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# Not All Threats Are Equal

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Not all Threats are Equal

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An alert just came from the Washington Post on my Blackberry that U.S. Representative Gabrielle Giffords (D-AZ) was shot in the head at close range at a grocery store in Tucson, AZ. Earlier this week, a child walked into a local high school and killed the Assistant Principal, who an hour before suspended him for using his car to tear up the school football field. Unfortunately, violence occurs every day in our country and schools are not immune from horrific acts. A comprehensive approach to school safety includes a balance of education, prevention, intervention, discipline, security and crisis preparedness measures. Emotional safety in schools is often destroyed by threats whether they are real or imagined. School leaders must be prepared to respond appropriately. All threats must be assessed with care and expediency to balance the First Amendment rights of the student making the threat and the safety of the school. Some threats pose a clear and present danger of tragedy on the scale of Columbine High School or Virginia Tech University. Other threats represent little or no threat to school safety. Both must be dealt with, but in very different ways. The pages that follow will help school officials understand and assess threats that are made to the safety of schools.

### **Student Speech and the Law**

The First Amendment of the U.S. Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The First Amendment was written to meet the demands of citizens who wanted a guarantee that their new country would not take away their basic freedoms. The school’s authority over its students was subject to few limitations until relatively recently. The U.S. Supreme Court has recognized since the mid-twentieth century that

students “do not shed their constitutional rights” as a condition for attending public schools. In the landmark case, *Tinker v. Des Moines Independent School District (1969)*, the U.S. Supreme Court declared that students in school as well as out of school are “persons’ under our constitution. The court also stated that “the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings.”

In the years that followed, three additional student speech cases clarified the scope and limits of the *Tinker v. Des Moines (1969)* case. In *Bethel v. Fraser(1986)*, the U.S. Supreme Court held that lewd and indecent speech is not protected by the First Amendment

In *Hazelwood v. Kuhlmeier (1988)*, the court ruled on a school newspaper case and established guidelines regarding school-sponsored student expression. In *Morse v. Frederick (2007)*, the U.S. Supreme Court ruled that schools could restrict student speech that promoted illegal behavior. The court recognizes that defamatory, obscene and inflammatory communication is outside the protective arm of the First Amendment. Additionally, lewd and vulgar comments and expression that promotes illegal activity for minors is not protected speech in the public school context. Certain kinds of speech can be restricted including speech that conveys “true threats” of violence, racial epithets, or “fighting words.” Fighting words are those words which by their very utterance inflict injury or tend to incite an immediate breach of peace. (16B C.J.S. Constitutional Law § 824, June 2007) Speech that incites danger and harm to individuals or disruption to the school are also subject to restraint. Hate speech is a common problem on many campuses, regardless of location and is considered a form of psychological bullying. Hate speech is treated the same as a threat. It is not protected speech and disciplinary action is required when it is within the realm of the public school.

School officials must be able to discern between the free speech and expression rights of students and real and imminent danger. The general rule set forth in *Tinker* requires that schools anticipate, foresee and reasonably “forecast material and substantial disruption” from the information at hand (Alexander, 2009, pg 442). The Supreme Court recognizes that First Amendment rights do not apply to threats of violence. In general, speech that indicates danger or harm to individuals or disruption to schools is subject to restraint.

In a 1942 Supreme Court decision, *Chaplinsky v. New Hampshire (1942)*, a state statute was upheld that banned “face to face words plainly likely to cause a breach of peace by the addressee. Supreme Court Justice Frank Murphy, offering his own opinion in this case, said that certain forms of expression--among them obscenity and fighting words--do not convey ideas and thus are not subject to First Amendment protection. True threats are slightly different than “fighting words”. In *Watts v. United States (1969)*, the Supreme Court established that “true threats” are not protected speech. When considering student threat cases, courts generally start by deciding whether the student speech in question presented a true threat (Stader, 2011).

True threats may or may not cause a disruption, but the speaker directly promises harm. In the case of a threat that may be harmful to the conduct of a school, the recipient will be another student, a teacher, school principal or other employee. Interpreting and managing this behavior in schools is a tremendous challenge. In determining if a true threat has been made, courts can consider a number of factors, such as:

1. The reaction of those who heard the alleged threat;
2. Whether the threat was conditional;
3. Whether the person who made the alleged threat communicated it directly to the object of the threat;

4. Whether the speaker had a history of making threats against the person who had been threatened;
5. Whether the recipient had a reason to believe that the speaker had a propensity to engage in violence. (Thomas, Cambron-McCabe & McCarthy, 2009)

In a case where a student wrote a poem about death, suicide, the shooting of 28 people, and how it all cleansed his soul, the court held that the poem constituted a threat to the safety of students and emergency expulsion was justified. Further evidence indicated that the student was a loner, had stalked a girl, and was insubordinate on occasion at school. The evidence in total was a basis for a reasonable person to conclude the poem was a threat that could have forecast suicide or harm to the safety of other students. Harm to one's self (suicide) or physical harm to others is certainly a disruption. This analysis is not useful for a legal analysis of physical violence. In fact, threats of physical violence in any forum are not protected by the First Amendment. Generally, if spoken or written language appears to a reasonable person as threatening, or could be perceived by a reasonable person to be threatening, then it is a threat (Stader, 2011).

### **The additional challenge of off-campus speech**

Out of school conduct and expression adds another dimension to student rights. In general, the power of school authorities does not end when pupils leave the school premises. The test of reasonableness of a school regulation affecting out-of school conduct has usually explicitly or implicitly been whether out of school conduct being regulated has a direct and immediate effect on the discipline or general welfare of the school. If administrators choose to discipline a student for off-campus speech, the school district must demonstrate that speech is a

true threat or that there is a connection between the speech and disruption on campus. Cases involving Internet threats have become more prevalent in recent years.

## **Disruption**

In *J.S. v. Bethlehem Area School District*, (2002) Justin Swindler, a Pennsylvania eighth grader, created a website on his home computer named “Teacher Sux”(sic). His main target was algebra teacher Kathleen Fulmer. On Mrs. Fulmer’s page, entitled “Why Fulmer Should be Fired,” Justin solicited \$20 contributions to “help pay for the hit man.” Another page had Mrs. Fulmer’s face morphing into the face of Adolf Hitler, and another depicted a miniature Mrs. Fulmer with her head cut off and blood dripping from her neck. The district took no action, and Justin continued attending classes and participated in a band trip. Mrs. Fulmer was negatively impacted by the website and began to have physical and emotional illness as a result and ended up taking medical leave for the remainder of the school year. The district finally responded and began expulsion proceedings. After the board decision to expel Justin, he sought legal review in the state court. On review, the Pennsylvania Commonwealth Court concluded that Justin’s website, though sophomoric, crude, and highly offensive, did not represent a true threat. However, the emotional and physical reaction of Mrs. Fulmer, the reports of anxiety on the part of several students, and feeling of helplessness that permeated the school significantly impacted the education process. Consequently, the board was within its authority to expel Justin (Stader, 2010).

## **No Disruption**

Another case, *Emmett v. Kent School District No 415 (2000)*. In February 2000, Nick Emmett created an Unofficial Kentlake High website and posted satirical obituaries for some of his friends. The mock obituaries were apparently inspired by a junior English creative writing assignment in which the students wrote their own obituaries. A local evening news story characterized the website as a “hit list.” Nick was summoned to the principals’ office the day after the newscast and placed on emergency expulsion. The expulsion was subsequently modified to a 5-day suspension. However, the Western District Court of Washington forbid the district from enforcing the suspension, primarily because the school district failed to demonstrate the mock obituaries were intended to threaten anyone, manifest any violent tendencies, or result in disruption in the school (Stader, 2011). As the courts begin to deal with off campus speech using technology we will have more guidance with which to make appropriate decisions regarding this type of incident.

## **Anonymous and Ambiguous Threats**

School administrators, teachers and students now have a heightened concern over school violence and even vague messages can cause a serious disruption. On a Friday afternoon, a student at Francis Howell High School just outside of St. Louis, Missouri, discovered a message on a restroom wall that referenced Columbine and warned students not to come to school on Monday. The police and school officials were not sure how long the message had been in the restroom before it was discovered. The message was viewed as vague and an investigation uncovered no plans or plots for Monday. However, rumors spread rapidly among students through social networking sites and cell phones. School officials decided to send out an email



message to parents to reassure them that security measures were in place. However, it was too little, too late. More than 900 of the 1800 students stayed home and many others came to campus and left after they heard the news. Vague, ambiguous and anonymous threats are an extremely difficult challenge. It is impossible and pointless to attempt to find the origin of the anonymous threat. It is also pointless to try to investigate who started the rumor. It is critical that school officials communicate with students and parents, swiftly and honestly. Stader (2011) suggests a few ways to get ahead of a situation like this when it occurs:

1. One of the foundations of school public relations is the *key communicator* concept. “Key Communicators” are respected individuals in the community who agree to work with school personnel to get the word out. In the past, key communicators were parents, civic leaders, and clergy, defined by the circle of influence. In today’s world, key communicators can be almost anyone, including students and parents. Key communicators can use cell phones and social networking sites to present an honest appraisal of the situation.
2. Many large school districts use automated phone message system to call parents when their child is absent. It is possible to use the same system to call parents about rumors of threats in the school. Just be sure not to overuse the system. Make sure that the message is clear, concise and truthful.
3. Mellon (2006) reports that several school districts are using their district websites as a quick easy and inexpensive way to reach parents and students. For example, a school district had used it “fact or fiction” page to dispel rumors that contractors were installing Italian marble in the new high school. The district could certainly use the same page to control the rumor mill generated by anonymous threats. (Stader, 2011, pg 148)

As school administrators plan ways to stay ahead of situations, they need to keep in mind that, in general, people do not instantly switch from non-violence to violence. Often, the path toward violence happens over a period of time. A threat is an observable behavior. Other pathways to violence include obsessing about misfortune or displeasure, fantasies of destruction or revenge in conversation, and in writing or drawing.

### **Types of threats**

There are four categories of threats: direct, indirect, veiled and conditional (O'Toole, 2004).

*Direct Threat* A direct threat identifies a specific act against a specific target and is delivered in a clear, straightforward, and explicit manner. "I am going to place a bomb in the school gym."

*Indirect Threat* An indirect threat is vague, unclear, and ambiguous. The plan, the motivation, intended victim and other aspects of the threat are masked. "If I wanted to, I could kill everyone at this school!" While violence is implied the threat is phrased tentatively and suggests that it could occur.

*Veiled Threat* A veiled threat is one that strongly implies, but not explicitly threatens violence. "We would be better off without you around anymore" clearly hints at a possible violent act, but leaves it to the potential victim to interpret the message and give a definite meaning to the threat.

*Conditional Threat* A conditional threat is the type of threat often seen in extortion cases. It warns that a violent act will happen unless certain demands or terms are met: “If you don’t pay me one million dollars, I will place a bomb in the school.”

## **Threat Assessment**

A threat assessment consists of two separate and interrelated approaches: threat inquiry and threat investigation. Each is concerned with an analysis of the evidence involved in the threat, but they differ significantly in scope.

A *threat inquiry* is carried out by a school-based team that makes an initial determination of the risks. The school-based team should include an administrator, a school counselor, a teacher or a coach, and a school resource officer. If the inquiry indicates a moderate or high risk of targeted violence, the inquiry is expanded to a threat investigation.

A *threat investigation* goes beyond the inquiry team to include outside agencies such as law enforcement and mental health professionals. It follows the same path as an inquiry, but it considers whether state law has been violated, the availability of weapons in the home, and any other issues to which an internal team would not have access.

## **Levels of Risk**

The FBI National Center for the Analysis of Violent Crime has established three levels of risk:

A *low level* of threat poses a minimal risk to the victim and public safety. This type of threat is characterized by the following: The threat is vague and indirect; the information contained in the threat is inconsistent, implausible, or lacks detail; the content of the threat suggests that the person is unlikely to carry it out.

A *medium-level* threat could be carried out, although it may not appear entirely realistic. It's characteristics include the following: The threat is more direct and more concrete than a low-level threat; the wording suggests that the person who is making the threat has given some thought to how the act will or could be carried out; there is a general indication that preparatory steps have been taken.

A *high-level* threat appears to pose an imminent and serious danger to the safety of others. This type of threat is direct, specific and plausible; the threat suggests that concrete steps have been taken toward carrying it out (O'Toole, 2004).

### **Threat inquiry team**

The threat assessment process starts with the campus or district-based threat inquiry team. The information gathered will determine if the inquiry needs to turn into an investigation. The team concludes from available information that there is insufficient information for the team to be reasonably certain the student does not pose a threat or the student appears to be on the path to an attack. The team should immediately recommend that the matter be referred to the threat investigation team (Stader, 2011).

## **Threat investigation team**

The threat investigation team is composed of members of the threat inquiry team as well as law enforcement, mental health professional and individuals from other relevant agencies or groups. Regardless of the outcome, it is important to document and keep a record of gathered information. It can be used to justify recommendations of the team, provide a database in case of a repeated occurrence, and serve as important evidence in demonstrating that a threat assessment was completed in case decisions are challenged before a board of education, or in court (Stader, 2011).

Emotional safety in schools is often destroyed by threats whether they are real or imagined. Not all threats are equal, but all must be taken seriously. School leaders must be prepared to respond appropriately. When the danger of the threat is over, the school leader must work to reestablish emotional safety within the school.

## **Conducting a threat assessment**

*Factors in a threat assessment* Specific, plausible details are critical to evaluating a threat. Details can include the identity of the victim or victims; the reason for making the threat; the means, weapon, and method by which it is to be carried out; the date, time and place where the threatened act will occur and concrete information about plans or preparations that have already been made. Within the details one can determine the type of thought planning and preparatory steps that have already been taken, suggesting the level of risk of actually following through on the threat. Details that are specific but not logical or plausible may indicate a less serious threat. The emotional content of a threat can be an important clue to the mental state of the person making the threat. Emotions are conveyed by melodramatic words and unusual

punctuation. “I hate you!!!” “You have ruined my life!!!” May God have mercy on your soul!!!”(sic) or in excited, incoherent passages that may refer to God or other religious beings or deliver an ultimatum. Though emotionally charged threats can tell the assessor something about the temperament of the person making the threat, they are not a measure of danger. They may sound frightening, but there has been no established correlation made between the emotional intensity of the threat and the risk that it will be carried out. Precipitating stressors are incidents, circumstances, reactions or situations which can trigger a threat. The precipitating event may seem insignificant and have no direct relevance to the threat but, it becomes a catalyst. The impact of the precipitating event will depend upon pre-disposing factors such as personality traits, characteristics and temperament that influence an adolescent to fantasize about violence. Information about a temporary trigger must be considered with broader information about other underlying factors such as a student’s vulnerability to loss and depression (O’Toole, 2004).

### **Board Policy Recommendations**

Schools need to have clear, board approved policies that give them direction in order to react and follow through on potentially threatening situations. According to Fein et al. (2002) board policies should provide the following support to inquiry or investigation.

1. Outline the purpose and scope of the policy
2. Establish a threat inquiry and threat assessment team
3. Delegate authority to certain school officials for determination that a threat assessment inquiry or investigation should be pursued.
4. Define the threshold of concern for initiating a threat assessment inquiry or investigation.
5. Describe the types of information that may be gathered

6. Designate the school-based individuals and community individuals or agencies that will be responsible for gathering and analyzing the information that is gathered.

In summary, school leaders must be fully prepared to respond to all types of threats that occur. Being fully prepared means that a comprehensive approach is taken that includes a balance of education, prevention, intervention, discipline, security and crisis preparedness measures. All threats must be assessed carefully and swiftly balancing the First Amendment rights of the student making the threat and the safety of the school. All threats are not equal but, all must be dealt with.

## Bibliography

Alexander, Kern, and M. David Alexander. *American Public School Law- 7th Edition*. Belmont CA: Wadsworth-Cengage, 2009.

Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986),  
<http://supreme.justia.com/us/478/675/case.html>.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942),  
<http://supreme.justia.com/us/315/568/case.html>.

Emmett v. Kent School District No 415, 92 F. Supp. 2d 1088 (Western District Court of Washington 2000).

Fern, Robert A., Bryan Vossekuil, William S. Pollack, Randy Borum, William Modzeleski, and Marisa Reddy. *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. Washington DC: Unites States Secret Service and United States Department of Education, 2002.

Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988),  
<http://supreme.justia.com/us/478/675/case.html>.

J.S. v. Bethlehem Area School District, 807 A.2d 803 (Supreme Court of Pennsylvania 2002).

Mellon, Ericka. "Did you hear? Schools are using Web to stifle rumors." *The Houston Chronicle*, December 12, 2006.

Morse v. Frederick, 127 S. Ct. 2618 (2007).

O'Toole, Mary Ellen. *The School Shooter: A Threat Assessment Perspective*. Quantico, VA: Federal Bureau of Investigation, 2004.

Stader, David L. *Law and Ethics in Education*. Upper Saddle River, NJ: Pearson Education, 2007.

Stader, David L. *A Leader's Guide to Creating Safe Schools*. Nowood MA: Christopher-Gordon Publishers, 2011.

Thomas, Stephen B., Nelda H. Cambron-McCabe, and Martha M. McCarthy. *Public School Law: Teachers' and Students' Rights*. Boston, MA: Pearson, 2009.

Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969),  
<http://supreme.justia.com/us/393/503/case.html>.

Watts v. United States, 394 U.S. 705 (1969), <http://supreme.justia.com/us/394/705/case.html>.