



Independent School Law

Wise in the School World

VENABLE LLP

Our Experience

Independent School Law

Venable's Independent School Law Practice represents schools nationwide. Aware of the impact culture has on the health and sustainability of the industry, this focused practice group provides advice consistent with a school's mission and principles. We represent schools of all sizes, denominations, philosophies, and locations, helping them meet their ever-increasing challenges.

Our lawyers work as partners with clients, advising them on a number of levels, as they seek not only to respond to current legal issues, but also to identify problems before they arise. Our attorneys are a team of skilled, experienced professionals. Extensive and regular interactions with independent schools provide our practice group 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 setting for school employees and a nurturing learning environment for students. Assisting schools with 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

Litigation

While the goal is to avoid litigation, there are times when, for a variety of reasons, it is the best or only option to protect the school. Venable's team of litigators has 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 help to defend against

legal claims and bring claims to assert schools' legal rights. These include:

- Defense against 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

HR, Wage and Hour, and Independent School Audits

The most effective strategy in avoiding legal exposure is to identify areas that may lead to liability and take the actions necessary to reduce risk. The Independent School Law Practice regularly conducts audits that assist schools in risk management. These take various forms, including reviews of human resources policies, wage and hour and payment practices, and legal issues throughout the school. As part of the audit, a report is drafted that identifies the issues of concern, suggests methods for improvement and correction, and outlines the steps the school can take, in order of priority.

Allegations of Sexual Abuse of Current Students and Alumni

It is imperative that schools act in a proactive and strategic manner when addressing allegations of sexual abuse raised by current students or alumni. Failure to respond appropriately can result in substantial legal liability and cause serious harm to the school's reputation and relationships with the community. Actions taken by the school before, during, and after the filing of allegations can substantially impact the school's success in maintaining its reputation and relationships and limit liability. The Independent School Law Practice assists clients in the following manners:

- Creation, review, and revision of policies and procedures that address relationships and

interactions between students, as well as students and employees, with specific attention to strategies for avoiding such behavior

- Creation, review, and revision of procedures for responding to allegations of abuse, including the process followed in internal investigations
- Development of a crisis management plan for responding to allegations of misconduct, including the identification of an external investigator, a crisis management consultant, and an internal task force
- Consideration of proactive steps for reaching out to the school community prior to the reporting of allegations
- Training of staff, students, and other members of the school community related to boundaries, appropriate behavior, and methods for protecting the student body

Transgender Members of the School Community

As students and adults in the school reflect upon their gender and gender identity, schools are asked to consider the ways in which they will respond and methods for creating safe spaces. The process is not always easy, and the numerous related issues can become overwhelming if they are not addressed in a mindful and thoughtful manner. The Independent School Law Practice helps clients consider the various elements of the school that are impacted by the inclusion of transgender individuals and works with them to navigate the creation of policies, procedures, and ways to ensure a safe space consistent with the school's culture and mission.

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 relations, including labor contract negotiations
- Workers' 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 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), Section 457(b), and 457(f) plans

- Health insurance, life insurance, and other benefit plan reviews
- Short-term and long-term disability plan reviews
- Cafeteria plans
- Education assistance plans
- HIPAA compliance
- Split-dollar life insurance
- Compliance with healthcare reform obligations

Executive Compensation, and Drafting and Design of Head of School Contracts

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 proficient 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

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 stand-alone institution, schools considering

international programs must be mindful of the new legal issues they pose. 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:

- Co-venture creations, financing and compliance
- International tax implications
- Safety and security issues
- Contracts and agreements
- International trade and establishment compliance
- Enrollment and employment agreements
- Salary and employment practice compliance
- Curriculum, intellectual property, and branding protection
- Relationship branding

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 Homestays

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 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 independent 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 not only to their employees, but also to 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

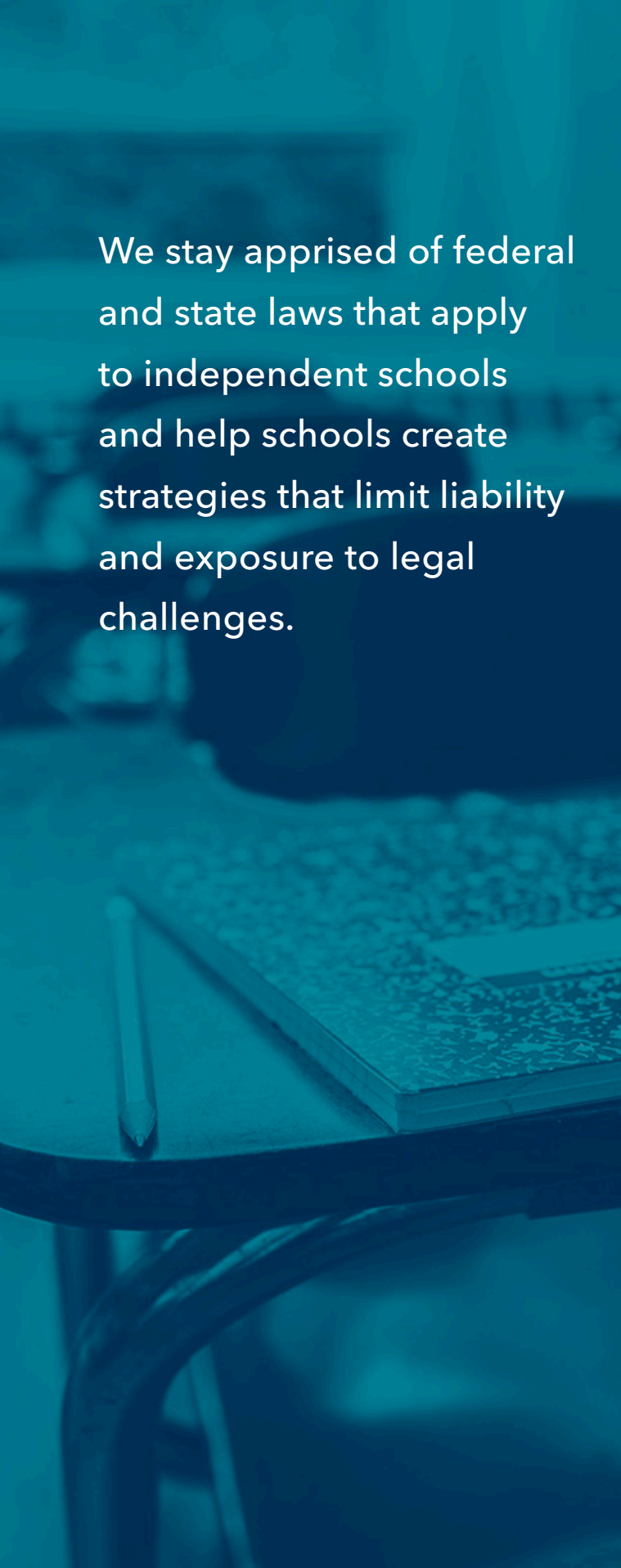
For employees and students to perform at their highest potential, their learning and teaching environments must be free from harassment. The members of the Independent School Law Practice work with schools to create proactive policies to prevent unlawful harassment and procedures to address allegations 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

Employee Performance, Evaluations, 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



We stay apprised of federal and state laws that apply to independent schools and help schools create strategies that limit liability and exposure to legal challenges.

- 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 can be 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
- Bylaw 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
- Drafting and review of charters and articles of incorporation
- 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

Labor Relations, Negotiations, and Counsel on Organized Employees

While not common, there are schools whose employee base has organized and is represented by a union or other entity. These situations often result in challenges when attempting to control the workforce and achieving the school's educational mission. Working with the bargaining unit is often challenging but must be addressed carefully, so as to avoid subjecting the school to unfair labor practice charges and other actions that could limit the school's flexibility. Venable has substantial experience in this area and has assisted schools by:

- Providing counsel on implementing the collective bargaining agreement
- Advising on strategies that provide flexibility
- Assisting in the negotiations of the collective bargaining agreement

- Representation of the school in defending unfair labor practice charges

Nonprofit 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 fundraising 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

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 Act 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

Mergers, Acquisitions, and Strategic Alliances

Legal considerations are critical when deciding if one school should combine, affiliate, or form strategic alliances with another school or acquire its assets. The different legal paths to school combinations often impact operational and educational decisions, including integration of curriculum, staffing and facility needs, and decisions about governance and leadership. Venable helps schools comply with the various federal, state, and sometimes local laws that may impact how schools analyze risk and navigate

strategies when considering a merger or consolidation, acquisition of assets, closures, or other strategic alliances. This often includes:

- Conducting due diligence and a review of potential liability exposure
- Compliance with applicable state and local notice and filing laws
- Dissolving or forming a new corporate entity
- Negotiating and drafting formal agreements
- Reviewing the potential impact on governance structures, bylaws, and policies
- Assessing and protecting property rights and ownership, including real property, endowment funds, and intellectual property
- Analyzing employment law issues
- Considering parent, student, and alumni relations

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 a 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 curricula, 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 resources. 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

Antitrust and Anti-Competitive Conduct

Venable brings years of experience with complex antitrust issues and the hard realities of government investigations and litigation. Venable's education attorneys represent schools on a wide range of antitrust matters, including:

- Investigations
- Litigation
- Compliance and audits
- Mergers and acquisitions
- Best practice policies
- Association breaches obligation

Venable's Independent School Law Team



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Caryn Pass has represented independent schools for over 25 years. As a partner in Venable's Independent School and Labor and Employment practices and as chair of Venable's Education Practice, Caryn advises independent schools nationwide on a wide range of legal issues. She tracks trends specific to independent schools and develops and promotes industry best practices. Caryn works with schools on legal issues—involving students, parents, employees, trustees, boards, donors, alumni, neighbors, and vendors—by establishing policies, procedures, and strategies that promote positive working and learning environments while limiting potential liability exposure. A problem solver and strategic thinker, Caryn's goal is to reduce liability exposure while meeting the needs of the school.

Caryn provides legal counsel and strategic guidance to independent schools on legal issues including employee matters, student discipline, safety and risk management, enrollment and employment contracts, handbooks and policies, board governance, head searches, and transitions. She has extensive experience in assisting schools in navigating alumni abuse matters as well as allegations by current students. Caryn advises on the proper use of technology and social media, wage and hour compliance, employee and student discipline, admissions, investment and financial issues, FMLA, performance evaluation design, and employee termination. She oversees investigations involving students, employees, and other members of the school community; reviews employee and student handbooks; develops emergency preparedness plans; and works with experts in the assessment of campus security. Caryn designs and reviews by-laws and governance policies and works with boards to establish good governance through training and strategic planning. Working collaboratively with school leadership, Caryn is committed to advancing the mission, priorities, and culture of institutions while meeting business needs and mitigating potential liability.

Caryn speaks for regional and national associations that support independent schools on the many legal issues of concern to independent schools and is consulted by associations and others on legal and strategic matters in the industry. Caryn is well known for her commitment to mentoring, supporting, and developing the next generation of independent school leadership and assists in developing transition plans and strategies for ensuring the new head's success. She is the 2016 recipient of the Sarah Daignault Award, given by the National Business Officers Association to those who have consistently given generous support to independent schools and their business officers.



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Grace Lee is a seasoned independent school law attorney who partners with schools to provide legal guidance and tailored advice to advance the mission, priorities, and culture of institutions while meeting business needs and mitigating legal and reputational risk. Grace draws on over 20 years of experience within the independent school industry to help schools manage complex issues, offer creative solutions, and work proactively to meet standards of best practice.

Grace partners with schools of all types and sizes across the country on a broad range of issues, including employee discipline and performance management; student safety, health, and disciplinary issues; board governance; and various compliance and regulatory matters. Grace both conducts and supports schools through internal investigations, internal human resources compliance audits, and allegations of sexual abuse or misconduct. She develops key documents used by independent schools, such as employment contracts, student enrollment contracts, vendor agreements, employee and student handbooks, travel forms, head of school contracts, DEIB policies, counseling department policies and forms, housing agreements, and summer camp documents. Grace provides training and guidance to boards regarding governance best practices, and reviews board documents such as bylaws, conflicts of interest policies, codes of conduct, and whistleblower policies. She also conducts training for faculty and staff on harassment prevention, appropriate boundaries with students, mandatory reporting obligations, and professional conduct.

Grace previously served as vice president, legal affairs, with the National Business Officers Association (NBOA) and continues to serve as NBOA's legal counsel. Grace is a frequent speaker at NBOA conferences, a contributor to *NetAssets* magazine, and an author of several white papers and the book *Culture Meets Compliance: The NBOA Guide to Assessing Human Resources at Independent Schools*. Grace is also actively engaged with the National Association of Independent Schools and other state and regional associations.



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Janice Gregerson partners with independent schools to ensure they maintain compliance with federal, state, and local laws, as well as industry best practices, in order to minimize operational and reputational risks, and maintain a safe and productive learning environment. Janice draws upon her litigation experience to devise practical solutions for routine and complex issues. Deeply familiar with each institution's operations, mission, and culture, and through years of partnering extensively and directly with independent schools, she is able to anticipate evolving needs and craft solutions that go beyond simple problem solving to help schools fulfill their missions.

Janice is experienced in counseling schools on such issues as student safety, welfare, and discipline; managing the parent-school partnership; and managing employee conduct and performance issues, such as the maintenance of appropriate professional boundaries. She advises schools on the development

and implementation of hiring practices, including conducting background and reference checks. Janice also conducts and supports schools through investigations into allegations of harassment, discrimination, abuse, and misconduct. She drafts, reviews, and revises policies and documents routinely used by independent schools, including student, employee, and board handbooks; faculty and staff employment contracts; head of school contracts; travel documents; bylaws; codes of conduct; enrollment agreements; vendor contracts; and facility use agreements. She provides training for schools to ensure understanding of the school's policies, including training on faculty and staff harassment prevention, professional conduct, conflicts of interest, and mandatory reporting. Additionally, she conducts internal reviews of human resources practices and develops Diversity, Equity, Inclusion, and Belonging (DEIB) initiatives and policies.



Ashley Sykes
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As a member of the Independent School Law team, Ashley advises independent schools on all types of employment issues, from hiring and background checks to wage-and-hour issues, leave and accommodations, and discipline and separations. She also works with administrators to develop policies involving students, parents, alumni, trustees, and employees, particularly concerning interpersonal conduct, student safety and welfare, and discipline. Ashley regularly reviews and drafts vendor and employment contracts, head of school contracts, student and employee handbooks, travel documents, enrollment agreements, facility use agreements, and other documents to make sure everything is legally sound and in line with her clients' missions and cultures.

During the COVID-19 pandemic, Ashley interpreted developing legislation and guidance at the federal, state, and local levels related to school closure and reopening, paid sick leave, vaccinations, and health and safety protocols for in-person learning. Using that information, Ashley and the Independent School Law team helped independent schools to navigate the COVID-19 pandemic and return to in-person learning while ensuring the health and safety of their students, faculty, and staff. The team also regularly advises on Diversity, Equity, Inclusion, and Belonging (DEIB) initiatives and policies, internal reviews of human resources practices, and managing the parent-school partnership. Ashley also contributes to in-school training for faculty and staff on harassment prevention, maintaining appropriate boundaries with students, professional conduct, and mandatory reporting.

Independent School Law Report Card

As independent schools prosper and develop, ensuring compliance with best practices becomes a higher priority. As fiduciaries responsible for fiscal resources, schools have begun to thoroughly assess their operations as they relate to legal issues. When conducting such reviews, it is imperative that the school act consistently with its culture and mission to achieve sustainability by building best practices. The Independent School Law Practice at Venable is well versed in the operations of educational institutions. We stay apprised of federal and state laws that apply to independent schools and help schools create strategies that limit liability and exposure to legal challenges.

Venable's Independent School Law Practice offers a review of the school's policies, procedures, and practices known as the "School Law Report Card." The objective of the School Law Report Card is to determine whether the school's operations are in compliance with federal and state law and best practice in the independent school industry. We create the Report Card by collecting information through interviews and review of documentation at an on-campus visit. After we have assembled the necessary information, we evaluate and draft our findings and recommendations in a written document.

When designing the Report Card document we find it helpful to create a list of actions to be taken, organized by priority, along with a timeline for completing the work. Since time and funds are not unlimited, these two factors must be calculated into the timeline for completing the proposed projects. Not only does this allow for a more effective and thoughtful process, but it

avoids the "shock" that sometimes occurs with change. Since policies and practices do not become out of date overnight, they should not be updated overnight. If the goal is to ensure that the school is meeting best practices, this can be achieved only if changes are made in a thoughtful and integrated manner, with careful attention to all details.

After we have obtained the necessary information, we will provide a Report Card, which is an evaluation of where current policies stand with respect to legal compliance and best practices. We would then work with the members of your team to design a strategy that specifically addresses the needs of your school. The strategic plan would be designed with consideration of the areas of weakness that are identified during our assessment, the priorities and needs of the school, future goals of the school, budget, and timing. Our recommendation would also be mindful of the fact that certain documents and policies interact and build upon one another, and require attention at different times of the academic year. For example, while an updated employee handbook is a crucial document, it is often wise to roll out the new handbook in conjunction with a training session on new policies and workplace conduct. Likewise, if the existing teacher contracts incorporate certain provisions of an existing handbook, timing may affect implementation of new policies.

School Law Report Card Checklist

Governance

- Bylaws, Charter and Article of Incorporation Review
- Audit Committee Creation
- Conflict of Interest and Codes of Conduct
- Gift Receipt Policies
- Governance Best Practice and Board Consultation
- Whistleblower Policies
- Policy and Process Procedures for Board
- Creation of Committee Descriptions and Design of Best Practice
- Training and Presentations for Proper Governance
- Intermediate Sanctions Compliance
- Minutes and Maintenance of Board Documents
- Proper Procedures and Practices During Board Meetings

Insurance Coverage

- Review Insurance Coverage for Adequate Coverage Amounts
- Review Insurance Coverage for Adequate Language Inclusion
- Review Insurance Coverage for Adequate Policies

Executive Support

- Head Contract Review
- Deferred Compensation Advice
- Comparable Salary Assessment
- Intermediate Sanctions and Rebuttable Presumption Compliance
- Tuition Remission
- Housing Compliance Issues

Document Compliance, Maintenance, and Retention

- Document Retention/Destruction Policy
- Review of Sarbanes-Oxley Act Compliance
- I-9 Records

- Individual Personnel Files Maintenance
- Contents Review
- Length of Time Retained
- Payroll Information
- Recruitment, Application, and Hiring Process Records
- Employee Benefit Plan Records
- Affirmative Action Plan Compliance Records
- Workplace Injury Records
- Termination and COBRA Compliance Records

Information Gathering

- Description of Any Pending Employment-Related Litigation, Including Allegations
- Total Number of Employees, Full-time, Part-time, Faculty, Staff
- Total Number of Students

The Hiring Process and Related Issues

- Review of Recruitment
- Employment Application
- The Interview Process
- Is There a Written Hiring and Interview Procedure?
- Is There a Standard Applicant Evaluation Form?
- Are Colleagues Trained on Interviewing Skills?
- What Records Are Maintained That Identify the Sex, Race, Age, National Origin, Disability, or Other Protected Status?
- A Review of Pre-Employment Inquiries That May Appear Benign, but Implicate Legal Issues
- I-9 Employment Verification Process
- Review of Any Testing Done as Part of the Hiring Process
- Aptitude or Skill Testing
- Polygraph
- Drug/Alcohol Testing for Bus Drivers
- Reference Checking Procedure
- Fair Credit Reporting Act Compliance
- Criminal Background Checks
- Offers and Rejections of Employment
- Review of Employment Agreements
- New Hire Reporting Requirements
- New Hire Orientation Process



Performance Evaluations and Training for Supervisors on Conducting Evaluations Discipline and Discharge

- Review of Policy and Process
- Review Discipline Forms

Compliance with Americans with Disabilities Act (ADA)

- Review Job Descriptions
- Review Process for Determining Reasonable Accommodation
- Review Available Leave Policies to Ensure Compliance with ADA

Compliance with Family and Medical Leave Act (FMLA)

- Review FMLA Notice Letter
- Review Procedure for Designating Leave as FMLA
- Review Procedure for Requesting Medical Certification, Re-certification, and Fitness for Duty
- Coordination of FMLA, Workers' Compensation, Short-term Disability, and Other Leave Policies

Review of Employee Handbook/Faculty and Staff Policies

- Review for Compliance with Applicable Federal, State, and Local Laws
- Ensure that Handbook Reflects School's Practices, Policies, and Culture
- Review At-Will Employment Language
- Review Acknowledgment Form
- Acceptable Use Policies and Use of Technology

Compliance with USERRA

Determine Applicability of HIPAA and Review Compliance

Review of Any Other Benefits Offered to Employees

- Tuition Reimbursement/Remission
- Child Care
- Attendance at Conferences and Seminars

- Credit Union
- Moving Expenses
- Food Services, Meals
- Employee Assistance Program
- Relocation Assistance
- Employee Referral Bonuses

Assessment of Handling of Internal Employee Complaints

- Complaint Procedure
- Communication of Procedure to Employees
- Investigation Process
- Resolution of Complaint
- Action Plan to Prevent Recurrence

Wage and Hour Practices

- Exemption Status and Overtime Calculation
- Identification of All Positions Treated as "Exempt" from Overtime Obligations under the FLSA
- Review Lawful Basis for Treatment as Exempt
- Review of Any Salary Deductions of Exempt Employees, and Any Other Deviation from Compensation
- Review any Additional Types of Payment Provided to Exempt Colleagues
- Review the Method of Overtime Computation for Non-exempt Colleagues
- Review Calculation of Non-exempt Employees' Regular Rate of Pay
- Review of Any Bonuses, and Their Treatment in the Computation of Overtime Payments to Hourly Employees
- Review of the Method Used to Track Hours Worked and Breaks Taken by Non-exempt Employees
- Review of the Method of Calculation Utilized to Determine Overtime Compensation for a Colleague Working More Than One Job or Shift at Different Rates of Pay
- Review of the Method of Calculation Used to Determine Overtime for Colleagues Who Work on the Sixth or Seventh Day of the Week
- Review of Procedures for Overtime

Authorization, and for Payment of Overtime Work Not Authorized

- Review of Payment Policies for Travel Time, Time Spent On-call, and Time That Non-exempt Employees Are Required to Be on the Premises during Hours They Are Not Regularly Scheduled to Work

Other Key Wage Issues

- Review of the Pay Period and Pay Dates Following Close of Pay Period
- Review of any Independent Contractors Utilized by the School, Including the Nature of Any Agreement Used with Independent Contractors That Sets Forth the Relationship
- Identify Any Positions Where Male Colleagues Receive Pay Different from That of Female Colleagues for Reasons Other Than Seniority, Merit, or a System

Measuring Productivity

- Review of the Method Used for the Payment of Final Wages to an Employee Separated from Employment by Termination or Resignation (Including Any Deductions from Final Paychecks and the Timing of Payment)
- Review of the Policy Regarding the Payment of Earned but Unused Vacation and Sick Leave upon Termination, Whether Compensatory Time Off Is Offered
- Identify and Assess All Reasons for the Docking of Amounts from Paychecks
- Review Whether Colleagues Receive an Itemized Statement of Deductions
- Review Whether Direct Deposit Is Offered

Separation from Employment

- Review of Written Termination Policy and Procedure
- Termination Process
- Use of Releases and Separation Agreements
- Employment Reference Policy
- Policy and Process of Payments to Terminated and Resigning Employees

- Severance Pay Policy
- Exit Interview and Procedures Policy
- Procedures for Return of School Property

Student Issues

- Student Handbook Policies
- Admissions Document Review and Revisions
- Enrollment Contracts
- Disciplinary and Honor Code Policies
- Permission Slip and Emergency Forms
- Due Process (Honor Code Procedures) Prior to Suspension or Discipline
- Academic Dishonesty
- Theft Investigations
- Internet and Email Policies
- Appropriate Role of School in Custody and Domestic Issues
- Drug and Alcohol Policies and Discipline
- Accommodation of Learning Disabilities
- Acceptable Use Policies and the Proper Use of Technology
- Reporting Requirements for Abuse

Benefits Review

- 403(b) Plans
- 457(b) or (f) Plans
- Cafeteria Plans
- Tuition Remission Plans
- Education Assistance Plans

International Students and Homestays

- Review Process for Selecting, Enrolling, and Housing International Students
- Review of All Forms, Materials, and Related Documentation, Including Third-Party Agreements

International Travel

- Review Practices and Procedures Related to Establishment of International Travel Program
- Review of Permission Slips and All Related Documents
- Review of Agreements with Third-Party
- Review of International Homestay Arrangements

Student Injury and Concussion Plans

- Review Practices and Procedures Related to Establishment of Concussion Plans, Response and Obtaining Baseline Assessments
- Review of Policy Related to Responding to Emergency Situations, Including during Sports Events, during the School Day, and on Trips

We hope this memorandum assists you in gaining a better understanding of the Report Card process. Please do not hesitate to contact us if you require any additional information.

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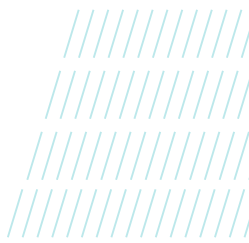
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