

Ohio School Boards Association
Capital Conference & Trade Show
Columbus, Ohio

OCSBA School Law Workshop
November 12, 2013

Mandatory School Safety Plans
Practical Considerations

Presented by:
Mary A. Lentz, Esq.
Mary A. Lentz Co., L.P.A.
Chagrin Falls, Ohio

Introduction

School Safety Plans as defined by Ohio Revised Code § 3313.536 are “comprehensive” in scope and shall be adopted by public boards of education for each school building under a board of education’s control. Safety Plans shall address environmental hazards, conditions, and operations of each school building in a school district, as well as addressing serious threats to the safety of school property, students, employees, or administrators.

All school Safety Plans shall include a protocol for responding to any emergency event that occurs and that compromises the safety of school property, students, employees, or administrators. Each protocol shall include appropriate procedures regarding:

- Response to threats and emergency events.
- Notification of appropriate law enforcement personnel and emergency response personnel for assistance.
- Informing parents and affected students.
- Annual information prior to the opening of school to each student enrolled in the school and the student’s parent concerning parental notification procedures.
- Safety Plan update at least once every three years and whenever a major modification to a school building requires changes in the Safety Plan procedures.

Considerations for Safety Plan protocol:

- Remediation strategies for any building where documented safety problems have occurred
- Access to each building
- Exit routes
- Safety concerns regarding the physical building structure
- Security camera systems
- Air-lock foyer
- Appropriate signatures regarding authorized visitors
- School safety and security
- Secured entrance doors which allow egress
- Storage areas
- Lockdown procedures
- Lockout procedures
- School Emergency Response Team
- Evacuation routes
- Shelter sites
- School Safety Team members
- Prevention and intervention strategies

A comprehensive Safety Plan will address threats (bomb, personal harm), violence, gas leaks, weapons, utility malfunctions, unauthorized visitors, building structural safety issues, potential hazards, and potentially dangerous problems and circumstances.

Increased litigation regarding a school district's duty to protect students from harm while on school premises is a separate but related legal issue for school district counsel to re-visit on a frequent basis. The Sixth Circuit in *Walker v. Detroit Public School District*, 2013 WL 4515996 (C.A. Michigan, 2013) addressed the alternative state-created danger theories. Citing *Jones v. Reynolds*, 438 F.3d 685 (6th Cir., 2006), the Sixth Circuit stated that to establish a state-created danger claim, three elements are essential:

1. An affirmative act by the state which created or increased the risk that the plaintiff would be exposed to an act of violence by a third party;
2. A special danger to the plaintiff existed, and the state's actions placed the plaintiff specifically at risk as opposed to a risk affecting the public at large; and
3. The state knew or should have known that the state action specifically endangered the plaintiff.

In *Walker*, plaintiffs contend that if school officials had intervened more effectively in a fight which occurred during the school day on school premises, a subsequent shooting may have been prevented. The Sixth Circuit acknowledged the tragic infliction of harm on the plaintiffs, but further stated that the violence that occurred was "unquestionably committed by private actors" and further that the plaintiffs have neither stated a plausible claim nor advanced sufficient factual support for the claim that the school district or school officials played a part in creating or greatly increasing the danger that plaintiffs would be victims of gun violence as they left school.

I. Building Safety Plan

A school Safety Plan adopted by any school entity is a living document and work in progress that needs to be implemented and periodically re-addressed for review.

A Building Crisis Response Team needs to be established and members identified, as well as the preparation of a Safety Plan in accordance with the provisions of Ohio Revised Code § 3313.536. The preparation of a Safety Plan requires input from all stakeholders (local police and fire departments, parents, students, teachers, administration, and non-teaching staff) with the result being a Safety Plan which is general and unique to each school building.

Once a building Safety Plan is prepared in accordance with the Ohio legislative mandate, the building should have designated teams for emergencies with staff membership including support and licensed teaching staff. Staff and students need appropriate training regarding the implementation of the building Safety Plan. Staff need to be aware of Crisis Response Team members and also the building Safety Plan contents, provisions, and procedures. Periodic drills (rehearsals) during the school year of the Safety Plan should be conducted, as well periodic amendments and updates as needed. Each staff member should be provided with a small laminated “flip chart” for ready-reference and review of the salient features of the Plan rather than a complete copy of the Safety Plan. The Safety Plan should be carefully maintained with limited distribution to those on staff with a need to know. School Safety Plans are not public records.

The defined role of all school staff members during any emergency situation is critical, as well as the use of the school public address system, building telephone system, individual phones (cell phones), and portable radios. An Emergency Response Kit (preferably in a portable metal carrying box) including current staff and student lists and copies of all staff and student emergency cards should be maintained in a secure place with a staff member responsible for carrying the Kit from the building during any emergency.

The following definitions are commonly used in building Safety Plans and should be considered for an adopted Plan:

Emergency Response Team: Designated team comprised of school personnel, local law enforcement officials, and representatives from local, regional and/or state emergency response agencies, other appropriate incident response teams, and a post-incident response team that includes appropriate school personnel, medical personnel, mental health counselors, and others who can assist the school community in coping with the aftermath of a violent incident.

Incident Command System: A standardized on-scene emergency management system (also known as ICS) that allows multi-agencies to work together without any jurisdictional boundary problems. ICS defines the chain-of-command as a series of management positions in order of authority. Individuals in the chain-of-command are from different agencies and positions.

Lockdown: A procedure used when there is an immediate and imminent threat to the school building population. School staff and students are secured in the rooms they are currently in, and no one is allowed to leave until the situation has been curtailed. This allows the school to secure students and staff in place and remove any innocent bystanders from immediate danger. Most commonly used when the building has an intruder.

Lockout: Allows no unauthorized personnel into the building. All exterior doors are locked, and the main entrance is monitored by administrators, security, or school resource officer. This procedure allows the school to continue with the normal school day but curtails outside activity. Most commonly used when an incident is occurring outside the school building, on or off school property.

School Safety Plan: All emergency response plans developed by building-level school safety teams must include the following elements: policies and procedures for the safe evacuation of students, teachers, and other school personnel as well as visitors to the school in the event of a serious violent incident or other emergency, which shall include evacuation routes, shelter sites, and procedures for addressing medical needs, transportation, and emergency notification to persons in parental relation to a student.

School Safety Team: Team appointed by the principal in accordance with guidelines established by the board of education, chancellor, or other governing body; responsible for developing the school building safety plan. Teams shall include, but not be limited to representatives of teachers, administrators, and parent organizations, school safety personnel and other school personnel, community members, local law enforcement officials, local ambulance or other emergency response agencies, and any other representative the board of education, chancellor, or other governing body deems appropriate.

Short-Term Shelter in Place: A procedure whereby the entire school population is moved to a single (or multiple) location(s) in the school (depending on building population) that has been clear and sanitized. Most commonly used during bomb threats and weather emergencies.

Code Word(s): A simple word(s) for use over the public address system for a specific emergency (e.g., intruder, weapons, lockdown).

Prevention/Intervention Strategies:

Training, Drills, and Exercises

- Have procedures been developed for review and drills and other exercises been conducted to test components of the emergency response plan?
- Are the drills and exercises conducted in coordination with local and county emergency responders and preparedness officials?

II. General Recommendations

- Establish of a Command Center for emergencies.
- Designate code word(s) for emergencies involving an intruder, weapons, or lockdown.
- Include a segment in the Safety Plan on terrorism/terroristic threats.
- Include a segment in the Safety Plan addressing medical emergencies such as pandemic flu, MRSA, diabetic coma, insect bites, choking (Heimlich Maneuver), heart failure or episode, EPI pen, and physical distress.
- An emergency supply kit should be on hand in each building.
- A First Aid Kit and a Student Records Kit including current class lists and emergency information cards for each staff and student should be maintained in the main office and carried from the building by a designated administrator during all drills, emergencies, and evacuations.
- The Safety Plan should address building internal communication during an emergency, external communication with the media, and communication to parents.
- Safety Plan goals: Do all staff and students know what to do when a Code is implemented? Avoid panic and “stampeding” of building occupants.
- Identify internal and external evacuation routes.
- Sufficient portable communication devices should be available in the building.
- Keep all two-way radios compatible and charged.
- Policies and procedures in place for contacting appropriate law enforcement officials in the event of a violent incident or other emergency.
- Established protocols for responding to bomb threats, hostage-takings, intrusions, and kidnappings.
- Consult local safety officials about proposed protocols.
- Train students and teachers so they are knowledgeable about all procedures in emergencies.
- Establish and clearly define roles and responsibilities of school staff during emergencies.
- Ensure that staff know what to do in fire drills and during a bomb scare, intruder with a weapon, hostage situation, or other serious building emergencies.
- Provide staff with a summary “flip chart” of the adopted Safety Plan for ready reference.
- Develop policies and procedures for contacting parents, guardians, or persons in parental relation to students in the event of a violent incident or an early dismissal.
- Inform parents about how they will be contacted in the event of an emergency.
- Reinforce that the principal is the media liaison and public information officer at the school.
- Address internal and external “safe places” and communication.
- Designate lockdown areas.
- Identified shelter-in-place off-site and on-site areas for students and staff.
- Include safe options should electrical power go off.
- Enforce photo I.D. by all staff.

- Visitor I.D. should be a readily observable color.
- Office staff should keep current on the names of registered sex offenders on the Attorney General of Ohio list or county sheriff's web site so that those individuals do not have access to the school building. (The board of education may wish to consider policy regarding access to buildings when students are in session by parents/guardians who are registered sex offenders).
- Safety Plan training for all school volunteers, staff, and students.

III. Ohio Revised Code § 3313.536 School Safety Plans Mandated Upon Public Schools and Chartered Non-Public Schools

Ohio Revised Code § 149.433(C): Infrastructure record that is necessary for construction, renovation, or remodeling work on any chartered non-public school. These records are **not** a public record.

Ohio Revised Code § 3313.536: The board of education of each city, exempted village, and local school district and the governing authority of each chartered non-public school shall adopt a comprehensive school safety plan for each school building under the governing authority's control.

The governing authority shall examine the environmental conditions and operations of the building to determine potential hazards to student and staff safety and propose operating changes to promote the prevention of potentially dangerous problems and circumstances.

In developing the Safety Plan, the governing authority shall involve community law enforcement and safety officials, parents of students who are assigned in the building, teachers, and non-teaching employees who work in the building. The Safety Plan shall consider incorporating remediation strategies into the Safety Plan for the building where documented safety concerns have occurred.

The governing authority shall grant access to the school building to law enforcement personnel to enable them to hold training sessions for responding to threats and emergency events affecting the school building **only** if the training sessions occur outside the student instructional hours and only if an employee of the governing authority is present in the school building during the training sessions.

In accordance with Ohio Revised Code § 3737.73, the principal of a public or private school or educational institution with an average daily attendance of twenty (20) or more pupils shall conduct drills or rapid dismissals at least nine (9) times during the school year in accordance with the times and frequency prescribed in rules adopted by the fire marshal. No drill or rapid dismissal under this division need be conducted in any month that a school safety drill is conducted as required under division (D) of Ohio Revised Code § 3737.73 as long as a total of nine (9) drills or rapid dismissals under division (D) are conducted in the school year.

Under division (D)(1) of Ohio Revised Code § 3737.73, on or after the first day of December of each year, the principal of a public or private school shall conduct a school safety drill to provide pupils with instruction in the procedures to follow in situations where pupils must be secured in the school building, such as a threat to the school involving an act of terrorism, a person possessing a deadly weapon or dangerous ordnance (as defined in Ohio Revised Code § 2923.11) on school property, or any other act of violence.

Not later than December 5th of each year, the principal shall provide **written certification** by mail to the local Police Chief of the date and time of each safety drill conducted.

The principal shall hold annual training sessions for school employees regarding the conduct of school safety drills.

The Safety Plan:

- Shall include a protocol for addressing serious threats to the safety of the school, school property, employees, or administrators. Identify potential threats, and establish a protocol.
- Shall include a protocol for responding to emergency events that compromise the safety of school property, students, employees, or administrators. Identify emergencies such as gas leaks, no heat in winter, no water, neighborhood crisis (e.g., escaped felon, bank robbery, intruder), fire, threats, bomb threat, weapons, hostage situation, acts of terrorism, floods, tornadoes, snowstorm, and establish a protocol.

Each protocol shall include procedures deemed appropriate by the governing authority for responding to threats and emergency events including notification of appropriate law enforcement personnel, contacting emergency response personnel for assistance, and informing parents of affected students.

- Shall be updated at least every three years and whenever major modifications to the building require changes in Safety Plan procedures and protocols.
- Shall include building blueprints which are filed with the law enforcement agency that has jurisdiction over each school building and upon request from the local fire department.
- Shall not be distributed to parents, staff, or students per Ohio Revised Code § 3313.536. Safety Plans and school building blueprints are **not public records** under Ohio Revised Code § 149.433.
- The board of education shall file a copy of the current Safety Plan and a building floor plan (not blueprint) with the Ohio Attorney General.