



School Safety and Security Initiatives

The Importance of
Careful Planning and Compliance

By Scott Corba



At a Glance

Schools must comply with a variety of safety and security initiatives promulgated by the state over the last 20 years ranging from reporting incidents of school crime to local and state officials to implementing health and safety protocols designed to curb the spread of COVID-19. It is important for schools to comply with these requirements to fulfill their legal and ethical obligation to protect the safety and welfare of students, create an environment conducive to academic achievement, and remain legally compliant and limit potential liability.

State law recognizes the crucial responsibility of schools and school districts to create a safe and secure educational environment for students. The Revised School Code gives school districts broad powers to perform functions related to the operation of public schools and the provision of public education services.¹ The right, power, and duty to provide for the safety and welfare of pupils while at school, at school-sponsored activities, or en route to or from school or school-sponsored activities is among the functions expressly identified in the Revised School Code, secondary only to the obligation to educate pupils.²

The authority afforded to school districts in this regard exceeds that of other local governmental and quasi-governmental entities. For example, Michigan law prohibits local units of government from regulating the possession of firearms beyond the framework of regulations otherwise established in federal or state law.³ Courts have interpreted this statute to preclude cities and district libraries from enacting

and enforcing gun-free zones on their campuses.⁴ In contrast, the Michigan Supreme Court held that school districts are neither preempted expressly by statute nor impliedly under a theory of field preemption from regulating or even banning firearms on school campuses in a manner not afforded to other public entities.⁵

Over the last 20-plus years, the state has taken several measures designed to address school safety and security. In 1999, the legislature amended the Revised School Code to direct the superintendent of public instruction, director of the Michigan State Police, and attorney general to work together to adopt, publish, and distribute a Statewide School Safety Information Policy.⁶ School boards, county prosecutors, and local law enforcement were required to confer about implementation of the policy in their locality and begin complying with its terms.⁷ The statewide policy, last amended in 2015, primarily addresses reporting obligations for criminal incidents occurring on school property.⁸

In 2011, the Michigan Department of Education (MDE) published more expansive guidance, the MI Ready Schools: Emergency Planning Toolkit, which encouraged schools to develop or update emergency management plans covering a wide variety of hazards.⁹ Specifically, the toolkit provides guidance and resources to help schools create comprehensive plans covering four phases of emergency planning: mitigation and prevention, preparedness, response, and recovery.¹⁰ The toolkit addresses potential emergencies such as natural disasters (e.g., floods, fires, tornados), bomb threats and weapons on campus, and epidemics or pandemics.¹¹

In 2019, the legislature enacted school safety legislation that amended the Revised School Code to require school districts, intermediate school districts, and public school academies to develop and adopt emergency operations plans for each school building by January 1, 2020, and review the plans at least biennially in conjunction with local law enforcement.¹² These plans are required to establish guidelines and procedures addressing topics extending well beyond the scope of the Statewide School Safety Information Policy including but not limited to school violence, bomb threats, weather emergencies, training, and a vulnerability assessment.¹³

The school safety legislation impacted other statutes and agencies. It created the Office of School Safety within the Michigan State Police and tasked the office to work with MDE to create model practices for school safety and develop and offer safety training to school staff.¹⁴ Recognizing the value of maintaining the confidentiality of emergency planning information, the legislation classified emergency operation plans and related information submitted to the state as exempt from disclosure under the Freedom of Information Act.¹⁵ The legislation also created a new exemption to the Open Meetings Act that allows school boards to meet in closed session to discuss security planning.¹⁶

Over the past year, the focus of school safety and security initiatives has shifted from school crime and acts of violence to matters of public health as schools have been compelled to consider how to provide instruction during the COVID-19 pandemic. On June 30, 2020, Gov. Gretchen Whitmer issued Executive Order 2020-142 to address the circumstances under which schools could reopen during the pandemic.¹⁷ The order required school districts to develop and adopt plans for the 2020–2021 school year aligned with the MI Safe Schools: Michigan’s 2020–21 Return to School Roadmap, which included health and safety protocols addressing topics such as hygiene, cleaning, athletics, screening, testing, and student transportation.¹⁸

The Michigan Supreme Court subsequently concluded that Gov. Whitmer did not have the legal authority to issue executive orders related to the COVID-19 pandemic after April 30, 2020.¹⁹ Following the Supreme Court decision, some state agencies—including the Michigan Department of Health and Human Services and the Michigan Occupational Safety and

Health Administration—and local health departments issued additional rules and orders applicable to health and safety standards at schools.²⁰

As the MDE has explained, schools have a social and legal obligation to exercise due diligence in preventing and mitigating harm to students and staff; the lack of comprehensive planning could leave schools vulnerable to lawsuits.²¹ With regard to the social or ethical obligations, schools have a basic duty to protect the health and safety of students while they are at school or school functions.²² Moreover, research has found that safe and secure educational environments, or the perception thereof, may help academic achievement.²³ For example, studies have found that:

- The condition of school buildings and perceptions of safety strongly influence both student academic performance and absenteeism.²⁴
- Third graders who reported that they were frequently victimized scored lower in reading, mathematics, and science than their peers who reported that they were never victimized or were sometimes or rarely victimized.²⁵
- About five percent of students ages 12–18 involved in the study reported that they avoided at least one school activity or class or one or more places in school during the previous school year because they thought someone might attack or harm them.²⁶
- Both individual-level peer victimization and school-level climate have important influences on teachers’ evaluations of students’ academic functioning.²⁷

Noncompliance could potentially result in liability for school districts and school leadership. School districts maintain comprehensive liability insurance, but the coverage afforded to school districts may not extend to acts that violate the law. In addition, the Revised School Code contains a provision making it a misdemeanor for school-board members to neglect or refuse to perform acts required by the statute or knowingly consent to violating it.²⁸ School boards are also authorized to dismiss from employment and cancel the contract of a superintendent, school principal, or teacher who neglects or refuses to comply with the Revised School Code.²⁹

Generally, school districts are immune from tort liability while engaged in the exercise or discharge of governmental functions such as educating students.³⁰ Immunity extends to officers, employees, volunteers, and board members acting in the course of their employment or service unless they commit gross negligence, meaning conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.³¹ Michigan courts have found that violation of government directives like statutes and ordinances can serve as evidence of negligence in tort actions.³² Accordingly, noncompliance with school safety and security planning

requirements—or possibly even the associated guidance—could put school districts and school employees at risk of losing the protection of governmental immunity.

With these interests in mind, it is imperative for school districts and school leaders to devote the time and resources necessary to understand their obligations and ensure compliance with school safety and security laws and guidance from the state. This has been an emphasis of the legislature and MDE for more than two decades and has taken on additional meaning in recent months as the primary focus of school safety and security has shifted from concerns about school violence and crime to matters of public health related to the COVID-19 pandemic. ■



Scott Corba is a senior associate at Collins & Blaha, P.C., representing and advising local school districts, intermediate school districts, public school academies, and community colleges on legal issues arising from day-to-day school operations.

ENDNOTES

1. MCL 380.11a(3).
2. MCL 380.11a(3)(b).
3. MCL 123.1102.
4. *Mich Coalition of Responsible Gun Owners v City of Ferndale*, 256 Mich App 401; 662 NW2d 864 (2003) and *Capital Area Dist Library v Mich Open Carry, Inc*, 298 Mich App 220; 826 NW2d 736 (2012).
5. *Mich Gun Owners, Inc v Ann Arbor Public Schools*, 502 Mich 695; 918 NW 2d 756 (2018).
6. MCL 380.1308(1).
7. MCL 380.1308(1)(a)–(b).
8. MCL 380.1308(2) and Memorandum: Statewide School Safety Information Policy, Dept of Education, State of Mich (September 3, 2015), available at <https://www.michigan.gov/documents/mde/Statewide_School_Safety_499035_7.pdf> [https://perma.cc/F6QW-UR2F]. All websites cited in this article were accessed January 27, 2021.
9. *MI Ready Schools: Emergency Planning Toolkit*. Mich Dept of Education and CSHP (2011) <https://www.michigan.gov/documents/safeschools/MI_Ready_Schools_Emergency_Planning_Toolkit_370277_7.pdf> [https://perma.cc/L6G7-5DX6].
10. *Id.* at 3.
11. *Id.* at 4.
12. MCL 380.1308b(1)–(2).
13. MCL 380.1308b(3).
14. MCL 28.681 and MCL 28.683.
15. MCL 380.1308b(8).
16. MCL 15.268(k).
17. Executive Order No 2020-142.
18. *Id.* and *MI Safe Schools: Michigan's 2020–21 Return to School Roadmap*, Gov Gretchen Whitmer, COVID-19 Task Force on Educ, and Return to School Advisory Council (June 30, 2020), available at <https://www.michigan.gov/documents/whitmer/MI_Safe_Schools_Roadmap_FINAL_695392_7.pdf> [https://perma.cc/GT9G-ESZD].
19. *In re Certified Questions from the United States Dist Court, Western Dist of Mich*, opinion of the Mich Supreme Court, decided October 2, 2020 (Docket No 161492).
20. See, e.g., Mich Dept of Health and Human Services Emergency Order Under MCL 333.2253—Gathering Prohibition and Face Covering Order (October 9, 2020) <https://www.michigan.gov/documents/coronavirus/MDHHS_epidemic_order_-_Gatherings_masks_bars_sports_-_FINAL_signed_704740_7.pdf> [https://perma.cc/T8JC-8UD9] and Emergency Order Under MCL 333.2253—Reporting of Confirmed and Probable Cases of COVID-19 at Schools (October 6, 2020) <https://www.michigan.gov/documents/coronavirus/MDHHS_epidemic_order_-_school_reporting_of_covid19_infections_-_10-6-20_704340_7.pdf> [https://perma.cc/7E8C-B7N7]; Mich Dept of Labor and Economic Opportunity, Emergency Rules—Coronavirus Disease 2019 (COVID-19) (October 14, 2020) <https://www.michigan.gov/documents/leo/Final_MIOSHA_Rules_705164_7.pdf> [https://perma.cc/UEV5-C2XE]; and Wayne City Local Health Dept, Emergency Public Health Order in Response to the COVID-19 Pandemic Under MCL 333.2453 “Working Together to Fight COVID-19” (October 16, 2020) <<https://www.cityoftaylor.com/DocumentCenter/View/9031/WAYNE-COUNTY-Updated-Public-Health-Order-10-16-2020?bidld=>>> [https://perma.cc/RT9M-UMQH].
21. *MI Ready Schools: Emergency Planning Toolkit* at p 3.
22. MCL 380.11a(3)(b).
23. *Student Perceptions of Safety and Their Impact on Creating a Safe School Environment*, Readiness and Emergency Mgmt for Schools Tech Assistance Ctr, p 1, available at <<https://files.eric.ed.gov/fulltext/ED593833.pdf>> [https://perma.cc/ENC3-3ZPZ].
24. Berman et al., *School Environmental Conditions and Links to Academic Performance and Absenteeism in Urban, Mid-Atlantic Public Schools*, 221 Int’l J Hygiene & Environ Health 800, 807 (2018).
25. *Indicators of School Crime and Safety: 2016*, Nat’l Center for Education Statistics (May 2017), p iv, available at <<https://nces.ed.gov/pubs2017/2017064.pdf>> [https://perma.cc/XD8D-YWBA].
26. *Id.* at viii.
27. Wang et al., *School Climate, Peer Victimization, and Academic Achievement: Results from a Multi-Informant Study*, 29 School Psych Quarterly 360, 373 (2014).
28. MCL 380.1804.
29. MCL 380.1806.
30. MCL 691.1407(1).
31. MCL 691.1407(2) and MCL 691.1407(8)(a).
32. *Zeni v Anderson*, 397 Mich 117; 243 NW2d 270 (1976) and *Cassibo v Bodwin*, 149 Mich App 474; 386 NW2d 559 (1986).