

IT'S TIME TO START PLANNING YOUR SUMMER

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It is hard to believe that the 2014/15 school year is coming to a close. Summer projects beckon. So, what should be on the list for your summer (other than some vacation time)? Ideally, if you haven't done it lately, you should take some time to review employee and student handbook policies and schedule your back-to-school training.

Start With Your Employee Handbooks

When was the last time your handbook was reviewed for changes in the law or best practice? As many schools know, ever since the troubles at Penn State, states nationwide have been changing requirements both for child abuse reporting and criminal-background checks. For example, Pennsylvania passed three revisions to its child abuse laws, the last of which became effective in December 2014.

The new laws not only expanded who must report child abuse, but changed some long-standing accepted procedures on how the reporting was to occur. If your policy doesn't reflect these changes, this should be one area of focus for your summer audit. Similarly, Georgia and Florida made changes within the last year that should be reflected in your policies.

Many states have adjusted and tightened their laws on criminal-background checks and notification requirements. For example, Florida now requires that universities and schools post the sexual offender/predator website information on their website and discuss it at orientation. We have recommended for years that schools include specific requirements in their handbooks for self-reporting of

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criminal actions. Some states now require employees to do so by law.

This is another area in which Pennsylvania has been especially active, now requiring by statute that all school employees, volunteers, and contractors pass a child-abuse background check as well as state and federal criminal-history checks; individuals with clearances older than three years or expiring clearances must update them. You will want to review both your practices and your policies on background checks to make sure that you stay in compliance with your state's laws. Even if your state hasn't passed laws in this area, your accrediting association may have. And as the industry moves into more strict background requirements, your school may be out of step if it is not keeping up.

How about your social-media policy? Could it create an unintentional violation of the law? The National Labor Relations Board, the federal agency responsible for protecting workers' rights, might think so. Under federal law, most private-sector employees have the right to engage in concerted activities "for the purpose of . . . mutual aid or protection" in the terms and conditions of employment. The NLRB has focused on whether an employer's social media-policy could have the effect of "chilling" an employee's exercise of that right.

Under that standard, the NLRB has found even such common provisions as prohibiting employees from "engaging in activities that could harm the image or reputation of the company" or from disclosing information "related to the company or any of its employees or customers" to be unlawful. Would your social media policy pass muster?

Your employee handbook likely includes an equal-opportunity statement, including that the school will not discriminate on the basis of an employee's disability. But you should also include a separate statement on disability accommodation, including the school's policy of compliance and the process for requesting such an accommodation.

Under the Americans with Disabilities Act (ADA), employers must provide reasonable accommodations that would enable an otherwise qualified employee with a disability to perform the essential functions of the job. According to the Equal Employment Opportunity Commission – the federal

agency responsible for enforcing employment-related civil rights laws – employers covered by the ADA should have a written policy specific to providing reasonable accommodations.

And, as we all know, there have been many changes in our society over the last few years that have resulted in greater protections for employees in the areas of sexual orientation discrimination, transgender issues, gender-identity protection, and same-sex marriage legislation, all of which should be addressed in your policies.

Don't Forget Your Student/Parent Handbook

In addition to employment discrimination, the ADA also prohibits discrimination on the basis of disability in access to "public accommodations," which includes nonreligious private schools. In accordance with that statute, schools are required to provide reasonable accommodations that would allow the student to participate fully in the school's programs and activities (but would not result in an unacceptable impairment to the rights of other students or employees, or a fundamental change to the school's educational environment or mission). So a "reasonable accommodation" provision should be included in your student/parent handbook as well.

If your student/parent handbook does not include an anti-bullying policy, it should; and if you already have one, make sure that it is up to date and compliant with the law. Different states have passed and amended anti-bullying legislation. For example, Illinois amended its anti-bullying law in 2014, and added a cyberbullying law effective 2015, both of which require public and private schools in Illinois to have written policies against bullying that include specific language set forth in those statutes. You should check your state's laws for similar requirements.

With the recent outbreaks of measles in some parts of the country, you may want to review your school's position on immunizations, and adjust your policy accordingly.

For upper-level schools, your student/parent handbook should address the relationship between the school, the parents, and the student if the student reaches the age of majority while enrolled at the school: specifically, that the school will continue to share all student information with the student's parents or legal guardians, and that the student's

continued enrollment after reaching 18 years of age evidences the student's agreement with that requirement.

How About Your Back-To-School Training?

Now's the time for planning and scheduling your fall training on important school issues, including student/adult boundaries, child-abuse reporting, employee interactions (employee avoidance and reporting of harassment), and professionalism in communications (with everyone, including parents and third parties). Your insurance company will look upon the school favorably when it engages in preventive training...and plaintiffs' attorneys will have a harder time finding the opportunity for claims and the evidence to sustain them.

For more information, contact your Fisher Phillips lawyer or the author at CStutin@fisherphillips.com or 954.525.4800.