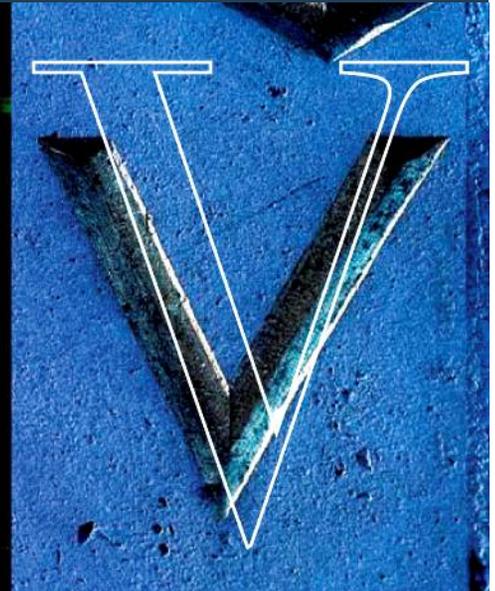
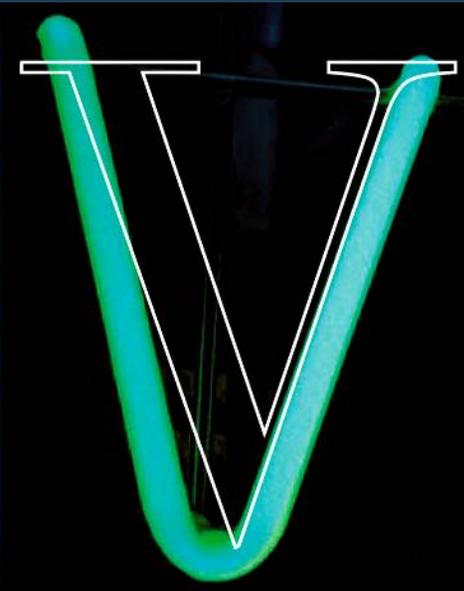
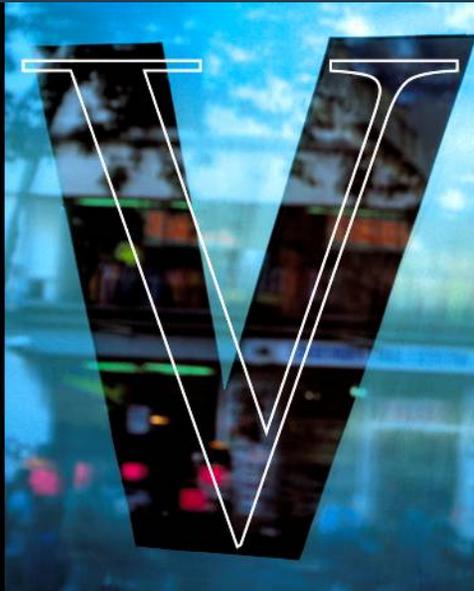
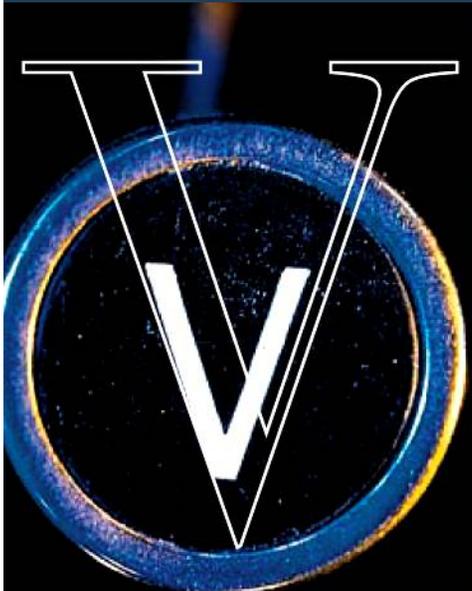




Common Legal Pitfalls and Proactive Strategies for Teachers

2018 ISACS Annual Conference
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Common Themes

- **Student Safety and Security is the #1 Priority**
 - The duty of care
- **“Zero Risk” Doesn’t Exist**
 - We cannot eliminate, but can minimize, risk
- **Risk Benefit Analysis**
 - Don’t make that decision on your own!
- **Culture, Culture, Culture!**
 - Not all independent schools are alike
- **Trust Your Instincts**
 - If it doesn’t feel right, say something!
- **No Changing Hats**
 - You are always an employee of the school, even if you’re not actually at work or on duty
- **Law and School Policy**

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Appropriate Interactions with Students

- **Not Rules, but Guidelines**
 - Cannot foresee every possibility that may arise from every interaction
 - Boundaries are not one-size fits all (or even most)
- **Age and Developmentally Appropriate Interactions**
 - Early Childhood versus Lower School versus Middle School versus Upper School
 - Differing developmental needs
- **Teacher ≠Peer**
 - There is always a power dynamic
 - The “cool” teacher
 - Avoid even the appearance of impropriety

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Appropriate Interactions with Students

- **In Person Interactions with Students**
 - Avoid, where possible, being alone in a room with a student and, if not possible, be cognizant to leave doors open, etc.
 - Limit physical contact with students
 - Age appropriate needs may dictate otherwise
 - Developmental needs may dictate otherwise
 - Consider your role in the school – are you also a coach? Teaching orchestra?
 - Avoid making any student feel uncomfortable
 - On Campus and Off Campus Interactions
 - You're never not a teacher
- **Online and Phone Interactions with Students**
 - Texting Students
 - School policy?
 - Connecting with Students on Social Media
 - School policy?
 - Your Own Social Media Presence
 - People forget themselves on social media

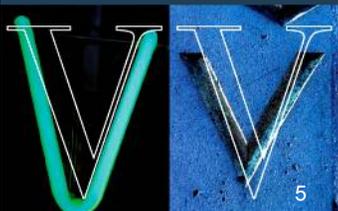
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Case in Point #1: Appropriate Interactions with Students

John Smith is a history teacher at Perfectville Prep, an independent school in Perfectville. John has been teaching at PP for 7 years, and, this year, has been selected to also coach the girls' varsity soccer team. The girls' varsity soccer team is one of the best teams in Perfectville. Every year, they spend a week in the spring at a training camp in Sunny & Humid City. During the school year, the team spends a lot of time travelling to away games and even went to the championships. Because of this, John has the cell phone numbers of all the girls on the varsity soccer team, including Molly McAmazing. John begins to text Molly for reasons unrelated to soccer travel. At first, he starts out by asking her how she did on her tests, or congratulating her for her hard work during the soccer game. One day, John sends Molly a text telling her that he "likes her," and asking her if she "likes him." Molly responds telling John that his text made her uncomfortable. John responds saying that she is sorry if she feels uncomfortable, but that he just hoped that she would feel the same way. Molly says "that's weird, you're 42 and have a wife and children."

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Case in Point #2: Appropriate Interactions with Students

Katie Cool is, rather (in)appropriately, the “cool” teacher at Laissez-Faire School, an all boys high school. Being a teacher at LF is Katie’s first job out of college. She finds that she interacts well with the boys, and attributes at least part of that to the fact that there is not much of an age difference between her, and senior boys. She tells them stories of her “glory days” in high school to break the ice, and not long after, people notice that the boys are spending a lot of time in Katie’s office (always with the door open). Katie wants to make sure that the boys feel they can come to her, so she starts hosting dinner parties at her house for some of the members of the class. When the boys learn that Katie has tickets to the same concert they do (of course, they share an interest in the same music), they make a plan to meet up with Katie at the concert. Eventually, one of the boys invites Katie to come along a weekend trip to Rendezvous Beach that some of the boys are taking to celebrate their graduation – and Katie accepts.

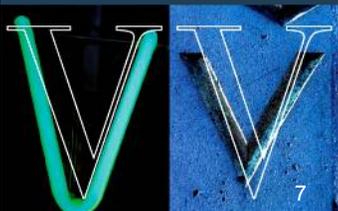
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Case in Point #3: Appropriate Interactions with Students

Bonnie Bluesocks is a teacher at Calm Waters College Prep, an independent school that has been in operation for 150 years and which is affiliated with Calm Waters Church, located right next door to the school. Bonnie is the model teacher for CWCP – she always has engaging content to fill her classes, her students score well on their respective exams and get into the colleges/universities of their choice. Bonnie has fastidiously studied the CWCP Employee Handbook and knows that CWCP’s social media policy prohibits CWCP employees from connecting on BuddyPalGram (the newest and hottest social media platform, run entirely out of the CEO’s mom’s garage) with current and former students. Knowing this, Bonnie is conscientious about declining friend requests from students, and not initiating friend requests with students. Bonnie is not so conscientious about her privacy settings, and did not realize that her BPG account was completely searchable. In the evenings, Bonnie works as an exotic dancer at an area gentleman’s club and posts videos of her performances on her BPG account. One of Bonnie’s students finds Bonnie’s BPG account and shows her videos to all of his classmates, one of whom shows the videos to his parents.

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Creating and Maintaining a Safe Environment

■ Identifying Harassment and Bullying

- Harassment: Based on a protected class, creates an offensive environment, is severe or pervasive
- Bullying: Based on a power dynamic, generally occurs over time, intended to harm, intimidate or humiliate the victim

■ Harassment and Bullying Involving Students

- Teachers are in a unique position to be able to identify harassing and bullying behaviors – you are with the students all day, and see them in the hallways
- Everyone has a “duty to adequately supervise”
- If you see harassing or bullying behavior, it is important to address it quickly, bringing in other help if need be

■ Harassment and Bullying Involving Colleagues

- Particularly in the #MeToo era, the responsibility for reporting harassment extends to all employees, regardless of whether they are the victim or a witness

■ We are a community, and we are all responsible for one another

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Creating and Maintaining a Safe Environment

■ Taking Students Off Campus (Trips and Travel)

- Before committing to any travel arrangements, make sure that the travel plan is thoroughly vetted
- To vet, think about: chaperone ratios (including gender considerations), safety of the location where the trip will occur, procedures for ensuring the physical and emotional safety of students attending the trip and emergency plans

■ Serving as a Chaperone

- Chaperones are not on a pleasure trip for their own rest and relaxation
- Chaperone On Duty versus Chaperone Always On Duty
 - Even if not on duty, be mindful of your conduct
- Consuming alcohol or other impairing substances while chaperoning
- Accessibility to students via cell phone

■ Seeing Students in Casual Settings Off Campus

- Observing underage students drinking at a bar

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Case in Point #1: Creating and Maintaining a Safe Environment

Chris is a middle school student, and one of a handful of Jewish students in his class. Chris' classmates often make derogatory remarks about Chris' religion, both when they are talking to Chris and when they are talking behind his back. Such remarks are made constantly – before class, in the gym and in the lunchroom. All of the teachers hear and are aware of the other students' derogatory remarks when talking to and about Chris, but do nothing to address it – they do not correct the students or report it to the Head of School. One day, Chris has simply had it. When one of his classmates, Brian (who is African-American, and also one of few African-Americans in the class), asks him to scoot over to make room for him at a table, Chris responds “No, [Racial Slur]!” Chris is given a two-day suspension. Chris' mom voices her concern that Brian provoked Chris, and Brian's mom is concerned that the punishment does not fit the crime.

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Case in Point #2: Creating and Maintaining a Safe Environment

Peter Piper is in his second year of teaching in the Lower School at AllTheNations International School. Peter has a great idea for a trip for his third grade students – he knows of a program in New Zealand that brings students from all across the globe together for a big camping trip that lasts a full week. During the day, all the students get to interact and learn from one another. He secures spots for 8 of his students (boys and girls). Because the trip involves sleeping overnight in the outdoors, he arranges for a “practice sleepover” at the school. At the practice sleepover, Tommy Slumber has trouble sleeping. When the time for the trip arrives, Peter flies with all 8 students to New Zealand, where Tommy again has trouble sleeping. To help Tommy sleep, Peter lets Tommy sleep in his tent with him.

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Mandatory Reporting of Child Abuse and Neglect

- **Each state has a law regarding mandatory reporting of child abuse and neglect**
 - Defines what constitutes abuse and neglect
 - Defines who is considered a mandatory reporter
 - May be particular school employees, all school employees or, in some states, all people
 - Creates a reporting procedure for reporting abuse and neglect to the state child protective services agency and/or the police
- **Schools also develop mandatory reporting policies that are in line with the mandatory reporting laws**
 - Create a centralized reporting mechanism for the school, *i.e.* a single individual who is designated as the school's "reporter" and procedures for documenting the report made (even if not made by the designated reporter)
 - It is important to work collaboratively with your school's designated reporter to ensure that all relevant factors are considered in determining when and how to make a report (*i.e.*, who has the student)
- **Even if you are not sure whether it rises to the level of abuse or neglect, say something to someone in your school**

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Case in Point: Mandatory Reporting of Child Abuse and Neglect

Max Mandate is a teacher at a Spanish language immersion school, where many of the students and teachers (Max included) are of Hispanic descent. Max teaches in the second grade and seems to be very friendly with his students. Other teachers occasionally see him wrestling with them on the playground, or letting them sit in his lap. He's often seen hugging his students and giving them little treats or presents. Some of the teachers feel unnerved by the closeness of his interactions with his students, and bring their concerns directly to Max. Max is dismissive of them, telling them that they just do not understand his culture. One day, one of the teachers observes Max go down into the school basement with 4 of his students. When Max is gone for longer than she thinks would be necessary to retrieve materials from the basement, the teacher goes down the basement as well. She sees that a closet door in the basement is closed, and goes to open it. When she does, Max is inside with the students and the students look guilty, as though they feel they've been caught.

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Political Activism

- **Record Levels of Political Activism**
- **First Amendment Rights**
 - First Amendment Free Speech only refers to government suppression of free speech
 - All employees – regardless of the industry – agree to temper their exercise of the right to free speech when they accept employment with that organization
- **Be Cognizant of Anti-Discrimination Laws**
 - In certain circumstances, the exercise of political activism can encroach on the anti-discrimination laws, depending on the nature of the activity
 - Employees have the right to work in an environment that is free from discrimination and harassment
- **Be Mindful of How You Conduct Yourself**
 - Be respectful, be courteous, be civil
 - Avoid vulgar language or destructive behavior
 - We are setting an example for our students as to how to engage in their democracy

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Case in Point #1: Political Activism

Christine Civics is a teacher at Metropolitan College Prep. Christine has been at MCP for a long time and encourages her students to be actively engaged in politics. It is the beginning of the school year, and a very important election for a very important position in the Metropolitan country government is underway. Christine feels that the Candidate A is clearly more qualified than the other for the position, and indeed, is disturbed by Candidate B's use of offensive and derogatory terminology to refer to certain classes of individuals. In fact, Candidate B refers to musicians – but *especially* violinists - as lazy and a drain on society. One day, one of Christine's students walks into her class wearing a t-shirt (clearly out of uniform, but that is for another day) which shows his support for Candidate B. In front of the entire class, Christine says to the student, "how can you support Candidate B, you play violin!" The student is upset, and feels that he has been singled out. He goes home to tell his mom that night, who calls the Head of School the next day.

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Case in Point #2: Political Activism

Maggie Majority is also a teacher at Metropolitan College Prep. Maggie has been long time friends with David Delegate. In fact, she has known David since they were in elementary school together. One day, David tells Maggie that he has decided to run for public office and asks Maggie whether she would appear in a campaign ad for him, so that she can tell his potential constituents what a good candidate he would be for public office. Maggie agrees, and appears in the ad where she describes how long she has known David and how she knows him to be an upstanding citizen.

Unbeknownst to Maggie, David has some dark secrets. When his campaign is fully underway, a reporter uncovers his dark secrets and soon, they are on the front page of the Metropolitan Times. The MCP community is in an uproar because they cannot believe that one of their own teachers would support a candidate with such a dark history as David.

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Confidentiality and Communications with Third Parties

- **You Owe Your Students a Duty of Confidentiality**
 - But necessarily a duty of privacy
 - Even if a student has disclosed something to you in confidence, you may be required to report that information
- **Communications with Parents**
 - Parents who are also employees in the school
 - Parents who are going through separations and custody battles
 - Parents of other students in your class, or in your school
- **Communications with Lawyers and Legal Professionals**
 - You are not obligated to speak with any lawyer, absent a subpoena (and even a subpoena can be challenged)
- **Communications with Law Enforcement Officers**
 - Generally, we want to comply with law enforcement, however, you have to be mindful in cooperating
 - Consider who needs to know that law enforcement has reached out to you
- **Communications Other Service Providers**
 - Medical professionals, outside doctors and therapists
 - Written authorization to communicate

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Case in Point #1: Confidentiality and Communications with Third Parties

Greta Garrulous and Veronica Verbose are both teachers in High Profile High School, an elite private school which attracts the children of politicians, professional athletes, music superstars and actors and actresses. In fact, part of High Profile High's attraction is its reputation for ensuring that its students confidentiality is highly guarded. For this reason, Nate and Natalie Notorious send their children to HPH. A few years after the Notorious children start attending HPH, Nate and Natalie decide to separate and began going through a messy and highly publicized divorce, the details of which often end up on gossip blogs and in magazines. Greta and Veronica both have taught the Notorious children and both witnessed one particularly heated interaction between Nate and Natalie during the winter school play. Eager to fill one another in on the sordid details, Greta and Veronica meet at a coffee shop the day after the winter play to swap information.

As they are exchanging their accounts of who yelled at whom, and about what, they fail to realize that Natalie's sister is sitting right next to them at the coffee shop.

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