

SCHOOL

**SAFETY &
SECURITY
STRICTLY
ENFORCED**

7:00 AM
TO 4:00 PM

BALANCING DUTIES & RIGHTS

Being informed about legal obligations and students' rights can help a principal ensure a safe environment and a healthy climate for the entire school community.

Almost every education publication these days contains an article on school violence, and parents are fearful that their children may be in physical jeopardy in schools. In a reactive mode, a Colorado state representative recently proposed that 10 percent of each school's staff be provided guns as part of a legislative package to create safe schools (Lawmaker 2000). Fortunately, most strategies to combat school violence are far less dramatic, but some do implicate the law, and educators need to be knowledgeable about the legal principles governing their obligations.

School personnel have various legal duties in ensuring a safe, secure school environment that go beyond their general responsibilities to provide appropriate supervision and instruction. A few of these legal obligations trigger liability if not fulfilled appropriately.

Protecting Students from Injuries

State tort law is a fertile area for school district liability. A tort involves injury by one person against another and includes the subcategories of negligence, defamation, and intentional (e.g., assault and battery, false imprisonment) torts. Most education tort cases involve negligence and contain allegations that the educator has breached the duty to protect others (e.g., students) from harm that resulted in an injury. Key considerations are whether the educator acted reasonably given the circumstances and whether the student's injuries were foreseeable.

The judiciary has recognized that school personnel have a legal duty to warn potential victims and law enforcement agencies if they are aware of possible harm (see *Tarasoff v. Regents* 1976). Such a duty is legally recognized only if school personnel have actual knowledge of a student's intentions and take no action to alert parents or other professionals with appropriate expertise.

Several cases have focused on an educator's duty to prevent student suicides. The Maryland High Court found school counselors negligent for breaching their duty to alert parents about their child's intentions to commit suicide (*Eisel v. Board of Education* 1991). The counselors' negligence was not for failure to prevent the suicide but for failure to warn parents about the foreseeable suicide. More recently, a Florida school district was required to pay damages to the family of a student who committed suicide at home after a failed attempt at school the previous day; school ►

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Students' Rights

At times, educators' duties to maintain safe school environments appear to conflict with students' rights protected by constitutional or statutory law. Although space limitations preclude addressing the full array of students' rights, the following are the most likely to be involved in efforts to curb violence and ensure safe schools.

Expression and Appearance

In *Tinker v. Des Moines Independent Community School District* 1969, the Supreme Court held that school authorities could not curtail students' ideological expression during non-class times unless the expression threatened a material or substantial disruption of the educational process. However, students' rights are not coextensive with those of adults, and school authorities appear to have more latitude in restricting student expression now than they had during the decade following the *Tinker* ruling. The Court has ruled that student expression considered lewd or vulgar is not protected by the First Amendment (*Bethel School District v. Fraser* 1986) and has distinguished private student expression, which is still governed by *Tinker*, from student expression in school-related activities or publications that can be censored for pedagogical reasons (*Hazelwood v. Kuhlmeier* 1988). The most controversial

current issues involve censorship of student expression on the Internet. Although schools have the authority to enforce acceptable use policies for Internet access at school, courts have been reluctant to uphold disciplinary action against students for creating webpages and engaging in other Internet activities from their homes unless they pose a clear threat of harm (see *Emmett v. Kent School District* 2000).

The Supreme Court has not directly addressed a case dealing with student appearance, but lower courts have supported school policies restricting attire that can be linked to disruption, is lewd or vulgar, or presents a health or safety hazard (see *Bivens v. Albuquerque* 1995; *Broussard v. School Board* 1992). Dress codes that are vague or lack any educational justification, however, will not be judicially condoned. Some policies designed to keep gangs off campus have been struck down for being vague, too broad in scope, or unnecessary because of negligible gang activity in the schools (see *Jeglin v. San Jacinto* 1993; *Stephenson v. Davenport* 1997).

In the 1990s, a number of school districts, particularly in urban areas, implemented policies requiring students to wear school uniforms as a violence prevention strategy. In 2000, Philadelphia became the largest school district to adopt student uniforms. As long as the policies allow students to opt out of the uniform requirements and provide assistance for >

students whose families cannot afford the uniforms, they are likely to survive legal challenges.

Student Searches

Although public school students enjoy Fourth Amendment protections against unreasonable governmental searches, they have little expectation of privacy in their lockers because schools jointly control the lockers. Thus, school officials can inspect lockers unless state laws or school board policies impose additional constraints, such as requiring students to be present when their lockers are opened.

Personal student searches (e.g., purses, pockets, bookbags) are governed by the reasonable suspicion standard articulated by the Supreme Court in *New Jersey v. T.L.O.* (1985). Under this standard, school authorities do not have to secure a search warrant to conduct personal searches of students, but there must be reasonable grounds for suspecting that the search will turn up evidence that the student has violated school rules or the law. This has generally been interpreted as requiring individualized suspicion. Also, the scope of the search must be reasonable in that it is not excessively intrusive given the student's characteristics and the focus of the search. Students have the greatest expectation of privacy in connection with strip searches, which school personnel would be wise to avoid.

With the mounting concerns about school violence, courts appear to be giving school authorities more latitude to implement strategies to keep weapons out of schools. The judiciary has upheld the use of metal detectors without individualized suspicion, reasoning that the school's interest in ensuring the security of all students and staff members far outweighs the minimal invasion of privacy involved in the scanning process. Triggering the detector establishes reasonable suspicion for a personal search of bookbags, pockets, etc. (see *Thompson v. Carthage* 1996).

In efforts to combat drug use, schools have employed drug-detecting canine units and implemented drug-testing programs under certain circumstances. Courts have upheld the use of dogs to sniff student lockers and cars in school parking lots to identify the presence of controlled substances (see *Horton v. Goose Creek* 1982), but only the Seventh Circuit Court of Appeals has upheld the use of canine units to sniff students without individualized suspicion (*Doe v. Renfrow* 1980). Although blanket drug testing programs for entire student bodies have not yet been upheld, there has been recent movement in this direction. The Supreme Court in *Vernonia School District 47J v. Acton* (1995) upheld

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suspicionless drug testing of students participating in athletic programs, noting that students have a lower expectation of privacy in connection with athletic activities. Some courts have even upheld random drug testing of all participants in cocurricular activities, which covers about 80 percent of high school students (see *Todd v. Rush County* 1998). However, the Seventh Circuit Court of Appeals struck down a policy requiring drug testing of any student found in possession of tobacco products, suspended for three or more days for fighting or violating other school rules, or considered habitually truant (*Willis v. Anderson* 1999). The court reasoned that there was an insufficient connection between the targeted behaviors and drug use.

Zero-Tolerance Policies

Zero-tolerance policies that impose predetermined, strict penalties (usually suspension or expulsion) for infractions are an increasingly popular strategy for dealing with school violence. Most zero-tolerance policies prohibit any type of weapons or drugs in public schools. Some also prohibit students from engaging in harassing behavior based on race, gender, religion, or disability. Penalties often are modeled on the Gun Free Schools Act of 1994 that requires states to have legislation calling for one-year expulsions of students who bring firearms to school. (Such expulsions are limited to 45 days for children with disabilities; educational services cannot be terminated for these children, who are covered by the Individuals with Disabilities Education Act.)

The central legal requirement for zero-tolerance policies is that students are given at least minimal procedural due process (i.e., notice of the charges and the opportunity to refute them) before even a short suspension from their regular instructional assignments (see *Goss v. Lopez* 1975). Of course, more elaborate procedures are necessary for longer suspensions or expulsions. Most courts have upheld zero-tolerance policies, but a state court struck down a Pennsylvania school district's policy because it denied the superintendent's statutory right to exercise discretion in

expulsion decisions (*Lyons v. Penn Hills* 1999). The court also noted that the zero-tolerance policy did not comply with the statutory requirement for such policies to be written and distributed to parents.

More than 90 percent of teachers and the general public favor zero-tolerance policies for drugs and alcohol in public schools (Langdon and Vesper 2000). Advocates argue that zero-tolerance policies ensure nondiscrimination by treating all students the same for similar offenses and by deterring illegal and violent acts because of the stringent penalties. Critics, however, are concerned that zero-tolerance policies remove any discretion from school personnel and may result in harsh punishments that are not justified for certain infractions. The media has highlighted extreme applications of such policies, such as the expulsion of a kindergarten student for bringing a rubber hatchet to school as part of his Halloween costume. School districts should ensure that zero-tolerance policies apply only to behavior that clearly should be excluded from public school. Also, policies should contain protections for students who inadvertently bring prohibited items to school (e.g., a paring knife left in a lunch box), so the students can alert appropriate school personnel without being punished.

Conclusion

Contrary to the popular rhetoric, national statistics show that violent crimes in schools have declined in recent years (Brooks, Schiraldi, and Ziedenberg 2000). Nonetheless, substantial attention will continue to focus on this issue, and the escalating efforts to make schools safe learning environments inevitably will result in conflicts between rights and duties. Educators cannot be cognizant of all legal ramifications of their actions, but they can become more knowledgeable of legal principles that should guide their decisions. Greater legal awareness and confidence should lead to more effective and just practices and provide a positive model for students.

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