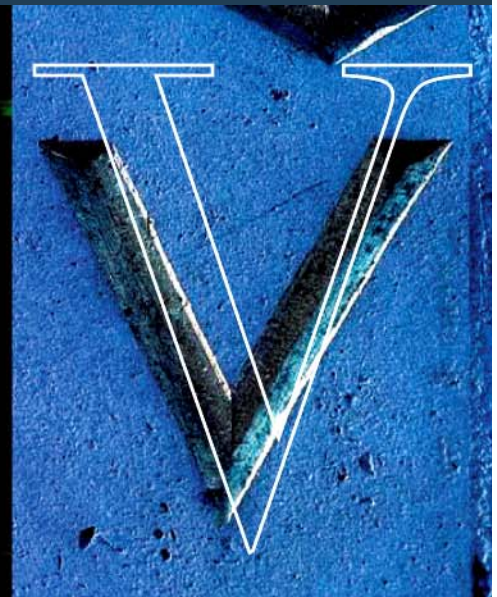
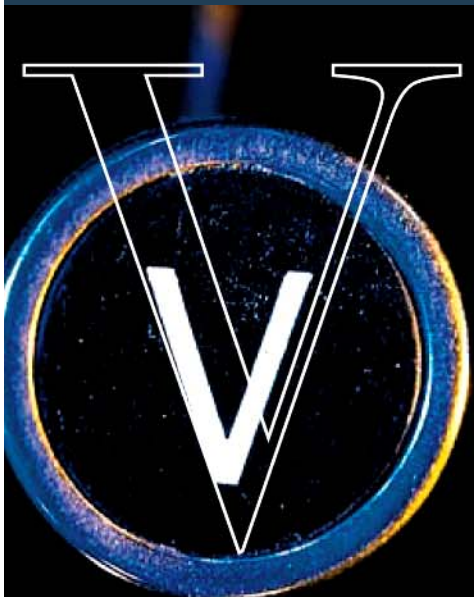


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## Legal Concerns When Enrolling International Students

Caryn Pass, Presenters

February 27, 2015





## Legal Framework

Practices and procedures  
needed to ensure the  
safety, security and well  
being of:

international students  
domestic students &  
families

broader school community



## Session Outline

- Overview
- Third Party Vendors and Services
- Student Identification and Selection (use of third party, applications, interviews)
- Student Enrollment (enrollment agreements, tuition payments and collection)
- Student Protections and Permissions (medical, legal, driving, travel)
- Housing (home stay, school housing, third party housing)



## Overview

- **More international students attending U.S. schools**
- **Benefits to U.S. Schools**
  - revenue from tuition & parent gifts
  - rich cultural experience for U.S. students
  - global learning
  - expands reputation internationally
  - response to decreasing enrollment in U.S. schools
- **Benefits to International Students**
  - quality of U.S. Schools often higher than home country
  - proficiency in English
  - assistance in college admissions
  - benefit of international travel
  - status in home country



## Overview

- **Attending**
  - boarding and day programs
    - huge increase in day programs
  - full time, exchange programs, summer or fixed period
- **Expanding countries of origin**
  - Historically: China, Korea, Mexico, Taiwan, Canada, Japan, Germany, Hong Kong, Vietnam, Thailand, Spain, Bermuda, U.K., Saudi Arabia, Brazil, Russia, Nigeria, Jamaica, Bahama, France
  - China and Korea were major “supplier
  - Fast growth in other countries
    - Estonia, Croatia, Slovakia, Czech Republic
- ***country expansion based on***
  - growth of economy of country of origin
  - strength of currency
  - greater recruitment and focus by U.S. schools
  - change in commitment to education and cultural shifts



## Third Party Vendors General

- **Responsible for actions of the third party vendor**
  - Depend on actions of vendor
  - Can be held responsible for those actions
- **Carefully select vendor**
- **Investigate selection procedures (i.e. selection of students, home stay families)**
- **Services and costs to international family**
  - SAT prep, college counseling, “incidentals”
- **Clear written understanding between Vendor &**
  - School, International Family, Home Stay Family & Other third party (transportation, break trip, shopper)



## **Third Party Vendors**

- **Identify and vet candidates**
- **Tours and meetings with candidates in country of origin**
- **Assist in application process**
  - Confirm student involvement
  - Confirm all information provided is truthful and accurate
- **Serve as “guardian” of international students**
  - Confirm necessary documentation
- **Provide living arrangements (private dorm/home, home stay)**
- **Testing, tutoring, college counseling, vacation oversight, transportation, guardianship, medical or legal responsibility,**



## Written Agreement With Third Party/Vendor

- **Term: year to year, extended term (3 years/ 5 years)**
- **Termination provisions**
  - Fixed period of notice prior to termination;
  - Reasonable time period: 60/90 days
  - Reasons for termination
- **Application process and decision**
  - Completion of application
  - Truthfulness of information
  - Interview process
  - Acceptance consistent with school's standards
  - Sole and exclusive decision of school
  - Misrepresentations grounds for removal
- **Execution of Enrollment agreement**
  - Ensure authority to execute in behalf of family
- **Re-enrollment**





## Written Agreement With Third Party/Vendor

- **Failure to cooperate grounds for student removal**
- **Costs incurred for removal of student**
- **Tuition Payments**
  - Collect from parent and pay to school
  - Serve as guarantor
- **School maintains ownership of program**
  - Intellectual property
- **Coordinate communication between parents and school**
- **Assumption of Risk and Release**
  - Waiver of liability and indemnification
- **Costs incurred by school**
  - For services provided by vendor
  - Clearly define
    - Costs
    - Method of payment
    - Reasons for non-payment

## Third Party Vendors

- **Execute enrollment contract**
  - Must have authority to agree to all provisions of the contract
    - Payment of tuition and fees
    - Guardianship of student
    - Permission to use photos etc.
- **Transport of student to and from country of origin**
- **Arrange for transport to and from school**
- **Oversight during holiday and other vacations**
- **Obtains Health insurance and medical authorization**
- **Coordinates visa and other documentation**
- **Collect tuition from family in country of origin and pay tuition to school (Often for a fee)**
  - Serving as “guarantor”





## Selection of Student

- **School ultimately responsible for selecting students**
- **Vetting**
  - At a minimum vetting of international student 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 school record or report discipline?
- **History of ALL schools attended and reason for departure**
  - Get specific dates of attendance including month and year



## Selection of 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.”



## Enrollment Contracts For International Students

- **Purpose of Enrollment Contract**
  - Enforce collection of tuition and other fees
  - Ability to take actions impacting students
    - Removal, discipline, supervision of student
    - Cooperation of parents and other adults
  - Allow for student participation in program
    - Waivers, permission forms, use of photos
- **Complications**
  - Difficult to enforce enrollment agreement internationally
  - If party executing contract not resident of US limited ability to bring claim
  - Ability to ensure authenticity of agreement
    - Language and identity issues
- **Third party participation**
  - School enters agreement with third party vs parents or guardian
  - School enters agreement with parents via third party



## Parties to Enrollment Contract

- **Parents or guardians living abroad**
  - Difficult to enforce in international courts
    - Consider enforcement methods in countries of origin
    - Include language allowing for international enforcement
    - Enforcement Extremely costly
  - Agreement to allow for enforcement in US courts
    - Not universally enforceable
    - Extremely expensive
- **Require U.S. guarantor (guardian)**
  - Agree to responsibility for tuition and fees
  - Power of attorney or guardianship
    - Agreement to pay vs. authority to make decisions effecting student
      - Enrollment agreement addresses both
- **Third party company**
  - Serves as guarantor for payment of tuition
  - Ensure status as US business



## Tuition Payment Options

- **Full payment prior to attendance**
  - Party obligated to pay full financial obligation
  - Must enforce consistently
  - Clearly describe in enrollment agreement
  - Leverage to enforce payment
  - Difficult if student is on campus, has traveled to states
  - Attendance contingent upon satisfaction of all financial obligations prior to DATE “X”
    - Best date is prior to final cancellation date
    - first day of school, prior to arrival on campus
- **Two or multiple payments**
  - Set clear consequences
    - Failure to pay results in return of student at parent’s expense
  - Enforce consistently
- **Financial Aid issues**
  - Assessment of need

## Other Enrollment Agreement Terms

- Include following in Enrollment Agreement to avoid multiple forms
  - **Power to act in behalf of student**
    - medical decisions, guardianship/legal decisions
  - **Use of images, photos, videos or other likenesses and student work**
  - **Activity Permission**
    - Participate fully in program, Take field trips, excursions, other activities (Cirque Du Soleil – Additional Form)
    - Leave campus, travel on own during vacation and break
  - **Assumption of Risk and Release**
    - Waiver of liability and indemnification for injury to or by student

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## **Other Enrollment Agreement Terms**

- **Costs incurred in return to country of origin**
  - failure to pay, behavior or other reasons
- **Compliance with Student Handbook**
  - international student issues in handbook
  - additional handbook or guide i.e. compliance with home family rules or compliance with other standards of behavior
- **Description of discipline and standards for removal of student including parent/guardian's**
  - Behavior that is disruptive, intimidating, overly aggressive, or reflects a loss of confidence or serious disagreement with School's policies, procedures, responsibilities, or standards, or accomplishment of its educational purpose or program
- **Policy on notification of colleges and universities of discipline**



## Authenticity of On-line Enrollment Agreement

- **Obtain assistance if not proficient in English**
  - Translated into language of international students
- **Modify on-line **policy** if process different than U.S. student**
- **Ensure security of log-in information**
  - Confirm with country of origin
- **Confirmation of each option selection**
- **Ability to review completed document**
- **Opportunity to modify document**
- **Suggest party print copy for records**
- **Electronic signature final step**
  - Not recognized by all countries
- **Sent to School as PDF**
  - Not subject to modification
- **Respond with email confirming receipt and acceptance**
  - If email not received notify school immediately



## Medical Considerations

- **Medical information**
  - Privacy rights of Student vs Health and Safety of all
  - When and what to collect
    - Consider in context of boarding status
    - What to share with Host Family
- **Medical authorization**
  - For use in emergency situations and for common needs
    - Accidents, Flu shots, Purchase of Prescriptions (controlled substances)
  - Authorization to incur and responsibility for insured and uninsured expenses
  - Will every provider accept?
    - Notary vs. witnesses vs. signature only
    - Review of legal authority
  - Medical power of attorney
    - Limits on authority?
- **Medical Insurance**



## Responsibility for Student

- **Clearly establish who is responsible for students**
  - School, Home Stay Parents, Vendor, Guardian, Parents
- **Clear rules on guardian and supervision obligations**
  - Telephone number, address and confirmation of living arrangements
  - Method for communications with parents, guardian etc.
  - Consequence of lack of guardian
  - Obligation to notify in case of change in status
- **Type of Authority**
  - Medical Authority, Power of Attorney, In Loco Parentis
- **Who is responsible for:**
  - Arranging for vacation, breaks, summer
  - Costs incurred in return to country of origin
    - During vacations, breaks, summer
    - Removal for discipline, medical or other reasons

## Protecting International Students Residing Off Campus



A Gwinnett County couple is in jail after allegations that they molested a group of Korean exchange students living with them.

\* \* \*

The couple is **accused of giving the six teens alcohol and forcing them to strip and touch one another**, police said.

The parents of the six children had paid **Woo Yi more than \$15,000 each to host the children so they could attend local high schools**, police said. The students attended different schools in Gwinnett County, authorities said.

On Wednesday, **one of the teens complained to a school employee of abuse at their host home**, police said.

The victims told school officials, and eventually detectives, that their host family would provide them with alcohol and have them play games, Gwinnett County Police spokesman Cpl. Jake Smith said.

By [Marcus K. Garner](#),  
The Atlanta Journal-Constitution

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## Home Stay Issues: Liability

- **Negligence:**
  - Failure to protect student
  - Placed student in unsafe home
  - Consider standard of care
    - Checks performed on school's employees
    - Standard of vetting performed
- **Breach of contract**
  - Promises made in enrollment or other contract
- **Violation of statutory or regulatory obligations**
  - Student protection/Mandatory reporting
    - Suspicion of abuse
  - Wage and hour
    - If failure to clearly establish the relationship is “independent contractor”
  - Taxes
    - Obligation to file taxes for “income” if stipend or other payment provided
  - Background checks
    - Obligations under state law

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## Home Stay Programs: Overview

- Used primarily by day schools
- Set up by school or by Third Party Vendor
  - Schools generally use families connected to school
  - Third Party Vendors using school families
  - Third Party Vendors using non-school families
- Create Home Stay Handbook and policy
  - Must comply with handbook and policy
- Set up comprehensive system for selection, training, monitoring and interacting with home stay family
- Make certain vendor's procedures are comprehensive

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## Home Stay Issues: Selection

- **Written Application**
  - Questions related to who is in home
  - Sleeping and living arrangements
  - Transport to school
  - Supervision abilities
  - Reason they want to participate in program
  - Expectation of pay
  - Vacations, breaks
- **Screening Process**
  - Interview family and references
  - Background check including criminal history
  - Visit the home – food, sleeping arrangements, bathrooms, cleanliness,
- **Establish standards of selection**
  - What is needed to meet the school's standards

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## Home Stay Issues: Monitoring and Training

- **Training of home stay families**
  - Provide comprehensive handbook with rules and guidelines
  - Conduct meetings prior to arrival of student and period throughout year
- **Supervision and monitoring by school**
  - Check in with student asking pointed questions related to homestay
    - What did they do over the weekend
    - What did they have for dinner
  - Visit home periodically
  - Watch for attendance, hygiene, how much is eaten at lunch
- **Reporting and handling of problems and allegations**
  - Method for both student and home stay family
  - Have identified contact person

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## Home Stay Additional Considerations

- **Fees / reimbursement issues**
  - Payment to host family by school or by family
    - Consider tax implications
  - Reimbursement for expenses vs Stipend
- **Employees serving also as Host Families**
  - Impact of stipend on hourly rate of pay
  - Implications of investigation
- **Holidays and travel**
  - Is host family responsible for student during holidays?
  - If family travels do they take student?
  - Does school monitor or establish appropriate travel?
- **Liability Insurance**
  - Homeowners, supplemental
- **Travel to School**
  - Can international student drive car?
  - Drive with another student?

## Home Stay Additional Considerations

- **Student necessities and student spending money**
  - Is bank account set up for student?
  - Who controls funds?
  - What necessities are covered? Soap, shampoo, towels, lunch
- **Designated family contact**
  - Authority to execute forms and enter agreements
  - Communicates with school
  - Communicates with student's family
- **Written Agreements School Exist Between**
  - School and Host Stay Family
  - Host Stay Family and Student Family
  - School and Student Family

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