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NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS (NAIS) 2018 ANNUAL CONFERENCE

East Meets West: Local and National Legal Trends to Follow or Avoid

3/8/2018

PRESENTED BY:

Michael Blacher & Susan Schorr

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National Association of Independent Schools (NAIS) 2018 Annual Conference
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Fusion Framework

- Understand that for students and employees from out of your state, expectations may be different, based on their home-state laws and regulations
- Make sure school policies conform to law applicable in your state and understand when deviation (more or less strict) OK
- Best practices: learn from each other, but...be wary of cultural (mis)appropriation



Seven Course Fusion Meal


1. Gender and Roommates
2. Marijuana on Campus
3. Employee References and "Pass the Trash"
4. Student Sexting
5. Student Travel Waivers
6. Arbitration
7. Transparency in Employee Discipline



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1. Gender and Roommates



- Legal Framework: schools as places of public accommodation
 - Check if your state law includes gender identity as a protected class (approximately 20 states)
- For all schools: use of pronouns, single use bathrooms, locker rooms
- For boarding schools: room visitation policies, gender neutral dorms
- Student Travel: room assignments

2. Marijuana: Recreational and Medical

- Still lots of uncertainty based on federal law:
 - Marijuana is a Schedule 1 drug per the DEA
- At state level, different approaches to recreational/personal use:
 - Legalization
 - Decriminalization
- Still illegal for most K-12 students (if under age 18 or 21)



2. Marijuana: State Law Trends




- Illegal to possess or use on school grounds when children are present
- Fines for public consumption
- Medical marijuana:
 - Managing use and effects when on campus
- Testing
- **Bottom Line:** Most schools still ban all use on campus

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3. Employee References

- Old School: Letters of recommendation
- Less Old School: Verify dates of employment
- Now: Pro-active alerts about sexual misconduct toward students:
 - If subject of an investigation unless allegations found to be false
 - Discharged, non-renewal of contract, resignation pending allegations
- Sexual misconduct includes grooming behaviors




3. "Pass the Trash"

- Reporting obligations to state agencies even if teacher not licensed:
 - Child welfare
 - Department of Education
- Fines imposed for failing to report (up to \$10,000 in some states)
- How to let subsequent school know?



4. Approaches to Sexting


- Child pornography and a felony
- Romeo and Juliet (or close in age) carve outs for teenagers
- Transmission of multiple images within 24 hours counts as one offense
- Penalties differ based on image of nudity versus image or video of sexual conduct



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4. Approaches to Sexting

- Disclosure to school counselor may not be protected by privilege
- Mandated reporting obligations




5. Student Travel Waivers

- Be specific about risks, but not too specific
- Consult government travel alerts (CDC, State Department) close in time to planned travel and inform students and parents of any travel warnings
- Make sure information provided to parents is accurate (double and triple check any internet resources)



5. Student Travel Waivers


- Schools cannot waive liability for "gross negligence" (most states agree)
- Release provision must be distinguishable from other sections:
 - Printed in a different typeface from the rest of the form
 - Not buried in the middle of a document
- If (minor) student signs, be careful to have parents sign and on behalf of their minor children



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6. Arbitration – Advantages

- Privacy/confidentiality
- Control over proceedings
- Limits on discovery
- Finality and limited appeal rights
- Often speedier resolution than litigation
- Perception of smaller damage awards than juries
- Waiver of class actions




6. Arbitration – Disadvantages

- Arbitration can be as expensive as court
- May be less likely to prevail on dispositive motion
- Limited appeal rights if bad decision
- Not all insurance policies cover arbitration
- Continual challenges to enforceability
- Same remedies as in court



7. Transparency in Employee Discipline

- What must or should be confidential?
 - IRS – Tax Code Section 162(q)
 - #MeToo
- Traditional board guidelines
- Public announcements
 - Confidentiality
 - Defamation
 - Interference with contract
- Addressing false or misleading statements



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Thank you!

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