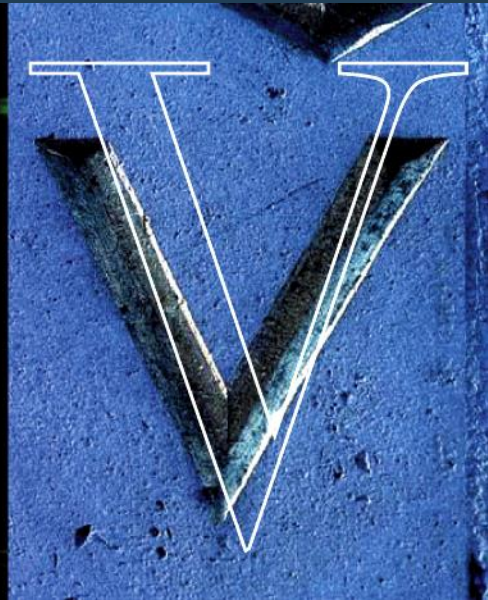
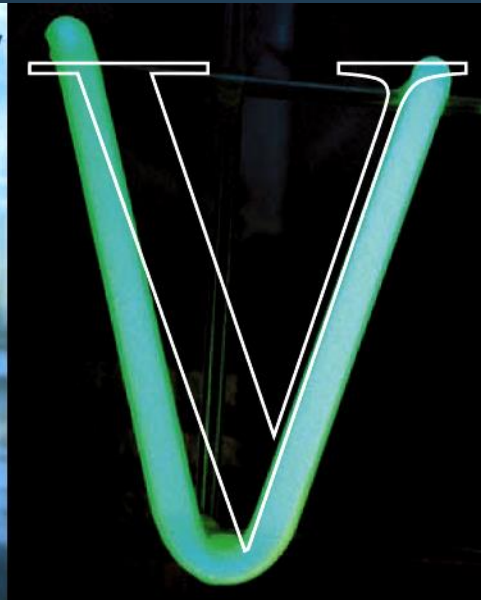
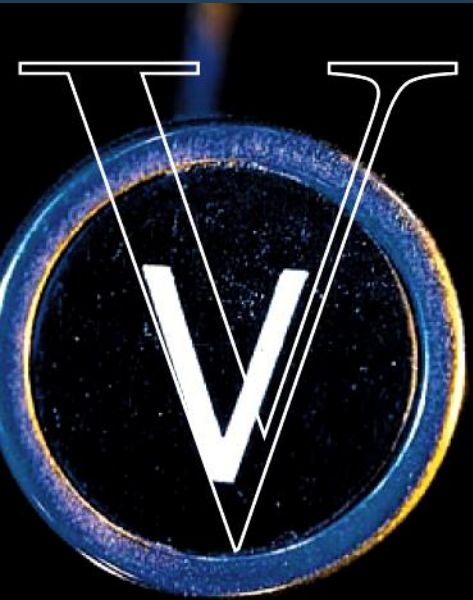


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## Legal Concerns When Enrolling International Students

Caryn Pass, presenter  
NYS AIS Business Manager Conference  
May 2014



## Session Outline

- Overview
- International Student Enrollment Contracts (paper and online formats) & Signatures to Agreement
- Tuition and Fee Payment Issues
- Impact of On-Line Process
- School's Responsibility for Students
- Selection of Students
- Using third Party Vendors
- Home Stay Issues
- Medical Issues



## Overview

- **Increasing Number of international students attending schools in the U.S.**
- **Benefits to US Schools**
  - Excellent source of revenue from tuition
  - Excellent source of revenue from parent gifts
  - Allows for a rich cultural experience for U.S. students
  - Consistent with the educational objective of global learning
  - Expands reputation of School internationally
  - Response to decreasing enrollment in U.S. schools
- **Benefits to International Students**
  - Quality of U.S. Schools often higher than home country
  - Proficiency in English
  - Assistance in college admissions
  - Familiarity with culture and benefit of international travel
  - Status in home country



## Overview

- **International Students are attending:**
  - Both boarding and day programs
    - Huge increase in day programs
  - Full time, exchange programs, summer or fixed period
- **Expanding countries of origin**
  - Historically: China, Korea, Mexico, Taiwan, Canada, Japan, Germany, Hong Kong, Vietnam, Thailand, Spain, Bermuda, U.K., Saudi Arabia, Brazil, Russia, Nigeria, Jamaica, Bahama, France
  - China and Korea were major “supplier
  - Fast growth in other countries
    - Estonia, Croatia, Slovakia, Czech Republic
- **Country expansion based on**
  - Growth of economy of country of origin
  - Strength of currency
  - Greater recruitment and focus by U.S. schools
  - Change in commitment to education and cultural shifts



## Enrollment Contracts For International Students

- **Purpose of Enrollment Contract**
  - Enforce collection of tuition and other fees
  - Ability to take actions impacting students
  - Waivers, permission forms, use of photos
- **Complications**
  - Difficult to enforce enrollment agreement internationally
  - If party executing contract not resident of US limited ability to bring claim
- **Third party participation**
  - School enters agreement with third party vs parents or guardian
  - School enters agreement with parents via third party
- **Obtain assistance if not proficient in English**
  - Translated into language of international students
  - Modify on-line **policy** if process different than U.S. student
- **Ensure security of log-in information**
  - Confirm with country of origin



## Parties to Enrollment Contract

- **Parents or guardians living abroad**
  - Difficult to enforce in international courts
    - Consider enforcement methods in countries of origin
    - Include language allowing for international enforcement
    - Enforcement Extremely costly
  - Agreement to allow for enforcement in US courts
    - Not universally enforceable
    - Extremely expensive
- **Require U.S. guarantor (guardian)**
  - Agree to responsibility for tuition and fees
  - Power of attorney or guardianship
    - Agreement to pay vs. authority to make decisions effecting student
      - Enrollment agreement addresses both
- **Third party company**
  - Serves as guarantor for payment of tuition
  - Ensure status as US business



## Tuition Payment Options

- **Full payment prior to attendance**
  - Party obligated to pay full financial obligation
  - Must enforce consistently
  - Clearly describe in enrollment agreement
  - Leverage to enforce payment
  - Difficult if student is on campus, has traveled to states
  - Attendance contingent upon satisfaction of all financial obligations prior to DATE “X”
    - Best date is prior to final cancellation date
    - first day of school, prior to arrival on campus
- **Two or multiple payments**
  - Set clear consequences
    - Failure to pay results in return of student at parent’s expense
  - Enforce consistently
- **Financial Aid issues**
  - Assessment of need



## Other Enrollment Agreement Terms

- Include following in Enrollment Agreement to avoid multiple forms
- **Power to act in behalf of student** (medical decisions)
- **Use of images, photos, other likenesses and student work**
- **Activity Permission**
  - Participate fully in program, Take field trips, excursions, other activities (Cirque Du Soleil – Additional Form)
  - Leave campus, travel on own
- **Assumption of Risk and Release**
  - Waiver of liability and indemnification for injury to or by student
- **Costs incurred in return to country of origin**
- **Compliance with Student Handbook**
- **Description of discipline, standards for removal of student**
  - Policy on notification of colleges and universities





## Selection of Student

- **School responsible for student behavior: injury to others**
- **Vetting**
  - At a minimum vetting of international student consistent with standards of U.S. students
  - Higher level of vetting appropriate for international student:?
- **Criminal background checks**
- **History of discipline**
- **Consider cultural differences**
  - Attitude towards females
- **History of ALL schools attended and reason for removal**
- **Fitness for travel**
- **Recommendations and transcripts**
  - Translated
  - Dates of attendance
- **Careful review of application**

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## Responsibility for Student

- **Clearly establish who is responsible for students**
  - School, Home Stay Parents, Vendor, Guardian, Parents
- **Clear rules on guardian and supervision obligations**
  - Telephone number, address and confirmation of living arrangements
  - Method for communications with parents, guardian etc.
  - Consequence of lack of guardian
  - Obligation to notify in case of change in status
- **Type of Authority**
  - Medical Authority, Power of Attorney, In Loco Parentis (in place of parent)
- **Who is responsible for:**
  - Arranging for vacation, breaks, summer
  - Costs incurred in return to country of origin
    - During vacations, breaks, summer
    - Removal for discipline, medical or other reasons



## Medical Considerations

- **Medical information**
  - Privacy rights of Student vs Health and Safety of all
  - When and what to collect
    - Consider in context of boarding status
    - What to share with Host Family
- **Medical authorization**
  - For use in emergency situations and for common needs
    - Accidents, Flu shots, Purchase of Prescriptions (controlled substances)
  - Authorization to incur and responsibility for insured and uninsured expenses
  - Will every provider accept?
    - Notary vs. witnesses vs. signature only
    - Review of legal authority
  - Medical power of attorney
- **Medical Insurance**



## Third Party Vendors

- **Identify and vet candidates**
  - School ultimately responsible for student actions
  - Ensure thorough process
  - Review “vetting” process
    - Criminal background checks
    - Teacher recommendations
    - Past disciplinary behavior
- **Tours and meetings with candidates in country of origin**
- **Assist in application process**
  - Confirm student involvement
  - Confirm all information provided is truthful and accurate
- **Serve as “guardian” of international students**
  - Confirm necessary documentation
- **Provide living arrangements (school, private dorm, home stay)**
  - Establish Clear Responsibilities



## Third Party Vendors

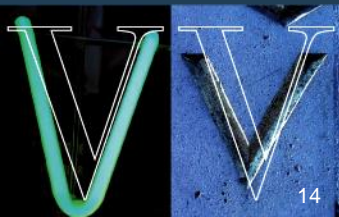
- **Execute enrollment contract**
  - Must have authority to agree to all provisions of the contract
    - Payment of tuition and fees
    - Guardianship of student
    - Permission to use photos etc.
- **Transport of student to and from country of origin**
- **Arrange for transport to and from school**
- **Oversight during holiday and other vacations**
- **Obtains Health insurance and medical authorization**
- **Coordinates visa and other documentation**
- **Collect tuition from family in country of origin and pay tuition to school (Often for a fee)**
  - Serving as “guarantor”



## Written Agreement With Third Party/Vendor

- **Term: year to year, extended term (3 years/ 5 years)**
- **Termination provisions**
  - Fixed period of notice prior to termination;
  - Reasonable time period: 60/90 days
  - Reasons for termination
- **Application process and decision**
  - Completion of application
  - Truthfulness of information
  - Interview process
  - Acceptance consistent with school's standards
  - Sole and exclusive decision of school
  - Misrepresentations grounds for removal
- **Execution of Enrollment agreement**
  - Ensure authority to execute in behalf of family
- **Re-enrollment**

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## Written Agreement With Third Party/Vendor

- **Failure to cooperate grounds for student removal**
- **Costs incurred for removal of student**
- **Tuition Payments**
  - Collect from parent and pay to school
  - Serve as guarantor
- **School maintains ownership of program**
  - Intellectual property
- **Coordinate communication between parents and school**
- **Assumption of Risk and Release**
  - Waiver of liability and indemnification
- **Costs incurred by school**
  - For services provided by vendor
  - Clearly define
    - Costs
    - Method of payment
    - Reasons for non-payment

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## Protecting International Students Residing Off Campus



A Gwinnett County couple is in jail after allegations that they molested a group of Korean exchange students living with them.

\* \* \*

The couple is **accused of giving the six teens alcohol and forcing them to strip and touch one another**, police said.

The parents of the six children had paid **Woo Yi more than \$15,000 each to host the children so they could attend local high schools**, police said. The students attended different schools in Gwinnett County, authorities said.

On Wednesday, **one of the teens complained to a school employee of abuse at their host home**, police said.

The victims told school officials, and eventually detectives, that their host family would provide them with alcohol and have them play games, Gwinnett County Police spokesman Cpl. Jake Smith said.

By [Marcus K. Garner](#),

The Atlanta Journal-Constitution

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## Home Stay Programs: Overview

- **Used primarily by day schools**
- **Increasingly popular in school community**
  - Emerging market of income
    - Establish homes or apartments
- **Create Home Stay Handbook**
- **Consider relationships between:**
  - School and the 1) Student, 2) Student's Family, 3) Host Family, 4) Vendor
  - Host Family and the 1) Student, 2) Student's Family, 3) Vendor
  - Vendor and the 1) Student, 2) Student's Family
- **Defining the relationships, obligations, and rights**
- **Obligations in each relationship different and distinct**
- **Ensure understanding between each relationship is clear**



## Home Stay Issues: Liability

- **Negligence:**
  - Failure to protect student
  - Placed student in unsafe home
  - Consider standard of care
    - Checks performed on school's employees
    - Standard of vetting performed
- **Breach of contract**
  - Promises made in enrollment or other contract
- **Violation of statutory or regulatory obligations**
  - Student protection/Mandatory reporting
    - Suspicion of abuse
  - Wage and hour
    - If failure to clearly establish the relationship is “independent contractor”
  - Taxes
    - Obligation to file taxes for “income” if stipend or other payment provided
  - Background checks
    - Obligations under state law



## Home Stay Issues: Selection

- **Create clear process for selection of home stay families**
- **Consider:**
  - Application
    - Questions related to who is in home
    - Sleeping and living arrangements
    - Transport to school
    - Supervision at home
  - Screening
    - Interview, visit home,
    - Background process
  - Selection
    - Standard for selection and criteria
  - Training of home stay families
  - Supervision and monitoring by school of families
  - Reporting and handling of problems and allegations
    - Method for both student and home stay family



## Home Stay Additional Considerations

- **Fees / reimbursement issues**
  - Classification of Host Family
  - Payment issues
- **Employees serving also as Host Families**
- **Holidays and travel**
- **Student necessities and student spending money**
- **Comparability of boarding and Homestay experience**
- **Involvement of local friends / family**
- **Designated family contact**
  - Authority to execute forms and enter agreements
- **Medical information, releases and authority**
- **In loco parentis**
  - Power to grant permission
- **Guests in Host Family home**
- **Other adults and children in Host Family home**

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## Housing in Non-Boarding School

- School rents space for housing students
- Guardianship responsibilities for students
  - Issues associated with guardianship
  - Medical and Legal authorization
- Dorm Parent
  - Liability for actions of individual
  - Selection of individual
  - Check and balance on oversight
  - Payment practices and format (OT etc.)
- Student activities outside “school hours”
  - Weekends, vacations, nights
- Liability Insurance
  - Coverage for off-campus housing
  - Actions of dorm parents
  - Physical plant/property

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