- **perspective and approach**
  - set up vs. dig out

- **# 1 priority is safety and security of students**

- **“Zero” risk is a myth**
  - be proactive
  - policies, procedures and protocols that reduce risk

- **risk assessment continuum**
  - risk of legal action vs. benefit to school

- **culture is king**
  - acting outside of culture is recipe for disaster

- **keep current and monitor trends & legal issues**

- **QUERY: WHAT DOES A TRUSTEE DO?**
  - what is communicated to board
    - abuse allegations
  - when is the board involved
    - transgender students
Basic Foundation of Good Governance

What is Good Governance?

“Planning for the School your Grandchildren will attend”

The Rest is Commentary
legal standards of good governance

- **Duty of Care**
  - take all available information into account before making decisions; participate in deliberations and discussions
  - act in a judicious manner that promotes the School's best interests; use your own best judgment

- **Duty of Loyalty**
  - undivided allegiance to School when making decisions
  - set personal interests aside
  - School’s benefit is number one concern and responsibility

- **Duty of Obedience**
  - be faithful to the School’s mission
  - protecting the School’s interests
  - consistent with strategic goals of the School
- sets policy
- addresses long range and strategic issues
- makes decisions based on
  - culture, mission & strategic plan
- **What comes before the board?**
  - day to day operations of the school?
  - Issues related to transgender policies?
  - decisions related to educational program?
  - termination of a teacher (what if there is a possible legal issue)?
  - discipline of a specific student?
  - disciplinary policies and standards?
  - hiring of an administrator?
  - admissions standards?
governance and trustee behavior legal issues

- **confidentiality issues**
  - communication in board & committee meetings
  - speaking to community (drop off line, Starbucks)

- **overstepping by trustee**
  - engaging in operations (advising on discipline issues)
  - especially during change in leadership
  - undermines head and administration
  - I got a job for YOU

- **never remove trustee hat (even if it is feeling tight)**
  - acting contrary to interests of school
    - calling for rally against the school
  - bullying coach/faculty
    - threatening to have employee terminated

- **review of key documents**
  - bylaws, conflict of interest policy, code of conduct

- **monitor trustee’s behavior & remove if necessary**
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.
avoid collusion between competitors
  – restrains commerce
  – limits healthy marketplace

DOJ has been focusing on higher education

DOJ turning to independent schools
  – eliminating AP classes
  – 8 schools drafted a letter confirming agreement & sent to newspaper

examples of possible violations
  – failure to enroll if outstanding debt to other school
  – agreement not to employee if under contract
  – notification prior to interviewing employee, student
  – fixing tuition/fees above floor
  – first choice letters
  – agree not to release ACT/SAT scores
  – school placement professionals

antitrust violations
alumni allegations of sexual abuse

- all types of schools
  - not just boarding, not just east coast
- alumni claiming abuse by faculty, staff, students
  - 10, 15, 20, 30, 50 years ago
- reports made by email, letter, calls, social media
  - Facebook, survivors websites, blogs
- strategy for responding to allegations
  - previously little was done
  - current trend
    - investigation after notification to community
- keep up to date
  - read “Great is the truth”
  - boston globe articles
    - spotlight investigation
  - NAIS/TABS draft document
proactive preparation

- **proactive planning before crises occurs**
  - no scrambling in middle of crises

- **establish task force**
  - administrators, trustees
  - attorney client privilege (on committee)
  - determine authority
    - bylaws
    - vote of the board
    - consistent with level of transparency vs confidentiality

- **create a crises management policy**
  - role of the board/notice to board
  - steps followed when report or notice
  - list of tasks and steps to consider

- **insurance**
  - at time of offense
  - retain plans

- **select experts to support school**
selecting professionals

- **considerations in selecting professionals**
  - experience in independent schools & abuse matters
  - cost is factor

- **attorney**
  - represents the school
    - provides general advise
    - engages other professionals
    - Interfaces with investigator
    - assists in crises management team
    - addresses insurance issues
  - lawyer appointed by insurance
    - experience in defending abuse claims

- **investigator**
  - “transparent, independent and complete” investigation
  - no conflict of interest

- **crises management firm**
  - assists with strategy, press, communications, reputational protection
employee political activism

- record levels of political activism
- consider culture and mission of school
  - what are school’s core values
  - attending white nationalist march
- first amendment rights
  - only government suppression of free speech
  - accepting employment impacts free speech
  - always represent the school
- notify employees of school’s expectations
  - be respectful, be courteous, be civil
  - avoid vulgar language or destructive behavior
  - modeling proper behavior
    - “F” you Trump on sign at women’s march
    - faculty saying student’s politics wrong in light of his race
    - participating in commercial supporting Kavanagh
parents on sex offender registry

- knowledge creates liability if failure to act
  - child injured by parent on offender registry
- wide range of responses
- establish acceptable and non-acceptable behavior
  - sex offender registry vs. conviction for violent behavior
- possible strategies
  - take no action
  - prevent enrollment or remove if offense occurs after enrollment
  - allow enrollment with restrictions
    - not on campus or at any school event
    - chaperone while on campus or school event
    - no sleepovers; play dates; parties at offender home
    - no contact with students on/off campus or during or outside of school events
    - notify entire community (class or entire school)
transgender and gender fluid students

- lawsuit filed by parents in behalf of student
  - limit bathroom access based on gender discrimination
- legal claim of negligence
  - acceptance implies creation of safe space
  - bullying
- students self identifying as:
  - transgender, gender non-conforming, gender fluid other gender based identities
- identifying at younger ages (kindergarten common)
- Be pro-active -- create “guidelines”
  - consider construction, address sports/restrooms/name use/pronoun
- culture and mission critical to strategy
- strong feelings on this issue
- board involvement
student trips

- **Hotchkiss case**
  - $40 million decision against school

- **consider risk of trip**
  - age of students, educational benefit

- **current state of international and local trips**

- **draft guidelines for designing a trip**
  - from start to finish
  - make sure every trip follows the guidelines
  - 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
  - links to resources and instruction to check and make informed decision (CDC, State Department)
  - medical form confirming fitness for trip
  - chaperone release
  - removal from trip and consequences of travel home
student on student sexual misconduct

- substantial concern in college and university
- addressed increasingly by independent schools
- major challenges to discipline
  - common college application
  - challenged in court

- **NOTIFICATION OF REPORTING TO COLLEGE**
  - handbook, enrollment agreement, at college meetings

- **honor code and student discipline policy**
  - consistently apply
  - communicate to students & parents
  - student handbook, enrollment agreement
  - provide appeals process
  - 24/7 vs. during school and school activities
  - definition of CONSENT
  - investigation (consider 3rd party)
  - consequences of behavior
  - status of accused during investigation
physical space, facilities and access

- conduct security audit
  - engaged by counsel
  - experienced in working with schools
  - set scope of audit

- review all areas of campus

- special areas of concern
  - stairwell, off-sight locations, windowed doors
  - dorms, locker rooms, stage changing areas, stair cases

- entry to school
  - security at the door, signing in and out, name tags
  - Identification monitoring

- cameras
  - location, monitoring, maintenance of tapes, disclosure

- engage help of faculty and staff
  - ask if not recognized
  - maintenance and grounds staff, cleaning staff
promise “safe and secure learning environment”
  – responsible for behavior of students enrolled
  – duty to admit and enroll safe students
  – student not admitted if properly vetted

unsafe student admitted to school
  – injures or causes harm to fellow student
    • drug use, sexual abuse

establish policies and procedures
  – carefully vet applicants
  – address misconduct of students
  – take action if signs of “risk to others”
  – reference and disclosure by school

history (on application and in interview)
  – all education history not just last 2/3 years
  – reasons for departure
  – review dates of attendance
  – inquire into disciplinary issues
  – gap in attendance

exposure to dangerous students
vetting applicants for employment

- obligation to expose students to safe adults
- “best practices” in hiring
  - NAIS/TABS report
  - accreditation process
- create hiring policy
- 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
- loss of teaching license
- references
  - When giving a reference do we disclose problems?
  - “Pass the trash”
- social media check
  - social media sites
  - reflects judgment and behavior of applicant
Venable Independent School Law Practice

**wise in the school world**


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the road ahead is bright