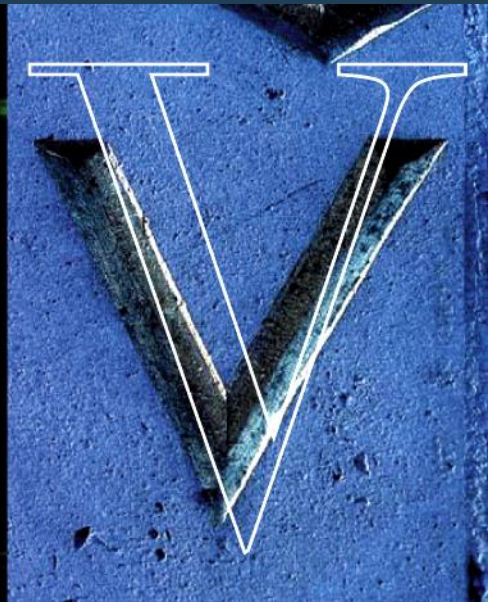
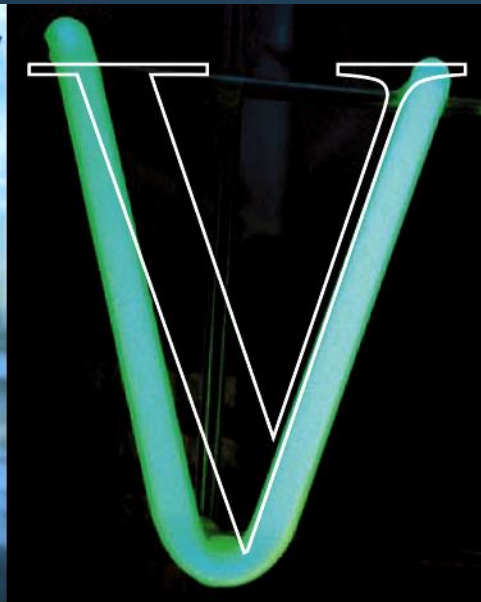
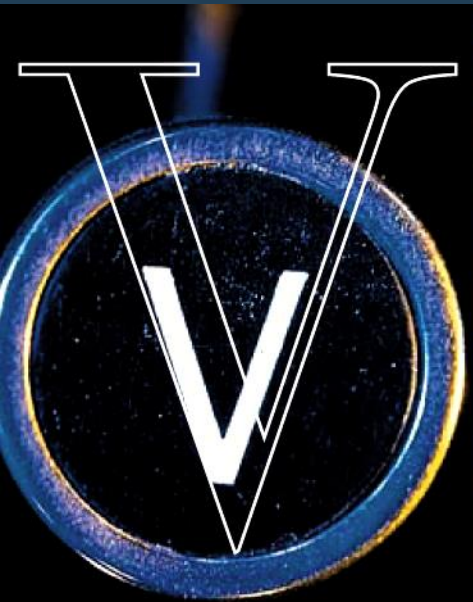


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Hot Legal Issues for Independent Schools: Lessons from the Front Line

Caryn Pass, Presenter
NYSAIS Trustee Governance Workshop
September 2015



subjects

- Employee Issues
- Safety and Security
- Intellectual Property
- International Student Travel
- International Students
- ERISA and deferred compensation plans
- Transgender students
- Student Issues
- Parent Issues
- Divorce, Custody and Parental Turmoil
- Immunization and infectious disease

*Wise In The
School World*



employee issues

- **Wrongful Termination**
 - Based on protected category
 - race, age, sex, national origin, disability
 - Breach of employment contract/agreement
 - Handbook non-compliance
- **Reduction in staff**
- **“Protected Speech” under the NLRB**
- **Application and selection process**
 - Injury resulting from failure to properly vet
 - Criminal background check reflected past history of inappropriate contact with minor
- **Inappropriate contact with minors**
 - Conducting training with employees
 - actual misconduct and appearance of misconduct



safety & security

- **Safety of students number one priority**
- **Failure to consider safety and security of entire community = negligence**
 - Tragedies nationwide place schools on “notice”
 - Failure to address security risk resulted in injury
- **Risk vs Benefit**
 - Reasonableness: Armed security guard? Obligation to “sign in”
 - Cost and budget: Electronic fence?
- **Board establish risk management committee**
- **Conduct security audit**
 - 3rd party review & report with Emergency preparedness policy
 - Legal counsel engagement: Attorney client privilege



intellectual property

- **Protect name, logo, likeness, "tag line", program**
 - Represents school's "brand"
 - Alternative revenue sources (international)
 - Protect in and outside of U.S.
 - T-shirts, new school, program of "School", international schools trading on name
- **Use experienced lawyer**
- **Notify parents, students, faculty other "vendors"**
- **Agreement with faculty, students, 3rd parties**
 - Use/ownership of intellectual property
- **Language in enrollment contract, teacher's contract, all handbooks, materials sent to parents, vendor contracts**
 - **ESPECIALLY INTERNATIONAL STUDENT VENDORS**



international student travel

- **Recent cases shed light on legal exposure**
 - Hotchkiss Decision
 - School failed to consider risks of activity
 - Insect bite caused catastrophic illness
 - “Appropriate clothing reasonable requirement?”
- **Injury during school sponsored trips**
 - Run by 3rd party
 - Failure to vet 3rd party
 - ***Documented relationship with 3rd party***
 - Documented relationship with family
 - Run by School
- **Carefully Drafted Travel Documents**
- **Reasonableness of field trip and activity**
 - Kindergarten white water rafting trip?
 - High School students traveling to Cuba?



international students

- **Legal exposure**
 - Identification, selection, enrollment agreement, housing/home stay
- **Failure to vet international student resulted in injury**
 - Student guilty of sexual abuse of brother
- **Vetting of 3rd party**
 - Establish role and responsibility in writing
 - Payment of tuition, selection of home stay family
- **Execution of enrollment agreement**
- **School selects home stay family**
 - Vetting of family: criminal background checks?
 - Permission granted by student's parent
 - Medical, transport, guardianship
 - Tax treatment of stipend



ERISA and deferred compensation plans

- **IRS watching closely of late**
- **Church school classification & 403(b) misuse**
- **Use of 457(b)**
 - Mandatory maximum, no “catch up”, only highly compensated eligible (\$115 or higher), fund each year
- **Use of 457(f)**
 - Only board contributes, risk of forfeiture essential, payout at vesting, get help drafting plan (unwinding is painful)
- **Tuition remission**
 - Same benefit to all or taxable income
 - Head receives greater than policy amount
 - Entire remission taxable income
- **School contribution to 529: Taxable Income**



transgender students

- **Discuss and consider issues and school's approach, develop guidelines**
- **Younger students each year (kindergartners)**
- **Issues to consider:**
 - Bathrooms (non-gender bathrooms)
 - Locker rooms
 - Sports
 - Single sex schools
 - Girl's schools allow transgender boy?
 - Name change
 - during school
 - official transcripts (current and former)
 - use of pronoun (he,she,they)
 - Boarding room arrangements
 - Field trip room arrangements



student issues

- **Discipline and Code of Conduct**
 - Parent challenges (court is expensive)
 - Refuse pay tuition, create websites, petitions
 - Update policy, include in handbook, enrollment contract, plaster on walls
 - Social media, drugs/drinking, 24/7, “review board” & appeal
- **Vet carefully**
 - Month and year of all previous schools
 - Ask if discipline, “sexual misconduct”, bullying, departure reason
 - Not current teacher, also yes from administrator
 - More carefully for international (cat skinner)
 - Criminal background of parents
- **Notice to colleges of discipline (during and after)**
- **Report reason for departure to next school**



parent issues

- **Vet carefully**
 - Criminal background of parents
 - Conviction for inappropriate contact w/minor
 - Notice to parent body? Set rules?
 - Interview for “crazy” factor (ask former school)
 - Google search
- **Issues of fitness**
 - Drug/alcohol use or mentally unstable
 - Notify other parents?
 - Inappropriate contact with students
 - Harassment or inappropriate treatment of faculty
- **Conflicts b/w parents**
 - Parents with conflicts and impact on students in the classroom and school
- **Reporting abuse to children services**
 - Notify of school’s obligation & procedure



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



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



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