AGENDA

1. Bills of Interest (including The Return of H.B. 239, aka H.B. 132)
2. Cyberbullying
3. Sexting
4. Vaping
5. How Not to Get Sued
Legal Issue #1: Bills of Interest

• **H.B. 46**: Educator Licensing Amendments—Gets rid of current levels of licensing and directs USBE to implement a new system of licensing, including an associate license, a professional license, and an LEA specific license. USBE is still working out details for requirements for each license and when this will be implemented.

• **H.B. 48**: Parenting Plan Amendments—Requires an education plan within a parenting plan to clarify custody issues
  - PLEASE CALL YOUR LEGISLATOR AND TELL HIM/HER TO VOTE YES ON THIS BILL!!!!!

• **H.B. 132**: Juvenile Justice Modifications—Hold please.
• **H.B. 178**: Power of Attorney Amendments—Would require a district to enroll a student whose parents have moved from Utah where the parents designate by power of attorney a responsible adult in the district for the student to live with.

• **H.B. 232**: Health Education Amendments—Repeals the prohibitions on the advocacy or encouragement of the use of contraceptives in human sexuality instruction.

• **H.B. 234**: Compulsory Education Revisions—Amends the definition of "valid excuse" in compulsory education section to mean specifically, "physical or mental illness" rather than just "illness"
H.B. 132 Juvenile Justice Modifications

• Quick review:
  • H.B. 132 passed in 2017 Legislative Session
  • Prohibits schools from referring criminal offenses committed at school that
    aren’t class B misdemeanors or higher to law enforcement or courts
  • Intended to reverse the “schools-to-prison pipeline” and to have schools
    deal with school-based problems, like truancies, etc.

• 2017 History
  • Juvenile Justice Implementation Oversight Committee (JJOC), including
    Rep. Snow, Chief Justice of Jordan Police Department, Patty Norman
    (Assistant Superintendent at USBE), and others
  • Travelling road shows to get feedback from all across the state, which
    included the following...
H.B. 239—Frustrations faced by administrators, prosecutors, and law enforcement:

- Leaves schools without the teeth to enforce school rules and laws on school grounds
- Makes schools a safe haven for crimes
- Students can’t be arrested for committing minor offenses even during the summer months when school is not in session, if the offense is committed on school grounds
- Put the burden back on the schools to address low level offenses without providing a fiscal note for the added supports
- Raises questions about whether an SRO or other law enforcement officer can take a student, against his will, into custody to transport him/her to a receiving center or some other diversion program
- Prosecutors cannot send a minor before a judge for anything less than a felony or misdemeanor involving a sexual offense
1. Defines “school in session” and “school-sponsored activity” and clarifies that the law applies to offenses committed when school is in session or during a school-sponsored activity

Better yet: “This section applies to a minor enrolled in school who is alleged to have committed an offense at the school where the student is enrolled or on school property where the student is enrolled.

1. Defines a school resource officer and lists what an SRO may do, notwithstanding that a minor may not be referred to law enforcement, including: ... (next slide)
• Investigate possible offenses
• Consult with a school administration about the conduct of a minor enrolled in a school
• Transport a minor enrolled in a school to a location permitted by law
• Take temporary custody of a minor when ...
• Conduct reasonable searches on school property; or
• Use reasonable and necessary physical restraint in self-defense or when otherwise appropriate to the circumstances to obtain a weapon, protect from physical injury, remove a student who is violent or protect property when physical safety is at risk.
Better yet: keep this list, but also delete the term “law enforcement” from the following: “... the minor may not be referred to law enforcement or court...”

3. Clarifies that law enforcement **may** arrest if the minor commits an offense on school property when school is **not** in session (except for at school-sponsored activities)
More “Better Yet” Language

• Change “alternative school-related interventions” to just “alternate interventions” to clarify the interventions do not necessarily have to be created by schools but can be adopted by schools or created and developed by Juvenile Court, local counties and municipalities, and/or the Utah Department of Health and Human Services

• Include a provision that—except for truancies—a minor who fails to comply with alternative interventions may be referred to court for class C misdemeanors, infractions and status offenses committed
Hopeful 1st Substitute Language

• So far, no sign of a substitute with the “better yet” language.
• Rep. Snow seemed receptive and open to changes to his bill
• Possible that a substitute may be forthcoming in the committee, as many bills are substituted in committee.
Legal Issue #2: Cyberbullying

- In 2015, 92% of teens reported going online daily — including 24% who said they go online “almost constantly”
- More than half (56%) of teens — defined in this report as those ages 13 to 17 — go online several times a day
- Nearly three-quarters of teens have or have access to a smartphone and 30% have a basic phone, while just 12% of teens 13 to 17 say they have no cell phone of any type.
- Among these “mobile teens,” 94% go online daily or more often
- Some 88% of teens have or have access to cell phones or smartphones and 90% of those teens with phones exchange texts. A typical teen sends and receives 30 texts per day
- In 2015, teens and young adults spent 198 minutes/day on the internet on their mobile device
Good-bye “Mean Girls” from Yesteryear...
A California student and friends met off-campus, made and posted a 4-minute YouTube video critical of another student. J.C. used her personal recording device and posted the video on her home computer. The video used profanity, called the victim a “slut” and “the ugliest piece of **** I’ve seen in my life.” J.C. received a 10 day suspension and a 90-day “social suspension” which prevented her from attending school events and prevented her from crowning the new “Queen of Charm” in the year’s Charm Review, having been elected “Queen” herself the previous year.

Court reversed the student’s suspension:

• Mere “buzz” about speech is insufficient to determine substantial disruption

• Speech wasn’t violent; no violent history of student

• Perpetrator/victim had no history, so confrontation was unlikely

• No evidence of disruption of school activities: administrators did not miss school activities; no widespread whispering campaign sparked by video; issue resolved before lunch of the first day of reaction; no evidence that school work was disrupted; not a single student watched the video at school
Kara Kowalski, a high school senior in Berkeley County, West Virginia, created and posted a MySpace webpage which was labeled “Student Against Sluts Herpes.” and which was largely dedicated to ridiculing a fellow student. She defended the speech as “not at a school-related activity” and “private out-of-school speech.” She was suspended from school for 5 days.

--Kowalski v. Berkeley County Schools (4th Circuit 2011)
Court’s Decision?

The court upheld the student’s suspension:

- Most of the MySpace site’s members and the target of the site were students at the high school.
- The site was accessed first by a student at school during an after school class.
- Kowalski indeed pushed her computer’s keys in her home, but she knew that the electronic response would be, as it in fact was, published beyond her home and could reasonably be expected to reach the school or impact the school environment.
- Court repeatedly referenced and deference to Musselman High School Harassment, Bullying and intimidation Policy—adequately put Kowalski on notice.
Landon Wynar, a sophomore at Douglas High School in Nevada, collected weapons and ammunition. He used instant messaging and MySpace to communicate with friends. His messages became increasingly violent and focused on a school shooting to take place on the date of Hitler’s birth and the Columbine massacre. Finally the friends contacted a coach at school. Landon was suspended for an initial 10 days and then expelled for 90 days.

--Wynar v. Douglas County School District (9th Circuit 2013)
The court **upheld** the suspension:

- It was reasonable that school officials could “forecast” substantial disruption at school activities.
- The speech was an identifiable threat of school violence.
- It was reasonably foreseeable to the student that his messages would reach campus and therefore cause disruption.
- Had the harm described occurred, it would have been catastrophic.
- The student explicitly named the school.
- The student stated he had access to weapons and ammunition so there was reason to believe he had the ability to carry out the shooting—as opposed to being so ridiculous no one took it seriously.
- Threatening a school shooting impinged on the rights of others.
Two students at Lee’s Summit North High School created a website called NorthPress which contained a variety of offensive and racist comments as well as sexually explicit and degrading comments about particular female classmates, whom they identified by name. The posts discussed fights at the school and mocked black students. The students were suspended for 180 days but sent to an alternative school to carry out their suspension. The students filed a motion for a preliminary injunction that would enjoin them from having to go to the alternative school and allow them to stay in the regular school during the court proceedings.

_S.J.W. ex rel. Wilson v. Lee’s Summit_, (8th Cir. 2012)
Court’s Decision?

The court **upheld** the suspension:

- Shows numerous Lee’s Summit North computers were used to access or to attempt the site.
- Several teachers testified they experienced difficulty managing their classes because students were distracted and in some cases were upset.
- At least 2 teachers described as one of the most or the most disrupted day of their teaching day.
- Local media arrived on campus and parents contacted the school with concerns about safety, bullying, and discrimination.
- Administrators expressed concerns that the Wilsons’ early return would cause further disruption and might endanger the Wilsons.
Case #5

• A student in Itawamba County, Michigan, made an rap recording, which he uploaded to Facebook and YouTube claiming two teachers/coaches at the school were harassing and preying on female students. The video had several vulgarities, including the use of the F and the N word multiple times and included the lines:
  • “You f****g with the wrong one/Going to get a pistol down your mouth”
  • “Middle fingers up if you want to cap that n****a”

• When a student played it for one of the coaches named in the song, the coach reported to the principal and Bell was suspended for 7 days and placed in an alternative high school for the remainder of the term.

--Bell v. Itawamba County Sch. Bd., 799 F.3d 379 (5th Cir. 2015)
Initially, the district court upheld the suspension, but the 5th Circuit Court of Appeals reversed.

• There was no commotion, boisterous conduct, interruption of classes, or any lack of order, discipline and decorum at the school as a result of Bell’s posting his song

• Staff testified that students seemed to act normal; most of the talk about the song was about Bell’s suspension rather than the song itself

• No evidence that Bell or any other student listened to the song on campus, aside from the single instance that the coach had the student play it for him

• No evidence of a “foreseeable disruption”, either. Bell’s song was composed, recorded, and posted entirely off campus; school computers blocked FB and school policy prohibited possession of cell phones, diminishing the likelihood that a student would access the song on campus.

• The violent lyrics in the song were “plainly rhetorical in nature and could not reasonably be viewed as a genuine threat to the coaches”
Case #6

Student made a “mashup video” combining the songs “Evan” and “Pumped Up Kicks” and posted to Instagram. The post included tags that said, “See you next year, if you’re alive,” and “See you next yaer. It is not a threat, you n****s need to chill.” Students and parents became concerned. The PA state police contacted the principal at 2 a.m. and school was cancelled the following day. Student was expelled.

--A.N. v. Upper Perkiomen Sch. Dist., 117 LRP 1109, 2017 (E.D. Pa. 01/10/2017)
Court’s Decision?

Court **upheld** the suspension

- The speech caused material and substantial disruption:
  - after viewing the post, two students asked whether the post was a threat;
  - a parent sent an email to the school’s principal to notify him of the post;
  - another parent called the state policy, who also notified the principal;
  - school officials were up all night to determine the identity of the poster and discern whether the perceived threat was credible;
  - the superintendent cancelled school district-wide the next day

- “Although the student argued that the post was meant to be a joke, the student’s subjective intent was not relevant to the court’s application of *Tinker*. The *Tinker* standard also did not require the court to decide whether the school officials’ characterization of the student’s speech as a threat was proper.”
Be sure you can **articulate** the substantial disruption to the school environment caused by speech that originates off campus. Literally, make a bullet-pointed list of instances of disruption.

- 10 media calls this morning between 7 a.m. and noon.
- 50 upset parents calling before lunchtime.
- 3 students came to the counselor’s office on 3 separate occasions in tears during 1st period.
- The victim of the bullying refused to come to school.
- Mrs. Johnson reported she could not get her class to stop talking about the video.
- The victim’s best friend and the student who posted got in a fight at lunch over the video. 20+ students surrounding the fight. Administrators had to break it up.
The 1st Amendment is not dispositive on whether a school has an obligation to address the problem under federal civil rights laws.

In other words, even if you cannot articulate any substantial disruption at school that would warrant a suspension, schools cannot ignore the online conduct if it was based on some civil rights protections (sex, race, disability, religion)

- For example, a female student being called sexually provocative names
- Transgender student is targeted for his gender status
- Racial slurs and epithets
- Jokes about disabled persons

DO SOMETHING ABOUT IT!
Civil Rights Responsibilities

Just because you might not be able to suspend a student, you can still address the behavior and take “prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur.” (Dear Colleague Letter, OCR October 26, 2010)
Legal Issue #3: Sexting--the New Flirting? Or The Worst Cyberbullying Ever?

• 17% of sexters share the messages they receive with others, and 55% of those share them with more than one person.

• While nearly 70% of teen boys and girls who sext do so with their girlfriend or boyfriend, 61% of all sexters who have sent nude images admit that they were pressured to do it at least once.

• Nearly 40% of all teenagers have posted or sent sexually suggestive messages, but this practice is more common among boys than girls.

*These stats come from: https://www.dosomething.org/us/facts/11-facts-about-sexting. Sources are identified at the bottom of the website.
• Sending semi-nude or nude photos is more common among teens girls. 22% of teen girls report sending images of this nature, while only 18% of same-age boys have.

• 15% of teens who have sent or posted nude/semi-nude images of themselves send these messages to people they have never met, but know from the Internet.

• 24% of high-school age teens (ages 14 to 17) and 33% of college-age students (ages 18 to 24) have been involved in a form of nude sexting.
So… How Do You Address Sexting Problems?
1. Policies!

District administrators, ensure your district has policies regarding appropriate cell phone use:

• How and when school staff can confiscate and/or search cell phones or electronic devices

• The policy should inform parents and students that police may be contacted if students are found in possession or nude or semi-nude images of minors on their electronic devices

• School discipline policies should address sexting and cyberbullying

• Policies that address class disruption should include disruptive cell phone use
2. Community and student outreach and education.

• Provide a clear definition of sexting.*

• Help parents and students understand the potential legal implications:
  • State criminal laws include: Distributing pornographic material, Sexual exploitation of a minor, Dealing in harmful materials of a minor.
  • Federal laws on child pornography are also implicated, not to mention potential civil lawsuits

• Review school policy (see “Solving the Sexting Problem, Point #1—HAVE a policy)

*In a 2014 survey conducted by Impero researchers, 83 percent of young people ages 8 to 11 years old and 93 percent of young people aged 12 to 15 years old said that they knew how to be safe on the Internet. But 40 percent of those students did not consider topless images inappropriate.
Community and Student Outreach, cont.

• Help parents understand all the various apps that are conducive to sexting
• Help students understand that “vaulted” or “secret” or “private” or “deleted” texts are not actually any of those things
• Scare the bjeezies out of kids by telling them once an image is sent, it’s never retrievable; they have no more control over who sees it and where it goes; there are child pedophiles that scour the internet for images of young girls and boys; kids have committed suicide because of the trauma of having a compromising image sent around school.
• Help students understand that just because the image is sent to a trusted friend, lover, soulmate, that person may not always be so trustworthy.
3. Don’t Ignore It!

- If you hear about a sexting scandal, report to your SRO or to law enforcement immediately. The criminal implication of possessing and distributing nude or semi-nude images of minors can be serious.

- Law enforcement may do nothing. Some prosecutors have taken the stance that if two kids the same age willingly and consensually share images of themselves with each other, they will not prosecute.
• If law enforcement does nothing, decide whether to pursue it further. That determination may rest on:
  • Your district policy and/or practice
  • Whether your district has a specific policy prohibiting sexting
  • Whether the images were distributed at school (sometimes hard to tell without a time/date stamp) and/or whether the images were viewed at school.
  • Whether the distribution of the images had a clear nexus to school or caused a disruption
  • Whether kids are harassing/bullying the subject of the images—This may implicate Title IX

• If law enforcement pursues an investigation, you still may want to pursue school discipline if the sexting violated school policies. Work with your local agency so as not to impede their investigation and to get information necessary to pursue administrative discipline.
  • Remember, a school’s timeline to discipline students and ensure safety of students is going to be much shorter than law enforcement’s timeline to prosecute
4. Remember the Ting-Yi Rule

Do NOT EVER EVER EVER EVER copy, forward, and ask a student to forward you a sext during the course of your investigation.

➔ Instead, take the phone and call police!

➔ In addition to preserving evidence, you also prevent at least that person from further distributing the image.
You may search phones, but remember the Fourth Amendment! Any search of a cell phone must be justified in its inception and permissible/reasonable in its scope.

In other words:

(1) Do you have good reason to believe the student has something on his cell phone that is evidence of a policy violation?

(2) Is your search of the phone limited to the areas that you have reason to believe may turn up this evidence?
Example of Cell Phone Search Gone Wrong

• In Pennsylvania, parents of student Christopher Klump sued for, among other things 4th Amendment violation when Principal Kocher confiscated Christopher’s cell phone because he displayed it during school hours, in violation of a school policy prohibiting the use or display of a cell phone during school and then subsequently Principal Kother and AP Grube called nine other students listed in Christopher’s phone number directory to determine whether they, too, were violating the school's cell phone policy.

• The assistant principal and teacher also accessed Christopher's text messages and voice mail to determine if Christopher had violated any other school rules. They also called Christopher’s brother through IM (old-school AOL feature), without identifying themselves as being anyone other than Christopher.
Klump case, cont.

• Court held that there was no basis for initiating a search and refused to dismiss the case on grounds of qualified immunity.

• **LESSON LEARNED:** You must have some basis for believing you’re going to find something on a student’s phone (ie, Suzy, a reliable trustworthy student, reported that Jonny has been sending nude pictures via snapchat of his ex-girlfriend to everyone at school). AND THEN... your search of the student’s phone must be LIMITED to finding that evidence. (ie, You can look at snapchat stories or other apps known to record snapchat stories after they automatically delete, but not listen to voicemail).
• Like with cyberbullying, even if you decide against investigating or disciplining students for sexting, schools have an obligation to ensure that students are not harassed on the basis of sex under Title IX.

• This means that if an image of a student has been widely circulated and that student is in danger of harassment, bullying, etc., and the school *knows or should have known* about the harassment, we have that obligation to take “prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur.”

• In other words, look into the harassment and take appropriate action to end it.
Summary of Sexting

• Sexting is not likely to go away.
• If it comes into your schools, you need to deal with it.
• Get law enforcement involved after conducting an initial investigation to determine what you’re dealing with.
• NEVER copy or download images.
• Conduct searches in lines with 4th Amendment principles
• Follow your district policy/practice regarding disciplining students for sexting.
• Remember to watch for harassment and provide help for students whose naked images have been shared with all their peers.
Legal Issue #4: Vaping

- University of Michigan study conducted in 2017 asking 50,000 8th-, 10th- and 12th-grade students every year since 1991 about drugs and sex and attitudes on subjects ranging from race and ethnicity to career plans.

- Findings:
  - drug use generally down,
  - marijuana use stayed the same,
  - “very high and very fast uptake of electronic vaping devices” (A new US Surgeon General report says e-cigarette use among high school students has increased 900 percent since 2011)
Stats

- 1 out of every 3 high school seniors used a vape or e-cigarette
- Roughly 10 percent of high school seniors reported intentionally vaping nicotine, but many teens surveyed seemed unsure whether or not they were using a product with the drug
- "Teens endorse that they don't really know what they are vaping. They may think they have just a strawberry flavor, and it may be mixed with nicotine."
Teenagers are also using e-cigarettes for marijuana or hash oil, according to the survey, with roughly 11 percent of high school seniors saying they've done that.

Hash oils can reach 95 percent pure THC, the psychoactive component in marijuana.

Vaping such high concentrations of the drug can put people, particularly those who are not used to smoking weed, at a higher risk for undesirable side effects like temporary psychosis.

Some vaping devices do not look like vaping devices: Juul, a new product on the market, looks like a USB flashdrive, and filled with a Juul “pod” contains as much nitotine as a pack of cigarettes*


*Source: Juul e-cigs: The controversial vaping device popular on school campuses, by Josh Hafner, USA Today, Oct. 31 2017
Vaping in Utah

- Experimentation and use of vaping products among Utah youth nearly doubled from 2013 to 2015 (12% to 30%)
- In 2015, Utah youth were most likely to borrow e-cigarettes from others (23.2%) or buy them in a convenience store, supermarket, discount store, or gas station (20.0%).
- Other vape product sources include tobacco or vape shops (13.0%), the Internet (12.1%), getting them from a person older than 18, and giving someone else money to buy them.

Source: Youth E-Cigarette Use 2015 Utah Data Update, by Janae Duncan, Program Manager Utah Department of Health Tobacco Use (http://le.utah.gov/interim/2016/pdf/00000733.pdf)
Policies

• How many of your student conduct policies include e-cigarettes?
• Do they treat e-cigs as tobacco products or drug products/paraphernalia?
• How many of them include referrals to law enforcement or citations?
  • NO LONGER AN OPTION UNDER H.B. 239. Tobacco/e-cigarette use by minors is a class C misdemeanor
  • District and school policies need to change to comply with H.B. 239
• So what CAN you do about vaping?
What schools around the country are doing?

• D.C. principal taking doors off bathrooms to ensure students do not vape
• California school prohibits students from using restrooms during class
• New Jersey school treating e-cigarettes as a substance abuse violation: first offense results in 5 day suspension from school and 7 day suspension and extracurricular activities (including dances and graduation)
• Another California school requires students to be drug tested if found with an e-cig
• Meet with counselor before returning to school following a suspension
• Educating communities/parents
What You Can Do

• Confiscate e-cigarettes and vaping devices. If student complains that it was expensive or belonged to parent or sibling, hold it in your office until a parent can come pick it up. (It’s helpful if this is noted in your school or district policies)

• Suspend

• Youth court

• Require tobacco and drug awareness classes

• If you have reasonable suspicion that a particular student was smoking pot through his/her e-cig at school, refer to law enforcement. Illegal substances (including marijuana) is a class B misdemeanor and MAY be referred to law enforcement

• Fines?
• Mom sues New York school because her daughter received an expulsion for vaping in the bathroom with Fatima Ptacek (“Dora the Explorer”, while “Dora” received a 3-day suspension)

• Dad sues Ohio high school when his son was benched the rest of the football season for having e-cigarettes on school grounds when other students only got benched for 1 game.

• **LESSON LEARNED:** Be sure to treat all students the same under your policy!
Legal Issue #5: How Not to Get Sued

WHO SUES SCHOOLS?

• Patrons
  • Mostly parents, but anyone who could be considered a “customer”

• Employees
Litigation Costs

• In litigation, it doesn’t matter if you’re right; it matters how much you’re willing to pay and how many documents you can produce to prove you’re right. And any Tom, Dick, or Harry can file a lawsuit.

• Lawsuits cost and not just financially.
  • Depositions are time suckers
  • Being named personally in a suit is emotionally taxing
  • Lawsuits can drag on for years
Part I: Happy Customers Don’t Sue
Scenario 1—Pick the most appropriate response:

You’ve been asked to join an IEP with a mother who has a reputation for being extremely difficult. In addition to her reputation, the two of you clash in personality on just about every level. The child is a student with autism and the mother is demanding the school pay for equine therapy, at $200/hour, 3 hours a week, as the child seems to calm down around horses. You’ve never seen equine therapy as a related service on an IEP and you’re thinking to yourself, “What a joke.” But out loud you say,

a. “What a joke! Lady, if you think we’re paying for some crazy therapy for your kid, you should check yourself into therapy!”

b. “I’m sorry, but that’s simply not an option.”

c. “Can you help us understand how equine therapy will provide an educational benefit? Let’s discuss this as a team and see what we can come up with.”

d. “Great idea. I’ll get that arranged.” Then, under your breath, “Anything to get you to shut up and go away.”
Scenario 2—Pick the most appropriate response:

The parents of a 16 year old transgender student call you regarding their child who was born male but identifies female. The student played basketball on the boys’ team all through junior high but was recently cut from the team, and the parents are now asking you to allow the student to try out for the girl’s team. What is your response?

a. “If you think I’m that stupid, you’ve got another think coming!”*

b. “I’m sorry but we can’t allow a boy to try out for a girl’s team just because he got cut from the boy’s team. It wouldn’t be fair to the girls.”

c. “I didn’t realize your child was transgender. I’m not exactly sure what the district’s policy on this matter is, but let me do some research and get back to you. Also, I’d love to sit down with you and your student and discuss further your student’s gender identity and how we can assist you and your student with a transition, including name changes, pronoun changes, dress code, bathroom/locker-room use, etc.”

d. “Of course your student can try out for girl’s basketball. Not a problem.”
It’s a typical Monday morning and you get a call from an angry patron whose home borders the playground of your school. Apparently, over the weekend, some kids were throwing rocks from the playground and one went through this woman’s window, hit her beloved cat FluffFluff giving it a concussion and sending the cat and the woman to the emergency room yet all weekend. Now FluffFluff has to wear a helmet and is fraught with anxiety, fearing another unknown flying object. She (the woman, not FluffFluff) is not happy. She wants you to pay for the window, the helmet, and the cat’s therapy. What do you say?

a. “Look lady, if FluffFluff is paranoid of UFOs, that makes two of us. If you hate kids so much, you really should not be living where you do.”

b. “M’am, it’s not the school’s or the district’s responsibility for what happens on the playground afterhours. You’ll have to take it up with the kids who threw the rocks.”

c. “Mrs. ____, I’m so sorry about what happened to your window and to your cat. That must have been frightening for you both. If that happened during the school day and we knew who the culprits were, we’d certainly address it with the students and their parents. As it happened on the weekend, I’m not sure if there’s anything we can do, but let me talk to my supervisor and I’ll get back to you.”

d. “What’s your address? I’ll have a check issued this afternoon.”
What’s the common theme here?

• All “a” answers were rude and ridiculing.
• All “b” answers were polite but still shut down options.
• All “c” answers heard the concerns, empathized with the person speaking, and, while not promising anything, offered to further explore options.
• All “d” answers gave away the farm.
KEY: Administrators are Customer Service Experts

Good service makes the difference!
What does this have to do with litigation?

Happy Customers Don’t Sue.
So, does this mean we roll over and give crazy patrons everything they want?

• No, absolutely not. But this is where your therapist/customer service skills come into play.

• Most of the time, angry patrons just want to vent and parents just want to feel listened to. The worst reaction to an angry, venting patron or a parent asking for the moon, is an emotional one.
LAAF

- The best reaction is to LAAF.
  - Listen.
  - Acknowledge the patron’s frustration.
  - Ask what it is the patron is asking you to do.
  - Feel free to say “Let me get back to you on that”.

![Chimp laughing]
PART II: Happy Employees Don’t Sue

I ❤ MY JOB!
Scenario 1—Pick the most appropriate response:

You have a teacher who is, by all accounts, a completely mediocre teacher. She gets the job done but puts in minimal effort. She isn’t loved by her students, but she’s not hated. She’s often late, but she shows up. And she has an Eyore-like attitude that is contagious. She comes to you one day after her 5th tardy in a row and tells you she’s been dealing with depression and she needs an accommodation to allow her to sleep in when she doesn’t feel like getting up. Do you:

a. Tell her, “Cry me a river! We all don’t feel like getting up some days. Suck it up!”

b. Say, “Thank you for letting me know but unfortunately, you’re going to have to show up on time just like everybody else.”

c. Direct her to HR to go through the ADA accommodation process

d. Tell her, “That’s really sad. I’m so sorry. Of course, come in whenever you want.”
Scenario 2—Pick the most appropriate response:

One of your most popular teachers just got a tattoo all up and down both arms and his neck. In your opinion, it is distracting and violates your school’s dress code. When you approach the teacher about it, he tells you the tattoo expresses his religious beliefs and you can’t ask him to cover it up because that would be like asking him to cover up his religion. Do you:

a. Tell him, “That’s too bad, cover it up or find yourself another job.”

b. Say, “I understand. Thank you for explaining.” And then put him on unpaid administrative leave for the rest of the year.

c. Tell him, “Ya know, let me talk this over with HR and get back to you.”

d. Express your interest in his beliefs and ask him if he’d be willing to share his religion with the faculty and with the students in an assembly.
Scenario 3—Pick the most appropriate response:

One of your most difficult employees—a secretary—is a concealed permit holder. She’s worked at your school longer than all the other secretaries combined and she thinks she owns the joint. Several people have complained to you that she deliberately lets her gun show in a confrontation (which she seems to get into often), and it’s intimidating to those she’s talking to. When you ask her about it, she goes on a 20 minute rampage about gun owners’ rights and threatens to sue you for infringing on the 2nd Amendment. What do you do?

a. Relishing this moment because you have had it with this woman, yell at the top of your lungs, “You’re fired!”

b. Calmly let her know she is going on a sabbatical and never coming back.

c. Tell her you respect her right to carry a concealed weapon, but by definition, “concealed” means “concealed” and you’ll have to ask her not to bring it to school if she does not keep it concealed. Or call HR.

d. Back away, quickly and let her do whatever she wants. After all, she’s the one with the gun.
Most appropriate response is ALWAYS going to be:

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• Calmly approach the situation
• Respond with respect and reason
• If in doubt, do not hesitate to call for help
• Equal treatment for all employees!