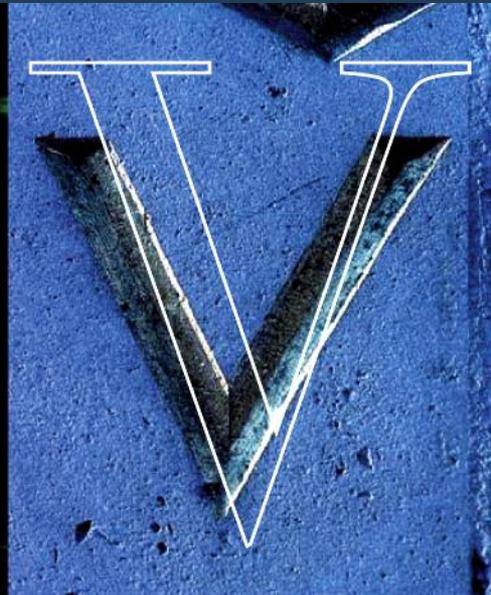
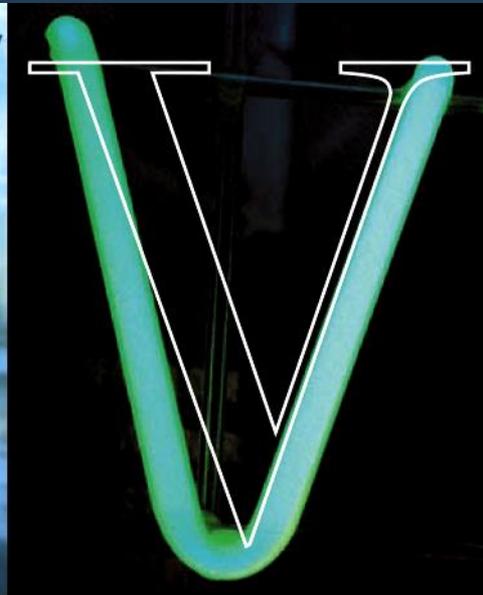
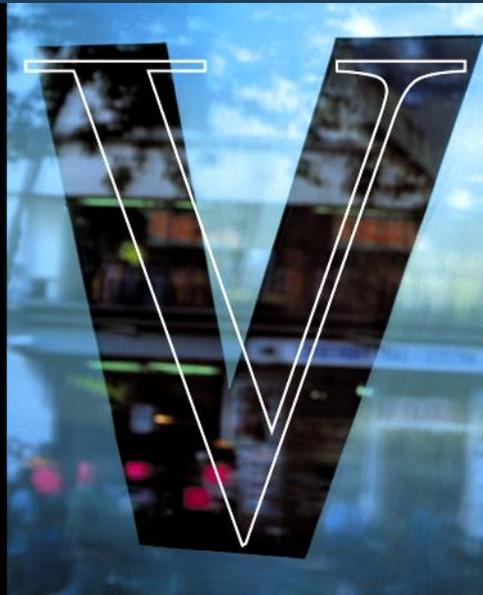
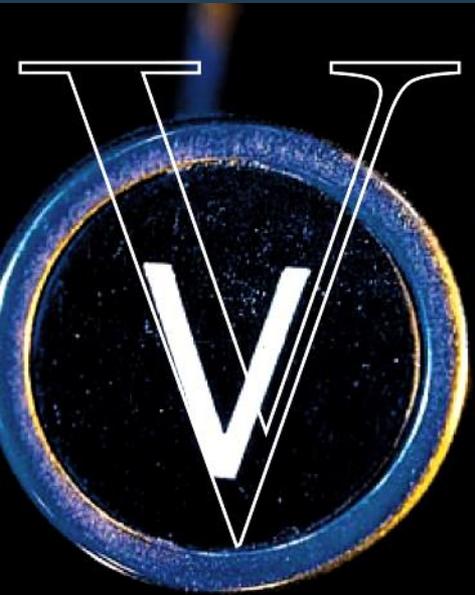


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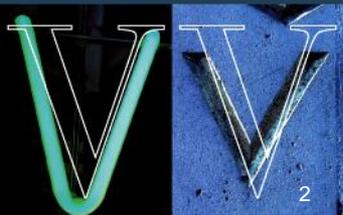
Sex, Lies and Snapchat: Strategies that limit liability when addressing student behavior

AISGW Risk Management Symposium
Caryn Pass, Esq.



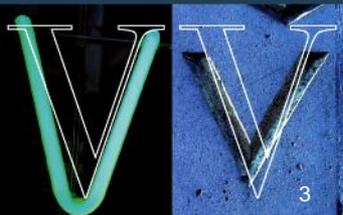
ground rules

- # 1 Priority is Safety and Security of students
 - failure to consider safety of students = negligence
 - tragedies nationwide aplce schools on “notice
- hardwire protection of students
 - Accreditation process
- ZERO risk is a myth
 - limit liability exposure by being proactive
- risk benefit analysis
 - electric fence: expense = protection?
- culture is king
 - acting outside of culture is recipe for disaster
 - “acceptable behavior” in *OUR* school
 - can teachers text students?
- document coordination
 - handbooks, enrollment contracts, applications
- communication of “rules” and “consequences”
 - REPEATED, AGAIN & AGAIN & AGAIN



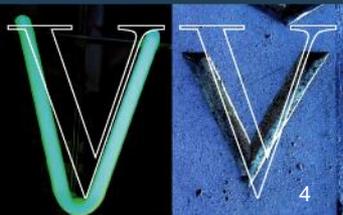
points of risk for student behavior

- **identify all points of risk**
- **students**
 - currently enrolled, applicants, international, visitors
 - definition of “alum” (completion of “requirements”, graduation)
 - screening, supervising and monitoring actions and behavior while on/off campus
- **physical plant**
 - classrooms, **BATHROOMS**, locker rooms, **BATHROOMS**, theatre changing area, remote areas on campus, stairwells, **BATHROOMS**, dorms, by the maintenance shed, buses
- **activities**
 - international trips
 - on-campus and off-campus
 - school sponsored and not-school sponsored
 - not on school property or during school events (weekend party, snapchat on personal phone)



key considerations

- **24/7 or during school events/school sponsored activities**
 - privilege not right to be member of community (24/7)
 - week end parties, personal technology, outside of school hours, on non-school social media, against “non-school” students
- **“reporting” or “non-reporting” to colleges**
 - challenges because of college notification
- **communication to “receiving” school**
 - discipline, departure or behavior to “receiving” schools
 - proactive communication
 - responding to request and teacher recommendation
- **transcript**
 - discipline, removal, withdraw on transcript
- **notification of behavior/discipline policies and procedures**
 - to parents and students, faculty, staff, board members
 - student handbook, enrollment agreement, parent portal
 - entering 9th grade, starting college process
- **protecting “vulnerable” students**
 - transgender students
- **counselors**
 - confidentiality and release of notes



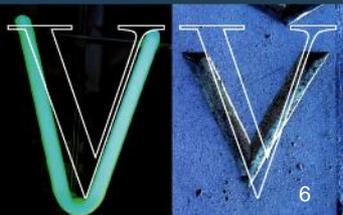
review of space, facilities & access

- conduct security audit
- review all areas of the campus
- areas of concern:
 - stairwell, off-sight locations, windowed doors
 - dorms, locker rooms, stage and changing areas, back stair cases
 - cars and parking lot
 - unvisited locations
- entry and exit from buildings
- engage help of “support staff”
- cameras
 - where are they located
 - are they pointed in proper direction
 - who monitors the tapes
 - do we maintain the tapes



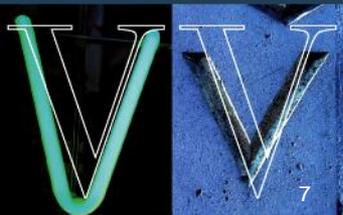
Student Code of Conduct

- **address the following conduct**
 - threats of harm or violence to self and others
 - acceptable use of technology, social media, internet use
 - cyber bullying and other inappropriate conduct via blogs, websites, snapchat, Instagram etc.
 - use of drugs, alcohol or substance
 - other forms of bullying, harassment or mean behavior
 - sexual harassment and misconduct (define consent)
 - destruction of property
 - inappropriate physical contact (younger students in bathroom)
 - acting in a manner that is racist, sexist or otherwise hurtful or disrespectful
 - Black face and “N” word cases
 - cheating, plagiarizing, breach of rules related to tests, papers, studying, homework
 - Acting in a manner consistent with expectations of a student at “X” school (student on porn website)
 - **sexting**



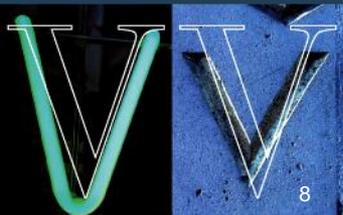
Disciplinary Policy

- **outline the possible consequences for behavior**
 - suspension, expulsion, probation, service
- **allow for maximum flexibility and broad discretion**
 - Don't bind yourself to a fixed consequence
- **establish age appropriate consequences**
- **address issues of by-stander and “duty to disclose”**
- **address process for review of behavior and establishment of discipline**
 - Parties responsible for establishing disciplinary action
 - Consider establishing a honor counsel
 - Include students, faculty others
 - Clearly establish scope of review
 - Create a clear method for selecting participants
 - Allows for due process (appeal to division head)
 - Make ultimate decision maker head of school
- **consistency in discipline is key**
- **consider “messaging” to students**
- **removal of discipline from record**



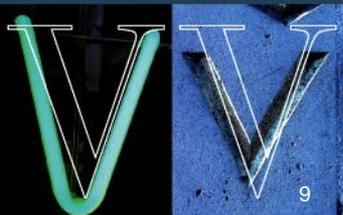
Investigating student behavior

- establish reporting mechanism
 - how and to whom do students report misconduct
 - third party consideration
- communicating with parents of offender and those involved in investigation
- reporting requirements (child protective services)
- establish investigation procedure
 - create investigation “plan”
 - who conducts investigations:
 - administrators, designated administrator, other
 - outside third party: arms length, impartial, independent
 - investigation guidelines and forms
 - training of those involved
 - consider if counsel is needed (privilege)
- determine method for evaluating investigation and result
- remove accused or wrongdoer pending outcome
- communication to student, families, community



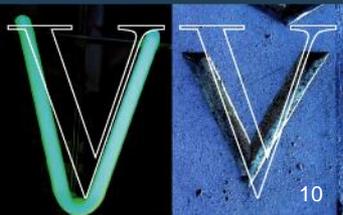
Student Activism

- **record Levels**
- **political and related to school events and behavior**
- **activism off campus and on campus**
 - Off campus Anti-gun
 - On campus: Challenging decisions of administration
 - Poly Prep/Ethical Culture
- **First Amendment Rights**
 - First Amendment Free Speech only refers to government suppression of free speech
 - students- agree to comply with the policies and procedures of the school when they enroll
- **Be Mindful of How You Conduct Yourself**
 - Be respectful, be courteous, be civil
 - Avoid vulgar language or destructive behavior
 - Students represent the school at all times and are expected to act in an appropriate manner



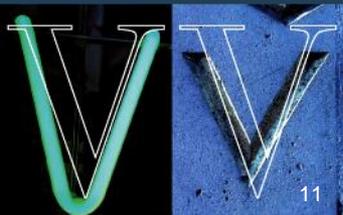
Consent

- Are seeing increased attention to consent and discussions of “what is consent”
 - #MeToo and the Kavanaugh confirmation hearings
 - Public discourse means that students are paying more attention to consent and exactly what it is
- Helpful to look at what the public schools are doing and what is going on in higher education
 - Shouldn’t copy completely – consent education needs to be age appropriate
- Only 8 states (+ DC) mandate a discussion of consent in sexual education courses for public schools
 - California, Hawaii, New Jersey, North Carolina, Oregon, Rhode Island, Vermont and West Virginia
- The Law: “Age of Consent” means that the individual is considered under the law legally able to consent to sexual activity
 - Not to be confused with the “Age of Majority”
- Trends: Affirmative Consent/Circumstantial Consent



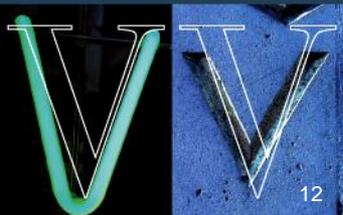
Circumstantial Consent

Lack of consent occurs when one is **physically forced** or **verbally intimidated** into doing something sexual, or submitting to a sexual act, or when one has explicitly indicated a lack of consent, or when the circumstances make it clear that consent has not been given. It can also occur when someone is too intoxicated to say “no” or resist, or has fallen asleep and can therefore not consent. In addition, it may occur in other situations in which someone is deemed to be physically or mentally incapable of giving valid consent, whether due to the use of intoxicants or any other reason.



Consent Education

- Should be age appropriate and can occur at all levels of education
- Consider including it in your curriculum
- Include in Policy
 - make sure to provide supplemental training/guidance on the policy
- Have counselors available to further education on issues of consent
 - Remind counselors about their duty of confidentiality and to whom it is owed
- *Even if you don't have a consent policy, be prepared to respond to allegations that a sexual act occurred and consent was not obtained*



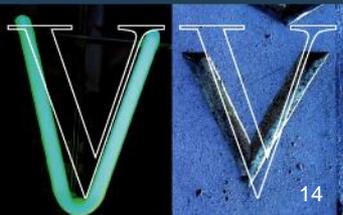
student vetting

- **duty to enroll safe students**
- **failure to properly vet applicants**
 - not admitted if properly vetted
- **student injured by fellow student**
 - drug dealer case
 - behavior caused by influence of dangerous student
- **education history (on application and in interview)**
 - all history not just last 2/3 years
 - reasons for departure
 - carefully review dates of attendance (month and year)
 - specifically inquire into any disciplinary issues
 - inquire into gap in attendance
- **google, Facebook, social media search**
- **teacher recommendations**
 - teachers rarely know full story
 - recent teachers know best
 - form completed by school administration
 - reason for departure, allowed to return, disciplinary history, discipline on transcript
- **ESPECIALLY INTERNATIONAL STUDENTS!!!**



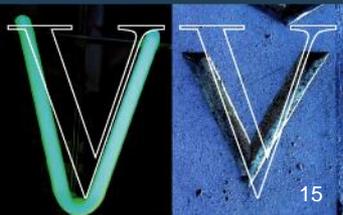
international students

- **using third party consultants**
 - school ultimately responsible for selecting students
- **vetting standard**
 - minimum = consistent with standards of U.S. students
 - higher level of vetting appropriate
 - consider using a different application
 - consider including essays that reflect upon values and student behavior
- **criminal background checks**
 - can be done in host country
- **history of discipline**
 - why did student leave school of origin
 - does originating school record or report discipline?
- **history of ALL schools attended and reason for departure**
 - specific dates of attendance= month and year



application for enrollment & documents

- parent waives access to application materials
 - subject to subpoena
- teacher recommendations
 - contingent upon parent release (receiving)
 - maintain copy, common source, release from parents (sending)
 - mailed/emailed/online from teacher
- notes (interviews, committee meeting, visit)
 - caution writing comments
 - avoid inappropriate statements
 - train all parties
- transcripts
 - sent directly from school
- do not write on any application “document”
 - application, recommendations etc
- communication with applicant, parents etc.
 - texting, email, Facebook
 - follow school policy



application release

- authorize access to student information
 - permission to speak with former school
- information true, accurate, and complete
 - false, incomplete, omitted or misleading information *given on application or during the application process* may result in a refusal to admit or dismissal in the event of admission
- waive access to application documents
 - teacher recommendations, meeting notes, financial aid decisions, calculation methods
- obligation to comply with behavior standards
- admissions decisions
 - based on a wide range of considerations
 - solely and exclusively determined by school
 - application does not guarantee admissions



Venable Independent School Law Practice
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www.Venable.com/education

@schoollawyer

Caryn Pass

cpass@venable.com

(dc) 202.344.8039

(ny) 212.307.5500

(cell) 202.222.8026 (cell) 917.597.1705

Megan Mann

mmann@venable.com

(dc) 202.344.4520

(ny) 212.370.6260

Janice Gregerson

jgregerson@venable.com

(va) 703.905.1402

(cell) 202.440.2183

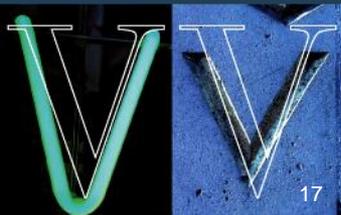
Lauren Stocks-Smith

lstocksmith@venable.com

(dc) 202.344.4329

(cell) 217.691.9629

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