

CHAPTER 2

Preventive Law

Developing Risk and Crisis Management Programs

Accidents, incidents, or transgressions are organizational and managerial problems and not always, as we tend to think, people problems. Regardless of the cause of problems that may lead to litigation, such events are too often dealt with ex post facto rather than by means of a well-planned, proactive program of risk anticipation and litigation prevention. Risk factors diminish with a well-defined, proactive program of preventive law. The function of preventive law is to regulate human conduct to ensure a harmonious society by attempting to strike a balance between allowing individuals as much freedom as possible and enabling society to function without unreasonable interference from the conduct of individuals.

School districts should make preventing liability a high priority in daily operations. In many school districts, responsibility for preventing litigious actions or inaction and loss is relegated to middle- and low-level staff members. The longstanding misperception is that safety and loss programs involve minor personnel matters and relatively insignificant details. Yet when a major incident, accident, or loss occurs, it requires significant top-level time and energy. A senior manager should be assigned the responsibility for a district's risk management prerogatives. In the development and implementation of policies and procedures, school districts, in cooperation with their legal counsel, should include the concepts and practice of preventive law as a major component of their overall risk management program. A tendency in many school districts is to temporize and downplay the significance of legal problems, seeking answers to such problems at the operational level rather than at the organizational level, and school districts often rely on legal counsel only after they are in trouble. That said, despite district initiatives, principals can significantly reduce their exposure to liability by incorporating and practicing preventive law as outlined here.

CONSIDERATIONS RELATED TO COVID-19

Minimizing the likelihood of students and staff from contracting the virus is clearly the most important priority for school districts and principals. There are other risks that are associated with school operations affected by the pandemic that have also become apparent, some of which previously existed but have become magnified due to COVID-19.

Achievement deficits and opportunity gaps have worsened. This is especially true for those students with special needs and those who may not qualify for services but still are in need of in-person, consistent classroom attention. Future planning and resources must be directed at these deficits.

Similarly, virtual learning has further exposed the gaps between those who have access to devices and internet services and those that do not. Forced to move toward virtual learning required the immediate

addressing of equity issues that have always existed but in many cases were still allowed to continue. Even though this has created additional budgetary and implementation pressure, being forced into action toward greater equity has produced many positive results, including partnerships with businesses, internet service providers, and other agencies that will hopefully continue in the future.

Rising rates of youth suicides in 2020 have been linked to the impacts of COVID-19. School districts and educators have not only a moral obligation to do all they can to prevent youth suicide through conscientious suicide prevention programs, but a legal obligation as well. The social-emotional effects are also present as they relate to overall student and staff trauma, and as will be noted in further chapters, there is now litigation related to trauma as a disability.

SUGGESTED GUIDELINES FOR PRACTICE

Somewhat arguably, there are three major daily functions and responsibilities of educators each day school is in session—teaching; keeping everyone safe; and dealing with the social, emotional, and physical needs of students. Hopefully inarguably, the number one concern each day is that no one is injured in any way or that no acts of violence are committed on the campus.

Minimizing risk is not only a legal obligation but a moral one as well. This chapter deals with ways to minimize risks, with the following chapter describing remedies in place when incidents occur through either negligence or willfulness of some kind.

Principals and other educators are not expected to prevent all possible accidents, injuries, or other

potential injurious events, but they are expected to take every precaution to prevent them from occurring as much as a possible.

Principals are reminded of the idiom “nothing is an emergency except an emergency.” Successful principals have a sense of what requires immediate action and response and what does not. The reason this is important is that placing too much focus on what isn't truly an immediate “crisis” can prevent you from seeing far more serious problems that jeopardize health and safety. For example, the presence of gum left in a drinking fountain is a nuisance but not worthy of being distracted from a bubbling issue of social media bullying of a student who may be reaching the breaking point.

SECTION A. PREVENTION AND RISK MANAGEMENT

Tenets of Preventive Law and Risk Management

The concepts of preventive law and the management of risk, which are interwoven throughout this book, are illustrated by six general beliefs or tenets:

1. *An understanding of the substance of law limits an education organization's culpability and exposure.* Effective principals base their day-to-day decision making on substantive law, which consists of both an understanding of the basic tenets of law and knowledge of current education litigation decisions.
2. *The proper application of procedures, informed decision making, and foreseeability reduces liability and environmental and organizational loss.* Effective principals adhere to procedures and precedents established by law, exercise reasonable and prudent judgment in situations not directly addressed by the law, and integrate foreseeability when practicing preventive law, thus minimizing exposure to liability and loss.
3. *Working with counsel reduces budget loss.* When they have questions about legal issues that are not directly addressed in established laws and procedures, effective principals consult legal counsel.
4. *Flexibility endangers system stability but enhances conflict resolution.* Although principals must strictly adhere to, enforce, and monitor all policies and procedures, effective principals demonstrate flexibility and reduce conflict (and avoid litigation) by fostering a school climate in which divergent ideas may be presented, respected, permitted to flourish, and channeled into productive results for the school.
5. *Knowledge of precedent, constitutional compliance, and public information needs enhances crisis and motivational management and monitoring.* Effective principals understand the legal ramifications of precedent-setting cases and consider the significant protections provided to students, teachers, and others under various interpretations of the Constitution when making decisions. They also know that it is often up to them to educate parents and others about how court actions influence the daily operations of the school.
6. *Leadership in the education enterprise must be coupled with leadership in preventive law.* Effective education leadership sometimes involves taking calculated risks when complicated situations warrant decisive action; however, such risks must be legal and must demonstrate a commonsense commitment to preventive law.

What Is Preventive Law?

Preventive law is generally defined as a program, supported by policies, procedures, and regulations, that endeavors to minimize the risk of litigation or to secure, with more certainty, legal rights and duties. Preventive law emphasizes the importance of *pre facto* planning to avoid legal problems and their consequences should litigation ensue. There are four components of preventive law, all of which should be put into everyday practice at the building level by principals:

1. The *anticipation* of legal challenges (foreseeability);

2. The *evaluation* of the legal merits of potential challenges;
3. A *consideration* of the policies (in effect or proposed) affected by potential challenges;
4. *Implementation or modification*, where appropriate, in response to the first three steps.

Identifying Potential Risks

To the extent that human behavior and the law are reasonably foreseeable, informed school principals practicing preventive law and common risk management methods can predict certain legal risks and reduce their scope through policy, procedure, and practice. In those areas in which the law is less certain, principals can at least *identify* and *analyze* risk and choose courses of action that are less precarious than others. *Risk identification* focuses on the question, “What losses can happen?” whereas *risk analysis* goes further, asking, “How likely is it that the loss will happen, and, if the loss happens, how serious will it be, and how often might it occur?” Thus consideration is given to both frequency and severity probabilities. Figure 2.1 provides a simple tool to analyze foreseeable risks. The figure presents a formula that integrates three key factors of preventive law: (1) how *likely* an event is to occur, (2) the *frequency* with which the opportunity exists for such an occurrence, and (3) the *potential consequences* of such an event. The formula provides numerical ratings for each factor that, when multiplied together, produce a risk score. In other words, *likelihood* times *exposure* times *potential consequences* equals the level of *potential risk* ($L \times E \times PC = R$).

The following example shows how the formula can be used to support districtwide or site-based risk management. Examples that principals can apply to their own buildings and operations follow.

A newspaper reports the explosion of a water heater in a local office building. There are several fatalities, severe injuries, and significant structural damage to the building. Your school district records indicate that the water heaters in most of your buildings are more than ten years old and have not been inspected for seven years. Should your district allocate resources for a full inspection of its facilities’ water heaters? If yes, when should this be done? First, the *likelihood* of an explosion needs to be identified. Most people would probably rate the likelihood as 5 (unusual but possible). The *exposure* rating usually depends on how frequently the piece of equipment is in use.

In the case of a water heater, that rating would normally be a 10 (continuous). However, school officials might be concerned with how frequently people are in the vicinity of the operating water heater and might rate the exposure as 8 (frequent, daily). In this example, a school official might use a composite rating of 9. The third factor is an estimate of the *potential consequences* of an explosion. The potential consequence scale suggests three interrelated types of consequences: physical injury, financial loss, and public relations problems. In this example, the school official assumed that the potential consequences ranged between 7 (very serious) and 8 (disaster), for a composite rating of 7.5. To estimate the risk, the school official multiplied 5 times 9 times 7.5, which produced a risk score of 337.5. This score indicates that a *substantial risk* exists and *timely correction* (inspection) is advised.

FIGURE 2.1 Risk Analysis Model

Likelihood Scale	Exposure Scale	Potential Consequences Scale	Risk Scale
10 Probable	10 Continuous	10 Catastrophe (many fatalities, critical financial loss, critical public relations problem)	1000 Very high risk; consider discontinuing operation
9 Might well be expected	9	9	
8 Quite possible, could happen	8 Frequent (daily)	8 Disaster (multiple fatalities, critical financial loss, critical public relations problem)	750 High risk; immediate correction required
7	7	7 Very serious (fatality, significant financial loss, significant public relations problem)	
6	6	6	
5 Unusual, but possible	5 Regular (once a week)	5 Serious (disability results, serious financial loss, serious public relations problem)	500 Substantial risk; timely correction required
4	4	4	
3 Remotely possible	3 Occasional (monthly)	3 Important (serious injury, serious financial loss, serious public relations problem)	250 Possible risk; non-routine attention required
2 Conceivable, but unlikely	2 Minimal (a few times a year)	2	
1 Practically impossible	1 Rare (once a year or less)	1 Noticeable (minor injury, potential financial loss, minimal public relations problem)	100 Known risk; routine attention recommended
Likelihood	Exposure	Potential Consequences	Risk
x	x	x	=

Although the risk analysis model presented here is clearly subjective, it provides at least a consistent way of thinking about risk and preventive law, as well as a simplified way of reporting. Most importantly, the model aids in the process of forecasting, an important concept in the law, commonly called *foreseeability*.

When applying the model to the COVID-19 pandemic, the polarization of attitudes about the pandemic can be illustrated. Those who view the virus as something not to be taken seriously and as of little consequence would take far fewer precautions than those who would be on the opposite side of the scales. School districts and educators do not have any leeway to casually dismiss the guidance of world health experts and local health authorities no matter what their own personal viewpoint may be surrounding COVID-19 and schools. Unfortunately, school boards and educators are caught in between the different viewpoints in the public on the pandemic, and while being caught in the middle of a social or public health debate may seem like familiar territory to veteran educators, clearly COVID-19 has been perhaps the worst crisis most educators have faced in their careers.

The usefulness of the model in both scope and diversity is further demonstrated in the following selected examples derived during field testing.

Example 1: A school principal calculated the school's risk regarding injuries related to slippery entry areas during inclement weather as follows:

- *Likelihood* = 10 (Probable)
- *Exposure* = 3 (Occasional)
- *Potential consequences* = 1 (Noticeable). The resultant risk score of 30 indicates a *known risk* with routine attention recommended.

Example 2: A school principal calculated the school's risk regarding injuries related to children falling over the sides of a playground slide as follows:

- *Likelihood* = 3 (Remotely possible)
- *Exposure* = 10 (Continuous)
- *Potential consequences* = 4 (Serious). The resultant risk score of 120 indicates a *possible risk* with nonroutine or focused attention advised.

Example 3: A school principal calculated the school's risk regarding injuries related to students traveling on field trips in school-owned vehicles as follows:

- *Likelihood* = 6.75 (average of 3–8, from Remotely possible to Quite possible, could happen)
- *Exposure* = 5 (Regular)
- *Potential consequences* = 6 (average of 4–7, from Serious to Very serious). The resultant risk score of 202 indicates a *possible risk* with nonroutine or focused attention advised.

Example 4: A high school principal in a mid-Atlantic state calculated the school's risk regarding injuries related to a disturbance resulting from a group of students displaying a Confederate flag as follows:

- *Likelihood* = 6 (average of 5–7, from Unusual but possible to Quite possible, could happen)
- *Exposure* = 8 (Frequent)
- *Potential consequences* = 1 (Noticeable). The resultant risk score of 48 indicates a *known risk* with routine or focused attention advised.

Example 5: A school principal has become concerned about social media being used by students from off-campus who may be bullying, sexting, or making derogatory or threatening statements to students and staff. The principal has rated this risk as follows:

- *Likelihood* = 10 (Probable)
- *Exposure* = 10 (Continuous)
- *Potential consequences* = 7 (average of 4–7, from Important to Very serious). The resultant risk score of 700 indicates immediate *high risk* with timely correction required.

During the preceding century, changes in American culture created numerous conflicts in society. These conflicts led to new issues. New issues required new laws. Needless to say, for effective principals to practice preventive law and risk management, it is imperative that they seek out current updates on laws, policies, and procedures that affect education. All too often, unfortunately, the need to know is considered *ex post facto*. Effective principals do not wait for legal counsel to provide preservice—they take the time to read, listen, and actively apply what they know to their schools to prevent harm to students and others and to short-circuit incidents that might lead to litigation. Although it is not suggested that principals walk around with Figure 2.1 in their hands, the model presented here gives principals a framework for a mindset in practicing preventive law—an effective way for principals to think about risk and liability prevention as they go about business as usual.

Identifying Risk Is Only the First Step

In the past few years, an unprecedented number of crisis situations have been reported in our nation's schools. Some of these emergencies were caused by natural disasters, others were the result of accidents, and still others the result of violence and malicious or suicidal acts. School districts and individual school administrators are accountable and can be held legally liable for the safety and well-being of students, district employees, and visitors to the district's facilities. The direct and indirect costs when losses occur can be great. Creating and maintaining a safe environment require both an active risk management program—to prevent foreseeable dangers—and an effective crisis management program—to manage the emergency and limit the damage once crisis occurs.

A key element in crisis management is preparedness. Effective response in emergency situations requires structure, order, discipline, and linear thinking and action on the part of crisis managers.

When a crisis appears or is impending, a school district's response is critical. To safeguard resources, certain actions must be preplanned so that responses to crises are prompt and effective. Effective crisis management protects the integrity

of the *in loco parentis* responsibilities to students that are inherent in the education enterprise. Effective crisis planning integrates and coordinates school procedures with similar crisis plans at the district, municipal, county, and state levels.

Nearly every industry has career specialists who focus solely on risk analysis and all aspects of prevention, including, among other areas, product liability; cybersecurity; workplace safety; and physical, social, and psychological risks. Some risk is not controllable but measures can be taken to mitigate possible loss when such uncontrollable events occur. Schools located where the possibility of tornados is high would fall into such a category. Educators cannot prevent a tornado from hitting their school, but they can take steps to keep everyone as safe as possible should they find themselves in the path of a tornado.

Schools benefit from the guidance of professionals to minimize serious risks to students and staff. But ultimately it is the responsibility of those working in schools to not only adhere to such professional advice, but acknowledge that their own behaviors and decisions are critical and could become the weakest link in prevention efforts should they fail to properly perform their duties. The point being made is that there are multiple layers of safety and prevention that are in place every day, some layers of which are in place because of well-researched best practices and other layers because everyone is attuned to doing their job. Educators should view safety and prevention as part of an entire system.

James Reason (1990) and his associates devised the “Swiss Cheese Model” used in risk analysis applied to multiple fields, including engineering, business, and health care. The idea of the model is simple—individual slices of Swiss cheese have holes of various sizes, but when multiple layers of the cheese are stacked together, the holes tend to be covered by different slices. When viewing the model in terms of school safety and prevention, we can see that just one strategy of prevention is insufficient, but when multiple strategies are put in place, the systemic effect increases prevention and minimizes risk. If one layer of prevention fails to work, the hope is that a different layer of protection will work, even if it is the final layer.

The Prevention of School Violence

This model applies very well to help conceptualize the efforts to prevent school violence. In the wake of the tragedy of the Columbine school shooting in 1999, twenty years of school violence prevention efforts have been undertaken at the federal law and policy level, state legislative level, and with school-level policies and actions. Many times the public becomes aware of times when potential acts of violence have been prevented, and there are no doubt other acts of violence that have been prevented by some action that school authorities, parents, or the public are unaware of. Unfortunately, despite the two plus decades of such efforts, school shootings did not completely disappear, to the point where one student interviewed on national media after a shooting at her school said she wasn't surprised it happened and knew it was a matter of time (Eltagouri, 2018).

Litigation against school and law enforcement officials is not uncommon in the wake of school shooting incidents, and although costly for such entities, most cases have not resulted in legal liability. Often it is the shooter or the families of the shooter who face legal liability. However, obviously the moral obligation to prevent school violence is paramount for educators.

What we have learned since Columbine are multiple layers of prevention that work and unfortunately also layers that either don't work or are clearly not effective on their own without sufficient other protections in place. Kenneth Trump, a school violence prevention expert, has noted that after Columbine the nation had to play catch-up after years of neglecting school security concerns. He advises that we must be careful not to have knee-jerk reactions or overreactions, because such efforts tend to merely create the perception of increased security instead of an actual increase in security.

School districts at times are caught between the public justifiably wanting the school to do all they can to prevent violence and needing to determine which prevention efforts are effective, practical, cost effective, and least restrictive to students' rights and a positive school culture. Kenneth Trump notes that historically such efforts have a skewed focus on security hardware and products and an understandable desire to "do something; do anything; do it differently; and do it fast (Trump, 2018).

Given this background, and returning to Reason's model, there are prevention strategies that are known to work, especially when layered with a variety of strategies designed to work when another may fail. The overreliance on a single prevention measure is doomed to fail, at times tragically. Prevention measures that rely on human factors, such as antibullying programs and positive school climate initiatives, depend on training, skills in relationship building and sustaining those relationships, a commitment to continual diligence, and a willingness to evaluate and revise as needed. Measures that rely on technical and hardware efforts

The overreliance on a single prevention measure is doomed to fail, at times tragically.

to prevent violence also require training and people to understand how to use the technology. Such measures can lead to a false sense of security, and it must always be kept in mind that should a technology measure fail, there needs to be some other type of backup plan in place. For example, if a system designed to automatically lock all doors fails, there needs to be a plan to alert all staff in the event they may need to lock their own doors.

It is imperative that school districts train school administrators, teachers, and support staff (i.e., secretaries, custodians, and bus drivers) regarding school violence prevention and school security and actively include the community in school emergency planning. Any plan needs to include a working partnership with public safety officials. Working with these groups is paramount, even if at times such groups may appear to have conflicting roles and goals. It has been said that it is much more preferable to be *partners* who work together than to later be *co-defendants* because you didn't.

School crisis plans must be continually revised, accessible, and reviewed thoroughly during professional development. Throwing the crisis plan in a drawer and attempting to thumb through it once a crisis occurs is professional malpractice.

Following are a few important "musts" for school leaders to consider:

- The first and best line of defense is a well-trained, highly alert school staff and student body.

- Prevention efforts should focus on the goal to disrupt the path to violence. Research has shown that over 80% of all school shooting incidents involved the shooter telling someone ahead of time in some manner. Almost no incidents included someone who “snapped,” indicating opportunities existed to stop the path to violence.
- School police and resource officers can become a positive culture within the school, but the creation of that positive culture is not created without effort on the part of school officials and law enforcement.
- School administrators should be aware of their own roles to prevent an overreliance on law enforcement to perform functions that fall within the job description of administrators and not police officers.
- Do not overrely on any single threat assessment or profiles because they are not predictive and can be seriously misused.
- Keep in mind that *prevention efforts* are still in effect and in place even during an incident.
- Security is often associated with equipment such as metal detectors, surveillance cameras, and other physical, tangible methods. Although these measures are necessary and play an important part, *such equipment is only as good as the human element supporting or operating it*. When security equipment is used in schools, it must be viewed as a supplement to, but not a substitute for, a more comprehensive school safety program.
- Research has shown the single most effective safety measure for schools is the capability to lock building and classroom doors.
- Gaps in previous emergency plans may include problematic outdated content in the original plans, a lack of training of school staff on emergency plans, and a lack of exercising plans in cooperation with public safety officials. For example, school safety or emergency plans should address preparedness procedures such as lockdowns, evacuations, parent–student reunification procedures, mobilizing school transportation during the school day, emergency communications protocols with parents and the media, and mobilizing mental health services.
- Schools should determine ways to incorporate social media into safety plans, especially since, during a crisis, students (and their parents) will be using social media.
- Schools should work with public safety officials to identify potential staging areas for media, parents, medical personnel, and others who are expected to respond in an emergency.
- School officials should meet annually with public safety officials—police, fire, emergency medical services, and emergency management agencies—to discuss safety, security, and emergency planning strategies.
- Most states mandate practice lockdown drills over the course of a school year in the same manner they practice fire drills, tornado drills, and so on. Keep in mind the traumatic nature such drills may have on students, especially very young children.

- Schools should number each entrance/exit door so first responders can easily identify specific entrances/exits when called to respond to an incident and/or to manage a tactical response. In addition, schools should provide police and fire departments with updated floor plans and blueprints for their reference for tactical responses.

Suggested Risk Management Guidelines

As stated previously, all schools should have a written crisis management plan that includes the specific procedures to be followed in emergencies. The following information is often included in crisis management procedure manuals:

- The purpose, scope, and organization of the manual
- The structure of the crisis management organization, including key contact personnel (most important: who's in charge!)
- Evacuation instructions, including explanations of alarm signals and diagrams of exit routes
- Communication procedures to be followed during and after the emergency
- Potential sites of emergencies
- Appropriate responses to emergencies
- Arrangements for obtaining assistance from emergency service organizations and local government agencies
- Procedures for coordinating use of district resources and personnel during emergencies
- Available district resources
- A system for informing the district of the emergency and for notifying parents or guardians
- Plans for taking the following actions, if appropriate:
 - School cancellation
 - Early dismissal
 - Evacuation
 - Sheltering

In addition,

- Develop, disseminate, and implement a comprehensive crisis management plan that clearly identifies and communicates the procedures to be followed in the event of emergencies.
- Provide training to appropriate personnel to ensure that they will be able to respond promptly and effectively in a crisis.
- Coordinate crisis planning with appropriate district, municipal, and county agencies.

SECTION B. DUTY AND RISK MANAGEMENT

Affirmative Duty of School-Based Personnel in Risk Management and Prevention

A. Duty of Building Administrator (Principal, Head Teacher) to Students and Parents (at a Minimum)

1. Ensure compliance with applicable federal, state, and local laws and regulations; enforce established school policies, procedures, and rules; and establish additional rules, as necessary and appropriate in the particular education environment, to ensure the safety and well-being of students while under the care of the school.
2. Provide effective supervision of the education program (including the development, oversight, and evaluation of appropriate curricular, intracurricular, and extracurricular activities).
3. Promote the hiring of competent administrative, teaching, and support staff appropriately trained in specific disciplines.
4. Provide effective supervision of staff (including the appropriate delegation of authority, formalization and assignment of specific responsibilities, direction of daily work activities, and observation and evaluation of performance).
5. Manage the school's physical facilities and material and financial resources to ensure the maintenance of a safe and productive learning environment.
6. Develop and maintain communication channels and media that promote effective two-way communication about school-related issues (including student progress) between administrators and parents, administrators and teachers, administrators and students, teachers and parents, and teachers and students.

B. Duty of Education Administrator (Associate or Assistant Principal, Dean, Supervisor, Department Chair, et al.) to Students and Parents (at a Minimum)

1. Adhere to applicable federal, state, and local laws and regulations; adhere to and enforce established school policies, procedures, and rules in the performance of assigned duties and responsibilities; and recommend additional policies, procedures, and rules, as appropriate, within the scope of delegated authority.
2. Provide effective supervision of the instructional activities presented by staff members of programs within the scope of delegated authority.
3. Provide effective supervision of all staff members assigned to, or working with, programs within the scope of delegated authority.
4. Facilitate effective two-way communication about school-related issues (including student progress) in programs within the scope of delegated authority, between administrators and parents, administrators and teachers, administrators and students, teachers and parents, and teachers and students.

C. Duty of Teacher to Students and Parents (at a Minimum)

1. Adhere to applicable federal, state, and local laws and regulations; adhere to and enforce established school policies, procedures, and rules in the performance of assigned duties and responsibilities.
2. Develop and present instructional activities that are appropriate to and consistent with the approved education program and specifically designed to increase students' knowledge; facilitate the development of learning skills, life skills, and appropriate social behavior; and prepare students to interact effectively in general society.
3. Provide effective supervision of students participating in instructional activities that are within the scope of assigned responsibility to ensure students' safety and general well-being.
4. Facilitate effective two-way communication about school-related issues (including student progress) in programs within the scope of assigned responsibility, between administrators and parents, administrators and teachers, administrators and students, teachers and parents, and teachers and students.

SECTION C. WORKING WITH THE MEDIA

During and after a crisis, schools need effective communications with the media, employees, students, parents, and the community at large. Postcrisis communications should inform employees and patrons as soon as possible of the extent of the losses caused by the crisis and describe the school district's or school site's short- and long-term recovery plans.

Suggested Risk Management Guidelines

(Note: Should be tailored to meet school district policies or procedures)

- Although schools are public buildings, administrators do not have to allow the media on campus.
- Permission must be granted by the administration for members of the press to be on campus.
- Police answer questions regarding criminal investigations. Administrators should focus on what the school is doing to secure student safety and maintain student welfare.
- Identify one school spokesperson.
- Identify and maintain a media staging area. (This should be coordinated with police.)
- Do not let reporters wander.
- Direct all media to the school spokesperson to maintain consistency.
- Prepare factual written statements for the press in cooperation with the police and your school district's community relations personnel. Provide updates, when appropriate.

- Be certain that every media member receives the same information.
- Be accurate. If uncertain, do not speculate. When appropriate, refer media to other agencies, such as the police or the health department.
- Set limits for time and location.
- When giving an interview,
 - Ask in advance what specific questions will be asked.
 - Do not say, “No comment.” If an answer is not known, offer to get information and to get back to the reporter. Do not speak “off the record.”
 - Keep answers brief and to the point.
 - Emphasize positive action being taken. Turn negative questions into simple positive statements.
- Ensure that the sensitivities of those who are touched by the crisis are respected by the reporters.
- Before agreeing to let staff members be interviewed, obtain their consent.
- Students under the age of eighteen may not be interviewed on campus without parental permission.
- Yearbook and school newspaper photographs are public documents. Access to them must be provided.

ADDITIONAL CASES OF INTEREST TO EDUCATORS

Ratner v. Loudoun County Public Schools, 16 Fed.Appx. 140 (4th Cir. 2001). Courts have upheld zero tolerance policies even when they may disagree with the wisdom of the decisions of the school. In this case, a 13-year-old was expelled after school officials learned the girl had a knife and was contemplating suicide. The court held that federal courts were not “properly called upon to judge the wisdom of a zero tolerance policy” used in the case.

Porter v. Ascension Parish School Board, 393 F.3d 608 (5th Cir. 2004). A student drew a sketch depicting violence toward his school, including a missile launcher and a brick directed at the principal. The sketch never made it to school as it was thrown in a closet at home. Two years later, his younger brother found the sketch pad and took it to school. The original artist was detained by law enforcement and disciplined by the school. The court held that the two-year delay and distance from the school were factors overturning the discipline but granted qualified immunity to the principal.

S.G. v. Sayreville Board of Education, 333 F.3d 417 (3rd Cir. 2003). A young elementary student was suspended for telling a student on the playground “I will shoot you.” Because of previous threats at the school and the principal discussing with all students such behavior would not be tolerated, the court upheld the suspension. The court noted that the prohibition of threats by school officials was a legitimate concern of principals and therefore not a violation of First Amendment free speech rights.

Wisniewski v. Board of Education of the Weedsport Central School District, 494 F.3d 34 (2nd Cir. 2007) *cert denied*. The court upheld the suspension of a student, under the *Tinker* standard, who displayed an AOL message depicting a pistol firing at the head of the principal.

Parmertor v. Chardon Local School District, 47 N.E.3d 942 (Ohio 2016). The court noted that the bar for proving gross negligence or willful disregard for student safety in a school violence act is very high and difficult to meet.

DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989). The U.S. Supreme Court held that generally the Fourteenth Amendment does not impose a duty on the state to protect individuals from acts of private violence.

Castalado v. Stone, 192 F.Supp.2d 1124 (D. Colo. 2001). The state case related to *Columbine* noted that compulsory attendance laws do not create the necessary special relationship to be held in violation of the Fourteenth Amendment. The case also discussed foreseeability and the state created danger theory.

At press time, nearly twenty-five lawsuits had been filed related to the February 14, 2018, school shooting at Marjory Stoneman Douglas High School in Parkland, Florida. For example, see:

L.S. by Hernandez v. Peterson, 982 F.3d 1323 (11th Cir. 2020)

Pollack v. Cruz et al., N. CACE-18-009607-(26) (Fla. Cir. Ct. 2018)

Guttenberg et al. v. The Broward County School Board, 303 So.3d 518 (S. Ct. Fla 2020)

Guttenberg v. FBI and *Schentrup v. FBI*

Israel v. DeSantis, No. 4:19cv576-MW/MAF (N.D. Fla. May 5, 2020)

The following case from the *Sandy Hook Elementary School* tragedy resulted in a finding for the defendants based on governmental qualified immunity:

Lewis v. Town of Newtown, 214 A.3d 405 (Conn. App. Ct. 2019)