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**NATIONAL ASSOCIATION FOR
INDEPENDENT SCHOOLS AND THE
ASSOCIATION OF BOARDING
SCHOOLS (NAIS-TABS) 2018 LEGAL
SYMPOSIUM**

**Local and National Legal and Risk
Management Trends to Follow or
Avoid**

10/18/2018

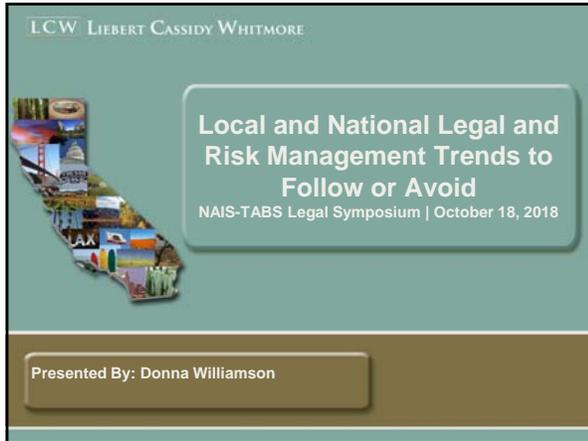
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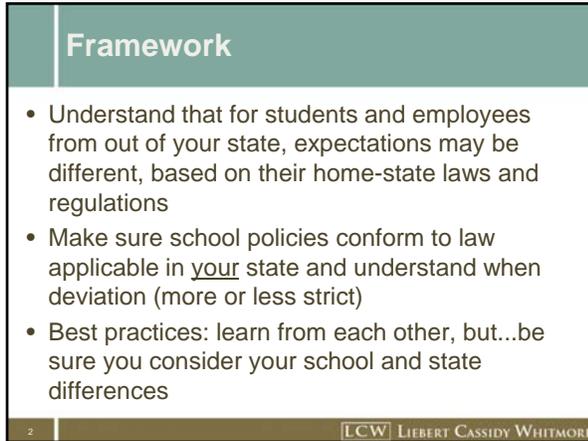
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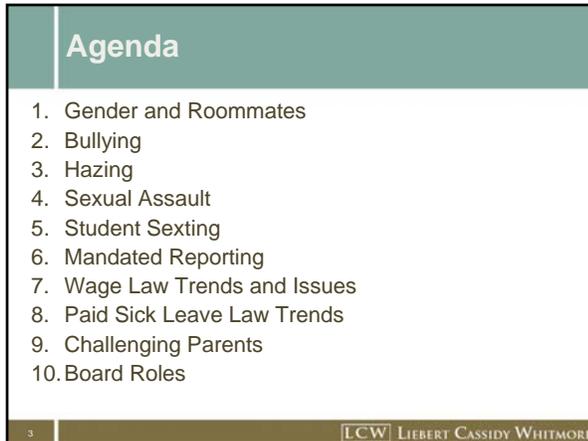
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NAIS-TABS Legal Symposium | October 18, 2018

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Gender and Roommates



- Legal Framework: schools as places of public accommodation
 - Check if your state law includes gender identity as a protected class (approximately 20 states)
- Use of pronouns, single use bathrooms, locker rooms
- Room visitation policies, gender neutral dorms

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Bullying

- All 50 states have passed anti-bullying legislation
- Much of this legislation only regulates public schools, but still serves as best practice for private schools
- Many states have criminal and civil remedies to deal with cyberbullying

Common Issues:

- Whether conduct is in fact bullying
- Parents blame school for child being bullied
- School must take prompt steps to investigate
- School must take prompt steps to end bullying and prevent it from reoccurring

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Hazing

- Hazing is any action taken or any situation created intentionally that causes embarrassment, harassment or ridicule and risks emotional and/or physical harm to members of a group or team, whether new or not, regardless of the person's willingness to participate.
- Most states have Anti-Hazing Laws
- Hazing is frequently associated with colleges and universities, but occurs in middle and high schools, and often as part of athletic programs or in dorm rooms.
- Hazing can also be sexual harassment/assault
- Schools can be liable for failure to prevent and address hazing

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Sexual Assault: “Me Too” Legislation

- There is a national trend of “Me Too” Legislation in response to recent events
 - NY recently enacted a law requiring employers to provide employees with annual sexual harassment training, prohibiting mandatory arbitration of sexual harassment claims, and restricting the use of confidentiality provisions in settlement agreements. Similar proposals have been enacted or are pending in numerous other states.

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The Effect of the “Me Too” Campaign

- More students are coming forward with claims of sexual assault
- If the assault took place on campus, or is otherwise disrupting the educational environment (for example the conduct took place between two students off campus), the School should to take responsive action
- Title IX provides good guidance (although Title IX does not apply to boarding schools)

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Sexual Abuse: Past Claims

- Each state has a different statute of limitations
- The statute generally tolls upon knowledge of potential harm
- Former students who learned that teacher abused other students were barred from bringing claims by statute of limitations where they knew at the time of potential harm
 - Raddin v. Manchester Educational Foundation, Inc., 175 So. 3d 1243

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Approaches to Sexting



- Child pornography and a felony
- Romeo and Juliet (or close in age) carve outs for teenagers
- Transmission of multiple images within 24 hours counts as one offense
- Penalties differ based on image of nudity versus image or video of sexual conduct

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Revenge Porn

- “Revenge porn” may occur when a jilted ex-spouse/boyfriend/girlfriend/partner shares explicit messages and photos that were meant to be private in an attempt to cause humiliation and embarrassment.
- Most states have passed laws making revenge porn a crime.

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Mandated Reporting

- Most states have mandated reporting laws
- California law requires that mandated reporters immediately make an oral report to CPS or local law enforcement upon reasonable suspicion of child abuse, and follow up with a written report within 36 hours.
- Sexual assault claims by minors give rise to duty to make a mandated report
- Hefty penalties for failure to comply
- In CA, failure to report is a misdemeanor

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Challenging Parents: Divorce

- One parent refuses to sign enrollment agreement, behavior contract, trip waiver, or other legal documents
- Conflicting parent requests
- One parent requests school withhold documents/information from other parent
- One parent is disruptive or threatening

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Wage Law Trends

- Many states now require a higher minimum wage than the federal one.
- The minimum wage is indexed for inflation in 18 states and D.C., meaning it is automatically adjusted each year for increases in prices.
 - In California, the Minimum Wage will increase \$1 each year until it reaches \$15 an hour on January 1, 2022
- Minimum Wage in 18 States increased in 2018
- Some localities also have higher minimum wage than state minimum wage

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Common Wage Issues for Boarding Schools

- Separation of working from non-working time for non-exempt employees who live on campus
- Payment for time spent "on-call" for non-exempt employees
- Whether employee's salary meets salary threshold for exempt status (salary threshold amount depends on state). In CA the salary threshold for exempt status cannot generally be pro-rated unless the employee is a teacher engaged primarily in instructing K-12 grade students.

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Paid Sick Leave Trends

- There are no federal laws that require employers to provide paid sick leave for their employees.
- Ten states and Washington D.C. currently require paid sick leave.
- 32 cities and two counties have their own paid sick leave laws.
- In CA: Oakland, Emeryville, Santa Monica, Los Angeles, San Diego, and Berkeley
- In PA: Philadelphia and Pittsburgh
- If local paid sick leave law, both state law and local ordinance must be complied with, but in the event of a conflict, state law controls

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Board Roles

- Board of Trustees
 - To Hire & Support The Head of School
 - To Oversee The School's Financial Health
 - To Set The Strategic Direction of The School
- Head of School
 - Day to Day Operations

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Board Roles

Possible Board Pitfalls

- CONFIDENTIALITY ISSUES
- CONFLICTS OF INTEREST
 - Dual Role as Board Member and Parent
 - Dual Role as Board Member and Friend/Neighbor/Colleague of Family Involved in Decision
 - Dual Role as Board Member and Constituent of School

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Thank You!

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