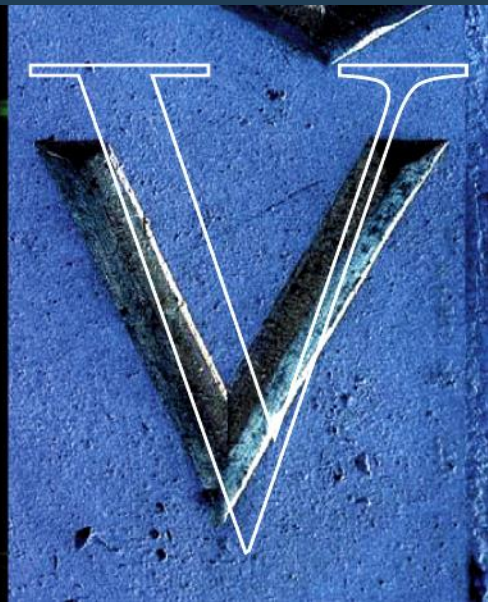
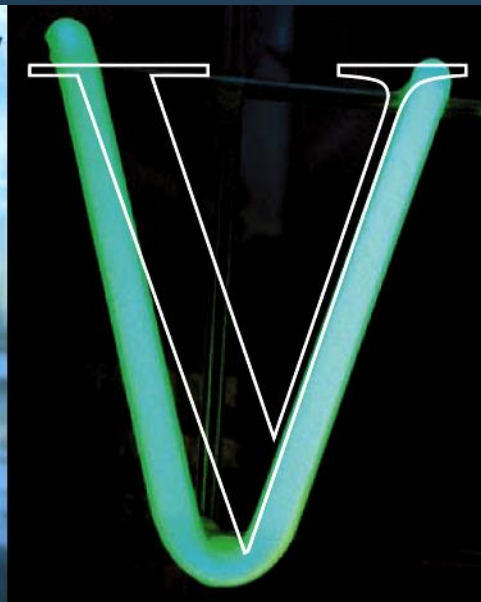
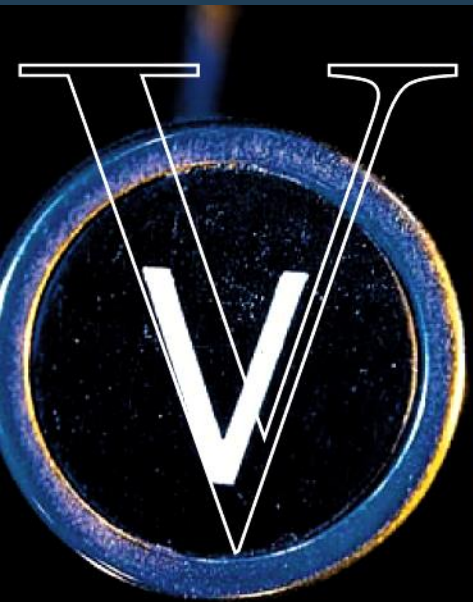


# VENABLE<sup>®</sup><sub>LLP</sub>

## Hot Legal Issues for Independent Schools: Lessons from the Front Line

Caryn Pass, Presenter  
NYSAIS Business Affairs Conference  
April 2015



## *Subjects*

- Intellectual Property
- Document Retention and Destruction Policy
- ERISA and deferred compensation plans
- Transgender students
- Student Issues
- Parent Issues
- Divorce, Custody and Parental Turmoil
- Immunization and infectious disease

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School World*



## *intellectual property*

- Protect name, logo, likeness, "tag line", program
  - Represents school's "brand"
- Use experienced lawyer
- T-shirts, new school, program of "School", international schools trading on name
- Notify parents, students, faculty other "vendors"
- Alternative revenue sources (international)
- In and out of U.S.
- Agreement with faculty, students, 3<sup>rd</sup> parties
  - Use/ownership of intellectual property
- Language in enrollment contract, teacher's contract, all handbooks, materials sent to parents, vendor contracts
  - **ESPECIALLY INTERNATIONAL STUDENT VENDORS**



*document retention and destruction policy*

- Create policy, enforce consistently
  - Litigation requires retention and production
- Admissions
  - Financial aid award, "calculation" (disclosure)
  - Application docs, recommendations, notes
- Advancement
  - History of giving, solicitation notes, donor agreements
- Sexual misconduct, contact or harassment investigation notes (students, employees, parents, vendors)
- Employee performance, discipline, termination notes/documents
- Student discipline investigation notes/documents
- Intermediate Sanctions Documentation
- Head of School Contracts



## *ERISA and deferred compensation plans*

- IRS watching closely of late
- Church school classification & 403(b) misuse
- Use of 457(b)
  - Mandatory maximum, no “catch up”, only highly compensated eligible (\$115 or higher), fund each year
- Use of 457(f)
  - Only board contributes, risk of forfeiture essential, payout at vesting, get help drafting plan (unwinding is painful)
- Tuition remission
  - Same benefit to all or taxable income
  - Head receives greater than policy amount
    - Entire remission taxable income
- School contribution to 529: Taxable Income



## *Transgender students*

- Discuss and consider issues and school's approach, develop guidelines
- Younger students each year (kindergartners)
- Issues to consider:
  - Bathrooms (non-gender bathrooms)
  - Locker rooms
  - Sports
  - Single sex schools
    - Girl's schools allow transgender boy?
  - Name change
    - during school
    - official transcripts (current and former)
    - use of pronoun (he, she, they)
  - Boarding room arrangements
  - Field trip room arrangements



## *student Issues*

- Discipline and Code of Conduct
  - Parent challenges (court is expensive)
    - Refuse pay tuition, create websites, petitions
  - Update policy, include in handbook, enrollment contract, plaster on walls
  - Social media, drugs/drinking, 24/7, “review board” & appeal
- Vet carefully
  - Month and year of all previous schools
  - Ask if discipline, “sexual misconduct”, bullying, departure reason
  - Not current teacher, also yes from administrator
  - More carefully for international (cat skinner)
  - Criminal background of parents
- Notice to colleges of discipline (during and after)
- Report reason for departure to next school



## *parent issues*

- Vet carefully
  - Criminal background of parents
  - Conviction for inappropriate contact w/minor
    - Notice to parent body? Set rules?
  - Interview for “crazy” factor (ask former school)
  - Google search
- Issues of fitness
  - Drug/alcohol use or mentally unstable
    - Notify other parents?
  - Inappropriate contact with students
  - Harassment or inappropriate treatment of faculty
- Reporting abuse to children services
  - Notify of school’s obligation & procedure
- Conflicts b/w parents
  - Cost of expense to school including legal fees, collection of documents, testimony of faculty





*divorce, custody and parental turmoil*

- Parent(s) access to student and school
  - Attend events? Pick up? School notices? Communicate with faculty?
  - Access to report cards, attendance records?
  - Custody orders
- Responding to subpoenas & guardian ad litem
  - Confirm valid subpoena (privacy violations)
  - Notify faculty
    - Give subpoena to school
    - Do not speak with any lawyers
    - Don't make promises to parents
- Enrollment contract
  - Cost to school including legal fees, collection of documents, testimony of faculty
  - Disruption to school grounds for removal
    - Fighting, involvement in legal matters



## *Immunization and infectious disease*

- Create written policy
- Must be fully immunized unless:
  - “Genuine and sincere religious belief”
    - Proof = letter from “clergy”, publication, materials, other documentation
    - Other children or parents not immunized
    - Organized church not mandatory
    - Can request additional proof
  - Medical condition
    - Certification from state licensed medical provider
    - Detrimental to child’s health condition
    - Length of time immunization delayed
- Infectious disease
  - Sick child should not attend school
  - Work with local health officials to determine if non immunized may attend



Venable Independent School Law Practice  
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