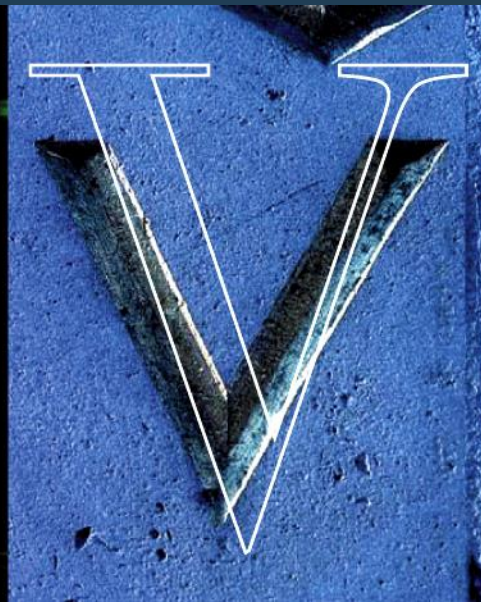
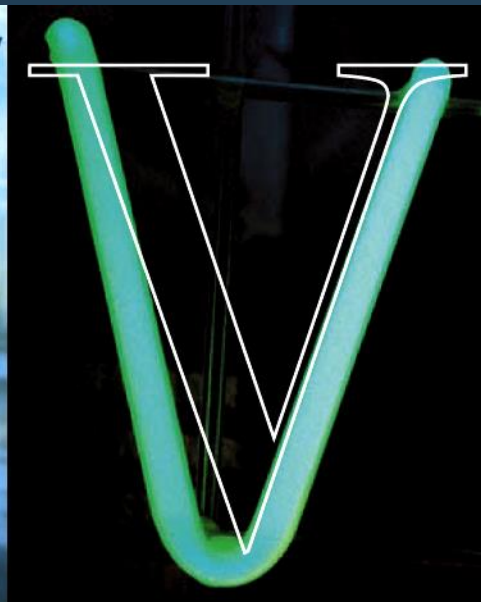
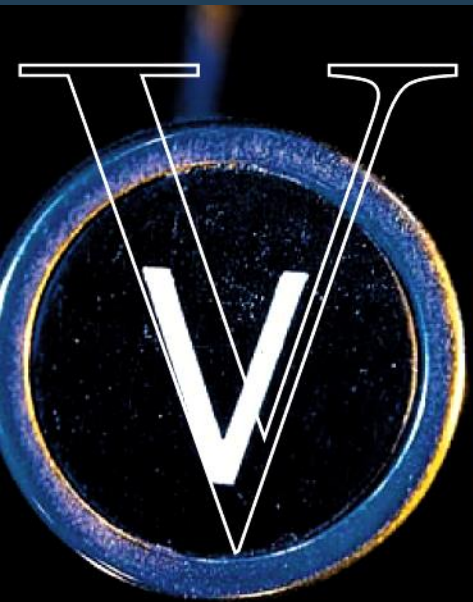


VENABLE<sup>®</sup><sub>LLP</sub>

Student Discipline in the Time of Pot Brownies  
NAIS Conference 2013  
Presenter, Caryn Pass

March 1, 2013



# overview

- increase in student disciplinary issues
  - economy
  - helicopter parents
  - greater pressure on kids
  - technology and social media
- consider culture of your school when:
  - addressing student disciplinary issues
  - designing student disciplinary policies
- think through disciplinary philosophy and establish guidelines before you create:
  - student discipline policy
  - code of conduct
  - honor code



## student behavior trends

- sending pictures of “privates” taken by phone camera to god’s green earth
- sex in the stairwell
- cooking pot brownies at school
  - cooking at home but selling at school – martha stewart matter
  - cooking at home but serving to teacher without her knowledge
- using phone to take photos of teacher undressing in bedroom
- establishing facebook page in name of teacher
  - work = “lap dancing instructor”
- theft of head of school’s car



# student legal issues

- legal challenges
- considerations
- communications
- challenges to discipline
- searches
- contact with legal authorities
- documents to review

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## potential legal claims

- breach of contract
  - failure to comply with enrollment contract
  - failure to comply with student handbook or school disciplinary policies
- enforcement of enrollment contract
  - parent challenges payment of tuition by alleging school violated student's rights
- breach of privacy
  - dissemination of private student information
  - who receives disciplinary information
- defamation
  - injury to reputation of the student or family
- negligence
  - failure to control student
  - failure to control employee or other party
- tortious interference with contract / relationship
  - communication with college or other schools
- temporary restraining order



## considerations for student behavior

- representation / reflection on school
- when conduct occurred:
  - 24/7 vs. on-campus, during school hours, during school sponsored events
    - part of community; privilege not right
    - negative representation on school
    - type of activities; summer international trip offered but not sponsored by school
    - do we want to serve as “police”
- type of conduct (never complete and total list: sexting)
  - drugs & alcohol (use vs sell), bullying, criminal conduct, social media, honor code



## additional considerations for student behavior

- discipline
  - types of discipline
    - suspension, expulsion, other forms
  - allow for flexibility
  - will student complete school year
  - receive work from teachers
- establish and follow due process procedure
  - how is discipline determined?
    - disciplinary due process board?
      - who is on it; students, teachers, other faculty?
      - how does it operate?
      - is there an appeal option?
    - appeal options?
      - head of school, board?
    - can lawyer & or parent participate?



## additional considerations for student behavior

- Investigation of discipline
  - reporting by other students, collection of information, investigation
  - who performs, what information is gathered
- consistency
  - factors creating different decisions
    - repeated offences
    - severity of offence
    - response by student





## communication

- communicate student behavior expectations, process and rules to parents & students
- common college application
  - school culture and policy
  - implications of a “no” answer when student has disciplinary history
- to other schools both public and private
- on the student transcript
- to student community
- to teacher community
- to community at large
- parents/guardian (custody orders)



# challenges to discipline

- parent / student challenges to disciplinary action
  - challenging the evidence
    - denial
    - shifting blame
    - alleging insufficient supervision
  - alleging discrimination / inconsistency
  - negotiating for lesser penalties
- allegations of negligence / failure to discipline
  - by other students, parents or employees
- attempts to evade enrollment contract obligations
- temporary restraining order



# searches

- lockers, cars, backpacks, computers, phones
- what is expectation of privacy?
- who owns?
  - school owned or student owned
- issues
  - local law
  - school culture
  - risk of “getting more than you bargained for”
- recommendations
  - establish procedure **before** you need to use it
  - communicate policy to parents/students to address expectation of privacy
  - think about practical implications of policy



## contact with legal authorities

- know your rights and responsibilities under local law (e.g. “hot pursuit” exception)
- try to avoid allowing police interview of student on campus without parent knowledge
- set policy / guidelines **before** you need them
- law enforcement requests to interview students or conduct investigation on campus
- maintain a copy of your jurisdiction’s mandatory reporting requirements
  - review law and policy **each** time there is a question
  - establish internal process to guide and support employees making reports
  - communicate and reinforce process with staff



## documents

- enrollment contracts
  - school's sole and exclusive right to discipline
  - school can determine whether to discipline and type of discipline
  - notify of discipline and obligation to comply with rules established in student handbook and other documents
  - Notification to other schools
  - Notification to colleges and universities
  - Posted on transcripts
- student handbooks
  - philosophy of discipline policy (i.e. 24/7)
  - types of offences
  - types of discipline
  - process for determining discipline
  - appeals process
  - school's policies with regard to colleges, other schools and the posting of transcripts



Questions?

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## contact information

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