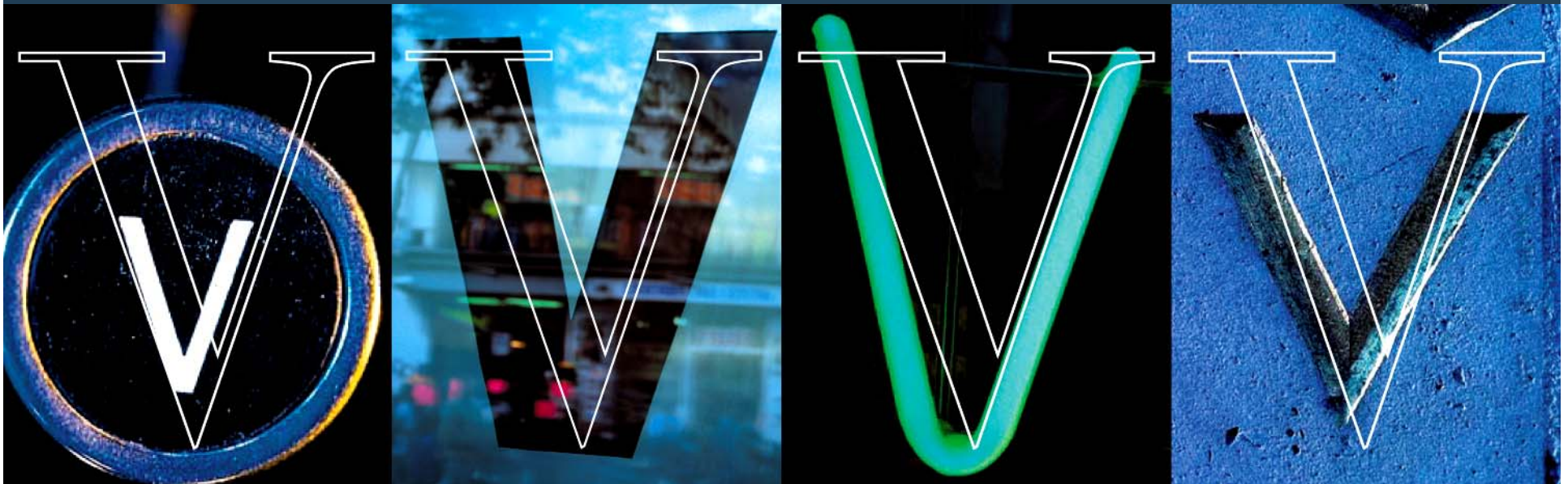


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Drafting 2011-2012 Enrollment Contracts and Employment Agreements: Hot Legal Issues

presented by
caryn pass & grace lee





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
- change in economy
 - compels schools to look critically
 - spending
 - budget
 - flexibility

community factors

- boards
 - 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
- kids
 - acting out as a result of stress
- teachers and other employees
 - challenging changes in contracts, becoming more concerned, acting in ways not seen before

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employment agreement

- goals of the employment agreement
 - establishes the employment relationship
 - establish clear expectations and avoid confusion
 - provide assurances of employment for a fixed period for both employee and the school
 - provide flexibility to modify or terminate the agreement and establish consequences upfront
 - avoid potential liability

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employment agreements: legal framework

- legal framework and potential claims
 - breach of contract
 - payment of salary and benefits for full contract year
 - discrimination based on a protected category
 - age, race, sex, disability, national origin, religion
 - failure to renew/offer new contract
 - misclassification of exempt status
 - misclassification of independent contractor

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employment agreements: who receives agreement

- who receives an agreement
 - faculty, staff, administrators
 - benefits and detriments of written contract
 - MAKES US RENEW THE PAIN
 - sets out basic rules
 - establishes standards of performance and behavior
 - establishes fixed term of service that automatically ends
 - allows for specific standards for termination
 - opportunity to provide flexibility to make changes
 - consistent with public school
- written document
 - form it takes
 - letter v. agreement

employment agreements: employment at will

- employment at will?
 - at-will employees can still bring discrimination claims against the school
 - at-will employees are employed indefinitely
 - affirmative step to terminate v. allowing a contract to end
 - well-drafted contract allows flexibility including termination prior to the end of the contract
 - without contract language, employee handbook establishes standards for termination

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employment agreements: term

- fixed term
 - establish beginning and end
 - July 1 to June 30
 - 1st day of school to day before school year starts
 - 1st day of school to last day of school
 - consider
 - unemployment insurance
 - continuation of insurance benefits
 - starting payment before school starts
 - 10 month vs. 12 month contract
 - no expectation of contract next year
 - contracts should end at the termination date and the school and employee may enter a NEW contract for any following year
- contingent upon background check results for new employees

salary and benefits

- salary
 - describe salary/pay rate per pay period that represents annualized salary of ____
 - check state wage payment laws
 - establish that salary ends on last day worked
 - look out for pay disparity claims
 - Lilly Ledbetter
 - coordinated effort to crack down on gender discrimination in pay by DOL, DOJ, and EEOC
- benefits
 - provide general description of benefits school offers
 - describe impact on benefits if employee is terminated prior to end of contract term
 - vacation, sick leave, and other paid time off

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employment agreements: position and duties

- identification of position/duties
 - full time/part time
 - does not replace job description
 - comply with school policies and procedures
 - support mission and philosophy of the school
 - reserve the right to change, supplement, or remove assigned responsibilities at any time, at the school's discretion

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employment agreements: modification and termination

- modification/termination
 - establish basis for modification/termination of contract prior to the end of the contract term
 - change in curriculum; student enrollment; change resulting from financial status of school; reorganization or change in program
 - insubordination
 - dereliction of duties
 - poor performance
 - violations of policy and procedure
 - actions that would bring disrepute upon the school
 - potential impact on salary, benefits, and hours
 - impact on tuition remission and loans
 - discretion of the school

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employment agreements: conflict of interest

- conflict of interest
 - employee agrees to serve in the best interest of the school
 - outside employment that is inconsistent with position or could negatively impact reputation of the school
 - individual employment with school families
 - tutor, counselor, other educational services that could be a conflict
 - during the school year? with prior approval?
 - should be consistent with general conflict of interest policy of the school



employment agreements: force majeure

- force majeure
 - describe the effect on the contract of a natural disaster or other catastrophe
 - salary may be suspended or contract terminated with no additional pay or benefits
 - school year may be extended, weekend classes, distance learning or other modifications with no additional salary



employment agreements: other issues

- student privacy
 - employee agrees to respect and protect the privacy rights of students and their families
 - pictures, videos, other images, lists, personal information

- qualifications
 - employee warrants that he/she has all qualifications, certificates, credentials and licenses required for the position and will keep them current

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employment agreements: document review

- consistent with other school documents
 - handbook
 - evaluation process
 - loan documents
 - tuition for teachers attending classes
 - housing purchase
 - computer advance
 - tuition remission

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employment agreements: exemption status

- exempt vs. non-exempt status
 - review classifications
 - greater enforcement by the Department of Labor
 - 250 additional auditors in an effort to pursue violations of minimum wage, overtime, and meal break laws
 - consider culture and impact on employees if change contemplated
 - train managers on differences and how to manage overtime

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employment agreements: independent contractor; guidelines

- employee vs. independent contractor
 - more challenges and greater scrutiny by IRS and DOL
 - new guidelines replace the 20-point test
 - behavioral
 - does the school control or have the right to control what the employee does and how the employee does his or her job?
 - financial
 - are the business aspects of the employee's job controlled by the school? (i.e., how employee is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
 - type of relationship
 - are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)?
 - will the relationship continue and is the work performed a key function of the school?

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employment agreements: independent contractor considerations

- employee vs. independent contractor
 - considerations
 - risk of claim for unpaid taxes
 - unemployment insurance, general liability, liability sexual misconduct, workers compensation
 - retirement and health benefits (review 403(b) plan, insurance policy)
 - tutors, substitutes, coaches, testers, seasonal employees
 - clear identification in contract
 - wage and hour considerations

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employment agreements: optional provisions

- optional provisions
 - severance
 - consider impact on obtaining waiver and release of claims
 - notice of termination
 - confidentiality/noncompetition
 - review state laws
 - difficult to enforce
 - arbitration of disputes
 - does not always cost less
 - review state laws

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employment agreements: unintended contracts

- unintended contracts
 - oral contracts
 - establish who can make promises and who can make revisions to the employment agreement
 - train faculty, staff, and administrators involved in the hiring/firing process
 - offer letters
 - even with at-will language, employee can claim breach of contract

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tuition agreement: goals

- removal of students and or family
 - behavior of student and or family as basis for explosion of student or other discipline
- maximum flexibility to change program and policies
 - ability to amend school year or make other changes without challenge
- collection of tuition and other fees
 - enforceable collection of tuition
 - collection of fees and other financial exposure
 - leverage options

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tuition agreements: establishing contract relationship

- each student has own enrollment contract
- initial paragraph
 - student identified
 - enrollment year identified
 - 2011-2012 academic year or school year
 - grade identified
 - grade student will enter
- enrollment limited to 2011-2012
 - no commitment to re-enrollment in following years
- consideration
 - in exchange for enrollment of student parties agree to the conditions in agreement
- modification of agreement
 - must be in writing and signed by head
 - “middle school head said ok for me to notify after June 1”



tuition agreements: executing parties

- financially responsible party executes
 - parents
 - both must sign
 - not valid without both signatures
 - only one parent involved
 - one signs
 - may not be financially responsible
 - only party responsible
 - guardians
 - make certain financially responsible
 - legal responsibility for child
 - grandparents or other party
 - expects access to confidential information
 - not authorized to agree to other provisions
- one parent opposes enrollment
- timing of school signature

tuition agreements: timelines

- date for return of executed agreement
 - returning students
 - holding of contracts
 - ability to fill vacated slots
 - newly enrolled students
 - fill from wait list
 - mid-year or wait list students
- date for parent termination of contract without consequences
 - after which all tuition and fees due and owing
 - written notice to school's designated party for termination
- enforcement of time lines
 - consistent enforcement or waive right to enforce
 - student selected from wait list of another school after cut off date of June 1





tuition agreements: tuition and fees

- establish tuition amount
- define fees
 - including but not limited to
 - books, sports etc.
- enrollment fee or deposit
 - establish amount
 - forfeiture or refund
 - off set outstanding debts
- payment options
 - one payment; two payments; monthly
 - tuition processing company
 - if mandatory
- tuition insurance
 - mandatory vs. voluntary
 - require review of document by parent
 - premium identified as “fee”

tuition agreements: securing collection

- payment of tuition and fees unconditional and due in full
 - regardless of whether “replacement” student found
 - not transferable to another student’s account
 - not considered charitable donation
 - regardless of withdrawal, removal, partial year attendance
- liquidated damages
 - impossible to determine exact amount at execution
- outstanding balance consequences
 - not permitted
 - to attend classes, take examinations, participate in school activities, obtain grades or transcripts
 - no transcripts or recommendations to any party except as required by law
 - notification to transferring school
 - no re-enrollment

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tuition agreements: related issues

- divorce and custody issues
 - costs of document production or testimony in court
 - legal fees
 - value of faculty time
 - party executing enrollment agreement responsible
 - if mother signs and father subpoena's documents
- costs associated with collection
 - school's legal fees and court costs
- Electronic Enrollment Contracts
 - federal E-Commerce Act and state provisions
 - obligation to include language and comply with provisions
 - failure to do so; inability to enforce agreement
- impact of:
 - financial aid
 - bankruptcy

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tuition agreements: student and parent removal

- parent misbehavior
 - ability to expel child for behavior of parent or other adults associated with child attending school
- student misbehavior
 - dismiss or otherwise discipline
 - does not meet the behavioral and/or academic standards of the school
 - whose conduct at any time or place interferes with program or operations
 - brings discredit to the school
- student handbook
 - duty to comply with provisions
 - (student discipline, code of conduct, AUP, reporting of discipline to colleges and university)



tuition agreements: operations of school

- provide flexibility to school for change
 - school can make changes at sole discretion
 - change in curriculum, programming, student teacher ratio
 - no obligation to modify, amend or other wise provide alternative program for students missing school
- force majeure
 - acts of god
 - school can delay, extend, shorten, modify or take other actions to complete school year
 - describe the effect on the agreement of a natural disaster or other catastrophe

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tuition agreements: document review and related issues

- create “enforcement policy”
 - family moves out of town, medical condition
 - consistent enforcement or waive right to enforce
- student parent handbook
 - review for consistency with enrollment document
 - student discipline policy, AUP
- admissions application
 - commitments not consistent with enrollment document

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the road ahead looks bright

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