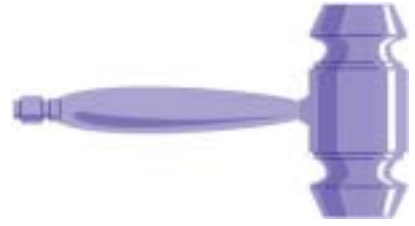


Legal Corner



By Michael Levin, Esq., PAESSP Chief Legal Counsel

Best Practices—Safe and Healthy Schools—Development of a Safety Program



Principals are uniformly recognized as the educational leaders of their school. Less clear is whether principals are “safety or health commissioners” of their buildings. After all, others are responsible for such things as maintenance and repairs, design decisions, equipment purchases, etc., all of which have an impact on how safe or healthy the

building is. However, as the highest ranking employee of the school district on the premises on a day-to-day basis, it is suggested that the principal take a proactive, thoughtful and calculated approach to insuring that the school is safe and healthy. This is necessary not only to prevent injury and disease, but also to reduce or eliminate the potential of legal liability for the school entity or for the principal. Public school administrators, including principals, are regularly being sued for injuries occurring to students or employees.

In order to take such an approach, it is first necessary to understand the areas of risk. They are generally:

1. Mold and asbestos;
2. Chemicals used in the school for such things as cleaning, maintenance or instruction;
3. Communicable disease of students, employees or others who enter the school;
4. Medication stored for student use that is not properly secured;
5. Defective or dangerous conditions of the building or premises;
6. Defective or dangerous conditions of equipment in the building;
7. Drug or alcohol induced impairments;
8. Illegal drugs brought to school by students or others;

9. Unsafe driving conditions or practices on school property or in connection with school district events;
10. Weapons brought to school by students or others;
11. Unsafe activities, such as using power equipment without eye protection; and
12. Violent acts by students or others.

I suggest that principals develop a comprehensive “safety program” for their schools. The safety program should be written and should address each of the risks identified on this page. Principals may have to create some sections from scratch, while other sections may be taken from documents already existing in the school district, such as the “disaster plan” that the school district adopted, the Code of Conduct, etc. Naturally, the written materials in the “safety program” should be consistent with applicable law, school board policy and administrative guidelines in the school district.¹

There is not nearly enough space in this article to address all of the items that should be addressed in a safety program. However, I will attempt to summarize some of the more important points. The written safety program should have the following ingredients:

1. **Education and Training.** Each employee and student, regardless of age, should be taught about safety. Safety education must occur in a multitude of formats and at different times, as appropriate. Posters and announcements placed around the school for both employees and students are the first step. Films, videos or other literature should be provided to students or employees who will be engaged in dangerous activities. The school district’s general liability insurer or workers’ compensation carrier may be willing

Continued on next page

to provide safety seminars to employees. Schools can obtain safety services from the Pennsylvania School Boards Association (PSBA) Insurance Trust, the leading provider of insurance and insurance related services to Pennsylvania's public schools. Written reminders sent on a regular and as-needed basis to employees and students regarding specific or general health and safety issues should be considered. Finally, safety meetings with employee groups, such as teachers, custodial staff and cafeteria staff, should be conducted regularly. If the school district has a safety committee that was created in connection with workers' compensation, principals should make use of the committee to provide training or conduct safety meetings in accordance with school district policy. You should ensure that the curriculum makes some allowance for the teaching of safety to students on a repeated and no less than annual basis at the beginning of the school year.

2. **Periodic Inspections.** Principals should conduct periodic inspections of their buildings, either alone or in conjunction with others, such as the facilities director of the school district or the members of the safety committee. It is recommended that an inspection checklist be prepared to ensure that the principal is looking for the right things. Items to address should include water leaks, cracks, tripping hazards, safe containment of dangerous materials, friability of asbestos containing materials, training by shop teachers, posting of required notices and others.
3. **Emergency Procedures.** The safety program should have written *emergency procedures* in place to ensure that if an injury occurs or if a condition arises that may cause injury, it is handled properly.
4. **Accident/Injury Reporting and Investigation.** Whenever there is an accident or injury, even if minor, it must be reported and investigated and the investigation must be thorough and comprehensive. Items that were involved in the injury may have to be preserved. It is also a good idea to require "near miss" injuries be reported so if corrective action is necessary, it can be taken. Such reports will help identify potential hazards or risks. Because of the importance

of the investigation and action to prevent similar injuries from occurring, it is recommended that the central administration be involved in the process. The investigation should inquire into the cause of each accident or injury and must be documented in an incident report. If a particular piece of equipment was involved in an accident or injury, it should be evaluated and preserved. If repairs are necessary, they should be made before the saw is used again. Pictures should be taken of an accident scene as soon as possible after the accident occurs, especially if conditions at the accident scene will change, as is the situation where there is a fall on snow or ice. Each picture should be properly labeled as to the date and time taken, the identity of the photographer and a general description of what the picture depicts. If any employee or student engaged in any unsafe act, depending upon circumstances, discipline may be appropriate. At the least, education and training should be provided. The documentation should state the action that is being taken to guard against such injuries or accidents in the future.

5. **Use, Care and Maintenance of Machinery, Tools, Material and Equipment.** Many injuries occur as a result of the use of machinery, tools or equipment. All employees who use or are responsible for machinery, tools and equipment must be properly trained on each piece with respect to its safe use, care and maintenance. Employees must be encouraged to report whenever equipment needs to be repaired or maintained to allow safe usage. Employees are to be directed to use and maintain equipment, machinery and tools in accordance with manufacturer's recommendations. I suggest the principal, as part of the safety program, maintain a central repository for copies of the instructions associated with all machinery, tools, material and equipment in the school. Shop teachers should make copies of manufacturer's instructions for each student using the machinery and review the pertinent points as part of the instructional program.
6. **Use and Care of Chemicals.** Chemical manufacturers are mandated by law to provide "Material Safety Data Sheets" ("MSDS") to their customers containing

information about characteristics, health hazards and emergency response procedures for each hazardous substance. All chemicals brought into the building should be disclosed to the principal and the MSDS relating to that chemical be given to the principal. A copy should also be kept at the location where the chemical is to be used.

7. Drug and/or Alcohol Induced Impairments.

Some accidents and injuries are caused because students or employees are impaired due to illegal drug or alcohol use. Most school districts have policies dealing with the subject in one way or the other, but few have policies pertaining to “reasonable suspicion” drug and alcohol testing of students or employees. All school districts should have policies specifically allowing “reasonable suspicion” testing and setting for pertinent safeguards. The safety program developed by the principal should contain provisions pertaining to same. Although random drug and alcohol testing would not be able to pass constitutional muster in most instances, “reasonable suspicion” testing would. However, the procedures must be fair and objective, as they are, for example, in the drug and alcohol testing of school bus drivers. Among the provisions in the safety program are provisions that require designated individuals in the school to receive reasonable suspicion training. A related issue deals with medications needed by students at school. The safety program must address the safe and secure storage of such drugs and the proper administration of the drugs. The inspections recommended earlier in this article should include an examination to ensure the procedures are being followed.

8. Employee and Student Rules. Health and safety practices should be the responsibility of each employee and student in the school. The Code of Student Conduct should contain specific rules designed to insure safety and employees should be given written directives, perhaps in the employee handbooks, about rules for safety. The shop teachers, as previously suggested, should be required to operate all equipment in accordance with manufacturer’s requirements.

9. Safety and Hazard Committee. I recommend that the safety program include a safety and hazard committee. The school district



may already have such a committee in place and operating. If so, the individual safety program for the individual school can, if sufficient, incorporate the school district’s safety committee program into the school’s program. However, if there is any reason why it is not adequate, the principal should consider forming and operating a school-based safety committee that could supplement what the school district’s committee is doing.

10. Legal Considerations.

➤ Certain activities or situations are highly regulated because of safety concerns and implications. The safety program I recommend should reference all applicable safety laws and mandate compliance by employees with applicable provisions. For example, the Asbestos Hazard Emergency Response Act (“AHERA”) applies to school districts and contains provisions mandating any school employee who is directed to conduct emergency repairs involving any building material containing asbestos shall be provided the proper training to safely conduct such work and shall be provided the proper equipment and allowed to follow work practices that are necessary to safely conduct such work. 15 U.S.C.A. §2655(b). Another example is Pennsylvania’s Worker and Community Right-to-Know Act. 35 P.S. §7301, *et. seq.* The most important safety statute is OSHA. However,

OSHA does not apply to public schools because there is an exemption in OSHA for governmental employers. Although OSHA does not apply to public school districts, the statute contains numerous practical requirements to ensure a safe work place. It is suggested that those provisions of OSHA having applicability to a particular school building be adopted as a work rule in the school.

- Some types of injuries require reporting under the law. All work related injuries must be reported to the state under the Workers' Compensation Act and to the workers' compensation insurer or pool. 72 P.S. §994.2. Injuries that constitute "abuse" of a student by a school district employee must be reported to the appropriate school administrator and to the police and district attorney. 23 Pa.C.S.A. §§6352, 6353. In addition, the appropriate investigation and remedial measures must be promptly taken by the school and school district. It is recommended the safety program contain a clear and thorough description of how the principal will ensure that legal requirements will be met.

11. Student Discipline. Perhaps the lion's share of injuries in schools is caused by student-on-student violence. All student injuries and violent attacks, whether they result in injury or not, must be properly investigated and remedial action must be taken. It is recommended the safety program describe how it will be accomplished. The records should be maintained in the individual student records for each student involved in the violence, either as perpetrator or victim, or in a central file. State law, in the form of the Safe Schools Act, 24 P.S. §13-1301-A, *et seq.* mandates that certain records be maintained and reported to the Pennsylvania Department of Education. It further states "[w]henver a pupil transfers to another school entity, a certified copy of the student's disciplinary record shall be transmitted to the school entity to which the pupil has been transferred." 24 P.S. §13-1305-A. The practical consequences of this is, contrary to the practice in some school

districts to destroy student discipline records whenever the child transfers from elementary to middle, or middle to high school, the disciplinary records must be maintained so that they can be transferred to a new school district should the child transfer. Whenever a new student enters a school, it is recommended that the disciplinary records of the student be reviewed to make certain you know of the student's possible propensities so appropriate action can be taken to ensure a safe environment for employees and students.

12. Periodic Review of Records. Because the safety program will call for a central repository of records pertaining to all injuries and accidents, as well as unsafe conditions, in the school, such records will be easy to examine and evaluate. The records should be reviewed and evaluated on a regular basis, no less than quarterly, and documentation of the review should be prepared and preserved. If there is a safety committee, it should review the documentation. Depending upon the results of the data, appropriate action should be taken. If, for example, it is found that a particular student is involved in repeated acts of violence or assault, then special effort should be undertaken to remediate the situation.

13. First Aid/Resuscitation. The safety program should identify those employees in the building qualified to give first aid and resuscitation. First aid and resuscitation training must be provided by a qualified instructor on a periodic basis and be properly documented. Although state law requires resuscitation training at least every three years, I recommend that it be done annually.³

14. Supervising Safety. As the highest ranking supervisor in the school building, the principal has the power and authority to supervise the employees in the school to ensure safe and healthy practices and conditions. In order to supervise effectively, however, you need to fulfill the following, which needs to be reflected appropriately in the safety program:

- You need to know and understand the school district's safety requirements and the legally required safety responsibilities;
- The employees and students have to be trained and directed to engage in

- safe practices and to report unsafe conditions or practices;
- You need to document training and directives;
 - You need to identify all hazardous or potentially hazardous conditions or activities in your school;
 - You need to comply with safety related reporting requirements, and insist on subordinate employees to provide you with the necessary information;
 - You need to conduct periodic inspections of the facilities, equipment, practices, etc.;
 - You need to conduct periodic inspections of the documentation;
 - You need to hold employees and students accountable for safety infractions;
 - You need to address safety regularly at meetings with employees and teachers and you need to address safety as appropriate in class and shop;
 - You need to have annual safety goals and assess whether they are being met, and if not, what needs to be done to make sure they are met;
 - You need to update your safety program annually; and
 - You need to consult or be trained by legal counsel for the school district as to your legal duties with regard to safety and health.

I hope that this information has given you some structure and food for thought with respect to safety and health in our schools. In the limited space available for this article, I could only scratch the surface of all of the items that need to be addressed. It is a difficult task to create a safety program, but a necessary one.

Footnotes

¹ Many school districts have Administrative Compensation Plans under Act 93 that tie evaluations or merit pay raises to the achievement of goals. I suggest that you might want to suggest the preparation of a written "Safety Program" as one of your goals for the year.

² The Workers' Compensation Act is clear in its mandate for reporting. The applicable provision provides as follows: "(a) An employer shall report all injuries received by employees in the course of or resulting from their employment immediately to the employer's insurer. If the employer is self-insured such injuries shall be reported to the person responsible for management of the employer's compensation program." 77 P.S. §994.

³ Section 1205.4 of the School Code provides as follows: "(a) School entities shall be required to offer a cardiopulmonary resuscitation training (CPR) class on school premises at least once every three years. The course shall be offered as an option to all employees of the school entity. (b) Completion of training, including testing of skills and knowledge, shall be documented by the signature and title of a representative of the training entity and shall include the date training was completed. Documentation shall be retained in the facility in that employee's file. Training shall be conducted by: (1) the American Red Cross; (2) the American Heart Association; (3) an individual certified to conduct CPR training by the American Red Cross, American Heart Association or other certifying agency approved by the Department of Health; or (4) other certifying agency approved by the Department of Health. (c) School districts may include this training in the continuing education plan submitted by the district to the Department of Education under section 1205.1."