

## Safe from Harm

*In the wake of several school shootings, a get-tough stance is tempting, but compassion and conversations are just as important*

**T**he mountainous and usually tranquil state of Colorado was again the site of a violent shooting inside a high school this September, leaving school officials nationwide to re-examine their own policies and practices to keep students safe at school.

But the issue goes beyond simply one of security. Good school law attorneys know there is a delicate mix when taking the necessary steps to control risk, while still maintaining the openness and sense of trust that public schools have historically enjoyed.

The question of whether school safety measures interfere with learning climate is often overlooked. But it is an equally central part of the equation. From a legal liability standpoint, no school system wants to stand accused of being lax. In the past 10 years, there are plenty of examples of individuals using school buildings or school grounds to make a last, bullet-riddled stand—leaving tragedy and heartache in their wake. Even a rural Amish school is not immune, as we learned in early October when an intruder stormed a one-room schoolhouse in Nickel Mines, Pa., shot and killed five students, injured several others, and then killed himself.

After such inexplicable violence, one of the first questions asked by grieving survivors is this: Could it have

been prevented?

As more and more incidents occur, the temptation looms for the pendulum to swing toward caution and for school leadership teams to adopt rules that give courts plenty of concrete examples that demonstrate their get-tough stance. As a defensive measure, it is wise to catalogue various precautions taken.

School boards often are motivated as much by a dread of potential liability as a sense of foreboding. The rationale is twofold: 1) We do not want to be the test case, and therefore let's make our security airtight. 2) If we save just one child, then ...

### **A need for dialogue**

Discussion is the key. It would be easy for school board members to merely make one-at-a-time decisions: purchase metal detectors, deploy drug-sniffing dogs, or install surveillance cameras. But the gravity of the topic calls for board members, the superintendent, and the school attorney to have a more overarching conversation.

Topics would necessarily include talk about tolerance for risk, impact of various security measures on the ability of students to learn and schools to be welcoming places for parents and guests, and the possibility of being held legally responsible for actions taken or not taken.

Many times school safety is reduced to an either/or situation. A libertarian view might be that school inhabitants are entitled to their freedom and school officials dare not surpass what is legally enforceable and practical in a school environment.

Authoritarians, by contrast, would say extraordinary times call for extraordinary measures. They would add that by looking around the nation one can see the damage that has been inflicted. Hence, school officials should take proactive steps—every means necessary—to avert harm and keep every child, teacher, administrator, and all other employees safe.

How superintendents and school boards treat this issue of school climate sends a signal to students. It tells young people how secure adults feel about the world. It also gives them an example of the U.S. Constitution in action.

School safety practices can raise questions of First Amendment freedom of speech, freedom of religion, and freedom of the student press; the Fourth Amendment freedom from unreasonable searches and seizures; and Fifth Amendment Due Process (a right to be heard before punishment).

The memory is still fresh of Columbine High School in Littleton, Colo., where two students went on a shooting rampage, killing 12 students and a teacher, and wounding two dozen others. This September, Platte Canyon High School in Bailey, Colo., became another example of school violence. A man with little connection to the school burst in, held hostages, eventually assaulted six girls, and died in a hail of bullets by a Special Weapons and Tactics (SWAT) team. One student died

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as a result of the incident.

### A culture clash

As K-12 education law attorneys Thomas E. Wheeler III and Thomas W. Pickrell noted in this magazine, a culture clash sometimes emerges between crime fighters and educators. In their 2005 article, "Schools and the Police," they wrote: "While school safety is the mutual goal, the mission of law enforcement is to stop crime, and the mission of public schools is to educate children. At times these missions and the cultures that support them can lead to an uneasy alliance."

A study released recently by New York University's Robert F. Wagner Graduate School of Public Service reinforced that point. It found that while police officers in schools are an effective way to prevent crime, their presence increases tension and elevates disputes to criminal matters. For example, the report revealed that students were charged with disorderly conduct for yelling at a teacher or screaming in the halls—offenses that would normally be dealt with as a rule violation. The report recommends that school officials build relationships with students, rather than use criminal penalties as a first resort.

If a school district wanted to quash as many internal and external threats as possible (and had a hefty budget), it might take the following actions:

- Hire a security company to do a threat assessment and recommend steps.

- Install video security cameras in all school buildings and around the perimeter of the property.

- Install video security cameras on all school buses in the fleet.

- Conduct random locker searches.

- Conduct random car searches in the school parking lot.

- Require all students participating in extracurricular activities to agree to a random drug test.

- Erect metal detectors.

- Operate occasional drug-sniffing and bomb-sniffing dog searches.

- Ban inflammatory clothing (such as those depicting a confederate flag) that might incite conflict.

- Implement a zero-tolerance discipline policy.

- Require not only staff but also students to wear their I.D.s on a lanyard.

- Adopt a policy regarding off-campus electronic harassment.

- Equip all school buses with global positioning systems.

- Require all volunteers to submit to fingerprinting and background checks.

- Post constant sentries at every entrance at all times.

- Allow security officers or resource (full-time police) officers to be armed.

But if this fictional school district took all these steps, the heavy criticism of students—particularly those in high school who are approaching adulthood—would likely be that they are not being treated with respect. Students have been known to utter that the security precautions taken by offi-

cial make the environment seem more like a prison than a school.

### A local decision

Each community, however, knows its students and the threats they pose, which means there is no one-size-fits-all answer. Schools have to be primarily places of learning where young people know they are respected, supported, and trusted. Yet, those in a position of power cannot be naive.

Randolph Public Schools in Massachusetts, for example, has banned hooded sweatshirts (known as hoodies), because district officials say students could conceal stolen goods inside the hood or use it to hide their identities from cameras.

Sometimes, however, the courts let government officials know they have gone too far. In July, a U.S. District Court judge approved a \$1.6 million settlement against South Carolina's Berkeley County School District and the Goose Creek Police Department. Police entered the high school with guns drawn and forced students to the floor during a drug raid. Some students were handcuffed, but no arrests were made and no drugs were found, leading to the class action lawsuit.

In yet another push to the pendulum, even Congress is weighing in on what should be done. In September, the U.S. House of Representatives approved a measure that would require schools to pass policies governing student searches. The Senate has not yet taken action on a companion bill.

Bottom line: School boards and the individuals who advise them need to be careful about maintaining a balance between safety efforts and a climate conducive to learning. Legal fears, in other words, must be counterbalanced by educational considerations, which deserve equal weight and equal thought. ■

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## Policy questions to consider

- Have the superintendent and board of education discussed your philosophy behind school safety, determining, for example, whether preventive efforts or after-the-fact punishment (deterrents) take higher priority?

- Are issues of school climate important to the school board and the community, or is absolute safety foremost?

- When the need arises, are the lines of authority clear with resource officers who are also police officers? Does policy or regulation address when a matter is on the internal school discipline track rather than criminal?

- With limited resources, is the school district's energy spent mostly on controlling threats within (students and staff) or outside threats (violent behavior by individuals intent on hurting the school community)?