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## Teachable Moments in Independent School Law overview

- About the presenters
  - Heather J. Broadwater
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- Agenda
  - Scenarios
    - Legal issue(s)
    - · What happened
    - · Lesson(s) learned







Although inspired in part by true event(s), the following scenarios are fictional and do not depict any actual person(s) or event(s).

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### Corporate Status

Know Where Your School Stands

- Legal issue:
  - Filing requirements vary by jurisdiction
- What happened:
  - Review of bylaws and articles of incorporation
  - "Not in good standing"
    - · Basic annual form
  - "Forfeiture"
    - · Personal property tax form





### Corporate Status

Know Where Your School Stands

- Lessons learned
  - Designate the position responsible for filings
  - Assign a second position for confirming
  - Maintain a checklist of key filings and position responsible
  - Review articles of incorporation and bylaws periodically, including
    - · Checking standing
    - Confirming that school's current version of Articles matches state files\*



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#### "Parent bad behavior"

"Parent bad behavior" is not just for parents anymore

- Legal issue
  - Enrollment contract: conditions under which school may end enrollment
- What happened
  - Contracts used to focus solely on student conduct
  - Parent behavior became an issue and was added to enrollment contract as potential grounds for ending enrollment
  - Disruptive behavior by others becoming more common





#### "Parent bad behavior"

"Parent bad behavior" is not just for parents anymore

- Lessons learned
  - Include parent behavior in enrollment contract as grounds for terminating enrollment\*
  - Also include behavior of any other person(s) interacting with the school community by virtue of their relationship with the student
  - Focus on deterring bad behavior rather than exercising right to take punitive action
    - Cultural issue: punishing student for acts of others



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#### Truth in Lending Act

The Accidental Creditor

- Legal issues
  - Truth in Lending Act requires certain disclosures, including APR and APY
    - When "borrower" is charged a fee for paying over installments rather than one lump sum\*
    - When more than 4 payments are made pursuant to a written agreement
- What happened
  - Many schools assume they are not covered because they don't consider themselves lenders or creditors





# Truth in Lending Act

The Accidental Creditor

#### Lessons learned

- Obtain a legal review of your school's payment plans and whether they trigger TILA obligations
- Ensure that disclosures are provided at the time the parent(s) elect a payment plan
- Provide amortization when requested
- If payments made via third party plan, consider confirming that TILA disclosures are provided



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### **Employment and Vendor Contracts**

'Til Death Do Us Part?

#### Legal issues

- Contracts for employment or vendor services may be terminated only as provided within the contract or upon established expiration
- Otherwise, terminating party is at risk for breach of contract claim

#### What happened

- Development Consultant contract set 3 year term, without any provisions for early termination by school (even though the event was cancelled)
- Head's contract contained an evergreen clause with no provision for notifying of decision to not renew. Contract provided only for "just cause" termination, with narrow definition.
- Penalty for breach: make other party "whole"





#### Head of School and Vendor Contracts

'Til Death Do Us Part?

- Lessons learned
  - Review contracts carefully
  - Ask "when does this end?"
    - Does the contract expire?
    - · May the school terminate the relationship?
    - If so, when and under what conditions?
    - What, if any, penalties does the school experience as a result of early termination?
  - Consider the worst case scenarios and whether contract allows for termination
  - Balance flexibility and fairness

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### **Ending the Employment Relationship**

Don't Go Away Mad; Just Go Away

- Legal issues
  - Breach of contract
  - Discrimination
  - Failure to accommodate
  - Denial of FMLA rights
  - Retaliation
  - Enforceability of releases
  - Previously unasserted claims
  - Defamation

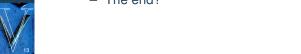




### **Ending the Employment Relationship**

Don't Go Away Mad; Just Go Away

- What Happened Annie (age 55, 14 y.o.s.)
  - History of employee, parent and board complaints about Annie (alumni affairs office)
  - 2<sup>nd</sup> year head, 2<sup>nd</sup> year supervisor
  - Disciplinary "record"
  - The blowup
  - The consultation
    - · Employment "agreement"
  - The meeting
  - The aftermath
    - Handbook policies
  - The apology
  - The demands
  - The end?





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### **Ending the Employment Relationship**

Don't Go Away Mad; Just Go Away

- What Happened Bessie (age 65, 25 yos)
  - Head's executive assistant
  - New head (former employee)
  - Familiar with history and M.O.
  - No record of warnings or counseling
  - Negative surveys
  - The meeting
    - Talking points
    - Severance agreement\*
  - The end





### **Ending the Employment Relationship**

Don't Go Away Mad; Just Go Away

- What Happened Charlene (age 62, 18 yos)
  - Development coordinator
  - New head (former employee)
  - 'Not the strongest performer'
  - Challenges set by Board
  - No record of warnings or counseling
  - Position elimination / restructuring
  - The meeting
    - · Talking points
    - Severance agreement\*



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### **Ending the Employment Relationship**

Don't Go Away Mad; Just Go Away

- What Happened Dennis (age 61, 13 yos)
  - Director of Auxiliary Programs
  - New head (former employee)
  - 'Not the strongest performer'
  - Challenges set by Board
  - Record of poor performance evaluations
  - The meeting
    - · Talking points
    - Severance agreement\*
  - The counteroffer / demand (ADEA)
  - The successful negotiation
  - The e-mail





### Ending the Employment Relationship

Don't Go Away Mad; Just Go Away

- Lessons learned
  - Performance and conduct problems don't magically go away
  - "Employment-at-will" is not a cure-all
  - Deceptiveness regarding reasons for terminations can create additional exposure
  - Importance of employee perception
  - Treat employees with dignity and respect
  - Give employees options
  - Be prepared for backlash even from those who complained the most
  - Board buy-in and understanding are critical

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#### **Teachable Moments**

#### What If's

- Terminated employee had on-campus housing
- School conducts background checks on parent volunteers and discovers troubling information about a parent
- Terminated employee has child enrolled at school with tuition remission
- Terminated employee had "volunteered" to work through meals and afterhours
- FMLA clock not started until employee exhausts leave



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# contact information

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