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**VENABLE INDEPENDENT
SCHOOL LAW PRACTICE**
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Independent School Law Practice Group

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INDEPENDENT SCHOOL LAW

Venable's Independent School Law Practice represents schools nationwide. Well versed in the impact culture has on the health and sustainability of the industry, Venable's Independent School Law Practice provides advice consistent with a school's mission and culture. Representing schools of all sizes, denominations, philosophies, and locations, the firm provides assistance with the ever-increasing challenges facing independent schools.

Our lawyers work as partners with clients, advising them on a number of levels as they seek not only to respond to a client's current legal issues, but also to identify potential problems before they arise. Our attorneys are a team of skilled, experienced professionals. Extensive and regular interactions with independent schools provide the practice with the ability to track and understand the nuances specific to independent schools and allow for the development of best practices. Lawyers in the Independent School Law Practice regularly speak at state and national meetings on selected topics and provide in-school training.

When complex legal issues arise, Venable's prominence as a full-service, national law firm allows us to call upon the support of colleagues and combine their knowledge of their particular areas of practice with our understanding of independent schools to provide integrated advice and support. The broad range of legal areas covered by the firm includes the following.

Proactive and Preventive Strategies for Creating Positive Work Environments

Proactive and preventive actions are the best way to avoid liability and create a positive and productive work environment for school employees and a learning environment for students. Assisting schools with creating policies, procedures, and strategies is a cornerstone of the practice. An essential element in the process is the hiring of qualified and safe employees. To assist with these goals, the practice works with schools on the following:

- Employee handbooks
- Faculty and staff employment agreements
- Sick, vacation, and short-term and long-term leave policies
- Hiring policies
- Employment applications
- I-9 compliance
- Reference checks and other vetting options
- Interview procedures
- Effective criminal background screening procedures
- Medical screening procedures
- Orientation procedures

Managing the Workforce

The Independent School Law Practice assists schools with workforce challenges and legal compliance. The practice regularly helps with:

- Counseling and advisory assistance with employee matters
- Suspension and termination procedures
- Performance evaluations
- Managing employment discrimination claims
- Affirmative action plans
- EEO-1 compliance
- Evaluation and design of benefits programs
- Internet and email use
- Job descriptions
- FMLA compliance
- Personnel files and record maintenance
- Faculty grievance procedures
- Transportation and driver policies
- Drug-free workforce policies
- Union oversight and labor contract negotiations
- Worker's compensation compliance
- Exempt vs. non-exempt classifications
- Proper overtime payment calculation and tracking of hours
- Payroll process compliance

Employee Retirement and Health Insurance Benefits

Venable's Employee Benefits and Executive Compensation Group has thorough knowledge of the specialized rules that apply to the retirement and compensation plans sponsored by independent schools. We work closely with our clients and their consultants to ensure that their retirement programs meet all compliance requirements and partner with our clients and their consultants to help them decide whether they should migrate from traditional retirement programs to more contemporary solutions. We also structure deferred compensation plans and other innovative programs that are designed to supplement retirement savings so that independent schools can attract and retain their key employees. In addition, the firm has extensive experience in the area of health insurance plans and other related benefits. Because the rules created by healthcare reform are constantly changing, the need for careful review and compliance is greater than ever before. We provide support and legal guidance with respect to the following:

- Section 403(b) plans, Section 457(b) and 457(f) plans
- Health insurance, life insurance, and other benefit plan review
- Short-term and long-term disability plan review
- Cafeteria plans
- Education assistance plans
- HIPAA compliance
- Split-dollar life insurance
- Compliance with healthcare reform obligations

Executive Compensation and Head of School Contract Drafting and Design

The drafting and design of the head of school's contract and compensation have taken on added importance with the expansion of laws affecting remuneration. School leaders face fiduciary exposure in the form of intermediate sanctions and other institutional and personal penalties for noncompliant compensation and benefits transactions. Venable's lawyers are well versed in the drafting and design of head of school contracts that incorporate the best practices for incentivizing administrators and providing the most beneficial tax impact for both the head and the school. Other issues addressed are:

- Deferred compensation advice
- Comparable salary assessment
- Intermediate sanctions and rebuttable presumption compliance
- Tuition remission programs

- Housing and loan programs
- Tax treatment of benefits
- Transition planning
- Executive severance programs
- Evaluation and compensation tools
- Head of school search and selection strategies
- Succession planning

Student Issues

Members of the Independent School Law Practice have extensive experience with the challenges raised by a student body. With the Internet and social media playing increasingly significant roles in the lives of children, the Practice has helped to create policies and procedures that set sound boundaries and consequences and has worked with schools to ensure that discipline and other actions are upheld in times of challenge. Areas covered include:

- Applications for admissions
- Admissions procedures
- Enrollment documents
- Student handbook policies
- Disciplinary and honor code policies
- 24/7 conduct policies
- Permission slips, emergency forms, and foreign travel documents
- Due process (honor code procedures) prior to suspension or discipline
- Academic dishonesty policies
- Theft investigations
- Internet and email policies
- Appropriate role of school in custody and domestic issues
- Drug and alcohol policies, detection, and discipline
- Accommodation of learning disabilities
- Reporting child abuse or neglect
- Counselor and teacher confidentiality issues
- Uncooperative parents and guardians
- College reporting obligations
- Transcript and school document release policies

Enrolling International Students and Home Stays

Members of the Independent School Law Practice have extensive experience assisting schools with the attendance of international students. In addition to ensuring the relationship with the international parents, it is important that the school outlines the responsibilities of all parties, including homestay families if applicable. Venable has extensive experience in the drafting of written documents outlining the obligations of all parties. This includes but is not limited to:

- Enrollment agreements addressing international payment
- Permission and authorization forms
- Medical permission forms
- Homestay agreements with families
- Homestay payment procedures
- Homestay procedures for selection and vetting
- Agreements with third-party providers

Local and International Student Travel and Field Trips

Schools that sponsor trips and study-abroad programs must clearly define the rules and liability exposure of all parties involved, including but not limited to parents, students, third-party providers, and the school. The documents that establish the relationship between the parties and a process for ensuring that all details of these trips are addressed create a proactive response should claims be raised against the school. The documents include:

- Student travel protocol
- Permission and authorization forms
- Medical permission forms
- Payment and compliance forms
- Agreements with third-party providers

Summer Camps and Other Auxiliary Programs

Summer camps and other auxiliary programs offered by schools require special focus to avoid legal exposure. Camps often provide activities that are not usually associated with an academic program, such as horseback riding and climbing walls. In addition, “after school” and other forms of auxiliary programming often engage the services of non-school employees. This staffing requires additional screening and often alternative forms of engagement. Documents, policies, and other procedures necessary to ensure a safe program are designed by Venable lawyers. These include:

- Summer camp enrollment forms
- Permission slips for alternative program participation
- Employment documents for minors and other camp employees
- Vetting of non-faculty labor
- Compliance with state and local summer camp rules and obligations

Interpretation of Disability Laws

Laws preventing discrimination on the basis of disability and requiring accommodations for disabled individuals apply to schools, with respect to not only their employees, but also their students and possibly others participating in school programs. Thus, following the Americans With Disabilities Act (ADA) can be a complicated process. The Independent School Law Practice has assisted schools with regard to the ADA as it applies to students, employees, and other individuals in the school community which involves:

- Admission of students with learning disabilities
- Undue burden determination
- Reasonable accommodation
- Facilities and program access
- Allergies and health issues requiring program modifications
- Training of supervisors and administrators in ADA requirements

Sexual and Other Forms of Harassment

For employees and students to perform at their highest potential, their learning and teaching environments must be free from harassment. The members of the Independent School Law Practice work with schools to create proactive policies to prevent unlawful harassment and procedures to address allegations of harassment. In addition to conducting extensive training on this topic, the Practice also provides:

- Policies and procedures for reporting sexual harassment
- Prevention programs and training
- Investigations of claims
- Guidance on confidentiality and privacy obligations
- Disciplinary notices
- Document creation and maintenance

Faculty and Staff Performance and Evaluation Issues, Reductions in Staff, and Retirement Plans

Venable has extensive experience helping schools develop a workforce that best serves school needs. This includes developing and communicating performance incentives, procedures for evaluating and mentoring faculty and staff, and programs allowing for early retirement. Examples of work performed in this area are:

- Appointment, promotion, and tenure

- Termination procedures
- Disciplinary procedures and implementation
- Grievance procedures
- Reduction, rightsizing, and downsizing
- Severance agreements
- Housing loans
- Housing eligibility
- Early retirement programs
- Mentoring and extended educational support
- Incentive programs
- Tuition remission programs
- Education assistance programs

Accreditation

Venable has extensive experience with the accreditation process, including drafting and revision of materials for presentation during an accreditation committee's visit, including:

- Governance procedures
- Compliance with state and federal laws
- Matters associated with best practices in the industry

Social Media, Technology, Electronic Communications, Privacy, and E-Commerce

Social media and technology have become pivotal resources as well as challenges. How students, employees, and the school use social media and technology is a source of liability exposure if the legal implications are left unconsidered. Venable assists in the limitation of liability by counseling schools regarding:

- Drafting and reviewing acceptable technology use policies applicable to students and employees
- Use of school space by third parties for movies
- Review of safety and security issues
- Use of school and personal equipment, networks, and programs
- Compliance with privacy obligations
- Drafting email disclaimers
- Reviewing use of social media for marketing and development
- Ensuring enforceability of online enrollment agreements
- Drafting of e-commerce procedures
- Ensuring compliance with state solicitation laws

Governance

Venable advises clients – including administration and trustees – on the full range of governance-related matters, including:

- Sarbanes-Oxley compliance
- By-law review and design
- Fiduciary duty review
- Audit and auditor selection process
- Compliance with duty of care, loyalty, and obedience requirements
- Confidentiality requirements
- Board minutes, procedures, and meeting policies
- Charter and articles of incorporation drafting and review
- Audit committee policy design
- Governance best practices
- Board consultation and training
- Document retention and destruction policies
- Whistleblower policies
- Intermediate sanctions compliance
- Conflict of interest policies

- Committee structure design
- Codes of ethics and enforcement procedures
- Private inurement and private benefit

Non-Profit Tax, Financing, Investments, and Charitable Giving

We provide support and legal guidance with respect to every major tax and benefit issue affecting independent schools, including, but not limited to:

- Charitable planned giving and bequests
- Estate planning and fund-raising planning
- Investment strategies and compliance requirements
- Nonprofit tax status and issues
- Financial aid programs and tax implications
- Unrelated business income tax planning and structuring
- IRS and state tax defense and audit support
- Banking, lending, and loan issues
- Gift giving and donor obligations
- Form 990 reporting, disclosure, and compliance
- Church status evaluation
- Defense of IRS and state tax audits
- Charitable solicitation, substantiation, and registration requirements
- Sales and use taxation and exemptions

Contract Reviews, Drafting, and Negotiations

Independent schools execute countless contracts and agreements every year, often without having these documents reviewed recently, if ever, by counsel.

Unfortunately, many schools do not realize the rights, responsibilities, and liabilities that are created based on what these documents say and fail to say. An agreement that, in its brevity, is assumed to retain maximum flexibility for a school may have the unintended effect of waiving rights the school otherwise would have had. We review, revise, draft, and assist in the negotiations of the various contracts and agreements that schools enter into, including:

- Food service, cleaning service, technology purchase and support, and other service contract review
- Use of facility and subcontracting process and contract review
- Insurance plans and coverage assessments and review
- Contract dispute resolution

International and Local Partnerships

With increasing frequency, independent schools are partnering with schools internationally. Whether developing an affiliation with another domestic or foreign entity or establishing a standalone institution, schools considering international programs must be mindful of the new legal issues posed by such programs. These include the protection of the school; the compensation, benefits, and taxation of employees working outside the United States; the safety of students and faculty; and the applicability of the laws of the country or countries in which the program will operate. Venable has assisted numerous schools in the consideration of the following:

- International tax implications
- Safety and security issues
- Contracts and agreements
- International trade and establishment compliance
- Enrollment and employment agreements
- Co-venture creations
- Relationship branding

Business Matters

Basic business matters and obligations are a critical part of a school's operations. Venable lawyers are well versed in the business operations of independent schools and have provided assistance with:

- Review and preparation of business and vendor contracts
- Red flag policy drafting and compliance
- Truth in Lending compliance
- Facility use agreements
- Management of investments and endowments
- Collection of tuition and other debts
- Evaluation, interpretation, and assessment of insurance coverage amounts
- Review of director and officer insurance coverage
- Banking, loans, and financial institution relationships
- Intellectual property issues pertaining to copyrights, trademarks, and patent infringement

Real Estate, Construction, and Land Use

Venable's highly respected real estate practice assists independent schools with complex commercial real estate transactions, including:

- Purchase and sale of buildings and property
- Zoning, special exception, and conditional use approvals
- Environmental assessment approvals
- Site location identification
- Relations with neighbors
- Maintaining safe campus
- Land use assessment and approvals
- Construction and building contracts
- Construction and building defect and error resolution
- OSHA review and compliance
- Asbestos review and compliance
- Architect contracts
- Performance management support
- Mechanic's liens
- All facets of green construction and certification
- General contractor contracts

Intellectual Property

A school's name, logo, and branding can be subject to theft unless they are protected. We represent clients in all aspects of intellectual property law protection, including trademarks, patents, copyrights, domain names, technology licensing and transactions, trade secrets, and antitrust and unfair competition. Other work performed in this area includes:

- Copyright protection of logos, branding, and slogans
- Technology licensing and use agreements
- Non-compete and early enrollment issues
- Program, curriculum, and written works protection
- Joint venture branding protection

Royalty Agreements

Schools are looking for alternative revenue sources in addition to ways to motivate both students and faculty. Faculty are encouraged and supported in the development and drafting of curriculum, apps, and other teaching tools. Through classes and other programs, students are offered the opportunity to participate in incubators that encourage the development of creations requiring protection as intellectual property and can serve as the source of substantial financial resource.

The issues arising from these creations become a substantial challenge if not addressed in advance. We represent clients in all aspects of intellectual property protection, including:

- Intellectual property agreements
- Policies for work created by faculty, students, or other employees
- Procedures for obtaining copyright and other intellectual property protections

Insurance Coverage and Risk Management

Venable attorneys successfully counsel clients in a range of insurance matters, including property and casualty, health and benefits, directors and officers, and other relevant plans. The types of services provided include:

- Advice on insurance coverage and claims procedures
- Advocacy on coverage of claims
- Assessment of policy coverage
- Review of directors and officers insurance policy
- Review of liability insurance policy
- Assistance with compliance with plan requirements
- Evaluation of buildings and grounds safety
- Assessment of driver and vehicle licensing obligations and policies
- Travel and foreign trip coverage
- Student athletic risks and policies
- Medical provider liability exposure

Regulatory Compliance and Legislative Advocacy

While independent schools advocate for and articulate the need to operate independently, they remain subject to certain state and local regulatory obligations. Venable can help ensure compliance with these laws while sustaining the independence of the institution by reviewing:

- Legislative and government issue advocacy
- Vouchers
- State and federal financial assistance
- FERPA compliance
- State licensing obligations

Litigation

While the goal is to avoid litigation, there are times when, for a variety of reasons, it is the only option. Venable's team of litigators have a proven track record of vigorously defending our schools while still working to resolve conflicts when it is in the best interest of the school. As a benefit to schools, the firm is able to represent them through their insurance providers when coverage is available, which results in a significant cost savings. Venable's skilled litigators assist schools both with defending against legal claims and with bringing claims to assert schools' legal rights. These include:

- Defense of wrongful discharge claims
- Construction disputes and enforcement litigation
- Wage and hour litigation
- Student discipline challenge defense
- General personal injury liability defense
- Property and neighbor disputes
- Board challenges and litigation
- Enrollment contract disputes
- Insurance enforcement litigation