School Law for Administrators

Headlines on School Law

Colorado lawmakers take action against school violence

by Rob Taylor, Ph.D.

At the end of the 2014 legislative session, Colorado legislators unanimously passed Senate Bill 002, which moved a private nonprofit-run tip line—Safe2Tell—for students under the office of the Attorney General and provided secure funding. Continuing its campaign against the kind of violence afflicting public schools both in and outside the state, the legislature nearly at the end of the 2015 session has passed through the Senate SB 213, which creates an exemption to governmental immunity against lawsuits for public schools when school violence has been found to be "reasonably foreseeable."

In 2013 Arapahoe High School student Claire Davis was shot and killed in the school cafeteria by a deranged classmate, who then killed himself. The young killer was known to have made threats about his intended attacks. Claire's mother Desiree Davis nearly two years later pleaded with a Senate Judiciary Committee to waive state-sanctioned governmental immunity, saying, "Please don't make the next mother beg for answers as to why her child was killed in a public school in Colorado." Both Davis parents had grown increasingly frustrated at the unresponsiveness of Littleton school officials in providing information about their daughter's shooting.

Senate President Bill Cadman responded to the Davis' plea by sponsoring the bill—named in honor of Claire Davis—that established a newly-defined duty of "reasonable care" to be expected of schools in averting violent episodes. Most analysts believe SB 213 will soon be passed by the Democratic-controlled House and then signed by the Governor.

The bill allows victims or their families to file lawsuits for negligence and claim damages up to $350,000 a person or $900,000 all told in the event of multiple injuries. The original bill was made retroactive to 2013 in order to allow the Davis family to file a lawsuit but was later amended to cover incidents after June 30, 2017 because Michael and Desiree Davis have struck a deal with the Littleton Public Schools to go to arbitration and avoid a lawsuit.

There were naysayers to this antigovernmental immunity legislation, according to a *Denver Post* article. Senator Mike Johnson, D-Denver and a former school principal, said, "What we are talking about is a massive expansion of the right to sue the state."

Colorado Springs Republican Cadman responded, "What is our goal with this bill? Moving our schools in the direction that provides increased safety for our kids with increased peace of mind for parents."

Some school districts also reacted against the legislation, claiming that their liability insurance would be increasing about $20,000 to $30,000 per year. In fact that argument went further, saying the new law was much less likely to prevent school violence than it was to increase insurance liability.

A school board president from Colorado Springs, Jan Tanner, inveighed against the bill, predicting that schools would now begin expelling mentally disturbed students rather than providing treatment. A lawyer for the Denver-area Cherry Creek School District, Sonja McKensie, chimed in: "Kids won't get second chances anymore."

But lawmakers appeared less influenced by those arguments than the contentions of Claire Davis' parents that something was clearly amiss in how the schools were responding to violence. Arapahoe High, for example, did not report Claire's killing as an act of violence in their annual data because—since the shooter killed himself—he was never disciplined. This kind of inaccurate reporting had been pointed out in a joint investigation conducted by the *Denver Post* and *7News* in 2014. The investigation revealed that "Traditional high schools at Littleton Public Schools have not reported an assault, robbery, or felony in the past five years."

Given the emotional nature of the testimony in the 2015 committee hearings and the kinds of issues raised, lawmakers crafted a companion bill to SB 213, Senate Bill 214, which creates a legislative committee to look at school safety and mental health concerns of students.

Colorado Pioneered Tip Line Strategy After Columbine

Following the 1999 shootings at Columbine High, near Littleton, a task force recommended the implementation of a tip line to allow students to anonymously report suspected violence by another student against himself/herself or others. This seemed a good recommendation since a U.S. Secret Service report had earlier indicated that in 82% of violent incidents across the U.S., someone other than the attacker knew in advance of that person's plans but failed to report it.

However, through its first three years of operation in Colorado after starting up in 2004, the Safe2Tell tip line received only seven reports. That problem, said its executive director Susan

(Continued on Page 2)

Lawsuit Over Football-Caused Concussion Could Foretell Changes to High School Football

A motion was recently filed by the Illinois High School Association asking the Cook County Circuit Court to dismiss a class action concussion suit. IHSA's motion characterizes the suit as "a misguided effort that threatens high school football." The suit, which was filed in November 2014, seeks court supervision over high schools' management of head injuries. The IHSA believes that this decision could be harmful to the sport.

There are many concerns when it comes to court imposed mandates in schools, because it doesn't leave room for grey area, and different schools have different needs. IHSA Director Marty Hickman has previously said that court-imposed mandates could make football prohibitively expensive for poorer schools, especially Chicago's public health schools, and lead to "haves and have nots" in the sport.

Conversely, plaintiff attorney Joseph Siprut believes that improving safety should help football survive, not lead to its demise. He also asserted that football is already in jeopardy because parents fearful of concussions are refusing to let their kids play, potentially drying up the talent pool.

Even though college and professional football have faced a barrage of class-action lawsuits in recent years, the suit against IHSA is the first-of-its-kind against a high school football governing body. IHSA insists court-imposed mandates could be financially crippling.

The goal of this lawsuit is to ensure the safety of high school football players. The lawsuit does not seek monetary damages. The suit asks for court oversight of the sport, and it seeks requirements that medical personnel be present at all games and practices, among other mandates. It also calls for the IHSA to pay for medical testing of former high school football players extending back to 2002. The IHSA filing argues that designating a court-administered high school head-injury policy—rather than leaving it to the prep body, school boards, and Illinois legislators—would be unwieldly.

The motion asks rhetorically: "If a high school . . . fails to have a court-ordered medical professional at a football practice, how will such a violation of the Court's injunction be remedied? Sanction the IHSA? The local school board? The principal? The athletic director? The coaches? All of the above?"

Source: *Chicago Tribune*

—School Law Bulletin,
Vol. 42, No. 11, June 10, 2015, pp 8.

Headlines on School Law. . . *(Continued from page 1)*

Payne, emanated from students not yet believing they would receive total anonymity or that reports would be followed up on.

Moreover, she continued in an *EdWeek* piece, tip lines prove effective only when they are part of a comprehensive prevention program including cooperative law enforcement and school training.

Once adjustments were made over time, Colorado's Safe2Tell tip line has become one of the most successful in the nation. It has

- Since 2004 received reports on 282 planned school attacks, all of which were investigated by law enforcement, with 31 being classified as high risk;
- Collected 1,436 reports of planned suicides; and
- Logged 2,386 reports of bullying.

The continuing issue in Colorado has been the tip line's status as a nonprofit agency and hence its insecure funding. As mentioned above, this problem was solved in May of 2014 when Governor John Hickenlooper signed SB 002 into law, placing Safe2Tell under the office of the Attorney General.

In October of 2014 Attorney General John Suthers announced the launch of new Safe2Tell Education Toolkits, available for download free of charge. The toolkits are intended to be age-appropriate resources for K-12 students encouraging prompt reporting of "school-safety" concerns.

Attorney General Suthers commented in a press release, "Last year 3,178 Safe2Tell reports were responded to by school officials and law enforcement to intervene and prevent violence. We hope to increase awareness with the launch of these toolkits."

Safe2Tell director Susan Payne said the toolkits have been designed as a resource for educators to have a "guided conversation" with students, helping them know what to watch for. In the last year, she added, ". . . our highest category of reports was suicide interventions, followed by bullying and substance abuse."

Observers have noted that the Sandy Hook Elementary shootings in Newton, Conn. in 2012 have spurred a more intense interest nationally in tip lines, with Colorado's being a common model. Plans to develop tip lines, for example, have recently been discussed in New Jersey, Utah, and Wyoming, while Kentucky has already piloted a reporting system in seven districts.

Michigan lawmakers have passed a law initiating a system called OK-2-Say, costing $3.5 million over four years. The law contains a built-in 2017 end date unless the legislature at that time renews it.

—School Law Bulletin,
Vol. 42, No. 11, June 10, 2015, pp. 1-3.

You Be the Judge

Can a school district legally punish a student for a Facebook post that says teacher should be shot?

The Facts

After getting a C in health class, a middle school student posted critical messages about his teacher on his Facebook page from his home. He finished the post by saying, "Ya haha she needs to be shot." Friends of the student were able to see this post but no teachers or staff from the school district could see it. After one day, the student's mother noticed the post and removed it. However, sometime later someone anonymously placed a copy of the printout in the school office.

The student was called to the principal's office, where he was shown the post and reminded of various district policies. The student expressed that the post was made in jest and he did not think the teacher should be shot and had not meant to threaten her. After this conversation, the district suspended the student for three and a half days to be served in school, a less serious discipline measure than out-of-school suspension.

Though the teacher felt scared and nervous about having the student back in her class, she accepted the decision without a fight and never talked about the Facebook post with the student or her colleagues. There was no other fallout from the post.

The student later sued the district alleging violations of his First Amendment free speech rights and his 14th Amendment due process rights. A magistrate judge recommended that the student be granted summary judgment on the First Amendment claim but that the school district should be awarded summary judgment on the due process. The district appealed to the lower court on the magistrate judge's findings that it had violated the student's free speech rights when it disciplined him following the threatening post, asserting that under *Tinker,* such action was permissible given the possibility of substantial disruption to the school environment.

The Question

Was the school district correct that it was permissible to discipline the student for his speech given the nature of the speech? (See the answer below.)

—School Law Bulletin,
Vol. 42, No. 13, July 10, 2015, p. 3.

You Be the Judge (Answer)

Can a school district legally punish a student for a Facebook post that says teacher should be shot?

The Judgment

The court rejected the district's argument and agreed with the magistrate judge's recommendations, granting the student summary judgment on his First Amendment claim. It noted that while a school district may discipline a student for speech that causes or could reasonably be expected to cause a substantial disruption to the school environment and operations, the record did not reflect that such a disruption occurred or was forecast to occur, nor did the court believe the post was a "true threat" under the relevant standard.

While the teacher expressed her discomfort with the post, she did not discuss it openly with anyone at the district except for the district administration. Moreover, the principal seemed to accept the student's explanation that he made the post in jest and did not mean to threaten the teacher. This was evident in the fact that the principal meted out a relatively light disciplinary action.

The court noted also that the student's post was unlike other threatening speech that had justified disciplinary action in that, at most, the speech was personally offensive but not of the type or context required for *Tinker's* substantial disruption exceptions to apply.

This scenario is based on *Burge ex rel. Burge v. Colton School Dist. 53, 2015 WL 1757161 (D. Or. 2015).*

—School Law Bulletin,
Vol. 42, No. 13, July 10, 2015, p. 6.

Around the Nation ~ California

Teacher on unpaid leave due to inappropriate alleged relationship with student, receives settlement from district for invasion of privacy

A school district in California admits that they may have crossed the line when they looked at the private e-mails of a school employee. Therefore, they have agreed to a $275,000 settlement. Charles Brautigam, a teacher at Granada Middle School, filed a lawsuit against the Whittier City School district alleging that they invaded his privacy when they looked into his private e-mail on his school computer. According to Brautigam's suit, in February 2013, East Whittier City School District (EWCSD) officials seized his computer after launching an investigation into whether he had an improper romance with a 17-year-old La Serna High School student in 2006.

This case has not yet been settled, and Brautigam is currently on unpaid leave while awaiting a scheduled August 2015 hearing before the state's Office of Administrative Hearing Board regarding this alleged inappropriate relationship. According to Karl Kronenberger, Brautigam's attorney, district officials confiscated his laptop after Brautigam was placed on leave. The laptop itself is school property, but the courts contend that even so, private account information cannot legally be accessed by the district without a court order.

The school district invaded his personal privacy when "they got his passwords in his g-mail account and then proceeded to snoop through all of his e-mail, including attorney-client information," Kronenberger said. "They went through other accounts as well," he said. "It was such a horrible breach of privacy. The communication people store in their personal e-mail have a lot of private things, such as medical, financial, personal, and family issues." In this case, Kronenberger has not yet been convicted of any crime, and the school district was out of line when they looked at this information.

In defense of the school district, Superintendent Mary Branca said that they believed that one of their students was in danger, and took the steps necessary to make sure she was safe. Branca claims that the district settled the lawsuit, which was filed in August 2014, on the advice of its attorneys, rather than going to trial. "Most of this will be paid by our insurance," she said. "It's a complicated case and this was part of an investigation we're doing where we thought there was wrongdoing against our students." Branca added employees should not have an expectation of privacy on the district-issued computers, but in the future, district officials will not access private e-mails.

Source: *Whittier Daily News*

—School Law Bulletin,
Vol. 42, No. 10, May 25, 2015, p. 6.

Around the Nation ~ Illinois

Debate continues over whether special needs student should be allowed to have a service dog at school

Service dogs are becoming more and common in schools across the country. Still, many schools will not allow students to use them. Sherrard School District will not allow a student to bring her service dog to school, and they are appealing a decision by an Illinois State Board of Education hearing officer in favor of an epileptic student who was prohibited from bringing her service dog to school.

The hearing officer found that SSD had show "unreasonableness and indifference" and had created a "hostile environment" for the student. Colin land Brandi McGuire, the student's parents, filed a complaint alleging that SSD was violating federal disability law by denying their daughter permission to bring the dog to school.

The student's parents are disappointed with the school district's appeal saying that it is waste of time and money. "It's a huge waste of taxpayer dollards, you're talking they've spent 100 thousand dollards so far, another 100 thousand dollars when this is all said and done? For what?" Brandi McGuire said. She claims they have spent $60,000 in legal fees alone, which she believes the district will have to pay to them when teh appeals process is completed. SSD Superintendent Samuel Light contends the state hearing officer erred in his decision, and that the district did nothing wrong.

Source: *WQAD8*

—School Law Bulletin,
Vol. 42, No. 11, June 10, 2015, pp 8.