



Independent School Leadership

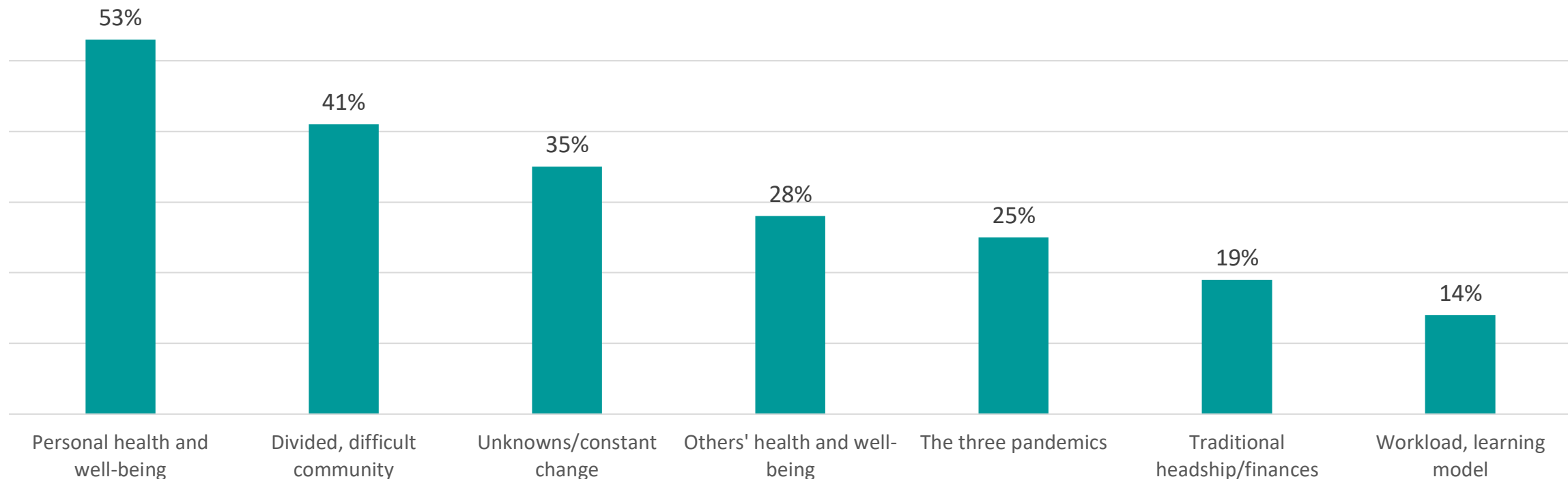


NAIS Leadership Report: I feel very prepared in...

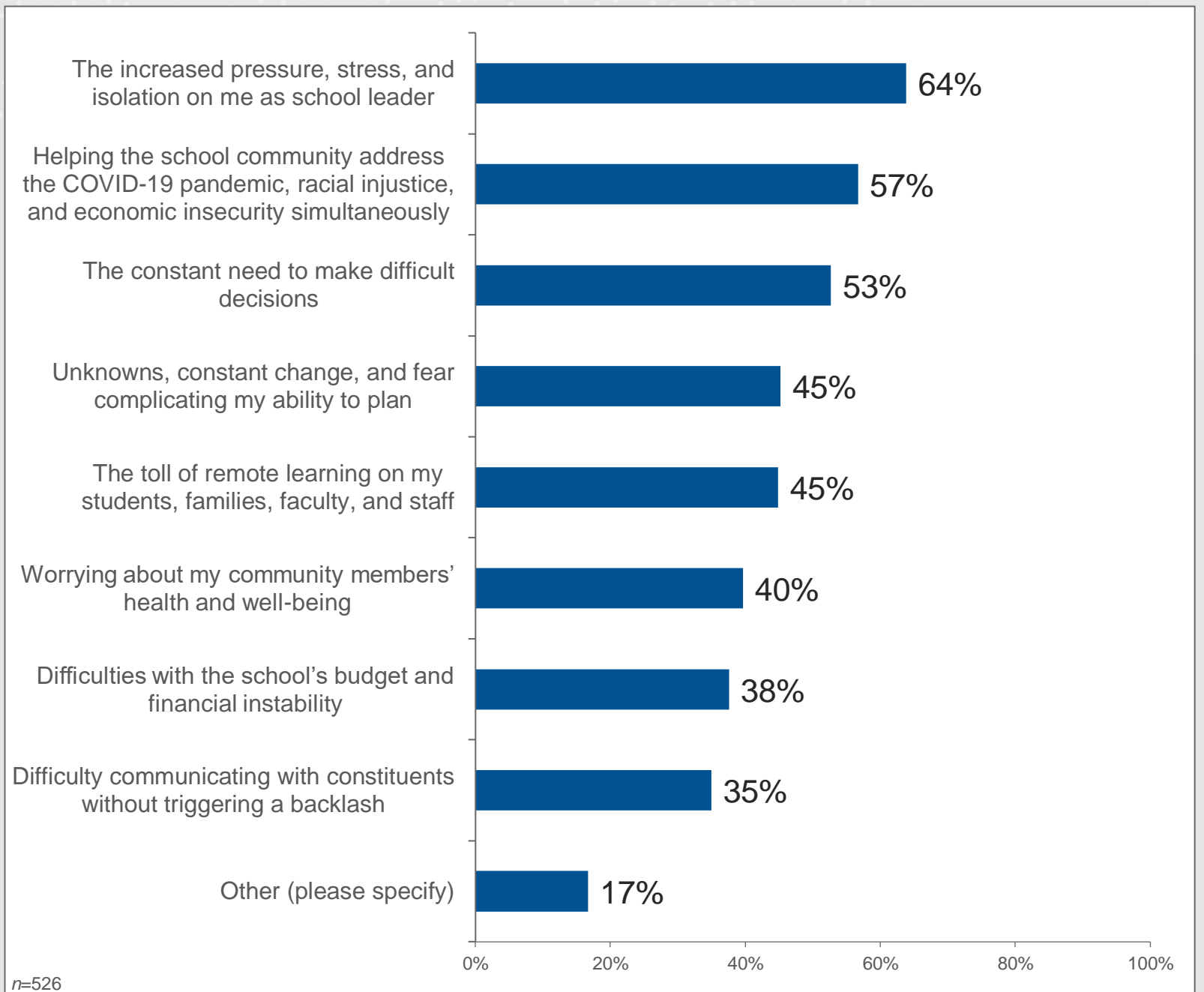
- Working with parents/families: **90%**
- Serving as a community ambassador to recruit new families: **81%**
- Managing school climate/culture: **65%**
- Managing conflicts: **64%**
- Managing pandemic plans: **60%**
- Working with the board: **58%**
- Engaging in crisis/risk management: **51%**
- Managing school's overall financial health: **48%**
- Fundraising: **40%**
- Handling legal issues: **35%**
- Addressing community polarization: **23%**

Most stressful aspects of headship

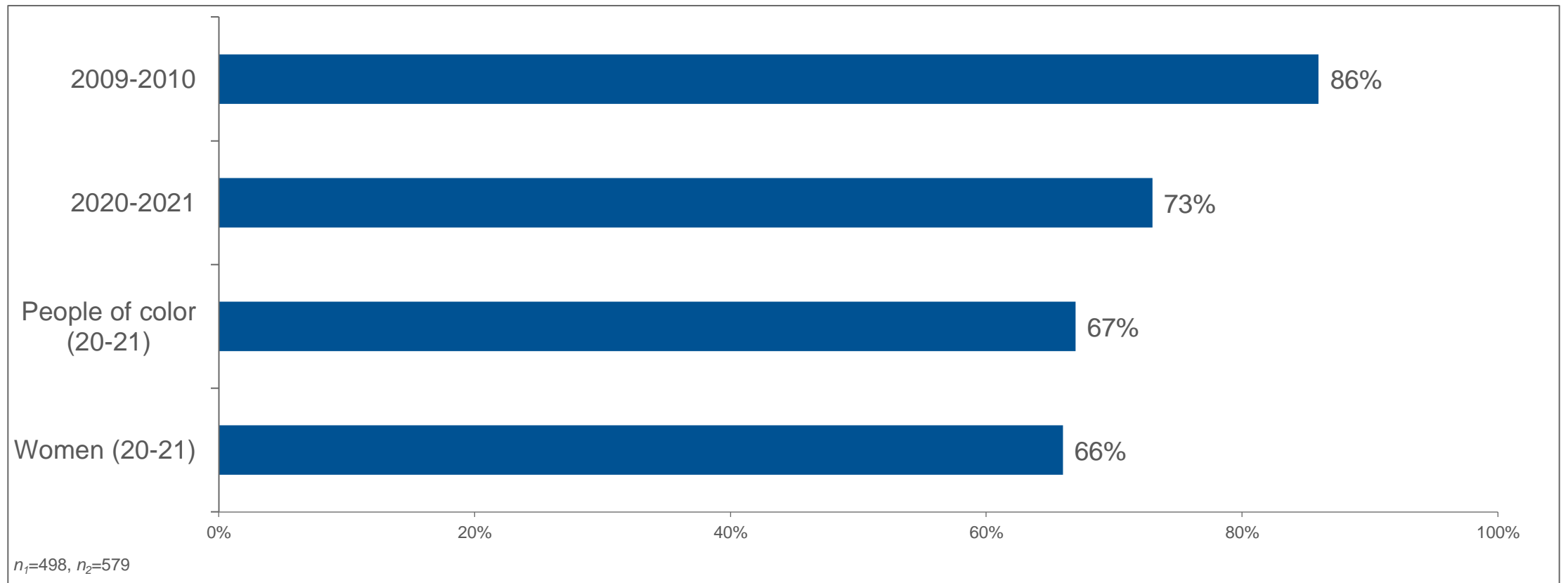
Most Stressful/Challenging Aspect of Headship



What is pulling on heads?



Worth the Stress?



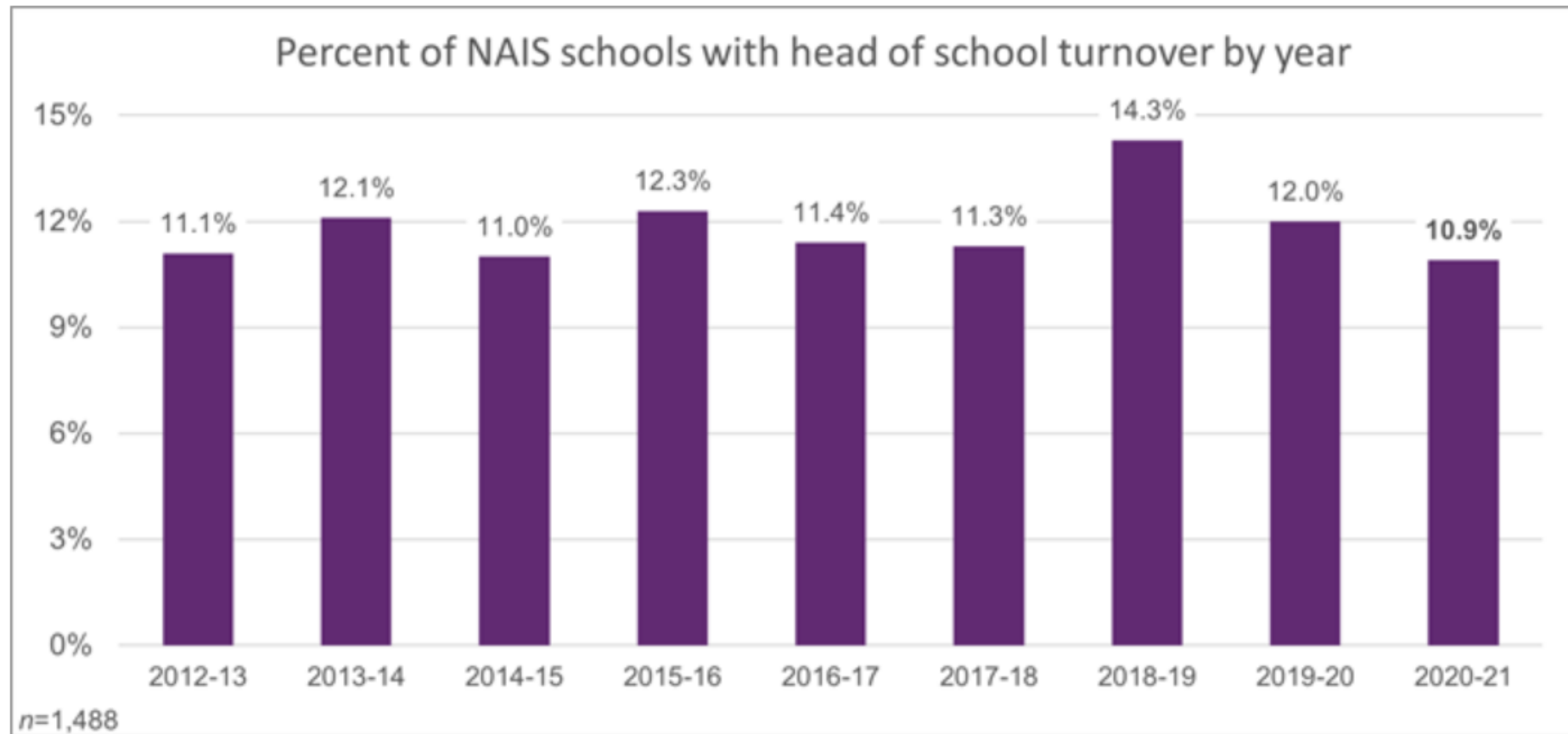
Looking ahead...

- More than half of NAIS heads intend to transition from their current jobs within the next five years, with most either intending to retire or unsure of what they are doing next.
- The pandemic influenced only 28% of heads' decisions to stay at or leave their jobs. However, 17% of heads are leaving their jobs early, with 9% leaving 3+ years earlier than originally planned.
- 83% percent of current heads who say their school has a search process in place to find a head of school.

Hiring...

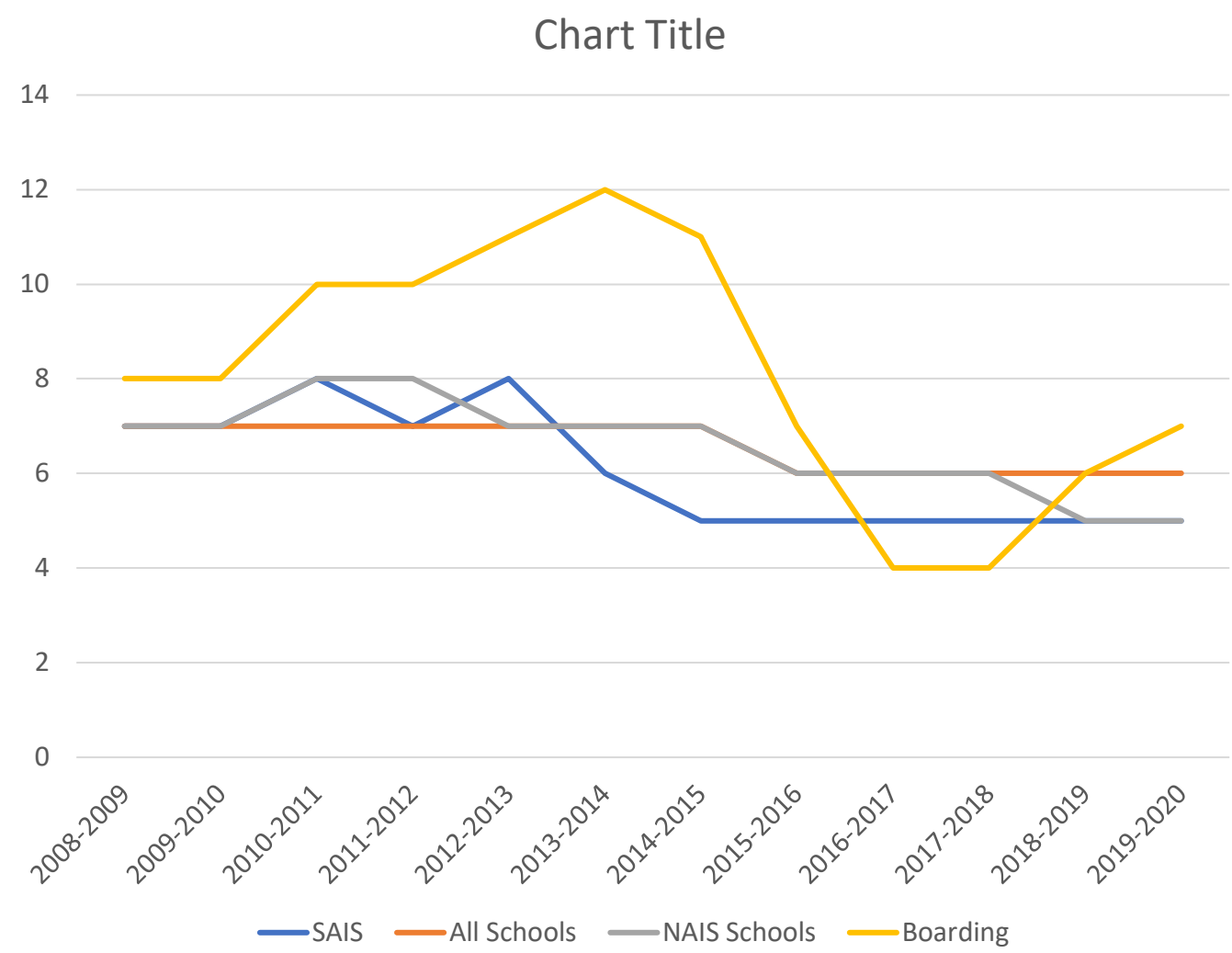
- Research from the Connecticut Association of Independent Schools (CAIS) found that, over a 10-year period, all internally hired heads were signed for a second contract, compared to 65% of externally hired heads.
- [Siri Akal Khalsa, “Succession Planning: Getting It Right,” *Independent School Magazine* \(Fall 2017\)](#)

And...



Data and Analysis for School Leadership (DASL), custom report

Heads' Tenure



Head Transitions



52 new heads of school 2019-2020 (14% of membership)



46 new heads of school 2021-2022 (12%)



9 Abrupt Departures



Association averages around 10-13%



35 new heads of school 2020-2021 (odd-ball year)

Stability...

- Consistent leadership
- Often more consistency within different management roles within the school
- Distributed leadership requires that more people understand the levers within schools
- As schools get more complex, greater need for more leaders within institutions to understand how they work



LEGAL ISSUES

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“Our job descriptions and handbooks outline the things we generally can control and manage. We are graded by our community on how we manage what we cannot control or predict.”

Steve Piltch, retired head Shipley School
Director School Leadership Program
Upenn, Graduate School of Education






AGENDA

- Overview
- Sources
- Working with Your Lawyer
- Risks and Risk Management
- Negligence
- Key Legal Issues



Key Resources

- Main COVID-19 Pages
 - Institutional Risk Management with UE
 - Federal Laws and Independent Schools
 - Antitrust and Independent Schools
 - Resources
 - Fisher Phillips
 - Venable
 - Schwartz Hannum
 - NAIS
 - ISM
- 

Where Do All Hard Decisions Start?

With your mission and values


This sometimes makes for painful paths, but generally the right path

Statements, legal decisions, etc.

Can you defend your stance in light of your mission?

How would your students recognize the school's mission in its actions?

Make sure your lawyer understands this about your school



How can you tell if a school is running well?

- Clean and updated policies, procedures, bylaws, and other foundational documentation ...
- That people actually follow: related to mission or law, or both
- Process for training and education
- Open to questions or suggestions
- Process for regular review of policies, handbooks, processes, etc.
- Stays up to date on legal changes, aware of evolving risks, working to create evolved systems

Working with Legal Counsel

- What about pro bono help?
- What about board attorneys?
- What do you need?
 - Someone to call periodically for a few minutes
 - Someone to act as your coordinator for bigger projects
 - Someone who is aware of your culture
 - Someone to keep you on schedule
 - Do ask for a discount



How do you work with your lawyer?

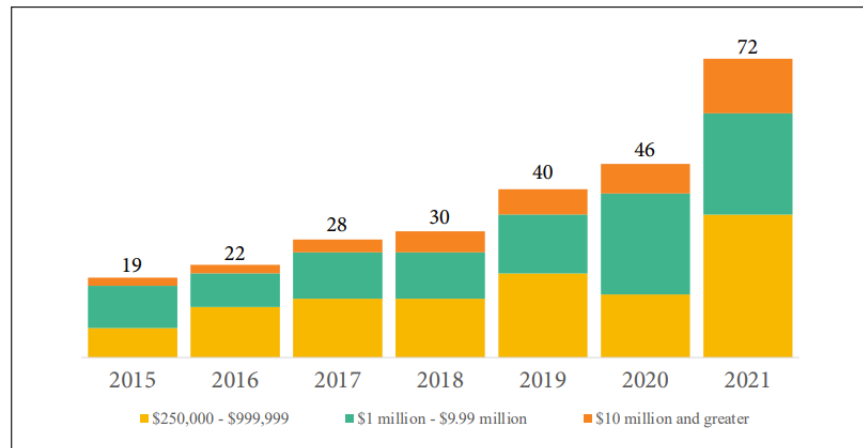
- For the most part, the law should not be the ultimate driver of your decisions.
 - Some things are very cut and dry, but rarely
- What is your objective? Safety, sanity, general compliance.
- Usually the best thing you can do is figure out roughly what you want to do, or how you want to do it, and work with your attorney to get there.
- Remember how an attorney bills. It is better to start drafting, thinking, and processing, then get your attorney more heavily involved. Drafting is expensive and they do not necessarily start with a better product.
- What is your tolerance for risk?



What kinds of claims are out there?

United Educators

Damage Awards and Settlement Trends

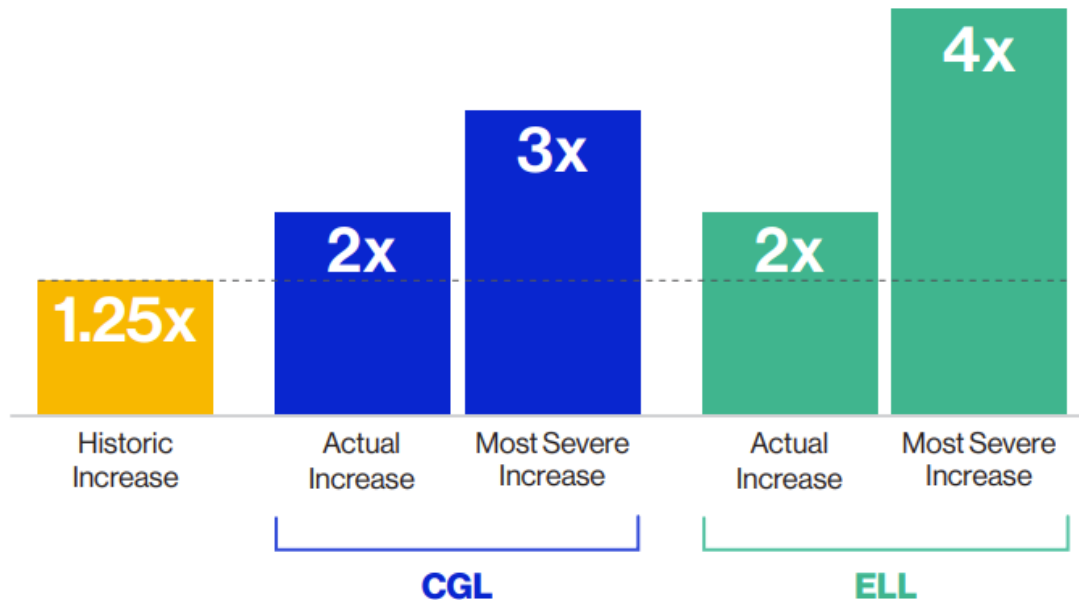


- The number of publicly reported awards or settlements of at least \$250,000 has risen each year, from 19 in 2015, to 46 in 2020, and then to 72 in 2021.
- The 38 awards or settlements (or costs related specifically to ransomware) of at least \$1 million totaled roughly \$1.1 billion, though one settlement, involving a former University of Southern California gynecologist, was for \$852 million.

Independent School Claims

Primary General Liability (CGL) and Educators Legal Liability (ELL) Claims Trends: Increased Severity

Average 2015-2020 Loss Trends



Sexual Misconduct

Excluding employment-related harassment and high-profile claims related to mass serial abusers, UE saw sexual misconduct claims:



Grow **3x faster** than all other claims types over the last 15 years

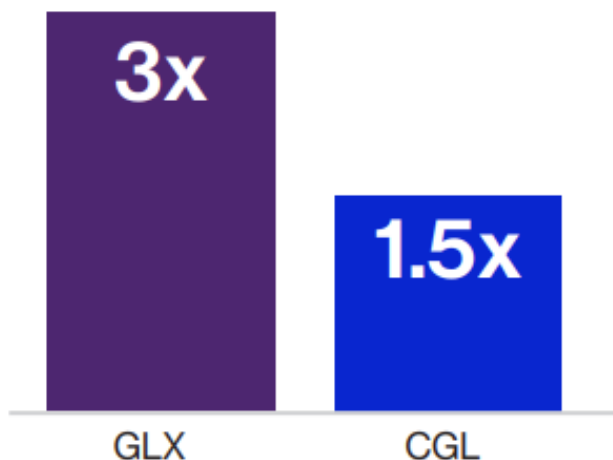


Comprise **nearly 20%** of all claims costs in the latest year

Independent School Insights

Social inflation and increased settlements affect all UE members.

Average losses for independent K-12 school claims have increased in the past 3-4 years:



The frequency of independent K-12 school claims with payments or expected future payments **increased 80% across all lines of coverage.**



The loss ratio (which measures the portion of each premium dollar attributable to claims activity) for independent K-12 school policies has **increased 23%**, indicating that total loss cost trends are outpacing premium increases.

Of the publicly reported settlements or awards of at least \$1 million:

- Thirteen involved sexual misconduct (\$1.6 million to \$852 million)
- Three involved accidents or crimes resulting in death (\$2 million to \$25 million)
- Three involved COVID-19 (\$1.25 million to \$12.5 million)
- Two involved retaliation (\$1.4 million and \$2.4 million)
- Two involved heat-related illnesses and death (\$3.5 million to \$39.5 million)
- Two involved retirement plans (\$13 million each)
- Two involved injuries not resulting in death (\$1.55 million and \$2.75 million)
- Two involved discrimination against transgender students (\$1.3 million and \$4 million)

Kayaking Accident

- Mid-Pacific Institute, agreed to a \$7.2 million settlement with the family of a 5-year-old boy who drowned in 2019 while participating in the school's spring break day camp when a kayak carrying four people capsized. A camp counselor also drowned during the incident. The kayak was designed for two people and wasn't equipped with life vests. Kayaking wasn't in the program's itinerary — it was meant to be a surprise, according to the lawsuit. The child didn't know how to swim.

Student suicide...

- Cincinnati Public Schools announced a \$3 million proposed settlement agreement with the family of a student who, at age 8, hanged himself after being bullied.
- His family had filed a federal lawsuit against the district and the school's Principal and Assistant Principal, as well as a school nurse.
- The family alleged the school hadn't adequately responded to the bullying, and that the school didn't inform them about a bullying incident two days before the student died.
- In the proposed settlement, the district committed to several anti-bullying measures. The district didn't admit guilt.

Tuition and Fee Refunds

- Southern New Hampshire University (SNHU) agreed to pay \$1.25 million to settle a purported class action lawsuit brought on behalf of students seeking tuition and fee refunds following COVID-19-related closures.
- In a complaint, the SNHU student class representative contended the university had breached its contract with its students by not providing in-person instruction during the spring 2020 semester.

Discrimination

The DeKalb County School District in Stone Mountain, Ga., will pay \$750,000 to settle a lawsuit filed by a rejected superintendent candidate who said he was discriminated against because of his race and age.

He was 69 when the suit was filed and said board members made ageist remarks to him and to constituents in favor of younger candidates.

The suit also named a board member as a defendant and accused her of disparaging him because his late wife was white.

Title IX

The Gloucester County School Board in Gloucester, Va., will pay a transgender student a \$1.3 million settlement after refusing to let the student use the boys' bathroom, according to the American Civil Liberties Union, which represented the student.

The lawsuit lasted six years and received national attention. The student argued the decision to not let him use the bathroom violated Title IX and the Equal Protection Clause of the Constitution.

Sports Injury

- A jury found that Horry County Schools in Conway, S.C., was grossly negligent in not caring for a middle school football player who suffered a concussion during a game.
- The student and his mother were awarded \$850,000.
- According to his lawyers, the student had clear signs of a brain injury but wasn't pulled from the game.
- Now a high school senior, the student has suffered from post-concussion syndrome.

Sports & Heat

The University of Maryland agreed to a \$3.5 million settlement with the parents of a 19-year-old football player, Jordan McNair, who died two weeks after collapsing during an outdoor conditioning practice.

The death prompted an investigation, which determined there was a failure to identify increasing symptoms associated with exertional heat illness.

University fired its football coach as a consequence and announced a partnership with the Jordan McNair Foundation to educate the public and athletic programs nationwide about heat exhaustion, concussions, and other topics.

Mental Health and ADA

Brown University reached a \$684,000 settlement agreement with the Justice Department and U.S. Attorney's Office for the District of Rhode Island to ensure students with mental health disabilities have equal access to educational programs.

The department found Brown had violated the ADA by not letting students who took medical leave for mental health reasons return to school even though they were ready to return to campus life.

Among other things, the agreement ensures that Brown will modify its policies for students with mental health disabilities who are seeking to return from medical leave. The \$684,000 will help compensate undergraduate students who were harmed.

Retirement Plan and Fiduciary Obligations

Columbia University agreed to pay \$13 million to settle a lawsuit alleging that fiduciaries of two university retirement plans breached the Employee Retirement Income Security Act of 1974 (ERISA).

Plaintiffs alleged that Columbia and its fiduciaries had charged unreasonable record-keeping fees and kept low-performing investments in two 403(b) retirement plans.

Several similar lawsuits against other universities already have been settled. The University of Pennsylvania agreed to pay \$13 million to settle a proposed class action lawsuit challenging its retirement plan's fees and investment options. Current and former participants in the plan had alleged that fiduciaries of a university 403(b) plan had violated guidelines involving ERISA in managing the plan.

Independent School Risks

- UE Study – 1600 claims brought against independent schools from 2007-2011 more than \$41.5 incurred losses
- General Liability - Students brought less than half the claims but accounted for 58% of the cost. Employees 18% of claims, 23% of cost. Rest are third party claims.

UE: Independent Schools

- Top risks include
 - Enrollment
 - COVID-19 and future pandemics
 - Data security,
 - Facilities and deferred maintenance, and
 - Operational pressures.





Risks



A risk is anything that might affect your flight path



Any uncertainty that may affect your school's progress



It can be negative or positive



It can be legal, financial, or strategic (e.g., demographics, growth or right-sizing)

What is risk management?

- Risk Management is a **system** that creates air in the school's operations to **pro-actively, thoughtfully, and with appropriate resources and focus** address issues that could affect the school's future.

Risk Management steps include:

- **Identifying** risks to your school
- **Assessing** their potential likelihood and impact (how risky is the risk?)
- **Addressing** each risk through a planned course of action (how are we going to tackle it?)
- **Ongoing Monitoring, Tweaking, and Tracking**

Who is involved?


- **Board Committee.** Provides fiduciary oversight, may be involved in some topics.
- **Senior Administration.** Head of School general oversight of strategy. The business officer typically oversees the process (but note....). Administrators implement overall risk management and delegate specific risks or responsibilities to key employees.
- **Key Employees.** Involved across the spectrum. Risk committees, owners, and leaders of management of risks. Implements and manages mitigation strategy. Draft reports and maintain records. Consult subject matter experts on trends and best practices. Actually move the process forward. They can be senior administrators.
 - Note – this is a good place for leadership opportunities for staff members

US Schools

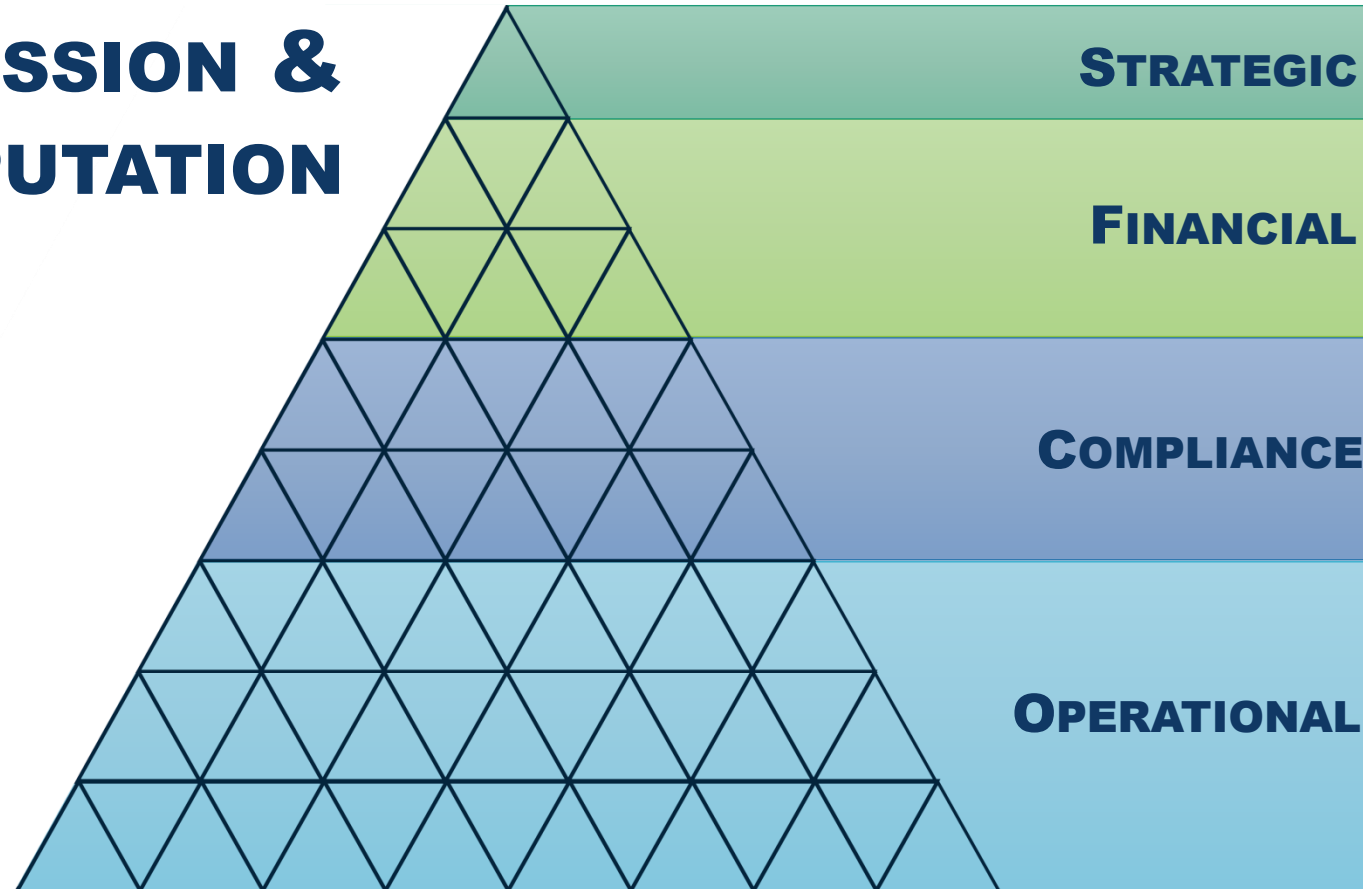
- 87% have never done a full risk identification process
- Of those that have, 51% in the last 1-3 years,
- 24% do have a risk committee of some kind
- Those that have done it report feeling more under control and greater board comfort



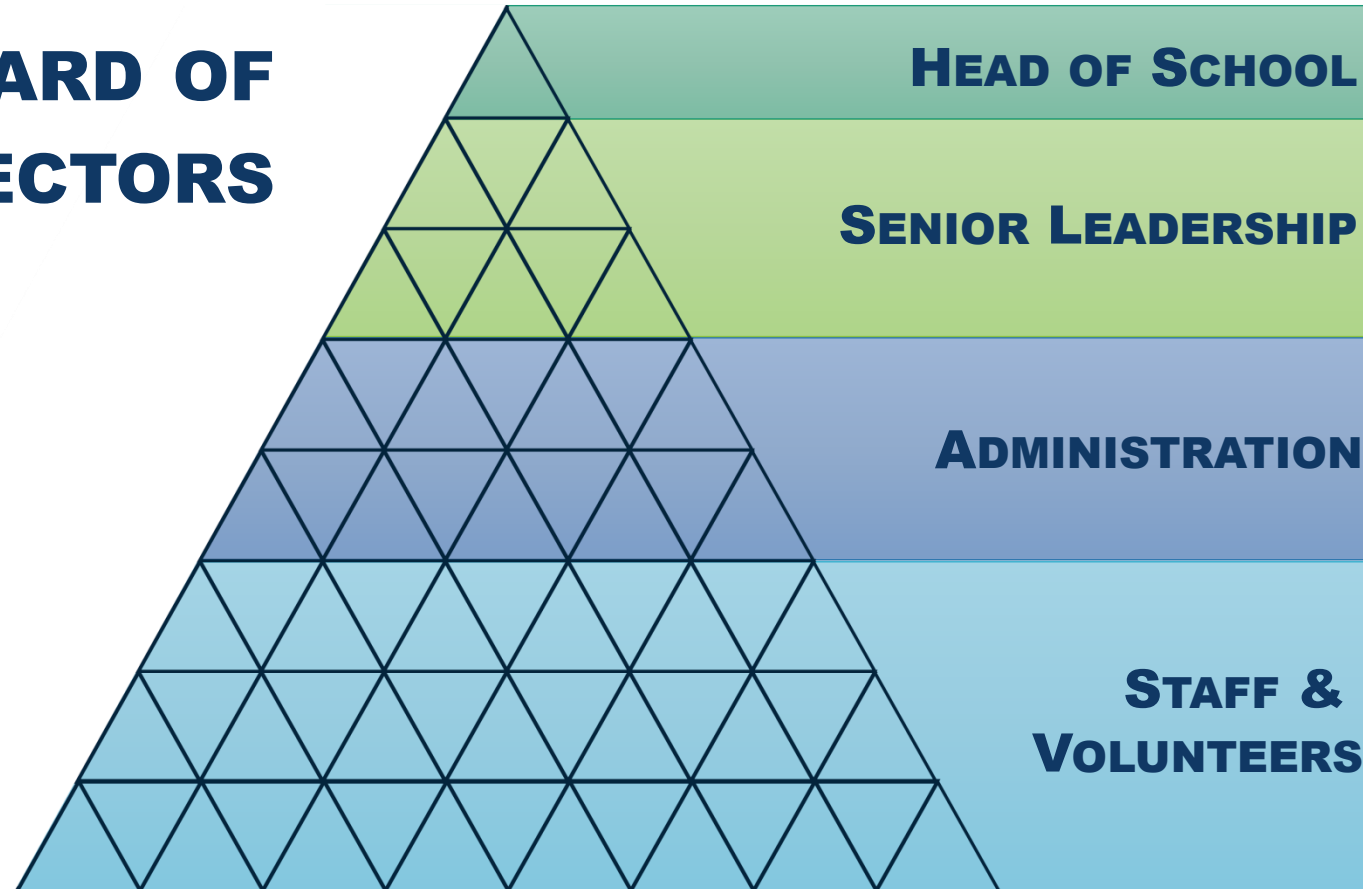
Greatest Risk Areas

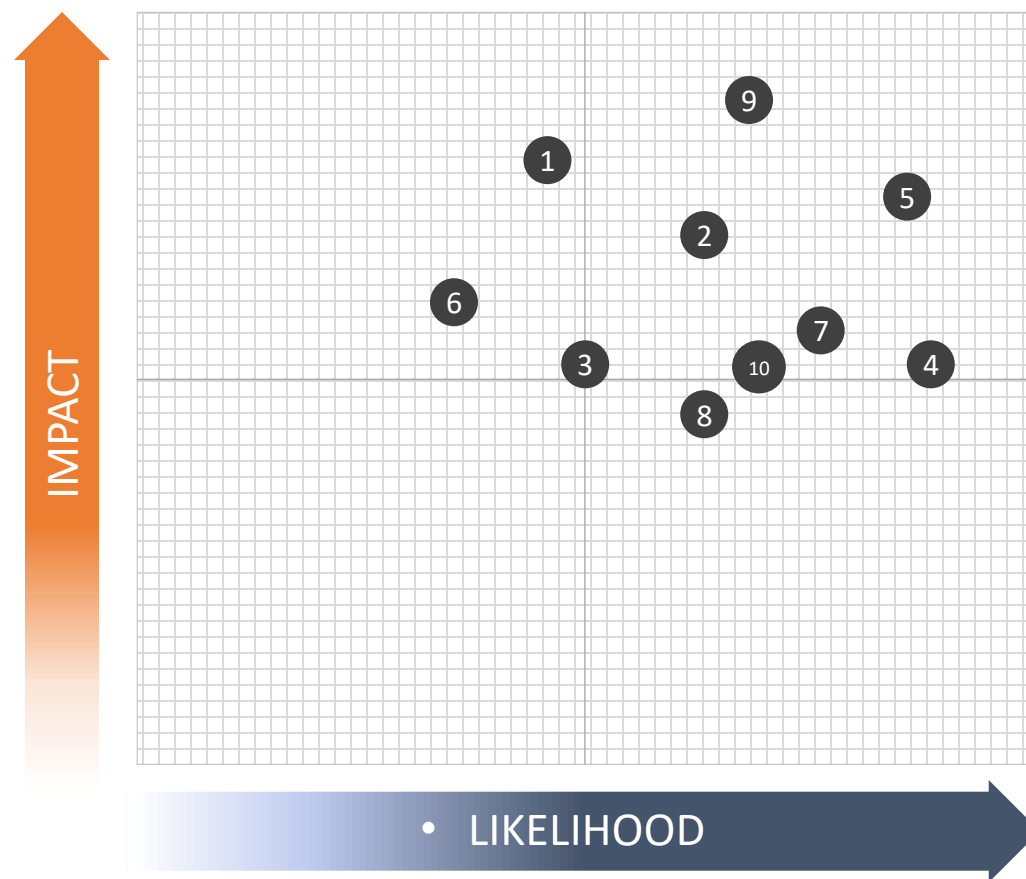
- Abuse of students/ interactions with adults
 - Crisis management
 - Employment practices
 - Facilities/deferred maintenance
 - Health center
 - IT infrastructure
 - International students
 - School security
 - Study abroad programs
- 

MISSION & REPUTATION



BOARD OF DIRECTORS





Independent School Heat Map

- 1) *Abuse of students*
- 2) *Crisis management*
- 3) *Curriculum redesign*
- 4) *Employment practices*
- 5) *Facilities management*
- 6) *Health center*
- 7) *IT infrastructure*
- 8) *International students*
- 9) *School security*
- 10) *Study abroad programs*

RISK SCORECARD: More Quantitative

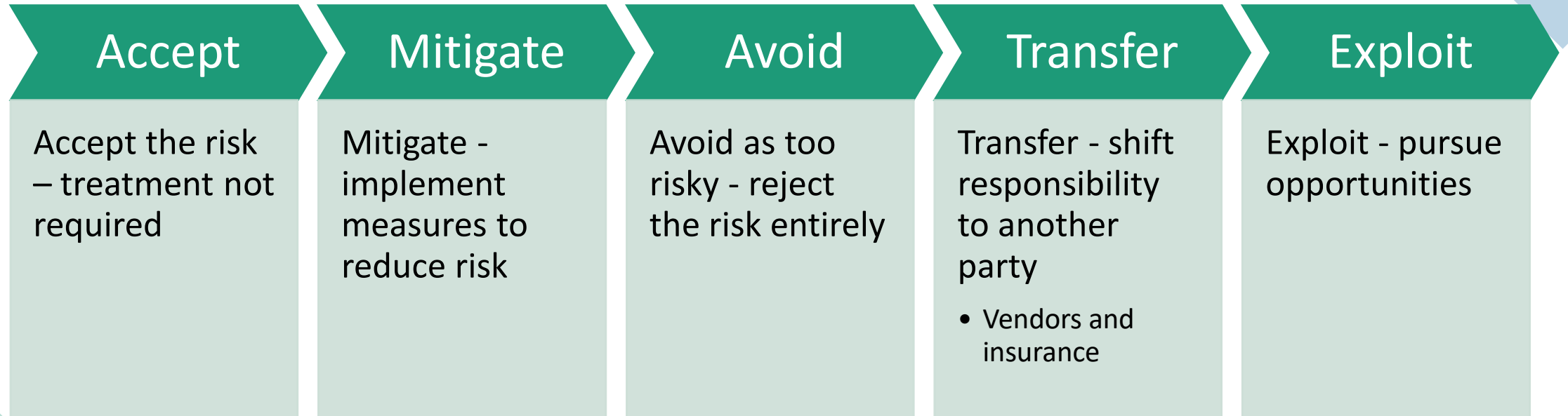
| | | | | | Score |
|------------------|------------|---|---|---|-------|
| Risk | | 1-2 Insignificant/Mid | 3 Moderate | 4-5 Significant/Catastrophic | |
| | IMPACT | Minimal impact on annual operations, reputation or financial condition. | Could delay plans in place, short-term affect on programs; requires moderate management effort; 1-6 months' recovery. | Long-term and significant effect on operations, finances, ability to recruit students and faculty; material impact on reputation. | |
| | | | | | X |
| | | | | | |
| | LIKELIHOOD | 1-2 Unlikely | 3 More Likely | 4-5 High Probability | |
| | | Unlikely to happen in the near future; no immediate action needed. | More than likely to occur; management should begin to mitigate. | High probability event/risk will occur within a year; immediate action plans needed. | |
| | | | | | = |
| TOTAL RISK SCORE | | | | | |

Risk Id Pit Falls

- Must commit to managing the risk
 - If identified, documented, then ignored, potential liability.
- Do not overwhelm the system
- 3-5 high level risks per year, maximum
- Begin with the urgent
- Most US independent schools identify roughly 80 risks overall



Now what: Treatment Approaches



Mitigating the Risks

- Consider:
 - **Physical** – safety equipment, building or vehicle retrofit
 - **Policies** – update, add new, cross reference
 - **Procedures** – implement new ones, including tracking incidents, updating as needed
 - **Personnel** - including if you need a consultant or more experienced school for insight, or new staff
 - **Practice** - and training – for staff, students, parents
 - **Insurance**



Mitigation Planning

- Ownership – Broad!
- Subject matter expertise
- Management plan with timetable
- Key Roles
 - Senior leaders
 - Staff
 - Outside expertise
 - RM Committee



Risk & Control Self Assessment- Human Resource

Uncertainty as to the school's ability to attract, develop and retain the talent needed to meet its objectives; the risk that people do not follow the organization's procedures, practices and/or rules; Risk that the organization may incur losses due to drain or loss of personnel, deterioration of morale, inadequate development of human resources, inappropriate working and safety environment, inequality or inequity in human resource management or discriminatory conduct.

Risk

Risk Rating: Impact

Risk Rating: Likelihood

Mitigation

Owner

Date of Completion

Status

Reputational

Financial

HR

Safety and Security

Operational


Technology

Compliance-Legal

Governance

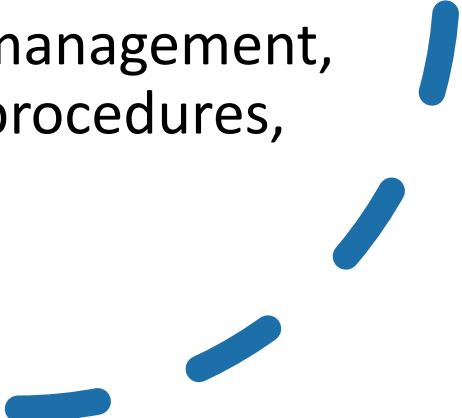


Pick a topic

- Pick over-arching topic
 - Choose an area to drill into
 - Consider:
 - Mitigation, management, acceptance, cultural issues
 - Physical
 - Policies
 - Procedures
 - Personnel (including if you need a consultant)
 - Practice (training)
 - Insurance
- 



Risk Management Plan/Report

- School philosophy / culture
 - Date
 - Name of Risk
 - Owner
 - Description of Risk
 - Risk Score (low, med, high)
 - Goal Plan Implementation
 - Action steps/Treatment (Mitigation, management, acceptance, cultural issues, policies, procedures, other steps to patch up holes)
- 

Example

- School philosophy / culture: What is it???
- Date
- Name of Concern: Student Drinking & Drugs
- Owner: Upper School Head
- Description of Risk: Adolescent Experimentation with ...
- Risk Score (low, med, high): Likelihood High, Ramifications: High
- Goal Plan Implementation: Roll-Out
- Action steps/Treatment: Education, Training, Discipline, Etc.



Legal Issues

Federal Structure

- Constitution
- Legislation
- Regulations
 - Executive Order – need authority and must be reasonable in terms of court precedent
- Courts
- State Issues
 - Raise the floor but not lower it
- School Policies, practices, and procedures
 - Reflect the values of the school





What are we usually talking about when we talk about liability?



What is the main liability?

- Negligence... what does that mean?
 - Duty to act (exercise such care as a parent of ordinary prudence would in comparable circumstances)
 - Breach of the duty
 - Harm
 - Caused by failure to perform duty and the failure was a “proximate cause” to that duty (“but for” test).





- 
- 
- So then what?
 - Defenses:
 - Assumption of risk
 - Not reasonably foreseeable
 - Waivers, Releases
 - Third party vendors / partners
 - Third party intervention




Pool Party


Four of the third grade teachers are chaperoning an end of the year party at a local pool. There are 60 students in all, 6 lifeguards, and 5 parent chaperones. If students attend, parents must sign two releases. One waives claims of liability against the school and chaperones, the other waives claims against the club.





At the party, quite unexpectedly, Joey does a triple back flip off the diving board and hits his head on the board because Sam runs up the at the last minute and startles him. An ambulance is called and Joey is taken to the ER for 15 stitches. What are the issues?



- 
- Negligence... what does that mean?
 - Duty to act (exercise such care as a parent of ordinary prudence would in comparable circumstances)
 - Breach of the duty
 - Harm
 - Caused by failure to perform duty and the failure was a “proximate cause” to that duty (“but for” test).


Essentially have a duty to work to prevent foreseeable harm





Happy Place

“...schools are under a duty to adequately supervise students in their charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision, they are not insurers of safety of their students for they cannot be reasonably expected to continuously supervise and control all of the students’ movements and activities.”



What About Defense?

- Assumption of risk on behalf of plaintiff?
 - Can't make this argument when compelled to attend – class requirement - “Inherent compulsion”
 - Duty to use ordinary and reasonable care to protect students voluntarily involved from unassumed, concealed, or unreasonably increased risks.
 - Did defendants do anything to increase the risk?

Sudden action on behalf of Joey?

- Would more supervision have helped here? Spontaneous injury. What facts would help or hurt here?
- “... plaintiff must show that the school had sufficiently specific knowledge or notice of the dangerous conduct which caused the injury and the that third party acts could reasonably have been anticipated.”



What about the third party? (Club)



Question of whether they own and operate the facilities.



Words of caution?



Warnings from lifeguards?

Releases

- Voluntarily, intelligently, and with full knowledge of the consequences
- Four (to six) part test – key areas being:
 - Does not adversely affect public interest
 - Exculpated party not under legal duty to perform
 - Contract does not grow out of unequal bargaining power or otherwise unconscionable.

Releases

- So should you ditch releases?
 - Make sure they are readable (font)
 - Make sure they are reasonable (don't try to get them to waive everything)
 - Be clear in the risks in writing and in orientations / training.
 - Arbitration
 - General deterrent effect
 - [Resource](#)



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Other most common issue...

- Your school enrollment agreement has a parent behavior clause that requires parents to partner with the school for the good of their students. It specifies that parent conduct that is disruptive to the community or the school / parent partnership may be grounds for dismissal of the family from the school, at the discretion of the head of school.
- After winter break, the spouse of one trustee did not want her child to wear a mask as mandated by the return to campus protocols. And, she would not provide the school with ADA related documentation to go with her ADA exemption request.
- She has been writing threatening emails to any teacher who requires him to wear a mask. She emails the head of school constantly and has begun surveying the parents about how they feel about the protocols. It has become an every day time-consuming distraction, and the teachers are afraid of her. The trustee will not talk with his spouse about it. The community is abuzz.
- What happens next?

What is the problem?

- Parent clause?
- School action?
- Trustee? Fiduciary...
- What if....



Questions