KNOWLEDGE AND PRACTICE
OF OHIO'S SCHOOL ADMINISTRATORS
REGARDING STUDENT-ON-STUDENT VIOLENCE
AND ASSOCIATED LEGAL LIABILITY

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate School
of The Ohio State University

By

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* * * * *

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Patrick David Pauken
This study examines the knowledge and practice of Ohio school administrators regarding student-on-student violence. This study is necessary for several reasons. First, previous studies testing knowledge of school administrators reveal that these administrators are not-well-versed in school law. Second, few studies examine tort, constitutional, and statutory law related to student violence. Third, litigation against schools where violence occurs may be increasing. Fourth, school violence itself is increasing. Examples of student violence include peer sexual harassment, gang activity, weapons violations, bullying, and hazing. Currently, courts and legislatures favor schools and their anti-violence and liability-reduction policies. However, some courts and commentators have recently placed responsibility for student violence on the schools. This possible shift toward school district liability makes an examination of administrators' legal knowledge important and urgent.

This study has several related purposes. First, the level of legal knowledge of Ohio's public school district superintendents and principals is assessed, particularly the
state and federal, and statutory and judicial law related to school district liability for student-on-student violence and the constitutional implications of school anti-violence policies.

Second, this study requests and reports information from school administrators on the experience they have had with student-on-student violence in their schools over the past two years, and the anti-violence measures their schools have implemented to reduce or eliminate this violence. Third, it asks administrators if their schools or school districts have addressed any legal questions or concerns in the development, implementation, or enforcement of these anti-violence measures.

This document reviews the broad and active body of violence and violence prevention literature. This review culminates in a four-level characterization of violence prevention practices: (1) reactive-punitive; (2) reactive-educational; (3) proactive-punitive; and (4) proactive-educational. The document also contains an extensive review and analysis of constitutional, tort, and statutory law relating to student violence.

The dependent variables were (1) knowledge of the law and legal liability regarding student-on-student violence; (2) school and school district history/experience with student-on-student violence; (3) school and school district practice in violence prevention; and (4) school
administrator access and exposure to school law information. A random sample of 500 school administrators was selected to participate, stratified on two four-level independent variables: administrative role (superintendent, high school principal, middle school or junior high school principal, and elementary school principal), and school district type (large city, small city, suburban, and rural). Two hundred and twenty-four complete and usable questionnaires were returned. The grand mean knowledge was 25.23, out of 40. This indicated some level of knowledge, but left room for improvement.

The 4 X 4 analysis of variance on knowledge of the law resulted in a main effect for administrative role. Elementary schools scored significantly lower than high school and middle school principals. There was no significant interaction effect, and no significant main effect for school district type.

For violence experience, participants rated fifteen types of violence, on a six-point scale, from "very frequently" to "never." While high schools, middle schools, and large city districts had the highest rates of violence, nearly all groups agreed on the most frequent and least frequent types. Verbal threats, bullying, theft, and peer sexual harassment were most frequent. Weapon injury, weapon threat, weapon possession, and hazing were least frequent.
Participants were asked to read through a list of violence prevention policies and practice and check all the ones their school(s) have implemented. Results revealed a wide variety of prevention policies, many of them reflective of an awareness of the law: student codes of conduct; various particularized, systematic, or random search and seizure procedures; dress codes; sexual harassment policies; peer mediation; school-business partnerships; and multicultural education. Some of the less popular policies overall were more popular in large cities: mandatory school uniforms, police presence in schools, zero tolerance policies, and metal detectors. Among sources of legal information, most participating administrators indicated a broad range, including courses at colleges and universities, publications from professional and governmental organizations, and communication with school district attorneys and other school administrators.
DEDICATION

This dissertation is dedicated

to all of the educators in my life --
who inspired me to explore, to discover,
to learn, and to create --
especially my parents,
who taught me that
education is not only good for the mind,
but also good for the heart.

* * * *

Time and change will surely show

How firm Thy friendship

OHIO
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David A. Goldberger, Esq.
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Pilot Test Participants
The University Council for Educational Administration
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The Ohio Association of Secondary School Administrators
The Ohio Association of Elementary School Administrators

My parents, Ray and Trish
My brother Michael
My twin sister Molly

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   and all the patient, professional people at COP-EZ

James Gallagher,
   and The Ohio State University Men's Glee Club, Past and Present

Tom Minnick, my guardian angel at Ohio State.

John Mount, the truest Buckeye Spirit I know.
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FIELD OF STUDY

Major: Education
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CHAPTER 1

INTRODUCTION

Background and Setting

After school, while waiting for the bus ride home, an innocent student is mistaken for a rival gang member and shot.\textsuperscript{1} Several male students verbally and sexually assault female students in a darkroom of a graphic arts classroom.\textsuperscript{2} Two students are beaten up and stabbed after one of them accidentally bumps into a third student in a hallway.\textsuperscript{3} In a hazing incident, a high school football player is forcibly restrained by five teammates and taped, unclothed, to a locker room towel rack.\textsuperscript{4}

Though they may vary in motive, severity, and type of attack or injury, violent incidents among students are common in today's schools. As a result, teachers,

\begin{enumerate}
\item D.R. v. Middle Bucks Area Vocational Technical Sch., 972 F.2d 1364 (3d Cir. 1992), cert. denied, 113 S. Ct. 1045 (1993).
\item Mirand v. City of New York, 637 N.E.2d 263 (N.Y. 1994).
\item Seamons v. Snow, 84 F.3d 126 (10th Cir. 1996).
\end{enumerate}
administrators, students, and parents are caught in a crossfire of violence. To reduce this violence, and to protect others, schools implement anti-violence policies such as dress codes, weapon and drug searches, police presence on campus, stricter discipline (including permanent exclusion), and peer mediation programs. With or without these anti-violence rules and regulations, however, schools run the risk of incurring legal liability for the violence that occurs while students are under their care. On one end of the crossfire, schools must defend their anti-violence actions against allegations that these policies violate the First, Fourth, Fifth, and/or Fourteenth Amendment rights of students. On the other end, a school may be caught for alleged inaction (or omission) when a student is injured by the violent act of another and sues the school district for negligence (including negligent supervision); unconstitutional deprivation of life, liberty, or property (committed under "color of state law"); or a general failure to protect students from the violent acts of others.

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When plaintiffs bring lawsuits alleging constitutional violation as the result of governmental act or omission, courts will most often resolve the disputes by balancing the rights of the affected parties. In cases involving state and/or federal constitutional challenges to school anti-violence policies, the affected parties typically are: (1) students and parents, in the exercise of their constitutional rights and their rights to be free from unconstitutional deprivation of life, liberty, or property; and (2) school districts and school administrators, in their efforts to control the behavior of disruptive or dangerous students and to protect the rights of school personnel and law-abiding students. For example, in a case involving a principal’s search of a student for drugs or weapons, a court must balance the school’s interest in a safe educational atmosphere with the student’s expectation of privacy in his or her person or property. In the majority of recent cases, anti-violence policies such as weapon or drug searches have successfully withstood constitutional challenges. That is, courts and legislatures will generally protect schools that work to protect the health, safety, and welfare of students and school personnel.

Similarly, the majority of federal constitutional tort cases involving student-on-student violence favor the schools. In these cases, student victims and/or their parents argue that the public school districts violated
their constitutional rights through the acts or omissions of school employees. Section 1983 of Title 42 of the United States Code (Section 1983)\(^6\) is the basis for these claims. The rights most often asserted under Section 1983 in student violence and peer sexual harassment situations are Fourteenth Amendment rights to substantive and procedural due process. The critical question courts usually address here, however, is whether school districts have an affirmative duty to protect students against the violent acts of third parties, primarily other students. Overwhelmingly, courts answer this question in the negative.\(^7\) Except in rare situations, courts hold that school districts do not have an affirmative duty to protect their students from the harmful conduct of non-state actors. Plaintiffs rely on two theories to argue that schools have such a duty to protect:

(1) First, they argue that a "special relationship" exists between the school officials and the students -- a relationship sufficient enough to establish an affirmative duty on the school's part to protect its


students from a constitutional deprivation of rights;\textsuperscript{8} or

(2) Second, they argue that a "state-created danger" exists. In other words, the school has affirmatively acted to create the risk of harm to students, or to render the students more vulnerable to the danger. In such a case, the school is deliberately indifferent in failing to adequately protect students from the danger it created.\textsuperscript{9}

Finally, under state-based tort law, courts typically hold in favor of schools. In tort cases involving student violence, plaintiffs must show that schools have a duty of care to meet. Unlike in the cases involving constitutional tort claims that fail to find an affirmative duty of care under federal law, school districts do have a duty of care to meet under state law, particularly the duty to supervise children. In many student-on-student violence cases, courts find that the school district has met its duty of care and, therefore, is not liable for the unforeseeable injuries


suffered as a result of student violence. In other cases, school districts assert governmental or sovereign immunity, and avoid liability for governmental or discretionary acts and decisions.

Despite the current legal trend favoring schools, a few courts and administrative agencies, and several commentators have recently placed legal responsibility for student-on-student violence on the schools.\textsuperscript{10} Although this is not a specific research question for this study, violence among elementary and secondary school students -- including peer sexual harassment, gang violence, weapons violations, bullying, and hazing -- may be joining the ranks of special education and employee sexual harassment as one of the most litigated areas in school law. This split among courts, legislatures, and commentators; the possibility of school district liability; and the increased frequency and severity of student violence make an examination of the legal knowledge and responses of school officials toward student violence in schools important and urgent.

Statement of the Problem and Purpose of the Study

Researchers have tested the legal knowledge of school administrators in the past, dealing primarily with other areas of the law, such as special education, school prayer,  

\textsuperscript{10} See, generally, Sperry and Daniel, supra note 5.
and general constitutional law.\textsuperscript{11} To date, however, very few studies have discussed tort law and constitutional law as they relate to violence among elementary and secondary school students. In addition, few studies examine the policies that schools implement to reduce violence and legal liability.\textsuperscript{12} The previous studies testing legal knowledge among school administrators reveal that most school officials are not well-versed in the management of their


legal concerns.\textsuperscript{13} Certainly, the legal issues surrounding school violence are among these concerns.

This study has several related purposes. First, the level of legal knowledge of Ohio's public school district superintendents and principals is assessed, particularly the law related to school district liability for student-on-student violence and the constitutional implications of school anti-violence policies.

Second, this study requests and reports information from school administrators on the experience they have had with student-on-student violence in their schools over the past two years. Third, this study requests and reports information from school administrators on the various anti-violence measures their schools have implemented to reduce or eliminate this violence. Fourth, it asks administrators if their schools or school districts have addressed any legal questions or concerns in the development, implementation, or enforcement of these anti-violence measures.

Finally, the study asks participants to report their sources of law-related information. In other words, where do Ohio school administrators get their legal information?

Research Questions

The following research questions are addressed in this study:

(1) What is the level of legal knowledge of district superintendents and school principals regarding school violence and its associated legal liability and constitutional implications?

(2a) Is there a significant difference among administrative roles (school district superintendents, high school principals, middle school or junior high school principals, and elementary school principals) on knowledge of the law and legal liability regarding student violence in the schools?

(2b) Is there a significant difference among school district types\textsuperscript{14} on knowledge of the law and legal liability regarding student violence in the schools?

\textsuperscript{14} For this study, the school district types are (1) large city, (2) small city, (3) suburban, and (4) rural.
(2c) Is there a significant interaction effect of administrative role and school district type on knowledge of the law and legal liability regarding student violence in the schools?

(3) What experiences have schools and school districts had with student-on-student violence in the past two years?

(4a) What anti-violence policies have been implemented in Ohio schools and school districts?

(4b) Which of these anti-violence policies, if any, have raised legal concerns during development, implementation, or enforcement?

(4c) Which of these anti-violence policies, if any, have been implemented in order to comply with a legal ruling (e.g., a statutory or judicial ruling)?

(4d) Which of these anti-violence policies, if any, entitle the school or school district to additional federal or state funding?

(5) From what sources do Ohio’s district superintendents and school principals obtain their law-related information?
Variables and Definition of Terms

Dependent Variables

The primary dependent variable in this study is knowledge of the law and legal liability regarding student-on-student violence in schools. A second dependent variable, school history/experience with student-on-student violence, measures the frequency and types of violence experienced by schools and school districts over the past two years. Third, school and school district policy and practice in violence prevention measures the implementation of anti-violence policies in the schools. Fourth, exposure to school law information measures the access to and use of several types of school law sources.

Knowledge of the Law and Legal Liability Regarding Student-on-Student Violence in Schools

Knowledge is the acquaintance with or theoretical or practical understanding of some branch of science, art, learning, or other area involving study, research, or practice.\(^\text{15}\) Law is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. Liability is the condition of being responsible for a possible or actual loss, penalty, expense,\(^\text{15}\)

\(^\text{15}\) Webster's Third New International Dictionary (1986).
or burden.\textsuperscript{16} Therefore, knowledge of the law and legal liability regarding student violence can be defined as the level of practical and/or theoretical understanding of the rules of action or conduct prescribed by courts, legislatures, or other authorities, as they relate to the commission and consequences of violent acts by students against students in school settings.

For this study, knowledge of the law and legal liability regarding student violence will be operationalized as the raw score on a law test developed especially for this study and administered to district superintendents and school principals. The test consists of forty issues and rule statements, based on state and federal cases and statutes binding in Ohio, and asks participants whether each issue or rule statement is true, false, or currently unclear.

\textbf{School and School District History/Experience with Student-on-Student Violence}

Violence is an instance of injury or damage, through rough or abusive treatment, by one or more persons to other persons or property.\textsuperscript{17} For this study, school and school district history/experience with student-on-student violence


\textsuperscript{17} The Reader's Digest Great Encyclopedic Dictionary (1969).
will be operationalized as a frequency score for each of several types of violence including verbal threats, physical fights, gang presence, weapon possession, and peer sexual harassment. Frequency is measured on a six-point Likert-type scale from "very frequently" to "never," and is based on the principal’s or superintendent’s perceived frequency of student-on-student violence in their schools over the past two years.

School and School District Policy and Practice in Violence Prevention

A policy is any course or plan of action designed to influence future decisions or actions. A practice is an established custom or usage -- the act or process of executing or accomplishing.\textsuperscript{18} Therefore, school and school district policy and practice in violence prevention is any course or plan of action, or established custom or usage of a school or school district which is designed to prevent acts of injury or damage by rough or abusive treatment by one or more students to other students or their property.

For this study, school and school district policy and practice in violence prevention will be operationalized as the percentages of Ohio school administrators who report implementing certain anti-violence measures in their schools. These anti-violence measures include weapon and

\textsuperscript{18} Id.
drug searches of students and lockers, use of metal detectors, implementation of dress and/or uniform codes, peer mediation programming, and police presence in schools.

Exposure to School Law Information

In this study, each of the participants will be asked to read a list of sources of school law information, and check all of the sources with which they have had experience. The sources of school law information are based on a study by Hillman, adapted for this study, and include college or university courses, readings in journals or books, attendance at education and/or law conferences and conventions; in-service programs, continuing education, and information from colleagues. Results will be presented by numbers and percentages of respondents who use each particular source of law.

Independent Variables

Administrative Role

For this study, administrative role is defined as the current position held by each participant. It is operationalized as a four-level independent variable: (1)

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district superintendent, (2) high school principal, (3) middle school or junior high school principal, and (4) elementary school principal. As defined below, "superintendent" and "principal" also include superintendents’ and principals’ designees.

School District Type

School district type is a four-level variable: (1) large city; (2) small city; (3) suburban; and (4) rural.\(^{20}\) The study’s questionnaire will ask each participant to place his or her district into one of the four classifications. Because legal knowledge and practice may be influenced by how a school administrator perceives his or her district, in terms of this classification, it is important to have the participants do the classifying themselves, rather than classify the district based on the researcher’s arbitrary designation. For this independent variable and for the selection of the random sample, the researcher will, instead, stratify the sample of Ohio’s district superintendents and school principals based on a current classification system employed by the Ohio Department of

\(^{20}\) This variable is inspired by and based, in part, on the "community classification" factor used by Kimberly K. Theller (1995), A Comparison of Ohio Elementary Principals’ and Special Education Supervisors’ Legal Knowledge, Attitude, and Self-Reported Behavior as Related to Inclusion Practices of Disabled/Handicapped Students (unpublished Ph.D. dissertation, The University of Toledo) (on file with The University of Toledo Library). It has been modified and expanded for use in this study.
Education and then ask the participant to label his or her own district. According to the Ohio Department of Education, Ohio's public school districts may be placed into seven different, mutually exclusive categories: (1) Big Eight Districts; (2) Other Large Districts; (3) Independent Districts; (4) Suburbs/Satellites Districts; (5) Rural Districts; (6) Rural/High ADOC Districts; and (7) Wealthy Districts. For this study, the researcher has consolidated these seven categories into four: (1) Large City (combination of the State Department's categories 1 and 2); (2) Small City (category 3); (3) Suburban (categories 4 and 7); and (4) Rural (categories 5 and 6).

Definition of Terms

In addition to the dependent and independent variables defined above, the following terms are used throughout this study, and are defined below:

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21 According to the Department of Education, there are four very small "unclassified" districts in Ohio. These districts do not appear in any other category and were eliminated from the target population for this study. The researcher accessed this seven-level classification scheme, known as Group Identification, in the Department of Education, via the Department's World Wide Web site. See <http://www.ode.ohio.gov/ww/ims/extract_vitals_data.html> (visited September 3, 1997).

22 Many of the definitions presented here are based on the Glossary of Legal Terms from Sperry and Daniel, supra note 5, at 1125-1143.
**Affirmative defense** is an argument asserted by a defendant in a lawsuit that, if true, constitutes a defense to the plaintiff's complaint. Examples include comparative negligence and qualified immunity.

**Due Process**, a phrase from the Fifth and Fourteenth Amendments of the United States Constitution, refers to the reasonable, fair, and equitable application and administration of law. **Procedural due process** refers to the requirements of notice, hearing, and other procedures that protect a citizen's life, liberty, or property. **Substantive due process** refers to the requirement that government action be reasonable in its content and application and within the scope of its authority.

**Governmental function** is any duty required of a governmental body, including a school district, in furtherance of the law or the public good.

**Governmental Immunity** (see "Sovereign Immunity," below).

**Liability** is a party's legal obligation, duty, or responsibility; it is the condition of being responsible for a possible or actual loss, penalty, expense, or burden.

**Negligence** is any conduct, usually causing injury to another's person or property, that (1) falls below the degree of care that a reasonable person would exercise in the same situation; (2) falls below a standard of care fixed by law; or (3) falls below a standard of care established by
a profession or trade about which the negligent party knew or should have known.

Principal, for purposes of this study, is defined as the head administrator or designee of a public elementary, middle, junior high, or high school.

Proprietary function is a function of a governmental body, including a school district, that is not required by law, but is engaged in for the benefit, improvement, or profit of the governmental body.

Qualified immunity is an affirmative defense granting immunity from liability for conduct that does not violate the clearly established judicial, statutory, or constitutional rights of others.

School district, for this study, means any city, exempted village, or local system of public schools in Ohio designated by the State Department of Education in one of the following seven group identification categories: (1) Big Eight Districts; (2) Other Large Districts; (3) Independent Districts; (4) Suburbs/Satellites Districts; (5) Rural Districts; (6) Rural/High ADC Districts; and (7) Wealthy Districts.

Search is an examination of a person or property with an intent to discover contraband, stolen property, or some evidence of guilt to be used in the prosecution of a crime or other offense.
Seizure the act of taking possession or control of a person or property.

Sovereign immunity (also governmental immunity) is a governmental body's immunity from lawsuits for injurious consequences resulting the exercise of "governmental functions."

Student-on-student violence pertains to instances of physical or emotional abuse and injury perpetrated by students against other students, including verbal threats, physical fights, bullying, gang activity, drug and weapon possession and use, and peer sexual harassment.

Superintendent, for the purposes of this study, is defined as the head administrator or designee of a public school district.

Tort is any wrongful non-criminal conduct that causes injury to another person or that person's property or reputation; the conduct is wrongful if it is unlawful or amounts to a breach of a legal duty existing between the wrongdoer and the injured person. A constitutional tort is any wrongful non-criminal conduct, by a state actor, that violates the constitutional rights of another person.
Contribution to Theory and Practice

This study is the first of its kind in the timely area of student-on-student violence. There are no prior studies analyzing school administrators’ knowledge of the law relating to violent conduct among students at school. Therefore, the newness and urgency of this topic dictate that this study be exploratory and descriptive as much as it is inferential.

With respect to the other dependent variables -- Ohio schools’ recent experience with student-on-student violence, and the anti-violence practices of school administrators -- Chapter 2 of this study reviews the broad and active body of school violence prevention literature and presents a new categorization of violence prevention policies: (1) reactive-punitive; (2) reactive-educational; (3) proactive-punitive; and (4) proactive-educational. Readers and educational researchers are encouraged to further test and modify the instrument administered here and to replicate this study in other jurisdictions.

This study has several practical applications, as well. First, this study may reveal that certain groups of public school administrators lack the legal knowledge necessary to address all of the concerns of student-on-student violence. College and university educators, as well as other providers of school law information will be able to use the results of
this study to increase the awareness of student-on-student violence in schools and the level of legal knowledge among Ohio's principals and superintendents. Second, this study's practical importance extends to the anti-violence policies implemented by schools. This study encourages schools and school districts to look at the four-part categorization of school violence prevention and to implement the disciplinary and educational programs that are the most effective and most appropriate under given sets of circumstances. In addition, the wide range of school districts and school sizes and types in Ohio allow all educators and administrators to learn from the experiences and practices of their colleagues and to adapt these experiences and practices to their particular situations. Geographically and demographically, all corners of Ohio are represented among the respondents.

Limitations of the Study

Because there are no studies directly covering the knowledge and practices of school administrators with respect to student-on-student violence and the law, this study is able to address only a few of the unanswered questions in this area. Some of this study's limitations are due to the nature of the study itself. For example,
knowledge of the law is best tested when the law is limited to a certain jurisdiction; this ensures that the content area is the same for each of the participants. This study tests the knowledge of Ohio school administrators, and will test only the state and federal law binding in Ohio. However, this study should be useful as a model for other state's school administrators and the law binding in those jurisdictions. Another substantive limitation to this study is that it covers primarily student-on-student violence; this study does not address student-to-teacher and teacher-to-student violence.

There are also procedural limitations to this study. First, one of the independent variables is administrative role: superintendent, high school principal, middle school or junior high school principal, or elementary school principal. Other school personnel such as counselors, teachers, students, board members, and parents are not sampled. However, future studies may be modeled after this one to assess the knowledge and practices of these groups, as well. Second, the participants are administrators in public schools; this study does not include non-public, adult, or vocational schools.
CHAPTER 2

STUDENT-ON-STUDENT VIOLENCE AND SCHOOL VIOLENCE PREVENTION:

REVIEW OF LITERATURE

Violence in the Schools

Violence in Society, Generally

It is without question that violence across the country -- in communities of all types and sizes, and among people of both genders and all races -- has increased to alarming levels. But it is perhaps violence among young people that causes the greatest alarm for young witnesses and survivors, their parents, their families, teachers, and school administrators.

In 1990, for the first time, more American teenagers died from firearms than from all natural disasters combined.¹ According to Dr. Deborah Prothrow-Stith, a leading researcher, teacher, and speaker on public health issues, among industrialized nations, the homicide rate for

young men in the United States is four times higher than the rate in second-place Scotland, and seventy times higher than in Austria. Dr. Prothrow-Stith reports that violence is the second leading cause of death for America's students.2 R. Craig Sauter reports similar data in his widely-cited Phi Delta Kappan study, "Standing Up to Violence." According to Sauter, more young people in this country have been killed by gunfire during the past thirteen years than died in the Vietnam War.3 Homicide is the second leading cause of death for people between the ages of 10 and 24, and the third leading cause for children between 5 and 14. To make these matters worse, over half the people arrested for homicide in 1991 were under 25.4 In 1995, Bernard James reported that juvenile detention and correction rates were increasing, and that the number one killer among young African-American males was homicide.5 Between 1988 and 1992, the number of youths arrested on homicide charges increased by 101% in Ohio alone. While this age group

2 Deborah Prothrow-Stith, Building Violence Prevention into the Curriculum, SCHOOL ADMINISTRATOR, Apr. 1994, at 8, 8-9.

3 R. Craig Sauter, Standing up to Violence, PHI DELTA KAPPAN, Jan. 1995, at K1, K2.

4 Id. at K2.

accounted for only 10% of the population in 1992, 25% of the crimes involved juvenile victims that year.\(^6\)

Naturally, homicide is not the only type of violence perpetrated against young people. In one study, 25% of all female students at three midwestern high schools had reported either physical or sexual assault while dating.\(^7\)

In fact, violent acts of all types against all people are collectively recognized as a major public health problem requiring the efforts of health care professionals.\(^8\)

Data such as those reported above may indicate that if the homicide rates of young people are high and if the juvenile detention, correction, and arrest rates are similarly high, then the potential exists for high rates of violent acts by young people on young people. This potential is likely no higher anywhere than on the campuses of this nation's schools. If societal violence, in general, is now a public health concern for health care professionals, it takes little stretch to declare violence among young people in schools a similar concern for


educators, for the health of schools, and for the students who are required to attend them.

Violence in Schools

Effect of Societal Violence on the Schools

Schools were once thought to be safe havens in an otherwise violent world. However unfortunately, most people would agree that this is no longer the case.\(^9\) Of course, relatively speaking, and based on the data reported above, children may actually be safer at school than they are at homes or in their neighborhoods.\(^10\) But, the violent trends off school premises have spilled into schools. In fact, crime rates in the population at large have been relatively stable over the past twenty years, while crime in schools has increased.\(^11\) School violence has many devastating effects, not the least of which is its impact on the practice of principals and superintendents who attempt


to administer schools in a manner consistent with the educational goals of the district.\textsuperscript{12}

This spillover of violence from the street to the classroom is not the schools’ fault entirely, though. The causes and consequences of violence in the schools are inseparable from the roots of violence in American society.\textsuperscript{13} Some commentators have said that societal violence is one of the causes of school violence.\textsuperscript{14}

Types of Student-on-Student Violence

In order to confront student-on-student violence and to develop programs to eliminate or reduce it, school administrators must know and understand the different types of violence that occur among students, the causes and effects of this violence, and the victims of violent acts.

General literature on types of violence among students. The literature that discusses the types of student-on-student violence is fairly easily divided into two classes. Some authors discuss violence generally,\textsuperscript{15} and others

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\textsuperscript{12} Furst, supra note 7, at 14.
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\textsuperscript{13} Dean Walker, Violence in the Schools: How to Build a Prevention Program from the Ground Up, OSSC BULLETIN, Jan. 1995, ERIC: ED 380 892.
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\textsuperscript{15} See, e.g., Van Acker, supra note 9.
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discuss it specifically and report numerical data on types of violence, amounts, frequency, severity, and location within school facilities.\textsuperscript{16}

Van Acker asserts that there are four types of youth violence: (1) situational, (2) relationship, (3) predatory, and (4) psychopathological.\textsuperscript{17} Situational violence occurs with the interaction of personal frustration and particular circumstances or settings. In school, situational violence takes many forms, from playground arguments to lunchroom brawls. According to Van Acker, relationship violence is the most common. It consists of disputes among people with ongoing relationships -- for example, family and friends. Examples of relationship violence include domestic violence and some forms of child abuse. People who engage in predatory violence act with intentional or criminal antisocial behavior, typically in favor of some personal gain. Predatory violence in schools includes consistent and repeated bullying or threatening behavior from one student or a group of students toward classmates. Finally, psychopathological violence usually results from a physical or emotional disability in the perpetrator. One example may be a student who believes the fictional violence portrayed on television is real and attempts to copy it. Generally,

\textsuperscript{16} Peterson, et al., supra note 6, and Sauter, supra note 3.

\textsuperscript{17} Van Acker, supra note 9, at 5-8.
situational and relationship violence are the most common and least severe, while predatory and psychopathological are less common, but often the most severe.

Because the treatment and prevention of each of Van Acker's types of violence is different, some theoretical basis on the sources, acts, and consequences of each type is necessary. However, for the benefit of school administrators, teachers, students, parents, and the general public, it is also important to get a handle on how much violence is actually occurring in schools.\textsuperscript{18} In Joseph Dear's 1995 study of California educators and administrators, his focus groups generated the following forms of violence, in order of emphasis: fights, gang activities, verbal abuse, weapon possession, racial incidents, assaults, vandalism, bullying, and weapon injury (e.g., shootings).\textsuperscript{19} Dear reports that, among administrators, gangs and weapon possession are the greatest concerns.\textsuperscript{20} According to James, assaults, batteries, weapon possession, and the proliferation of gang activity represent the administrator's "worst nightmares."\textsuperscript{21}

Thankfully, most educators report the highest frequencies for the least severe forms of violence -- verbal threats,

\textsuperscript{18} Wood and Chestnutt, \textit{supra} note 11, at 633.

\textsuperscript{19} Dear, \textit{supra} note 14, at 13.

\textsuperscript{20} Dear, \textit{supra} note 14, at 17.

\textsuperscript{21} James, \textit{supra} note 5, at 32.
minor assaults, and property theft -- and state that more serious violent behaviors occur less often. ²²

Regardless of the type of violence occurring in schools, it is reported that over three million crimes (11% of all crimes) occur each year in America's 85,000 public schools. ²³ In other words, 16,000 violent acts occur on school grounds each day. ²⁴ In a study covering only six-months, researchers noted that almost two million students reported being victims of crimes at school. ²⁵

Not surprisingly, given the reports of increased violence among young people in society, all members of school communities -- including students and parents -- report increased rates of crime and violent activity in schools. Eighty-nine percent of the respondents in the 1995 Phi Delta Kappa/Gallup Poll on the attitudes toward public schools believed that violence in the nation's schools had increased in recent years; sixty-seven percent felt it was increasing in their own schools. ²⁶ A recent National

²² Van Acker, supra note 9, at 4-5.
²³ Sauter, supra note 3, at K5.
²⁶ Stanley M. Elam, Lowell C. Rose, & Alec M. Gallup, Phi Delta Kappa/Gallup Annual Poll of the Public's Attitudes Toward the Public Schools, PHI DELTA KAPPAN, Sept. 1995, at 41.
School Boards Association survey supports this result.\textsuperscript{27} These increases in school violence occur at all school levels, from elementary to middle to secondary, and in all sizes and types of districts, from small to large, and rural to urban. The largest increases are reported in middle schools and/or in larger districts.\textsuperscript{28}

According to the respondents in Peterson's 1996 study, the top five locations of highest risk of violence are hallways (37\% of the respondents), restrooms (26\%), buses (24\%), extracurricular activities/athletics (19\%), and cafeteria/ lunchroom (17\%).\textsuperscript{29}

Gangs. Aside from weapon possession and use, the presence of youth gangs in schools probably gets the most specific attention from school officials, law enforcement, and education researchers concerned about violence reduction. Much has been said about the nature and characteristics of gangs, their membership and recruitment trends, and their criminal and violent activity.\textsuperscript{30}

\textsuperscript{27} Jessica Portner, School Violence Up over Past 5 Years, 82\% in Survey Say, XIII EDUCATION WEEK, Jan. 12, 1994, at 9; and Peterson, supra note 6.

\textsuperscript{28} Peterson, et al., supra note 6.

\textsuperscript{29} Id. at 9.

Gang membership among young people is not new. Burnett and Walz argue that youth gangs have been a major part of urban culture since at least the 1830s, when Charles Dickens described Fagin's pack of young boys roaming the streets of London in Oliver Twist.\textsuperscript{31} Felgar compares gang activity to organized crime as it existed prior to World War II.\textsuperscript{32} Turnbaugh-Lockwood states that gangs have developed sophisticated structures similar to corporations and other entrepreneurial ventures.\textsuperscript{33} Regardless of the origin, structure, and severity of gangs, however, it is widely recognized that schools are no longer neutral territory. Schools are the meeting grounds for gangs today. Conflicts arise when competing gangs claim the school as their own. Schools are also key places for gangs' income (often via drug-trafficking).\textsuperscript{34}

The fact about gangs most often communicated by law enforcement and education authors is this: gangs exist in all types of schools and school districts -- urban, suburban, and rural -- often long before school leaders

\textsuperscript{31} Gary Burnett & Garry Walz, \textit{Gangs in the Schools} (1994), ERIC: ED 372 175.


\textsuperscript{33} Anne Turnbaugh Lockwood, \textit{The Professor of Gangs}, \textit{Focus in Change}, Spring 1993, at 10 (Wisconsin Center for Educational Research, Madison. National Center for Effective Schools), ERIC: ED 365 769.

\textsuperscript{34} Felgar, supra note 32, at 9.
realize it. In addition, gang activity starts early. Recruitment occurs in many elementary schools. Gang leaders in big cities may move to smaller cities to expand.\textsuperscript{35} C. Ronald Huff argues that the differences between gang activity and non-gang, at-risk youth are few, indicating that not only are all types of communities affected and influenced by gangs, but also all types of children.\textsuperscript{36}

Kenneth S. Trump, one of Ohio's leading gang experts, presenters, and authors, defines "gang activity" broadly. According to Trump, a gang is defined by the negative behavior of its members. It is more than a social group. "Groups reach gang status when their behavior, either individually or collectively, is disruptive, antisocial, or criminal."\textsuperscript{37} Gangs make their presence known in a variety of ways. Students, staff, and visitors to gang-infested schools recognize gang-related symbols such as clothing, jewelry, hair styles, hand signals, slogans, colors, and graffiti typically displayed to show pride or loyalty or to mark territory.\textsuperscript{38} Specific gang identifiers, styles, and activities vary tremendously from gang to gang, and may

\textsuperscript{35} Felgar, supra note 32.

\textsuperscript{36} Huff, supra note 30, at 7.


\textsuperscript{38} Burnett & Walz, supra note 31; Mary Lynn Cantrell, Gang Identifiers and Terminology, JOURNAL OF EMOTIONAL AND BEHAVIORAL PROBLEMS, Spring 1992, at 13.
change rapidly within individual gangs. School leaders are advised to be aware of this when developing anti-gang policies in schools.\textsuperscript{39}

Gangs usually develop along racial and ethnic lines, and are predominantly male, although female membership is increasing, as well, including the prominence of separate female gangs. Gang violence occurs most often between gangs of the same race or ethnicity. When race is discussed in the gang literature, African-American, Hispanic, and Asian gangs get the most attention. However, white supremacist groups and Satanic cults are now discussed as gang types.\textsuperscript{40}

There is much literature discussing why children join gangs. It is hypothesized that if school leaders know why their students join gangs, they will be better able to reduce or prevent gang activity in their schools. Ronnie Thompson and P.J. Karr-Kidwell noted that gang membership stems from a wide variety of things from boredom to criminal intent.\textsuperscript{41} The overwhelming reason stated for gang affiliation, though, is a sense of family, belonging, or

\textsuperscript{39} Burnett & Walz, supra note 31; and Trump, supra note 37.

\textsuperscript{40} Burnett & Walz, supra note 31; and Felgar, supra note 32.

acceptance otherwise lacking in the lives of gang members. For many immigrant children, this sense of belonging is necessary to maintain strong ethnic identity. Unfortunately, they tend to find this identity within a gang.

Burnett and Walz link the gang member’s search for a sense of belonging to that member’s ultimate desire for control and expansion. In effect, gang membership may become so addictive (or so necessary for survival) that powerlessness turns to power. According to Burnett and Walz, these children begin with a sense of alienation due to the lack of traditional support structures, such as families and schools. In a gang, they discover a major source of identity. In turn, their gang membership affords them a sense of power and control, and gang activities become an outlet for their anger. Ultimately, to control their "turf" and to maintain their strength, recruitment of new members and expansion of territory are essential.

Felgar cites additional reasons for gang membership: lack of employment opportunities; meaningless educational curricula; self-esteem; reputation; and protection.

42 Burnett & Walz, supra note 31; Felgar, supra note 32; and Thompson & Karr-Kidwell, supra note 41.

43 Burnett & Walz, supra note 31.

44 Burnett & Walz, supra note 31.

45 Felgar, supra note 32.
Turnbaugh-Lockwood adds that gangs develop in response to inequality and poverty; crime is not the central issue.46

By percentage, known and recognized gang membership in schools is low, even with the growing gang population outside of school. However, gangs have a significant impact on the culture of a school.47 Gangs engage in extortion, vandalism, arson, theft, assault, murder, and drug trafficking.48 As is the case with any type of persistent violence, an increase in gang presence in a school will increase the level of fear and tension among non-violent students, decrease their academic achievement, and ultimately lead to increased truancy and dropout.49

Weapons. According to June Lane Arnette, no issue has captured more forcefully the attention of the public than the increasing presence of weapons on school campuses.50 School administrators have become combat officers in an increasingly violent environment. Similar to gang presence and activity, weapon possession and the potential for serious injury in school is not just an urban concern. The data vary only slightly: it is now well-known among school

46 Turnbaugh Lockwood, supra note 33.

47 Burnett & Walz, supra note 31.

48 Felgar, supra note 32, at 10.

49 Id.

leaders that between 200,000 and 300,000 students carry weapons to schools daily.\textsuperscript{51} In one survey over a six-month period, 500,000 students reported carrying a weapon to school for protection.\textsuperscript{52} In a 1996 survey, Irene M. MacDonald and Jose L. da Costa reported that threats with weapons had increased 25\% in schools.\textsuperscript{53} Sauter's 1995 report for the \textit{Phi Delta Kappan} notes that in 1994, guns led to 35 deaths and 92 injuries in the schools.\textsuperscript{54} One of the reasons why students carry guns to school is that guns are easy to obtain. In a 1987 survey, 41\% of boys and 25\% of girls stated that they could get guns if they needed to.\textsuperscript{55}

\textbf{Physical and verbal assaults.} Physical and verbal assaults among students probably account for the majority of violence in schools.\textsuperscript{56} They probably also account for the widest range of severity among types of school violence. Seventy-five percent of the student participants in MacDonald and da Costa's 1996 study said they generally feel

\textsuperscript{51} James, supra note 5, at 31; and Sauter, supra note 3, at K5.

\textsuperscript{52} Bastian & Taylor, supra note 25, at 12.


\textsuperscript{54} Sauter, supra note 3.

\textsuperscript{55} Felgar, supra note 32, at 9.

\textsuperscript{56} Dear, supra note 14.
safe at school. However, over half of the boys and 35% of the girls had experienced fights, verbal threats, or property damage at school. According to the study, the three top problems were name-calling, theft, and bullying, including ethnic conflict.\textsuperscript{57} Several reports say that this form of violence has greatly increased over the past few years.\textsuperscript{58} One quarter of a million students are victims of physical assault each month.\textsuperscript{59}

**Peer sexual harassment.** Perhaps the fastest growing body of literature in school violence involves the discussion of peer sexual harassment. This increase in attention at the K-12 level may be due, in large part, to the sexual harassment news and controversies at colleges and universities, and in the military. Unfortunately, the news at elementary and secondary school levels is sufficiently alarming to warrant its own separate discussion. According to Sylvia Hermann Bukoffsky, eighty percent of public school students experience some type of sexual harassment by the time they reach the twelfth grade; and the perpetrators are often their own classmates.\textsuperscript{60}

\textsuperscript{57} MacDonald and da Costa, supra note 53, at 8-9.

\textsuperscript{58} See, e.g., MacDonald and da Costa, supra note 53; and Peterson, supra note 6.

\textsuperscript{59} Felgar, supra note 32.

Much of the attention to peer sexual harassment is paid in the form of victims' lawsuits against school districts. The plaintiffs in these cases argue that their school districts have permitted a hostile environment to persist, allowing sexual harassment to occur from student to student without repercussion. Many commentators argue that educators fail or refuse to notice that a peer sexual harassment problem exists at all. "[P]arents, teachers, and administrators must acknowledge that sexual harassment in school is creating a hostile environment that compromises the education of America's children." Authors argue that a hostile environment in schools leads to decreased student academic achievement, and increased silence, withdrawal, and negative self-image. Among commentators, William W. Watkinson, Jr., perhaps states this point most bluntly:

One disturbing aspect of the problem is the apparent lack of concern on the part of some school officials. Their collective reaction to sexual abuse has been described as a 'conspiracy of silence,' indicating that many school administrators choose to ignore sexual abuse in the hope that the problem will disappear.

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The state and federal statutes and court decisions regarding peer sexual harassment will be discussed at length in Chapter 3.

Causes of Violence among Young People

Education literature is rich in discussions of the causes of violence among students at school. These causes are loosely divided into two categories: internal factors (causes stemming from school district action or inaction) and external factors (causes stemming from violence outside of school or from the children themselves). In fact, the school administrators who participated in Dear’s 1995 study agreed that a wide range of internal and external factors contribute to violence among students, including racial/ethnic ignorance, dysfunctional families, gangs, and a poorly-equipped staff.64 The American Psychological Association has recognized that violence is a nature/nurture phenomenon, with causes coming from all internal and external directions.65 The vast majority of the studies conducted and the results reported tend to favor the external causes as the primary contributors of youth violence in schools. However, these studies also hope to convey the serious message that a large part of the

64 Dear, supra note 14, at 18.

65 Furst, supra note 7, at 14; and Sauter, supra note 3, at K7.
responsibility for violence prevention belongs to the schools.

**Internal factors.** The primary internal cause of student-on-student violence actually works as an umbrella for all internal causes: the lack of school resources to deal with violence.\(^{66}\) Peterson says, first, that faculty are afraid to get involved. From his study, he noted that 26% of the teacher-respondents agreed that the fear of intervening in student violence situations had increased over the past two years. Second, Peterson reported that one-fourth of the respondents cited a lack of a conflict resolution curriculum as an additional cause of increased student violence.\(^{67}\) Furst says that disorderly classrooms, hostile environments, and previous violent acts in the school cause violence to continue.\(^{68}\) Finally, authors cite overcrowding, behavioral routine, and lack of supervision as contributors to student violence.\(^{69}\)

**External factors.** When educators and administrators are asked to list the causes of student violence in their schools, the overwhelming majority of the responses involve factors that children bring to schools every day. Some of


\(^{67}\) Peterson, et al., *supra* note 6.

\(^{68}\) Furst, *supra* note 7.

these factors are internal to the children, but most are based in dysfunctional families and neighborhoods, and in the media. The results of a factor analysis conducted by George J. Peterson and his colleagues reveal the following causes of student violence, most of them external to the school: (1) lack of school resources or skills to deal with violence; (2) violence in the media; (3) drug related factors (with family violence); (4) decline in family structure; and (5) breakdown in moral and ethical education of youth. In his national study of school violence and prevention, Peterson reported the top ten causes of student violence and the percentages of teachers and administrators who responded to each one:

1. lack of rules or family structure (94%)
2. lack of parental involvement or supervision (94%)
3. violence modeled/acted out by parents (93%)
4. parental drug use (90%)
5. student drug/alcohol use (90%)
6. violent movies (85%)
7. student poor self concept/emotional disturbance (85%)
8. violence on TV (84%)
9. nontraditional families/family structure (83%)
10. gang activities (80%)

The top six causes were consistent among respondents, regardless of district size, with only the rank order differing. The large and midsize districts included the added availability of weapons and peer rumor in the top ten. Smaller districts cited lack of trust in the media or other

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70 Peterson, et al., supra note 6.
authority figures, and lack of family involvement in moral/religious activities.  

Joseph Dear cited many of the same causes as Peterson did. However, his results -- gathered from focus groups involving educators -- contained additional items attributable directly to the behavior and attitudes of children, including ethnic and cultural ignorance, gang and group protection activities, lack of values, anger and aggression, drugs and alcohol, and lack of self-discipline. Miller adds boredom and lack of motivation to learn, and Walker adds easy access to weapons.

The American Psychological Association has found that the strongest predictor of violence is previous violence in a child's life (including having been a victim). Poverty, inadequate or abusive parenting practices, lack of supervision at home, and other family problems contribute to this risk.

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71 Peterson, et al., supra note 6.
72 Dear, supra note 14, at 11.
73 Miller, supra note 69.
74 Walker, supra note 13.
75 Sauter, supra note 3, at K7.
76 Miller, supra note 69; Carolyn Pereira, Violence in the Schools: Can We Make Them Safe Again?, UPDATE ON LAW-RELATED EDUCATION, Spring 1994, at 49; Sauter, supra note 3; and Walker, supra note 13.
While the typical and popular reported causes of violence do not include factors directly contributed by schools, only a few of the items listed and discussed above emphasize factors within the control of the children themselves. This indicates, not surprisingly, that youth violence is a widespread national concern that has (perhaps unfairly) been placed in the laps of educational leaders. While realizations such as this do not place fault on the schools, they do place responsibility on them to contribute to violence reduction and prevention.

Victims of Violence in Schools

The emphasis in this study is on the student victim, as opposed to school employees and visitors. Children are the most obvious targets of school violence, and are likely the most obvious targets for protection from it. Pereira states, for example, that the perpetrators of violence often base their violent acts on the victim's aggressive or non-aggressive nature, race, gender, disability, sexual orientation, or academic achievement/intelligence.77

Teachers and administrators typically believe that the majority of the victims of student-on-student violence are male. The participants in Peterson's study were split on the race and age questions, however.78 Forty-three

77 Pereira, supra note 76.

78 Peterson, et al., supra note 6.
percent of the participants said that the victims were usually White, 27% said African-American, 11% said Hispanic, and 1% said Asian. In slight contrast, 82% of the school teachers and administrators in the study said that the perpetrators were primarily male. On the race issue, 37% said the perpetrators were usually White, 38% said African-American, 12% Hispanic, and 1% Asian. With respect to the age of the victims, twenty-three percent of the participants in Peterson’s study said that the age of the victim is generally younger than the perpetrator, while 63% said the same age.79 Consistent with the gangs literature discussed above, twenty-five percent of the participants in Peterson’s study felt that the victims were gang-related, substantiating the theory that gang violence is typically perpetrated against other gangs.

MacDonald and da Costa report that in most situations, male students feel more confident in their ability to deal effectively with conflict than female students. Overall, however, students felt least able to deal with peer sexual harassment, theft, and ethnic conflict. Twenty-eight percent felt unable to deal with weapon-related violence. Consistent with frequency and severity, a slight majority of the students in the study felt able to deal with bullying.

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79 Peterson, et al., supra note 6, at 10.
fights, and verbal threats, either "always" or "most of the time."  

Naturally, all school personnel and school community members -- teachers, administrators, staff, parents, and visitors -- are affected by violence in schools. In a 1993 study conducted by Metropolitan Life, eleven percent of teachers, and twenty-three percent of students said that they had been victims of violence in or near their schools. George J. Peterson, in The Enemy Within: National Study on School Violence and Prevention, asked school administrators and teachers about their schools' recent history of violence. A majority of respondents in Peterson's study reported having experienced some form of violence at least once in the past two years:

68% reported being verbally attacked  
63% verbally threatened  
55% victim of theft or property damage  
28% physically threatened or intimidated  
11% sexually threatened or intimidated  
9% physically attacked

The most frequent forms of violence against teachers and other school officials, according to Peterson, are verbal attacks and property theft/damage. Twenty-seven percent of Peterson's respondents were "concerned or very concerned" about their own safety at school (including physical attack.

80 MacDonald and da Costa, supra note 53, at 12.

and threat from students), and 35% were concerned about verbal threats from students. Only 5% were concerned about sexual harassment from students.\textsuperscript{82}

**Effects of Violence in Schools**

A few years ago, a *USA Today* poll reported that one-third of all school students felt unsafe at school; more than half of the respondents knew someone who had switched schools to feel safer. Forty-three percent regularly avoided bathrooms; 27% of the girls had been sexually harassed; and 63% said they would learn more if they felt safer.\textsuperscript{83} The statistics on violence in schools are alarming by themselves; but the impact of this violence on the lives of students, faculty, and staff may be even more so. The effects of violence on the school community are wide-ranging, from personal injury, death, and property damage to fear and decreased academic achievement.

Violence begets violence. Particularly among gangs, increased violence in schools typically leads to more violence. While gang membership may not necessarily increase among students, both gang members and non-gang members arm themselves for protection. Furthermore, schools

\textsuperscript{82} Peterson, et al., supra note 6, at 7-8.

with gangs are significantly more likely to have drugs available on campus than those without gangs.\textsuperscript{84}

One of the most serious effects of school violence is fear -- lost feelings of safety among students, parents, and school personnel. "In present times, students and teachers fear for their physical well-being as gangs and weapons become commonplace in our schools."\textsuperscript{85} Students in schools with a gang presence are twice as likely to report that they fear becoming victims of violence than their peers at schools without gangs.\textsuperscript{86} Unfortunately, these fearful students often do not report violent incidents in efforts to avoid retaliation. Sadly, students may be increasingly accepting violence as part of their schooling experience. According to MacDonald and da Costa, four percent "never feel safe."\textsuperscript{87} What further frustrates the students at schools plagued with violence is the perception gap between students and staff. Because many incidents go unreported out of student fear, administrators may think the violence problem in their schools is less severe than it actually is. This perception gap is confounded by another difference in perceptions. While administrators may think they have a

\textsuperscript{84} Burnett & Walz, supra note 31.


\textsuperscript{86} Burnett & Walz, supra note 31.

\textsuperscript{87} MacDonald & da Costa, supra note 53, at 8.
handle on the violence that occurs in their schools, the students believe violence is ignored.88

With this increased fear come other associated physical and emotional troubles, all negatively affecting the academic performance of students, their trust of authority, and their appreciation for school and education in general. "[T]he stress children experience as either victims of or witnesses to violence produces fears of recurrence, sleep difficulties, and attention difficulties all of which interfere with normal development and learning in school."89

Students may stay away from school because of fear of violence.90 According to Orlovensky:

Plotting a hallway route becomes a matter of survival. Attending class depends upon the presence or absence of weapons carriers. To use or not to use the restroom replaces the decision to memorize or not to memorize Hamlet’s soliloquy.91

Much concern has been given over the years to the attendance rates, truancy, and especially dropout rates of students.

88 MacDonald & da Costa, supra note 53.

89 Sauter, supra note 3, at K3.


91 Orlovsky, supra note 24, at 23 (quoting a newsletter of Pepperdine University’s National School Safety Center).
It is important to note, however, that truant students and dropouts include more than the traditional troublemakers. In many cases, the dropouts are the good, but no longer interested students who leave school out of fear of recurring violence. When schools attack the dropout rates in their districts, they must take special care to understand the different types of students that drop out.

Of course, many fearful or injured students do not dropout of school entirely. A large number of students and their families move to other, presumably safer, districts, or enroll in private schools or home-based education programs. These high rates of transfer not only take interested students and parents away from schools, but also reduce overall community support for school districts.\(^\text{92}\)

A discussion of the effects of violence on schools would not be complete without at least a brief mention of the potential effects of violence on the perpetrators themselves. In addition to the personal injury, property damage, truancy, dropout, and fear discussed above, many perpetrators of violence suffer from low self-esteem and low self-respect, and retreat into lonely worlds of silence and withdrawal.\(^\text{93}\) In *Pride and Prejudice in High School Gang Members*, Alvin Y. Wang compared gang and non-gang high school students on measures of self-esteem, racial

\(^{92}\) Bukoffsky, *supra* note 60, at 189.

\(^{93}\) Beckham, *supra* note 62.
attitudes, and self-professed role models. His independent variables were race and gang membership. Results from 78 white and 77 black students revealed that gang members had significantly lower levels of self-esteem compared to non-gang peers. In addition, the gang members in his study named fewer role models. All students, regardless of ethnicity, manifested negative racial stereotyping toward racial outgroups (people of a race different from the respondent). 94

Many people would argue that the most serious effect of school violence -- and the most fundamental to the continued strength of the schools and their students -- is decreased academic achievement. 95 Doctors Deborah Prothrow-Stith and Sher Quaday have written several articles, both jointly and separately, examining the relationship between violence and learning. _Hidden Casualties: The Relationship between Violence and Learning_ examines how violence affects the development and learning abilities of children and youth. According to Prothrow-Stith and Quaday, seeing family violence, living in unsafe neighborhoods, witnessing violence, and being exposed to the harsh lives often faced by immigrants and refugees place children in precarious

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94 Alvin Y. Wang, _Pride and Prejudice in High School Gang Members, Adolescence_, Summer 1994, at 279. C. Ronald Huff notes, in slight contrast to Wang, that the activities of gang members are not that different from the activities of non-gang, at-risk youth. See Huff, _supra_ note 30.

95 Beckham, _supra_ note 62; Dear, _supra_ note 14.
positions; progression through normal stages of development may be stifled by such environments.  

Albert Shanker argues that the academic function of schools has been replaced by a socialization function or a custodial function. Schools must act as surrogate parents and police, as well as educators.  

Worse yet, Shanker asserts that it is the violence of only a few that disrupts the learning of many. "Nobody has ever learned in a classroom where one or two kids take up 90% of the time through disruption, violence, or threats of violence."  

The final effect of student violence on schools is a legal one. Victims of school violence and their families may file lawsuits or Office of Civil Rights complaints against school districts and their employees, seeking damages to redress the physical and emotional injuries suffered at the hands of other students. According to Eric W. Schulze and T.J. Martinez, "as the epidemic of violence in American public schools increases, so too will federal


97 Albert Shanker, Classrooms Held Hostage: The Disruption of the many by the Few, AMERICAN EDUCATOR, Spring 1995, at 8.

98 Shanker, supra note 97, at 11.
claims under the state-created danger theory." The plaintiffs in these cases typically argue that the school has not met its federal-constitutional or state-based duty of care to supervise and protect its students from harm. For example, if -- as Schulze and Martinez write -- a public school has "created" a dangerous atmosphere such that the constitutional rights of students are violated when they are injured by the violent acts of others, then the school may be held liable for the injuries suffered by the student. In this violent and allegedly overly litigious society, some of these claims may succeed and subject schools and educators to high monetary costs. According to Peterson, 25% of the educators he surveyed said that fiscal compensation (worker's compensation, legal settlements) had increased or greatly increased over two years; 35% said that legal protection fees had increased or greatly increased; and 52% said violence prevention programs were underfunded.

Knowledge and understanding of the nature, causes, victims, and effects of school violence is essential for the safety and success of public schools. School

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101 Peterson, et al., supra note 6, at 12.
superintendents and principals must lead this knowledge and understanding.

Violence Reduction and Prevention in the Schools

According to the 1996 Phi Delta Kappa/Gallup Poll of the public’s attitudes toward America’s public schools, public opinion favors removing troublemakers from classrooms, and employing security guards, drug-sniffing dogs, and random drug testing to maintain order. A very slight majority (50-46%) in the same poll agree that public school students should wear uniforms; four percent had no opinion. The people who favor these popular punishment-oriented discipline procedures have been countered by dozens of educators and researchers who advocate more educational discipline. While many of these advocates do not doubt that exclusion of troublemaking students helps to maintain order in the short run, they argue that education-oriented discipline and violence prevention programs are, in the long run, more effective and more helpful to all children. The solution to the violence problem in the schools lies not only in the protection of

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students, but in the prevention of aggressive, antisocial behavior.\textsuperscript{103}

The violence prevention literature is rich and varied, and discusses violence prevention both generally and specifically, highlighting several successful programs and encouraging schools and school districts in comparable situations to adopt similar approaches. The bottom line in violence prevention in schools, if there is a bottom line, advocates collaborative, flexible approaches that are both proactive and reactive, and both punitive and educational. The causes of violence are complicated and interrelated. Therefore, the solutions to violence must be diverse and tailored to the actual setting.\textsuperscript{104} According to Sauter, schools must adopt a broadly conceived and well-coordinated strategy to confront violence perpetrated against and by its students.\textsuperscript{105} True, effective safety planning in schools requires a collaboration of school personnel, including students and parents, local businesses, civic leaders, religious leaders, and government officials.\textsuperscript{106}

Joan Gaustad, in \textit{Schools Respond to Gangs and Violence}, worked with violence experts and educational leaders and

\begin{thebibliography}{99}
\bibitem{Walker} Walker, \textit{supra} note 13.
\bibitem{Pereira} Pereira, \textit{supra} note 76, at 53.
\bibitem{Sauter} Sauter, \textit{supra} note 3.
\bibitem{Dear} Dear, \textit{supra} note 14.
\end{thebibliography}
offered the following summary of important steps in school violence prevention:

(1) acknowledge existing school violence, or the possibility of its developing in the future; (2) plan ahead for all reasonable contingencies; (3) develop written policies and clearly communicate them to staff and students; (4) train staff and students in techniques for applying those policies; and (5) cooperate with the community and other agencies.107

Types of Prevention Policies

The Prevention Policies Implemented in Schools, Generally

Several studies have been conducted over the past few years, asking teachers and other school leaders what their schools and school districts are doing to combat violence among students. Each of the studies briefed below follows the broad-based, collaborative approach encouraged in the literature.

Similar to their list of the top ten types of violence reported in the schools, Peterson and his colleagues reported the top ten prevention policies implemented by

teachers and administrators across the country. These ten, and their associated percentages are:

1. poverty issue programs (breakfast/book programs) (84% of the respondents use this)
2. teacher monitors in the hallways (79%)
3. alternative schools/educational models (72%)
4. visitor registration/ID badges (72%)
5. community-business partnerships (71%)
6. before/after school programs (69%)
7. parental involvement programs (68%)
8. dress codes (67%)
9. peer mediation/conflict resolution (66.3%)
10. uniform discipline policies (65%)
(tie) multicultural/diversity awareness programs (65%)108

Joseph Dear's 1995 study of California schools revealed similar popular policies among teachers, administrators, board members, and university professors, including multicultural curricula, partnerships between schools and community agencies and law enforcement, fair and firm enforcement of discipline policies, conflict resolution and problem solving curricula, increased counseling and social work personnel, increased parental involvement, education for parents, values education, and peer tutoring and counseling. Among administrators in Dear's study, involvement of community agencies and law enforcement, conflict resolution and problem solving curricula, multicultural curricula, and values and discipline training were most common.109

108 Peterson, et al., supra note 6, at 14.
109 Dear, supra note 14, at 11, 15.
Another important aspect of Dear's report is the emphasis on training of teachers and staff to implement these policies, especially the innovative, education-based ones. Dear's focus groups called for training in multiculturalism, classroom management, conflict management/resolution, communication, interpersonal skills, and counseling skills.\textsuperscript{110}

In a 1993 study conducted by the National School Boards Association, school officials listed several popular discipline policies. In addition to the traditionally popular suspension and expulsion, at least half of the respondents implemented and advocated conflict resolution and peer mediation (60%), and locker searches (50%). Forty-one percent used dress codes, and 24% used drug-sniffing dogs. While only 15% used metal detectors, the report noted that 45% of the urban districts did. More innovative approaches such as 24-hour hotlines and anti-violence curricula were also mentioned.\textsuperscript{111}

Elizabeth Crouch and Debra Williams looked at several large cities and reported what the school districts there have implemented. For example, Chicago schools have their own security staffs, use cameras in hallways, and provide character education, peer mediation, and mentoring sessions.

\textsuperscript{110} Dear, supra note 14, at 16.

\textsuperscript{111} Pereira, supra note 76, at 50; and Sauter, supra note 3, at K8.
Buffalo and Memphis schools stress tight security measures and weapons confiscation. Baltimore schools and businesses have created off-campus "safety corridors." Cleveland Schools teach acceptable behavior via a Watch Your Hands program.\textsuperscript{112}

The popular violence prevention policies listed above are varied, covering the range from stricter punishment for perpetrators to curriculum-based conflict management skills for all students and staff. To implement such a wide range of programs, most researchers and educators advocate, simply, the enactment of a school or school district uniform discipline policy, either through collective bargaining or through legislation.\textsuperscript{113} Ohio schools, under the Ohio Revised Code are required to develop and publish such policies.\textsuperscript{114} Kenneth S. Trump advises school districts to publish and reinforce rules in a student handbook. The handbook should outline student responsibilities and their rights. According to Trump, fair, firm, and consistent treatment is key.\textsuperscript{115}

\textsuperscript{112} Elizabeth Crouch and Debra Williams, What Cities are Doing to Protect Kids, \textit{Educational Leadership}, Feb. 1995, at 60.

\textsuperscript{113} Arnette, \textit{supra} note 50, at 30; and Shanker, \textit{supra} note 97, at 12.

\textsuperscript{114} \textit{Ohio Rev. Code Ann.} \textsection{} 3313.20 (Banks-Baldwin Supp. 1997).

\textsuperscript{115} Trump, \textit{supra} note 37, at 40.
Reactive vs. Proactive; Punitive vs. Educational

The variety and great number of prevention policies implemented to combat school violence make it somewhat difficult to organize violence prevention into a few consistent categories for easy discussion. A few authors have devised models for such organization.¹¹⁶

Recall the above discussion of Richard Van Acker’s four types of violence: situational, relationship, predatory, and psychopathological. Van Acker provides his readers with prevention strategies he believes are appropriate for each type. For situational violence, Van Acker suggests a variety of approaches including curriculum modifications, multiculturalism, anger management, and fairly enforced rules. For relationship violence, he believes social problem-solving and conflict resolution skills are the most effective. Predatory violence calls for intensive early intervention, peer counseling, and parent-training. For psychopathological violence, the most rare, Van Acker argues that special education services will be appropriate in many cases.¹¹⁷

Jeffrey H. Coben divided violence prevention into four categories: (1) educational, (2) technological and environmental, (3) regulatory, and (4) a combination of the


¹¹⁷ Van Acker, supra note 9.
first three.\textsuperscript{118} Coben and his colleagues supplied a wide variety of violence prevention tools to fit into the categories. For their educational prevention policies -- mentoring and conflict resolution -- they looked to Dr. Prothrow-Stith's "Violence Prevention Curriculum for Adolescents." Technological and environmental prevention policies included security personnel, security cameras, metal detectors, ID cards, and dress codes. Regulatory policies, typically enacted by non-school organizations included community policing, youth curfews, and firearms laws.\textsuperscript{119}

According to Bernard James, school officials respond to acts of student violence in one of two ways: proactively or reactively. While the violence prevention literature covers proactive discipline much more heavily than reactive discipline, James asserts that "[b]oth approaches require the same procedure and resources: dedicated school safety personnel, training for teachers and support personnel, and administrators who have established at least a cursory rapport with local law enforcement."\textsuperscript{120} Schools invoke reactive, or deterrent, discipline policies after a violent act occurs. Examples of reactive discipline include suspension, expulsion, use of hand-held metal detectors,

\textsuperscript{118} Coben, supra note 8.

\textsuperscript{119} Coben, supra note 8, at 310-311.

\textsuperscript{120} James, supra note 5, at 32.
locker searches, and dog-sniffs. Schools invoke proactive
discipline policies to prevent any more violent incidents
from occurring. These include conflict resolution and peer
mediation programs, training in problem-solving and
alternatives to violence, mentoring, multicultural
education, service learning, parental skill training, and
law-related education.\textsuperscript{121}

The distinction between reactive and proactive
discipline is important. However, an additional distinction
may help to shed even more light on the knowledge and
current practices of school superintendents and principals.
Furthermore, these distinctions may help to guide the future
practices of school leaders. In addition to reactive and
proactive divisions among violence prevention policies, the
collective literature makes an indirect distinction between
punishment-based and education-based discipline. After
review of the literature, including Ohio laws affecting
schools, this study proposes that violence prevention
policies may be divided in to the following four categories:

(1) Reactive-Punitive
(2) Reactive-Educational
(3) Proactive-Punitive
(4) Proactive-Educational

\textsuperscript{121} Pereira, \textit{supra} note 76, at 51-52. See also
Given the large number of approaches to violence prevention available to school officials, it is not difficult to place at least one option in each category. Schools, in fact, have several options in each category. Table 2.1 below presents examples of these categorized prevention policies. The large number of options shown in Table 2.1 is important because, as discussed at length above, the types, victims, causes, and effects of student violence are varied. Therefore, the responses to student violence should be. Each of these four categories can and should be included, in some variation, in school district codes of conduct or uniform discipline policies. They should also be considered when individual schools conduct well-advised periodic assessments of their own violence problems, and when they offer inservice anti-violence training to their staffs. Finally, when violence prevention programs are evaluated for their effectiveness, school officials should look at each of these categories to see which programs work in which situations.
<table>
<thead>
<tr>
<th>Reactive-Punitive</th>
<th>Reactive-Educational</th>
<th>Proactive-Punitive</th>
<th>Proactive-Educational</th>
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<tr>
<td>suspension</td>
<td>victim-support programs</td>
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<td>multicultural problem-solving</td>
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<td>regulation of off-campus behavior</td>
<td>problems</td>
<td>no bookbags</td>
<td>peer counseling</td>
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<td>no/fewer night-time events</td>
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<td>anti-hazing policies (as applied)</td>
<td>school-business partnerships</td>
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Table 2.1. Types of Violence Prevention Policies in Schools
Reactive-punitive. Examples of reactive-punitive discipline include harsher penalties for violent acts, and traditional exclusionary discipline like suspension and expulsion. In Ohio, a recently enacted statute permits permanent exclusion of students age sixteen and older who commit certain crimes on school campuses, including weapon possession and drug trafficking.\textsuperscript{122} Ohio is not alone. Several states have recently passed laws to deal with drug abuse, assault and battery, weapons possession, school vandalism/property damage, and parental responsibility. A recent review of state legislation by Julius Menacker indicates that two trends have emerged: (1) increased penalties for school-related crimes; and (2) the assignment of penalties to parents of students who commit criminal acts.\textsuperscript{123}

Generally, under the law, schools may be permitted to regulate the off-campus/after-hours violent behavior of their students, increasing their range of control over student conduct. This may be the case even if the conduct does not occur during a school-sponsored activity. For example, a school may be able to suspend a student for an assault on another student, even if the assault occurred on

\textsuperscript{122} OHIO REV. CODE ANN. § 3313.662 (Banks-Baldwin Supp. 1997).

the way to or from school, or during a school break. If the
punished student's conduct has an adverse effect on the
learning environment at school, the punishment may be
upheld.\textsuperscript{124}

Other reactive-punitive discipline includes corporal
punishment, and search and seizure. By statute, the use of
corporal punishment has been restricted in Ohio.\textsuperscript{125}
Depending on the form, searches and seizures conducted by
school officials may be either reactive-punitive or
proactive-punitive. If the search or seizure is conducted
on specific individuals after an incident has occurred, or
after sufficient evidence of a rule violation is collected,
then the search or seizure is reactive. For example, a
middle school principal may search the locker of a student
who was heard talking in the cafeteria about a gun he had
brought to school. If the search or seizure is conducted on
a large group of students without any particular suspicion
that any one of them has broken the law or a school rule,
then the discipline is proactive. Examples include random
drug tests imposed on student athletes and installation of
metal detectors at the doors of the school.

\textsuperscript{124} See, e.g., Pollnow v. Glennon, 757 F.2d 496 (2d
Cir. 1985). See also the discussion of the regulation of
off-campus conduct in the next chapter.

\textsuperscript{125} OHIO REV. CODE ANN. 3319.41 (Banks-Baldwin Supp.
1997).
Among law- and rule-abiding students, reactive-punitive policies may be welcome. According to MacDonald and da Costa, students call for harsher penalties to perpetrators and fairer treatment of victims. The results of their study revealed that the majority are dissatisfied with the way victims are treated and about half are dissatisfied with the way perpetrators are treated.\textsuperscript{126}

Reactive-punitive discipline is not without its critics. Some commentators disfavor such responses to student violence. According to Peterson, "[b]udgetary, scheduling and resource constraints on American schools make it nearly impossible for the schools to focus adequate attention on this major problem and they are therefore having to deal with violence issues in a piecemeal fashion."\textsuperscript{127} In other words, school officials should be engaging in proactive discipline to eliminate all incidents, instead of merely reacting to each incident. Others, including the students in MacDonald and da Costa's study, would argue that certain events, such as weapon possession, require quick reactive-punitive responses.

\textbf{Reactive-educational.} Reactive-educational discipline, for some, may be the best of both worlds. On one hand, it allows school administrators to punish wrongdoers (often by removing them from the environment) and to deter future

\textsuperscript{126} MacDonald & da Costa, \textit{supra} note 53, at 12.

\textsuperscript{127} Peterson, et al., \textit{supra} note 6, at 5.
similar behavior. On the other hand, reactive-educational discipline gives the wrongdoers -- and all other students -- an opportunity to continue learning in a safe atmosphere.

Examples of reactive-educational discipline include in-school suspension, time-out rooms, disciplinary transfers of trouble-making students to other schools, separate alternative schools for students with disciplinary problems, and community service requirements imposed as a punishment. Reactive-educational examples that allow all students to learn new skills in response to violence include teen courts and other law-related education, and the application of conflict resolution and peer mediation skills.

One reactive-educational response to violence is geared more toward the victims than to the perpetrators. Some school districts have implemented victim support programs.\textsuperscript{128} Most of these programs were developed in response to peer sexual harassment.\textsuperscript{129}

\textbf{Proactive-punitive}. There is a misconception that proactive discipline policies cannot be punitive. Some of them are, despite the following statement by Peterson:

Schools tend to rely on the use of police and security personnel, and technology to combat violence when a

\textsuperscript{128} Jerry G. Maze, \textit{The School District's Liability in Cases of Violent Attacks on Students and Employees} (1991), ERIC: ED 334 702.

\textsuperscript{129} Bukoffsky, supra note 60; and Stephen G. Hirsch, \textit{Schoolgirls Seek New Protection from Harassment: Suits Stretch Reach of Title IX}, \textit{Legal Times}, July 26, 1993, at 1.
proactive stance would have proved more beneficial.\textsuperscript{130}

The proactivity of a violence prevention policy is determined by whether or not the violent incident has occurred. The punitive aspect of a discipline policy is determined by the school officials' response to the incident. Most often, for example, if a police or security officer -- or a metal detector -- discovered such a violation, the ultimate response by school officials would be punitive: perhaps suspension, expulsion, or arrest. The punitive response of the school administrators, however, does not take away the proactive approach used to combat violence. The objective in employing police officers, security personnel, metal detectors, and other proactive-punitive policies remains proactive -- to detect student violence before it occurs.

Stricter dress codes and, in some public school districts, mandatory uniforms are increasingly popular proactive-punitive discipline policies among school leaders. Dress codes are becoming the trend in urban districts, and are on the upswing in other districts. In 1994, for example, 90% of the Baltimore city elementary schools had voluntary uniform policies.\textsuperscript{131} Many other school

\textsuperscript{130} Peterson, et al., supra note 6, at 18.

\textsuperscript{131} Aggie Alvez, Will Dress Codes Save the Schools?, UPDATE ON LAW-RELATED EDUCATION, Spring 1994, at 9.
districts may follow suit. Schools justify their use of stricter dress codes and uniforms by noting the increase in gang activity in their schools and communities. Clothing is a primary form of gang-member identification. "School districts are rapidly banning certain types of dress -- from ball caps to jackets and bandannas -- in an attempt to limit gang identification and reduce potential problems on school campuses." 132 Schools that can produce evidence of gang presence are typically able to withstand any constitutional challenge by students and parents, provided the dress code is reasonable in the circumstances. 133

Schools must be careful -- and knowledgeable -- when they implement a dress or uniform code. 134 This knowledge must go beyond knowledge of the law. According to Trump, dress codes are important; but they must be flexible and up-to-date. The policy should target behavior, not just the outward signs of membership, which change rapidly within gangs. For example, schools should address appearance that is "disruptive to the educational environment," rather than appearance that attacks specific colors or symbols. It is advised that schools use dress codes in conjunction with


133 See the discussion of Olesen v. Board of Education, and related cases in the review of law in Chapter 3.

134 Mary Lynn Cantrell, What We Can Do About Gangs, JOURNAL OF EMOTIONAL AND BEHAVIORAL PROBLEMS, Spring 1992, at 34.
other gang prevention programs, including staff inservice training.\textsuperscript{135}

The search and/or seizure of a specific person or his property is considered reactive when the school has enough evidence to justify the particular search/seizure and conducts it only on that person or property. Searches and seizures are proactive when a school employs broad sweeping or random searches. For example, drug-sniffing dogs that approach all students, lockers, or desks are employed for proactive purposes, to find contraband before injury or property damage. Random searches by metal detectors, surveillance cameras, or by urinalysis drug-testing are similarly proactive.

Many authors have commented on the use of metal detectors and other technological violence prevention policies in schools. Wood and Chestnutt urge readers to remember that the primary goal of metal detectors is not to detect crime, but to ensure safety. They advise against careless use of metal detectors.\textsuperscript{136} Schools must be able to justify their use. Factors to consider are the number of incidents involving weapons in the school and the number of weapons found over a certain period of time. Schools are also urged to develop a random sample method of searching, if searching all students by metal detector is not feasible.

\textsuperscript{135} Kenneth S. Trump, \textit{supra} note 37, at 40.

\textsuperscript{136} Wood & Chestnutt, \textit{supra} note 11, at 627.
This method must be neutral -- to avoid claims of racial, national origin, or gender discrimination.

In Ohio, it is required by law to provide advance, written notice to students that the schools control student lockers and may search them at any time.\textsuperscript{137} Wood and Chestnutt advise schools to provide similar notice to students and other visitors that the searches via metal detectors may take place. Written and posted policies on searches and seizures will not only discourage weapon possession in the first place, but also will satisfy many legal concerns, including due process.\textsuperscript{138}

Technology as a violence deterrent, according to Trump, should be a support to security personnel and not a replacement. "Human and not mechanical intervention will ultimately change the negative behavior of gang members and other young people who defy society’s rules."\textsuperscript{139}

Another violence-reducing measure is the elimination of school lockers, which serve as hiding places for weapons and contraband and also as congregating places where violent

\textsuperscript{137} \textit{Ohio Rev. Code Ann.} § 3313.20(B) (Banks-Baldwin Supp. 1997).

\textsuperscript{138} Wood \& Chestnutt, supra note 11, at 626-627.

\textsuperscript{139} Kenneth S. Trump, \textit{Youth Gangs and Schools: The Need for Intervention and Prevention Strategies} (1993), at 12; ERIC: ED 361 457.
confrontations can start.\textsuperscript{140} Similarly, some schools are eliminating bookbags, or requiring clear ones.\textsuperscript{141} To control the drug trade, schools may adopt policies that ban the use and possession of beepers and pagers.\textsuperscript{142}

One of the most prevalent violence prevention tools is the employment of security officers and/or police officers on campus. In a recent survey conducted by the National League of Cities, Randolph C. Arndt reports that cities are now allocating a greater amount of police resources to address school violence. According to the study, the problem of school violence has led to a rethinking of the roles and responsibilities of local government policymakers as they consider the fact that school violence is a problem of substantial or growing significance in more than 80 percent of the nation's cities and towns.\textsuperscript{143} There is an increasing recognition that the problem of school safety is a problem that includes the total community, including

\textsuperscript{140} Arnette, supra note 50; and Mark A. Rczwicki & William C. Martin, Fighting Violence without Violence (1994); ERIC Clearinghouse: ED 385 388.

\textsuperscript{141} Garry W. McGiboney, Keeping Guns Out of Schools, EXECUTIVE EDUCATOR, Nov. 1995, at 31.

\textsuperscript{142} OHIO REV. CODE ANN. § 3313.753 (Banks-Baldwin Supp. 1997). The policy must clearly specify the applicable disciplinary measures, and it must be conspicuously posted and available to students.

police and social service.\textsuperscript{144} Some school districts employ police officers at all grade levels.\textsuperscript{145}

To control the access to school buildings, many schools require identification badges and monitor visitors.\textsuperscript{146} Schools also monitor visitors by eliminating or reducing the number of night-time school-sponsored events, including dances and athletics.\textsuperscript{147}

Perhaps the most important proactive-punitive policies schools implement today cover peer sexual harassment, hate speech, and hazing. Much has been written on the potential legal liability schools may face for allowing such harassment to continue. Both Title IX of the Education Amendments of 1972 and Section 1983 of the Civil Rights Act of 1871 permit a cause of action for school district liability in instances of employee-to-student harassment. However, as discussed in the next chapter, the extension of these laws to school district liability for peer sexual harassment has been restricted by the courts. Nonetheless, Joseph Beckham, among others, urges schools to implement "policies and practices to reduce risk and insulate the

\textsuperscript{144} Trump, supra note 139, at 2-3.


\textsuperscript{146} Burnett & Walz, supra note 31; Maze, supra note 128.

\textsuperscript{147} Maggie Riechers, Friday Night Fights, AMERICAN SCHOOL BOARD JOURNAL, vol. 182, no. 6 (1995), at 32, 32.
local district from liability are essential." Beckham advises schools to address both substantive issues, such as sensitivity and confidentiality for the victims, and procedural issues, to cover reports, investigations, and due process hearings. The policies should stipulate enforceable penalties and allow for annual reviews of the policy and background checks on new employees. Staff training is also essential. Emphasis should be placed on student and staff development, improved school climate, and conflict mediation and resolution.

"Zero Tolerance," while it may sound reactive, is actually a proactive stance taken by school leaders who announce, clearly, that their schools and school districts will no longer tolerate student violence and other behavior that disrupts the learning environment. Some individuals in some situations may argue that exceptions should be made; but "zero tolerance" in its purest form does not allow exceptions. Much of the zero tolerance literature discusses schools' responses to gangs. Generally, a zero tolerance stance on gangs declares schools "neutral zones." Zero tolerance anti-gang policies prohibit not only gang membership but any gang-related involvement at school, during school-related functions, and on any school district

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148 Beckham, supra note 62, at 689.

149 Id. at 700.

150 Cantrell, supra note 134.
property.\textsuperscript{151} Zero tolerance strategies require strong organizational commitment from both school boards and school administrators, unmistakable policies forbidding weapons on school property and enforcing school safety, staff and parent training, and establishment of cooperative ongoing relationships with police and social agencies serving students.\textsuperscript{152}

**Proactive-educational.** Currently, the most popular anti-violence strategies are those that fit within the proactive-educational category. The options are varied, and typically involve all members of the school community -- in and out of school. Examples include early intervention programs, multicultural education, values training, peer mediation and conflict resolution curricula, peer counseling, mentoring, parental involvement, and school-community partnerships.\textsuperscript{153}

Many authors argue that proactive-educational discipline is most effective in the long run in creating a positive school culture and developing mature, thinking, civilized graduates. Lyndon G. Furst argues that "[a]dmnistrators and school boards must be proactive in

\textsuperscript{151} Foster, *supra* note 145.

\textsuperscript{152} Trump, *supra* note 139, at 7.

promoting a school climate that generates a culture of safety and nonassaultive behavior on the part of children as they deal with their classmates."\(^{154}\) According to Dr. Deborah Prothrow-Stith, a leading public health administrator, "[w]e should not overlook the most logical violence-prevention strategy for schools: to improve the learning environment and the academic achievement of students."\(^{155}\) The ultimate objectives of proactive-educational discipline, in addition to safe schools, are respectful, firm, and fair rules; inviting and welcoming school climates where every student feels valued; and increased academic achievement of all children.\(^{156}\)

Building violence prevention into the curriculum is a key aspect of proactive-educational discipline. For example, the Violence Prevention Curriculum for Adolescents, developed by Dr. Prothrow-Stith, attempts to raise teens' violence threshold by creating a nonviolent classroom atmosphere and extending students' alternative responses to anger. The curriculum should present anger as a normal, essential, and even healthy emotion; the challenge is a curriculum that will control anger. According to Dr. Prothrow-Stith, an ideal schoolwide program teaches social

\(^{154}\) Furst, supra note 7, at 33.

\(^{155}\) Prothrow-Stith, supra note 2, at 11.

\(^{156}\) Burnett & Walz, supra note 31; Cantrell, supra note 134; and Walker, supra note 13.
skills and features such proactive-educational tools as peer-mentoring and conflict resolution programs, after-school activities, and parenting, leadership, and prevention programs. As is the case with most discipline strategies, there is no one-shot curriculum. A commitment from the entire community is needed. The programs must be developmentally appropriate, and racially and culturally appropriate.\textsuperscript{157}

Proactive-educational curricula take many forms. In addition to the anger management curriculum advocated by Dr. Prothrow-Stith, multicultural education, problem-solving, drug and alcohol awareness, peer mediation, and conflict resolution are often inserted into curricula, in part to teach non-violence.\textsuperscript{158} Values education is becoming very popular -- and somewhat controversial. Several researchers report and/or advocate the addition of morals, ethics, and values training into school curricula.\textsuperscript{159} Some schools teach their students about violence directly, especially consequences of it and the alternatives to it. The DeKalb County School System in Georgia has gone further and has included the schoolwide discipline policy itself in the

\textsuperscript{157} Prothrow-Stith, supra note 2, at 10.

\textsuperscript{158} Arnette, supra note 50; and Kathleen K. Shepherd, Stemming Conflict through Peer Mediation, School Administrator, Apr. 1994, at 14.

\textsuperscript{159} Burnett & Walz, supra note 31; Cantrell, supra note 134; and Noguera, supra note 10.

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curriculum, and requires the students to review it several times each year as an academic mandate.\textsuperscript{160}

Anti-gang curricula are popular, as well. Most are similar to other violence prevention plans and emphasize self-esteem, alternatives, consequences, and career options.\textsuperscript{161} Shirley R. Lal, however has advocated quite a radical approach to gangs in schools, where the gangs are assimilated into the fabric of daily school life.\textsuperscript{162}

The most popular proactive-educational plans geared at violence reduction are peer mediation and conflict resolution. Peer mediation is a program in which selected students are trained as mediators to help their peers in resolving conflicts before violence erupts. Research asserts the effectiveness of letting children resolve their own conflicts.\textsuperscript{163} Most peer mediation programs begin by training students in empathy, cooperation, and perspective-taking, and all programs teach a process to help peers settle differences peacefully.\textsuperscript{164} In a 1994 study, Kathleen K. Shepherd reported that as many as 5,000 United

\textsuperscript{160} McGiboney, supra note 141.

\textsuperscript{161} Burnett & Walz, supra note 31; and Cantrell, supra note 134.

\textsuperscript{162} Shirley R. Lal, et al., HANDBOOK ON GANGS IN SCHOOLS: STRATEGIES TO REDUCE GANG-RELATED ACTIVITIES (1993), ERIC: ED 363 012.

\textsuperscript{163} Furst, supra note 7; Rowicki & Martin, supra note 140; and Walker, supra note 13.

\textsuperscript{164} Walker, supra note 13.
States elementary and secondary schools now use one of several conflict resolution models, including peer mediation. Peer counseling, tutoring, and mentoring programs are also popular and successful.

Despite the popularity of peer mediation programs, there are critics. For example, Alex Rascon, security director of San Diego schools, frowns on peer mediation: "We don't want to put a student in the position of making a gang unhappy. I don't believe in allowing students to supervise students. It opens them to liability issues. ... We need well-trained adults."

Dean Walker, in *School Violence Prevention*, argues that proactive-educational discipline can occur within all aspects of a school. The entire school community, including students, should be involved in creating a caring, inclusive school culture. First, a highly visible principal can help maintain a non-violent culture by cultivating relationships with students, engaging in shared decision-making with faculty and staff, and encouraging a sense of ownership in the school. Second, according to Walker, research indicates that teachers' emphases on academic goals and respectful behavior in the classroom, coupled with

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165 Shepherd, *supra* note 158.


168 Walker *supra* note 13.
quick, nonintrusive intervention in misbehavior will encourage order. Third, a schoolwide discipline plan helps foster a peaceful, caring student culture. Within this plan, structures should be created to involve students in the maintenance of an inviting physical facility, in addition to a curriculum that models prosocial education and teaches non-violence. Walker’s discipline plan also encourages consistent and fair application of school rules, thus holding children accountable for misbehavior. Finally, schools can collaborate closely with community social-service agencies to provide children and their families with timely and affordable access to counseling, financial assistance, protection, and parent education.

Several authors echo Walker’s advocacy of parent, business, and community involvement in violence prevention.\(^{169}\) Rowicki and Martin offer options suitable to parents both in and out of the schools.\(^{170}\) Parents may volunteer to patrol hallways, cafeterias, bathrooms, and school grounds, and to staff phone lines for unsupervised children who need help or guidance. Parents can also create "safe houses" where students can feel safe from violence on their way home from school. Businesses and community organizations can form partnerships with schools and provide

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\(^{169}\) Arnette, supra note 50; Burnett & Walz, supra note 31; Cantrell, supra note 134; Foster, supra note 145; and Noguera, supra note 10.

\(^{170}\) Rowicki & Martin, supra note 140, at 4.
everything from school supplies, computers, tutors, field trips, and other practical educational opportunities. In addition, some school districts may require community service learning before graduation.

Similarly, some commentators argue in favor of college preparation programs and jobs programs as violence prevention tools. These programs include increased access to scholarship opportunities, college searches, vocational education, and school-based job placement services. Anne Turnbaugh-Lockwood says that trying to eradicate gangs and violence in schools is a waste of energy. She argues, instead, for a jobs program as a longer-term solution for all students.\(^{171}\)

Sexual harassment, hate speech, and hazing policies were discussed above as proactive-punitive discipline options. As applied -- after a harassing incident occurs -- these policies are very much proactive-punitive. But because the primary goal of anti-harassment policies is outright prevention, the policies themselves are perhaps more appropriately placed in this last category.\(^{172}\)

Most of the proactive-educational prevention plans are geared toward education of children. Some of these plans, however, aim to educate school personnel and parents.

\(^{171}\) Turnbaugh-Lockwood, supra note 33, at 13.

\(^{172}\) Beckham, supra note 62; and Bukoffsky, supra note 60.
Education of school personnel occurs at all stages. First, school leaders conduct periodic assessments of their schools to monitor their record of student violence.173 Peter D. Blauvelt, now the Director of the National Alliance for Safe Schools, and colleague Robert J. Rubel, provide educational administrators with a multi-step process to assess the "policy health" of their schools and school districts:

(1) Check policies and procedures. Are they clearly stated? Do they distinguish between violation of school rules and criminal law? Are there definitions of specific crimes?

(2) Check school facilities. How many entrances? Do the trees and shrubs provide good hiding places? Is the parking lot well-lighted?

(3) Are the school security staff members school-trained or police officers? Is there on-going training? Look at their job descriptions.

(4) These assessments are not adversarial. Should be done publicly and with full support and cooperation of all school community.174

Second, many school districts provide faculty and staff with inservice training programs. It is important to


educate all school staff, including support staff, about how gangs and school violence develop.\textsuperscript{175} Trump argues that staff training programs should exist at both the building and district level, to address staff stereotypes, problem-solving curricula, and the consequences of student violence.\textsuperscript{176} Inservice training programs help school staff recognize early signs of gang activity.\textsuperscript{177}

Third, schools evaluate their own violence prevention policies for effectiveness and progress.\textsuperscript{178}

Finally, some attention should be paid to violence education for parents. For example, schools may offer special programs for parents on gangs and how to deal with them as parents. These programs typically present information in a culturally sensitive way, and may do so in a variety of languages, to reflect the diversity of the affected community.\textsuperscript{179}

**Proactive-educational prevention policies and the Ohio Revised Code.** Within the state curriculum standards for health education, students are required to receive instruction in drug, alcohol, and tobacco abuse. For grades

\textsuperscript{175} Arnette, supra note 50; Burnett & Walz, supra note 31; Cantrell, supra note 134.

\textsuperscript{176} Trump, supra note 139, at 6.

\textsuperscript{177} On Alert!, Gang Prevention, SCHOOL IN-SERVICE GUIDELINES (1994), ERIC: ED 370 179.

\textsuperscript{178} Arnette, supra note 50; and Essex, supra note 173.

\textsuperscript{179} Burnett & Walz, supra note 31.
kindergarten through six, schools must provide instruction in personal safety and assault prevention. Schools with grades of six or higher are required to post in their locker rooms a warning statement on the health and legal risks of using or possessing anabolic steroids. Schools may also contract with local police to develop drug abuse programs.

More generally related to the curriculum, boards of education are required to ensure that principles of democracy and ethics are emphasized and discussed wherever appropriate in all parts of the curriculum from kindergarten through twelfth grades. Boards of education are required to ensure that their teachers know their roles in satisfying this objective.

Boards of education may adopt resolutions to include community service learning in the curriculum. School districts that include community service learning must

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establish a community service advisory committee and adopt a curriculum for all grade levels. ¹⁸⁴

School boards may adopt a policy requiring district-sponsored parent education and training for the parents of students who have been suspended or expelled, or are habitually truant. If adopted, the policy must be conspicuously posted. ¹⁸⁵

**Development and Implementation of Violence Prevention Programs: Legal Mandates and Incentives**

The majority of the review of law is presented in the next chapter. However, the following subsections briefly explain the authority granted to boards of education and school administrators in implementing and enforcing the anti-violence policies discussed above.

**What Ohio law requires or authorizes.** Under Ohio Revised Code Section 3313.20, boards of education are required to "make any rules that are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." ¹⁸⁶ This section grants boards of

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education a high level of authority. In Board of Education v. McCluskey, the United States Supreme Court held that a court's construction of board of education rules is controlled by the board’s reasonable decision-making. A court will not substitute its judgment for that of a board of education unless the board has clearly abused its discretion or has violated the constitutional rights of students.\textsuperscript{187} Within the range of rules covered by this section are dress codes, free speech and expression regulations, search and seizure of students, due process for exclusionary discipline.

Under the Ohio Revised Code, a board of education may also adopt and publish a written policy that authorizes public school principals or their designees to search the locker of a student reasonably believed to have violated a school rule or the law. Random or suspicionless locker searches are permitted if a written policy is conspicuously posted and made available to students in advance.\textsuperscript{188}

The Gun-Free Schools Act. In 1994, the United States Congress passed the Gun-Free Schools Act.\textsuperscript{189} The Act calls for the automatic one-year expulsion of any student


\textsuperscript{188} OHIO REV. CODE ANN. § 3313.20(B) (Banks-Baldwin Supp. 1997).

who carries or possesses a firearm on school premises. Exceptions are made for children with disabilities, provided the weapon possession is a manifestation of his or her disability. Exceptions may also be made on a case-by-case basis. The statute encourages state legislatures to enact similar laws, or risk losing federal funding. In Ohio, the Gun-Free Schools Act has been expanded and codified in Revised Code Section 3313.66(B)(3). Under the law, a superintendent may expel a student for firearm or knife possession. Full due process rights -- notice and formal expulsion hearing -- are provided.

**Goal Six of Goals 2000.** Goal Six of Goals 2000: The Educate America Act makes federal funds available for various projects aimed at creating safe schools, especially those schools in high-crime districts.\(^{190}\) Most of the anti-violence policies discussed above would qualify, including conflict resolution programs, social skills programs, peer mediation programs, student courts, installation of metal detectors, and hiring of security personnel.

Specifically, Goal Six states:

By the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and

will offer a disciplined environment conducive to learning.\textsuperscript{191}

The objectives of Goal Six include: (1) firm and fair policies on the use, possession, and distribution of drugs and alcohol; (2) parental, business, governmental, and community involvement in school efforts secure a safe educational environment for children; (3) anti-violence and anti-weapon policies in schools; (4) K-12 drug and alcohol prevention education programs; and (5) sexual harassment policies in schools.

Under Goals 2000, preference for grants is given to school districts with high rates of homicides committed by young people; referrals to juvenile court; youth under supervision of the courts; expulsion and suspensions from school; disciplinary referrals to alternative schools; or victimization of youth by violence, crime, or other forms of abuse. Preference is also given to communities that show a strong commitment to the project and to meeting goal six.\textsuperscript{192}

Applications for funding should include an assessment of the current violence and crime problems, and an assurance that the applicant has written policies regarding discipline, school safety, and procedures for the appropriate management of violent or disruptive acts. The


applications should also show a commitment to including students, parents, and businesses and community organizations in the development and implementation of Goal Six programs.193

Grantees shall use the funds for at least one of the following: assessment of the current violence problem; training school personnel; parental involvement activities; conflict resolution, peer mediation, after-school programs, and other disciplinary alternatives to exclusion; innovative curricula; purchase and installation of metal detectors; and evaluation of programs.194

Costs of Violence and Violence Prevention

Kenneth S. Trump, in School Safety and Security, reminds educators of their greatest assets: the minds and bodies of the students and staff.195 Trump also reminds readers of schools' physical and financial assets. According to Trump, in addition to protecting human assets, schools must also protect these other assets:

As cases challenging school action (or inaction) in maintaining school safety and security continue to increase, the financial pool is likely to

become even more depleted, particularly if there are legitimate reasons for such suits.\textsuperscript{196}

As part of their national study, Peterson and his colleagues requested data on the annual financial costs of violence prevention in schools. The results are presented in Table 2.2.\textsuperscript{197}

<table>
<thead>
<tr>
<th>Violence Prevention Policy</th>
<th>Amount Spent</th>
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</thead>
<tbody>
<tr>
<td>Security Personnel</td>
<td>44% spend less than $50,000</td>
</tr>
<tr>
<td></td>
<td>5.6% spend up to $250,000</td>
</tr>
<tr>
<td></td>
<td>11.1% spend more than $1 million</td>
</tr>
<tr>
<td>Staff Training</td>
<td>38.9% spend less than $50,000</td>
</tr>
<tr>
<td></td>
<td>16.7% spend up to $250,000</td>
</tr>
<tr>
<td></td>
<td>5.6% spend more than $1 million</td>
</tr>
<tr>
<td>Alternative schooling/programming</td>
<td>27.8% spend less than $50,000</td>
</tr>
<tr>
<td></td>
<td>5.6% spend up to $250,000</td>
</tr>
<tr>
<td></td>
<td>16.7% spend up to $1 million</td>
</tr>
<tr>
<td></td>
<td>5.6% spend more than $1 million</td>
</tr>
<tr>
<td>Security equipment</td>
<td>33.3% spend less than $50,000</td>
</tr>
<tr>
<td></td>
<td>22.2% spend up to $250,000</td>
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<tr>
<td></td>
<td>5.6% spend more than $1 million</td>
</tr>
<tr>
<td>Site maintenance/repair</td>
<td>33.3% spend less than $50,000</td>
</tr>
<tr>
<td></td>
<td>11.1% spend up to $250,000</td>
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<tr>
<td></td>
<td>5.6% spend up to $1 million</td>
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<td></td>
<td>5.6% spend more than $1 million</td>
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</table>

Table 2.2. Costs of Violence and Violence Prevention

\textsuperscript{196} Id.

\textsuperscript{197} Peterson, supra note 6, at 13-14.
Effectiveness of Violence Prevention Measures

Research shows that small schools, with fair and firm discipline policies, strong principals, high expectations for children, and involved parents are safe atmospheres where learning takes place.\textsuperscript{198} Generally, schools with low levels of violent behavior are distinguished from those with high levels by a positive school climate where nurturance, inclusiveness, and community feeling are evident. Students who feel recognized and appreciated by at least one adult at school will be less likely to act out.\textsuperscript{199}

Effectiveness of violence reduction programs is measured primarily by opinion polls, surveys, and statistics collected by individual schools and school districts. In Peterson's 1996 study, teachers and administrators listed violence prevention programs that they felt were most effective and those they felt were least effective. Among districts of all sizes, the commonly effective policies were teachers in hallways, security personnel, police liaisons, peer mediation/conflict resolution, alternative schools/educational models, closed campuses, metal detectors, removal of lockers, uniform discipline policies, and before and after-school programs. Large districts added drug-and-

\textsuperscript{198} Prothrow-Stith, supra note 2, at 12.

\textsuperscript{199} Walker, supra note 13.
explosive sniffing dogs. Smaller districts added alteration of class schedules, cameras, and parental involvement. Least effective prevention policies were transparent bookbags, removal of lockers, social skills training, security cameras, dress codes, multicultural/diversity awareness programs, programs to increase parental involvement, metal detectors, alteration of class schedules.  

Due to the time and money involved, very few controlled studies have been conducted on the effectiveness of violence prevention policies.  

The most popular subject for effectiveness studies may be peer mediation/conflict resolution. Research on the effectiveness of peer conflict-resolution programs has been limited, but data are accumulating that show peer conflict-resolution programs reduce discipline referrals; improve the school climate; and increase self-esteem, confidence, and responsibility in the students who go through training. In 1995, John M. Enger conducted a controlled study on the effectiveness of instruction in violence prevention and conflict resolution on knowledge of violence. The violence prevention program, based on Prothrow-Stith’s curriculum model, was implemented in certain seventh-grade health education classes. Some

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200 Peterson, et al., supra note 6, at 14-15.
201 Walker, supra note 13.
202 Walker, supra note 13.
classes got the instruction; others did not. The experimental-group students answered significantly more items than did control-group students in the areas of violence in society, homicide, risk factors, anger, the expression of anger, fighting, what leads to a fight, and alternatives to fighting. Gains in test scores were positively correlated with students' socioeconomic status, GPA, and SAT composite scores. Gains in test scores were negatively correlated with the number of disciplinary referrals.203

Instead of relying on formal experimental studies, most administrators look for reduced violence and discipline problems to measure the effectiveness of their anti-violence programs. M. Beth Thompson, a principal in Bowling Green, Ohio, stated:

The conflict-resolution program at our school has reduced the number of violent incidents. It has reduced administrator time spent on disciplinary matters by providing ways for students to identify their problems and reach their own agreements. ... It has improved student communication and analytical skills. It allows students to take responsibility for their behavior.204

According to Kathleen K. Shepherd, "[m]any schools now are deciding that the best answers are found not in metal


204 Shepherd, supra note 158, at 15.
detectors and guards but in the students themselves." 205
For example, administrators at a California high school with
2,000 students and very large classes initiated an
adopt-a-kid program by matching adult volunteers on campus
with low-achieving students. This program, according to a
1995 report by Rebecca Shore, personalized the school
experience and substantially improved school climate. 206
Similarly, the Cleveland, Ohio, Public Schools' gang
intervention and prevention program and its Youth Gang Unit
has seen a 26 percent reduction in gang related incidents
during the first eight weeks of the second year of the
project. 207

A 1995 report from the Subcommittee on Children and
Families, and the United States Senate Committee on Labor
and Human Resources, presented findings of a study,
conducted by the United States General Accounting Office
(GAO). 208 The study investigated four specific programs
used by schools to curb violence, including the Positive
Adolescents Choices Training (PACT) program in Dayton, Ohio.
According to the GAO, the programs reported changes in

205 Id. at 17.

206 Rebecca Shore, How One High School Improved School
Climate, EDUCATIONAL LEADERSHIP, Feb. 1995, at 76.

207 Trump, supra note 139, at 9.

208 School Safety: Promising Initiatives for Addressing
School Violence, Report to the Ranking Minority Member,
Subcommittee on Labor and Human Resources, U.S. Senate
participants' attitudes toward violence and gang membership, less disruptive behavior, and less contact with the criminal justice system. The United States Senate report also identified seven characteristics of effective school-based violence prevention programs: a comprehensive approach, an early start and long-term commitment, strong leadership and disciplinary policies, staff development, parental involvement, interagency partnerships and community linkages, and a culturally sensitive and developmentally appropriate approach.

All effectiveness reports are not as positive. Most of the critics of violence prevention policies attack the reactive and/or punitive policies, especially those that rely on the suspension or expulsion of children. While such options can protect other students, many critics argue that they are ineffective in deterring future misbehavior or criminal acts. According to June Lane Arnette, "[i]t does little good for schools to suspend weapon-carrying students, [and turn] them over to law enforcement officials or the courts, only to have them return to the classroom in a matter of days." When the students re-enter the school, their behaviors have not changed; they are often more hardened and bitter. Carolyn Pereira agrees.

\[209\] Walker, supra note 13.

\[210\] Arnette, supra note 50, at 32.

\[211\] Arnette, supra note 50.
Reactive, deterrence-based policies only work with students who believe the rules are sensible, helpful, and equitably enforced.\textsuperscript{212} Instead of using these more reactive approaches, educators and psychologists are eyeing the prevention of violent behavior as both a more humane and more cost-effective response.\textsuperscript{213}

As this chapter has shown, schools have experienced many different types of violence, with most of these types increasing in frequency and severity. The two greatest effects of this violence are lost educations and lost childhoods. Thankfully, schools have dozens of anti-violence options to implement in their schools. Some are reactive, some are proactive; some are necessarily punitive, and some are educational. Regardless of the anti-violence scheme(s) adopted, however, education and violence prevention researchers largely agree that school administrators must look inside the school and outside in the community for support.

\textsuperscript{212} Pereira, supra note 76, at 51.

\textsuperscript{213} Walker, supra note 13.
CHAPTER 3

STUDENT-ON-STUDENT VIOLENCE AND THE LAW:

REVIEW OF LITERATURE

As was mentioned in Chapters 1 and 2, schools, students, and school personnel are caught in a crossfire of violence. In response, schools work to reduce or eliminate violent behavior among students by implementing anti-violence and programs, including dress codes, weapon and drug searches, police presence on campus, stricter discipline (including permanent expulsion), and peer mediation and conflict resolution programs.¹ With or without these anti-violence programs, however, schools run the risk of incurring legal liability for the injuries and/or property damage suffered by students at the hands of violent classmates. As a result, schools are also caught in a legal crossfire.

On one end of the crossfire, schools must defend their anti-violence actions against allegations that these policies violate the First, Fourth, Fifth, and/or Fourteenth Amendment rights of students. In any case, get-tough policies such as zero tolerance, and periodic sweeping weapon searches, might result in unforeseen and unintended outcomes that undermine the societal commitment to basic democratic values. According to Carolyn Pereira, "[a]s we develop programs to prevent and treat [violence in schools, we must make them] compatible with a democratic society."

On the other end of the crossfire, schools and school personnel are concerned about being held liable for the actions of their students, despite the fact that they have only minimal control over them. In other words, a school may be caught for alleged inaction (or omission) when a student is injured by the violent act of another and sues the school district for negligent supervision; unconstitutional deprivation of life, liberty, or property (committed under "color of state law"); or a general failure to protect students.

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2 Note that since school districts are arms of state governments, the rights contained in the Bill of Rights are protected via incorporation and the Fourteenth Amendment.

3 Carolyn Pereira, Violence in Schools: Can We Make Them Safe Again?, UPDATE ON LAW-RELATED EDUCATION, Spring 1994, at 49, 50.

This chapter discusses -- through an extensive presentation of federal and state law -- the compatibility of students’ rights and schools’ responsibilities for providing a safe, healthy learning environment, and the state of affairs in state and federal tort law when schools allegedly fail to meet their responsibilities. This literature review presents law from a variety of jurisdictions to emphasize important legal trends or current differences among courts and legislatures. This law review also highlights Ohio law, particularly state statutes, relevant to this study.

Violence Reduction Policies and the Defense against Constitutional Challenges

First Amendment Challenges

The First Amendment of the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.\(^5\)

\(^5\) U.S. CONST. amend. I.
Within the case law affecting student-on-student violence, the First Amendment is most often implicated in cases involving challenges to dress codes or mandatory uniforms. These challenges are based on free speech and/or free religion.\(^6\)

**Free Speech/Expression Rights**

No discussion of First Amendment Freedom of Speech in public schools is complete without *Tinker v. Des Moines Independent Community School District*.\(^7\) In a discussion of uniform and dress codes in public schools, *Tinker* is, legally and factually, an appropriate place to start. In *Tinker*, two high school students and one junior high school student were suspended for wearing black armbands to school to protest the Vietnam War. In advance of the protest by the students, the principals in the school district became aware of the plan to wear armbands. They met and adopted a policy that disallowed the armbands. Under the policy, violators would be asked to remove the armband or be suspended until they did. The students and their parents challenged the suspension on First Amendment grounds and filed suit. The United States Supreme Court held that such silent, passive, and symbolic speech was protected by the

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\(^7\) 393 U.S. 503 (1969).
Constitution. The Court held that schools may regulate student expression only if school officials can reasonably forecast that the expression will substantially disrupt or materially interfere with school activities or the rights of other students. The black armbands did not interfere with or disrupt the school’s learning environment. Therefore, the Court overturned the suspensions.

The *Tinker* decision is widely-known for its statement that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."8 While the case is cited often for this principle, it is important to note that it also provides school officials with a large measure of authority over the disciplinary and academic operations of their schools, even in the face of the constitutional rights of their students. The substantial disruption and material interference standard may be difficult for plaintiffs to overcome.9

In 1986, the Supreme Court again visited the First Amendment in public schools. In *Bethel School District No. 403 v. Fraser*, the Court upheld the suspension of a student who delivered a vulgar speech at a school assembly.10 The Court held that the First Amendment does not prevent school

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8 393 U.S. at 506.


officials from determining that to permit a student’s vulgar and lewd speech would undermine the school’s basic educational mission. According to the Court, it is perfectly appropriate for the school to disassociate itself from certain student expression to make the point to pupils that vulgar speech and lewd conduct are inconsistent with the "fundamental values" of public school education.

Two years later, the Supreme Court expanded this principle of disassociation between schools and the inappropriate expression of students.11 In Hazelwood School District v. Kuhlmeier, just before a school-sponsored newspaper was to be printed and distributed to students, a high school principal deleted two pages containing articles that he thought were excessively personal and inappropriate. One article involved students and the effects of divorce, and mentioned a student’s name directly. The other questionable article discussed teen-age pregnancy. While the pregnancy article used false names to maintain the confidentiality of students, the principal determined that the article contained enough information to identify the pregnant students. The Supreme Court upheld the principal’s decision to delete the pages and denied the students’ injunction and claim for monetary damages.

The Supreme Court recognized the school's broad powers in restricting student speech in a non-public forum and declared that the school newspaper fell within that context. The Court held that schools are not obligated to support or promote student speech that is inconsistent with school purposes, especially speech that is part of a school-sponsored and curriculum-based journalism class. The Court declined to apply the Tinker standard:

Accordingly, we conclude that the standard articulated in Tinker for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.\footnote{484 U.S. at 273.}

Recently, several courts have heard and decided cases involving First Amendment challenges to dress codes or mandatory uniform policies in public schools. As long as the schools can justify their use of dress or uniform codes, courts will most often hold in favor of the schools. Aggie Alvez asserts that some connection between the dress code and academic attainment would help in a legal challenge.\footnote{Aggie Alvez, Will Dress Codes Save the Schools?, UPDATE ON LAW-RELATED EDUCATION, Spring 1994, at 9.} As the readers will see in the following discussion, the
courts rely on many factors to uphold dress codes, including evidence of gangs, encouragement of a civilized society and appropriate behavior, lower costs to parents, and improved unity or pride in the school. Similarly, the courts' reliance on and application of Tinker, Bethel, and Hazelwood vary, as well.

In Phoenix Elementary School District No. 1 v. Green, two students and their parents filed a lawsuit against their school district after the students failed to comply with the public school's mandatory uniform dress code.\(^{14}\) Under the code, students were required to wear white shirts or blouses (with no logos) and blue pants or skirts purchased from a particular store. Failure to comply code resulted in a call to the parents, an offer to wear a school-provided uniform for the day, and/or a transfer to another school in the district without a dress code. One of the plaintiffs in Green wore a shirt with an American Flag on it; the other wore a shirt with the Bible and "Jesus" on it.

Against a First Amendment challenge, the court held for the school. First, the court refused to apply the Tinker analysis and held that the speech restriction was not content-based, but rather a neutral policy that furthered the reasonable goals of the school. Second, the court determined that the school was not a public forum and held

that the school could impose reasonable time, place, and manner restrictions upon speech, in light of the purpose of the forum. To meet both of these standards and to show that the dress code was reasonably related to the pedagogical missions of the school, the school district presented the following reasons for implementing its dress code: (1) a more effective climate for learning; (2) increased campus safety and security; (3) school unity and pride; (4) elimination of 'label competition'; and (5) minimal costs to parents.

The five justifications advanced by the school district in *Green* are represented, in various combinations, in several other recent dress code cases. For example, if schools can show some history of violence or gang activity in their districts, then their dress codes may be upheld. In *Olesen v. Board of Education of School District 228*, a male high school student was suspended under a school dress code prohibiting gang activities and gang-related clothing and symbols.\(^{15}\) Specifically, the code stated:

> No student on or about school property or at any school activity:

> (1) Shall wear, possess, use, distribute, display or sell any clothing, jewelry, emblem, badge, symbol, sign or other things which are evidence of membership or affiliation in any gang;

> (2) Shall commit any act or omission, or use any speech, either verbal or non-verbal (gestures,

\(^{15}\) 676 F. Supp. 820 (N.D. Ill. 1987).
hand-shakes, etc.) showing membership or affiliation in a gang; or

(3) Shall use any speech or commit any act or omission in furtherance of the interests of any gang or gang activity, including but not limited to:

(a) soliciting others for membership in any gangs;

(b) requesting any person to pay protection or otherwise intimidating or threatening any person;

(c) committing any other illegal act or other violation of school district policies; and

(d) inciting other students to act with physical violence upon any other person.\(^{16}\)

The policy defined "gang" as "any group of two or more persons whose purposes include the commission of illegal acts."\(^{17}\)

Olesen wore an earring which was known in the community to designate gang membership or affiliation. The student argued that this was mere coincidence and that his reason for wearing the earring was to express his individuality. He claimed the dress code was a violation of his free speech rights. Under a First Amendment analysis, the federal district court for the Northern District of Illinois found that "individuality" is not protected under the First Amendment and held that the school rule was narrowly tailored to meet the school's interest in reducing gang

\(^{16}\) Id. at 822.

\(^{17}\) Id.
presence on campus, especially in light of the gang activity in the community. The court held that the dress code was a reasonable time, place, and manner restriction that only prevented the student from wearing the earring (gang symbol) during school hours and on school property.

According to some courts, the school’s interest in safety may be essential to the constitutionality of the dress code. In Jeglin v. San Jacinto Unified School District, the federal district court for the Northern District of California held that a school dress code that prohibited clothing identifying professional or college sports teams violated the free speech rights of elementary and middle school students, but not high school students.\(^{18}\) Evidence showed only negligible gang presence in the elementary and middle schools and no actual or threatened disruption of school activities. There was evidence of a gang presence of undefined size and composition in the high school, resulting in intimidation of students and faculty that could lead to disruption or disturbance of school activities.

For other courts, a record of student violence is not essential to develop a valid dress code. Often, basic interests in student discipline and behavior are enough. In Hines v. Caston School Corp., an elementary school suspended a student for five days because he wore a gold-studded

earring to school in violation of a written dress code.\textsuperscript{19} The Indiana Court of Appeals held that the dress code was a factor in improving student attitudes toward school. The policy served a valid educational purpose to instill discipline and to create a positive educational environment, and was upheld.

Generally, state law empowers school officials to make rules and regulations governing the safe and orderly operation of schools.\textsuperscript{20} In addition, a school's interest in a safe and secure learning environment is important. Unless decisions made by school officials -- based on these interests -- are arbitrary, capricious, or outside their discretionary power, courts will not interfere. In \textit{Barber v. Colorado Independent School District}, a student wore long hair and an earring in violation of school policy.\textsuperscript{21} The Texas Supreme Court held that student grooming was an area in which the judiciary was incompetent. Accordingly, it was inappropriate for the court to prohibit the district from enforcing its dress code.

Some courts refuse to recognize style or form of dress as expression in the first place. In such cases, the First Amendment question is never addressed directly. For

\textsuperscript{19} 651 N.E.2d 330 (Ind. Ct. App. 1995).


\textsuperscript{21} 901 S.W.2d 447 (Tex. 1995).
example, in *Green v. Albuquerque Public Schools*, a student brought an action under Section 1983 of Title 42 of the United States Code claiming that a school dress code prohibiting saggy pants violated his First Amendment rights and that the procedures used in imposing a long-term suspension violated his due process rights.\(^\text{22}\) The student contended that wearing sagging pants was part of a style known as "hip-hop", with roots in African-American heritage, and that the style was, in large part, a matter of group identity. The federal district court of New Mexico held that there was no constitutional violation, since engaging in the practice of "sagging" was not speech or expressive conduct protected by the First Amendment.

The courts in the above cases relied on interests in safety, pedagogy, and civility to validate dress and uniform codes. In effect, the courts followed the dictates of *Bethel* and *Hazelwood* and held in favor of the schools. When a court relies on *Tinker*, as it did in *Jeglin*, the schools must show -- or reasonably forecast -- that the student expression causes a substantial disruption of or material interference with school activities or other students' rights in order to restrict the expression. As a result, in jurisdictions that apply the *Tinker* rule, schools are less likely to be rewarded for implementing proactive dress codes or mandatory uniform policies than schools in jurisdictions

\(^{22}\) 899 F. Supp. 556 (D.N.M. 1995).
that apply Bethel and Hazelwood. If prohibited clothing causes a disturbance only after a school bans it, and the school cannot justify the ban for any other reason, then a court may find in favor of the students. In McIntire v. Bethel Independent School District, for example, the school district prohibited the wearing of T-shirts with a variation on a rum advertisement, stating that the shirts promoted liquor use among minors. The federal district court for the Western District of Oklahoma held in favor of the students. Although a prohibition on dress promoting alcohol use is constitutional, the shirt at issue was not likely to be perceived as encouraging alcohol use. In this case, the only disruption to school activities occurred after the school banned the shirts.

More recently, in Pyle v. South Hadley School Committee, the Massachusetts Supreme Court found that a state statute, based on Tinker, required school officials to demonstrate that student expression is disruptive before they can restrict it. In Pyle, two students claimed that a school dress code prohibiting "obscene, profane, lewd, or vulgar" clothing violated their First Amendment rights. The court decided, under a Tinker analysis, that students have the freedom to engage in speech that may be considered vulgar, as long as it does not disrupt school activities.

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The court noted that since the decision in Tinker, and in light of Bethel and Hazelwood, the state legislature has had ample opportunity to create a statute to reflect new judicial trends, but did not do so. Therefore, the court applied Tinker and held for the students.

Other Dress Code Cases: Freedom of Religion Claims

The majority of courts will not hesitate to find that public schools have the authority to promulgate and enforce reasonable dress codes. However, as discussed in the above free speech cases, this authority is not unlimited. In addition to free expression, school authority must also be balanced against the constitutional right to free exercise of religion. In Alabama and Coushatta Tribes of Texas v. Big Sandy Independent School District, the federal district court for the Eastern District of Texas held that the enforcement of a dress code restricted the constitutional rights of students because of a sincerely held religious belief entitled to First Amendment Free Exercise protection. The school district’s dress code was not a valid means of achieving the objectives of maintaining discipline fostering respect for authority, and projecting a good public image when weighed against the sincerely held beliefs of American Indian students.

In *Cheema v. Thompson*, a school district had a ban on all weapons, including knives, based on two state statutes: (1) making it a crime to carry a knife with a blade longer than 2.5 inches to school; and (2) authorizing expulsion for possession of "any knife ... of no reasonable use to the pupil."[26] Three student members of the Khalsa Sikh religion filed suit under the Religious Freedom Restoration Act (RFRA), claiming a denial of freedom of religion. Under their religion, they are required to wear, at all times, a ceremonial knife of 3.5 inches. The RFRA creates a statutory cause of action for violation of the free exercise of religion where the government has "substantially burdened a person’s exercise of religion even if the burden results from a rule of general applicability."[27] The school district relied on its interest in school safety to justify the ban. The United States Court of Appeals for the Ninth Circuit upheld a preliminary injunction against the school because the school had failed to consider, under the RFRA, whether other less restrictive alternatives existed where the students’ religious beliefs could be protected (for example, dulling the knives or permanently fastening them to their cases).

[26] 67 F.3d 883, 884 (9th Cir. 1995).

[27] Id. at 888.
Future cases like Cheema are decidedly uncertain. In Summer, 1997, the United States Supreme Court declared the Religions Freedom Restoration Act unconstitutional.\textsuperscript{28}

**Dress Codes and the Ohio Revised Code**

The Ohio Revised Code authorizes each board of education to adopt dress codes or mandatory uniform codes for one or more of the district’s schools, so long as the codes bear a reasonable relationship to a valid educational purpose, such as discipline, health, or safety of students.\textsuperscript{29} Under the statute, no uniform shall be adopted without opportunity for administrators, faculty, and parents to offer suggestions and comments. Parents and students must have six-months notice before the effective date. The dress or uniform code must also have provisions for assistance to economically disadvantaged students and families.\textsuperscript{30} Finally, the dress/uniform policy must not violate the constitutional rights of students.\textsuperscript{31}

\textsuperscript{28} City of Boerne v. Flores, 117 S. Ct. 2157 (1997).


\textsuperscript{30} Id.

The Revised Code published several legislative findings of fact regarding safe schools and uniform/dress codes. 32

In its findings, the legislature stated:

(1) Ohio children have a right to an effective public school education. They have the right to be safe and secure at school.

(2) Gang-related apparel is hazardous to the health and safety of the school environment. For example, gang-related clothing may facilitate the concealment of weapons.

(3) School-wide uniform policies are reasonable ways to provide some protection for students and to promote safe atmospheres conducive to learning. Uniforms help to keep children from being associated with a gang and keep the focus on education and not personal safety and status.

(4) School dress is important for unity, personal and school pride, and behavior in and out of the classroom.

Fourth Amendment Search and Seizure Challenges

The Fourth Amendment of the United States Constitution states, in part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause ... 33

32 These findings are not codified law, but are published with Ohio Revised Code Section 3313.665.

33 U.S. CONST. amend. IV.
Since the landmark decision in *New Jersey v. T.L.O.* in 1985, courts have applied the Fourth Amendment in a wide range of school circumstances. As student violence increases, the proactive and reactive responses of schools become more common. This section of the literature review discusses the convergence of the Fourth Amendment and violence prevention. Several types of searches and seizures implicate the Fourth Amendment: locker searches, sniff searches, strip searches, use of metal detectors, and drug tests.\(^{35}\)

**Reasonable Suspicion**

In 1985, the Supreme Court held that the Fourth Amendment applies in the school setting, but with a less stringent standard than the applicable test for searches by law enforcement officials. In *New Jersey v. T.L.O.*, a teacher discovered two students smoking in a restroom, in violation of a school rule. One of the students (T.L.O.) denied the violation to the assistant principal, who searched her purse and found a pack of cigarettes, rolling paper, a small amount of marijuana, a substantial quantity of one dollar bills, and a list of students who owed T.L.O. money.

\(^{34}\) 469 U.S. 325 (1985).

\(^{35}\) See, generally, Sperry and Daniel, supra note 6.
In upholding the search, the Supreme Court held that schools are exempted from the warrant and probable cause requirements of the Fourth Amendment. Searches by school officials are governed, instead, by a reasonableness standard. The interests of school teachers and administrators in creating and preserving a disciplined educational environment are more easily met with less restrictive rules.  

Under T.L.O.'s reasonableness standard, a school search is constitutional if it is (1) justified at its inception: the school officials have a reasonable suspicion that the law or a school rule has been violated; and (2) reasonable in scope: in light of the age and experience of the student being searched and the nature of the alleged infraction.  

To determine the reasonableness of a school search, a court must review the totality of the circumstances. In United States v. White, school officials suspected gang activity when four non-students entered school grounds. Police were called to the school where they conducted a search based on a witness' tip. The United States Court of Appeals for the Seventh Circuit held that the totality of


37 469 U.S. at 342.

the circumstances includes the officer's experience and
knowledge, the characteristics of the persons engaged in
illegal activities, and the behavior of the suspects. The
court noted that the tip, the gang clothing, the officer's
knowledge of gang association among the suspects, and the
relevant criminal conduct involving the suspects were all
components of reasonable suspicion justifying a search. The
court held further that while gang membership alone carries
some weight in the legal analysis, courts will more often
rely on gang involvement when the gang has been connected to
some suspected criminal or school-rule-breaking activity.

R. Craig Wood and Mark Chestnutt suggest schools use
the following factors when determining "reasonable
suspicion" under the circumstances: age of the child; the
child's history and record in school; prevalence and
seriousness of the problem in the school to which the search
is directed; the exigencies in making the search without any
further investigation or delay; the probative value and
reliability of the information used as a justification for
the search; and the particular teacher's or school
official's experience with the student searched.\textsuperscript{39}

The reasonableness standard adopted in \textit{T.L.O.}, applies
to both searches and seizures. In \textit{Edwards v. Rees}, the
United States Court of Appeals for the Tenth Circuit ruled
that a principal's seizure and interrogation of a student

\textsuperscript{39} Wood & Chestnutt, supra note 1, at 623-624.
suspected of planting a bomb at his school was justified at its inception, as two students implicated the alleged perpetrator with accusations that the perpetrator never refuted. 40 The magnitude of the suspected offense justified the detention and questioning the student to uncover information regarding the bomb threat.

The reasonableness doctrine has an important impact on proactive and reactive discipline and violence prevention. Bernard James initially asserts that T.L.O. is instructive only for reactive school safety policies. 41 In a proactive setting, "generic suspicions" are difficult to quantify, and the searches are difficult to balance against the expectation of privacies of the students. "If T.L.O. is useful in this regard at all, it is in the suggestion that courts balance the competing interests -- the need for a safe educational environment and the right of student privacy -- to permit school officials to act when reasonable expectations of privacy are outweighed by institutional factors." 42 James' argument, however, should be read in light of more recent Fourth Amendment decisions that tend to

40 883 F.2d 882 (10th Cir. 1989).
41 James, supra note 36, at 193.
42 Id. at 195.
uphold proactive searches, sometimes under reasonableness arguments.\textsuperscript{43}

James argues that the reasonableness doctrine applies to proactive discipline policies in two circumstances.\textsuperscript{44} First, a search may be constitutional if the school can show corroborated evidence to support its suspicions that a student is or will be breaking a law or school rule. For example, in \textit{Coffman v. State}, an assistant principal searched a student in a school hallway after the student had just come from outside. The student had prior discipline problems, and there had been many recent unsolved parking lot thefts at the school. The Texas Court of Appeals upheld a search of the student’s bag; the search revealed a weapon.\textsuperscript{45}

Second, the search will be constitutionally reasonable if the school successfully asserts its custodial interests in preserving school property for its intended use. Recently, these searches have become increasingly generic and suspicionless.\textsuperscript{46}


\textsuperscript{44} James, supra note 36, at 194-196.

\textsuperscript{45} 782 S.W.2d 249 (Tex. Ct. App. 1989).

In reactive violence prevention situations, the scope of the search is the crucial question. In proactive situations, the justification question is the bigger hurdle.\textsuperscript{47} Ultimately, according to James, the reasonableness doctrine adapts easily to proactive school safety plans, especially in relation to the severity of the student conduct prevented.

**Individualized Suspicion**

Generally, the reasonableness standard in search and seizure cases means "reasonableness under the circumstances." The Supreme Court in \textit{T.L.O.} adopted a two-part reasonableness test to apply to each given set of circumstances: (1) justification at inception; and (2) reasonableness in scope. This researcher proposes that the "reasonableness in scope" prong may be analyzed in one of two ways, often depending on how the justification question is analyzed. First, assume that school officials have justified the search of one or two specific students based on reasonable evidence to do so (e.g., a reliable informant). From here, the scope question becomes one of \textit{depth}: how far will the search of these particular students go, or how much property will be searched and seized? For example, a search of pants and coat pockets could lead to searches of purses, bookbags, or lockers. It may even lead

\textsuperscript{47} James, supra note 36, at 197.
to a strip search.\textsuperscript{48} Depending on the seriousness of the conduct or contraband, search sequences such as this may be reasonable in scope and, therefore, constitutional. This example demonstrates a search and seizure with reasonable, individualized suspicion, in a reactive situation.

The second analysis of the reasonableness in scope question is not a question of depth, but one of breadth.\textsuperscript{49} Assume, for example, that a school administrator hears that a student has a knife on the premises, but does not know which student specifically. In response, she orders a broad sweeping search of all students' coats, pockets, and bookbags. Due to the general seriousness of weapon possession in schools and the direct potential for injury to students or staff, the searches conducted here may also be reasonable in scope, despite the lack of individualized suspicion. In \textit{Thompson v. Carthage School District}, a school bus driver found knife cuts on the seats of her bus and told the high school principal.\textsuperscript{50} Concerned that a knife or other cutting weapon was on school grounds, the principal concluded that all male students in grades six through twelve should be searched. No weapon was discovered


\textsuperscript{49} As an analogy, the core of an orange represents a "depth" search, while the peel represents a "breadth" search.

\textsuperscript{50} 87 F.3d 979 (8th Cir. 1996).
in the searches. However, school officials found crack cocaine in the jacket of one student. The court held that individualized suspicion is not always required for school searches, and upheld the search. The court reasoned that the search for dangerous weapons conducted here was minimally intrusive and, therefore, not unconstitutional. The Thompson decision represents a good example of school administrators conducting a reasonable search and seizure in a proactive situation.

Cases following the second analysis of T.L.O.'s scope question are becoming more common today, and represent the growing trend of courts that recognize both the rapid increases of violence in schools and the authority of schools to engage in proactive violence prevention, without individualized suspicion. If a school official reasonably believes that at least one member of a suspicious group of students is in possession of illegal or prohibited contraband, then he or she will likely be able to conduct a search of the entire group, free from constitutional violation. In Smith v. McGlothlin, for example, the United States Court of Appeals for the Ninth Circuit upheld a search conducted by a school's assistant principal after some homeowners near the school alerted the administrators to a large group of students congregating and smoking in the neighborhood before school. The assistant principal

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51 119 F.3d 786 (9th Cir. 1997).
approached the students, saw a cloud of smoke above them and ordered them all to the school office to be searched. In the course of the search, the assistant principal found three knives on one student. The student argued that the search was illegal, as it was conducted without individualized suspicion. The Court held otherwise. The search was reasonable under the circumstances. According to the court, even if the students had an opportunity to confess, they still would have been searched. Furthermore, the two hours it took to search all the students did not amount to a deprivation of due process rights.

Similarly, in In re Alexander B., the California Supreme Court refused to find a police search of an alleged gang member unreasonable simply because no particular student was alleged to be in possession of a weapon. While a school administrator was involved in the separation of two student gangs, he overheard one of the students say "[d]on't pick on us: one of those guys has a gun." A police officer arrived and the administrator requested that the officer search the students for weapons. One of the

52 The students quickly extinguished their smoking materials as the assistant principal approached. Therefore, the school officials could not tell who, specifically, was smoking.

53 Smith, 1997 WL 400344, at *2.

54 270 Cal. Rptr. 342 (Cal. 1990).
students attempted to leave. In the course of the apprehension, the officer found a machete in the student’s pant leg. The court upheld the search and noted that school officials have a heightened responsibility to provide a safe and secure environment, compared to the responsibility of the police to the general public.

Courts may uphold broad, suspicionless searches in even more proactive settings than those seen in Thompson, Smith, and Alexander B. In Desilets v. Clearview Regional Board of Education, the New Jersey Superior Court upheld a pre-announced search of students’ hand luggage prior to boarding a bus for a field trip.55 The court found the search to be justified at its inception by the school’s duty to provide discipline, supervision, and control in conjunction with the unique burden placed on school personnel in the context of a field trip away from school. Furthermore, the advanced warning provided ample opportunity for students to remove any contraband or embarrassing items that might be located and exposed.

Not all broad or suspicionless searches can overcome the individualized suspicion hurdle. However, these cases tend to be older, and often involve less serious incidents. In Kuehn v. Renton School District, the Supreme Court of Washington State struck down a pre-field trip luggage search

due to the lack of individualized suspicion.\textsuperscript{56} And in a case not quite reaching the magnitude of Thompson, a school principal responded to an act of vandalism and ordered a search of all students' book bags, pockets and purses for magic markers.\textsuperscript{57} Two subsequent "sweep searches" were ordered --- one for a stolen walkman and the other because a teacher reported smelling marijuana in the school hallway. The court found no individualized suspicion and struck down the searches.

\textbf{Locker Searches}

One of the key considerations in any Fourth Amendment case, whether in a school or not, is whether the person has an expectation of privacy in the thing searched and/or seized. In school settings, this question is often answered in locker search cases. Most jurisdictions, including Ohio, hold that students' lockers are the property of schools.\textsuperscript{58} Therefore, the students' expectations of privacy in their lockers is diminished, and the authority of school officials to search them is enhanced. This is likely the case, whether the search is conducted with or without individualized suspicion.

\textsuperscript{56} 694 P.2d 1078 (Wash. 1985).


\textsuperscript{58} See, \textit{e.g.}, \textsc{Ohio Rev. Code Ann.} § 3313.20 (Banks-Baldwin Supp. 1997).
In Commonwealth v. Carey, two students reported that a third one had a gun. The third student reportedly was going to use it to retaliate for a previous altercation. School officials searched the student’s locker and found a rifle. The Massachusetts Supreme Court found that the locker was school property and was made available to the student for the limited purpose of storing items legitimately on school premises. The expectation of privacy asserted by the student in such circumstances was unreasonable. The search did not violate the Fourth Amendment.

Similarly, in In re Isaiah B., a random, proactive search of student lockers resulted in the confiscation of a gun and cocaine from the plaintiff’s coat pocket. The student claimed a violation of his Fourth Amendment right to "reasonable expectation of privacy" in his locker. However, since the lockers were school property as defined in the school handbook and since student locks were not permitted, his expectation to privacy was not reasonable. The Wisconsin Supreme Court upheld the search in light of the significant risk of imminent, serious personal harm to students and staff.

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60 500 N.W.2d 637 (Wis. 1993).
The Ohio Revised Code authorizes boards of education to adopt policies regarding locker searches.\(^{61}\) Generally, under the statute, each search may be conducted by a principal or a designee, and must be conducted with reasonable suspicion that the search will reveal evidence of a violation of criminal law or school rule. However, the search policy may be expanded to include random and/or suspicionless searches. Random locker searches may be conducted if the school conspicuously posts a notice to students stating that the lockers are school board property and are subject to random searches, regardless of suspicion. With or without a policy, a principal may search a student’s locker in an emergency, where the health and safety of persons or property are threatened.

**Sniff Searches**

Schools may also use dogs to sniff out drugs stored in lockers or desks, or on people. The key issue in sniff searches may be whether the dog-sniffs are searches at all under the Fourth Amendment. The courts appear split. In *Zamora v. Pomeroy*, the United States Court of Appeals for the Tenth Circuit determined that locker "sniff" searches implicated the Fourth Amendment.\(^{62}\) However, the court

\(^{61}\) OHIO REV. CODE ANN. § 3313.20(B) (Banks-Baldwin Supp. 1997).

\(^{62}\) 639 F.2d 662 (10th Cir. 1981).

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upheld the search because, under school policy, student lockers were jointly controlled by both the school and the students. As a result, students had an expectation of privacy in their lockers only with respect to other students, and not to school administrators. According to the court, the search was legal as soon as school administrators had reasonable suspicion that the student violated a school rule or the law.

The reasonable suspicion tests need not be addressed if the court determines, first, that sniff searches are not searches for Fourth Amendment purposes. In *Horton v. Goose Creek Independent School District*, the Fifth Circuit held that a dog sniff of a locker or desk is not a search under the Constitution, but that a dog sniff of a person does implicate the Fourth Amendment and require the application of the reasonableness tests.

If the sniff search is conducted by a person, the result will likely be the same. In *Burnham v. West*, the court held that the act of a school official sniffing the

63 *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982).

64 *Id.* at 481-482. See also *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223 (E.D. Tex. 1980). In 1983, the United States Supreme Court held, in a case outside the school context, that dog sniffs of personal property are limited in intrusiveness and are not searches. *United States v. Place*, 462 U.S. 696 (1983).

65 *Horton*, 690 F.2d at 481-482.
hands of students and the air around them did not constitute a search under the Fourth Amendment.\textsuperscript{66}

**Strip Searches**

To date, strip searches in schools, under a T.L.O. analysis, address only the depth analysis of the reasonableness in scope question. In other words, there are no reported cases of random, sweeping, and suspicionless strip searches of students. However, the importance of administrators addressing reasonableness factors such as age and sex of the child searched, maturity of the child, sex of the searcher, and seriousness of the situation is probably most pronounced in strip search situations. Among all types of searches, strip searches are potentially the most intrusive. In \textit{Williams v. Ellington}, two students were suspected of possessing drugs.\textsuperscript{67} Two assistant principals searched the students' lockers, books, and purses and found nothing. The principal asked the female assistant principal (Easley) to take Williams to her office to search her person. A female secretary served as a witness. Easley asked Williams to remove her T-shirt and lower her jeans; no drugs were found. Ultimately, the United States Court of Appeals for the Sixth Circuit upheld the search and ruled that a school official may conduct a strip search if the


\textsuperscript{67} 936 F.2d 881 (6th Cir. 1991).
nature of the contraband being sought can justify the level of intrusiveness. Furthermore, the search was reasonable based on the information provided by the informant.

Under similar circumstances and with a similar application of T.L.O., the federal court for the Southern District of Ohio upheld a security guard’s strip search of a student suspected of drug possession and drug use.\(^{68}\) In Widener v. Frye, a former detective with the Cincinnati police department strip searched a student after a classroom teacher and another security guard detected a strong odor of marijuana from the student. With the student’s permission, the authorities initially searched his bag as well as his coat. The search continued with a pat-down under his arms and, with his consent, he emptied his pockets. When these actions failed to reveal any contraband, he was asked to lift his shirt, remove his shoes and socks, and to lower his pants after it was confirmed that he was wearing gym shorts under his pants. Again, the guard found no evidence of drug possession. The student claimed to be embarrassed by the intrusiveness of the search and argued that the search violated his Fourth Amendment rights. The court found the search justified at its inception and reasonably related in scope to the circumstances at hand.

Nude searches may be upheld, as well. In Cornfield v. Consolidated High School District No. 230, a high school

student with a behavioral disorder brought action for a Fourth Amendment violation after male school officials strip searched him (a nude search in the school’s gymnasium locker room) for drug concealment. They found nothing. The court ruled the search constitutional, given the nature of the contraband and its possible danger to other students. An unusual bulge in the student’s pants created a reasonable suspicion that the student was "crotch ing" drugs. Some courts look at the seriousness of the material sought and/or seized to determine whether a strip search is warranted. For example, a strip search of students for $4.50 may not be reasonable under any circumstances. The United States Court of Appeals for the Eleventh Circuit, however, reached a decidedly different result. In Jenkins v. Talladega City Board of Education, the court upheld the strip searches of two second-grade students accused of stealing $7.00 from a classmate. According to the

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69 991 F.2d 1316 (7th Cir. 1993).

70 Id. In 1980, the Seventh Circuit heard another nude strip search case involving a drug investigation. Doe v. Renfrow, 631 F.2d 91, reh’g denied, 635 F.2d 582 (7th Cir.), cert. denied, 451 U.S. 1022 (1980). The court found that search too intrusive and struck it down. The difference between these two cases may be a reflection of the changing times and the greater concern over violence and drug use among students.


court, the stealing of $7.00 in an elementary school classroom could reasonably be considered serious. In addition, the court also determined that the searches were not excessively intrusive, since a female teacher conducted the searches on pre-pubescent girls.

Metal Detectors

R. Craig Sauter states that in order to prevent homicides (or other serious injuries) in the school setting, "metal detectors seem prudent because national estimates are that more than 200,000 students pack weapons along with their school lunches and bring them into the learning environment every day." Research indicates that many districts are heeding this advice. According to a National League of Cities survey in 1994, 19% of 700 communities questioned use metal detectors in their schools. Jessica Portner reports that 35% of the 100 largest districts in the country use metal detectors; Sauter states that 45% of the nation's urban districts use them. Garrett Electronics, one of the nation's largest

73 R. Craig Sauter, Standing up to Violence, PHI DELTA KAPPAN, Jan. 1995, at K1, K5.


76 Sauter, supra note 73.
metal detector manufacturers, reports that educational institutions are its second biggest customer, after airports.\textsuperscript{77}

The law of metal detectors in schools can be divided, generally, into two groups. First, schools must be aware of the legal issues surrounding the use of metal detectors. Second, they must be aware of the legal issues surrounding the alleged failure to use them.\textsuperscript{78}

The key legal issue for schools that use metal detectors is whether the search requires and/or was conducted with "individualized suspicion." In other words, is it advisable for a school district to search for weapons via a metal detector when the individuals searched may have done nothing in particular to raise suspicions on the parts of school officials?\textsuperscript{79} Is there evidence of illegal activity or a school rule infraction? The reasonableness test of T.L.O. may dictate.

Courts may also rely on the administrative search doctrine.\textsuperscript{80} Administrative searches are searches made without a warrant and without individualized suspicion; they

\textsuperscript{77} Jessica Portner, School Violence Up over Past 5 Years, 82\% in Survey Say, XIII EDUCATION WEEK, Jan. 12, 1994, at 9.

\textsuperscript{78} Bjorklun, supra note 74.


\textsuperscript{80} Bjorklun, supra note 74, at 12 n.83.
are designed to prevent the occurrence of a dangerous event and are aimed at a class of people rather than a specific individual. In People v. Dukes, a New York state court upheld the use of a hand-held detectors on the grounds that security interests outweighed privacy interests in a high school known for high crime. The court considered many important factors in its decision. School administrators told the students at the beginning of the school year that they may be subjected to weapon searches via metal detectors. The searches were conducted with hand-held detectors as students entered the building. The students searched were chosen by a random formula (e.g., every fifth student). Particular students were not chosen unless there was individualized suspicion. In this case, an officer of the same sex conducted the search and found an illegal switchblade knife in a girl's book bag. The court denied a motion to suppress the evidence from trial.

Applying the reasonableness test of T.L.O., courts typically hold that metal detector searches like those in Dukes are justified at their inception by high rates of violence in the surrounding community. That is, individualized suspicion is not required to conduct random metal detector searches of high school students in a setting

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82 Id. at 850-851.
known for considerable violence.\textsuperscript{83} Furthermore, these searches are reasonable in scope because of the unintrusiveness, the random nature of the searches, and the reduced expectation of privacy that accompanies the advance notice to students and parents.\textsuperscript{84} One court has held that the intrusion is minimal because the purpose of such a search is to protect and maintain a proper educational environment for all students, rather than to secure evidence of a crime.\textsuperscript{85}

There are two legal theories applied in cases where a student or parent sues a school for failure to use metal detectors. First, plaintiffs may argue that the school negligently breached its duty of care to students by failing to install metal detectors, especially in schools where weapon possession is common and well-known. In \textit{Thames v. Board of Education of Chicago}, the courts rejected this argument and held that the failure to install metal detectors was not negligent under state law.\textsuperscript{86} The court concluded that the school owed no special duty to prevent a student from being shot unless the school is uniquely aware


\textsuperscript{85} Pruitt, 662 N.E.2d at 547.

of the particular danger confronting the student and if a school official is responsible for the occurrence. In *Thames*, a student's gun accidentally discharged from a bookbag and injured the student sitting in from of him.

The *Thames* court also applied the Illinois Tort Immunity Act. In Illinois, according to the court, municipalities are generally not liable for the failure to prevent the tortious or unlawful acts of others, or for the negligent exercise of their own authority if engaged in a governmental duty.\(^7\) The court stated three exceptions to this immunity: (1) ministerial or routine governmental actions; (2) essentially not governmental functions; and (3) care or custody over an individual creates a special duty to act on that individual's behalf.\(^8\)

The negligence theory is tough to beat, due to immunity statutes. The decision to spend the money to buy and install metal detectors is generally discretionary and within the immunity doctrine.\(^9\) In *Thames*, the court said that the school had to be uniquely aware of a particular danger to a particular student before liability under the "special duty" exception to immunity took effect. According to Bjorklun, previous confrontations may be enough; but this would be determined on a case-by-case basis.

\(^{7}\) *Id.* at 447.

\(^{8}\) *Id.* at 448.

\(^{9}\) Bjorklun, *supra* note 74, at 12a-12b.
The second legal theory plaintiffs assert in metal detector liability cases is that the failure to install and use metal detectors unconstitutionally deprived students of their constitutional rights. For example, in Johnson v. Dallas Independent School District, parents brought a Section 1983 action against school officials for not using an installed metal detector after their son was shot and killed by a non-student in school.\textsuperscript{90} The court held that the failure to use the detectors routinely produced no Section 1983 liability. The court further held that the school had no duty to take affirmative acts to protect students against random acts of violence committed by third parties. The court rejected two arguments that, if successful, would have imposed such a duty. First, the court held that the school did not create the danger to students. To infer that the school is a dangerous place solely by citing the purchase of metal detectors and use of ID badges would be a "serious disincentive to their use."\textsuperscript{91} The court held that the student was simply a victim of a random act of violence and not the victim of a state-created danger. Second, the court rejected the "special relationship" theory on the basis that the school

\textsuperscript{90} 38 F.3d 198 (5th Cir. 1994), cert. denied, 115 S. Ct. 1361 (1995).

\textsuperscript{91} Id. at 201. For a discussion of the "state-created danger" doctrine, see, infra, notes 270-287 and accompanying text.
does not have custody over children to such an extent as to render them unable to care for themselves.\textsuperscript{92}

As metal detectors become more common, commentators offer advice to school administrators on addressing and surviving the associated legal challenges. Joseph M. Wilson and Perry Zirkel offer five legal lessons:\textsuperscript{93}

(1) Justify the use of metal detectors. \textit{Dukes} pointed to specific evidence of weapons in the school district. However, the interest in a safe school environment may be high enough in some jurisdictions that evidence of youth violence and guns, in general, may be enough.

(2) Give advance warning of the use of metal detectors. Notice must address due process procedures, and the deterrence goal. Bernard James notes that, especially with generic searches, if students are provided with advance notice that searches will occur (weapons, drug-testing, lockers, metal detectors), then fewer due process problems will occur.\textsuperscript{94}

(3) Make sure the search is equitable. If not all students are searched, make it random, and not based on race, ethnicity, or gender.\textsuperscript{95}

(4) Seek consent, but don't stop without it. \textit{Dukes} held that consent is not necessary for the constitutionality of an administrative search.

(5) To maintain uniformity and privacy, develop and follow written guidelines for both the initial scan and the follow-up searches.

\textsuperscript{92} See DeShaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 200 (1989), and the discussion of the "special relationship" doctrine, \textit{infra}, notes 240-269, and accompanying text.


\textsuperscript{94} James, \textit{supra} note 36, at 199-201.

\textsuperscript{95} Wilson & Zirkel, \textit{supra} note 93, at 33.
Drug Testing and More on Random or Suspicionless Searches

In Vernonia School District v. Acton, a school district implemented a urinalysis drug testing program designed to decrease drug and alcohol use among students in the community.\textsuperscript{96} Previous tactics instituted by the district failed to decrease substance abuse problems. Under the test, all interscholastic athletes were tested at the beginning of their respective sports’ seasons; this was followed by random testing throughout the season. A same-sex monitor was to be present during the test, but not as a direct witness. The monitor was responsible for tamper checks and preparation of the sample for transport to the assigned testing lab. A positive result required another test. A student with two positives had two options: (1) participation in a six-week counselling program; or (2) suspension from school athletics for the remainder of the year and for all of the next year.

The Supreme Court held that random, suspicionless drug testing of school athletes is not unreasonable under the Fourth Amendment. The Court determined that public school students are committed to the temporary custody of school officials. Therefore, school officials may exercise a degree of control and supervision over students greater than that over adults. According to the Court, this greater supervision and control is needed to establish a "proper

\textsuperscript{96} 115 S. Ct. 2386 (1995).
educational environment," to control the use of illegal drugs among students, and to prevent injury among students. The Court determined that, relative to other students, athletes have a diminished expectation of privacy based on voluntary participation in extracurricular activities. The testing procedure was no more intrusive than their daily experiences of communal undress in locker rooms.

Fifth Amendment Concerns

The Fifth Amendment of the United States Constitution provides several rights: (1) the right to a grand jury; (2) the right against double jeopardy; (3) the right against self-incrimination; (4) the right against deprivation of life, liberty, or property without due process rights; and (5) the right against a public taking of private property without just compensation. Student-on-student violence and the law generally does not implicate these rights directly. For the purposes of this literature review, the due process rights will be discussed in the section covering the Fourteenth Amendment.

There are a few Fifth Amendment cases in this area, however. First, because the violent behavior of students often violates both school rules and criminal law, the Fifth Amendment right against double jeopardy has some application
here, although the case law is minimal. While it is true that both civil and criminal penalties constitute forms of "punishment" for double jeopardy purposes, the prosecution of an individual as a juvenile for a crime committed on school grounds did not subject him to multiple punishments for the same offense after he had already been expelled from school for the same crime.  

Second, for purposes of qualified immunity, at least one court has held that it is uncertain whether the admission of a student's arson confession into evidence at an expulsion hearing violates the Fifth Amendment if police obtained the confession prior to recitation of Miranda warnings.

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Fourteenth Amendment Concerns and School Discipline

In pertinent part, the Fourteenth Amendment of the United States Constitution says that no state shall deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the

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97 In the Matter of C.M.J., 915 P.2d 62 (Kan. 1996) (a student was expelled for firearm possession).

equal protection of the laws. The Fourteenth Amendment analysis below discusses issues of vagueness and overbreadth of school discipline rules, due process, equal protection, and the regulation of off-campus student conduct.

**Discipline and Vagueness and Overbreadth**

Generally, schools have inherent authority to maintain order and discipline. Their conduct rules, however, need not be written with the same specificity as criminal codes. There is no constitutional infraction when school rules are created with flexibility and reasonable breadth. Punishment and discipline are part of the educational process and may be expressed in general terms. However, these rules must not be so general as to be unconstitutionally vague or overbroad. In other words, rules must be clear and narrow. For example, a school rule that prohibits gang-related activities must adequately define "gang" and "gang-related activities" so that the students can adapt their behavior appropriately, and the school officials can enforce the rules properly. In *Stephenson v. Davenport Community Unity School District*, a

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99 U.S. Const. amend. XIV.

100 See, generally, Sperry and Daniel, supra note 6.


102 Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969).
school suspended a student for wearing a tattoo of a small cross between her thumb and index finger.\textsuperscript{103} On the First Amendment issues, the United States Court of Appeals for the Eighth Circuit held that the tattoo was not protected expression. However, the court held that the school district’s regulation prohibiting gang symbols was void for vagueness, as it failed to provide a definition of "gang." Similarly, the court held that the rule -- by not defining "gang-related activities" -- failed to provide notice of unacceptable conduct and failed to offer clear guidance for those who were to enforce the rule. The court overturned the suspension.

The Davenport Schools responded quickly to the Stephenson decision. Their new anti-gang policy is identical to the policy upheld in Olesen v. Board of Education.\textsuperscript{104} The anti-gang policy from Olesen is reprinted above in the subsection on First Amendment challenges. Davenport’s definition of "gang" nearly matches the existing definition in the California Penal Code:

\begin{quote}
Any ongoing organization, association, or groups of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more ... criminal acts ..., having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or whose members engage in
\end{quote}

\textsuperscript{103} 110 F.3d 1303 (8th Cir. 1997).

or have engaged in a pattern of criminal gang activity.\textsuperscript{105}

The "pattern of criminal gang activity" means "the commission, attempt to commit, conspiring to commit, or solicitation of two or more criminal acts, provided the criminal acts were committed on separate dates or by two or more persons who are members of or belong to, the same criminal street gang."\textsuperscript{106}

Some words and rules may be written generally, and withstand constitutional challenges. For example, in \textit{Broussard v. School Board of City of Norfolk}, a school suspended a seventh-grade student for refusing to change an allegedly offensive and inappropriate T-shirt in violation of a school rule.\textsuperscript{107} The rule stated that students do not have the right to engage in conduct that disrupts, disturbs, or interrupts any school activity. The District Court for the Eastern District of Virginia upheld the rule, finding that it provided adequate notice of appropriate and punishable conduct.

Similarly, in \textit{Wiemerslage v. Maine Township High School District},\textsuperscript{108} a high school student and his parents


\textsuperscript{106} Cal. Penal Code § 186.22(f).


\textsuperscript{108} 824 F. Supp. 136 (N.D. Ill. 1993).
unsuccessfully challenged a three-day suspension for violating an anti-loitering rule. Because "loitering" was self-explanatory under the circumstances, the District Court for the Northern District of Illinois held that the rule gave parents and students a clear explanation of the prohibited conduct and was not vague. The rule was a reasonable restriction on the students' rights to free speech and assembly.

As long as school rules are narrowly-tailored to meet the school's interests in discipline, safety, order, and a school environment conducive to student learning, courts will not strike the rules down as overbroad. The same may be said for school-related ordinances enacted and enforced by local government. In Grayned v. City of Rockford, a student was convicted of violating a local ordinance that prohibited picketing within 150 feet of a public school.109 The student, along with other people, marched on a sidewalk 100 feet from the school. He challenged the ordinance, arguing that it was vague and overbroad. The Court upheld his conviction on the grounds that school officials have a legitimate government interest in preventing activity that materially disrupts educational activities or invades the rights of others.

Courts typically defer to the disciplinary decisions of educators, so long as the decisions are made within proper

legal authority. However, if a school board adopts a code of conduct that exceeds its authority, then a court may intervene and strike down any unreasonable punishment that emanates from the code. In *Spencer v. Omaha Public School District*, for example, the school board adopted a code of conduct stating that students may not defend their intentional conduct in assault situations on the grounds that the consequences of that conduct were accidental.\(^{110}\) In *Spencer*, a school expelled a student for two semesters for violation of this code. The Supreme Court of Nebraska overturned the expulsion, citing the state’s Student Discipline Act, which says that accidental injuries cannot be the grounds for expulsions. The court held that the board of education exceeded its authority in adopting the code.

**Discipline, Control, and Discretion under the Ohio Revised Code**

The Ohio Revised Code requires boards of education to adopt regulations necessary for the "government" of schools, faculty, staff, pupils, and visitors.\(^{111}\) All rules and

\(^{110}\) 566 N.W.2d 757 (Neb. 1997).

regulations over student conduct and status must directly relate to the school's function of educating the pupils in its charge. The rule must be reasonable, and there must be a reasonable relationship between the rule and the furtherance of the educational objectives of the school.\footnote{Jacobs v. Benedict, 301 N.E.2d 723 (Ohio Ct. Com. Pl. 1973); Gfell v. Rickelman, 441 F.2d 444 (6th Cir. 1971).}

Part of this required discipline policy must outline procedures governing suspension, expulsion, emergency removal, and permanent exclusion of students.\footnote{Ohio REV. CODE ANN. § 3313.661(A) (Banks-Baldwin Supp. 1997).} Ohio law now permits schools to invoke community service as a punishment, often in conjunction with a suspension or expulsion.\footnote{Ohio REV. CODE ANN. § 3313.661(B) (Banks-Baldwin Supp. 1997).} Schools are also permitted to limit the punishment by suspending a student from extracurricular activities only.\footnote{Ohio REV. CODE ANN. § 3313.664 (Banks-Baldwin Supp. 1997).} The schools' discipline policies must also include the types of conduct that warrant suspension and/or expulsion. Copies of the policy must be posted in central locations in the school and made available to pupils upon request.\footnote{Ohio REV. CODE ANN. § 3313.661(A) (Banks-Baldwin Supp. 1997).}
This specification of punishable conduct is important. For example, in *Wilson v. South Central Local School District*, in light of state statute requiring the board of education to adopt a policy that specifies the type of misconduct for which a pupil may be suspended, a student could not be suspended for tobacco possession when the school's policy does not specify possession of tobacco as a punishable offense. Under the statute, "specified" requires that suspendable misconduct be explicitly described, so as to distinguish it from non-suspendable misconduct.\(^{117}\) In response, the state General Assembly enacted a provision forbidding students' use or possession of tobacco in school-controlled areas.\(^{118}\) More recently, a court upheld the suspension of a student who had furnished a cigarette light to another student.\(^{119}\) Drug-related offenses are punishable, as well.\(^{120}\)

\(^{117}\) 669 N.E.2d 277 (Ohio Ct. App. 1995).


Among the punishable offenses in Ohio schools' discipline policies is weapon possession. The Gun-Free Schools Act, passed by the United States Congress in 1994, requires school districts receiving federal assistance to adopt a policy requiring the one-year expulsion of any student who brings a weapon to school. The United States Congress limited "weapon" to the federal definition of "firearm." The Ohio legislature codified the Gun-Free Schools Act and expanded it to include expulsion for knife possession. Note that the Gun-Free Schools Act applies differently if the perpetrator is a child with a disability. The maximum exclusion is 45 school days, and a placement hearing must be held to determine the proper exclusionary action and change of placement. In any case, the Gun-Free Schools Act permits the district superintendent to modify the punishment on a case-by-case basis. If the student is age sixteen or older, the expulsion may be permanent. Under Ohio law, a school district may permanently exclude a student who is convicted of or adjudicated a delinquent for committing any one of a list of


123 OHIO REV. CODE ANN. § 3313.66(B) (Banks-Baldwin Supp. 1997).


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crimes, including murder, rape, weapon possession, and drug trafficking.\textsuperscript{125}

Generally, courts will give great deference to the educational and disciplinary decisions made by schools. A court’s construction of school rules is based on the school board’s reasonable interpretation and exercise of discretion. That is, a court will not interfere in the decision-making of a school board unless the board acts arbitrarily or clearly abuses its discretion.\textsuperscript{126} Note that a court’s determination in such cases is not dependent on the school board’s wisdom or efficiency, but rather on the proper exercise of the board’s discretion.\textsuperscript{127}

**Discipline and Due Process**

One of the most important school-related Supreme Court decisions originated in Ohio. The decision in Goss v. Lopez established for public school students the due process rights for short-term exclusionary discipline.\textsuperscript{128} The Court held that for a suspension of ten days or less, the

\textsuperscript{125} Ohio Rev. Code Ann. § 3313.662 (Banks-Baldwin Supp. 1997).


\textsuperscript{128} 419 U.S. 565 (1975).
student must be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his or her side of the story. 129 These rights are not unlimited, however. If notice and hearing prior to removal are not feasible due to the dangerous nature of the circumstances, then a school may suspend the offending student and provide the notice and hearing as soon as practicable. 130 The student must be told what he or she did and what the rule infraction is. 131 For suspensions of no more than ten days, a school need not allow an accused student to have legal counsel present. Nor does the student have any right to call or cross-examine any witnesses. 132

Note that Goss involved a short-term suspension. In dicta, the Court stated that for exclusions of longer than ten days, more formal procedures are required. 133

While the decision in Goss v. Lopez provided students with the basic due process rights of notice and an informal hearing, other cases shed light on the scope of these due process requirements. For example, if an expelled students'

129 Id. at 581.
130 Id. at 582-583.
131 Id. at 582.
132 Id. at 582.
133 Goss, 419 U.S. at 584. This statement was echoed by the United States Court of Appeals for the Sixth Circuit in Paredes v. Curtis, 864 F.2d 426, 428 (6th Cir. 1988).
parents are already aware of the misbehavior, often only a few days' notice is constitutionally adequate in advance of an expulsion hearing.\footnote{134}

A warning to the student in advance of the infraction that he would be punished upon violation, coupled with ten days' notice to the students' parents in advance of the hearing, also satisfies due process requirements.\footnote{135} In \textit{Green v. Albuquerque Public Schools}, a student was suspended for violating a dress code prohibiting saggy pants. The court held that procedural due process was not violated. The school warned the student about the violation of the dress code and later invoked several short-term suspensions for continual violations. The assistant principal warned the student that he would be suspended for a longer period of time if he violated the dress code again. The student violated the dress code again the next day, the long-term suspension was invoked, and notice of the due process hearing was sent to the student's mother ten days before the hearing. Furthermore, the school system provided two levels of appeal after that hearing.

\footnote{134} Stratton v. Wenona Community Unit Dist. No. 1, 551 N.E.2d 640 (Ill. 1990) (the student was expelled for gross misconduct, including fighting with other pupils, threatening the principal, and using obscene language toward the principal and other school officials; the principal hand-delivered the notice to the father).

In expulsion cases, and in some suspension cases, the student is permitted to present evidence and witnesses on his or her own behalf.\textsuperscript{136} However, this allowance may not be unlimited. Often, the opportunity to present witness testimony on behalf of a student is provided only on appeal.\textsuperscript{137} Generally, students are not often permitted to confront or cross-examine other witnesses.\textsuperscript{138} Balancing the rights of all the affected parties, courts typically hold in favor of the school's interest in and responsibility for safeguarding all children in school.\textsuperscript{139} Furthermore, students do not have the right to know the identity of their accusers or to cross-examine them. Schools have a responsibility to protect these informants against foreseeable retaliation, and have an interest in providing an avenue for student victims and witnesses to report rule infractions.\textsuperscript{140} Accused students are not left alone, though. Students are still permitted to present their own


\textsuperscript{137} Rossman v. Conran, 572 N.E.2d 728 (Ohio Ct. App. 1988).

\textsuperscript{138} Carey v. Maine Sch. Admin. Dist. No. 17, 754 F. Supp. 906 (D. Me. 1990) (student was expelled for bringing an automatic weapon and ammunition to school); and Newsome v. Batavia Local Sch. Dist., 842 F.2d 920 (6th Cir. 1988) (an Ohio student was expelled for selling marijuana on school grounds).

\textsuperscript{139} Carey, 754 F. Supp. at 918.

\textsuperscript{140} Newsome v. Batavia Local Sch. Dist., 842 F.2d 920 (6th Cir. 1988).
evidence and witnesses; and they must, in any event, be apprised of the evidence against them.\textsuperscript{141}

**Suspension, Expulsion, and Due Process under the Ohio Revised Code**

The Ohio General Assembly has codified the due process requirements dictated in \textit{Goss v. Lopez}.\textsuperscript{142} Suspensions, limited to no more than ten days, may be imposed by principals or superintendents. According to the statute, a suspension must be accompanied by written notice of the suspension and the reasons for it, along with an opportunity for an informal hearing before the principal, assistant principal, superintendent, or superintendent's designee.\textsuperscript{143} A meeting with the principal and the accused student in the principal's office may be enough to satisfy the informal hearing requirement.\textsuperscript{144} Expulsions (up to eighty days) may be imposed only by the superintendent.\textsuperscript{145} The required due process for expulsion includes written notice and an opportunity for a more formal hearing before

\textsuperscript{141} \textit{Newsome}, 842 F.2d at 927.


\textsuperscript{143} \textit{Ohio Rev. Code Ann.} § 3313.66(A) (Banks-Baldwin Supp. 1997).

\textsuperscript{144} \textit{McNaughton v. Circleville Bd. of Educ.}, 345 N.E.2d 649 (Ohio Ct. Com. Pl. 1974).

the superintendent or his or her designee. The hearing must take place three to five days after the notice, unless an extension is granted.\textsuperscript{146} Suspensions and expulsions may be carried over to the next school year in case the length of the exclusion exceeds the number of school days remaining in the current academic year.

If the student’s presence poses a continuing danger to persons or property or an ongoing disruption of educational activities, school may waive -- temporarily -- the notice and hearing requirements and remove a student from school immediately.\textsuperscript{147}

\textbf{Equal Protection}

When schools develop, draft, and enforce policies against student violence, they must be careful not to do so discriminatorily. The Fourteenth Amendment requires that no state shall deny any person equal protection of the laws. Most often, equal protection claims are based on gender, race, and/or national origin discrimination.

A common complaint against dress codes is that they discriminate against male students. For example, some dress codes prohibit only males from wearing earrings and other jewelry. Most often, on balance of the parties’ rights, the


\textsuperscript{147} \textit{Ohio Rev. Code Ann.} § 3313.66(C) (Banks-Baldwin Supp. 1997).
school and the rule withstand this challenge. In *Olesen v. Board of Education*, discussed above in the section on First Amendment challenges, the student claimed an equal protection violation in that the school district's anti-gang dress code permitted girls, but not boys, to wear earrings.\(^{148}\) The court upheld the dress code against this argument. According to the court, women as a group wear earrings and this is seen as nothing more than adornment to the typical female attire. In this particular environment, girls displayed their gang membership in other ways (also prohibited by the school’s rule), while boys who wore earrings typically did so to denote gang membership. Hence, the court permitted the school to enforce a gender-based rule.

The school board defendant in *Olesen* convinced the court that its dress code, included in the school’s anti-gang policy, successfully addressed the important interests of safety of students and elimination of gang presence and activity on school grounds. This showing is essential to the constitutionality of a dress and grooming code, especially in a gender discrimination claim against it. If the school cannot show at least a substantial relationship between the rule and the important and legitimate interests it aims to satisfy, then the rule may be violative of the equal protection clause of the Fourteenth Amendment. In

1972, Texas enacted its own Equal Rights Amendment which states that "equality under the law shall not be denied because of sex, race, color, creed, or national origin."\textsuperscript{149} In 1995, a student sued his school district under this amendment, claiming that a school rule on hair length discriminated against male students on the basis of gender, as the rule applied only to boys.\textsuperscript{150} In \textit{Bastrop Independent School District Board of Trustees v. Toungate}, the Texas Court of Appeals ruled that imposing a four-month in-school suspension on the student for wearing a pony-tail was unreasonable. The court found that the hair length rule did not control or deter gang activity, gender identity was not a legitimate educational goal under the rule, the need to teach conformity could not be justified on the basis of hair length, and the student's pony tail did not create discipline problems or disrupt educational goals.

The development of school rules must not be racially or ethnically discriminatory. In \textit{Green v. Albuquerque Public Schools}, the court held the wearing of saggy pants was not protected expression under the First Amendment. The plaintiff had contested a long-term suspension invoked after he violated the school's dress code by wearing saggy pants. The student claimed that the rule was racially

\textsuperscript{149} \textit{Tex. Const.} art. I, § 3a.

discriminatory, as "sagging" was practiced primarily by African-Americans. The court held in favor of the school.\(^{151}\)

Similarly, the enforcement of school rules must not discriminate against race or national origin. In Robinson v. Oak Park and River Forest High School, the Illinois Appellate Court held that a school board abused its discretion in expelling a female African-American student for six months for an off-campus, after-hours fight.\(^{152}\) The school officials' suspicions of black gang activity were not supported by the evidence, the students involved in the fight did not have records of prior misconduct, and there was no indication that the incident would substantially disrupt or materially interfere with other school activities. The court found that the imposition of the harshest penalty available was oppressive, unreasonable, and an abuse of discretion.

Regulation of Off-Campus Behavior

School districts may include, in their student handbooks, a provision authorizing school officials and notifying students and parents that off-campus behavior is subject to school discipline rules. In Smith v. Little Rock School District, for example, a school suspended a student

\(^{151}\) 899 F. Supp. 556 (D.N.M. 1995).

for violating a handbook rule which authorized school officials to punish students for "criminal offenses committed away from the school which may affect the school climate."\textsuperscript{153} The court denied the student's injunction and upheld the long-term suspension, despite the fact that the student's murder trial had not yet ended. The court held that the public's interest in a safe school environment outweighed the potential harm to the plaintiff.

School officials who wish to punish students for off-premises, after-hours behavior would do well to find a clear link between on-campus behavior and the offending conduct off-campus. For example, a student may be expelled for assaulting another student after school in a fight that started in school.\textsuperscript{154} In such cases, it is usually of no consequence that the school's disciplinary rules do not explicitly prohibit the conduct.

If there is no clear link, the school must rely on its general interest in the physical and emotional safety of students and school personnel. A school must show that the off-campus behavior directly and immediately affects the general welfare or discipline of the school before it may impose any punishment on misbehaving students.\textsuperscript{155} This


\textsuperscript{155} 53 A.L.R.3d 1124, 1128 (1973); and Wood & Chestnut, supra note 1, at 628.
argument may be more difficult than finding a specific link, but it is often successful, as well. For example, in *Fremont Union High School v. Board of Education*, the school district expelled a high school student for the rest of the year when the student left school during the day, went to another school, got into a fight, and used a gun he was carrying.\(^{156}\) The court upheld the expulsion against claims that off-campus conduct is not subject to punishment. The court held that school officials have the duty to promote a safe and orderly educational environment and were not restricted by events that occur only on their campuses.\(^{157}\)

If the assault occurs during a school vacation, the link to the school becomes even more blurred and the school’s punishment may be struck down.\(^{158}\) The court in *Pollnow v. Glennon* held differently, however.\(^{159}\) In *Pollnow*, a student was arrested for seriously assaulting and


\(^{157}\) See also R.R. v. Board of Educ., 263 A.2d 180 (N.J. Super. Ct. Ch. Div. 1970) (school was permitted to suspend a student for an off-campus stabbing incident); and Howard v. Colonial Sch. Dist., 621 A.2d 362 (Del. Super. Ct. 1992) (schools and school districts have the authority to suspend or expel students for off-campus drug-dealing).

\(^{158}\) Board of Educ. v. Ambach, 465 N.Y.S.2d 77 (N.Y. App. Div. 1983) (suspension of a student for an alleged off-campus assault upon a woman was not upheld; the assault occurred during a vacation and the victim had no connection to the school).

\(^{159}\) 594 F. Supp. 220 (S.D.N.Y. 1984), aff’d, 757 F.2d 496 (2d Cir. 1985).
attempting to stab a classmate's mother. The principal questioned the student when school resumed several days later. The student's parents urged the school to halt disciplinary proceedings until after the criminal charges were resolved. Notwithstanding this protest, the hearings commenced and the district suspended the student for the remainder of the school year and the first semester of the following one. The court upheld the suspension, despite a complaint that the conduct occurred off campus.

School Liability for Negligence
or Tortious Deprivation of Constitutional Rights:
Liability Under Federal Law

Under federal law, school district liability for injuries suffered as a result of student-on-student violence may be based on statutory and/or constitutional mandates. While many types of violence were discussed in Chapter 2, much of the federal case law and statutory interpretation in student violence and school liability involves peer sexual harassment. Employees and students typically file sexual harassment claims under Title IX of the Education Amendments of 1972\textsuperscript{160} and Section 1983 of Title 42 of the United States Code.

States Code.\textsuperscript{161} As will be discussed at length below, peer sexual harassment lawsuits are much less likely to succeed than those that involve a school employee or agent as one of the harassing parties. Courts that have reviewed claims of peer sexual harassment in the past have cast doubt on the liability of school districts and administrators -- absent the satisfaction of rigorous proof and pleading requirements.\textsuperscript{162} However, several commentators, a few judges, and other lawmakers argue otherwise and open the door to possible future liability.

\textbf{Statutory Law: Title IX}

Title IX of the Education Amendments of 1972 (Title IX) states, in pertinent part:

No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any educational program or activity receiving Federal financial assistance. \ldots\textsuperscript{163}


\textsuperscript{162} Horner, supra note 4, at 46. See also, generally, Sperry and Daniel, supra note 6.

There are at least three landmark Supreme Court cases that affect the law of sexual harassment in public schools. Each will be discussed below. Two of them are Title IX cases.

The decision in **Cannon v. University of Chicago** established the right of plaintiffs, under Title IX, to pursue a private cause of action against defendants who are receiving federal financial assistance, and are allegedly discriminating based on sex. In **Cannon**, the medical schools at both the University of Chicago and Northwestern University denied admission to a female applicant. The applicant brought suit under Title IX, charging the universities with discrimination based on sex. To make its determination as to whether Congress intended for Title IX to provide plaintiffs with the right to pursue a sex discrimination claim against defendants receiving federal assistance, the Supreme Court applied the following four factors: (1) whether the statute was enacted to protect the class of people of which the plaintiff is a member; (2) whether there is an indication of legislative intent to provide a private remedy; (3) whether the implications of a private remedy are consistent with statutory intent; and (4)

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whether imposing a federal remedy is inappropriate because the subject matter is more suited to the states.165

In its analysis, the Court determined that all four factors weighed in favor of the plaintiff. The first element was satisfied by looking at the explicit language of the statute.166 The second was satisfied because Title IX is nearly identical to Title VI of the Civil Rights Act, and should, therefore, be interpreted and enforced similarly. The language Title IX merely replaced "race, color, or national origin" with "sex." Since Title VI had already been interpreted to provide a private remedy, the Court assumed that Congress knew this and intended the same application.167 The third factor was satisfied; implication of a private remedy will assist in achieving the statutory purpose of prevention of sex discrimination in publicly-supported education.168 Finally, the fourth factor was satisfied; since the Civil War, the federal government had been a champion of civil rights.169

165 441 U.S. at 689.

166 Id. at 689-693.

167 Id. at 694-703. For the case that interpreted Title VI to provide a private remedy, the Supreme Court cited to Allen v. State Board of Elections, 393 U.S. 544 (1969).

168 Id. at 703-708.

169 Id. at 708-709.
In *Franklin v. Gwinnett County Public Schools*, the Supreme Court addressed the applicability of Title IX's federal remedy to sexual harassment.\textsuperscript{170} In *Franklin*, a female student was subjected to continual sexual harassment by her teacher-coach. Teachers and administrators were aware of and investigated the harassment, but took no action to halt it. The Court held that Title IX provided an implied right to recover damages for intentional statutory violations.\textsuperscript{171} Reflective of the societal concern for employer-employee sexual harassment, lawsuits for teacher-to-student and, increasingly, student-to-student sexual harassment are more common today. According to Sylvia Hermann Bukoffsky "[w]hen school districts fail to stop the offensive behavior, student victims of sexual harassment increasingly seek redress by filing suits against school districts and personnel in federal and state courts, pursuing money damages under Title IX ... ."\textsuperscript{172}

**Sexual Harassment Theories**

In *Meriton Savings Bank v. Vinson*, a bank employee filed suit against her employer after she had endured four

\textsuperscript{170} 503 U.S. 60 (1992).

\textsuperscript{171} *Id.* at 65–66, 73.

years of continual sexual harassment by her supervisor.\textsuperscript{173} In the course of the harassment, the plaintiff had been fondled in front of co-workers, and forced to engage in various sexual acts. The plaintiff later took an extended leave of absence, allegedly due to the harassment; upon her return, the bank fired her. The United States Supreme Court held in favor of the plaintiff. In its decision, based on Title VII, the Court examined two types of sexual harassment: (1) \textit{quid pro quo} ("something for something") sexual harassment; and (2) hostile environment sexual harassment.\textsuperscript{174}

\textit{Quid pro quo} sexual harassment exists when a person grants or withholds benefits -- including hiring, promotion, or salary -- as a result of the other person's willingness or refusal to submit to the first person's sexual demands.\textsuperscript{175} Because the pressure may be explicitly or implicitly connected to a term or condition of the relationship, the critical point is not whether the submission by the victim was made voluntarily, but rather

\textsuperscript{173} 477 U.S. 57 (1986).

\textsuperscript{174} In cases of sexual harassment involving students in school settings, Title IX is the applicable statute.

\textsuperscript{175} \textit{Meritor}, 477 U.S. at 64.
whether the conduct he or she submitted to was unwanted.176

Hostile environment sexual harassment is often less direct, but is likely more gradual and much more common. A hostile environment is created when a person’s conduct has the purpose or effect of unreasonably interfering with an individual to benefit from services, opportunities, or privileges, by creating an intimidating, hostile, or offensive educational or working environment so severe that it interferes with the individual’s ability to perform.177 The critical point here is the outcome, regardless of whether the harasser’s behavior is deliberate or whether it simply has the effect of creating an offensive atmosphere. The conduct does not necessarily have to involve sexual gestures, language, or activities; it has to be motivated by the victim’s sex.178

Peer Sexual Harassment under Title IX

Several courts have addressed these two theories recently in the context of peer sexual harassment in


177 Meritor, 477 U.S. at 64. See also Wolchan, supra note 176, at 893 and Linderman & Kadue, supra note 176.

178 Wolchan, supra note 176, at 893.
schools. In a growing set of decisions, courts remain split as to the appropriate standard to apply against quid pro quo and hostile environment claims. Under any standard, however, the success rate for plaintiff-victims in peer sexual harassment lawsuits against school districts is very low. Thomas R. Baker, in a recent article on Title IX and its impact on sexual misconduct among students, recognizes the split among courts.\(^{179}\) For example, the Eleventh Circuit in *Davis v. Monroe County Board of Education* applied a "knew or should have known" standard, similar to the standard applied in employment sexual harassment cases. The court in *Rowinsky v. Bryan Independent School District* rejected this view in favor of an "equal protection" standard. Between these two, the courts in *Doe v. Petaluma City School District* and *Oona R.–S. v. Santa Rosa City Schools* preferred an "intentional discrimination" standard. Among all of the cases Baker reviewed, not one imposed liability on the defendant for failing to maintain a harassment-free environment. However, on the other hand, not one of the cases dismissed the plaintiffs’ claims on the ground that Title IX did not provide a remedy. The

questions, therefore, are what the applicable standard is and how difficult the standard is to beat.\footnote{180}{Id. at 533. Baker also mentioned that the named defendants are not limited to schools and school districts. Individuals may be named as defendants. Id.}

\textit{Doe v. Petaluma City School District}. For some commentators, \textit{Doe v. Petaluma City School District}\footnote{181}{54 F.3d 1447 (9th Cir. 1995).} is considered the first peer sexual harassment case brought under Title IX.\footnote{182}{See, e.g., Bukoffsky, supra note 172.} In \textit{Petaluma}, the United States Court of Appeals for the Ninth Circuit held that plaintiffs may recover Title IX damages for peer sexual harassment if they can show intentional discrimination on the part of the schools. Other courts have adopted a similar standard.\footnote{183}{Burrow v. Postville Community Sch. Dist., 929 F. Supp. 1193 (N.D. IOWA 1996); and Oona R.-S. v. Santa Rosa City Sch., 890 F. Supp. 1452 (N.D. Cal. 1995).}

In \textit{Petaluma}, a student alleged that her school counselor failed to take action against the student peers who were sexually harassing her. The student also alleged that the counselor failed to tell her that the school had a Title IX policy. The district court held that to obtain damages under Title IX, a plaintiff must allege and prove intentional discrimination on the basis of sex by an employee of the educational institution. According to the court, it was not enough that the institution knew or should have known of the hostile environment. The United States
Court of Appeals for the Ninth Circuit reversed, in part, on a qualified immunity issue. The court refused to find that, at the time of the counselor’s actions, the law was clearly established as to a staff member’s duty to stop peer sexual harassment. Therefore, the court ruled that the counselor was entitled to qualified immunity. However, the court also indicated that if the counselor "had engaged in the same conduct today, he might not have been entitled [to such] immunity."\textsuperscript{184}

On July 22, 1996, the federal district court for the Northern District of California granted a motion for reconsideration of the Petaluma case. The court held that the school district may be liable for injuries suffered by students as a result of peer sexual harassment -- if the school district knew or should have known about the harassment and failed to take reasonable steps to prevent it.\textsuperscript{185}

The plaintiff in Petaluma asserted her Title IX claim under Section 1983, which provides a cause of action against a government actor for an illegal deprivation of constitutional or statutory rights. The Court of Appeals did not have pendent appellate jurisdiction to decide

\textsuperscript{184} 54 F.3d at 1452.

whether this assertion can be made.\textsuperscript{186} Since then, however, at least two courts have answered this question. First, in \textit{Bruneau v. South Kortright Central School}, the Court held that Congress intended to supplant section 1983 claims based on sexual harassment in federally funded institutions by enacting Title IX.\textsuperscript{187} Thus, the student could not state a Section 1983 claim based on a Title IX right against the school and school board.\textsuperscript{188} Second, and contrary to the holding in \textit{Bruneau}, a California federal district court determined that Title IX does not preclude a student from bringing a Section 1983 cause of action against a school employee based on a Title IX violation.\textsuperscript{189}

\textit{Davis v. Monroe County Board of Education}. The "knew or should have known" standard for peer sexual harassment cases was adopted in \textit{Davis v. Monroe County Board of Education}.\textsuperscript{190} \textit{Davis} involved a fifth grade female student who complained of sexual harassment by a male classmate for six months. The incidents were reported to teachers and the principal. Various requests were made to have the victim moved (the perpetrator sat next to her in class); school

\begin{footnotesize}
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\item \textsuperscript{186} 54 F.3d at 1449.
\item \textsuperscript{187} 935 F. Supp. 162 (N.D.N.Y. 1996).
\item \textsuperscript{188} Id. at 178-179.
\item \textsuperscript{189} Nicole M. v. Martinez Junior High Sch., 964 F. Supp. 1369 (N.D. Calif. 1997).
\item \textsuperscript{190} 74 F.3d 1186, vacated, 91 F.3d 1418 (11th Cir. 1996).
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officials did nothing. The victim’s grades dropped and she became suicidal. The United States Court of Appeals for the Eleventh Circuit ruled against the school district, analogizing Title IX to Title VII’s hostile environment principles. According to the court, just as Title VII encompasses a claim for damages due to a sexually hostile environment created by co-workers and tolerated by the employer, Title IX encompasses a claim for damages due to a hostile environment created by fellow students when, authorities knowingly fail to act to eliminate the harassment.

Specifically, the Davis court held that failing to respond appropriately to peer sexual harassment of which school personnel knew or should have known is a violation of Title IX. Ultimately, the Eleventh Circuit adopted the following test. For a school to be liable for peer sexual harassment under Title IX, a plaintiff must show the following: (a) that the victim is a member of a protected group; (b) that the victim was subjected to unwelcome sexual harassment; (c) that the harassment was based on sex; and (d) that the harassment was sufficiently severe or pervasive so as to alter the conditions of her education and create an abusive educational environment.191 The Eleventh Circuit

191 74 F.3d at 1194.
later vacated the judgment in Davis, pending a review by the full Eleventh Circuit.\footnote{92}{91 F.3d 1418 (11th Cir. 1996). In Summer 1997, the full Eleventh Circuit held in favor of the school. 120 F.3d 1390 (11th Cir. 1997). According to the court, Title IX -- a spending clause statute -- must give school districts "unambiguous notice" that they could be liable for peer sexual harassment. The court noted that unambiguous notice is provided by Cannon v. University of Chicago in academic admissions cases and Franklin v. Gwinnett County Public Schools in teacher-to-student harassment cases. There is no such notice for peer sexual harassment cases.}

The United States Court of Appeals for the Tenth Circuit applied the Davis test in Seamons v. Snow.\footnote{93}{84 F.3d 1226 (10th Cir. 1996).} In Seamons, a high school football player was grabbed as he came out of the shower, forcibly restrained by five upper-classmen teammates, and bound -- unclothed -- with adhesive tape to a locker room towel rack. A girl he had dated was then brought into the locker room to view him. Other teammates looked on. The victim reported the incident to school administrators (including the coach and principal). The coach brought him before the team, accused him of betrayal, and ordered him to apologize. He refused, and the coach dismissed him from the team. The five assailants played the next game, but the final game of the season, a playoff game, was cancelled by the school district.

Applying the Davis test, the United States Court of Appeals for the Tenth Circuit held that the first two elements of the Title IX test were met. The school
excluded Seamons from an educational program (high school athletics), and the program receives federal money. However, the third element, whether the exclusion was based on sex, was not met. Plaintiff failed to show that the conduct being challenged -- the district’s response to the assault -- was sexual in nature, as defined in the "hostile environment" test of Davis. According to the court:

Brian fails to allege any facts that would suggest he was subjected to any unwelcome sexual advances or requests for sexual favors, or that sex was used to contribute to a hostile environment for him. ... Brian points to comments made by school officials such as 'boys will be boys' and 'he should take it like a man' to support his argument that he was subjected to a sexually hostile school environment. These statements, however, fall short of showing sex discrimination.194

In order to recover under Title IX, the "hostile" environment shown must be "sexual." Here, it was not "sexual." Therefore, the court found no violation of Title IX. A concurring opinion argued that the district’s response was a continuation of the harassment and that its conduct was, therefore, based on sex.

Most recently, the Davis "knew or should have known" test was applied by a California federal district court. In Nicole M. v. Martinez Junior High School, the court held that a student may maintain a Title IX action against a school district by showing that the district, through its employees, knew or should have known about the peer sexual

194 Id. at 1233.
harassment and failed to stop it. According to the court, "an official or a supervisor of students such as a principal, vice-principal, or teacher cannot put her head in the sand once she has been alerted to a severe and pervasive hostile educational environment."\textsuperscript{195}

Rowinsky v. Bryan Independent School District. The last of the major Title IX peer sexual harassment cases decided in 1996 is \textit{Rowinsky v. Bryan Independent School District}.\textsuperscript{196} In \textit{Rowinsky}, two eighth-grade students (sisters) were repeatedly verbally and physically sexually abused on a school bus and at school. After the parents of the abused girls complained to the school, the school suspended the harassing student for three days. But the harassment did not stop. After a while, the girls stopped reporting the incidents, citing a lack of action by the bus driver and school.

The United States Court of Appeals for the Fifth Circuit held that Title IX does not impose liability on a school district for hostile environment peer sexual harassment, absent allegations that the school itself directly and intentionally discriminated based on sex. For example, the court stated that a school may be liable for peer sexual harassment if it treats sexual harassment of

\textsuperscript{195} 964 F. Supp. 1369, 1378 (N.D. Calif. 1997).

\textsuperscript{196} 80 F.3d 1006 (5th Cir. 1996).
boys more seriously than it does harassment of girls.\textsuperscript{197} The plaintiff claimed that the critical statutory language was "under any educational program or activities." Taken in isolation, this phrase could impute third party abuse to the school district. But the \textit{Rowinsky} court held otherwise. First, the court noted that Title IX was enacted under the spending clause and applies only to the conduct of grant recipients; students do not apply.\textsuperscript{198} Second, from the legislative history of Title IX, both supporters and opponents of Title IX referred only to acts of recipients and their agents. Again, students are not included.\textsuperscript{199}

**Title IX Liability for Peer Sexual Harassment**

Against the decisions in the cases above, Sylvia Hermann Bukoffsky provides a few public policy arguments in favor of expanding Title IX to permitting remedies against

\textsuperscript{197} \textit{Id.} at 1016.

\textsuperscript{198} \textit{Id.} at 1013.

\textsuperscript{199} \textit{Id.} Contrary to the \textit{Davis} decision, which paralleled Title IX with Title VII, the \textit{Rowinsky} court seemed to equate Title IX more with Title VI of the Civil Rights Act. The court quoted \textit{Cannon v. University of Chicago}:

\begin{quote}
[T]itle IX, like its model title VI, sought to accomplish two related, but nevertheless somewhat related objectives. First, Congress wanted to avoid the use of federal resources to support \textit{discriminatory practices}; second, it wanted to provide individual citizens effective protection against those practices.
\end{quote}

441 U.S. at 704 (emphasis added by the \textit{Rowinsky} court).
school districts for peer sexual harassment. First, the Supreme Court has the authority (as do other federal courts) to fashion any remedy, unless Congress has explicitly dictated otherwise. In *Franklin v. Gwinnett County*, the Court found an implied right of action and no Congressional limit on the type of remedies available under Title IX. Affording monetary relief for victims of peer sexual harassment would satisfy the broad, remedial purposes behind Title IX "to use any available remedy to make good the wrong done." 200

Second, according to Bukoffsky, the victims of peer sexual harassment suffer the same types of physical, mental, and emotional injury as they do when school personnel abuse them. Indeed, peer sexual harassment is more prevalent. 201

The lack of court victories in Title IX cases does not mean that students do not recover from school districts in peer sexual harassment cases. Many of these suits are settled out of court. Ralph D. Mawdsley reports a couple such cases. 202 In 1991, in Duluth, Minnesota, a student was awarded a $15,000 settlement by the state human rights commission for "alleged mental anguish and suffering" 203

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200 Bukoffsky, supra note 172, at 191 (citing *Franklin*, 503 U.S. at 65).

201 Bukoffsky, supra note 172, at 192.

because the school district had failed to remove sexually explicit graffiti about her from the boys' restrooms, despite requests to do so. A similar complaint in California resulted in a $20,000 settlement after a female student suffered direct verbal sexual abuse from boys to a female classmate.\textsuperscript{203}

The United States Court of Appeals for the Sixth Circuit, including Ohio, Michigan, Kentucky, and Tennessee, has not decided a Title IX peer sexual harassment. Given this fact, and the divergent standards applied in the other circuits, Ohio schools are advised to pay close attention to the development and application of Title IX peer sexual harassment law.

\textbf{More on Peer Sexual Harassment:}

\textbf{Office of Civil Rights Guidelines}

\textbf{Advocating Civil Liability of the School}

As the discussion above indicates, plaintiffs rarely win their lawsuits against schools for damages suffered by peer sexual harassment. The courts in Petaluma, Davis, Rowinsky, and others split on which liability standard to adopt, but rarely differed on the ultimate result: schools are not usually liable for the injuries their students suffer as a result of peer sexual harassment. In 1996, the

\textsuperscript{203} Id. at 41-42.
Office of Civil Rights (OCR) threw an additional wrinkle in the peer sexual harassment fabric when it published guidelines advocating civil liability against schools that allow hostile environment peer sexual harassment to persist.²⁰⁴

In an April 1994 letter to the University of California at Santa Cruz, the OCR offered the following definition of "sexual harassment" in schools, now adopted in the 1996 guidelines:

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, imposed on the basis of sex, that could (a) deny, limit, or provide different aids, benefits, services or opportunities, (b) condition the provision of aids, benefits, services or opportunities, or (c) otherwise limit a student's enjoyment of any right, privilege, advantage, or opportunity protected by Title IX.²⁰⁵

According to the OCR, "unwelcome" means unsolicited and undesired, regardless of acquiescence. In addition, one unwelcome incident is enough, regardless of previous consensual incidents. The OCR includes other important factors such as age of students and nature of conduct.²⁰⁶

Paralleling the Title IX case law, the OCR separates sexual harassment into two categories: employee-to-student


²⁰⁵ Letter to the University of California at Santa Cruz, Office of Civil Rights, April, 1994.

and student-to-student harassment. As far as the OCR is concerned, however, the question of whether or not a school is liable for sexual harassment does not differ much between the two categories. As described in the following paragraphs, the OCR argues that courts should recognize claims for each type. According to the OCR, the differences between employee-to-student and student-to-student harassment include the applicable theories of recovery, and the required prevention procedures.

**Employee-to-Student Sexual Harassment**

The OCR is consistent with *Franklin v. Gwinnett*. Title IX prohibits sexual harassment of students by school employees.\(^{207}\) Prohibited harassment includes both quid pro quo and hostile environment. For employee-to-student harassment, a hostile environment exists if the employee (1) acts with apparent authority (whether he or she had it or not); or (2) uses his or her position of authority to aid in the harassment.\(^{208}\) The OCR and Title IX regulations require schools to adopt and publish grievance procedures for the prompt and equitable resolution of employee-to-student sexual harassment and sex discrimination claims.\(^{209}\)

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\(^{208}\) Id. at 52,173.

\(^{209}\) Id. at 52,173.
Peer Sexual Harassment

Unlike employee-to-student harassment, peer sexual harassment under the OCR guidelines covers only hostile environment sexual harassment.210 The OCR defines "hostile environment sexual harassment" as sexual harassment that is "sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment."

Severe, persistent, or pervasive harassment may involve tangible and/or intangible injuries; and specific or general targets, or victims. Victims of a hostile environment may suffer either a pattern or practice of harassment, or sustained and nontrivial harassment. According to the OCR, the more severe the conduct, the less the need to show a series of incidents. Evidence of multiple incidents at the same school may be enough to show a hostile environment, even if each one alone would not be enough.212 Because multiple incidents of peer sexual harassment are common in schools where such harassment is a problem, this declaration

210 Id. at 52,175 (1996).
211 Id. at 52,175.
212 Id. at 52,177.
by the OCR may implicate many school district defendants in the future.\textsuperscript{213}

The hostile environment test for peer sexual harassment differs from the test for employee-to-student harassment. From the OCR guidelines, a school is liable under Title IX for peer sexual harassment if (1) a hostile environment exists; (2) the school knows or should know of the harassment; and (3) the school fails to remedy it. Note that, according to the OCR, Title IX does not make a school liable for the harassment itself, but rather the discrimination in permitting the harassment to continue once the school is aware of it.\textsuperscript{214}

The OCR's coverage of sexual harassment is broad. It makes no difference what the genders of the harasser and victim are; same-sex peer sexual harassment is covered. However, the OCR makes a point to note that discrimination based on sexual orientation is not covered.\textsuperscript{215} Furthermore, the OCR says that a school may be liable even if the harasser is a non-student on school premises (for

\textsuperscript{213} Most of the peer sexual harassment cases presented here provide examples of multiple incidents which, if they occurred today, could subject the school to liability under the OCR Guidelines.

\textsuperscript{214} \textit{Id.} at 52,175-52,176.

\textsuperscript{215} \textit{Id.} at 52,176.
example, a visiting student/athlete from another school).\textsuperscript{216}

Under the Guidelines, schools are required to develop and enforce policies and grievance procedures covering peer sexual harassment.\textsuperscript{217} A school will be liable for failing to adopt a policy, even if there is no hostile environment.\textsuperscript{218} The policy should be made public to students and parents, complete with complaint procedures, details on investigations and hearings (opportunity to present witnesses and other evidence), designated time frames, notice to the parties, and steps the school will take to prevent future harassment.\textsuperscript{219}

The bottom line is this: the OCR expects both reactive and proactive conduct from schools, including (1) action to end the specific harassment; (2) corrective action to address the victim and possible effects of the harassment; and (3) action to prevent future harassment.\textsuperscript{220}

\textbf{Constitutional Law: Section 1983}

\textsuperscript{216} Id. at 52,176.

\textsuperscript{217} Id. at 52,175.

\textsuperscript{218} Id. at 52,177.

\textsuperscript{219} Id. at 52,179. Notice can come in different forms: for example, complaints by students, actual witness of the events. Id. at 52,177.

\textsuperscript{220} Id. at 52,176.
Section 1983 of Title 42 of the United States Code provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action on law, suit in equity, or other proceeding for redress.\(^{221}\)

Basically, Section 1983 creates a cause of action against local governments and their officials if they violate a citizen’s constitutional or other legal rights. Section 1983 provides no substantive constitutional rights; it provides only a remedy (monetary or injunctive) for governmental deprivation of those rights.\(^{222}\) In student violence cases, for example, student-plaintiffs typically argue that their Fourteenth Amendment due process rights have been violated (e.g., a deprivation of their life, or liberty interest in freedom from damage to bodily integrity).\(^{223}\) Mere negligence is insufficient to


establish a constitutional tort. Students also file Section 1983 claims for violation of First and Fourth Amendment rights, as well as rights granted under federal statutory law. For the most part, these other claims -- including those under Title IX -- are discussed in separate sections elsewhere in this Chapter. Due process violations are discussed here.

The United States Congress passed Section 1983 in 1871 in response to post-Civil War violence against Blacks in the South. It provided a federal remedy for civil rights violations, in case state laws were not enforced fairly, Fourteenth Amendment rights were denied by state agencies, or state courts did not adequately protect the rights of citizens. In Monroe v. Pape, the United States Supreme Court interpreted Section 1983 as allowing a remedy for Fourteenth Amendment deprivations caused by a state official's abuse of his position.

The language of Section 1983 has been interpreted broadly. For example, a government official, including one employed by a public school district, is acting "under color

\footnote{224} Sperry and Daniel, et al., supra note 6, at 1089.


\footnote{226} Id. at 172. In Monroe, an African-American family alleged that several Chicago police officers broke into their home, ransacked each room, searched the entire house, and interrogated the father about a two-day-old murder -- all without warrants or the opportunity to consult an attorney.
of state law" whenever he or she is performing his or her official duties or is acting in his or her official capacity, whether or not the conduct is legal.\textsuperscript{227} Along with individual school officials, school boards are included in Section 1983's definition of "person."\textsuperscript{228}

The Supreme Court in \textit{Monell v. Department of Social Services} held also that Section 1983 liability could be based on a "governmental custom," even if such custom does not receive formal approval by the governing body of the state actor.\textsuperscript{229} This may open the door to school district liability in Section 1983 cases if plaintiffs can show that the schools know or should know a violent atmosphere exists and have not done enough to correct them.\textsuperscript{230} In practice, however, showing that deliberate indifference amounts to a custom or policy is difficult.\textsuperscript{231}

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\textsuperscript{228} \textit{Monell v. Department of Social Services}, 436 U.S. 658 (1978).

\textsuperscript{229} Id. at 690-691.

\textsuperscript{230} Adam Michael Greenfield, \textit{Annie Get Your Gun 'Cause Help Ain't Comin': The Need for Constitutional Protection from Peer Abuse in Public Schools}, 43 DUKE L.J. 588, 616 (1993).

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In 1975, the Supreme Court decided another important case that also opened the door to school district liability under Section 1983. In *Wood v. Strickland*, the Court held that a school official is not immune from liability under Section 1983 "if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student." In addition to this objective element, the Court's holding had a subjective element, too. A compensatory award will be appropriate only if the school official's act is committed in bad faith.

In *Wood*, three high school students "spiked" the punch at a meeting of the school's extracurricular clubs. The teacher in charge of the meeting heard rumors about the spiking later and asked the students about it. They admitted the infraction to the teacher and ultimately to the school principal. The principal suspended each of the students for ten days, subject to board of education approval. The board voted, instead, to expel the students for the rest of the semester (three months). The parents of the students were told not to contact any board members in

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233 *Id.* at 322.

234 *Id.* at 321-322.
advance of the vote; none of the parents attended the meeting where the vote took place. The parents did attend a meeting two weeks later, when the expulsions were upheld.

The Court held that government actors are not charged with "predicting the future of constitutional law." However, they are expected to act within the basic, unquestioned constitutional rights of their students.\textsuperscript{235} According to the Court, there is no language in Section 1983 pertaining to tort immunity; therefore, the enactment of Section 1983 did not abolish the existing common-law immunities. Among these immunities is qualified immunity, under which government actors are immune from liability if they act within the scope of their duties and in good faith. Even if constitutionally wrong, decisions made in good faith will not render school officials liable. According to the Court, to hold otherwise would unnecessarily constrain school personnel from making any decisions at all, out of fear of liability. However, the Court in Wood determined that the board members acted in bad faith in invoking the long-term expulsions without sufficient due process. As a result, they were not qualifiedly immune.\textsuperscript{236}

\textsuperscript{235} Id. at 322.

\textsuperscript{236} Absolute immunity, which is a bar to Section 1983 liability, applies only to those officials performing judicial, legislative, or prosecutorial functions. Immunity does not apply to those performing executive or administrative functions. \textit{Erwin Chemerinsky, Federal Jurisdiction} 402, 407 (1989).
Alleged deprivation of substantive due process: Students' freedom from invasion of bodily security

To state a claim under Section 1983, a plaintiff must allege a violation of rights secured by the Constitution or laws of the United States, and demonstrate that the alleged deprivation was committed by a person acting under color of law. The rights guaranteed by the Constitution are primarily negative rights, or limitations on behavior. That is, government officials must refrain from conduct that unconstitutionally interferes with the rights of citizens, including First and Fourth Amendment rights, and Fourteenth Amendment life, liberty, or property rights. Arms of the government have few affirmative constitutional duties to meet. In other words, the Constitution generally does not require state actors to engage in certain or specified conduct; it is "a charter of negative liberties."^{237} Important for this review of the law, the state has no affirmative duty to protect an individual from private acts of violence. However, there are at least two exceptions to this rule: the government may owe this duty of care if: (1) a special relationship exists between the government actor and the plaintiff; or (2) the government has created the danger that caused the injury or loss. To date, the United States Supreme Court has recognized only two classes of

^{237} Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).
people to whom the government owes an affirmative duty to protect from constitutional violation: (1) inmates,238 and (2) mentally disabled people involuntarily committed to institutions.239

DeShaney v. Winnebago County Department of Social Services. In 1989, in DeShaney v. Winnebago County Department of Social Services, the United States Supreme Court addressed the question of whether the government owed an affirmative duty of care to victims of private acts of violence.240 The Court held that the government does not owe this duty. In DeShaney, a child was subjected to a series of beatings by his father, with whom he lived. The county social services department took various steps to protect the child, but made no attempt to remove him from his father's custody. The child ultimately suffered beatings severe enough to render him profoundly retarded.


239 Youngberg v. Romeo, 457 U.S. 307 (1982). Along with the special relationship doctrine in constitutional law, there is also a traditional "special relationship" doctrine in tort law. When the defendant stands in some sort of "special relationship" with the plaintiff, an affirmative duty to aid, assist, or protect exists. RESTATEMENT (SECOND) TORTS § 315 (1965). For example, landlords and tenants, common carriers and passengers), innkeepers and guests, shopkeepers and customers, hosts and social guests. Susanna M. Kim, Comment, Section 1983 Liability in the Public Schools after DeShaney: The "Special Relationship" between School and Student, 41 U.C.L.A. L. Rev. 1101, 1113-1118 (1994).

The Court held, against a Section 1983 action, that the county department of social services did not violate the child’s substantive due process rights. According to the Court, the substantive due process clause is a limitation on the government’s power to act, not a guarantee of certain minimal levels of safety and security. There is no affirmative duty on the government to protect people from infringement of life, liberty, or property at the hands of private third parties. The purpose of the Due Process Clause is "to protect the people from the State, not to ensure that the State protect them from each other."²⁴¹

Addressing the special relationship question, the Court held that the State’s knowledge of the danger and its expressions of willingness to protect the child did not establish a "special relationship" sufficient enough to create an affirmative constitutional duty to protect. Despite the awareness of the danger, the State did not create the danger, nor did it do anything to make the child more susceptible to the harm suffered. In an important statement, the Court held that the Due Process Clause does not transform every tort committed by a state actor into a constitutional violation.²⁴²

The DeShaney Court distinguished Estelle v. Gamble (imposing on the government an affirmative duty to protect

²⁴¹ Id. at 195-196.

²⁴² Id. at 202.
inmates, due to a "special relationship" between the inmate and the state) and Youngberg v. Romeo (a similar duty to protect those involuntarily committed to mental institutions). According to the Court, a special relationship exists when the government has custody over the individual.\textsuperscript{243} In other words, the state assumes a duty of care "when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself."\textsuperscript{244} The Court in DeShaney stated that "it is the State's affirmative act of restraining the individual's freedom to act on his own behalf -- through incarceration, institutionalization, or other similar restraint of personal liberty -- which is the deprivation of liberty triggering the protections of the Due Process Clause."\textsuperscript{245}

Using DeShaney as a backdrop, many courts have held that school districts do not stand in a "special relationship" with their students and, therefore, owe no constitutional duty to protect students from the violent acts of other students.

The special relationship doctrine. Many commentators, child advocates, and plaintiffs' attorneys disagree with the DeShaney ruling and/or its application in school settings.

\textsuperscript{243} Id. at 199-200.

\textsuperscript{244} Id. at 200.

\textsuperscript{245} Id. at 200 (emphasis added).
They argue that the italicized language above -- "or other similar restraint of personal liberty" -- should be enough to establish an affirmative duty on the part of schools to protect children from the violent acts of other students.\textsuperscript{246} It is the application of the "other similar restraint" language that may determine whether a court finds a school in custody of its students and, therefore, in a \textit{special relationship} with them. Another distinction may be who the perpetrator is.

If the abuser is a school employee, the courts are more likely to find that students are in the custody of the schools, and to hold schools liable under Section 1983.\textsuperscript{247} In \textit{Doe v. Taylor Independent School District}, the United States Court of Appeals for the Fifth Circuit found a special relationship: "School superintendents and principals have a duty to police the halls of our public schools to insure that school children, who are obliged to attend, have an opportunity to learn and study in a school environment free from sexual molestation and harassment."\textsuperscript{248}

Furthermore, "[p]arents, guardians, and the children

\textsuperscript{246} Watkinson, supra note 227; Susanna M. Kim, Comment, \textit{Section 1983 Liability in the Public Schools after DeShaney: The "Special Relationship" between School and Student}, 41 U.C.L.A. L. Rev. 1101 (1994); and Greenfield, supra note 230.

\textsuperscript{247} Doe v. Taylor Indep. Sch. Dist., 975 F.2d 137, 146 (5th Cir. 1992), cert. denied, 113 S. Ct. 1436, vacated, 987 F.2d 231 (5th Cir. 1993).

\textsuperscript{248} Id. at 149.
themselves have little choice but to rely on the school officials for some measure of protection."\textsuperscript{249} On the other hand, if the abuser is another student, the courts may use this fact to find in favor of the school.\textsuperscript{250} In fact, nearly all courts have held, under Section 1983, that students do not possess a constitutional right to protection from the violent acts of individuals who are not school officials, particularly the violent acts of other students.\textsuperscript{251}

Watkinson argues that the broad interpretation of "other similar restraint" is more appropriate. According to Watkinson, schools have custody over their students, and therefore, should be held accountable under Section 1983 for failing to protect the students from sexual abuse.\textsuperscript{252} First, he considers compulsory attendance and truancy laws. When the state mandates attendance, it assumes a duty to protect students from dangers posed by anti-social activities -- of the government or of other students.\textsuperscript{253} Second, Watkinson notes that schools have considerable

\textsuperscript{249} Id. at 147.

\textsuperscript{250} D.R. v. Middle Bucks Area Vocational Technical Sch., 972 F.2d 1364 (3d Cir. 1992), cert. denied, 113 S. Ct. 1045 (1993).

\textsuperscript{251} Horner, supra note 4, at 51.

\textsuperscript{252} Watkinson, supra note 227, at 1238.

\textsuperscript{253} See also Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470, 480 (5th Cir. 1982), cert. denied, 463 U.S. 1207 (1983).
discretion and authority over the behavior of students. Third, schools effectively remove children from their homes and become their guardians; students are not free to leave schools on their own.\(^{254}\)

Similarly, Susanna M. Kim argues that the school-student relationship is a "special relationship" for Section 1983 purposes, requiring schools to take affirmative steps to protect the safety and well-being of their students. Kim bases her argument on the key factors from Judge Sloviter's dissent in \textit{D.R. v. Middle Bucks Area Vocational Technical School}.\(^ {255}\) First, students are prevented by compulsory attendance and truancy laws from voluntarily leaving schools (often, the violence rates in these schools pose risks of personal injury). Compulsory attendance is a form of state restraint on personal liberty. Against this argument, courts argue that parents remain the primary caregivers of students. However, the parents give up some of their authority every day when their children attend school; this authority goes to the schools. "Merely because children can and do leave school campuses every day does not mean that

\(^{254}\) Watkinson, supra note 227. at 1261-1263. Watkinson, however, does admit the major factual difference between cases like \textit{Taylor} and \textit{Middle Bucks}: that the abuser in \textit{Taylor} was a school employee, rather than a student.

\(^{255}\) Kim, supra note 239, at 1126-1134; see also \textit{Middle Bucks}, 972 F.2d 1364 (3d Cir. 1992), cert. denied, 113 S. Ct. 1045 (1993).
they deserve no protection while they are at school."256 Furthermore, many parents cannot afford to enroll their children in private schools or in home-based education programs.

Second, the states, via legislatures and courts, grant schools a large degree of discretion in the control of student behavior and the educational environment. Examples include the doctrine of in loco parentis, state statutes authorizing the development of student codes of conduct, and cases like Ingraham v. Wright,257 T.L.O.,258 and Bethel School District v. Fraser.259 According to Kim, "[i]t would be inherently inconsistent to afford schools these broad rights and powers without imposing on the schools the corresponding duties and liabilities."260 If schools are given rights to student discipline and control, they should also be subjected to liability when they go too far.261

256 Kim, supra note 239, at 1129-1130.

257 430 U.S. 691 (corporal punishment).


260 Kim, supra note 239, at 1132.

261 This is a key statement, and may be used in the future to hold school districts liable under the "special relationship doctrine and Section 1983."
Third, students are minors whose judgment and behavior may not be fully mature. In addition, some of the violence -- particularly sexual abuse -- may be difficult for minors to report or discuss. According to Kim, school officials are in the unique position to see much of this abuse and violence, and are in the position to affirmatively prevent or reduce it.

Finally, Kim argues that the existence of state tort remedies is not enough to deny Section 1983 recovery. Schools faced with Section 1983 liability will have the extra incentive to take the steps to reduce violence in schools. Furthermore, school officials will not look away from violence when student victims are in need of protection.

Adam Michael Greenfield wrote another in a large group of articles advocating constitutional protection from peer abuse in public schools. According to Greenfield, the private nature of peer abuse should not be enough to preclude school district liability. Greenfield argues that there should be no distinction between government action and inaction in Section 1983 cases.

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263 Kim, supra note 239, at 1133-1134.

264 Kim, supra note 239, at 1137.

265 Greenfield, supra note 230, 43 DUKE L.J. 588, 599.
Greenfield, "it is possible to restate most actions as corresponding inactions with the same effect."\textsuperscript{266}

On the custody argument, Greenfield distinguishes between "legal custody," which he applies to the special relationship doctrine, and "functional custody," which he applies to the state-created danger doctrine.\textsuperscript{267} For legal custody, Greenfield relies on compulsory attendance and truancy laws, as well as the in loco parentis doctrine. In addition, he notes many parents' inability to provide their children with private education or home schooling.\textsuperscript{268} For functional custody, Greenfield focuses on control, dependency, and vulnerability. According to Greenfield, schools that create dangerous classroom environments, allow repeated misbehavior, and inadequately supervise their employees and students ought to be liable for any harm students suffer as a result.\textsuperscript{269}

The state-created danger doctrine. The other Section 1983 exception establishing an affirmative duty to protect citizens from private acts of violence is the state-created

\textsuperscript{266} Id. at 600. Greenfield takes this statement from Archie v. City of Racine, 847 F.2d 1211, 1213 (7th Cir. 1988), cert. denied, 489 U.S. 1065 (1989). In Archie, plaintiffs filed suit under Section 1983, alleging a fire department dispatcher's failure to provide rescue services, as requested, for a woman who later died.

\textsuperscript{267} The state-created danger doctrine is discussed below. See notes 270 to 287 and accompanying text.

\textsuperscript{268} Greenfield, supra note 230, at 605-608.

\textsuperscript{269} Id. at 609-614.
danger exception. Under this theory, a state will be liable for failing to protect a person if:

(1) the state affirmatively acted to create the danger or render the student more vulnerable to the danger;

(2) the danger to the student that is created or enhanced by the school encompasses an immediate threat of harm; and

(3) the school defendants have been deliberately indifferent in failing to protect the plaintiff from the danger they created.\footnote{270}

In other words: "[i]f the state puts a man in a position of danger from private persons and then fails to protect him, it will not be heard to say that its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snakepit."\footnote{271} Police officers are common defendants in state-created danger cases.\footnote{272}

The first prong of the state-created danger test requires that the school affirmatively act to create the danger or render the student more vulnerable to the danger.\footnote{273} It is not enough to show that the government

\footnote{270} Schulze & Martinez, supra note 223, at 545-551.

\footnote{271} Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982). \textit{See also} Schulze & Martinez, supra note 223, at 546.

\footnote{272} Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989), \textit{cert. denied}, 498 U.S. 938 (1990) (an arresting officer left an intoxicated driver's female passenger alone in a dangerous neighborhood; she was raped on her way home); and White v. Rochford, 592 F.2d 381 (7th Cir. 1979) (police have an affirmative duty to protect children left in a car when the police arrest the driver).

\footnote{273} Schulze & Martinez, supra note 223, at 545-546.
failed to respond to known dangers which were created by private parties. The government itself must affirmatively act. In D.R. v. Middle Bucks Area Vocational Technical School, for example, the United States Court of Appeals for the Third Circuit acknowledged the "indefensible passivity" of the defendants, but held that the school owed no duty to protect because it did not affirmatively create or enhance the danger posed by the male students against their sexually harassed female classmates.274

The second prong requires that the danger that is created or enhanced by the school encompass an immediate threat of harm to the student.275 The immediate threat of harm must have a limited range or duration.276 It must encompass an "identifiable radius of harm" and an identifiable class of victims.277 The Middle Bucks court held that the risk of danger to the plaintiffs must also be foreseeable.278 That the school knows of the aggressive or violent natures of the perpetrators is not enough to

274 972 F.2d 1364, 1374-1376 (3d Cir. 1992), cert. denied, 113 S. Ct. 1045 (1993). See also Dorothy J. v. Little Rock Sch. Dist., 7 F.3d 729, 733-734 (8th Cir. 1993); Graham v. Independent Sch. Dist., 22 F.3d 991, 995 (10th Cir. 1994); and Watkinson, supra note 227, at 1281-1282.

275 Schulze & Martinez, supra note 223, at 546-547.

276 Dorothy J., 7 F.3d at 733.

277 Cornelius v. Town of Highland Lake, 880 F.2d 348, 359 (11th Cir. 1989).

278 972 F.2d at 1374-1375.
create an immediate threat of harm if the danger to the victim is too remote a consequence of the defendants' actions.\textsuperscript{279}

The third prong of the state-created danger test requires that the school defendants be deliberately indifferent in failing to protect the plaintiff from the danger they created.\textsuperscript{280} Negligence is not enough. According to one court, "deliberate indifference is shown by intentional or reckless conduct that amounts to more than 'gross negligence,' but which perhaps need not rise to the level of conduct that 'shocks the conscience.'"\textsuperscript{281} According to another, actual knowledge of a serious risk of physical danger is an important factor.\textsuperscript{282} "[I]t is not enough to show that the state increased the danger of harm from third persons; the plaintiff must also show that 'the state acted with the requisite culpability in failing to protect the plaintiff from that danger...'"\textsuperscript{283}

Finally, Schulze and Martinez sum up the state-created danger test:

\textsuperscript{279} Graham, 22 F.3d at 995.

\textsuperscript{280} Schulze & Martinez, supra note 223, at 547-551.

\textsuperscript{281} Leffall v. Dallas Indep. Sch. Dist., 28 F.3d at 531 (5th Cir. 1994).

\textsuperscript{282} Johnson, 38 F.3d at 201.

The student must prove that the affirmative acts of the school or its employees played a part in creating the danger from private violence or rendering the student more vulnerable to the private violence, in effect, placing the student in a worse position than that in which he would have been had they not acted at all. The key to the state-created danger cases lies in the defendants' conduct in affirmatively placing a student in a position of immediate danger of limited range or duration, effectively stripping him of his ability to defend himself, or cutting off potential sources of private aid. If such conduct is coupled with deliberate indifference to the plight of the student who is placed in danger, the district and/or its employees may find themselves liable for a violation of the student's constitutional rights because of their failure to protect the student from private violence.²⁸⁴

The Supreme Court in DeShaney did not address the state-created danger exception.²⁸⁵ Several post-DeShaney courts have recognized this exception, however, including cases involving student-on-student violence.²⁸⁶ At least one court specifically has not recognized the theory.²⁸⁷

As the following discussion of Section 1983 student-on-student violence cases shows, plaintiffs have great difficulty recovering damages from school districts in lawsuits stemming from the violent acts of their peers.

²⁸⁴ Schulze & Martinez, supra note 223, at 551-552.

²⁸⁵ Schulze & Martinez, supra note 223, at 542.

²⁸⁶ L.W. v. Grubbs, 974 F.2d 119, 121-122 (9th Cir. 1992); Dorothy J. v. Little Rock Sch. Dist., 7 F.3d 729, 733 (8th Cir. 1993); Reed v. Gardner, 986 F.2d 1122, 1125 (7th Cir.), cert. denied, 114 S.Ct. 389 (1993); Dwares v. New York, 985 F.2d 94, 99 (2d Cir. 1993).

²⁸⁷ Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521, 530 (5th Cir. 1994).
Barring extraordinary factual situations, courts uniformly reject students' arguments under both the special relationship and state-created danger theories. Victories by students, when they occur, typically are based on other theories.

**Recent Section 1983 cases arising in schools.** During the past few years, several federal circuit courts of appeals have addressed peer violence liability under Section 1983. The first of these cases is the widely-discussed Third Circuit decision in *D.R. v. Middle Bucks Area Vocational Technical School*.\(^{288}\) In *Middle Bucks*, public high school students claimed that they were sexually molested (verbally and physically) by classmates in the darkroom of the school's graphic arts classroom. Allegedly, the student teacher in charge of the class knew about the abuse and was the target of some of it herself. School officials took no action.

The court rejected the students' arguments that compulsory attendance laws imposed an affirmative constitutional duty upon the school board, superintendent, or principal. There was no *special relationship* between students and the school for purposes of a Section 1983 action. The court distinguished *Estelle v. Gamble* and *Youngberg v. Romeo*, and noted that students, unlike inmates

\(^{288}\) 972 F.2d 1364 (3d Cir. 1992).
and institutionalized mentally ill patients, are not "wholly
dependent upon the state for food, shelter, clothing, and
safety." The court continued and noted that
incarceration and institutionalization are situations where
those affected do not have the power to take care of
themselves and are not free to leave. The court held
that students are not physically restrained, and certainly
not 24 hours a day.

The court also held that the school did not create the
danger that eventually led to the attacks. The court
reasoned that even though fights between students occurred
on a regular basis, this was insufficient to establish that
school officials should have known that the students were in
danger.

In dissent, Judge Sloviter argued that there is a
special relationship between schools and students. Sloviter
based this assertion on the following four factors: (1)

289 Id. at 1371. Under Pennsylvania law, students' parents remained the primary caretakers of children, despite the students' presence in school. See Estelle v. Gamble, 429 U.S. 97 (1976), and Youngberg v. Romeo, 457 U.S. 307 (1982).

290 Interestingly, this implies that children, in fact, are able to take care of themselves and are free to leave the school setting.

291 972 F.2d at 1371. Other circuit courts addressing Section 1983 claims have held similarly on the special relationship claim. Dorothy J. v. Little Rock Sch. Dist., 7 F.3d 729 (8th Cir. 1993); J.O. v. Alton Community Unit Sch. Dist., 909 F.2d 267 (7th Cir. 1990); and Maldonado v. Josey, 975 F.2d 727 (10th Cir. 1992).
school attendance is mandated by law (via compulsory attendance and truancy laws); (2) students are minors whose judgment is not mature; (3) schools have discretion in controlling students' behavior (based on in loco parentis); and (4) schools exercise control over the movement of students.\textsuperscript{292}

In 1994, the Fifth Circuit decided two Section 1983 cases involving student violence and gunfire. Both incidents occurred in the Dallas, Texas, public schools. In \textit{Leffall v. Dallas Independent School District}, a student was killed by random gunfire in the parking lot of a high school after a school-sponsored dance.\textsuperscript{293} Several students had fired guns into the air and one student was accidentally shot. Allegedly, the school administrators knew that students carried and fired dangerous weapons on school property regularly. The issue in \textit{Leffall} was whether the decision of the school to sponsor the dance -- knowing the risk of such an occurrence -- violated the constitutional rights of the student.

The court considered both the special relationship and state-created danger theories and held that the state's failure to protect an individual against private acts of violence does not constitute a violation of the due process clause. There was no special relationship between the

\textsuperscript{292} 972 F.2d at 1377 (J. Sloviter, dissenting).

\textsuperscript{293} 28 F.3d 521 (5th Cir. 1994).
school district and the student during a school-sponsored dance held after hours. Even if a special relationship existed with the school during school hours, that relationship ended when the students were no longer compelled to be under the school’s care.294

The court further held that even if the state created a danger by sponsoring the dance with the awareness of the associated dangers, the conduct of the state actors here did not rise to the level of deliberate indifference to the rights of the slain student. The court held that it is not enough that the school increased the threat of harm from third persons. The plaintiffs must show that the state acted with the requisite culpability in failing to protect the students. Here, the school employed two security guards (unarmed) on the night in question. The court distinguished this case from one in which the school might knowingly bring the student into close proximity with a third party known to be likely to commit violence, or abandon the student in a highly dangerous environment, or conspire with a private actor to inflict the deprivation.295

Several commentators disagree with the decision in Leffall. Robert D. Tennyson argues that the school created

294 28 F.3d at 529.
295 Id. at 531.
the danger. According to Tennyson, the principal knew the dangers; and the police warned him to postpone the dance until he got enough security. Given this knowledge and warning, the principal could have been found to be deliberately indifferent by scheduling the dance anyway. Tennyson argues that these facts can be read to support a showing of deliberate indifference and liability under Section 1983.\footnote{297}

The second Fifth Circuit decision out of Dallas involved a homicide during school hours. This time, however, the gunman was not a student, but an unauthorized visitor.\footnote{298} In Johnson v. Dallas Independent School District, parents brought a Section 1983 action against school officials for not using an installed metal detector after their son was shot and killed in school. They based their claim on the state-created danger theory. The court held that failure to use the detectors routinely produced no


\footnote{297 See also Joseph Beckham, Liability for Sexual Harassment Involving Students under Federal Civil Rights Law, 99 Educ. L. Rep. 689, 699-700 (1995); and Schulze & Martinez, supra note 223, at 548.}

\footnote{298 Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198 (5th Cir. 1994), cert. denied, 115 S. Ct. 1361 (1995).}
Section 1983 liability under the state-created danger theory. The court held:

The key to the state-created danger cases ... lies in the state actors' culpable knowledge and conduct in "affirmatively placing an individual in a position of danger, effectively stripping a person of her ability to defend herself, or cutting off potential sources of private aid."

There was no allegation of previous criminal conduct that would allow a trier-of-fact to conclude that the school was a dangerous, high crime area. Furthermore, there was no actual knowledge of the violence or any conduct by the school that affirmatively placed students in a position of violence and danger. According to the court, the conduct of the school officials, perhaps negligent, was not deliberately indifferent -- the required standard for Section 1983 claims. The court specifically worried that to hold schools liable in situations like this one would be to "make the schools virtual guarantors of student safety."

299 According to the court, even if metal detectors are in use, school districts need not require each student to pass through a detector prior to admission to school. To do so can be very time-consuming and inefficient. Id. at 201-202.

300 Id. at 201 (citation omitted).

301 Id.

302 Id. at 202.

303 Id. at 203.
been made even for "prisoners or the mentally ill or handicapped, who are the beneficiaries of a 'special relationship' with the state."\textsuperscript{304}

The court in \textit{Johnson} made special mention of the fact that the school administrators had no specific advance knowledge of the shooting. Even when the school does have such knowledge, though, the result may be the same.\textsuperscript{305} In \textit{Graham v. Independent School District No. I-89}, the plaintiffs alleged that the school district had received warnings -- direct threats of violence to a student -- about the assailant in advance of a student-to-student homicide on school grounds. Notwithstanding this claim, the court held that the school did not have an affirmative duty to protect students from unrelated third parties. The school did not have the custodial relationship necessary to establish this duty of protection. According to the court, compulsory attendance laws and foreseeability of danger do not give rise to a duty to protect. Furthermore, the court held that the school was not liable for creating a hazardous situation by placing the aggressors and the victims in the same location; the aggressors' enrollment preceded any knowledge of danger. In addition, the court held that the plaintiffs presented no evidence of affirmative acts by the school that

\textsuperscript{304} Id.

created or increased the danger to students.\textsuperscript{306} The court in \textit{B.M.H. v. School Board} held similarly. A student sued the school district and several teachers after the student suffered a sexual assault by another student. Initially, the victim reported the threat of an assault; the employees took no action to protect the student; and three days later, the assault occurred. The court held in favor of the school: as a matter of law, no "special relationship" is created under these circumstances.

Although most court decisions on peer sexual harassment involve male-female abuse, discussions and judicial decisions involving same-sex peer sexual harassment exist, as well. The Seventh Circuit decision in \textit{Nabozny v. Podlesny} may set the stage for future same-sex peer sexual harassment cases and increased attention to it on the part of school leaders.\textsuperscript{307} In \textit{Nabozny}, a student brought Section 1983 equal protection and due process claims against middle and high school administrators. \textit{Nabozny} presented evidence of years of abuse he suffered at the hands of other students. Several students pretended to gang-rape him in a school science lab; another student urinated on him; and another repeatedly punched him in the stomach, resulting in internal bleeding. \textit{Nabozny}'s middle school principal responded by saying "boys will be boys;" other school

\textsuperscript{306} \textit{Graham}, 22 F.3d at 995.

\textsuperscript{307} 92 F.3d 446 (7th Cir. 1996).
officials said that Nabozny would have to expect such conduct from others because he is openly gay. This abuse resulted in two suicide attempts. Nearly all of the incidents were reported to school counselors, teachers, and administrators. Most often, very little was done; usually, disciplinary action was promised and not taken.

On the equal protection claim based on sex discrimination, the court found it impossible to believe that similar complaints from female students would have been met with similar inaction by the schools' officials. The court held that the law clearly established Nabozny's basis for his claim; the school should have known this. The court held that reasonable persons standing in the defendants' positions would have believed their conduct to be unlawful. No substantial relationship to important governmental objective.\footnote{The plaintiff in Seamons v. Snow, discussed above, made a similar argument. He argued that his school would not have tolerated the locker room hazing incident if the victim had been a woman. However, the court said there was no evidence that the school had acted in favor of a female victim and not a male one. Therefore, the court rejected the Seamons' argument. 84 F.3d 1226, 1233.}

On the equal protection claim based on sexual orientation discrimination, the court held that Nabozny presented sufficient evidence of discriminatory treatment based on his sexual orientation, including comments from defendants that he should expect to be harassed. The law is well-established that the Constitution prohibits intentional
discrimination based on status in an identifiable minority. The court held that homosexuals are an identifiable minority subjected to discrimination in our society. According to the court:

We are unable to garner any rational basis for permitting one student assault another based on the victim's sexual orientation, and the defendants do not offer us one. ... We hold that reasonable persons in the defendants' positions would have concluded that discrimination against Nabozny based on his sexual orientation was unconstitutional.³⁰⁹

Critical to this discussion of Section 1983, special relationships, and state-created dangers, it is important to note that the Nabozny court treated the Section 1983 due process claims just as all other circuit courts of appeals have. Based on Deshaney, the Seventh Circuit in Nabozny found no affirmative duty to protect. There was no evidence that defendants' failure to act left Nabozny in a position of danger, or increased the pre-existing threat of danger.

³⁰⁹ 92 F.3d at 458. The court also cited to a Wisconsin state statute that explicitly prohibits discrimination based on sexual orientation. The statute provides:

No person may be denied ... participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, ... sexual orientation ... .

Similarly, there was no evidence that defendants' conduct encouraged a climate of harassment.

In Seamons v. Snow, discussed above in the section on Title IX, the court also addressed due process claims under Section 1983. A student who was assaulted by football teammates in the school locker room claimed violations of both procedural and substantive due process. The court rejected both claims. On the procedural issue, the court held that deliberate government action is required. Here, the student's decision to transfer was only suggested by administrators, not ordered. On the substantive due process issue, the court considered and rejected both special relationship and state-created danger theories. The court held -- as all others have -- that there is no affirmative duty to protect students from the hostility of fellow students, even where the schools knew or should have known of the danger.

As the above discussion has shown, the vast majority of courts will reject students' Section 1983 claims against

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310 84 F.3d 1226 (10th Cir. 1996).

311 While the court in Seamons dismissed the due process claims, it retained Seamons' free speech claim. According to the court, the speech by Seamons in telling his parents and school officials about the incident was protected by the First Amendment. The court applied Tinker, and held that the officials were aware of this clearly-established law. There was no evidence that Seamons' speech here substantially disrupted or materially interfered with school activities or the rights of other students. Therefore, defendants were not entitled to case dismissal on the basis of qualified immunity.
schools for the failure to protect children from violence at school. One of the very few exceptions is Pagano v. Massapequa Public Schools.\footnote{714 F. Supp. 641 (E.D.N.Y. 1989).} In Pagano, an elementary school student successfully brought a Section 1983 action against school officials to recover for their failure to prevent continuing attacks and abuse from other students. The court reasoned that while a single act of ordinary negligence may not form the basis of a civil rights claim, seventeen separate incidents may rise to the level of deliberate indifference to an affirmative duty. School officials promised the victim that they would take action to prevent future harm; they did not.\footnote{Id. at 642.}

The Sixth Circuit has not yet been caught in the wave of recent lawsuits involving Section 1983 and student-on-student violence or sexual abuse. One of Ohio’s few cases is the District Court decision in Elliott v. New Miami Board of Education.\footnote{799 F. Supp. 818 (S.D. Ohio 1992).} The result matches that of the circuit court decisions. Against evidence that several students sexually harassed the plaintiff, and that the principal and some teachers had witnessed several of the incidents, the court held that the State’s affirmative duty to protect a citizen from the acts of another arises only when the state has directly prevented the citizen from protecting himself.
The court held that liability cannot be imposed upon school district for its policies, customs, or practices, where violative acts were committed by private actors.

**Alleged Deprivation of Procedural Due Process**

The seminal case discussing school district liability for failure to provide students with procedural due process protections is *Wood v. Strickland*.\(^{315}\) *Wood*, discussed above, set the stage for subsequent similar lawsuits and school district liability for unconstitutional deprivation of procedural due process. Generally, students are not successful in their claims. However, the same rule applies: school officials must act within the basic, unquestioned constitutional rights of their students.\(^{316}\)

On balance, a school’s interest in maintaining a safe, orderly, and effective educational environment will typically outweigh a student’s liberty and property interests in reputation and uninterrupted education. For example, in *Draper v. Columbus Public Schools*, the school district expelled a student for threatening several students with a knife.\(^{317}\) Against a procedural due process claim, the court held for the school. The school had provided extensive procedural due process. There was an informal

\(^{315}\) 420 U.S. 308 (1975).

\(^{316}\) 420 U.S. at 322.

hearing before the principal, written notice to the pupil and his parents, the right to appeal to the school board and to be represented by counsel, and a hearing before the board, at which his expulsion was affirmed.

Anonymity is often very important to the success of school sexual harassment policies, the support of harassment victims, the report of harassing incidents, and the general reduction in sexual harassment in schools. Also important, however, are the procedural rights of the accused. Generally, however, courts are not as sympathetic to the alleged perpetrators. They typically hold that the accused student has no due process right to confront his or her accusers. In such cases, therefore, courts will deny the plaintiff recovery under Section 1983. In Coplin v. Conejo Valley Unified School District, for example, the school district expelled a student for allegedly sexually harassing other students. According to the school's sexual harassment policy, students who allegedly suffer such harassment and file grievances remain anonymous. The expelled student filed suit under Section 1983, claiming a violation of procedural due process. Specifically, he claimed that school officials unconstitutionally prevented him from knowing the identities of his accusers. The court


held that the plaintiff had no due process right to confront them.

Similarly, the school's interest in maintaining safety and order in school will generally outweigh a student's interest against punishment for off-campus conduct. As a result, students' Section 1983 claims under this theory fail, as well. In Smith v. Little Rock School District, for example, an African-American male student was suspended for criminal conduct committed away from school.\textsuperscript{320} He claimed that the school has no authority over off-campus conduct. Further, he claimed that the school's punishment preempts the role of the courts. (He had only been charged with murder, not yet convicted). The court held for the school. The school has the authority to maintain order and discipline; the school may suspend any student who impairs this order. The risk of harm to other students and the potential for disruption of educational processes outweigh whatever harm the plaintiff will suffer as a result of the expulsion.

School Liability for Negligence

or Tortious Deprivation of Constitutional Rights:

Liability Under State Law

\textsuperscript{320} 582 F. Supp. 159 (E.D. Ark. 1984).
Under state law, a tort is a civil wrong -- against person or property -- not in contract, that is based on intentional acts, negligence, or strict liability.\textsuperscript{321} Intentional torts include assault, battery, intentional infliction of emotional distress, and false imprisonment. In student-on-student violence cases, the "tortfeasor" -- or actor who commits the tort -- in intentional tort situations is another student and not the school district or its employees. Student-on-student intentional tort situations likely result in very few liability cases for school districts. Therefore, further discussion of intentional torts in this literature review is not necessary.\textsuperscript{322} Similarly, strict liability, or the imposition of liability without regard to fault, is extremely rare in student-on-student violence situations. In fact, it is rare in most school law situations.\textsuperscript{323}

Negligence is the tort theory most often used against school districts and school personnel.\textsuperscript{324} Negligent supervision is the most common state-based claim against schools in student violence cases. Therefore, for purposes


\textsuperscript{322} But see the brief discussion of case law involving the aggressive behavior of some students against others in physical education classes, infra, notes 356-357 and accompanying text.

\textsuperscript{323} Id. at 1407.

\textsuperscript{324} Id. at 1407.
of this literature review, the following discussion is limited to negligence cases.

In order for a student-victim to establish that a school district or employee is negligent, he or she must show (1) the defendant had a duty of care to the student; (2) the defendant breached that duty of care; (3) the breach caused the injury or loss to persons or property; and (4) the plaintiff suffered actual injury or damage to his or her person or property.\textsuperscript{325} In response, the school district and its employees may assert one or more defenses to negligence: contributory or comparative negligence; assumption of the risk; or governmental immunity.\textsuperscript{326} From the discussion of case law below, the reader will note that governmental or sovereign immunity is the most popular and effective defense for schools and school personnel.

\textbf{Negligence Liability}

\textbf{Duty of Care}

Generally, the duty owed by a defendant to a plaintiff is the duty to conform to a certain level of conduct in order to protect the plaintiff against an unreasonable risk

\textsuperscript{325} Sperry and Daniel, supra note 6, at 1068.

\textsuperscript{326} Id. at 551-553, 1086-1089.
of injury.\textsuperscript{327} Basically, the standard is one of reasonableness under the circumstances. In school settings, this standard may be higher than it is elsewhere because the duties are owed to children.\textsuperscript{328} The duties of care a school and its employees owe to students range from the duty to provide a safe physical facility (including the buildings and surrounding grounds) to the duty to supervise pupils adequately. As discussed at length above, there is no affirmative duty, under federal law, to protect pupils from the violent acts of third parties, including other students. The same is likely true at the state level, unless a particular state legislature explicitly acts to create such a duty, or a state constitution mandates one. For example, California’s Bill of Rights provides that all students and staff of public primary, elementary, junior high and senior high schools have the "inalienable right to attend classes on campuses which are safe, secure, and peaceful."\textsuperscript{329}

The duty to maintain a safe physical facility and surrounding grounds is not normally implicated in student violence situations, but if the failure to meet this duty results in a violent incident and injury, the school may be

\textsuperscript{327} Id. at 1069.

\textsuperscript{328} Id. at 1071.

held liable. For example, in Peterson v. San Francisco
Community College District, a rapist hid in untrimmed
foliage and attacked a student.\textsuperscript{330} The California Supreme
Court held the school liable because the school officials
knew of the condition and failed to take reasonable
protective measures.

The duty to supervise students adequately is implicated
in student violence situations far more than the duty to
maintain the physical facility and surrounding grounds.
Generally, however, the duty of care a school owes to its
pupils ends when the student leaves the premises or when the
school day (or school-sponsored event) ends, unless the
school affirmatively assumes additional responsibilities or
fails to exercise reasonable care under the
circumstances.\textsuperscript{331} For example, where a school board has
the duty to maintain a student parking lot in a reasonably
safe condition, it may be held liable for the shooting and
injury of a student as that student is leaving the premises,
even though the actual injury took place a few feet beyond
the school line.\textsuperscript{332}

\textsuperscript{330} 685 P.2d 1193 (Cal. 1984).

\textsuperscript{331} Sperry and Daniel, supra note 6, at 1075. See also
Brownell v. Los Angeles Unified Sch. Dist., 5 Cal. Rptr.2d

\textsuperscript{332} Guiterrez v. Dade County Sch. Bd., 604 So.2d 852
(Fla. Dist. Ct. App. 1992), review denied, 618 So.2d 208
(Fla. 1993).
In contrast, an Ohio court, in *Williams v. Columbus Public Schools*, held that the school board does not have a duty to provide after-hours protection to students if there is no evidence that an injury to students will occur.\footnote{333}{610 N.E.2d 1175 (Ohio Ct. App. 1992).} In *Williams*, three male students who were released from detention physically and sexually assaulted a female student who stayed after school to work on a science project. Her supervising teacher left the room to attend a parent-teacher conference. School employees saw the perpetrators in the halls and told them to leave the premises; but the school administrators did not formally escort them from the building. The court held that there was no duty to escort the three male students from the building. The district was not liable for failure to provide adequate care, supervision, or protection.

**Breach of Duty**

If the defendant’s conduct falls short of the level required by the applicable standard of care under the circumstances, then the defendant has breached the duty of care.\footnote{334}{Sperry and Daniel, supra note 6, at 1077.} To show a breach of duty, the plaintiff must show what the defendant did or did not do. Then, the plaintiff must show that this conduct was unreasonable. In *Mirand v. New York*, two students were seriously injured when
they attempted to leave the school building at the end of the school day.\textsuperscript{335} Earlier in the day, one of the victims accidentally bumped into one of the perpetrators in a hallway between classes. The perpetrator immediately threatened to kill the victim after school. The victim feared for her safety and reported the threat to a teacher forty-five minutes before the attack. She attempted to locate security officers to repeat the report, but they were not stationed where they normally were. After school, in a stairway near the exit, the student who made the initial threat hit one of the victims in the elbow and head with a hammer. The other, her sister, was hit in the back by another perpetrator and stabbed in the wrist with a knife by a third. The New York Court of Appeals held that there was sufficient evidence to support a jury’s finding that a board of education breached its duty to provide adequate supervision. The school was made aware of the threat against one of the victims and had sufficient notice of a specific danger at a particular time. Furthermore, security officers who could have prevented the assaults were not at their assigned posts.

\textbf{Causation}

\textit{Foreseeability}. A plaintiff must show both actual cause (causation-in-fact) and legal cause (proximate cause).

\textsuperscript{335} 637 N.E.2d 263 (N.Y. 1994).
Actual cause is satisfied by one of two tests. First, the "but-for" test holds that the defendant's conduct caused the injury if the injury would not have occurred "but for" the defendant's conduct. Second, the "substantial factor" test holds that, among possible causes, the defendant's conduct caused the injury if it is a substantial factor in causing the injury. For example, the California Court of Appeals in *Skinner v. Vacaville Unified School District*, held that the school's failure to warn a teacher of an attacker's disciplinary record was not a substantial factor in bringing about a student's injury.

To show legal or proximate cause, the plaintiff must show that the consequences of the defendant's conduct were foreseeable under the circumstances. Under a duty to supervise students, for example, schools will be held liable

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336 Sperry and Daniel, *supra* note 6, at 1077-1079.

337 See, e.g., *Roberts v. Robertson County Bd. of Educ.*, 692 S.W.2d 863 (Tenn. Ct. App. 1985) (a vocational agriculture teacher allowed a student to operate a drill press without appropriate supervision or instruction; the court determined that the injury of a student standing nearby would not have occurred if the teacher had supervised the class adequately).

338 Note that the substantial factor test requires that the alleged cause of the injury need only be one of the substantial factors and not the sole cause or the last act prior to the injury. Sperry and Daniel, *supra* note 6, at 1079.


340 Sperry and Daniel, *supra* note 6, at 1079.
for foreseeable injuries or deaths proximately related to the absence of adequate supervision.\textsuperscript{341} If the lack of supervision does not proximately cause the injury or death, then the school will not be liable under such a claim.\textsuperscript{342}

Courts have repeatedly stated that schools are not the insurers of children's safety.\textsuperscript{343} This is especially true when the injuries at school are caused by the unforeseeable acts of third parties (usually students). The key for school administrators may be its assumed knowledge and management of foreseeable risks. In this respect, school administrators may be rewarded for the actions they do take, either regularly or under particular circumstances. In \textit{Brownell v. Los Angeles Unified School District}, an innocent student was waiting for the bus ride home after school and was mistaken for a member of a rival gang and shot. The shooting occurred on a public street adjacent to school property. The court held that the school district exercised due care in supervising its students; the administrators were just inside the school doors distributing bus passes, as they typically did at the end of the school day. The

\begin{flushright}
\textsuperscript{341} \textit{Mirand}, 637 N.E.2d at 266. \\
\textsuperscript{342} \textit{Maness v. City of New York}, 607 N.Y.S.2d 325 (N.Y. App. Div. 1994) (student was shot to death while standing outside of the school at lunch time). \\
\end{flushright}
court held further that the activity of the gang members was not foreseeable. The court rejected a rigid interpretation of foreseeability since, in light of the circumstances, the school had taken a variety of precautions to minimize gang-related problems at the school.

Foreseeability may depend, in part, on whether the district has actual or constructive knowledge of a hazardous condition. In Clark v. Jesuit High School, the school escaped liability for a student shooting because it had no actual or constructive knowledge that guns might be a problem on its campus. There was no causal connection between the injury and the lack of security because the violent act was unforeseeable.\(^{344}\) Also due to the lack of foreseeability, tort liability for off-campus and/or after-hours student violence is rare.\(^{345}\) Recall, however, that schools have the authority to punish students for off-campus or after-hours conduct if the conduct has a negative effect

\(^{344}\) 572 So.2d 830 (La. Ct. App. 1990) (a student at the high school was shot with a BB gun by a classmate on school grounds shortly after dismissal).

\(^{345}\) Towner v. Board of Education of Chicago, 657 N.E.2d 28 (Ill. App. Ct. 1995) (altercation between members of nonschool clubs that were meeting on campus); Guiterrez v. Dade County Sch. Bd., 604 So.2d 852 (Fla. Ct. App. 1993) (altercation began on campus, but injury occurred off school property). But see Rupp v. Bryant, 417 So.2d 658 (Fla. 1982) (principal and faculty advisor held liable for hazing incident in student club meeting held on campus after hours).
on student or staff safety and daily operation of the school.\footnote{See supra, notes 153 to 159 and accompanying text.}

By implication, the decision in Clark may mean that if there is a history of violence in the school, or knowledge among school personnel that weapon possession might be a problem, then weapon-related injuries may be foreseeable and the school may be liable.\footnote{Wood & Chestnutt, supra note 1, at 633.}  At least two courts have confronted such cases, but have held that the school’s knowledge of prior violence or weapon possession is not enough to declare the school liable. First, in Watts v. Wayne County Board of Education, a junior high school student sustained injuries during recess after a classmate picked him up and threw him down on a concrete patio.\footnote{412 S.E.2d 541 (Ga. Ct. App. 1991).}  The court held that the student failed to show negligent supervision. Although there was evidence of prior fights at the school, the students were friends and the injured pupil had no knowledge of violent tendencies on the part of his classmate. Regarding weapon possession, a school may have to be uniquely aware of the specific weapon-related incident in order to be liable for the injuries of other students.\footnote{Thames v. Board of Educ. of Chicago, 645 N.E.2d 445 (Ill. App. Ct.), cert. denied, 649 N.E.2d 425 (1995).}
The court in Watts implied that if school administrators had been aware of the violent tendencies of the student perpetrator, then they may have been liable for the injuries suffered by the victim. Courts that have addressed this issue are split.\textsuperscript{350} In an elementary school case, a court held that evidence existed that school officials could have foreseen a known aggressive fourth-grade boy’s sexual assault of a first-grade boy in restroom. The court held that foreseeability of the specific consequences was not necessary to hold the school liable.\textsuperscript{351} In a higher education case, a new student who was an ex-convict and a parolee went on a killing spree and killed other students. One of the victims’ families recovered $360,000.\textsuperscript{352} This case may say something about the duty that schools may have to warn others about the known dangerous propensities of students.

Other courts say that the prior disciplinary and punishment records of students should not necessarily put the school on notice for future, allegedly foreseeable,

\textsuperscript{350} See, e.g., Alvarado v. Board of Educ. of the City of New York (N.Y. Sup. Ct. 1997), School Law Bulletin, Aug. 1997, at 6 (a teacher was aware of the problems of certain students harassing other students at school; the school was negligent in allowing an eleven-year-old student to go to the bathroom alone where he was assaulted by the other students with known violent tendencies).


violent behavior.\textsuperscript{353} This result may change, however, if the prior disciplinary record is due to previous altercations with the same victim. For example, a school may be liable when a teacher places the victim between two other students who had been harassing the victim for several months, especially if the teacher is aware of the harassment.\textsuperscript{354} A prior history of hostility is not always enough to show foreseeability of consequences, though.\textsuperscript{355}

The aggressive nature of some students in physical education classes raises a related concern. Cases against schools for intentional acts of violence in physical education classes typically involve the satisfaction of the school's legal duty of care to supervise students. In \textit{Kersey v. Harbin}, a student's parents sued the school when their son died after suffering an injury at the hands of his classmates.\textsuperscript{356} The student's teacher was still in the locker room when the plaintiffs' son and a few students were already out in the gym. Other students, known to be aggressive and unruly, picked him up and he either fell or was dropped onto the floor. He suffered no external

\begin{footnotesize}
\textsuperscript{356} 591 S.W.2d 745 (Miss. Ct. App. 1979).
\end{footnotesize}
injuries and continued to participate. The school nurse examined him and found nothing. He later died of massive cerebral hemorrhage and skull fracture. "Aggressive tendencies by a student can, potentially, make later violence foreseeable." 357 The court held that physical education teachers are not absolute insurers of student safety, but must still provide adequate supervision under the specific circumstances.

**Intervening and superseding forces.** An intervening force actively operates to produce the harm to the plaintiff after the defendant's conduct has occurred. The liability of the defendant in such cases depends on both the foreseeability of the consequences and the foreseeability of the intervening force. 358 If both the harm and the intervening force are foreseeable, then the defendant will be liable in negligence cases. 359 If the harm is foreseeable and the intervening force is unforeseeable, then the defendant will be liable, unless the intervening force is a crime or an intentional tort committed by a third party. 360 In a rare situation, if the harm is

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358 Sperry and Daniel, supra note 6, at 1080.


unforeseeable and the intervening force is foreseeable, then the defendant will most often not be liable. Unforeseeable intervening forces that produce unforeseeable results are more commonly called superseding causes.\(^{361}\) In such cases, the defendant will not be liable. For example, in *Mix. v. South Seneca Central School District*, the court relieved the school district of liability after a child threw a screwdriver at another student during a school recess.\(^{362}\) The court declared the child's act a superseding force. Similarly, in *Patterson v. Meramec Valley R-III School District*, a third party threw a piece of asphalt at a student on school grounds.\(^{363}\) The court held that the third party's conduct superseded the alleged dangerous condition of the broken asphalt, and dismissed the case against the school district.

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**Defenses to Negligence Liability: Governmental Immunity**

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party's stabbing of a student at a school dance was an unforeseeable intervening cause relieving the school of liability for failure to provide a police officer).

\(^{361}\) Sperry and Daniel, supra note 6, at 1082. See *Franks v. Union City Pub. Sch.*, 1997 WL 416759, No. 81,841 (Okla. July 15, 1997) (a school was not liable for injuries sustained by a high school student who was assaulted by another student at school; there was no evidence that the assault was foreseeable).


\(^{363}\) 864 S.W.2d 14 (Mo. Ct. App. 1993).
Governmental tort immunity, or sovereign immunity, holds that the federal, state, and local governments and their political subdivisions are free from tort liability.\textsuperscript{364} Immunity has been expanded by statute to render individual employees or agents of governments or political subdivisions immune from personal liability for many acts performed within the scope of their duties.\textsuperscript{365} Public schools are included in the definition of "political subdivision."\textsuperscript{366}

The primary rationale for governmental immunity is the protection of schools' decision-making authority. Without immunity, school officials' decision-making would be seriously jeopardized by countless ordinary negligence actions for accidents that occur in the course of the exercise of such decision-making. The goal is to increase principled, independent, and fearless exercise of governmental and discretionary functions.\textsuperscript{367}

**Governmental Immunity in School Violence, Generally**

Generally, school districts are immune from liability for injuries and accidents that occur in the exercise of

\textsuperscript{364} Sperry and Daniel, supra note 6, at 551.

\textsuperscript{365} Id. at 552.

\textsuperscript{366} OHIO REV. CODE ANN. § 2744.01 (Banks-Baldwin Supp. 1997).

\textsuperscript{367} Sperry and Daniel, supra note 6, at 553.
governmental or discretionary acts. Governmental acts include statutory, constitutional, and judicial mandates. Discretionary acts vary by jurisdiction and include decisions that require the formation of policy. Proprietary and ministerial acts are not immune; these include the mere technical execution of existing policies.\textsuperscript{368}

Critical to the discussion here is whether the duty to supervise pupils is discretionary or ministerial. Courts are split.\textsuperscript{369} In Ohio, the duty to supervise is discretionary. As long as school district employees execute this duty within the scope of discretion, the school district and employees will be immune from liability, unless the employees' conduct is malicious, reckless, or in bad faith.\textsuperscript{370} In \textit{Marcum v. Talawanda City Schools}, a sixth-grade student was injured in a group assault at an after-school student council meeting.\textsuperscript{371} The teacher was temporarily absent from the room. The court held that the decision of the teacher to leave students unattended while

\textsuperscript{368} \textit{Id.} at 561-562.

\textsuperscript{369} \textit{Lewis v. McDowell}, 390 S.E.2d 605 (Ga. Ct. App. 1990) (supervision is discretionary; immunity protected); \textit{Doe v. Escambia County Sch. Bd.}, 599 So.2d 226 (Fla. Dist. Ct. App. 1992) (supervision is ministerial; no immunity); and \textit{Watts v. Wayne County Bd. of Educ.}, 412 S.E.2d 541 (Ga. Ct. App. 1991) (supervisory duties during recess are discretionary and immune from liability, unless they are exercised with malice or ill will).

\textsuperscript{370} \textsc{Ohio Rev. Code Ann.} § 2744.03(A)(6) (Banks-Baldwin Supp. 1997).

\textsuperscript{371} 670 N.E.2d 1067 (Ohio Ct. App. 1995).
she attended a faculty meeting was within the scope of her discretionary authority. Therefore, the school district was immune from liability. The actions of the school officials in response to the assault were within the scope of policymaking, planning, and enforcement powers. They met with all of the students involved, ordered community service for perpetrators, and met with the plaintiff's parents to discuss investigation and counseling.

In many jurisdictions, an educator’s conduct in maintaining classroom discipline is discretionary, requiring personal deliberation, decision, and judgment. Even if the school district requires every teacher or school to develop and maintain a discipline plan, these plans need not be so precise as to leave the educators with no opportunity to exercise judgment or discretion. An educator’s decisions in developing this discipline plan are similarly discretionary,\(^ {372}\) as are the decisions regarding the type and amount of security a school provides for its students.\(^ {373}\)

In Doe v. Escambia County School Board, the court held that the duty to supervise was mandatory, and not

\(^ {372}\) Downing v. Brown, No. 96-0742, 935 S.W.2d 112 (Tex. 1996) (elementary school student bullied regularly by other students; ultimately physically attacked and severely injured; teacher’s acts are discretionary, and not an abuse of discretion).

Therefore, the school board was not immune from liability for the injuries suffered by a student with disabilities who was kidnapped and raped by other pupils during the school day. Similarly, the Minnesota Court of Appeals, in **S.W. v. Spring Lake Park School District No. 16**, held that a school district was not immune from liability for the injuries suffered by a high school student who was raped in the school’s locker room.\(^{375}\)

Immunity may be waived in certain circumstances. For example, some statutes waive immunity when the injuries are caused by the negligent acts of employees.\(^{376}\) In **Ledfors v. Emery County School District**, however, there was also an exception to the waiver of tort immunity, due to a superseding act by a third party: assault and battery of other students. The plaintiff-student was attacked during physical education class by students not enrolled in the class. The court held that the injury came from assault and battery, not from the failure to supervise.

School districts may also waive tort immunity by the purchase of liability insurance.\(^{377}\) As a result, the

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\(^{375}\) 566 N.W.2d 366 (Minn. Ct. App. 1997) (the school district’s decision not to have a security policy was not discretionary).

\(^{376}\) Ledfors v. Emery County Sch. Dist., 849 P.2d 1162 (Utah 1993).

\(^{377}\) Sperry and Daniel, supra note 6, at 716.
school district may be liable in tort up to the amount of the policy. However, the purchase of insurance by individual school administrators -- even if through their professional organizations -- does not waive immunity.\textsuperscript{378}

\textbf{Liability, Duties of Care, and Sovereign Immunity: Coverage in the Ohio Revised Code}

Generally, a school district may be liable for employee negligence (e.g., for inadequate supervision or for failure to take reasonable precautions in a situation when the district is forewarned of a specific danger). The duty of care to be met is that degree of care which a reasonably prudent person would exercise under the circumstances.\textsuperscript{379}

The above discussion of Section 1983 indicated that schools do not have an affirmative duty to protect students from harm inflicted by third parties, including other students. However, under the Ohio Revised Code, there may be an affirmative duty to protect students.\textsuperscript{380} Ohio Revised Code Section 2919.22(A) provides, in part, that no parent, guardian, custodian, or person standing in loco parentis shall, by violating a duty of care, protection, or support,


\textsuperscript{379} Wood & Chestnutt, supra note 1, at 632.

create a substantial risk to health or safety of a child under eighteen (or child with a disability under 21).

Whether school personnel are included here is currently unclear. The in loco parentis doctrine holds that school authorities stand "in the place of the parent" while the child is at school. Traditionally, this meant that school personnel could establish rules for the educational welfare of the child and may inflict punishments for disobedience. The legal test is whether a reasonably knowledgeable and careful parent might so act.381 The doctrine of in loco parentis may be used not only to support the rights of school authorities, but also to establish their responsibilities concerning such matters as injuries to students.382 If such an application is made in Ohio, then Section 2919.22(A) of the Ohio Revised Code may establish an affirmative duty to protect students from the violent acts of other students.

School districts, as governmental entities, are traditionally immune from negligence liability regarding the exercise of governmental or discretionary functions (those related to the operation of public schools). Proprietary (private) and ministerial (operational) functions are not

381 Sperry and Daniel, supra note 6, at 629.

382 E. Edmund Reutter, Jr., Legal Aspects of Control of Student Activities by Public School Authorities, NOLPE, 1970, at 3; see also Robert J. Rubel, The Relationship between Student Victories in the Courts and Student Violence in the Schools, CONTEMPORARY EDUCATION, Summer 1979, at 226.
protected by immunity.\textsuperscript{383} Ohio's immunity statutes are codified in Chapter 2744 of the Ohio Revised Code. In a civil action brought against a political subdivision or an employee of political subdivision to recover for death, injury, or property damage allegedly suffered as the result of a governmental act or omission, Ohio law provides several immunities. Political subdivisions and its employees are immune if:

1. the act or omission was performed in the context of a judicial, quasi-judicial, legislative, or quasi-legislative function;

2. the act or omission was required by law or was necessary to the exercise of the district's or the employee's powers;

3. the act or omission was within the employee's discretion in policymaking, planning, or enforcement;

4. the injured party is covered under the circumstances by worker's compensation; or

5. the act or omission required the government's judgment or discretion in determining whether to acquire or how to use equipment, supplies, materials, personnel, or facilities.\textsuperscript{384}

\textsuperscript{383} Jerry G. Maze, The School District's Liability in Cases of Violent Attacks on Students and Employees, at 4, ERIC: ED 334 702; and Wood & Chestnut, supra note 1, at 631.

\textsuperscript{384} OHIO REV. CODE ANN. § 2744.03(A) (Banks-Baldwin Supp. 1997).
The immunities do not apply if the conduct is malicious, reckless, or in bad faith. Furthermore, Ohio Revised Code Section 2744.02(B) says that school districts are liable for employees' negligent acts with respect to proprietary functions and some governmental functions, including the negligent operation of a motor vehicle by an employee of a political subdivision, the negligent performance of a proprietary function, and the negligent failure to maintain the buildings or grounds.

Immunity also does not apply to (1) contractual liability; or (2) civil liability for violation of federal statutes or federal constitutional rights. For example, school administrators are not protected by immunity in lawsuits under section 1983. However, a good faith defense may be available to an individual school official in a section 1983 lawsuit. To successfully invoke this defense -- that of qualified immunity -- the official must show that he or she acted sincerely and with the belief that he or she did the right thing; but he or she cannot justify conduct by claiming ignorance or disregard of settled law.

According to Jerry G. Maze, failure to take preventive measures may result in loss of government tort immunity and


\[\text{386 Wood & Chestnutt, supra note 1, at 631-632.}\]
charges of negligence liability.\textsuperscript{387} Maze's review of case law indicates a trend toward successful litigation by plaintiffs against school districts -- an increase in attention to victims' rights, and a decline in sovereign immunity.\textsuperscript{388}

Finally, under Ohio law, civil lawsuits may be brought against schools, school administrators, and employees who knew or reasonably should have known about hazing and made no reasonable attempts to prevent it. Schools may defend against such claims on the basis that they were actively enforcing an anti-hazing policy at the time.\textsuperscript{389} Hazing is also a crime in Ohio.\textsuperscript{390}

**Conclusion**

Except in unusual cases, negligence claims against schools in student violence situations have not been

\textsuperscript{387} Maze, \textit{supra} note 383, at 2.

\textsuperscript{388} \textit{Id.} at 6-7.

\textsuperscript{389} \textsc{Ohio Rev. Code Ann.} § 2307.44 (Banks-Baldwin 1995).

\textsuperscript{390} \textsc{Ohio Rev. Code Ann.} § 2903.31 (Banks-Baldwin Supp. 1997).
successful. Sovereign immunity protects public schools, especially when school employees are performing governmental or discretionary functions. In matters of discretion, courts are hesitant to replace their judgment with that of educators and administrators. Typically, the nature and amount of supervision is discretionary; in other words, the school will not lose a negligence case as long as basic supervision is provided. However, in many jurisdictions, where there is a total lack of supervision, children may win, because the school has not performed a mandatory duty. In addition, injured students can always recover from the student who caused the injury. 392

Furst argues that these results afford little protection to student victims, and little comfort to parents who are required by law to send their children to school. 393 Furst argues further that, even without the legal duty to protect children from private acts of violence, schools and their employees have the moral duty to protect them. "School officials have the moral obligation to determine the kinds of behaviors that are precursors of violent acts and to intercede to prevent such violence." A


393 Furst, supra note 391, at 32.

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disorderly classroom causes further disorder. Hostile environments allow further hostility. Despite the legal trends favoring them, school administrators are responsible for safe schools -- internal and external, social and physical.\textsuperscript{394}

\textsuperscript{394} Id. at 33.
CHAPTER 4

SCHOOL ADMINISTRATORS' KNOWLEDGE OF
STUDENT-ON-STUDENT VIOLENCE AND THE LAW:
REVIEW OF LITERATURE

Most school administrators think at the outset that the law will be more of an impediment to decision-making and policy-formation than a guide. This attitude is probably a product of stereotypes about lawyers and the legal profession, as well as a lack of knowledge about the law. Much of what is known today in school law is only a few decades old and evolving rapidly, case-by-case.¹ Therefore, it is important that school leaders be knowledgeable and up-to-date about the law that affects their professional lives. While one of the primary objectives behind legal education for educators is preparation for responses to lawsuits, perhaps the most important objectives are to prevent lawsuits altogether, and to view the law as a positive, necessary tool instead of a roadblock.

Importance of Administrator Knowledge of School Law

In *Brown v. Board of Education*, the United States Supreme Court stated the following:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities ... It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied an opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.²

It is widely believed that the great expansion in education law over the last half of this century began with the unanimous decision in *Brown*. Since *Brown*, education has become increasingly legalized and resort to the courts much more common.³ The civil rights explosion occurred and


state and federal legal mandates on the schools became the norm. In the decision that triggered the education law explosion, the Brown Court ruled that racial segregation of public school children unconstitutionally deprived minority children of equal educational opportunities. This decision, and the classic, much-cited statement above laid the foundation for school law, both judicial and legislative for the next forty-five years. For thorough and efficient school administration and sound decision-making, an understanding of this foundation and all of its developments is imperative.

Julius Menacker, in Civil Rights in the School Setting, discusses the expansion of school law since the Cold War and the Civil Rights Movement. He first discusses school segregation from Brown and Swann v. Charlotte-Mecklenburg Board of Education (forced busing) to Board of Education of Oklahoma City Public Schools v. Dowell and Freeman v. Pitts (judicial control over public school desegregation should be temporary). Second, Menacker discusses equal protection cases and their influences on

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school administration. These cases cover ability grouping and tracking, the effects of standardized testing on minorities and special education, bilingual education, illegal aliens and the right to education, and school finance. Third, Menacker urges school administrators to be aware of First Amendment case law, particularly *Tinker v. Des Moines Independent Community School District*, *Bethel School District No. 403 v. Fraser*, and *Hazelwood Independent School District v. Kuhlmeier*. Finally, and perhaps most fundamentally, Menacker emphasizes *Goss v. Lopez* and Due Process law.

Important developments in federal legislation, according to Menacker, include the Elementary and Secondary Education Act of 1965; the Individuals with Disabilities Education Act (originally the Education for All Handicapped

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10 Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984).


Children Act of 1975); Title VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; and the Family Educational Rights and Privacy Act. To sum up the importance of the law on public education, as well as the roles played by school administrators in relation to law, Menacker states:

The many state and federal laws and court decisions affecting education are proof of the concern that our nation places on proper, fair, equitable, and effective education. It has fallen to the courts to serve as arbiters of what is and is not legal educational policy, particularly with regard to constitutional civil rights. However, it is important to note that the courts are in a reactive position in our system of governmental separation of powers. Courts can only decide the cases brought before them. The initiative for school policy lies with local school district boards of education, state legislatures and school boards, and Congress.

It is refreshing to note that many school leaders are, in fact, responsive to developments in school law. In 1988, the National Organization for Legal Problems in Education (now the Education Law Association) asked the educational leaders of each of the states and territories the following question: "Since the 1954 Brown decision, what one education

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23 Menacker, supra note 5, at 8.
law opinion by the Supreme Court has had, in your opinion, the most impact on public schools?" The cases receiving the most votes were *Goss, Rodriguez, Tinker, New Jersey v. T.L.O.*\(^{24}\) (search and seizure in public schools), and *Swann*. Each of these landmark cases covers a different area of education law. Knowledge of each of them and the corresponding laws and policies they produce are essential for school administration today.

A series of recent articles published in the *Educational Administration Quarterly* discusses, generally, the knowledge base in law and ethics necessary for educational leaders. The first of these, by Barry L. Bull and Martha M. McCarthy, recognizes that every aspect of educational decision-making is affected by law and ethics.\(^{25}\) According to the authors, it is impossible to study and learn education law as a set of boundaries within which school administrators may act. The law is not static or fixed. Understanding the law is not just a technical skill. "Everything we do takes place within a legal framework and understanding why we have laws and what values guide the development of laws in our democracy is as

\(^{24}\) 469 U.S. 325 (1985).

important as knowing the legal directives." In other words, the emphasis should not be on product, but on process -- or how mandates are developed, interpreted, and applied.

The purpose of education law is to make available to educators a wide range of social, cultural, and intellectual materials that can help them understand the circumstances they confront in their work. Legal knowledge helps educators ask more critical questions in approaching school situations. It enhances the process of identifying problems, developing alternative responses, anticipating consequences of those responses, and evaluating and supporting the ultimate chosen path.

Bull and McCarthy continue their argument and emphasize that school administrators retain much discretion in their educational decision-making. Knowledge of the law, in this respect, serves two purposes. First, it tells administrators that they have this discretion, and that legislatures and courts will not disrupt such decisions as long as the decisions are reasonable. Second, it tells administrators that, through the exercise of this discretion, they effectively play an important role in interpreting and applying the law.

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\text{\textsuperscript{26}} Id. at 616.
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\text{\textsuperscript{27}} Id. at 628.
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\text{\textsuperscript{28}} Id. at 619.
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\text{\textsuperscript{29}} Id. at 620.
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of the Supreme Court's deference to the reasonable judgments of school officials are Ingraham v. Wright\(^\text{30}\) (upheld reasonable corporal punishment as a proper form of discipline); New Jersey v. T.L.O.\(^\text{31}\) (upheld the search and seizure of students' property, with reasonable suspicion of rule or law violation); and Hazelwood Independent School District v. Kuhlmeier\(^\text{32}\) (upheld the principal's elimination of two potentially controversial articles in a school-sponsored newspaper).

Finally, Bull and McCarthy argue that the law is not as restrictive as educators often believe. They assert that increased knowledge of the law will lead to improved, positive attitudes toward the law, and a corresponding increase in rational, informed decisions.\(^\text{33}\)

In the second article, Kenneth A. Strike accepts most of Bull and McCarthy's argument rejecting the notion that the law is merely a set of concrete directives.\(^\text{34}\) Strike reinterprets their argument, using a three-part model of administrative knowledge: (1) knowledge of criteria and procedures for determining legitimate educational goals; (2)


\(^{33}\) Bull & McCarthy, supra note 25, at 621-622.

knowledge of the means required to achieve these goals; and (3) knowledge of moral or legal constraints on these means.\textsuperscript{35} Specifically, Strike applies this model to knowledge of constitutional principles: a knowledge of constitutional principles enables an administrator to understand the value conflicts that arise in schools. "The administrator who lacks a view of these matters cannot understand the goals of public schools or the tensions that must be balanced or resolved in achieving [these goals]."\textsuperscript{36}

In the third article, Tyll van Geel reconstructs Bull and McCarthy's argument into four "capacities" or abilities necessary for managing a complex, conflict-ridden organization: (1) the ability to know and understand the clear legal and ethical boundaries they face; (2) the ability to understand the complexities of the difficult cases; (3) the ability to offer publicly the legal and ethical justifications of a decision, and (4) the ability to make sound law. School administrators are responsible for developing and exercising these capacities.\textsuperscript{37} According to van Geel:

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{35} \textit{Id.} at 633.
\item\textsuperscript{36} \textit{Id.} at 635-636.
\item\textsuperscript{37} Tyll van Geel, \textit{Response to "Reflections on the Knowledge Base in Law and Ethics for Educational Leaders," Educational Administration Quarterly, Nov. 1995, at 640, 642-643.}
\end{itemize}
\end{footnotesize}
When educators do not teach law and educational ethics to future educational administrators, they limit the ability of those administrators to properly fulfill their roles, a circumstance that ultimately impinges on the realization of the goal of equal educational opportunity.\textsuperscript{38}

Another legal education model was compiled and presented by Scott D. Thomson, et al., in \textit{Principals for Our Changing Schools: The Knowledge and Skill Base}.\textsuperscript{39}

According to Thomson and his colleagues, the knowledge and skill base necessary for school administrators is contained in an elaborate system of 21 domains, organized under four broad themes. The fourth theme examines contextual domains, which reflect the environmental context in which the school operates. Among these domains is school law. Treating the law as a "contextual domain" may lead a reader to believe that the law is, contrary to Bull and McCarthy's theory, merely a boundary within which administrators must contain their decision-making. Thomson, however, stresses both product and process. First, principals require knowledge of a wide range of legal and regulatory rights and responsibilities in order to address a similarly large range of complex and sensitive problems that arise in schools. Second, Thomson recognizes the need to move beyond technical knowledge to an awareness of the fundamental values and

\textsuperscript{38} \textit{Id.} at 645.

\textsuperscript{39} Thomson, \textit{supra} note 3.
rationales that support the laws and regulations. This two-part "traditionalist perspective" of legal education looks not just for specific mandates, but examines the existing law for meaning, patterns, and direction. It finds rational bases from which future decisions and judgments can be made. According to Thomson, laws are derived by induction, requiring generalizations be drawn from particulars. In these important respects, Thomson's thesis parallels Bull and McCarthy's discussed above.

Generally, Thomson argues that school administrators should be knowledgeable in the following broad areas:

(1) federal constitutional principles, including the First, Fourth, and Fourteenth Amendments;

(2) federal statutory and regulatory principles, including IDEA, the Gun-Free Schools Act, and the Civil Rights Act;

(3) state constitution, statutes, and regulations, including education statutes covering administrators' duties and responsibilities; and

(4) standards of care applicable to civil/criminal liability.

Thomson's bottom line, and the ultimate message of advocates of legal education for educators is this: "[k]nowledge of legal issues and competence in managing school risk [are]

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40 Id. at 478.
41 Id. at 480.
42 Id. at 481.
43 Id. at 482-484.
essential to avoid legal liability and to provide competent leadership."\textsuperscript{44}

\textbf{School Administrators' Knowledge of the Law:}

\textbf{Review of Previous Studies}

While the number of formal studies of educators' legal knowledge is low, those that are published vary in procedure, format, legal subject matter, and results. Generally, their purposes are similar, however: to explore and identify the level of legal knowledge among different subgroups of educational administrators, and to identify the areas of law and/or the subgroups of administrators that need more legal training.

The majority of studies published indicate that school personnel do not score very highly on tests of legal knowledge. Deficiency in legal knowledge exists, regardless of the subject matter examined: special education;\textsuperscript{45}

\footnotesize{\textsuperscript{44} \textit{Id.} at 479.}

student discipline;\textsuperscript{46} Title IX;\textsuperscript{47} tort law;\textsuperscript{48} students' constitutional rights;\textsuperscript{49} and general education law.\textsuperscript{50}


The recommendation in such studies is to coordinate future legal training for teachers and administrators, including regular communication of changes in the law, inservice training, and courses at colleges or universities.

Whether there is an overall lack of legal knowledge or not, many factors may contribute to significant differences in knowledge among subgroups of school administrators. These factors include (1) administrative role (superintendent or principal); (2) grade-level of building (if a principal); (3) years of administrative experience; (4) community classification (urban, suburban, rural); and (5) prior access to legal training or knowledge, including inservice programs.

**The effect of administrative role on knowledge**

Susan J. Hillman has conducted several studies of the legal knowledge of school personnel. In an interview-based study published in 1985, Hillman compared principals, teachers, and counselors on their knowledge of disciplinary due process. The results revealed that the principals were significantly more knowledgeable than the teachers and counselors, especially on federal due process laws.

Hillman's research upheld the hypotheses that more highly...
placed school personnel exhibit greater knowledge of legal mandates.\textsuperscript{51} Other studies have examined the differences in legal knowledge among superintendents and principals and have found a significant difference between the two groups.\textsuperscript{52}

**The effect of building-grade-level on knowledge**

Among principals, there may be a difference in legal knowledge based on the grade level of the school. For example, Robertson reports that elementary school administrators scored significantly higher on a special education law exam than secondary school administrators.\textsuperscript{53} Crockett, however, found no significant difference among grade-levels of school in her test of educators’ legal knowledge of constitutional law.\textsuperscript{54}

**The effect of administrative experience on legal knowledge**

An administrator’s knowledge of the law may be affected by the number of years he or she has served in his or her

\textsuperscript{51} Hillman, supra note 46, at 19.

\textsuperscript{52} Clark, supra note 49.

\textsuperscript{53} Robertson, supra note 45.


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current role. Kimberly Theller found a significant three-way interaction among years of experience, length of time since initial certification, and community classification (urban, suburban, or rural district) in relation to knowledge of special education law.\textsuperscript{55} Hines found that years of experience in education were inversely related to knowledge of special education law.\textsuperscript{56} This may be due to rapid recent developments in special education and the emphasis they get in the preservice training of new teachers. On the other hand, Clark's test of students' legal rights,\textsuperscript{57} and Bagnato's test of special education law\textsuperscript{58} yielded no significant results based on years of administrative experience.


\textsuperscript{57} Clark, supra note 49.

The effect of community classification on legal knowledge

The studies testing the hypothesis that district type or size affects level of legal knowledge have yielded divergent results. Theller found a significant interaction among years of experience, years since initial certification, and community classification, as they relate to knowledge of special education law. But Bagnato, also testing special education law, found no relationship between district size and legal knowledge.

The effect of inservice training on knowledge

Orlando B. Gonzalez studied, in an experimental design, the effects of an inservice program on school administrators' knowledge of Fourth Amendment search and seizure law. The 13-week program included case analyses, role-playing exercises, and critical-thinking worksheets. Pre- and post-test surveys indicated that participants made significant gains in their knowledge and understanding of laws that regulate student search and seizure. As a result of this study, Gonzalez urged school districts to communicate legal information to building-level

59 The community classifications were urban, suburban, and rural. Theller, supra note 55.

60 Bagnato, supra note 58.

61 Orlando B. Gonzalez, The Effects of an Inservice Program on School Administrators' Knowledge Concerning the Fourth Amendment's Applicability to Student Search and Seizures (1992), ERIC: ED 350 656.
administrators and to develop similar inservice programs. Hines (special education law)\textsuperscript{62} and Kuck (students' rights)\textsuperscript{63} found similar results: knowledge of the law is directly related to participation in inservice training.

The effect of access to legal knowledge on level of knowledge

Access to legal information may impact the level of legal knowledge.\textsuperscript{64} For example, an administrator's level of knowledge of special education law -- discipline, evaluation, placement, and due process -- may naturally be affected by the amount of legal training the administrator has in special education.\textsuperscript{65} Daley reports similar results with respect to teachers' knowledge of sexual harassment law.\textsuperscript{66} A contrary result was reported by Claudie Crockett.\textsuperscript{67} In her study, prior access to a school law course had no significant impact on administrators' legal knowledge of students' rights.

If, in fact, there is a difference in legal knowledge among teachers, principals, and superintendents, it may be

\textsuperscript{62} Hines, supra note 56.

\textsuperscript{63} Kuck, supra note 49.

\textsuperscript{64} Dumminger, supra note 50.

\textsuperscript{65} Hines, supra note 56; and Robertson, supra note 45.

\textsuperscript{66} Daley, supra note 48.

\textsuperscript{67} Crockett, supra note 54.
interesting to determine where school personnel obtain their legal knowledge, especially in practice. In 1988, Hillman surveyed Massachusetts public school principals and superintendents to determine where school administrators obtain information on school law. The results indicated that school administrators consult newspapers, state-level professional organizations, other school administrators, and their school district attorney to obtain legal knowledge. According to the study, superintendents use a wider variety of sources than the principals do. In addition, administrators almost unanimously expressed a need for school officials to have some knowledge of education law.

Most studies determine that school administrators are lacking proper legal knowledge in at least one area. Some studies, however, indicate sufficient levels of knowledge. Using selected Supreme Court decisions, Gary L. Reclin conducted a general survey of the legal knowledge of principals and teachers in South Carolina. The results were positive. At least 80 percent answered correctly to questions on legal decisions about racial segregation,


69 Gary L. Reclin, Public School Educators’ Knowledge of Selected Supreme Court Decisions Affecting Daily Public School Operations, RESEARCH IN RURAL EDUCATION, Fall 1990, at 17.
school newspapers, rights of handicapped and non-English-speaking students, student suspensions, tracking, and exit examinations. Similarly, Perry Zirkel reported, based on earlier studies, that a majority of administrators are knowledgeable about the constitutionality of school prayer and released-time programs. He also reported that knowledge was inversely related to the recency of legal training, indicating that practical experience plays a role in legal knowledge.\(^70\) In another report by Zirkel, the results with respect to teachers' knowledge of the law are not as positive. Both experienced and prospective teachers had serious deficits with respect to children's rights, including corporal punishment, child abuse, and special education.\(^71\)

Application Here:

School Administrators’ Knowledge and Practice Regarding Student-on-Student Violence and the Law

Before this study, no researchers had examined the legal knowledge and practice of school administrators as they relate to student-on-student violence. Special


\(^71\) Zirkel, supra note 49.
education law, sexual harassment law, students' rights, general constitutional law, and tort liability have been examined in previous works. This study expands the previous examinations by combining these areas of law with the timely topic of student-on-student violence. Similar to the studies discussed above, two major factors which may affect the level of legal knowledge will be addressed: administrative role and school district type. In addition, the level of violence in the schools and the administrators' responses to it will be discussed. Finally, the sources and access to law-related information will be presented. School administrators should be knowledgeable about legal, ethical and professional responsibilities essential for administering effective, safe, and peaceful schools.  

Unfortunately, many administrators feel that the law does not complement the needs of modern educators. As mentioned above, many school leaders fear a lawsuit for every minor incident, from routine playground scuffles to allegedly unfair discipline. Tort liability for accidents and injuries is a constant concern for many school

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personnel, and is a large source of the negative opinions many people have toward the legal system. Several factors contribute to this fear. First, many people feel this is an overly-litigious society. Legal action for injuries allegedly suffered at the hand of other parties is often encouraged in the media. Second, previous lawsuit experience may contribute to the fear. Educators who have been sued, either personally or professionally in the past, may have a negative opinion of the protection the legal system offers. This may be the case, regardless of the substantive outcomes. Procedural hassles, often, are enough. Third, a lack of knowledge may contribute to lawsuit fear. The more school personnel know about how the law protects them, the more comfortable they will be performing their required and discretionary functions.

Regarding the negligence standard, recall that plaintiffs must show that the defendant had a duty of care, that he or she breached that duty, and that the breach caused some personal injuries or property damages. Most of these elements are straightforward and fairly easy to show. However, as discussed above, the causation rules and sovereign immunity work well to protect schools and school districts from liability.

School systems may have a fear of excessive litigation and massive judgments against them if they are found to have an affirmative constitutional duty to protect students,
under Section 1983, from the private violent acts of other students.\textsuperscript{74} Watkinson argues, though, that this fear has not been realized in other areas where Section 1983 suits are permitted to proceed. Section 1983 liability has not led to an increase in lawsuits or judgments.\textsuperscript{75} Furthermore, the standard for Section 1983 in school liability cases is high: deliberate indifference, even with the special relationship between school and student. Mere negligence is not enough.\textsuperscript{76}

Whether excessive litigation exists in schools or not, Chester L. Quarles rightfully warns school administrators that lawsuits are inevitable. When something goes wrong, the school may be sued. "When the attack could have been foreseen because of an increasing level of violence, the school is going to be sued."\textsuperscript{77} It must be emphasized, however, that the proliferation of lawsuits does not necessarily dictate huge losses for school districts. In fact, despite the landmark cases that have spotted the legal landscape over the past few decades, schools and school districts have fared well in the courts, particularly in day-to-day academic and disciplinary decision-making. Win

\textsuperscript{74} Watkinson, supra note 73, at 1268.

\textsuperscript{75} Steven F. Huefner, Note, Affirmative Duties in the Public Schools after DeShaney, 90 Colum. L. Rev. 1940 (1990); and Watkinson, supra note 73.

\textsuperscript{76} Watkinson, supra note 73, at 1269.

\textsuperscript{77} Chester L. Quarles, STAYING SAFE AT SCHOOL 46 (1993).
or lose, however, the school is a victim too. Schools must work to protect themselves from legal hassles.  

"Lawsuit avoidance, [therefore,] like security, is also your responsibility." Similarly, knowledge of the law and a positive attitude toward it are essential.

Regarding school administrator violence prevention practices, Bernard James says a fear that the modern legal system is not protective of school and school district decision-making is unfounded. Even in a rapidly changing world, James asserts that several fundamental principles have remained constant. A body of law is readily available for both proactive and reactive violence prevention policies. For proactive policies, schools retain significant power over their curricula, their discipline policies, and the creation of an educational environment conducive to learning. Typically, courts will interfere with curricular and discipline decisions only when schools clearly abuse their discretion. Otherwise, courts will defer to the educational decisions of those best trained to make them. Similarly, for reactive policies, schools retain power over discipline and preservation of an educational

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78 Id.
79 Id. at 48.
80 Watkinson, supra note 73.
environment conducive to learning. In addition, schools are provided, by statute and Supreme Court opinions, appropriate and detailed due process procedures. Under the law, schools are permitted to base their discipline policies, especially reactive ones, on "reasonable suspicion" rather than cause.\textsuperscript{82} Furthermore, schools have the power to punish conduct that juvenile or criminal systems may not.

James, however, is reluctant to advise policy-makers to base proactive violence prevention -- for example, dress codes -- on suspicion only. Recall \textit{Olesen v. Board of Education},\textsuperscript{83} where the school had to show evidence of a gang problem to uphold its dress and conduct code. School boards that seek to revise dress-code policies on gang clothing need to make certain they can justify their steps so that students' First Amendment rights to freedom of expression and the interest in a safe school environment can be properly balanced.\textsuperscript{84} Search and seizure law provides another example. Administrators must know enough about T.L.O. and its impact in order to balance the competing interests and make decisions that are reasonable under the law.\textsuperscript{85} "Any educator wishing to get on the learning curve

\begin{footnotesize}
\begin{enumerate}
\item Id. at 33.
\item 676 F. Supp. 820 (N.D. Ill. 1987).
\item James, \textit{supra} note 1, at 195.
\end{enumerate}
\end{footnotesize}
of school safety must understand that the reasonableness framework provides an incentive rather than a deterrent to implementing a plan to preserve a campus."86

The critical point is this: it is important that schools know the legal limits in their jurisdictions. The amount of violence in schools varies by school and district. Students vary, too. Schools must, therefore, know the limits of their rights and the extent of their responsibilities. With this, they must know the rights and responsibilities of their students -- both the victims and the perpetrators.87

86 Id. at 203.

CHAPTER 5

METHODOLOGY

Population and Sample

The Population Frame

The population for this study consisted of school district superintendents and school principals from Ohio's city, local, and exempted village public school districts. The sampling frame was obtained from the 1996-1997 Ohio Educational Directory. The Directory, compiled and reported by the Ohio Department of Education, contains names and addresses of all current school administrators in Ohio. The directory was accessed through its on-line World Wide Web site.\(^1\) To generate the frame, the directory was accessed twice. First, data on Ohio’s city, local, and exempted village school districts were obtained to generate the sampling frame for public school superintendents. Second, data on Ohio’s individual public school buildings within these districts were obtained to generate the sampling frame.


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for principals. In the Ohio Educational Directory, each school district has a unique identification number that can be matched with that district’s superintendent. Similarly, each school has a unique identification number that can be matched with its principal. Each entry in the Directory also contains the name of the school district (or school), the name of the superintendent (or principal), address, phone number, and the county of location. The entries for the individual school buildings also contain data on the grade level and enrollment of the school.

Sample Selection

To select the sample, the identification numbers, and the names and addresses of the school districts, the schools, and their administrators were downloaded into a computer file. A table of random numbers was used to generate the sample for the study. Superintendents and principals were selected separately; that is, sample districts represented by superintendents were not represented by principals, and vice versa. This procedure prevented any overlapping or dependent data between

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2 There are some schools in Ohio that share principals. For example, two rural elementary schools within the same school district may have the same principal. Because the population for this study consisted of administrators and not schools, the frame was modified so that each administrator had only one, equal chance of selection.
superintendents and building-level administrators from the same district, particularly with respect to frequency of student violence in schools and violence prevention activities. Because each principal was asked to provide data for his or her school only, all schools from a school district were eligible for selection. Therefore, some school districts were represented in the sample by more than one school.

A representative sample of 500 principals and superintendents was selected, at random, to participate. The sample was stratified by school district type (large city, small city, suburban, and rural), and administrative role (superintendent, high school principal, middle school or junior high principal, and elementary school principal). Administrative role and school district type were developed and defined in Chapter 1.

For sample selection, the researcher based the administrative role of school principals on the grade level of the school buildings, as provided by the Department of Education in the Ohio Educational Directory. While the traditional and typical grade designations do not vary much

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3 In the questionnaire, superintendents were asked to respond to the violence frequency items and the violence prevention items with respect to their entire district, while principals were asked to respond with respect to only one school. If one particular district had been represented by both a superintendent and some of its principals, then the frequency and prevention data could have been overstated.
in Ohio (K-5 for elementary, 6-8 for middle/junior high, and 9-12 for high school), there are some exceptions. For example, several Ohio high schools -- particularly small rural schools -- enroll grades 7-12. Because most of these schools are called "high schools" in the Ohio Educational Directory, and because they enroll students through grade 12, they were placed, for sampling purposes, in the "high school principal" level of the administrative role variable.⁴

As explained in Chapter 1, each administrator was asked to place his or her school (or district) into the category that best described his or her school district: large city, small city, suburban, or rural. It is important, due to the subject matter of this study, to have the participants label themselves in this regard. Legal knowledge, and especially perceived violence experience and prevention practice, may be influenced by how a school administrator perceives his or her own district. However, for school district type, and for the selection of the random sample, the researcher stratified the sample of Ohio’s district superintendents and school principals based on a current classification system employed by the Ohio Department of Education that divides the school districts into seven categories of school

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⁴ Similarly, K-8 schools called "elementary schools" were placed in the "elementary school principal" category.
district types. These categories were consolidated into the four levels used here for purposes of sample selection and adequate representation of the population. The researcher presumed that the respondents, through self-labeling, would categorize themselves reasonably closely to the Department of Education's classification and the researcher's stratification and selection.

The distribution of the initial sample is presented in Table 5.1. This distribution is based on the researcher's attempt to get a reasonably representative snapshot of Ohio's public school administrators for external generalizability, and a sufficient number of administrators in each cell for internal statistical power.

Given the low number of large city superintendents, to obtain large cell sizes and a purely mathematical representative snapshot of administrators, the entire

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5 The seven categories, listed and described in Chapter One, are (1) the "Big Eight"; (2) other large districts; (3) independent districts; (4) suburban districts; (5) rural districts; (6) rural/high ADC districts; and (7) wealthy districts. See <http://www.ode.ohio.gov/www/ims/extract_oeeds_data.html>.

6 The number of large city superintendents in Ohio is low. Under the Ohio Department of Education classification scheme accessed at its World Wide Web site, there are eighteen large city school districts. The largest are called "The Big Eight" and the remaining ten are "Other Large City" districts. Because superintendents and principals were not selected from the same school districts, only eight of the eighteen large city district superintendents were contacted. Seven responded with usable data. The other ten large city districts were represented in this sample by principals.
population would have been required. The numbers in Table 5.1 represent, however, a reasonable compromise of both internal and external concerns, as well as financial concerns. Data from the twelve pilot test participants were included, as well, making the total sample 512.\(^7\) The distribution in Table 5.1 reflects this inclusion.

<table>
<thead>
<tr>
<th>DISTRICT TYPE</th>
<th>Sup’t</th>
<th>High School</th>
<th>Middle School</th>
<th>Elem. School</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large</td>
<td>8</td>
<td>26</td>
<td>10</td>
<td>42</td>
<td>106</td>
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<tr>
<td>Small</td>
<td>20</td>
<td>25</td>
<td>23</td>
<td>32</td>
<td>100</td>
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<tr>
<td>Suburban</td>
<td>34</td>
<td>31</td>
<td>35</td>
<td>45</td>
<td>145</td>
</tr>
<tr>
<td>Rural</td>
<td>38</td>
<td>42</td>
<td>36</td>
<td>45</td>
<td>161</td>
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<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>124</td>
<td>124</td>
<td>164</td>
<td>512</td>
</tr>
</tbody>
</table>

* Includes twelve members of the pilot test.

Table 5.1. Sample Distribution*

\(^7\) Pilot test procedures are described below, under "Validity and Reliability."
Instrumentation

The instrument was designed especially for this study, and was written in three parts. The first part examined school administrators’ knowledge of the law and legal liability regarding student-on-student violence in schools. Because the participants were Ohio superintendents and principals, the knowledge section tested only Ohio law: the state and federal law that is binding in Ohio. The statements in this section covered the legal liability of schools, school districts, and/or school personnel regarding the legality of anti-violence programs, policies, and discipline. The statements also covered liability for negligent acts or omissions that result in injury to persons or property. Each item in this section was generated from and was based on judicial, statutory, or constitutional law, and presented a statement that was either true, false, or currently unclear under Ohio law or federal law binding in Ohio. Each participant responded to each statement by circling one of the three options. The knowledge score of each participant was the raw score number of statements that the participant answered correctly, out of forty.

The second part of the instrument was divided into three subsections. First, school administrators rated the perceived frequency of various types of student-on-student violence that have occurred in their schools over the past
two years. The questionnaire listed fifteen types of violence; the list was generated from the literature on school violence (reviewed in Chapter 2), primarily Peterson, and MacDonald and da Costa. The frequency scale was a six-point Likert-type scale ranging from "very frequently" to "never." Second, school administrators were asked to indicate which anti-violence policies or programs, if any, they or their districts have implemented. The list of anti-violence policies came from the violence prevention literature (reviewed in Chapter 2), and was presented in a "check all that apply" format. Finally, the second part of the questionnaire asked three open-ended questions. First, the participants were asked if their school or school district had addressed or confronted any legal issues in the implementation of any of the policies or programs. Second, they were asked if they had implemented any of the violence prevention policies in order to satisfy a legal requirement.

8 Superintendents were asked to respond with respect to their school district as a whole. Principals responded with respect to their school only. The two-year time period was based on the time period used by Peterson, et al., in their 1996 study. See George J. Peterson, et al., The Enemy Within: A National Study on School Violence and Prevention, ERIC: ED 394 907 (Paper presented at the Annual Meeting of the Association of Teacher Educators, St. Louis, MO, Feb. 24-28, 1996), at 9.

9 Id.

(e.g., statute or judicial ruling). Third, they were asked if the implementation of any of the violence prevention policies had entitled them to state or federal funding assistance.

The third part of the instrument requested demographic information for the independent variables, described above and defined in Chapter 1. On the final page, the administrators were asked, in a "check all that apply" format, to indicate where they obtain their school law information. Among the eleven sources listed are formal means of legal education such as a law degree and school law courses at colleges and universities, and informal means such as information from other colleagues. A copy of the questionnaire appears in Appendix C.

Validity and Reliability

Validity

"Validity reflects the degree to which a measure actually measures what it purports to."\textsuperscript{11} For this study, administrators' knowledge of the law as it relates to student-on-student violence was validated by content

validity. Content validity verifies that the items in an instrument make up a representative sample of the applicable universe of content.\textsuperscript{12} The universe measured in this study covers the state and federal law of student-on-student violence binding in Ohio. To define the universe of content for the knowledge measure, the researcher consulted several sources, including case law and statutory law, primarily that law binding in Ohio.\textsuperscript{13} In addition, the researcher consulted two prominent and comprehensive school law texts.\textsuperscript{14} The review of literature for the knowledge variable appears in Chapter 3.

To validate the knowledge measure, a panel of experts assessed the instrument during and after development. The panel consisted, in part, of members of the researcher's dissertation committee. The committee members have knowledge of measurement, content, and/or the target population; they represent a mix of lawyers, school administrators, and quantitative researchers. In addition, the panel of experts included law professors specializing in


\textsuperscript{13} Law binding in other jurisdictions is important to a discussion of student-on-student violence. Law binding outside of Ohio is discussed in Chapter 3, but is not tested in the knowledge measure.

tort and constitutional law, and practicing school law attorneys. The panel members were:

Dr. Philip T.K. Daniel, associate professor of education and adjunct professor of law, The Ohio State University.

Mr. Rick Dickinson, general counsel for the Ohio School Boards Association, and President of the Education Law Association.

Dr. E. Gordon Gee, President of The Ohio State University, and professor of education and law, The Ohio State University.

Mr. David A. Goldberger, professor of law, The Ohio State University.

Ms. Deborah Merritt, professor of law, The Ohio State University.

The panel provided valuable feedback and support in the development, testing, and administration of the questionnaire. As part of the content validation process, the researcher asked the panel members to read a draft of the questionnaire, comment on its suitability and readability for the target audience, and complete a "classification table." The classification table, similar to a table suggested by Anastasi, listed each item in the draft of the knowledge measure. Each panelist was asked to classify each of the items into one or more areas of the law: constitutional law (First, Fourth, Fifth, and/or Fourteenth Amendment) and tort law (negligence, governmental immunity, and/or constitutional torts). For each item, they

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15 Anastasi, supra note 11, at 137.
were also given to option to suggest deletion, due to overrepresentation of a certain area of law, poor or tricky wording, or unsuitability for the population. The responses from the panel of experts were uniformly favorable. No panelist suggested deleting or adding any items, indicating that the representation of items within the applicable universe was adequate and valid. Some panelists, however, suggested rewriting a few items before administering the test. This advice was taken. The cover letter addressed to the panel of experts, instruction sheet, and classification table, are presented in Appendix A.

To further validate the knowledge measure, the researcher conducted a pilot test with a small group of school administrators representative of my ultimate population. The pilot test participants consisted of purposefully selected principals and superintendents from central Ohio school districts. They each completed the entire questionnaire, and commented on its clarity, wording, ease of completion, thoroughness, and appropriateness. Very importantly, they commented on the length of the questionnaire and time needed for completion. Most pilot test participants needed between thirty and forty minutes to complete the questionnaire.¹⁶ However, when asked to weigh

¹⁶ The questionnaire administered to participants contained a fourth section not included in this study. This extra section, on administrators' attitudes toward the law, contributed to the 30-minute time of completion.
the time of completion against the relevance and timeliness of the subject matter, the pilot test participants stated that relevance and timeliness were important enough to keep the questionnaire at its current length. Only minor, typographical changes were made to the instrument before administration to the sample. The pilot test cover letter and instructions appear in Appendix B.

Reliability

"Reliability reflects the degree to which the results of measurement are free from error."17 Reliability for the knowledge variable was assessed by an internal consistency measure. A coefficient alpha was calculated to measure internal consistency. Despite the low reliability measure (0.3203), very few changes were made to the questionnaire before administration to the sample and analysis of results. The results of the content validation procedures discussed above indicated that the set of forty items developed for the questionnaire adequately represented the content necessary to judge Ohio school administrators’ knowledge of student violence law. Some of these items, particularly the ones most often answered incorrectly, may not correlate well with others in the test and may contribute to lower

17 Stone, supra note 11, at 43.
reliability. However, deleting them would place the content in jeopardy. For example, the participants overwhelmingly answered the items covering federal constitutional tort law incorrectly. Removing these items from the internal consistency measure increased the reliability coefficient to 0.44, but seriously damaged the representation of content. Validity of a content-oriented measure "consists essentially in judgment. Alone or with others, one judges the representativeness of the items."\(^\text{18}\) The researcher deferred, most often, to this judgment -- from both the attorneys on the panel of experts and the practicing school administrators who consented to pilot the instrument. Therefore, only minor changes were made to instrument.

**Data Collection\(^\text{19}\)**

Data for this study was collected by mail questionnaire. Questionnaire packets were sent to the selected participants on September 14, 1997. The questionnaire was designed to be completed in thirty

\(^{18}\) Kerlinger, supra note 12, at 458 (emphasis supplied). See also Anastasi, supra note 11, at 135-136; and Stone, supra note 11, at 52.

\(^{19}\) The researcher filed for and received an exemption from the Human Subjects Institutional Review Board of The Ohio State University. The questionnaire is administered with the procedures approved by the Human Subjects Review Board.
minutes, with no need to research any answers. Three weeks after the first mailing, follow-up postcards were sent to all participants, thanking them for their participation and reminding the non-respondents to complete the questionnaire as soon as possible. One week later, second questionnaire packets were sent to a sub-sample of non-respondents.\textsuperscript{20} Data collection ended five weeks after the initial mailing. Copies of the cover letters (both original mailing and follow-up), the postcards, and the endorsement letter from the Buckeye Association of School Administrators appear in Appendix C.

To maintain anonymity and confidentiality -- especially for the potentially sensitive subject matter of student violence and the law -- the researcher employed a double-blind administration of the questionnaire. That is, each participant returned, separately, a questionnaire and an enclosed postage-paid postcard.\textsuperscript{21} The postcard was coded with an identification number for follow-up purposes with non-respondents. This identification number did not appear on the questionnaire. Participants were assured that no individual school administrator, school, or school district would be mentioned in the results.

\textsuperscript{20} Financial constraints prevented the researcher from sending replacement copies of the questionnaire to all of the non-respondents. Instead, about 35\% of the non-respondents received replacement questionnaires.

\textsuperscript{21} Copies of the return, postage-paid postcards appear in Appendix C.
A summary of the results were provided to the participating administrators who requested one on the return postcard.

Postcards and questionnaires were printed by COP-EZ at The Ohio State University.

Research Design and Data Analysis

Legal Research Methodology

This study combined both legal and quantitative research methods to examine the knowledge and practice of Ohio public school administrators regarding student-on-student violence and the law. The primary objective of the legal research conducted for this study was to collect, review, and analyze the state and federal law relevant to a discussion of school violence in public schools. The review, presented in Chapter 3, covers applicable case law, statutory law, and administrative regulations from all jurisdictions. Ultimately, the legal research was used

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22 Throughout this book, the footnote format, references to works cited, and citations to legal authority conform to the Uniform System of Citation. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (16th ed. 1996). A citation, or cite, is a reference to legal authorities, precedents, and any other written materials. See BLACK'S LAW DICTIONARY 243 (6th ed. 1990); and WILLIAM P. STATSKEY, LEGAL RESEARCH AND WRITING: SOME STARTING POINTS 61 (4th ed. 1993).
to construct a forty-item instrument testing Ohio public school administrators' knowledge of federal and state law binding in Ohio as it relates to student violence.

The cases, statutes, and regulations reviewed here were collected through manual legal research (in law libraries), on-line legal research, and consultation of two comprehensive education law texts. The legal methodology used in this study is the standard form of case analysis.

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23 LEXIS/NEXIS and WESTLAW.

24 See Sperry and Daniel, supra note 14; and Goldstein, Gee, and Daniel, supra note 14.

25 See JOHN C. DERNBACH, RICHARD V. SINGLETON II, CATHLEEN S. WHARTON, AND JOAN M. RUHTENBERG, A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD (2d ed. 1994); and HELENE S. SHAPO, MARILYN R. WALTER, AND ELIZABETH FAJANS, WRITING AND ANALYSIS IN THE LAW (2d ed. 1991). Another legal research methodology -- critical legal theory -- approaches the law in a more deconstructionist way, challenging the legal status quo rather than reporting it, as the standard method does. One of the goals of this study was to construct and implement an instrument testing school administrators' knowledge of current law relating to student violence. Consequently, the standard case method of legal research was the more appropriate approach to use in order to answer the research questions posed in Chapter 1. Other research questions, not analyzed here, may be better suited to a critical legal approach. For example, a study of the impact of school administrators' disciplinary and educational decisions, and courts' and legislatures' legal decisions on both students and parents may be better realized under a critical legal theory, as many disciplinary, educational, and legal decisions in school violence situations now favor the schools. See, e.g., Pedro A. Noguera, Preventing and Producing Violence: A Critical Analysis of Responses to School Violence, Harvard Educational Review, Summer 1995, at 189.
Central to standard legal research is the case brief. A case brief is a summary, or a condensed statement of a judicial decision. Case briefs help readers and researchers to understand the significance of a decision, and to place that decision in its proper context within a larger framework. This framework may be a legal one. For example, the expanded discussion of DeShaney v. Winnebago County Department of Social Services and its progeny in Chapter 3 reflect the importance of the DeShaney decision on this area of law, and the attention school-based Section 1983 claims currently receive in federal courts. Ultimately, the framework may also be quantitative. In this study, the weight of First and Fourth Amendment case law in the knowledge instrument administered is indicative of the significant impact these two provisions have on the law of student violence.

Case briefs may take many forms. Generally, however, there are five major sections: (1) facts, (2) issue(s); (3) rule(s) or holdings; (4) analyses; and (5) conclusions. After a student or researcher reads a case, he or she summarizes it into the above sections. The facts should only include those legally relevant to the issues, rules,

analyses, and conclusions. Facts include both substantive facts and procedural history of the case.\textsuperscript{30} The issues are the legal questions that must be resolved before a case can be decided. The holdings, or rules, are the legal answers to these questions.\textsuperscript{31} The rule is the general legal principle relevant to the particular case. It may be a synthesis of prior holdings.\textsuperscript{32} The analysis consists of the steps that the court took to reach its holding. Analyses include the applicability or inapplicability of pre-existing rules, the application of those rules to the given facts, and the use or synthesis of other law (statutes, cases, and regulations) to arrive at the holding.\textsuperscript{33} Finally, the conclusion section of a case brief consists of the actual disposition of the case. For example, a case on appeal may be affirmed, reversed, vacated, or remanded for further proceedings. A case decision at trial may declare a civil defendant liable or not liable, or find a criminal defendant guilty or not guilty. The conclusion may also include the implications of the particular legal decision on future legal, social, political, economic, or educational decisions.\textsuperscript{34} For this

\textsuperscript{30} Id. at 26.

\textsuperscript{31} Dernbach, et al., supra note 25, at 23.

\textsuperscript{32} Id. at 24.

\textsuperscript{33} Id. at 27–28.

\textsuperscript{34} Shapo, supra note 25, at 27.
study, each case and statute consulted was read and briefed, and placed into an appropriate place within the outline for the law review. The clearest results of the standard case law method appear in the review of law in Chapter 3.

Quantitative Research Methodology

The quantitative portion of this study was designed in two major parts. First, a 4 X 4 factorial analysis of variance was conducted on the knowledge variable, defined in Chapter 1. The independent variables, also defined in Chapter 1, were (1) administrative role (i.e., superintendent, high school principal, middle school or junior high school principal, and elementary school principal), and (2) school district type (i.e., large city, small city, suburban, and rural). The factorial design allowed the researcher to examine differences among the levels of the independent variables for the knowledge measure, and to investigate the possible interaction and main effects.

The second part presented and described data on the Ohio school administrators’ perceptions of the recent history, frequency, and types of violence experienced in their schools. In addition, this part of the study presented and described data on the violence prevention
policies and practices implemented in schools. Next, this part of the study reported the extent to which Ohio school administrators face or address legal concerns in the development, implementation or enforcement of these policies. Finally, this part of the study reported the administrators' exposure to and sources of law-related information.
CHAPTER 6
RESULTS

Participating Ohio School Administrators

From the population of Ohio’s public school superintendents and school building principals, 500 participants were selected in a random sample, stratified on administrative role and school district type. Both stratifying factors are four-level variables, as developed and described in Chapters 1 and 5. Their levels are as follows:

Administrative Role

(1) Superintendent
(2) High school principal
(3) Middle school or junior high school principal
(4) Elementary school principal

School District Type

(1) Large city
(2) Small city
(3) Suburban
(4) Rural
Data from the twelve pilot test participants have been included, bringing the sample to 512.

Two hundred and thirty-five administrators (46%) responded to the questionnaire during the five weeks of data collection. Of the 235 responses, 224 (44%) were complete and usable, and were included in the results here. One hundred and seventy-five responded within three weeks of the initial mailing. The final sixty responded over the next two weeks after "thank-you/reminder" post cards were mailed and after replacement surveys were mailed to 122 of the non-respondents.

The distribution of the 224 participating Ohio school administrators is representative of the initial sample. This distribution is presented in Table 6.1. Nearly all of the sixteen groups are represented by at least one-third of their sampled cell size. The highest responding groups were small city administrators (61% of the number sampled for that category) and high school principals (53.2%).
Results

Knowledge of the Law and Legal Liability
Regarding Student Violence in Schools

Descriptive Statistics

Each of the participating administrators completed a test covering the Ohio and federal law relating to student-on-student violence in public schools. The major areas of law tested were constitutional law and tort law. The legal knowledge score of each participant was the raw score number of items answered correctly, out of forty. The individual scores ranged from 18 to 32, and the grand mean was 25.23. The mean scores of each group of participants appear in Table 6.2.

Among administrative roles, high school principals scored the highest (X = 25.76) and elementary school principals scored the lowest (X = 23.98). Among school district types, rural school administrators scored the highest (X = 25.73) and large city administrators scored the lowest (X = 24.40). The highest scoring individual group was rural high school principals (X = 27.00) and the lowest scoring was large city elementary school principals (X = 23.58).
### Administrative Role

<table>
<thead>
<tr>
<th>DISTRICT TYPE</th>
<th>Sup’t</th>
<th>High School</th>
<th>Middle School</th>
<th>Elem. School</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large</td>
<td>7</td>
<td>14</td>
<td>14</td>
<td>12</td>
<td>47</td>
</tr>
<tr>
<td>Small</td>
<td>13</td>
<td>16</td>
<td>17</td>
<td>15</td>
<td>61</td>
</tr>
<tr>
<td>Suburban</td>
<td>11</td>
<td>16</td>
<td>15</td>
<td>11</td>
<td>53</td>
</tr>
<tr>
<td>Rural</td>
<td>15</td>
<td>20</td>
<td>13</td>
<td>15</td>
<td>63</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>46</td>
<td>66</td>
<td>59</td>
<td>53</td>
<td>224</td>
</tr>
</tbody>
</table>

**Table 6.1. Participating Ohio School Administrators.**

### Administrative Role

<table>
<thead>
<tr>
<th>DISTRICT TYPE</th>
<th>Sup’t</th>
<th>High School</th>
<th>Middle School</th>
<th>Elem. School</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large</td>
<td>24.57 (s=3.102)</td>
<td>24.50 (s=3.693)</td>
<td>24.93 (s=3.246)</td>
<td>23.58 (s=3.316)</td>
<td>24.40</td>
</tr>
<tr>
<td>Small</td>
<td>25.54 (s=2.296)</td>
<td>25.75 (s=2.887)</td>
<td>25.59 (s=2.717)</td>
<td>23.93 (s=2.764)</td>
<td>25.21</td>
</tr>
<tr>
<td>Suburban</td>
<td>25.69 (s=3.015)</td>
<td>25.31 (s=2.774)</td>
<td>26.33 (s=2.469)</td>
<td>24.54 (s=2.767)</td>
<td>25.40</td>
</tr>
<tr>
<td>Rural</td>
<td>25.73 (s=2.134)</td>
<td>27.00 (s=2.695)</td>
<td>25.85 (s=2.478)</td>
<td>23.93 (s=2.685)</td>
<td>25.73</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>25.35</td>
<td>25.76</td>
<td>25.68</td>
<td>23.98</td>
<td>25.23</td>
</tr>
</tbody>
</table>

* Raw score number of items answered correctly, out of 40.

**Table 6.2. Mean Knowledge of Ohio School Administrators, by School District Type and Administrative Role.*
Analysis of Variance

To examine the legal knowledge of Ohio's public school administrators as it relates to student violence, a 4 X 4 factorial analysis of variance was conducted.\(^1\) The results are presented in Table 6.3. The interaction effect of administrative role and school district type on knowledge of student violence law was not significant at an alpha-level of 0.05 (\(F = 0.497, p > 0.05\)). Similarly, there was no main effect for school district type (\(F = 2.048, p > 0.05\)). In other words, there was no significant difference in mean knowledge of school violence law among large city, small city, suburban, and rural school district administrators.

However, there was a significant main effect of administrative role on the level of knowledge of student violence law (\(F = 4.749, p < 0.05\)). To determine where among the four administrative roles the significant differences lie, a post hoc test was conducted. Under Tukey's Test for comparisons between pairs of means, elementary school principals scored significantly lower than high school principals and middle school principals. The results of the post hoc tests are presented in Table 6.4. The graphs of group means appear in Figure 6.1. The possible justifications for this main effect and significant

\(^1\) The researcher set the alpha-level at 0.05. That is, the probability of Type I error (finding a significant effect when, in fact, there is no significance) is 0.05.
difference among administrative roles are discussed in Chapter 7.

Analysis of Variance

<table>
<thead>
<tr>
<th>Source</th>
<th>SS</th>
<th>df</th>
<th>MS</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Role</td>
<td>112.904</td>
<td>3</td>
<td>37.635</td>
<td>4.749*</td>
</tr>
<tr>
<td>School District Type</td>
<td>48.682</td>
<td>3</td>
<td>16.227</td>
<td>2.048</td>
</tr>
<tr>
<td>Admin. Role X District Type</td>
<td>15.429</td>
<td>9</td>
<td>3.937</td>
<td>0.497</td>
</tr>
<tr>
<td>Residual</td>
<td>1648.307</td>
<td>208</td>
<td>7.925</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1845.929</td>
<td>223</td>
<td>8.278</td>
<td></td>
</tr>
</tbody>
</table>

* p < 0.05; omega-squared = 0.05

Table 6.3. Ohio School Administrators' Knowledge of the Law and Legal Liability Regarding Student-on-Student Violence in Schools: An Analysis of Variance by Administrative Role and School District Type.
<table>
<thead>
<tr>
<th>ADMINISTRATIVE ROLE</th>
<th>MEAN DIFFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Sup't</td>
<td>H.S.</td>
</tr>
<tr>
<td></td>
<td>M.S.</td>
</tr>
<tr>
<td></td>
<td>E.S.</td>
</tr>
<tr>
<td>H.S.</td>
<td>Sup't</td>
</tr>
<tr>
<td></td>
<td>M.S.</td>
</tr>
<tr>
<td></td>
<td>E.S.</td>
</tr>
<tr>
<td>M.S.</td>
<td>Sup't</td>
</tr>
<tr>
<td></td>
<td>H.S.</td>
</tr>
<tr>
<td></td>
<td>E.S.</td>
</tr>
<tr>
<td>E.S.</td>
<td>Sup't</td>
</tr>
<tr>
<td></td>
<td>H.S.</td>
</tr>
<tr>
<td></td>
<td>M.S.</td>
</tr>
</tbody>
</table>

* The mean difference is significant at alpha = 0.05

Table 6.4. Post Hoc Tests for Significant Differences in Mean Legal Knowledge among Administrative Roles.
Ohio Administrators' Knowledge of the Law: By District Type

Ohio Administrators' Knowledge of the Law: By Administrative Role

Figure 6.1. Ohio School Administrators' Mean Knowledge of the Law Regarding Student-on-Student Violence in Schools.
Student-on-Student Violence in Ohio's Schools

In Part II-A of the questionnaire, administrators were asked to rate the frequency of each of fifteen types of violence. The types of violence included in the questionnaire were a consolidation of the types discussed by Dear, James, MacDonald and da Costa, Peterson, Sauter, Sperry and Daniel, and Van Acker. Based on their schools' experience over the past two years, the administrators rated the frequency of each type of violence

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on a six-point Likert-type scale from very frequently (1) to never (6). Therefore, a lower "violence score" indicated a higher perceived frequency.\(^9\) The results are presented in Tables 6.5 through 6.7.

The second column in Tables 6.5 and 6.6 is identical, and lists the violence scores for the entire sample. Across all participants, the most frequent forms of violence perceived were verbal threats (2.65), bullying (2.84), theft (3.07), and peer sexual harassment (3.48). The least frequent were injuries with weapons (5.78), threats with weapons (5.13), weapon possession (4.92), and hazing (4.73). According to Table 6.5, the most frequent and least frequent forms of violence are nearly the same across all administrative roles. Superintendents and high school principals agreed on the most frequent forms of violence, although in a slightly different order. For these two groups, drug and alcohol use placed among the most frequent (3.09 for superintendents and 3.14 for high school principals), while peer sexual harassment placed just behind. Similarly, middle school and elementary school principals agreed on the most frequent forms of violence, again in a slightly different order. According to the respondents, elementary schools experienced bullying more

\(^9\) Each superintendent was asked to report violence with respect to his or her entire school district. Each principal was asked to report violence with respect to his or her school only.
often than any other form of violence (2.94), while middle schools experienced verbal threats most often (2.36). Relative to most other types of violence, both elementary and middle school principals also reported high occurrences of physical fights and peer sexual harassment among their students. Weapon-related violence -- possession, threats, and injuries -- was low across all administrative roles, as was hazing. Among elementary school principals, drug and alcohol-related activity -- possession, use, and trafficking -- also rated low in frequency. In fact, except for bullying, elementary school principals rated all forms of violence the lowest among the four administrative roles. On the other end, high school principals and middle school principals reported the highest rates of violence: high schools were the highest in seven categories; middle schools were highest in six. Superintendents rated weapon possession (4.33) and drug and alcohol use (3.09) as more frequent than each of the building principals’ groups did.

According to the figures in Table 6.6, administrators from each of the four school district types reported frequency of violence with similar consistency. Verbal threats, bullying, theft, physical fights, and peer sexual harassment were rated as the most frequent, while weapon-related violence and hazing were rated as the most rare. Across the district types, perceived violence rates appear to increase as districts become more urban. In this study,
large city administrators rated eleven of the fifteen types of violence higher (more frequent) than the small city, suburban, and rural administrators did. However, the large city administrators recorded the lowest rates of peer sexual harassment and drug and alcohol use. For each of the remaining thirteen forms of violence, either suburbs or rural districts rated the lowest.

Table 6.7 shows the highest and lowest ratings for each type of violence. Generally, large city superintendents reported the highest frequencies of violence, while rural suburban, and small city elementary school principals reported the lowest frequencies.
<table>
<thead>
<tr>
<th>TYPE OF VIOLENCE</th>
<th>TOTAL (n=223)</th>
<th>SUP'T (n=46)</th>
<th>H.S. (n=66)</th>
<th>M.S. (n=59)</th>
<th>E.S. (n=52)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical fights</td>
<td>3.53</td>
<td>3.59</td>
<td>3.67</td>
<td>3.24</td>
<td>3.63</td>
</tr>
<tr>
<td>Verbal threats</td>
<td>2.65</td>
<td>2.76</td>
<td>2.53</td>
<td>2.36</td>
<td>3.06</td>
</tr>
<tr>
<td>Weapon possession</td>
<td>4.92</td>
<td>4.33</td>
<td>4.92</td>
<td>4.71</td>
<td>5.10</td>
</tr>
<tr>
<td>Threats with weapons</td>
<td>5.13</td>
<td>4.98</td>
<td>5.09</td>
<td>4.98</td>
<td>5.33</td>
</tr>
<tr>
<td>Injuries with weapons</td>
<td>5.78</td>
<td>5.72</td>
<td>5.83</td>
<td>5.73</td>
<td>5.83</td>
</tr>
<tr>
<td>Theft</td>
<td>3.07</td>
<td>3.11</td>
<td>2.81</td>
<td>2.98</td>
<td>3.46</td>
</tr>
<tr>
<td>Vandalism</td>
<td>3.54</td>
<td>3.39</td>
<td>3.35</td>
<td>3.44</td>
<td>4.04</td>
</tr>
<tr>
<td>Bullying</td>
<td>2.84</td>
<td>3.00</td>
<td>2.83</td>
<td>3.32</td>
<td>2.94</td>
</tr>
<tr>
<td>Peer sexual harassment</td>
<td>3.48</td>
<td>3.39</td>
<td>3.32</td>
<td>3.34</td>
<td>3.73</td>
</tr>
<tr>
<td>Ethnic/racial conflict</td>
<td>4.08</td>
<td>4.07</td>
<td>3.97</td>
<td>3.90</td>
<td>4.44</td>
</tr>
<tr>
<td>Gang presence</td>
<td>4.33</td>
<td>4.35</td>
<td>4.11</td>
<td>4.12</td>
<td>4.85</td>
</tr>
<tr>
<td>Hazing</td>
<td>4.73</td>
<td>4.43</td>
<td>4.40</td>
<td>4.63</td>
<td>5.21</td>
</tr>
<tr>
<td>Drug/alcohol possession</td>
<td>4.04</td>
<td>3.48</td>
<td>3.41</td>
<td>4.05</td>
<td>5.27</td>
</tr>
<tr>
<td>Drug/alcohol use</td>
<td>3.80</td>
<td>3.09</td>
<td>3.14</td>
<td>3.78</td>
<td>5.29</td>
</tr>
<tr>
<td>Drug trafficking</td>
<td>4.48</td>
<td>4.11</td>
<td>3.88</td>
<td>4.44</td>
<td>5.62</td>
</tr>
</tbody>
</table>

Participants were asked to report the frequency of various types of violence in their school(s) over the past two years. Principals responded with respect to their school; superintendents responded with respect to their school district. A Likert-type scale was used: (1) very frequently, (2) frequently, (3) occasionally, (4) rarely, (5) very rarely, and (6) never. The lower the "violence score" is, the more frequent the type of violence is.

Table 6.5. Student-on-Student Violence in Ohio’s Schools: By Administrative Role.
<table>
<thead>
<tr>
<th>TYPE OF VIOLENCE</th>
<th>TOTAL (n=223)</th>
<th>LARGE (n=46)</th>
<th>SMALL (n=61)</th>
<th>SUBURB (n=53)</th>
<th>RURAL (n=63)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical fights</td>
<td>3.53</td>
<td>3.04</td>
<td>3.46</td>
<td>3.81</td>
<td>3.71</td>
</tr>
<tr>
<td>Verbal threats</td>
<td>2.65</td>
<td>2.24</td>
<td>2.52</td>
<td>2.87</td>
<td>2.90</td>
</tr>
<tr>
<td>Weapon possession</td>
<td>4.92</td>
<td>4.43</td>
<td>4.95</td>
<td>5.15</td>
<td>5.05</td>
</tr>
<tr>
<td>Threats with weapons</td>
<td>5.13</td>
<td>4.46</td>
<td>5.15</td>
<td>5.25</td>
<td>5.37</td>
</tr>
<tr>
<td>Injuries with weapons</td>
<td>5.78</td>
<td>5.46</td>
<td>5.92</td>
<td>5.79</td>
<td>5.87</td>
</tr>
<tr>
<td>Theft</td>
<td>3.07</td>
<td>2.98</td>
<td>3.11</td>
<td>3.04</td>
<td>3.16</td>
</tr>
<tr>
<td>Vandalism</td>
<td>3.54</td>
<td>3.52</td>
<td>3.48</td>
<td>3.70</td>
<td>3.56</td>
</tr>
<tr>
<td>Bullying</td>
<td>2.84</td>
<td>2.73</td>
<td>2.77</td>
<td>2.95</td>
<td>2.98</td>
</tr>
<tr>
<td>Peer sexual harassment</td>
<td>3.48</td>
<td>3.70</td>
<td>3.38</td>
<td>3.38</td>
<td>3.52</td>
</tr>
<tr>
<td>Ethnic/racial conflict</td>
<td>4.08</td>
<td>3.74</td>
<td>4.13</td>
<td>3.94</td>
<td>4.40</td>
</tr>
<tr>
<td>Gang presence</td>
<td>4.33</td>
<td>3.59</td>
<td>4.15</td>
<td>4.60</td>
<td>4.83</td>
</tr>
<tr>
<td>Hazing</td>
<td>4.73</td>
<td>4.60</td>
<td>4.75</td>
<td>4.79</td>
<td>4.73</td>
</tr>
<tr>
<td>Drug/alcohol possession</td>
<td>4.04</td>
<td>3.98</td>
<td>4.07</td>
<td>3.98</td>
<td>4.06</td>
</tr>
<tr>
<td>Drug/alcohol use</td>
<td>3.80</td>
<td>3.91</td>
<td>3.70</td>
<td>3.81</td>
<td>3.79</td>
</tr>
<tr>
<td>Drug trafficking</td>
<td>4.48</td>
<td>4.51</td>
<td>4.36</td>
<td>4.38</td>
<td>4.68</td>
</tr>
</tbody>
</table>

Participants were asked to report the frequency of various types of violence in their school(s) over the past two years. Principals responded with respect to their school; superintendents responded with respect to their school district. A Likert-type scale was used: (1) very frequently, (2) frequently, (3) occasionally, (4) rarely, (5) very rarely, and (6) never. The lower the "violence score" is, the more frequent the type of violence is.

Table 6.6. Student-on-Student Violence in Ohio’s Schools: By School District Type.
<table>
<thead>
<tr>
<th>TYPE OF VIOLENCE</th>
<th>HIGHEST RATING</th>
<th>LOWEST RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical fights</td>
<td>2.14 Large-Sup’t</td>
<td>4.13 Suburb-H.S.</td>
</tr>
<tr>
<td>Verbal threats</td>
<td>1.71 Large-Sup’t</td>
<td>3.36 Suburb-E.S.</td>
</tr>
<tr>
<td>Weapon possession</td>
<td>4.07 Large-Mid.Sch.</td>
<td>5.40 Rural-E.S.</td>
</tr>
<tr>
<td>Threats with weapons</td>
<td>3.86 Large-Sup’t</td>
<td>5.46 Rural-E.S.</td>
</tr>
<tr>
<td>Injuries with weapons</td>
<td>4.86 Large-Sup’t</td>
<td>6.00 Suburb-E.S.</td>
</tr>
<tr>
<td>Theft</td>
<td>2.44 Small-High Sch.</td>
<td>3.67 Small-E.S.</td>
</tr>
<tr>
<td>Vandalism</td>
<td>3.00 Large-Sup’t</td>
<td>4.13 Rural-E.S.</td>
</tr>
<tr>
<td>Bullying</td>
<td>2.36 Large-Elem.Sch.</td>
<td>3.45 Suburb-E.S.</td>
</tr>
<tr>
<td>Peer sexual harassment</td>
<td>2.85 Rural-Mid.Sch.</td>
<td>4.27 Small-E.S.</td>
</tr>
<tr>
<td>Ethnic/racial conflict</td>
<td>3.00 Large-Sup’t</td>
<td>4.87 Rural-E.S.</td>
</tr>
<tr>
<td>Gang presence</td>
<td>2.86 Large-Sup’t</td>
<td>5.13 Rural-E.S.</td>
</tr>
<tr>
<td>Hazing</td>
<td>3.86 Large-Sup’t</td>
<td>5.87 Small-E.S.</td>
</tr>
<tr>
<td>Drug/alcohol possession</td>
<td>3.00 Large-Sup’t</td>
<td>5.33 Small-E.S.</td>
</tr>
<tr>
<td>Drug/alcohol use</td>
<td>2.56 Small-High Sch.</td>
<td>5.53 Small-E.S.</td>
</tr>
<tr>
<td>Drug trafficking</td>
<td>3.25 Small-High Sch.</td>
<td>5.73 Small-E.S.</td>
</tr>
</tbody>
</table>

Table 6.7. Highest and Lowest Frequencies for Types of Student-on-Student Violence.
Violence Reduction and Prevention in Ohio’s Schools

In Part II-B of the questionnaire, school administrators were asked to read a list of several violence reduction/prevention policies and actions and to check all of the ones that their school or schools have implemented.\(^{10}\) The 33 policies and actions were generated from the violence prevention literature of Dear,\(^{11}\) Peterson,\(^{12}\) Sauter,\(^{13}\) and Sperry and Daniel.\(^{14}\) This list appears in the questionnaire, reproduced in Appendix C. Tables 6.8 and 6.9 present the results.

Each table lists the most popular violence prevention policies. Column 2 in each table is identical, and lists -- for the entire sample -- the fifteen policies implemented most often, in order of popularity. The final four columns in Table 6.8 present the most popular violence prevention policies among the different administrative roles. The rankings are presented in parentheses, and represent the popularity of the listed prevention policies within that particular administrative role. For example, while

\(^{10}\) Each superintendent responded with respect to his or her entire school district, and each principal responded with respect to his or her school only.

\(^{11}\) Supra note 2.

\(^{12}\) Supra note 5.

\(^{13}\) Supra note 6.

\(^{14}\) Supra note 7.
restricted dress codes are the fourth most popular violence prevention policy for the entire sample of Ohio public school administrators, they rank ninth among superintendents and third among elementary school principals. An asterisk in a cell indicates that the listed policy was among the most popular overall, but did not make the top ten in the corresponding category of administrators. For example, locker searches (with reasonable suspicion) did not rank among the top ten responses provided by elementary school principals. The final four columns in Table 6.9 present the results for the four district types.

For the most part, the ten most popular policies in each category are represented in the top fifteen overall. There are a few exceptions, however. First, the tenth most popular policy among high school principals was faculty/staff inservice programs; second, the seventh most popular among elementary school principals was mentoring programs; and third, the tenth most popular among rural school administrators was random locker searches.
<table>
<thead>
<tr>
<th>PREVENTION POLICY</th>
<th>TOTAL (n=224)</th>
<th>SUP'T (n=46)</th>
<th>H.S. (n=66)</th>
<th>M.S. (n=59)</th>
<th>E.S. (n=53)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n%</td>
<td>rank</td>
<td>n%</td>
<td>rank</td>
<td>n%</td>
</tr>
<tr>
<td>Code of conduct</td>
<td>220 98.2%</td>
<td>(1)</td>
<td>97.8%</td>
<td>(1)</td>
<td>98.5%</td>
</tr>
<tr>
<td>Locker searches (with</td>
<td>181 80.8%</td>
<td>(2)</td>
<td>93.4%</td>
<td>(2)</td>
<td>95.5%</td>
</tr>
<tr>
<td>reasonable suspicion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Student searches (with</td>
<td>172 76.8%</td>
<td>(3)</td>
<td>69.6%</td>
<td>(7)</td>
<td>87.9%</td>
</tr>
<tr>
<td>reasonable suspicion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dress codes</td>
<td>168 75.0%</td>
<td>(4)</td>
<td>67.4%</td>
<td>(9)</td>
<td>84.8%</td>
</tr>
<tr>
<td>Anti-hazing policy</td>
<td>154 68.8%</td>
<td>(5)</td>
<td>89.1%</td>
<td>(3)</td>
<td>77.3%</td>
</tr>
<tr>
<td>Substance abuse program</td>
<td>152 67.9%</td>
<td>(6)</td>
<td>78.3%</td>
<td>(5)</td>
<td>66.7%</td>
</tr>
<tr>
<td>Closed campuses</td>
<td>150 67.0%</td>
<td>(7)</td>
<td>62.6%</td>
<td>(4)</td>
<td>74.2%</td>
</tr>
<tr>
<td>School-business partnerships</td>
<td>128 57.1%</td>
<td>(8)</td>
<td>69.6%</td>
<td>(7)</td>
<td>51.5%</td>
</tr>
<tr>
<td>Peer mediation</td>
<td>127 56.7%</td>
<td>(9)</td>
<td>67.4%</td>
<td>(9)</td>
<td>48.5%</td>
</tr>
<tr>
<td>Sexual harassment policy</td>
<td>121 54.0%</td>
<td>(11)</td>
<td>53.3%</td>
<td>(9)</td>
<td>53.0%</td>
</tr>
<tr>
<td>Conflict management/</td>
<td>121 54.0%</td>
<td>(11)</td>
<td>53.0%</td>
<td>(10)</td>
<td>(*)</td>
</tr>
<tr>
<td>conflict resolution</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mentoring programs</td>
<td>117 52.2%</td>
<td>(13)</td>
<td>47.8%</td>
<td>(8)</td>
<td>(*)</td>
</tr>
<tr>
<td>Partnerships with</td>
<td>117 52.2%</td>
<td>(13)</td>
<td>60.1%</td>
<td>(8)</td>
<td>(*)</td>
</tr>
<tr>
<td>community org’s</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternative schools</td>
<td>104 46.4%</td>
<td>(14)</td>
<td>45.7%</td>
<td>(8)</td>
<td>(*)</td>
</tr>
<tr>
<td>Multicultural educ.</td>
<td>102 45.5%</td>
<td>(15)</td>
<td>54.3%</td>
<td>(15)</td>
<td>42.4%</td>
</tr>
</tbody>
</table>

* Violence prevention policies are listed in order of popularity with respect to the entire sample. The last four columns represent the rank within the top ten for each administrative role. For example, among superintendents, dress codes were the ninth most popular policy of the 33 presented in the questionnaire. A (*) means that the policy was popular overall, but was not one of the top ten in that category.

Table 6.8. Most Popular Violence Prevention Policies: By Administrative Role.
<table>
<thead>
<tr>
<th>PREVENTION POLICY</th>
<th>TOTAL (^{n=124})</th>
<th>LARGE (^{n=47})</th>
<th>SMALL (^{n=61})</th>
<th>SUB. (^{n=53})</th>
<th>RURAL (^{n=63})</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- rank -</td>
<td>- rank -</td>
<td>- rank -</td>
<td>- rank -</td>
<td>- rank -</td>
</tr>
<tr>
<td>Code of conduct</td>
<td>220 98.2%</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Locker searches (with reasonable suspicion)</td>
<td>181 80.8%</td>
<td>(2)</td>
<td>(6)</td>
<td>(5)</td>
<td>(2)</td>
</tr>
<tr>
<td>Student searches (with reasonable suspicion)</td>
<td>172 76.8%</td>
<td>(3)</td>
<td>(2)</td>
<td>(4)</td>
<td>(6)</td>
</tr>
<tr>
<td>Dress codes</td>
<td>168 75.0%</td>
<td>(4)</td>
<td>(7)</td>
<td>(4)</td>
<td>(3)</td>
</tr>
<tr>
<td>Anti-hazing policy</td>
<td>154 68.8%</td>
<td>(5)</td>
<td>(*)</td>
<td>(2)</td>
<td>(4)</td>
</tr>
<tr>
<td>Substance abuse program</td>
<td>152 67.9%</td>
<td>(6)</td>
<td>(9)</td>
<td>(6)</td>
<td>(6)</td>
</tr>
<tr>
<td></td>
<td>150 67.0%</td>
<td>(7)</td>
<td>(*)</td>
<td>(7)</td>
<td>(7)</td>
</tr>
<tr>
<td>School-business partnerships</td>
<td>128 57.1%</td>
<td>(8)</td>
<td>(3)</td>
<td>(8)</td>
<td>(*)</td>
</tr>
<tr>
<td></td>
<td>127 56.7%</td>
<td>(9)</td>
<td>(5)</td>
<td>(10)</td>
<td>(8)</td>
</tr>
<tr>
<td>Peer mediation</td>
<td>121 54.0%</td>
<td>(11)</td>
<td>(*)</td>
<td>(10)</td>
<td>(*)</td>
</tr>
<tr>
<td>Sexual harassment policy</td>
<td>121 54.0%</td>
<td>(11)</td>
<td>(*)</td>
<td>(10)</td>
<td>(*)</td>
</tr>
<tr>
<td>Conflict management/conflict resolution</td>
<td>121 54.0%</td>
<td>(11)</td>
<td>(*)</td>
<td>(5)</td>
<td>(*)</td>
</tr>
<tr>
<td>Mentoring programs</td>
<td>117 52.2%</td>
<td>(13)</td>
<td>(*)</td>
<td>(10)</td>
<td>(*)</td>
</tr>
<tr>
<td>Partnerships with community org's</td>
<td>117 52.2%</td>
<td>(13)</td>
<td>(*)</td>
<td>(9)</td>
<td>(*)</td>
</tr>
<tr>
<td>Alternative schools</td>
<td>104 46.4%</td>
<td>(14)</td>
<td>(*)</td>
<td>(10)</td>
<td>(*)</td>
</tr>
<tr>
<td>Multicultural educ.</td>
<td>102 45.5%</td>
<td>(15)</td>
<td>(9)</td>
<td>(10)</td>
<td>(9)</td>
</tr>
</tbody>
</table>

* Violence prevention policies are listed in order of popularity with respect to the entire sample. The last four columns represent the rank within the top ten for each school district type. For example, in large city districts, locker searches were the sixth most popular among the 33 policies listed in the questionnaire. A (*) means that the policy was popular overall, but did not make the top ten for that category.

**Table 6.9. Most Popular Violence Prevention Policies: By School District Type.**
Several of the violence prevention policies listed in the questionnaire represent newsworthy, and often controversial actions by school district administrators. While most of these policies failed to make the "most popular" list, their popularity may be increasing, particularly in large city districts. These include (1) random drug testing (3.1% of total sample, 4.3% of large city administrators); (2) random locker searches (36.6% of total, 48.5% of high school principals); (3) mandatory school uniforms (7.6% of total, 25.5% of large city administrators); (4) security officers in schools (19.6% of total, 55.3% of large city administrators); (5) police presence in schools (21.9% of total, 46.8% of large city administrators); (6) zero tolerance policies (40.2% of total, 66.0% of large city administrators); (7) stationary metal detectors (3.6% of total, 14.9% of large city administrators); (8) hand-held metal detectors (7.1% of total, 29.8% of large city administrators); and (9) periodic security assessments (36.6% of total, 63.8% of large city administrators).

Proactive-educational violence prevention policies are also growing in number, innovation, and popularity. Several proactive-educational policies placed among the most popular throughout the sample. These included substance abuse programs (67.9% of sample), school-business partnerships (57.1%), peer mediation (56.7%), conflict management and
conflict resolution (54%), mentoring programs (52.2%), partnerships with community organizations (52.2%), and multicultural education (45.5%). Generally, proactive-educational policies were more popular in large city school districts than in other school district types, but showed less difference across administrative roles.

Open-Ended Questions

Part II of the questionnaire also asked participants about their approach to violence prevention and the law. Many of the respondents answered "no" to the following three questions, indicating that the law was not addressed in advance of development, implementation, and enforcement of many violence prevention activities. Some respondents, on the other hand, stated that they addressed law-related concerns for nearly every violence prevention decision they made. The questions and answers to each of the three open-ended items are summarized below.

1. Did you or your school(s) address any legal concerns in the implementation of any of the above policies or programs?

   When school administrators addressed legal concerns in the implementation of violence prevention decisions and policies, they tended to focus on constitutional issues and on state statutory requirements. For example,
administrators in this sample considered legal issues in the adoption and implementation of student codes of conduct, anti-hazing policies, suspension and expulsion, permanent exclusion procedures, and dress codes. Each of these prevention policies is either required or authorized under the Ohio Revised Code. Similarly, school administrators considered several constitutional issues before enforcing or implementing certain prevention options, including locker search procedures, dress codes, drug-sniffing dogs, and searches of individual students.

2. Did you or your school(s) implement any of the above policies in order to satisfy a state or federal legal requirement (e.g., statute or court ruling)?

Similar to the answers to Question 1 above, the answers to Question 2 reflected administrator knowledge and awareness of statutory and constitutional law. Many administrators satisfied Ohio statutory requirements in the promulgation of student codes of conduct, and in the imposition of suspensions, expulsions, and permanent exclusions. Some of these punishments were in compliance with Ohio’s adoption of the federal Gun-Free Schools Act, which authorizes schools to expel, for one year, any student who brings a weapon to school.  

Administrators stated that they consider and comply with constitutional obligations, as well: First Amendment requirements associated with dress codes, Fourth Amendment requirements associated with all types of random or particularized searches and seizures, and Fourteenth Amendment requirements of due process.

Finally, several respondents stated that they implemented anti-hazing and sexual harassment policies in order to satisfy a legal requirement. According to both state and federal law, the existence of such policies may serve as defenses in liability lawsuits filed against school districts.

3. To the best of your knowledge, do any of the policies that you or your school(s) have implemented entitle you to additional state or federal funds?

Participants did not answer this question as often as they did the first two. However, the responses were consistent. According to the respondents, several Ohio schools and school districts receive federal grant assistance for the implementation and maintenance of proactive and/or educational violence prevention activities. These activities range from installation of metal detectors and security cameras to the implementation of conflict resolution, peer mediation, and mentoring programs. Based on the participants’ responses, drug and alcohol awareness
activities are the most common violence prevention/education programs supported with government funds.

Ohio Administrators' Sources of School Law Information

As part of its "demographic information" page, the questionnaire asked participants what their major sources of school law were. Eleven different sources\textsuperscript{16} were listed, ranging from formal legal study (e.g., law degree, other college or university work) to informal access (e.g., information from colleagues). These results, presented in Table 6.10, indicate that the majority of school administrators use a wide variety of sources to obtain information about school law. The most popular sources were courses in school law in colleges and universities (94.2\% of the sample), readings in journals or books (93.4\%), newspapers or magazines (83.9\%), and information from professional organizations like the Buckeye Association of School Administrators, Ohio Association of Secondary School Principals, Ohio Association of Secondary School Principals, and the Education Law Association (82.1\%). One respondent had earned a law degree. Other respondents added "other"

\begin{table}
\centering
\begin{tabular}{|c|c|}
\hline
Source & Percentage \\
\hline
Courses in school law & 94.2\% \\
Readings in journals or books & 93.4\% \\
Newspapers or magazines & 83.9\% \\
Professional organizations & 82.1\% \\
Law degree & 1\% \\
Other & \% \\
\hline
\end{tabular}
\caption{Sources of School Law Information}
\end{table}

sources, including one year of law school, ten years of law-
enforcement, membership on a community safety council, and "common sense."

| SOURCE OF EDUCATION LAW                              | TOTAL (n=224) | -n- | -%-
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Degree</td>
<td>1</td>
<td>0.4%</td>
<td></td>
</tr>
<tr>
<td>Courses at college or university</td>
<td>211</td>
<td>94.2%</td>
<td></td>
</tr>
<tr>
<td>Readings in journals or books</td>
<td>210</td>
<td>93.4%</td>
<td></td>
</tr>
<tr>
<td>Newspapers or magazines</td>
<td>188</td>
<td>83.9%</td>
<td></td>
</tr>
<tr>
<td>Attendance at education and/or law conferences and conventions</td>
<td>162</td>
<td>72.3%</td>
<td></td>
</tr>
<tr>
<td>Publications or other information supplied by the state department of education</td>
<td>167</td>
<td>74.6%</td>
<td></td>
</tr>
<tr>
<td>In-service programs</td>
<td>167</td>
<td>74.6%</td>
<td></td>
</tr>
<tr>
<td>Continuing education to keep certification current</td>
<td>107</td>
<td>47.8%</td>
<td></td>
</tr>
<tr>
<td>School district attorney(s)</td>
<td>153</td>
<td>68.3%</td>
<td></td>
</tr>
<tr>
<td>Information from colleagues (other administrators)</td>
<td>165</td>
<td>73.7%</td>
<td></td>
</tr>
<tr>
<td>Information from professional organizations (e.g., BASA, ELA, etc.)</td>
<td>184</td>
<td>82.1%</td>
<td></td>
</tr>
</tbody>
</table>

Table 6.10. Ohio School Administrators' Sources of Legal Information.
CHAPTER 7

FINDINGS, DISCUSSION, AND CONCLUSIONS

Introduction

The Problem and This Study

It would come as a surprise to very few readers to note that student violence in schools has increased greatly over the past couple decades.\(^1\) Violence among elementary and secondary school students -- peer sexual harassment; gang violence; weapon possession, threat, and injury; bullying; and hazing -- has increased both in frequency and in severity. While statistics reporting such violence in large city high schools may not be startling to most people, similar statistics reporting serious student violence at younger ages and in smaller cities, suburbs, and rural communities may be to some. Perhaps the most unsettling

statistic, however, is that these facts themselves may no longer be startling.

One of the newest trends in school violence is its increased appearance in courtrooms and legislatures. Although not intended as a source of research, student-on-student violence may be joining special education law and employee sexual harassment as one of the most litigated areas in school law. School administrators must not only battle school violence from all ages and in all types of school districts, but they must also battle it from two important legal perspectives. First, they must know the limits of their own legal -- and often, ethical -- authority so that they may reduce violence and injury, and increase safety and discipline as appropriately and as definitively as possible. At the same time, they must know the limits of their students’ rights, so that their violence prevention activities do not violate the constitutional rights of their children and staff.

Second, school administrators must do something -- legally and ethically -- to halt the violent activity of students in schools and to protect the safety of law-abiding children and staff, and to prevent legal liability for themselves and their schools. While it is true that schools and school districts risk infringement of constitutional rights with many of the anti-violence and disciplinary measures they implement, it is also true that they risk
incurring legal liability if they do not do enough. For example, at one end of this "crossfire" of violence, the search of a student for a possible concealed weapon may violate the Fourth Amendment rights of that student. On the other end, however, another student may sue his or her school if he or she is injured by that same weapon-carrying student, while the school did nothing to prevent the attack.

School administrators have many rights and responsibilities to balance and perform. These rights and responsibilities, of course, must be balanced and performed along with the rights and responsibilities of their students. The primary goals of this study were to find where that balance lies, and to find out how much Ohio’s public school administrators know about that balance. Each Chapter of this book contributes to meeting these goals. Chapter 2 presented and discussed violence and violence prevention in schools. Much of the violence data and literature, including works by Burnett and Walz,\textsuperscript{2} Peterson,\textsuperscript{3} Prothrow-Stith,\textsuperscript{4} Sauter,\textsuperscript{5} Trump,\textsuperscript{6} and Van

\textsuperscript{2} Gary Burnett & Garry Walz, Gangs in the Schools (1994); ERIC: 372 175.


\textsuperscript{4} Deborah Prothrow-Stith, Building Violence Prevention into the Curriculum, SCHOOL ADMINISTRATOR, Apr. 1994, at 8.
Acker\(^7\) indicated that while school violence is increasing, so is violence prevention. The review of violence prevention literature culminated in the synthesis and presentation of four types of violence prevention policies, all of which are implemented by schools, and represent the range of responses school administrators may give to the school violence problem: (1) reactive-punitive; (2) reactive-educational; (3) proactive-punitive; and (4) proactive-educational.

Chapter 3 reviewed the law. Basically, with broad discussions of constitutional law, tort law, and state and federal statutory law, Chapter 3 drew the line at the midpoint of the "crossfire of violence:" the balance between violence prevention activity by school administrators and liability for the lack of violence prevention activity. In other words, this Chapter attempted to answer the following questions: (1) in violence prevention, how far is too far; and (2) in legal liability for student violence, did the school not go far enough? The law review covered the case law and statutory law necessary for Ohio school administrators to make informed, legal decisions about

\[\text{\footnotesize\begin{footnotesize}\begin{enumerate}
\item R. Craig Sauter, \textit{Standing up to Violence}, PHI DELTA KAPPAN, Jan. 1995, at Kl.
\item Richard Van Acker, \textit{A Close Look at School Violence}, UPDATE ON LAW-RELATED EDUCATION, Spring 1995, at 4.
\end{enumerate}\end{footnotesize}}\]
school violence, student discipline, violence prevention, and liability risk management.

While the balance of constitutional, tort, and statutory law tends to favor the schools and the authority of school administrators, there are several commentators and a few cases that indicate or argue otherwise. Because student violence itself has increased, and because school liability for student violence may be on the upswing, it is important for school administrators to know the law in this area. It is therefore, important, to examine the level of legal knowledge of these administrators.

Chapter 4 reviewed previous studies that examined school administrator knowledge of the law. While these previous studies reviewed different areas of the law -- such as special education and sexual harassment -- the results were still useful. Generally, school law, as a major subject area, is only a few decades old and is still evolving case-by-case and statute-by-statute. The results of previous work in school administrator knowledge of the law indicate that school leaders need to be better educated on their rights and responsibilities and on the rights and responsibilities of their staff and students. According to these studies, this is true regardless of the

administrators' school district type\textsuperscript{9} and administrative role.\textsuperscript{10}

\textbf{The Participants}

Two hundred and twenty-four Ohio school administrators participated in this study. A random sample of five hundred was selected and contacted to participate. The sample represented a cross-section of school leaders: superintendents, high school principals, middle school/junior high school principals, and elementary school principals from large cities, small cities, suburbs, and rural communities. In five weeks of data collection -- in an extremely busy time of the year -- 44\% completed the questionnaire. The respondents represented a similar cross-section, indicating that school administrators from all


types of schools and school districts recognized the importance, relevance, and timeliness of the subject matter.

Ohio School Administrators' Knowledge of the Law Regarding Student-on-Student Violence

Previous studies of school administrators' knowledge of the law revealed significant differences among administrators based on their administrative roles,\textsuperscript{11} and their districts' "community classification" or school district type.\textsuperscript{12} These studies examined the knowledge of different areas of law, including general constitutional law and special education law. One of the purposes of this study was to find if these significant differences hold up when school administrators are tested on the law regarding student-on-student violence.

\textsuperscript{11} See Hillman, supra note 10; and Clark, supra note 10.

Findings and Discussion

Among all of the school administrators who participated in this study, the overall mean knowledge of the law as it relates to student violence was 25.23 out of 40, or 62.5%. This result is consistent with many of the previous studies that examined level of legal knowledge among school administrators.\textsuperscript{13} The results and interpretation are consistent, as well. First, knowledge of school law is important and necessary for education administrators, especially in serious and timely areas like student violence. Second, where there is a lack of knowledge among school administrators, more work should be done -- in colleges and universities, through inservice programs, and by specially designed publications -- to increase this knowledge. This increase in legal education and knowledge is particularly important in the area of school violence, in

light of the high rates of violent activity in all types of schools, the growing number of lawsuits filed relating to student violence, and the current strong arguments in favor of holding schools liable for such violence.

Furthermore, it may be interesting to note that the items answered incorrectly most often reflected administrators’ under-estimation of legal authority or over-estimation of possible legal liability. For example, many participants incorrectly stated that strip searches for serious contraband were illegal. The Sixth Circuit decision in Williams v. Ellington say otherwise.\textsuperscript{14} Similarly, many administrators thought that federal law imposed on school officials an affirmative duty to protect students from the harmful acts of other students. The overwhelming majority of courts say otherwise.\textsuperscript{15}

This study had two four-level independent variables: administrative role and school district type. The two-way analysis of variance conducted for this study resulted in a significant main effect for administrative role. That is, school administrators’ mean knowledge of the law as it relates to student violence differed significantly among

\textsuperscript{14} See Williams v. Ellington, 936 F.2d 881 (6th Cir. 1991). Note that legal authority -- allowing strip searches under such circumstances -- is different from moral or ethical authority, which may demand another disciplinary alternative.

\textsuperscript{15} See the discussion of Section 1983 liability, in Chapter 3.
superintendents, high school principals, middle school principals, and elementary school principals. Post hoc tests revealed that elementary school principals scored significantly lower than high school and middle school principals. While the mean knowledge of elementary school principals was the lowest of the four groups across all school district types, it was not significantly lower than the mean knowledge of school district superintendents.

In this study, the lower levels of knowledge among elementary school principals likely do not stem from lack of competence. Rather, these results may be due, simply, to lower frequency and severity of violence in elementary schools. Of the fifteen types of violence listed in this study’s questionnaire, elementary school principals reported the lowest rates on fourteen of them, when compared with the other three groups of administrators. Only bullying was rated as more frequent. In addition, the law regarding locker searches would be less applicable in elementary schools, since most of them do not have lockers.

Contrary to Theller’s study on school leaders’ knowledge of special education law, there was no significant main effect for school district type in this

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16 Under the Tukey Test, there were no other significant differences among the four administrative roles.

17 See OHIO REV. CODE ANN. § 3313.20(B) (Banks-Baldwin Supp. 1997).

18 See Theller, supra note 9.
study. That is, all four school district classifications scored equally well on the knowledge test. This may be due to the fact that all four types of districts -- large cities, small cities, suburbs, and rural communities -- are dispersed fairly evenly throughout Ohio and are geographically close to one another. As a result, administrators from all four types of districts may communicate with each other more easily and more often than in other jurisdictions. Furthermore, this geographical arrangement and the high number of colleges and universities in Ohio may allow all school administrators more opportunities to increase their knowledge through coursework and continuing education.

Ohio Administrators' Sources for School Law Information

Because the overall mean knowledge of the law regarding student-on-student violence was relatively low in this study, teachers of school law and other providers of legal information should begin to emphasize, in their teaching and communication, the law relating to school violence.

The participants in this study were asked where they get their school law information. The results were broad. The majority of the respondents checked nearly all of the eleven sources of law, including courses at colleges or universities, legal or educational publications, information

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from school district attorneys, and information from colleagues. In future studies, these sources should be analyzed further for their usefulness, effectiveness, and preference among school administrators. Educational administration programs in colleges and universities must serve better the school leaders in the area of school violence -- in both legal education and violence prevention.

Violence and Violence Prevention in the Schools

Violence Experience in Ohio’s Schools

The results presented in Chapter 5 reporting Ohio school administrators’ experience with student violence in schools were, for the most part, not surprising. Recent polls from both Phi Delta Kappan and the National School Boards Association reported increases in school violence at all levels from elementary through secondary, and in all school district types. The largest increases were reported in middle schools and high schools. The experiences of the participants in this study mirror these findings. Based

19 Stanley M. Elam, Lowell C. Rose, & Alec M. Gallup, Phi Delta Kappa/Gallup Annual Poll of the Public’s Attitudes Toward the Public Schools, PHI DELTA KAPPAN, Sept. 1995, at 41; Jessica Portner, School Violence Up over Past 5 Years, 82% in Survey Say, XIII EDUCATION WEEK, Jan. 12, 1994, at 9; and Peterson, supra note 3.
on the results her, the highest rates of violence in Ohio are in large cities, high schools, and middle schools.

Of the fifteen types of violence listed in the questionnaire for this study, the most frequent in Ohio’s schools were verbal threats, bullying, theft, and peer sexual harassment. The least frequent were weapon injury, weapon threat, weapon possession, and hazing. Generally, this comports with previous literature holding that while school leaders worry the most about weapons and gangs, the less serious forms of violence occur more often.\(^{20}\)

There were interesting findings among individual types of violence. For example, while gangs and ethnic/racial conflict tend to get much attention in discussion in the media, they failed to make the most frequent within any group of respondents. This is probably not the result of decreased gang activity or racial conflict. Instead, it may be that they are increasing gradually and are simply not among the least frequent anymore.\(^{21}\) Future studies on the fluctuation of these types of violence may begin to tell a greater story. In any case, this study’s snapshot of Ohio

\(^{20}\) Joseph D. Dear, Creating Caring Relationships to Foster Academic Excellence: Recommendations for Reducing Violence in California’s Schools (Executive Summary of Final Report), at 17, ERIC: ED 391 218; James, supra note 8, at 32; and Van Acker, supra note 1, at 4-5.

\(^{21}\) The highest individual rating for gang presence was 2.86 out of 6.00 ("occasionally"), by large city superintendents; for ethnic/racial conflict, it was 3.00, also by large city superintendents.
school violence indicates that gang presence and racial conflict are less prevalent than the other forms of violence.

Drug trafficking was reported as low within most groups of respondents. Its highest rating was 3.25 out of 6.00 ("occasionally"), by small city high school principals. Drug and alcohol use, on the other hand, was rated as fairly frequent within several groups. Among suburban and rural superintendents, drug and alcohol use was rated as the most frequent of all fifteen types listed. 22

Another minor surprise here is that, for the entire sample, peer sexual harassment was reported as the fourth most frequent type of violence among the fifteen listed -- more common than physical fights. There are several possible explanations for this finding. First, sexual harassment is the target of much media and societal attention. Second, the number of laws and lawsuits surrounding sexual harassment have increased recently. Third, and probably most likely, the definition of "sexual harassment" has broadened quite a bit recently, through both the media and the law.

22 2.90 for suburban superintendents, and 3.13 for rural superintendents.
Violence Prevention in Ohio's Schools

The questionnaire for this study asked Ohio school administrators to read a list of thirty-three violence prevention activities and policies, and to check all the activities or policies their schools have implemented. The most commonly implemented policies reflected a general agreement with other violence prevention literature, and a general awareness of the law. Fifteen of the violence prevention activities and policies were implemented by at least 100 of the 224 respondents. The most popular were student codes of conduct, search and seizure procedures, dress codes, anti-hazing policies, and substance abuse programs. Some of the less popular policies overall were more popular in the large cities, indicating a growing trend for more violence prevention activity in the schools and school districts where more violence occurs. Some of these innovative policies implemented were random locker searches, random drug testing, mandatory school uniforms, security officers and police officers in schools, zero tolerance policies, and metal detectors.

The most popular violence prevention policies reported by the participating school administrators, in large respect, also reflected an awareness and knowledge of the

\footnote{23 Peterson, et al., \textit{supra} note 3; and Dear, \textit{supra} note 20.}
law. The most popular policy -- a student code of conduct-- is required by the Ohio Revised Code.\textsuperscript{24} The second and fourth most popular -- locker searches and dress codes -- are authorized by the Ohio Revised Code.\textsuperscript{25} The third most popular -- searches of students with reasonable suspicion -- may be a reflection of the knowledge of the reasonableness test adopted by the United States Supreme Court in \textit{New Jersey v. T.L.O.}\textsuperscript{26} Other popular policies, including peer sexual harassment and anti-hazing policies, may indicate good proactive decision-making by school administrators, and may also set up strong defenses in case any lawsuits are filed. In addition, the Office of Civil Rights has recently required schools to adopt peer sexual harassment policies. Those schools who do not have one yet may soon draft one.

Other violence prevention policies reflect a general societal concern for proactive and/or educational discipline to supplement traditional punitive policies. Popular proactive violence prevention activities include substance abuse programs, school-business partnerships, peer mediation, conflict resolution, and multicultural education.

\textsuperscript{24} \textit{Ohio Rev. Code Ann.} § 3313.20(A) (Banks-Baldwin Supp. 1997).


\textsuperscript{26} 469 U.S. 325 (1985).
In Chapter 2, the many different types of violence prevention policies were consolidated into a four-column table. The table reflects the different actions schools may take in response to or in advance of student violence. The four categories of violence prevention are (1) reactive-punitive, including traditional discipline like suspension or expulsion; (2) reactive-educational, including community service as a punishment and alternative schools for student with violence problems; (3) proactive-punitive, including student codes of conduct, metal detectors, and police officers on campus; and (4) proactive-educational, including peer mediation, school-business partnerships, and multicultural education. The fifteen most popular violence prevention policies implemented by Ohio school administrators included at least one policy from each of the four categories. This is a very positive finding. Not only must schools be prepared for all types of student violence, however rare their occurrences, they must also be prepared -- proactively and reactively -- to respond to this violence. A well-rounded approach to violence prevention is likely the best possible policy.
Theoretical and Practical Implications

This study had several wide-ranging, related purposes. First, it served both practical and theoretical objectives. Practically, this study addressed and examined the serious and timely topic of student-on-student violence in schools. The researcher worked with Ohio public school administrators from all types of school districts and from all areas of school administration: superintendents, high school principals, middle school or junior high school principals, and elementary school principals. These school leaders, anonymously, and candidly, shared with readers their legal knowledge, experience with violence, and perhaps most importantly in the long run, their experience with violence prevention.

On a greater practical level, the participants have shared knowledge with the entire education community. On one hand, they have told legal educators what they know about the law as it relates to student violence, and where they access information about the law. Professors of educational administration, particularly school law teachers, can use these results as guideposts for future teaching and practical education. On the other hand, the participants have communicated valuable information to their colleagues. School administrators in districts or schools with high rates of violence have put administrators from
other districts and schools on alert as to the types of violence that may increase or come their way. In addition, they have given other administrators some innovative violence reduction and prevention ideas.

Theoretically, this study contributed to the educational administration arena the first quantitative study on school administrators' knowledge of the law regarding student-on-student violence. From this contribution comes the opportunity to refine, expand, and replicate this study in other jurisdictions and with other populations.

Second, this study served both policy and leadership objectives. From the policy standpoint, the results of this study unite the members of two vital populations — educational administration professors and public school administrators — in a broad discussion of student violence and the approaches each population takes to it. The results of this study tell readers from both groups how some Ohio school administrators approach the student violence problem and, to some extent, how educational administration professors approach the teaching of school law. For example, the teaching of law and ethics to teachers and administrators may influence the decisions school leaders make when developing codes of student conduct. Policymaking at the college and university level is vital to the preparation of school administrators, and policymaking at
the school and school district level is vital to the
performance of school administrators.

From the leadership standpoint, this study addresses
how school administrators execute important decisions in the
student violence context. On one hand, this study tells
readers what a large group of Ohio school administrators
know about the limits on their legal and ethical authority,
and what they know about their own risk of personal or
institutional liability. On the other hand, this study
highlights some of the popular and/or innovative violence
prevention decisions currently made by these school
administrators.

Third, from a research perspective, this study serves
both exploratory and inferential goals. First, the study
presents and describes what school administrators know about
student violence law, where they access legal information,
what types of student violence they see in their schools,
how frequent that violence is, and what they are doing to
reduce or eliminate it. Second, through a representative
random sample of participants, this study presents the
results of an examination of Ohio school administrators’
knowledge and practice regarding student-on-student violence
and the law. Finally, this study is exploratory in that it
combines both legal and quantitative research methodologies
and applies them to an area of educational research that has
not seen this combination before.
Limitations and Future Research Opportunities

Because there are no studies directly covering the knowledge and practice of school administrators with respect to student-on-student violence and the law, this study was able to address only a few of the unanswered questions in this area. Some of this study’s limitations were due to the nature of the study itself. This study tested the knowledge of Ohio school administrators, and tested only the state and federal law binding in Ohio. However, this study is useful as a replicable model for other state’s school administrators and the law binding in those jurisdictions. Another substantive limitation to this study is that it covers primarily student-on-student violence; this study does not address student-to-teacher and teacher-to-student violence. Furthermore, this study did not discuss, at great length, the legal implications of student violence where the victims and/or the perpetrators are children with disabilities. Because the rights and responsibilities of school students and staff change when the affected students are children with disabilities, future research should, at some time, concentrate on the student violence and its connection to special education law. Finally, this study reviewed and discussed the law from a standard legal research approach. Because this study aimed to test school administrators on their knowledge of the law as it currently
exists, no attempt was made to discuss the law from a critical-legal point of view. Future researchers may wish to do so, however.

This study sampled school administrators on only two independent variables. There are several other factors that could be addressed in a study of school administrator knowledge as it relates to student violence and the law. For example, legal knowledge may vary by years of administrative experience, by years of teaching and administration experience in Ohio, or by personal or institutional legal history. In addition, knowledge may depend on where and how that knowledge is obtained. This study surveyed school administrators on their sources of school law. Researchers are encouraged to conduct future studies on the effectiveness of these sources. In other words, what effects do certain sources of law, such as inservice training or college coursework, have on the level of legal knowledge?

With respect to the violence and violence prevention data collected for this study, only descriptive statistics were reported. Future studies may address questions of statistical significance of violence frequency and level of legal knowledge, administrative role, and/or school district type.\textsuperscript{27} Similarly, now that the most popular violence

\textsuperscript{27} For example, a finding that levels of violence do not differ significantly across school district type might explain why levels of legal knowledge do not differ
prevention policies have been reported, future research may address the effectiveness of these policies.

There were also procedural limitations to this study. First, one of the independent variables is administrative role: superintendent, high school principal, middle school or junior high school principal, or elementary school principal. Other school personnel such as counselors, teachers, students, board members, and parents were not sampled. However, future studies may be modeled after this one to assess the knowledge and practices of these groups, as well. For example, Ohio students could be surveyed on perceived levels of violence and violence prevention in schools to determine if there are any perception gaps between students and administrators. Second, the participants are administrators in public schools; this study does not include non-public, adult, or vocational schools.

Another procedural limitation to this study is the low reliability measure for the knowledge variable. Future research may refine this new knowledge measure. The low reliability here, however, can be justified for two important, substantive reasons. First, higher reliability in this study would have come with the price of seriously damaged content validity. If lowly-correlated items were deleted from the knowledge test for the sake of slightly significantly by school district type.
higher reliability, then some vital areas of school violence law may have been underrepresented or eliminated from the test. For example, if most of the questions regarding federal constitutional tort law contributed to low reliability and, therefore, were eliminated, some very important aspects of the law would not have been tested. As a result, content validity would have decreased.

Second, this is the only study to examine school administrator knowledge of the law regarding student-on-student violence. The newness and the urgency of this topic dictate that this study be exploratory and descriptive, as well as inferential. New contribution to both theory and practice, and to policy and leadership, demands some level of experimentation and innovation.

Conclusion

At one time in the history of American public education, the mere education of children may have been enough to unify all the relevant members of the education community: students, families, teachers, staff, and administrators. Now, the demands on public education are much greater. While the education of young people remains the primary goal, other goals -- including both the protection of law-abiding students from acts of violence and
the discipline of other students who commit these violent acts -- have garnered some of the spotlight. In some respects, it may be the increase in school violence that has contributed to an increase in the relevant members of the education community. Now each school community is made up of students, families, teachers, staff, administrators, lawmakers, university professors, and other community members. All of the members of these communities must work to achieve each of the necessary goals of public education. Among those goals, increasingly, is the safety and protection of school children, particularly from the violent acts of their classmates. With the preparation of teachers, administrators, and staff by university professionals, the support of families and community leaders, and the authority of lawmakers, safe schools may thrive and the primary goal of public education -- education of young people -- may survive.
APPENDIX A

CONTENT VALIDITY PROCEDURES: THE PANEL OF EXPERTS

1. Cover Letter
2. Instruction Sheet
3. Classification Table
June 4, 1997

Mr. Rick Dickinson
Ohio School Boards Association
700 Brookside Blvd.
P.O. Box 6100
Westerville, OH 43086-6100

RE: Knowledge, Attitudes, and Practices of Ohio's School Administrators Regarding Student-on-Student Violence and Associated Legal Liability, by Patrick David Pauken, J.D.

Dear Mr. Dickinson:

Thank you for agreeing to review my dissertation instrument as a member of my panel of experts. You have helped me a great deal as I work to complete my doctorate in educational administration at the Ohio State University.

I have enclosed a draft of the full instrument for your review, along with a separate document and table covering only the Knowledge portion. While you may review and comment on the entire instrument, it is a review of the Knowledge section of the questionnaire -- Part I -- that is most crucial and required for formal review of content validity. In order to provide some background information, I have also attached an abstract describing my study, and the definition of "Knowledge of the Law and Legal Liability Regarding Student-on-Student Violence in Schools," which you will use to review the content validity of the Knowledge section.

To complete your part of the content validity review, please refer to the enclosed instructions and the document/table. Upon completion, please return it to

Patrick Pauken
The Ohio State University
301 Ramseyer Hall
29 West Woodruff Avenue
Columbus, OH 43210

If you have any comments or questions, please do not hesitate to call or FAX. You may call me at home at 330-1124, or at school at 292-7700. The FAX number at school 292-7020. Thank you very much for your time.

Sincerely,

Patrick Pauken, J.D.
Graduate Research Assistant
The Ohio State University
Knowledge, Attitudes, and Practices of Ohio's School Administrators Regarding Student-on-Student Violence and Associated Legal Liability

Patrick David Pauken, J.D.

Background and Setting

This study examines Ohio school superintendents and principals for legal knowledge of and attitudes toward constitutional law and tort liability — as they relate to student-on-student violence. The study also examines the relationship between legal knowledge of these school administrators and attitudes toward legal liability and constitutional concerns relating to school violence. Additional factors affecting knowledge and attitudes (community classification, years of experience, grade level of school, and exposure to school law information) are also addressed. This study is necessary for several reasons. First, previous studies testing knowledge and attitudes reveal that administrators are not well-versed in school law. Second, few studies examine the tort and constitutional law related to student violence. Third, litigation against schools where violence occurs has increased. Fourth, violence itself has increased. Examples of student violence include peer sexual harassment, gang activity, weapons violations, bullying, and hazing. Currently, courts and legislatures favor schools and their anti-violence and liability-reduction policies. However, some courts and commentators have recently placed responsibility for student violence on the schools. This possible shift toward district liability makes an examination of administrators’ legal knowledge and attitudes important and urgent.

Knowledge of the Law and Legal Liability Regarding Student Violence in Schools

For this study, knowledge of the law and legal liability regarding student violence will be operationalized as the percentage score on a law test developed and validated especially for this study and administered to district superintendents and school principals. The test consists of several issues and rule statements, based on state and federal cases and statutes binding in Ohio, and asks participants whether each issue or rule statement is true, false, or currently unclear.

The two areas of law applied in student-on-violence cases are (1) tort law, with respect to the liability of schools and school administrators for acts or omissions committed by school personnel; and (2) constitutional law, primarily with respect to the violence reduction policies implemented and enforced by schools.
Instrumentation

PART I: Knowledge of the Law and Legal Liability Regarding Student Violence in Schools.

The statements in this section cover the legal liability of schools, school districts, and/or school personnel regarding the legality of anti-violence programs, policies, and discipline. The statements also cover liability for negligent acts or omissions that result in injury to persons or property. Because the participants are Ohio superintendents and principals, this section will test only Ohio law -- the state and federal law that is binding in Ohio. Each item in this section presents a statement that is either true, false, or unclear according to current Ohio law. Each participant is asked to respond to each statement by circling one of the three options. The knowledge score of each participant will be the percentage of statements that the participant answers correctly.

PART II: Attitudes toward the Law and Legal Liability Regarding Student Violence in Schools.

The section of the instrument measuring attitude is divided into two subsections. The first subsection presents items referring to the actions a school might take to reduce violence in schools, and the constitutional issues implicated in these actions. The second subsection presents items relating to school liability for action or inaction that results in violence-related injury to persons or property. The six-point Likert scale in each subsection ranges from "Strongly Agree" to "Strongly Disagree." The attitude score of each participant will be the summated score of responses.

PART III: School Experience/History with Student-on-Student Violence and Anti-Violence Policies Implemented by Schools and School Districts.

This part asks respondents whether they or their districts have implemented any or all of the anti-violence policies listed. The goal of this section is to inform the readers about the anti-violence measures schools are implementing and which of these, if any, raise legal concerns. This part of the instrument also asks the participants about their recent experiences with student-on-student violence. The data will be presented in percentages or proportions, and in table or chart format, with no single school or school district specifically named.

PART IV: Demographic Information.

The fourth part of the instrument requests demographic information for the independent variables.
Directions to Panel of Experts for Content Validity Review

For formal review of the Knowledge portion of the questionnaire, please complete the attached document/table titled "LEGAL KNOWLEDGE QUESTIONNAIRE." There are forty items to review.

1. Read the item and place a check mark (or an "X") in the box(es) that best describe that item's representation in the domain — school administrators' knowledge of the Law regarding student-on-student violence in schools. Check all that apply.

   Use the following guide:
   (1) Tort Law
      (a) Negl. = Negligence on the part of schools, school districts, or school personnel.
      (b) Immun. = Governmental/Sovereign Immunity of defendants.
      (c) Const. = Constitutional Torts; tort liability for unconstitutional deprivation of protected rights and interests.
   (2) Constitutional Law
      (a) 1st = Item tests First Amendment Law.
      (b) 4th = Item tests Fourth Amendment Law.
      (c) 5th = Item tests Fifth Amendment Law.
      (d) 14th = Item tests Fourteenth Amendment Law.

2. If an item does not fit any of the categories listed, or if you think an item belongs to an additional category not listed, please mention this and suggest an appropriate new category. You may write directly onto the tables.

3. If you feel an item should be worded differently, please suggest changes (directly on the tables).

4. Mark the box in the second column, labeled "ax," if you feel the item should be eliminated, instead of rewritten (i.e., the item is not representative of the domain or not answerable by the population tested).

Other considerations. Please comment below, on the reverse side, or on attached sheets:
- Are all the applicable areas of law represented? If not, what areas should be added?
- Are these areas covered in proportions reasonably related to their importance to school administrators?
- What is the ease or difficulty of the items? Are the items appropriate for school principals and superintendents?
- Please also comment on the format, item order, and any procedural or administrative concern you may have.
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<thead>
<tr>
<th></th>
<th>Negligence</th>
<th>Immunity</th>
<th>1st Amend</th>
<th>4th Amend</th>
<th>5th Amend</th>
<th>14th Amend</th>
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<tbody>
<tr>
<td>1. School administrators have a legal duty to make rules to regulate violent conduct of students.</td>
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<td>2. The federal Constitution recognizes a person's liberty interest in bodily integrity.</td>
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<td>3. For suspensions of ten days or less, schools are required to provide the student with notice of the charges, and an informal opportunity to tell his or her side of the story.</td>
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<td>4. A student who brings a knife to school may be expelled for one year.</td>
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<td>5. A school district may permanently expel a student sixteen or older for possession of a deadly weapon on school premises.</td>
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<td>6. School principals are authorized to expel students for violence on school premises.</td>
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<td>7. School officials may be held personally and financially liable for wrongful suspension or expulsion of a student.</td>
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<td>8. School officials may suspend a dangerous or disruptive student for ten days before notice and a hearing.</td>
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<td>9. Students have no right to cross-examine classmates-informants, or even to know their identity.</td>
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<td>10. School officials may regulate student expression when such expression is reasonably likely to substantially disrupt or interfere with school activities.</td>
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<td>11. Officially loud and indecent speech of students may be regulated by schools.</td>
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<td>12. Student speech may be censored by the school if it is not consistent with the school's educational mission.</td>
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<td>13. Educators may exercise control over the content of student expression in school-sponsored activities if the control is related to an educational concern.</td>
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<td>14. A school may suspend a student who delivers a campaign speech that contains discourteous and rude remarks directed at another student.</td>
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<td>15.</td>
<td>A school principal may remove from the school's library a book whose ideas have caused fights among students in other schools.</td>
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<td>16.</td>
<td>A student may be punished for uncivil and disrespectful speech in a school-sponsored activities.</td>
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<td>17.</td>
<td>The right of students to wear clothing in the styles that suit the students themselves is protected under freedom of speech in the United States Constitution.</td>
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<td>18.</td>
<td>Search warrants are required before school officials may search student lockers or desks.</td>
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<td>19.</td>
<td>School officials must have probable cause before searching students for drugs or weapons.</td>
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<td>20.</td>
<td>A school administrator's search of an individual student for evidence of a violation of a school rule must be justified at its inception and reasonable in its scope.</td>
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<td>21.</td>
<td>School officials may search the hotel rooms of students during school-sponsored field trips.</td>
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<td>22.</td>
<td>When police request school cooperation in an on-school-premises search of a student, probable cause is required.</td>
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<td>23.</td>
<td>A strip search of a student is permitted when the school administrator reasonably suspects that the student is concealing drugs or weapons.</td>
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<td>24.</td>
<td>A dog-sniff of a student's locker does not raise federal constitutional concerns.</td>
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<td>25.</td>
<td>A board of education may adopt a written policy permitting a principal to search any student's locker, with reasonable suspicion that the locker or its contents contain evidence of the student's violation of a crime or school rule.</td>
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<td>26.</td>
<td>If the evidence sought is serious enough, a board of education may authorize a principal to search any student's locker at any time and without advance notice.</td>
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<td>27.</td>
<td>Schools may search a student's locker in emergency situations, regardless of whether the school has a written locker search policy.</td>
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<td></td>
<td>Tort Law</td>
<td>Constitutional Law</td>
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<td>28.</td>
<td>A school's use of radio transmitters or security cameras in classrooms and hallways will generally not violate the constitutional rights of students.</td>
<td>ax Negl Immun Const 1st 4th 5th 14th</td>
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<td>29.</td>
<td>School employees are immune from acts and omissions in the scope of their employment.</td>
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<td>30.</td>
<td>Governmental immunity always relieves a school district from liability for the negligence of a school employee.</td>
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<td>31.</td>
<td>A school district will be liable if one of its employees negligently supervises his or her students in violation of school policy.</td>
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<td>32.</td>
<td>School employees will be liable for injuries suffered by students in hazing incidents in their schools if they knew or should have known about the hazing and made no reasonable attempts to prevent the incidents.</td>
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<td>33.</td>
<td>School administrators are not immune from liability if they knowingly or maliciously disregard a student's established constitutional rights.</td>
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<td>34.</td>
<td>School districts are liable under federal sex discrimination statutes for incidents of peer sexual harassment in schools.</td>
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<td>35.</td>
<td>The United States Constitution requires a public school official to protect a student from harm inflicted by another student.</td>
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<td>36.</td>
<td>Under federal law, a school has no duty to protect a student who is injured by another student known by the school to be violent.</td>
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<td>37.</td>
<td>For purposes of legal liability in student violence cases, there is a &quot;special relationship&quot; between a school and its students.</td>
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<td>38.</td>
<td>Sovereign immunity does not protect a school district from liability if the district violates a student's constitutional rights.</td>
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<td>39.</td>
<td>A school administrator is immune from liability for violating the constitutional rights of students if the administrator acted in good faith.</td>
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<td>40.</td>
<td>In short-term suspension hearings, schools need not allow students to have attorneys present.</td>
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APPENDIX B

PILOT TEST PROCEDURES

1. Cover Letter
2. Follow-Up Question Sheet
August 25, 1997

Mr. Ron Stebelton
Principal
Stewart Elementary School
40 East Stewart Avenue
Columbus, OH 43206

RE: Knowledge, Attitudes, and Practices of Ohio's School Administrators Regarding Student-on-Student Violence and Associated Legal Liability, by Patrick D. Pauken, J.D.

Dear Mr. Stebelton:

Thank you very much for agreeing to serve as a pilot test participant for my dissertation. I appreciate your time, energy, and support in this busy time of year. I have enclosed the current draft of my questionnaire, as well as a draft of the cover letter I plan to include in the final mailing. Although the questionnaire looks long, it should take less than thirty minutes to complete. If necessary, I will use the results from the pilot test to make the questionnaire shorter for ultimate data collection.

My dissertation examines knowledge, attitudes, and practices of Ohio public school principals and superintendents with respect to student violence and the law. I have also included an abstract of my study to provide some background information.

The results of the pilot test members are confidential. Please do not write your name anywhere on the questionnaire. As a member of the pilot test group:

(1) Complete the questionnaire. Directions appear at the beginning of each section. No outside research is necessary.

(2) After completing the questionnaire, answer the Follow-up Questions. These questions are answered by pilot test participants only and will not appear on the final questionnaire. These questions are optional, but I encourage your comments.

Please return the completed materials by September 3, 1997 to: Patrick Pauken, 464 Eastmoor Blvd., Columbus, OH 43209. Use the enclosed pre-addressed envelope. If you have any questions, please call me at 338-1124 (H) or 292-7700 (W). Thank you very much for your time. You have been a great help to me.

Sincerely,

Patrick Pauken, J.D.
Graduate Research Assistant
The Ohio State University

Raymond Pauken
Retired Teacher
The Columbus Public Schools
FOLLOW-UP QUESTIONS FOR PILOT TEST

Patrick D. Pauken, J.D.

(1) How long did it take you to complete the questionnaire (in minutes, excluding unsolicited breaks or distractions)?

(2) Is the questionnaire's subject matter important enough to you to balance the time it takes to complete it?

(3) Does the cover letter adequately convince the reader that it is worth his or her time to complete the questionnaire?

(4) Are the instructions clear? If not, please suggest changes (either on the lines below, or on the questionnaire directly).

(5) Did any part of the questionnaire (or any individual item) stand out as inappropriate or irrelevant? If so, which one(s)?

(6) Additional comments and suggestions:
APPENDIX C

DATA COLLECTION ITEMS

1. Cover Letter
2. Endorsement Letter
3. Postcards
4. Questionnaire
September 17, 1997

Dear Ohio Educator and Administrator:

Though they may vary slightly in motive, severity, and type of attack or injury, violent incidents among students are common in today’s schools. As a result, teachers, administrators, and students are caught in a crossfire of violence. In order to respect the legal rights of students, staff, and parents, to satisfy the legal responsibilities of school districts, and to reduce or eliminate school violence, it is important for school administrators to have sufficient knowledge of this very important area of the law. Currently, courts, legislatures, and commentators are split on issues of school legal liability for student-on-student violence. This split, and the possibility of school district liability, make an examination of administrators’ legal knowledge and attitudes important and urgent.

I am a lawyer and a doctoral candidate in the Ohio State University College of Education conducting research under the supervision and guidance of Dr. Philip T.K. Daniel and Ohio State University President E. Gordon Gee. This research examines the knowledge, attitudes, and practices of Ohio’s school administrators regarding student-on-student violence and associated legal liability. This research will help to identify areas of law that need additional attention in university coursework and professional development programs.

You are one of a small group of Ohio superintendents and principals selected to participate in this study. Therefore, a high response rate is critical. Valid, useful research is dependent upon complete and accurate data, and your contribution is vital to the success of this study.

Confidentiality is assured. No individual administrator or school district will be mentioned in the results. The identification number on the enclosed postcard (to be returned with the enclosed questionnaire) is used for follow-up purposes only. This number does not appear on your questionnaire.

Please take the few minutes necessary to complete the questionnaire and return the following items by September 29, 1997:

(1) the completed questionnaire, in the enclosed postage-payed, pre-addressed envelope; and

(2) the enclosed postage-paid, pre-addressed postcard.
You may receive a summary of the results by checking the appropriate line on the postcard. As school administrators are often the life-savers of elementary and secondary school students, as well as university graduate students, please enjoy the enclosed Life-Savers while you complete the questionnaire.

If you have any questions, please do not hesitate to call me at 614-338-1124 (H) or 614-292-7700 (W). Thank you for your time, energy, and support, especially in this busy time of the year. Your assistance is greatly appreciated.

Sincerely,

Patrick D. Pauken, J.D.  
Educational Policy & Leadership  
The Ohio State University

Philip T.K. Daniel, J.D., Ed.D.  
Associate Professor of Education and Adjunct Professor of Law
TO: Superintendents of Selected Ohio Schools

FROM: Rod Rice, Executive Director

DATE: July 1997

RE: Student Violence in Schools

Mr. Pat Pauken, doctoral student, is researching student violence in Ohio schools. The topic is germane to a contemporary circumstance in schools.

Mr. Pauken will share his findings with BASA, which in turn will be shared with BASA membership. It is a worthwhile research.

Please take the minutes to complete his questionnaire. The validity of the research depends upon the input from administrators like you. Your involvement is appreciated as well as important.

Thank you for your time and effort!
KNOWLEDGE, ATTITUDES, AND PRACTICES OF OHIO'S SCHOOL ADMINISTRATORS REGARDING STUDENT-ON-STUDENT VIOLENCE AND LEGAL LIABILITY.

_____ I have completed the questionnaire and have mailed it separately in the postage-paid envelope.

_____ I would like a summary of the results of this study (available in early 1998).

(please print your name)

Thank you again for participating in this important study, especially in this busy time of year.

I recently sent you a questionnaire on the KNOWLEDGE, ATTITUDES, AND PRACTICES OF OHIO'S SCHOOL ADMINISTRATORS REGARDING STUDENT-ON-STUDENT VIOLENCE AND LEGAL LIABILITY.

If you have already completed and returned the questionnaire, thank you very much for your participation. If not, please take the short, but important time to complete the questionnaire and return it today.

This timely study on school violence is the first of its kind in the nation. Responses from administrators from all types of districts and all parts of Ohio are essential for a complete, accurate, and representative study. You are one of a small group of superintendents and principals selected to participate, and a high response rate is critical.

If the questionnaire has not reached you, or if you need a replacement copy, please call me at 614-338-1124 or 614-292-7700. Thank you very much for your participation.

Sincerely,

Patrick Paulsen
The Ohio State University
QUESTIONNAIRE

PART I: Knowledge of the Law and Legal Liability Regarding Student Violence in Schools.

This section is designed to assess school administrators' knowledge of the law and school violence. The following statements cover the legal liability of schools, school districts, and/or school personnel regarding the legality of anti-violence programs, policies, and discipline. The statements also cover liability for negligent acts or omissions that result in injury to persons or property. According to the state and federal law currently binding in Ohio, are the following statements TRUE, FALSE, or presently UNCLEAR? For each statement, please circle the number corresponding to your response. No outside research is necessary.

<table>
<thead>
<tr>
<th></th>
<th>TRUE</th>
<th>FALSE</th>
<th>UNCLEAR</th>
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</thead>
<tbody>
<tr>
<td>1. School administrators have a legal duty to make rules to regulate violent conduct of students.</td>
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<td>2</td>
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<td>2. The federal Constitution recognizes a student's right against bodily intrusion.</td>
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<td>3. In advance of suspensions of ten days or less, schools must provide the student with notice of the charges, and an informal opportunity to tell his or her side of the story.</td>
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<td>4. A student who brings a knife to school may be expelled for one year.</td>
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<td>5. A school district may permanently expel a student age sixteen or older for possession of a deadly weapon on school premises.</td>
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<tr>
<td>6. School principals are authorized to expel students for violence on school premises.</td>
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<tr>
<td>7. School officials may be held personally and financially liable for wrongful suspension or expulsion of a student.</td>
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<td>8. School officials may suspend a dangerous or disruptive student before giving notice and a hearing.</td>
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<td>9. Students have no right to cross-examine classmate-informants, or even to know their identity.</td>
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<td></td>
<td>TRUE</td>
<td>FALSE</td>
<td>LAW IS NOW UNCLEAR</td>
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<td>10. School officials may regulate student expression when such expression is reasonably likely to substantially disrupt or interfere with school activities.</td>
<td>1</td>
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<tr>
<td>11. Offensively lewd and indecent speech of students may be regulated by schools.</td>
<td>1</td>
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<tr>
<td>12. Student speech may be censored by the school if it is not consistent with the school’s educational mission.</td>
<td>1</td>
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<td>13. Educators may exercise control over the content of student expression in school-sponsored activities if the control is related to an educational concern.</td>
<td>1</td>
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<td>14. A school may suspend a student who delivers a campaign speech that contains discourteous and rude remarks directed at another student.</td>
<td>1</td>
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<td>15. A school board may remove from the school’s library a book whose ideas have caused fights among students in other schools.</td>
<td>1</td>
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<td>16. A student may be punished for uncivil and disrespectful speech in a school-sponsored activity.</td>
<td>1</td>
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<td>17. The right of students to wear clothing in the styles that suit the students themselves is protected under freedom of speech in the United States Constitution.</td>
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<td>18. Search warrants are required before school officials may search student lockers or desks.</td>
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<td>19. School officials must have probable cause before searching students for drugs or weapons.</td>
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<td>20. A school administrator’s search of an individual student for evidence of a violation of a school rule must be justified at its inception and reasonable in its scope.</td>
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<td>21. School officials may search the hotel rooms of students during school-sponsored field trips.</td>
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<td></td>
<td>TRUE</td>
<td>FALSE</td>
<td>LAW IS NOW UNCLEAR</td>
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<td>22. When police request school cooperation in an on-school-premises search of a student, probable cause is required.</td>
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<td>23. A strip search of a student is permitted when the school administrator reasonably suspects that the student is concealing drugs or weapons.</td>
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<td>24. A dog-sniff of a student’s locker does not raise federal constitutional concerns.</td>
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<td>25. A board of education may adopt a written policy permitting a principal to search any student’s locker, with reasonable suspicion that the locker or its contents contain evidence of the student’s violation of a crime or school rule.</td>
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<tr>
<td>26. A board of education may authorize a principal to search any student’s locker at any time and without advance notice.</td>
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<tr>
<td>27. Schools may search a student’s locker in emergency situations, regardless of whether the school has a written locker search policy.</td>
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<td>28. A school’s use of radio transmitters or security cameras in classrooms and hallways will generally not violate the constitutional rights of students.</td>
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<td>29. School employees are immune from acts and omissions in the scope of their employment.</td>
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<tr>
<td>30. Governmental immunity relieves a school district from liability for the negligence of a school employee.</td>
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<td>31. A school district will be liable if one of its employees negligently supervises his or her students in violation of school policy.</td>
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</table>
32. School employees will be liable for injuries suffered by students in hazing incidents in their schools if they knew or should have known about the hazing and made no reasonable attempts to prevent the incidents.

33. School administrators are not immune from liability if they knowingly or maliciously disregard a student's established constitutional rights.

34. School districts are liable under federal sex discrimination statutes for incidents of peer sexual harassment in schools.

35. The United States Constitution requires a public school official to protect a student from harm inflicted by another student.

36. Under federal law, a school has no duty to protect a student who is injured by another student known by the school to be violent.

37. For purposes of legal liability in student violence cases, there is a "special relationship" between a school and its students.

38. Sovereign immunity does not protect a school district from liability if the district violates a student's constitutional rights.

39. A school administrator is immune from liability for violating the constitutional rights of students if the administrator acted in good faith.

40. In short-term suspension hearings, schools need not allow students to have attorneys present.
PART II: School Experience/History with Student-on-Student Violence and the Anti-Violence Policies Implemented by Schools and School Districts.

A. School Experience/History with Student-on-Student Violence

This section asks you to provide information regarding your exposure to student-on-student violence during the past two years. If you are a principal, please supply, to the best of your knowledge, the information from your school only. If you are a superintendent, please supply, to the best of your knowledge, information from your school district. Respond to each of the following types of violence by circling the number that most closely indicates the frequency with which the corresponding type of violence occurs in your school or school district. Use the following scale.

1. Very Frequently
2. Frequently
3. Occasionally
4. Rarely
5. Very Rarely
6. Never

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<tr>
<th>Event</th>
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<td>Physical fights among students</td>
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<td>Verbal threats among students</td>
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<td>Weapon possession</td>
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<td>Threats with weapons</td>
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<td>Injuries with weapons (e.g., shootings and stabbings)</td>
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<td>Theft of personal or school property</td>
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<td>Vandalism by students</td>
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<td>Bullying among students</td>
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<td>Peer sexual harassment</td>
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<td>Ethnic or racial conflict</td>
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<td>Gang presence (e.g., student-members, clothing, symbols, graffiti)</td>
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<td>Hazing</td>
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<td>Student drug/alcohol possession</td>
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<td>Student drug/alcohol use</td>
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<td>Student drug trafficking</td>
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B. Anti-Violence Policies Implemented by Schools and School Districts.

Which of the following violence reduction/prevention programs or policies has your school or school district implemented? If you are a principal, respond with respect to your school only. If you are a superintendent, respond with respect to general practice within your district. PLEASE CHECK ALL THAT APPLY. Please also answer the brief short-answer questions at the end of this section.

1. Random drug-testing of student athletes
2. Random drug-testing of students involved in extracurricular activities
3. Locker searches conducted with suspicion that a particular student has broken a school rule or law
4. Random locker searches
5. Searches of students conducted with suspicion that a particular student has broken a school rule or law
6. Random searches of students
7. Stationary metal detectors placed at school entrances
8. Hand-held metal detectors used by school personnel or security officers
9. Restricted dress codes
10. Uniform codes
11. Peer mediation programs
12. Conflict management or conflict resolution programs
13. Mentoring programs
14. Community service as a punishment
15. Procedures invoked to permanently exclude a student
16. Disciplinary transfer of a student to another school
17. Multicultural education
18. Security officer employed in school
19. Police presence in school
20. School district has its own police department
21. School-sponsored substance abuse programs
22. School-implemented peer sexual harassment policy
23. Anti-hazing policy
24. Alternative schools for students with severe or repeated discipline problems
25. Closed campus (no off-campus lunch, etc.)
26. Fewer or no night-time, school-sponsored events (e.g., athletics, dances)
27. Faculty and staff inservice training for management of violence
28. "Zero Tolerance" policy
29. Published student code of conduct
30. Partnership programs with community organizations
31. School-business partnerships or Adopt-a-School programs
32. Periodic building-level security assessments
33. Regulation of and punishment for off-premises, after-hours conduct by pupils
Q1. Did you or your school(s) address any legal concerns with the implementation of any of the above policies or programs? If YES, which one(s)?


Q2. Did you or your school(s) implement any of the above policies in order to satisfy a state or federal legal requirement (e.g., statute or court ruling)? If YES, which one(s)?


Q3. To the best of your knowledge, do any of the policies that you or your schools have implemented entitle you to additional state or federal funds (e.g., Goal Six of Goals 2000)? If YES, which one(s)?


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PART III: Demographic Information

1. Current Professional Role
   ____ Superintendent
   ____ High School Principal
   ____ Middle School or Junior High School Principal
   ____ Elementary School Principal

2a. If you are currently a district superintendent:
   How many years have you worked as a superintendent? ____
   How many of those years have been in Ohio? ____

2b. If you are currently a school principal:
   How many years have you worked as principal? ____
   How many of those years have been in Ohio schools? ____

3a. How would you classify your school district? (check only one)
   ____ Large City
   ____ Small City
   ____ Suburban
   ____ Rural

3b. How many students enrolled in your school district at the beginning of this school year?
   ____ 2000 students or less
   ____ between 2001 and 5000
   ____ between 5001 and 8000
   ____ more than 8000

4a. If you are currently working as a principal, how many students enrolled in your school at the beginning of this school year?
   ____ 250 students or less
   ____ between 251 and 500
   ____ between 501 and 750
   ____ between 751 and 1000
   ____ between 1001 and 1250
   ____ more than 1250

4b. If you are currently working as a principal, please check the space that most appropriately identifies the socioeconomic status of the MAJORITY OF YOUR STUDENTS.
   ____ upper class
   ____ middle-to-upper class
   ____ lower-to-middle class
   ____ middle class
   ____ lower class
5. What exposure to education law have you had? (check all that apply)

___ Law degree
___ Courses at college or university
___ Readings in journals or books
___ Newspapers and magazines
___ Attendance at Education and/or Law Conferences and Conventions
___ Publications or other information supplied by the state department of education
___ In-service programs
___ Continuing education to keep certification current
___ School district attorney(s)
___ Information from colleagues (other school administrators)
___ Information from professional organizations (e.g., Buckeye Association of school Administrators, The Education Law Association (formerly NOLPE))

___ Other __________________________________________

_________________________________________
BIBLIOGRAPHY


Elizabeth Crouch and Debra Williams, What Cities Are Doing to Protect Kids, Educational Leadership, Feb. 1995, at 60.

Albert J. Cunningham (1994), Knowledge, Attitude, and Practice of Pennsylvania School Administrators in Regard to


Stanley M. Elam, Lowell C. Rose, and Alec M. Gallup, Phi Delta Kappa/Gallup Annual Poll of the Public's Attitudes Toward the Public Schools, Phil Delta Kappan, Sept. 1996, at 50.


Nathan L. Essex, This Stunning Legal Decision Might Lead to Increased Board Liability . . ., American School Board Journal, March 1987, at 32.


Patrick V. Gaffney, Knowledge of and Attitudes toward the Legal Rights of Public School Students on the Part of Undergraduate Education Students at the University of Mississippi (1991) (unpublished Ph.D. dissertation, The University of Mississippi) (on file with The University of Mississippi Library).


Susanna M. Kim, Comment, Section 1983 Liability in the Public Schools after DeShaney: The "Special Relationship" between School and Student, 41 UCLA L. Rev. 1101 (1994).


University of Illinois at Chicago) (on file with The University of Illinois at Chicago Library).


Ohio Educational Directory
<http://www.ode.ohio.gov/www/ims/extract_vitals_data.html>


Letter from John E. Palomino, Regional Civil Rights Director, Department of Education, to Karl Pister, Chancellor, University of California, Santa Cruz (April 29, 1994).


Deborah Prothrow-Stith, Building Violence Prevention into the Curriculum, School Administrator, April 1994, at 8.


Gary L. Reglin, Public School Educators’ Knowledge of Selected Supreme Court Decisions Affecting Daily Public School Operations, Research in Rural Education, Fall 1990, at 17.

E. Edmund Reutter, Jr., Legal Aspects of Control of Student Activities by Public School Authorities (1970).


Robert J. Rubel, The Relationship between Student Victories in the Courts and Student Violence in the Schools, Contemporary Education, Summer 1979, at 226.


Helene S. Shape, Marilyn R. Walter, and Elizabeth Fajans, Writing and Analysis in the Law (2d ed. 1991).

Kathleen K. Shepherd, Stemming Conflict through Peer Mediation, School Administrator, April 1994, at 14.

Rebecca Shore, How One High School Improved School Climate, Educational Leadership, Feb. 1995, at 76.


TABLE OF CASES


Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).


Cheema v. Thompson, 67 F.3d 883 (9th Cir. 1995).


Cornfield v. Consolidated High Sch. Dist. No. 230, 991 F.2d 1316 (7th Cir. 1993).


Davis v. Monroe County Bd. of Educ., 74 F.3d 1186, vacated, 91 F.3d 1418 (11th Cir. 1996), rev'd on reh'g, 120 F.3d 1390 (11th Cir. 1997).

DeShaney v. Winnebago County Dep't of Social Serv., 489 U.S. 189 (1989).


Doe v. Renfrow, 631 F.2d 91, reh'g denied, 635 F.2d 582 (7th Cir.), cert. denied, 451 U.S. 1022 (1980).

Doe v. Taylor Indep. Sch. Dist., 975 F.2d 137, 146 (5th Cir. 1992), cert. denied, 113 S. Ct. 1436, vacated, 987 F.2d 231 (5th Cir. 1993).

Dorothy J. v. Little Rock Sch. Dist., 7 F.3d 729 (8th Cir. 1993).

Downing v. Brown, No. 96-0742, 935 S.W.2d 112 (Tex. 1996).


Edwards v. Rees, 883 F.2d 882 (10th Cir. 1989).


Gfell v. Rickelman, 441 F.2d 444 (6th Cir. 1971).


In re Isaiah B., 500 N.W.2d 637 (Wis. 1993).

J.O. v. Alton Community Unit Sch. Dist., 909 F.2d 267 (7th Cir. 1990).


L.W. v. Grubbs, 974 F.2d 119 (9th Cir. 1992).

Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984).


Ledfors v. Emery County Sch. Dist., 849 P.2d 1162 (Utah 1993).

Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521 (5th Cir. 1994).


Maldonado v. Josey, 975 F.2d 727 (10th Cir. 1992).


Nabozny v. Podlesny, 92 F.3d 446 (7th Cir. 1996).


Newsome v. Batavia Local Sch. Dist., 842 F.2d 920 (6th Cir. 1988).


Paredes v. Curtiss, 864 F.2d 426, 428 (6th Cir. 1988).


Rupp v. Bryant, 417 So.2d 658 (Fla. 1982).


Seamons v. Snow, 84 F.3d 1226 (10th Cir. 1996).


Smith v. McGlothlin, 119 F.3d 786 (9th Cir. 1997).

Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969).
Spencer v. Omaha Public Sch. Dist., 566 N.W.2d 757 (Neb. 1997).


Stephenson v. Davenport Community Unity Sch. Dist., 110 F.3d 1303 (8th Cir. 1997).


Thompson v. Carthage Sch. Dist., 87 F.3d 979 (8th Cir. 1996).


White v. Rochford, 592 F.2d 381 (7th Cir. 1979).


Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981).
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<td>The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq.</td>
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<td>Ohio Rev. Code Ann. § 2307.44</td>
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Tex. Const. art. I, § 3a


U.S. Const. amend. I.
U.S. Const. amend, IV.
U.S. Const. amend. V.
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