



**independent schools association
of the central states**

HOT LEGAL ISSUES IN INDEPENDENT SCHOOLS

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WHAT WE WILL COVER

AGENDA



- An overview of necessary documents to minimize risk
- Addressing internal complaints
- Social media and bullying
- Student accommodation issues
- Heads of School contact considerations

CRITICAL DOCUMENTS

- Charters or Articles of Incorporation
- By-laws
- Employee Handbooks
- Student Handbook
- Employment Agreements
- Travel policies and permission documents



CRITICAL DOCUMENTS



- Insurance policies
- I-9 Forms
- Job descriptions
- Student application and enrollment documents
- Crises Management Policy

ADDRESSING INTERNAL COMPLAINTS

- Complaints regarding allegations of sexual harassment or abuse can come from many sources.
- Must be prepared to address in any situation.
 - Employees
 - Students
 - Alumni



INCREASE IN COMPLAINTS



EMPLOYEE COMPLAINTS

- Maintain a comprehensive sexual harassment policy
- Employees must know who to report conduct to
- Investigation must be conducted
- Conduct in violation of policy must be addressed



AFFIRMATIVE DUTIES

- To investigate
 - Promptly
 - As confidentially as possible
- To redress conduct that violates employment laws

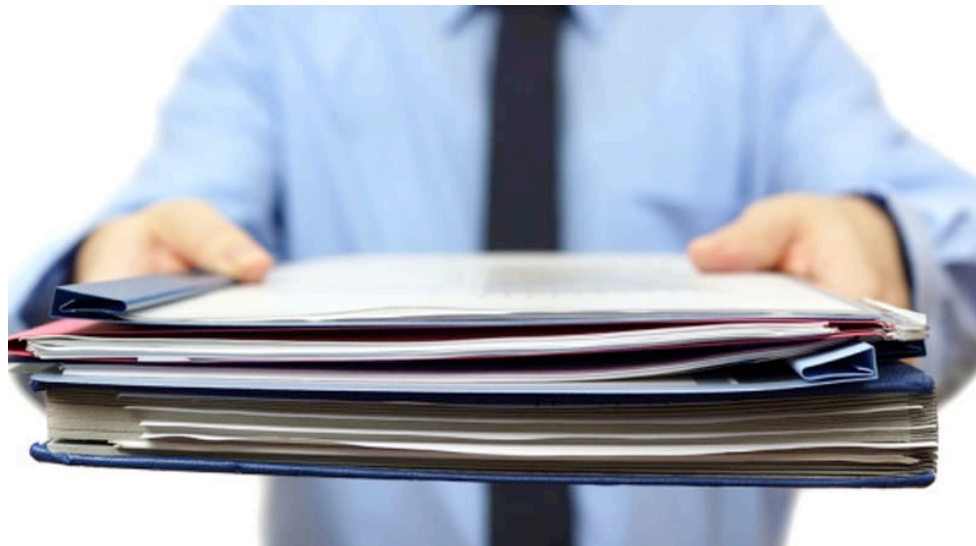


ADDRESSING COMPLAINTS

- Who will investigate?
 - Internal/External
 - Conflicts of interest
- Do interim measures need to be taken?
- Witnesses
- Types of evidence

DOCUMENTATION

- Individuals interviewed
- Evidence reviewed
- Specific findings of policy violations or lack thereof



CORRECTIVE MEASURES

- Counseling
- Training
- Transfer
- Final warning
- Suspension
- Discharge



ESTABLISH ZERO TOLERANCE



- Make sure all employees are following the policy
- Do not allow incidents to go unaddressed

STUDENT COMPLAINTS

- Allegations of abuse by faculty, staff and other students
- Affects all types of schools
- Requires immediate action
- Strategies in place for investigation and consulting with legal counsel
- Know your mandatory reporter obligations

ALUMNI COMPLAINTS



- Numerous reports by alumni around the country
- Reports can date back decades
- Strategy for responding to complaints
- Potential legal claims
 - Respondeat Superior
 - Negligent Hiring
 - Negligent Supervision

TASK FORCE/CRISES MANAGEMENT

- Do not wait until the complaint comes in to think about how complaints should be handled
- Establish task force
 - Attorney
 - Investigator
 - Public Relations firm
- What is the role of the Board?



SOCIAL MEDIA AND BULLYING



WHAT IS BULLYING?

- Bullying is any unwanted aggressive behavior(s) by another youth or group of youths . . . that involves an observed or perceived power imbalance and is repeated multiple times or is highly likely to be repeated. Bullying may inflict harm or distress on the targeted youth including physical, psychological, social or educational harm.

WHAT CONSTITUTES A POWER IMBALANCE?

- Physical Characteristics
- Popularity or Association with Popular Peers
- Background/Demographic Characteristics
- Abilities and Skills
- Access to Money, Resources and Information
- Being Outnumbered
- Presence of Weapons



RISK FACTORS

- Learning disabilities
- Attention Deficit/Hyperactivity Disorder (ADHD)
- Autism Spectrum Disorder (ASD)
- Special health care needs or chronic illnesses
- Overweight or underweight
- Lesbian, gay, bisexual, transgendered; questioning their sexual orientation or do not conform to gender stereotypes
- Speak another language at home

SOCIAL MEDIA AND BULLYING

S T O P

cyberbullying

CYBERBULLYING

- Posting mean comments online
- Creating a hate group about someone
- Photoshopping someone's photo to embarrass them
- Recording and posting videos of others
- Spreading rumors and gossip
- Stealing someone's identity and creating a fake profile
- Refusing to "friend" others or creating exclusive groups



BULLYING PREVENTION AND RESPONSE

In addition to having policies prohibiting bullying, staff must be trained on the following:

- The nature and effects of bullying
- How to prevent bullying
- (e.g. the importance of adult supervision)
- Appropriate responses if bullying is known or suspected



RESPONSE TO BULLYING

- **Off-site activity can be regulated:**
 - Clear-cut threat
 - Disruption in school
 - Student accessing websites while in school
 - School-owned or sponsored website or social media site
 - School-owned equipment
 - Proof of in-school impact (psychological behavioral or academic impact on others)
 - Violation of acceptable use policy

BULLYING

- 105 ILCS §5/10-20.14. Student discipline policies; parent-teacher advisory committee
- 105 ILCS §5/10-22.6(d-5). Suspension or expulsion of pupils; school searches
- 105 ILCS §5/14-1.09.2. School social work services
- 105 ILCS §5/22-12. Preventing or interfering with a child's attendance at school
- 105 ILCS §5/22.24b. School counseling services
- 105 ILCS §5/27-13.3. Internet safety education curriculum
- 105 ILCS §5/27-23.7. Bullying prevention
- 105 ILCS §5/34-84a.1. Principals shall report incidents of intimidation

STUDENT ACCOMMODATION ISSUES



STUDENT ACCOMMODATION ISSUES

Section 504 of the Rehabilitation Act of 1973:

"No otherwise qualified individual with a disability. . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . ." 29 U.S.C. § 794(a).

SECTION 504

A physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Physical or mental impairment includes virtually any substantially limiting physical or mental disorder.

Major life activity is defined to include, without limitation, functions such as "caring for oneself, performing manual tasks, walking, seeing.

MINOR ADJUSTMENT

- Nature of the program for which the accommodation is sought
- The administrative burden of the requested adjustment
- The expense of the requested adjustment
 - minimal extra time to complete school work
 - class seating preference
 - use of a tape recorder
 - larger print
 - oral exams

AMERICANS WITH DISABILITIES ACT

Title III of the ADA applies to non-religious, private schools with respect to student accommodation issues.



AMERICANS WITH DISABILITIES ACT

- Using eligibility criteria that tend to “screen out” otherwise qualified individual students/applicants with disabilities
- Failing to ensure that no otherwise qualified student/applicant with a disability is excluded, denied services, segregated or otherwise treated differently than other students/applicants because of the absence of auxiliary aids and services

AMERICANS WITH DISABILITIES ACT

- Failing to make “reasonable modifications” in policies, practices, and procedures that are necessary in order for otherwise qualified students/applicants to have equal access to school programs
- Failing to remove architectural barriers, structural communication barriers in existing facilities, and transportation barriers in existing vehicles used by the school for transporting students where such removal is “readily achievable;”

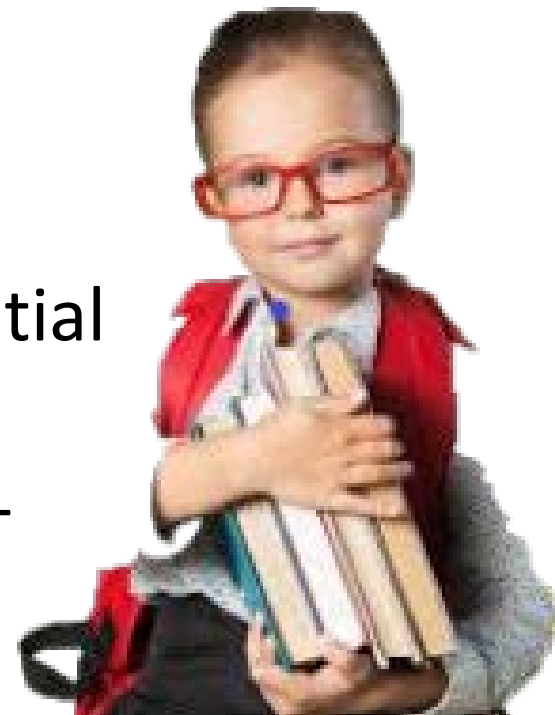
DEFINITION OF DISABILITY

- (a) The student must, in fact, have “a physical or mental impairment that substantially limits one or more of the major life activities of such individual”; or
- (b) The student must have “a record of such an impairment”; or
- (c) The student must be “regarded as having such an impairment.”



QUALIFIED STUDENT

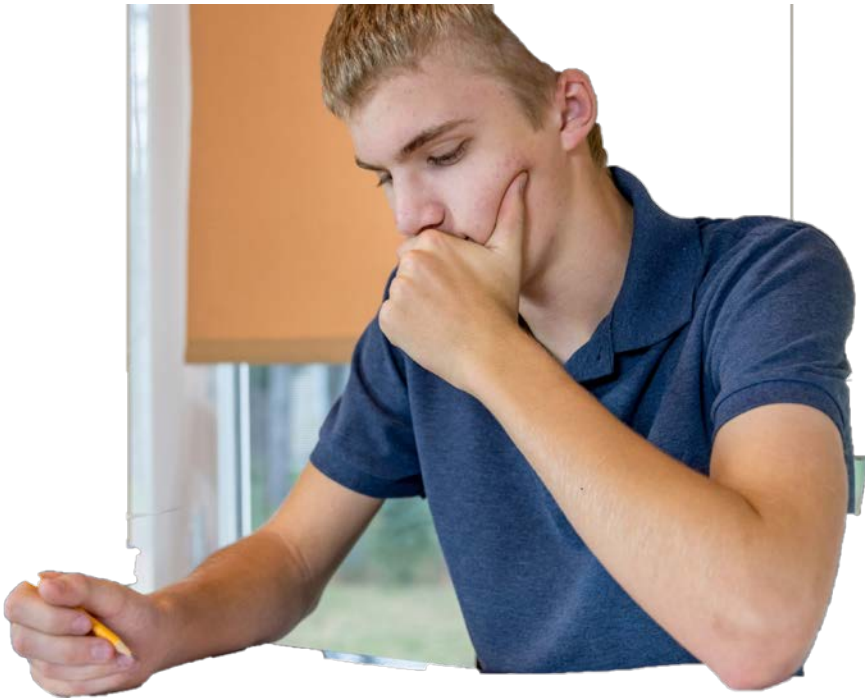
- A disabled student is not, solely by virtue of having a disability, entitled to admission to a school or to participate in any other program or activity of the school.
- The student must satisfy all the essential qualifications for participation in any school program or activity that a non-disabled student must satisfy.



REASONABLE ACCOMMODATION

- (1) Whether the requested modification is “reasonable;”
- (2) Whether the modification is “necessary” to enable the disabled student to participate; and
- (3) Whether it would “fundamentally alter the nature of the school or cause undue burden to the school.”

REASONABLE ACCOMMODATIONS



- Offering different testing formats or settings, and additional time to complete tests.
- Not changing the content of the test itself.

REASONABLE ACCOMMODATIONS

Example: A school requires that all entering seventh grade students read, write, and do math at the seventh grade level or above, and this requirement is mandatory to the school's commitment to its high academic achievement mission.

HEAD OF SCHOOL ISSUES

- Delegating responsibilities between Board and Head
- Student and staff recruitment/retention
- Competition for strong leaders
- Burn out



ADMINISTRATIVE RESTRUCTURING

- Reduce the number of direct reports to the head of school.
- Structure defined to enable the head to focus on the most important challenges facing the school.
- Give junior administrators more responsibility in order to encourage talented individuals to stay with the school and advance.

CONTRACT CONSIDERATIONS

- Term
- Termination provision
- Severance
- Bonus or Incentive Compensation



ANY
QUESTIONS
?

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Thank You!