

Safe2Say Program Launch, Federal School Safety Commission Recommendations & Related Developments

By Aimee R. Zundel, Esq.

Much professional education has occurred on the topic of school emergency preparedness with the passage of Act 44 of 2018 and the launch of the Safe2Say Something Program. This area continues to evolve. Here are the newest developments school administrators need to be aware of as we enter 2019.



Aimee R. Zundel

Safe2Say Launch

Act 44 of 2018, which was enacted June 22, 2018, created the “Safe2Say Something” program as a comprehensive, state-wide threat reporting system. Safe2Say is supported by a website, 24/7 hotline number, and mobile app. The program facilitates anonymous reports regarding individuals who may be at risk of hurting themselves or others. Once a tip is made, within moments the local school and law enforcement officials are notified so they may review the reported threat and take appropriate responsive action.

The PA Office of the Attorney General (OAG) will operate the program. Schools were required to submit their administrative contact for this program to the OAG by September 14, 2018. A series of trainings and updates have come down the pike since that time, and the program is now on the brink of being put into effect. The launch date is currently set for January 14, 2019. More information is available at: <https://www.safe2saypa.org/>.

The attorneys at WBK understand that school safety is of paramount importance.

Federal School Safety Commission Recommendations

On Tuesday, December 18, 2018, the Federal Commission on School Safety issued a new report regarding the issue of school safety and violence. A process that included formal meetings, school field visits, and listening sessions held in different areas of the country provided a foundation for the commission’s report. The commission was established after the February 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida.

In an effort to help prevent future tragedies, the commission set forth a number of policy recommendations, divided into three report sections. Section 1 covers preventative measures such as bolstering mental health supports, effectively addressing cyberbullying, and utilizing suspicious activity reports and threat assessments in ways that enhance school safety. Section 2 of the report covers protection and mitigation methods, and discusses the topics of school safety staff, training, and best practices in building security. Finally, Section 3 of the report addresses response and recovery in the wake

Aimee Zundel is Named Partner at Weiss Burkardt Kramer

Weiss Burkardt Kramer LLC is pleased to announce that Aimee R. Zundel has become an Equity Partner with the firm. Ms. Zundel is an experienced school solicitor who has focused her practice on special education and student services matters.

Ms. Zundel joined the firm as an Associate in 2008. She has represented the firm’s school district clients as a general solicitor for many years, in addition to her student services-focused work. Ms. Zundel has extensive experience representing clients in special education cases through all levels of litigation, and in the scope of compliance complaints filed with state and federal agencies.

As a part of her services to school clients, Ms. Zundel routinely advises the firm’s school clients on necessary Board policy revisions and development of new policies to address legislation and the changing demands of public education. She also advises clients on general school board matters, ranging from personnel and labor relations to collective bargaining and the Sunshine Act.

She is widely regarded for her knowledge in school and special education law, routinely presenting at local and national seminars. Among the topics she has presented include the Individuals with Disabilities Education Act (IDEA), federal nondiscrimination laws such as Section 504 of the Rehabilitation Act and Title IX, and the Pennsylvania Child Protective Services Law.

Ms. Zundel is a member of the Allegheny County Bar Association and the Municipal and School Solicitors section. She is also an active member of the Pennsylvania Bar Association and its Exceptional Children’s Committee.

“Aimee is an outstanding attorney, she works tirelessly to defend and advocate for our clients.” said Ms. Burkardt. “We are fortunate to have her as part of our team.”

Ms. Zundel graduated from the University of Mount Union with a B.A. in Sociology. She obtained her law degree from The University of Pittsburgh in 2008, where she participated as Senior Research Editor for The University of Pittsburgh Law Review.

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Safe2Say Program Launch, *continued*

of school violence. It is in this section that the commission discusses the topic of active shooter preparedness and mitigation.

Notably, the report recommends a review of the Family Educational Rights and Privacy Act (FERPA) and guidance developed by the U.S. Department of Education to implement FERPA. The commission highlighted several exceptions to FERPA's general prohibition on the disclosure of personally identifiable information from school records – including the familiar “health and safety” exception. The “health and safety exception” carved out in the law permits the disclosure of personally identifiable information in case of an emergency, if disclosure is necessary to protect the health or safety of the student or others. The commission cited a need for further technical assistance to foster understanding among schools about when a school resource officer is considered a “school official with a legitimate educational interest” in information, justifying disclosure of information that could prevent a threat to the health or safety of individual students or the school community. The report also urges revocation of the Obama administration's July 2015 “Rethink School Discipline” Resource Guide and encourages schools to consider arming school staff as a defensive measure. The commission's full report can be accessed at: <https://www.2.ed.gov/documents/school-safety/school-safety-report.pdf>.

Other New Developments

Despite the views of the Federal Commission on School Safety, which urge arming of school staff, governing boards in Pennsylvania that take this step may face legal challenges.

For example, the Tamaqua Area School Board was recently challenged by its professional bargaining association after creating a policy which authorized employment of armed School Resource Professionals. In September of 2018, the Tamaqua Area board unanimously adopted a policy entitled “Standard Operating

Procedures for Persons Authorized to Use Weapons.” The policy, among other more specific provisions, authorized identified “School Resource Professionals” to possess firearms and use deadly force in response to an immediate threat of death or serious bodily injury.

The School Resource Professional (SRP), as outlined in the training portions of the policy, would only have to be trained in accordance with the Lethal Weapons Act, rather than the Municipal Police Educator and Training Law. In practice, the policy permits teachers and other identified employees who are hired and designated as SRPs, to carry firearms on school property. In October, the board authorized a stipend of \$2,000 per year for staff who are employed as SRPs. The Tamaqua Education Association filed suit in the Schuylkill County Common Pleas Court challenging the policy on November 14, 2018. TEA asserts that the school board exceeded its express statutory authority by permitting non-police officers on staff to carry firearms, in view of the School Code's provisions.

While the TEA's legal challenge is still pending, school boards at this time lack specific precedent or legislative guidance on the issue of arming school personnel. The TEA's lawsuit is the first legal challenge of its kind. It is clear, however, that school police officers are authorized to carry weapons and exercise lethal force where justified for the protection of self or others, in line with relevant school board policies, state and federal laws.

The attorneys at WBK understand that school safety is of paramount importance. We look forward to our continuing partnerships with school clients to meet legal obligations in this sensitive area.

We're Speaking...

- Attorney Jocelyn Kramer will be speaking on the topic of School Violence and Special Education at the 25th Annual School Attorneys Conference in Phoenix, Arizona on January 16, 2019.
- Attorney Ira Weiss will be presenting at PASBO's 64th Annual Conference and Exhibits at the Hershey Lodge and Convention Center from March 5-8, 2019. The title of Attorney Weiss' presentation is, “Bargaining Within Your Means: Managing Employment Costs in the Act 88 Arena.”
- Attorney Kramer will present two sessions, Investigating Discriminatory Harassment and Addressing Employee Misconduct - Special Educators, at the 40th Annual National Institute on Legal Issues of Educating Individuals with Disabilities in Orlando, Florida taking place May 5-8, 2019. Attorney Rebecca Hall will also be co-presenting with Dr. Jessica Dirsmith at the conference. The title of their presentation is, “What's Trending in Emotional Disturbance Identification?”
- Attorney Hall will be co-presenting at the 2019 Annual Convention of the National Association of School Psychologists being held in Atlanta, Georgia from February 26, 2019 - March 1, 2019. The topic of the presentation will be “Ethical and Legal Considerations for Gifted Assessment of Diverse Students.”

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.

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