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School Law Update
December 1, 2020

WELCOME!

- We will begin the workshop at 1:30pm.
- We will be taking questions throughout the workshop via the [Chat Box](#).
- We will also be posting the links to the handouts and materials in the Chat Box once we begin.

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SCHOOL LAW ISSUES FLYING UNDER THE RADAR

LUKE M. FEENEY

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OMA – REMOTE MEETINGS

Public Act 101-640 (effective June 12, 2020) codifies many of the Open Meetings Act changes previously in place via Executive Order, permitting virtual or remote meetings during a declared emergency, subject to some additional provisions not previously required in the Executive Orders, including, but not limited to:

1. All members of the body participating in the meeting, wherever their physical location, shall be verified and can hear one another and can hear all discussion and testimony.

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OMA – REMOTE MEETINGS

Public Act 101-640 (effective June 12, 2020):

3. At least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the disaster.
4. All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.
5. Public bodies holding open meetings under this provision must also keep a verbatim record of all their meetings in the form of an audio or video recording.

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OMA – REMOTE MEETINGS

Public Act 101-640 (effective June 12, 2020):

2. For open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link.

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OMA – PUBLIC PARTICIPATION

PAC Opinion (Non-Binding) – 2020 PAC 64050:

The PAC held that a school district's remote meeting, which permitted public attendance only via Zoom, and with a 100-person limit on the Zoom account, did not meet the OMA requirement to provide contemporaneous access to members of the public at a meeting where more than 100 people attempted to access the meeting (and specifically noting that posting the recording of the meeting the following day was not fully compliant). The PAC issued a non-binding opinion because the school district had already taken action to increase its Zoom license limit.

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OMA – PUBLIC PARTICIPATION

PAC Opinion (Binding) – 2020-004:

The PAC held that a school district violated OMA by discussing in closed session the schedule and process for evaluating the school's principal. While the discussion of a specific principal's evaluation rating and performance falls within the OMA personnel exception, the discussion about evaluation process must be in open session.



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FREEDOM OF INFORMATION ACT

- *Better Government Association v. City of Chicago*, 2020 IL App (1st) 190038 (Decided August 5, 2020):
- The court held that public officials' emails and text messages kept in personal accounts are subject to FOIA if they pertain to public business.



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FREEDOM OF INFORMATION ACT

- PAC Opinion (Non-Binding) – 2020 PAC 63566
- The PAC found that the Village improperly responded to a FOIA request, by failing to provide the requester with a list of all persons and/or users who were banned or blocked from the Village's social media accounts.



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IL WORKERS ON PUBLIC WORKS ACT

- 30 ILCS 570 - Employment of Illinois Workers on Public Works Act
- Whenever there is a period of "excessive unemployment" in Illinois, if a person or entity is charged with the duty, either by law or contract, of constructing or building any public works, then that person or entity shall employ at least 90% Illinois laborers on such project. Every public works contract let by any such person shall contain a provision requiring that such labor be used: Provided, that other laborers may be used when Illinois laborers as defined in this Act are not available, or are incapable of performing the particular type of work involved, if so certified by the contractor and approved by the contracting officer.



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IL WORKERS ON PUBLIC WORKS ACT

- 30 ILCS 570 - Employment of Illinois Workers on Public Works Act
- "A period of excessive unemployment" means any month immediately following 2 consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5% as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures.



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DATA SECURITY

THE WORLD OF CYBER SECURITY IN 10 MINUTES
CHRISTINE G. CHRISTENSEN



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IT BEGAN ONE MONDAY-

Your network has been penetrated.

All files on each host in the network have been encrypted with a strong algorithm.

Backups were either encrypted or deleted or backup disks were formatted.

ransomware copies also removed, so if or any other methods may damage encrypted data but not restore.

We do not have decryption software for your situation.

The decryption software is available on the public.

DO NOT RESET OR SHUTDOWN - files may be damaged.

DO NOT REMOVE OR MOVE the encrypted and readable files.

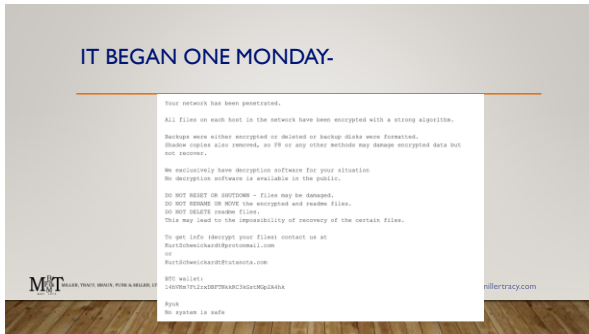
DO NOT DELETE ransom files.

This may lead to the impossibility of recovery of the certain files.

To get help (decrypt your files) contact us at
Ransom@mltracy.com or
Ransom@mltracy.com

BTC wallet:
140767P1z38F78M8C36G4Gq248k

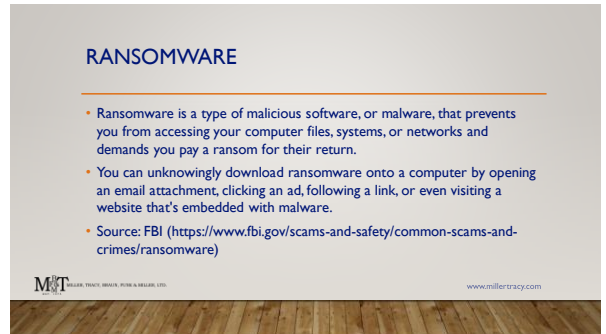
Ryuk
No system is safe



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RANSOMWARE

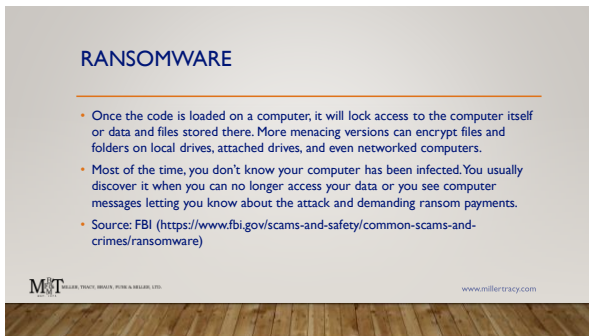
- Ransomware is a type of malicious software, or malware, that prevents you from accessing your computer files, systems, or networks and demands you pay a ransom for their return.
- You can unknowingly download ransomware onto a computer by opening an email attachment, clicking an ad, following a link, or even visiting a website that's embedded with malware.
- Source: FBI (<https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/ransomware>)



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RANSOMWARE

- Once the code is loaded on a computer, it will lock access to the computer itself or data and files stored there. More menacing versions can encrypt files and folders on local drives, attached drives, and even networked computers.
- Most of the time, you don't know your computer has been infected. You usually discover it when you can no longer access your data or you see computer messages letting you know about the attack and demanding ransom payments.
- Source: FBI (<https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/ransomware>)



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RANSOMWARE

- In its 2019 Internet Crime Report, the FBI reported that there were over 1,707,618 total complaints, with total losses calculated around \$10.2 billion. (https://pdf.ic3.gov/2019_IC3Report.pdf)
- Average cost of a data breach is \$3.86 million and the average time to identify and contain a breach is 280 days (<https://www.ibm.com/security/data-breach>)
- In 2019, over 500 US schools were hit by ransomware.



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DISTRICT RESPONSE

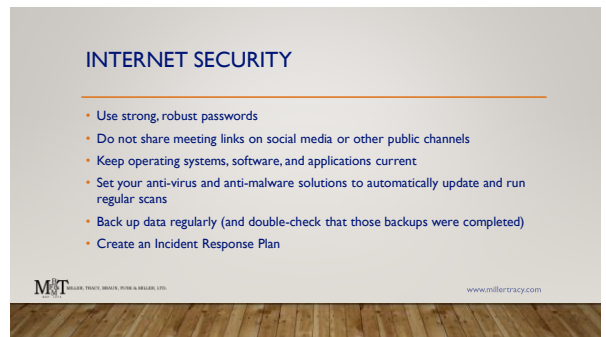
- Activate Incident Response Plan
 - National Institute of Standards and Technology: Computer Security Incident Handling Guide
- Stop the Attack
- Contact Insurance Carrier and Legal Counsel
 - Gather information, engage vendors, and provide coordination



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INTERNET SECURITY

- Use strong, robust passwords
- Do not share meeting links on social media or other public channels
- Keep operating systems, software, and applications current
- Set your anti-virus and anti-malware solutions to automatically update and run regular scans
- Back up data regularly (and double-check that those backups were completed)
- Create an Incident Response Plan



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ILLINOIS STUDENT ONLINE PERSONAL PROTECTION ACT (SOPPA)

- Beginning July 1, 2021, public school districts and the Illinois State Board of Education (ISBE) will have to comply with new requirements when it comes to their handling of students' covered information
 - Agreements, transparency, security, and parent rights
- The SOPPA amendments require ISBE to develop and make publicly available model student data privacy policies and procedures, including a notice for parents- coming soon!



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REASONABLE ACCOMMODATIONS DURING COVID

DAVID J. BRAUN



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BASELINE RULES

- Must have interactive communication with major life function-limiting disabilities
- Must reasonably accommodate known conditions
- Unless such accommodation causes undue burden



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BASELINE RULES

- Need not accommodate "COVID-fear"
- Need not accommodate a familial health condition
- Burden is to communicate – not any particular accommodation



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ACCOMMODATIONS

- Need not accommodate "COVID-fear"
- Need not accommodate a familial health condition
- Burden is to communicate – not any particular accommodation
 - Accommodations might include:
 - A break
 - A different room
 - Leave



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FFCRA

- After 30 days employment – all employees eligible
- 1 grant for a total of 80 hours
 - Full pay up to \$500/day for self
 - 2/3 pay up to \$210/day for family care
- + 1 grant for a total of 10 weeks at full pay for daycare closure
 - Unless you let them work from home
 - True even if only part-closure conflict with work
 - But employer need not grant intermittently – can force full use, but will pay full time.



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TAKEAWAYS
Discussion

- Conditions require reasonable accommodation
- "COVID-fear" is not a condition
- Interactive communication is burden on employer
- Leave may be a reasonable accommodation

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THORNY TITLE IX ISSUES AND SOME TIPS TO SAVE YOURSELF TIME

ELLEN D. LUEKING

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IT'S NOT OVER

- While the Biden vowed back in May to put a "quick end" to the new Title IX rules, it isn't that simple.
- These rules took 4 years in the Administrative Rulemaking Process—2 years in writing and development and then 2 years in "notice and comment"
- New notice and comment to change;
- Legislation (unlikely as it stands);
- Non-enforcement by Department of Education—However, that does not stop a court from enforcing, just OCR.

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FAILURE TO USE TRAUMA INFORMED INVESTIGATION TECHNIQUES

- It is important that Title IX staff (especially investigators who risk re-traumatizing complainants) are trauma-informed to gather useful information and to understand why what would be evasive behavior by a party or witness could actually be trauma.
- Changing story is not necessarily a lie—traumatic moments are stored differently and are often triggered by the senses like smell, sound, etc.
- Body language may show dishonesty, but is really a trauma response.

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TITLE IX PERSONNEL

- One of the biggest challenges that small to mid-sized schools will encounter is whether the Title IX Coordinator will also be EITHER the investigator or informal resolution facilitator. There are benefits to both.
- Successful informal resolution
 - Good for schools—time and resource intensive process
 - Good for participants—more focused on what participants view as important to resolving the issue
- Title IX Coordinator also serving as investigator
 - Coordinator has a solid base of knowledge about what has happened and who is involved, as well as supportive measures and any hesitations that the complainant may have had about reporting—partially developed rapport built

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TRAIN YOUR EMPLOYEES

- You can have the best Title IX team, forms, and procedures in place, but if your teachers don't know what, when, and how to report, it means nothing.
- Keep it concise. They need to know what to report, to who, and how quickly.
- Don't overwhelm them with the definitions you've learned in your training.

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LGBTQ+ PROTECTION

- The Seventh Circuit has held that Title IX encompasses discrimination on the basis of gender identity under a sex-stereotyping theory (which would encompass sexual orientation as well). *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017).
- If you've heard a student is being bullied at school because of their gender identity or sexual orientation, you may have a bigger issue than just bullying. It can become a Title IX issue.
 - Further, something like a teacher repeatedly using a transgender student's dead name or incorrect pronouns can become a Title IX issue quickly.

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PREPARE FOR PARENTAL INVOLVEMENT

- Right to exercise all Title IX rights including requesting supportive measures or participation in grievance process.
- Parent/guardian must be permitted to accompany student to meetings, interviews, and hearings, but student still has a right to an advisor that is separate from parent/guardian.

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BE PREPARED TO TALK TO PARENTS ABOUT TITLE IX

- Especially parents of complainants/victims
 - Timeline for discipline is LONG (6 weeks is expected—more is very possible)
 - Their previous encounters with school discipline not representative of Title IX processes.

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CREATE A LOG TO DOCUMENT CORRESPONDENCE EARLY

The regulations require the investigative report include a "description of procedural steps taken during the investigation."

- Time consuming if investigator has to create
- Many steps are taken by Title IX Coordinator, not investigator

Date	Who	Contact Type	Re:	Additional Notes
12/5 End of school day	Ms. Stephens, assistant volleyball coach	In Person	Reported Alex came to her to report repeated sexually explicit images being received from another student during school day.	Could not catch Alex before Alex left school
12/5	Alex's Parents	Called home	Offer of supportive measures that will be in place tomorrow Set up meeting to discuss next steps	Parents will be in to meet tomorrow morning at 8am.
12/6	Complainant Alex and Parents	In person	Supportive measures in place Formal complaint signed Willing to engage in informal resolution	Alex asked for mutual no contact order Supportive measures form sent home with parents—provided to necessary teachers

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REMINDER!

- Public Act 101-0221 requires Illinois employers to train employees on sexual harassment prevention by December 31, 2020, and on an annual basis thereafter.
- Employers must either develop their own sexual harassment prevention training program that equals or exceeds the minimum standards outlined in Section 2-109(B) of the Illinois Human Rights Act, or they may use the model training provided by IDHR.
- Use this training opportunity to reinforce what needs to be reported to Title IX Coordinator, if you have not already completed the training. If you have, take a little time at your next meeting or all-employee email (don't forget your cafeteria staff, bus drivers, and coaches not otherwise employed by the District).

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FAPE IN PHASE 4

What are the implications for special education?
 BRANDON K. WRIGHT

Building on a foundation of fundamentals...

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FAPE IN PHASE 4

1. FAPE is still FAPE.

- ❖ For remote learning, the default/starting point should be implementing the “normal” IEP but remotely.
- ❖ The remote learning plan should be for changes made necessary by remote learning, while still providing FAPE, not to automatically reduce any services.

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FAPE IN PHASE 4

2. Parent participation matters.

- ❖ Remote meetings are possible (and encouraged), with parent agreement.
- ❖ Don't overlook Prior Written Notice.
- ❖ Timelines are not waived unless specifically agreed in writing.

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FAPE IN PHASE 4

3. Implement the “paperwork bill”.

- ❖ Provide written materials to the parent at least 3 school days prior to meeting.
- ❖ Have a clear cover letter explaining the draft.
- ❖ Right to related service logs clarified.
- ❖ Failure to implement notices now only required at IEP initiation.

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FAPE IN PHASE 4

4. Review practices related to virtual instruction.

- ❖ Choosing the right platform = student privacy should not be a barrier to synchronous or asynchronous instruction.
- ❖ Implement accommodations and modifications.
- ❖ Ensure accessibility requirements are met (VI, DHH, etc.).
- ❖ Don't just “set it and forget it”!

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FAPE IN PHASE 4

5. Physical Restraint, Time Out, and Isolated Time out:

- ❖ The rules are final and in effect.
- ❖ Training is the key, and must be completed by December 31.
- ❖ Legislative proposals with further changes may still be on the horizon.

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