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

Caryn Pass, Presenter
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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
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

Wise In The School World
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
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 3\textsuperscript{rd} party
  - Failure to vet 3\textsuperscript{rd} party
  - \textit{Documented relationship with 3\textsuperscript{rd} 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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