

## School Liability and the Law of Unintended Consequences

In the wake of the horrendous Sandy Hook massacre, manufacturers have offered a wave of new retrofit security devices used to barricade doors with the intention of protecting students from active shooters on school property. Because they can block egress from classrooms, however, many of these devices conflict with existing fire and life safety codes. Despite objections from fire marshals and other code officials, some state legislators have pushed to override those codes. Granting that everyone involved in this issue has the same goal -- keeping children safe -- the end result for local school districts can be confusion about which products comply with the law, are cost-effective and, above all, actually make students safer.

Allegion, an enterprise of security solution experts, is taking a leadership role in launching a national conversation about the issue of school safety and developing a course of action for addressing it. We asked an attorney: *From a safety and legal liability perspective, what issues should a school district consider when deciding whether to install door barricades or other active shooter defense systems?* While we cannot offer legal advice, the following analysis may be helpful when considering which security measures would be appropriate for an educational facility.

- **Duties of Care:** Premises liability differs from state to state but all property owners have a duty to keep their premises safe for anyone legally allowed to be there. In doing so, owners must exercise “reasonable care,” a standard which varies depending on the circumstances. A higher degree of care is required when dealing with young children, for example, than when dealing with adults. This is especially true for schools, which have special responsibilities as custodians of their students. For example, traditional wired glass remains in use today in many types of buildings throughout the country, and may have been perfectly legal at the time of its installation at a given school, but it causes thousands of school-related injuries annually and fails to meet the impact requirements of current codes. As a result, some school districts in recent years have found themselves accused of not meeting their duties of care – and involved in very expensive lawsuits – after students were injured in accidents involving traditional wired glass.
- **Life Safety Codes:** If a property owner has violated a code or regulation, that violation can usually be taken as proof that the owner was negligent and failed to use the required amount of care. In the case of classroom security, barricade devices -- which by their nature do not permit immediate, free egress -- do not meet the requirements of published model codes. Even if a state legislature allows districts within its jurisdiction to override code requirements, this would not mean that the decision to do so in a particular classroom, or with a particular device in a particular location, was reasonable under the circumstances. Jurors might well give more weight to established life safety codes than to state legislators when child safety is at stake.
- **Foreseeable Harms and Unintended Consequences:** As every school administrator knows, and as documented by the Centers for Disease Control and Prevention and by the Federal Bureau of Investigation, the persons most likely to commit violence on school grounds are students themselves. A person injured in a barricaded classroom might have a strong argument that the school district should have recognized that a student, or someone else lawfully on the premises, could use a barricade to lock others into a classroom and prevent safety officers from entering. More generally, obstacles to egress can be fatal for both children and adults during an emergency. Modern codes exist because of hard lessons learned from school fires and other tragedies. A district considering whether to install classroom barricades should take into account the possibility of an exit being accidentally or maliciously blocked during an emergency.

- *Governmental Immunity*: All states provide some form of immunity from liability for themselves and their political subdivisions, including local public school districts. In states where that protection is not absolute, however, a district could find itself in the middle of disputes such as whether its decision was grossly negligent, whether its employees are entitled to indemnification from the district, or whether the decision to install a particular device in a particular location was a protected “policy” decision or merely an unprotected “operational” decision. Even if the district ultimately prevails on these issues, getting to that point could involve years of legal wrangling.

In summary, the risk of liability for a school district may not be an overriding issue in itself but it relates directly to the risk of injury to students and staff. A thorough analysis of safety and liability issues suggests that school districts avoid devices that block egress, because those devices ignore hard-learned lessons embodied in today’s codes. Making it more difficult for a shooter to get *into* a classroom shouldn’t risk making it more difficult for students and staff to get *out* during an emergency.

#### **Additional Resources:**

- For general information concerning school violence, including the most recent version of the Centers for Disease Control and Prevention’s “Understanding School Violence Fact Sheet,” visit [CDC.gov](https://www.cdc.gov). The FBI Study of Active Shooter Incidents can be downloaded from [FBI.gov](https://www.fbi.gov).
- For a discussion of the special duties of care owed by schools, see The Restatement of the Law (3d) of Torts: Liability for Physical and Emotional Harm (2012), § 40 (“The relationship between a school and its students parallels aspects of several other special relationships -- it is a custodian of students, it is a land possessor who opens the premises to a significant public population, and it acts partially in the place of parents.”).
- For a 50-state overview of state sovereign immunity and tort liability laws, visit the National Conference of State Legislatures’ website at [NCSL.org](https://www.ncsl.org).
- For a discussion of the distinction between protected “policy” decisions and unprotected “operational” decisions, see [Rogers v. State](#), 459 P.2d 378 (Haw. 1969) (decision as to what types of road signs to place and where to place them did not require evaluation of policies, but only implementation of everyday operations of government affairs; therefore, such decisions were not protected as discretionary).
- For examples of statutes requiring or permitting a governmental entity to defend or indemnify its employees, see [Me. Rev. Stats. Ann Title 14, § 8112](#); [Minn. Stat. Ann. § 3.736, subd. 9](#). For a general discussions of the liability and immunity of state and local officers and employees, see Dobbs, et al., *The Law of Torts* (2d ed.), § 350.