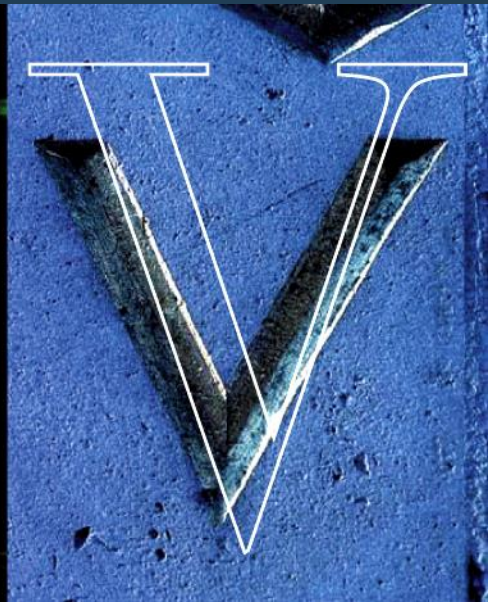
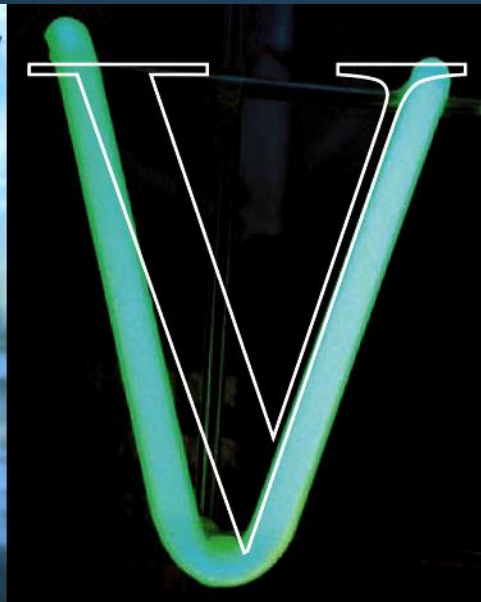
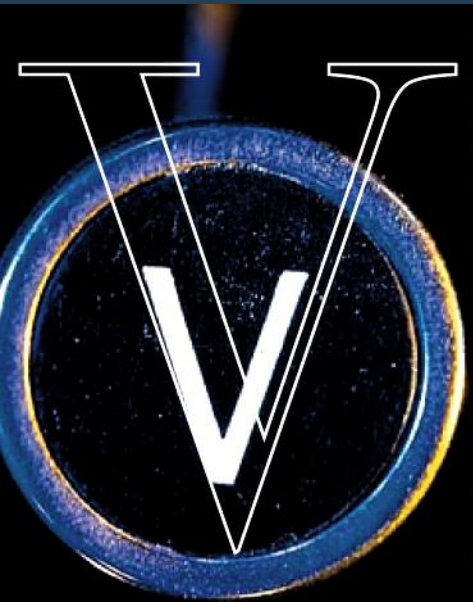


# VENABLE<sup>®</sup><sub>LLP</sub>

Protecting Our Community: Proactive Legal Strategies  
that Hardwire Safe Teaching & Learning Environments

2017 ABOIS MEETING  
Caryn Pass, Esq.



# you hold the power!!!!!!!

- **# 1 Priority is Safety and Security of students**
  - failure to consider safety of students = negligence
  - tragedies nationwide place schools on “notice
- **Hardwire protection of students**
  - Accreditation process
- **ZERO risk is a myth**
  - limit liability exposure by being proactive
- **Risk benefit analysis**
  - electric fence: expense = protection?
  - escorting terminated teacher off campus
- **Culture is king**
  - acting outside of culture is recipe for disaster
  - “acceptable behavior” in *OUR* school
    - can teachers text students?
- **Document Coordination**
  - handbooks, enrollment contracts, applications



## points of risk

- **identify all points of risk**
- **adults**
  - employees, parents, contractors, coaches/tutors, visitors
  - screening, supervising and monitoring actions and behavior while on/off campus
- **students**
  - Current, applicants, international, visitors
  - vetting, supervising, disciplining & securing safety
- **physical plant**
  - Classrooms, meeting & locker rooms, theatre changing area, remote areas on property, dorms
- **activities**
  - international trips, on-campus programs (Cirque du Soleil),



## alumni allegations of sexual abuse

- numerous reports by alumni around the country
- types of schools
  - boarding and non boarding
  - lower, middle and high school
  - single sex and co-ed
  - parochial and non affiliated
- often dating back to the 60's and 70's
- reporting by email, letter, calls, social media
  - Facebook, survivors websites, blogs
- keep up to date
  - read “Great is the truth”
  - boston globe articles
    - spotlight investigation
    - survey to schools threats for failure to respond
- reports of abuse in past ignored
  - discovered once complaint raised
- no one is immune



# STUDENTS

*Wise In The  
School World*



## students

- **duty to enroll safe students**
- **vetting students**
  - evaluating carefully all applicants
  - increased vetting of international students
- **student visits**
- **student discipline**
  - clear standards of behavior and consequences
- **protecting vulnerable students**
  - transgender students
- **harassment, sexual abuse and bullying**
  - reporting claims
  - investigation of allegations
  - 24/7 or only at school & during school events
  - communicating acceptable standards of conduct
  - discipline policy and reporting to college
- **policies on social media & use of technology**



# transgender students

- **increasing # of students at younger ages**
  - Kindergarteners through high school
- **exposure for failing to create “safe space”**
  - acceptance = creating safe environment
  - bullying, alienation (use of selected name)
- **Create policies and think through “philosophy”**
  - include board
- **single sex school considerations**
  - enter as gender of school
  - change of gender identity while student
- **Train EVERYONE**
  - Especially parents
- **application:**
  - Gender vs. Identified Gender
  - pronouns



# transgender students, not just the bathrooms

- **consider creating “guidelines” based on issues**
  - use of bathrooms (gender neutral)
  - locker rooms
  - sports participation
    - Conflicts with leagues/other schools
  - change of name–
    - used in school
    - legal name -- official capacity (transcripts/records)
  - rooming during field trips
  - dorms and boarding
  - communicating with student body (“girls”)
  - including in student handbook
  - use of pronouns (he/she/they)
  - communicating with student’s parents
- **construction projects**





## student vetting

- **student injured by fellow student**
  - student not admitted if properly vetted
  - drug dealer case – Sold drugs at previous school, expelled, two students at new school purchased from him and became addicted
- **education history (on application and in interview)**
  - all history not just last 2/3 years
  - reasons for departure
  - carefully review dates of attendance (month and year)
  - specifically inquire into any disciplinary issues
  - inquire into gap in attendance
- **Google and or Face book search?**
- **recommendations**
  - teachers rarely know full story
  - recent teachers
  - form completed by school administration
    - reason for departure, allowed to return, disciplinary history, discipline on transcript
- **ESPECIALLY INTERNATIONAL STUDENTS!!!**



## international students

- **using third party consultants**
  - School ultimately responsible for selecting students
- **vetting standard**
  - minimum = consistent with standards of U.S. students
  - higher level of vetting appropriate
  - consider using a different application
  - consider including essays that reflect upon values and student behavior
- **criminal background checks**
  - can be done in host country
- **history of discipline**
  - why did student leave school of origin
  - does originating school record or report discipline?
- **history of ALL schools attended and reason for departure**
  - specific dates of attendance= month and year



## selecting international students

- **consider cultural differences**
  - attitude towards females
  - attitude towards using alcohol or drugs
- **medical certification for travel and attendance**
- **immunizations**
- **recommendations and transcripts**
  - translated
  - dates of attendance
  - confirmation of grading and recording system
- **careful review of application**
  - who completed it?
  - is it done on line or by paper?
  - “all information on this application is true and accurate.”



# application for enrollment & documents

- **parent waives access to application materials**
  - subject to subpoena
- **teacher recommendations**
  - contingent upon parent release (receiving)
  - maintain copy, common source, release from parents (sending)
  - mailed/emailed/online from teacher
- **notes (interviews, committee meeting, visit)**
  - caution writing comments
  - avoid inappropriate statements
  - train all parties
- **transcripts**
  - sent directly from school
- **do not write on any application “document”**
  - application, recommendations etc
- **communication with applicant, parents etc.**
  - texting, email, Facebook
  - follow school policy



## application release

- **authorize access to student information**
  - permission to speak with former school
- **information true, accurate, and complete**
  - false, incomplete, omitted or misleading information given on application or during the application process may result in a refusal to admit or dismissal in the event of admission
- **waive access to application documents**
  - teacher recommendations, meeting notes, financial aid decisions, calculation methods
- **confirm “proprietary” nature of financial aid calculation with “vendor”**
- **decisions**
  - based on a wide range of considerations
  - solely and exclusively determined by school
  - application does not guarantee admissions



## visiting applicants and interviews

- **permission form completed prior to visit**
  - known allergies (bee sting, peanuts)
  - limitations in activities (asthma)
  - who will pick up from school
  - if plan on using pictures, get waiver
  - emergency contact information
  - other emergency permission (permission to treat)
  - risk to him/herself or others
  - waiver of liability
  - if known issue have adult remain
    - diabetic, seizure, other medical issues
- **International/domestic interviews off campus**
  - Skype: confirm applicant
  - Involvement of 3<sup>rd</sup> party



# enrollment agreement

- **Parent responsible for costs & legal fees**
  - Document subpoena, testimony of employees
  - Collection of tuition or challenges to contract
  - Challenges to student discipline
- **removal of student resulting from**
  - **behavior of parents, guardians, or other minors or adults associated with a student**
  - **abusive, intimidating, hostile behavior**
  - **Loss of confidence in administration**
- **reporting of discipline to college or university**
- **age of majority**
- **discretion to determine accommodations**
- **international students**
  - obtain assistance if difficulty with English (written in foreign language)
  - cover costs if student returned to home country



# documents: retention, destruction, access

- **requesting access to admissions documents**
  - custody battles, failure to admit, financial aid challenges
- **do not release without subpoena**
  - open door to other releases
  - breach of privacy
  - confirm enforceability of subpoena
- **document retention and destruction policy**
  - what documents?
    - financial aid records, teacher recommendations, notes, applications, testing & records
  - why do we maintain a specific
  - how long are documents maintained
  - where do we keep them
    - 3<sup>rd</sup> party vender





# ADULTS

*Wise In The  
School World*



## contact with adults

- school owns adult's behavior by giving access to students
- school's responsibility to ensure adults are "safe"
- steps to ensure adults are safe
  - vetting, training, communicating expectations, monitoring, evaluating, terminating
- consider all adults in contact with students
 

~employees	~parents
~visitors	~tutors
~substitutes	~coaches
~contractors	~construction employees
~food service	~cleaning services
~neighbors	~international guardians
~alumni	~home stay families
~tae kwon do guy	~3 <sup>rd</sup> party international vendor



# ADULTS: parents, visitors, neighbors

*Wise In The  
School World*



# parents, guardians & relatives

- **do we “vet” parents, guardians & relatives?**
  - proper vetting would reveal danger
- **difficult issue**
  - message to applicant families
  - impact on applicant pool
- **parents on offender registries**
  - come on campus, notify community, allow play dates
- **responding to signs of bad behavior**
  - suspicion of abuse; children’s services reporting
  - appearance of being under the influence
  - close relationship with student not his/her child
  - drinking parties at homes
- **visits by adults associated with student**
  - grandparents, estranged parent, step parent
- **assure each student has responsible adult**
  - identify, vet and confirm existence and contact info



# vetting of parents, guardians & relatives

- **difficult issue**
  - message to applicant families
  - impact on applicant pool
- **criminal background check**
  - parents on offender registries
  - come on campus, notify community, allow play dates
- **driving record**
- **social media searches**
- **question on application:**
  - *parent or other adult associated with this applicant convicted of a crime involving inappropriate contact with a minor*
- **consider as part of check with previous school**
- **consult school history if alumni**



# adults miscellaneous

## ■ neighbors

- checking offender registries of neighbors
- Notice to families, other actions to protect students

## ■ facilities use - renters

- use of pool, gym, other facilities
- security and vetting of visitors

## ■ entry to school - visitors

- establish screening standards
- screening machine
  - background check based on driver's license
  - generally just sex offender registries
- badges or other name tags
- sign in forms
- purpose of visit and chaperoning to destination



# ADULTS: hiring and vetting process

*Wise In The  
School World*



## hiring process

- **goal of vetting process**
  - Tighten the net so no one slips through
- **even if applicant from search consultant**
- **carefully review entire process**
  - from start to finish
  - policy outlining process
- **ensure consistency**
  - Central oversight to
  - HR office maintains all documents and checklist
  - consider training on hiring/interviewing
- **application**
  - complete application at very start of process
  - In addition to application
  - On-line
  - Compliance with state laws
  - Signature confirming information accurate and complete





## vetting process

- **criminal background check**
  - # of years (5, 10, 15) based on residency
  - State, federal and “crime guard (central data base)
  - Standard for rejection
    - Type of offenses, # of years since offence
    - FCRA if used as basis for decision
- **social security check**
- **credit check**
- **driving record check**
- **sex offender registries**
- **reference checks**
  - Maintain tracking form
  - Central list of questions
- **education verification**
- **work history**
- **teacher license forfeiture**
- **social media check (Google, face book, rate my teacher)**



# ADULTS

employees and  
contractors

*Wise In The  
School World*



## managing employee performance

- **Documentation that governs the relationship**
  - employment agreement
    - An agreement to perform and abide by policies
    - Fixed term with avenue for removal
    - Other terms: confidentiality, intellectual property
  - employee handbook
    - relationship between employee and school
  - benefit plans
- **Performance management tools**
  - Supervision
  - Review/evaluation
  - Coaching/counseling
  - Note to file
  - Written warning
  - Performance improvement plan
  - Training



## focus on student boundaries

- **perception v. reality**
  - *The former can be equally damaging*
- **no such thing as a list of can and cannot “do”**
- **encourage employees to consider factors at play**
  - Context (where, when, why)
  - Ages & genders
  - The mode of communication
    - Cell phone, text, school/personal email
  - Verbal communication
  - Physical/personal space
    - Leaning over shoulders to view computers
- **social media**
  - connections with students and former students
  - when private lives become public
- **school-sanctioned platforms (e.g., Google Classroom)**



## “Service Providers “

### ■ options

- employee?
  - tutors, coaches, substitutes, after-school yoga
- contractors
  - food service, construction, cleaning service, search firms, international student provider
- positions may fall into different categories
  - may be an employee or a contractor

### ■ employee v. independent contractor

- liability: tax, benefits
- employment agreement v. service contract
- no bright-line test, or single dispositive factor
  - control over scheduling and work, who provides tools for work, how person treated and paid

### ■ who is engaging provider?

- School, Parents. contractor



# establishing relationship with contractor

## ■ written agreement

- term of service
- service provided
- payment timing and total cost
- termination of agreement
- intellectual property ownership
  - Financial interest
- proprietary information
- hiring standards (same as school?)
  - background checks
  - criminal background (duty to inform school)
- ability to reject “employee”
- source of substitutes
- work authorization status
- confidentiality



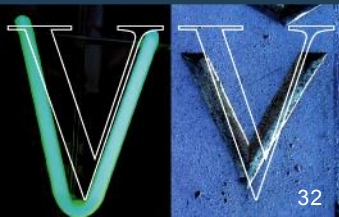
## When the Relationship Ends ...

- **treat person with “respect and dignity”**
- **consider**
  - Taking the computer
  - Taking security access devices (keys, key-cards)
  - Retrieve and change all passwords and codes
  - Blocking access to other employees etc.
    - *may require escorting out, and finding an alternate way to gather/retrieve personal belongings*
  - reminder of the confidentiality obligation
  - contact with students, families
  - return to campus
- **security during termination**
- **release or other agreement**
  - Consideration; value in exchange for release



# PHYSICAL PLANT

*Wise In The  
School World*





## review of space, facilities & access

- **conduct security audit**
- **review all areas of the campus**
- **areas of concern:**
  - Stairwell, off-sight locations, windowed doors
  - dorms, locker rooms, stage and changing areas, back stair cases
  - Unvisited locations
- **entry to property**
  - security at the door, signing in and out, name tags when on campus
- **Engage help of “support staff”**
- **cameras**
  - where are they located
  - who monitors the tapes
  - do we maintain the tapes



# ACTIVITIES

*Wise In The  
School World*



## overnight trips: local and international

- permission forms only one part of protecting students
- clear policy establishing process for designing trip
  - from start to finish
  - every trip follows the guidelines
  - check CDC, State Department, local government
  - identify points of risk
    - sleeping arrangements
    - background check chaperones
    - vetting of international consultant running the trip
    - camping arrangements
    - homestays



Venable Independent School Law Practice  
*wise in the school world*

[www.Venable.com/education](http://www.Venable.com/education)

@schoollawyer

**Caryn Pass**

[cpass@venable.com](mailto:cpass@venable.com)

(dc) 202.344.8039

(ny) 212.307.5500

(cell) 202.222.8026

**Megan Mann**

[mmann@venable.com](mailto:mmann@venable.com)

(dc) 202.344.4520

(ny) 212.370.6260

(cell) 917.597.1705

**Janice Gregerson**

[jgregerson@venable.com](mailto:jgregerson@venable.com)

(va) 703.905.1402

(cell) 202.440.2183

**Lauren Stocks-Smith**

[lstocksmith@venable.com](mailto:lstocksmith@venable.com)

(dc) 202.344.4329

(cell) 217.691.9629

*Wise In The  
School World*



the road ahead  
is bright

*Wise In The  
School World*

