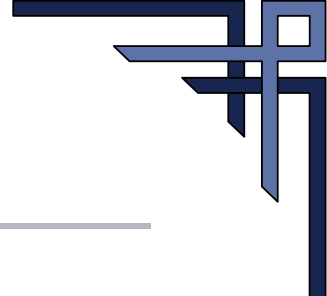


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# *Community College Trustee Training*

June 14, 2025

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

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**COMMUNITY COLLEGE TRUSTEE TRAINING**  
**JUNE 14, 2025**  
**AGENDA**

**GENERAL SESSION**

**8:30 a.m. – 9:00 a.m.**      The Open Meetings Act: FAQs and Answers

*Presented by: Catherine R. Locallo*

**9:00 a.m. – 9:45 a.m.**      The Role of the Board of Trustees in Preventing and Addressing Sexual Violence on Campus

*Presented by: Matthew M. Swift*

**9:45 a.m. – 10:30 a.m.**      Collective Bargaining Overview and Tips for Negotiations

*Presented by: Kevin P. Noll*

**10:30 a.m. – 10:45 a.m.**      **BREAK**

**RESUME GENERAL SESSION**

**10:45 a.m. – 11:15 a.m.**      Fiduciary Responsibilities of a Community College Trustee

*Presented by: Kenneth M. Florey*

**11:15 a.m. – 12:00 p.m.**      General Compliance Guidance: Illinois Freedom of Information Act

*Presented by: Matthew M. Swift*

**12:00 p.m. – 12:45 p.m.**      Financial Oversight and Accountability

*Presented by: Kenneth M. Florey*



# Community College Trustee Training

Robbins Schwartz

June 14, 2025

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## REMINDER

You have registered for the ICCB Approved Community College Trustee Training, required by the Illinois Community College Board. All elected or appointed trustees must complete **four hours of training during their first, third, and fifth years in office.**

*Note: Attending the training in its entirety is required in order to receive a Certificate of Completion and to satisfy ICCB's training requirements.*

**IMPORTANT**

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# The Open Meetings Act: FAQs and Answers

Presented by: Catherine R. Locallo



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## Introduction



**Catherine R. Locallo**  
Partner



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## What is a “Meeting” and What is a “Public Body”?



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



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



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

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## What is a “Meeting” and What is a “Public Body”?

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



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## Meeting Notice and Meeting Agenda

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



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

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

**REQUIRED**



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## What Type of Notice Must be Given for Action Items?



The agenda must set forth the general subject matter of any final action to be taken at the meeting.



Final action at a meeting shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

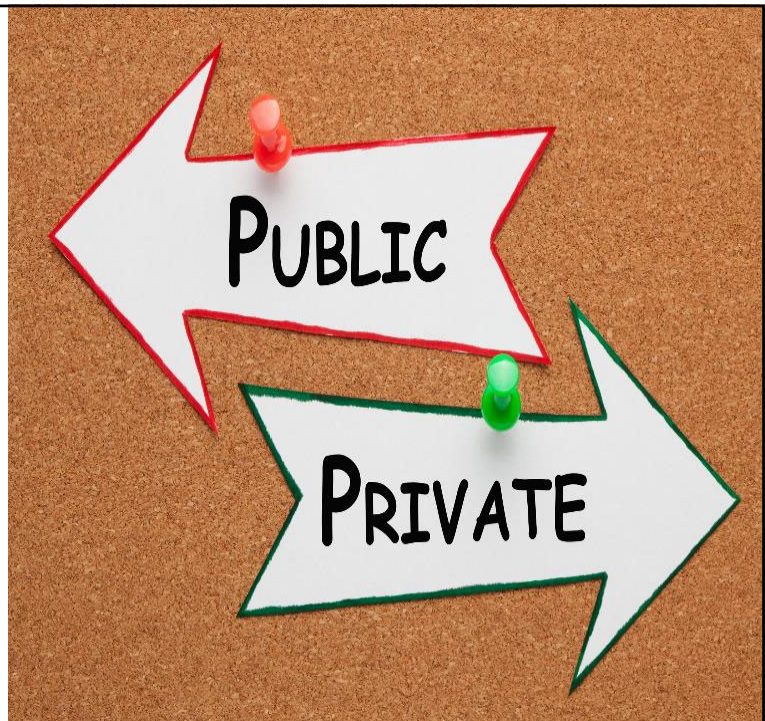
## May a Trustee Attend a Meeting by Video Conference or Telephone Call?

- If allowed by the public body under rules adopted on the subject, an absent trustee may be permitted to participate electronically only if he or she is prevented from physically attending the meeting due to:
  - Personal illness or disability;
  - Employment purposes;
  - Business of the public body;
  - A family emergency or other emergency; or
  - Unexpected childcare obligations.
- A trustee who wishes to attend electronically must notify the “recording secretary or clerk” of the board before the meeting unless it is “impracticable” to do so.
- Board takes action at the meeting to allow the member to attend by video conference or telephone call.
- A quorum of the board must be physically present at the actual location of the meeting. Absent trustees may not “call in” to make up a quorum.



## What Topics May the Board Discuss in a Closed Meeting?

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



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

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



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## What Topics May the Board Discuss in a Closed Meeting?

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



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## What Topics May the Board Discuss in a Closed Meeting?

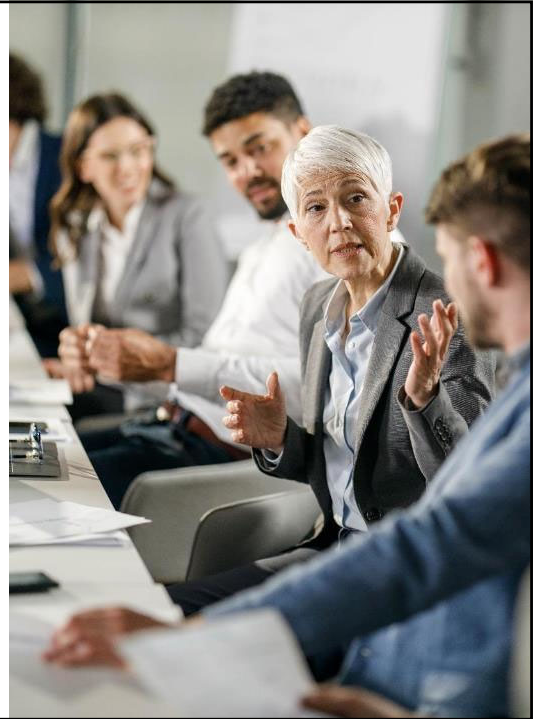
- A board may hold a closed meeting to discuss the following subjects:
  - Purchase or lease of real property for the use of the district, including meetings held to discuss whether a particular parcel should be acquired.
  - Setting a price for the sale or lease of property owned by the district.
 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



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## What Topics May the Board Discuss in a Closed Meeting?

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



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## What Topics May the Board Discuss in a Closed Meeting?

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



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## How Detailed Should Open Meeting Minutes Be?

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

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## How Detailed Should Closed Meeting Minutes Be?

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

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

The board must review closed session minutes and tape recordings every 6 months and release closed meeting minutes which no longer need to be kept confidential.

If closed meeting minutes are not released, the board must make a specific finding in the record that the need for confidentiality still exists.

Tape/audio recordings may be destroyed after 18 months provided the minutes have been approved and that there is no pending litigation about a subject discussed on that particular recording.

## Does a community college board need permission from the State to destroy a verbatim recording?

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The verbatim record of a closed session may be destroyed without notification to or approval of a records commission or the State Archivist under the Local Records Act or State Records Act no less than 18 months after completion of the meeting, but only after (a) the public body approves the destruction of a particular recording; and (b) the public body approves the minutes of the closed session that meet the requirements of the OMA.

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5 ILCS 120/2.06(c).

## What Does the OMA Say About Recording Meetings?

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

## What is the Interplay Between Collective Bargaining and the OMA?

While collective bargaining negotiations have been exempted from compliance with the OMA for many years, an amendment to the Illinois Educational Labor Relations Act ("IELRA") makes clear that collective bargaining strategy sessions are also exempt from the requirements of the OMA. 115 ILCS 5/18 (eff. 1/1/19).



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

- Each public body must designate employees, officers and/or members to receive OMA electronic training provided by the Public Access Counselor (OMA Designees). *Annual training obligation if an OMA Designee*.
- Public Act 97-504 (effective January 1, 2012) extended this training requirement to each elected or appointed member of a public body subject to the OMA.
- Newly elected or appointed members of public bodies must complete the training no later than the 90th day after the date they take any required oath of office (or assume their responsibilities as a member of the governmental body, if no oath is required), and must file a certificate of completion issued by the PAC with the public body. *One-time training during term of office, unless an OMA Designee*.
- The annual on-line training provided by Public Access Counselor can be found at <https://foiapac.ilga.gov>.



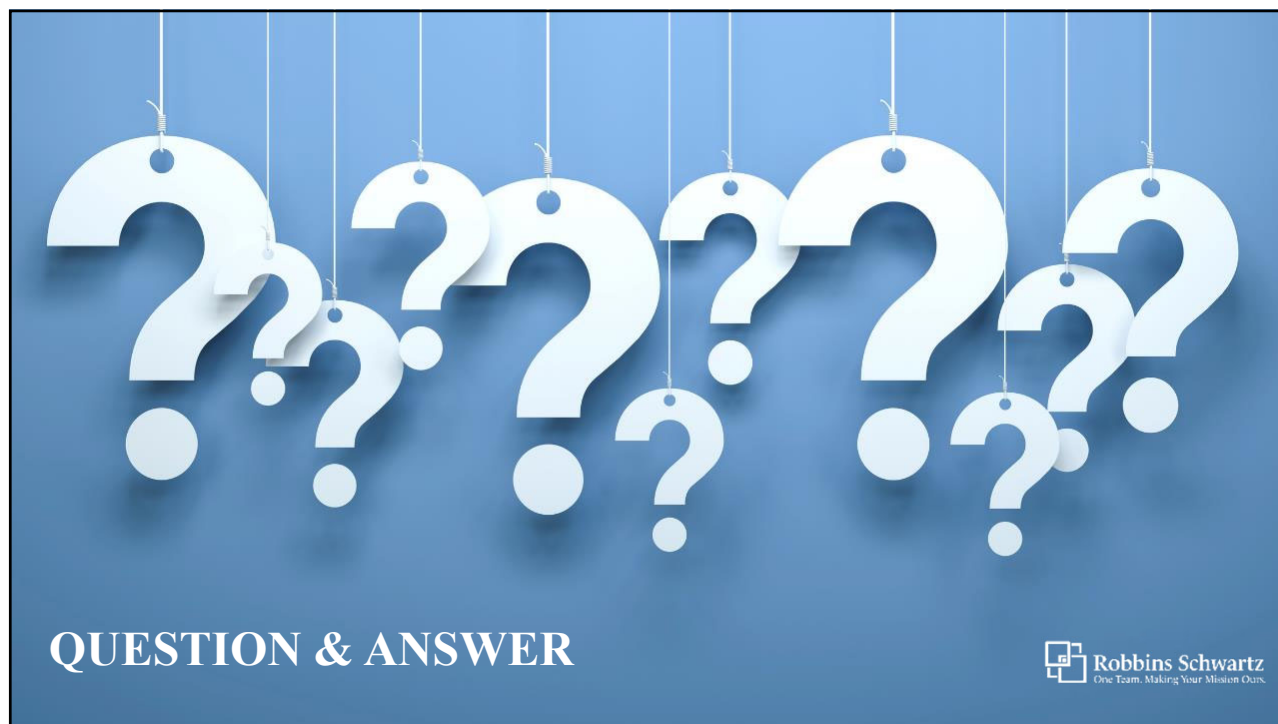
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## What Happens if You Violate the OMA?

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



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## QUESTION & ANSWER



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## Contact Us



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## **Next Session (9:00 a.m. – 9:45 a.m.)**

The Role of the Board of Trustees in Preventing and Addressing Sexual  
Violence on Campus

*Presented by: Matthew M. Swift*



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## **The Role of the Board of Trustees in Preventing and Addressing Sexual Violence on Campus**

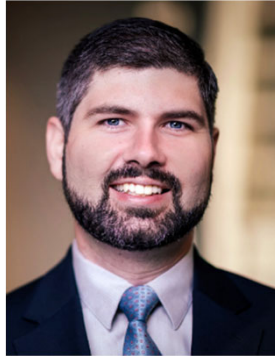
**Presented by: Matthew M. Swift**



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## Introduction



**Matthew M. Swift**  
Associate



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## Applicable Laws

- Title IX of the Education Amendments of 1972
- Title VII of the Civil Rights Act of 1964
- Illinois Human Rights Act
- Preventing Sexual Violence in Higher Education Act



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## Title IX: The Pendulum Swings Again

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## Background on Title IX

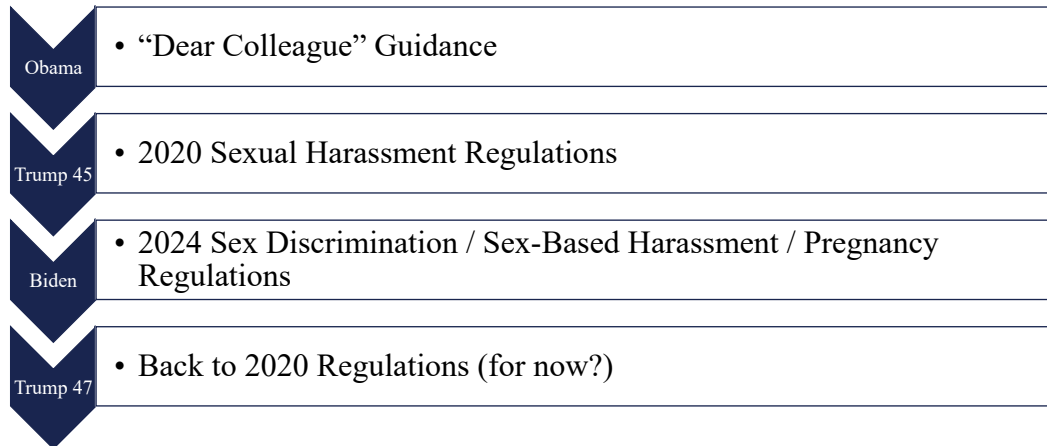
- “No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31(a).



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## How Did We Get Here?



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## Current Landscape: 2020 Regulations

- Expressly address institutions’ obligations to address **sexual harassment** in their educational programs and activities.
- Major changes from 2024 regulations:
  - Narrower definition of sexual harassment
  - Jurisdictional limitations
  - Single investigator model prohibited
  - Live hearing required for higher education institutions
  - Greater due process protections for accused parties



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## Key Concepts Under Title IX



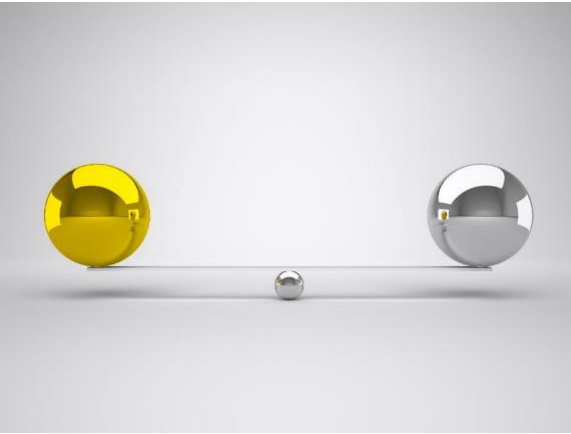
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## Definition of Title IX Sexual Harassment

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Title IX sexual harassment includes:

1. Quid pro quo harassment by a college employee
2. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to the education program
3. Any instance of sexual assault, dating violence, domestic violence or stalking (as defined in the Clery Act/VAWA)



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## Definition of Title IX Sexual Harassment

- 1 **Quid Pro Quo**  
“My math professor offered extra credit if I sent him inappropriate sexual pictures of myself.”
- 2 **“Hostile Environment”**  
“My classmate made frequent, explicit sexual comments and gestures at me during class for months; I switched sections to avoid seeing him.”
- 3 **Specific Acts:**  
“The athletic trainer touched me in a sexual manner even though I told her to stop.”



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## Title IX Sexual Harassment: Specific Acts

### Sexual Assault

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

### Dating Violence

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

### Stalking

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



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## Title IX Sexual Harassment: Specific Acts

### Domestic Violence

- Felony or misdemeanor crimes committed by a current or former spouse or intimate partner under the laws of the jurisdiction and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse; or
- A pattern of any other coercive behavior (not necessarily criminal) committed, enabled, or solicited to gain or maintain power and control over a victim, by a person who:
  - Is a current or former spouse or intimate partner, or person similarly situated to a spouse of the victim;
  - Is cohabitating or has cohabitated with the victim as a spouse or intimate partner;
  - Shares a child in common with the victim; or
  - Commits acts against an adult or youth victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



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## Title IX Jurisdiction



- The 2020 Title IX regulations apply only to alleged sexual harassment that occurs:
  - “in the institution’s education program or activity”—the College had substantial control over the respondent and the context—and
  - “against a person in the United States.”
- Other laws applicable to Illinois higher education institutions (IHRA, PSVHEA) do not have the same jurisdictional limitations as Title IX.
- Title IX regulations do not prohibit institutions from adopting policies with broader jurisdictional parameters.



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## Title IX Response Obligations



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



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## Standard of Liability Under Title IX

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



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## “Deliberate Indifference” under Title IX

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



## Key Components of the PSVHEA



- Comprehensive Policy
- Reporting Procedures
- Notification of Rights and Options
- Confidential Advisors
- Complaint Resolution Procedures (AKA Grievance Procedure)
- Campus Training, Education and Awareness
- Campus Task Force
- Annual Report
- Climate Surveys

## Scope of Prohibited Conduct

- Student party
- Sexual violence
- Domestic violence
- Dating violence
- Stalking



## Scope of Prohibited Conduct

### Sexual Violence

Physical sexual acts attempted or perpetrated against a person's will or when a person is incapable of giving consent, including without limitation rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

## Consent

- Freely given agreement to sexual activity
- Withdrawn at any time
- Not constituting consent:
  - Lack of verbal or physical resistance
  - Submission resulting from use or threat of force
  - Manner of dress
  - Consent to past sexual activity
  - Consent to sexual activity with another person

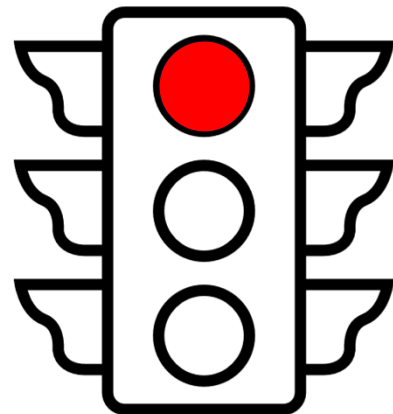


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## More on Consent

- A person cannot consent to sexual activity if they cannot understand the nature of the activity or give knowing agreement due to:
  - Being asleep or unconscious;
  - Being a minor;
  - Being incapacitated due to a mental disability; or
  - Being incapacitated due to alcohol or drugs.



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## PSVHEA Notification of Rights and Options

- Upon being notified of an alleged PSVHEA offense, a college must provide survivor, when identified, with concise notification of their rights and options, including:
  - Right to report to college and/or law enforcement
  - Right to assistance with reporting to law enforcement
  - Ability to request supportive measures
  - Right to assistance with accessing health and mental health services
  - Summary of college's grievance procedure



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## Jurisdiction: Hypothetical

A nursing student contacts the Title IX Coordinator to report that she was fondled by a fellow student while participating in clinical rotations at a local hospital.

Does the institution have an obligation to respond to this report under Title IX?



Same facts, except the student reports that she was fondled by a patient, rather than by a fellow student.

Does the institution have an obligation to respond to this report under Title IX?

How should the Title IX Coordinator handle this report?



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## Reporting Sexual Harassment

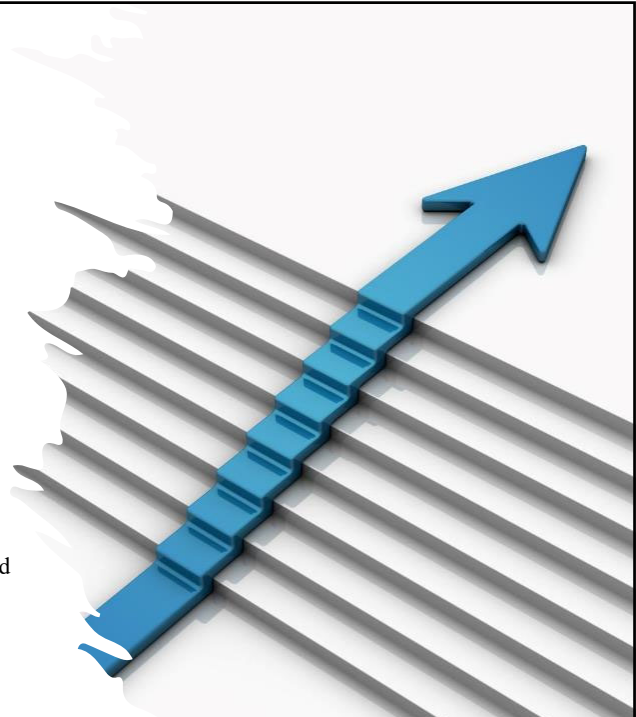
- As a Trustee, what should I do if I learn of allegations of sexual harassment?
  - Do not promise confidentiality.
  - Promptly report the information to the Title IX Coordinator.
    - If the allegations are against a Trustee, following your institution's specific reporting procedures for such allegations.
  - Reports can be made by anyone (including Trustees) and need not be made by the alleged victim of the misconduct.



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## Title IX/PSVHEA Grievance Process

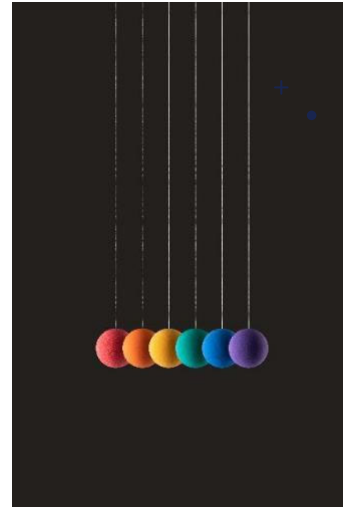
- Among other elements, an institution's grievance process must include:
  - Adequate availability of trained staff;
  - Simultaneous written notice of the allegations to both parties upon receipt of a formal complaint;
  - Right to be accompanied by an advisor of their choice;
  - Equal opportunities to provide and review relevant evidence and submit responses regarding the evidence gathered;
  - A live hearing with cross-examination through representatives, with an option for remote testimony; and
  - Appeal rights.



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## Today's Takeaways

- Regardless of which way the Title IX pendulum swings, colleges should ensure that they have:
  - A designated Title IX Coordinator to oversee compliance efforts
  - A policy (or policies) prohibiting sex-based discrimination, harassment and other misconduct
  - A mechanism for reporting that is clearly communicated to relevant stakeholders
  - A grievance process for investigating complaints
  - A plan for providing regular training and education opportunities for members of the college community



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## Today's Takeaways

- When you become aware of potential harassment, report the alleged incident to the Title IX Coordinator(s), as required by College policy.
- The college's investigation will vary depending on a variety of factors, including the nature of the allegations and source of the complaint.
- The college must take steps, including interim supportive measures, to maintain access to college programs and prevent any retaliation against the complainant and those who provide information during the investigation.



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## Contact Us

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## **Next Session (9:45 a.m. – 10:30 a.m.)**

Collective Bargaining Overview and Tips for Negotiations

*Presented by: Kevin P. Noll*



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## **Collective Bargaining Overview and Tips for Negotiations**

**Presented by: Kevin P. Noll**



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## Introduction



**Kevin P. Noll**  
Partner



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## Collective Bargaining

- High Level Tips
- Traditional Bargaining
- Interest Based Bargaining
- Strategic Considerations



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## High Level Tips

### What is collective bargaining?

- Bargaining is a discussion about a complicated relationship in which the parties try to air and resolve their problems.
- Idealized perspective: bargaining is problem solving.
- Cynical perspective: bargaining is a process of realizing diminished expectations.

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## High Level Tips

How do you foster the “complicated relationship” with the union into labor peace?



How do you communicate, build trust, and maintain relationships with people in normal life?



Do exactly that!

Transparent  
discussions

Respectful  
interactions

Active  
listening

Think before  
speaking

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## High Level Tips

### Differing views on what the CBA represents:

- Union: The CBA should define all union rights and entitlements, akin to an Employee Handbook.
- Management: The CBA should be limited articulation of where management authority is restricted. Less is more!

## High Level Tips

### The reality of what the CBA represents:

- A combination of both viewpoints.
- CBAs are a mixture of:
  - Required elements such as compensation, benefits, and the grievance procedure.
  - Well-reasoned clauses and clauses that address specific problems after many hours at the bargaining table.

## High Level Tips

### Traits of **effective** negotiators

- Problem solvers
- Prepared
- Ability to make the same point a variety of ways
- Know how each proposal will impact the individuals on the other side of the table
- Firm but flexible
- Focused on satisfying everyone's interests

### Traits of **ineffective** negotiators

- Posturing
- Shoot first, aim second mentality
- "Beat a dead horse"
- Focused on "winning" the negotiation
- Apprehensive to commit



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## High Level Tips

### **Do's** at the table

- Take notes to establish bargaining history
- Keep a poker face
- Stay organized and consistent with formatting
- Engage in transparent discussions – every tentative agreement should have meeting of the minds.

### **Don'ts** at the table

- Overly react to unrealistic proposals
- Interrupt the union during their proposal presentation
- Try to sneak something past the union ("gotcha")



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## High Level Tips

Avoid unfair labor practices:

- Regressive bargaining
- Adding new and significant proposals late in the process
- Surface bargaining
- Imposing conditions on bargaining
- Note: firm bargaining is not an unfair labor practice!



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## Traditional Bargaining

- General process for **traditional bargaining** format:
  - Planning with management bargaining team:
    - Composition of the bargaining team
    - Review language issues
    - Financial modeling
  - Ground rules
  - Language proposals – union presents first
  - Economic proposals – union presents first
  - Union ratification
  - Board approval – this is where you come in!



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## Traditional Bargaining

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



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## Traditional Bargaining

- The parties will alternate responses until an agreement is reached
  - Agreements reached on particular contract terms are considered “tentative agreements.”
  - When all issues have been “TA’d,” the parties submit the new draft collective bargaining agreement to the union’s membership for ratification, and then the Board for approval.
  - The “TA” represents the parties’ work product after bargaining in good faith. The bargaining teams should be confident that the TA will pass ratification from the union membership and approval from the Board.



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## Interest Based Bargaining (IBB)

- IBB is often referred to as “win-win” or “mutual gains” bargaining.
- IBB dispenses with the use of a chief spokesperson and sequential exchanges of formal proposals. Instead, the process focuses on interest-based problem solving.
- IBB uses facilitators to train the participants on IBB techniques and to help the parties in negotiation sessions.



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## Interest Based Bargaining (IBB)

- IBB process:
  - The participants identify issues of mutual concern.
  - The participants identify the various interests both parties have in the issues, while avoiding taking positions on the issues.
  - The participants jointly brainstorm options and solutions – no judging!
  - The participants apply standards or criteria to evaluate the solutions or options.



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## Strategic Considerations



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## Negotiations Strategies and Techniques

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



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## Negotiations Strategies and Techniques

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



## Economics – Salary

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

## Economics – Salary

- For across-the-board annual salary increases, consider backloading.
  - Reduces the total expense of the contract because wages compound.
    - 6% - 5% - 4% annual increase averages 5.33% each year.
    - 4% - 5% - 6% annual increase averages 4.66% each year.
  - Consider using a CPI based formula for annual increases.
    - Annual increase is CPI with a floor of 2% and a ceiling of 4%.



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## Economics – Fringe Benefits

- Benefits have surpassed salary as crucial and most difficult negotiations issues for colleges
  - Benefits costs continue to increase.
  - Common union talking point recently – the rising cost of family health insurance plans.



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## The End Game



Settle the contract



Impasse – stalemate in negotiations

Parties must use mediation



If still no settlement after mediation, the Board may:

Make its “last, best, final offer.” Make sure you mean it.  
Impose the terms of its last, best, final offer.

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Question & Answer

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# Contact Us



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## Break Time!

We will begin the next session at 10:45 a.m.

**Next Session (10:45 a.m. – 11:15 a.m.)**

Fiduciary Responsibilities of a Community  
College Trustee

*Presented by: Kenneth M. Florey*

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# Fiduciary Responsibilities of a Community College Trustee

Presented by: Kenneth M. Florey



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## Introduction



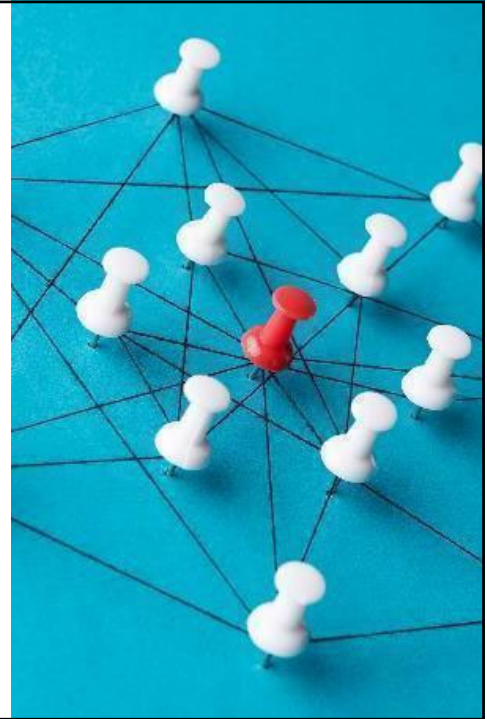
**Kenneth M. Florey**  
Partner



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# Model Board Governance

- Illinois Public Community College Act
  - Duties of the Board of Trustees outlined in Sections 3-21 to 3-29.20.
  - Powers of the Board of Trustees outlined in Sections 3-30 to 3-43.



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# Model Board Governance

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



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## Public Community College Act

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



## Public Community College Act

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



# Public Community College Act

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



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# Board Governance Process

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



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## Who Does the Board Directly Oversee?

**Legal Counsel**

**Auditor**

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



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## Striking the Right Balance

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



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## Role of Individual Board Members: Acting as a Whole

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

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## Role of Individual Board Members: Fiduciary Duties



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

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## Role of Individual Board Members: Fiduciary Duties

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



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## Role of Individual Board Members: Fiduciary Duties

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



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## Immunity in Official Capacity: Tort Immunity Act

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



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## Immunity in Official Capacity: Tort Immunity Act



- Immunities include, but are not limited to:
  - Section 2-201—Absolute immunity for discretionary actions that fall within official discretion as a member of the Board.
  - Section 2-103 and 2-205—Immunity for adopting or failing to adopt an enactment.
  - Section 2-104 and 2-206—Immunity for claims that arise from the issuance, denial, suspension, or revocation of a permit, license, or certificate as well as for the failure to issue, deny, or revoke, any such license.
  - Section 2-107 and 2-210—Immunity for alleged libelous or slanderous statements.
- Immunity protection generally will not extend to “willful and wanton conduct.”



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# Indemnification

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



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# Acting Within the Scope of the Role of a Board Member

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



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## Acting Within the Scope of the Role of a Board Member

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



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# Contact Us



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## Next Session (11:15 a.m. – 12:00 p.m.)

General Compliance Guidance: Illinois Freedom of Information Act

*Presented by: Matthew M. Swift*

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# General Compliance Guidance: Illinois Freedom of Information Act

Presented by: Matthew M. Swift



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## Introduction



**Matthew M. Swift**  
Associate



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## Overview of FOIA

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



## Overview of FOIA

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

## Overview of FOIA

FOIA only provides access to documents; it does not require creation of a new record.  
*Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989).

FOIA does not require a public body to answer questions, nor does it require a public body to interpret or advise requesters as to the meaning or significance of public records.  
See 5 ILCS 140/3.3

## Overview of FOIA

- A public body can require that a request for records be in writing.
- A public body may not require that a requester use a particular form to submit a FOIA request.
- A public body may, but is not required to, respond to oral requests for records. 5 ILCS 140/3(c).
- A request can be made anonymously.
- A public body cannot ask a requester why they want the records, except to clarify whether the request is being made for a commercial purpose.

## Overview of FOIA

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



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## Overview of FOIA



A public body must provide a record in electronic format requested by the requester if it is feasible to do so.



If it is not feasible to do so, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.

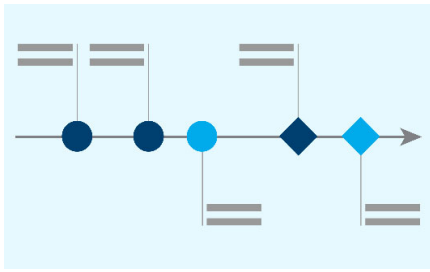


A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.



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## Timelines for Response



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

## Timelines for Response

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

## Timelines for Response

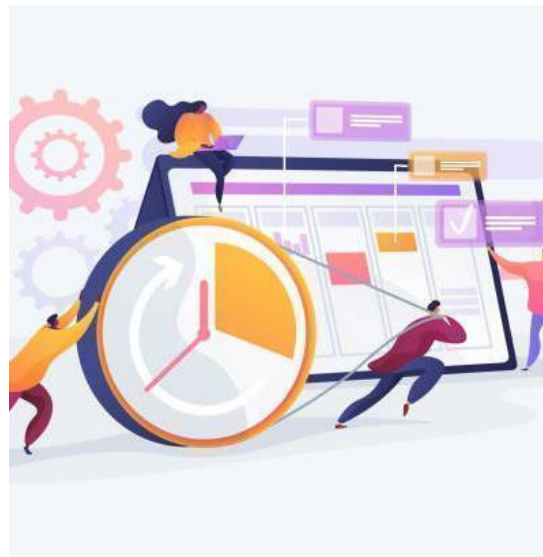


- The requester may voluntarily agree to a longer timeframe for response.
- Failure to timely respond is considered a denial, and the public body **waives the right to assert that the request would be unduly burdensome to comply with** or to charge copy fees.

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### Timelines for Response – Unduly Burdensome Designation

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



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## Timelines for Response – Commercial Purpose Request

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



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## Timelines for Response – Recurrent Requester

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



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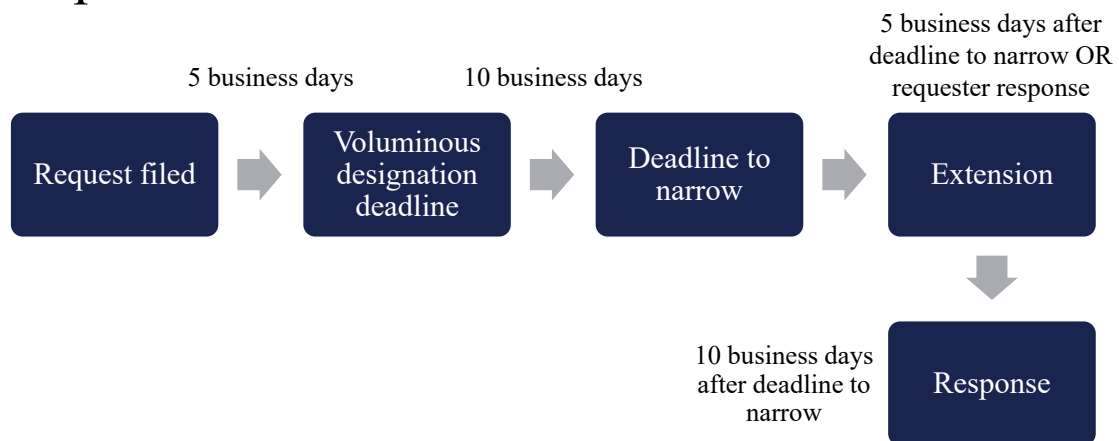
## Timelines for Response – Voluminous Request

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



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## Timelines for Response – Voluminous Request



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## Denials for Exempt Content or Records

- The presumption under FOIA is that all records in the custody or possession of a public body are presumed to be open to inspection and copying.
- Any public body that asserts that a record is exempt from disclosure has the burden of proving by **clear and convincing evidence** that it is exempt. 5 ILCS 140/1.2.

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## Denials for Exempt Content or Records



Any public body that denies a FOIA request must notify the requester in writing of the decision to deny the request.



Written denial must include the reasons for the denial, including a detailed factual basis and supporting legal authority for any exemption claims under FOIA Section 7, and the right to seek review of the denial by the Illinois Attorney General's Public Access Counselor (PAC) or in a court of law.



**The non-existence of a responsive record is not a denial.** Rather, the public body should respond, "[t]here are no records responsive to your request."

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## Review of Denials for Exempt Content or Records

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



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## Review of Denials for Exempt Content or Records



Alternatively, a requester may file a civil action in circuit court for injunctive or declaratory relief within 2 years after the alleged violation took place.



If a requester prevails in the litigation, the court will award the requester reasonable attorney's fees.



In addition, if the court determines that a public body willfully and intentionally failed to comply with FOIA or otherwise acted in bad faith, the Court can award a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.



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## FOIA Exemptions of Particular Interest to Colleges

- **Private information:**

- Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, home address, personal license plates and personal e-mail addresses, unless disclosure is required by another provision of FOIA, a State or federal law or a court order. 5 ILCS 140/7(1)(b).



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## FOIA Exemptions of Particular Interest to Colleges

- **Personal information** contained within public records, the disclosure of which would constitute a **clearly unwarranted invasion of personal privacy**, unless the disclosure is consented to in writing by the individual subjects of the information.
  - “Unwarranted invasion of personal privacy” means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information.
  - The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of privacy. 5 ILCS 140/7(1)(c).



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## FOIA Exemptions of Particular Interest to Colleges

- Examples of information upheld by the PAC as exempt as **personal information** under Section 7(1)(c) include:
  - Dates of birth (upheld on many occasions), but not age.
  - Race/ethnicity (2010 PAC 5602).
  - Names, application and application-related information of **unsuccessful applicants for employment** (2010 PAC 5196; 2010 PAC 7800).
  - Educational transcript (2010 PAC 6398, has no bearing on job performance).
  - Employee's law enforcement background check (2010 PAC 9678).
  - Employer-issued cell phone numbers (2010 PAC 8685, disclosure could subject staff to excessive calls from the public at all times of the day).



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## FOIA Exemptions of Particular Interest to Colleges

- Examples of information upheld by the PAC as **exempt personal information** under FOIA Section 7(1)(c) include:
  - Personal expenses for meals and entertainment which were **not submitted for reimbursement** (2010 PAC 7316, had no bearing on public duties and is not use of public funds).
  - Personal appointments (2010 PAC 7187 and 2010 PAC 9371).
  - Names and other identifying information for persons who express opinions, concerns or complaints to a public body (2010 PAC 8559, citizens have a privacy right in the opinions they express).
  - Medical information (upheld on many occasions).
  - Names of pension fund beneficiaries (2010 PAC 11125, not public employees, so they have a reasonable expectation of privacy).
  - Certain payroll deduction information (i.e., tax withholding elections; discretionary withholdings and contributions) (2011 PAC 13034, highly personal and does not relate to the use of public funds).



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## FOIA Exemptions of Particular Interest to Colleges

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



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## FOIA Exemptions of Particular Interest to Colleges

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



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## FOIA Exemptions of Particular Interest to Colleges

- Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, **except** that a specific record or relevant portion of a record shall not be exempt when the record is **publicly cited and identified by the head of the public body**. 5 ILCS 140/7(1)(f).



## FOIA Exemptions of Particular Interest to Colleges

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

## FOIA Exemptions of Particular Interest to Colleges

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



## FOIA Exemptions of Particular Interest to Colleges

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

## FOIA Exemptions of Particular Interest to Community Colleges

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



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## Electronic Communications and FOIA – Public Officials

- Records relating to the transaction of public business also can be “public records” under FOIA **even if generated on a public official’s private equipment** and/or maintained on personal electronic accounts.
- Communications via text message and e-mail between board members during a board meeting are subject to FOIA. *City of Champaign v. Madigan*, 2013 IL App. (4th) 120662.
- Board members collectively become a public body during a public meeting, so any communication that pertains to public business and is sent or received by board members when the public meeting is in session is a public record.



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## Electronic Communications and FOIA – Public Officials



Trustee communications that are public records under FOIA:

- Sent to/from any College email address (i.e., [trustee1@college1.org](mailto:trustee1@college1.org)).
- Sent to/from a College employee's private email/device.
- Sent to/from a trustee's private email/device during a meeting under the Open Meetings Act (regular, special, emergency, committee meeting).
- Sent to/from a private email/device with 3 or more trustees on the communication.
  - *Note:* Can be fewer than 3 trustees if the communication is between members of a committee and about committee business.



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## Electronic Communications and FOIA – Public Employees

In 2016, CNN submitted a FOIA request seeking “all emails related to Laquan McDonald from [Chicago] Police Department email accounts and personal email accounts where business was discussed” for 12 named CPD officers.

The PAC determined that the CPD violated FOIA by failing to conduct an adequate search. CPD had a duty to search for responsive records in the personal email accounts of the named officers since communications pertaining to the transaction of public business are “public records” under FOIA.

CPD could conduct this search by asking the named officers whether they maintain any records responsive to the request, and, if so, by requiring the officers to provide copies of the records to CPD's FOIA officer.



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## Electronic Communications and FOIA – Public Employees



The PAC's decision was upheld by the Court on administrative review. In order to qualify as a public record, a communication must both (1) pertain to the transaction of public business and either have been (2) prepared by, (3) prepared for, (4) used by, (5) received by, (6) possessed by, or (7) controlled by a public body.



Because police officers can act on behalf of the City individually, they act for the public body whenever their actions pertain to City business. Thus, any such records on their personal devices are public records of the City.

## Electronic Communications and FOIA – Public Employees

- The Court differentiated between city council members (elected officials) and police officers (employees). While a public body can act through its employees, agents, and elected officials, some (like city council members) can only act collectively while others (like police officers) act individually, without meetings or quorums.
- Thus, the holding in *City of Champaign v. Madigan* remains intact: communications from elected officials' personal electronic devices/accounts are public records only when such communications happen during a meeting.



141

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 robbinsschwartz



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## Next Session (12:00 p.m. – 12:45 p.m.)

Financial Oversight and Accountability

*Presented by: Kenneth M. Florey*



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## Financial Oversight and Accountability

Presented by: Kenneth M. Florey



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## Introduction



**Kenneth M. Florey**  
Partner



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## Overview: Key Issues to Consider for Financial Oversight

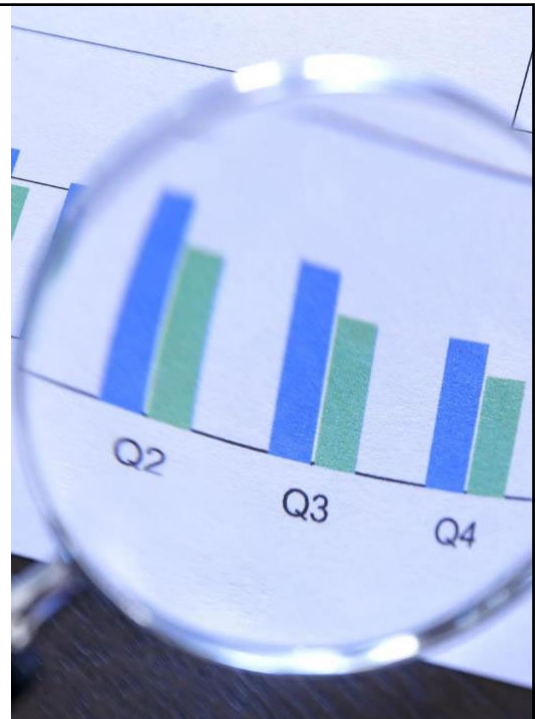
Sources of Funding

Protecting Your Property Tax Base

- Assessment Appeals
- Tax Rate Objections
- Exemptions

Budget, Fund Accounting, and Auditing Requirements

Public Contract Requirements



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# Financial Planning

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



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## Sources of Community College Funding



Property Taxes



Tuition



State  
Appropriations



Grants



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## Financial Oversight: Property Tax Assessment Appeals



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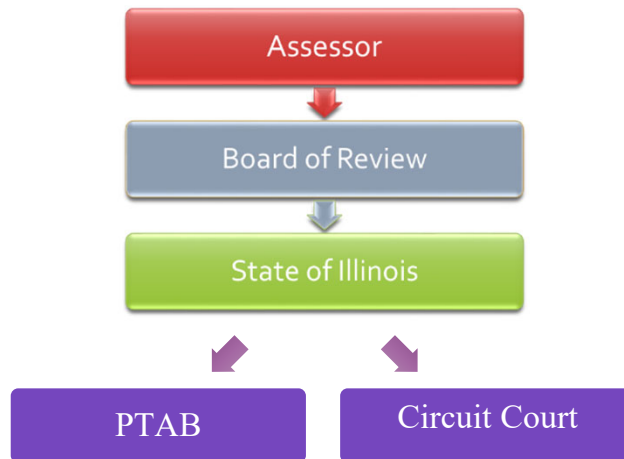
## Property Tax Assessment Appeals Protecting Your Tax Base



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## Levels of Appeal



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## Getting Involved in the Assessment Appeal Process

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

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## Benefits of College Involvement

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



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## Sample College Results – 8 Cases

Average College Potential Refund:  
\$14,296

Average College Actual Refund:  
\$3,468

Average Legal Fees Per Case:  
\$1,353

College Savings Per Case: \$9,475

Total College Savings: \$66,327



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## Intervention Goals



Settle PTAB Appeals



Minimize Refunds



Long-Term Settlement



Get to the Reasonable Value



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## Sample Case - Target



### Property Details

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



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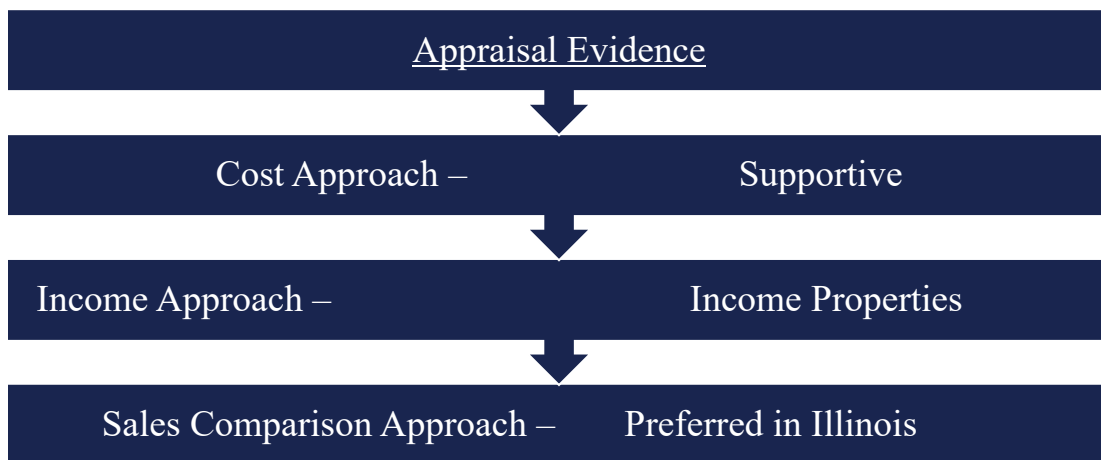
## Sample Case - Target

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



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## Sample Case - Target



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## Sample Case – Target – Taxpayer’s Evidence

### Sale Comp #1



Naperville Wal-Mart  
\$25.92 psf  
Purchased for Redevelopment

### Sale Comp #2



Waukegan Empty Retail  
\$32.69 psf  
Deferred Maintenance



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## Sample Case – Target – College’s Evidence

### Sale Comp #1



Oak Brook Jewel Osco  
\$70.78 psf  
Purchased by Tenant

### Sale Comp #2



Naperville Burlington Coat  
\$72.68 psf  
25 Year Lease



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## Financial Oversight: Tax Rate Objections



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## Tax Rate Objection Process

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

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## Defending or Otherwise Resolving Tax Objections

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



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## Defending or Otherwise Resolving Tax Objections

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

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## Defending or Otherwise Resolving Tax Objections



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



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## Common Objections to College Tax Levies

- Excessive accumulation objections
  - Typically assert that the challenged levy resulted in an excess accumulation of assets in the levied-for fund because, at the time the levy was made, the fund's available assets exceeded two times its average annual expenditure.
  - Excess accumulation claims are analyzed according to the guidelines set out in *Central Illinois Public Service Co. v. Miller*, 42 Ill.2d 542, 248 N.E.2d 89 (1969) ("CIPS v. Miller").
  - If available assets of that magnitude are shown, the taxing body can defeat the objection by presenting credible evidence as to why it needed to make an additional levy.



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## Common Objections – Improper Expenditures of “Tort” Funds

- Allege that college financial records show that it made “improper expenditures” from proceeds of levies for tort/liability insurance purposes, and that the tort levy should be reduced by the amount by which the fund would be replenished if reimbursed for the alleged wrongful “diversions of assets”.
- To support plaintiffs’ allegations, the text of these objections often cite budget line items for unemployment compensation and workers compensation.



## Common Objections – Improper Expenditures of “Tort” Funds

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

## Financial Oversight: Property Tax Exemptions



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## Common Disputes

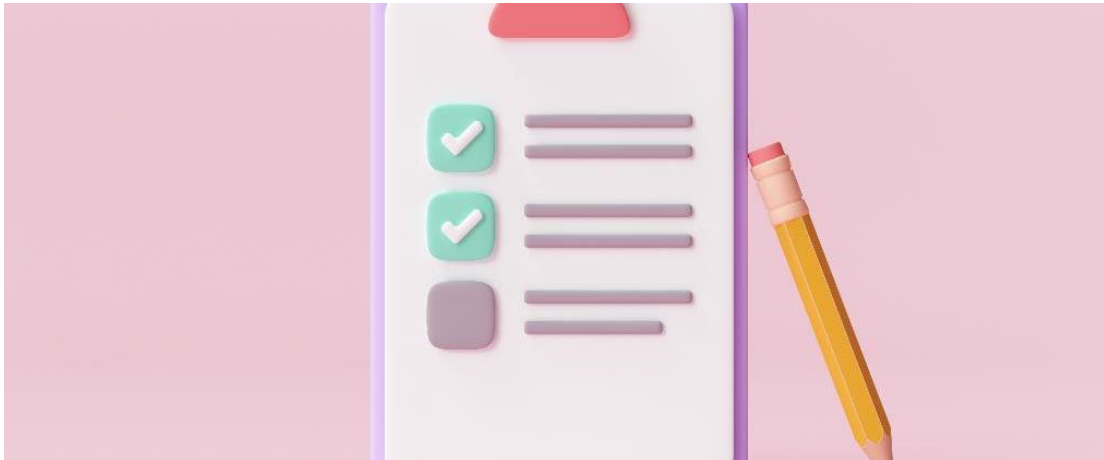
- Charitable Exemptions – Must Be In Charitable Ownership and Charitable Use
  - Hospitals
  - Performing Arts
  - Research and Science
- Religious Institutions – Must Be Used For Exclusively Religious Purposes
- Schools – Not Used With a View Towards Profit



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



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## Budget Requirements

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

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# Fund Accounting

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



## Fund Accounting

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

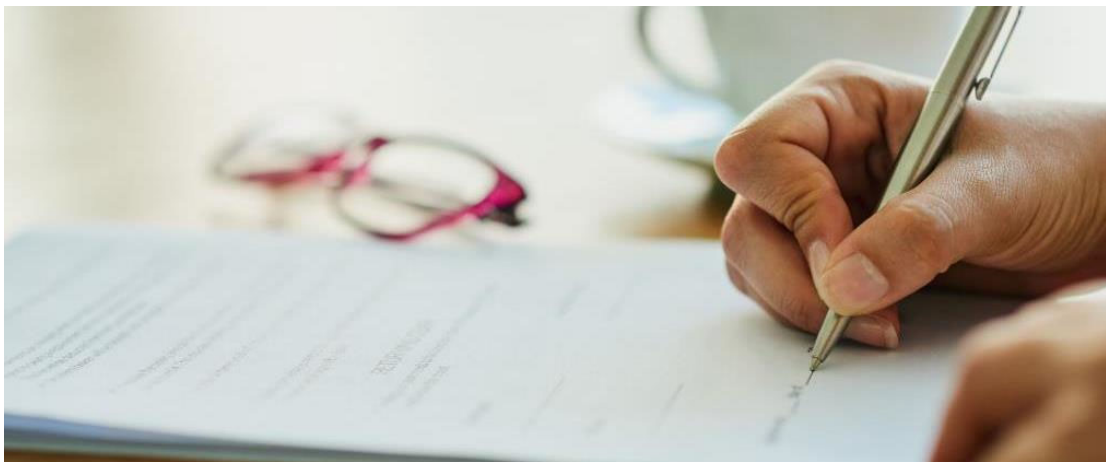
## Audit Requirement

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



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## Financial Oversight: Public Contracts



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## Public Bidding Requirements

- The Board has the authority “[t]o award all contracts for purchase of supplies, materials or work involving an expenditure in excess of \$25,000 or a lower amount as required by board policy to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability; after due advertisement, except for ....”

110 ILCS 805/3-27.1



## Public Bidding Exemptions

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

## Public Bidding Exemptions

- Maintenance or servicing of equipment by the manufacturer or its authorized agent
- Construction contracts for a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility.
- Equipment previously owned by another entity
- Perishable foods and beverages
- Duplicating machines or supplies
- Natural gas
- Printing of finance committee reports and departmental reports
- Printing or engraving bonds, tax warrants, and other evidences of indebtedness



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## Awarding the Bid Criteria

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



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## Contact Us

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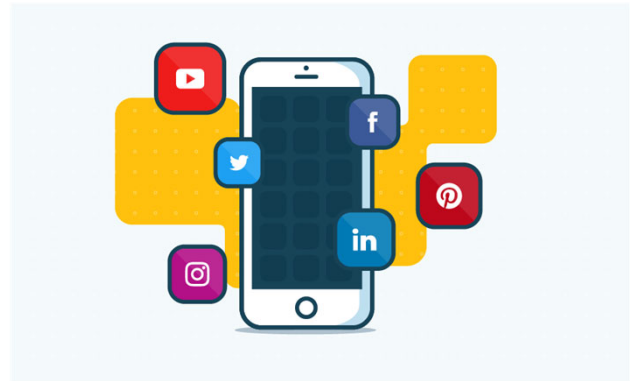
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## Biographies





## CATHERINE R. LOCALLO

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### PRACTICE AREAS

Board Governance  
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J.D., *cum laude*, The  
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### ADMITTED TO PRACTICE

Supreme Court of  
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for the Seventh Circuit

U.S. District Court for  
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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

First 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 Presentations

*Collective Bargaining 101*, Illinois Association of School Administrators Legal Seminar (March 2025)

*Collective Bargaining Strategies and Trends*, South Suburban School Business Officials (February 2025)

*2024 Hot Topics in Labor & Employment Law*, The Chicago Bar Association (February 2025)

*Which Hat Am I Wearing? Board Member Conundrums*, IASB/IASA/IASBO 2024 Joint Annual Conference (November 2024)

*Legal, Legislative and Ethics Updates*, Illinois Community College Trustee Association (November 2024)

*Compliance with Illinois Sunshine Laws, FOIA and OMA Basic Compliance Webinar* (September 2023)

*2022 Hot Topics in Labor & Employment Law*, The Chicago Bar Association (February 2023)

*Legal Issues Update*, Illinois Community College Trustee Association President’s Council Retreat (January 2022)

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





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Supreme Court of  
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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

*Illinois FOIA at 15: Recent Decisions and Developments*, IASA Legal Seminar (April 2025)



## ORGANIZATIONS

Chicago Bar Association

*Keep Calm and... Call a Lawyer? Spring 2025 Legal Updates, ICCCFQ Spring 2025 Conference (April 2025)*

*Legal ABCs of DEI EOs and OCR, Illinois Community College Trustee Association Meeting and Seminar (March 2025)*

*Please Proceed in an Orderly Fashion: Responding (or not) to Executive Orders, ED-RED Virtual Member Meeting (February 2025)*

*FOIA Fundamentals: The Bottom Lines for School Business Officials, IASBO Lunch & Learn Webinar (November 2024)*

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

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





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

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

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

#### Awards

Illinois Emerging Lawyers, Class Action/Mass Tort Plaintiff's Law; Employment Law: Employee

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

*Calculating Overtime & FLSA Update*, 2025 Illinois ASBO Bookkeepers Conference (March 2025)

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



## ORGANIZATIONS

Chicago Bar Association

Illinois State Bar  
Association

Kane County Bar  
Association

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

*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)





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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)

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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)

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Contributing author, “Meditation a Win-Win for Clients and their Attorneys in Construction Litigation,” *Chicago Daily Law Bulletin* (2018)

## Recent Presentations

*Eminent Domain – Key Challenges; Advanced Development Agreement Drafting Techniques; and Legal Ethics*, National Business Institute National Seminar (February 2025)

*Taking Action: Administration Red Flags During Construction*, IASB / IASA / IASBO Joint Annual Conference (November 2024)

*Contract Pitfalls to Avoid*, Emerging SBO Summit (July 2024)

*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)

