

Liability for Schools in the Face of Terrorism & Violence

In the face of the recent acts of school violence, the need for teachers, school administrators and their staff to be trained to prepare for an attack is more important than ever. Failure to address this need can result in claims of willful neglect or even negligence.

In the U.S. there is now a legal duty under civil law for administrators, staff and educators to prepare for, train for and mitigate the numerous threats in our schools. Events in recent years have increased the possibility of violent attacks on a school in the United States. Many people think these threats are overstated. However, there are numerous examples that prove otherwise.

In late 2004, an Iraqi national with known terrorist connections was apprehended and had in his possession a computer disk containing information detailing Department of Education crisis planning for U.S. school districts. This is the type of pre-planning commonly associated with terrorist attacks.

Last year, two Saudi men wearing long black trench coats despite the Florida heat, terrified a busload of Tampa school children. They boarded the school bus and remained on board for the entire ride to school. The FBI has been investigating information that al Qaeda-aligned operatives have been and are being sent to the United States and ordered to infiltrate and find work in our schools. Officials said the terrorist agents, similar to the Islamist school hostage crisis in the Russian town of Beslan in 2004, might have been and could currently be applying for work as school bus drivers and janitors where they would have access to thousands of children. The recent investigation and subsequent alert issued by the FBI in the summer of 2007 concerning suspected members of extremist groups signing up as school bus drivers U.S. school districts should serve as a stark reminder of the looming threat of terrorism that continues to plague us with no end in sight.

FACT: Since the Beslan school massacre in Russia on September 1, 2004, the world has now been put on notice that schools are soft targets for terrorists.

It is important to note that violent acts against our schools are not just a threat of terrorist groups. As reported in the 2006 *Indicators of School Crime and Safety*: U.S. Departments of Education and Justice study, the statistics below demonstrate that incidents of crime inside schools are also a critical consideration.

- ◆ Incidents of crime are reported at 96% of high schools, 94% of middle schools, and 74% of primary schools.
- ◆ 6 1/2% of students surveyed reported that they had carried a weapon on school property within the last thirty days, while 18% said they carried a weapon somewhere during the past month.
- ◆ 81% of schools reported experiencing one or more violent incidents.

While the death, destruction and attacks on people and buildings are tragic, the level of civil damages that a school system faces can be mitigated or avoided. Firstly, as any school legal counsel will note, schools are now expected to have high level risk/threat assessment plans in place since major incidents are now considered foreseeable, even if acts of violence, terrorist attacks or mass casualty incidents have never occurred in a particular area. In addition, many states such as New York employ the law of proportional damages.

An important point to keep in mind is that although an attacker could set off a bomb and hurt students, a school could be found 60% or more liable to pay damages if they had no effective planning in place to prevent or mitigate harm in the school itself. In addition, while a school district may follow the standard of care of other school districts in the construction of their plans, they

FACT: Over 78% of School Resource Officers attending the annual NASRO Conference reported they had taken a weapon from a student on school property in the past year.

can still be found liable when plaintiffs sue after an attack or incident if they have not kept up training and adjusted their policies as the threat environment changes. Just as the field of terrorism changes on a weekly basis, school threats also change and school administrators must adjust their policies for the safety of all in their district.

School districts must also understand how, why, and when a plaintiff’s lawyer will sue a school for failing to protect people. While no terrorist event or natural disaster can be prevented 100 percent of the time, a good lawyer will investigate and learn the nature of security personnel, polices, and planning, and find out if, in fact, everyone from top to bottom was aware of what to do in a crisis situation. While a school administrator may know what to do when a terrorist incident occurs, a janitor, retired security guard working in the school, or a substitute teacher in a class may have no idea. Even if only lower level personnel do not know how to react during a time of crisis, negligence is likely to be found when the case is presented in court. Every policy for dealing with emergencies in a school district will also be checked to ensure it is current and when such policies were last examined by administrators. In addition, a lawyer will use the media to highlight the ineffectiveness of a school district and to hurt its public image while litigation is pending. Think of shooting incidents in recent years and how school districts have been portrayed thanks to the prodding of attorneys.

As a foreseeable risk, school boards, directors and school administrators have an obligation to use good judgment to protect students and their staff or face a lawsuit for negligence. In legal terms, negligence is the failure to use such care or good judgment as a reasonably prudent and careful person would use under similar circumstances. This equated to performing some act, which a person of ordinary prudence would not have done under the circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances.

If school staff and administrators are not properly trained, and a formal effective plan is not developed and implemented before a foreseeable crisis, schools could be sued for negligence. Most school management and administrators immediately point to their “lock-down procedures” and plan. This is an important part of an emergency operations plan, but in the current threat environment, it is only one of many components. First of all, the lock-down procedure is reactive in nature, responding to a currently unfolding situation. Proactive measures should be included that contain actions to prevent an act of violence from occurring in the first place.

Conclusion: School security is a great concern in communities across the country. Fortifying our schools against insidious acts of violence is a daunting task, as is developing and implementing programs to reduce school violence and damaging acts against our children. No one has all the answers needed to address all these issues, but one thing is sure, the more you and your staff know, the better prepared you and your school will be. A good place to start is with additional training in Educator Threat Awareness for your school administrators, staff and educators. In the recent past we have had several events that have been dubbed by the media as a “Wake-Up Call.” The next time we experience an act of school violence, there will be no excuse. We must all work together to prepare ourselves for the unthinkable – an attack on our school children. Much of the documentation and programs available address what to do when an event or crisis occurs. We must all take a proactive rather than reactive approach and address all the threats that face our schools. Has your school staff been adequately trained?

TREND: More than 35% of School Resource Officers surveyed at the annual NASRO Conference said that violent incidents on school buses had increased in their districts during the past two years.



CONTACT

Spy-Ops

4017 Washington Road—MS #348
McMurray, PA 15317

P 888-650-0800

F 412-291-1193

I www.spy-ops.com

This article was written by Edward J. Maggio, a certified instructor and professor of criminal justice and private security. Presently Professor Maggio works in the behavioral sciences department at the New York Institute of Technology. During his career he has advised law enforcement personnel, business administrators, hospital personnel and members of government. He has organized and operated some of the leading conferences in the area of business continuity, security, and emergency planning. As a lawyer and professor, he has worked with numerous police organizations around the world. He is frequently invited to speak about criminal justice and security topics on college campuses, at business events and in different communities around the world along with working on publications to raise awareness of developments in the area criminal justice and counter-terrorism.

For NYIT, Professor Maggio also serves as an instructor and speaker in the fields of private security, risk assessment, corporate crime responses, technology applications for security, counter-terrorism, and emergency management. He also currently serves as the Director of Strategic Initiatives at the Technolytics Institute and Spy-Ops.