



Threats of violence and school walk-outs: A district's legal considerations

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Concern and emotion are at an all-time high following the Marjory Stoneman Douglas High School shooting on February 14, 2018. Many districts have received threats of violence following the tragedy in Florida. These threats continue to roll in. In addition, school walk-outs of students – often including staff – are occurring or planned. The organizers of and participants in the walk-outs may vary in terms of purpose and intent. Therefore, it is a critical time to work collaboratively with your crisis management team to navigate the myriad of issues (safety, public relations and legal) that schools currently face.

School safety and potential liability

All threats and concerns about violence must be taken seriously. Your staff members, who are on the frontline, need to understand their responsibility to immediately communicate these situations to administration. Working collaboratively and proactively with law enforcement, as well as with staff, students and parents, is critical to avoid a potential tragedy. Talk to local law enforcement, even before receiving a threat, to understand what information will be helpful to them when investigating and prosecuting individuals who make threats. Law enforcement can also assist in developing a safety plan prior to any planned walk-out. Maintenance staff should be checking building security systems to ensure they are operating properly. In addition, staff must be appropriately trained, and those skills must be refreshed regularly. Uniform enforcement of visitor policies and increased student supervision are also important to maintain building security.

Student confidentiality

As a general rule, the Family Educational Rights and Privacy Act (FERPA) prohibits disclosure of personally identifiable student information without the consent of a parent or eligible student. However, two exceptions under FERPA may apply. First, board-designated directory information, which usually includes student and parent names and addresses and student phone numbers, may be disclosed in most circumstances. You will need to review your board policy to verify the information your district designated as directory information. Directory information may be shared as long as the parent or eligible student has not opted out. Second, a district may determine that it is necessary to share additional personally identifiable student information in order to address a health or safety emergency. Such determinations are made on a case-by-case basis. A record of this disclosure must be made within a reasonable period of time in the student's education record.

First Amendment

Most districts have board policies that reflect the current law and position of the board related to student and staff demonstrations and speech (e.g., NEOLA Policy 5520 – Disorder and Demonstration; OSBA Policy JF – Student Rights and Responsibilities). If political speech is involved and a district endorses, allows, prohibits or chooses not to address a particular viewpoint, it may be required to afford the same treatment of an alternative viewpoint. Failure to do so may result in civil liability.

Financial considerations

District funds may be necessary to address immediate safety needs. Certainly, the general fund is unrestricted, as long as the funds are available and used for a proper public purpose. Such appropriations must be approved by the board. In addition, districts may levy a voted property tax for the purpose of "school safety and security." Funds generated pursuant to such a levy can be used for both current expenses (including personnel costs associated with school safety and security) and permanent improvement costs. Permanent improvement funds have a more limited role but can be used for security enhancements so long as the useful life of the improvement is five years or more. In addition, a county school financing district may levy a voted property tax for permanent improvements to be distributed to school districts in the county school financing district. These funds may be used for security enhancements having a minimum useful life of five years or more.

Bidding and construction

In the event that a district needs to add security measures to a school facility, such as cameras, metal detectors or any type of security apparatus, the district can do so quickly, bypassing the public bidding process. Specifically, O.R.C. 3313.46(A) provides an exception to the bidding laws when the improvement is needed for "the security and protection of school property." The district should review the board's procurement policy to make sure there is not language otherwise requiring competitive bidding. In any event, a board can waive any contrary policy in a resolution declaring the security and protection exception. A relatively simple board resolution is necessary to utilize this exception to the bidding requirements.

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Authors



Nicole M. Donovan

Partner

Columbus

614.227.4866

ndonovsky@bricker.com

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