YOUR SCHOOL

YOUR LEGACY

National Association of Independent Schools
School Policies

aligning your documents

with legal trends

best practices

and your mission
Legal Education & Support

• NAIS online resources
• NAIS Bulletin: Legal Tip of the Week
• Webinars
  – March 25: Trips & Travel
  – April 22: Conversation Series/Legal
  – May 7: ADA
• Direct support calls
  – Legal@nais.org
  – Not legal advice
Have a question you want NAIS to tackle? Email us (Legal@nais.org)

No one knows better about what is happening at schools than YOU.
Before we delve into policy trends ...

Please stand if you are an independent school lawyer
General Trends

More paperwork/more robust contracts

- E.g., documentation related to student mental health; risk management; permissions for trips, travel, activities, and rides home from school (e.g., rideshare); enrollment agreements

Manage expectations and build in flexibility and discretion for the school

- If you want community members to know something; if there are consequences → say it

Higher scrutiny of paperwork/increased focus by community members and schools

- People are reading (this is a good and bad thing), although not always what we want them to (new trend of incentivizing employee handbook review)
- Schools are dusting off documents and rethinking what should be in writing and how it should be written
### Policy Review Considerations

<table>
<thead>
<tr>
<th>Document coordination</th>
<th>• If you say one thing in the handbook, please do not say if differently elsewhere or otherwise create inconsistent policies</th>
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<tbody>
<tr>
<td>Consider a master list or lists of written policies and protocols</td>
<td>• Handbook TOC, athletic department policies and protocols, leave of absence documents, etc.</td>
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</table>
| This is not a one-time, one-shot process | • Policies should evolve with the school, the law, and best practices  
• One-time/one-shot tends to be overwhelming |
| Different schools have different approaches | • Policy owners; policy committees  
• Pros and cons to different approaches – what is practical and workable for your school? |
| Whatever you do, be thoughtful | • Learn from each other, third party services, and law firms, but please do not just cut and paste  
• Different jurisdictions, practices, philosophies, missions |
Enrollment Contract Review

**Document Coordination:**
This rule applies here too!

**The Law:**
Do not say you are withholding transcripts for failure to pay if your state prohibits it.

**Your Practices:**
You may *want* signatures from *everyone*, but is that reasonable?

**Your Culture:**
What can your community handle & how can you help?
Document Review: When & How

Annually (ideally, especially with enrollment)
- Document what worked/didn't work throughout the year
- Pick the date/time-frame you want the document finalized and work backward to make a schedule

Spring/Summer is a great time to start policy work

Summer/Fall is a great time to start enrollment work
- Have one person who can loop in the correct parties
- Admissions, Business Office, Head of School, Attorneys

Be strategic about when you loop in your attorney. Do not look for her to rubberstamp it! She will break your heart.
Include any universal (or semi-universal) policies in the handbook.

Consider separate guidelines for different types of trips:
- Or, even better, trip-specific guidelines
- Call/text protocol
- Bed check
- Alcohol
- Bathrooms
- Immunizations

Consider whether the trip would benefit from chaperone agreements:
- Including volunteer liability waivers for international & domestic-plus

Do not assume that “common sense” will guide all actions!
Major Policy Trend: Mental Health Policies

- Counseling policies
  - Why they are here: Collaborate and share info on a need-to-know basis

- Consent for mental health assessment
  - Independent evaluation
  - Access to student’s doctor

- Medical Leave
  - Return decision is ultimately in the school’s discretion

- School protocols
Trends Impacting Contracts *and* Handbooks

- **Parent Comportment**
  - Be kind & respectful/shape up or ship out

- **Custody & Communications**
  - Provide relevant documentation
  - Keep the school informed
  - Handbooks only:
    - Starting to see schools sketch out language about how/to whom they communicate
      - May be impacted by law, custody order, policy, payment status – check with your lawyer first!
Trends Impacting Contracts and Handbooks Continued

• **Immunizations & Communicable Diseases**
  – Student immunization (handbook, standalone, enrollment) and communicable diseases policies
    • Outline requirements/process; reserve the right to exclude
  – If state law requires teacher immunizations, you may have a policy in the employee handbook
  – Hepatitis B policies
  – Certain trips may warrant a vaccine requirement, and you might add this to chaperone documents
    – *Force Majeure*

• **Students 18+**
  – Handbook and enrollment
Enrollment Contract Trends

• More robust!
  – Gone are the days of the “spit-handshake.”
  – Sometimes this means managing community expectations
  – “Nuts & Bolts” (parties, tuition, deposit, signatures, etc.), plus belts, suspenders, bells, whistles

• Evolving language about handbooks
  – To abide or not to abide? Careful, we do not want the handbook to become a contract as well!
  – Whatever you and your attorney decide, please mention the handbooks

• Evolving language about trips and activities
  – Is your liability waiver compromising the enforceability of your contract?
Enrollment Contract Trends Continued

Consequences for failure to pay
- Reserve rights; make sure they are legal!

"Dry Cleaning Clause"
- Drag us through your mud, you pay for our dry cleaning!

Separation rights
- The school has ultimate discretion
- Possible acceleration of payment
Handbook Trend: Focus on Respectful Conduct & Boundaries

Equality and fair treatment policies

• Employee and student handbooks

Boundaries/conduct policies

• Employee Handbook: trending away from the exhaustive conduct list (no online gambling) and toward strong statements about professional boundaries with community members
• Student Handbook: may take many different forms and is often a compilation of policies
  • Renewed focus on “respectful speech”
  • In line with school philosophy and culture; reinforced through training
Student Handbook Trend: Evolving Discipline Policies

- Seeing a move away from multiple steps
  - Not all school cultures can handle this shift

- Evolving jurisdictional philosophy
  - What conduct do you monitor and do your policies reflect that?

- New language regarding the refusal to participate in an investigation
  - Reserve the right for consequences
### Student Handbook/Policy Trends Continued

<table>
<thead>
<tr>
<th>Trend</th>
<th>Details</th>
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<tbody>
<tr>
<td>Decline in standalone AUP policies</td>
<td>• Formerly: solo policy, agreement, handbook</td>
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<tr>
<td></td>
<td>• Increase in “sexting” as a specific AUP reference</td>
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<tr>
<td></td>
<td>• Educate students (don’t do it) and reserve the right for the school to take action</td>
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<tr>
<td>Decline in consent policies</td>
<td>• Increase in consent education</td>
</tr>
<tr>
<td>Increase in policies/agreements related to student departure</td>
<td>• Rideshare language, specifically</td>
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Bonus Trend: Reference Policies & Document

- Actually do a reference check
- Control references at the school
- Reference form
- Permission to collect references