HOT LEGAL ISSUES:
Proactive Legal Strategies that Hardwire Safe Schools

NYSAIS 2017 Business Affairs Conference
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points of risk

- identify all points of risk
  - identify and implement strategies that mitigate risk

- physical plant

- exposures from new administration

- adults
  - employees, parents, contractors, coaches/tutors, visitors
  - screening, supervising and monitoring actions and behavior while on/off campus

- students
  - current and applicants, alumni, international, visitors
  - vetting, supervising, disciplining and securing safety
immigration, international students and employees
immigration, international students and employees

- impact of administrations policies
  - fewer students traveling to U.S. for school
  - reports by colleges and universities of lower applications
  - impact on SEVIS and ability to obtain visas

- ability to obtain visa for employees
  - more difficult to obtain
  - caution when investing resources

- maintain current I-9 documents
  - use new forms
  - conduct updates and audits

- current students disappearing from schools
  - reporting truancy
physical plant
review of space, facilities & access

- review all areas of the campus
- conduct security audit
- areas
  - Stairwell, off-sight locations, windowed doors
- areas of concern:
  - Isolated areas
  - dorms, locker rooms, doors without windows, stage and changing areas, back stair cases
- entry to property
  - security at the door, signing in and out, name tags when on campus
- cameras
  - where are they located
  - who monitors the tapes
  - do we maintain the tapes
students
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
students

- duty to enroll safe students
- vetting students
  - evaluating carefully all applicants
  - increased vetting of international students
- student visits
- student discipline
  - clear standards of behavior and consequences
- protecting vulnerable students
  - transgender students
- allegations of harassment, sexual abuse and bullying
  - reporting claims
  - investigation of allegations
  - 24/7 or only at school & during school events
  - communicating acceptable standards of conduct
  - discipline policy and reporting to college
- clear policies related to social media and use of technology
transgender students

- New York City “Transgender and Gender Nonconforming Student Guidelines”
  - law governing public schools
- reference made in school policy
  - requires school to comply with “guidelines”
  - failure to comply exposes school to liability
- hot issues for “guidelines”
  - sports and participation in leagues
  - rooming during trips, dorms etc.
  - disclosure to parents
    - Age of student
    - Notice to parents and students of policy
- TRAINING PARENTS AND FACULTY
- INCORPORATE BOARD INTO PROCESS
student vetting

- student injured by fellow student
  - student not admitted if properly vetted
  - drug dealer case – Sold drugs at previous school, expelled, two students at new school purchased from him and became addicted

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

- Google and or Face book search?

- recommendations
  - teachers rarely know full story
  - recent teachers
  - form completed by school administration
    - reason for departure, allowed to return, disciplinary history, discipline on transcript

- ESPECIALLY INTERNATIONAL STUDENTS!!!
international students

- using third party consultants
  - School ultimately responsible for selecting students

- vetting standard
  - minimum = 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 originating school record or report discipline?

- history of ALL schools attended and reason for departure
  - Get specific dates of attendance including month and year
selecting international 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.”
application documents

- **waive access to application materials**
  - subject to subpoena

- **teacher recommendations**
  - contingent upon parent release (receiving)
  - maintain copy, common source, release from parents (sending)
  - mailed/emailed/online from teacher

- **notes (interviews, committee meeting, visit)**
  - caution writing comments
  - avoid inappropriate statements
  - train all parties

- **transcripts**
  - sent directly from school

- **do not write on any application “document”**
  - application, recommendations etc

- **communication with applicant, parents etc.**
  - texting, email, Facebook
  - follow school policy
application release

- authorize access to student information
  - permission to speak with former school

- information true, accurate, and complete
  - false, incomplete, omitted or misleading information given on application or during the application process may result in a refusal to admit or dismissal in the event of admission

- waive access to application documents
  - teacher recommendations, meeting notes, financial aid decisions, calculation methods

- decisions based on a wide range of considerations
  - solely and exclusively determined by school
  - submission of application does not guarantee admissions
visiting applicants and interviews

- permission form completed prior to visit
  - known allergies (bee sting, peanuts)
  - limitations in activities (asthma)
  - who will pick up from school
  - if plan on using pictures, get waiver
  - emergency contact information
  - other emergency permission (permission to treat)
  - risk to him/herself or others
  - if known issue have adult remain
    - diabetic, seizure, other medical issues

- international or domestic interviews off campus
  - Skype: confirm applicant

- inform candidates if interview during visit
  - who is in interview
enrollment agreement

- Parent responsible for costs & legal fees
  - Document subpoena, testimony of employees
  - Collection of tuition or challenges to contract
  - Challenges to student discipline
- removal of student resulting from behavior of parents, guardians, or other minors or adults associated with a student
- reporting of discipline to college or university
- age of majority
- discretion to determine accommodations
- International students
  - instructions to obtain assistance if difficulty with English (written in foreign language)
  - cover costs if student returned to home country
document retention and destruction

- requesting access to admissions documents
  - custody battles, failure to admit, financial aid challenges
- do not release without subpoena
  - open door to other releases
  - breach of privacy
  - confirm enforceability of subpoena
- document retention and destruction policy
  - what documents?
    • financial aid records, teacher recommendations, notes, applications, testing & records
  - why do we maintain a specific
  - how long are documents maintained
  - where do we keep them
    • 3rd party vendor
ADULTS
contact with adults

- school owns adult’s behavior by giving access to students
- school’s responsibility to ensure adults are “safe”
- steps to ensure adults are safe
  - vetting, training, communicating expectations, monitoring, evaluating, terminating
- consider all adults in contact with students
  - employees ~ parents
  - visitors ~ tutors
  - substitutes ~ coaches
  - contractors ~ construction employees
  - food service ~ cleaning services
  - neighbors ~ international guardians
  - alumni ~ home stay families
  - tae kwon do guy ~ 3rd party international vendor
ADULTS: parents, visitors, neighbors
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
parents, guardians & relatives

- do we “vet” parents, guardians & relatives?
  - proper vetting would reveal danger

- difficult issue
  - message to applicant families
  - impact on applicant pool

- parents on offender registries
  - come on campus, notify community, allow play dates

- responding to signs of bad behavior
  - suspicion of abuse; children’s services reporting
  - appearance of being under the influence
  - close relationship with student not his/her child
  - drinking parties at homes

- visits by adults associated with student
  - grandparents, estranged parent, step parent

- assure each student has responsible adult
  - identify, vet and confirm existence and contact info
vetting of parents, guardians & relatives

- criminal background check
- driving record
- sex offender registries
- social media searches
- references from community members
- question on application:
  - parent or other adult associated with this applicant convicted of a crime involving inappropriate contact with a minor
- consider as part of check with previous school
  - information that may impact student safety
  - behavior of parent
- consult school history if alumni
adults miscellaneous

- **neighbors**
  - checking offender registries of neighbors
  - Notice to families, other actions to protect students

- **facilities use - renters**
  - use of pool, gym, other facilities
  - security and vetting of visitors

- **entry to school - visitors**
  - establish screening standards
  - screening machine
    - background check based on driver’s license
    - generally just sex offender registries
  - badges or other name tags
  - sign in forms
  - purpose of visit and chaperoning to destination
ADULTS: hiring and vetting process
hiring process

- **goal of vetting process**
  - Tighten the net so no one slips through
- **even if applicant from search consultant**
- **carefully review entire process**
  - from start to finish
  - policy outlining process
- **ensure consistency**
  - Central oversight to
  - HR office maintains all documents and checklist
  - consider training on hiring/interviewing
- **application**
  - complete application at very start of process
  - In addition to application
  - On-line
  - Compliance with state laws
  - Signature confirming information accurate and complete
vetting process

- **criminal background check**
  - # of years (5, 10, 15) based on residency
  - State, federal and “crime guard (central data base)
  - Standard for rejection
    - Type of offenses, # of years since offence
    - FCRA if used as basis for decision

- **social security check**
- **credit check**
- **driving record check**
- **sex offender registries**
- **reference checks**
  - Maintain tracking form
  - Central list of questions

- **education verification**
- **work history**
- **teacher license forfeiture**
- **social media check (Google, face book, rate my teacher)**
ADULTS

managing employee relationship
Employees: Managing the Relationship

*Ok, they are here – now what?*

- Managing/supervising the employment relationship helps ensure safety in the community
  - Best employment practices; safe choices from safe employees; weed out those who cannot promote safety in the community

- Use the tools in your Management Toolbox
  - Workplace conduct training
    - Boundaries; harassment
  - Documents that set expectations
    - Employment agreement; employee handbook
  - Performance management
    - Supervision
    - Evaluations/reviews, discipline, plans, counseling

- Recognize common employee issues
  - Internal (poor performance, attendance, student boundaries)
  - External (inappropriate conduct/social media presence)
A Focus on Student Boundaries

- There are rarely “one size fits all” rules/approaches
  - Consider your culture, community, student ages
  - Written policy + training
    - Think about the “hard” lines you want to draw v. guidance and education you want to provide
      - E.g., social media relationships with students

- Encouraging our employees to think/consider factors at play
  - Perception v. reality
    - The former can be equally damaging
  - Context (where, when, why)
    - A text during the day v. at night
  - Relatable v. inappropriate
    - Jokes
  - Ages & genders
    - Sitting on laps (age is relevant)
  - The mode of communication
    - The texting coach
Student Boundaries Continued

We need employees to think about their actions (and the consequences)

- **Verbal language**
  - “Fingering safari”

- **Body language**
  - “Elvis Pelvis”

- **Physical/personal space**
  - Leaning over shoulders to view computers

- **What mediums of communications they use**
  - Cell phone, text, school/personal email

- **Social media**
  - Guidelines on use
    - Connections with students and former students
    - When private lives become public

- **School-sanctioned platforms (e.g., Google Classroom)**
Managing Performance

**Documentation that governs the relationship**
- **Employment agreement**
  - An agreement to perform as anticipated and abide by policies
  - An avenue for removal
  - Non-renewal can be used as an incentive for performance improvement; contingencies on renewal
- **Employee handbook**
  - Policies governing acceptable technology use, student boundaries and safety
- **Stand-alone policies**

**Performance management tools**
- Supervision
- Review/evaluation
- Coaching/counseling
- Note to file
- Written warning
- Performance improvement plan
Service Providers

- **Who?**
  - Our employee/auxiliary service providers (e.g., tutors, coaches)
  - External providers (e.g., other tutors, after-school yoga)
  - Contractors (e.g., food services, construction)
  - Employee-plus (e.g., she teaches and babysits)
  - *Different positions may fall into different categories (the night-time cleaner may be an employee or a contractor), or two people in the same position may fall into different categories.*

- **Nature of the Relationship**
  - **Employee v. independent contractor**
    - Liability: tax, benefits
    - Documentation: employment agreement v. contract for services
    - No bright-line test, or single dispositive factor
      - All tests weigh all factors (e.g., who has control over scheduling and work, who provides tools for work, how person is treated and paid, documentation used)
        » *Primary factor = CONTROL*
        » *We often have tutors, coaches, & others that may fall on both sides of the fence*
  - **Who is really involved?**
    - Is the relationship really between us and the service provider, the parents and the provider ...
When the Relationship Ends …

- A few key tips (regardless of employee/contractor classification)
  - Take the computer! Immediately!
  - Take all security access devices (keys, key-cards)
  - Retrieve and change all passwords and codes
  - Block access where possible
    - For employees especially, this may require escorting them out, and finding an alternate way to gather/retrieve personal belongings
  - Issue a reminder of the confidentiality obligation
  - Discuss further contact with students
ACTIVITIES
overnight trips: local and international

- permission forms are only one part of protecting students
- establishing a clear program that establishes process for designing a trip
  - from start to finish
  - make sure every trip follows the guidelines
  - identify points of risk
  - sleeping arrangements
  - background check chaperones
  - vetting of international consultant that is running the trip
  - camping arrangements
  - homestays
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