

# SAIS Fundamentals Conference

April 16-18, 2023 | Charleston, SC

## Risk Management and Legal Issues

*Debra P. Wilson*

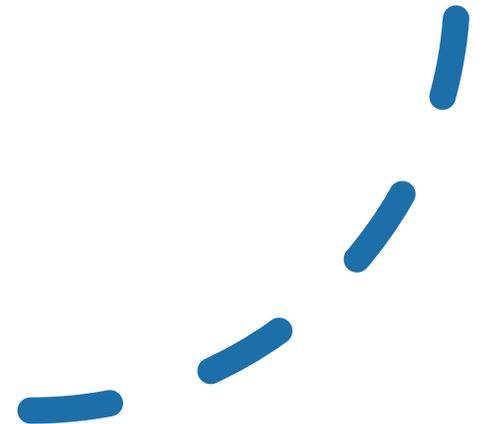
“Our job descriptions and handbooks outline the things we generally can control and manage. We are graded by our community on how we manage what we cannot control or predict.”

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



# Key Resources

- 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?

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With your mission and values

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

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Statements, legal decisions, etc.

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Can you defend your stance in light of your mission?

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

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Make sure your lawyer understands this about your school



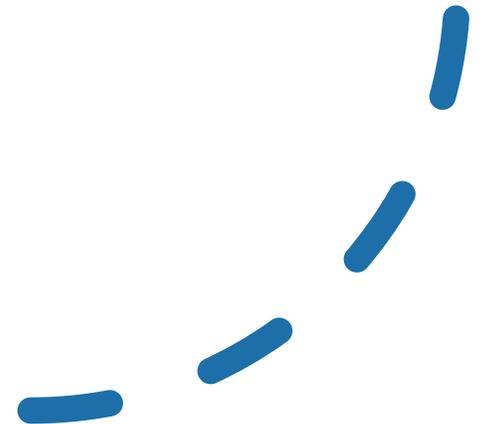
# How can you tell if a school is running well?

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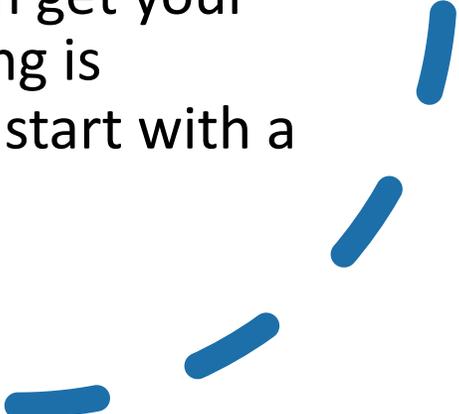
- Clean and updated policies, procedures, bylaws, and other foundational documentation ...
- That people actually follow: related to mission or law, or both
- Process for training and education
- Open to questions or suggestions
- Process for regular review of policies, handbooks, processes, etc.
- Stays 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.
- 

When  
thinking  
about legal  
issues...

- Just one piece of the puzzle
- School culture
- School mission – are you living your mission and values in how you treat your people?
- Are you being “fair”?
- Are you being consistent?



# Risk Management

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# 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?

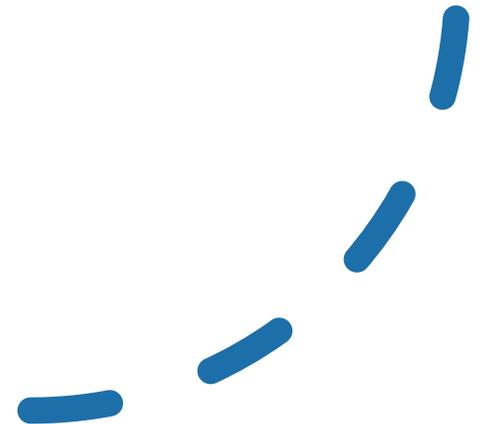
- Risk Management is a **system** that creates air in the school's operations to **pro-actively, thoughtfully, and with appropriate resources and focus** address issues that could affect the school's future.

Risk Management steps include:

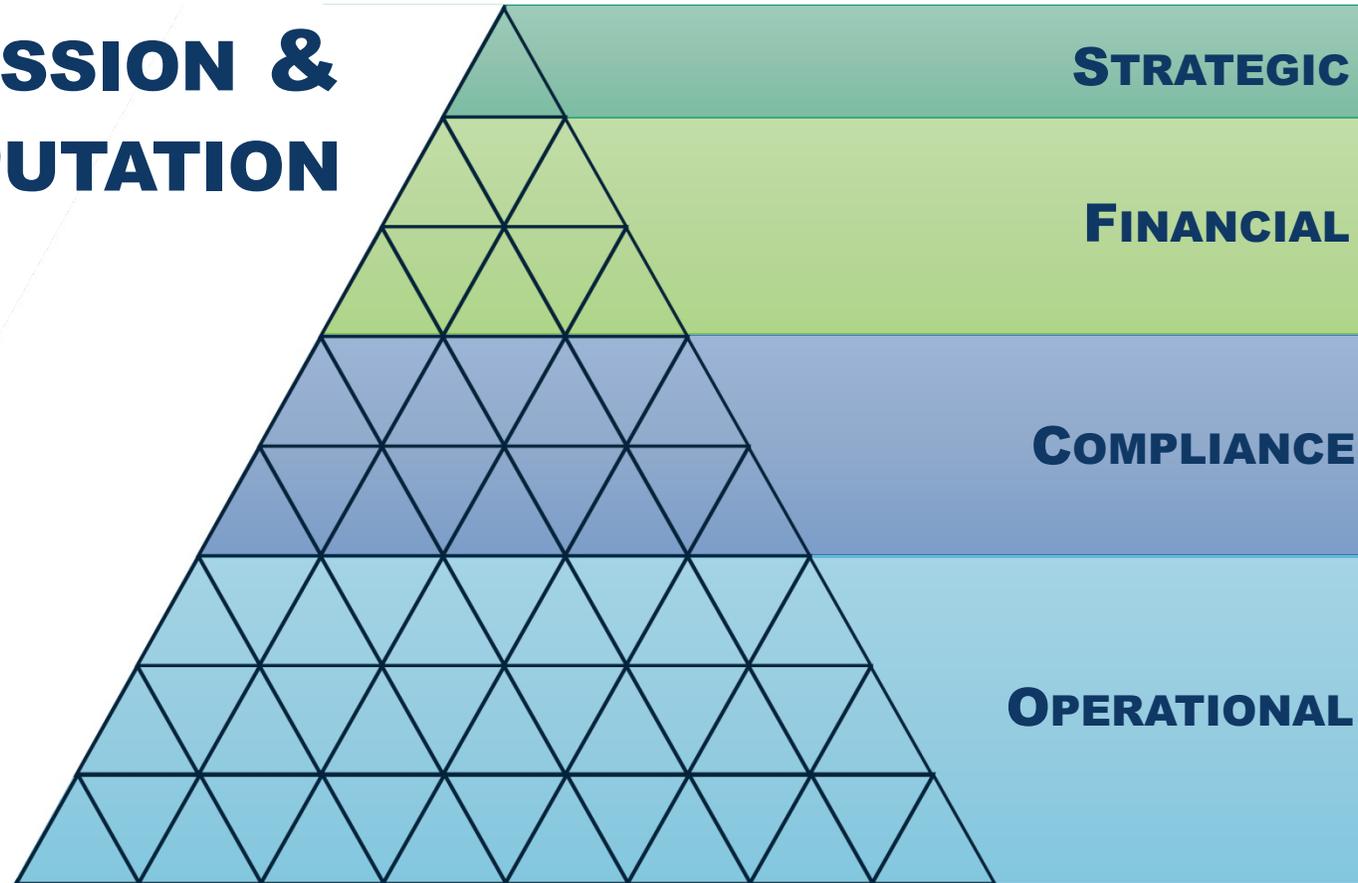
- **Identifying** risks to your school
- **Assessing** their potential likelihood and impact (how risky is the risk?)
- **Addressing** each risk through a planned course of action (how are we going to tackle it?)
- **Ongoing Monitoring, Tweaking, and Tracking**

# Greatest Risk Areas

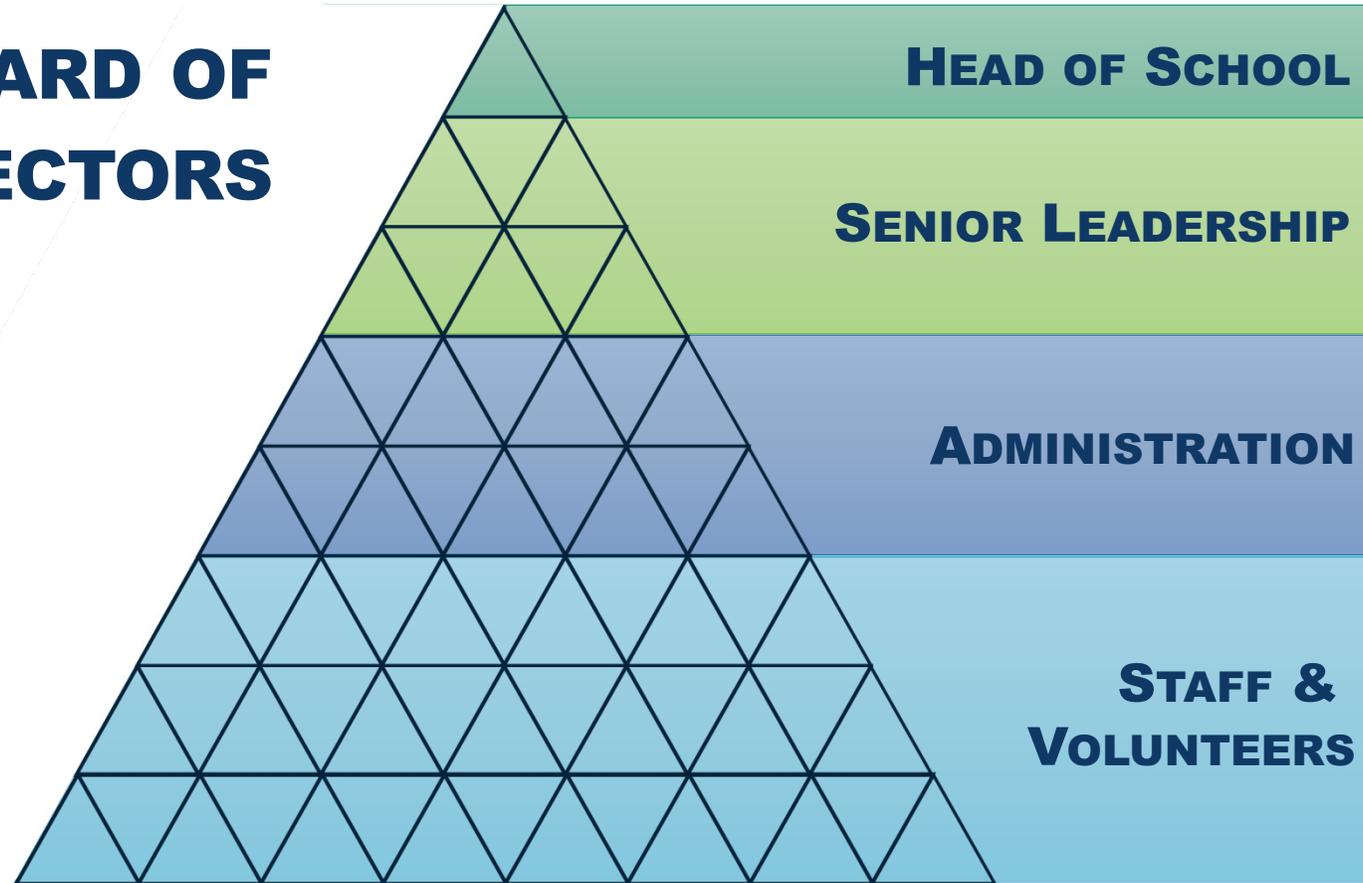
- Abuse of students/ interactions with adults
- Crisis management
- Employment practices
- Facilities/deferred maintenance
- Health center
- IT infrastructure
- International students
- School security
- Study abroad programs

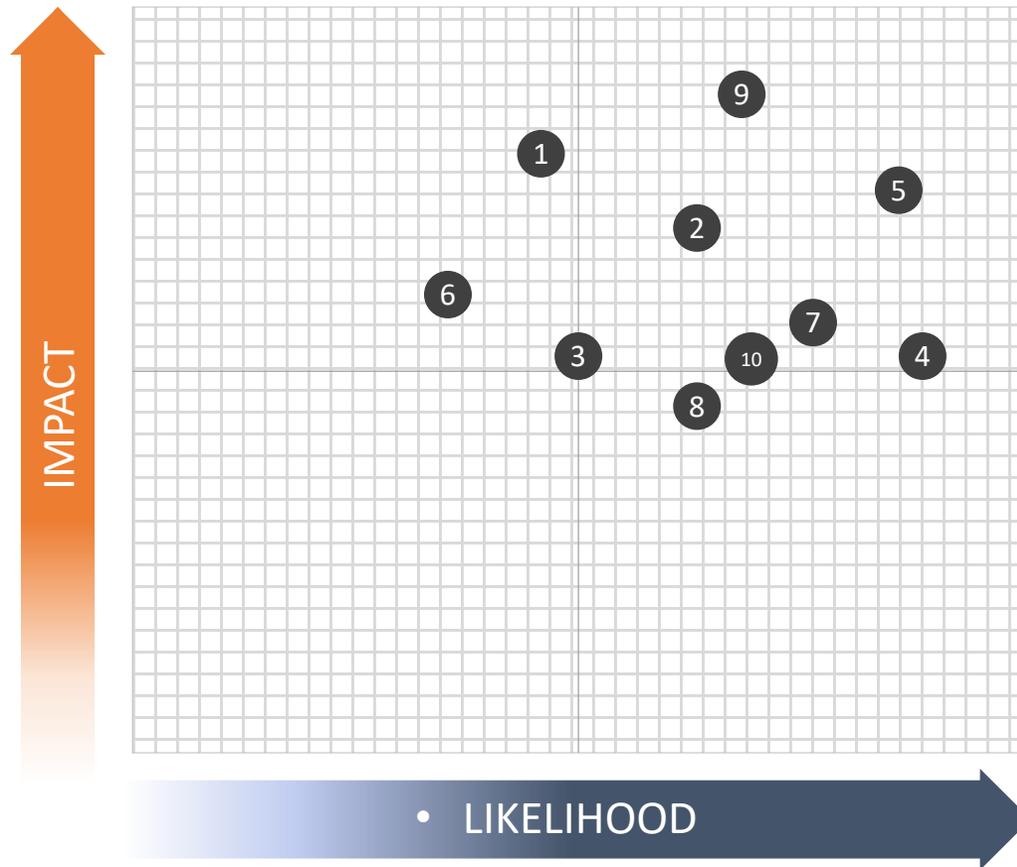


**MISSION &  
REPUTATION**



**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 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



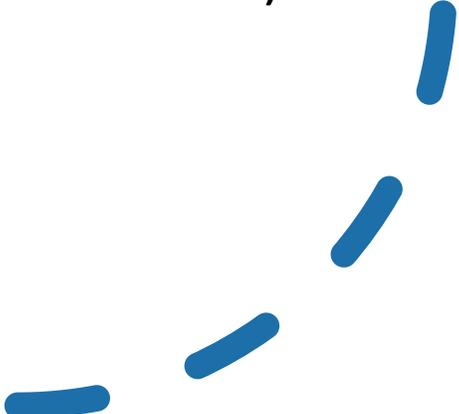
# Risk & Control Self Assessment- Human Resource

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.

	<u>Risk</u>	<u>Risk Rating: Impact</u>	<u>Risk Rating: Likelihood</u>	<u>Mitigation</u>	<u>Owner</u>	<u>Date of Completion</u>	<u>Status</u>
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# 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.



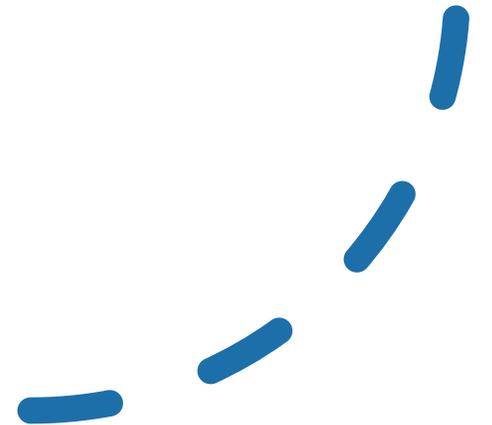
# Legal Issues

# 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



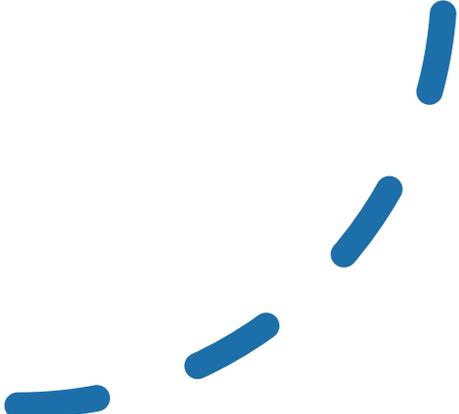
What are we usually talking about when we talk about liability?



# 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) / Meet a standard of care
    - Standard comes from a variety of places
  - Breach of the duty
  - Harm
  - Caused by failure to perform duty and the failure was a “proximate cause” to that duty (“but for” test).



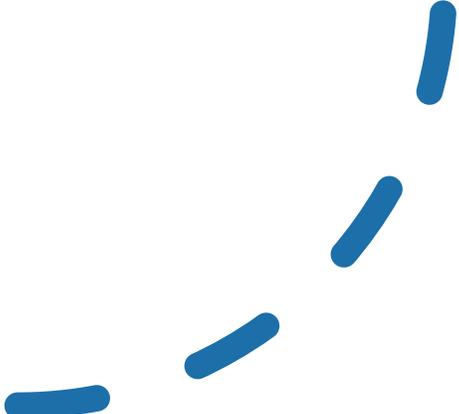
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- Then what?
  - Defenses:
    - Assumption of risk
    - Not reasonably foreseeable
    - Waivers, Releases
    - Third party vendors / partners
    - Third party intervention
- 

# 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.

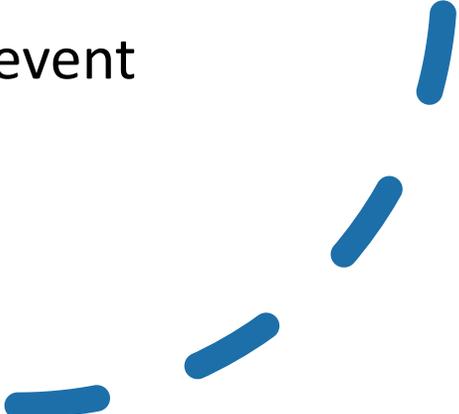


At the party, quite unexpectedly, Joey does a triple back flip off the diving board and hits his head on the board because Sam runs up the at the last minute and startles him. An ambulance is called and Joey is taken to the ER for 15 stitches. What are the issues?



- 
- Negligence... what does that mean?
    - Duty to act (exercise such care as a parent of ordinary prudence would in comparable circumstances) / Standard of care
    - 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





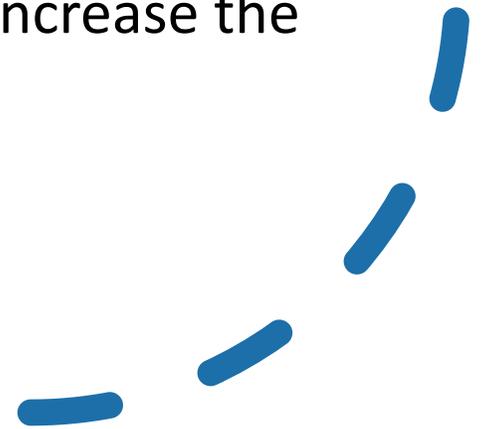
# Happy Place

“...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.”



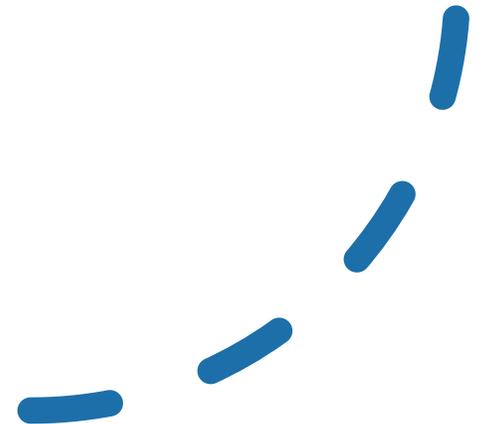
# What About Defense?

- 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 defendant 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... Contracts

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- 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 of 2021, one parent 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 her daughter 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 community is abuzz.
- What happens next?

# What is the problem?

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- Parent clause?
  - Clear?
  - On notice?
  - Updated policies?
  - School following own processes?
- School action?
- What if....

# Human Resources



# HR Truths

- Most school employees do not have contracts
- Handbooks really matter.
- Documentation and process are generally your friends
- Always be looking three or four steps out, nothing happens in a vacuum
- Whatever you build has to be authentic to your school or it won't happen regularly
- If you get sued, most of what exists can be subpoenaed by the other side, and will be
- Some labor laws do apply to our schools



## Nondiscrimination Laws

- Employment is different than student nondiscrimination laws
    - Generally, do not need federal financial assistance
  - Race, country of origin, ethnicity, color, religion, disability, marriage, pregnancy, age, veteran status, military service (reserves), sexual orientation, gender
  - Religious Exemption: For those with ministerial roles
    - Minister is very broad
    - Works with many nondiscrimination laws
- 

ADA

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# Employment & The ADA

- Different part of the ADA: Title I
- Employee has:
  - a physical or mental impairment that substantially limits one or more major life activities;
  - a record of a physical or mental impairment that substantially limits one or more major life activities; or
  - being regarded as having an impairment, irrespective of whether the actual or perceived impairment limits or is perceived to limit a major life activity
- Employee must be *qualified* for the position he/she seeks or currently holds. That is, the individual must be able to perform the essential functions of the position with or without reasonable accommodation

# Employment & ADA

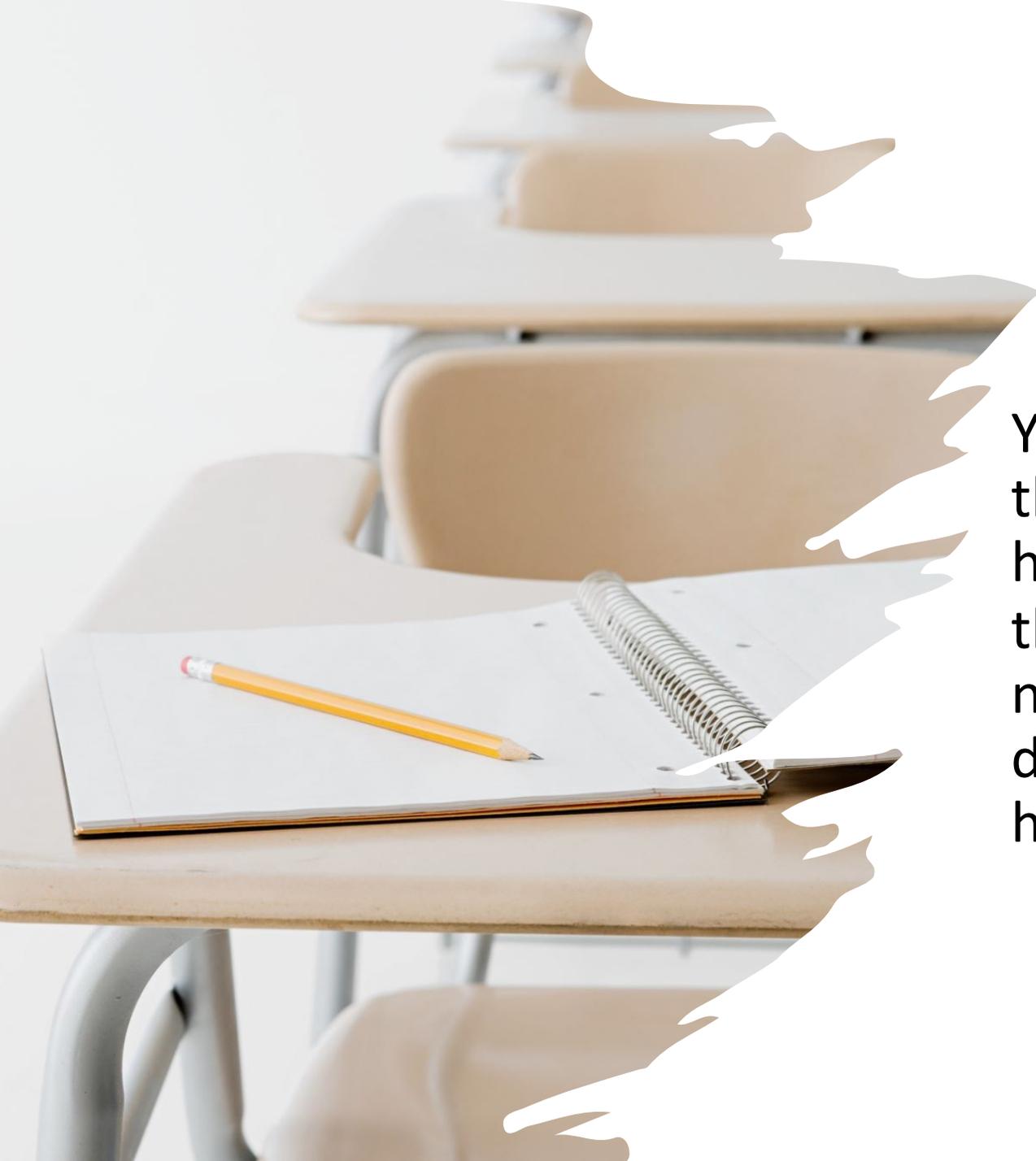
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- A reasonable accommodation is generally any job-related assistance enabling an employee to perform the essential job functions
  - Essential = Fundamental – Purpose of a function and the result, not the how is the focus
  - Is the function actually being performed?
  - Will removing the function fundamentally alter the nature of the job?
  - Does the job exist to perform the function?
- Is the job function specialized
  - May include modifying school policies, providing leaves of absence with job restoration, altering facilities or equipment, providing assistive devices, job restructuring, or reassigning the employee to a vacant position
  - May not cause an “undue hardship” (same as undue burden)
- Undue burden
  - Case-by-case basis, by weighing the difficulty or expense of the requested or required accommodation against a number of factors, including the overall financial resources of the employer, the number of employees employed, and the effect of the accommodation on the expenses, resources, or operations of the employer. Can be really hard to prove.

# Be Aware

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- No magic language or requirement of specific request for accommodation
- Being on notice of an issue and a need is sufficient
- On notice – interactive dialogue about what is needed
  - meet with the employee who requests accommodation;
  - request information about the condition and any resulting limitations;
  - ask the employee what he or she wants; and
  - offer and discuss alternatives if the employee's request is too burdensome.
- Document
- Although a school is not required to remove essential job functions, the ADA specifically recognizes reassignment to an alternative, vacant position as a form of reasonable accommodation
- A school is not, however, required to bump or displace another employee from a job to create a vacancy, nor is it required to promote the employee with a disability as a reassignment.



So...

You are the new head at a school that is new to you. The chair of the history department has told you that a newer history teacher should not be renewed for next year. What do you want to know? What do you hope to find out?

What do you  
want to  
know?

- Track record
- Documentation
- Consistency with policies
- Profile of the person – age, race, gender, etc.
- Whistleblower?
- Other obstacles?
- What would she say about us?
- Are we living up to who we are here?



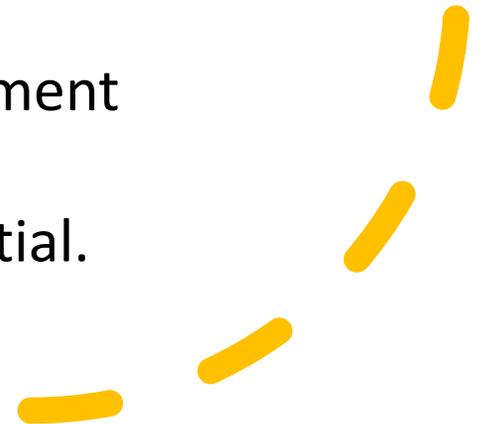
# Biggest issues...

- Discrimination – age, race, gender, ability, military service, religion, etc.
- Retaliation
- Sexual harassment / Hostile workplace
- Breach of contract



When you let  
someone  
go...

- Get the severance agreement
- Let people go in good faith
- What little things can you do to ease this time?
- What can you do to ensure that you get what the school needs?
- Waivers and confidentiality are often key
  - Keeps this from popping back up via EEOC or other agencies
  - Also keeps the terms of the settlement confidential
  - Keeps the circumstances confidential.

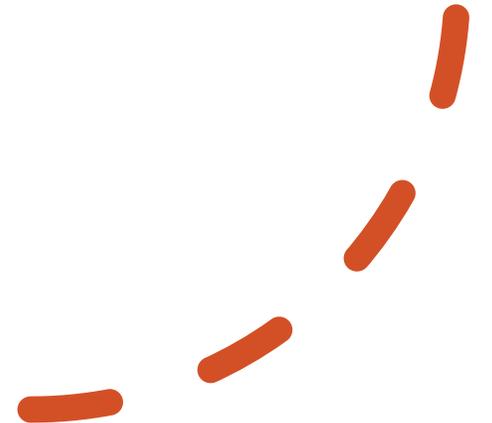


# Tight Staffing Market

Your city-wide independent school consortia has always been very collegial. However, this year your beloved physics teacher just announced that she is retiring, and you are feeling a bit stuck for next year. A superstar teacher from another school has applied for the position. Your head of school says “We can’t even consider him. We have all agreed that we won’t “do” that to each other.” Is this a problem?

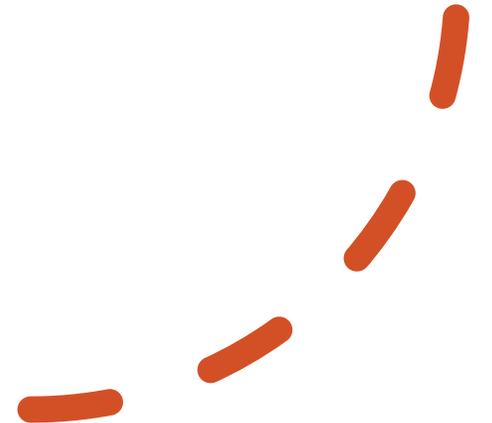
# Antitrust

- Anything that locks in cost or market, including staff, students, admissions decisions, financial aid, etc.
- Workforce is getting a very close look right now
- Talking about criminal charges
- Watch for:
  - Dividing market
  - Setting levers
  - Limiting or agreeing to funding (financial aid, etc.)
  - Commissions on placement?



# Antitrust

- FTC has been cracking down on nonprofits with these kinds of arrangements.
- UNC / Duke settlement
- Multiple cases over the last couple of years
- Do not either implicitly or explicitly find yourself in this situation
- Questions remain on:
  - Admissions timeline agreements
  - Early decisions information sharing



# Overview of Antitrust Laws

- Competitors must make significant business decisions individually rather than making them together.
- Applies to nonprofit schools engaging in “commercial activities.”
- Applies to formal and informal agreements.
  - Tuition, salaries, determinations regarding which families to admit, etc.
  - Hallway discussions, text message chains, listservs.

# Overview of Antitrust Laws

- Federal Antitrust Laws
  - Sherman Antitrust Act, 15 U.S.C. §1
  - Clayton Antitrust Act of 1914, 15 U.S.C. §12 *et seq.*



# What Is An Antitrust Violation?

- *Per Se* Violations
  - Agreements to fix prices
  - Agreements to boycott suppliers, competitors, customers/clients
  - Agreements among competitors dividing or allocating markets or market shares
  - Agreements coerced by a provider with a dominant market position tying the purchase or provision of one product or service to the purchase or provision of another product or service, so-called “tying”
  - **What is an agreement?** A lot less than you think it is
- 

# What Is An Antitrust Violation?

- Rule of Reason Violations
  - Conduct that has led to anticompetitive effects in the relevant market
  - Covers any conduct that is not a *per se* violation
  - Most nonprofit association conduct is reviewed under the “Rule of Reason” test
- 

# What Is An Antitrust Violation?

- Relevant questions to consider in analyzing antitrust violations:
- Is this agreement necessary or can it be done through individual decision-making by the educational institution?
  - Even if schools agreeing to do something collectively would be an antitrust violation, a school deciding that same approach individually is likely not
- Who benefits from the agreement – the students/applicants or the educational institution?

## Why Should Schools Care?

- Violations of the antitrust laws may be civilly or criminally prosecuted by the State or Federal government
  - Injured private parties (i.e., applicants, students, staff, other schools) may also bring a lawsuit
  - Courts may require injunctive relief or award monetary damages
  - Lack of public trust in institutions
- 

# Why Should Schools Care?

- Department of Justice and Federal Trade Commission announces they are on alert for anti-competitive collusion among employers.
- <https://www.justice.gov/atr/joint-antitrust-statement-regarding-covid-19>

# Tips for Avoiding Antitrust Liability

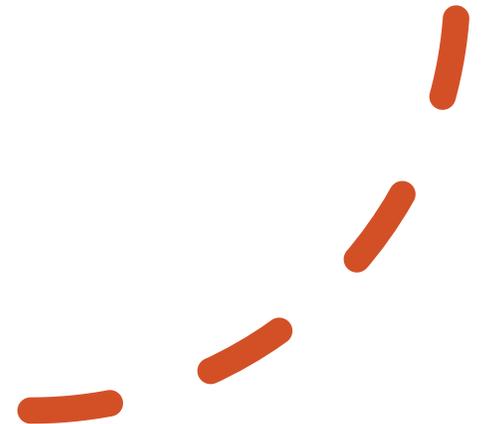
- Avoid group discussions, agreements, resolutions, or other actions—formal or informal—that restrict:
  - *staff choices and recruitment; marketing or recruiting to certain students or families; tuition levels, salary levels, benefits, and other topics impacting financials; or limit other competitive levers within the schools.*
- Avoid any action that appears likely to have the effect of raising, lowering, or stabilizing tuition or fees for schools or related programs.
- Avoid any action that appears likely to reduce the quantity, quality, or access to services of independent schools.
- Seek legal counsel whenever there is a potential antitrust concern.

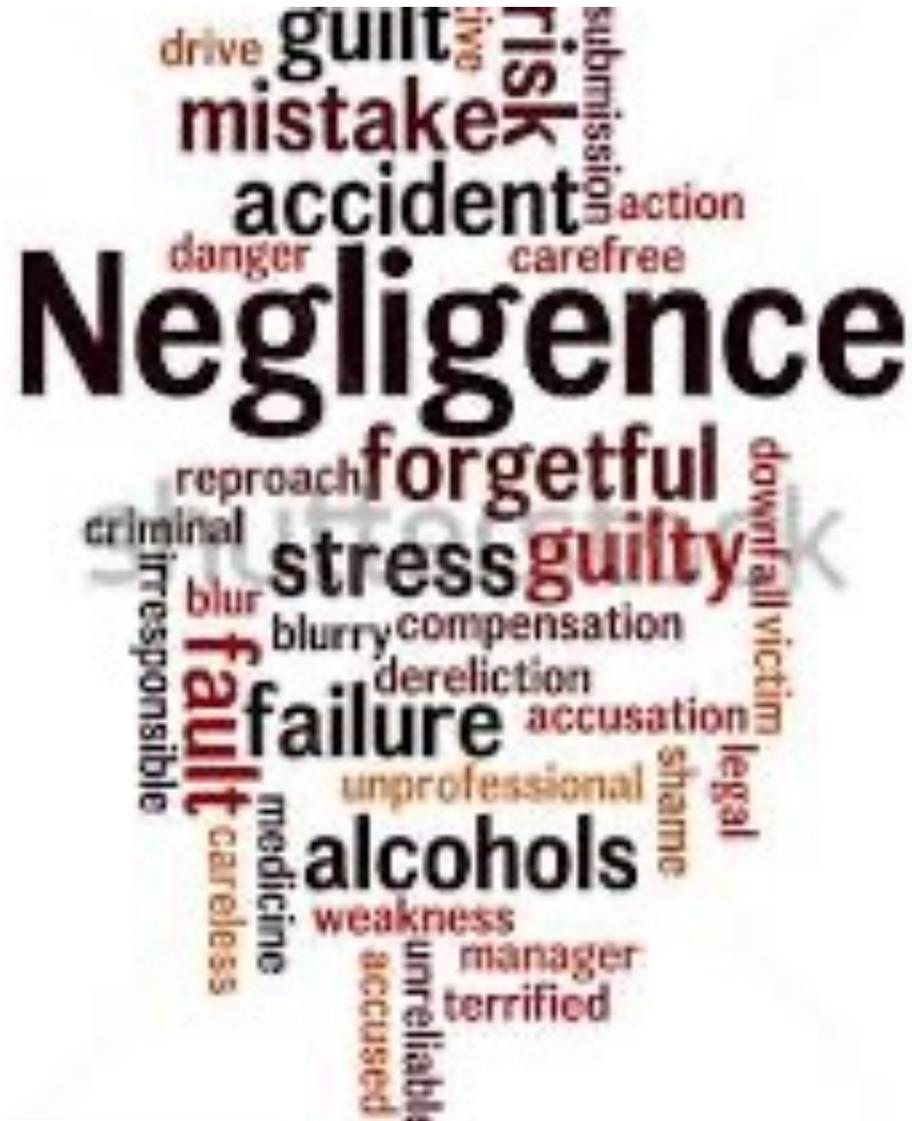
How has this  
come up in  
school  
context?

- Financial aid
- AP course offering agreements
- Student recruitment
- Employee recruitment / compensation
- Principles of good practice
- What does managing one of these cases look like?



Your assistant head of school, an alumni of your institution, just told you that one of her classmates posted a #metoo statement that includes the following: “My sophomore year in high school, my biology teacher pushed me against the wall and kissed me. The administration knew and did nothing.” What do you do?





## NAIS/TABS Task Force Report Be Aware of ...

- Negligence Standard
  - Hiring
  - Policies and Procedures for boundaries and follow up
  - Overall review of risks and follow up through implementation and training
- Accreditation Activity
- Communications expectations

# Prevention

- Managing the Risk: Who at Your School Owns Child Safety and Protection?
- Policies
- Supervision and Training
- Hiring
- Reporting
- Advance Work for Responding to an Allegation of Abuse or Reason to Suspect Abuse



# Prevention

- Managing the Risk: Who at Your School Owns Child Safety and Protection?
  - Can be a team, pre-existing or newly appointed
  - Can be an individual
- Policies
  - Establish and Update Written Student Safety Protocols
  - Establish and Maintain Clear and Appropriate Professional Boundaries Between Students and Adults
  - Employ and Enforce a Code of Conduct for All Staff and Volunteers
  - Periodically Review the School's Physical Spaces
  - Develop Appropriate Policies Related to the Use of Technology



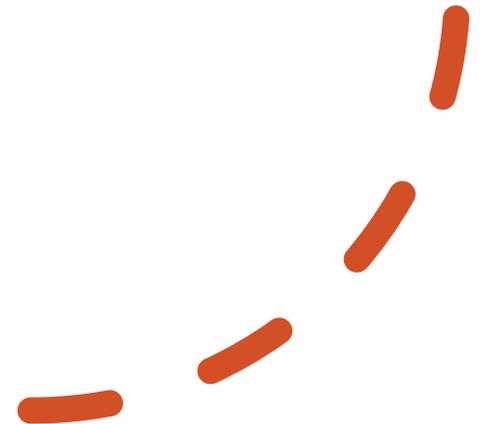
# Prevention

- Supervision and Training
  - Create and Maintain an Internal Reporting System
  - Provide Regular Required Training About Preventing Sexual Abuse
- Hiring
  - Improve the Screening of Prospective Employees
  - Develop Policies for Providing References and Information on Former Employees
- Reporting
  - Establish Procedures to Respond to, Report, Record, and Track Suspected Cases of Sexual Abuse



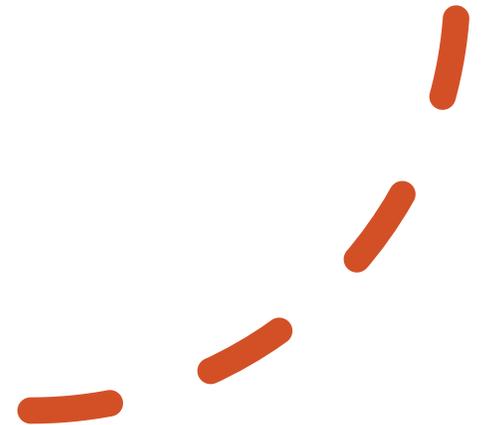
# Prevention

- Advance Work for Responding to an Allegation of Abuse or Reason to Suspect Abuse
  - Identify in Advance a “Response Team” to Respond to Allegations of Misconduct and Abuse
  - In Advance, Evaluate the School’s Insurance Policies Regarding Educator Sexual Misconduct

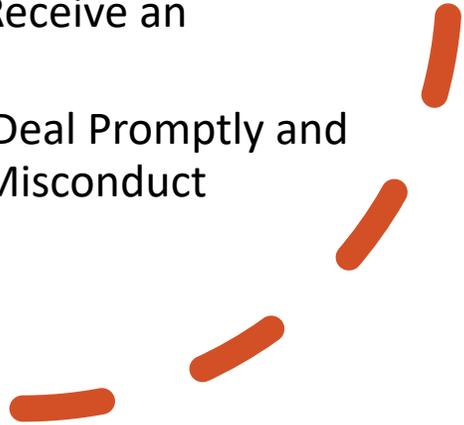


# Response

- Fundamentals
- Initial Notification
- Investigation
- Communications
- Afterwards

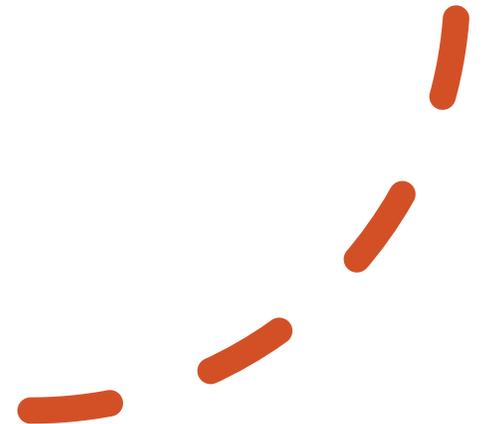


# Response

- Fundamentals of Response
    - Know and Follow the Law Without Exception
    - Never Dismiss an Allegation as the False Complaint of a Troubled Child
    - Protect the Confidentiality and Privacy Interests of the Reporter and Other Potential Victims
  - Initial Notification
    - Respond Quickly and Compassionately
    - Listen and Respond with Empathy to the Person Reporting the Abuse
    - Activate Your Response Team as Soon as You Receive an Allegation
    - Establish a Procedure That You Will Follow to Deal Promptly and Equitably with a Person Accused of Abuse or Misconduct
- 

# Response

- Investigation
  - As Appropriate, Retain an Independent Outside Investigator with Subject Matter Expertise to Investigate Allegations of Abuse
  - Conduct a Prompt, Equitable, and Thorough Investigation
- Communications
  - Plan How You Will Report on the Investigation
  - Communicate with Transparency
- Afterwards
  - Help Survivors Heal
  - Help the Community Heal



# Older Reported Abuses

- Take report in
- Report / document
- Statutes of limitations?
- Internal documents and knowledge
- Investigation – outside expert
- Be aware of past cultural acceptance of sexual behavior
- Take steps to prep for all of above
- Transparency in communications – across the board
- Reparations and community work afterwards

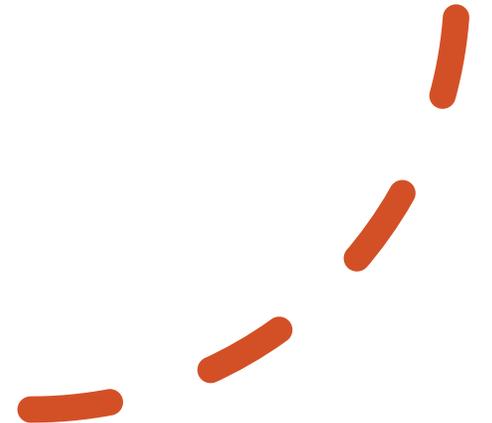


Your dean of faculty has interviewed a new physics teacher for an opening that came up late in the year. This is a unicorn candidate. He is a male teacher who can teach both physics and chemistry, can coach cross country and fencing, and has a counseling background. He has a stellar track record from other schools where he “lived for his students,” “always seemed to be at school for one reason or another,” and “he was so dedicated he really took the time to support several students whose family lives were very scattered.” While you are excited about the candidate, something seems a bit too good. How do you know if he is?



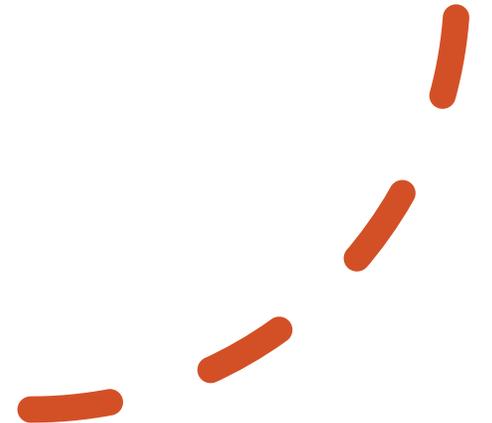
# Target Students

- Students who are perceived as weaker, loners, less socially tied
- Students with busy parents who need someone to fill in the gaps
- Students who may need / desire that one on one time with adult and respond accordingly.
- School protocols for identifying and tracking these students



# Inappropriate Educator/Volunteer

- Overly close with students, particularly frequent touching
- “Special students”
- Students as social companions
- Conversations that would be inappropriate in front of parents
- Signs of boundary breakdown: jokes, secrets, flirting. Student behavior, with an adult



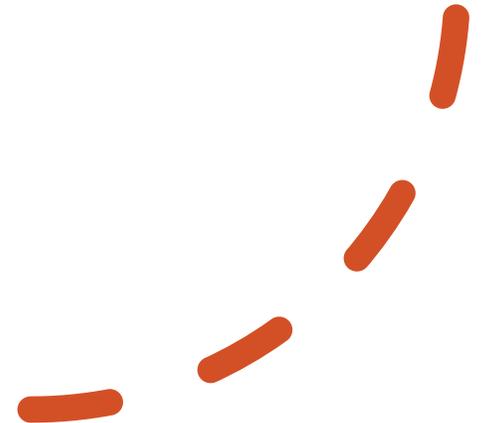
# Reference Questions

- Do you have any concerns about this individual working unsupervised with children?
- Who else should we contact regarding this individual's history working with children?
- Have you seen this person work with children?
- Do you feel this person is mature enough to handle this position?
- This is our Code of Conduct, do you feel this will be difficult for this person to follow?



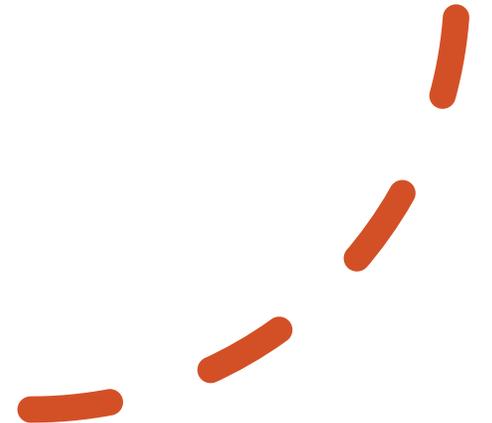
# Interview Questions

- Why do you want to work with children?
- How would you respond if... (boundary question, colleague question, etc.)
- What about this position appeals to you?
- You have been provided with a copy of our code of conduct, do you think this will affect your teaching style?



# Things to look for...

- Gaps you cannot fill
- Frequent changes of location, particularly international
- Holes in supervisor contact information
- “Loner” mentality
- History of overly close relationships with individual students



# Guerrilla Tactics

You had to let a high school biology teacher go at the end of last year. She was extremely hostile to the administration and would often rally other discontents on staff to her negative views. Her attitude would also seep into the classroom. Of course, she was one of the students' favorite teachers. A parent group has started a website called 'SaveGreenAcres.com.' The site states that the science department has been "gutted" by the loss of this teacher, the endowment is being mismanaged, your spouse is being paid an unlawful salary, and you are retaliatory to staff and students alike. They have also sent an open letter to the board and are working to recruit parents, staff, and alums to their group. What is going on? What do you do?



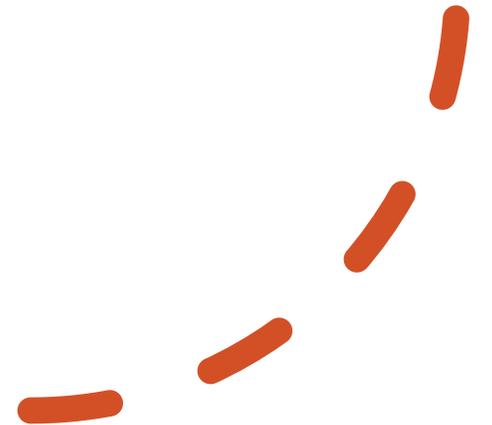
# Geurilla Tactics

- New trend in faculty / parents / alumni organization
- Quickly organized, very public, often trying to get public apologies, mea culpa, or other forms of displays and control
- Board is supposed to deflect to the head. What happens with the head is the target?
- Board speaking with one voice
- What do they want?
- Is it ever changing?
- How do you manage this risk on the front-end?
- What are your dashboards?
- What tools can you use to keep this from getting out ahead of you?



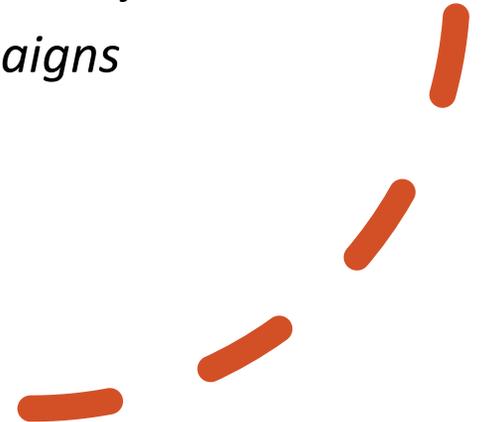
# Political Relations

Your AP US History teacher would like to take the class to a protest happening at your state capital. The protest is against legislative action related to school curriculum. Can this happen? How do you know?



# Politics

- All of the head's actions must go back to the mission of the school
  - Everything you do will reverberate, particularly when you are new
- Pragmatically, the school must survive in its culture
- If cultural change needs to happen, it must be planned strategically, within its context
  - What is the desired outcome?
  - What needs to change to get there?
  - How is that going to happen? Long-term goals and objectives
- *Limitations on involvement in political campaigns*



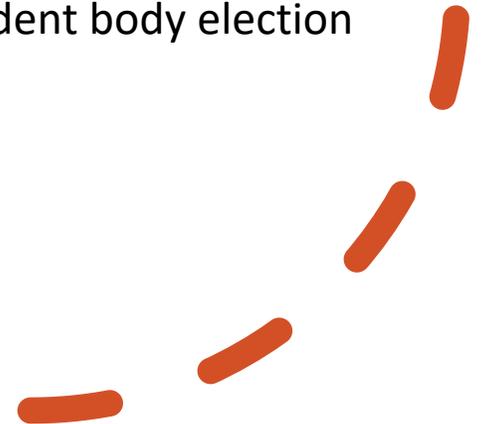
# Rules for Nonprofits & Advocacy/Political Activity

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	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive tax-deductible charitable contributions	YES	NO	NO	NO	NO
Receive contributions or fees deductible as a business expense	YES	YES	YES	YES	NO
Substantially related income exempt from federal income tax	YES	YES	YES	YES	YES
Investment income exempt from federal income tax	LTD*	YES	YES	YES	NO
Engage in legislative advocacy	LTD	YES	YES	YES	LTD
Engage in candidate election advocacy	NO	LTD	LTD	LTD	YES
Engage in public advocacy not related to legislation or election of candidates	YES	YES	YES	YES	LTD

# Rules for Nonprofits and Elections

- Schools may not be seen as endorsing a candidate in a political campaign
- Debates are okay, as long as both/all sides are invited to the debate.
- Educational opportunities to provide students with an overview of the issues are also okay, again provided that both sides are invited and, ideally, represented
- May not use school resources for:
  - Campaigning, including letterhead, supplies, mailing lists, email lists, etc.
  - Displaying signs on campus unless part of a student body election / education driven event.



# Teachers and Elections

- Employees have the voice of the school
- Particularly true for heads of school and other higher profile employees
- Teachers also count. Make clear that on campus / education activities should not involve teachers' express personal election or political leanings
  - Any letters, sign-ons, op-eds, social media, etc. should be clear that the individual is speaking for themselves and not the school
- Off campus / non work time activity regulation should be handled with care as some states do not allow employers to regulate such activity



# Considerations Around Advocacy

- Be aware of the political culture around your school and within the community
- Letters / Advocacy of the school
  - Topics within your mission
  - Not using substantial resources
  - NAIS Action Center
- **Student Activity?**
  - Mission / Educational Purpose
  - Safety
  - Student agency (is it really a walk-out if...)





Questions

# Risk Management & Key Legal Issues

Debra Wilson

## Session Evaluation

*Scan the QR code or go to  
[www.sais.org/23FCdw](http://www.sais.org/23FCdw)  
to complete the session evaluation.*

