LIEBERT CASSIDY WHITMORE

# PRIVATE EDUCATION MATTERS

News and developments in education law, employment law, and labor relations for California Independent and Private Schools and Colleges.

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## STUDENTS

### *BREACH OF CONTRACT*

#### *Student's Suit For Partial Tuition Refund Due To Transition To Virtual Instruction Fails.*

Chloe Linder (Chloe) was a student at Occidental College during the spring 2020 semester. In response to California Governor Gavin Newsom's March 4, 2020 COVID-19 state of emergency declaration and March 19, 2020 stay at home order, and Los Angeles Mayor Eric Garcetti's March 19, 2020 Safer at Home order, Occidental transitioned from in-person instruction to virtual instruction beginning on March 23, 2020 and for the remainder of the spring 2020 semester. Occidental issued a partial refund of the amount paid for room-and-board for the spring semester due to its closure of student residences. Occidental did not provide a refund for any amount of tuition.

Thereafter, Chloe and her father, Steven Lindner (Steven), filed a class action lawsuit against Occidental on behalf of all individuals who paid tuition and fees for the spring 2020 semester at Occidental, alleging that these individuals are entitled to a partial refund of tuition and fees for that semester because Occidental promised students in-person instruction. Chloe and Steven alleged causes of action for 1) breach of contract; (2) breach of implied contract; (3) unjust enrichment; (4) conversion; and (5) money had and received. Chloe and Steven did not allege that the transition to virtual instruction impacted Chloe's ability to earn credits towards degree programs or complete any classes.

Steven and Chloe contended that they entered into a contract with Occidental through the 2019-2020 Course Catalog (Catalog) and the course syllabi, which set forth the days of the week, the times, and the locations (building and room number) of each class offered. The Catalog expressly reserves the right to Occidental "to change fees, modify its services, or change its program should economic conditions or national emergency make it necessary to do so" and that "[f]ees, tuition, programs, courses, course content, instructors, and regulations are subject to change without notice."

Occidental successfully argued that Steven lacked standing to bring the suit against the college. The Court noted that "[o]nce a student reaches the age of majority, courts have routinely held that parents lack standing to bring claims against their adult children's colleges and universities, even when the parents pay tuition on behalf of their children." The Court explained that Chloe, was above the age of majority, Chloe, and not her father, attended Occidental, and Chloe was the beneficiary of any promises that Occidental allegedly made. Further, Steven did not assert that he suffered any separate and distinct injury from the injury Chloe allegedly suffered, namely the transition to virtual instruction. The Court, therefore, dismissed Steven from the suit.

Occidental also successfully argued that all of Chloe's claims should be dismissed because California case law prohibits challenges to the adequacy of a student's education; i.e., "educational malpractice" claims. Chloe's claims are all grounded on the theory that the education she received once Occidental transitioned to virtual instruction due to the COVID-19 pandemic was not equal in value to or in any way equivalent to the in-person instruction she previously received. The Court noted that evaluating Chloe's claims would require the Court to "make judgments about the quality and value of the education that Occidental provided in the Spring 2020 semester," and that "the adequacy of teachers and teaching methods are matters entrusted to educators and institutions that regulate them, not to judges and juries." Therefore, the Court held that Chloe's "claims are the type of educational malpractice claims that California courts, and courts throughout the country, have rejected."

Further, Occidental successfully defended against Chloe's breach of contract claims. The Court noted that it is undisputed that the relationship between Occidental and Chloe is governed by contract, namely the Catalog and other Occidental publications. However, Chloe failed to point to any language in which Occidental promises in-person instruction. In fact, the Catalog expressly states that [f]ees, tuition, programs, courses, course content, instructors, and regulations are subject to change without notice," and that Occidental has "reserve[d] the right to change fees, modify its services, or change its program should economic conditions or national emergency make it necessary to do so." Therefore, the Court dismissed all of Chloe's claims.

*Steven J. Lindner v. Occidental College* (C.D. Cal., Dec. 11, 2020, No. CV 20-8481-JFW(RAOX)) 2020 WL 7350212.

***NOTE:***

> *Schools, universities, and colleges should review documents, contracts, and publications provided to students and their parents, including enrollment contracts, handbooks, and curriculum guides, to confirm that these documents contain force majeure language giving the school the right to make modifications to services, programs, and locations of instruction at any time and do not contain language guaranteeing in-person instruction.*

## *STUDENT ORGANIZATIONS*

### *University Followed Procedure And Properly Denied Official Recognition To Student Organization Affiliated With Polarizing National Organization.*

In November 2015, Ahmad Awad (Awad) and several other undergraduate students attending Fordham University (Fordham), a private university located in New York, sought to organize a student club to be named the Students for Justice in Palestine at Fordham University (SJP) as a registered organization sanctioned by Fordham. The students submitted all of the required paperwork, including a proposed constitution, consistent with Fordham University Lincoln Center Campus United Student Government Operations Committee Club Guidelines (the Guidelines). The documents SJP submitted included information that the club would be "organized around the principles of the call by Palestinian civil society for Boycott, Divestment and Sanctions of Israel" and its mission would be "to build support in the Fordham community among people of all ethnic and religious backgrounds for the promotion of justice, human rights, liberation, and self-determination for the indigenous Palestinian people."

The Guidelines state that the United Student Government (USG) Operations Committee assists groups edit their constitution and then submits the packet to the Director of the Office for Student Involvement and then to the Dean of Students. A club is not considered a registered organization until the Director of the Office for Student Involvement, the Dean of Students, and the USG Senate have all approved the packet. The Guidelines state the Dean of Students has a right to veto any club, but do not set forth the grounds upon which the Dean may exercise that veto power.

After several months of discussions among and between Awad, other student members of SJP, employees of Fordham and with input from Fordham students, student organizations, and faculty, the Director of the Office for Student Involvement and the Dean of Students approved SJP's constitution. The USG Senate then approved SJP's request to be a recognized student club. Subsequently, the Dean of Students vetoed the USG Senate's approval. The Dean of Students explained:

"While students are encouraged to promote diverse political points of view, and we encourage conversation and debate on all topics, I cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country, when these goals clearly conflict with and run contrary to the mission and values of the University… There

is perhaps no more complex topic than the Israeli-Palestinian conflict, and it is a topic that often leads to polarization rather than dialogue. The purpose of the organization as stated in the proposed club constitution points toward that polarization. Specifically, the call for Boycott, Divestment and Sanctions of Israel presents a barrier to open dialogue and mutual learning and understanding."

Thereafter, Awad and the other students initiated an action seeking an order annulling the Dean of Student's denial of their request to be a registered organization and an order compelling Fordham to recognize them as a registered organization in accordance with the approval of the USG Senate. In New York, a court may set aside the determination of a university, acting in its administrative capacity, where the university does not abide by its own rules, or where the university's determination is "arbitrary and capricious." A determination is "arbitrary and capricious" if it is not rationally based, has no support on the record, or the decision maker considered inappropriate factors in coming to his or her decision.

Awad and the other students argued that the determination of the Dean of Students should be annulled because Fordham did not follow its own rules when deciding whether to approve the SJP and because the Dean of Students acted in an arbitrary and capricious manner when he denied SJP's request for formal recognition.

The Court agreed with Awad and the other students. The Court contended that Fordham did not abide by its own published rules governing the approval and recognition of student clubs because the Dean of Students first approved the SJP constitution and then vetoed the USG Senate approval. The Court also noted that because the Dean of Students approved the SJP constitution before the USG Senate granted its approval and then later vetoed the USG Senate's approval "without a rational explanation or any change in circumstance," it "necessarily require[d] the conclusion that the ultimate determination was arbitrary."

The Court explained that while the Guidelines grant the Dean of Students the discretion to evaluate whether a club will promote Fordham's mission, the Dean of Student's reason for vetoing the USG Senate's approval of the SJP, namely the potential for "polarization" of the Fordham community were SJP to be formally recognized, did not fall within this discretion. The Court concluded that the Dean of Student's reasons for rejecting SJP were arbitrary and capricious because he did "not provide a rational basis for concluding that SJP might encourage violence, disruption of the university, suppression of speech, or any sort of discrimination against any member of the Fordham community based on religion, race, sex, or ethnicity," and disapproved of SJP in large part because the subject of SJP's criticism was the State of Israel.

The Court, therefore, issued an order annulling the Dean of Student's rejection of the SJP and directing Fordham to recognize SJP as a university-sanctioned club in accordance with the approval of the USG Senate.

However, the decision was subsequently reversed. The Court noted that, contrary to the Court's previous holding, Fordham had followed its approval procedure for student clubs and acted "in the exercise of its honest discretion." The Court further noted that Fordham's "conclusion that the proposed club, which would have been affiliated with a national organization reported to have engaged in disruptive and coercive actions on other campuses, would work against, rather than enhance, respondent's commitment open dialogue and mutual learning and understanding, was not 'without sound basis in reason' or 'taken without regard to the facts.'"

*Awad v. Fordham University* (N.Y. Sup. Ct. 2019) 64 Misc.3d 1234(A), *rev'd* (N.Y. App. Div., Dec. 22, 2020) 2020 N.Y. Slip Op. 07695.

***NOTE:***

> *Schools, universities, and colleges that permit students to organize school-sanctioned clubs and organizations, should have procedures for approval and recognition of such clubs and organizations. In these procedures, schools, universities, and colleges should retain discretion to deny approval and recognition to student clubs and organizations that hold positions that are inconsistent with the school's mission, values, or nondiscrimination policies. It is also crucial for schools, universities, and colleges to follow any procedures they establish.*

## NEGLIGENCE

### *College Not Liable For Student's Fall From Dorm Bed.*

In August 2016, Elizabeth Davis (Davis) moved into her dorm room at Valdosta State University (Valdosta), a public university located in Georgia, to begin her freshman year of college. The dorm room contained two lofted beds; one bed was higher than the other bed. Davis's roommate chose the bed in the lower position before Davis arrived to her room, and Davis was left with the higher bed. Davis put in a request with Valdosta's housing department to lower her bed, but the request was never fulfilled and Davis did not follow up on lowering the bed.

In October 2016, Davis attended a Halloween party with a friend, had "a couple of beers" during the evening, and went back to her dorm room. Davis felt "tipsy after the party" and fell asleep. During the night, Davis fell out of her lofted bed and blacked out. When Davis woke up, she was lying on her back on the floor with her roommate standing over her. Davis sustained serious injuries that required surgery and a stay in the intensive care unit.

As of result of her injuries, Davis medically withdrew from all of her classes for the fall 2016 semester. She registered for the spring semester and returned to campus for a brief time, during which she had a bed rail installed on her lofted bed and the bed lowered. Davis withdrew during the spring semester because the concussion she suffered during the fall made it difficult for her to concentrate or perform as she had been able to in the past.

Davis filed a complaint against Valdosta based on the theory of premises liability. Davis alleged that Valdosta's negligence in failing to install safety rails on her lofted bed proximately caused the serious and permanent injuries she suffered from falling out of the bed and Valdosta had notice of the specific risk of falling from the lofted beds due to similar incidents at other University System of Georgia schools. In Georgia, in order to prevail on a premises-liability claim, a plaintiff must prove that (1) the owner or proprietor had actual or constructive knowledge of the hazard and (2) the plaintiff lacked knowledge of the hazard despite exercising ordinary care. Valdosta filed a motion for summary judgment, contending that based on the available facts it was entitled to a judgment in its favor without the need for a trial because Davis's lofted bed was an open and obvious condition, which precludes liability. The trial court denied Valdosta's motion and the university appealed.

On appeal, the Court noted that a plaintiff cannot recover damages if the hazard is open and obvious and the plaintiff could have avoided the consequences of a defendant's negligence by exercising ordinary care. The Court explained that Davis's lofted bed constituted an "open and obvious" condition and while Valdosta had actual or constructive knowledge of the lofted bed in Davis's dorm room, Davis also had equal knowledge that the lofted bed was raised off the ground and lacked guard rails. Davis had submitted a request to Valdosta to have the bed lowered and slept in the bed for three months before she fell. The Court concluded this demonstrated that Davis was aware of the open and obvious condition of the lofted bed, that the danger posed by falling from the bed was apparent, and that the risk of falling from the bed was avoidable by exercising reasonable care. Therefore, the Court concluded that Davis was barred from recovery as a matter of law. *Valdosta State University v. Davis* (Ga. Ct. App. 2020) 356 Ga.App. 397.

***NOTE:***

> *While the student here was barred from recovery because the risks posed by the lofted bed were open and obvious and could be minimized through reasonable care, schools, universities, and colleges do have a duty to take reasonable measures to protect students from foreseeable harm. Accordingly, schools, universities, and colleges should take steps to increase student safety and minimize any risks of which the schools are aware. Further, schools, universities, and colleges should respond promptly to student requests to mitigate dangerous conditions.*

## *COVID-19 RELATED SCHOOL CLOSURES*

### *Sixth Circuit Holds Public Health Department School Closure Order Violates Christian Schools' Free Exercise Rights.*

On November 4, 2020, the Toledo-Lucas County Health Department (Health Department) ordered all public and private schools serving grades 7-12 in the county to close effective December 4, 2020 until January 11, 2021, in order to slow the spread of COVID-19. The closure order contained an exemption permitting schools to hold religious educational classes or religious ceremonies. The Health Department noted that "little in-school transmission has been documented," but closed all schools in the county nevertheless because "[c]ommunity spread conditions continue to worsen in Lucas County[.]" The Health Department continued to permit gyms, tanning salons, office buildings, and a large casino to remain open.

In response, nine Christian schools brought an action against the Health Department seeking to enjoin the Health Department's school closure order as applied to them. The Christian schools argued that the Health Department's closure of religious schools, while permitting secular businesses to remain open, "amount[ed] to a prohibition of religious exercise in violation of the First Amendment." After the trial court denied the Christian schools' request for an injunction, "reasoning that [the school closure order] was a neutral law of general application," the Christian schools appealed.

On appeal, the Court analyzed whether to grant the Christian schools' request for an injunction. In determining whether to grant an applicant's request for an injunction on appeal, the Court considers four factors: (1) whether the applicant is likely to succeed on

the merits of the appeal; (2) whether the applicant will be irreparably harmed absent the injunction; (3) whether the injunction will injure the other parties; and (4) whether the public interest favors an injunction.

To determine whether the Christian schools were likely to succeed on the merits of their case, the Court analyzed whether the closure order violated the Christian schools' First Amendment right of free exercise of religion. The Free Exercise Clause protects religious observers from unequal treatment. Supreme Court precedent requires that any "law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny."

The Court concluded that the closure order burdened the religious practice of the Christian schools because, while the order permitted the schools to continue to provide religious educational classes or religious ceremonies, the Christian schools represented that "their faith pervades each day of in-person schooling," is an integral part of each class, and is interwoven into secular subjects. The Court indicated it had "no basis to second-guess these representations."

The Court further concluded that the school closure order appeared neutral, but was "not of general application." In reaching this conclusion, the Court inquired into whether the school closure order "imposed [a] greater burden on religious conduct than on analogous secular conduct." The Court noted that because the Health Department closed schools while allowing secular establishments, which were comparable for the purposes of spreading COVID-19 such as gyms, tanning salons, office buildings, and a casino, to remain open, the school closure order imposed greater burdens on religious conduct than on comparable secular conduct.

The Court concluded that the school closure order does not survive the "most rigorous of scrutiny" warranted under the circumstances, and, therefore, the school closure order violates the Christian schools' rights under the Free Exercise Clause. Since the Court determined that the Christian schools were likely to succeed on the merits of their appeal, it did not analyze the remaining three factors. The Court granted the Christian schools' request for an injunction prohibiting the Health Department from enforcing the school closure order against them.

*Monclova Christian Academy v. Toledo-Lucas County Health Department* (6th Cir., Dec. 31, 2020, No. 20-4300) 2020 WL 7778170.

***NOTE:***

*Numerous religious schools and other religious organizations across the United States have brought similar cases challenging COVID-19 related closure orders as violating the First Amendment Free Exercise Clause. For example, in November 2020, the Roman Catholic Diocese of Brooklyn and Agudath Israel of America obtained injunctions from the United States Supreme Court against New York Governor Andrew Cuomo's emergency Executive Order imposing occupancy restrictions on houses of worship during the COVID-19 pandemic under a similar argument, namely that the order violated the Free Exercise Clause. (Roman Catholic Diocese of Brooklyn v. Cuomo (2020) 141 S.Ct. 63.)*

# EMPLOYEES

## *FAMILY AND MEDICAL LEAVE ACT*

### *Employee Did Not Show Employer Willfully Violated Her FMLA Rights.*

Andrea Olson contracted to work with the Bonneville Power Administration (BPA) as a Reasonable Accommodation Coordinator in 2010. In this role, Olson assisted employees in need of accessibility accommodations at work, trained managers and employees on their rights and responsibilities, and maintained records and documentation. In late 2011, BPA declined to renew Olson's contract for another year. Instead, BPA required Olson to work through MBO Partners, a payroll service provider that had a master services agreement with BPA to facilitate certain independent contractors.

In 2013, Olson began experiencing anxiety, and in March 2014, Olson made a formal accommodation request through MBO Partners. Among other things, Olson requested to telework. MBO Partners subsequently informed BPA's Director of Human Resources of Olson's request. Shortly thereafter, Olson's anxiety increased, and she informed BPA she would be out of the office for two weeks. Olson then formally invoked leave under the Family and Medical Leave Act (FMLA) through MBO Partners, and she requested that MBO Partners inform her before sharing information about her condition or leave with BPA. Olson informed BPA that she would be out of the office for two more weeks and that she hoped to start a transition plan soon.

While on leave, Olson performed limited teleworking for which she billed BPA. However, because BPA did not have an expected date for Olson's return, it began exploring whether an existing employee could take on

Olson's responsibility. After Olson contacted BPA's Equal Employment Opportunity office to discuss filing a complaint, BPA sent Olson an email stating that her network access had been terminated in accordance with security policies. Despite termination of her network access, Olson still billed BPA for three hours of her time the next month.

In early May 2014, Olson told BPA that she intended to attempt a trial work period that she and her physician had agreed upon. BPA responded that she was under a "stop work" order and that she would have to meet with a BPA manager before returning to work. On May 27, 2014, Olson formally filed an EEO complaint alleging that BPA had violated her FMLA rights. While BPA agreed to allow Olson to telework more on June 11, 2014, she did not accept the offer and did not return to work. Nearly three years later, on March 13, 2017, Olson filed a lawsuit claiming that BPA willfully interfered with her rights under the FMLA.

The district court concluded that BPA never provided Olson with notice of her FMLA rights. However, it also found that Olson's lawsuit was untimely because BPA's conduct was not willful. Specifically, the court noted that BPA consulted with its legal department about how to proceed during Olson's FMLA leave, opted not to terminate her, offered her a trial work period, and made efforts to restore her to an equivalent position. Olson appealed.

In general, the FMLA provides job security to employees who must be absent from work because of their own illness or to care for family members who are ill. FMLA interference can take many forms, such as using FMLA leave as a negative factor in hiring, promotions, and disciplinary actions. Employers also have a duty to inform employees of their entitlements under the FMLA. However, failure to provide notice alone is not a cause of action; rather, employees must prove that the employer interfered with their exercise of FMLA rights.

On appeal, Olson argued that BPA's lack of notice interfered with her FMLA rights because she would have structured her FMLA leave differently had she been given notice and because BPA's actions during her FMLA leave exacerbated her FMLA-qualifying condition of anxiety.

The Ninth Circuit panel, however, determined that it did not need to decide whether BPA's failure to give notice constituted inference. Under the FMLA, a lawsuit must generally be brought within two years "after the date of the last event constituting the alleged violation". This deadline is extended to three years for "willful" violations. The court reasoned that because the "last event constituting the alleged violation" occurred no later than June 11, 2014 (when BPA emailed Olson allowing her to telework more), she would have to show that BPA's conduct was willful to avoid the statutory time bar for her March 2017 lawsuit.

The Ninth Circuit concluded that the district court was correct in finding Olson could not prove willfulness. For a willful violation to occur, the employee must show the employer knew or showed reckless disregard for whether its conduct was prohibited by statute. The court noted that the district court applied this standard and found little evidence that BPA knew or showed reckless disregard for whether it was violating Olson's FMLA rights. Accordingly, the Ninth Circuit concluded that Olson's claim was indeed barred by the statute of limitations.

*Olson v. United States by & through Dep't of Energy* (9th Cir., Nov. 23, 2020, No. 19-35389) 2020 WL 6864653.

***NOTE:***

> *Liability in this instance was avoided because the willfulness standard applied in FMLA cases is very difficult to meet and there were statute of limitations issues. Mistakes in administering FMLA and other overlapping leaves are common. Not providing proper leave notices happens frequently because these notices can be confusing to figure out and it can be challenging to get information needed from the employee. It is essential to send the notification of FMLA and other leave rights in a timely manner.*

## *U.S. Department Of Labor Issues Guidance On Telemedicine And FMLA.*

On December 29, 2020, the U.S. Department of Labor's Wage and Hour Division (WHD) issued a Field Assistance Bulletin (Bulletin) providing guidance on the use of telemedicine to establish a serious health condition under the Family and Medical Leave Act (FMLA). The FMLA provides eligible employees of covered employers with up to 12 workweeks of unpaid, job-protected leave for specified family and medical reasons during a 12-month period. These specified family and medical reasons include a serious health condition that makes the employee unable to perform the essential functions of his or her job, or to care for the employee's spouse, son, daughter, or parent with a serious health condition. A serious health condition is an "illness, injury, impairment, or physical or mental condition that involves" either: (1) "inpatient care" such as an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care, or (2) "continuing treatment by a health care provider." Under FMLA regulations, treatment must be "an in-person visit to a health care provider" and includes "examinations to determine if a serious

health condition exists and evaluations of the condition."

However, the Bulletin explains that, due to the COVID-19 pandemic, the WHD will consider a telemedicine visit to be an in-person for purposes of establishing a serious health condition under the FMLA provided that the telemedicine visit:

1) includes an examination, evaluation, or treatment by a health care provider;

2) is performed by video conference; and

3) is permitted and accepted by state licensing authorities.

The Bulletin further explains that certain types of communication methods do not meet the above criteria in order to be considered an in-person visit, such as a telephone call, letter, email, or text message.

***NOTE:***

*Field Assistance Bulletins are issued to provide Wage and Hour Division (WHD) field staff and investigators with guidance on enforcement positions, clarification of policies, and changes in policy so they can investigate, enforce, and administer the laws that the WHD is charged with enforcing. Nevertheless, the information in Field Assistance Bulletins can be instructive for employers because it indicates the WHD's position on interpretations of the law.*

## DISCRIMINATION

### *Court Affirmed Dismissal Of Former Employee's Sexual Harassment And Hostile Work Environment Claims.*

In July 2016, Petra Jackson (Jackson) began working at Pepperdine University (Pepperdine) as an admissions administrator. At a staff event in November 2016, Jackson mentioned to a pregnant coworker that she hoped the Cleveland Indians would win the World Series that evening. Another Pepperdine employee, Murzi Kay (Kay), overheard Jackson's comment. According to Jackson, Kay then said Jackson and her husband "need to be really careful tonight and take your birth control. Because if the Indians win, you're going to end up … [having] a baby. You're going to really go at it tonight and you need to make sure you wear extra protection." Jackson asserted that Kay approached her later that day and added:

"Whatever you were doing last night, you need to make sure you do the exact opposite thing tonight. Whatever you ate last night, make sure you don't eat it again, even if there are leftovers. If you were wearing clothes, don't wear any clothes tonight while you watch the game. Just watch the game naked. I mean, that would be awkward if you had other friends around and not just your husband, but don't wear any clothes."

Jackson stated she reported Kay's comments to Pepperdine's Associate Director of Human Resources. Pepperdine's Executive Director of Student Financial Services and Admissions, Natasha Kobrinsky, called Jackson later that day to discuss Kay's comments. Jackson asserted that Kobrinsky made excuses for Kay's conduct, such as he was "from a different generation," and made comments to Jackson, such as she was "overly sensitive" and needed to have a "thicker skin." About two weeks later, Jackson and Kay attended a mediation with Kobrinsky, during which Kay stated that if what he said "was taken a certain way, I was wrong and therefore I apologize."

Jackson alleged that Pepperdine did not conduct a formal investigation or offer her any support or accommodations following her complaint. She asserted that she had daily fear and anxiety and an increasing inability to complete her daily work, which left her with "no reasonable alternative except to resign" about three and half months after Kay made the comments. Jackson did not allege that Kay made any additional comments or harassing behavior after the two encounters that occurred on that day in November 2016.

Jackson filed a complaint against Pepperdine, Kay, and Kobrinsky, alleging causes of action for discrimination based on sex, sexual harassment, retaliation, defamation, negligent infliction of emotional distress, and intentional infliction of emotional distress. Jackson also brought a hostile work environment sexual harassment cause of action against Pepperdine only. The trial court dismissed Jackson's complaint. Jackson appealed just the harassment and failure to protect causes of action.

The Fair Employment and Housing Act (FEHA) makes it an unlawful employment practice for an employer to harass an employee because of sex. Under the FEHA, the definition of sexual harassment is broad and includes expressly or impliedly conditioning employment benefits on submission to or tolerance of unwelcome sexual advances and the creation of a work environment that is hostile or abusive based on sex. To prevail on a claim of sexual harassment based upon a hostile work environment, an employee must demonstrate that "the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex." Further, to be actionable, the employee must perceive the workplace as hostile or abusive and must show that a reasonable person in the employee's position, considering all the

circumstances, would also share the same perception. The Court found that Jackson failed to "allege conduct so severe that it created a working environment that a reasonable person—of any gender—would consider hostile or abusive." The Court explained that Kay's comments were "crude and inappropriate," but they were not so offensive that a reasonable woman would consider "her workplace significantly altered for the worse" or would have been so fearful of hearing another similar remark that she would be unable to perform her work duties. Further, the Court noted that the fact that Kay made two brief comments on the same day, one of which occurred at a workplace social event, further indicated that the alleged conduct was not sufficiently severe.

In assessing Jackson's failure to protect cause of action, the Court noted that because she failed to allege a claim of actionable sexual harassment, her action for failure to prevent sexual harassment necessarily failed as well. Accordingly, the Court affirmed the trial court's decision dismissing Jackson's claims.

*Jackson v. Pepperdine University* (Cal. Ct. App., Sept. 1, 2020, No. B296411) 2020 WL 5200946. *(unpublished)*

***NOTE:***

> *The FEHA prohibits discrimination, harassment, and retaliation and requires that employers take reasonable steps to prevent and correct wrongful (e.g., harassing, discriminatory, or retaliatory) behavior in the workplace. Accordingly, schools that learn of potential sexual harassment should promptly determine whether the report involves behavior that is serious enough to warrant a formal investigation or that may be resolved by more informal steps, such as counseling the individual. Any investigation should result in a factual determination of what actually occurred and implementation of effective remedial measures, as appropriate. For more information about harassment and workplace investigations, see the* California Department of Fair Employment and Housing Workplace Harassment Prevention Guide for California Employers.

# BUSINESS & FACILITIES

## *FUNDRAISING, CHARITIES, AND RAFFLES*

### *California Attorney General's Office Issues New Forms For Fundraising, Charities, And Raffles.*

The California Attorney General's Office is one of the California governmental offices that regulates charities and the professional fundraisers who solicit donations on the behalf of charities. During 2020, the Attorney General's Office updated many of the forms that these nonprofit organizations are required to file. Beginning January 1, 2021, the Attorney General's Office will only accept the new versions of these forms; using old versions may cause delays in the processing of registrations, renewals, and permits. The new forms include, but are not limited to, the following:

- CT-1 Initial Registration Form – Charitable organizations must now provide additional information, including dbas and prior enforcement actions
- CT-TR-1 Annual Treasurer's Report – Charitable organizations whose total revenue for the fiscal year is under $50,000 must file this form along with Form RRF-1 when they renew their registration with the Registry of Charitable Trusts.
- RRF-1 Annual Registration Renewal Fee Report – Charitable organizations must now provide additional information, including non-cash donations.

The Attorney General's Office also made changes to the Professional Fundraiser (PF) forms and the Nonprofit Raffle Program (NRP) forms. The new forms, instructions, video resources, and educational webinars are available on the Attorney General's Charities website here.

## *PREMISES LIABILITY*

### *Baseball Field Owner May Be Liable For Spectator Injured By Foul Ball.*

Twelve-year-old Summer J. (Summer) attended the United States Baseball Federation (US Baseball) national team trials at Blair Field, a stadium located on the campus of California State University Long Beach (Cal State Long Beach) and owned and maintained jointly by Cal State Long Beach and the City of Long Beach and operated by US Baseball. While seated in an area of the stadium

without a protective screen or netting, Summer was struck in the face by a line drive foul ball, which serious injured her and damaged her optic nerve.

Summer, through her guardian ad litem, sued US Baseball, Cal State Long Beach, and the City of Long Beach for negligence and premises liability. Summer alleged that there was inadequate protective netting at Blair Field behind home plate, a "zone of danger," and that US Baseball, Cal State Long Beach, and the City of Long Beach were aware of the inadequate nature of the netting and nevertheless failed to provide any warnings of the danger of being struck by a batted ball.

US Baseball argued that Summer's claims could not proceed due to the primary assumption of risk doctrine, which generally prohibits a plaintiff who willingly assumed the risk inherent in an activity from recovering for injuries resulting from participating in that activity. US Baseball also argued that the dangerous condition at Blair Field was open and obvious, which relieved them from any duty to warn or correct the condition.

After filing her initial complaint, Summer requested to amend her complaint to include additional factual allegations to support her claim, including those about "the dangers at Blair Field from hard-hit foul balls that were not inherent risks in the sport of baseball." The trial court held that the claims in Summer's complaint were barred due to the primary assumption of risk doctrine and her proposed amended complaint would not correct this issue. The trial court issued a judgment in favor of US Baseball and awarded US Baseball its costs. Summer appealed.

On appeal, the Court noted that according to the primary assumption of risk doctrine, in a sport setting a "plaintiff is said to have assumed the particular risks inherent in a sport by choosing to participate and the defendant generally owes no duty to protect the plaintiff from those risks." When the primary assumption of risk doctrine applies, the duty of care "operators, instructors and participants in the activity owe other participants [is] only the duty not to act so as to increase the risk of injury over that inherent in the activity." However, "[a] s general rule, where an operator can take a measure that would increase safety and minimize the risk of the activity without also altering the nature of the activity, the operator is required to do so."

Baseball argued that they had "no legal duty to eliminate the inherent risk of being hit by a ball while watching a baseball game or to otherwise protect a spectator from being hit by a ball." However, the Court explained that "as the entity responsible for operating Blair Field on that date, US Baseball had a duty not only to use due care not to increase the risks to spectators inherent in the game but also to take reasonable measures that would increase safety and minimize those risks without altering the nature of the game." The Court noted that installing protective netting down the first and third base lines, which may have protected Summer, would not alter the nature of the game of baseball, as indicated by the plans of major and minor league baseball teams to do so for the 2020 season. The Court held that Summer should be permitted to file her proposed amended complaint and to present evidence to the trial court to support her allegations.

Summer also argued that "US Baseball was aware of the inadequate nature of the netting at Blair Field, yet failed to warn her of the danger of being struck by a foul ball where she was seated." US Baseball countered that the "danger was so obvious it had no duty to warn Summer of the risk." The Court concluded that the question of "whether the danger of injury from foul balls in unprotected seating was sufficiently obvious to relieve US Baseball of its duty to warn Summer of its existence" was a question of fact that should be resolved at trial.

Ultimately, the Court reversed the previous judgment entered in favor of US Baseball and granted Summer's request to file her proposed amended complaint. Summer also recovered the costs of her appeal.

*Summer J. v. United States Baseball Federation* (2020) 45 Cal.App.5th 261, *as modified on denial of reh'g* (Mar. 9, 2020), *review denied* (June 17, 2020).

***NOTE:***

> *While the Court did not answer the question of whether US Baseball was liable for Summer's injuries, this case indicates that it is possible for liability to exist under similar circumstances. Accordingly, schools should assess their athletic fields and confirm that these locations contain current safety measures that are generally accepted among athletic fields of that type. Schools should further exercise due care not to increase the risks to spectators inherent in observing the game, and also take reasonable measures to increase safety and minimize risks to spectators without altering the nature of the game.*

## WEBSITE ACCESSIBILITY

### *Unequal Access To Private Entities' Website May Support Viable ADA Claim.*

Abelardo Martinez (Martinez) is permanently blind and requires screen reading software, which vocalizes the visual information on the computer screen, to read website content when he accesses the internet. When Martinez attempted to access the information on the website maintained by the San Diego County Credit Union (Credit Union), he asserted that he encountered

"numerous access barriers," such as missing alternative text, empty links, redundant links, and missing form labels, which precluded him from using his screen reading software.

Martinez filed an action against the Credit Union for violation of California's Unruh Civil Rights Act. The Unruh Civil Rights Act provides that "All persons within the jurisdiction of this state are free and equal, and no matter what their ... disability ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." A plaintiff can recover under the Unruh Civil Rights Act on two alternate theories: (1) a denial of access to a business establishment based on intentional discrimination; or (2) a violation of the Americans with Disabilities Act (ADA).

Title III of the ADA (Title III) prohibits private entities from discrimination against disabled individuals. Title III provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." To establish a violation of Title III, a plaintiff must show: (1) a covered disability; (2) "the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of [the] disability."

Martinez sought recovery on both alternate theories; specifically, that the Credit Union engaged in intentional discrimination by maintaining its website in a form inaccessible to visually impaired individuals and by failing to take corrective action after notice, and the Credit Union's website violates the ADA.

After the trial court dismissed Martinez's action, he appealed. The appeals court reviewed a few matters, including whether Martinez pled a viable claim for violation of the ADA.

The Court concluded that Martinez clearly established that he has a covered disability. Therefore, the issue that remained was whether a website falls within the definition of a public accommodation under the ADA. Given that there were no commercial websites when the ADA was enacted in 1990, a "website" is not one of the enumerated categories of public accommodations under the ADA, and in the years following the enactment of the ADA, the Department of Justice has not provided regulatory guidance on the topic.

In the absence of statutory or regulatory guidance, federal courts have reached two distinctive views on the issue of whether a website is a public accommodation. The U.S. Supreme Court has yet to weigh in on which view is correct. The minority view, held by the federal First, Second, and Seventh Circuits, maintains that websites are "public accommodations" within the meaning of the ADA. The majority view, held by the federal Third, Sixth, Ninth, and Eleventh Circuits, maintains that websites are not "public accommodations" under the ADA, "but a denial of equal access to a website can support an ADA claim if the denial has prevented or impeded a disabled plaintiff from equal access to, or enjoyment of, the goods and services offered at the defendant's physical facilities." California is located within the Ninth Circuit.

After analyzing the minority and majority views, the Court applied the majority view to the facts before them, finding that it is was generally more consistent with the ADA. Under the majority view, a disabled plaintiff can state a viable ADA claim for alleged unequal access to a private entity's website if there is a sufficient nexus between the claimed barriers and the plaintiff's ability to use or enjoy the goods and services offered at the defendant's physical facilities. In the case, the Court held that Martinez plead a viable ADA claim because he had alleged that the deficiencies in the website prevented him from gathering information about the Credit Union's services, products, and physical locations. The Court concluded that this indicated there was a sufficient nexus between the barriers Martinez claimed and his ability to use or enjoy the goods and services offered at the Credit Union's physical locations.

*Martinez v. San Diego County Credit Union* (2020) 50 Cal. App.5th 1048.

***NOTE:***

> *California schools should be aware that members of the public may be able to state a viable ADA claim for alleged unequal access to the school's website if there is a sufficient nexus between the claimed barriers and the individual's ability to use or enjoy the goods and services offered by the school's physical facilities. Schools should take steps to confirm that their websites are compatible with screen reading software.*

## *ACCREDITATION*

### *Accrediting Agency Must Establish And Apply Review Procedures That Comply With Due Process; Agency Does Not Act Arbitrarily And Capriciously When It Simultaneously Reaffirms University's Accreditation And Imposes Probation.*

The Council on Chiropractic Education, Inc. accredited chiropractic doctoral degree programs in the United States. National University of Health Sciences ran a program accredited by CCE. When the University sought reaffirmation of its accreditation in 2016, CCE concluded in 2017 that the University was not fully compliant with all accreditation standards but, nonetheless, CCE reaffirmed the University's accreditation. At the same time, CCE notified the University it was placing its program on probation. The University filed an administrative appeal of the probation with the CCE appeals panel, but CCE denied the appeal. The University then filed a complaint in federal trial court, arguing CCE violated its due process rights, and asking the trial court to issue an injunction preventing CCE from imposing the probation. The trial court denied the University's request, and the University appealed to the U.S. Court of Appeals.

An accrediting agency such as CCE must comply with 20 U.S.C. Section 1099b to maintain recognition by the U.S. Secretary of Education. The statute required CCE to consistently and evenhandedly apply and enforce standards of accreditation and afford due process to the programs it accredited. Consistent with the statute, CCE adopted and published accreditation standards.

The University admitted it did not comply with two standards at the time CCE reaffirmed the University's accreditation. However, the University asserted CCE violated its due process rights when CCE imposed probation on the University because the standards did not permit CCE to grant reaffirmation of accredited status and impose probation at the same time.

The University did not identify any standard specifically prohibiting CCE from placing a program on probation at the same time it reaffirmed accreditation. CCE standards set out a list of accreditation actions that CCE may take "at any time." This list included reaffirming accreditation and imposing probation. Further, another standard permitted CCE to take any of the following actions against a program that was not in compliance with all the standards: (1) issue a warning, (2) place the program on probation, or (3) require the program to show cause why its accreditation should not be revoked. Because the standards contemplated that a program could remain accredited even if it was not fully in compliance with all accreditation standards, CCE did not act arbitrarily and capriciously when it simultaneously reaffirmed the University's accreditation and imposed probation.

An accrediting agency such as CCE must also establish and apply review procedures that complied with due process. This included providing written notice of any deficiencies identified, providing an opportunity for a program to provide a written response regarding any deficiencies, and concerning the written response before imposing any adverse action. Here, the University argued CCE imposed probation without first providing written notification of any deficiencies and without providing the University an opportunity to submit a written response. Specifically, the University argued CCE did not provide it written notification prior to issuing a letter on February 2, 2018, notifying the University that CCE was placing it on probation.

However, the February 2, 2018, letter only contained CCE's conclusion that the University did not comply with CCE standard and probation was appropriate. CCE did not take any action against the University on that date. Instead, CCE did not change the University's probationary status until after the University exhausted the CCE appeal process.

Furthermore, the University had the opportunity respond in writing to the CCE site team's final report that identified compliance deficiencies. CCE and University representatives also discussed the areas of concern identified by the site team at a status review meeting. Additionally, CCE notified the University in writing of its conclusion that probation was appropriate and have the University the opportunity to appeal that proposed action before it became final. The record showed CCE adequately apprised the University of its concerns regarding noncompliance and provided the University with multiple avenues to advocate for its position. Thus, CCE's decision to impose probation was not arbitrary and capricious and did not violate CCE's obligation to apply review procedures consistent with due process.

Accordingly, the Ninth Circuit Court of Appeals affirmed the trial court's conclusion that CCE did not violate the University's due process rights by (1) imposing a sanction of probation while contemporaneously reaffirming the University's accreditation status and (2) providing the University with notice and opportunity to respond to identified deficiencies in the manner described.

*Nat'l Univ. of Health Scis. v. Council on Chiropractic Educ., Inc.* (2020) 980 F.3d 679.

# BENEFITS CORNER

## *IRS Releases Final 2020 Forms 1094 & 1095 And Related Instructions For ACA Reporting.*

We noted in the November/December 2020 Benefits Corner that the IRS released drafts of Form 1094-C and Form 1095-C for Applicable Large Employers (ALEs) to use in reporting ACA compliance for the 2020 tax year. The IRS recently issued the final versions of Form 1094-C and Form 1095-C and related instructions. The forms and instructions remain mostly unchanged compared to the previous year except for some of the notable highlights below.

The 2020 Form 1095-C makes completion of the "Plan Start Month box" mandatory for the first time. The Form 1095-C instructions also explain that the affordability threshold for plan years beginning in 2020 is 9.78%. The forms also explain the indexed penalty for reporting failures increased from $270 to $280 per return, with calendar-year maximum penalties increasing from $3,339,000 to $3,392,000. The IRS also provided the following deadlines and updates regarding extensions:

The due date for furnishing Form 1095-C to individuals was extended from January 31, 2021 to March 2, 2021. The IRS stated it will not grant any further additional extensions for providing individuals Form 1095-C.

For calendar year 2020, ALEs must file Forms 1094-C and 1095-C by March 1, 2021, or March 31, 2021, if filing electronically.

ALEs should carefully read the forms and instructions when conducting required ACA reporting compliance. LCW remains available to assist employers through this process.

**LCW BEST PRACTICES TIMELINE**

Each month, LCW presents a monthly timeline of best practices for private and independent schools. The timeline runs from the fall semester through the end of summer break. LCW encourages schools to use the timeline as a guideline throughout the school year.

**NOVEMBER THROUGH JANUARY**

□ Issue Performance Evaluations

- We recommend that performance evaluations be conducted on at least an annual basis, and that they be completed before the decision to continue employment for the following school year is made. Schools that do not conduct regular performance reviews have difficulty and often incur legal liability terminating problem employees - especially when there is a lack of notice regarding problems.
    - Consider using Performance Improvement Plans but remember it is important to do the necessary follow up and follow through on any support the School has agreed to provide in the Performance Improvement Plan.

□ Compensation Committee Review of Compensation before issuing employee contracts

- The Board is obligated to ensure fair and reasonable compensation of the Head of School and others. The Board should appoint a compensation committee that will be tasked with providing for independent review and approval of compensation. The committee must be composed of individuals without a conflict of interest.

□ Review employee health and other benefit packages, and determine whether any changes in benefit plans are needed.

□ If lease ends at the end of the school year, review lease terms in order to negotiate new terms or have adequate time to locate new space for upcoming school year.

□ Review tuition rates and fees relative to economic and demographic data for the School's target market to determine whether to change the rates.

□ Review student financial aid policies.

□ Review and revise enrollment/tuition agreements.

□ File all tax forms in a timely manner:

- Forms 990, 990EZ
    - Form 990:
        - Tax-exempt organizations must file a Form 990 if the annual gross receipts are more than $200,000, or the total assets are more than $500,000.
        - Form 990-EZ
        - Tax-exempt organizations whose annual gross receipts are less than $200,000, and total assets are less than $500,000 can file either form 990 or 990-EZ.
        - A School below college level affiliated with a church or operated by a religious order is exempt from filing Form 990 series forms.

(See IRS Regulations section 1.6033-2(g)(1)(vii)).

- The 990 series forms are due every year by the 15th day of the 5th month after the close of your tax year. For example, if your tax year ended on December 31, the e-Postcard is due May 15 of the following year. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

- The School should make its IRS form 990 available in the business office for inspection.

- Other required Tax Forms common to business who have employees include Forms 940, 941, 1099, W-2, 5500

□ Annual review of finances (if fiscal year ended January 1st)

- The School's financial results should be reviewed annually by person(s) independent of the School's financial processes (including initiating and recording transactions and physical custody of School assets). For schools not required to have an audit, this can be accomplished by a trustee with the requisite financial skills to conduct such a review.

- The School should have within its financial statements a letter from the School's independent accountants outlining the audit work performed and a summary of results.

- Schools should consider following the California Nonprofit Integrity Act when conducting audits, which include formation of an audit committee:

  ▪ Although the Act expressly exempts educational institutions from the requirement of having an audit committee, inclusion of such a committee reflects a "best practice" that is consistent with the legal trend toward such compliance. The audit committee is responsible for recommending the retention and termination of an independent auditor and may negotiate the independent auditor's compensation. If an organization chooses to utilize an audit committee, the committee, which must be appointed by the Board, should not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the corporation has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. It is recommended that these restrictions on makeup of the Audit Committee be expressly written into the Bylaws.

**JANUARY/FEBRUARY**

□ Review and revise/update annual employment contracts.

□ Conduct audits of current and vacant positions to determine whether positions are correctly designated as exempt/non-exempt under federal and state laws.

**FEBRUARY- EARLY MARCH**

□ Issue enrollment/tuition agreements for the following school year.

□ Review field trip forms and agreements for any spring/summer field trips.

□ Tax documents must be filed if School conducts raffles:

- Schools must require winners of prizes to complete a Form W-9 for all prizes $600 and above. The School must also complete Form W-2G and provide it to the recipient at the event. The School should provide the recipient of the prize copies B, C, and 2 of Form W-2G; the School retains the rest of the copies. The School must then submit Copy A of Form W2-G and Form 1096 to the IRS by February 28th of the year after the raffle prize is awarded.

## CONSORTIUM CALL OF THE MONTH

*Members of Liebert Cassidy Whitmore's consortiums are able to speak directly to an LCW attorney free of charge to answer direct questions not requiring in-depth research, document review, written opinions or ongoing legal matters. Consortium calls run the full gamut of topics, from leaves of absence to employment applications, student concerns to disability accommodations, construction and facilities issues and more. Each month, we will feature a Consortium Call of the Month in our newsletter, describing an interesting call and how the issue was resolved. All identifiable details will be changed or omitted.*

**ISSUE:** An administrator of an independent school that serves students in grades 6-12 called an LCW Attorney. The administrator explained that the school is planning to use a mobile app for COVID-19 symptom screening when they transition back to in-person learning. The administrator explained that the mobile app contains a COVID-19 symptom-screening questionnaire, which must be completed for each student before the student arrives on campus each morning. The administrator asked whether students can complete the COVID-19 symptom-screening questionnaire themselves, or whether parents/legal guardians must complete the questionnaire.

**RESPONSE:** The LCW Attorney explained that there is no legal guidance that speaks to this issue precisely, but there are some risks associated with permitting 6-12 grade students to complete the questionnaire in lieu of their parents/legal guardians. For example, if the school permits minor students to complete the questionnaire, there could be arguments that students, particularly younger students, did not understand one or more questions on the questionnaire. Further, there could be arguments that students were not entirely forthcoming on the questionnaire for various reasons, including because they wanted to be able to attend school to see their friends or not to miss an exam or test, or, alternatively, because they did not want to attend school on one or more days. Permitting students to complete the questionnaire in lieu of their parents/legal guardians also creates the possibility that a concerned parent or employee may believe the school was acting negligently by asking minor students to self-report COVID-19 symptoms instead of relying on information from their parents/legal guardians. Therefore, we recommend that parents/legal guardians complete the questionnaire.

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## New to the Firm

**Michael Jarvis** is a Labor Relations Consultant in LCW's Los Angeles office. His background includes working in management roles, and he has more than a decade of labor negotiation experience working with clients on mutually beneficial outcomes while building positive and productive relationships.

He can be reached at 916.747.6219 or mjarvis@lcwlegal.com.

**Chelsea M. Desmond** is an Associate in LCW's Los Angeles office where she defends clients against a wide variety of employment claims brought under state and federal law, including discrimination, harassment, and retaliation based on race, gender, sexual orientation, disability, and whistleblower retaliation.

She can be reached at 310.981.2739 or cdesmond@lcwlegal.com.

**Yesenia Z. Carrillo** is an Associate in LCW's Fresno office where she advises clients on employment law matters, including employee contracts, settlement agreements, retention policies, wage and hour compliance and employment handbooks.

She can be reached at 559.256.7816 or ycarrillo@lcwlegal.com.

**Arti L. Bhimani** is Senior Counsel in LCW's Los Angeles office. She is a leading litigator on behalf of nonprofit institutions, having served as Deputy General Counsel and head of litigation for a leading global healthcare nonprofit.

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**Sylvia J. Quach** is an Associate in LCW's Los Angeles office where she advises clients in all aspects of labor and employment law and defends clients in litigation.

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LCW LIEBERT CASSIDY WHITMORE

# On-Demand Mandated Reporting Training for Private and Independent Schools!

Employees whose duties require contact with and/or supervision of children are considered "mandated reporters." LCW's Mandated Reporting for Private and Independent Schools workshop provides mandated reporters with the training that is suggested and encouraged by the California Penal Code to help them understand their obligations. It is essential that mandated reporters understand their legal duties not only to help ensure the safety and welfare of children, but because the duty to report is imposed on individual employees, not their schools.

On-Demand Training Course:
LCW has created an engaging, interactive, and informative on-demand training course. Training is one-hour and participants will receive an acknowledgement of completion at the end of the course, which can be forwarded to a school administrator.

Compatible with LMS Systems:
Does your school already use a Learning Management System for other training? Simply add LCW's Mandated Reporting training to the required training list and let your staff complete it when and where they want.

Train your whole school at a discounted price:
We are pleased to offer discounted pricing for schools that purchase multiple training sessions. In addition to pricing discounts, schools that purchase multiple training sessions will receive robust tracking analytics, dedicated account support, and branding opportunities.

Questions?
We are here to help! Contact us at on-demand@lcwlegal.com with questions on discounted school-wide pricing.

## Register Today!

MANAGEMENT TRAINING WORKSHOPS

## Firm Activities

**Consortium Training**

**Feb. 2** **"10 Steps in Evaluating Employee Performance"**
Builders of Jewish Education Consortium | Webinar | Julie L. Strom

**Feb. 4** **"Operating in a COVID World"**
Association of Christian Schools International (ACSI) Consortium | Webinar | Stacy Velloff

**Feb. 9** **"Bylaws and Board Governance for California Nonprofit Schools"**
California Association of Independent Schools (CAIS) Consortium | Webinar | Grace Chan

**Customized Training**

Our customized training programs can help improve workplace performance and reduce exposure to liability and costly litigation. For more information, please visit www.lcwlegal.com/events-and-training.

**Feb. 16** **"Mandated Reporting"**
Crossroads School | Webinar | Kristin D. Lindgren

**Speaking Engagements**

**Jan. 31** **"Annual Legal Update for California Independent Schools"**
CAIS Trustee School Head Conference | Webinar | Michael Blacher & Donna Williamson

**Jan. 31** **"Legal and Risk Management Strategies in a COVID-19 Driven World"**
CAIS Trustee School Head Conference | Webinar | Michael Blacher & Ronald Wanglin

**Jan. 31** **"Shifting Expectations: How to Manage Parent Relationships During Crisis and Emerge Stronger"**
CAIS Trustee School Head Conference | Webinar | Grace Chan & Brad Weaver

**Jan. 31** **"Hope is Not a Strategy When it Comes to Crisis Communications"**
CAIS Trustee School Head Conference | Webinar | Linda Adler & Jim Hulbert & Dan Glass



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