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Teachable Moments in Independent School Law

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Teachable Moments in Independent School Law


overview

- About the presenters
 - Heather J. Broadwater
 - Caryn G. Pass
 - Grace H. Lee
- Agenda
 - Scenarios
 - Legal issue(s)
 - What happened
 - Lesson(s) learned

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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

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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

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“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


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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”

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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

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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)
 - 2nd year head, 2nd 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

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Ending the Employment Relationship
Don't Go Away Mad; Just Go Away

- What Happened – Charlene (age 62, 18 yrs)
 - 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 yrs)
 - 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

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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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