR NOT TO BID

To Bid Or Not To Bid

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

To Bid Or Not To Bid

A contract for the purchase of paper goods and supplies totaling \$34,000?



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

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

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



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To Bid Or Not To Bid

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

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



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To Bid Or Not To Bid

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

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



31

To Bid Or Not To Bid



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



32

To Bid Or Not To Bid

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



33

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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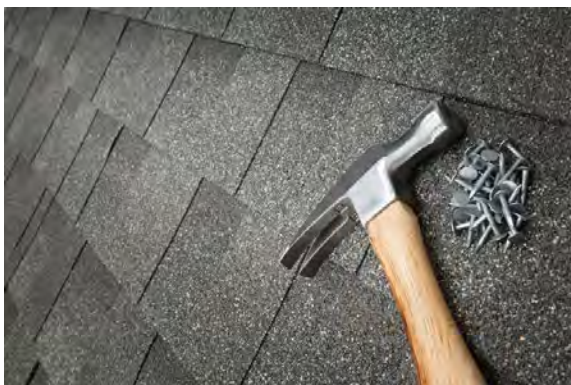
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To Bid Or Not To Bid

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



To Bid Or Not To Bid



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

To Bid Or Not To Bid

A contract for both regular and special education transportation services?



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Complex Parent Demands: Best Practices and Legal Pitfalls When Responding to Difficult Requests

October 9, 2024

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Agenda

- I. Introduction
- II. Applicable Policy and Legal Framework
- III. Ten Complex Demands
- IV. Questions



3

Legal Framework for Parent Participation and Involvement

- Due Process
 - The principles of the 14th amendment provide for the right to fair processes
- IDEA & Section 504
 - Requires districts to provide for meaningful parental participation 34 CFR 300.322(e)
- ADA
 - When necessary, schools must provide parents with reasonable accommodations



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Legal Framework for Parent Participation and Involvement

- FERPA/ISSRA
 - Parent/Guardian rights to access school student records information and have that information maintained confidentially
- State and federal law requires parent and family engagement as a component of English Language Learner (ELL) programs and the IDEA states that districts must take whatever action is necessary to ensure that parents understand IEP team discussions, including arranging for an interpreter for parents who are deaf or whose primary language is not English. 34 CFR 300.322 (e); 23 ILAC 226.530



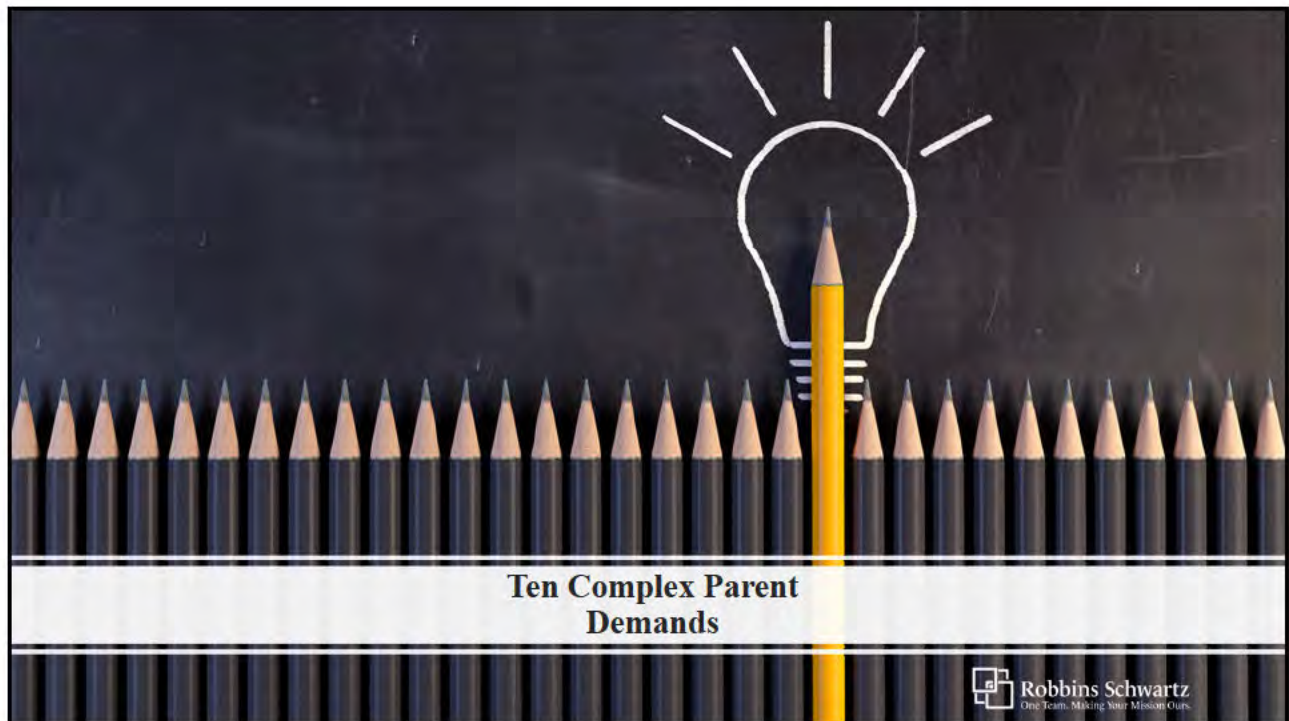
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Legal Framework for Parent Participation and Involvement

- **Board Governance**
 - 7.10 EEO
 - 7.340 Student Records
 - 8.30 Visitors
 - 8.70 Accommodating Individuals with Disabilities
 - 8.95 Parental Involvement



6



7

1. Requests to Record Meetings



Increasing demands to record meetings → both general education and special education



Legal requirements



Union Concerns



Board Policy

2. Attendance at Student Interviews

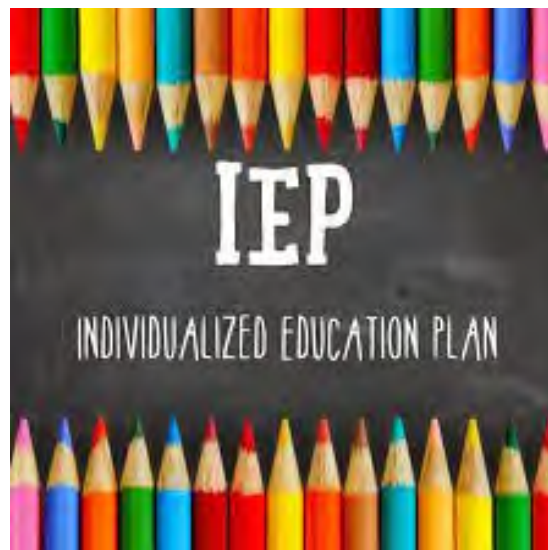
Parents often ask to be present if their student is being interviewed or decline to have their student interviewed at all

- Legal Requirements?
- Exceptions
 - Discipline related interviews
- Other Circumstances
 - Special Education Related Evaluation

3. Interpreters and Document Translation

Requests for interpreters and document translations for conferences, mediation, hearings, and other meetings are common.

- Legal Requirements?
- Criteria or Qualifications
- Other Considerations



English as a Second Language for Parents - IEP Document Translation Requirements

47 Ill. Reg. 2244, effective February 6, 2023

Amends the School Code's special education regulations by requiring translation of vital IEP documents

- **Vital IEP Documents:**
 - IEP, Parent/Guardian Notification of Conference, Parent/Guardian Notification of Conference Recommendations, Notice of Procedural Safeguards for Parents/Guardians of Students with Disabilities, Parent/Guardian Consent for Initial Evaluation, Parent Consent for Reevaluation, Evaluation Reports, Eligibility Determination, Manifestation Determination Review documents, IEP Progress Reports, and Medicaid Consent Forms

4. Requests for Vape Smoke Detectors

Many districts experience disciplinary issues with students vaping

→ Common issues include vaping occurring inside school bathrooms

- Legal Requirements?
- Health Considerations
- Practical Considerations



5. Special Education Notice Requests |

Prior Written Notice (PWN)

- Parents, attorneys, and advocates alike may ask for “prior written notice” when a district makes a change (or declines to make a change) to their student’s special education services → a right under the IDEA
- Legal Requirements?
 - What is Prior Written Notice?
- Practical Considerations



5. Special Education Notice Requests

PWN

- (1) What the District proposed and why the District determined the student's educational needs, educational programming, and services were appropriate to meet their needs;
- (2) A description of other options that the IEP considered and why those options were rejected;
- (3) A description of each evaluation procedure, assessment, record, or report the District used as the basis for determining the student's educational needs, program, and services; and
- (4) A description of the factors relevant to the District's determination regarding the Student's educational program and services



5. Notice Requests | Special Education

Processes → Requesting Advanced Notice



**Increase in requests
for incredibly
advanced notice (30+
days)**



**Legal
Requirements**



**Parental
participation**



**Requests for
Accommodations**

6. Requests for Animals in School

Districts receive various requests for support animals to be present at school to support students and/or parents.

- Legal Requirements?
 - What are Service Animals versus Emotional Support Animals?
- Practical Considerations



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Service Animal Framework

Under ADA laws, staff of a covered entity (including public schools) are **never** allowed to

1. Request documentation for a service dog;
2. Require that a service dog demonstrate its task(s); or
3. Inquire about the nature of the person's disability.

In situations where the role of a service animal and its tasks are not obvious a staff member may only *ask* two (2) questions.

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform? (inquiry only)



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Service Animal Framework

The US Department of Education has found that a qualified individual's right to use a service animal in a public entity's programs and activities is reasonable as a matter of law and the permissible reasons for excluding a service animal are limited to only five (5):

(1) the animal is out of control and the animal's handler does not take effective action to control it;

(2) the animal is not housebroken;

(3) the animal would constitute a fundamental alteration to a program or activity;

(4) the animal would create a direct threat; or

(5) the animal would impose an undue burden



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7. After-School Extracurricular Participation

When parents call their students out as absent during the regular school day, but then request for them to attend after school extracurricular activities.

- Legal Requirements?
 - Athletic Associations
- Accommodations
- Practical Considerations



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8. Security Camera Footage

Increase in requests to receive copies of security video footage for student incident(s) on school grounds and on school busses.

- Legal Requirements?
 - Student Privacy
 - Court Orders/Subpoenas
- Practical Considerations



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8. Reviewing Security Camera Footage

- Offer the family and/or their representative an opportunity to come into building/district offices to view the footage
- If families insist on receiving a copy, a court order specifically addressing the release of the video would be required for the District to release, transfer, or otherwise disseminate other students' school records (105 ILCS 10/6(a)(5)).

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9. Discipline Consequences of Other Students

Many parents want to ensure that a student who was involved in an incident with their child was properly disciplined and often demand to know what the discipline consequences are.

- Legal Requirements?
 - Student Privacy
- Practical Considerations



10. Disruptive Parent Demands

What are options for schools when responding to parents that engage in disruptive conduct in the form or nature of their communications, in threatening or hostile conduct, or otherwise unreasonable behavior?

- Legal Requirements?
 - Parent Participation
- Practical Considerations
 - Communication Plans or No Trespass





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Lessons Learned from Title IX Litigation

October 9, 2024

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Key Questions

1. When is conduct within a District's authority under Title IX?
 - What conduct applies and when?
2. What if a District fails to or delays in implementing the Grievance Process?
3. What is "deliberate indifference" and when is a District's response categorized as such?
4. How does Police or SRO involvement impact the District'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).

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.

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 District'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

- Board Policy 2:265 applies to all Title IX sex discrimination occurring under the District's education program or activity in the United States.
- Includes, but is not limited to, conduct that is subject to District's disciplinary authority.
- Board Policy 7:190 and employee discipline policies

Application

Districts 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.



Application Key Takeaways

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



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Application – Case Example

C.W. by and through Doe v. Smith, 2024 WL 3333024 (N.D. Ala. July 8, 2024)

- Plaintiff, a freshman in high school was being hazed by older players on the football team.
- The hazing involved older members of the team exposing their genitals and attempting inappropriate sexual contact with Plaintiff.
- Plaintiff quit the team and left the school after the incident.
- Plaintiff alleges a Title IX cause of action against the school district and his high school football coach.



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Application – Case Example

- In his first Complaint, under his Title IX allegation, Plaintiff pled that he was bullied due to his age and size, not because he is male.
- The court dismissed this Title IX allegation, giving Plaintiff the opportunity to re-plead.
- In his Amended Complaint, Plaintiff added that he is a heterosexual male, and that the players attempted to diminish his masculinity.
- He also added that the older football players only try to haze younger male football players, never females, thus occurring “on the basis of sex.”



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Application – Case Example

Court Findings:

- Amended allegations still did not rise to the reasonable inference plaintiff was harassed because he was male.
- The facts support a reasonable inference that the older football players acted with anti-freshman bias, not an anti-male bias.
- To succeed, Plaintiff must prove two things:
 - (1) Teammates harassed him because he was male; AND
 - (2) Harassment was so “severe, pervasive, and objectively offensive” that it deprived plaintiff of his ability to enjoy benefits or opportunities at the school.
- Plaintiff failed to plead the first, his Title IX Claim was dismissed.



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Application – Take Aways

- According to the Office for Civil Rights, “program or activity” includes “any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”
- Whether harassment occurs within a school's “program or activity” is extremely fact-specific. However, a school should never assume that reported harassment does not trigger Title IX obligations simply because it occurred off school grounds.
- Previously, the determination of whether Title IX was implicated turned on whether the institution exercised “substantial control” over both the perpetrator and the context in which the harassment occurred.
 - **NOTE: 2024 regulations expand Title IX application beyond “substantial control” analysis!!**

What if the School
District Fails to or
Delays in Implementing
the Grievance Process?

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



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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**

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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 District's grievance process 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 process and notify parties of informal resolution process.
- (5) In response to a complaint, initiate grievance process 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.

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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

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Implementation – Case Example

Doe vs. School District, U-46 557 F.Supp.3d 860 (N.D. Ill. 2021)

- Student, James Doe, was subject to ongoing bullying, including physical assaults and sexual assaults by four older students during his kindergarten year. James traveled from school to an after school (SAFE) program daily, and much of the conduct occurred on the school bus.
- Conduct first started as name calling and teasing, then escalated to kicking, taunting and other physical assaults.
- Parents initially reported the conduct to the classroom teacher, who notified the MTSS coordinator and other staff.



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Implementation – Case Example

- When bullying escalated, Parents notified principal who indicated she would speak with all of the involved parents and personally make sure the bullying stopped.
- Principal also notified James' parents that he would be seated near the front of the bus, away from the older students.
- One of the offenders was on student patrol, and therefore also sat near the front of the bus.
- For the next two months, James was sexually assaulted by this student and another friend of his daily. The two students would position themselves so that they blocked the bus driver's view.
- James ultimately withdrew from the school district.



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Implementation – Case Example

- Parents filed a suit against the district alleging various claims including Title IX violations.
- Plaintiffs alleged that the District had knowledge of sexual harassment against James and failed to take adequate measures to protect him.
- Plaintiffs argued that the facts support a reasonable inference that the bus driver observed the sexual harassment prior to the parents and student reporting it and failed to take adequate measures to protect James.



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Implementation – Case Example

Court Findings:

- Court held that the school's response was not "clearly unreasonable in light of known circumstances," hence no liability under Title IX.
- When Principal became aware of the initial report, she spoke with the offenders, disciplined them, and took steps to keep them away from James. School also provided James with counseling services.

*Would this case have a different outcome under 2024 regulations? Under 2020 regulations, "actual knowledge" triggers a response obligation.



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Legal Standard for Establishing Liability

For purposes of establishing liability under Title IX, schools can be held responsible for one student's sexual harassment of another where:

- (1) The school or school officials have actual knowledge of the sex-based harassment, which can be gained by a school official witnessing or being told about the harassment;
- (2) The harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to educational opportunities or benefits provided by the school; and
- (3) The school is deliberately indifferent to the harassment.

*Note: Standard for administrative enforcement is different (LOWER) under 2024 regulations!



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Deliberate Indifference – Case Example

Jane Doe v. Frisco Independent School District, 2024 WL 4350810 (E.D. Tex. Sept. 25, 2023)

- Plaintiff, 16 yr old, female was subject to sexual assault at the hands of the School Resource Officer (SRO), 34 yr old male, in the district middle school.
- Prior to the sexual assaults, SRO's behavior was noticed by the district and other SROs:
 - Routinely welcomed female students into his office, often making them late to class;
 - SRO would sit in the cafeteria surrounded by female students;
 - SRO would receive notes from female students, and give them candy;
 - SRO would work with school counselor to assist in cases involving abused female students.
- Numerous faculty members and SROs noticed SRO's closeness with the female students and concern grew, but nothing happened.



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Deliberate Indifference – Case Example

- Plaintiff volunteered for a summer program in which SRO was an instructor.
- SRO made sexual jokes to Plaintiff, they communicated throughout all hours of the day and night, SRO told Plaintiff she was like an “adopted daughter,” called her “baby girl” and told her he would get distracted when she wore leggings.
- Throughout the program, SRO and Plaintiff were always seen together: eating breakfast or lunch; driving off campus to get lunch; leaning against each other; hugging each other from behind; wearing SRO's clothes.
 - This behavior was noticed by other SROs at the summer program and was thought to be odd/concerning.



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Deliberate Indifference – Case Example

- Eventually, SRO was in Plaintiff's car one afternoon when he first sexually assaulted her.
- SRO continued to sexually assault Plaintiff as time went on. Plaintiff was scared but felt like she could not escape due to the power dynamic, and SRO's remarks that he knew where she lived, that he was "evil and sadistic" and could pass a lie detector test.
- SRO was finally arrested and charged criminally



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Deliberate Indifference – Case Example

- Plaintiff filed suit, alleging claims against the district under Title IX.
- District argued that Plaintiff's claims under Title IX must be dismissed as it did not have "actual knowledge" of the alleged sexual harassment and did not have authority to take remedial action.
- Court found that Plaintiff sufficiently pled actual knowledge:



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Deliberate Indifference – Case Example

Court Findings:

- Officials from the district had actual knowledge:
 - School officials including the principal, witnessed inappropriate behavior between SRO and female students, including Plaintiff, and did nothing to correct behavior.
- Plaintiff sufficiently alleged that the district was deliberately indifferent:
 - Officials from the district had actual notice of SRO's harassment and failed to act which resulted in deliberate indifference, which ultimately resulted in SRO's sexual assaults of Plaintiff.



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Deliberate Indifference – Key Takeaways

Deliberate indifference can take many forms:

- Knowledge of inappropriate conduct by school personnel without an appropriate response.
- Multiple incidents of improper conduct of a sex-based nature and improper handling.
- Failure to pursue key leads, such as interviewing witnesses, reviewing rape kits, etc.
- Failure to inform parties of their rights under Title IX.



33

What is "Failure to Supervise" and is there liability for such?

34

Negligent Supervision

- Illinois School Code in loco parentis doctrine confers upon school officials the status of "parent or guardian" for the purpose of ensuring the safety and supervision of students.
- If the school fails to take reasonable measures to protect student safety so, such constitute "willful and wanton" conduct, and result in legal liability.

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Negligent Supervision – Case Example

Doe v. Thorton Twp. High Sch. District 205 Bd. of Educ., 2021 WL 1172608 (N.D. Ill. Mar. 29, 2021)

- Parent (employee of district) came to work early one day and found her daughter (HS Student) being sexually assaulted by her coach.
- A year earlier, the Coach had asked parent to sign an authorization to allow him to transport Student to and from her softball games.
- Plaintiffs claim the Coach conditioned Student's participation as football manager and star softball player on her performing sexual acts.



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Negligent Supervision – Case Example

- Athletic Director inquired about Coach's relationship with Student and reported it to administration, but administration did not follow up with an investigation.
- Plaintiffs claim Coach had a history of inappropriate sexual relationships with students and school personnel knew about it and kept him employed.
- Plaintiff claims that, if she had not walked in on her daughter and the coach, abuse would have continued.



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Negligent Supervision – Case Example

Court Findings on Title IX Claims:

- Court recognized that harassment by a teacher inherently undermines a student's educational experience and a drop off in grades is evidence of such conduct.
- Email from the Athletic Director was sufficient to put the school on notice of potential misconduct. Further, Coach was transporting the student to and from games, which is against school policy.
- Title IX Claims may proceed against the educational institution only, not the individual defendants.



38

Negligent Supervision – Case Example

Negligent Supervision Court Findings:

- Must show defendants engaged in “a course of action that proximately caused the plaintiff's injuries, including having prior knowledge of similar incidents.”
- Court found that school personnel had sufficient knowledge of potential inappropriate conduct by coach, along with allegations that personnel were aware of prior incidents of misconduct. This was sufficient to establish a claim of negligent supervision.



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Negligent Supervision – Case Example

Willful and Wanton Court Findings:

- Plaintiff must show “defendant owed a duty to the plaintiff, that the defendant breached the duty, and that the breach was the proximate cause of the plaintiff's injury.”
- Evidence of willful and wanton conduct:
 - School personnel knowledge of Coach’s prior sexual misconduct
 - AD alerted Defendants of the fact that coach frequently spent time alone with Plaintiff in his car, in violation of school policy
- Defendants had a duty to protect Plaintiff from Coach and their failure to do so could constitute willful and wanton conduct.



40

Negligent Supervision Key Take Aways

- Knowledge of potential inappropriate conduct by school personnel or students could trigger a duty, even if not directly reported.
- Failure to take reasonable measures to protect students from known risks could constitute willful and wanton conduct.



41

How does Law Enforcement or DCFS Involvement Impact the District's Response?



42

General Rules

- Knowledge of Title IX Sex Discrimination may also trigger a school's obligation to report the matter to DCFS and/or law enforcement.
- DCFS and/or law enforcement investigation does not absolve the school district of its obligation to initiate the Grievance Process under Title IX.
- In some instances, law enforcement or DCFS may ask the school to pause or delay its own investigation so as not to interfere with the agency's investigation.



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Law Enforcement – Case Example

John v. Plainfield Cmty. Consol. Sch. Dist. 202, 21 C 4460 (N.D. Ill. Mar. 9, 2023)

- Doe Children A and B, high school freshmen football players, alleged that they were sexually assaulted by members of their school's varsity football team, through a hazing ritual known as "Code Blue" which had been part of the team's ritual and allegedly sanctioned by coaches.
- The day before their assault two unknown freshman were sexually assaulted by unknown perpetrators in the unsupervised locker room.
- When coaches were notified, they checked the locker room and found it empty. They also questioned the Doe Children regarding the alleged assault.
- Coaches notified the Athletic Director of the allegations.



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Law Enforcement – Case Example

- School held a meeting with the parents to discuss the allegations. AD admitted that school personnel was supposed to be monitoring the locker rooms.
- According to the coaches, students were not comfortable with adult monitoring of the locker rooms.
- Local police officer and SRO attended the meeting. SRO indicated that they would be investigating the matter.
- School directed Doe parents to follow up with SRO regarding the investigation.



45

Law Enforcement – Case Example

- SRO never followed up with the parents regarding the alleged sexual assault.
- Doe children continued to experience harassment and videos of the incident were posted to social media.
- Plaintiffs allege the four perpetrators were issued only a three-day suspension for their conduct. A majority of the perpetrators were permitted to remain on the team and continued to play football following the assault.
- Both students transferred out of the District.



46

Law Enforcement Case Example

- Plaintiffs filed a number of claims against the district including the following Title IX claims:
 - pre-assault “heightened risk” claims,
 - post-assault deliberate indifference and retaliation claims, and
 - a direct sex-based discrimination claim



47

Law Enforcement – Case Example

Court Findings on Title IX Claims:

- Plaintiffs have not alleged enough facts to establish that the District had an official policy of deliberate indifference which created a heightened risk.
- The District's failure to separate the assailants from the Doe Children, failure to discipline all players involved in the assault, failure to conduct any independent investigation into the events, and failure to assist and support the Doe Children following the assaults was clearly unreasonable in light of the circumstances.



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Law Enforcement – Case Example

Court Findings on Title IX Retaliation Claims:

If true, the following conduct supports Plaintiffs claims of retaliation:

- Failing to stop the threats and harassment from the varsity assailants after the assaults were reported;
- Failing to investigate the Doe Children's claims beyond referring them to the police;
- Refusing to allow the Doe Children to transfer schools



49



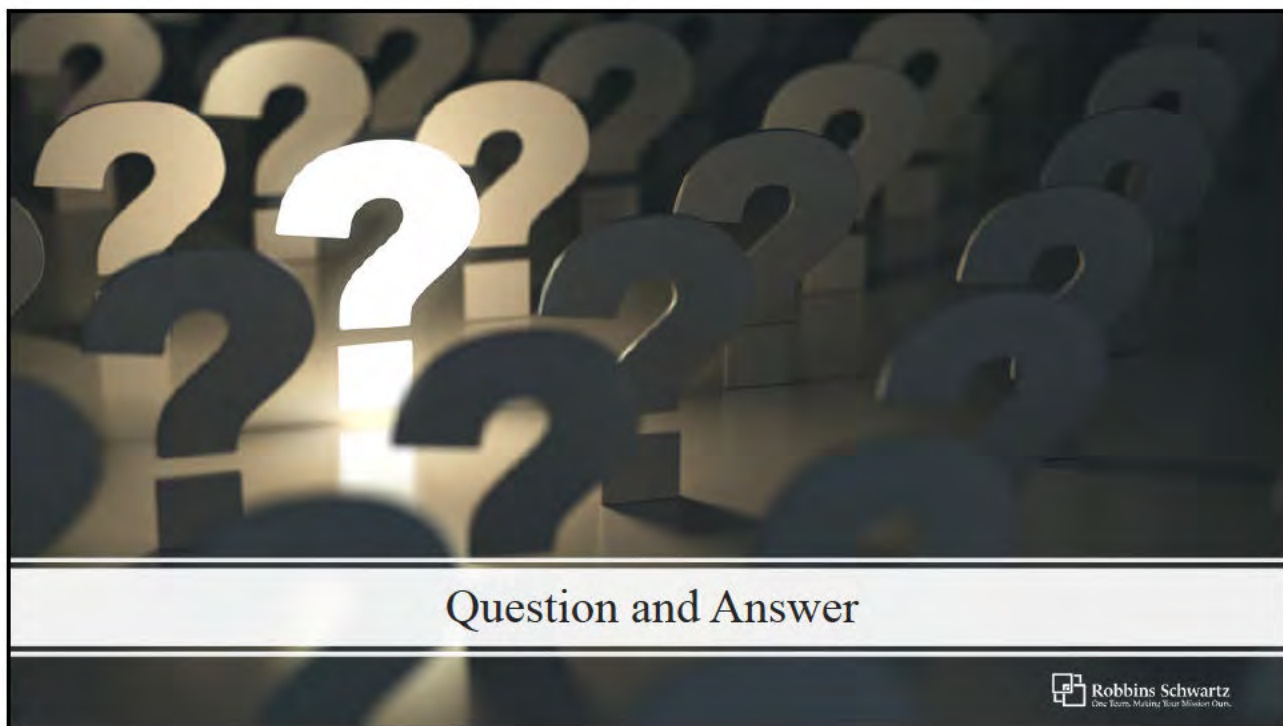
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Recommendations & Practice Tips

- Make sure school employees are properly trained on their notification and reporting obligations under Title IX.
- Keep written records of every communication and step in the grievance process.
- Maintain records of all reports (even if school determines not Title IX) and the school's determination and response to such reports.
- Inform parties of decisions and reasons for said decisions.
- Timely inform all parties of any reason for delay, such as waiting for criminal investigation or DCFS investigation to conclude, etc.
- Make sure TIX team is properly trained to implement Grievance Process.

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Labor and Union Issues Affecting School Construction Projects

October 9, 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 District 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 District 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 District 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 District 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 District 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 District 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



18

Reserve Gate System

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



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Property Tax Disputes and Protecting Your Tax Base

October 9, 2024

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Introductions



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1

School District Intervention Goals

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



2

The Assessment Process

- Assessments are made by the local assessor based upon the fair cash value of real property.
- Taxpayers view a property tax assessment as an opening offer for settlement negotiations.



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The Assessment Process

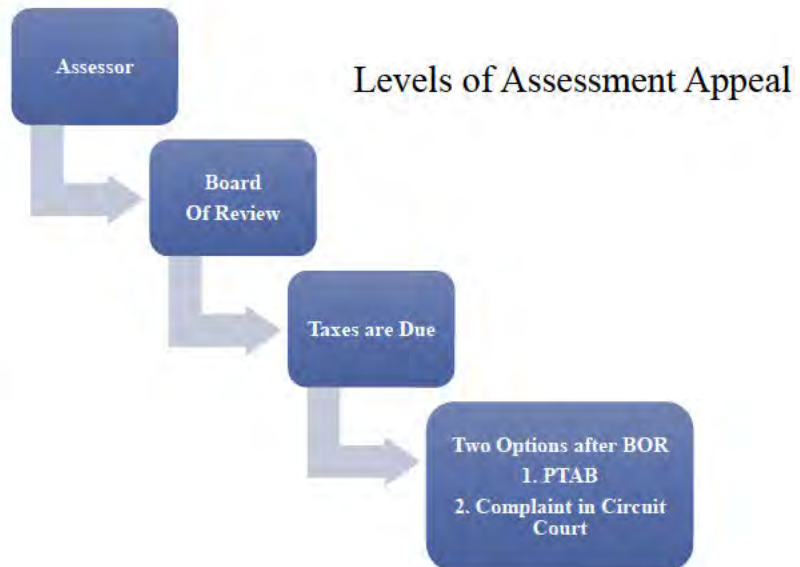
- **“Fair Cash Value” - The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and willing seller**
- Outside of Cook County
 - Quadrennial Assessment (general assessment every four years)
 - Fair Cash Value x 33 1/3 percent = Assessed Value
- Final assessments go to county clerk for calculation of tax rates
- Tax rates and assessments go to county treasurer for tax bills
 - Total Tax Rate x Assessed Value of Subject Property = Tax Bill for Subject Property

Note: In Cook County, assessment ratios vary by property type. General assessments are conducted on a triennial basis.

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Getting Involved In Assessment Process



5

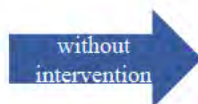
Protecting the Tax Base by Defending Assessments

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



Final Assessment

- Class A valued at \$95/sf
- Class B valued at \$85/sf
- Class C valued at \$65/sf



Final Assessment

- Class A valued at \$75/sf
- Class B valued at \$55/sf
- Class C valued at \$35/sf



6

Board of Review and PTAB Valuations

- Assessors and Boards of Review often rely on sales that are relevant to properties generating income.



- PTAB often values properties based on dark store comparables (vacant, non-operating stores).



Result: PTAB Valuations are lower, not reflecting the property's potential to generate income.

Lower Valuations = Lower Assessments and Refunds

PTAB's valuation method can result in much lower assessments compared to those determined by Assessors or Boards of Review. The difference can lead to:

- Tax refunds for large commercial property owners.
- Reduced future tax assessments, resulting in less revenue for school districts.



7

Getting Involved In the Assessment Process

- School District Intervention – Process
 - Board of Review Notice
 - Resolution(PTAB Only)
 - Intervention
 - One Page Application
 - No Filing Fee
 - Intergovernmental Cooperation



8

Top Reasons for Board of Review Participation

School District Board of Review Participation

- No refund
- Shorter timeframe means less litigation fees
- Opportunity to work with local property owners
- Local disputes decided locally
- Multi-year settlements
- Flexibility
- Get to the reasonable value



9

Defending an Appeal Before the Property Tax Appeal Board

Battle of the Experts - Most PTAB Cases concern which side has presented the best evidence of fair cash value

Best evidence of fair cash value is demonstrated through subject property sale, construction costs and, most often, appraisals

Appraisals analyze value based on cost approach, income approach and sales comparison approach



10

Defending an Appeal Before the Property Tax Appeal Board

- Hearing Officers
- Taxpayer Attorney



Refund Recapture Section 18-233 of Property Tax Code

- PTAB and Circuit Court Assessment Objections and Certificates of Error
- Annual Refunds Automatically Added to Levy
- Excluded from next year's aggregate extension base
- Tax-Capped (PTELL) Counties Only

Bill could set up wave of property tax hikes

Legislation headed to Pritzker addresses over-assessment errors

By Rick Pearson
Chicago Tribune

Legislation headed to Gov. J.B. Pritzker's desk could set the stage for a wave of annual real estate tax increases across Illinois by giving local taxing bodies the ability to make up for refunds they've issued due to erroneous property over-assessments by shifting those costs onto the rest of their taxpayers.

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

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

Turn to Legislation, Page 2

Legislation
from Page 1

The legislation points to the power of the education levy in Springfield, from local school districts and administrators to teachers' unions, amid Illinois' heavily dependent system of funding schools at the local level through property taxes rather than through state funding.

Property taxes for schools additionally make up the biggest line item on real estate tax bills and property



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

property assessment."

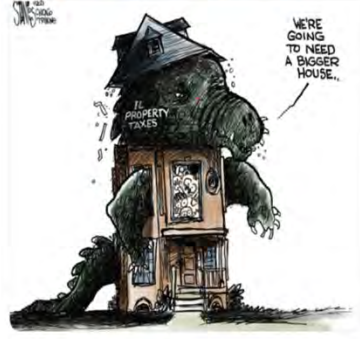
DeWitte said he believed the legislation would put more pressure on assessors to deliver more accurate assessments to avoid constant property tax increases driven by mistaken calculations. "That definitely was one of the byproducts of this legislation," he said.

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

Scott Stantis
@ScottStantis

A bill heading to #Illinois @GovPritzker's desk allows local taxing bodies to make up refunds given for over-assessing property by shifting the cost to the rest of the taxpayers.

Read the story at bit.ly/3x5JlIN
@chicagotribune cartoons at bit.ly/2VNMYL5



7:13 PM · Jun 29, 2021 · Twitter Web App



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13

Importance of Taxing District Intervention

Fundamental Fairness and Fiscal Stewardship

Intervention supports fair, evidence-based allocation of property tax obligations within community.

Section 18-233 (refund recapture) empowers School Districts to emphasize maintaining assessed value, which still considering refunds.



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Biographies

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



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U.S. District Court for the
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Illinois

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

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

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

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American Bar Association

Fellow, College of Labor
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Council of School
Attorneys

Federal Bar Association

Illinois Association of
School Business Officials

Illinois Bar Association

National School Boards
Association

Wisconsin Bar Association

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)





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Supreme Court of
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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.

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.



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Illinois Bar Association

Illinois Council of School Attorneys

National School Attorneys Association

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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)





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Supreme Court of
Illinois

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)



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

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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

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





LAURA M. SINARS

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PRACTICE AREAS

Education
Special Education
Student Rights

EDUCATION

J.D., University of
Notre Dame Law School

B.A., University of
Notre Dame

ADMITTED TO PRACTICE

U.S. Court of Appeals
for the Seventh Circuit

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

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

Supreme Court of
Illinois

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

Awards

Illinois Super Lawyers, 2005-2018

Recent Publications

Contributing author, "Special Education," *Illinois School Law*, IICLE (2005, 2010, 2012, 2015 and 2024)





HANNAH M. MAY

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PRACTICE AREAS

Education
Special Education
Student Rights

EDUCATION

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

B.A., University of
Michigan

ADMITTED TO PRACTICE

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

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Illinois Council of School
Attorneys

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

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

As a graduate of the Chicago Public Schools, Hannah has always been passionate about advancing equity in education and giving back to her educational community. Hannah's upbringing in a diverse Chicago community, coupled with her own experience as a student, has deeply influenced her perspective. She has great respect and appreciation for the dedication of school administrators, teachers, and staff in providing quality education to children in the community. Her unwavering commitment to equity in education is evident in her determination to create positive change both within and beyond the school setting. Her determination to effect change on a broad, community-wide level inspired her to become an attorney.

Outside of her legal career, Hannah values spending time with family and friends, staying active, and nurturing her well-being. She's an avid hiker and cyclist, finds serenity by Lake Michigan while walking her dog, and enjoys hosting home-cooked dinners for her loved ones. Furthermore, she's a certified Yoga Instructor at CorePower Yoga, reflecting her holistic approach to a balanced and fulfilled life.



Recent Publications

“Transition Programming: Preparing Student with Disabilities for Life After High School,” *Illinois Alliance of Administrators of Special Education* (2024)

“It’s Not an Easy A...Developing Legally Sound Grading Practices for Students with Disabilities,” *Illinois Alliance of Administrators of Special Education* (2023)

“Buried Alive: Gay v. Baldwin and Unconstitutional Solitary Confinement for Prisoners with Mental Illness,” *Loyola University Chicago Law Journal Volume 52, Article 8* (2021)





KENNETH M. FLOREY

Partner, Chicago & Lisle

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PRACTICE AREAS

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

EDUCATION

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

B.A., University of
Illinois at Urbana
Champaign

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)



ADMITTED TO PRACTICE

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

Supreme Court of Illinois

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

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

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

Contributing author, “Top 11 Public Bidding Questions,” *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, “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)





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PRACTICE AREAS

Commercial
Transactions
Construction
Public Finance &
Taxation
Real Estate

EDUCATION

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

M.B.A., Seattle
University

B.A., University of
Kansas

ADMITTED TO PRACTICE

Supreme Court of
Illinois

Katie N. DiPiero is a versatile attorney who brings focuses her practice on public finance and taxation, commercial law, construction law, and real estate development. Her legal practice primarily centers around assisting and representing school districts, community colleges, and municipalities in public finance and commercial matters. She is also well-versed in tax rate objections, real property taxation, valuation, and assessment appeals before the circuit court, Property Tax Appeal Board, and boards of review. Furthermore, Katie's proficiency extends to drafting and negotiating contracts in commercial transactions, assisting with nonprofits and foundations, as well as handling litigation and alternative dispute resolution.

In her role as an attorney, Katie finds immense satisfaction in writing and negotiating contracts, as well as tackling finance-related issues. Her strengths as a legal professional are exemplified through her exceptional writing and research skills, which have proven invaluable in her career.

Before her role at Robbins Schwartz, Katie assisted clients in tax planning and corporate reorganizations. She also gained valuable experience working for government entities and non-profit organizations.

Katie's impressive educational background led her to realize her calling – to assist others in navigating the legal system, particularly those with limited exposure to complex legal processes. Her desire to help people and her love for writing were the driving forces behind her decision to become a lawyer.

Katie's background, characterized by a journey from Kansas to Seattle, followed by work in Washington, D.C., has molded her into a well-rounded and empathetic attorney. Her ability to understand different perspectives, influenced by the myriad of experiences from her travels, significantly contributes to her capacity for finding creative solutions in her legal practice.

Outside her professional life, Katie is dedicated to staying active with her family and is working on refining her golf skills through lessons. An interesting facet of her life that many may not know is her background as a competitive pianist during her childhood.

Recent Publications

Contributing author, "Opening Your Mind to Closed Sessions," *UPDATE Magazine*, Illinois ASBO (2024)



Contributing author, “Who Ya Gonna Call? Knowing Your Legal Resources,” *UPDATE Magazine*, Illinois ASBO (2024)

Contributing author, “Opening Your Mind to Closed Sessions,” *UPDATE Magazine*, Illinois ASBO (2024)

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





CATHERINE R. LOCALLO

Partner, Chicago

312.332.7760

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PRACTICE AREAS

Board Governance
Education
Labor & Employment

EDUCATION

J.D., *cum laude*, The
John Marshall Law
School, Order of John
Marshall

B.S., Southern Illinois
University

ADMITTED TO PRACTICE

Supreme Court of
Illinois

U.S. Court of Appeals
for the Seventh Circuit

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

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

Catherine R. Locallo, a distinguished legal professional, has devoted her career to the realms of labor and employment law, focusing on education and board governance matters. Her commitment is exemplified by her role as a counselor to employers, offering comprehensive guidance on employment law intricacies, collective bargaining, labor relations, and compliance with various acts, including the Freedom of Information Act and Open Meetings Act.

Catherine's strengths lie in her client-focused approach, problem-solving skills, and the ability to build strong relationships. Her enjoyment stems from problem-solving and the opportunity to foster improved relations between management and labor.

Catherine's journey into law began with a significant role as a paralegal before transitioning to become an attorney. Her early career as a paralegal influenced her decision to pursue law, a path that led her to join Robbins Schwartz in 2004. She worked diligently while attending law school at night and was admitted to the bar in 2009. Catherine's dedication to education law led her to become a partner at Robbins Schwartz in 2017.

Catherine's upbringing, with her father as an attorney, has instilled a strong work ethic that influences her approach to the law. Beyond her legal endeavors, she is a hockey mom, team manager, and a Peloton enthusiast. A lesser-known fact about Catherine is her passion for running marathons, a tribute to her best friend Farrah, who passed away from Leukemia when she was seven years old.

Awards

Honorable Gerald L. Sbarbaro Mentoring Award (2023)

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

Recent Publications

"Substantive Amendments to Whistleblower Act Signed into Law," *Employment & Labor Law*, IICLE (2024)

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



ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Second Vice President, Justinian Society of Lawyers

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

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

President, Board of Directors, Glenview Stars Hockey Association

UNICO National

“U.S. Supreme Court Resolves Circuit Split for Title VII Claim Related to Job Transfer,” *Employment & Labor Law*, IICLE (2024)

“EEOC Releases Proposed Regulations for Pregnant Workers Fairness Act,” *Employment and Labor Law Flashpoints*, IICLE (2023)

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)

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

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

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

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

“Employee’s Loss of Ability to Maintain Privacy Rights Is Not Injury Compensable Under Workers’ Compensation Act,” *Employment and Labor Law Flashpoints*, IICLE (2022)

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

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

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

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

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

Recent Presentations

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

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





MATTHEW M. SWIFT

Associate, Chicago

312.332.7760

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PRACTICE AREAS

Board Governance
Education
Employee Benefits
Labor & Employment
Municipal

EDUCATION

J.D., University of
Chicago Law School

M.P.P., University of
Chicago, Harris School
of Public Policy

B.B.A., summa cum
laude, Baylor
University

ADMITTED TO PRACTICE

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

Supreme Court of
Illinois

Matthew M. Swift is a member of the labor and employment practice group. He counsels employers in various aspects of employment law, such as employee discipline, employment contracts, wage and hour laws, and employment discrimination matters under the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Illinois Human Rights Act, Title VII, and other federal and state anti-discrimination laws. He also helps clients with labor relations matters such as grievances and traditional and interest-based collective bargaining.

Matthew also frequently advises on legal issues that are unique to public-sector clients and educational institutions, including compliance with the Illinois Freedom of Information Act, the Open Meetings Act, the First Amendment, and Title IX. He works with clients on some of their most complex FOIA requests and board governance questions.

Before moving to Chicago for law school or attending college in Texas, Matthew grew up in a California mountain town, about a 20-minute drive from the nearest stoplight. He loves life in the big city—especially the museums and great food—but his more folksy roots still occasionally make an appearance.

Matthew has a soft spot for alliteration thanks to a family tradition—each Swift family member's first initial matches their middle initial. He enjoys when his work requires careful interpretation or choosing precise language, and he always appreciates a clever turn of phrase.

Recent Publications

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

"All Together Now – Employment Law Issues in the New Title IX Rules," *Chicago Daily Law Bulletin* (2020)

Recent Presentations

Beyond the Redaction Marker: Tools and Strategies for Managing Difficult FOIA Requests, Large Unit District Association Communications Conference (December 2023)



ORGANIZATIONS

Chicago Bar Association

The Open Meetings Act: FAQs and Answers, Community College Trustee Professional Development Training, Illinois Community College Trustee Association Annual Conference (June 2023)

Turning over a New Leave: Paid Leaves and Paycheck Protection under HB 1167, ED-RED Member Meeting (April 2022)

Red Light, Green Light? Responding to Recent Decisions about COVID-19 Mitigations, ED-RED Virtual Member Meeting (February 2022)





HOWARD A. METZ

Partner, Chicago

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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

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)



ORGANIZATIONS

Illinois Association of
School Business Officials

Illinois Council of School
Attorneys

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

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

Contributing author, “School Property and Environmental Issues,” *Illinois School Law*, 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)





LOGAN K. SWEENEY

Associate, Chicago

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lsweeney@robbins-schwartz.com

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

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)





ZARIA N. UDEH

Partner, Chicago

312.332.7760

zudeh@robbins-schwartz.com

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

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)



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)





HAYLEY A. WILLIAN

Associate, Chicago

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PRACTICE AREAS

Education
Litigation
Special Education
Student Rights

EDUCATION

J.D., Loyola University
Chicago School of Law

B.A., *university honors*,
University of Michigan

ADMITTED TO PRACTICE

Supreme Court of Illinois

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

ORGANIZATIONS

Chicago Bar Association

Hayley counsels K-12 school districts and higher education institutions on various issues, including IDEA, student discipline, Title IX, free speech and expression, student disability rights, board governance, and policy development. She assists school districts in responding to complaints from the Office for Civil Rights, Office of the Attorney General and Illinois State Board of Education, and she represents public school districts at IEP meetings, due process hearings, and student discipline hearings.

Prior to joining Robbins Schwartz, Hayley clerked at a private litigation firm, and interned with the Chicago Public Schools Board of Education. She received her Juris Doctor from Loyola University Chicago. During law school, she worked in the Civitas ChildLaw Clinic where she received her 711 license and served as a child representative in domestic relations and child protection proceedings.





MICHELLE L. WEBER

Partner, Chicago

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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

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)





NIKI LAMPRINAKOS

Partner, Chicago

312.332.7760

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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

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.



ORGANIZATIONS

Chicago Bar Association

Defense Research Institute
(DRI)

Hellenic Bar Organization

Illinois State Bar
Association





AIDAN C. FALK

Associate, Chicago

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afalk@robbins-schwartz.com

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

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.





BRITTANY FLAHERTY THEIS

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PRACTICE AREAS

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

EDUCATION

JJ.D., *cum laude*, The
John Marshall Law
School, Order of John
Marshall

B.S., *summa cum laude*,
Bradley University

ADMITTED TO PRACTICE

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

Supreme Court of
Illinois

Brittany Flaherty Theis has built her career as a dedicated advocate in the realm of school law and related matters. With a focus on representing school districts and taxing bodies, she has demonstrated expertise in a multitude of legal areas, ranging from property tax disputes to board governance, administrative law, personnel matters, and more.

Brittany's practice is marked by a keen understanding of property tax issues in Illinois. Her representation extends to various legal forums, including circuit courts, boards of review, and appellate courts. A significant milestone in her career was her involvement in mediating a billion-dollar property tax assessment dispute, showcasing her prowess in navigating complex legal terrain.

In property tax litigation, Brittany has been instrumental in litigating and negotiating settlements for diverse properties, from nuclear power plants to oil refineries. She defended findings of Freedom of Information Act and Open Meetings Act violations, contributing to a successful appeal in the Fourth District of the Illinois Appellate Court.

Beyond property tax litigation, Brittany provides crucial counsel on school finance matters, including property tax levies, contracts, and bond financings. She is actively engaged in presenting seminars to administrators throughout Illinois, demonstrating her commitment to knowledge sharing in the legal community.

Brittany is dedicated to addressing matters related to student rights, responsibilities, and special education and has served as a hearing officer in student disciplinary hearings. Brittany has navigated policy matters for school district clients, showing a particular interest in evolving issues such as accommodations for transgender students, constitutional questions, school and internet safety, and social media.

Brittany's journey into law was inspired by her parents' commitment to public service. Her inherent strengths lie in research and written arguments, complemented by empathy and genuine care for clients, students, and staff. She finds fulfillment in advising clients and guiding them through challenging situations.



ORGANIZATIONS

American Bar Association

Illinois State Bar
Association

Kane County Bar
Association

DuPage County Bar
Association

National Council of
School Attorneys

Illinois Council of School
Attorneys

Illinois Association of
School Business Officials

Illinois Association of
School Administrators

Beyond her legal endeavors, Brittany is involved in the Girl Scouts of Greater Chicago and Northwest Indiana. Her commitment to community service aligns with her upbringing in a family dedicated to public service. In her leisure time, Brittany finds joy in reading, outdoor activities, and her role as a Girl Scout leader, emphasizing a well-rounded and community-oriented approach to life with her husband and three daughters.

Recent Publications

Contributing author, "Opening Your Mind to Closed Sessions," *UPDATE Magazine*, Illinois ASBO (2024)

Contributing author, "Who Ya Gonna Call? Knowing Your Legal Resources," *UPDATE Magazine*, Illinois ASBO (2024)

Contributing author, "Opening Your Mind to Closed Sessions," *UPDATE Magazine*, Illinois ASBO (2024)

Recent Presentations

The Role of Taxing Districts in Assessments, Illinois Property Assessment Institute Legal Symposium (September 2023)

Legal Standards for the Management of School Personnel, Illinois ASBO AAC #820 (June 2023)

Legal Standards for the Management of School Personnel, IASB/IASA/IASBO Joint Annual Conference (May 2022)

Property Tax Refund Recapture & Other Tax Related Laws, Illinois ASBO Annual Conference (May 2022)





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PRACTICE AREAS

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

EDUCATION

J.D., Washington
University School of
Law

B.A., DePauw
University

ADMITTED TO PRACTICE

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

Supreme Court of
Illinois

Scott L. Ginsburg is chair of the firm's Real Estate and Finance Practice Group with a focus on matters related to public finance and property taxation. Scott's experience includes counseling clients and litigating cases in the areas of local government finance, real estate taxation, tax rate objections, tax exemptions, sale and use tax, energy, TIF and property tax abatements. As a registered lobbyist and longtime member of the State and Local Taxation ("SALT") Section Council of the Illinois Bar Association, Scott monitors and drafts legislation involving matters of public finance, and he has testified on behalf of Illinois units of local government in matters before the Illinois General Assembly. Scott has tried multiple cases before the Illinois Property Tax Appeal Board and the Illinois Department of Revenue, and his litigation experience includes defense of actions before courts of all levels. Scott also practices in the area of commercial transactions and local government, including contract drafting and review, litigation and alternative dispute resolution. He has experience in representing general contractors, local governments, and business owners in all aspects of civil litigation.

Prior to joining Robbins Schwartz, Scott concentrated his practice on litigation, in the areas of commercial disputes, construction defects and labor and employment issues. Scott is also a former judicial extern to the Honorable Michael J. Reagan, United States District Judge, Southern District of Illinois.

From the very beginning, Scott's passion for education law was evident. He recognized the transformative power of education and was drawn to the field as a way to contribute positively to this noble endeavor. As the child of educators - both of his parents and a sister dedicated their lives to teaching - Scott's career in education law became an apt reflection of his family's commitment to learning and knowledge.

What Scott finds most fulfilling in his professional life is helping taxing districts find innovative and creative solutions to address financial issues. It is in these challenging situations that his skills truly shine, as he harnesses his expertise to guide clients toward effective resolutions. The ability to apply creative thinking to solve intricate financial problems has become a hallmark of his career.



ORGANIZATIONS

Chicago Bar Association

Illinois Association of
School Business Officials

Illinois State Bar
Association, State and
Local Taxation Section
Council, Member

Rogers Park Montessori
School, Board of Directors

Outside of his professional life, Scott's interests and passions are just as diverse. He finds solace running along the serene lakefront, a practice that not only keeps him physically active but also clears his mind. His love for literature shines through in his joy for reading books about history and science, allowing him to delve into the complexities of the past and the wonders of the natural world. And then, there's his unwavering curiosity about the world, which is evident in his love for travel, a means through which he explores new horizons and experiences the beauty of different cultures.

Recent Publications

Co-Author, "Appellate Court Decision Clarifies Notice Standards for Property Tax Assessments in Illinois," *Tax Trends*, Illinois State Bar Association (July 2024)

"PTAB Clarifies Uniformity Standards for Income Properties," *Tax Trends*, Illinois State Bar Association, (2015)

"Chicago Bears Football Club v. The Cook County Department of Revenue," *Tax Trends*, Illinois State Bar Association (2014)

Contributing author, "Illinois Supreme Court Clarifies Standard Review for Zoning Decisions," Illinois Municipal Review (2008)

Recent Presentations

Comments on PTELL Legislation, ED-RED's Member Meeting (April 2022)

