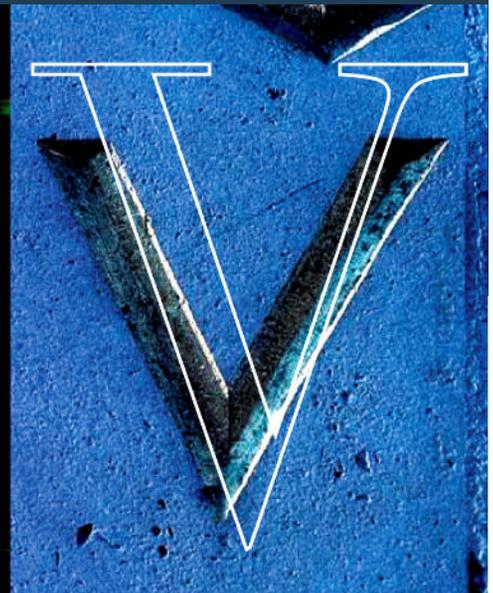
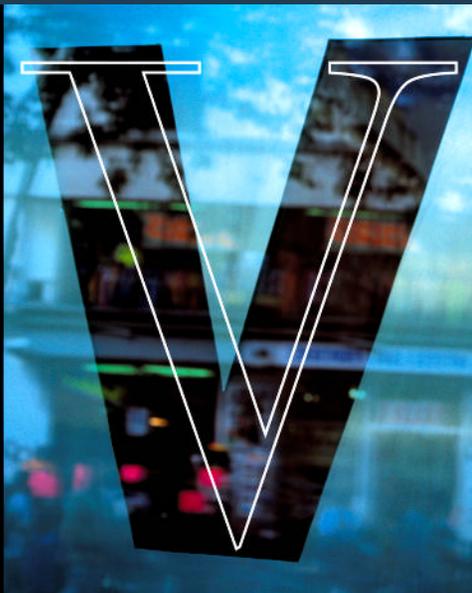
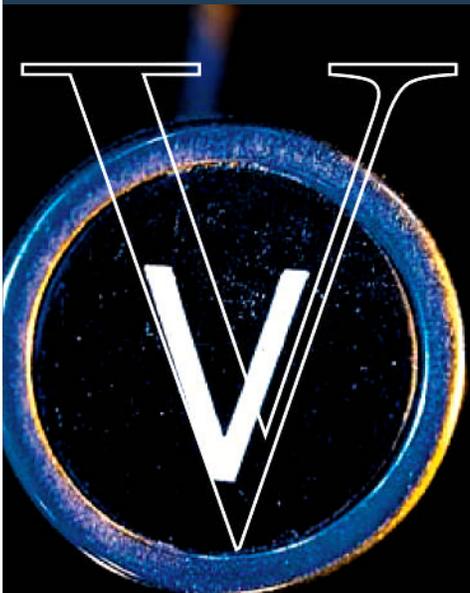


VENABLE[®]_{LLP}

Legal Strategies for Navigating Difficult Economic Times

NAIS Annual Conference 2010
presented by caryn pass



basic guidelines

- no panicking allowed
 - information is power
 - panic results in bad decision making
- culture and mission
 - decisions inconsistent with culture and mission result in law suits
- risk assessment continuum
 - different decisions warrant different risk
 - is the benefit worth the risk
 - belt, suspenders and safety pin
 - no risk
 - criminal background checks
 - middle risk
 - peanut free zone
 - total risk
 - blunt scissors in kindergarten



change in economy

- compels schools to look critically
 - spending
 - budget
 - flexibility
- benefits
 - strategic review of needs of school
 - eliminate long overdue change
 - teacher who should have been terminated
 - » conflict avoided
 - policies in need of review
 - » impact on operations
 - service contracts carefully evaluated
 - » cost effectiveness of contract



fallout areas

- boards gone wild
 - involving themselves in daily operations
 - second guessing administrative decisions
 - failure to terminate math teacher
- parents behaving badly
 - demanding “more” for their money
 - challenging teachers and administration
 - watching grades and discipline
- teachers and other employees
 - challenging changes in contracts, becoming more concerned, acting in ways not seen before



employment agreement

- who receives
 - faculty, staff, administrators
- written document
 - form it takes
 - letter, agreement
- employment at will
 - inconsistent with term agreement
- fixed term
 - term beginning and end
 - july 1 to june 30
 - 1st day of school to day before school starts
 - 1st day of school to last day of school
 - consider
 - unemployment
 - continuation of insurance
 - starting payment before school starts



employment agreement cont'd

- no expectation for contract in next year
- ability to change employment status
 - termination, modification, reduction in hours
 - basis for employment change
 - change in curriculum; student enrollment; change resulting from financial status of school; reorganization or change in program
 - total discretion of school
 - benefits and salary end upon last day of employment or amended based on eligibility if reduction in hours
 - tuition remission



employment contract cont'd

- force major
- reference to other documents
 - handbook
 - evaluation process
 - loan documents
 - tuition for teachers attending school
 - housing purchase
 - computer advance



employee status

- independent contractors
 - coaches, substitutes, fundraisers
 - seasonal employees
 - camp, special programs
 - closer scrutiny by irs
- exempt vs non exempt
 - closer scrutiny by wage and hour



tuition agreements

- tuition obligation
 - deadlines
 - date for return of agreement
 - date for first installment
 - date for termination of contract without consequences
 - enforcement of time lines
 - enforcement language
 - attorney's fees
 - compliant with state law
 - tuition obligation exists regardless of ability to fill seat
 - consistent enforcement or waive right to enforce



tuition agreement cont'd

- provide flexibility to school for change
 - school can make changes at sole discretion
 - change in curriculum, programming, student teacher ratio, respond to needs of school
- force major
- signatures
 - both parents signature
 - parties responsible for tuition
- parent misbehavior
 - ability to expel child for behavior of parent or other adults associated with child attending school



tuition agreement cont'd

- divorce and custody issues
 - costs of legal fees, teacher time charged to parent
- student parent handbook references
 - be certain to make consistent
- failure to satisfy financial obligations
 - transcripts held
 - next year contract held
 - notice to transfer school
 - attendance of student stopped till tuition current
- tuition insurance
 - know limits
 - careful to avoid fraud
 - built into contract



handbooks

- student parent
 - discipline defined
 - parent behavior
 - reference to changes in sole discretion of school
- employee
 - evaluations
 - termination and change in status
 - benefits



liability exposure

- discrimination
 - based on protected categories
 - school considered protected category in employment decision
 - sex, age, race, national origin, disability or religion
 - state protections
 - handbook protections
- breach of contract
 - employment agreement creates protections
 - handbook creates protections
 - evaluations, termination procedures
 - loan documents



termination plans

- types of change
 - termination, reduction of hours, modification or change in assignment
- basis for action
 - performance
 - adequate written documentation
 - procedure under contract, handbook
 - seniority at school
 - cleanest but not most effective
 - may raise claims of discrimination based on age
 - needs of school
 - change in organization
 - change in curriculum or programs
 - change in enrollment



termination plans cont'd

- considerations
 - beloved employee syndrome
 - panic impact
 - on part of
 - teachers
 - current parents
 - prospective parents
 - donors
 - support of board
 - good governance challenges



selection process

- create census
 - name, tenure, age, sex, race, position, salary
- create wish list
- identify
 - employees with defensible performance concerns
 - areas in need of right sizing
 - skills of employees in areas identified in need of right sizing
- compare censuses to wish list and other criteria
- identify candidates
- determine discrimination and contract exposure



severance and separation agreements

- assists employees with transition
- may cause suspicions of wrong doing on part of school by employee
- severance, payment or benefits provided in exchange for release
- options
 - payment of salary
 - based on fixed amount per years of service
 - flat rate for all employees
 - determined by position held
 - continuation of insurance coverage



contracts for services

- termination of contracts prior to end of term
 - consequences to school
- basis for change in rates
 - notice obligations
 - ability to end agreement
- cost to school for breach of agreement
 - attorney's fees assessed?
- bidding process
 - how often
 - what criteria
 - conflict of interest provisions



early retirement

- overview
 - less popular this year
 - lower participation
 - can't force participation
- create censes (as described above)
- terms of plan
 - who is eligible?
 - years of service
 - age
 - weighted age or weighted years of service
 - how long is plan offered?
 - one year? two years?



early retirement cont'd

- benefit options
 - salary
 - paid out over time or in lump sum
 - calculated based on years of service
 - amount of time per year
 - bands of time
 - » 1 to 5 years; two weeks pay
 - » 5 to 10 years; four weeks pay
 - health insurance
 - continue to pay premiums through COBRA
 - continue to pay premiums via active insurance
 - pay for fixed period of time or till 65
 - consider time limits



early retirement cont'd

- deferred compensation
 - certain payments may be placed in the 403(b) plan
 - salary payments deferred over time
 - avoid tax treatment of payments
- written document
 - obtain release from employee
 - outline benefits which serve as consideration



contracts for services

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other benefits

- 403(b)
 - review for strategic benefits
 - matching amounts
 - cost to school of administration
 - used to retain employees or encourage reductions
- health insurance
 - cafeteria plans
 - abilities to provide insurance after employment as severance benefit
 - payout for non-use



other benefits

- insurance
 - review to assure adequate coverage
 - increased claims will impact on bottom line if insufficient coverage
 - review d&o insurance for
 - sufficient coverage
 - coverage of intermediate sanctions
 - board member behavior
 - actions outside of scope of duty cause exemption from coverage
 - who will represent school if law suit brought



goals

- operate consistent with culture
 - gradual planned changed
 - strategic to address needs of school
 - greatest benefit for least risk
- provide maximum flexibility
- message carefully



the road ahead looks bright

