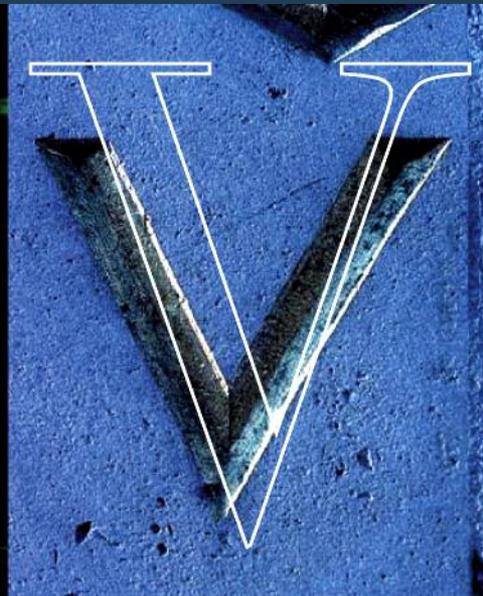
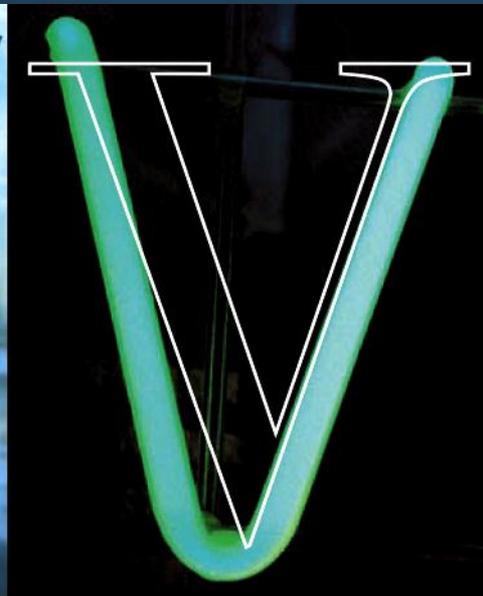
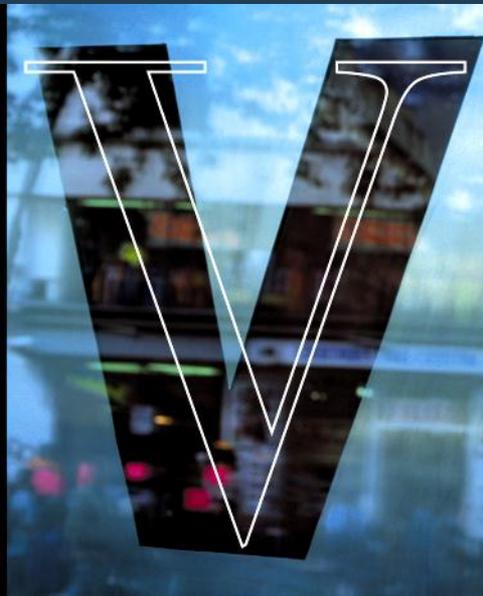
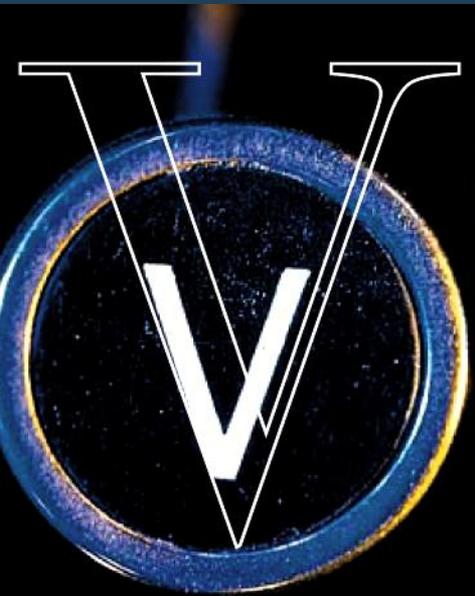


VENABLE[®]_{LLP}

Appropriate Boundaries in the World of Social Networking

SAIS annual conference 2011

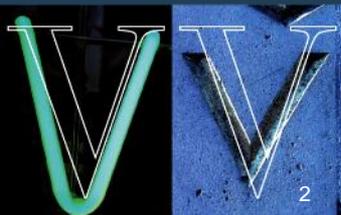
caryn pass and heather broadwater



Social networking

- evolving area
- protection of all constituencies
 - students, faculty, staff, parents, donors, alumni, applicants (students and employees)
- protection of school
- create systems limiting liability
 - consider experiences of all users
 - mission and culture of school
 - establish standards and create policies

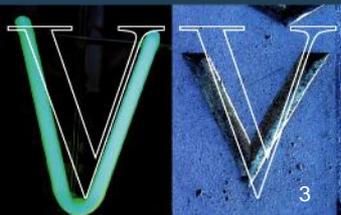
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Embrace the technology

- communication method for current generations
 - accepted form of interaction
 - i.e., access and use of cell phones
- second nature for next generation of leadership
 - cutting edge now is old hat to new leadership
- communicating with students while maintaining role as educator
 - use of facebook as educational tool vs. providing access to personal information
 - what is posted on “school” account; who controls
- marketing, admissions, development

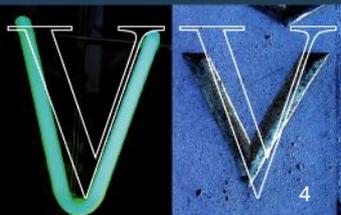
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Pitfalls of social media

- bullying, harassment, discrimination
 - between employees, between students, between employees and students/parents
- harm to reputation (of school, of students, of employees)
- inappropriate contact between employee and student/recent alum
- identity theft
- access to private information
 - e.g., criminal activity resulting from pictures and other information on social media

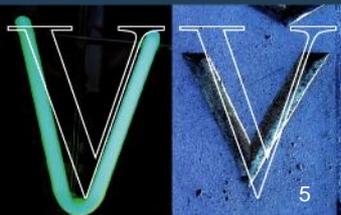
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Legal framework and potential claims

- violation of state/federal statute or regulation
 - children’s services reporting obligations
 - donor registration reporting obligations
 - state anti-bullying laws
- criminal conduct
 - sexting reporting
 - internet child pornography reporting
- breach of contract
 - violation of promises specific or implied in written agreement
 - enrollment, employment or other contracts
 - e.g., contractual promises to keep student safe
 - e.g., parent refuses to pay tuition after school failed to stop bullying (online and in person) and then expelled student

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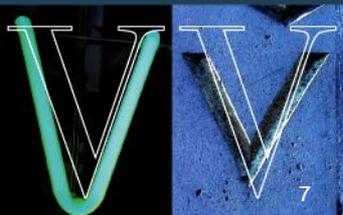
Legal framework and potential claims

- common law
 - established by court cases
 - negligence (privacy, defamation, supervision)
 - school had duty/failed to exercise duty/harm resulted from failure to exercise duty/obligation to compensate for resulting harm
- wrongful termination
 - e.g., teacher fired for Facebook posts suing school
- labor law
 - all employees (even non-unionized) have rights to “concerted activity”
 - NLRB suit against employer for firing employee after posts about employer (settled)
 - New NLRB charge against non-profit
- discrimination, harassment, and retaliation



Issues to consider

- boundaries
 - appropriate relationships
 - teacher/student/recent alum/parents
 - is banning use effective or realistic?
 - school's culture and philosophy
- notification of behavioral expectations
 - what school expects from
 - students, teachers, parents, community
 - expectations of privacy
- school sponsored technology vs. private use
- during “school” time only or also during “private” time
- school technology and/or private technology



Media to consider

- websites
 - school, employee, student website
- email
 - personal or school sponsored
- YouTube
- Facebook
 - private or school sanctioned
- Twitter
 - private or school sanctioned
- cell phones
 - student or teacher
- blogging
- instant messaging
- Skype
- New and emerging media

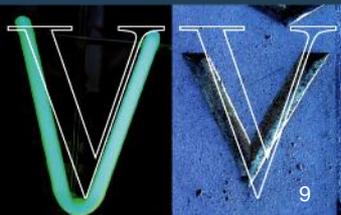
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Policy considerations

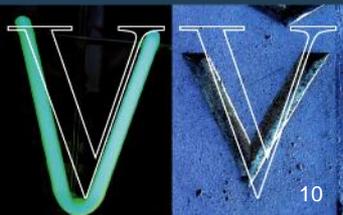
- Acceptable / appropriate use of school technology
- Standards of behavior
- Personal use of social media

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Teacher/employee issues : behaviors with students

- Facebook friends
 - friending current or former students on personal account
 - student exposed to possibly inappropriate or personal information
 - inappropriate contact and solicitation
 - librarian soliciting recent alum through chatroom
 - employees vulnerable to allegations
 - teacher has access to student page and implied obligation to act on information obtained
 - e.g., teacher “official use” twitter account still exposed teacher to students’ personal “tweets”
 - cell phone
 - when is use appropriate
 - calls vs. texting
 - personal email
 - gaming
 - teacher participation and encouragement of student resulted in addiction of student



Teacher/employee issues : behavior outside school

- actions of teacher inconsistent with educator standards
 - websites
 - creation of inappropriate website
 - nature of after school employment
 - activity in existing websites (promotion of violence)
 - Google search results
 - information reflecting poor decision making
- Facebook
 - posting by self or others
- YouTube postings
 - posted by employee or others
- employees making “official” representations on behalf of the school
- trademark and copyright considerations

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Teacher issues: potential claims

- failure to comply with representations in enrollment contract or other materials resulted in negative impact on student's performance
 - school representations
 - students treated in an equal and non-discriminatory manner;
 - supporting each member of the school community
- school's failure to supervise teacher resulted in injury to student
- teacher's personal relationship with select parents resulted in preferential treatment of student
 - emailing parents from personal address
 - friending parents
 - providing cell phone number
 - posting pictures
- challenge:
 - employees who are also parents of the school
- wrongful termination
 - breach of employment contract
 - discrimination based on protected category
 - violation of NLRA
 - violation of policies, procedures, handbook, past practice

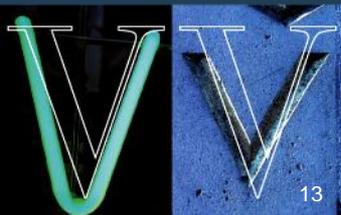
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Student issues: potential claims

- potential claims
 - breach of supervision of students filed by parent vs. school
 - student injury resulted from school's failure to supervise student
 - breach of contract
 - failure to enforce promises to keep students safe
 - failure to follow policies regarding reporting discipline on common application
 - refusal to pay tuition
 - invasion of privacy

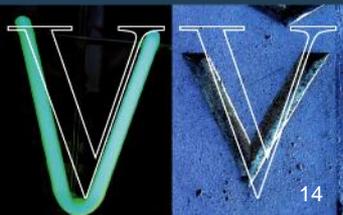
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Employee issues: preventative measures

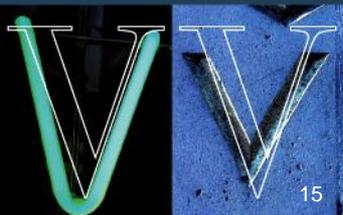
- clearly established policies
 - bullying, harassment, discrimination, retaliation
 - standards of conduct
 - when does it apply
 - ability to monitor and investigate
 - no retaliation for reporting
 - “behaviors inconsistent with values of school”
 - duties of teachers to monitor students and report
 - discipline of employees
 - clear and defined consequences
 - investigation procedure (establish privacy expectations)
 - establish expectations related to reporting offenses to others, including law enforcement
 - training of teachers and staff
- employment contract
 - ability to remove an employee for violations of policies
 - careful about NLRA

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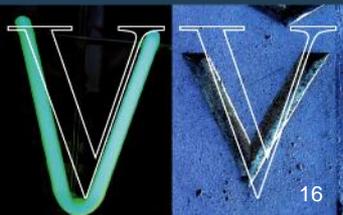
Privacy: general

- establish expectation of privacy
 - policies describing rights and appropriate expectations
 - liability to school for demanding waiver of privacy rights
 - student abducted after access to picture on website
- was privacy expectation reasonable?
 - school posts student grades on website
- did school have valid cause to invade privacy
 - claims teacher was visiting pedophile sites during school day
- was the nature of the intrusion reasonable in light of the cause
 - balancing test



Privacy concerns: student

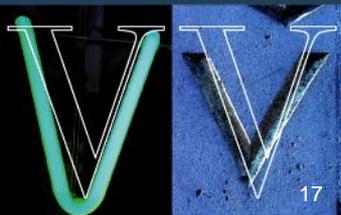
- actions resulted in dissemination of confidential information or access to “protected information”
- student information
 - school or individual employee’s use of photos, images and student work without permission resulted in dissemination of private protected information
 - school
 - obtain written permission from parent
 - website, promotional materials, newspaper and other media, facebook page
 - employee precluded from using such information for personal use
 - school monitoring resulted in breach of student privacy
 - webcam
 - installing webcam on student laptops without knowledge of family
 - student emails (school or personal)
 - school’s ability to investigate reports of abuse
 - search of lockers, cars, backpacks, personal laptops, cell phones?
 - demand for passwords or other access
 - place students on notice that school may have to contact law enforcement



Privacy concerns: employees

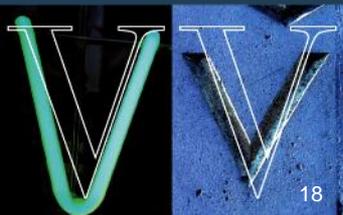
- actions of school resulted in dissemination of confidential information or access to “protected information” of employees
- website
 - mandatory inclusion of pictures, phone numbers, educational history
 - potential claim of privacy or negligence
- employer access to
 - emails and websites visited
 - notify employee of privacy expectation
 - care to secure private financial and medical information of employee
 - social security number
 - salary
 - medical information

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Privacy: development/marketing/admissions

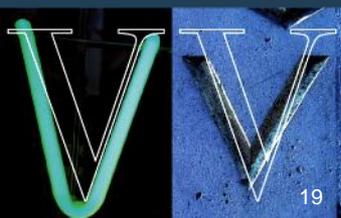
- actions of school resulted in dissemination of confidential information or access to “protected information”
 - general rules
 - photos and likeness on promotional materials, websites, facebook must be authorized
 - giving and other contact information must be authorized
 - parent contact data not be distributed or sold for solicitation purposes
- Facebook and twitter
 - GREAT CAUTION IN POSTING
 - official representation by school
- email
 - permission from email recipient
 - provide opt out language, assure removal
- website and promotional material clear and honest
 - detrimental reliance and bases of failure to educate
 - i.e. students playing lacrosse when school lacks team
- register with state agencies if soliciting donations through email or other electronic communication



Document and policy review

- employee handbook
 - code of conduct
 - use of student images
 - technology and proper use
 - discipline and termination provisions
- employment contracts
 - grounds for termination
 - standards of behavior

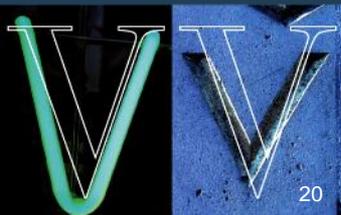
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Document and policy review

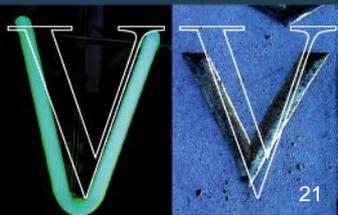
- enrollment contract
 - student code of conduct
 - grounds for discipline
 - impact of removal on tuition
 - notice to college and university of discipline
- IT
 - portal access policy
 - security policy
 - e-commerce policy
 - monitoring of emails/ web site usage

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Questions?

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contact information

Venable Independent School Lawyers

Caryn G. Pass, partner

cpass@venable.com

t 202.344.8039

f 202.344.8300

Heather J. Broadwater, associate

hbroadwater@venable.com

t 202.344.8042

f 202.344.8300

Grace H. Lee, associate

glee@venable.com

t 202.344.8043

f 202.344.8300

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www.venable.com

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