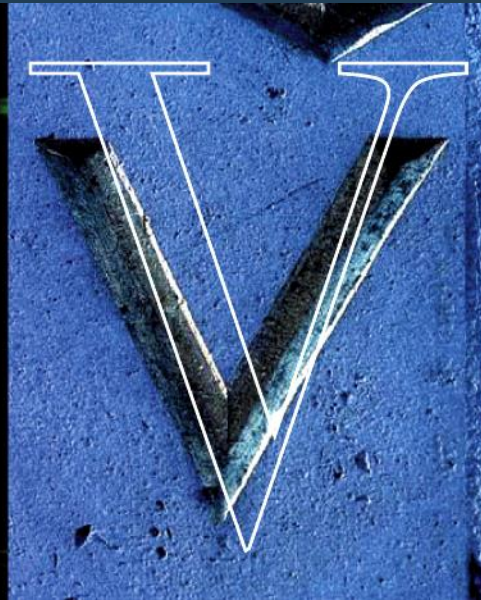
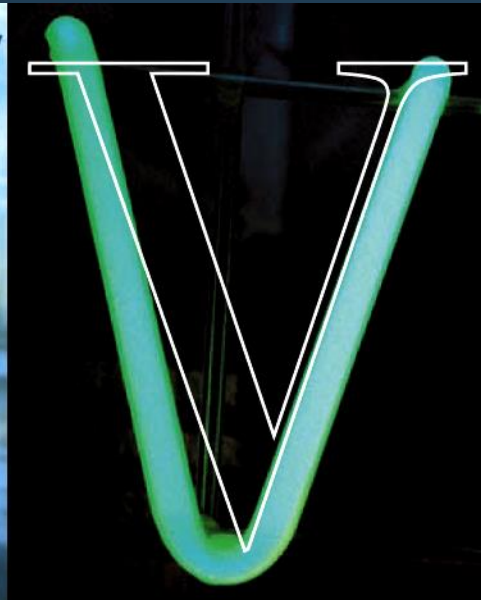
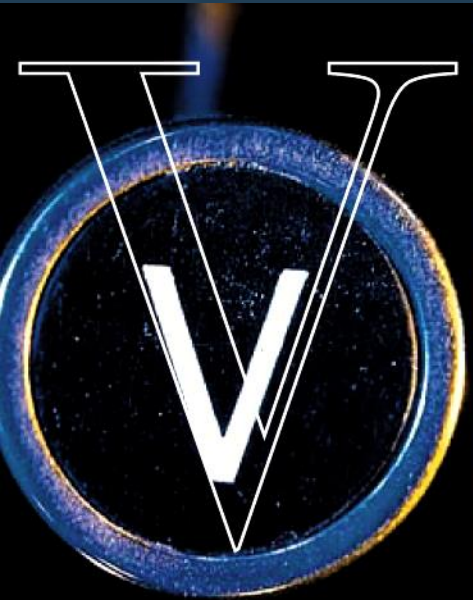


# VENABLE<sup>®</sup><sub>LLP</sub>

## top legal issues for independent schools

Caryn Pass, presenter  
NYSAIS Business Manager Conference  
May 2014



## overview

- legal issues based on working with schools nationwide
- many issues arise from
  - 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 calling legal counsel
  - be consistent with culture
  - stay calm

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## risk management of physical plant

- ensure safety of students and employees
- chance of offense low
  - should injury occur, failure to conduct proactive review will result in substantial liability exposure
- security audit
  - hire 3<sup>rd</sup> party to conduct audit of school
  - company hired by legal counsel “in contemplation of litigation” ensures privilege of document
  - have counsel review report to ensure “reasonableness of recommendations”
  - limit access to report
  - careful selection of vendor
    - avoid report with unreasonable recommendations
    - experience in industry important
- create checklist
  - annual review



## international students

- obligation to ensure safety of students and employees
  - avoid enrolling students that are potentially dangerous
  - careful vetting of international students
    - done by school
    - performed by 3<sup>rd</sup> party vendor; school sets standards
    - Numerous reasons students attend American schools
- use reliable 3<sup>rd</sup> party vendor
  - School responsible for actions if negligent
- ensure medical coverage
- ensure fitness for travel, participation in program and attendance at school
  - especially emotional
- summer vacation, breaks, medical authorization
- great care when selecting home stays



## international and domestic travel

- recent case law has substantially increased liability exposure for injury to students
- create “travel/field trip” policy
  - permission slips
  - medical authorization
  - proof of fitness for travel
  - standards for selection of 3<sup>rd</sup> party vendor
  - practice and guidelines prior to and during travel
    - student/chaperone ratio
    - sleeping arrangements and guidelines
    - standards for home stay selection
    - pre-trip notice to parents and students of expectations including inoculation suggestions, clothing and other supplies
    - standards for student participation



## parents and other adults

- divorce and custody issues
  - requests for documents and information
  - privacy rights of child
  - who has access to what information? (court/custody orders)
  - subpoenas
- parent or other adult bad behavior
  - appearing altered or inebriated
  - crossing appropriate boundaries
  - bring conflict into school
- enrollment contract
  - collect legal fees and other costs incurred when dealing with legal battles between parents
  - ability or obligation to limit access to students/school
  - remove a student due to bad behavior of parent or other adult associated with the student



## student behavior on social media

- actions by students during or after school
- acceptable use policy
  - how broad is the policy
    - on campus only or 24/7?
    - school-issued equipment only or personal computer?
  - response to sexting, allegations of bullying, etc.
    - investigation
    - establish expectation of privacy
    - discipline
  - no harassment, bullying, other activity that violates policy and mission of the school
  - consistent with other policies (e.g., student discipline policy)
  - reporting behavior to college



## employee behavior on social media

- actions by employee on social media
- acceptable use policy
  - no harassment, bullying, or other activity that brings discredit to the school
  - confidentiality of school and student information
  - protecting school's reputation and brand
    - no official authority to speak on behalf of the school
    - no use of the school intellectual property, logos, trademarks, and copyrights in any manner
  - avoid giving a professional reference through social media

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## independent contractor vs. employee

- increased scrutiny by IRS and DOL
  - employee reclassification initiative
  - *\$25 million dollars* to identify and deter misclassification of employees as independent contractors
  - random audit 6000 companies over the next 3 years to find misclassified employees
- tutors, testers, substitutes, coaches
- implications of misclassification
  - unpaid employer taxes
  - employee benefits
  - 403(b)

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## redesigned IRS test

- degree of control and independence based on three categories:
  - Behavioral: Does school control or have the right to control what worker does and how the worker does his or her job? How is IC evaluated?
  - Financial: Are business aspects controlled by school?
    - How is IC paid, what expenses are reimbursed, who provides tools/supplies, who provides insurance?
    - Opportunity for profit and loss
  - Type of relationship: Are there written contracts or employee type benefits?
    - Pension plan, insurance, vacation pay, etc.?
    - Will the relationship continue and is the work performed a key aspect of the business?
    - Can worker perform this work for other schools?
- weigh all factors – no magic “number” of factors
- documents: agreement, job description, other documentation of factors used in coming up with the determination



## wage and hour

- misclassification of employees as exempt
  - assistants to head of school number one offense
    - new head unhappy with former head's assistant
    - terminate for performance results in claim of overtime
  - others
    - teacher's aids
    - development and admissions office employees
- failure to track hours resulting in large awards
- review of exemptions essential
  - ensure proper “tracking” of hours worked



## board liability

- creation of liability for board or individual trustee
  - breach of fiduciary duty
    - review of head's salary
    - financial responsibility in decision making
      - alternate budgets
  - confidentiality
    - failure to maintain confidentiality of board deliberations
  - acting outside of scope of duty
    - failing to support decision of board
- board training
  - method of reducing liability

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## 990 governance documents

- conflict of interest policy
  - signed by trustees and head annually
  - process for disclosing conflicts
  - process for vetting conflict
- whistle blower policy
  - ensures protection of employees who report financial impropriety from retaliation
- document retention and destruction
  - policy outlining how documents are maintained and destroyed
  - important for litigation
    - once litigation filed documents must be kept



## Intellectual property & ownership of creations

- copyright and ownership protection of creations
  - student creations from incubator programs
    - establish agreements for ownership of creations
    - establish guidelines for resolving disputes between students
    - create written agreement if 3<sup>rd</sup> party adult involved
- work for hire doctrine
  - if created as part of employment, “product” belongs to school
  - clearly define expectations
    - distribution of profits
    - ownership of copyright



# contact information

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