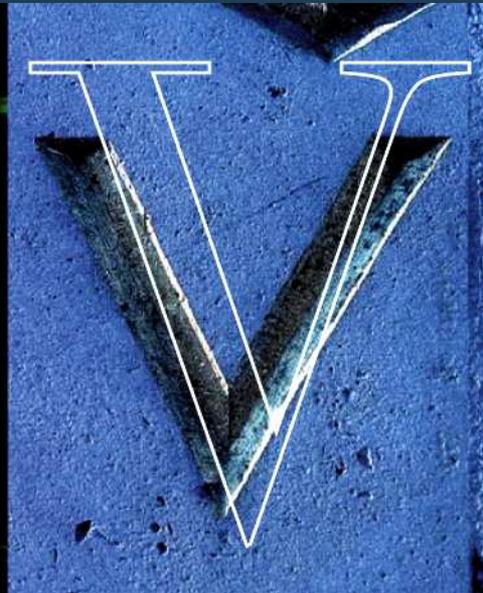
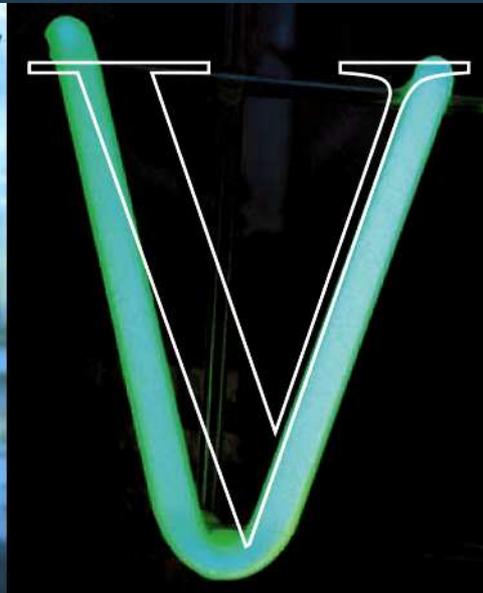
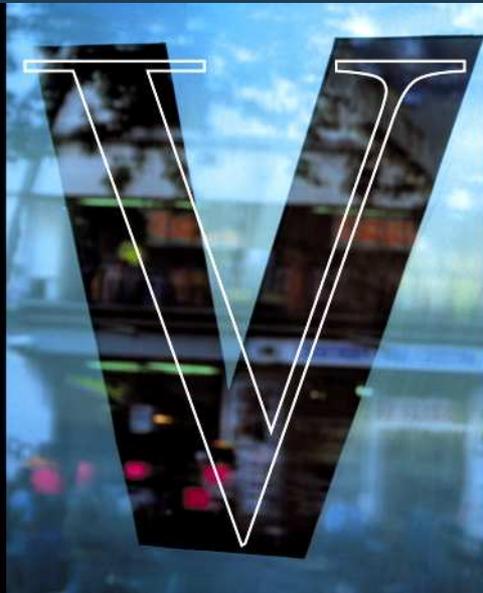
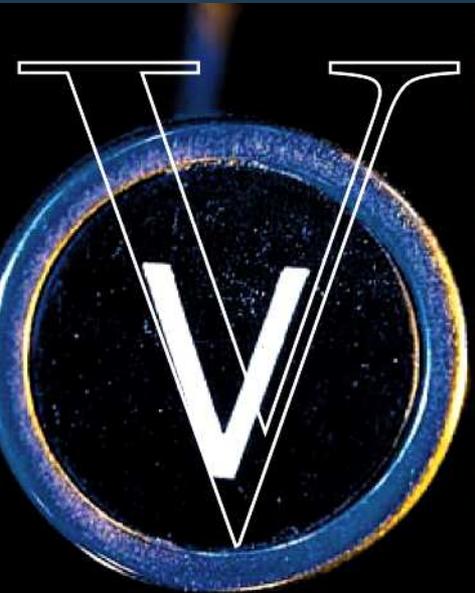


VENABLE[®]_{LLP}

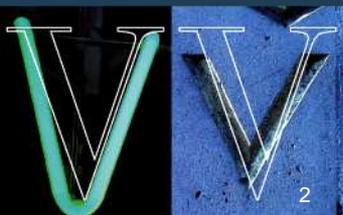
Social Media: what every independent school should know

Caryn Pass, Presenter
NAIS CONFERENCE 2012
Seattle, Washington



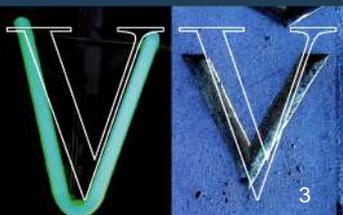
Overview

- can't give list of does and don'ts
 - every day new issues never before considered
 - teacher posting pole dancing video on school website
- protection of all constituencies vs. use by constituencies
 - constituencies
 - students, faculty, staff, parents, donors, alumni, applicants (students and employees)
 - Setting guidelines for student/employee contact
 - Students bullying on Facebook
- create systems limiting liability
 - consider experiences of all users
 - mission and culture of school
 - establish standards and create policies



Online Social Media Usage: Statistics

- Facebook: More than 500 million active users
 - People spend over 700 billion minutes per month on Facebook
- Twitter: Over 160 million users
- LinkedIn: Over 85 million users
- Over 77 million Americans visit blogs; over 346 million blog readers worldwide
- Not just the internet; must consider “mobile.” Between Jan 2009 and Jan 2010:
 - 30 % of smartphone users accessed social networks via mobile browsers – up from 22.5% in 2009
 - Social networking sites accessed via mobile browsers rose to 11.1% - up from 6.5 % in 2009
 - Facebook mobile browser usage up 112%
 - Twitter usage via mobile browsers up 347%



What is Online Social Media

- Social networks – Facebook, MySpace, LinkedIn
- Media repositories – YouTube, Flickr, Picasa, Vimeo
- Blogs and microblogs – twitter, tumble (twitter for hipsters)
- Document repositories – Google docs
- Wikis – Wikipedia, Medpedia, Sidewiki
- Mobile communication – texting
- Visual communications - skype
- Chat rooms, forums and user reviews – “mommy whining site,” rate my teacher, yelp
- Electronic mail – email
- Websites – school’s official site, teacher personal sites



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
- use by all parties must be considered
 - list serves by parents; alumni Facebook page; parents association link on school website
- not often considered
 - marketing, admissions, development



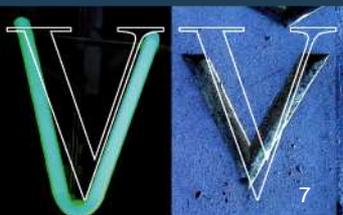
Be Aware of Challenges

- bullying, harassment, discrimination
 - between employees, between students, between employees and students/parents
- harm to reputation
 - of school – “mommy whining sites”
 - of students – posting of compromising images
 - of employees – rate my teacher
- inappropriate contact between
 - employees and employees
 - employees and current/former student
 - employees and parents
- identity theft
 - Students misrepresenting themselves as teachers
- access to private or confidential information
 - use of student photos
 - use of school contacts



Basis of Legal Claims

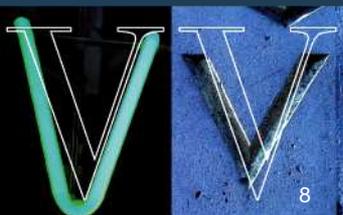
- violation of state/federal statute or regulation
 - children's services reporting obligations
 - donor registration reporting obligations
 - state anti-bullying laws
 - limiting use of Facebook as communication tool
- criminal conduct
 - sexting reporting
 - internet child pornography reporting
- breach of contract
 - violation of promises specific or implied in written agreement
 - enrollment, employment or other contracts
 - contractual promises to keep student safe
 - » failure to monitor faculty behavior resulted inappropriate contact with student
 - » parent refuses to pay tuition after school failed to stop bullying (online and in person) and then expelled student



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; teacher fired for:
 - Facebook posts
 - friending students
 - blog entries
- hiring decisions
 - collection of info on candidate from web
 - failure to consider information on web
- misrepresentation and false advertising
 - posting representations on school website not entirely accurate
- trademark and copyright violations
 - posting copyright protected documents

*Wise In The
School World*



Considerations for Social Media Approach

- boundaries
 - appropriate relationships
 - teacher/student/recent alumni/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
- during “school” time only or also during “private” time
- school technology and/or private technology



Student Issues: Behaviors

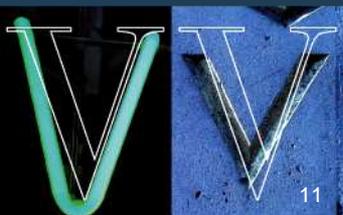
- behaviors:
 - bullying, harassment, intimidation
 - Texts, emails, Facebook posts, blogs
 - sexting
 - must report to authorities
 - have “sext” maintained but not sent to school
 - Facebook
 - pictures engaging in prohibited activities
 - negative comments about teachers, school or other matters (e.g., “I hate my teacher” blog)
 - banter inconsistent with values of school; e.g., racist, misogynist posts
 - YouTube videos of prohibited behavior
 - hacking school’s website

*Wise In The
School World*



Student Issues: 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
- breach of privacy/confidentiality
 - dissemination of information on student
 - use of pictures/names without permission



Student Issues: Protective Measures

- policies (acceptable use)
 - setting standards
 - anti-bullying and anti-harassment policies – should be clearly defined
 - when does it apply (off campus, field trips, summer/holidays, school activities)
 - consistent with code of conduct, mission and philosophy
 - “behaviors inconsistent with values of school”
 - discipline of students
 - clear and defined consequences
 - due process
 - Investigation procedure (establish privacy expectations)
 - when applied (24/7, private source)
 - reporting/investigation of allegations
 - obligations of students and teachers to report violations of policy
 - establish expectations related to reporting offenses to others, including law enforcement



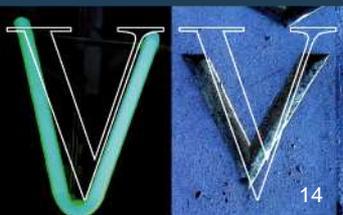
teacher/employee issues : behaviors with students

- 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 chat room
 - 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 employee or others
- YouTube postings
 - posted by employee or others
- employees making “official” representations on behalf of the school
- trademark and copyright considerations



teacher issues: potential claims

- against teachers
 - 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
- by teachers
 - wrongful termination
 - breach of employment contract
 - discrimination based on protected category
 - violation of policies, procedures, handbook, past practice
- challenge:
 - employees who are also parents of the school



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
 - consider adding “poor judgment”



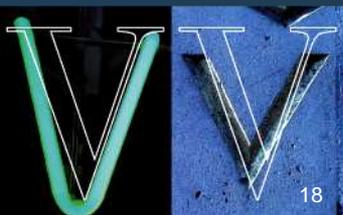
privacy: general

- establish expectation of privacy
 - policies describing rights and appropriate expectations
 - liability to school for demanding waiver of privacy rights
 - must allow use of student and employee photos
 - Ex-spouse discovered location of teacher and shot her
 - Student abducted by parent who found picture on school's website
- was privacy expectation reasonable?
 - school posts student grades on website
- did school have valid reason to invade privacy
 - claims teacher was visiting pedophile sites during school day



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
 - personal laptops, cell phones?
 - demand for passwords or other access
 - place students on notice that school may have to contact law enforcement



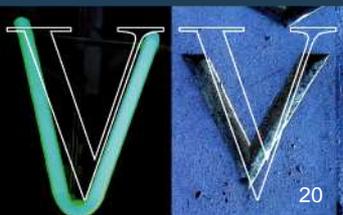
privacy concerns: employees

- 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



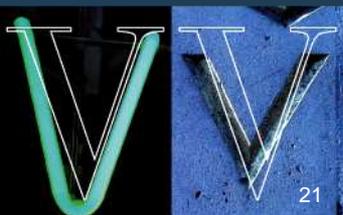
privacy: development/marketing/admissions

- 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



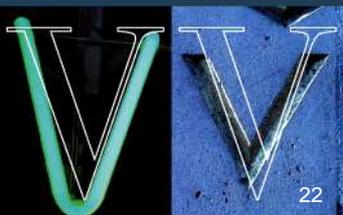
document and policy review

- 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
- student (parent) handbook
 - technology and proper use
 - code of conduct
 - disciplinary procedure
 - notice to college and university of discipline
 - bullying policy



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
- bullying policy
 - reporting policy and procedures
 - employee obligations
 - investigation procedure
 - follow up with parents and other parties
 - discipline standards
- IT
 - portal access policy
 - security policy
 - e-commerce policy
 - monitoring of emails/ web site usage



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

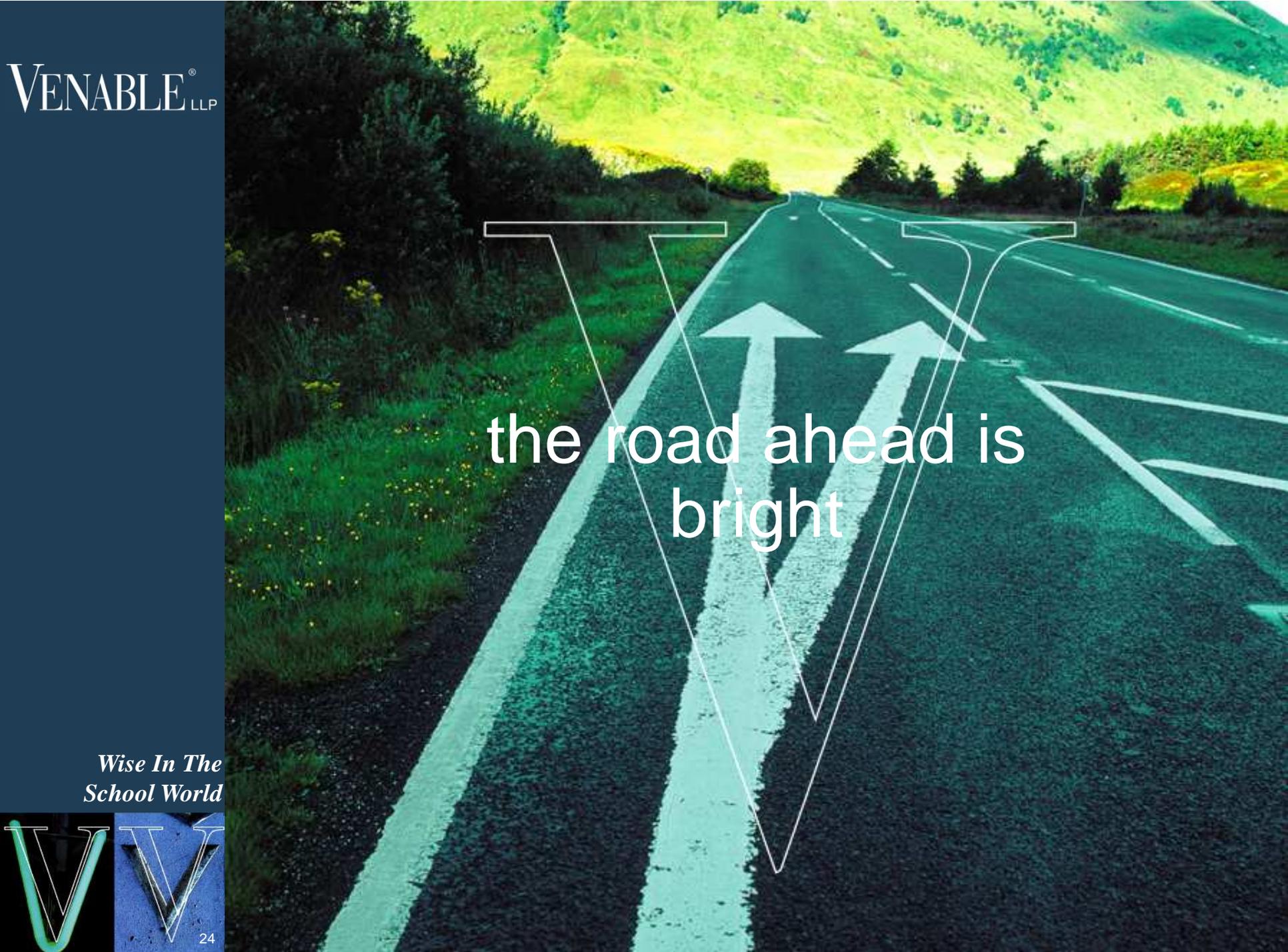
t 202.344.8043

f 202.344.8300

*Wise In The
School World*

wise in the school world

www.venable.com



the road ahead is
bright

*Wise In The
School World*

