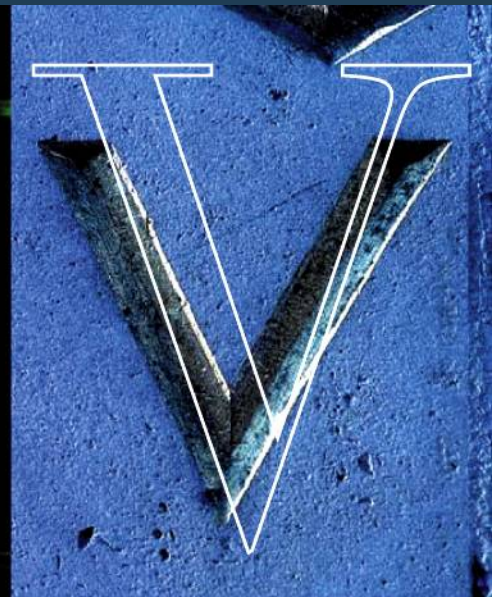
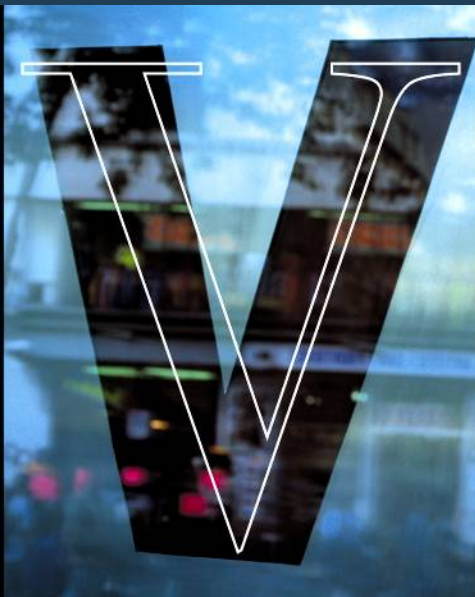
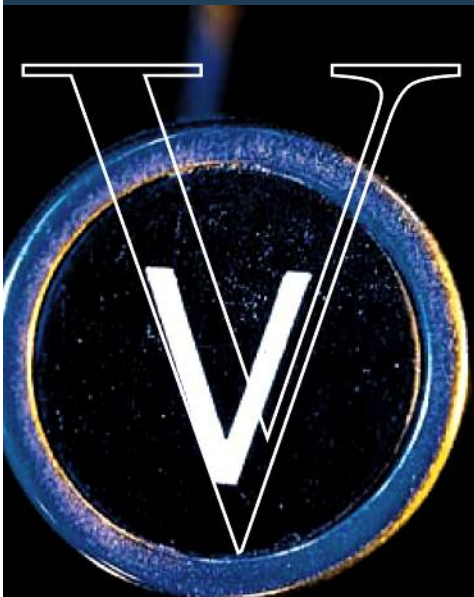


# VENABLE<sup>®</sup><sub>LLP</sub>

## Drafting 2012-2013 Enrollment Contracts Hot Legal Issues

NBOA Webinar  
October 2011





## 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

## 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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## establishing contract relationship

- each student has own enrollment contract
- initial paragraph
  - student identified
  - enrollment year identified
    - 2012-2013 academic year or school year
  - grade identified
    - grade student will enter in fall
  - conditioned upon successful completion of current year
- enrollment limited to 2012-2013
  - 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”



## 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
- timing of school signature
  - school signs sends signed or unsigned & returns to copy to parent
- only valid if fully executed

# language and foreign nationals

- knowingly enter into agreement
  - foreign language issues
    - notice party they are entering into legal document
    - obtain assistance in translating
  
- foreign nationals
  - inability to enforce in foreign country
  - obtain guarantor in United States
  - require full payment up front
  
- sponsor and guardianship
  - party responsible for student
    - avoid student living on own in United States
    - contact in case of emergency

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## timelines

- date for return of executed agreement
  - returning students
    - holding of contracts
    - ability to fill vacated slots
  - newly enrolled students
  - 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 and fees

- establish tuition amount clearly in agreement
- 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”
  - avoid fraudulent representations
- amount due by families receiving financial aid or public funding





## collection and enforcement

- 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
- costs associated with enforcement reimbursed by parent
  - school’s legal fees and court costs
- note jurisdiction for enforcement (State)

## 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
- outstanding balance consequences
  - not permitted to attend classes, take examinations, participate in school activities, obtain grades or transcripts
  - no transcripts or recommendations to any 3<sup>rd</sup> party except as required by law
    - state law prevails
  - notification to transferring school
  - no re-enrollment
- use of student photos, field trip permission
- school only executes agreement
  - **NO OTHER WRITNING ON DOCUMENT**





## parent behavior

- parent misbehavior
  - ability to expel child for behavior of parent or other adults or children associated with a child attending the school
  - **“A positive and constructive relationship between the School and the Student's Parent(s)/Guardian(s) or other adults or children interacting with the School and/or School community by virtue of their relationship with the Student is essential to the mission of the School. Thus, the School reserves the right to expel, remove or otherwise dismiss the Student if the Head of School concludes in his/her sole discretion that the actions of the Parent(s)/Guardian(s) or other adults and or children interacting with the School and/or School community by virtue of their relationship with the Student impede the School's ability to meet its educational objectives or mission or make a positive or constructive relationship impossible.”**



## student behavior

- 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
    - 24/7 standards
      - Both during school day and school activity or at all times child is enrolled
        - » Summer trips
- reporting discipline or removal to colleges
  - common college application

## 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
    - suspended, out for extended medical conditions, out for extended vacation or other non school activity
- acts of god
  - school can delay, extend, shorten, modify or take other actions to complete school year
- boarding schools
  - parents responsible for students during vacations
  - conduct applies during school day, after and before (ie; weekend)

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## enforcement policy

- create “enforcement policy”
  - not in agreement
  - not distributed or published
- factors
  - family moves out of town, medical condition
  - consistent enforcement or waive right to enforce
  - enough flexibility to respond to situation vs enough structure to support decision in court
  - process of enforcement
    - letter from school, letter from lawyer, court action
  - review policy with finance committee

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# online contracting

- elements
  - identity confirmation
    - Process for access to system
  - consent to electronic contract
    - Confirmation of agreement to use e-contract
  - ability to review and modify
    - Can party review submission of information and modify information
  - confirmation of school's receipt and acceptance
    - Return email confirming receipt and acceptance of contract
  - school's inability to modify agreement
    - Confirmation that school can't modify agreement
  - maintenance of document in school's system
    - How is information maintained by school

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the road ahead looks bright

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