



33<sup>rd</sup> Annual Seminar on School Law  
November 22, 2019  
Hyatt Regency Chicago

**Session 4**

## **School Board Funding/Finance and Governance Issues**

Presented by:

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Participants will leave with an understanding of some of the key school finance/funding issues facing school district clients, tips for representing clients when board members behave badly, and other board governance issues of interest.

Also, what school attorneys need to know about the developments in the legislative approach to implementation of the Evidence-Based Funding Formula (Public Act 100-0465, The Evidence-Based Funding for Student Success Act), the structural deficit in the state's General Fund and the unfunded pension liability may mean for the future of financial security of school districts.

**Board Governance 101:  
Legal and Practical Guidance for Effective and Civil Board Meetings  
33rd Annual ICSA Seminar on School Law  
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This presentation will provide legal and practical guidance for attorneys assisting boards with governance matters, including unfocused and endless meetings, circular discussions, and less than civil interactions between members.

- I. Expectations for Board members
  - A. Legal Requirements for Membership (105 ILCS 5/10-3)
  - B. No Interest in Contracts (105 ILCS 5/10-9)
  - C. Oath of Office (105 ILCS 5/10-16.5)
  - D. Required Trainings (105 ILCS 5/10-16a, 5 ILCS 120/1.05)
- II. Expectations for Board Meetings
  - A. Open Meetings Act Requirements
    - 1. Notice, agenda, time and place (5 ILCS 120/2.01, 5 ILCS 120/2.02)
    - 2. Quorum, minutes, and electronic attendance (105 ILCS 5/10-12, 5 ILCS 120/2.06, 5 ILCS 120/7(b),(c))
    - 3. Closed session (5 ILCS 120/2a, 5 ILCS 120/2(c), Ill Att’y Gen. Pub. Acc. Op. No 15-003, issued March 20, 2015); Ill. Att’y Gen. Pub. Acc. Op. No 16-013, issued December 3, 2016)
    - 4. Final, public vote, to close meeting (Board of Educ. of Springfield Sch. Dist. No. 186 v. Attorney General, 2017 IL 120343 (Ill. 2017))
    - 5. Public comment (5 ILCS 120/2.06)

- B. Guidelines for Conduct
  - 1. Robert’s Rules or a modified version
  - 2. IASB Code of Conduct for Board Members
  - 3. Local expectations--Board norms

### III. How Things Go Awry—Common Issues

- A. Conflict of Interest (School Code)
- B. Email Communications and Texting During Meeting
- C. Improper Use of Closed Session (OMA issues)
- D. Board Member(s) Gone Rogue

- 1. *Manley v. Law*, 889 F. 3d 885 (7th Cir. 2018) Plaintiff was a school board member attending a school play during the March 2015. While the plaintiff was not running in the April contested election for three available seats, her allies on the Board were. A student was leafletting for opponents of Plaintiff’s allies outside the play; Plaintiff had a verbal altercation with the student and as they say, the rest is history. The Superintendent instituted an investigation into Plaintiff’s conduct, to determine if it was bullying, Plaintiff filed a claim in state court for an injunction to stop the investigation, when this was denied, the claims were amended to seek a declaratory judgment that the investigation and board admonishment of Plaintiff violated her civil rights. The case was removed to federal court, and Plaintiff’s case was dismissed by the District court.
  - a. “The Constitution does not guarantee good feelings or regulate manners in political disputes.” *Manley*, 889 F. 3d 885, 889
  - b. Investigation and censorship is not constitutional violation

### III. Troubleshooting Misbehavior: Tools and Tips

- A. Attorney’s Role: Illinois Rules of Professional Conduct 1.13(a)(b): Organization as a Client
- B. Grounds for Removal of a Board Member
  - 1. “Conviction of an infamous crime, or any offense involving a violation of official oath, or of a violent crime against a child” 105 ILCS 5/10-11(5)
  - 2. “Willful failure to perform” official duties” 105 ILCS 5/3-15.5

3. “Official misconduct which includes promising, giving, or receiving a bribe; failing to report a bribe; knowingly or intentionally exceeding the scope of legal authority of his or her office; knowingly or intentionally failing to perform a required function of his or her office and improperly securing financial solicitations. 720 ILCS 5/33
- C. Censorship of Board Member
- D. OMA Challenges
1. Self-evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member. (5 ILCS 120/2(c)(16)
- E. Practical Guidance
1. Board President as facilitator
  2. Rules for discussion
    - a. Germane to the agenda topic
    - b. Rotational method for including the voice of each member
    - c. Limited to two rounds
    - d. Superintendent voice must be considered
    - e. Set time limits, but do not close discussion prior to all steps being completed
  3. Judicious use of motions
    - a. Use your rules for discussion
    - b. Do not amend—withdraw and make a new motion, or call and defeat