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ASSESSING THE IMPACT OF LEGAL ISSUES

ON PRIVATE BOARDING SCHOOLS

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Educational Leadership

by

Angela L. Duncan

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The dissertation of Angela L. Duncan was reviewed and approved* by the following:

Preston Green
Associate Professor of Education
Dissertation Advisor
Chair of Committee

Jacqueline Stefkovich
Associate Dean for Graduate Studies, Research, and Faculty Development

Nona Prestine
Professor of Education

Daniel R. Cahoy
Associate Professor of Business Law

Gerald K. LeTendre
Department Head
Education Policy Studies

*Signatures are on file in the Graduate School

ABSTRACT

This study was conducted to answer questions regarding if and how administrators at private boarding schools deal with legal issues which arise in the course of the daily operations of their schools. Specifically, it was designed to answer the following four research questions: (a) To what extent, if any, do legal issues impact boarding schools?; (b) Which specific legal issues have the greatest degree of impact on boarding schools?; (c) Why do these issues have a greater degree of impact on boarding schools than other legal issues?; and (d) Is there a way to better prepare a school to face these issues? Gross's turbulence theory and its concepts of positionality and cascading were used in helping to assess the level of disruption and possible causes. It was found that issues of contracts do affect administrators daily, that they most fear liability issues, and are most confounded by statutory and regulatory laws. However, more than the legality of these issues, administrators struggled with how following their legal obligations effected their decision-making process.

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Chapter 1

Assessing the impact of legal issues on private boarding schools

The United States was founded on the premise that all people were created equally and that in our newly formed democracy all views, religions, and ethnic backgrounds would be welcomed and accepted. What began as the idea of a melting pot, that is, people from all over the world coming to the new continent and learning how to become American citizens, has become in the last half century more of a metaphorical “vegetable soup”, each new citizen bringing his or her own culture and holding strong to ethnic roots, coexisting in harmony with other citizens without being forced to assume a national identity.

The U.S. Constitution, and specifically the Bill of Rights, was written to codify the most fundamental rights for these new and diverse citizens of the United States. As a reaction to tyrannical England, such rights as the ability to speak, write and assemble freely, to bear arms, to practice a religion of choice without governmental interference, and to protect oneself from being forced to self-incriminate through either testimony or governmental searches, were among the relatively few rights that the Founders felt important to enumerate. Knowing that there was no way in which they could anticipate every issue which would arise, and having a strong belief in States’ rights, the 10th Amendment to the Constitution was added, specifically stating that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people” (United States Constitution).

As education is not mentioned explicitly in our U.S. Constitution, the 10th Amendment guarantees that education and the defining thereof is a function of each individual state via local school boards acting as state agents. However, educating the populace has become one of the highest priorities of not only the citizens of the U.S., but also of state and federal governmental

agencies. As primary education is the only compulsory activity for all citizens, the U.S. as a society has developed a strong reliance upon its schools to serve as catalysts for societal change and improvement and economic growth and stability (Alexander & Alexander, 2008) as well as a venue for information distribution and instruction on civic responsibilities (Spring, 2004; Urban & Wagoner, 2004).

Given the extraordinarily diverse population of citizens being guaranteed the right to hold tight to their individual beliefs, in combination with each state's particular governance of schools, compulsory attendance laws, and today's high expectations of schooling, it is easy to see why public school systems in the United States face many different perceptions of what it is that they should and do provide their students. Multiple stakeholders with divergent expectations and strong individual opinions all contribute to the design, management and operation of schools. Clearly, this can lead to myriad concerns with varying legal implications within our schools. Further confounding these issues is the fact that since schools are state, not federally, run and governed, even similar legal questions or disputes which arise in schools of different states cannot be guaranteed to be handled in like-fashion everywhere. It becomes difficult to discern any single law which is applicable for all schools (Alexander & Alexander, 2008).

The thrust of this chapter is to explore these different kinds of legal issues which schools face, to discern the differences between various types of schools in the U.S. and the laws to which they are beholden, and to help administrators at a particular kind of school, the private boarding school, to understand their legal issues and responsibilities, and to guide them in preparing for or avoiding potentially crippling litigation.

Schools and the law in the United States

There are two basic types of schools in the United States: public schools and private schools. Each of these faces its own set of legal issues given differences in structure, purpose and governance mechanisms.

Public schools. The bulk of schools in the United States are public schools. Public schools are so called because they are available to all children and are governed by the individual state and local authorities. There are provisions in the constitutions of all fifty states which provide for, in varying language, free and adequate public instruction (Alexander & Alexander, 2008). These schools are funded almost exclusively through state and local taxes. As these schools are run and funded by state agencies and state collected taxes, those who work at these public schools are considered agents of the state, and therefore government employees.

Because they are government agencies run by government employees, the laws regulating public schools are primarily based on those of both the U.S. Constitution and of the individual state's constitutions, each one of which contains language providing for public schooling. And while public schools do present a special environment and limit some of the rights guaranteed by the Bill of Rights to its teachers and students, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School District*, 1969).

Given the connection to the State, many legal conflicts which arise in public schools center on violations of a student's or teacher's constitutional rights, specifically First Amendment rights while at school, including freedom of speech, assembly, expression, and the freedom to participate or not participate in religious activities. In addition to the First Amendment rights guaranteed, other significantly debated public school legal issues include freedom from unreasonable searches and seizures (the Fourth Amendment), issues surrounding due process of the law (the Fourteenth Amendment) and defining the nuances of the state constitutional language promising to provide a "free and adequate public education for all students" (Alexander & Alexander, 2008). Public schools are also bound by statutory and regulatory laws handed down

from the state and federal governments, including compliance with the No Child Left Behind Act (NCLB), the Americans with Disabilities Act (ADA), the Health Insurance Portability and Accountability Act (HIPAA), and the Individuals with Disabilities Education Act (IDEA) (Dunklee & Shoop, 2006).

Private schools. In contrast to public schools, private schools are operated, governed and funded by a private source. They are often opened to promote or protect a particular interest or population. These are interests that might not be provided for in a public school. Particularly common is the parochial school, which is steeped in a religious affiliation and often touts a religiously based curriculum which, given the requirement of separation of church and state required of public schools, would not be acceptable practice outside the setting of a private school.

Private schools have the ability to write their own admission policies and generally charge a significant fee for attendance. Therefore, they are not necessarily open to all students, another feature which distinguishes them from a public school. Because these schools and employees are not agents of the state, because they do not directly benefit from state and federal tax monies as their primary source of income, and because it is a family's choice as to whether or not to attend and pay for these schools, private school students (due to the school's lack of a sufficient connection to the government) do not have the same constitutional rights of public school students (Mawdsley, 2006). In essence, the guaranteed protection of constitutional rights is, to some extent, voluntarily waived when the family signs the attendance contract with the private school. The family and students, assumedly in line with a school's particular values or interests, enter into a contractual agreement with the individual school they have chosen, to abide by the mutually agreed upon, predetermined school rules which, absent the presence of the public schools' governmental connection, trump any constitutional rights which would otherwise be extended.

Parents of private school students, unhappy with the outcomes or process of the private schools and seeking reparation, do try on occasion to sue their schools over public school related legal issues. For example, there are several concepts which litigants have used in an attempt to draw parallels between public and private institutions which would lend credence to similar constitutional rights being granted to students in private schools. These include, but are not limited to, claims of state entanglement or the private school's performance of a state or public function (Mawdsley, 2006), the parents' argument being that as long as a private school is held to the same academic standards and federal mandates (No Child Left Behind and subsequent tests), requires the same type of teacher certification for employment, submits to the same licensure standards, and accepts any assistance from local governments while performing at least some of the same functions of a public school, there should be a protection of rights by the State. However, courts have resolutely ruled against this idea, and have consistently found that there was a lack of state involvement in private school management and therefore, lack of state action (Mawdsley, 2006). Private schools have continued to stand as entities separate from public schools legally.

Because of the lack of State connection, legal issues which often arise in private schools are not constitutional in nature, but rather primarily focus on liability claims and breach of contract violations, legal issues which face all private entities more so than government agencies (Mawdsley, 2006).

Boarding schools: A special type of private school. One of the best known categories of private schools in the United States is the boarding school. For the purposes of this research, a boarding school is defined as a college-preparatory, privately accredited, privately funded, and selective school which provides housing to its students either as an option or a mandate for

attendance.¹ In these schools, henceforth referred to as private boarding schools, or merely boarding schools, the residential component of the educative process is a fundamental piece of the curriculum.

Independent from state mandates, a boarding school is in no way beholden to the State for curriculum guidelines, funding, testing or hiring practices, nor is the boarding school required to allow any particular person entrance: They in fact tend to be quite selective in admission of students. Contrary to public schools, these schools are very often built upon a particular mission, philosophy of education or religious affiliation which in turn drives curricular decisions, staffing choices, and acceptance of students into the school.

Additionally, a traditional boarding school need not be accredited by anyone to exist. That said, boarding schools are only in existence based upon reputation, quality of students accepted, consequent applications, and the money provided by the tuition, charitable contributions and endowments received. All of these are quite difficult to garner without proof of a very high caliber program. It therefore behooves these schools to prove that they have a high-quality curriculum and a unique program. The better the program or even more accurate the *reputation* of the program, the more applications the schools receive, and therefore the more selective the school can be. Consequently, most boarding schools will go through an accreditation process with one of the twenty-five recognized accreditation organizations for independent schools (The Association of Boarding Schools, 2006).

Boarding schools and the law. As traditional boarding schools are themselves private schools, the pupils and employees who choose this path do not enjoy the privileges of constitutional protection that their counterparts in public schools enjoy. Therefore, legal issues in boarding schools do not generally consist of claims reflecting constitutional protections, but

¹ For the purposes of this study, only privately funded boarding schools are being examined. Therefore, not included in this discussion of boarding schools are state funded schools, schools in which attendance is mandated by the State, or American Indian Reservation schools.

rather mirror those of regular private schools: tort liability and breach of contract. Beyond just those of a regular private school, the legal issues that boarding schools must face merely by virtue of their residential mission and often sprawling size, tend to be different. Boarding schools and their employees are not responsible merely for school day activities, but also the evenings and weekends of recreational activities and communal living. Unlike private day schools, boarding schools encompass a much larger setting, consisting of not only classrooms, but countless playing fields and student living spaces. This twenty-four hour a day, seven day a week need for supervision which actually closely mirrors that of an actual parent, presents an interesting context for the application of the public school's concept of *in loco parentis*², or acting in place of the parent. Students who live in dorms with faculty, make parent-like, constant supervision by the faculty both necessary and expected of the schools. In this sense, the term *in loco parentis* takes on an entirely new and much deeper meaning: It truly does mean acting in the stead of a child's actual parents on a consistent, in and out of the classroom manner.

Because of this exceptional situation and set of circumstances, and the increasingly litigious society in the United States, great pains have been taken, especially over the last two decades, to pen comprehensive contracts (in varying forms) on the part of the school. Parents are issued handbooks and policy guidelines which must be read and signed as an understanding of exactly what their rights and responsibilities are as the parents of a child at their respective schools. Students receive a handbook and are expected to read it and sign an enrollment agreement stating that they have not only read the entirety of the information that has been presented, but also that they will willingly take responsibility for acting in accordance with the all of the school policies. Staff members, especially those living in the residence halls, are typically given a very detailed handbook delineating exactly what their responsibilities are, including when

² Of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent. The Supreme Court has recognized that during the school day, a teacher or administrator may act *in loco parentis* (Black's Law Dictionary, 2004, p. 803).

they are expected to be on “duty” and specifically what these duty times entail in regard to supervision expectations. Comprehensive lists of precautions for safe community living are published and agreed upon. In essence, these documents which serve as contracts, in many ways serve to negate other legal claims: Instances of “fault” can often be traced to a breach of contract on the part of the student, the family, or the employee of the school. Having comprehensive guidelines drawn up makes many potentially litigious situations easier to settle, without the involvement of formal legal authorities. The administrator can, and often does, default to the question “what does the handbook say?”

It is important to most of these schools to steer clear of formal litigation. Boarding schools tend to be generously endowed from private sources and are reliant upon spotless reputations for continued enrollment. Having costly litigation not only costs the school tremendous money, but tarnishes the reputation upon which boarding schools are built. The cascading effects of bad press leading to a bad reputation, lowered enrollment and often the consequent shrinking of endowments, can be crippling to private schools. Because of this, legal issues in boarding schools are rarely discussed, and are dealt with as often as possible very quietly and far away from the public eye.

Research question and significance of study

Given that boarding schools, as private schools, rarely face constitutional claims, it would seem that if indeed faced with legal issues at all, they would primarily center on dealing with breach of contract claims or torts stemming from breach of contract, and that these schools would prefer to do so as quietly as possible. Logic would suggest that the stronger a school’s various contracts, the less likely it would be that it would face litigation. However, no contract can be airtight, and boarding schools face litigation on a regular basis. In fact, in a recent survey (Hotchkiss & Duncan, 2005) 100% of the 130 boarding schools surveyed claimed that legal issues were a “concern” in their school and that they had on retainer a school solicitor with

whom they were in “frequent” contact. At a recent (2006) national conference of The Association of Boarding Schools- the only major professional organization specifically devoted to providing staff development to boarding school employees-there was only one session in the four day conference that addressed legal issues specific to boarding schools. Significantly, it drew a standing-room-only crowd of people feverishly taking notes and commenting to one another on the lack of information available as to the legal rights and responsibilities of boarding school personnel in general. No one wants to officially talk about legal issues, to admit to weaknesses or vulnerabilities at their schools. In spite of this caution, everyone seems to face legal issues, wants more information, and wonders why no one is discussing them. There seems to be a real and practical need to address the legal issues which boarding schools face.

In response to these needs, the focus of this study is to address the following questions:

(a) To what extent, if any, do legal issues impact boarding schools?; (b) Which specific legal issues have the greatest degree of impact on boarding schools?; (c) Why do these issues have a greater degree of impact on boarding schools than other legal issues?; and (d) Are there ways to better prepare a school to face these issues?

Currently, the answers to these questions do not exist in the literature. While some research has focused on the quality of residential life programs in boarding schools (Hotchkiss, 2001; Hotchkiss & Kowalchick, 2002; Crosier, 1992; Hillman and Thorn, 1997), anecdotes about boarding school life (Swanson, 2002; Thorn, 2003; Sizer, 1999; McPhee, 1966) and the power and privilege afforded to those who attend boarding schools (Cookson & Persell, 1985; Powell, 1996; Crosier, 1991; Terry, 1981), there is nothing written on the fundamentals of running a boarding school in the United States, the legal obligations of these institutions, or common

practices thereof.³ This may be in part because each school considers itself unique, responding to its own mission, philosophy, and traditions. Thus, each school's handbook and contracts will be specific to that school individually and not necessarily like any other school's materials. Some might argue there is no way to comprehensively address legal issues in boarding schools, as it would be like comparing apples to oranges. However, this could be said of the law generally. Legal premises, while pervasive are not universally legally binding and are always open to some explanation and interpretation. It is the assumption of this study that there will be several legal issues with common themes which surface upon an in-depth investigation, and therefore are worth investigating to provide school administrators some universal benefit and understanding.

Boarding schools are naturally reticent to acknowledge legal issues, as controversy and bad press are detrimental to the reputations of such schools. Solid reputations are obviously what these schools are built upon and any controversy can be damaging. However, this study's intent is not to ask schools to "air their dirty laundry", but rather to acknowledge that all schools face legal issues at one time or another, to highlight common legal themes within a cross-section of fairly diverse schools, and to provide recommendations on ways that a school might choose to preempt or prepare for these issues should they surface again.

Theoretical Framework

For school leaders to be able to decide which legal issues are most troubling to them, they must first have access to a method (or scale) by which to measure the impact that a legal issue has had on their organization. This scale must provide operational definitions which help them classify their legal issues. Additionally, for administrators to truly understand the "why" of these troubling legal issues, they must be provided a framework which will allow them to draw

³ While, as stated above, there is currently no publication detailing the best or common practices of boarding schools, Hotchkiss and Duncan (2005) conducted a survey on the common and best practices of 130 boarding schools in the United States and Canada. While data from this survey is used throughout, the actual publication of the material is not due to appear until summer of 2009.

connections between the actual issues, the way in which they perceived these issues, and the context in which they were faced. For the purposes of this study, Gross's turbulence theory will be used for help in assessing these issues (Shapiro & Gross, 2007). Turbulence theory is an appropriate framework for this discussion because it offers a predetermined scale specifically designed to measure organizational disruption, and offers two major concepts which might explain the causes of this disruption: the ideas of cascading and positionality. This theoretical framework and its application will be discussed in depth in the methodology section of this study.

Summary

Boarding school education and management is a unique subset of the American educational field. While obviously considered typical schools in the strictest interpretation of the term, these private, specialized high schools are markedly different in the ways in which they manage their students, faculty, curriculum and communities. It seems impossible to compare the legal issues that you would expect to find in a public school with those of a boarding school. However, it is naïve to believe that boarding schools, merely by virtue of not hearing as frequently about their legal issues, are free from legal entanglements. It is the aim of this research to use Gross's turbulence theory to help boarding school administrators recognize and classify the legal issues they face in an attempt to provide much needed information to those school professionals in the business of boarding school education and management on ways in which to prepare for and possibly avoid troublesome or potentially crippling litigation.

Chapter 2

A Review of the literature

As has been discussed previously, boarding schools do not deal with the same types of legal issues or deal with them in a similar fashion as their public school counterparts. Additionally, in an attempt to maintain status and reputation, rarely do these schools discuss their legal issues in any sort of public forum. The thrust of this research is to help these schools uncover the legal issues which they face, to determine which ones have the greatest degree of impact on the school community, and to help to prepare for these issues when possible. This chapter will provide a review of the relevant literature explaining a brief history of public school and private school law and how these legal principles apply- or more specifically, how they may not apply- to boarding school administration. This chapter will conclude with a review of extant literature on boarding school management as it relates to the educational leaders who would be placed in the position of dealing with the legal claims of schools. This discussion will reveal what is missing from the current research and consequently, what this research will add to the field of boarding school administration.

Schools in the United States

Public schools. As was briefly discussed in Chapter I of this work, the majority of schools in the United States are public schools, defined as, “an elementary, middle or high school established under state law, regulated by the local state authorities in the various political subdivisions, funded and maintained by public taxation, and open and free to all children of the particular district where the school is located” (Black’s Law Dictionary, 2004, p. 1372). This means that they are open and free of charge to the general, school-aged public, financed through state and local funding sources and held accountable to state and federal standards for

achievement. By virtue of its belief in an educated populace as a necessity to perpetuate the republic, the United States requires attendance of its youth at school (Spring, 2004).

While the state can mandate education for its citizenry, it cannot force students to attend a particular kind of school (*Pierce v. Society of Sisters*, 1925). Because of the people's ability (and right) to create and maintain schools which cater to a particular purpose or mission, and the family's ability to maintain the liberty right of choosing a school for their child to attend, there are a variety of different kinds of schools in the United States. In the public sector these include traditional public schools, charter schools (state sponsored schools created by a contract between the state and the individual school, designed to be less restrictive and allow for greater flexibility of operation and funding) and magnet schools, public schools which are designed with a particular curricular focus (Dunklee & Shoop, 2006). For the purposes of governance, however, these are still considered public schools: they are free of charge, open to application by anyone, funded by the same sorts of sources as other public schools, and held to the same performance standards demonstrating that learning has occurred.

Private schools. Other than the students attending public schools and the variations thereof discussed above, are the significant number of students nationally (approximately 10%, or roughly 5,100,000 students in approximately 28,000 schools) who attend private schools (National Center for Education Statistics, 2006). A private school is described as a "school maintained by private individuals, religious organizations or corporations funded at least in part by fees or tuition and open only to pupils selected and admitted based on religious affiliations or other particular qualifications" (Black's Law Dictionary, 2005, p. 1372). A majority of private schools, 76 percent, represent a particular religious affiliation: Forty-eight percent specifically Catholic, (National Center for Education Statistics, 2006). This practice of faith in education, which given the separation of church and state required of entities directly tied to the government, would not be able to be fulfilled outside the parameters of a private school setting.

As one can tell when comparing these definitions, public schools and private schools are significantly different in most respects which deal with school governance: management structures, funding sources, fees required, hiring practices, admissions policies, academic benchmarks, and often overt religious affiliation. Because of these significant differences, legal issues which these two types of schools face are dealt with very differently.

Legal issues in schools: Public v. private

Public school law. Since public schools are funded almost exclusively through state and local taxes and are run and governed by state agencies using these government collected monies, public schools are governmental entities. As such, the laws which govern public schools are those which are associated with governmentally protected rights and regulatory expectations. Governing practices of public schools primarily deal with insuring teachers and students their fundamental rights, based both on the U.S. Constitution and the constitutions of each individual state, all of which contain language which provides for public schooling.

There is no lack of information available to public school administrators on the laws which govern the public school system. Many textbooks and handbooks on school law are readily available to administrators to help them in their decision-making processes (Alexander & Alexander, 2008; Boshier, Kaminski, & Vacca, 2004; Bradley, 2005; Dunklee & Shoop, 2006); Essex, 2004; Fischer, Schimmel, & Stellman, 2007; Gunther & Sullivan, 1997; Imber, M. & van Geel, T., 2000; Morris, A.A., 1989; Reutter, C.J., 2006; Rossow, L.F. & Stefkovich, J.A., 2005; Shoop & Dunklee, 2005; Thomas, S.B., Cambron- McCabe, N.H., McCarthy, M.M., 2008; Valente & Valente, 2004). Understanding that each state may handle cases in a slightly different fashion given the sitting court, the nuances of particular state laws, judicial precedent and the claims brought against schools, one salient factor remains: Public schools are consistently

dealing with the same kinds of violations across the board. The focus of litigation is based in one of these areas of the law: the infringement upon a student's or teacher's Constitutional rights (including First Amendment, Fourth Amendment and Fourteenth Amendment issues); defining the nuances of state constitutional language promising to provide a "free and adequate public education for all students"; handling torts and liability claims; mediation of faculty contract issues; monitoring compliance with national testing standards; and fair IDEA practices (statutory and regulatory laws). Obviously, the legal issues which face public schools run the gamut..

Private school law. In the section which began this comparison of public and private schools, attention was drawn to the dramatically different manner in which public and private schools are managed and funded. Private schools, whose selective admissions process is tuition and application based, and whose mission is often overtly religious, specifically sets about the practice of being an alternative to a public school, offering that which a public school, by law, cannot. It does not maintain a sufficient connection to the state: it is privately, not governmentally operated. It is the lack of a sufficient tie to the government upon which the distinction between public schools and private schools lies in terms of governance and law (Mawdsley, 2006).

Because of this lack of a sufficient tie to the government, private schools are not bound to the constitution for a basis of operational practice. However, it cannot be said that private school attendees have no legal rights whatsoever. In fact, several authors (Bradley, 2005; Broughman, 2006; Case 2006; Mawdsley, 2005; Private School Handbook, 2003; Weeks, 1983) have written specifically on the types of specific legal issues which these schools tend to face: typically breach of contract and tort liability suits.

Primary Types of Private School Suits

Contract Law. In private schools, the admissions policy and consequent enrollment of the student is based upon an enrollment agreement— a contract which is penned between the school and parent, outlining the expectations for student and family behaviors dealing with the school. It is contract law which supplies the basis for much of private school litigation.

When parents decide to send their students to a private school, they sign an enrollment agreement. When students agree to attend the school and abide by school rules, they sign an enrollment agreement as well. When teachers agree to work for a private school, they sign an employment agreement. All of these documents are contracts. Black's Law Dictionary defines a contract as "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law...a writing that sets forth such an agreement" (Black's Law Dictionary, 2004, p. 341).

Given the lack of a tie between the government and private schools and consequently the lack of constitutional bindings between the state and private schools, the bulk of private school legal issues fall not into the category of constitutional claims like their public school counterpart, but rather into that of contractual disputes. By signing the various enrollment agreements, the constitutional rights which members of the private school community might expect to enjoy elsewhere become limited to the language of the individual contract which is signed. Students, employees, and families are forced then to abide by the terms of the contracts they have willingly accepted (Mawdsley, 2006).

It is incumbent upon private schools to understand and carefully define all the materials which can constitute a contract. These materials can include, but are not limited to: the enrollment/ employment agreement, school mission statement and philosophy, publication materials, and student/ employee handbook. Because of this, it is crucial for a school to clearly and consistently state appropriate standards of conduct throughout all materials, delineate the

process which will be used to determine whether or not those expectations have been violated, and the subsequent consequences for violations. If clearly written and explained, the courts generally accept the contractual language of the individual institutions without inquiry into process of development or rationale for these rules (Mawdsley, 2006).

While the bulk of private school claims seem to come down to some sort of breach of contract claim, it is important also to recognize other sources of legal disruption as well. In private schools, the other primary type of suit brought against schools centers around aspects of tort liability.

Tort Liability. According to Keeton, Dobbs, Keeton and Owen (1984), a tort is a “civil wrong, other than for breach of contract, for which the court will provide a remedy in the form of action for damages” (p.2). Black’s Law Dictionary adds “[a tort is] a breach of a duty that the law imposes on persons who stand in particular relation to one another” (p. 1526). Examples of tort claims include, assault, battery, defamation, inflicting intentional emotional harm, and most commonly for school cases, neglect (Alexander & Alexander, 2008; Bradley, 2005; Mawdsley, 2006).

Neglect can include failure to protect others, failure to exercise appropriate standard of care, and the standard of the “reasonable person”, that is, whether or not a reasonable person would be able to foresee and thus prevent loss or injury given their experience, reputation and intellect (Alexander & Alexander, 2005; Kionka, 2005). This language is purposefully vague, allowing for interpretation by the courts. In fact, as Kionka (2005) points out:

negligence is a broad and pervasive principle of liability. The general rule is that one is under a duty to all persons at all times to exercise reasonable care for their physical safety (and that of their property). At the same time, justice and policy considerations require that particular classes of persons and particular activities be subject to greater or lesser standards of liability. (p.105)

From the standpoint of legal precedents, teachers have fallen into this definition of a particular class of people subject to a greater standard of duty. A Vermont court (*Eastman v. Williams*, 1965) spoke specifically to the standard of care owed to a pupil from a teacher by saying that:

[A teacher's] relationship to the pupils under his care and custody differs from that generally existing between a public employee and a member of the general public. In a limited sense the teacher stands in the parents' place in his relationship to a pupil...and has such a portion of the powers of the parent over the pupil as is necessary to carry out his employment. In such relationships, he owes his pupils the duty of supervision. (p. 448)

This standard of care is applicable to all teachers, whether public or private, and distinguishes teachers in general from other government employees. Teachers in both public and private schools face tort liability suits, as is also true with breach of contract suits. However, as public schools also deal with statutory, regulatory, and Constitutional legal issues which private schools tend not to, torts and contracts end up comprising the majority of private school claims. Constitutional rights issues which public schools are forced to face, private school attendees to a large degree sign away upon enrollment.

Liability claims can take many different forms. Two sources of information which are particularly helpful in determining the types of liability claims which private (or sometimes referred to as independent) schools face are the two major insurance companies which specifically insure private schools: Bolston & Company, and United Educators. In the 2000 report, "Trends in Liability Claims at Independent Schools" produced by United Educators, they detail the three different types of insurance policies which they offer: general liability, general liability excess, and educators' legal liability. These cover claims ranging from premises liability and bodily harm (general liability), to severe bodily injury (general liability excess) and employee sexual harassment, civil rights claims, and excessive student discipline (educators legal liability) (United Educators, 2000). These multiple definitions of liability which will help to guide the

research in subsequent chapters, and which will become particularly applicable as we begin to discuss legal considerations in a boarding school setting.

As was detailed above, private schools face different legal issues than public schools do by nature of the missing state connection in private school governance. However, just as there are several types of public schools (magnet and charter) which abide by public school laws, there are different kinds of private schools as well. It would hold that various types of private schools would follow trends in private school law. To investigate this claim, this study will focus on the legal issues which affect a particular type of private school, the boarding school.

Boarding schools: A special type of private school

Boarding schools are independent, college preparatory schools that provide residential facilities for students and faculty. They are sometimes referred to as "intentional communities" because faculty and staff strive to create a secure environment for students that is academically challenging, active, and fun (The Association of Boarding Schools, 2008).

This definition of boarding schools, provided from the Association of Boarding Schools' (TABS) website, touches upon several of the concepts which should be highlighted for the purposes of this research. A boarding school is an independent school (private school) which provides residential facilities to its community members. To restate the definition of a boarding school provided in Chapter I of this work, a boarding school here is defined as a college-preparatory, privately accredited, privately funded, and selective school which provides housing to its students either as an option or a mandate for attendance. For this research, it will not include state funded boarding schools, schools in which residence is mandated by the State or American Indian Reservation schools. This discussion will deal specifically with what are known as "traditional" or private boarding schools and the legal issues which its administrators daily face.

Boarding school law. As boarding schools are themselves private schools, the types of legal issues which boarding schools face should fall into the same categories of lawsuit faced by

more typical private schools: contracts (the materials signed which are considered contracts in private schools) and torts, especially given the vast property in boarding schools needing maintained and supervised and the nature of twenty-four hour a day supervision (*in loco parentis*). An exhaustive review of literature relating to boarding school specific law however was not available to support this supposition: literature on this specific type of private school law simply does not exist. This is not particularly surprising given that a Westlaw search for cases involving boarding schools turned up fewer than twenty-five which had been heard in the last hundred years which fell into the category of contracts or torts occurring while the school was in operation⁴. Searching LexisNexis for news sources and journal articles specifically regarding boarding schools and the law brought forth little additional information: only a handful of news articles over the last decade which pertained specifically to boarding schools at all and even fewer which dealt with law related issues.

This would lead one to the belief in one of two things: either boarding schools do not face legal issues or the legal issues which boarding schools face are very well hidden and/ or avoided. As has been discussed throughout, it is the opinion of this research that the latter is true: that these legal issues, so as to thwart the public relations disasters which come from high profile legal troubles, are kept under wraps and taken care of as quietly as possible. In an attempt to unearth some of these well-covered, law-related incidents in boarding schools, a review of more anecdotal boarding school writings was conducted, hoping that narratives of the people involved in running and attending these schools would reveal more telling information.

⁴ The original search turned up close to 600 cases which dealt with boarding schools and the law. However, the bulk of these cases dealt not with issues occurring on site while the school was in operation, but rather on zoning laws for building these schools initially and the consequent tax laws related to their construction and “school” designation. These were not included in this study as they did not directly relate to the daily operations of boarding school administrators.

Boarding schools: sparse literature on special settings

Boarding schools are some of the oldest educational institutions in the United States. West Nottingham Academy, established in 1744 boasts the longest history of boarding school operation (Private School Handbook, 2003). For over two hundred and fifty years, these residential schools have served as the home to many of the nation's most influential sons and daughters. This is not a coincidence. When boarding schools began they were seen as an educational choice for the elite. In fact, at one point, almost 40% of the population of one elite boarding school studied was comprised of families from the social register (Cookson & Persell, 1985).

Given that this particular group of people- the well-known and the wealthy- comprised the majority of stakeholders in these schools for many years, it would seem that there might be scholarly literature written on the complexities of running these special institutions: the educated and wealthy writing academic works on how to efficiently and effectively run schools which take care of their own. This simply is not the case. Generally, the very little available literature related to boarding schools merely sets the scene for pieces of fiction, a place for Holden Caulfield or Harry Potter to live out their days; a backdrop for dramatizing teen life. Any literature which even resembles scholarly work about boarding schools has focused on one of several topics discussed below, none of which deal directly with providing a framework or guideline for administrators in the legal, daily operations of these schools, and none of which are based in case law.

Cookson and Persell (1985), Crosier (1991) and Terry (1981) have come the closest to addressing the legal issues that may arise in the boarding school setting, yet only do so tacitly. These authors have written on the social problems which can come from wealthy students being afforded the added privilege of attending private, elite boarding schools. Cookson and Persell (1985) and Terry (1981) discuss the importance of stressing moral practices to the members of these school communities and the obligation that these schools have to train and supervise these

elite families' children to behave in a respectable and socially responsible fashion. It might be said that stressing these moral practices could help students to avoid behaviors which often lead to legal issues, or perhaps even encourage them to take personal responsibility for questionable behaviors instead of automatically suing the school. However, these writings are neither based in a discussion of the law nor are based on an analysis of actual findings. Drawing this correlation as the reason that these works were written is at best a stretch.

Crosier (1991) presents articles and essays of former boarding school students and the perils that they faced while in the care of these boarding schools: drugs, depression, loneliness, questionable sexual behaviors, personal responsibility and accountability, and dealing with the extraordinarily high expectations of their families, friends and the schools. Crosier's collection of essays reveals the serious and varied social pressures which face the students at boarding schools and which often provides the byproduct of legal ramifications, but does not provide information or advice to schools on how to better face or prevent these issues, even though many may have legal implications if poorly handled. This is merely a memoir.

There is simply no academic, research based, or law based literature available on running boarding schools specifically. This is surprising, given that this special context is difficult, not just for the students as described above, but for faculty and staff as well. One might believe that adults who have lived through working at or running a boarding school might want to do some kind of systematic study of the issues that they face. In an attempt to glean even anecdotal information on the legal problems that these schools face, memoirs of former heads of school and deans were reviewed. McPhee (1966) and Swanson (2002) write on what it is like to run these institutions, having been a headmaster and dean respectively, and the rewarding but trying situations ethically and emotionally that living and working with students in a boarding school setting can produce. Sizer and Sizer (1999) tell us what it is like living in the "fishbowl" that is a residential school, being on constant display and having to be conscious of every action at all

times. This constant modeling can be exhausting to staff members they say, and obviously presents a challenging living situation for students and adults alike. Exhaustion can and often does have a direct effect on the quality of supervision which is provided. Yet again, that is where the analysis stops: Nothing is written further on specifically helping administrators deal with the legal ramifications of twenty-four hour supervision responsibilities. How to avoid exhaustion and putting yourself in a compromising situation—yes, but nothing further.

In an attempt to speak to the training and supervision of residence hall staff who deal with these student and faculty living issues, Hotchkiss & Kowalchick (2002) discuss how to structure and supervise dormitories to avoid faculty being on duty for long periods of time and in minimizing situations in which a dorm could go unsupervised (thus helping to eliminate supervision related legal implications). This is the only writing which speaks even indirectly to legal considerations in running boarding schools: addressing ways in which to allow staff members shorter units of time on duty in an attempt to make on-duty time more effective (less chance for fatigue-induced error) and in assuring that as much time as possible in the dorms is supervised time. Writings on how to structure the residential curriculum in an attempt to make the students' time in the residence hall more effective have also been produced. Hothckiss and Kowalchick (2002), Hotchkiss (2001), and Crosier (1992) all write on ways in which to structure the residential curriculum to help keep students from making poor choices which might cause harm to themselves, others, or the dorm, and offer curricular ideas to combat boredom, depression and stress. All of these suggestions are in an attempt to keep the residence halls a happy and healthy place for the students and the adults to live, an effort that administrators hope will alleviate unhealthy, potentially dangerous and consequently litigious situations. However, as is again evident, the sparse literature available spends its time discussing stress relief, time management, healthy lifestyles, and dorm structure- not what to do when these planning elements

are not enough and students are unsupervised, injured, or make poor choices with their personal behaviors.

All of the above review of boarding school literature merely reveals that there is relatively no boarding school literature to review. These workbooks and memoirs, while offering interesting stories and ideas for happier residence halls, offer no clues as to how to better understand boarding school law or successful administrative management techniques to handle legal issues when they arise. The closest these writings do to address any such concept is by highlighting the need to understand the old phrase, “idle hands are a devil’s tool.” A correlation between happy, healthy children engaged in positive, well-supervised activities could easily be made to avoiding situations in which questionable behaviors could lead to potentially litigious situations. However, this correlation is only tacit and unspoken in the literature. These books have been written to help produce a happy and healthy student and teacher population, not as any sort of guide for school management or scholarly examination of the legal issues at hand.

Boarding schools, while often viewed as institutions of elite, wealthy students from advantaged backgrounds, are in reality complex organizations of many different types of students, all of whom share the pressures of high expectations, rigor and tradition. Life in residence halls with high school- aged students can lead to tricky legal situations in which faculty and students alike must be conscious of their actions twenty-four hours a day and the ramifications these actions have to the larger communities.

Rationale for study

As has been evidenced through this review of the literature, boarding schools fit an interesting niche in the legal world, operating as a school, a non-profit, a care facility, a private entity and a sort of corporation, similar in nature to other schools, but with great variability between one another. Compounding the vagaries in literature as to what boarding school law constitutes and whether or not it is actually a problem is the ambiguity in how to deal with the

legal issues which boarding schools face. This, when added to the reluctance these schools have with discussing the legal issues they face makes an open discussion unlikely. Amongst the fears they face, the appearance of vulnerability, garnering a poor reputation, and extreme competition rank exceedingly high. These schools must vie with each other for money and the best and brightest students. Any negative repute only serves to increase the fear of litigation. While there is some writing on boarding schools and what it takes to provide welcoming environments for students and faculty, this is, in bulk, anecdotal and has nothing to do with how to specifically weather the storms of severe legal trauma which a school might face, nor is it based in legal analysis or considered scholarly work. However, having been a part of the boarding school community for the entirety of my professional life, witnessing amongst its members an underlying fear of litigation in much that they do, and a real desire for legal information being evidenced, it is my belief that this research is timely and badly necessary.

The study, which is detailed in the following chapter, aims to serve several purposes. First, it is to add to what should be recognized at this point as the complete dearth of information in this field: it is simply something of which nothing is written or spoken. If the study does indeed prove that legal issues are common to all boarding schools and they are merely not being spoken or written of, it becomes important for boarding school administrators to begin to acknowledge, if not to the world at large, then at least to one another, that legal issues do in fact exist: every school has experienced them to some degree. Because of this, talking about them should not diminish the reputations of these schools or administrators, but rather provide for important conversations to begin which will allow schools to learn from each other's experiences and possibly mistakes. Sharing information does not make these schools weaker, merely more informed. Finally, if it is discovered that these issues not only exist, but are fairly consistent across schools, it is the intent of this research to both provide the springboard for conversation, and more importantly, to provide ideas for possible solutions: handbook policy considerations,

better written contracts or preemptive staff training in an attempt to avoid situations which might lead to litigation. These recommendations will be made based upon the needs which surface, reflected in available legal findings and precedents as is applicable, thus providing a much needed legal guide for boarding school administrators.

Chapter 3

Research Methodology

Very little information has been published on the legal issues which boarding school face. Boarding schools, unlike public schools and private day schools, encounter legal issues which are much different from those which these more common types of schools typically face. Since boarding schools rarely deal with the constitutional rights claims which their public school counterparts encounter, it would follow that the bulk of their legal claims would consist of either tort liability claims or some form of a breach of contract claim. However, this assertion has heretofore neither been proven, nor to this author's knowledge been examined in any sort of methodical or scholarly fashion. Because of the glaring holes in the area of boarding school research in general and regarding legal issues therein specifically, the focus of this study is on investigating the legal issues which boarding schools face, particularly addressing the following research questions: (a) To what extent, if any, do legal issues impact boarding schools?; (b) Which specific legal issues have the greatest degree of impact on boarding schools?; (c) Why do these issues have a greater degree of impact on boarding schools than other legal issues?; and (d) Is there a way to better prepare a school to face these issues?

Rationale for research approach

To find the answers to the above questions, this study employed a mixed methodology of data collection. Mixed methodology has been broadly defined by Greene, Caracelli, and Graham (1989) as a "design that includes at least one quantitative method to collect numbers and one qualitative method to collect words" (p. 256). Johnson and Onwuegbuzie (2004) go on to further define mixed methods as "the class of research where the researcher mixes or combines

quantitative and qualitative research techniques, methods, approaches concepts or language into a single study” (p. 17).

There are several reasons that a researcher would choose to use a mixed methodology in doing research, especially in the social sciences. First, it helps to develop and inform each of the methods in a complementary fashion (Creswell, 2003). Second, most constructs that educational researchers are interested in are based on subjective, defensible judgments, in need of both categorization and subsequent clarification (Ercikan & Roth, 2006). Educational and cultural phenomena in general are simultaneously quantitative and qualitative in nature and therefore are in need of investigation through a mixed methodology (Ercikan & Roth, 2006). Johnson and Onwuegbuzie, (2004) go further by saying,

Adding qualitative interviews to experiments as a manipulation check and perhaps as a way to discuss directly the issues under investigation and tap into participant perspectives and meaning will help avoid some potential problems with the experimental method. (p.17)

Advantages to using a mixed methods approach include allowing for both predetermined and emerging methods and theories to be present, the ability to ask both open- and closed-ended questions, the ability to draw multiple forms of data, and the ability to analyze both statistics and text which lends context and meaning to the numbers (Creswell, 2003; Greene et al., 1989; Johnson & Onwuegbuzie, 2004). Greene et al. (1989) go on to recommend three reasons in particular for mixing quantitative and qualitative methods: Corroboration of findings (triangulation), elaboration of findings (marrying context with statistics), and initiation of new interpretations (p. 257).

Ultimately, however, research methods should primarily follow the research questions in a way that offers the best chance to obtain useful answers (Creswell, 2002; Johnson & Onwuegbuzie, 2004; Krathwohl, 1998). This, a mixed method approach, was appropriate for answering the different parts of the research questions presented here.

Specifically, this research design was a primarily qualitative, sequential, mixed method, for the purpose of complementary data collection, combining both a quantitative and a qualitative approach to gathering information (Greene et al., 1989). This complementary approach answered the quantitative questions posed by the research questions and allowed for qualitative elaboration, enhancement, illustration, and clarification of the results from the quantitative survey.

Quantitative data was necessary to answer question (a) To what extent, if any, do legal issues impact boarding schools? and (b) Which specific legal issues have the greatest degree of impact on boarding schools? Survey information, which involved the collection of data from a sample, representing a given population at a particular time, (Wiersma, 2000) was gathered to help establish a baseline for investigation and to uncover trends in the answers of the participants. Watson (1998) quotes Babbie's 1995 proposition that "survey research is probably the best method available to the social scientist interested in collecting original data for describing a population too large to observe directly" (p. 31). This method, a quantitative survey, was an appropriate response for answering questions such as which one, what is, and how many (Creswell, 2002; Watson, 1998) which directly applied to research questions (a) and (b).

Research questions (c) and (d) – why do these issues have a greater degree of impact on boarding schools than other legal issues and is there a way to better prepare a school to face these issues— are how and why questions, best answered by interviewing participants to ask for deeper meaning and interpretation of the data trends initially collected by the survey. Krathwohl (1998) recommends this sort of qualitative research when dealing with specific contexts, particularly when academic knowledge contrasts with practicing professionals' knowledge. This concept was particularly telling in this research study: Even though the review of literature indicated certain issues would emerge, given the nature of boarding schools and the lack of information published on boarding school administration, these qualitative components proved vital to understanding the true picture of what is going on. Because boarding schools are such specific and unique settings,

the added qualitative approach helped a great deal to explain the context specific, interpersonal, private, and often emotional angles of boarding school legal issues. This research method allowed for interaction in a natural setting and a holistic approach to data collection. As this is a virtually untapped area of interest, issues were unspecific and undeveloped, and therefore this methodology, which allowed for and even encouraged emergent ideas, was most appropriate (Creswell, 2003). Indeed, it did elicit many emerging ideas which would not have otherwise been discovered without both quantitative and qualitative data collection methods.

Theory Development and Application

For the purposes of this research, Gross's turbulence theory was used to frame the survey and guide the interview questions. Turbulence theory was developed by Gross in the late 90's in order to serve as a tool to help assess the level of organizational unrest being felt by schools as they were facing significant institutional reforms (Shapiro & Gross, 2007). Gross applied the definitions of turbulence which pilots use in flight as a metaphor for organizations to be able to better understand what its members were experiencing during difficult times. These definitions when applied to the schools he was studying, allowed him to operationalize otherwise vague conditions and emotions. He applied the four already existing levels of unrest felt by pilots during in-flight turbulence to the school setting, using the following turbulence definitions:

1. Light— Little or no disruption. Subtle signs of stress.
2. Moderate—Widespread awareness of the issue.
3. Severe—Fear for the entire enterprise- A feeling of crisis.
4. Extreme—Structural damage to the enterprise. Collapse likely (Shapiro & Gross, 2007).

Gross asked the members of these reforming schools to examine the stress that they were experiencing in implementing a school improvement effort from the standpoint of these four dimensions. However, this only answered part of the question: to what extent was unrest being

felt. More importantly, Gross wanted to understand the *why* of the unrest, therefore allowing participants to prepare for or remediate the issues which they faced. These two components match well the research questions being asked in this study.

In answer to these “why” questions, he carried the flight and turbulence metaphor a bit further. Gross considered how an occasional passenger might perceive an episode of in-flight turbulence as opposed to the experienced pilot. He felt that experience, context and circumstances all contributed to a particular person’s perception of the organizational unrest, eliciting many different views of the exact same turbulent event. Given this premise, he added the following two dimensions to his turbulence theory to provide for these very real differences in perception (Shapiro & Gross, 2007) and to help explain questions of why.

Positionality. Gross speculated that a person’s position within an organization, one’s intellect, institutional history, educational experiences and experience in similar situations contributed to his or her perception of turbulence level. Based in part in positionality theory and standpoint theory, he called this concept positionality. Furthering the metaphor, clearly what is seen as moderate turbulence by one person (i.e. someone who has had experience in like situations or who has been in that particular job or school for awhile) might be perceived as severe to another, newer to the role. In his research he noted, “turbulence might seem uniform viewed from far away, but at the level of the specific case, where one was in relation to the organization seemed very meaningful” (Shapiro & Gross, 2007, p. 45).

Cascading. Gross noted that in many cases the greatest levels of turbulence did not arrive at the organization as such, but rather were the result of many different contributing factors across the organization (“None of the destabilizing blows were isolated”, Shapiro & Gross, 2007, p.47). He called this concept *cascading*, which referred to the impact of multiple forces joining together to increase the level of turbulence. What might begin as something small, often snowballs into something greater and therefore ratchets up the end perception of turbulence: A small

misunderstanding can grow into something much larger as more people become involved, the public becomes aware, or information diffusion is uncontrolled. He felt that understanding this chain of events, not unlike Peter Senge's positive feedback loop, lead to a deeper understanding of how organizations often ended up in a state of significant unrest (Shapiro & Gross, 2007).

Application of theoretical framework to study

Turbulence theory and its concepts of positionality and cascading were good matches for addressing the questions being presented in this research. While admitting the limits of a metaphor, Gross highlights that metaphors provide a much needed lens—a way of seeing and a way of thinking— through which complex issues can be better understood. They allow for both episodic events and continuing forces to be considered, allowing for the “illumination of particular aspects of a person's reality” (Shapiro & Gross, 2007, p. 49). In this research, the metaphor employed by turbulence theory allowed for viewing events (the particular legal issues being addressed) and the forces which contribute to them (context and position). The turbulence scale used by pilots and applied by Gross to schools was used here to help boarding school administrators assess the impact of the legal issues they have faced and thereby allowed them to see which legal issues have had the greatest degree of impact on their schools. Once school administrators identified the legal issues which have had the most profound effect on their schools (highest levels of turbulence), the ideas of positionality and cascading provided the framework for probing questions which garnered insights into why they perceived these issues to be as such. Once the particular legal issues were fleshed out, impact of them assessed, and the potential causes of these issues were identified, recommendations were able to be made to administrators in order to prepare for or to avoid these legal issues in the future.

Sample and Site

The Association of Boarding Schools (TABS) is a professional organization for boarding schools and their employees. An off-shoot of the National Association of Independent Schools

(NAIS), TABS is an organization which specifically addresses the issues faced by those working in boarding schools. To be a member school, of which there are currently 288 in the United States and Canada (The Association of Boarding Schools, 2006), a school must first be accredited by one of the twenty-five nationally recognized independent school accreditation boards. These boards assess organizations for high academic standards, professional training, supervision, and adequate facilities (NAIS, 2006). As TABS is the only professional organization for those who work in boarding school settings specifically, each year's national conference draws many boarding school senior administrators from around North America. Annually at this national conference, TABS publishes the contact information of all those in attendance, including addresses, phone numbers and e-mail addresses. This is shared with other members in attendance for professional development purposes.

The initial survey produced for gathering general information and providing a basis upon which to assess trends was answered anonymously by senior administrators of schools in the United States who provided their e-mail addresses to TABS while attending the 2007 national conference. Collins et al. (2006) refer to this as a criterion sampling: "choosing settings, groups and/ or individuals because they represent one or more criteria" (p.84). The criteria that these people met included a) they are an employee of a TABS member school, insuring they all work at a school which has attained a baseline, minimum level of competency (the have been accredited) b) they were all willing to have their contact information for the purposes of networking and professional development published and disseminated (hopefully increasing a response rate, assuming that these people are already amiable to being contacted from others in the TABS community), c) they are all from schools in the United States, and d) they are all senior administrators of the schools at which they work. For the purposes of this research, senior administrators include one of the following positions: Head of School, Assistant Head of School,

Dean of Students, or Dean of Faculty.⁵ These are the positions at the schools that would most likely be exposed to the inner workings and details of significant legal issues and also are most likely to have multiple years in administrative positions, offering a greater breadth of knowledge.

The two sets of follow-up interviews consisted of convenience samples, which Collins et al.(2006) define as a “sample in which the researcher chooses settings, groups and/ or individuals that are conveniently available and willing to participate in the study” (p.84). The first set of interviews was conducted with survey participants who, upon agreeing to participate in research by filling out the survey, also responded that they were willing to be contacted to participate in a short, follow-up phone call interview to verify the results of the survey. The researcher attempted to recruit 8-10 people for this section of interviews. Nine people initially agreed to participate in the interview process. Two did not respond to repeated e-mail and phone calls attempts to schedule the follow up interview. In the end, seven administrators agreed to be contacted for a ten to fifteen minute phone interview to verify the survey results and begin to shape the direction that the in-depth interviews that followed would take.

After the survey was completed and tabulated, and the seven follow-up interviews were completed, transcribed, and analyzed for trends, four senior administrators at four different TABS member boarding schools were interviewed to find out more specifically the legal issues they face and to clarify and elaborate on the findings from the survey. These four administrators were purposefully chosen for three convenience reasons: a) the researcher has a relationship with these individuals and/ or these schools, and therefore knew in advance that access to the school and interviewee was granted, and b) the personal relationship that the researcher enjoyed with these administrators likely yielded more candid interviews, and c) these schools were relatively close

⁵ School titles are not standard across all schools. Some senior administrators will have similar job responsibilities if not the same job titles. Most importantly for this research, senior administrators are people who are in the upper levels of the school administration who would have access to detailed information about legal issues a boarding school might face.

and within reasonable traveling distance for the interviews. However, in the end due to the schedules of those being interviewed, only two of these four interviews were conducted in person while the other two were conducted over the telephone.

These four interviewees consisted of three women and one man who ranged in years of experience in senior boarding school positions from three years to 34 years. Their actual range of tenure in boarding school education (not necessarily in an administrative role) ran from approximately 15 years to almost 40 years. The four school populations where these administrators worked ranged from 50- 500 boarding students and were all co-educational. Two of the schools were in the Midwest and two in the Mid-Atlantic region (Michigan, Wisconsin, Maryland, and Pennsylvania). All of the schools included both boarding and day students, though two of the schools were primarily day schools while the other two have primarily full time boarders. According to Hotchkiss and Duncan (2005) and TABS (2006), these schools represent characteristics which make these school choices “typical” boarding schools, sharing the most commonly occurring demographics of boarding schools in size (63% of TABS boarding schools house between 50-500 students) gender make-up (72% of TABS schools are coeducational), and location (a little over 30% of all boarding schools are located in the Mid-Atlantic region and Midwest combined).

Both the sampling for the quantitative, survey section of this study and the sampling for the qualitative, in-depth interviews were purposive, non-random samples.

Instrumentation and Data Collection

Section one of the research conducted consisted of an online survey whose questions were designed solely for the purpose of this research, using a survey-writing service called Survey Monkey. It was confidentially distributed (via a secure e-mail link) to senior administrator participants from TABS member schools who agreed to participate in the research by replying to the ask e-mail affirmatively and by providing an e-mail address in which to send the survey link.

The initial contact information for the 185 senior administrators who were solicited for participation in this research came from the participant list provided from the TABS 2007 national conference publication.

The survey consisted of questions which were in one of several formats, designed to gather primarily frequency counts and Likert scale narrative ratings. Section one of the survey asked for general demographic information about both the administrator and the school at which the administrator was currently serving. Section two asked the administrators to answer questions regarding the frequency of occurrence of legal issues, common legal practices of the school in dealing with these issues, the administrator's level of training and comfort in dealing with such issues and selection (from a list of legal issues discovered through a review of the literature) of which ones they had encountered. Section three of the survey asked participants to rate the perceived level of institutional disruption in dealing with the selected legal issues using a simple, four point scale which corresponded to Gross' organizational turbulence theory, operationalizing the degree of institutional disruption. Gross defined four levels of what he calls organizational "turbulence" as follows:

1. Light— Little or no disruption. Subtle signs of stress.
2. Moderate—Widespread awareness of the issue.
3. Severe—Fear for the entire enterprise- A feeling of crisis.
4. Extreme—Structural damage to the enterprise. Collapse likely (Shapiro & Gross, 2007).

Finally, section four included open-ended questions and asked administrators to list any issues which had not been included elsewhere in the survey, to expand upon an issues they saw about which they had questions or concerns, to speculate about emerging legal issues, and to briefly discuss their experiences in dealing with law related disputes in schools.

The survey instrument was piloted with a small group of unrelated-to-the-study volunteers before being sent out to actual research participants. These survey pilot participants were asked to take the survey and comment on clarity of directions and questions and to discuss issues that they had with understanding answer choices or general themes. Seven respondents participated in this activity- one with a particular knowledge of the law and schools and one with specific knowledge of boarding and independent schools. Based on their questions and recommendations, several changes were made to the word choice used in the final survey questions and the directions provided for the respondents. The resultant final version of the survey questions is included in Appendix A.

After the surveys had been completed and the results analyzed, the seven administrators who agreed to the phone follow-up were contacted. The follow-up interviews took place over the telephone and were audio recorded. These were scheduled via e-mail to take place after the administrator had completed the survey. The questions which were asked of these participants primarily served as survey response verification. These administrators, after verifying (or not) the survey results, had a brief opportunity to contribute new information via one of the open-ended questions asked upon closing the interview (i.e. “Is there anything else you’d like to tell me/ contribute?”) For a complete list of the questions asked in the follow-up interviews, see Appendix B.

Using the data collected from these surveys and the short, follow-up phone interviews, the remaining research followed what Krathwohl (1998) calls “partially structured”, in depth interviews. Krathwohl further describes these interviews by saying:

Area is chosen and questions are formulated but order is up to the interviewer. Interviewer may add questions or modify them as deemed appropriate. Questions are open-ended, and responses are recorded nearly verbatim, possibly taped. (p. 287)

These interviews took place with four senior administrators (a Head of Upper School, two Assistant Heads of School, and a Dean of Student Services). Questions were developed that asked for clarification of the trends identified in the survey section of the data collection process and as verification or contradiction of both the survey data and the information gleaned from the follow-up phone interviews. Deeper questions about why particular issues were more disruptive than others and reflection on personal experiences as administrators were asked. Particular emphasis was placed on Gross' concepts of positionality and cascading (Shapiro & Gross, 2007). These were particularly helpful concepts to explore in assessing the question of why these particular legal issues had a greater impact on the operations of the school than others. A complete listing of the outline of interview questions for the in-depth interviewees is included in Appendix C.

Finally, the data drawn from the surveys, the follow-up interviews and the in-depth interviews helped in addressing specifically the final research question (d) Is there a way to better prepare a school to face these issues? This question was addressed through a review of the trends identified throughout the data collection process, actual recommendations volunteered by those interviewed, and any relevant literature or case law which was applicable.

Data Analysis

Survey Monkey as a survey design software collects and tabulates basic, descriptive statistics. Descriptive statistics, "transform a set of numbers or observations into indices that describe or characterize data" (McMillan & Schumacher, 2006). These reports include very basic statistics, mostly frequency counts, which helped to establish a basis for formulating and informing the follow-up and in-depth interviews. This explanatory design (McMillan & Schumacher, 2006) informed sections two and three of the research. While not used for this study at this time, the data collected will also serve to provide means and standard deviations for a more in-depth trend analysis in future work.

During the interview sections of the data collection, brief notes were taken and interviews were tape-recorded and transcribed with permission from the participants (Creswell, 2003). Data was analyzed on an interim basis (McMillan & Schumacher, 2006) throughout the various interviews and was organized into predetermined categories (codes) and summarized. Categories for organization included: legal issues which arise within the school including Constitutional issues, regulatory issues, tort liability claims, and breaches of contract (Bradley, 2005; Mawdsley, 2006); legal issues that revolved around the students versus around the faculty or around parents, (Alexander & Alexander, 2005; Bradley, 2005; Essex, 2005); and Gross' concepts of turbulence level, positionality, and cascading (Gross, 2006; Shapiro, 2006). As emerged through the data, codes were also assigned based on concepts of the law versus ethical considerations in terms of what caused the greatest degree of impact on the operations of the school. These summaries and categorizations used a variation on what Krathwohl (1998) calls a "contact summary report," or a one page summary, completed after each interview, asking questions such as "What were the main issues and themes?" and "What else was salient, interesting, illuminating or important?"(p. 305)

Analysis of potential legal issues and recommendations for school administrators is based on the information gathered primarily from the in-depth interviews and supported and supplemented by information collected during the follow-up interviews and any relevant write-in responses to the survey.

Reliability and Validity Concerns

The strongest aspects of this research design are the two built-in mechanisms for validity. Validity is "the degree to which scientific explanations of phenomena match reality- the truthfulness of findings and conclusions" (McMillan & Schumacher, 2006, p. 134). Several things led to the increased possibilities for veracity of results in this study. First, the mixed method design in-and-of-itself increased internal validity by triangulation (Greene et al., 1989).

Triangulation (Krathwohl, 1998) is a process by which the researcher consults two or more sources to establish factual accuracy. By cross-referencing the quantitative data with the two independent sets of qualitative interviews, a deeper level of truthfulness was achieved. The researcher was able to verify that the survey actually measured what it was intended to measure by asking in-depth questions of the participants, while gaining a deeper understanding of the responses.

A second source of internal validity for this study came from the relationships which the researcher had already built with those who were interviewed during the in-depth portion of the research. Having already gained access to the schools and trust from those to be interviewed, there was a higher likelihood that the participants offered honest responses to interview questions. This is of particular importance to the researcher for this study as the types of questions posed here regarding action, lack of action, preparation for and impact on schools due to legal problems are sensitive topics containing confidential information which many people might be reticent to volunteer.

Triangulation helped with generalizability. While the major thrust of this research came from purposeful, selected interviewees that were not at all generalizable, these interviews were steered by the quantitative data gathered by administrators of boarding schools of all kinds, representing characteristics of many different kinds of private boarding schools in the United States.

Reliability for this research is limited. As it is a purposeful sample of a small group of individuals, there is no evidence that this experiment could be replicated with similar results. However, in designing the survey section of this research inter-item consistency questions were included and a pilot of the survey instrument was completed to ensure the survey was consistently measuring what was intended to measure (Wierima, 2000).

Limitations

There are, of course, limitations to this design to recognize. As the survey was designed by the researcher for the sole purpose of this study, there is the possibility of poor question construction or survey design (Weirisma, 2000). Electronic surveys, while relatively easy to respond to, are also easily overlooked, sorted to junk mail, or deleted. There are also factors such as security, anonymity, and lack of computer prowess which might have kept respondents from feeling comfortable with the online survey (McMillan & Schumacher, 2006). Securing the e-mail addresses from people who provided them to a professional organization for the purpose of networking was helpful, but the possibility for non-response or poor response rates remained. In the interviewing process for both sets of interviewees, even though access was granted and participation voluntary, (and in the in-depth interviews close relationships already established) given the sensitive nature of legal issues at boarding schools, there remained the possibility that participants might not have felt comfortable answering candidly. In the survey and both sets of partially structured interviews it became incumbent upon the researcher to design the questions and conduct the interviews in a way that made the respondents feel comfortable in their confidentiality and with answering these sensitive questions honestly.

Chapter 4

Results

The information presented in Chapter IV of this study contains results from the data analysis of survey responses and two different sets of interviews as described in detail in Chapter III of this work. This data was collected from boarding school senior administrators (Heads of School, Assistant Heads of School, Deans of Students and Deans of Faculty) from around the United States who worked for TABS member institutions and agreed to be contacted for professional development purposes.

This three-part data collection process was designed to discover which legal issues boarding school administrators found to have the greatest degree of impact upon the daily operations of their schools. Further, it was the goal of this research to identify why these issues are more disruptive than others and consequently come up with recommendations as to how schools can prepare for or potentially avoid crippling legal situations.

Specifically, this study was set up to answer the following four research questions:

- a) To what extent, if any, do legal issues affect boarding school administrators?
- b) Which specific legal issues have the greatest degree of impact on boarding schools and their administrators?
- c) Why do these issues have a greater degree of impact than other legal issues?
- d) Is there a way to better prepare a school to face these issues?

There are approximately 300 boarding schools in the United States which are affiliated with The Association of Boarding Schools (TABS), the field's major professional organization. Survey invitations were sent to 180 senior administrators from these schools who attended the

2007 Association of Boarding Schools National Conference. For professional development purposes, these administrators gave their contact information out to other participants of this conference. It was from this list that e-mail addresses were obtained.

The initial call for participation to the 180 administrators was sent via e-mail. After two week's time and three follow-up e-mails, the response rate was as follows: 19 people declined to participate (11%), 8 people wrote back and were interested but were either unavailable (maternity leave, sabbatical, out of country, etc.) or felt unqualified to participate by virtue of time in position or particular job title/ position currently held (5%), 45 people agreed to participate (25%) and 107 people did not respond to the e-mail requests (59%). In total, 38 of the 45 people who initially agreed to take the survey actually completed it, approximately 21% of the 180 people initially contacted.

Section I- Survey results

Before entering into discussion of the results from the survey, see Table 4.1 below for the demographic information of those who responded.

Table 4.1
Survey Respondent Demographics

Position	Female	Male	Total	Years in boarding school education					
				1-4	5-10	11-15	16-20	21-25	25 +
Heads of school	0	9	9	2	1	1	2	1	2
Assistant Heads of School	5	9	14	0	2	5	5	1	1
Deans (Students/ Faculty)	5	10	15	1	4	3	2	2	3

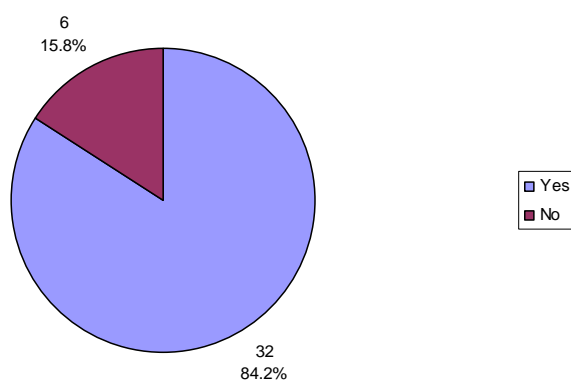
On average, these boarding school administrative respondents self-identified their schools as falling into the following demographic groups: 71.1% of their schools were over 100 years old; 79.0% of schools are located in either New England or the Mid-Atlantic region of the United States; 78.9% of schools are located in either rural or small town settings; 76.4% of schools enroll between 150 and 750 students; 86.8% of schools are co-educational. This is an accurate reflection of the demographics of boarding schools generally (Hotchkiss & Duncan, 2005).

The survey was designed primarily to elicit information that would be useful when later conducting interviews. It was designed to establish first whether or not legal issues were indeed a factor in the daily operations of boarding schools and then to find trends as to which particular legal issues school administrators would spend the most time on and find the most difficult with which to deal. By answering these questions and establishing these trends, the survey served to answer research questions 1 and 2 of this study: To what extent, if any, do legal issues affect boarding schools?; and Which ones are perceived to cause the greatest degree of disruption?

The following survey questions were designed to ascertain whether or not legal issues were a problem in boarding schools, the frequency of their occurrence, the respondent's level of training in dealing with legal issues and the respondent's comfort level in dealing with these issues as they arise.

Chart 4.1
Legal considerations

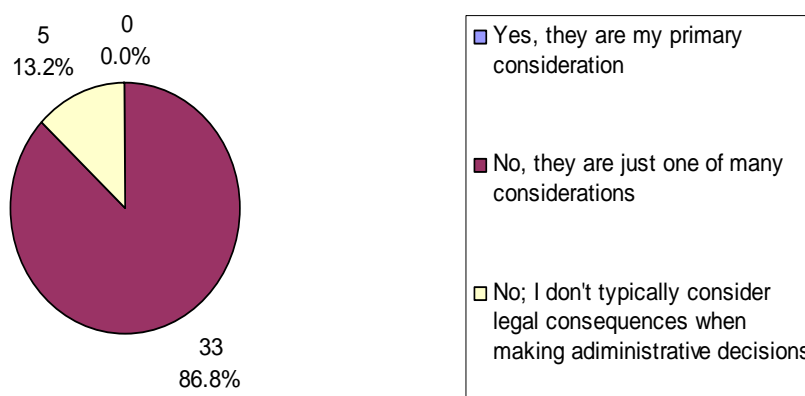
1) Would you say that legal issues are a consideration for you in the daily operations of your school?



Thirty-two of thirty-eight respondents agree that legal issues are a consideration for them in the daily operations of their schools (84.2%).

Chart 4.2
Legal consequences

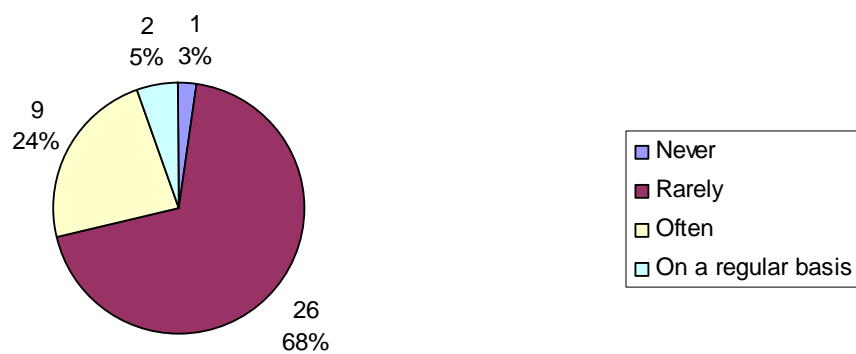
2) Would you say that legal consequences are your primary consideration in administrative decision making?



None of the respondents indicated that legal issues were their primary consideration in administrative decision making. 13.2% of respondents indicated that they did not typically consider legal consequences when making administrative decisions. However, close to eighty-seven percent of respondents indicated that they did consider legal consequences in their administrative decision making, but only as one of many considerations necessary in the decision making process.

Chart 4.3
Legal issue frequency

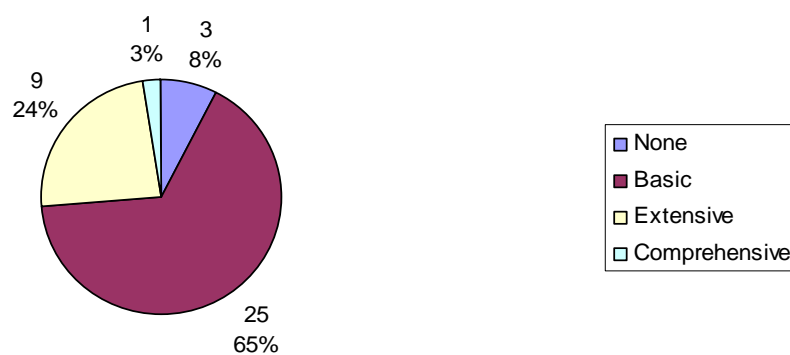
3) How often do you face what you would consider to be a significant legal issue?



Twenty-six of the 38 respondents indicated that they rarely dealt with legal issues which they considered to be significant. Only one respondent claimed to never have had to deal with significant legal issues.

Chart 4.4
Formal training

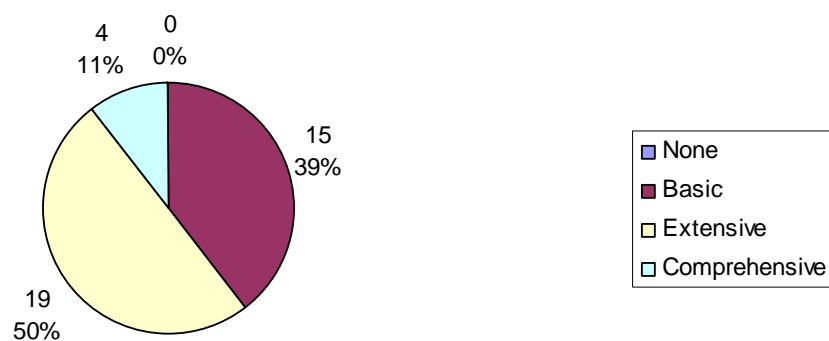
4) What would you say is your level of *formal* training (in-services, courses, etc.) regarding legal issues in schools?



Only ten of 38 respondents indicated that they had extensive or comprehensive formal training when dealing with school related legal issues. The majority of respondents, 73%, said they had no formal legal training or only a very basic training.

Chart 4.5
Informal training

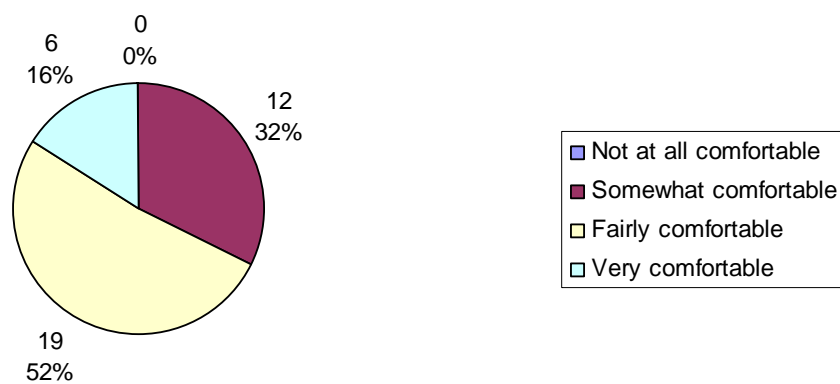
5) What would you say is your level of *informal* (“on the job”) training regarding legal issues in schools?



No one indicated that they had no informal training. A full half of respondents believed themselves to have extensive informal training in dealing with the legal issues in their schools. In comparison to the formal training, it is evident that more people (61%) self-describe themselves in the top two designations through informal training, as opposed to the only 27% who feel that they have formal legal training. Therefore, these numbers indicate most people rely upon personal experiences in their jobs and informal training methods for information on dealing with legal issues in their schools.

Chart 4.6
Legal Comfort level

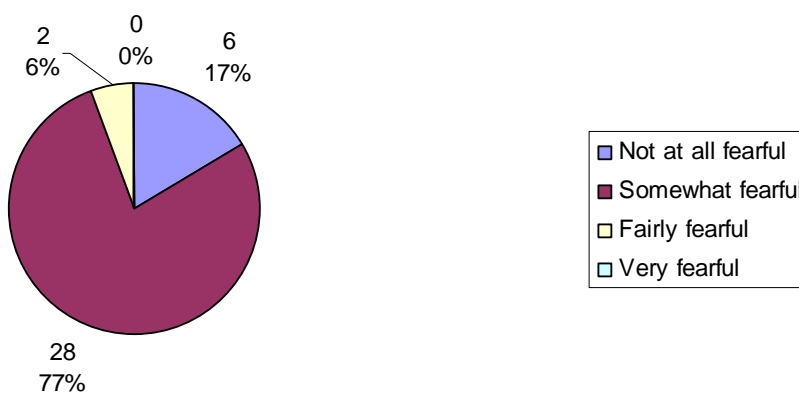
6) What would you say is your level of comfort in dealing with legal issues?



A little over half, 52% of respondents indicated that they felt fairly comfortable when dealing with the legal issues that they faced. There were no respondents who indicated that they were not at all comfortable.

Chart 4.7
Fear of litigation

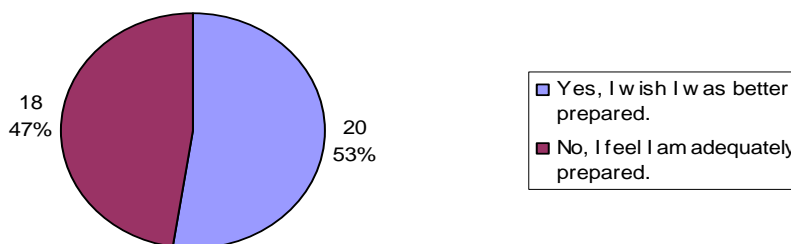
7) What would you say in your level of fear regarding potential litigation?



A majority, 77% of respondents, indicated that they were only somewhat fearful of potential litigation. No one indicated that they were very fearful.

Chart 4.8
Legal preparation

8) Do you wish you were better prepared to deal with legal issues as they arise?



This data indicates that a little over half of the administrators who answered the survey said that they wished they were better prepared to deal with legal issues (53%) while 47% responded that they felt they were already adequately prepared to deal with the legal aspects of their job. However, as will be discussed later, some people who indicated that they were already adequately prepared to deal with legal issues, did so because their understanding of their role in the schools was one that did not necessarily require them to have an extensive knowledge of the law, i.e. they already knew enough to perform the function of their jobs.

The answers to these initial eight questions begin to explain some of the trends explored throughout this study and answer the research question “to what extent do legal issues affect boarding school administrators?”. The data as shown in Chart 4.1 indicates that legal considerations are an everyday concern for most administrators (84.2%), even though as chart 4.2 suggests, 86.8% of respondents indicate they are just one of many considerations in making decisions. And while Chart 4.3 indicates most administrators do not face what they would consider to be major legal issues on a *daily* basis, the data as displayed in Chart 4.4 and Chart 4.5

indicate that the issues they do face require them to rely mostly upon their “on the job” training rather than any sort of specific formal training (27% indicating they have extensive or comprehensive formal training versus 61% indicating that they had extensive or comprehensive informal training). Chart 4.6 indicates that most administrators (52%) felt fairly comfortable in dealing with legal issues, and yet 77% still felt somewhat fearful of potential litigation (Chart 4.7) and 53% of respondents wished they were better prepared to deal with the legal issues that arise in the daily operations of the school.

Section 2 of the survey was designed to answer research question 2: Which issues did boarding school administrators perceive as causing the greatest degree of impact upon the daily operations of the boarding school? This was assessed by asking them two different types of questions. The first type asked them to discuss the frequency with which they had dealt with particular legal issues, the issues they most feared facing, and the issues that they had to deal with most regularly. These were asked to determine how dealing with legal issues actually fit into the daily operations of the schools. Questions asking about the perceived level of disruption caused by dealing with these legal issues were presented in the second set of questions asked in this section.

The list of possible legal issues from which to choose was determined by the review of literature. Administrators were asked to talk first about which issues they had ever dealt with, which issues they dealt with most frequently, which issues they perceived as being the most severe and which issues they had not yet faced, but feared facing in the future. These answers are presented in the tables that follow.

Table 4.2
Legal issues faced by boarding school administrators

<i>Which of following issues have you encountered in your time as a boarding school administrator?</i>		
Legal Claim	Yes	No
Drug use by students off campus	33 (86.8%)	5 (13.2%)
Drug use by students on campus	32 (84.2%)	6 (15.8%)
Contract dispute (enrollment agreement) with parents	31 (81.6%)	7 (18.4%)
Inappropriate sexual conduct of students with one another (consensual)	25 (65.8%)	13 (34.2%)
Contract dispute with faculty member	23 (60.5%)	15 (39.5%)
Sexual harassment (student claim)	20 (54.1%)	17 (45.9%)
Contract dispute (student handbook) with students	19 (50.0%)	19 (50.0%)
Sexual harassment (faculty claim)	18 (47.4%)	20 (52.6%)
Inappropriate sexual conduct of students with one another (non-consensual)	17 (44.7%)	21 (55.3%)
Character defamation (student claim)	16 (42.1%)	22 (57.9%)
Character defamation (faculty claim)	15 (39.5%)	23 (60.5%)
Inappropriate sexual conduct of a faculty member with a student	15 (39.5%)	23 (60.5%)
Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)	12 (31.6%)	26 (68.4%)
Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)	9 (23.7%)	29 (76.3%)
Lack of supervision (resulting in injury) while participating in extracurricular/ off-campus event	9 (23.7%)	29 (76.3%)
Lack of supervision (resulting in injury) in the dormitory	8 (21.1%)	30 (78.9%)
Lack of supervision (resulting in injury) in the classroom	7 (18.4%)	31 (81.6%)
Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)	6 (15.8%)	32 (84.2%)
Lack of supervision (resulting in injury) while participating in athletics	6 (15.8%)	32 (84.2%)
Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)	5 (13.2%)	33 (86.8%)
Drug use by faculty on campus	5 (13.2%)	33 (86.8%)
Drug use by faculty off campus	5 (13.2%)	33 (86.8%)
Lack of supervision (resulting in death) while under the care of the school	3 (7.9%)	35 (92.1%)

Table 4.2 indicates that well over 80% of boarding school administrators have had to deal with drug use of students on and off campus (86.8% and 84.2% respectively). Close to eighty-two percent of administrators have had to deal with contract disputes with parents over the enrollment agreement. The other topics which seem to top the list of issues which boarding school administrators have had to face seem to alternate in frequency between contract issues and issues which deal with sexual misconduct of students and faculty members at the school. Interestingly, the next most often cited issue after student drug use and parent contracts, consensual sexual conduct between students, was experienced almost 16 % less than the next closest legal issue faced, the greatest percentage jump between two consecutive legal choices. This clearly sets apart the top issues.

On the other end of the spectrum, it was comforting to see that only three of the 38 people who answered this survey had experienced the death of a student while under the care of the school. This could be because it is a rare occurrence that thankfully few people have had to experience, or this could be in part due to participants' abilities to choose whether or not to participate in this survey: People who had experienced the death of a student might have been reticent to answer a survey about legal issues at their school.

In sum, student drug use and contract issues with parents seem to be the issues which most boarding schools have faced. It is revealed later in the qualitative research that most boarding schools treat student drug issues as a violation of handbook policy, i.e. a breach of contract. Therefore, the top three issues indicated by administrators in this question, "which issues have you faced most frequently?" are all issues of contracts. Table 4.3 which follows will discuss the most frequently occurring legal issues for boarding schools.

Table 4.3
Top five most frequently faced legal issues

<i>Which of the following legal issues would you say you face most frequently? (Please choose up to five).</i>	
Legal Claim	Number of people/ percentage of total respondents selecting this as one of their top five
Contract dispute (enrollment agreement) with parents	20 (54.1%)
Drug use by students on campus	19 (51.4%)
Drug use by students off campus	19 (51.4%)
Contract dispute (student handbook) with students	14 (37.8%)
Contract dispute with faculty member	13 (35.1%)
Inappropriate sexual conduct of students with one another (consensual)	11 (29.7%)
Sexual harassment (student claim)	10 (27.0%)
Inappropriate sexual conduct of students with one another (non-consensual)	5 (13.5%)
Character defamation (student claim)	4 (10.8%)
Sexual harassment (faculty claim)	3 (8.1%)
Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)	3 (8.1%)
Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)	2 (5.4%)
Lack of supervision (resulting in injury) in the dormitory	2 (5.4%)
Lack of supervision (resulting in injury) while participating in extracurricular/ off-campus event	2 (5.4%)
Inappropriate sexual conduct of a faculty member with a student	1 (2.7%)
Lack of supervision (resulting in injury) in the classroom	1 (2.7%)
Lack of supervision (resulting in death) while under the care of the school	1 (2.7%)
Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)	0 (0.0%)
Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)	0 (0.0%)
Drug use by faculty on campus	0 (0.0%)
Drug use by faculty off campus	0 (0.0%)
Character defamation (faculty claim)	0 (0.0%)
Lack of supervision (resulting in injury) while participating in athletics	0 (0.0%)

As Table 4.3 indicates, the legal issue that boarding school administrators deal with most frequently tends to be enrollment agreement disputes with parents, closely followed by drug use issues of students. Once again, these top three issues seemed to clearly stand apart from the other

issues, a drop of almost 14% occurring between student drug use and handbook disputes. If student drug use is handled as a contract issue as administrators later indicate, once again the top five issues are contract related. Table 4.4 displays which issues administrators perceive to be most serious.

Table 4.4
Legal issues perceived to be most serious

<i>Select the (5) five issues which you perceive as being the most serious legal issues a boarding school might face.</i>	
Legal Claim	Number of people/ percentage of total respondents selecting this as one of their top five
Sexual harassment (student claim)	26 (68.4%)
Inappropriate sexual conduct of a faculty member with a student	24 (63.2%)
Lack of supervision (resulting in death) while under the care of the school	21 (55.3%)
Inappropriate sexual conduct of students with one another (non-consensual)	16 (42.1%)
Drug use by students on campus	14 (36.8%)
Sexual harassment (faculty claim)	14 (36.8%)
Inappropriate sexual conduct of students with one another (consensual)	10 (26.3%)
Lack of supervision (resulting in injury) in the dormitory	9 (23.7%)
Contract dispute (enrollment agreement) with parents	8 (21.1%)
Drug use by faculty on campus	6 (15.8%)
Lack of supervision (resulting in injury) while participating in extracurricular/ off-campus event	5 (13.2%)
Contract dispute with faculty member	5 (13.2%)
Drug use by students off campus	4 (10.5%)
Lack of supervision (resulting in injury) in the classroom	4 (10.5%)
Contract dispute (student handbook) with students	4 (10.5%)
Drug use by faculty off campus	3 (7.9%)
Character defamation (faculty claim)	3 (7.9%)
Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)	2 (5.3%)
Lack of supervision (resulting in injury) while participating in athletics	2 (5.3%)
Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)	1 (2.6%)
Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)	1 (2.6%)
Character defamation (student claim)	1 (2.6%)
Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)	0 (0.0%)

The legal issues that most administrators would place in their top five most serious legal issues they would have to face include sex-related offenses (student sexual harassment, inappropriate relationships between faculty and students, faculty sexual harassment and non-consensual sexual relationships between students), the death of a student while under the supervision of the school, and drug use of students. As opposed to the top five issues that administrators have had to face and the issues which they face most frequently (Tables 4.2 and 4.3), these issues (except for drug use, if handled as a contract issue) are all liability and supervision issues (torts).

Table 4.5
Issues not yet faced but fearful of facing in the future

<i>Which of the following legal issues have you not yet faced, but are concerned might be an issue in the future? (Please check all that apply.)</i>	
Legal Claim	Number/ Percentage of respondents answering that this was an issue they feared facing in the future
Lack of supervision (resulting in injury) in the dormitory	16 (48.5%)
Lack of supervision (resulting in injury) while participating in extracurricular/ off-campus event	15 (45.5%)
Sexual harassment (student claim)	11 (33.3%)
Lack of supervision (resulting in death) while under the care of the school	11 (33.3%)
Inappropriate sexual conduct of a faculty member with a student	9 (27.3%)
Character defamation (student claim)	8 (24.2%)
Character defamation (faculty claim)	8 (24.2%)
Sexual harassment (faculty claim)	8 (24.2%)
Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)	7 (21.2%)
Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)	7 (21.2%)
Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)	7 (21.2%)
Lack of supervision (resulting in injury) in the classroom	7 (21.2%)
Lack of supervision (resulting in injury) while participating in athletics	7 (21.2%)
Contract dispute with faculty member	6 (18.2%)
Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)	5 (15.2%)
Inappropriate sexual conduct of students with one another (non-consensual)	5 (15.2%)
Drug use by faculty on campus	4 (12.1%)
Contract dispute (student handbook) with students	4 (12.1%)
Contract dispute (enrollment agreement) with parents	3 (9.1%)
Drug use by students on campus	1 (3.0%)
Drug use by faculty off campus	1 (3.0%)
Inappropriate sexual conduct of students with one another (consensual)	1 (3.0%)
Drug use by students off campus	0 (0.0%)

It is important to remember when reading this chart to consider carefully the question which was being answered: Which of the following legal issues have you *not yet faced*, but are concerned might be an issue in the future? Because of this, I do not believe that the issues listed at

the bottom of this list are not of future concern for administrators, but rather that these are issues (as is shown in Table 4.2 and 4.3) which the administrators *have already dealt with*. What then becomes interesting about these results is that the thing which administrators seem to be most fearful of facing, though have to yet to face, are issues of student safety and supervision: injury, death, and sexual misconduct- all liability issues.

The responses to these survey questions indicate that for the most part the legal claims provided by this research are indeed the issues that boarding school administrators have to primarily face. As shown in Chart 4.3, administrators most frequently find themselves facing contract disputes with parents, closely followed by issues of student drug use on and off campus, contract issues with faculty members and handbook disputes with students (the behavioral contract between the student and the school), all of which are contact related. Logically, the issues that administrators most fear facing, as discussed in chart 4.5, are those which are dealt with less often and are quite difficult to predict: student injury/ death and those which are sexual-conduct related, i.e. supervision and liability issues. Fear of the unknown and having to figure out how to deal with issues they have not yet faced, being reactive rather than proactive, is a trend that is consistent throughout this research and will be addressed further in Chapter V.

Using the theoretical framework of turbulence theory, the following two survey questions were included to have respondents indicate which legal issues they perceived as having the greatest degree of impact upon the daily operations of the school. Definitions of the four levels of turbulence- light, moderate, severe, and extreme- were included before each question for the reference of respondents. Question 1 asked respondents to comment on the level of disruption a particular legal issue had caused them, but only if they had actually personally had to deal with it. Below are the responses from those who could answer this question.

Table 4.6
Perceived level of organizational unrest personally experienced

<i>Using the descriptions provided, please rate the following legal issues in terms of your perception of the level of organizational unrest THEY HAVE CAUSED YOU PERSONALLY. If you have not faced this issue, please select N/A.</i>					
Legal Claim	extreme	severe	moderate	light	N/A
Lack of supervision (resulting in death) while under the care of the school	2 (5.4%)	1 (2.7%)	1 (2.7%)	2 (5.4%)	31 (83.8%)
Inappropriate sexual conduct of a faculty member with a student	0 (0.0%)	5 (13.5%)	7 (18.9%)	3 (8.1%)	22 (59.5%)
Drug use by students on campus	0 (0.0%)	3 (7.9%)	17 (44.7%)	14 (36.8%)	4 (10.5%)
Lack of supervision (resulting in injury) while participating in extracurricular/ off-campus event	0 (0.0%)	2 (5.4%)	4 (10.8%)	8 (21.6%)	23 (62.2%)
Inappropriate sexual conduct of students with one another (non-consensual)	0 (0.0%)	2 (5.4%)	11 (29.7%)	5 (13.5%)	19 (51.4%)
Drug use by students off campus	0 (0.0%)	2 (5.3%)	16 (42.1%)	16 (42.1%)	4 (10.5%)
Inappropriate sexual conduct of students with one another (consensual)	0 (0.0%)	1 (2.6%)	10 (26.3%)	19 (50.0%)	8 (21.1%)
Sexual harassment (student claim)	0 (0.0%)	1 (2.7%)	9 (24.3%)	12 (32.4%)	15 (40.5%)
Sexual harassment (faculty claim)	0 (0.0%)	1 (2.6%)	9 (23.7%)	7 (18.4%)	21 (55.3%)
Contract dispute with faculty member	0 (0.0%)	1 (2.7%)	7 (18.9%)	22 (59.5%)	8 (21.6%)
Contract dispute (student handbook) with students	0 (0.0%)	1 (2.7%)	7 (18.9%)	12 (32.4%)	17 (45.9%)
Lack of supervision (resulting in injury) in the dormitory	0 (0.0%)	1 (2.8%)	6 (16.7%)	10 (27.8%)	19 (52.8%)
Drug use by faculty off campus	0 (0.0%)	1 (2.7%)	2 (5.4%)	5 (13.5%)	29 (78.4%)
Lack of supervision (resulting in injury) while participating in athletics	0 (0.0%)	1 (2.7%)	2 (5.4%)	8 (21.6%)	26 (70.3%)
Drug use by faculty on campus	0 (0.0%)	1 (2.6%)	2 (5.3%)	6 (15.8%)	29 (76.3%)
Contract dispute (enrollment agreement) with parents	0 (0.0%)	0 (0.0%)	10 (26.3%)	24 (63.2%)	4 (10.5%)
Character defamation (student claim)	0 (0.0%)	0 (0.0%)	5 (13.5%)	13 (35.1%)	19 (51.4%)
Character defamation (faculty claim)	0 (0.0%)	0 (0.0%)	3 (8.1%)	9 (24.3%)	25 (67.6%)
Lack of supervision (resulting in injury) in the classroom	0 (0.0%)	0 (0.0%)	3 (8.1%)	7 (18.9%)	27 (73%)
Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	3 (7.9%)	12 (31.6%)	23 (60.5%)
Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	3 (7.9%)	7 (18.4%)	28 (73.7%)
Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	2 (5.3%)	7 (18.4%)	29 (76.3%)
Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	0 (0.0%)	7 (18.4%)	30 (78.9%)

As this survey question shows, most administrators who have had to deal with the various legal issues listed, overwhelmingly rate the level of unrest that they actually cause a school to be “light”; little disruption: subtle signs of stress. The only issue selected as having “extreme” disruption was the death of a student while under the care of the school: two of the six people who had experienced the death of a student while under the care of the school rated it as extreme, causing “Structural damage. Collapse of institution likely.” The issues which appear to have the greatest degree of impact on the daily operations of the school from the vantage point of those who have had to deal with these issues are first (as described above) the death of a student while under the care of the school, and second, an inappropriate sexual relationship between a faculty member and a student (5 of the 15 people who had experienced this ranked it “severe”, describing it as “fear for the entire enterprise- a feeling of crisis.”) The use of drugs by students on campus rounds out the top three issues administrators hold to be most disruptive to the operations of the school. Issues concerning sexual behaviors (consensual, nonconsensual, and harassment), contract issues, and injury and supervision-related claims sit comfortably in the middle of the disruption scale: administrators feel the disruption to varying degrees, but generally as light or moderate. Issues surrounding speech and expression are both the least occurring and hold the least level of unrest: the few administrators who had faced a speech issue predominately ranked the level of disruption it caused them as “light”. Interestingly, parent enrollment/ contract disputes, while not considered extreme or severe in disruption, ranked high in moderate turbulence in addition to being the issue most frequently experienced (See Chart 4. 3) by administrators. As will be witnessed in later qualitative interviews, this is significant. While these issues will likely not completely derail the operations of the school in and of themselves individually, when an administrator has to frequently spend a great deal of time dealing with issues they rank as having “subtle signs of stress” and/ or as “causing a widespread awareness of

the issue” they can clearly become compounding and in combination cause a higher level of organizational unrest (what turbulence theory refers to as cascading.)

The final question of the survey asked administrators to rate, on the same turbulence theory scale, the level of organizational disruption that they *anticipate* they would face when dealing with each of these legal issues, regardless of whether or not they have actually faced the particular issue. The results are listed in the table which follows.

Table 4.7
Anticipated level of organizational disruption

<i>Using the descriptions provided above, please rate the following legal issues in terms of your perception of the level of organization disruption you THINK THAT THEY WOULD CAUSE. You need not have had to face these issues personally to make a conjecture.</i>				
Legal Claim	extreme	severe	moderate	light
Lack of supervision (resulting in death) while under the care of the school	21 (58.3%)	13 (36.1%)	2 (5.6%)	0 (0.0%)
Inappropriate sexual conduct of a faculty member with a student	11 (30.6%)	18 (50.0%)	7 (19.4%)	0 (0.0%)
Inappropriate sexual conduct of students with one another (non-consensual)	5 (13.5%)	17 (45.9%)	13 (35.1%)	2 (5.4%)
Drug use by faculty on campus	5 (13.9%)	14 (38.9%)	12 (33.3%)	5 (13.9%)
Lack of supervision (resulting in injury) in the dormitory	4 (11.1%)	17 (47.2%)	12 (33.3%)	3 (8.3%)
Lack of supervision (resulting in injury) while participating in extracurricular/ off-campus event	4 (11.1%)	12 (33.3%)	16 (44.4%)	4 (11.1%)
Lack of supervision (resulting in injury) while participating in athletics	3 (8.3%)	12 (33.3%)	17 (47.2%)	4 (11.1%)
Lack of supervision (resulting in injury) in the classroom	2 (5.7%)	16 (45.7%)	15 (42.9%)	2 (5.7%)
Sexual harassment (student claim)	2 (5.4%)	16 (43.2%)	17 (45.9%)	2 (5.4%)
Sexual harassment (faculty claim)	1 (2.8%)	15 (41.7%)	18 (50.0%)	2 (5.6%)
Drug use by faculty off campus	1 (2.8%)	13 (36.1%)	12 (33.3%)	10 (27.8%)
Drug use by students on campus	0 (0.0%)	12 (32.4%)	17 (45.9%)	8 (21.6%)
Character defamation (faculty claim)	0 (0.0%)	7 (19.4%)	19 (52.8%)	10 (27.8%)
Contract dispute with faculty member	0 (0.0%)	7 (18.9%)	18 (48.6%)	12 (32.4%)
Drug use by students off campus	0 (0.0%)	6 (16.2%)	17 (45.9%)	14 (37.8%)
Contract dispute (enrollment agreement) with parents	0 (0.0%)	6 (16.2%)	16 (43.2%)	15 (40.5%)
Character defamation (student claim)	0 (0.0%)	4 (11.1%)	19 (52.8%)	13 (36.1%)
Inappropriate sexual conduct of students with one another (consensual)	0 (0.0%)	4 (10.8%)	21 (56.8%)	12 (32.4%)
Contract dispute (student handbook) with students	0 (0.0%)	2 (5.6%)	15 (41.7%)	19 (52.8%)
Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)	0 (0.0%)	1 (2.8%)	14 (38.9%)	21 (58.3%)
Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	18 (48.6%)	18 (51.4%)
Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	15 (41.7%)	21 (58.3%)
Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)	0 (0.0%)	0 (0.0%)	12 (33.3%)	24 (66.7%)

The answers to this question reveal that even when people had not actually dealt with these legal issues, their perception of the ones which would cause the greatest degree of institutional unrest match that of those who had actually experienced the event. In Table 4.7 administrators anticipated that the death of a student while under the supervision of the school and inappropriate relationships between faculty and students were far and away the top two most disruptive issues a school might face. Table 4.6 in which only administrators who have actually gone through these particular events have responded, death of a student on campus and inappropriate relationships between faculty and students (58.3% and 30.6% respectively) far outrank the next four perceived most disruptive issues, which hover between a few percentage points of one another, the next highest of which is almost 17% lower than the two leading issues. People anticipate that the issues which would cause the greatest degree of unrest would be the death of a student while under the supervision of the school and sexual misconduct between a faculty member and a student just as the previous question indicated was true for those who had actually experienced the event.

Similarly for the other end of the spectrum, respondents agreed with least disruptive issues as well. People who had experienced speech and expression issues (and there were only a few) indicated that these were the ones least disruptive to the school. Those who had not experienced them agreed that they anticipated that these speech issues would cause the least degree of disruption in the school day. Potentially, this is because the constitutional rights of speech are not promised to students and faculty in private schools. It is likely that these issues simply never surface, and if they do, it is easy for an administrator to explain that the right does not exist or direct them back to the handbook policy which covers the issue.

Interestingly, these two questions back to back illustrate one of the points discovered in previous questions and which will become a theme later in the data. People who have not yet gone through a particular legal problem automatically assume that it will have a greater degree of

disruption upon the school than those who have actually lived through dealing with the legal issue. Take for example the two issues which are both perceived to be the most disruptive to those who have experienced it and those who have not: the death of a student while under the supervision of the school, and inappropriate relationships between faculty members and a student.

Table 4.8
Comparison of perceived and actual disruption

Legal issue	Extreme		Severe		Moderate		Light	
	Have experienced	Have not experienced	Have experienced	Have not experienced	Have experienced	Have not experienced	Have experienced	Have not experienced
Death of a student	2 (33.3%)	21 (58.3%)	1 (16.7%)	13 (36.1%)	1 (16.7%)	2 (5.6%)	2 (33.3%)	0 (0.0%)
Inappropriate relationship (faculty/student)	0 (0.0%)	11 (30.6%)	5 (33.3%)	18 (50.0%)	7 (46.7%)	7 (19.4%)	3 (20.0%)	0 (0.0%)

As is illustrated in the brief example above and throughout the data provided in Table 4.6 and Table 4.7, boarding school administrators consistently assume that the level of organizational disruption that an event they have not yet experienced might cause is higher than the actual level felt by those who have experienced the event, i.e. they assume it is going to be worse than it actually is. School administrators in this study, as evidenced in this question and as surfaces in the interview section that follows, tend to fear mostly the unknown- those things which they haven't yet faced- and therefore want to be able to learn about and prepare for as many of these issues as they can. It is the situations in which administrators feel they have to be reactive rather than proactive which seem to be the most feared.

The final section of the survey included six short answer questions basically providing an outlet for respondents to provide feedback, ask questions, include any additional information that they felt may have been left out of the survey, or thoughts that the respondent had while taking the survey. These questions were also designed for validation of survey questions—asking

several similar questions to those in earlier survey questions in order to verify previous responses. In addition to result validation and asking for supplemental feedback, these questions were designed to begin to identify trends for interview coding and to continue to set a basis upon which to structure interview questions.

The essay questions of “which legal issue do you perceive as being the most severe and why” and “what is the most severe legal issue you have had to face in your time as a school administrator” indeed matched survey question responses: dealing with student drug issues, student safety and supervision issues, and sex-related incidents topped the list of responses of issues that they perceived as being most disruptive and as the most severe they have had to deal with as administrators.

In answer to the question “Have you seen an increase or a decrease in the number of legal issues you have had to face in your tenure” only four of the 40 respondents answered that there had been a decrease. However, when asked why there had been a decrease, all four respondents explained that it was because their particular school had made a conscious effort at being more proactive in terms of setting up policy and putting procedures in place to deal with legal issues: being proactive in preparation for these legal situations had been the direct cause of the decrease. Of the remaining 40 respondents 13 people flatly said they have seen an increase in legal issues faced. All remaining respondents (23) indicated that while the actual number of legal issues they have had to face has remained fairly consistent or only increased slightly, that the number of *threats* of litigation had sky-rocketed in recent years. The increased threat of litigation and today’s litigious society which shows up first here, is a trend that is mentioned throughout the remainder of this research by respondents.

When asked to discuss emerging legal trends and issues, topics of technology use and student behaviors towards one another (harassment, bullying, etc.) via technology (internet, cell phones, social networking sites) were the predominant worry amongst respondents. The only

other major issue mentioned centered on HIPAA (Health Insurance Portability Assurance Act) violations and privacy rights of students as they pertain to reporting and student medical records in a residential environment.

The final question asked of administrators was “what are the most challenging aspects of having to deal with legal issues in your school?” Several trends emerged from this question. First, and not surprisingly, was dealing with what one administrator called the “fear factor.” And this theme was consistent. “Not being fully aware of how to handle the legal aspect of problems we face”; “Upper administrators who are significantly afraid of parent reaction and possible lawsuits”; “A feeling of unease (especially around) tougher sexual harassment cases”; “The society is so litigious, yet we have no formal legal training”. Second, administrators commented that dealing with these issues took a great deal of time, energy and financial resources away from doing the “normal activities” of running a school. As one administrator commented, “The time and energy that they consume even if they never rise to the level of a lawsuit. You sometimes spend a great deal of time and energy just avoiding a lawsuit.” Included in this resource loss was the emotional toll it takes on a school and the impact it has on the small, closed community that is a boarding school. One respondent commented, “[the biggest challenge is] the time consumption and emotional toll these issues take on individuals and institutions as well.” They mentioned that it was difficult striking a balance between the student’s rights and what was in the best interest of the school and the school community. Responses in this vein were many. “Sometimes the responsibility to protect the institution compromises my ability to act in what I believe to be the best interest of the individual student or the best interests of the community apart from liability concerns.” “[My biggest challenge is] when the legal choice conflicts with common sense.” And as one administrator simply put, “It’s about balancing faculty morale and parent concerns.” Administrators spoke a great deal about having their leadership decisions primarily driven by fear of litigation due to the litigious nature of today’s society, using phrases like “a feeling of unease”,

and “not always being fully aware of how to handle the legal aspects of problems we face”. And overall, they spoke of being afraid that they weren’t trained well enough in dealing with emerging legal issues and understanding the difference between their obligations and the obligations of their public school counterparts. One administrator respondent very aptly summed the bulk of the issues which were identified in the survey. When asked what the most challenging aspect of dealing with legal issues in his/ her school was, the administrator responded,

Not knowing how long to keep anecdotal records, notes from meetings, emails regarding you-name-it, all can be a nightmare once council requests “any paperwork” relating to their client. It can derail so many faculty members while trying to do this appropriately, especially when you feel that the potential suit is bogus from the beginning but you have parents that are angry and unwilling to be angry at their child. This can take up resources and time that most schools are short on to begin with. Another ever-challenging issue is trying to stay on top of the language used in the student handbook so that in the event something happens, you feel as a school you can stand firmly on what you’ve written and that you’ve behaved (as a school) according to what you’ve written.

Survey results summary

This survey was designed to answer research questions a) To what extent, if any, do legal issues affect boarding schools, and b) Which specific legal issues have the greatest degree of impact on boarding schools? It was also designed to inform the follow-up interviews as well as the in-depth interviews that will explore research questions c) Why do these issues have a greater degree of impact than other legal issues? and d) Is there a way to better prepare a school to face these issues?

The survey indicated that boarding school administrators do face legal issues in the daily operation of their schools and that while they think about these issues regularly, they are only one of many considerations that administrators have to think about when making decisions. Issues of student drug use, contract disputes with parents, faculty and students, and sex-related offenses tend to be the most frequently occurring trends in schools. Most administrators have little formal training operating in these areas but wish they had more. They find that they are challenged by

issues in which they have to be reactive rather than proactive, and consistently overestimate the effect of legal issues on schools. They also struggle with situations where they feel that their legal responsibilities conflict with what they believe to be in the best interest of the students. They fear that issues of technology and student privacy are on the rise. Moreover, and possibly most importantly, they are challenged by the time, energy, emotional toll and financial resources that dealing with legal issues cause not just to them personally, but more importantly to the community at large. The issues that the survey indicated caused the greatest degree of impact on a school were issues of student drug use, the injury of a student, and an inappropriate relationship between a faculty member and a student. These are the issues that will be further explored in the subsequent qualitative interviews.

Section II- Phone call follow-ups

At the time the initial ask e-mail was sent, included was an invitation to be contacted post-survey for a short ten minute phone follow-up interview to verify survey results. Initially, nine people agreed to participate in this activity. However, two people failed to return follow-up e-mail and phone call attempts at scheduling these interviews. In the end, seven people were called for follow-up phone call interviews for survey verification.

Below find the demographic information of the phone interview follow-up participants:

Table 4.9
Follow-up respondent demographics

Respondent	Position	Gender	Years in boarding school admin
#1	Headmaster	Male	10 years
#2	Director of Studies (Dean of Faculty)	Male	12 years
#3	Assistant Head	Male	15 years
#4	Dean of Students	Female	31 years
#5	Dean of Students	Male	12 years
#6	Assistant Head	Male	10 years
#7	Headmaster	Male	24 years

Initially, the phone call follow-up interviews were designed primarily to verify survey results and to start to inform the direction that the in-depth interviews would take. Respondents were told that the phone interviews would take approximately ten to fifteen minutes to complete. However, once contacted, phone respondents began to talk much more than was initially asked of them or expected: people seemed excited to discuss these issues. Phone call duration averaged 19:57, and ranged from 12:27 to 23:29.

By-in-large, the interviewees verified the results from the survey. When asked if they agreed that the three most frequently occurring legal issues within schools were student drug use, parent enrollment agreement disputes and faculty contract disputes, six of seven respondents agreed that that was accurate. Those who agreed that these three were the most frequent issues they faced, mentioned that the contract issues between faculty members and the schools ranked far below issues of student drug use and contract disputes with parents over the enrollment agreement in frequency and in severity. As one administrator added when asked to comment on those most frequent legal issues, “Certainly the drug use is much more common than a contract dispute with a faculty member or even with a parent. But yeah, I guess, yeah the other two come up from time to time, so yeah, I agree with that.” Another agreed with that assessment, “Yeah, I

would say...faculty contracts come up, but is certainly far below the other two issues [student drug use and enrollment agreements] in importance.” The one respondent who did not agree with this statement, Respondent #6 was an administrator at an all boys military school who said, when asked about whether or not student drug use on campus was a major legal issue he faced,

No. Never. But part of it, I think, is our school culture. In the sense of our very paternalistic institution and the fact that we're an all boys school. We're all boarding. We have no day students at all. And most of our students come from distances over six hours away. So the factors that might occur when a portion of your population is day students, just doesn't occur here.

This theme of school culture comes up throughout this research in various iterations and is important to note here. It will be discussed further in the analysis and discussion section of this research.

When asked about the issues which caused the greatest degree of disruption or impact on the school, all respondents agreed that even beyond the death of a student, that drug use of students on campus and an inappropriate relationship between a faculty member and a student would be the most disruptive legal issues that a school could face. However, several respondents qualified these responses by saying that the reason these issues would be the most disruptive had much less to do with the legality of the situation than it did with the actual reaction of the community to these issues, the time it would take to handle the issues, and the emotional toll it would take upon the school. As one respondent indicated, “Whenever there is a disciplinary case [when] a student gets in trouble...that definitely has an impact, particularly when a student is asked to leave school. It is both emotionally distractive for friends, and also the faculty involved in the decision-making.” As another administrator stated, when asked about the disruptive nature of student drug use,

Drug and alcohol use not only have a major impact on the student him or herself, but um, well, it frequently puts others at risk. Kids rarely use drugs and alcohol alone. So it

involves groups of kids...[and] it is a tremendous place where kids and adults come into a values conflict.

Values conflicts and issues of community are themes which are recurrent throughout the follow-up interviews and the in-depth interviews and will be discussed further in subsequent sections.

Follow-up interviewees were asked next to comment on whether or not they felt comfortable in dealing with legal issues, whether or not they thought those around them seemed comfortable in dealing with legal issues, and how it was that they arrived at these levels of comfort. These questions were asked in order to help paint a picture about what kind of practical impact legal issues had school on administrators. All seven respondents agreed that they felt fairly comfortable dealing with legal issues as they arose in their schools, as the survey had also indicated. The particular reasons for their comfort varied, but mostly were determined by their personal experiences, legal workshops they had sought out, and the legal resources they had at their fingertips: having “lived through it”, searching for a seminar, and having readily available legal counsel. As one administrator aptly summarized,

Yeah, I think when you've been at it as long as I have, that I feel fairly comfortable.

There was a time when I didn't feel comfortable at all, but I feel fairly comfortable now. I'm quick to speed dial the law firm that we use. I'm very quick to get advice from them, sometimes when we don't even need it, when we just sort of need confirmation. So, having a lawyer at the other end of the phone makes me more comfortable, but I would say that at this point, I would feel fairly comfortable. The formal training is only sort of conference-workshop based- the regional association might offer us on occasions a day boning up on pertinent legal matters-pertinent to independent schools. But I think that all those combine with just being more relaxed in your own skin. I'm just more confident.

Most respondents agreed that to the best of their knowledge, their counterparts, for many of the reasons listed above (time in position, personal experiences, access to legal advice/counsel, etc.) also seemed to feel fairly comfortable dealing with the legal issues that they faced. However, one respondent indicated that he felt that this was due mostly to a false sense of comfort: “I think that most heads are comfortable. And I think that they are crazy. Because I have made sort of a hobby out of studying the law...[and] I think the heads, most of whom are comfortable with their handling of legal issues are just unaware of how vulnerable they are.”

Questions were asked of follow-up respondents about whether they found anything unusual included in the survey or if they felt that there were issues missing from the survey that should be further investigated.⁶ Respondents claimed that the only two legal issues which they found to be particularly surprising on the surface were issues surrounding defamation of character and issues of speech and expression in the school. However, after talking with respondents about what those categories might possibly include they agreed that issues of appropriate internet use and cyber-bullying were both issues on the rise and thought that maybe those would fit into one of these legal categories. As one administrator commented,

One area that I remember thinking I can imagine why this would be an issue for schools but has never been an issue for mine were all the issues around free speech. But you know, since then, at the TABS seminar last week, I feel like I clued more into the extent to which, like, activities which students are doing online, like “rate my teacher” and those things might very well be a point of conflict for a school or a student or a family. And so I understand now better why free speech might be an issue.

⁶ As it had been several weeks between taking the survey and answering these questions for some respondents, a copy of the survey was available to those who requested it be re-read to them before answering these questions.

It was interesting to hear that respondents didn't consider speech and expression issues to deal with a student's First Amendment right to protected speech, but rather with contract issues: violating school policies covering hazing or computer use and not about the actual right to post the content. Once again, the outlier on this question was the representative at the all-boys military school. He responded that at his school the only serious issues that were faced were a violation of the honor code: a student could only be dismissed for being found lying, cheating or stealing.

I've been here for ten years and we've only dismissed one student for drug use. [And free speech]...I don't feel like that's an issue here at all. You know, we recognize the kids on campus as, and I don't mean this term as pejorative, but as wards. And it's a privilege for them to be here and while we respect them as individuals and their individual lives and basic human rights, we don't feel like they have the rights to do or say anything they want...I mean, that would *never* [emphasis added] be an issue...I can't even think of that as being a legal issue.

Of the issues mentioned as being missing from the survey, Health Insurance Portability and Accountability Act (HIPAA) violations were mentioned as something which would be of interest to have more research questions asked about, specifically, in a residential setting, in terms of who on campus has access to a student's medical records. Others mentioned technology use as being an issue which they hoped to have more specific information regarding, but saw technology issues as falling under issues which would be covered in student handbook/ policy compliance issues (contracts) and not as protected speech issues.

More so than a particular legal issue being on the rise was what the respondents claimed was the changing landscape of society and the litigious nature of the parents that are sending their children to boarding schools. They claimed that threats of a lawsuit were drastically on the rise and that parents would often use as an intimidation method potential litigation. This changing landscape meant for administrators that more of their daily time and energy was being spent considering the legality of their actions and policies than in previous years and that often times they felt that their authority was undermined by the parents' litigiousness. One interviewee's

response summed up nicely the views of the majority of respondents to both the survey and the phone interviews:

What I really see getting worse, well there are three things. #1) how litigious the climate has become. Related to that but worthy of a stand-alone category is how parents have become so aggressive, even when their children are clearly caught engaged in highly inappropriate behavior...the response of so many parents these days is to just go on the war path against the administration. And the third thing, what I also see as getting worse is that students are arriving emotionally less capable of coping with life...It would be humorous if it weren't sad because I think we are very very judicious in the way in which we treat students—very kind, very nurturing. When a student is engaged in behavior...to try to help them learn from it...what are they learning when the parent's response is not "take responsibility son/ daughter and try to grow from this" but no matter what you have done, no matter what the evidence, I am going to go at, with both barrels blazing anybody who tries to hold you accountable, even in the most minor of ways? In the field, I have heard people shift from the phrase "helicopter parents" to the new phrase "lawn mower parents" who actually try to mow you under...it's very disheartening...and I just can't tell you how ubiquitous it is...

Another respondent, a man who had been a head of school for the last twenty-four years in boarding schools commented similarly in response to this same question.

I think the whole damned kettle of fish has gotten worse. And I don't think there's a school, day or boarding who would disagree with that. I remember, well my history is that I have been a boarding school head now for 24 years. In my first school where I was for 8 years there was never, not once, even the whisper of a legal event. Nothing. Nobody was suing. Nobody was threatening to sue. Nothing. Nothing. Nothing. For 8 years. Eight, nice, peaceful years. And then I came here. And I have been here for 16 years. And honest to God, I think for the first four or five years there was nothing. And it took until three years ago before I ever had a brush with an actual lawsuit. And that got nipped in the bud when it was taken to the local, or the state's human rights commission. And it was essentially denied. The plaintiff's case was denied. So even that didn't lead to court. So I've never been in a courtroom. And I think somehow or another, that's significant. So, I don't want to be guilty of overly stating this or exaggerating this, but I would say that the amount of time I spend talking to law firms and attorneys has probably grown by a factor of, I want to say, ten? Over the last 16 years? And a lot of that is preventative stuff. I mean, I'll call in advance to get good advice as to how to maneuver through a minefield in order to avoid... In fact, I think that most of it is that, it's avoidance rather than responding to any legal claim.

This quote is an accurate reflection of what other administrators said as well: they spend a great deal of time in this new, litigious society full of cranky parents, being proactive with their lawyers so as to not have to face the growing threats of litigation.

The last question that was asked of people participating in the follow-up interview was an open-ended question that was included to help first allow people to add items that might not have been covered in the survey, and to second inform further the direction of the in-depth interviews that would take place next. The question “Is there anything else you would like to tell me about how legal issues affect your daily work as a school administrator” is answered below by each of the seven respondents.

Respondent #1: Well, I think it actually, having said all that I’ve said, I think it makes us follow better practices. The litigious climate makes us, ultimately, with all its flaws does make us much more conscious about doing everything in the best possible practice. It certainly sometimes gets in the way, and sometimes is not best for children...but overall, I think it keeps students safer.

Respondent #2: I would say that being an administrator as opposed to being a classroom teacher, which is what I was for a decade before, a dozen years before starting this work, is that I am much more aware of how much legal issues are in play and how much they matter. How much schools have to take them seriously. How much schools have to know about them and have them in mind.

Respondent #3: I think the way it affects me is that it causes me to take a lot more time to think about the word choice I might use and how I might communicate with a family. So what is *not* [emphasis added] put in an e-mail or how an e-mail might be worded versus a conversation over the phone or face to face, so I think we’re very careful about the language that we use both to protect ourselves and to protect all the parties involved. So, that is probably the biggest impact for me, in my position. Just being very careful about what you say.

Respondent #4: All of the heads of school I have worked with, I feel, are pretty driven by anxiety about legal action, which I think has largely to do with the schools’ good name. I just think it’s really unfortunate that the whole landscape has gotten so much more litigious. I myself honestly don’t worry about it all that much. I just think it’s unfortunate that this has...makes more of an impact than it should on the life of schools.

Respondent #5: I think the daily challenge for us is not how we spend money that’s not given to us by tuition, but whether or not...well, it’s basically a problem of knowing who we are and then sticking to it. And when we get away from that [doing what it is we say we do] we get ourselves into legal hot water.

Respondent #6: I think that the main thing that I always do is think to myself in any situation could this end up in litigation and what can I do to mitigate the risk in this of the school. And in the interactions especially with parents, if anything could lend itself to putting this situation into litigation and what can we do to mitigate those risks.

Respondent #7: Well, I think we all need, all of us who do the kind of work that we do, that we need to constantly remind ourselves that if we are truly afraid of getting called into a court of law, then we are likely to be paralyzed and incapable of leading our schools forward. So we can't be afraid. We need to stay the course, stick to our guns, assuming we are moral and upright people who want to do well in this world and to do good in this world...we just need to stick to our guns and not be afraid. Because if we are afraid of the legal consequences, we just won't get anything done.

The responses from these administrators point to several important ideas. First, administrators seem to recognize the law as a sort of necessary evil; that it does in fact often protect students and forces the school to have an identity, a policy and clear operating practices to which they strictly adhere. These administrators also indicate that they spend a great deal of time making sure that their behaviors are congruent with what they say they do as a school and take great pains to think situations through completely, considering all of the possible legal consequences before acting, especially when the action is in writing.

Section II- Phone call follow-up summary

In sum, these interviews verified the survey results indicating that the majority of schools struggle most often with drug use of students, parental contract disputes (enrollment agreements), faculty contract disputes, and disputes with students regarding handbook issues. They confirmed that the legal issues which caused the greatest degree of impact on the school were student drug use, student injury and inappropriate relationships between students and employees of the school. Respondents indicated that this greater degree of impact was due to the far-reaching consequences upon multiple stakeholders (parents, students, faculty) which these issues had upon the constituents of the school rather than the actual legality of the situation: the time, energy and emotional toll which dealing with these issues caused. The respondents indicated that they felt fairly comfortable in dealing with the legal issues they faced and felt that their counterparts generally do as well. They indicated that their level of comfort is due primarily to personal

experiences and time in the job, paired with the fact that they have trusted and accessible legal counsel. They felt that the survey was comprehensive in scope and agreed with the issues listed, though also worried about HIPAA regulations and issues of technology becoming a major consideration in the future.

These interviews in combination with the survey responses and a review of the literature were used in determining the trends that would be identified in the final, in-depth interviews that follow. Information on coding of responses will be discussed in the next section.

Section III- In-depth interviews

In-depth interviews were conducted with four senior boarding school administrators to answer the research questions c) Why do these legal issues [those which have been determined to have the greatest degree of impact on a school] have the greatest degree of impact?; and d) Are there ways to better prepare a school to deal with these issues? These four senior administrators were chosen as a convenience sample because of the relationship already established between the researcher with both them and the school at which they were working. Additionally, these individuals have an established career in the field of boarding school administration and varied (but accomplished) backgrounds in preparation for their positions. A brief description of each administrator and the school for which they are currently working is listed below.

*Carla*⁷. Carla has been working in boarding school administration for close to forty years. She has been a teacher, a counselor, a dean of students and currently serves as the assistant head of school for a small co-educational boarding school in the Midwest. She is widely reputed as the leading expert in boarding school residential education and has published multiple books on the ins and outs of running a boarding school. She runs her own consulting agency for independent and residential schools and is on an advisory board for the Association of Boarding Schools (TABS). She helps to run various seminars that TABS puts on around the country in addition to

⁷ Pseudonyms are used.

her own professional development seminars for boarding school administrators. She is often sought as an “expert witness” in boarding school legal cases which actually make it to court. Carla is the most senior of administrators interviewed for this research.

Aiden. Aiden has been working in boarding school education for most of the last fifteen years. She has a master’s degree in private school administration from the premiere program in the country. She was a teacher, residential assistant and director of student activities at one of the most prestigious boarding schools in the country during a time when it was making a switch from being an all boys school to a co-ed school. She has served as dean of students at two separate schools since then and has been serving as the assistant head of school at her current school for the last three years. She has been at this very small (under 100 students) co-educational, Mid-Atlantic boarding school for six years in total. Aiden is the youngest administrator interviewed for this research.

Leah. Leah has been at the same boarding school for close to thirty years. She has served in various administrative capacities, but has been acting as the dean of student services for almost thirteen years. Her background is in student services, with a master’s degree in college personnel management. This mid-sized, Midwestern boarding school (approximately 500 students) is co-ed and is a unique program in that it is a specialty school-- students are accepted based on special talents and interests. Much of the school’s fame and good name is a product of the corresponding summer camp that is the counterpart to the boarding school.

Jonathan. Jonathan is a product of the same private school administration master’s degree cohort as Aiden. He has been in boarding school administration for close to fifteen years. He has served at several boarding schools as a teacher, an equal opportunity employment officer, a dean of students, a residence hall counselor, and currently serves as the Head of Upper School. Jonathan works for a large boarding and day school in a Mid-Atlantic metropolitan area and serves on the advisory board for TABS.

As was discussed in Chapter III, these respondents were chosen as a convenience sample because of an established rapport and geographic proximity to the researcher. But these administrators also represent a broad spectrum of education, backgrounds and experience at multiple schools. The schools at which these administrators serve also characterize the range of boarding school experiences available to students.

The in-depth interviews were each approximately an hour in length. They began as the phone call follow-up interviews did, asking first for participants to verify the results of the survey. Different from the other interviews, questions were asked of these administrators which addressed why certain issues were particularly troublesome, the most disruptive legal issues they had been involved with, how they were handled, and if they could have been avoided or handled better. Specifically in alignment with the theoretical framework, questions which addressed the concepts of positionality and cascading were asked⁸. According to the literature and previous interviews, these interviews were also coded thematically by the following categories: contract law or liability (torts); legal issues with parents or employees or students; disruption caused by the law or by ethics (and the values of the community); and the concepts of positionality and cascading. These trends are explored further in Chapter V of this research which discusses in-depth the findings and their implications.

After the a) verification of previous information and b) probing for answers to the research questions presented, the semi-structured interviews tended to follow the flow of conversation set-out by the respondent. Below are the responses to each of the four research questions proposed by this research.

⁸ Complete list of interview questions are included in Appendix C

To what extent do legal issues affect boarding school administrators? All of the respondents concurred with the responses from the survey and the follow-up phone calls, answering that dealing with legal issues is a significant part of the daily operations of the schools in which they work. Aiden commented,

it's never far from my thoughts. I'm actually pleased that it is a little more on autopilot. I think that a lot of administrators will say that that is a button that kicks in to some degree when you start thinking about stuff. You have to run through your mental checklist about how this could end or dare we say, what could be the worst case scenario and how can I avoid this?

Leah concurred that it is a persistent concern of her Head of School.

In terms of legal issues...I hate to use this word...the paranoid style of my supervisor. I think that my supervisor [the Head of School] is overly worried about possible litigation on an every day basis, an every *issue* [emphasis added] basis. It isn't necessarily the reality of the potential, but rather the perceived potential for legal difficulties.

Carla and Jonathan also agreed, but spoke of a kind of differentiated responsibility.

Jonathan relayed,

Sure. I deal with legal issues all the time. I think that in my position as a division director, I'm more likely to get the legalistic questions than, say, dean of students, but probably less likely to have to actually deal with the legal issues. I'm more of a stop-over, or they [people threatening lawsuits] test the legal grounds with me before they move on to the president of the academy, and so, I am certainly likely to hear about them...even if I'm not the one who actually ends up dealing with it.

As an administrator, if there's a legal issue that comes up, it is generally taken over by the HR person and our school lawyer. And they tell me what to do, but they handle it all themselves. They might say...don't talk to anybody, don't do this, don't do that, and I've always felt very...well, that's nice (*laughing.*)

This idea of handing the issue off to someone better skilled to deal with the legal aspects of it was consistent in the data. The position of each person in the school directly determined what was handled, who knew what, and who was to be "in charge of" dealing with the legality of it. As Carla commented again later when asked specifically about the position of those dealing with legal issues in the school,

I do think we have an obligation to sort of know things, but I'd hate for Deans of Students to have to feel like they needed to be mini-lawyers. They really need to know that the *school* [emphasis added] is going to serve in that capacity, both by educating them and by taking care of these situations as they come up.

The idea of differentiated responsibility and the concept of positionality are discussed further in Chapter V of this research.

Being the senior administrator in the group, Carla was asked why, if these legal issues are so prevalent and if boarding school administrators have to think about them on a daily basis, she feels there is so little literature written about it or cases actually brought to court. Her response was telling:

The lawyer that used to work for us said something like 85% of all lawsuits the school wins, if it actually makes it to court. It's just a matter of how much energy, money, and sometimes your school name do you want to have dragged through the courts or even through the newspapers. So there's a lot of hush money—and I don't mean that in a bad way, there's just a sense of I don't want to deal with it...just give the kid the diploma.

Aiden commented similarly.

Yes, I think there's a lot of "let's find a compromise outside of the courtroom...I would say that more people are eager to...or are willing to find a way to make it go away without fighting the good fight for the principle of it... I do know secondhand of a case where they knew full-well that going into the case meant time and money spent that they wouldn't recoup, but goddamn it...They stood by what they were gonna do. They followed their process, and no one was gonna tell them what to do or what they did was wrong, and they took it all the way to court and they won. But they had to pay for the right to be right.

As with the survey responses and the phone call follow-ups, Aiden's comment speaks to the amount of time, energy and the emotional toll it takes for schools to go about the process of taking a legal issue to court, even if they feel they are in the right.

Which specific legal issues have the greatest degree of impact on boarding schools and their administrators? Why do these issues have a greater degree of impact than other legal issues? When I asked these four administrators to discuss which legal issues they perceived as causing the greatest degree of impact on the daily operations of the school their answers were somewhat varied. It became hard to discuss which ones were most disruptive without also discussing why at the same time. Therefore, for the purpose of this data display, the two research questions will be combined with one another in this section.

While three of the four administrators verified those which were listed from the survey and from the phone interviews- student drug use, injury of a student, and the inappropriate relationship between an employee and a student- as their most disruptive legal issues, there were deeper aspects of these that the administrators expounded upon that tied in with the “why” behind the disruption. As Jonathan commented,

What I would do...I would actually broaden that. I think the truly disruptive ones are any ones where a student is involved...I think any time a student is involved, it has a direct effect on the whole community and often times becomes much more of a communal issue. Certainly the three major ones that you outlined are very disruptive when they happen, but there are other versions of that that are equally disruptive.

Carla didn't believe that those were the most disruptive issues at all.

The ones I have been most involved with as an administrator and as a counselor have to do with harassment- sexual and otherwise. That may be because of my history as a counselor. This one case [her most disruptive] was interesting...they were saying that the child that had been doing the hazing had been hazed as a freshman, and therefore there was a culture of hazing and that that's what made him a hazer. [It became about] not inhibiting a culture of initiation or hazing.

Carla also identified an important differentiation between legal issues, actual litigation and the disruption that these issues cause.

I've never dealt with a drug issue controversy legally. I mean, certainly it's disruptive when it happens, and we deal with it disciplinarily. But I've never had that have legal complications unless the child is expelled, and then it tends to be more of a legal contract disagreement about him being expelled, not whether or not he was using a drug or

alcohol. So in my experience, the sexual harassment issue has been the worst and of course the injury would be a second...[it's] the other two [that are disruptive]...the drug one, it's disruptive, but I have never dealt with it in a legal sense.

Aiden concurred that even when talking about drugs as being the most disruptive legal issue at a school it had much less to do with drug use or the legality of drugs than it had to do with the disruption it caused to the community.

I believe so whole-heartedly that we as adults are the last ones to know...that the kids know much more what's going on before anything comes to a head with the administration at a school. I think kids are often wasting...not wasting...spending more emotional energy worrying about losing a friend at the school or worrying about trying to cover their own possible involvement in what's going on as something unfolds or is being investigated...I feel like there may be...you may be talking to one, two, three kids in succession in the dean's office and the herd that will gather around that office 10, 15, 20 kids start buzzing around and they all seem to know exactly what's going on, so I think it can be seriously disruptive, even before any serious decisions are made.

While it seemed as though the administrators dealt most often with contract issues in terms of legality, the legal aspects of dealing with these issues were not the parts that were actually causing the disruption at the school. Aiden commented,

Almost everything comes down to a contract issue with us in terms of legality. Didn't follow the student handbook. Violated the enrollment agreement. Didn't follow our process...whatever. I mean, drugs are bad from a supervision and liability standpoint sure, but at the end of the day the students signed a contract about not doing drugs and not doing anything illegal. That's what we send them home on. That's where we hang our hat. The disruption part...it comes after that. It's putting the pieces back together in the community later on that's the issue. And kids and their friends. It's the aftermath.

What each administrator said in varying language, was this: the most disruptive issues were not actually a particular legal issues, but rather were ones which were either, 1) unexpected within the community—issues for which there was either lack of experience in dealing with or set protocol for handling, 2) issues which were far-reaching, centering on the student, but touching many people, or 3) ones in which it significantly derailed the normal operations of the school community, taking people outside of their comfort zones or away from what they normally do or

from what the school is generally about. This was especially true of inappropriate relationships between a faculty member and a student. As Aiden commented,

I've seen the kids divide at a school and take sides as to who they believe is at the root of the problem and who failed to do what. You see faculty take sides... It's hard to come out of an episode where a faculty member is accused or is found to have been out of line with a student and what the student's been doing willfully or against their will...it leaves a dark cloud, and nobody comes out unscathed. The school as a whole...the parents...there's almost no stone unturned in handling it, even if you find out that nothing has happened, you almost cannot avoid getting everybody involved somehow, and nobody comes out feeling good about it.

Having just gone through a serious legal case dealing with inappropriate sexually-related behaviors of a faculty member, Leah was asked to comment on why it had been such a particularly awful experience.

I think it truly was the nature of it. I mean, you have someone who is hired to be a child care expert and then they are arrested and convicted and end up in jail for child pornography. I mean, it cuts at the very core of what you're about. This type of issue has the greatest degree of impact because it directly relates to the care and supervision of a child...and that's going to be something that parents...it's going to impact your recruitment for the following year. It's going to impact how other parents who are not involved perceive the care that you're providing to their child even though they're not involved. There are PR issues...so it just makes for...there are a lot of pieces that you have to keep checking on. You know, you have to keep your different constituencies informed as the situation unravels...

The true nature of what causes disruption at a school is probably best-summarized by Carla, who has been working in boarding schools for close to forty years.

It's the impact on the community. Not just students, but faculty...I think it's particularly when...let me see if I can put this in a way that makes sense...when the legality of it takes everybody out of their prescribed community roles. I mean, you're no longer a teacher responsible for teaching and taking care of students, suddenly you're a friend of a sexual predator or you're being sued so that you're not really a teacher anymore, you're a person, and in that person role either you are defending other people, and the kid is no longer someone that you're nurturing and taking care of...suddenly he comes the enemy or the family becomes the enemy and so suddenly all bets are off in terms of the way we interact with each other. That's when it tends to get really nasty. I think the biggest legal frustration that teachers have or that I've had as an administrator is the sense that it all *does* [emphasis added] take us out of that sense of a sort of contract of compassion. I mean, we're all in this to do the best for the child, and then suddenly we're being sued for whatever, whether its neglect or harassment or one kid is suing another... and it suddenly

becomes a judgment of character and a judgment of placing blame. And that just throws everything out of context.

In-depth interview summary

In sum, while the survey indicated that drug use, student injury and inappropriate relationships between students and faculty members were the most disruptive legal issues a school could face, the interviews revealed a little more. They indicated that it was not a particular legal issue per se which causes the greatest degree of impact upon schools or school administrators. And while these four administrators claim that they deal most frequently with issues of contracts (a trend which will be discussed further in the implications section of this research) it seems that the legality of these issues is not what causes the greatest degree of disruption at the school. Rather, it is how these issues are handled, who ultimately deals with these issues, the degree of community involvement, the position the administrator is placed in, the context in which the issues are faced, and the cascading nature of the issues which are responsible for the disruption to the community, regardless of the particular issue at hand.

The final research question, *Is there a way to better prepare a school to face these issues?* will be discussed in the analysis and implications section of this study.

Chapter 5

Summary, Discussion, and Recommendations

This chapter will discuss the summary of results from Chapter IV of this research, the implications of those findings, and the conclusions drawn from these results and this discussion. The final research question of this study- Are there ways to better prepare a school to face these legal issues- is a direct byproduct of this discussion and will be addressed here in the recommendations section of this work. Finally, the chapter will provide recommendations for further research as evidenced through the discussion of this study.

Study summary

This study was conducted to answer questions regarding if and how administrators at private boarding schools deal with legal issues which arise in the course of the daily operations of their schools. Specifically, it was designed to answer the following four research questions: (a) To what extent, if any, do legal issues impact boarding schools?; (b) Which specific legal issues have the greatest degree of impact on boarding schools?; (c) Why do these issues have a greater degree of impact on boarding schools than other legal issues?; and (d) Is there a way to better prepare a school to face these issues?

As was evidenced by the sparse literature review, there is very little written on boarding schools generally and nothing written about boarding school law. Therefore a mixed methodology study was designed to provide much needed information to boarding school administrators on how to face potentially problematic legal issues in their schools. In this study, thirty-eight senior administrators from TABS-affiliated boarding schools answered a forty question survey to address research questions (a) and (b) to what extent, if any, do legal issues impact boarding schools, and which specific legal issues have the greatest degree of impact. The

survey revealed that legal issues are a daily considerations for boarding school administrators, but are only one of many things which the feel they have to face. There is not a great degree of fear regarding these issues, but a general sense of caution and awareness that is pervasive. A majority of administrators indicated they felt fairly comfortable dealing with the legal issues that they face, but wish they had more training on how to deal with them as they arose. While some administrators indicated that they had been fortunate enough to take a law class during some part of their formal schooling or make it to the rare conference seminar session, most administrators indicated that they relied upon their personal experiences and their time in their jobs as the primary sources of training available to them in dealing with the legal issues that they faced. In sum, to answer research question one, legal issues do in fact impact boarding schools and the administrators who deal with them on a regular basis.

The survey then asked boarding school administrators to talk about which specific legal issues had the greatest degree of impact upon their schools. Administrators indicated that the issues they faced most frequently were student drug use, and contract issues with faculty members, parents (with enrollment agreements) and student handbook conflicts with students. All of these were handled legally as contract disputes. Administrators indicated that the most disruptive legal issues were student drug use, the injury of a student while under the care of the school, and inappropriate relationships between a student and a faculty member. The majority of the truly disruptive issues rested in liability claims. The administrators who answered this survey began to paint an interesting picture of the climate of boarding schools, the nature of the students they were receiving, and the parents that they were bringing along with them. These were fascinating concepts that were explored further in the qualitative interviews that followed.

The mixed methodology which was employed for this study was vital in fully explaining what was truly going on in boarding schools with the law. The follow-up interviews which were initially designed primarily for verification of survey data only, ended up yielding telling results

which more fully explained the data garnered from the survey. First, administrators seemed eager to discuss the law and the issues that they faced. They commented on how little they knew about the laws which govern boarding schools and seemed truly interested in the topic. Specifically, they found themselves not understanding all the differences between what a public school was required by law to do, and what was expected of private school administrators. But as the interviews unfolded, it began to become evident that what these administrators were truly interested in discussing was much less about specific laws or the legal consequences of the phenomena they were struggling with, and much more about the changing face of schools, school climate, their decision-making process, and the effect on the school community which dealing with legal issues and the threats of litigation wreaked upon them. All seven interviewees, people who had been working in boarding schools for an extended period of time, wanted to talk about the changing attitudes of students and their parents, the litigious climate of the United States currently, and about how much worse it has become.

The survey indicated, and the administrators interviewed agreed, that they find themselves not worrying about growing outside legal interference or new laws affecting them, but rather the threats of litigation which are much more frequent currently than in years past. The administrators' jobs have become not about the dealing with legal issues per se (most of them have legal counsel or someone else at the school who is hired to handle legal matters) but instead about spending a great deal of time and energy constantly watching their backs, making sure that should one of the legal threats actually make it to the inside of a courtroom that they have, to the best of their knowledge, acted appropriately. In sum, while the short, quantitative answer to the question of which legal issues have the greatest degree of impact upon boarding schools, is drug use, student injury and inappropriate relationships between students and faculty members, when asked about these issues specifically, it becomes clear that the disruption is about more than just legal specifics.

The in-depth interviews verified these results- That the legal issues with the greatest degree of impact may appear to be these three, but that the disruption is not caused by the legal implications they have. Instead, it is about the impact they have on the community, the position into which it puts those who must deal with these issues, and the time, energy and emotional toll they take upon a community. It was because these three were the most disturbing to the greatest number of people—their far-reaching nature and the vast and cascading impact that they had on all the stakeholders of the school—which made them the hardest with which to deal.

Discussion

Setting the scene. The administrators interviewed for this research painted an interesting landscape in education in which this study is embedded. Each respondent commented on the context in which they were operating, which is important to understand before discussing the implications of these results. Some of these circumstances are particular to the state of the economy and education generally today, and others are important primarily to boarding school administrators specifically.

First, as has been highlighted throughout this research, administrators worry about the ever-growing litigiousness of society. They claim that parents have become much more aggressive in advocating for their children, even when as many commented, their children had obviously committed a rules offense. As one interviewee commented, “there has been such a dramatic upsurge of parental reversion to litigiousness when their child is caught using drugs or engaged in inappropriate behaviors. Behaviors they *know* [emphasis added] are inappropriate.” Another agreed. “[Parents] have a very strict constructionist perception of how the law, in their imaginations, applies to the reality of school discipline. And it’s entirely misplaced. And it’s just very striking to me...and saddening.” The ideas of the “lawn mower parent” and the helicopter parent, which were mentioned briefly in Chapter IV of this research, surfaces again here. Parents

seem willing to “mow over” anyone who causes their child any discomfort. As one administrator added,

Now the term helicopter parent has taken over- and I don't think it's a bad thing that parents have a stake in their child's education, but sometimes when they get too involved, it causes problems. And sometimes that becomes legal for us because they expect what we go and advertise that we provide. We happen to feel that [it's good when] students struggle with issues when they are unhappy...but parents tend to say, my student is unhappy, let's remove the source of unhappiness instead of making them grow from actually dealing with it.

Second, as was quoted earlier in this research, administrators feel that students are changing as well. They feel that students are arriving at school more entitled, less emotionally ready to deal with issues themselves, and more likely to resort to, or more accurately have their parents resort to, litigation. As Carla commented, “I have to think twice about how I justify holding a kid accountable for something. You know, so I may have to...what he really needs is just to be grounded for a month, but that's “cruel and unusual” or somebody will claim that it's cruel and unusual.” And Aiden agreed.

I know there are more kids today who will throw out the phrase “well my parents will call their attorney’ or “you can't do that, it's illegal.” It's amazing how much the students- maybe they really are in the know or think they are fully in the know but they will claim you can't do something because it's illegal.

In addition to the litigiousness of society and parents and students who seem more willing to resort to litigation than to personal accountability, the interviewees were concerned about the current economic climate and the current climate of college admissions. In today's economy, driven by recession-based decision-making for families, the cost of private boarding schools is prohibitive to many. In order to justify sending students to these schools, families need to believe that the benefit of attendance outweighs the cost and that these schools are able to provide for their students exactly what they say they provide—excellent, advanced education, which parents feel should all but guarantee admission into the student's college of choice. When families feel that they are not reaping the benefits of what they believe the school says it will provide (i.e. the

student does not get into his/ her college of choice) the parents believe that the school should be held liable for the outcome, and they sue for breach of contract. As Jonathan remarked,

Parents know that they pay to go to independent schools and so they are expecting a certain experience. And when the experience runs contrary to either what they hoped or expected, there's a contract in place and they look to that as means, of a way of guiding the situation.

Another administrator agreed. "I think the most pressure builds around customers who are not satisfied with the outcomes or they may claim that what was 'sold' if you will, from an admissions perspective was not actually what they felt their child was experiencing in terms of level or support or guidance or things like that." One of the follow-up interviewees expressed similar concerns:

There's so much at stake economically, with kids being in these schools, because they do cost a lot of money. And with college admissions really, in my opinion, trying to find ways to weed kids out as opposed to embracing the strong qualities that kids have...it's an admissions thing. And it's becoming a world where if a kid makes one mistake, they're going to jeopardize their chance to get into a good college. And that's becoming more and more true with time. So, parents are becoming more and more involved. I think the issues attached to that are growing more increasingly complex because of what they expect.

In sum, it seems the nature of parents and students, the litigious nature of society, the current economic climate, and parents' desperation to do whatever it takes to get their students into university, combine to set the scene for how and why boarding schools are facing more legal issues now than ever before.

It is important to note, as we continue the discussion of these results, that many different themes surfaced throughout the course of this research. For the purposes of this discussion, I will concentrate on outlining the most prevalent themes which emerged while analyzing the transcripts of interviews. This included the following: the types of legal findings which surfaced (contracts and torts); the components of positionality and cascading used to analyze the reasons behind the disruption from these legal issues; and the ethical implications which these trends unearthed.

Legal findings: Contracts dominate. As has been shown throughout this research, the legal issues which boarding schools find that they most frequently face are issues which revolve around contracts. As boarding schools do not operate as public schools, it is the contract in all of its forms which dictates the operations of the school. Often, even the issues which could otherwise be thought of as supervision related (i.e. drug use or hazing) or issues that public schools would hold as speech-related (internet posting, text messaging) boil down instead to a violation of the expectation of the school as outlined in one of the many publications which stand as the school's contracts: admission information, enrollment agreements, handbooks, and employment agreements. As one administrator explained, "the state of [state omitted] treats everything we do as contract law, so as long as we have a process...as long as our process is fair, as it relates to the contract, and we haven't done anything to violate that contract, then they're not looking at any other issues regarding the institution." This is true of boarding schools generally. Because of this, it is incumbent upon the school to carefully pen these documents and to closely follow what it is they say they do in them.

Schools did not deal with liability claims (torts) on a very regular basis. They were however the issues which administrators seemed most fearful of facing and which administrators held to be the most disruptive. As will be discussed in the section that follows on cascading effects, it is possible that the reason these particular issues have a greater degree of impact on the school is because of the far-reaching nature of the issues and the consequences they bring with them to all facets of the operations of the school.

An interesting concept which surfaced was that administrators seemed most frustrated with or confused by situations in which they did not understand how they were alike or different from their public school counterparts. These included statutory and regulatory issues which public schools have to abide by, but that private school administrators did not fully understand. One of these issues was compliance with Health Insurance Portability and Accountability Act

(HIPAA) regulations. In a residential school there are health care workers and mental health counselors working together with these students on campus. It is a place where all of the adult staff, especially those living in the residence halls are considered acting *in loco parentis*.

Administrators worry about who holds what information, what is confidential, and what can be shared amongst the adult community. This was an area of conflict for many schools, and was mentioned as one of the things about which they both currently worry and about which they fear facing more in the future. Carla, whose background was in counseling and who had worked as a consultant to boarding schools on just such issues had this to say:

I know there were times as a counselor that I had information that I wasn't able to share with staff members and they were *furios* [emphasis added] at me. Furious. And you know, I'm saying, I'm sorry but I can't! And that's the sort of confidential legality. But that has changed a lot over the years. And I think...I know...that [name omitted] and I worked long and hard on this in terms of schools developing a legal contract with the parents that says *we need to share* [emphasis added] this information. And that has made it better. But I know, I still have licensed counselors and licensed nurses saying "I can't tell you".

While administrators seemed to agree and understand that they were primarily beholden to contract law, they did not necessarily consider this issue to be one which fell into that category. Although as Carla stated, perhaps it can and should be: Merely write a strong policy on disclosure of information, educate parents and community members about the policy, and abide by it appropriately.

The same could be said for the technology issues that so many people fear. While most administrators seemed to feel uncomfortable monitoring or limiting their student's phone, MySpace or Facebook access, this behavior could also be dealt with contractually. As one administrator explained:

Yeah, well we just flat out say that your Facebook page is under our control too. And we hold the boys accountable for them. We can tell them to take it down, deny them account access, I mean... we can control all of that. And basically, if they don't like it, we'll send you home. We're done with you. We let them use it, and we hold them accountable for what occurs.

Because contracts are binding in private schools and because parents and students voluntarily enter into these contracts, specific regulations can be laid out in the handbooks and enrollment agreements, which address these issues and protect the school from what they incorrectly fear to be an infringement upon the students' First Amendment rights.

Private school administrators tended to try to apply public school law terminology to their private school settings. As there is little education or training available in private school administration specifically, people working in and running boarding schools traditionally have a public school education background. Often then, they automatically assume that speech rights, due process, and legal reporting of school-based behaviors to local authorities mirrors what they know to be true about public school education. This was evidenced in several places throughout the interview process. As one administrator explained regarding due process:

One thing I do hear a lot is that we didn't follow due process. And the law is overwhelming and unambiguous that the due process clause does not apply to these issues in schools. But they always refer to "oh you didn't follow due process." What they really mean is that you didn't follow the process that is in your handbook.

Jonathan agreed when speaking of speech rights.

I usually think that free speech stuff at independent schools is a bit of a misnomer anyway in that kids are free to say whatever they want, but they can't necessarily say it here. There are limitations based on contract expectations and handbooks. So you know, for example issuing a racial slur against somebody may be viewed as protected speech on some level someplace in the world, but here it certainly wouldn't be. And if they put it in a text message or e-mail, it wouldn't make any difference to us.

Carla added a similar story about the conflict between public school trained staff and the reporting practices of boarding schools.

Well, I think we take a lot of pride in not being as litigious as, say, public schools, and part of that is a little bit we handle it in-house, like we would if we were the at-home parents. We're not as bound by step-by-step litigation. I mean, the two teachers who were upset [about the legal issue in question]...I mean it, it

wasn't even a serious thing. [We had] two kids try to make alcohol out of apple juice (*laughing*) you know so, it was a little funny, so both of them [the complaining teachers] were public school and certified teachers and they were like "we have to turn this in to the police!" and we said *of course* [emphasis added] we're not turning them in to the police.

In sum, the legal issues that seemed to need the greatest attention by administrators were contract related issues. The issues most feared by administrators were liability related. But the issues which were most frustrating to administrators were ones in which their roles and responsibilities were undefined, or where the private school had the latitude to handle the issue in a different fashion than the public-school-trained employees were used to.

Turbulence theory application: Positionality and cascading. Turbulence theory was used as the theoretical lens through which to analyze the disruption that schools felt in dealing with their legal issues. Specifically, the ideas of positionality and cascading were examined. While both seemed to be a factor in schools, the idea of cascading clearly trumped positionality in terms of importance in explaining why some legal events were more disruptive than others.

Positionality, or the job title, experience and background of those who were reporting the perception of turbulence came into play only marginally and in an unexpected fashion. Many of the administrators commented that they felt fairly comfortable dealing with legal issues because of their time in their position, and their having dealt with the particular circumstance before. That said, this level of comfort didn't necessarily have to do with how comfortable they were with handling the legal issue themselves, but rather the assuredness they had in what their role in the process was about. As Carla remarked, "[the legal issues with the greatest degree of impact are the ones] when the legality of it takes everybody out of their prescribed community role." The respondents spoke of what I call a kind of differentiated responsibility. The people that were interviewed here overwhelming said that in their position as a senior administrator it was not their responsibility to deal with the handling of the law. They were exposed to legal issues daily, but they were (happily) not the persons who were primarily responsible for dealing with the legal

aspects of the situations. Every respondent interviewed claimed a close, or at the very least an open, relationship with the school's legal counsel and was thankful for being able to contact them as frequently as necessary. These administrators claimed that in issues of the law, it was not their job to pretend to be lawyers, but instead that it was their job to know enough to educate their staff as to when and how to hand these issues off to the proper authorities, and then to manage the community climate and reaction to the legal issues during and after these disruptive events occurred. As Jonathan commented when asked if there was anything he would provide his staff to better prepare them to deal with legal issues,

What I hope the faculty continues to remember is that everything we do matters. And as long as we're being thoughtful towards our students we're generally ok. ...and so reminding them to pay attention to the details. Which I really think is just continually reminding them...which I get to do (*laughing*).

Carla agrees that it is not her job to deal with the legality, but instead her position is to arm her staff with information.

Well, I think they [the staff of boarding schools] should have the understanding [of the law]. But I don't think that they should have the responsibility. I think that it's...what tends to happen legally is that the parents are going to sue the school because the school has more resources. I mean, the parents can sue anybody along the line that they're pissed at, but the big bucks are going to be the school, and they're angry, even if it filters out to individuals, at the school. So I think that schools have, I have, first of all, an obligation to train and support the faculty and to supervise them in a way that they can say they've done due diligence, they understand their obligations, and we'll stand by them. But that's really it.

In this sense, positionality becomes more about the role that each person in the school community fills, knowing what your role is about, and acting in accordance with that role, more so than about that role determining a particular perception of disruption. That said, experience did play a part in the level of comfort they felt. The more they had gone through an event, the better defined their roles were, and the more able the administrators were to become hands-off: to hand

off the legal matters as soon as the issues surfaced, and thereby go about the business of tending to the community climate, which was in fact the role they felt they were supposed to be filling.

Cascading was the idea that no severe organizational unrest generally arrived as such: that the truly disruptive issues schools face are often the result of many different contributing factors across the organization in combination with one another. This idea seemed to be prevalent through the research presented here. Administrators spoke of the hardest issues to deal with as being the ones which centered on students, yet affected the most number of constituents. As Leah described when dealing with her most disruptive legal issue,

It was bad because it directly related to the care and supervision of a child and that's going to be something that parents...it's going to impact your recruitment for the following year. It's going to impact how other parents who are not involved perceive the care you're providing to their children even though they may not be involved. There are PR issues...so it just makes for...there are a lot of pieces that you have to keep checking on. You know, you have to keep your different constituencies informed as the situation unravels and then as you resolve it and so you're trying to keep a lot of people happy and informed and satisfied with your response.

Others agreed with this assessment.

I was handling the individuals involved [in a harassment case] and that was very difficult because of the impact on the community. I mean you've got somebody being asked to leave the school because of a very harassing, degrading behavior. And then you've got another person who has been harassed and they're still at the school. It's the impact on the community. Not just students but faculty and families.

Administrators, as has been described above and throughout this research, seem to have the most difficulty in dealing with issues which have a far-reaching effect. A student who uses drugs in the school could simply be thought of as having violated the school's drug policy and consequently expelled. However, it is never that simple in the closed, tight-knit community that is a boarding school. The cascading effect of a student being sent home is massive because it touches all the constituents of the school: the teachers who are losing a student and advisee; the students who are losing a friend or a roommate; the coach who is losing a quarterback and a

resident. It is the parents of the expelled, who are now angry with the school for not living up to the promise of providing a year's worth of schooling to their child, the consequent money loss they experience, the effect on their child's college admission opportunities. It's the perception that the other parents have about the supervision of students at the school—a school which suddenly isn't safe, but rather is a place where children are allowed to do drugs. It is the consequent reputation loss which leads to enrollment loss because no one wants to send their student to an unsafe school with a reputation for drug use. Suddenly, the school administrator is no longer dealing with a legal issue, but rather a public relations nightmare and rebuilding the school community after the loss. Cascading, it would seem, provides the very definition of why administrators feel disruption from particular legal issues they face.

An ethical lens. It came as a bit of a surprise to the researcher that when asking administrators about the complexities of the legal issues they faced, a majority of administrators concentrated not the legal components which they found to be confounding, but instead the ethical situations they found themselves faced with. Understanding the law often times merely made the decision they had to make more difficult. One administrator offers the perfect example of this conflict.

It [the law] certainly sometimes gets in the way and sometimes it is not best for children. And I can give you one example of what I mean by that. This is before I arrived at [school name omitted]...maybe a year before I arrived. The previous head had a girl who e-mailed a nude picture of herself to her boyfriend over the intranet here at [school name omitted]. And that had to be reported to the Department of Social Services and the police had to talk to her. And there was ostensibly child pornography because she underage. And it was just a stupid, 17-year-old thing to do, and in my opinion, the required legal response was a profound over-reaction for that girl in terms of the legal actions she had to undergo for the stupid act of sending a nude picture of herself to her boyfriend. And stupid it was, but it certainly wasn't something warranted criminal investigation. But we had to. It was the law, and if that had leaked to the public...? So I think that sometimes it's not best for students.

Venturing back to the write-in responses from the initial survey, several respondents to the question regarding the most challenging aspects of their jobs as administrators responding similarly: “When the legal choice conflicts with common sense”; “sometimes the responsibility to protect the institution compromises my ability to act in what I believe to be the best interests of the individual students or the best interest of the community”; “at times, legal considerations overshadow professional discretion and doing what you know is in the best interest of your community and in the best interests of your student.” As one follow-up interviewee added, “we teach ethics to the kids, and we apply ethics to the situations we find ourselves in.”

This trend was evident in the follow-up interviews with the senior administrators. Several cited flexibility in decision-making (using ethics and discretion) and freedom from rigorous legal bindings as a reason for going into independent school administration.

I’ll say I have the luxury of working in a school that is not public. And I do know that my counterparts in public school have much more legal worry when it comes to making decisions and maneuvering through situations. And we get to be able to, within reason, call a lot of our own shots and set our own policies. But that’s a responsibility.

Yet another agreed.

You know, part of the reason I’m in independent school education is because of the amount of, sort of, freedom that is afforded to me in the workplace is higher than in public schools. By the same token, I can think of a number of boarding or independent schools that are sort of prestigious that have a number of rules that to me are just shockingly laissez-faire... [in terms of ethical questions] I think there’s a really broad range of practices in independent schools. I think that some independent schools act unethically with the freedom that they’re afforded by virtue of being independent.

Others spoke specifically about trying to act in what they felt was the best interest of the student and how sometimes when parents get involved and threaten litigation, it often takes away the time and energy that could have been better spent in helping the student. In discussing her most trying legal issue, Aiden makes this point in the following manner:

That's the thing... We just lost a lot of time and energy that we felt could have been spent better elsewhere. And the kid lost. The *kid* [emphasis added] lost out on it. Instead of looking for a right placement or looking at some of the issues that...we had some really good evidence to help them look for a right placement to help the child, but it was ignored.

Jonathan agreed: "When parents threaten litigation, he [the head of school] says 'we're trying to make the best decision for your child and we think it's in your child's best interest and if you think it's best to bring in counsel that's your decision.'"

This theme was echoed, yet extended further into the in-depth interviews. Freedom from strict legal restraints and the ability to set reasonable policies from themselves were a pull for these administrators to private school education. They went further to state that in the absence of these laws, ethical decisions had to be made. However, since the school was predominately governed by the language of contracts and by extension the handbooks, these ethical decisions were often made in the proactive setting of policies and writing of the handbook. In making these decisions, they first had to understand and articulate the school's identity. Then they had to make sure that the policies and procedures which they made, in congruence with the school's mission and identity, were well articulated and followed. As Aiden very simply put it, "If you have a handbook, know it. If you put it in your handbook, follow it." Jonathan agreed. "We have our policies in place. We've done our research about them. And so our job is to make sure that we adhere to our processes appropriately. And if we're doing that, we're going to be as appropriately protected by the law as we can be." Another follow-up interviewee used almost the exact same language to describe his thought-process. "We have a handbook. We put a policy in the handbook, and then we have to follow what it is we say we do...it's basically a problem of knowing who we are and then sticking to it. And when we get away from that, we get ourselves into legal hot water." And as was quoted previously in this work, but which stands repeating here,

is the summation comment from the most senior boarding school administrator who participated in any of the interviewing.

We need to stay the course, stick to our guns, assuming we are moral and upright people who want to do well in this world and to do good in this world...we just need to stick to our guns and not be afraid. Because if we are afraid of the legal consequences, we just won't get anything done.

Recommendations

The review of literature, survey information, and interview results yielded interesting and consistent information on what boarding school administrators should think about in terms of being as proactive as possible in dealing with the legal issues which they face. The following checklist of recommendations is provided as an answer to the final research question posed by this study: Are there ways in which to better prepare a school to deal with legal issues?

- 1) First, have a school mission and know your school identity. This is the first step in being able to establish policy.
- 2) Have a legal counsel readily available. Use this legal counsel to pen policy that accurately reflects your school's mission and identity.
- 3) Carefully define a process by which to explore these policies. This can include but is not limited to disciplinary processes for students, termination of faculty/ staff processes, when and how the various contracts will be reviewed or modified, and the process by which stakeholders can question these various contracts.
- 4) Understand outside-of-school-based obligations (i.e. mandated reporting of child abuse).
- 5) Put all of these policies and processes into writing. Carefully and clearly define the language of these policies and procedures. It will be that language which will serve as the binding contractual agreement for the school.
- 6) Inform and educate all the parties involved in the process, showing that due diligence has been done. Require that as a community contracts are carefully read and signed. Perform the necessary staff training in dealing with the legal issues which might surface (from academic integrity/ cheating, to mandated reporting of abuse).
- 7) Follow the process set forth.
- 8) Most schools also include in their contracts language which provides for using administrative discretion for events which occur outside of the prescribed handbook. This language usually says something to the effect of "the school reserves the right to dismiss a student for any behavior which we feel is dangerous, unethical, or inappropriate for our larger community." If such language exists, it is important for the administrator to be able to articulate the mission and ethics of the school so as to be able to qualify behaviors as such.

- 9) Make sure to continue to have legal counsel available. It is not the job of the administrator to know all the legal rules all the time. Know when to abdicate responsibility. Most administrators would claim their major job responsibilities consist of tending to the community climate and reaction rather than acting as legal counsel to the school.
- 10) Make sure that contracts are living documents which go through regular (usually annual) review with stakeholders and counsel. In the review, make certain that the rules and policies set forth continue to be in alignment with the school's mission, values, and identity.

As was stated by Leah, very simply, when talking about why she was comfortable in dealing with the legal issues that she faced,

Number one, I have tremendous confidence in our handbook, in the student handbook. I also have strong confidence in the process that we follow when it's something that is out of the student handbook. And lastly, we have excellent care from our general counsel. We have an excellent team. I think they provide us with very very good advice and guidance and counsel.

Besides these very practical, daily recommendations, there are other academic recommendations which could be made. First, it was interesting that administrators in private schools, by in large, have been trained as public school educators. It seemed that often the legal confusion which existed dealt with lines being blurred between what was required of public schools versus private schools. Besides the Klingenstein Institute at Columbia University and a freshly minted program at John's Hopkins University, there does not seem to be any private school administration programs in the country. Interestingly enough, four of the 11 people interviewed had graduated from the Columbia program. However, even there, the interviewees indicated that their law training at the Institute had primarily been based in the public school law. A specific program discussing the obligations of private schools or possibly more broadly, independent school management, seems deeply needed. As was indicated by the research results, administrators seem to most fear the unknown. Covering these sensitive legal issues in a systematic way with people who have experience in dealing with them seems necessary, and

could cut down on the anxiety which administrators feel when facing the unknown, allowing them to act in a fashion more congruent with the law and their own school's (and personal) ethics.

Since private schools are primarily beholden to contract law, it would seem that contract law education and training would also be an important piece of preparing a private school administrator for service. In addition to understanding the differences between public school law and private school law and having a deeper understanding of contracts, courses in ethics and ethical decision making seem appropriate. In the absence of strict legal parameters, an administrator must rely upon his or her ethics for judgment; Understanding that ethical decision-making process seems important. Perhaps even going into the TABS association and helping them to develop an ethical code for boarding school administrators (much like many other professional helping organizations have) would be an appropriate step towards defining the roles and responsibilities of boarding school specific administrators.

Finally, it seems necessary that boarding school administrators take responsibility for their legal education. The Association for Boarding Schools (TABS) does offer annual summer conferences for people new to the business of boarding school administration. Part of one day of the week long session is dedicated to the law. The association which the Heads of boarding schools can choose to be a part of also has informal seminars on current, pressing legal issues. One of the interviewees, an administrator at a school in Massachusetts, commented that a local law firm which actually dealt specifically with independent school legal issues, offered periodic evening talks on pressing legal topics. While no one has seemed to pen any sort of academic literature on the matter, it does appear that there are resources available to those who seek them.

Future research

When trying to uncover the legal issues which have the greatest degree of impact on private boarding schools, many trends were unearthed which were beyond the scope of this research. However, it is important to note them here for consideration in future research.

Personal bias: The educational leadership and administration lens. As the study was being conducted, several interviewees mentioned that they were not necessarily the people who had the greatest degree of responsibility for handling legal issues. This study was conducted with Heads of School, Assistant Heads of School, Deans of Students and Deans of Faculty. This was because these are the people that, for lack of a better term, “run” the schools and are responsible for the daily operations therein. My position as an educational administrator made these people’s opinions the ones which were important to me.

However, one person interviewed found my focus on student and faculty related issues to be very pointed and possibly limiting. It was asked twice of me whether I had considered contacting the school’s legal counsel, the school’s directors of admissions and human resources, the business or operations managers, or their board of trustee president. It is likely that my responses would have been significantly different if it was this population who was interviewed. Jonathan, when asked what issues he saw on the rise, actually mentioned board governance and endowment management, especially in the current economic climate, as being the issues he was most concerned about for the future. Subsequent studies, to get a more global perspective of all the legal issues which schools face, might include these school constituencies in interviews.

Through a different theoretical lens. As was evidenced through this research, the theoretical framework of turbulence theory was helpful in discerning which legal issues had the greatest degree of impact and why they had a greater degree of impact than others. It was shown that the impact mostly centered on context, ethics, community, and acting with professional discretion in what the school (or administrator) felt was in the best interest of the students or what their job responsibilities and expectations were. A compelling theoretical framework to use for future research would be Shapiro and Stefkovich’s (2005) ethic of the profession to help to set a baseline of what the profession of boarding school administrator expects of its members. The ethic of profession asks what would the profession expect me to do?; what does the community

expect me to do?; and what should I do based on the best interests of students? Given the very specific context of boarding schools, it seems this lens would be a perfect fit for future research and the development of a professional ethic for this very specific group of school leaders.

Additionally, Stefkovich's idea of best interests of the student, a concept laid out in her 2006 work, specifically addresses the application of ethics and the consideration of what is best for students, to the legal issues which public schools face. This theme was pervasive throughout this research. Introducing this model, one of considering the rights of students, respect for the students, and the responsibility which an administrators has for acting in the what is in the best interest of the student, to administrators of boarding schools and having them analyze their decision-making processes accordingly could offer a deeper understanding of the motivations behind their decision-making and policy development.

As was evidenced through the research, the ideas of community, climate and context played a large role in how administrators perceived legal issues in their schools, and what they perceived their role to be in dealing with these issues. Authors such as Gail Furman, Lynn Beck, and Thomas Sergiovanni all write extensively on schools as communities and on building community in schools. Furman's extensive work in studying schools and community could serve as an interesting lens for future study of the decision-making processes of boarding school administrators, especially given the unique community that is a boarding school.

Cyber-related issues. Almost every administrator participating indicated that issues of technology, appropriate technology-use, and inappropriate behaviors between students via technology (e-mail, text messaging, social networking sites) were both on the rise and the issues which they most feared facing in the future. However, as one administrator commented, there is much legal groundwork to be laid regarding cyber-laws and internet privacy related issues. It was easy to gloss over the issue in this research because technically, as was mentioned, technology-related issues can boil down to merely contractual compliance issues in private schools.

Additionally, as one administrator quoted here mentioned, free speech doesn't exist in private schools, and disparaging remarks made are disparaging, regardless of whether or not someone puts them in a text message or an e-mail. The most recent literature on cyber-bullying (Shariff, in press) would agree with that statement. This issue seems ripe for further investigation as cyber-laws begin to become more clearly defined.

A side-by-side comparison. As was indicated throughout, boarding school administrators struggled with determining their duties and legal obligations as opposed to that of their public school counterparts. A compelling future study would be to actually do a side-by-side-by-side comparison of public school expectations, private school expectations and finally boarding school expectations. This would be particularly interesting when examining regulatory issues such as HIPAA laws, Americans with Disabilities Act regulations, mandatory reporting laws, and the increasing litigation and regulation around student privacy and technology related laws.

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Appendix A

Initial Survey Questionnaire

Section 1- Basic administrator and school demographics

- 1) Approximately how old is the school where you are currently working? (1-15, 16-30, 31-50, 51-75, 76-100, 100+ years)
- 2) In which region is your school located? (New England, Mid-Atlantic, Southern, Midwest, Mountain/ Plains, West Coast)
- 3) Would you describe your school as: (Urban, Suburban, Small town, Rural)
- 4) What is your estimated current enrollment? (Under 75, 76-150, 151-250, 251-350, 351-500, 501-750, 751- 1000, 1001-1500, over 1500)
- 5) What grade levels does your school currently enroll? (Please choose all that apply). (6th, 7th, 8th, 9th, 10th, 11th, 12th, PG)
- 6) What is the gender make-up of you school?: (Co-ed, all boys, all girls)
- 7) Would you consider your school an (all boarding school, a boarding and day school equally, a boarding school with only a few day students, a day school with only a few boarding students)
- 8) What is your gender? (female, male)
- 9) What is your current job title? (Head of School/ Headmaster, Assistant Head of School, Dean of Students, Dean of Faculty, Other (please list))
- 10) How many years have you been working in boarding schools? (Less than 1 year, 1-4, 5-10, 11-15, 16-20, 21-25, 25+ years)
- 11) How long have you been in an administrative position in a boarding school? (Less than 1, 1-4, 5-10, 11-15, 16-20, 21-25, 25+ years)
- 12) How long have you been in your current position? (Less than 1, 1-4, 5-10, 11-15, 16-20, 21-25, 25+ years)

Section 2- Descriptive/ Which ones/ Rank

Please answer the questions below concerning the kind and frequency of legal issues which you and your school face.

- 1) Would you say that legal issues are a consideration for you in the daily operations of your school? (yes, no)
- 2) How often do you face what you would consider to be a significant legal issue? (never, rarely, often, on a regular basis)
- 3) What would you say is your level of formal training (in-services, courses) regarding legal issues in schools? (none, basic, extensive, comprehensive)
- 4) What would you say is your level of informal training (“on-the-job”) training regarding legal issues in schools? (none, basic, extensive, comprehensive)
- 5) What would you say is your level of comfort in dealing with legal issues? (not at all comfortable, somewhat comfortable, fairly comfortable, very comfortable)
- 6) What would you say is your level of fear regarding potential litigation? (not at all fearful, somewhat fearful, fairly fearful, very fearful)

- 7) Do you wish you were better prepared to deal with legal issues as they arise? (Yes, I wish I was better prepared; No, I feel I am adequately prepared.)
- 8) Would you say that legal consequences are your primary consideration in administrative decision making? (yes, they are my primary consideration; no, they are just one of many considerations; no, I don't typically consider legal consequences when making administrative decisions)
- 9) Do you have a school solicitor? (yes, no)
- 10) How often do you contact your solicitor? (never, rarely, often, regularly, NA)
- 11) Is your solicitor a part of your faculty contract writing process? (yes, sometimes, no, NA)
- 12) Is your solicitor a part of your parent enrollment agreement writing process? (yes, sometimes, no, NA)
- 13) Is your solicitor a part of your student handbook writing process? (yes, sometimes, no, NA)
- 14) Which of the following issues have you encountered in your time as an administrator? (yes, no)
- Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)
 - Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)
 - Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 - Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 - Drug use by students on campus
 - Drug use by students off campus
 - Drug use by faculty on campus
 - Drug use by faculty off campus
 - Character defamation (student claim)
 - Character defamation (faculty claim)
 - Sexual harassment (student claim)
 - Sexual harassment (faculty claim)
 - Inappropriate sexual conduct of students with one another (consensual)
 - Inappropriate sexual conduct of students with one another (non-consensual)
 - Inappropriate sexual conduct of a faculty member with a student
 - Lack of supervision (resulting in injury) in the classroom
 - Lack of supervision (resulting in injury) the dormitory
 - Lack of supervision (resulting in injury) while participating in athletics
 - Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event
 - Lack of supervision (resulting in death) while under the care of the school
 - Contract dispute with faculty member
 - Contract dispute (enrollment agreement) with parents
 - Contract dispute (student handbook) with student
 - Other (please list)
- 15) Which of the following issues did you have to first consult your solicitor with before handling the issue? (yes, no)
- Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)

Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 Drug use by students on campus
 Drug use by students off campus
 Drug use by faculty on campus
 Drug use by faculty off campus
 Character defamation (student claim)
 Character defamation (faculty claim)
 Sexual harassment (student claim)
 Sexual harassment (faculty claim)
 Inappropriate sexual conduct of students with one another (consensual)
 Inappropriate sexual conduct of students with one another (non-consensual)
 Inappropriate sexual conduct of a faculty member with a student
 Lack of supervision (resulting in injury) in the classroom
 Lack of supervision (resulting in injury) the dormitory
 Lack of supervision (resulting in injury) while participating in athletics
 Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event
 Lack of supervision (resulting in death) while under the care of the school
 Contract dispute with faculty member
 Contract dispute (enrollment agreement) with parents
 Contract dispute (student handbook) with student
 Other (please list)

16) Which of the following legal issues would you say you face most frequently? (Please choose up to five)

Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 Drug use by students on campus
 Drug use by students off campus
 Drug use by faculty on campus
 Drug use by faculty off campus
 Character defamation (student claim)
 Character defamation (faculty claim)
 Sexual harassment (student claim)
 Sexual harassment (faculty claim)
 Inappropriate sexual conduct of students with one another (consensual)
 Inappropriate sexual conduct of students with one another (non-consensual)
 Inappropriate sexual conduct of a faculty member with a student

Lack of supervision (resulting in injury) in the classroom
 Lack of supervision (resulting in injury) the dormitory
 Lack of supervision (resulting in injury) while participating in athletics
 Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event
 Lack of supervision (resulting in death) while under the care of the school
 Contract dispute with faculty member
 Contract dispute (enrollment agreement) with parents
 Contract dispute (student handbook) with student
 Other (please list)

- 17) Which of the following legal issues have you not faced, but are concerned might be an issue in the future? (Please check all that apply).
- Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 Drug use by students on campus
 Drug use by students off campus
 Drug use by faculty on campus
 Drug use by faculty off campus
 Character defamation (student claim)
 Character defamation (faculty claim)
 Sexual harassment (student claim)
 Sexual harassment (faculty claim)
 Inappropriate sexual conduct of students with one another (consensual)
 Inappropriate sexual conduct of students with one another (non-consensual)
 Inappropriate sexual conduct of a faculty member with a student
 Lack of supervision (resulting in injury) in the classroom
 Lack of supervision (resulting in injury) the dormitory
 Lack of supervision (resulting in injury) while participating in athletics
 Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event
 Lack of supervision (resulting in death) while under the care of the school
 Contract dispute with faculty member
 Contract dispute (enrollment agreement) with parents
 Contract dispute (student handbook) with student
 Other (please list)
- 18) Select the five (5) issues which you perceive as being the most serious legal issues a boarding school might face.
- Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)

Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 Drug use by students on campus
 Drug use by students off campus
 Drug use by faculty on campus
 Drug use by faculty off campus
 Character defamation (student claim)
 Character defamation (faculty claim)
 Sexual harassment (student claim)
 Sexual harassment (faculty claim)
 Inappropriate sexual conduct of students with one another (consensual)
 Inappropriate sexual conduct of students with one another (non-consensual)
 Inappropriate sexual conduct of a faculty member with a student
 Lack of supervision (resulting in injury) in the classroom
 Lack of supervision (resulting in injury) the dormitory
 Lack of supervision (resulting in injury) while participating in athletics
 Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event
 Lack of supervision (resulting in death) while under the care of the school
 Contract dispute with faculty member
 Contract dispute (enrollment agreement) with parents
 Contract dispute (student handbook) with student
 Other (please list)

Section 3- How much disruption?

1) Using the descriptions provided below, please rate the following legal issues in terms of your perception of the level of organizational unrest THEY HAVE CAUSED YOU PERSONALLY. If you have not yet faced this issue, please select N/A.

Light— Little or no disruption. Subtle signs of stress.

Moderate—Widespread awareness of the issue.

Severe—Fear for the entire enterprise- A feeling of crisis.

Extreme—Structural damage to the enterprise. Collapse likely.

Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 Drug use by students on campus
 Drug use by students off campus
 Drug use by faculty on campus
 Drug use by faculty off campus

Character defamation (student claim)
 Character defamation (faculty claim)
 Sexual harassment (student claim)
 Sexual harassment (faculty claim)
 Inappropriate sexual conduct of students with one another (consensual)
 Inappropriate sexual conduct of students with one another (non-consensual)
 Inappropriate sexual conduct of a faculty member with a student
 Lack of supervision (resulting in injury) in the classroom
 Lack of supervision (resulting in injury) the dormitory
 Lack of supervision (resulting in injury) while participating in athletics
 Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event
 Lack of supervision (resulting in death) while under the care of the school
 Contract dispute with faculty member
 Contract dispute (enrollment agreement) with parents
 Contract dispute (student handbook) with student
 Other (please list)

2) Using the descriptions provided, please rate the following legal issues in terms of your perception of the level of organizational disruption you **THINK THEY WOULD CAUSE**. You need not have had to face these issues personally to make a conjecture.

Light— Little or no disruption. Subtle signs of stress.
 Moderate—Widespread awareness of the issue.
 Severe—Fear for the entire enterprise- A feeling of crisis.
 Extreme—Structural damage to the enterprise. Collapse likely.

Free speech/ expression claim of a student in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a student in the dormitory (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the classroom (including computer/ cell phone use)
 Free speech/ expression claim of a faculty member in the dormitory (including computer/ cell phone use)
 Drug use by students on campus
 Drug use by students off campus
 Drug use by faculty on campus
 Drug use by faculty off campus
 Character defamation (student claim)
 Character defamation (faculty claim)
 Sexual harassment (student claim)
 Sexual harassment (faculty claim)
 Inappropriate sexual conduct of students with one another (consensual)
 Inappropriate sexual conduct of students with one another (non-consensual)
 Inappropriate sexual conduct of a faculty member with a student
 Lack of supervision (resulting in injury) in the classroom
 Lack of supervision (resulting in injury) the dormitory
 Lack of supervision (resulting in injury) while participating in athletics

Lack of supervision (resulting in injury) while participating in an extracurricular/ off campus event

Lack of supervision (resulting in death) while under the care of the school

Contract dispute with faculty member

Contract dispute (enrollment agreement) with parents

Contract dispute (student handbook) with student

Other (please list)

Section 4- Describe in words

- 1) As an administrator, what are the most challenging aspects of having to deal with legal issues in your school?
- 2) Which legal issue do you perceive as being the most severe? Why is this one the most severe?
- 3) What is the most severe legal issue you have had to face in your time as a school administrator? Why was this particular issue a challenge?
- 4) Have you seen an increase or decrease in the number of legal issues you have had to face in your tenure?
- 5) What sorts of changes have you seen in the types of legal issues you have faced during your tenure?
- 6) Are there legal issues which you see as emerging or that you fear facing in the future?
- 7) Do you have any additional comments you would like to make in regard to dealing with the legal issues a boarding school might face?

Appendix B

Follow-up interview questions

Verification of Survey Data

1) The survey that you took indicated that a majority of people struggled *most often* or *most frequently* with the following 4 legal issues:

- Student drug use on and off campus
- Contract disputes with faculty members
- Contract disputes with parents (enrollment agreement)
- Contract disputes with students (handbooks)

In your experience, would you agree that that is accurate?
If so, why? If not, what are we missing?

2) The survey that you took indicated that a majority of people found that the following 3 legal issues caused the *greatest degree of impact/ disruption* on the daily operations of the school:

- Drug use of a student
- Inappropriate relationships between a faculty member and a student
- Injury during an off-campus event (particularly during an extracurricular)

In your experience, would you agree that that is accurate?
If so, why? If not, what are we missing?

3) In the survey that you took, the majority of people indicated that they felt fairly comfortable in dealing with the legal issues which they faced daily at their school.

In your experience, would you agree that that is accurate?
Why do you think that this is the case?

4) Was/ were there any item(s) on the survey that you found to be surprising (i.e. an issue which had never occurred to you or which you do not perceive to be a problem?)

5) Were there issues that you felt were missing (i.e. things which you have to deal with which were not included?)

6) Are there any issues that you believe have gotten worse over time and/ or you perceive will be getting worse in the future?

7) Is there anything else you'd like to tell me about how legal issues affect your daily work as a school administrator?

Appendix C

In-depth interview questions

1) The survey that you took indicated that a majority of people struggled *most often or most frequently* with the following 4 legal issues:

- Student drug use on and off campus
- Contract disputes with faculty members
- Contract disputes with parents (enrollment agreement)
- Contract disputes with students (handbooks)

- a) In your experience, would you agree that that is accurate?
- b) If yes, please talk a little about why you think that these are the most frequently occurring legal issues faced.
- c) If no, what are we missing?
- d) In your opinion, are these issues difficult for you because of your particular position within the school? (i.e. do other people in the community deal with the same sorts of issues as these to the same degree?)

2) The survey that you took indicated that a majority of people found that the following 3 legal issues caused the *greatest degree of impact/ disruption* on the daily operations of the school:

- Drug use of a student
- Inappropriate relationships between a faculty member and a student
- Injury during an off-campus event (particularly during an extracurricular)

- a) In your experience, would you agree that that is accurate?
- b) If yes, why do you think that these cause the most disruption?
- c) If no, what would you include or change?

3) In the survey that you took, the majority of people indicated that they felt fairly comfortable in dealing with the legal issues which they faced daily at their school.

- a) In your experience, would you agree that that is accurate?
- b) Why do you think that this is the case?
- c) Do you feel comfortable dealing with the legal issues you face daily in your school?
- d) If yes, how did you arrive at this level of comfort (e.g. experience, training, etc.?)
- e) If no, what could be done to better prepare you for facing these issues?
- f) Did you have any formal legal training before or during the course of your career?

4) Please describe the most difficult legal issue you have personally had to face as a school administrator.

- a) Why was this more difficult than others?
- b) Was the process satisfactory to you?
- c) Was the outcome satisfactory to you?
- d) If the situation was in front of you again, would you handle it differently?
- e) What was your position in the school at the time?
- f) How did your position affect your involvement in this situation?

5) Please describe for me your relationship with the school solicitor.
(i.e. how often are you in contact, what your solicitor is used for, etc.)

6) Was/ were there any item(s) on the survey that you found to be particularly surprising
(i.e. an issue which had never occurred to you or which you do not perceive to be a problem?)

7) Were there issues that you felt were missing from the survey (i.e. things with which
you have had to deal that were not included?)

8) Are there any issues that you believe have gotten worse over time and/ or you perceive
will be getting worse in the future?

- a) How have things changed in your time as a school administrator?

9) What other issues or concerns do you see as pressing in boarding school
administration?

10) Is there anything else you'd like to tell me about how dealing with legal issues affects
your daily work as a boarding school administrator?

Vita

Angela L. Duncan

Education

5/2009 The Pennsylvania State University, Ph.D. Educational Leadership, emphasis in Educational Ethics and Law

5/ 2005 American University, M.A. Educational Leadership, emphasis in Educational Policy

5/1998 Millikin University, B.M. k-12 Music Education, emphasis in Jazz and Commercial Vocal Performance

Fields of Concentration

Educational Ethics

Educational Law and Policy

Private and Boarding School Leadership

Professional Experience

1997-2002 Interlochen Center for the Arts

Residence hall director, camp director, political science tutor, residence life administration

2003-2005 SEED Public Charter School of Washington DC

Assistant director of campus operations, teacher (English, geography, jazz history), residence hall counselor, volleyball coach

2006-2007 Easter Seals Central Pennsylvania

Development assistant, grant and publication editor, stewardship manager

2005-2009 Pennsylvania State University

Graduate research assistant, managing editor *Values and Ethics in Educational Administration*, book review editor *American Journal of Education*, Freshman FTCAP advisor

Honors

University Fellow

Recipient, Lavanda P. Muller Graduate Fellowship in Education

Recipient, Wayne C. and Elsie Kolter Hoy Scholarship in Education

Member, Pi Lambda Theta

Research Associate, The Willower Center for the Study of Leadership and Ethics