

# Law Related Education

The newsletter of the Illinois State Bar Association's Committee on Law Related Education

The Illinois State Bar Association's Law-Related Education Newsletter is provided free of charge on a quarterly basis during the school year. We are dedicated to promoting law-related education resources and discussion topics appropriate for use in classroom or community settings. If you do NOT wish to receive this complimentary newsletter, please reply and indicate in the message line that you wish to be removed from our mailing list. Statements, expressions of opinion or comments appearing herein are those of the editors or contributors, and not necessarily those of the Association or the Committee.

## Civics education continues to advance through LRE

BY JUDGE MICHAEL J. CHMIEL

Over the past decade, the *Standing Committee on Law Related Education for the Public* of the Illinois State Bar Association ("LRE") has worked to evolve ISBA Lawyers in Classrooms, which

boasts more than 160 volunteers spread across more than 28 Illinois counties. In conjunction with this program, and as an aid to teachers throughout the State, LRE

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## MLK day will be observed as per usual, but this year it's actually on King's birthday

BY SHARON L. EISEMAN

Did you know or are you surprised to learn that Congress' move in 1983 to establish a national holiday to honor Dr. Martin Luther King, Jr. and commemorate his legacy, met with controversy? It did, from southern legislators as well as from then President Ronald Reagan who opposed creating a national holiday for

Dr. King who was variously described as "an outside agitator" (by Senator Strom Thurmond in 1968 following King's assassination), and as someone who "welcomed collaboration with Communists" (by North Carolina Senator Jesse Helms). To express his resistance that

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## Civics education continues to advance through LRE

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has developed various teaching aids which continue to be made available through ILCivics.org. In addition, LRE has worked to draft, revise, and provide pamphlets on various topics in the law, to provide insight and assistance to students.

“By educating youth through *ISBA Lawyers in Classrooms*, we bring an understanding of the law into classrooms through the State,” Attorney Catherine R. Brukalo, coordinator of the *ISBA Lawyers in Classrooms* program, explains. “We are providing for better educated citizens, and enhancing the rule of law through better respect for our legal system.”


Over the last few years, LRE has also increased focus on adult learning. Last year, LRE launched the *ISBA Speakers Bureau*. This program focuses on adult learning, by bringing judges and lawyers to community groups throughout the State.

One such adult-oriented presentation is *Courtroom to the Community* which has been crafted by Judge Robert Wilbrandt. Modeled after a similar program developed through the Illinois Judges Association for students, Courtroom to the Community involves an interactive PowerPoint presentation which provides an overview

of the court system in Illinois, and then leads the audience through the life of a case through the appellate process. “Educating the community about what we do at the courthouse is important to provide for a better understanding of our legal system,” Judge Wilbrandt explains.

Much of this civics education programming was inspired during the administration of ISBA Past President Umberto Davi. Mr. Davi saw and heard the need to better educate the public with the stakeholders who are in the trenches – the judges and lawyers who work in our legal system. “As the saying goes, to whom much is given, much is expected,” says Mr. Davi. “So, we need to continue to do what we can to help.”

As we move forward in this new fiscal year, we continue to welcome questions, comments, and suggestions from educators and others interested in civics education in Illinois. All are invited to explore and utilize the *free* resources which are available through the websites of the ISBA (ILCivics.org) and the Supreme Court of Illinois ([www.state.il.us/court](http://www.state.il.us/court)), as we are all working to make our State a better place through education. ■



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Published at least four times per year.

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## Martin Luther King Jr. Day

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year, Helms led a 16-day filibuster of the MLK Holiday bill but then finally voted for it in exchange for Congress' approval of his tobacco bill. Despite this opposition, the bipartisan vote in favor of the bill handily won the day, possibly because many Republicans may have believed they needed to show the public their support for civil rights.

And did you know that Dr. King died before he reached the age of 40, having been assassinated in Memphis, Tennessee on April 4 of 1968 when he was in the midst of preparing to lead a protest march in support of the City's striking sanitation workers? Yet in his short lifetime, Dr. Martin Luther King accomplished the unimaginable, especially for a black man from the South and one advocating for peaceful integration. Thus, this year, on **January 15**, which is the actual date of his birth in 1929, people all over our country—and beyond—will pay homage to this great man, preacher, and acknowledged leader of the civil rights movement in America.

Even before he stepped onto the national 'stage' and ignited a widespread movement for peace, justice and racial equality through his electrifying voice and powerful words invoking hope for the dreamers in his audiences, Dr. King had achieved many impressive goals. King earned a B.A. in Sociology from Atlanta's Morehouse College at the age of 19, a B.A. in Divinity just three years later and then, in 1955, a Doctorate in Systematic Theology from Boston University.

In that same year, Dr. King was chosen by local civil rights activists to lead a one-day boycott of the buses in Montgomery, Alabama. Their protest was spurred by area residents upset when Rosa Parks, a black woman, was arrested on the bus she was taking home from work for violating the City's segregation laws that applied to public accommodations. Parks had refused the order of the bus driver to give up her seat to a white man who had been standing on the crowded bus and who,

under local law, was entitled to preferential seating because of his race. That single day turned into a year which is how long it took Montgomery to desegregate the buses.

On August 28, 1963, King delivered perhaps his most stirring and memorable speech, one that has come to be known as the "I Have a Dream" speech. To the 250,000 people who were participants in an organized march that ended in Washington, D.C., King pronounced: "***I have a dream that one day this nation will rise up and live out the true meaning of its creed, 'We hold these truths to be self-evident: that all men are created equal.'***" In that same speech he made the dream even more personal when he stated: "***I have a dream that my four children will one day live in a nation where they will not be judged by the colour of their skin, but by the content of their character.***" The theme of non-judgmental equality and respect for human rights and opportunity for all without regard to color resonated with many individuals besides those in the gathered crowd which is what King intended: that his message of hope would take hold across the nation and trigger needed changes in the law.

The era of the sixties was also witness to the award of the Nobel Peace Prize to Dr. King—in 1964. In the presentation to King, Nobel Committee Chairman Gunnar Jahn described the Reverend as an "undaunted champion of peace" who had distinguished himself by showing that "a struggle can be waged without violence." Mr. Jahn also praised Dr. King for never abandoning his faith despite his having been subjected to numerous imprisonments and bomb threats, as well as repeated death threats against him and his family.

Sadly, as we all know, this decade didn't end well. Dr. King's good fortune and possibly the momentum toward a more civil and just society, took a tragic turn on April 4, 1968 when Dr. King was assassinated in Memphis, Tennessee.

If you wish to read more about Dr.

Martin Luther King and his legacy, check out the University of Chicago's website at <http://mlk.uchicago.edu/> which offers significant material about the subject and identifies volunteer activities for commemorating the Holiday. The University also invites individuals to "voice" their dreams on the MLK Dream Wall at: <http://dream.uchicago.edu/>. Much historic detail is available on the website for the National Park Service's Martin Luther King, Jr. Memorial located in Washington, D.C. That site is accessible at: <https://www.nps.gov/mlkm>. Teachers will also find many resources for observing the Holiday at [www.MLKDay.gov](http://www.MLKDay.gov). Participating in a 'Day of Service' as part of the MLK, Jr. Holiday is a way to help preserve Dr. King's legacy and keep the torch of equality burning.

An additional reference is The Martin Luther King, Jr. Center for Nonviolent Social Change in Atlanta, Georgia, which Mrs. Coretta Scott King established in tribute to her husband, not as a 'dead monument' but as a living testimonial that would engage and empower visitors. The King Center offers a chance to enter your dream and choose up to five 'themes' to tag it. If your dream is approved after review, it will be posted on the Center's website. Check it all out at <http://thekingcenter.org>. ■



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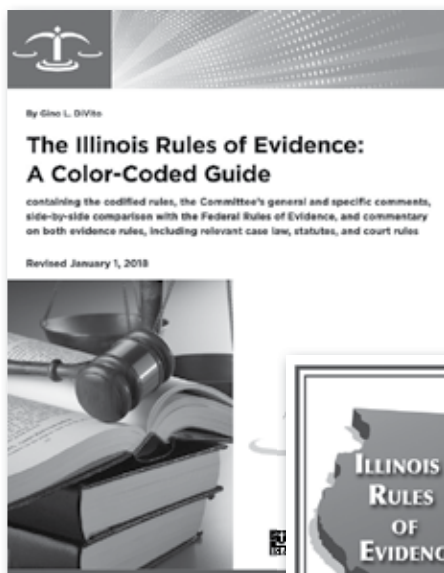
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ILLINOIS STATE BAR ASSOCIATION

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# Special education

BY JUDGE EDWARD SCHOENBAUM

**In an 8-0 decision**, the U.S. Supreme Court, in *Endrew F. v. Douglas County School District RE-1*, 580 U.S. \_\_\_\_ (2017), ruled in favor of a higher standard of education for children with disabilities. Advocates and parents say the case dramatically expands the rights of special-education students in the United States, creates a nationwide standard for special education, and empowers parents as they advocate for their children in schools. Critics however say the decision will not have any impact on schools, arguing that the vast majority already provide a good education for children with disabilities.

The central question in the case was whether schools must provide a meaningful education in which children show significant progress and are given substantially equal opportunities as typical children, or may they provide an education that results in some improvement?

The facts of the case established that the parents of Endrew F. removed him from his local public school, where he had made little progress, and placed him in a private school, where they said he made “significant” academic and social improvement.

In 2012, his parents then filed a complaint with the Colorado Department of Education to recover the cost of tuition at the private school, which was then approximately \$70,000 per year. The lower courts ruled on behalf of the school district, determining that the intent of the Individuals with Disabilities Education Act (IDEA) is to ensure handicapped kids have access to public education, and not to guarantee any particular level of education. The parents appealed, eventually landing at the U.S. Supreme Court.

Chief Justice John G. Roberts Jr. stated in the opinion that a child’s “educational program must be appropriately ambitious in light of his circumstances” and that “every child should have the chance to meet challenging objectives.”

“When all is said and done, a student

offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all,” Roberts wrote. “For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to ‘drop out.’”

Advocates for children with disabilities say this case will help millions of students. For the 2013-14 school year, 6.5 million students or 13 percent of the public school population, had an Individual Education Plan (IEP). The court’s decision increases the education expectations for children with disabilities and requires schools to consider each child’s individual strengths and weaknesses when writing an IEP. Schools can no longer provide a “one-size-fits-all” IEP, Gary Mayerson, a civil-rights lawyer in New York City and a board member of Autism Speaks, explained in an interview. “Clearly this is the most monumental IDEA case decided by the high court in over 30 years,” he said.

Parents of special-needs children are ecstatic about this decision, according to Amanda Morin, a parent of two children with IEPs and a contributor for the parent website [Understood.org](http://Understood.org). Morin said, “I’m thrilled, because I think it really empowers parents to feel confident when they go in the door [of an IEP meeting]. They can say that the law says that this program must be tailored so my child makes progress.”

A number of education groups, including The Council of the Great City Schools, the School Superintendents Association (AASA), and the National School Boards Association, supported the Douglas County School District in this case, however, saying that the standard for special education did not require change, because the system was already working for kids.

Sasha Pudelski, a lobbyist for the professional association, said that the decision will not have a big impact on

district practices. The court decision was actually quite moderate, she said. The court rejected the plaintiff’s argument that a special-education student should have a “substantially equal” standard of education as those of typical children. Instead, the justices focused on the idea that children with disabilities should receive an education that shows progress in light of their disabilities. Pudelski said that schools are already doing that. “It is not going to be groundbreaking for districts,” she said. “It’s a flexible standard that defers to the expertise of the schools.”

How this decision will play out on the school level, given the rising costs of special education and diminishing support from the federal government, is anyone’s guess. But, for now, those concerns are not dampening the celebrations of parents and special-needs advocates. ■

**Did you know?**

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**\*Sorry, if you’re a licensed Illinois lawyer you must be an ISBA member to order.**

# Waivers: Have fun, but sign here first

BY DAVID HOUSE

**Have you ever been asked to sign a form** before you were allowed to take part in an activity? Did you read the form? Did you sign the form? Did you have fun after you signed the form? The answer is probably “yes” to all four questions. What happened after that? More than likely you took part in the activity, had fun, and that was the end it. What just happened? You executed a waiver (also known as a release of claim) in which you agreed not to bring a cause of action (also known as a lawsuit) against the purveyor of said fun.

A waiver is a contractual agreement where a party voluntarily relinquishes a known right. In the context of having fun, that means that the person wishing to have fun (can we call him or her the funnee?) agrees not to sue the person providing the fun (the funnor) if the funnee is injured while having said fun. This waiver can prevent an injured party from recovering for his or her injuries even if the other party was clearly the cause of the injuries. How can this be allowed to happen?

The answer is that the law presumes that people, absent some incapacity (more about this later), are free to enter into an agreement that shifts the normal burden of liability for injuries that might occur as a result of their interactions. A properly executed waiver can provide a balance between the interests of a business and an individual and thereby make an activity affordable. In other words, if the purveyor was not allowed to shift some of the burden of the cost of injury to the other party, the activity would be too expensive (insurance premiums) and nobody would get to use a rock climbing wall, for example.

So a waiver is a contract. Like any contract, the terms must be specific and explicit. The document must put the signer on notice that he or she has a right to compensation for injuries caused by the other party, reasonably inform the signor of the foreseeable dangers of the activity, and obtain agreement from the signor to

exchange or bargain away the right to seek compensation for injury for some other benefit, such as the right to engage in the fun activity.

Does a waiver apply to any conduct causing injury? The general answer is no. While the law has no problem with parties shifting the burden for the risk of negligent actions, there is a strong public policy against allowing a party to escape the consequences of intentional or willful injury to another. To allow waivers to be effective in those situations might actually encourage bad behavior. So waivers are not enforceable in cases where injury was the result of intentional or willful actions of the party seeking the waiver, or an agent or employee acting in the scope of employment. Also, waivers are generally not enforceable when procured by fraud or duress (extreme force). Not allowing someone to use a rock climbing wall unless they first sign a waiver, is not duress.

Can anyone sign a waiver? Yes, anyone with “contractual capacity.” Contractual capacity is the capability to comprehend and understand the rights and obligations of entering into a binding contract. Who does not have contractual capacity to sign a waiver? MINORS. The law presumes that unemancipated minors are incapable of comprehending and understanding what they are doing. A waiver executed by a minor is therefore unenforceable.

Can a parent execute a waiver on behalf of a minor? In Illinois, as in most but not all states, the answer is no, a parent cannot execute a waiver on behalf of a minor. When it comes to a lawsuit on behalf of a minor, the minor is considered a ward of the court and any resolution of a minor’s claim for injury by a parent or anyone else would require the approval of the court. Since a court must approve the resolution of a lawsuit brought on behalf of a minor, a parent cannot logically waive the right to bring the action in the first place. But, a parent can waive his or her own rights that

might derive from their status as parent of the injured minor, such as medical expenses paid by the parent.

A final thought about waivers: While you are probably not able to consult an attorney before signing a waiver, you should always consult an attorney whenever you reasonably believe that you were injured as the result of the actions of another person, even if you executed a waiver. Ultimately, the enforceability of a waiver is a question of law that will depend upon many factors, including factors not addressed in this article. It is best to discuss any specific questions you may have with a qualified attorney since there are always exceptions and special circumstances in any area of the law. ■

## 2018 ISBA Election

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**Nominating petitions are now being accepted and must be filed by 4:30 p.m. on Wednesday, January 31, 2018. Petitions must be physically submitted with original signatures. Candidates’ biography and photo should be submitted at [www.isba.org/election/bioform](http://www.isba.org/election/bioform).**

Find out more at [www.isba.org/elections](http://www.isba.org/elections).

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## February

**Thursday, 02-01-18 – LIVE**

**Webcast**—Storm Water Regulation Under the National Pollutant Discharge Elimination System (NPDES). Presented by Environmental Law. 11AM – 12PM.

**Thursday, 02-01-18 – LIVE Webcast**—

The Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) Permit Program. Presented by Business Advice and Financial Planning. 1:30PM – 2:30PM.

**Friday, 02-02-18 – Bloomington,**

**IL**—Hot Topics in Agriculture Law – 2018. Presented by Agriculture Law. All-day.

**Friday, 02-02-18 – ISBA Chicago**

**Regional Office**—2018 Federal Tax Conference. Presented by Federal tax. All Day.

**Friday, 02-02-18 – LIVE**

**Webcast**—2018 Federal Tax Conference. Presented by Federal tax. All Day.

**Feb 6 - June 26**—Fred Lane's ISBA Trial Technique Institute.

**Wednesday, 02-07-18 – Webinar**—

TITLE INSURANCE 101: HOW TO HANDLE COMMON TITLE INSURANCE AND COVERAGE ISSUES IN RESIDENTIAL REAL ESTATE TRANSACTIONS—A Primer for New Attorneys and Those 'New' to Real Estate Law Practice. Presented by Real Estate. Time: 2-3 PM.

**Friday, 02-09-18 – SIU Carbondale**—

Central and Southern Illinois Animal Law Conference. Presented by Animal Law. 8:00AM to 5:30PM.

**Tuesday, 02-13-18 Webinar**—Cloud

Services for Lawyers. Practice Toolbox Series. 12:00-1:00 PM.

**Monday, 02-19-18 – Chicago, ISBA**

**Regional Office**—Workers' Compensation Update – Spring 2018. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Monday, 02-19-18 – O'Fallon**—

Workers' Compensation Update – Spring 2018. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Monday, 02-26-18 Webcast**—

Annual 2018 Immigration Law Update – Reviewing the First Year of the Trump Administration. Presented by International and Immigration. Time: 12:00-1:00 PM.

**Tuesday, 02-27-18 Webinar**—Security

is Only as Good as the Weakest Link: Security Measures Every Lawyer Should Take. Practice Toolbox Series. 12:00-1:00 PM.

**Wednesday, 02-28-18 – ISBA Chicago**

**Regional Office**—Copyright and Student Records Issues in Education. Presented by Education Law. 9:00 AM- 12:30 PM.

**Wednesday, 02-28-18 – LIVE**

**Webcast**—Copyright and Student Records Issues in Education. Presented by Education Law. 9:00 AM- 12:30 PM.

## March

**Friday, 03-02-18 – ISBA Chicago**

**Regional Office**—9th Annual Animal Law Conference. Presented by Animal Law. 9:00AM to 4:30PM.

**Tuesday, 03-06-18 – LIVE Webcast**—

The Ethics of Social Media for Attorneys and Judges. Presented by Bench and Bar. 1:00-2:30 PM.

**Wednesday, 03-07-18 – LIVE**

**Webcast**—Fixing the Underperforming Practice. Presented by LOME. 12:00-1:00 PM.

**Thursday, 03-08-18 – ISBA Chicago**

**Regional Office**—The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

**Thursday, 03-08-18 – LIVE Webcast**—

The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

**Friday, 03-09-18 – ISBA Chicago**

**Regional Office**—Malpractice Avoidance Program. Presented by Trusts and Estates. 8:30-4:00.

**Friday, 03-09-18 – Webcast**—

Malpractice Avoidance Program. Presented by Trusts and Estates. 8:30-4:00.

**Monday, 03-12 to Friday, 03-16**—Pere

Marquette Lodge, Grafton IL—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

**Tuesday, 03-13-18 – LIVE Webcast**—

Don't Panic – What to do When a Letter Arrives from the ARDC. Presented by ARDC. 2:00-3:00 PM.

**Thursday, 03-15-18 – Webinar**—Hello

My Name is PAC: An Introduction to the Attorney General's Public Access Duties. Presented by Local Government. 12:00-1:00 PM.

**Friday, 03-16-18 – Holiday Inn &**

**Suites, Bloomington**—Solo and Small Firm Practice Institute. All day.

**Wednesday, 03-21-18 – LIVE**

**Webcast**—Topics in Professionalism 2018: Mental Health and Substance Abuse Impacting Lawyers, and Diversity and Inclusion in the Legal Profession. Presented by General Practice. 12:00-2:00 PM.

**Friday, 03-23-18 – ISBA Chicago**

**Regional Office**—Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm. ■