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Please Proceed in an Orderly Fashion: Responding (or not) to Executive Orders

ED-RED Member Meeting

February 7, 2025

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Agenda

- Background on Executive Orders
- Overview of Recent Executive Orders
- A Few Relevant Statutes and Cases
- Tips for Responding (or not) to Executive Orders
- Questions



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What is an Executive Order?



Legally binding directive from the President to the executive branch of the federal government.



Provides direction as to policy and enforcement priorities for federal agencies.



Does not create new laws or regulations.

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Legal Powers and Limits of Executive Orders

- Constitutional protections
- Statutory authorizations
- Administrative Procedure Act
- Emergency powers

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Recent Executive Orders

Immigration

- Protecting the American People Against Invasion (EO 14159)

DEI

- Ending Radical and Wasteful Government DEI Programs and Preferencing (EO 14151)
- Ending Illegal Discrimination and Restoring Merit-Based Opportunity (EO 14173)
- Ending Radical Indoctrination in K-12 Schooling (EO 14190)

Gender Identity

- Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (EO 14168)
- Ending Radical Indoctrination in K-12 Schooling (EO 14190)
- Keeping Men Out of Women's Sports (EO number TBD)



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Impact of EO 14159 – Immigration

- Directs the executive branch to set priorities regarding immigration that include enforcement of final removal orders and prosecution of criminal offenses related to the unauthorized entry or continued unauthorized presence.
- DHS directive to ICE/CBP rescinds a 2021 memo that had limited immigration enforcement at schools and other “sensitive” or “protected areas.”
- DOJ lawsuit to challenge “sanctuary” laws and policies.



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Impact of EO 14151 – Federal DEI Programs

- Directs agencies to coordinate the termination of all “discriminatory programs, including illegal DEI and ‘diversity, equity, inclusion, and accessibility’ (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government,” including related grants or contracts.
- OMB Memorandum M-25-13, January 27, 2025: “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs.”
 - Memo rescinded January 29, 2025, but EO “will be rigorously implemented.”



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Impact of EO 14173 – DEI (again)

- Directs Attorney General and Secretary of Education to issue guidance by May 31 “regarding the measures and practices required to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*”
 - U.S. Supreme Court decision holding that race-based admissions in colleges and universities are unconstitutional.
- “This order does not prevent ... local educational agencies ... from engaging in First Amendment-protected speech.”
- Federal employment practices shall reward individual initiative, skills, performance, and hard work and shall not consider DEI or DEI factors, goals, policies, mandates, or requirements.
- Directs agencies to develop an enforcement plan “to encourage the private sector to end illegal discrimination and preferences, including DEI.”



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Impact of EO 14168 – Gender Identity

- Federal government recognizes two sexes: male and female as defined by a person’s biological sex at conception.
 - Does not include the concept of gender identity
 - Requires changes to government-issued identification documents
 - Rejects gender identity-based access to single-sex spaces
- Directs agencies to remove federal regulations, forms, guidance, and other communications “that promote or otherwise inculcate gender ideology”
- Directs agencies to consider grant conditions to “ensure grant funds do not promote gender ideology.”



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Impact of EO 14190 Gender, DEI, “Indoctrination” in K-12 Schools

- Directs federal agencies to submit plan by April 29 for removal of funding to K-12 schools “to the maximum extent consistent with applicable law” where funds are used to support:
 - “gender ideology”—including student social transitions
 - “discriminatory equity ideology”
 - “interference with a parent’s Federal statutory right to information regarding school curriculum, records, physical examinations, surveys, and other matters under the PPRA or FERPA”
- Directs Attorney General to coordinate with state/local prosecutors about certain unlawful actions by school officials



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Impact of “Women’s Sports” EO

- Directs Department of Education to take enforcement action and update regulations and policy “to affirmatively protect all-female athletic opportunities and all-female locker rooms.”
- Prioritizes enforcement against schools and athletic associations “that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women’s category, to compete with or against or to appear unclothed before males.”
- IHSA response.



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Impact of Gender Identity EOs



Office of Civil Rights, Department of Education

Dear Colleague Letter about Title IX regulations
Press releases about pending OCR investigations
Newly filed OCR complaints



EEOC Statement

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Relevant Statutes

- Illinois Human Rights Act
 - Prohibits discrimination, harassment, and retaliation against individuals in connection with employment and public accommodations (including education).
 - Includes protections for individuals based on sexual orientation and gender identity and for employees based on citizenship status or work authorization status.
- TRUST Act
 - Limits state/local law enforcement cooperation with civil immigration enforcement.
- FERPA/Illinois School Student Records Act
 - ISSRA requires a court order (not just a subpoena) to release protected student records



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Relevant Court Decisions on Gender Identity

- *Bostock v. Clayton County*, U.S. 2020
 - Title VII's prohibition on sex discrimination and sex harassment extends to discrimination and harassment based on sexual orientation and gender identity
- *Whitaker v. Kenosha School District*, 7th Cir. 2017
 - Title IX and the Equal Protection Clause protect student's right to access to restroom consistent with their gender identity
- *A.C. v. Metropolitan School District*, 7th Cir. 2023
 - Title IX and the Equal Protection Clause require access to locker rooms and restrooms consistent with a student's gender identity
 - SCOTUS denied appeal
- *Kluge v. Brownsburg Community School Corp.*, 7th Cir. 2023
 - No reasonable accommodation available under Title VII for teacher's religious objection to using students' chosen names and pronouns.
 - SCOTUS returned case to Seventh Circuit to consider new standard for religious accommodation claims



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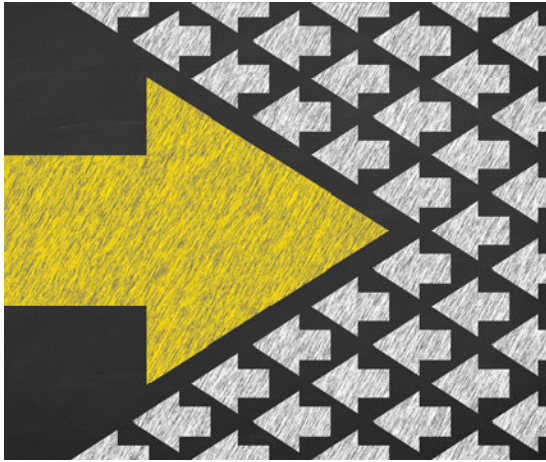
Responding (or not) to Executive Orders

- Fight, flight, freeze, fawn?
 - Is the “brave” decision actually best for those you are supporting/defending?
 - Is the “safe” decision actually trading one risk for another?
 - Could this issue resolve itself, or is it going to fester?
 - In trying to reassure/placate someone, are we committing to one approach too early or promising too much?
- Consider different perspectives about the risks.

Immigration Enforcement Visits



Conflicts over Gender Identity



- Specific facts matter!
- Does the District already have a plan with the student/employee?
- What kinds of accommodations might be available?
- Ask an attorney.


Other Tips to Consider



- Take a beat (and a breath)!
- Continue monitoring orders and guidance—but limit and/or delegate.
- Communicate reminders to building staff to ensure compliance and consistency with internal procedures.
- Direct any communications through a designated administrator, with approval by superintendent if appropriate.
- Ask an attorney.



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Biographies



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Joseph J. Perkoski has built his legal career with a profound focus on representing educational institutions and public sector employers, particularly in board and executive leadership matters. Known for his experience in labor and employment issues, including collective bargaining, grievance arbitration, and contract interpretation, Joseph has become a trusted counselor for his clients.

Joseph finds immense satisfaction in counseling clients to help them achieve their goals and objectives. His strengths as an attorney lie in effective listening and engagement skills and his contributions extend beyond his legal practice with notable publications and presentations. These include labor negotiations and collective bargaining agreement administration.

Joseph's excellence in the legal field is underscored by prestigious accolades, including being recognized as a Fellow of The College of Labor & Employment Lawyers and consistently listed in Illinois Super Lawyers from 2008 to 2020. Notably, he holds the title of an Illinois Leading Lawyer in Employment, Labor, and School Law.

Joseph's desire to provide guidance to people and entities facing legal challenges motivated him to become a lawyer. His choice to specialize in education law is rooted in his aspiration to assist educational entities in achieving their objectives.

Before becoming a lawyer, Joseph served as a Human Resources Administrator at The Ohio State University. This role significantly influenced his career trajectory, eventually leading him to become a labor and employment attorney with a specialization in serving educational entities.

Joseph's blue-collar upbringing in a community where education was seen as crucial to advancement profoundly influences his goals, outlook, and approach to the law. Being the first in his family to attend college, he has dedicated himself to education both as a student and as an attorney serving educational entities.

Apart from his legal pursuits, Joseph enjoys writing and outdoor activities. He has been an active supporter of the Chicago Rowing Foundation since 2021, showcasing his commitment to community involvement. A lesser-known fact about him is his love for poetry, adding a creative dimension to his multifaceted personality.



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U.S. Court of Appeals for the Seventh Circuit

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

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

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

Supreme Court of Illinois

Supreme Court of Wisconsin

Superior Court for the District of Columbia

ORGANIZATIONS

American Bar Association

Fellow, College of Labor and Employment Lawyers

Council of School Attorneys

Federal Bar Association

Illinois Association of School Business Officials

Illinois Bar Association

National School Boards Association

Wisconsin Bar Association

Awards

Fellow, The College of the Labor & Employment Lawyers
Illinois Super Lawyers, 2008-2020
Illinois Leading Lawyer, Employment, Labor and School Law

Recent Publications

Contributing author, “Bargaining Implications of Statutory Leave Rights for Public Sector Employees,” *State and Local Government Bargaining & Employment Law Committee Midwinter Meeting*, American Bar Association (2024)

Contributing author, “Labor Issues in the Transactional Side of the Project,” *Construction Law: Transactional Considerations*, IICLE (2017)

Contributing author, “Labor Relations: Contract Administration Including ULPs,” *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

“Finding a New Way: Subcontracting Revisited,” *UPDATE Magazine*, Illinois ASBO (2011)

Contributing author, “Labor Issues in the Transactional Side of the Project,” *Construction Law – Transaction Practice*, IICLE (2010)

Recent Presentations

The Nuts and Bolts of Employee Sexual Misconduct and Grooming Investigations, Large Unit District Association January 2024 Conference (January 2024)

Legal Update, Illinois Community College Chief Financial Officers Spring Conference (April 2022)

Legal Update, Illinois Community College Chief Financial Officers Spring Conference (April 2021)

Hot Legal Topics, Bargaining in a Post-Covid World, Illinois Community College Chief Financial Officers Spring Conference (April 2021)

Will it Count? Teacher Evaluations in a Hybrid and Virtual World, Large Unit District Association Virtual Fall Conference (October 2020)





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U.S. District Court for
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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

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



ORGANIZATIONS

Chicago Bar Association

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

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

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

