



# Back-to-School Homework for School Leaders: A 6-Step Guide to Refreshing Your Employee and Student Policies

Insights

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As you prepare for the coming academic year, you'll need to consider key developments that took place over the last year as you plan your approach this fall. Indeed, legal changes, current events, shifting priorities, and evolving outlooks all should have an impact on your policies, practices, and training each year. How will these factors from the last year mold your future practices? Here's a six-step guide to help you prepare for the 2023-2024 school year.

## 1. Update Your Handbooks and Agreements

You may want to review your employee and student handbooks, as well as employment and enrollment agreements. Keep these points in mind as you make updates:

- **Employee and student handbooks:** First, it's a good practice to get rid of any dated language or policies in your handbooks, including programs no longer offered and terminology no longer used. You may also need to adjust your misconduct rules due to a significant ruling by the NLRB earlier this month. This year also includes reviewing COVID-19 policies you may not need or that require tweaking. Next, consider discussing in detail the school's expectations for use of ChatGPT and similar artificial intelligence (AI), articulating appropriate adult-student boundaries, updating any policies that may need to change due to your campus safety plan, and revisiting your search policies to make sure they are broad, clear, and flexible.
- **Employment agreements:** Confirm you are complying with any state laws regarding pre-employment background checks, affidavits, or other processes. Some of these requirements arise as states try to prevent pedophiles and employees who don't maintain professional boundaries with students from moving from one school to another. Be sure to have employment agreements signed by both the employee and someone with authority to bind the school and provide the employee with a fully executed copy.
- **Enrollment agreements:** The key is to be transparent and avoid trying to "sneak" in changes to enrollment agreements. Most states require signatures of both parents to bind them both. This is important for financial reasons but also because the enrollment agreement binds parents to the school's expectations for parental behavior and the school's policies and handbooks.

## 2. Plan Your Fall Training for Employees, Students, and Trustees

The start of the school year is a good time to focus on key training for your employees, trustees, and students to remind them of your policies and their obligations—and to set expectations and best practices for a variety of situations. Consider these training topics for the new school year:

- **Employee training on child abuse prevention, recognition, and reporting:** Consider discussing in detail the school's policies and expectations for adult-student boundaries. Educate employees on how to recognize the signs of abuse and neglect. Annually train employees on their child abuse reporting obligations under your state's laws and be sure to determine any mandated or professional reporting requirements. Support employees who report and let parents know that your school cooperates with child protective services (CPS) investigations.
- **Administrator and supervisor training on performance management:** Your performance-management program may include annual evaluations, corrective action, and other feedback. Train relevant supervisors on providing honest feedback, even when it is difficult, and eliminating bias based on factors that could be discriminatory—such as age, gender, race, ethnicity, national origin, disability, religion, and anything medical. Ensure evaluations are based on objective criteria and document employee performance.
- **Student reminder on behavioral expectations:** Make students aware of the expectations and policies that are important to your school, such as those regarding physical and electronic interactions with peers. Discuss actions the school may take if an issue arises—such as removal from campus, investigation, and law enforcement or CPS reporting.
- **Training for the board of trustees:** Be sure to conduct new trustee orientation, if applicable, and provide all trustees a refresher on governance best practices. Remind them that they are acting as ambassadors of the school and provide them with an overview of their fiduciary duties.

### 3. Consider Opioid Antagonists

The U.S. Drug Enforcement Agency (DEA) has deemed fentanyl the “deadliest drug threat” facing the country. This unwanted development, which may unfortunately lead to greater incidents of overdose and inadvertent but lethal exposure, is why some schools are stocking opioid antagonists, commonly known as Narcan.

You should check your state's laws and with your school insurer when considering whether it makes sense to stock these potentially life-saving antagonists and in what locations on campus. Many states are enacting laws for schools, which often include training and reporting requirements as well as (in some states) providing immunity for administering or failing to administer opioid antagonists. You should also consider training students and parents about the availability of Narcan on campus and at off-campus athletic events.

### 4. Review and Revise Your School Security Program

The unfortunate realities of active shooter events and other threats make it essential for schools to

evaluate their safety and security protocols and develop a comprehensive action plan. The first critical step is ensuring you have policies and procedures in place to stop problematic behavior before it turns into a bigger issue. A best practice is to create a zero-tolerance policy for threats — even those made in jest — and develop anti-harassment and anti-bullying policies.

Additionally, you should keep these eight goals in mind when revising your school security program:

- **Prevent:** Stop an attack before one happens.
- **Prepare:** Make sure everyone on campus knows what to do if a shooting, bombing, or other threat were to happen.
- **Respond:** Implement a process for responding to threats and attacks.
- **Recover:** Plan for how your school would recover from an incident.
- **Train employees, students, and administrators:** Avoid fear-based training and make sure to keep records of the training.
- **Communicate:** Let families know that you are educating and training their children in age-appropriate ways. Tell them what to expect in an emergency.
- **Listen carefully:** If you hear of a threat or anything close to a threat, take it seriously.
- **Engage:** Research shows engaged students and former students are less likely to become school shooters.

## 5. Prepare for a Shifting Legal Landscape

The legal landscape for schools is always evolving and a few recent developments may shape your future policies and practices. Be sure to track the impact of the following court cases:

- **Factoring Race in Admissions:** The Supreme Court severely restricted higher educational institutions from using race or ethnicity as part of their admissions process, curbing the practice of using affirmative action principles during admissions for schools across the country. Want to know more about how the ruling affects higher educational institutions and K-12 schools? [Read our Insight here.](#)
- **Update on Title IX Cases:** A federal judge in Maryland [ruled](#) in July 2022 that a school's nonprofit status in and of itself constituted the receipt of federal financial assistance — which means that it is subject to Title IX requirements, among other things. This was surprising as neither the Supreme Court nor any circuit courts of appeal have made this determination before. Moreover, the regulations regarding federal financial assistance do not establish this position. A few days later, a California court followed the Maryland court in [holding](#) that a church and a Christian school had received federal financial assistance through both their receipt of Paycheck Protection Program (PPP) loans and their tax-exempt status. The cases this court relies on are similar to the Baltimore case. These cases may have a broad impact on schools, so we'll be watching for further developments in these cases as well as Title IX cases in other jurisdictions.

## 6. Recognize Emerging Antitrust Trends

You should also note that the U.S. Department of Justice and courts are cracking down on “collusion” between schools. In light of this development, here are some best practices to consider:

### *Employment Antitrust Best Practices*

- **No-poach agreements:** Be careful about entering into any no-poach agreements with other schools. Federal antitrust agencies are taking a more critical look at such agreements and will challenge them if they are deemed “naked” restraints on the free flow of labor markets.
- **Wages:** Avoid any activity that could be deemed an agreement to fix wages or benefits with another school. Certain exchanges of wage and benefit information with other schools or school associations can lead to antitrust liability.
- **State laws:** Review any applicable state laws that apply to no-poach agreements and other restrictive covenants and update employment agreements accordingly.
- **Employment agreements:** Review your employment agreements with experienced legal counsel to ensure they are compliant with current interpretations of antitrust law.

### *Enrollment Antitrust Best Practices*

- **Agreements between schools:** Be very careful about agreements between schools regarding anything related to admissions, financial aid, or the students’ positions. Do not make agreements with other schools about soliciting or marketing to students enrolled at other schools.
- **Financial aid packages:** Avoid comparing financial aid packages for any given student with another school.
- **Transferring:** Recognize that students are free to explore transferring schools.
- **Training:** Train your employees on what to say and not to say to students being recruited by other schools.
- Be thoughtful about **list-serve questions and large group emails**.
- **Review your enrollment contracts** with legal counsel experienced with independent schools and antitrust law.

## Conclusion

We will monitor these and other education-related developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips’ Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Education Team](#).

*A version of this Insight was originally published by [the National Association of Independent Schools \(NAIS\)](#).*

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