



Hot Topics : Legal Issues Impacting Students

VAIS

February 2, 2021



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Protecting the school with paper

- What documents protect the school from liability?
- 20/21:
 - ask for additional signed document or add policies to handbook
 - Emails, on campus signage, newsletters other communication
- 21/22:
 - include in handbooks, enrollment agreements
- Which activities are covered?
 - Attending school on campus
 - Off campus behavior
 - Sports activities
 - Transportation
- Other Considerations
 - Clearly describe the risks of participation and the safety measures the School is taking
 - Ensure that parents' waiver covers their own claims and their child's claims

Can Schools Mandate COVID-19 Vaccinations? Flu Shots?

- COVID-19 approved under Emergency Use Approval
 - Prevents government bodies from requiring public vaccination; Still safe, just not 100% effective
- Students
 - May require students to receive flu shots as condition of attendance
 - Retain right to take all actions necessary to create safe environment including vaccine
 - Check state law for permitted exemptions: Religious, Medical
 - Need to provide medical and religious accommodation
 - Parent provides notarized certification affirming conflict with religious tenets
 - Very difficult to establish need for medical accommodation (CDC suggests everyone be vaccinated)
- Develop the School's Position and Clearly Communicate
 - Consider community/culture concerns before cementing the School's stance on vaccinations
 - Update the School's health and safety protocols

Governing Time Off Campus

- Travel Policy
 - Address travel for personal reasons (employees, students, others)
 - Do you require quarantine or testing upon return? (consider state law)
 - What if a family member travels?
 - Will employees be required to take leave during quarantine or can they work remotely?
 - Can students opt in/out of remote learning if limited by travel?
 - Require disclosure of travel plans? Consequences of failure to disclose?
- Other Outside Activities
 - Sports: Students on club sports, travel for non-school competitions, school sponsored sports
 - Social gatherings
 - consequences of student parties
 - Families gathering
- Governing Documents
 - Community Pledge
 - Return to School Policy
 - Safety Protocols (Daily screening questions should include travel questions)

Politics at School

▪ **Political Discourse and Activity**

- **In official capacity as student of school** and/or **In personal capacity as individual**
 - Applies to students? Trustees? Parents?
 - Set ground rules: what is acceptable and not acceptable “BEHAVIOR”
 - Illegal activity, negative impact on reputation of the school, inconsistent with school values
 - Participation in Capitol Trespass
 - Participation in BLM protest? White supremacist protest?
 - Remind members of community about **civility**, **respectful discourse**, and **differing opinions**
 - Educators teach students “**how**” to think, not “**what**” to think
 - **First Amendment** does not apply to private employers or students
- 501(c)(3) organizations may not support, oppose or endorse a **candidate for elective office**
- Applies to School in it’s “official capacity” (is trustee speaking individually or for school)
 - Using school resources (financial or otherwise), campus or employee time
 - Painting “Black Lives Matter” on the main street through the campus using school’s supplies?
 - Support “Candidate X” and “Black Lives Matter”

Enrollment Contracts

Address lessons learned from the 2019-2020 School Year:

- Force Majeure Clauses
 - Review covered events (pandemic and everything else you can think of)
 - Ensure that the clause clearly describes its effect on the parties' contractual obligations
 - Address remote learning, partial / full closures, schedule changes, and changes to program
- Program Flexibility
 - Don't promise particular educational programs, activities, or curriculum
 - Address distance-learning
 - Cement the School's right to modify programming at its discretion
- Parental Cooperation
 - Clearly set forth the School's expectations regarding support for the School's policies and standards of conduct.
 - COVID-19 Safety Protocols
 - Consequences for behavior that is disruptive, overly aggressive, or that seriously undermines the School's policies or decisions
- Cancellation Provisions
 - Consider whether you will need to modify enrollment, cancellation deadlines
 - What are the eligibility guidelines around tuition refunds?
 - What does your state law say about excusing parties from contractual obligations?
- Tuition Refund Plans
 - Review plan information, eligibility requirements

Bias, Bigotry and Racism

- Difficult for schools even with extensive focus and work
- Strategies
 - Policy addressing prohibition against bias, bigotry and racism
 - Training and other sensitivity programs
 - Conduct Audit
 - Support for those impacted (financial support for counseling)
 - Require parents to participate in programs addressing systemic racism (condition of enrollment)
 - Add language to enrollment and employment agreement confirming obligation to comply with school's values
- School's policy and commitment to combat discrimination, harassment, and retaliation
 - Establish
 - procedure for reporting complaints
 - procedure for investigating complaints
 - options for addressing violations of policy: ie restorative justice, mediation other
 - Confirm consistency with employee and student code of conduct and disciplinary processes

PPP #1 and now #2 and Title IX

- PPP loans #1
 - If accepted first round -- currently looking for forgiveness
 - Slowly getting approved; mostly under 2 million
 - Over 2 million required to complete additional questionnaire
 - No panicking, not clear if change under new administration, unlikely
- PPP round #2
 - Less than 300 employees
 - 25% loss of income established between same quarter in 2019 and 2020
- Title IX obligations continue for the duration of the PPP loan (until repaid or forgiven)
 - Confirm Title IX policy in place
 - Address issues in code of conduct and other performance and behavior policies
 - **Ensure definition of consent established**
 - Take allegations seriously, many schools caught by failure to comply

Code of Conduct and Disciplinary Policies

- Decisions are overturned by courts for failure to follow the school's policies and procedures
 - Not in place of school's decision
- General conduct and community standards
 - Clearly address and define standards of behavior expected of students
 - What is acceptable and what is prohibited
 - Especially issues related to on campus vs off campus behavior
 - Going to or holding a party during pandemic
- Clearly outline consequences of violations of code of conduct
 - Possible discipline: define scope, provide transparency and equity
 - Who decides and how is it decided
 - Appeals process
- Reporting disciplinary suspensions or actions to other schools, colleges and universities
- Please Address sexual assault and misconduct: definition of Consent is essential
 - Discuss, discuss again, bring in experts to discuss, make sure it is reviewed again and again

Code of Conduct and Disciplinary Policies

- Academic integrity
 - Clearly define for students AND FACULTY
 - Especially while students are remote and or doing work collaboratively
- Acceptable use of technology
 - Very important to define the standards of acceptable behavior
 - School's equipment vs personal equipment
 - Cell phones and electronic devices
 - Use during remote learning
- Social media
 - Bullying (including cyber bullying), hazing, retaliation
- Drugs, alcohol and tobacco, Weapons
- Right to conduct investigations and search student property, personal devices, lockers, vehicles

Student Personal and Health Information

- Increasing concerns related to student privacy during the 2020-2021 school year
 - Distance-learning, increased use of EdTech
 - Daily Health Screening
 - COVID-19 Test Results
- Independent schools are **not covered** by HIPAA, FERPA, and COPPA
- Check **state** law
- Digital Privacy Best Practices:
 - Hardwire parental consent for students' use of EdTech into the enrollment contract
 - Limit the type, amount of student personal information provided to third-parties
 - Review contracts with third-party vendors to understand how student data is used
 - Ensure standard data security protocols are in place
 - E.g., privacy policy, data retention guidelines, encryption

COVID-19 Issues and Applications

- Health and Safety Policies
 - Masks, social distance, daily screening, when to quarantine and medical release to return to school
 - Limit visitors, parties, gatherings, volunteers, assemblies
 - Limit personal travel and outside activities (review state and local orders)
 - Outside sports (what safety measures do they follow? is travel involved? what about the other team?)
 - Quarantine guidelines
- Vaccine / testing / immunizations
 - Reserve the right to require additional vaccinations beyond what state requires (COVID-19 vaccine? Flu shot?)
 - Explain possible exemptions (medical or religious) and process to request exemption
- Force majeure / modifications due to events outside the school's control
- Assumption of Risk
- Confidentiality of health information
- Enforcement considerations

COVID-19 Issues and Applications

- Maintain right to make certain modifications for health and safety reasons
 - Policies, practices, and procedures
 - Activities, sports, trips, before or after-care, schedule, calendar, food service
 - Method of program delivery, curriculum, workforce
- Distance learning policies
 - Continue to offer the option or just for periods of shut down or quarantine?
 - Consent to digital platforms
 - Consent to video, recording, use of images, visiting students
 - Discourage parents from “auditing” the class
 - Address one on one communications (counseling, check-ins, tutoring, etc.)
 - Establish behavior and conduct expectations
- Semester or year away policies?



Non-Discrimination Policies

- Diversity and inclusion statement
- Policy against discrimination, harassment, sexual harassment
- Sexual abuse and dating violence
 - What is consent?
- Anti-bias and anti-discrimination policy
 - Define terms
 - Provide clear reporting channels
 - Investigation and complaint resolution process
 - Ensure equity and transparency
 - Expectation of parents / students to support school's initiatives
- Title IX
 - Only during the period of the PPP loan
- Transgender students

Enrollment and Home/School Partnership

- Enrollment contract should:
 - reference the parent/student handbook
 - ensure parents consent to comply with policies and procedures in the handbook
- Parental comportment and support of school mission, philosophy, policies, procedures
- Parents must be supportive of the school's commitment to a diverse and inclusive community
- Age of Majority (parents will continue to be responsible for terms of the enrollment contract and students will not prohibit school from communicating with parents)
- Re-enrollment and holding enrollment



Program and Support

- Don't promise a specific program or program delivery method
- Define curriculum requirements
- Address scope of accommodations and process to request
 - Parents / students agree to work collaboratively with schools
 - Agree to get requested tests and evaluations and consent to share information
- Learning resources and support services
- Medication at school
- Counseling services and scope of confidentiality

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