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ABSTRACT

The school's responsibility to provide a safe learning environment for students is examined in this paper. Failure to take preventative measures may result in loss of government tort immunity and charges of negligence liability. A review of case law indicates a trend toward successful litigation by plaintiffs against school districts--a decline in sovereign immunity. A recommendation is that school districts have a professional and legal obligation to protect students and staff from foreseeable risk. Each district should determine its needs and provide protection in accordance with budget considerations and community perceptions. Some actions include student and faculty ID cards, conflict management training, improved control of access to facilities, policy procedures, victim support, and violent student management. (13 references) (LMI)

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## The School District's Liability in Cases of Violent Attacks on Students and Employees

### Issue

Recent publicity given violent attacks, gangs, and drug-related incidents in public schools among students and by students against teachers and employees has raised the level of concern over whether our schools are safe. A 1987 National Education Association Member Opinion Poll reports that four percent, or 91,000 of 2.2 million, of U.S. teachers were attacked(Stover 16). A 1984 study by the California School Employees Association reports that 46 percent of the respondents feared for their safety on the job. A survey of 390 Baltimore high school students found that 64 percent knew someone who had been shot, threatened or robbed at gunpoint in their school(Stover 16). These numbers cannot be generalized to every school district; but some violence occurs within all social groups, and much occurs that is not reported. Local analysis will determine

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the likelihood of violent crimes within any particular school.

Socioeconomic conditions such as lack of parental involvement, permissive attitudes toward violence, limited law enforcement ability to detain serious juvenile offenders, availability of weapons, drug addiction, gangs, and the related problems of schools less willing to enforce discipline because of these conditions have raised the stakes in what otherwise might be less serious assaults(Stover 16).

A legal liability question arises from this milieu as to the School's duty to provide a safe environment for learning and at what point knowledge of safety hazards requires preventative measures in protecting the school population, or face losing governmental tort immunity and incurring negligence liability for criminal acts against its population.

#### Points of View

Negligence is generally accepted as failing to act as a reasonably prudent person would act under similar circumstances. Public school personnel have a legal duty to protect their students from reasonably foreseeable risks of harm, though they are not exclusive insurers of pupils' safety(Reutter 343). As an employer the school district can be expected logically to have a similar duty to provide a

safe work place for teachers and employees. However, the school district is traditionally provided with sovereign immunity, or legal protection from lawsuits. This question of victims' rights is central to the question of negligence liability.

Negligence liability centers around a specific set of elements that must all be proven by the plaintiff in a successful negligence action: 1) a duty, or obligation recognized by law, requiring the actor (the school) to conform to a certain standard of conduct for the protection of others against unreasonable risks; 2) failure to conform to the required standard; 3) a reasonably close causal connection between the conduct and the resulting injury, that is, proximate cause; 4) actual loss or damage resulting to someone to whom the duty is owed. When a student, teacher, or employee is injured in a violent crime on the campus, the question arises of whether the victims' rights to a safe environment have been protected, or whether these negligence elements are present. Provided the facts and the law support the action and all the elements are proven administrators, teachers, and school employees are responsible for their own negligent torts; and the school district may be vicariously liable for actions under its supervision (Carrington 21).

There are generally three defenses that will relieve the school district of negligence liability in part or whole: 1) contributory negligence -- the plaintiff contributed to the

injury by willfully disregarding a warning or procedure designed to prevent the injury; 2) assumption of risk -- the plaintiff willfully participated in an action where injury was known to be a possibility(Carrington 22); 3) sovereign immunity -- the government cannot be sued, except with permission of the government(Carrington 39).

The most relevant defense applicable to victim's rights litigation is sovereign immunity. School districts, as governmental entities, have been immune traditionally from suits regarding their governmental functions. Generally, activities related to operation of public schools have been considered governmental, and therefore protected by immunity. Proprietary(private) acts are not protected. Likewise, discretionary(planning) acts are protected; ministerial(operational) acts are not protected. Obviously, the definitions are unclear, unmanageable, and not consistently distinguished in the Courts. Legal actions concerning school districts are decided generally in state courts; therefore, each state may interpret immunity differently, each case standing on its on merit. The majority are found in favor of the school district. It is noteworthy that at least some courts have found against plaintiffs on the question of the school's action being protected as discretionary(Carrington 41). This would suggest that schools are safely under immunity for planning (which would seem to include planning to provide safety

measures concerning violent attacks). However, legal writings and state actions are showing the sun beginning to set on this long-held immunity and suggesting a new day in court decisions concerning victims' rights to safe schools.

As victims have turned increasingly to the court system to remedy the wrongs against them, the United States Supreme Court and some states have begun to reshape victims' rights laws concerning public schools.

In a 1985 case, New Jersey v. T.L.O., Justice Lewis Powell addressed clearly the issue that education requires discipline and order and that "... the school has an obligation to protect pupils ... and also to protect teachers from violence ... (Carrington 8)."

In a similar vein, Chief Justice Warren Burger praised the American legal system's evolutionary capacity in a 1986 article saying, "Legal institutions change as they respond to new challenges. The serious challenge of restoring a safe school environment has begun to reshape the law (Carrington 8)."

This reshaping includes California's 1982, "Victims' Bill of Rights," a state constitutional amendment that among other provisions states:

"All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful." (Carrington 10)

The scope of the amendment's validity has been upheld by the California Supreme Court to the extent of criminal behavior, but has been implied to be more encompassing. This new guarantee is yet to be fully tested in court, but it clearly suggests increased liability exposure for failure to provide reasonable safety measures against criminal behavior in public schools: security guards, safety devices, improved procedures, etc.(Carrington 11). As a constitutional right, the California measure takes precedent over the usual tort considerations mentioned above.

Other states have yet to provide a constitutional right to safe schools; and, development of this area of legal change will be lengthy. But in victims' rights cases, a trend is developing to hold third-party defendants, including schools, responsible for injuries of crime victims. The courts have developed the expectation that schools will provide an environment " ... harmonious with the purposes of an educational institution ... where there is custody of and an absolute right to control student behavior(Carrington 14)."

Whether by proving the school's negligent behavior and defeat its defenses, or by relying on the trend suggested by the Supreme Court and evidenced by the actions of states such as California, the victim of violent crime in our Nation's schools is increasingly likely to successfully litigate for money damages against the school district. The twilight of

sovereign immunity in its former broad sense appears to be nearing in the operation of public schools.

### Personal Opinions

With or without the presence of a constitutional amendment or supporting case law, school districts have a professional and legal obligation to protect students and staff against foreseeable risks of harm. To provide less is unconscionable, as were many of the royal decrees from whence sovereign immunity came.

Every school district cannot afford a security force -- every school district does not need one. The responsibility lies with each district to determine the scope of local violent crime and then act as a "reasonably prudent person" in providing protection. The protections will be limited by budget considerations and community perceptions, but many low cost solutions may be acceptable: identification cards for students and faculty, conflict management training, better access control to facilities, establish procedures for responding to violent acts, provide support for victims, improved management of violent students.

Schools are a function of the State; and as such, they inherently owe an obligation of quality and responsiveness to the people who fund and make them possible. The State requires that parents trust schools with their children.



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Logically, an even higher standard of care could be expected. If the school is aware of a dangerous presence -- gangs, drug trade, habitual juvenile offenders -- the school must take reasonable steps to prevent students (and staff) from being injured. It is reasonable to predict that sovereign immunity for public schools is slowly dying because the public will continue to logically and correctly demand that the schools they are required to create and support will be at least as responsible for their own actions as is required of the general public.

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