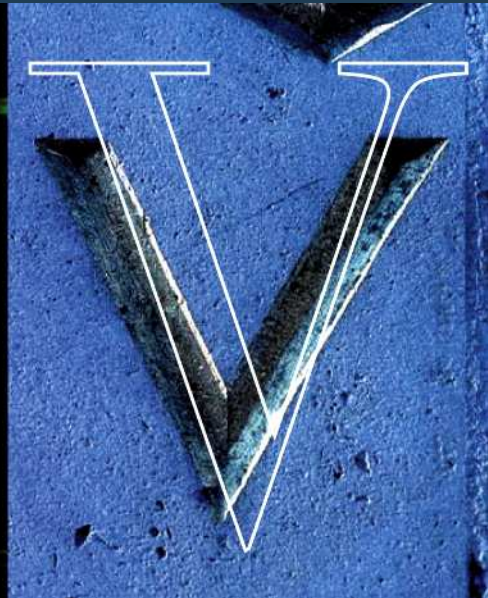
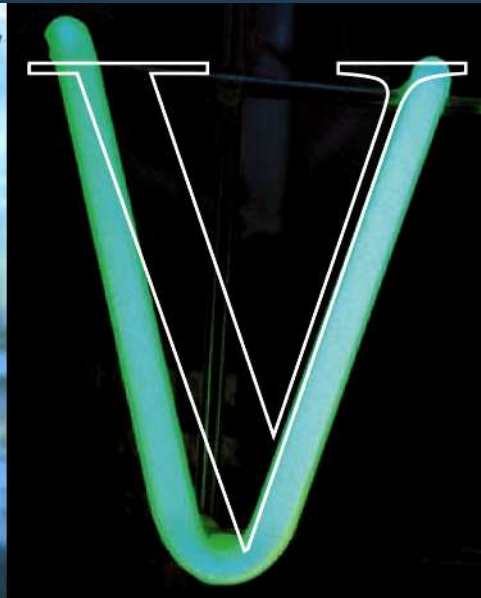
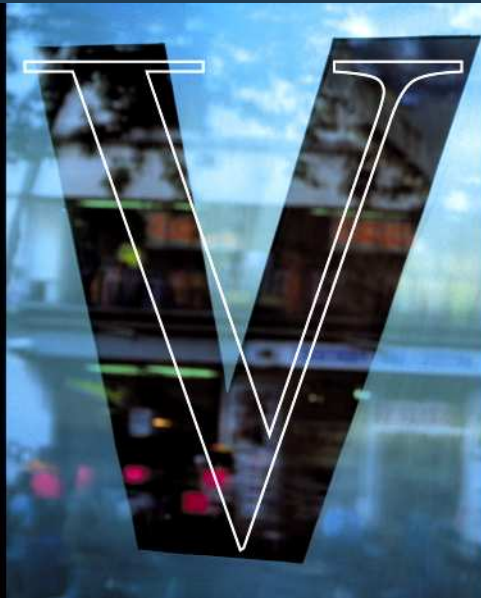
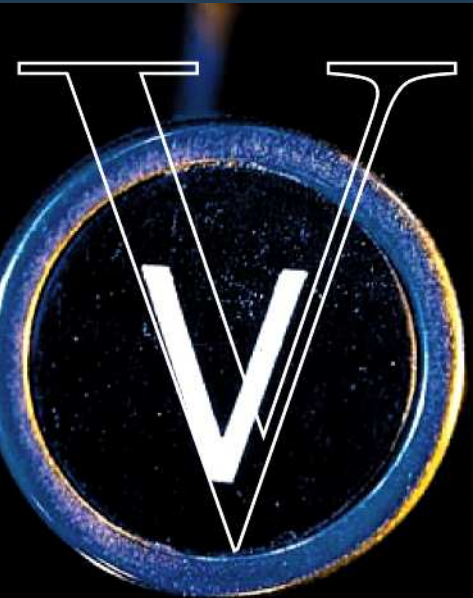


VENABLE[®]_{LLP}

Technology and Schools in the 21st century: A legal overview

NBOA 2013 Meeting
Presented by Caryn Pass



Session Guidelines

- Issue Spotting Session
 - Issue identification and description
 - Legal implications
 - Action items
- Culture of school is essential
 - Best way to create legal exposure is to operate outside of school's culture
- Knowledge is power
 - No panicking
 - Best to know the issues before you confront them
 - Action plan for addressing concerns over time



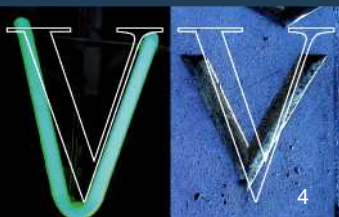
Impact of technology and social media on schools

- Relationships modified
 - Student/faculty
 - Student/student
 - Faculty/faculty
 - Faculty/parent
 - Faculty/trustee
 - Families and the school
- Boundaries have changed and blurred
- Acceptable behavior less defined
- Legal issues created by new opportunities
- Obligation to address new and changing issues



What are the Reasons for Using Technology Social Media?

- communication method for current generations
 - accepted form of interaction
 - e.g. access and use of cell phones
 - increased engagement
 - new world of possible interactions and experiences
- second nature for next generation of leadership
 - cutting edge now is old hat to new leadership
 - collaboration
- new and creative teaching
- business tool(s)
- constituent expectations
 - global connections



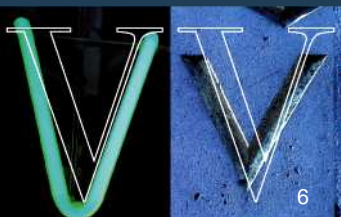
Baseline facts

- Technology and social media impact every aspect of school
- Students establish new standard
 - Methods constantly mutating: Twitter, Facebook, YouTube, Snap chat, Vine, Instagram, Text
- Public and permanent nature of social media
- Challenges assumptions of appropriate behavior
- Creates new boundaries between school's stakeholders
- Provides for new and exciting learning as well as operations tools



Issue: E-contracting

- Entering into formal legal agreements on-line
 - School provides opportunity for parent, teacher or other party to enter into contract on-line
 - Either on school's network or through third party
- Types of e-contracts
 - Enrollment agreements (parents and school)
 - Purchase of books, supplies other materials
- Creates binding legal contract
- Schools e-contracting with 3rd parties for goods and services
 - Service providers (food vendors), financial institutions, purchasing groups



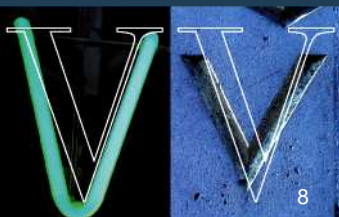
Legal Implications: E-contracting

- Enforceability of agreement
 - Only valuable if agreement is enforceable
 - Tuition collection, removal of student
- Challenges to authenticity of agreement
 - Confirmation of accuracy of contract
- Compliance with state and federal law
- Breach of Privacy
 - process used to collect information or method for maintaining information
 - Salary of teacher, payment by parent
- Identity theft
 - Access to social security number or other identifiable information



Action Items: E-contracting

- Collect list of all e-contracts
- Identify vendor used and in-school process
- Create policy for on-line contracting
- Describe entire process
 - Ensure identity of parent
 - Notify parent they are entering into binding agreement
 - Provide opportunity to review and modify
 - Recommend printing copy
 - Send to school in PDF format
 - Confirm receipt and agreement with parent (email)
- Determine storage methods



Issue: Collection of data on-line

- Collection of information from parents, students, alumni, donors, applicants, employees
- Through school's technology or 3rd party vendor
- Examples:
 - Medical information on students
 - 3rd party vendors now collecting and storing
 - Applications for enrollment
 - Permission slips and parent consent forms
 - Local field trips, international field trips, participation in special programs, ImPACT consent forms
- Storage of data collected
 - Maintained in printed form or in system



Legal Implications: Collection of data on-line

- Negligence
 - Authenticity of information collected
 - Question accuracy of information
 - Consent to administer EpiPen
- Breach of privacy
 - process used to collect information or method for maintaining information
 - Access to medical conditions
- Identity theft
 - process used to collect information or method for maintaining information
 - Social security number
- HIPPA Violations



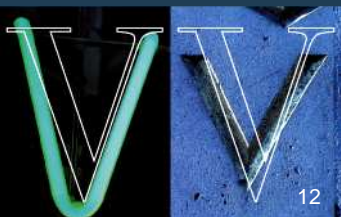
Action Items: Collection of data on-line

- Compile list of all information collected on-line
 - Donations, enrollment applications, emergency information, medical information, permission and consent forms, employee information
- Identify vendors used and in-school methods
 - Medical information vendors****
- Establish written policy for collection of information including each and every step of the process
 - Ensure identity
 - Provide opportunity to review and modify
 - Recommend printing copy
 - Send to school in PDF format
 - Confirm receipt
- Evaluate security of storage method



Issue: School use of Facebook, blogs, twitter, websites and other social media

- Tools used to promote and publicize institution
 - Facebook page, blogs, twitter accounts, school website
- Involved constituents
 - Head, institutional advancement, admissions, marketing, alumni, administrators, teachers
- Monitoring of Information posted
 - Who posts? What is posted? Who reviews prior to posting? Removal procedures.
 - Standards and authenticity of information
- Permission to use
 - Photos, names, work product, identifying information (college education)



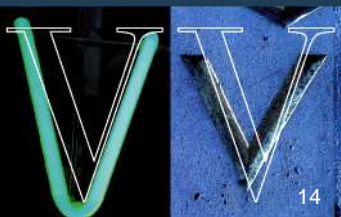
Legal Implications: School use of Facebook, blogs, twitter, websites and other social media

- Breach of Privacy
 - Disclosure of protected information
 - student return to school after medical leave
- Negligence
 - Failure to obtain permission to use image resulted in injury to party
- Detrimental reliance on misleading information
 - Inaccurate information relied upon to the detriment of party
 - building new science wing
- Free speech
 - Posting derogatory message by community member



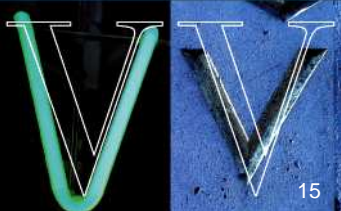
Action Items: *School use of Facebook, blogs, twitter, websites and other social media*

- Compile list of social media formats used by school
- Determine party(s) responsible for each tool
- Written acceptable use policy for school sponsored social media:
 - Content standards, posting and removal authority, review procedures, authenticity, permission and consent obligations
- Policy for obtaining and monitoring written permission
 - Parties (teachers, students, alumni)
 - Methods (Handbooks, employment/enrollment agreement, permission forms)



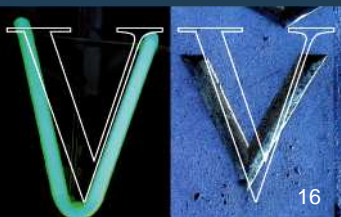
Issue: Boundaries between students and teachers

- Boundaries blurred between students and teachers by social media
- “friending” current or former students on personal account
 - access to inappropriate or personal information
 - employees vulnerable to allegations
 - current student access through shared contacts
 - implied obligation to act on information obtained
- cell phones / home numbers
 - when is use appropriate
 - calls vs. texting vs. e-mailing
 - assumptions / pressure created by how and when we communicate
- personal email (student or employee)
 - secrecy / monitoring / tracking
- nature of activities
 - “gaming,” snap chat



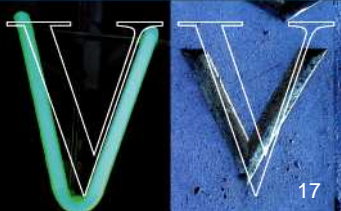
Legal Implications: Boundaries between students and teachers

- Negligence
 - Failure to monitor student activity observed on social media resulted in injury (pregnant student, bullying)
 - Relationship between student and teacher resulted from uncontrolled “access”
 - Encouraging behavior resulted in injury to student (addiction to game)
- Breach of Privacy
 - Access to “private” information
- Breach of contract
 - Implied duty to protect student in enrollment agreement



Action Items: Boundaries between students and teachers

- Compile list of ways students and teachers communicate
- Consider what is “appropriate” in culture
- Written acceptable use policy for students and faculty
 - Acceptable ways to communicate with students
 - Acceptable social media tools
 - Methods and standards for communicating
 - Responsibilities for reporting information observed
 - Reporting obligations to children’s services
- Distribute and discuss policy with teachers and students



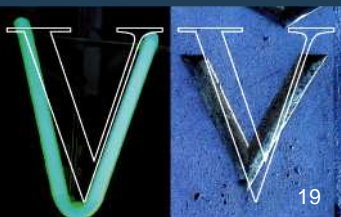
Issue: Acceptable social media “behavior”

- Establishing acceptable behavior
- Teachers and students
- 24/7 vs Only during school
- Standards of conduct:
 - Appropriate behavior for teacher, students other community members
 - Creation of website promoting violence
 - Postings on blog related to use of illegal drugs
 - Identification as employee or student at school
- What activity is “covered”
 - Teacher’s blogs, twitter accounts, participation on web sites and in other activities; (Lap dancing instructor)
- Speaking in “behalf” of school



Legal Implications: Acceptable social media “behavior”

- Wrongful termination or discipline
 - Termination of employee for actions on social media
- Challenging student discipline
 - Inappropriate use of information on social media lead to discipline
 - Reporting to college or university
- Negligence
 - Failure to monitor behavior led to injury of student or teacher
- Breach of contract
 - Failure to establish appropriate standards is breach of promises asserted in contract
 - Failure to provide proper education by employing teachers engaged in behavior



Action Items: Acceptable social media “behavior”

- Consider what is “appropriate” in culture
- 24/7 or during school day
- Written acceptable use policy addressing standards of behavior for students and faculty
 - What behavior is covered; blogs, twitter, websites
 - What is “acceptable”
 - Expectations if violate standards
 - Responsibilities for reporting information observed
 - Activities outside school that may negatively impact reputation of employee/student and school
- Distribute and discuss policy with teachers and students



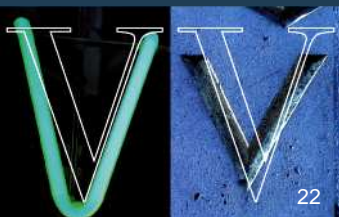
Issue: *Employee and or Student Applicant Vetting*

- Use of information gathered from social media during the hiring or enrollment application process
- Conducting Google search of student and or employee applicants
 - Consider postings on blogs, websites, twitter accounts or other social media
- Considering other activities or information discovered
 - Criminal history, political activity (pro-legalizing marijuana)
- Requiring student and or employee applicant to provide access to Facebook during interview
- Employee applicant, reviewing sites such as:
 - Rate my teacher



Legal Implications: Employee and or Student Applicant Vetting

- Failure to hire or admit
 - Actions based on information inappropriately gained through social media
 - Fraudulently gained access to protected site
 - Discrimination based on protected category (discrimination based on sexual orientation when learned walked in gay pride parade)
- Breach of Privacy
 - Information gathered was private and or protected
- Concerted activity
 - Negative comments related to former employer may be protected under the NLRA



Action Items: Employee and or Student Applicant Vetting

- Consider what is “appropriate” in culture in consideration of information for purposes of vetting
- 24/7 or during school day
- Establish clear standards for acceptable behavior for employees and students
- Create hiring policy
 - Establishes the procedures for the hiring process including background checks and other vetting
- Create admissions policy
 - Establish the procedures for the admissions process including background checks and other vetting



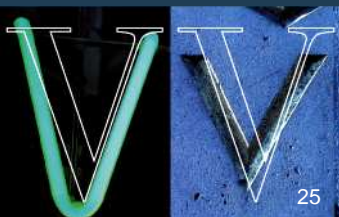
Issue: Protecting private information of students and teachers

- Protecting the privacy of student information including grades, teacher comments, educational evaluations and reports
 - Is documentation stored in the school's electronic system
 - How is information stored in the school's electronic system
 - Who has access to the information
 - What are access safeguards
- Protecting the privacy of teacher's information including evaluations, disciplinary notes and comments, salary, medical information, background checks
 - Is documentation stored in the school's electronic system
 - How is information stored in the school's electronic system
 - Who has access to the information
 - What are access safeguards



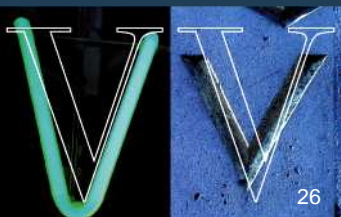
Legal Implications: Protecting private information of students and teachers

- Breach of Student Privacy
 - Failure to establish clear protections and controls of access to information resulted in breach of privacy
 - Providing access to teachers not involved with student resulted in dissemination of private information
 - Testing shared with all teachers
 - Grades shared with teachers
- Breach of Teacher Privacy
 - Failure to establish clear protections and controls of access to information resulted in breach of privacy
 - Providing access to administrators not overseeing teacher resulted in dissemination of private information



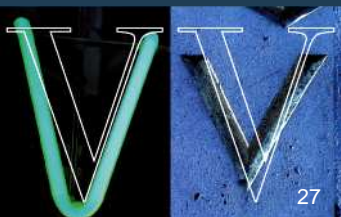
Action Items: Protecting private information of students and teachers

- Determine what parties need access to what information
- Establish clear protections for information maintained in electronic system including password protections
- Create policy establishing who has access to what information
- Consider programs being used such as Folio to ensure protections
- Consider impact of maintaining documents in hard copy and exposure to privacy breach



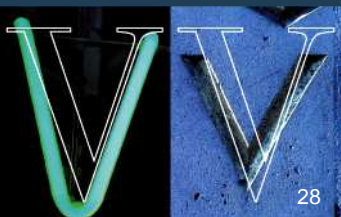
Acceptable Use Policy Considerations

- acceptable / appropriate use of school property (including technology)
- acceptable / appropriate use of personal property (including technology) of employees and students
- acceptable / appropriate representation of or conduct on behalf of school
- general standards of behavior
 - professional
 - personal
 - “off duty”, “off campus”, “private” vs. “public” conduct
- notification of behavioral expectations
 - what school expects from
 - students, teachers, parents, community
 - expectations of privacy
- boundaries
 - appropriate relationships
 - teacher/student/recent alum/parents
 - school’s culture and philosophy



Acceptable Use Policy Considerations

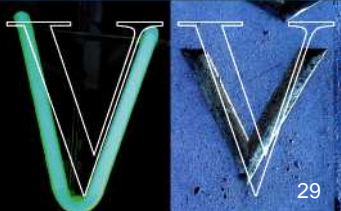
- balancing risks and benefits in context of school culture and constituent expectations
 - consider experiences of all users
 - consider mission and culture of the school
 - consider risk tolerance and what is at stake
- what is the right approach for our school?
 - general ban ('you can't use any social media')
 - specific ban ('you can't use these sites')
 - specific permission ('you can only use these sites')
 - general permission ('you can use any sites')
 - general guidelines with specific examples of permitted and prohibited conduct/sites; and
 - mechanism for approval; and/or
 - mechanism for monitoring



Implementing a Comprehensive Approach

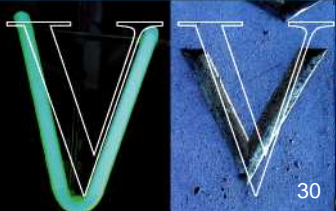
- employee handbook
 - code of conduct
 - use of student images
 - technology and proper use
 - discipline and termination provisions
- employment contracts
 - grounds for termination
 - standards of behavior
- enrollment contract
 - student code of conduct
 - grounds for discipline
 - impact of removal 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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the road ahead looks bright

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