

MILLER, TRACY, BRAUN, FUNK & MILLER, LTD. presents

SCHOOL LAW UPDATE:

New Laws and Strategies for Success

October 30, 2019

**2019
Annual
MTBF&M
Firm Workshop**

iHotel and Conference Center
Champaign, IL



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MTBFM 2019 Firm Workshop
October 30, 2019

New Legislation 2019:
New Laws and Strategies for Success

9:00 – 9:10	BKW – PA 101-205 & PA 101-370 – Administration of Medication and Medical Cannabis Products
9:10 – 9:20	CGC – PA 100-825 – Changes to Truancy and Non-Attendance
9:20 – 9:30	DJB – PA 101 – 531 – Sex Abuse Investigations & License Suspensions
9:30 – 9:40	LMF – PA 101-46 & 101-177 – ESP RIFs & Equal Pay/Salary History
9:40 – 10:00	DJB – PA 101-1 & PA 101-443 – Bargaining Minimum Salary and Minimum Wage
10:00 – 10:15	<i>Question Break</i>
10:15 – 10:30	BREAK
10:30 – 10:50	BKW – PA 101-515 – Implementing Special Education Changes
10:50 – 11:00	CGC – PA 100-1177 – Complying with Prevailing Wage and Other Requirements in Public Contracts
11:00 – 11:10	LMF – PA 101-478 – Police Questioning Students
11:20 – 11:30	DJB – PA 101-591 – Unsatisfactory Appeals
11:20 – 11:30	CGC – PA 101-455 – Threat Assessment Teams
11:30 – 11:40	LMF – PA 101-459, 100-768, 100-968 – OMA Exceptions, PERA, Architect Procurement
11:40 – 11:50	BKW - PA 101-516 – Protecting Data Privacy
11:50 – 12:00	<i>Question Break</i>
12:00 – 12:30	Lunch
12:30 – 1:00	Q&A

NEW LEGISLATION 2019: STRATEGIES FOR SUCCESS

WELCOME TO THE
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FALL WORKSHOP



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MARIJUANA IN THE SCHOOL SETTING

LEGALIZATION, STUDENT MATTERS, AND
EMPLOYMENT

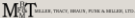


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Student use of Medical Cannabis Infused Products:

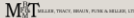
“Ashley’s Law” – Effective August 1, 2018



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- PA 101-370, effective January 1, 2020, expands Ashley’s Law:
- A school must allow a school nurse or school administrator to administer a medical cannabis infused product to a student who is a registered qualifying patient .
 - A school may authorize the self-administration of a medical cannabis infused product by a student who is a registered qualifying patient if the self-administration takes place under the direct supervision of a school nurse or school administrator.
 - Medical cannabis infused products that are to be administered under subsection (b-5) must be stored with the school nurse at all times in a manner consistent with storage of other student medication at the school and may be accessible only by the school nurse or a school administrator.



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New Statutes (Other Medication)

PA 101-205 (effective January 1, 2020) expands the School Code’s self-administration of medication provision from only asthma medication to include medications included in a student’s 504, allergy, or emergency action plan.



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Other Medical Marijuana Changes

- Senate Bill 2023 was signed into law on August 9, 2019 by Governor Pritzker; 30 ILCS 500/1-10 (via PA 101-363, effective August 9, 2019). This bill adds eleven new conditions that can qualify for medical marijuana prescriptions and allows certain advanced practice nurses and physician assistants to prescribe medical marijuana, rather than solely physicians.

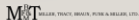


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Other Medical Marijuana Changes

- PA 101-363 adds the following new conditions that can qualify for medical marijuana: ulcerative colitis, autism, chronic pain, irritable bowel syndrome, migraines, osteoarthritis, anorexia nervosa, Ehlers-Danlos syndrome, Neuro-Behcet's Autoimmune Disease, neuropathy, polycystic kidney disease, and superior canal dehiscence syndrome.



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Employee Use of Medical Marijuana

- The Compassionate Use Act in Illinois specifies that a qualifying patient cannot be denied any right or privilege and cannot be disciplined by an occupational or professional licensing board if they use medical marijuana in compliance with the act in question. 410 ILCS 130/25 (a). However, the Act does not allow possession or usage of cannabis on school grounds or on a school bus, unless it is permitted by the Illinois School Code. 410 ILCS 130/30 2-3. There is no carve-out for an employee to use medical marijuana in the School Code and as such schools may keep medical marijuana users from using the product on school grounds.



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Employee Use of Medical Marijuana

- In Illinois, the specific language of the statute may – for the present time – prevent successful claims by employees regarding employment policies. The Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/50) provides:

Sec. 50. *Employment; employer liability.*

- (a) Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis.
- (b) Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.



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Employee Use of Medical Marijuana

- In Illinois, the specific language of the statute may – for the present time – prevent successful claims by employees regarding employment policies. The Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/50) provides:

Sec. 50. *Employment; employer liability.*

- (c) Nothing in this Act shall limit an employer from disciplining a registered qualifying patient for violating a workplace drug policy.
- (d) Nothing in this Act shall limit an employer's ability to discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.



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Employee Use of Medical Marijuana

Sec. 50. *Employment; employer liability.*

- (f) An employer may consider a registered qualifying patient to be impaired when he or she manifests **specific, articulable symptoms while working** that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's **speech**, physical dexterity, agility, coordination, **demeanor**, irrational or unusual **behavior**, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.



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Employee Use of Medical Marijuana

Sec. 50. *Employment; employer liability.*

- (g) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for: (1) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment; (2) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment; (3) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired.



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Employee Use of Recreational Marijuana

- The Cannabis Regulation and Tax Act (PA 101-27) allowing recreational use of marijuana in Illinois for those over the age of twenty-one (21) is very clear in its requirements that marijuana possession and usage is impermissible on or near school grounds or school buses. 410 Ill. Comp. Stat. 705/10-35.
- Additionally, all employers are allowed, should they so choose, to develop a policy of a drug free workplace. 410 Ill. Comp. Stat. 705/10-50. This Act does not determine or require that employers allow their employees to use marijuana or marijuana products. Thus, an employer can also discipline or fire a worker for violating a drug free work policy, should the employer so choose.

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Employee Use of Recreational Marijuana

- The Act clearly states that employers cannot discipline employees for marijuana use outside of work hours. However, **if impairment is clear during the work day**, the Act does not prevent an employer from disciplining or terminating an employee, or if the employee violates the employer's drug free workplace policy. 410 Ill. Comp. Stat. 705/10-50(b), 410 Ill. Comp. Stat. 705/10-50(c). The Act further clarifies what is necessary for an employer to consider when determining if an employee is incapacitated:

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Employee Use of Recreational Marijuana

- Sec. 10-50. *Employment; employer liability.*
- (a) Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.
- (b) Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.

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Employee Use of Recreational Marijuana

- Sec. 10-50. *Employment; employer liability.*
- (c) Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.

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Employee Use of Recreational Marijuana

- Sec. 10-50. *Employment; employer liability.*
- (d) An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.

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Expungement of Prior Offenses

- The Illinois School Code provides that a school employee's licensure may be revoked should they commit certain Narcotics offenses, including certain offenses defined in the Cannabis Control Act. 105 ILCS 5/21B-80. The School Code also provides that all employees who wish to be employed at a school must submit to a fingerprint criminal record test. 105 ILCS 5/10-21. The statute further explains school boards cannot knowingly hire someone who was convicted of an offense that would lead to licensure revocation or suspension.

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Expungement of Prior Offenses

- 105 ILCS 21B-80(b): *Whenever the holder of any license issued pursuant to this Article or applicant for a license to be issued pursuant to this Article has been convicted of any drug offense, other than [a Class X felony], the State Superintendent of Education shall forthwith suspend the license or deny the application, whichever is applicable, until 7 years following the end of the sentence for the criminal offense. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the State Superintendent of Education shall forthwith terminate the suspension of the license.*

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Expungement of Prior Offenses

- The new recreational marijuana law (PA 101-27) also sets forth that drug **charges** (arrests, but not convictions) for a "minor cannabis offense" (generally, possession of less than 30 grams and a non-violent offense) will be automatically expunged.
- In order to expunge a **conviction**, individuals can petition to have those prior offenses expunged provided they meet the statutory requirements.

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Expungement of Prior Offenses

- Based on these expungements, individuals with certain prior convictions which may currently prohibit employment with a school district pursuant to Section 21B-80 of the School Code, may be eligible for employment in the future without the seven-year waiting period currently anticipated under 21B-80(b).

CHANGES TO TRUANCY AND NON-ATTENDANCE ISSUES

PA 100-825 and PA 100-810

PUBLIC ACT 100-0825
 PUBLIC ACT 100-0810

• DENYING ENROLLMENT
 • PROFESSIONAL DEVELOPMENT
 • VALID CAUSE
 • TRUANCY FINES

SECTION 26-2(C) OF THE SCHOOL CODE: PRE-PUBLIC ACT 100-0825

- Section 26-2(c) provided that a School District could deny enrollment to a 17+ year old student if the student:
 - 1) achieved less than a D grade point average the semester before;
 - 2) the family was given written notice of the student failing academically and was subject to denial unless the student attained at least a D average;
 - 3) due process was provided to appeal the notice;
 - 4) the student was provided with an academic plan and academic remediation services; and
 - 5) Student failed to achieve a "D" average.

PUBLIC ACT 100-0825

- Public Act 100-0825 removed language in Section 26-2(c) permitting School District to deny enrollment based on student's failure to meet academic standards.
- A School District may only deny enrollment to a 17+ year old student for one semester for failure to meet attendance standards, not academic standards.

DENYING ENROLLMENT - ATTENDANCE

- A School District may deny enrollment to a 17+ year old student for one semester for failure to meet attendance standards if:
 - 1) the student was absent without valid cause for 20%+ of the attendance days in the previous semester;
 - 2) the student and parent are given a written notice warning that denial from enrollment may occur unless student is absent without valid cause for less than 20% of current semester;
 - 3) the student's parent is given the opportunity to appeal the notice in accordance with due process;

DENYING ENROLLMENT-ATTENDANCE

- A School District may deny enrollment to a 17+ year old student for one semester for failure to meet attendance standards if:
 - 4) the student is provided with attendance remediation services, including without limitation assessment, counseling, and support services; and
 - 5) the student is absent without valid cause for 20%+ of the attendance days in the current semester. 105 ILCS 5/26-2(c).

BUT PUBLIC ACT 100-0825

- "[A] truant may not be expelled for non-attendance unless:
 - He/she has accrued 15 consecutive days of absences without valid cause; and
 - The School District cannot locate the student or the School District has located the student but cannot "after exhausting all available support services, compel the student to return to school." 105 ILCS 5/26-12.

PUBLIC ACT 100-0825- IDEA & ADA

- No child may be denied re-enrollment in violation of the Individuals with Disabilities Education Act (IDEA) or the Americans with Disabilities Act. 105 ILCS 5/26-2(d).

PUBLIC ACT 100-0810 (EFF. JAN 1, 2019)

- School Districts shall make reasonable efforts to provide ongoing professional development to teachers, administrators, board members, school resource officers and staff on "the appropriate and available supportive services for the promotion of student attendance and engagement[.]" 105 ILCS 5/10-22.6 (c-5)
- "Valid Cause" for absence now includes "such other circumstances which cause reasonable concern to the parent for the mental, emotional, or physical health or safety of the student." 105 ILCS 5/26-2a.

PUBLIC ACT 100-0810 (EFF. JAN 1, 2019)

- A School District may not refer a truant, chronic truant, or truant minor to any other local public entity, for that local public entity to issue the child a fine or a fee as punishment for his or her truancy. 105 ILCS 5/26-12(b).

PUBLIC ACT 100-0810

- A School District may refer any person having custody or control of a truant, chronic truant, or truant minor to a local public entity to issue a fine or fee only if:
 - The School's truant office, regional office of education, immediate service center has been notified of the truant behavior; and the School District, Regional Office of Education, or immediate service center "has offered all appropriate and available supportive services and other school resources to the child." 105 ILCS 5/26-12(c).

PUBLIC ACT 100-0810 DOCUMENTATION

- Before the referral occurs, the School District must document any appropriate supportive services offered to the child. If that does not occur, it must retain documentation that it made reasonable efforts to convene the meeting at a mutually agreeable time and that the meeting would have occurred but for the individual's conduct. 105 ILCS 5/26-12(c).

PA 101-531

Sexual Abuse Investigations, License Suspensions

PA 101-531 –HIGHLIGHTS

- Every 2 years, each school district must review all existing policies and procedures concerning sexual abuse investigations at schools to ensure consistency
- School District or Regional Superintendent must conduct Statewide Sex Offender Database and Murderer and Violent Offender Against Youth Database **once every 5 years** that an applicant remains employed by the school district (no longer just at initial employment).

PA 101-531 - HIGHLIGHTS

- As a condition of employment, each school board must consider the status of a person who has been issued an indicated finding of abuse or neglect of a child by DCFS under the Abused and Neglected Child Reporting Act (ANCR)...
- Each school must ensure that mandated reporters review the State Board of Education's materials and materials developed by the DCFS and distributed in the school building under ANCR at least once annually.

PA 101-531 - HIGHLIGHTS

- (c) Except for [teachers], if a school board determines that any school district employee has **willfully or negligently failed to report an instance of suspected child abuse or neglect**, as required by ANCRA, then the school board **may dismiss that employee immediately upon that determination**. For purposes of this subsection (c),
 - negligent failure to report an instance of suspected child abuse or neglect occurs when a school district employee personally observes an instance of suspected child abuse or neglect and reasonably believes, in his or her professional or official capacity, that the instance constitutes an act of child abuse or neglect under the ANCRA, and he or she, without willful intent, fails to immediately report or cause a report to be made of the suspected abuse or neglect to the DCF, as required by ANCRA.

PA 101-531 - HIGHLIGHTS

- Whenever the holder of a license ... applicant for a license ... has been **charged** with attempting to commit, conspiring to commit, soliciting, or committing any sex or other offense, ... first degree murder, or a Class X felony ..., the State Superintendent of Education **shall immediately suspend the license or deny the application until the person's criminal charges are adjudicated** through a court of competent jurisdiction. If the person is acquitted, his or her license or application shall be immediately reinstated.

PA 101-531 - HIGHLIGHTS

- School may not interview the alleged victim [of sexual abuse] regarding details of the alleged incident of sexual abuse **until after the completion of the forensic interview of that victim is conducted at a Children's Advocacy Center.**
 - This paragraph does not prohibit a school from requesting information from the alleged victim or his or her parent or guardian **to ensure the safety and well-being of the alleged victim at school during an investigation.**
 - But – gives access to schools to view forensic evidentiary video

BEST PRACTICES

- Re-conduct background checks every 5 years
- Call DCF as soon as you have information
- Don't interview sex abuse victim until you get clearance
- Consider due process rights and evidence before reporting, but report all sex- and Class X felony charges to ISBE licensure

ESP RIFS AND EQUAL PAY ACT

PA 101-46 and PA 101-177

PUBLIC ACTS 101-356 AND 101-177

- Reduction in Force - ESPs
- Equal Pay
- Salary History

PUBLIC ACT 101-46 -- RECALL RIGHTS

- Statutory Change (105 ILCS 5/10-23.5):
- If an ESP is removed or dismissed... and he or she accepts the tender of a vacancy within one calendar year from the beginning of the following school term, then that employee shall maintain any rights accrued during his or her previous service.

HISTORY ~ GRIEVANCE / ARBITRATION

- Kaskaskia Special Education Association Local No. 4336 v. Kaskaskia Special Education District No. 801
 - The District RIFd numerous ESPs at the end of the 2011-2012 school year, and began the 2012-2013 school year with no intention of recalling any RIFd employees
 - Based upon fluctuation in student attendance the District recalled several positions beginning in September of 2012 after a break in service.

HISTORY ~ GRIEVANCE / ARBITRATION

- Kaskaskia Special Education Association Local No. 4336 v. Kaskaskia Special Education District No. 801
 - Recalled employees were treated as new hires for the purposes of salary schedule placement.
 - Recalled employees did not qualify for grandfathered cash in lieu of insurance benefit, and would not receive their birthday as a personal day
 - Recalled employees did not carry over sick days accumulated prior to the RIF

HISTORY ~ LITIGATION

- Kaskaskia Special Education Association Local No. 4336 v. Kaskaskia Special Education District No. 801
 - The District prevailed at arbitration
 - Section 10-23.5 did not address rights or benefits accrued prior to RIF (different from how Section 5/24-12.1 treats teachers)
 - Union files in Court – Motion to Vacate Arbitration Award
 - District files Motion to Dismiss
 - Lack of Subject Matter Jurisdiction
 - Matter continued to allow settlement discussions – Union abandons

RECALL RIGHTS – TAKEAWAYS

- While unsuccessful in litigation the Union was politically successful - resulting in a change to the statute
- A break in service caused by a RIF and recall no longer “re-sets” the employment relationship, and the ESP is entitled to maintain any rights accrued during his or her previous service

PA 101-177 -- SALARY HISTORY

- Changes to the Equal Pay Act of 2003:
 - It is unlawful to:
 - Screen applicants based upon their current or prior salary / wages
 - Request or require salary history as a:
 - Condition of being considered
 - Condition of being interviewed
 - Condition of continuing to be considered
 - Condition of an offer for employment
 - Request or require salary history as a condition of employment

PA 101-177 -- SALARY HISTORY

- It is unlawful to:
 - Seek the wage or salary history, including benefits or other compensation, of a job applicant from any current or former employer
- EXCEPT:
 - If the applicant's wage or salary history is a matter of public record under the Freedom of Information Act...

PA 101-177 -- SALARY HISTORY

- The FOIA exception...



PA 101-1 & 101-443

Minimum Wage, Minimum Salary

MINIMUM WAGE || MINIMUM SALARY

- | | |
|---|---|
| <ul style="list-style-type: none"> 1/1/20 - \$9.25 7/1/20 - \$10 1/1/21 - \$11 1/1/22 - \$12 1/1/23 - \$13 1/1/24 - \$14 1/1/25 - \$15 | <ul style="list-style-type: none"> 7/1/20 - \$32,076 7/1/21 - \$34,576 7/1/22 - \$37,076 7/1/23 - \$40,000 7/1/24 and beyond – annually increased by percentage equal to CPI-U |
|---|---|

PENALTIES

- For failure to meet minimum wage:
 - \$100 per impacted employee for failure to keep payroll record
 - \$5% damages (up from 2%)
 - \$1500 fine for underpayment
- Neither fines nor requirement for records are new – they've only increased and attached to previously existing requirements

ISSUES TO WATCH

- Indexed schedules
- Loss of base control
- Loss of ability to control the "system" where the system auto-inflates wage
 - This is a problem of *language* not money - \$ is cheap, language is expensive.

EXAMPLES – 6% TO BASE, 8% TO BASE, SAME INDEX

21-22 BA		22-23 BA		23-24 BA	
1	\$35,000	1	\$37,076	1	\$40,000
2	\$35,700	2	\$37,818	2	\$40,800
3	\$36,414	3	\$38,574	3	\$41,616
4	\$37,142	4	\$39,345	4	\$42,448

EXAMPLES – 6% TO BASE, 8% TO BASE

- Result?
 - While \$5,000 goes to base over 2 years, \$5,306 goes to the top of the schedule
 - Fundamentally, a larger percentage of the District's money is "captured" by the top of the schedule
 - Over time this will drive money to the more senior parts of the schedule, making the base difficult to afford
 - CPI inflator will auto-inflate schedule

EXAMPLES – 6% TO BASE, 8% TO BASE

- Result?
 - To extend the analogy, in a simple 6 lane, 10 step schedule with a 2x2 indexed lane and step, that same \$5,000 increase over the 4 years (20-21 through 23-24) causes \$6,597.39 to be tied up at the top of the schedule. (from \$46,181.76 to \$52,779.15)
 - And this does not take into account the number of people who may be at that step.
 - In other words, the same "14%" increase actually costs you a much larger percentage of your total budget.

EXAMPLES – 6% TO CELL, 8% TO CELL

- What if you applied index to cell?

21-22 BA		22-23 BA		23-24 BA	
1	\$35,000	1	\$37,076	1	\$40,000
2	\$35,700	2	\$39,300	2	\$43,200
3	\$36,414	3	\$41,659	3	\$46,656
4	\$37,142	4	\$44,158	4	\$50,388

EXAMPLES – FLAT DOLLAR ALTERNATIVE

- What if you applied a flat dollar increase as an alternative to minimum wage boost?
 - Imagine 3 employees, one making \$9/hr, another making \$13/hr, and another making \$27/hr
 - Only the first one is relevant for 4 years
 - Then the second is relevant for the next 2 years
 - If you increase all of these employees' wages by the same percentage, increases will be 11%, 10%, 9%, 8.3%, 7.7%, and 7.1%
 - The person at the top is making nearly \$45/hr (a 66% increase in 6 years, or 11% annually).

SOLUTIONS


Minimum Wage

- Consider a flat dollar alternative – you get the same flat dollar increase, no index.
- Consider applying increase to person, not cell (although beware the effect of blowing up a schedule)
- Consider an alternative flat dollar – "employees will make the flat dollar increase necessary to meet minimum wage annually, or \$1.15, whichever is more" or "employees will make an increase of \$2/hr annually until reaching \$15/hr, and will receive a \$0.25 longevity bonus annually until they reach \$27/hr (benchmark), after which each employee exceeding the benchmark will make \$0.75 hourly increase."

SOLUTIONS

Minimum salary

- Consider entry cut-offs – remove a step or 2
 - But be careful that you identify *in writing* what will happen to employees already there – do you move down? Do you stay the same and see no increase?
- Consider short-term solutions (waive *status quo explicitly* so that your contract and/or practice does not continue
- If you can, begin base increases ahead of mandate
 - Consider carefully your audience – do your homework and prepare your Board with alternatives and information thoroughly

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QUESTION BREAK!



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**IMPLEMENTING
HB 3586**

CHANGES IN SPECIAL EDUCATION PROCEDURES AND NOTICES
RESPONSE TO INTERVENTION AND OTHER SPECIAL EDUCATION REQUIREMENTS

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IMPLEMENTING HB 3586

- HB 3586 was signed by Governor Pritzker on August 23, 2019, becoming law effective immediately as PA 101-515.
- There was some hope for an amendatory veto, as the provisions were allegedly intended to apply only to Chicago Public Schools, but the law as drafted applies to all districts *effective immediately*.

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IMPLEMENTING HB 3586

- Codifies the regulatory requirements that RTI is the mandatory process for determining eligibility for a specific learning disability, and expands RTI to be a permissive process for other categories of eligibility. Requires that parent be a participant in a collaborative team approach to decision-making regarding RTI.

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IMPLEMENTING HB 3586

- **RTI Changes?**
- RTI was already mandatory for SLD eligibility by regulations, but this makes it clear within the School Code (and much harder to amend in the future).
- Expect clarification or regulations from ISBE on the permissive RTI for other categories of disability. Until then, define it in your RTI plan.

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IMPLEMENTING HB 3586

- **RTI Changes?**
- **Parental participation is now expressly required.**
- **Best Practice:** *Define the role of parents specifically in your district RTI plan.*
- The right to notice and the right to be invited (who, what, when, where, why). I don't think participation rights are equivalent to IEP meetings, but it would be much cleaner and consistent to have clear, written expectations for the role of parents.

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IMPLEMENTING HB 3586

- Requires that no later than **three school days prior** to an eligibility meeting or IEP meeting that the school provides the parents with copies of **all written material** that will be considered by the IEP team at the meeting so that the parent or guardian may participate in the meeting as a fully-informed team member.

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IMPLEMENTING HB 3586

- The written material must include, but is not limited to, all evaluations and collected data that will be considered at the meeting and, for a child who already has an IEP, a copy of all IEP components that will be discussed by the IEP team, other than the components related to the educational and related service minutes proposed for the child and the child's educational placement.

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- If the meeting is scheduled (with parental consent) less than three school days prior to the meeting, the documents must be shared with the parent "as soon as possible."

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IMPLEMENTING HB 3586

- Providing Drafts:**
- As the law reads, it applies to every IEP or eligibility meeting, regardless of whether the parents requests those documents.
 - It applies to "all written materials" – that's very broad language.

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IMPLEMENTING HB 3586

- Providing Drafts:**
- This creates an argument for parents that if something is considered at a meeting that they didn't receive ahead of time, then they have been denied meaningful participation. And then if we don't consider something that is relevant, the claim will be that we ignored or failed to consider the information. **A real catch-22!!!**

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Providing Drafts:

- We are going to have to create a system for providing "any written materials" (other than placement/service page of draft IEP) to parents in a timely fashion:
 - Have parents consent to receiving those my email 3 school days prior?
 - If we are sending my US mail, allow for timely receipt (so mail even earlier)?
 - Concern about sending such sensitive documents home in the backpack?
 - Create a way for a parent to log in and view an encrypted read-only version of drafts and other "written materials" the team will consider?



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Providing Drafts:

- **Thoroughly** complete draft IEP pages. Present levels must be updated and thorough. Be sure to mark everything clearly as a "DRAFT".
- Information is to be in written format to discuss at meeting. Draft pages can be updated at the meeting.
- Do not complete services and placement pages or eligibility pages (this is not required and could provide an argument for predetermination).
- If parent waives 10 days' notice of meeting with less than 3 school days, then provide written materials to parents as soon as possible. If parent waives 10 days' notice of meeting with more than 3 school days, then provide written materials to parents by the 3 school day deadline.



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Providing Drafts:

- The law does not appear to apply to domain meetings, provided they are only a domain meeting and no other purpose. If you are having a domain meeting that may be directly followed by an eligibility determination conference (EDC) and IEP review, you will need to send the parent the required paperwork for the EDC and IEP.



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Providing Drafts:

- Keep in mind the difference between preparation and predetermination!



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Providing Drafts:

- Keep in mind the difference between preparation and predetermination!
- *If we provide parents copy of a draft IEP when we are determining eligibility, are we predetermining eligibility? Should we separate the EDC and IEP?*



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Providing Drafts:

- **Option 1:** Schedule the EDC and IEP meetings as separate meetings. If the student is not determined eligible at the EDC, then no further action is required. If the student is determined eligible, the IEP must be in place within thirty (30) calendar days of determining eligibility and within sixty (60) school days of obtaining consent for an evaluation. Provide a draft IEP at least three (3) days in advance of the IEP meeting.



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Providing Drafts:

- **Option 2:** Write a draft IEP and provide it to the parent/guardian prior to the initial eligibility meeting. Use my recommended IEP Meeting Draft Written Materials Cover Letter to explain the matter and emphasize that the District cannot make a decision regarding your child's eligibility for an IEP until the meeting. Should the IEP team, with your input and participation, determine that your child does not qualify for an IEP, then the draft IEP enclosed will not be considered. However, if the IEP team determines, with your input and participation, that your child does qualify for an IEP then we will utilize this draft to discuss during the meeting. In other words, nothing can be decided until the meeting.

IMPLEMENTING HB 3586

Providing Drafts:

- **Option 3:** Do not make a draft IEP prior to the eligibility meeting and if the student is made eligible, begin the IEP meeting and write the entire IEP together as a team. I think this route would make drafting the IEP very difficult and create a very lengthy meeting which may result in a questionable IEP.

IMPLEMENTING HB 3586

Providing Drafts:

- These procedures follow best practice, but are not specifically required for ISP (Service Plan) meetings. The goal of the new law is to increase meaningful participation of parents and guardians, so it may make sense to do so anyway.

IMPLEMENTING HB 3586

- Requires related service logs that record the type of related services administered under the child's IEP and the minutes of each type of related service that has been administered available to the child's parent or guardian at the annual review of the child's IEP and must also provide a copy of the related service logs at any time upon request of the child's parent or guardian.

IMPLEMENTING HB 3586

- The local education agency must inform the child's parent or guardian within 20 school days from the beginning of the school year or upon establishment of an IEP of his or her ability to request those related service logs.

IMPLEMENTING HB 3586

- If services required by a student's IEP are not administered within 10 school days after date or frequency set by the IEP, then the school must provide notification to the child's parent or guardian within 3 school days of the local education agency's non-compliance with the child's IEP and must include information on the parent's or guardian's ability to request compensatory services.

IMPLEMENTING HB 3586

- For purposes of this provision, “school days” does not include days where a child is absent from school for reasons unrelated to the lack of IEP services.

IMPLEMENTING HB 3586

- **Service Logs:**
- What forms or logs already exist with that information?
- Medicaid billing logs?

IMPLEMENTING HB 3586

- **Service Logs:**
- Stay current (weekly) on related service logs. Parents may request related service logs at any time.
- Record both the date/time of the session and the length of the session on the log.

IMPLEMENTING HB 3586

- **Service Logs:**
- Service logs must be provided at every annual review for all related services. Be sure to look at everything listed as a related service for the student on his or her IEP, and make sure there is a log for that service.
- Add make-up sessions to related service log.

IMPLEMENTING HB 3586

- **Failure to Implement:**
- What is considered a failure to implement?
- Is missing one session enough? Holidays? Student absence? Staff absence?
- What if we fully intend to make it up regardless?
- Who decides that the school failed to comply with the IEP?

IMPLEMENTING HB 3586

- **Failure to Implement:**
- Providers have 10 school days to make up missed related services minutes without giving notice to parents. If minutes aren't made up within that timeframe, then a failure to implement letter is sent to parents within 3 school days.
- Service providers need to be in contact with supervisors and case managers if unable to make up minutes and cannot rectify within the ten (10) school days allowed.

IMPLEMENTING HB 3586

Failure to Implement:

- A related service provider is scheduled to provide a service within a specific timeline and is unable to do so for any reason other than the child being absent from school for reasons unrelated to a lack of IEP services. I am not able to provide enough examples of what all could be included in "any reason" because there is an endless list. Suffice it to say that the only reason a related service cannot be provided and notice not be required is that the child was absent from school. Field trips, assemblies, class parties, schedule changes, etc. are not absences.

IMPLEMENTING HB 3586

- School districts may not use any measure which would prevent or delay an IEP team from adding a service to the IEP or create a time restriction in which a service is prohibited from being added to the IEP. The school district may not build functions into its computer software that would remove any services from a student's IEP without the approval of the IEP team and may not prohibit the IEP team from adding a service to the IEP.

IMPLEMENTING HB 3586

Limiting Services:

- When would this ever happen?
- Properly convened team of decision-makers?
- Does our software limit us?

COMPLYING WITH PREVAILING WAGE AND OTHER REQUIREMENTS FOR PUBLIC CONTRACTS

PA 100-1177

PREVAILING WAGE
PUBLIC ACT 100-1177

- PREVAILING WAGE CALCULATIONS
- OBJECTIONS
- RECORD KEEPING
- OTHER PUBLIC WORKS REQUIREMENTS

PUBLIC ACT 100-1177

- Amended the Prevailing Wage Act
- Impacts adoption and notification of prevailing wage resolutions, objections, and record keeping.
- Effective June 1, 2019

ADOPTION AND NOTIFICATION OF PREVAILING WAGE RESOLUTIONS

- Public bodies are no longer required to:
 - ascertain the prevailing wage,
 - publically post its determination of the prevailing wage, or
 - file a copy of its determination with the Department of Labor
- The Department of Labor shall ascertain the prevailing wage and post it on its website by July 15.

OBJECTIONS

- Any objections to the prevailing wage shall be heard by the Department of Labor, not the School District
- Until a final determination is made, the work in question shall proceed under the rate established by the Department of Labor.

RECORD KEEPING

- The Department of Labor shall keep records and maintain a database *by no later than April 1, 2020*.
- The School District must continue to keep the records submitted until the activation of the database.

CONTINUING REQUIREMENT

- Public bodies must specify – in the call for bids for a contract or where the public body performs the work without letting the contract in a written instrument provided to the contractor – that the general prevailing wage must be paid.
- “A public body may not opt out of any provisions herein.”

OTHER PUBLIC WORKS REQUIREMENTS

- All Public Contracts
 - Compliance with the Illinois Human Rights Act and regulations
- Calls for Bids
 - Not barred from bid-rigging (Article 33E of the Criminal Code)
 - Non-Collusion
 - Certifies a drug-free workplace (25+ employees)
 - Has a sexual harassment policy (775 ILCS 5/2-105)

POLICE QUESTIONING STUDENTS

PA 101-478

PARENTAL NOTIFICATION

- **BEFORE** detaining and questioning a student under the age of 18 by a:
 - Law enforcement officer
 - School resource officer
 - "Other school security personnel" (problematically vague)
- A school must:
 - Ensure that notification or attempted notification of the student's parent / guardian is made
 - Document the time and manner in which the notification or attempt occurred

PARENTAL NOTIFICATION

- Make reasonable efforts to ensure the parent / guardian is present during the questioning
 - If not present, ensure the presence of:
 - school social worker
 - school psych
 - school nurse
 - guidance counselor
 - "any other mental health professional"

PARENTAL NOTIFICATION

- If practicable – make reasonable efforts to ensure that law enforcement officer trained in promoting safe interactions and communications with youth is present during questioning
- Consider adding this requirement as a term of any Intergovernmental Agreement with law enforcement

PARENTAL NOTIFICATION

- Notification requirements do not apply when:
 - Circumstances that would cause a reasonable person to believe that urgent and immediate action is necessary to do any of the following:
 - Prevent bodily harm or injury to the student or any other person
 - Apprehend a fleeing suspect
 - Prevent the destruction of evidence
 - Address an emergency or other dangerous situation

PARENTAL NOTIFICATION – PRACTICAL CONSIDERATIONS

- Differentiate between school discipline and criminal acts, but be cautious when disciplinary matters approach the realm of criminal acts
- Reasonable efforts mean reasonable efforts – Do not notify a parent and then race to interrogate before the parent can arrive
- Questioning by "other school security personnel"
 - Carefully review job descriptions and consider who should be involved in questioning students
- Do not overstate the "urgent and immediate action" exception

PA 101-591

Unsatisfactory Evaluation Appeals

EVALUATION APPEALS PROCESS

- Beginning with the first school year following the effective date, each school district shall, in good faith cooperation with its teachers or, if applicable,
 - through good faith bargaining with the exclusive bargaining representative of its teachers, develop and implement an appeals process for "unsatisfactory" ratings...
- that includes, but is not limited to, an assessment of the original rating by a panel of qualified evaluators agreed to by the [PERA] joint committee...
- that has the power to revoke the "unsatisfactory" rating it deems to be erroneous.
- The joint committee shall determine the criteria for successful appeals:
 - however, the issuance of a rating to replace an "unsatisfactory" rating must be determined through bargaining between the exclusive bargaining representative, if any, and the school district.

EVALUATION APPEALS PROCESS

- Therefore:
 - Law applies to tenured and nontenured teachers
 - You have until 2020-2021 to implement
 - The bargaining committee decides the process
 - The PERA joint committee sets the criteria for review
 - You may wish to consider the highest possible standard for overturning the rating
 - The bargaining committee then determines result of overturned rating

DON'TS

- Don't
 - Subject more than a summative evaluation rating of unsatisfactory to review
 - Restrict committee from having authority it needs
 - Require committee to conduct a hearing or review anything in particular
 - Construct committee of non-licensed evaluators you don't know
 - Reduce criteria for successful appeal to a low standard like "error of the evaluator"
 - What is error? Does any error count?

TAKEAWAYS

The "Do's"

- Raise the bar – arbitrary and capricious
- Know your committee – qualified evaluators only
- Don't subject yourself to unnecessary review
- Support evaluative ratings with strong directives for improvement

THREAT ASSESSMENTS

PA 101-455

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- Creates a new 105 ILCS 128/45 (Section 45 of the Illinois School Safety Drill Act) related to threat assessment procedures. Each school district must implement a threat assessment procedure as part of its targeted school violence prevention policies. The procedure must include the creation of a threat assessment team, which must include at least one administrator, one teacher, one school counselor, one school psychologist, one school social worker, and one law enforcement official. Must be in place within 180 days of effective date.
- Allows referendum for sales tax for SRO/mental health.

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- Amends FOIA to exempt any records “concerning the work of the threat assessment team of a school district.”

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- Members of the threat assessment team must be employed either by the district or by a special education cooperative to which the district is a member.

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- If a school district is unable to establish a threat assessment team with school district staff and resources, it may utilize a regional behavioral threat assessment and intervention team that includes mental health professionals and representatives from the State, county, and local law enforcement agencies.

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- A school district shall establish the threat assessment team under this Section no later than 180 days after the effective date of the law (8/23/2019) and must implement an initial threat assessment procedure no later than 120 days after the effective date of the law (8/23/2019).

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- Any sharing of student information under this Section must comply with the federal Family Educational Rights and Privacy Act of 1974 and the Illinois School Student Records Act.

THREAT ASSESSMENTS

PA 101-455 – *Threat Assessments and Funding*

- If you already have a 1% county school facilities sales tax, it does not allow for the expanded purpose unless there is a second referendum passed by the voters.

THREAT ASSESSMENTS

PA 101-455 – Threat Assessments and Funding

- In the future, 1% county school facilities and resources sales tax may be used for:
 - (i) for school facility purposes, (ii) school resource officers and mental health professionals, or (iii) school facility purposes, school resource officers, and mental health professionals.

OPEN MEETINGS ACT, PERA, AND ARCHITECT PROCUREMENT

Public Acts 101-459, 100-768, and 100-968

PUBLIC ACTS 101-459, 100-768 AND 100-968

- Open Meetings Act
- PERA
- Architect Procurement

OPEN MEETINGS ACT

- Good news:
 - Changes to the OMA, PERA and IELRA codify prevalent practices
- OMA:
 - A public body may hold closed meetings to consider the following subjects:
 - (c) The appointment, employment, compensation, discipline, ... of ... specific individuals who serve as independent contractors in a park, recreational or educational settings, or specific volunteers of the public body

OPEN MEETINGS ACT

- However:
 - School districts all too frequently exceed the scope of exception 2(c).
 - Discussion must still be related to the appointment, employment, compensation, performance, or dismissal of a specific person – not classes of people or the contracts under which they serve as independent contractors

OPEN MEETINGS ACT - PERA

- The provisions of the Open Meetings Act shall not apply to the meetings of a joint committee
 - However – the joint committee must now meet no less than one time annually to assess and review the effectiveness of the district's evaluation plan for the purposes of continuous improvement of instruction and evaluation practices

OPEN MEETINGS ACT - BARGAINING

- The provisions of the Open Meetings Act shall not apply to collective bargaining negotiations, including negotiating team strategy sessions, and grievance arbitrations conducted pursuant to this Act (IELRA)
- *Again, however* – Avoid the temptation to use a negotiating team strategy session as a catch-all, unrecorded closed session meeting

LOCAL GOVERNMENT PROFESSIONAL SERVICES SELECTION ACT

- Waiver of competition
 - A school district may waive the public notice, evaluation procedure and selection procedure set forth in the Act if it determines, by resolution, that an emergency situation exists and a firm must be selected in an expeditious manner, or the cost of architectural, engineering and land surveying services for the project is expected to be less than \$40,000 (previously \$25,000)

LOCAL GOVERNMENT PROFESSIONAL SERVICES SELECTION ACT

- Waiver of competition
 - The \$40,000 maximum shall be increased annually by a percentage equal to the annual unadjusted percentage increase, if any, as determined by the consumer price index-u
- The increase does not expand the definition of an emergency situation, and Districts must still avoid splitting larger projects into parts to avoid the \$40,000 limit.

HB 3606 – DATA PRIVACY

CONSIDERING IMPLEMENTATION OF PA 101-516

DATA PRIVACY

HB 3606/PA 101-516 is effective July 1, 2021.

That's a long time from now, but there's a lot of work to do for compliance!

DATA PRIVACY

HB 3606/PA 101-516 is effective July 1, 2021.

This statute amends the Illinois Student Online Privacy Protection Act in several ways, including:

- ❖ Requirements for agreements with vendors/operators.
- ❖ Requirements for electronic security measures.
- ❖ Requirements for response for data breach.

DATA PRIVACY

Each school must implement and maintain **reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect covered information** from unauthorized access, destruction, use, modification, or disclosure. Any written agreement under which the disclosure of covered information between the school and **a third party** takes place must include a provision requiring the entity to whom the covered information is disclosed to implement and maintain reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect covered information from unauthorized access, destruction, use, modification, or disclosure. The State Board must make available on its website **a guidance document** for schools pertaining to reasonable security procedures and practices under this subsection.

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DATA PRIVACY

The statute includes web posting requirements for all school districts, including an explanation of data security procedures, list of online vendors/operators used by the school district (including subcontractors) and a copy of the agreements, list of prior data breaches by the school district, and a list of student/parent rights under the statute.

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DATA PRIVACY

After receipt of notice of a data, a school shall notify, no later than 30 calendar days after receipt of the notice or determination that a breach has occurred, the parent of any student whose covered information is involved in the breach. The notification must include, but is not limited to, all of the following:

- (1) The date, estimated date, or estimated date range of the breach.
- (2) A description of the covered information that was compromised or reasonably believed to have been compromised in the breach.
- (3) Information that the parent may use to contact the operator and school to inquire about the breach.
- (4) The toll-free numbers, addresses, and websites for consumer reporting agencies.
- (5) The toll-free number, address, and website for the Federal Trade Commission.
- (6) A statement that the parent may obtain information from the Federal Trade Commission and consumer reporting agencies about fraud alerts and security freezes.

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DATA PRIVACY

Each school district should designate a **privacy officer, who is responsible for implementing the requirements of the statute.**

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DATA PRIVACY

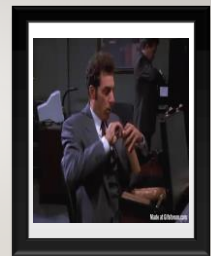
The bottom line:

Strong passwords, encryption, filtering, security software, security patches, antivirus software, limited network connectivity, monitoring servers for hacking attempts, oversight, policies, audits, contracts that adequately protect data, training, properly vetting apps, exercising due diligence before hiring service providers, and basic security measures are standard practices to help prevent data breaches and lessen a school district's liability and damages.

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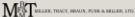
QUESTION BREAK!



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STAY TUNED FOR MORE Q&A AFTER LUNCH!



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