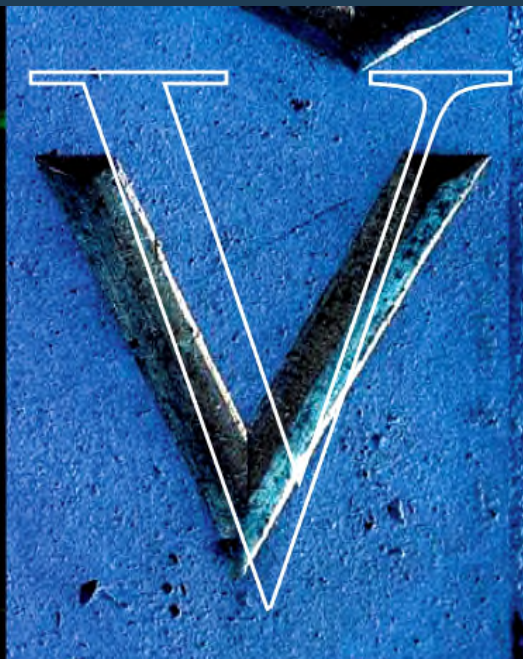




Hot Legal Issues Facing Independent Schools: Limiting Exposure Through Proactive Strategies

2017 SAIS Board/Head Retreat
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overview

- perspective and approach
 - legal & industry perspective
 - based on experience nationwide, all sizes, all types, all cultures
 - track and establish best practice
 - track trends
 - strategy = achieve goal with least legal exposure
 - pro active = preparation of documents, policies, risk management
 - set up vs. dig out
- “Zero” risk is a myth
 - limit liability exposure by being proactive
 - policies, procedures and protocols that reduce risk
- risk assessment continuum
 - is the benefit worth the “risk”?
 - risk of legal action vs. benefit to school
 - termination of bad math teacher
- culture is king
 - acting outside of culture is recipe for disaster
 - “acceptable behavior” in *OUR* school
- # 1 priority is safety and security of students
 - failure to consider safety of students = negligence
 - tragedies nationwide place schools on “notice”

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legal landscape

- substantial increase in legal claims and legal challenges
- matters with un-anticipated legal implications
 - custody battles
 - confidentiality of board
- possible causes:
 - economic factors
 - higher tuitions & expectations (parents)
 - concern for job (employees & parents)
 - change in approach to unacceptable behavior
 - abuse matters
 - change in administration
 - “me too”, “the president can do it...”
 - new legislation & increased/decreased enforcement
 - title IX, immigration laws, standards of care
 - technology (good and bad)
 - general increase in litigation
 - poor governance
 - too many: 1) parents that are lawyers; 2) non-lawyer parents who practice without a license

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Basic Foundation of Good Governance

What is Good Governance?

“Planning for the School your
Grandchildren will attend”

The Rest is Commentary

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Hot Legal Issues Facing Independent Schools

Identifying the Minefields Part 1: Students, Parents, Alumni

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transgender and gender fluid students:

legal exposure: negligence for failure to keep safe/ discrimination

- lawsuit filed by parents in behalf of student
 - refusal to allow entry to girls bathroom
- evolving on a daily basis
 - Public school cases encourage challenges in independent schools
- students self identifying as:
 - transgender, gender non-conforming, gender fluid other gender based identities
- identifying at younger ages (kindergarten common)
- acceptance implies creation of safe space
 - fully and safely incorporate into the school community
- culture and mission critical to strategy
 - religious schools, single sex schools, conservative schools
- act now
 - board, parents, faculty, students have opinions
 - create “guidelines”, consider construction, address sports/restrooms/name use/pronoun etc.
- strong feelings impact actions
 - pants suit vs Neiman Marcus Dress

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alumni allegations of sexual abuse by employees/students

legal exposure: claim of injury to former student

- numerous reports by alumni around the country
- no one is immune
- all 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, 70's and older
- allegations by alumni claiming abuse by faculty, staff, students
- reports made by email, letter, calls, social media
 - Facebook, survivors websites, blogs
- strategy for responding to allegations
 - previously little was done
 - current trend is investigation after notification to community
- keep up to date
 - read “Great is the truth”
 - boston globe articles
 - spotlight investigation
 - survey sent to schools/threats if failure to respond
 - NAIS/TABS draft document for responding to allegations

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alumni allegations of sexual abuse by employees/students: legal and reputational considerations

- **statute of limitations**
 - claim against school (civil)
 - claim against abusers (criminal)
 - governed by state law
 - states extending statute of limitations (one time opt in)
- **school's mandatory reporting obligations**
 - school's obligation to report allegations of abuse
- **legal claims against school**
 - by survivor
 - respondeat superior
 - school has responsibility for actions of employees
 - negligent hiring
 - school failed to properly vet employee pre-hire
 - employment of dangerous individual
 - negligent supervision
 - school failed to properly supervise employee
 - by school against school
 - relied upon positive recommendation
 - failure to disclose inappropriate behavior
- **impact on school's reputation and stake holders**
 - alumni anger
 - current parents concern for safety of their children
 - applicant families question school's reputation
 - donors and other supporters
 - larger non-school community

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alumni allegations of sexual abuse by employees/students:
taking proactive steps: engaging professionals and task force

- **identify before crises occurs**
 - don't want to be scrambling in middle of crises
 - learns culture of school, responsibilities, action steps
 - hit ground running
- **include in crises management policy**
- **establish task force**
 - attorney, administrators, trustees
 - attorney present during discussions for attorney client privilege
- **role of the board**
- **experts engaged by legal counsel**
 - attorney client privilege protection
- **considerations in selecting professionals**
 - familiar with crises management in independent schools
 - high degree of comfort and confidence
 - cost is factor
- **professional team**
 - attorney
 - represents the school (different than attorney selected by insurance)
 - lawyer appointed by insurance (who selects counsel?)
 - investigator
 - “transparent, independent and complete” investigation
 - no conflict of interest (school, board members, other school employees, school attorney)
 - crises management firm
 - assists with strategy, press, communications, reputational protection

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alumni allegations of sexual abuse by employees/students:
taking proactive steps: protecting current students

- policy on mandatory reporting
 - to child protective services and or police
 - compliance with state law
 - provide education annually
 - internal reporting of issues
 - central location that monitors concerns
 - avoid being blind sided
 - consider role and responsibility of school counselor
 - documenting reports made
- policy for responding to allegations of misconduct or abuse
 - mandatory reporting obligations
 - internal investigations
 - procedure for conducting investigations, maintaining interview notes and other documents, drafting of investigation results
 - treatment of current faculty accused of abuse
 - pending results of investigation (leave of absence?)
- establish boundaries, behavior and standards of performance
 - for employees and students
 - social media, meeting students one on one, inviting students to home, texting
- training of employees, students, parents
- review vetting procedures for parents, students, employees
- review procedures for supervising and evaluating employees

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alumni allegations of sexual abuse by employees/students:
taking proactive steps: “abundance of caution” letters

- letter sent to community prior to receipt of allegations of abuse
 - shows support for alumni community
 - allows for advanced preparation and controlled response
 - sends message
 - to everyone: school takes this seriously
 - to students: safe to come forward
 - to survivors: safe to come forward
- content of letter
 - not aware of allegation
 - in light of many claims reported in schools
 - in support and protection of community
 - encourage the reporting of all incidents of abuse
 - engage investigator to receive complaints
 - explain current policies and procedures for protecting students
- limit liability through good faith effort
 - no intent to cover up abuse as defense to future allegations
- consider timing of letter
 - middle of capital campaign
 - decreased enrollment
 - removal of head of school

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legal exposure: injury resulting from exposure to dangerous student

- student injured by fellow student
 - sexual assault, violence, exposure to drug/alcohol, cheating or other misconduct
- school promises “safe and secure learning environment”
 - responsible for behavior/actions of students enrolled
 - duty to admit and enroll safe students
 - student not admitted if properly vetted
 - student removed if “risk to others”
- establish policies and procedures
 - carefully vet applicants
 - address misconduct of students
 - take action if signs of “risk to others”
- history (on application and in interview)
 - all education history not just last 2/3 years
 - reasons for departure
 - eligible for return, withdraw/dismissed, agreement reached
 - carefully review dates of attendance
 - day, month and year of attendance, not just school year
 - specifically inquire into disciplinary issues
 - what is considered “discipline” worthy
 - does school report to college
 - gap in attendance

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- Google, Facebook and other social media search
 - photos, links or other references
 - reflect upon student and will reflect upon school
 - a few schools ask applicants to log onto Facebook page
- teacher recommendations
 - teachers that know student, current teachers may not be best
 - ensure honest recommendation
 - parent and student waive access
 - only valid if signed by parent (over 18 student)
 - mailed/emailed or online directly from teacher
- administrator recommendation
 - fuller story on student
 - reason for departure, allowed to return, disciplinary history, discipline on transcript
- interview student
 - in person or via Skype
 - make certain applicant is one that shows up at school
 - if on campus obtain details of applicant first
 - especially in boarding school overnight visit
- vetting especially important with international students
 - great candidates and important to many schools
 - more difficult to vet and greater exposure
 - students coming to states as a result of behavior in home country
 - often recommended by third party
 - we are responsible for conducting our own vetting
 - confirm process used by third party
 - especially in home stay or non-boarding situations
 - may or may not be monitored as closely

- **increasing challenges to disciplinary actions**
 - college applications
 - temporary restraining orders filed increasingly
- **communicate clearly to students, parents and employees**
 - student handbook, enrollment contract, signed agreement with students
- **draft disciplinary policies and procedures**
 - define appropriate student behavior
 - what behavior is covered?
 - dishonesty, violent behavior, drugs/alcohol abuse
 - school expectations (privilege not right to attend)
 - whether 24/7 or during school day/school activities
 - bullying on social media, drinking at weekend party
 - investigation process
 - who conducts, notes, parent notification
 - disciplinary process including
 - hearing or due process procedure and appeals process
 - students involved
 - exceptions to policy
 - address details
 - appeal to board, head of school?
 - lawyer attending hearing or other meetings
 - consequences of behavior
 - types of disciplinary action; reporting to college
- **consider physical plant and other locations students visit**
 - stairwell, far off areas on campus, locker room,



- **Hotchkiss case**
 - \$40 million decision against school
 - student bitten by tick
- **consider risk of trip**
 - age of students
 - educational benefit
- **current state of international trips**
 - Very popular in schools, Very little oversight
 - 3rd parties involved in trip
- **draft guidelines for designing a trip**
 - from start to finish
 - make sure every trip follows the guidelines
 - communicating expectations clearly
 - does discipline apply during the trip
 - identify points of risk
 - sleeping arrangements, camping arrangements, home stays, times students unsupervised, drinking, chaperone student ratio, vetting of school “partners”
- **permission forms and related documents**
 - extensive release of liability provision
 - notice of risks including links to resources and instruction to check and make informed decision (CDC, State Department)
 - medical form confirming fitness for trip
 - chaperone release
 - permission to travel
 - payment requirements
 - removal from trip and consequences of travel home



- parents objecting to immunization
- governed by state law
 - “genuine and sincere religious belief”
 - 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
 - personal beliefs
 - immunization has negative impact on children
- create clear policy
 - balance health of all students with beliefs/needs of few
 - impacted by culture and philosophy of school
- infectious disease
 - chicken pox, Ebola, other diseases
 - sick child should not attend school
 - work with local health officials to determine if non-immunized may attend
 - impact on employees and others who visit
 - pregnant mothers



- parent responsible for costs & legal fees
 - request for documents, testimony of employees
 - cost of collecting documents, cost of substitute, legal fees associated with preparation of witness, interacting with opposing counsel, time of witness prep
 - collection of tuition or challenges to contract
 - challenges to student discipline
- reporting of discipline to college or university
 - clearly describe and reference to policy
- age of majority
 - student signs agreement confirming compliance
 - parent signs agreement confirming student's failure to cooperate is grounds for removal
- discretion to determine accommodations
- international students
 - instructions to obtain assistance if difficulty with English
 - written in foreign language
 - cover costs if student returned to home country
 - loss of SEVIS grounds for removal
 - no guarantee to college admissions
- removal of student for parent/other adult behavior





Parent Cooperation:

The School may take all action necessary to ensure the operation of the School in all matters as it may apply to the Student. A positive and constructive relationship between the School and Parent or other adults interacting with the School and/or School community by virtue of their relationship with the Student is essential to the mission of the School. Thus, if the behavior, communication, or interaction on or off campus (including during School-sponsored events) of Parent or other adults interacting with the School and/or School community by virtue of their relationship with the Student is disruptive, intimidating, overly aggressive, or reflects a loss of confidence or serious disagreement with the School, including but not limited to disagreement with its policies, procedures, responsibilities, personnel, leadership or standards, or imperils accomplishment of its educational purpose or program, Parent understands and agrees that the School has the right to dismiss the Student and/or the Student's family from the School community. In addition, Parent understands and agrees that the School has the right to place restrictions on that party's involvement with or activity at the School, on School property, or at School-related events if the party engages in behavior that the School determines in its sole discretion to warrant such a restriction.



Cost of Participation in Court or other Legal Proceedings:

If the Parent fail(s) to make any payment(s) under this Enrollment Contract when due, and School undertakes collection efforts to collect the payment(s) (including but not limited to efforts in house, with the assistance of third parties, or through legal action), the Parent agree(s) to pay all expenses incurred by the School, including collection costs and/or legal fees, in the event the School prevails. In the event of a dispute between the School and the Parent regarding tuition, fees, or charges of any kind, the School shall be entitled to recover the costs incurred by the collection of payments including but not limited School's attorneys' fees and costs incurred in such a dispute.

If, as a result of the School's relationship with the Student, the Parent, or other person(s) interacting with the School and/or School community by virtue of their relationship with the Student, the School or any member of its faculty or staff is required to testify, provide information for, or otherwise participate in a legal dispute to which the School is not a party, the School shall be entitled to recover from the Parent the School's attorneys' fees and costs incurred in such legal action and costs incurred by the School as a result of the collection of documents, coverage of faculty, staff or others absent from classrooms or other School responsibilities or other associated costs.

Hot Legal Issues Facing Independent Schools

Identifying the Minefields Part 2: Employees, Physical Plant, Operations

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immigration, international students and employees

legal exposure: violation of immigration and other laws

- **impact of administration's policies**
 - fewer students traveling to U.S. for school
 - students selecting Canadian and UK schools
 - schools with larger international populations are in jeopardy
 - reports by colleges and universities of lower applications
 - impact on SEVIS and ability to obtain visas
 - seeing students with greater challenges or lower qualifications
- **ability to obtain visa for employees**
 - more difficult to obtain new visa
 - caution when investing resources
 - care if approached by lawyer for employee
 - asking for greater “promises”
 - difficult to obtain status for current applications
- **maintain current I-9 documents**
 - use new forms
 - conduct updates and audits
 - may begin to see government checks
 - do not ask for specific documents
 - terminate if documents not provided within 3 days
- **current students disappearing from schools**
 - truancy reporting requirements
 - providing financial aid for students not able to obtain financial aid for college

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classification of employees under wage payment laws
legal exposure: liability for unpaid wages

- classification of employees as overtime eligible vs. non-eligible
- failure to properly pay overtime
 - payment for all hours worked more than 40 in work week
 - time and ½ regular rate of pay
 - penalties and interest for failure to pay X two (three) years
- requirements for exemption from overtime payment
 - salary level: + minimum of \$455/week
 - salary basis: + same pay regardless of # of hours worked/week
 - duties: + meet qualifications of exempt category
 (executive, administrative, educational establishments
 administrative, professional (teacher)
 +actual duties performed by the employee
 (not just as described in the job description)
 +not relevant (access to confidential information, acts like a
 professional, board secretary)
- employees at risk
 - advancement, admissions, head of school assistant
 - work many hours (advancement = events, admissions = season)
- review positions classified as exempt
- exposure
 - audit by government, disgruntled employee

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creating safe spaces and physical plant
legal exposure: injury resulting from failure to secure physical plant

- **perception of increased risk of injury on campus**
 - duty to create safe campus and physical plant
 - limiting access to campus
 - access by those intending to do harm
 - on notice based on recent incidents of mass shootings
 - risk of such events low, event occurring causes substantial liability
- **review all areas of the campus**
 - stairwell, off-sight locations, windowed doors, isolated areas
 - dorms, locker rooms, doors without windows, stage and changing areas, back stair cases
- **entry to property**
 - security at the door, signing in and out, name tags when on campus
 - all visitors, independent contractors, parents, applicants, other large events
 - sex offender registry checks
 - consider positive results
- **cameras**
 - where are they located, who monitors the tapes, do we maintain the tapes
- **conduct security audit**
 - serves as defense in case of incident
 - lawyer engages company to ensure attorney client privilege
 - may choose not to implement recommendations
 - receive oral report before written report
 - balance benefit of suggestion with cost and inconvenience
 - electric fence around campus
- **CHOOSE COMPANY WITH EXPERIENCE IN INDEPENDENT SCHOOLS**

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Vetting of applicants for employment
legal exposure: injury resulting from failure to vet employee

- obligation to expose students to safe adults
- create hiring policy
 - carefully review entire process
- use employment application
 - everyone completes
 - before visit to school
 - attaching resume not sufficient
- consider central hiring oversight to ensure consistency
- criminal background checks
 - state obligations are floor
 - consider using third party
 - periodic background updates
 - require notice if issue during employment
- sex offender registries in multiple states and multiple forms
- loss of teaching license
 - indication of inappropriate behavior
- references
 - date and time of call, telephone number, name of reference, notes of conversation, if message was left
 - former employers and other non identified references
 - any concerns or allegations of inappropriate contact with students
- social media check
 - consider checking Facebook and other social media sites
 - reflects judgment and behavior of applicant

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- school provided housing can be tax exempt benefit to head
 - real estate benefit to school
 - heads increasingly declining offer
 - cons: fish bowl, desire to build equity
 - pros: departure leaves fewer obligations, cheaper for head
- must meet “mandatory criteria”
 - housing on or contiguous to campus
 - on property attached to main campus
 - condition of employment
 - consider whether other heads required to reside in home
 - benefit/convenience of the school
- benefit of school: regular use for entertaining or other school activities
 - meetings with faculty, staff or students
 - entertaining parents, donors, “friends of the school”
 - fundraising events
- track use by head of school to provide in case of challenge
- include details in HOS employment agreement
 - describe “mandatory criteria” to support tax status
 - timeline for removal of head in various conditions
 - termination with cause, without cause, death, disability
 - not “lease” or “rental” relationship;
 - consider if head and spouse divorce (spouse may have rights to housing pursuant to court order)

School provided housing for employees
legal exposure: inability to remove employee/dangerous occupants

- removing employees from school provided housing
- avoiding dangerous occupants
- including clear language into employment agreement
 - General Criteria:
 - As a condition of employment, Educator will be required to live on campus in the housing (“Campus Housing”) provided by the school in order for Educator to properly perform the responsibilities of his/her position.
 - Removal of Employee After Termination:
 - If Educator’s employment ends for any reason or, in the sole discretion of the School on campus housing is no longer appropriate, he/she will/may be required to vacate Campus Housing within X days of the last day of employment.
 - Who May Live In Campus Housing:
 - Only the Educator may live in Campus Housing under this Agreement unless permission is given in writing by a School authorized agent to allow an individual other than the Educator to live with the Educator. Such permission may be revoked by the School at any time for any reason as determined by the School in its sole discretion and the individual will be required to vacate Campus Housing.
 - NON MANDATORY HOUSING: (CONFIRM WITH STATE LAW)
 - Educator agrees and acknowledges that this Agreement does not serve as a lease or give Educator a leasehold estate. Neither Educator nor any individuals living with Educator in Campus Housing is/are tenants of the School. Employee waives in his/her behalf and those that may reside with him/her in Campus Housing any and all notices to vacate the Campus Housing as may be required by the law.
 - (CONSIDER ENTERING INTO A LEASE AGREEMENT)



- increased number of parents on sex offender registry
 - abuse of students substantial exposure to school
 - association with parent resulting from association with school
- exposing students to safe parents (other adults)
 - parents, grandparents, home stay parents, other visitors
 - school's failure to vet parent/adult exposed student to injury
 - what is school's duty
 - what is reasonable
 - in the case of injury: is school comfortable describing process followed?
- when to conduct check
 - admissions process and/or during course of enrollment
- await notice vs. request information
 - community member comes forward or affirmative check
- in admissions process
 - enrollment application; teacher recommendations; interview former school
 - question on application:
 - parent or other adult associated with this applicant convicted of a crime involving inappropriate contact with a minor
- conduct background check
 - history of reports to child protective services (difficult to obtain)
 - Google search
 - criminal background checks (written permission)
 - check sex offender registries (no permission)
 - require as condition of application

- wide range of responses
- establish acceptable and non-acceptable behavior
 - sex offender registry vs. conviction for violent behavior
- knowledge of status creates risk of liability exposure for failure to act
 - child injured by parent on offender registry
 - school had knowledge and failed to act
- possible strategies
 - take no action
 - school ignores information
 - prevent enrollment or remove if offense occurs after enrollment
 - allow enrollment with restrictions
 - not on campus or at any school event
 - accompanied by chaperone while on campus or school event
 - no sleepovers; play dates; parties or other interactions at offender home
 - no contact with students on or off campus or during or outside of school events
 - notify entire community (class or entire school)
 - Provide parents with information so they can make decisions about contact
- agreement in writing with family as condition of enrollment

Other parent activities
legal exposure: danger caused by parent actions

- **parents driving during school events (field trips)**
 - track driving records; confirm insurance coverage, obtain permission from other parents
- **parents under the influence or questionable mental health issues**
 - driving students in car
 - notice to other parents if play dates
- **parent's personal use of school directory**
 - place community on notice not to use directory
 - confirm consequence of abuse
 - salt list
- **parent use of logo, slogan or other intellectual property**
 - ensure name, logo slogan etc. protected by trademark
 - consider in advertising for personal gain, as part of school events (booster clubs), creation of shirts
- **“drinking” parties hosted by parents**
 - states holding parent's legally responsible
 - consider discipline of students for drinking
 - include language in agreement that violating law or allowing such in home is grounds for removal of student
- **parent association and other recognized organizations**
 - school sponsored and “controlled”
 - “funds” monitored by school
 - school oversight of list serves, websites, activities
 - school has responsibility for activity and liability of organization

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- **parents increasingly pulling schools into conflicts**
 - asking schools to take sides
 - demand participation and asking for support
 - requiring teachers, faculty and others to testify
 - demanding emails, information and documents
- **avoid involvement at all cost**
 - do not take sides (remind faculty repeatedly)
 - do not know what happens at home
 - exposes school to liability for misrepresentation
 - Takes substantial time if pulled into conflict
- **require parents to resolve dispute**
 - ask for custody order or other documentation of status
 - continued disruption shall lead to removal
- **speaking with attorney or other “representative”**
 - instruct all employees:
 - not to speak with lawyer or other representative
 - may or may not actually represent parent
 - parent may or may not have right to information
 - breach privacy of student if disclose information
 - notify administrator of call, contact or subpoena
- **language in enrollment contract**
 - requiring payment for costs
 - removal if continued disruption



Proactive Strategies For Addressing a Crises:

reports from the frontline

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Laura Kirschstein, J.D.
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Laura Kirschstein joined T&M in December 2012 and currently serves as Vice President of the Sexual Misconduct Consulting & Investigations (SMCI) division. Under her leadership and management, the division provides consulting, training and investigative services to schools, colleges and universities, professional and collegiate sports teams and leagues, non-profit organizations, businesses and private clients in the areas of sexual assault, abuse, harassment, boundary guidelines and proper investigatory techniques during sexual misconduct cases.

Since joining T&M, Ms. Kirschstein has played an instrumental role in the rapid growth and development of SMCI division, a robust team of former prosecutors with an expertise in sexual misconduct, domestic violence and child abuse who have worked with dozens of educational institutions, along with businesses, corporations, law firms and athletic organizations throughout the United States. Ms. Kirschstein and her team of experts assist K-12 private and public schools, colleges and universities with all the various issues related to sexual misconduct and other forms of harassment and violence (domestic violence, stalking, harassment, hazing and bullying) that can impact an educational institution. At primary and secondary schools, she and her team conduct outside independent investigations into reported allegations of sexual misconduct and participate in developing and/or revising schools' harassment policies to include all types of harassment, bullying, hazing, sexual harassment and sexual abuse/assault. She and her team also work with colleges and universities, helping them to integrate the many requirements of Title IX, the Campus SAVE Act, and the guidelines set forth by "The First Report of the White House Task Force to Protect Students from Sexual Assault," into their policies, procedures, training for staff and education for students. She and her team conduct investigations into allegations of sexual misconduct and sexual violence that have taken place on and off-campus involving a school's students or staff. In the specific area of athletics, she and her team develop school athletic policies, evaluate and provide recommendations on athletic department handbooks, advise on appropriate training and education for both student-athletes and athletic department staff and deliver training and educational presentations for athletes and athletic department personnel of all school levels.

Ms. Kirschstein began her career at the Manhattan District Attorney's Office where she worked as a prosecutor for over 13 years. During that time she conducted hundreds of investigations and Grand Jury presentations and developed a wealth of experience in the investigation and prosecution of sex crimes and child abuse cases. She served as an assistant district attorney for ten years until promoted to Deputy Bureau Chief of one of the six trial bureaus where, among her many responsibilities, she supervised the prosecution of felony cases by 50 lawyers in the bureau. As a senior prosecutor in the Sex Crimes Unit, she presented to the Grand Jury the first John Doe indictment in New York State, based solely upon DNA evidence.

Ms. Kirschstein earned her Bachelor of Arts in English and Political Science from Bucknell University, graduating with Honors. She received her Juris Doctor from Temple University School of Law.





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Chris Lukach is president of Anne Klein Communications Group, LLC where he brings his strategic counseling and planning skills to help clients in the healthcare, education and chemical industries grow and preserve their bottom lines.

Chris heads the AKCG issues and crisis communications practice. He has been instrumental in developing issues and crisis communications plans and consulting with clients facing crises in the healthcare, higher education, information services, chemical manufacturing and financial industries. Chris also leads the firm's spokesperson training team.

A frequent lecturer and author on social media, Chris spearheads the AKCG social media practice. He develops social media programs for AKCG's clients, particularly for education, healthcare, social service and non-profit clients seeking ways to use social media to engage with discrete audience segments.

Since 2008, Chris has been a member of the Community Advisory Board of WHYY, Inc., the Philadelphia region's PBS network affiliate. He is an accredited member of PRSA and is active with its Philadelphia chapter. Chris is a former president and chairman of PPRA. In addition, he is a featured columnist in *Philly Ad News*. Chris is a *magna cum laude* graduate of Rowan University, where he received a Bachelor of Arts degree in communications with a specialization in public relations. He was active in the Public Relations Student Society of America (PRSSA) where, as Rowan's chapter president, he led his group to be recognized as the "Outstanding Chapter in the Nation." In 2009, Chris was inducted into the Rowan University PRSSA Hall of Fame.

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Reducing Legal Exposure by Hardwiring Good Governance

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- fiduciary duty
- confidentiality
- actions outside of scope of duty
- insurance coverage
- key documents and policies
 - charter and articles of incorporation
 - bylaws
 - whistle blower policy
 - document destruction and retention policy
 - intermediate sanctions policy
 - audit policy
 - investment policy
 - conflict of interest policy
 - process for vetting conflict
 - annual execution by trustees, head and cfo
 - disclosure of conflict
- risk management oversight
 - executive committee
 - governance committee
 - risk management committee
 - audit committee



■ Fiduciary duty

- Authority to bind School
 - who can sign and amount limits for multiple signatures
 - what goes before board/finance committee
- Audit and 990 completion
 - how is 990 presented to board, how is audit presented to board
- Retirement plans and oversight
- Review of budget
 - passing balance budget
- Assuming debt

■ Confidentiality

- Deliberations and exchange of views
 - process requires full and honest discussion
 - chilling effect if question of confidentiality
- Board must:
 - speak with one voice; appear unified
 - support board decision or leave board
- Avoid “public” discussions outside board meetings
- Breach of confidentiality
 - negative impact on decision (appearance of uncertainty)
 - personal liability (cause damage to School)
 - negative reaction by community (withdrawal from membership)



- **Acting outside scope of duty**
 - substantial liability exposure for overreaching
 - head's responsibility:
 - decisions related to employees
 - » support decision of head
 - » limit requests for details on termination or personnel matters
 - » allow head to determine resolution of challenges resulting from termination
 - » amount of severance
 - decisions related to students;
 - » disciplinary decisions
 - » do not second guess
 - speaking with teachers about performance of head
 - trustees calling lawyer directly
 - board member acting as school's lawyer
 - using status as board member for person gain
- **insurance**
 - consider amount of insurance to provide sufficient coverage
 - consult and evaluate with experts in independent school industry
 - review annually
 - consider selection of counsel
 - per occurrence/ per coverage year
 - coverage for abuse
 - coverage for intermediate sanctions
 - international trips, actions of nurse, injury based on actions of 3rd party

- establishes School as legal entity
- do you know where your articles are?
- review regularly
 - check state filing
 - document consistent with board modifications
 - correct Name
 - correct description i.e. does it include accreditation, non profit vs for profit school members
- charter or articles in “forfeiture”
 - actions of board invalid, board acts without authority
 - school name can be taken by other entity
- confirm current status of 501 (c)(3) status
- confirm status as “church school”



- method for review of compensation of Head
- avoid payment of excess benefit
- board establish compensation committee or designees
- compensation committee
 - ensures members have no conflict of interest
 - selects comparable Schools
 - collects comparable remuneration of similarly situated professionals (more than just salary)
 - considers information
 - establishes remuneration
 - documents process
- presentation to board
 - general vs detail



- review regularly to ensure compliance
 - board's actions must be consistent with by-laws
 - failure to comply with by-laws invalidates boards' actions
 - proxy vote not provided for in by-laws
 - e-mail notification of board meetings
- use by-laws as good governance foundation
 - consider how board wants to act as an entity
 - what is the board's culture
 - transparency?
 - commitment to diversity?
 - ability to address issues?
 - level of “democracy”?
 - expectations of board service?

- **Head of School Considerations**
 - Executive sessions
 - Standing session at end of each board meeting
 - With/without Head
 - Section related to Head
 - Selection and review
 - Method for establishing compensation
 - Intermediate sanctions obligations
 - 990 presentation to board
 - Method and votes needed for removal
 - CHECK YOUR CONTRACT
 - Does the Head have a vote
- **Selection of trustees**
 - Trustees vs. Directors
 - Number of Trustees on Board
 - Selection of board members
 - Fixed skills or open spots
 - Design for needs of board
 - Who selects the candidates
 - Governance Committee, board in general or community
 - Level of Head participation
 - Can community make suggestions?
 - Interview process and vetting
 - Is there an interview process, who performs
 - Presentation to the board
 - Make up of board
 - Heads? CFO's? Parents?



■ Voting for trustees

- Method for Voting
 - Slate vs. individual nominees, Nominations of trustees at time of vote
 - Percentage vote needed
- Rotating terms
 - % of trustees that roll off each year
- Term limits of trustees
 - Years per term, # of terms can serve, Break between terms, Honorary trustees

■ Committees

- General
 - What committees established, Creation of new committee, Role of each committee
- Executive committee
 - Decisions between meetings, Regular meetings, With Head, Creation of agenda, Plans for the year
- Head's committee
 - Evaluation of Head, Compensation of Head
- Governance
 - Selection of trustees
 - Selection of officers
 - Review of trustees
 - Removal of trustees
 - receives and investigates complaints, reports to board, makes recommendation
 - TRUSTEE LEAVES DURING DELIBERATION



Review of Concerns Involving Board Members

The Board Governance Committee is responsible for the review of allegations made against individual Board members. Members with reasonable belief that a fellow Board member has acted in a manner which would serve as the basis for removal may file a complaint with the Board Governance Committee. The Board Governance Committee shall conduct a careful and complete investigation of the complaint. Should the Board Governance Committee conclude that no violation occurred, the findings shall be reported to the Board. Should the Board Governance Committee determine that a violation took place; the Board Governance Committee shall report the findings to the Executive Committee and recommend appropriate action up to and including possible removal from the Board. The Executive Committee shall report the Governance Committee's findings and recommendation to the Board. The report shall take place in Executive Session. The Board shall consider the findings and recommendations of the Board Governance Committee and determine what, if any, additional action is appropriate under the circumstances. At the discretion of the Board, the Member under review may be required to leave the meeting during discussions of the matter and may be permitted to appear before the Board to address the complaint against him/her.





Removal of Board Members

Any Board Member, including Ex Officio members, Elected Trustees, and Trustees Emeriti, may be removed from the Board with or without cause upon recommendation of the Executive Committee and/or the Board Governance Committee, at any meeting of the Board, by an affirmative vote of two-thirds of the Elected Trustees. The vote for removal shall take place in Executive Session. The Board Member under consideration for removal may be dismissed from the Executive Session during the discussion and or deliberation of the recommendation. The Member under review may be permitted to appear before the Board to present his/her objection to the recommendation. For the purposes of this Section, "cause" shall mean any of the following: (1) absences from Board meetings two or more times within a 12-month period; (2) breach of the Member's fiduciary duty to the School; (3) repeated failure to carry out assigned responsibilities from the Board of Trustees or a Committee of the Board; (4) conduct which is determined by the Board Governance Committee to be: i) detrimental to the reputation, mission, or operation of the School; ii) detrimental to the Board of Trustees; iii) in violation of the obligation to maintain the confidences of the Board; iv) in violation of the Board's Conflict of Interests policy; or, v) contrary to a Member's obligation to adhere to his/her duty of loyalty, obedience and care. Item (4) of this section shall include conduct by the Member and the conduct of persons associated with the Member who have interaction or affiliation with the School by nature of their relationship to the Member.

Top 14 Actions That Should Have Been Done (it's not too late):

A Risk Management Check List

*Wise In The
School World*





strategies for limiting liability and managing risk

- comply with culture, mission & strategic plan
- stay current on legal trends **nationwide**
 - use resources- sais, nais, nboa, tabs
- Consider federal, state and local laws
- hardwire best practice into
 - governance documents: By-laws, conflict of interest policy
 - operational documents: establish and review policies, procedures, practices
- train, educate, communicate and prepare all constituents
- assign risk management responsibilities
 - audit committee with risk management role
 - division head reviews student handbook
- commit financial resources
 - security audit
- engage experts in advance of “problem”
 - legal counsel, crises management professionals
- Stay calm
 - Panic = Mistakes



proactive strategies to protect your school

1. Review documents

- Employee handbooks
- Student Handbook
- Student Discipline Policy
- Enrollment contracts
- Employment agreements
- International travel policies and permission documents
- By-laws
- Charter/Articles of Incorporation
- Conflict of interest policy

2. Conduct Security Audit

- Consider access to school
- Vesting visitors

3. Address Sexual Misconduct, Abuse and Boundaries issues

- Consider “in an abundance of caution” letter
- Review policies related to proper boundaries between students and employees
- Review policies on addressing allegations of abuse and misconduct including investigation process
- Locate history of insurance policies



proactive strategies to protect your school

4. Establish Crises Management Policy
 - Engage professionals
 - Identify task force
5. Ensure intellectual property is protected
 - Logos, name, slogan
6. Create transgender and gender fluid guidelines
7. Create immunization policy
8. Review exemption status of all employees
9. Review I-9 documents
10. Review application & enrollment of students including vetting
11. Review vetting of parents
12. Review hiring process of employees
13. Review insurance policies including coverage amounts
14. Establish risk management committee
 - Create policy for assessing and avoiding risk

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the road ahead
is bright

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