

VENABLE[®]_{LLP}

Good Governance:
Holding in Trust Your Independent School

Caryn Pass

January 12, 2013



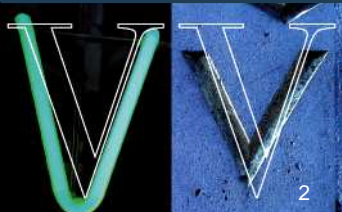
Basic Foundation of Good Governance

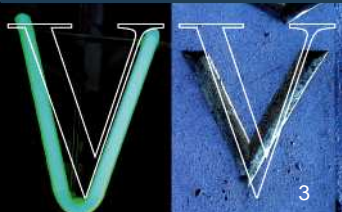
What is Good Governance?

**“Planning the School your
Grandchildren will attend”**

The Rest is Commentary

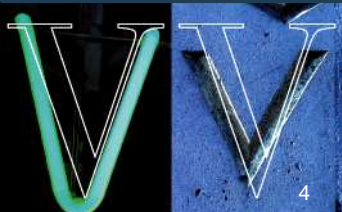
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legal issues

- legal issues based on working with schools nationwide
- causes:
 - economic times
 - new legislation and increased government enforcement
 - new technology without policies to govern use
- preventing and resolving legal issues
 - establish policies and standards up front
 - be proactive in consulting counsel
 - act consistent with culture, mission and strategic plan
 - don't panic



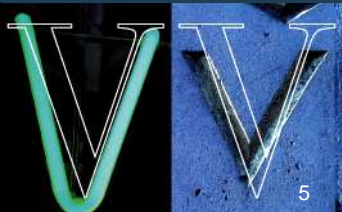
strategy to avoid legal exposure

- act in a manner consistent with good governance
- good governance:
 - framework for making decisions
 - decisions that are consistent with the law
 - process used to establish a defense to legal challenges
- top governance violations:
 - breach of confidentiality
 - acting outside of the scope of duty
 - breaching fiduciary duty

board governance documents

- use your drafted tools to hard wire good governance and limit liability
 - by-laws
 - charter/articles of incorporation
 - conflict of interest policy
 - whistle blower policy
 - intermediate sanctions (process for compensation of head)
 - document retention and destruction

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confidentiality

- deliberations and exchange of views essential
 - process requires full and honest discussion
 - chilling effect if question of confidentiality
- board = speak with one voice; appear unified
 - trustees = support board decision or leave board
- avoid “public” discussions of issues before the board
 - Car pool line; spouse; supporters of “your” position
- breach of confidentiality
 - breach of privacy (student/employee issue)
 - negative impact on decision (appearance of uncertainty)
 - Personal liability (cause damage to school)
 - negative reaction by community (reduction in pledges)

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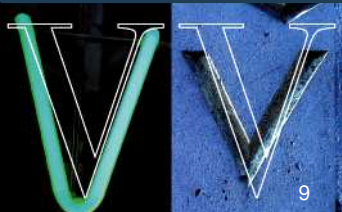
acting outside of scope of duty

- board
 - establishes policy and creating strategic plan for the school
 - makes larger policy decisions
 - supports head of school
- administration
 - responsible for daily operations of school
 - implements boards policy
- board operating in administration's arena
 - legal claims by heads of school
 - Inability to do job resulting from interference of board
 - legal claims by employees
 - trustees spoke in behalf of administration
 - retaliation for failure to appease trustee



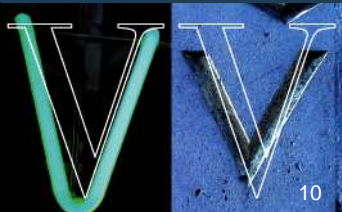
charter and articles of incorporation

- establishes school as legal entity
 - do you know where your articles are?
- review regularly
 - check state filing
 - document consistent with board modifications/amendments
- charter or articles in “forfeiture”
 - actions of board invalid
 - board acts without authority
 - school name can be taken
 - loans and or financing in jeopardy
- JEPORDIZE 501 (c)(3) status



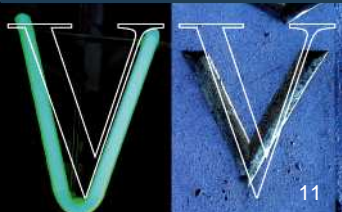
by-laws

- review regularly to ensure compliance
 - board’s actions must be consistent with by-laws
 - failure to comply with by-laws invalidates boards’ actions
 - proxy vote not provided for in by-laws
 - e-mail notification of board meetings
- use by-laws as good governance foundation
 - consider how board wants to act as an entity
 - what is the board’s culture
 - transparency?
 - commitment to diversity?
 - ability to address issues?
 - level of “democracy”?
 - expectations of board service?



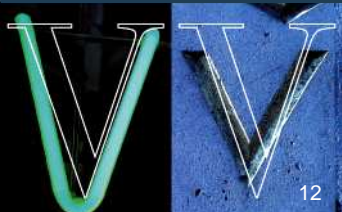
by-law provisions

- selection of board members
 - fixed skills or open spots
 - from committee, board in general or community
 - interview process and vetting
 - presentation to the board
- voting for board members
 - slate vs. individual nominees
 - nominations from the board at meeting
 - percentage vote needed
- term limits
 - board chair and other officers
 - board members



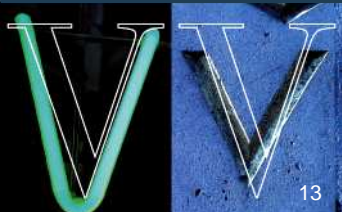
by-law provisions

- percentage of votes needed for various decisions
 - what decisions are most vs. least important
- committees
 - what committees exist
 - role of each committee
- executive committee
- “care and feeding of head committee”
- governance or committee on trustees
 - review of trustees
 - removal of trustees
 - receives and investigates complaints, reports to board, makes recommendation
 - TRUSTEE LEAVES DURING DELIBERATION



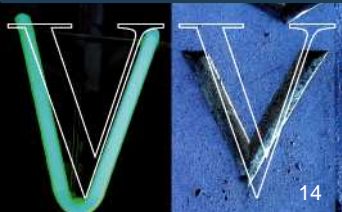
by-law provisions

- executive sessions
 - standing session at end of each board meeting
 - with/without head of school
- head of school
 - selection and review
 - method for establishing compensation
- Directors and Officers insurance and indemnification
 - how much coverage?
- make up of board
 - Faculty? Student? Alumni officer? PTA officer? Non-parents? Other head of school?



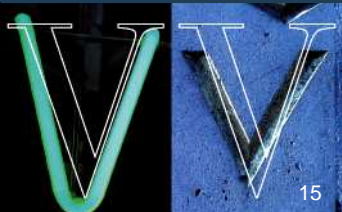
conflict of interest policy

- written policy
- formally adopted by board
- signed by trustees and head annually
 - perhaps others
- create disclosure statement
- process for disclosing conflicts
- process for vetting conflict
- include tracking system
- confirm tracking in board resolutions
- referenced in 990

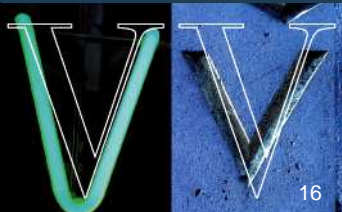


whistle blower policy

- ensures protection of employees who report financial impropriety from retaliation
- care be taken to limit extent of reporting topics
 - only financial impropriety
- consider who accepts and considers complaints
 - audit committee
 - finance committee



- ## document retention and destruction policy
- policy outlining how documents are maintained and destroyed
 - important for litigation
 - once litigation filed documents must be kept
 - assists in litigation filed against school
 - assists in subpoena by parents
 - ensures maintenance of necessary documents
 - consider all documents including
 - financial aid, development, application
 - consider all parties at school with documents



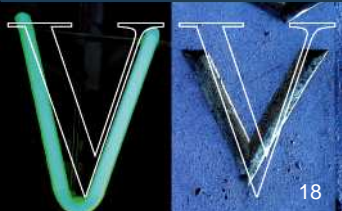
intermediate sanctions

- method for review of compensation of head, business manager and others
- avoid payment of excess benefit
- review directly or by board establishing a committee
- committee
 - ensures members have no conflict of interest
 - selects comparable schools
 - collects comparable remuneration of similarly situated professionals (more than just salary)
 - considers information
 - establishes remuneration
 - documents process
- presentation to board
 - general vs detail



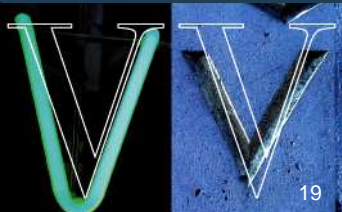
fiduciary duty and due diligence

- authority to bind school
 - policy authorizing binding of school
 - who can sign and amount limits for multiple signatures
 - what goes before board/finance committee
- audit and 990 completion
 - create policy that states
 - who prepares and reviews
 - Lawyer/accountant
 - who signs audit and 990
 - how is 990 presented to board
 - how is audit presented to board



Legal Exposure

- Employment
 - Allegations of wrongful termination
 - Discrimination based on protected category
 - Employment Contract breach
 - Handbook non-compliance
 - Reduction in staff
 - Violations of payment laws
 - Overtime, independent contractor
- Board Actions
 - Actions outside scope of duty
 - Self dealing or conflict of interest
 - Breach of fiduciary duty
 - Breach of confidentiality
- Creating safe environment
 - Establishing policies that ensure the safety of students



Legal Exposure

- Student issues
 - Discipline and addressing performance
 - Common college applications, Due process
 - Enrollment
 - Failure to admit
 - Failure to educate
- Social Media
 - Sexting and other inappropriate use by adults and students
- Tuition collection
 - Parent's failure to pay tuition, termination of agreement after deadline
 - Enforcement of penalties ie: holding of transcripts
- Compliance with reporting obligations pursuant to child protective services

contact information

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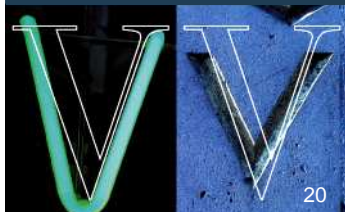
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