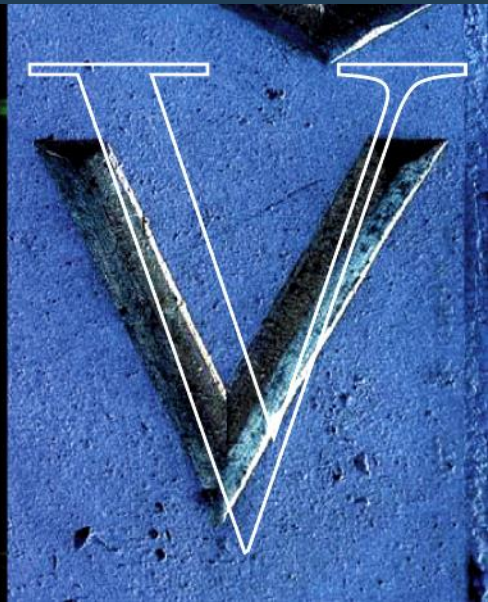
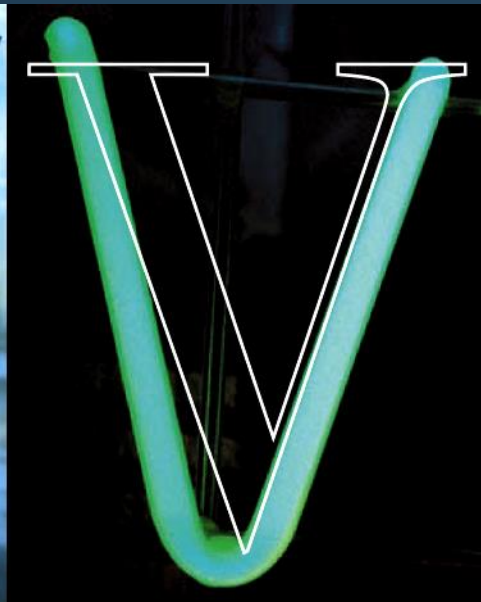
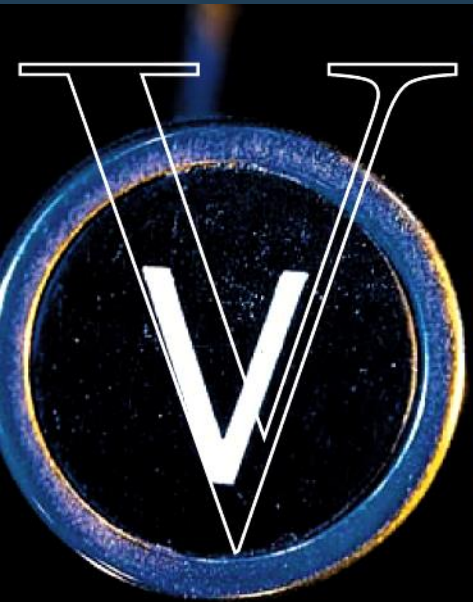


# VENABLE<sup>®</sup><sub>LLP</sub>

## HOT LEGAL ISSUES:

Proactive Legal Strategies that Hardwire Safe Schools

NYS AIS 2017 Business Affairs Conference  
Caryn Pass, Esq.



## points of risk

- **identify all points of risk**
  - identify and implement strategies that mitigate risk
- **physical plant**
- **exposures from new administration**
- **adults**
  - employees, parents, contractors, coaches/tutors, visitors
  - screening, supervising and monitoring actions and behavior while on/off campus
- **students**
  - current and applicants, alumni, international, visitors
  - vetting, supervising, disciplining and securing safety



# immigration, international students and employees

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# immigration, international students and employees

- **impact of administrations policies**
  - fewer students traveling to U.S. for school
  - reports by colleges and universities of lower applications
  - impact on SEVIS and ability to obtain visas
- **ability to obtain visa for employees**
  - more difficult to obtain
  - caution when investing resources
- **maintain current I-9 documents**
  - use new forms
  - conduct updates and audits
- **current students disappearing from schools**
  - reporting truancy



# physical plant

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## review of space, facilities & access

- **review all areas of the campus**
- **conduct security audit**
- **areas**
  - Stairwell, off-sight locations, windowed doors
- **areas of concern:**
  - 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
- **cameras**
  - where are they located
  - who monitors the tapes
  - do we maintain the tapes



# students

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# 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





## 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
- **allegations of 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
- **clear policies related to social media and use of technology**



## transgender students

- **New York City “Transgender and Gender Nonconforming Student Guidelines”**
  - law governing public schools
- **reference made in school policy**
  - requires school to comply with “guidelines”
  - failure to comply exposes school to liability
- **hot issues for “guidelines”**
  - sports and participation in leagues
  - rooming during trips, dorms etc.
  - disclosure to parents
    - Age of student
    - Notice to parents and students of policy
- **TRAINING PARENTS AND FACULTY**
- **INCORPORATE BOARD INTO PROCESS**



## 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**
  - Get specific dates of attendance including month and year



## selecting international students

- **consider cultural differences**
  - attitude towards females
  - attitude towards using alcohol or drugs
- **medical certification for travel and attendance**
- **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 documents

- **waive 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
- **decisions based on a wide range of considerations**
  - solely and exclusively determined by school
  - submission of 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
  - if known issue have adult remain
    - diabetic, seizure, other medical issues
- **international or domestic interviews off campus**
  - Skype: confirm applicant
- **inform candidates if interview during visit**
  - who is in interview





# 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**
- **reporting of discipline to college or university**
- **age of majority**
- **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



# document retention and destruction

- **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

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## 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

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# ADULTS: parents, visitors, neighbors

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# 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



# 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

- criminal background check
- driving record
- sex offender registries
- social media searches
- references from community members
- 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
  - information that may impact student safety
  - behavior of parent
- 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

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## 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

managing employee  
relationship

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## Employees: Managing the Relationship

*Ok, they are here – now what?!*

- **Managing/supervising the employment relationship helps ensure safety in the community**
  - Best employment practices; safe choices from safe employees; weed out those who cannot promote safety in the community
  
- **Use the tools in your Management Toolbox**
  - Workplace conduct training
    - Boundaries; harassment
  - Documents that set expectations
    - Employment agreement; employee handbook
  - Performance management
    - Supervision
    - Evaluations/reviews, discipline, plans, counseling
  
- **Recognize common employee issues**
  - Internal (poor performance, attendance, student boundaries)
  - External (inappropriate conduct/social media presence)

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## A Focus on Student Boundaries

- **There are rarely “one size fits all” rules/approaches**
  - Consider your culture, community, student ages
  - Written policy + training
    - Think about the “hard” lines you want to draw v. guidance and education you want to provide
      - E.g., social media relationships with students
  
- **Encouraging our employees to think/consider factors at play**
  - Perception v. reality
    - *The former can be equally damaging*
  - Context (where, when, why)
    - *A text during the day v. at night*
  - Relatable v. inappropriate
    - *Jokes*
  - Ages & genders
    - *Sitting on laps (age is relevant)*
  - The mode of communication
    - *The texting coach*

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## Student Boundaries Continued

**We need employees to think about their actions (and the consequences)**

- **Verbal language**
  - “Fingering safari”
- **Body language**
  - “Elvis Pelvis”
- **Physical/personal space**
  - Leaning over shoulders to view computers
- **What mediums of communications they use**
  - Cell phone, text, school/personal email
- **Social media**
  - Guidelines on use
    - Connections with students and former students
    - When private lives become public
- **School-sanctioned platforms (e.g., Google Classroom)**





# Managing Performance

## ■ Documentation that governs the relationship

- Employment agreement
  - An agreement to perform as anticipated and abide by policies
  - An avenue for removal
  - Non-renewal can be used as an incentive for performance improvement; contingencies on renewal
- Employee handbook
  - Policies governing acceptable technology use, student boundaries and safety
- Stand-alone policies

## ■ Performance management tools

- Supervision
- Review/evaluation
- Coaching/counseling
- Note to file
- Written warning
- Performance improvement plan

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## Service Providers

### ■ Who?

- Our employee/auxiliary service providers (e.g., tutors, coaches)
- External providers (e.g., other tutors, after-school yoga)
- Contractors (e.g., food services, construction)
- Employee-plus (e.g., she teaches *and* babysits)
- *Different positions may fall into different categories (the night-time cleaner may be an employee or a contractor), or two people in the same position may fall into different categories*

### ■ Nature of the Relationship

- Employee v. independent contractor
  - Liability: tax, benefits
  - Documentation: employment agreement v. contract for services
  - No bright-line test, or single dispositive factor
    - All tests weigh all factors (e.g., who has control over scheduling and work, who provides tools for work, how person is treated and paid, documentation used)
      - » *Primary factor = CONTROL*
      - » *We often have tutors, coaches, & others that may fall on both sides of the fence*
- Who is really involved?
  - Is the relationship really between us and the service provider, the parents and the provider ...



## When the Relationship Ends ...

- **A few key tips (regardless of employee/contractor classification)**
  - Take the computer! Immediately!
  - Take all security access devices (keys, key-cards)
  - Retrieve and change all passwords and codes
  - Block access where possible
    - *For employees especially, this may require escorting them out, and finding an alternate way to gather/retrieve personal belongings*
  - Issue a reminder of the confidentiality obligation
  - Discuss further contact with students



# ACTIVITIES

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## overnight trips: local and international

- permission forms are only one part of protecting students
- establishing a clear program that establishes process for designing a trip
  - from start to finish
  - make sure every trip follows the guidelines
  - identify points of risk
    - sleeping arrangements
    - background check chaperones
    - vetting of international consultant that is 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

**New York Office:**

1270 Avenue of the Americas  
New York, NY 10020

**Washington, D.C. Office:**

575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004

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is bright

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