1st Quarter 2014
Open Door Session with Melanie Herman

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1st Quarter Webinar Topics

- Codes of Conduct
- Social Media and the Law
- Risk Oversight
- Questions about these… or other risk topics?

How are Codes of Conduct most often used in nonprofits?

- Responding to inappropriate action or behaviors
  - Alternative to targeted discipline
- Codifying accountability protocols
  - If this, then that
- Expressing desired minimum standards
  - Supporting tool for accreditation, licensing
- Signaling goals or aspirations
  - We want our staff to behave this way
What Makes a Code of Conduct “work”?

**Staff:**
- Real risk of being fired (or punished) if you violate the code
- Perception that chances of being caught (and held accountable) are high
- Consistent adherence by the leaders of the organization

**Participants:**
- Real risk of being suspended or deemed ineligible
- Perception that chances of being caught (and held accountable) are high
- Consistent application of the code – it applies to everyone and no one is above the rules

**Volunteers:**
- Pride
- Desire to fit in, perform at a high level, and contribute to a team

**Common Challenges**
- Inconsistent policies
- Overly complex policies or requirements
- Inconsistent enforcement of policies
- Lack of “common sense”
Code of Conduct Best Practices

- Timed appropriately
- Perfectly suited to the intended audience
  - Simple by design ("no hitting")
  - Use familiar terms and references
  - Age-appropriate
- Tuned / proper tone
- Clear and unequivocal
  - Standard + consequences of violating the code
- Voluntary agreement to comply

Samples reviewed during the webinar

- Members of a profession
- Members of a Nonprofit Board
- Staff at a Youth-Serving Nonprofit (youth protection-oriented)
- Volunteers at a Youth-Serving Nonprofit
- Athletes/Participants

When NOT to use a Code of Conduct
Code of Conduct Homework Assignment

- If you don’t currently use a code of conduct for your board, staff, volunteers and athletes, what are the most compelling to do so?
- If you decide to develop a code, what are the three top goals or rules you’ll follow?

Code of Conduct Homework Assignment

- Take a closer look at your existing code(s) of conduct
- Ask:
  - What is the primary purpose of the code? Has that purpose been met by its use? If not, why?
  - Does the code meet the “best practice” test?

Social Media and the Law

- Unintentional Illegal Discrimination: The Slippery Slope to Information That You Can’t Use: Social media sites provide endless information about prospects. Beyond being entertained, bored or surprised, is there a legal risk?
- Too Strict Social Media Policies May Violate the NLRA: The hard truth is that you can’t prohibit employees from talking about work… in all cases.
- Is Your Nonprofit Big Brother? When curiosity or risk management cross the line.
- Social Media and Copyright Protection: tweet and publish with care.
Balancing Risk & Reward

- Some employers believe that researching online profiles is key to:
  - Identifying candidates whose personal conduct puts the organization (e.g., the camp) and its clientele at undue risk
- Be aware of the potential for discriminatory bias and proceed with caution

Can you discipline staff for unbecoming conduct on a Social Media site?

- Not unless an employee’s post on a social media site directly impacts the reputation or harms the organization.
- “Some states have general rights of privacy and others have more specific laws that protect employees from discipline for their off-duty, off-site conduct. So reserving the right to discipline employees for their conduct in their social media accounts can violate an employee’s right to privacy.” http://www.hrexaminer.com/8-reasons-social-media-policies-backfire/

Privacy Legislation

- As of Jan. 2014, 24 states have legislation (or are considering legislation) that prohibits employers from requesting or requiring employees to provide usernames and passwords for their social media accounts.
- According to the National Conference of State Legislatures, employers often request this information to protect trade secrets, comply with federal regulations, and minimize legal exposures. www.ncsl.org/research/telecommunications-and-information-technology/employer-access-to-social-media-passwords-2013.aspx
Risk Lessons

- A social media policy can be an important risk management tool.
- Don’t over-reach by prohibiting employees from discussing the terms and conditions of employment.
- Exercise caution when searching social media sites for info on current and prospective staff.

Managing Copyright Risk

- Adopt clearly stated policies regarding the use of others’ content.
- Establish an internal review process prior to the posting of online content.
- When in doubt, seek permission and obtain a release!

What does “risk oversight” mean in a nonprofit?

- The Board is responsible for overseeing management’s efforts to identify, evaluate, prioritize, mitigate and monitor risks.
- The Board is also responsible for establishing risk policies that protect assets needed for the nonprofit’s mission.
- The Board should pay special attention to the risks associated with strategy.
WHO

* "In carrying out their role of risk oversight, some boards choose to assign responsibility to selected committees to assess the risks relative to their mandate. Some boards have established a separate risk committee. Many boards prefer to have risk oversight assessed by the entire board." SOURCE: "Building High Performance Boards," CCGG

- (1) existing committees; (2) new risk committee; (3) board as a whole
- How to decide? What will work best for your BOARD given your governing structure, size, and culture?

HOW

- Clearly assign board responsibility for risk oversight (e.g., in the bylaws, committee charters, etc.).
- Ensure breadth of capability on the board to understand and oversee critical risks; retain independent advisors as needed.
- Ensure directors are engaged in a conversation about risk: what’s changing? What more do we need to know to make the best possible decisions about strategy?
- Allocate sufficient time on the board’s agenda to consider risk.
- Begin drafting a narrative about how the board oversees risk.

Thank you!

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