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THREATS AND THREAT ASSESSMENT IN SCHOOLS

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Due to recent well-known tragic episodes involving school shootings, as well as well-publicized instances of school operations being suspended due to threats of violence, school districts are increasingly expected to install threat assessment practices independent of those available via direct intervention of law enforcement. To be certain, school resource officers (SROs) are a great resource, however, many schools do not always have such a person directly available.

A decision to not involve law enforcement where a threat in hindsight, often tragically, turns out to be a valid concern will be viewed harshly. Further, where there is no sovereign immunity, plaintiffs will use the issue of a school district's alleged knowledge of a prior threat of violence by a perpetrator to establish that the perpetrator's subsequent violence against a student was foreseeable to the district. This memorandum analyzes the definition of "threat" when determining whether an act of violence against a student was foreseeable to a district in the context of a negligence suit and also attempts to outline some relevant considerations when examining threat assessments in the K-12 context.

A. Definition of Threat

1. Definition of Threat When Determining Foreseeability of Violence in the Context of a Negligence Suit Against a District.[1]

If a court applied a definition of "threat" to determine foreseeability of violence in the context of a negligence suit against a district, it would apply the definition of "threat" in Webster's Dictionary. When a statute does not define a term, Washington courts use the common and ordinary meaning of the term. *In re Det. of Danforth*, 173 Wn.2d 59, 68, 264 P.3d 783 (2011); *State v. Edwards*, 84 Wn. App. 5, 10, 924 P.2d 397 (1996). Washington Courts have held that the common and ordinary meaning of the term "threat" is the definition found in Webster's Dictionary, i.e. "'**a:** an expression of an intention to inflict evil, injury, or damage on another; [or] **b:** expression of an intention to inflict loss or harm on another.'" *Danforth*, 173 Wn.2d 59, 68, 264 P.3d 783 (2011) (quoting *Webster's Third New International Dictionary* 2382 (2002)); *see also Edwards*, 84 Wn.

[1] This memo focuses in part, when discussing case law, on my practicing locale, Washington State. Obviously each State will have varying levels of relevant case authority. Where I have deemed it relevant, I include such cases.

App. at 10. In Washington, as it appears in many jurisdictions, no statutes provide a specific definition of "threat" in the context of a negligence suit against a district. Often times it is examined in the context of a criminal statute or penal code. Thus, if the Court in Washington applied a definition of "threat," they would apply the Webster's Dictionary definition.

Other jurisdictions also use Webster's Dictionary to define "threat" and "threaten" when there is no statutory definition: *See, e.g, In re McCoy*, 138 Ohio App. 3d 774, 778, 742 N.E.2d 247 (Ohio Ct. App. 2000); *State v. Hall*, 327 Or. 568, 573, 966 P.2d 208, 210 (1998); *State v. Flynt*, 199 Ariz. 92, 94, 13 P.3d 1209 (Ariz. Ct. App. 2000); *Johnston v. State*, 747 P.2d 1132, 1134 (Wyo. 1987). Some jurisdictions use Black's Law Dictionary's definition, i.e. "A communicated intent to inflict harm or loss on another or on another's property, esp. one that might diminish a person's freedom to act voluntarily or with lawful consent; a declaration, express or implied, of an intent to inflict loss or pain on another." THREAT, Black's Law Dictionary (10th ed. 2014); *See, e.g., State v. Laib*, 705 N.W.2d 815, 817 (N.D. 2005). Some jurisdictions use multiple dictionaries. *See, e.g.*, *Clement v. State*, 309 Ga. App. 376, 380, n.1, 710 S.E.2d 590 (2011).

Regardless of the definition applied, a school district must act consistent with its obligations to keep students, staff, and stakeholders safe. Whether applying the "gut test" or applying a developed assessment process (recommended), consideration of any reported threat should occur by persons in a position of sufficient authority to initiate an appropriate process of response.

2. "True Threat" Distinguished

The definition of "true threat" applies in any context in which the First Amendment provides protection, including in the context of district disciplinary determinations of students who make threats. *See J.S. ex rel. H.S. v. Bethlehem Area Sch. Dist.*, 569 Pa. 638, 653, 807 A.2d 847 (2002) (citing *Lovell By and Through Lovell v. Poway Unified Dist.*, 90 F.3d 367 (9th Cir.1996)). The Washington State Supreme Court has defined "true threat" as follows:

> A "true threat" is a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted ... as a serious expression of intention to inflict bodily harm upon or to take the life of another person. A true threat is a serious threat, not one said in jest, idle talk, or political argument. Under this standard, whether a true threat has been made is determined under an objective standard that focuses on the speaker.

State v. Kilburn, 151 Wn.2d 36, 43–44, 84 P.3d 1215 (2004), *as amended* (Feb. 17, 2004) (internal quotation marks and citations omitted.).

A large body of state and federal case law interprets what constitutes a "true threat." But the First Amendment's strong protection of speech makes this definition of "threat" too narrow, and therefore inapplicable, to the context of whether a threat made an act of violence foreseeable to a district in the negligence context. The Supreme Court has held that a threat statute "must be interpreted with the commands of the First Amendment clearly in mind," and therefore be construed only to reach a "true threat" and not "constitutionally protected speech." *Watts v. United States,* 394 U.S. 705, 707 (1969). "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. . . . The speaker need not actually intend to carry out the threat." *Virginia v. Black,* 538 U.S. 343, 359-60 (2003). Comparatively, protected speech includes political hyperbole or "vehement, caustic, or unpleasantly sharp attacks" that fall short of true threats. *Watts*, 394 U.S. at 708 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

In *Elonis v. United States*, the Supreme Court recently ruled in favor of a man who was convicted of posting violent messages about his estranged wife on Facebook. *Elonis*, 135 S. Ct. 2001 (2015). The Court sidestepped the clear issue of the First Amendment, deciding the case on statutory grounds under 18 U.S.C. § 875(c), the federal threat statute.

B. Threats and Foreseeability

1. Washington State Law

While the courts would use the Webster's definition of "threat" if they considered a definition, courts generally do not consider a definition of "threat" when determining whether plaintiff's harm is foreseeable to a school district. *See Jachetta v. Warden Joint Consol. Sch. Dist.*, 142 Wn. App. 819, 176 P.3d 545 (2008). Rather, courts ask whether a threatening statement in *combination* with other information the district knew prior to a plaintiff's harm placed the district on notice of a risk of the type of harm suffered by plaintiff, so as to make plaintiff's harm foreseeable to the district. *See J.N. By & Through Hager v. Bellingham Sch. Dist. No. 501*, 74 Wn. App. 49, 57, 871 P.2d 1106, 1109 (1994).

For example, in *Jachetta*, a student (S.M.) made a handwritten list of people to kill, on which Billy Jachetta's first name was placed, along with classmates, staff, and famous figures such as Shania Twain, Big Bird, and George Bush. *Jachetta*, 142 Wn. App. at 822. The school found out about the list and immediately placed S.M. on emergency expulsion. *Id.* S.M. said that he had no intent to harm anyone, the police chief determined S.M. was not a threat, and a psychiatrist evaluated S.M. and determined

that there was no reason S.M. could not return to school. *Id.* Accordingly, the district converted S.M.'s emergency expulsion into a 45-day suspension. *Id.*

The Jachettas sued the district for negligence, arguing that the district should have responded to S.M.'s kill list by expelling S.M. for the entire year. *Id.* at 823. The Jachettas argued that the district's failure to expel S.M. for the entire year in response to the threat caused Jachetta to suffer post-traumatic stress disorder (PTSD). *Id.* at 823-25.

The Court held that summary judgment for the district was proper. *Id.* at 826. The Court analyzed the district's decision to allow S.M. to return to school in light of its knowledge of the kill list along with the other information known to the District, particularly legal mandates to seek alternatives to suspension or expulsion and the psychiatrist's positive evaluation of S.M. *Id.* The Court then held that given the information known to the District, Jachetta's PTSD was not a foreseeable consequence of allowing S.M. to return to school after a 45 day suspension:

> The School District was not under an obligation to keep S.M. out of school for the remainder of the year just to accommodate the Jachettas. It reasonably acted in accord with the law and its policies when it relied on the assessment of a mental health care professional who examined S.M. and the professional's recommendation to allow S.M. back to school.
>
> The School District is liable only if "'the wrongful activities are foreseeable, and the activities will be foreseeable only if the district knew or in the exercise of reasonable care should have known of the risk that resulted in their occurrence.'" Billy's PTSD, in light of the School District's response, was not foreseeable.

Id. at 826-27 (internal citations omitted).

Jachetta stands for the reasonable proposition that when determining whether a threatening statement placed a school district on notice of a risk of physical harm to students so as to make the harm foreseeable, the Court will combine the district's knowledge of a threatening statement with the other information available to the school district, placing particular focus on the conclusion of a psychiatric evaluation of the student who made the threat. *Id.*; *c.f. J.N.*, 74 Wn. App. at 55 (summary judgment inappropriate where two psychologists testified (after the fact) that based upon what the school knew prior to a sexual assault, the school was on notice of the risk that the student would assault students).[2]

[2] Arguably, S.M.'s threat could never have placed the district on notice of Jachetta's PTSD, regardless of what the district knew, because Jachetta's PTSD is so tangential to S.M.'s threat. But if S.M. had actually carried out his threat against Jachetta, *Jachetta's* result may have been different.

But while a psychiatrist's opinion as to the danger presented by a student is given great weight, a mere diagnosis of a student with a serious mental health condition may not automatically give the district notice of a risk that a student will harm other students. *See Kok v. Tacoma Sch. Dist. No. 10*, 179 Wn. App. 10, 20, 317 P.3d 481 (2013). In *Kok*, a perpetrator student diagnosed with paranoid schizophrenia had attempted suicide and had been a *victim* of violence. *Id.* at 23. But no evidence suggested that the perpetrator, although quiet and considered a "loner," had engaged in violence or made threatening statements to other students. *Id*. On the morning returning from a holiday, the perpetrator shot and killed a student victim in front of his locker, shooting him three times at point blank range. *Id.* at 13. The victim's estate sued the district, arguing that the district had notice that the perpetrator may harm other students because of his schizophrenia diagnosis and his:

> 2002 suspension for defiance of authority, his being attacked by a group of students at Mount Tahoma, his frequent school transfers, a line from the school psychiatrist in his IEP file stating that he gets into fights with people he does not know, reports of him talking and laughing to himself during school hours, a confrontation with a stranger at Sears, *and a school writing assignment referencing a person named "[victim's first name]."*

Id. at 20 (emphasis added).

After extensive discovery and related motion practice, the court held that summary judgment in favor of the district was proper. *Id.* at 23. First, the court held that the above factors in this case were not sufficient to give the district notice of the risk that the student would physically harm a student, particularly because many of the above facts are from events before the perpetrator's schizophrenia diagnosis or while his treatment was being adjusted by medical professionals. *Id.* Second, the Court noted that "there are no written or verbal expressions of violence in the record." *Id.* Finally, the court held that a schizophrenia diagnosis alone is not a reason to take a student out of public education. *Id.* This was directly in conflict with expert testimony against the school district by a trained threat assessment expert that his manifestation of schizophrenia and prior suicidal ideation merited greater pre-incident intervention and should have been considered a legitimate threat.

Kok stands for the proposition in Washington that an actual threat or strong prior history of violence is needed to place a district on notice of a risk of harm to a student; mental diagnoses and a history of victimization is not sufficient. *Kok* also stands for the proposition that vague statements rendering concern with the hindsight of a tragedy (in this case mere reference to someone with the first name of the victim) are insufficient to give the district notice of a risk of harm of that student. Other cases in Washington have found that where there is no threatened use of force, a finding of foreseeability is

unlikely. *Wilbert v. Metro. Park Dist. of Tacoma*, 90 Wn. App. 304, 310, 950 P.2d 522 (1998), *as amended on denial of reconsideration* (Apr. 24, 1998).

Evolving understanding of school violence and violence in general, however, may limit the value of decisions such as *Kok* in the practical school context. In *Kok*, the fact that the perpetrator was suicidal did not place the district on notice of a risk that the perpetrator may harm students. But it is important to note that there is a clear potential that in light of recent school tragedies involving the combination of murder and suicide, courts will likely retreat from this rationale of *Kok*'s holding and hold that a student's suicide attempts give a district notice of a risk that the suicidal student will harm other students. Suicide, once regarded as only a threat of self-harm, could be construed in certain contexts by a mental health or threat assessment professional as an indicator of potential harm to others in proximity.

Conversely to *Kok*, in *Bond v. Dep't of Soc. & Health Servs.*, the Department of Social and Health Services revoked an adult family home operator's license to operate, where the operator had left the resident's care to a completely untrained individual who had no access to the patient's medical records and who could not contact the operator. The Department revoked the license using its authority under RCW 70.128.100 to take action when it finds "imminent danger." 111 Wn. App. 566, 571, 573-74, 45 P.3d 1087 (2002) (emphasis added). RCW 70.128.010 defined "imminent danger" as "serious physical harm to or death of a resident has occurred, or there is a serious *threat* to resident life, health, or safety." Because no harm had yet occurred to the residents, DSHS was relying on the existence of a serious threat. *Id.* at 574. The Court of Appeals held that this constituted a serious threat to resident life, health and safety. *Id.* This case shows that even absent a specific threat, a series of circumstances can produce a threat.

2. Other Jurisdictions

The overarching principal of Washington State Law is true across the nation: courts ask whether a threatening statement in *combination* with other information the district knew prior to a plaintiff's harm, placed the district on notice of a risk of the type of harm suffered by plaintiff, so as to make plaintiff's harm foreseeable to the district. *See, e.g., Conklin v. Saugerties Cent. Sch. Dist.*, 106 A.D.3d 1424, 1426, 966 N.Y.S.2d 575 (N.Y. App. Div. 2013).

Conklin distinguishes a "threat" from a mere rumor that violence will occur. *Id.* In *Conklin*, a student victim sued the district for an assault by another student occurring on school grounds. Prior to the assault, the victim's mother monitored the victim's MySpace account. *Id.* The mother discovered a comment from one of the victim's friends, which asserted that the perpetrator student was intending to fight the victim the next day. *Id.* at 1424-25. That night, the victim's mother notified the school of the friends' comment. *Id.* A school administrator returned the mother's call the next

morning before school started, and arranged for the victim to meet with a social worker. *Id.* The social worker met with the victim, conducted a mediation between the victim and the perpetrator, and had the perpetrator meet the school resource officer and the assistant principal to discuss the criminal and disciplinary consequences of fighting. *Id.* The perpetrator denied intent to fight throughout these proceedings, and denied ever making a threat to fight. *Id.* Nonetheless, later that day, the perpetrator severely assaulted the victim on school grounds. *Id.*

The victim sued the district for negligent supervision. *Id.* at 1425. The Court held that summary judgment in favor of the district was appropriate because the district could not reasonably anticipate the attack. *Id.* at 1426-27. The Court held that the victim's friend's Myspace comment that the perpetrator planned to fight the victim "was merely a rumor rather than a direct threat from" the perpetrator. *Id.* at 1426. The nature of the statement as a mere rumor, combined with the numerous steps the district took in response to that alleged rumor, the perpetrator's repeated assurances she had no intent to fight, the perpetrator's repeated assurances she had made no threats, and the perpetrator having no history of violent offenses, showed that the district could not have reasonably anticipated the perpetrator's assault of the victim. *Id.* at 1426-27.

Conklin stands for the proposition that comments from students that some other perpetrator will engage in violence are mere rumors that are distinct from and less serious than direct threats. *Conklin* may assist where there are allegations of an alleged report that a shooting was going to occur, but no actual direct threat from the perpetrator.

In *Gammon v. Edwardsville Cmty. Unit Sch. Dist. No. 7*, a student victim sued a school district for a battery inflicted by a student perpetrator. 82 Ill. App. 3d 586, 587, 403 N.E.2d 43 (Ill. App. Ct. 1980). Prior to the battery, the victim had heard from a friend that another student was threatening her. *Id.* The victim told her guidance counsellor about the threat. *Id.* The guidance counsellor met with the perpetrator and victim, and the counsellor told the perpetrator that a suspension would result from fighting. *Id.* at 587-88. The victim continued to express her fear of the perpetrator. *Id.* The Counselor did not notify disciplinary personnel, despite common practice being to notify the assistant principal, nor did the counsellor notify the playground supervisors. *Id.* Subsequently, the perpetrator assaulted the victim in the school yard. *Id.*

The victim sued the district, and the jury returned a verdict in favor of the victim, finding wanton and willful conduct on the district's part. *Id.* at 588. The trial court ordered a judgment for defendants notwithstanding the verdict, and the Court of Appeals reversed and reinstated the jury's verdict. *Id*. The court found:

> We cannot say that evidence was not presented which would enable the mind of the jury to determine that adequate steps were not taken; steps that could have been taken where impending danger had been brought to the

> attention of those vested with the duty to maintain discipline. We cannot say that such conduct does not demonstrate an utter indifference to or conscious disregard for the safety of the plaintiff.

Id. at 590.

In *Pugh v. St. Tammany Parish School Board*, a Louisiana case, a student victim sued for damages sustained when two fellow students attacked him on school grounds. 994 So. 2d 95, 98-100 (La. Ct. App. 2008). Summary judgment for the district was denied because of the following allegations in the victim's petition:

> [The victim and his stepfather] had voiced numerous complaints to school administrators, teachers and other school employees . . . about the harassment and threats by [the perpetrators].

Id. at 100. Thus, because the district had knowledge of threats generically, even without specific information about those threats, summary judgment was not appropriate.

In *Taubin v. City of New York*, a public school teacher sued the City for injuries when a student forcefully pushed her down a stairwell. 187 Misc. 2d 327, 327, 723 N.Y.S.2d 601 (N.Y. Sup. Ct. 2001). The student had previously attacked multiple students and threatened two students with a piece of glass. *Id.* at 328. The Court held that her claim could proceed, because the student's prior disciplinary history constituted an ongoing safety threat that would give rise to a negligent supervision claim if "school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury . . . and that [such] acts could reasonably have been anticipated." *Id.* at 331. *See also Ramos ex rel. Rodriguez v. City of New York*, 24 Misc. 3d 1228(A), 899 N.Y.S.2d 62 (N.Y. Sup. Ct. 2009) (unpublished, summary judgment improper where assaulted victim/student had reported to Deans each of three separate threats by perpetrator); *Mirand v. City of New York*, 84 N.Y.2d 44, 46, 637 N.E.2d 263, 614 N.Y.S.2d 372 (1994) (court held summary judgment improper; district was sufficiently placed on notice of a risk of the student victim's assault because after victim unsuccessfully attempted to report assault perpetrator's death-threat to unstaffed security office, victim successfully reported death-threat to an art teacher whose name the victim could not remember).

In *Jesik,* a college student's murder victim's estate sued the district. Prior to the murder, the perpetrator told the college student that the perpetrator was going to go home, get a gun, return to the campus, and kill the victim. *Jesik v. Maricopa Cty. Cmty. Coll. Dist.*, 125 Ariz. 543, 544, 611 P.2d 547, 548 (1980). The victim reported the threat to a college security guard, who promised to protect him. *Id.* The perpetrator returned with a briefcase, at which point the victim pointed out the perpetrator and the briefcase to the security guard. *Id.* The perpetrator shot and killed the victim. *Id.* The Court held that

because the report of the threat placed the district on notice of the threat of the very harm that occurred, the district had a duty to protect the victim from the threat of being killed by the perpetrator. *Id.* at 546.

Conversely, in *Stephenson v. City of New York*, a student sued a district for an assault by a student perpetrator. 85 A.D.3d 523, 523-24, 925 N.Y.S.2d 71 (N.Y. App. Div. 2011), *aff'd*, 19 N.Y.3d 1031, 978 N.E.2d 1251, 954 N.Y.S.2d 782 (2012). Prior to the assault, the victim and perpetrator had a fistfight on school grounds. *Id.* The school suspended both students. *Id.* The perpetrator then threatened the victim with assault. *Id.* The victim never conveyed the threat to any of his family members nor to school authorities. *Id*. Subsequently, the perpetrator severely assaulted the victim off of school grounds. *Id.*

The victim sued the City of New York for its school's negligence in not protecting him, arguing that failing to report the on-school fistfight to his parents caused the subsequent assault. *Id.* The Court held that there was no liability, because the school did not have a duty because they had affirmatively responded to the fist fight with suspensions, and where the victim had not notified school personnel about the threats. *Id.* at 525. This case supports the proposition that a district is not placed on notice of threats if it was never notified about those threats. *Id.*

C. Threat is a Fluid Concept

There appears to be no set definition of "threat" in the context of a negligence suit against a school district among the States. Rather than using the definition of the word "threat" in its analysis, however, courts will probably ask whether a threatening statement in *combination* with other information the district knew prior to a plaintiff's harm, placed the district on notice of a risk of the type of harm suffered by plaintiff, so as to make plaintiff's harm foreseeable to the district.

It is recommended that the district take swift and decisive action to address any potential threat of which it is informed. But the action need not be draconian. *See Jachetta*, 142 Wn. App. at 824. Rather, the action should be based upon a determination of whether the student presents an actual threat, given the other information known to the district. *See id.* Where the threat is of a serious crime such as a threat to kill and is legitimate under the circumstances, the district should at a minimum obtain a psychological evaluation or its equivalent of the perpetrator. *See id.*

D. Threat Assessment Models

There are many models for threat assessment currently in practice. Regardless of the applicable model, a clear understanding of the applicable process is required.

Some school districts utilize assessment practices primarily with staff with some guidelines. Many contract out to a professional mental health practitioner on a case-by-case basis to examine a particular student. Many school districts still simply defer to local law enforcement when they discover a threat or possible threat.

Increasingly, whether by statutory mandate or reaction to a particular incident, greater structure for assessment of potential violence and intervention is appearing among schools nationwide. The Salem Keizer School District in Oregon has created a robust model with significant components and coordinated levels of effort across other agencies known as the "Salem-Keizer System." *See* http://studentthreatassessment.org. The Salem-Keizer System is a significant deployment of resources and effort, but has been successful. As a multi-agency model, it relies upon meaningful participation of juvenile justice, law enforcement, and mental health agencies. This requires a commitment of many.

1. Notice of a Possible Threat

Threat assessment predictably commences with notice of a potential threat. Notice can come in any form: physical, verbal, written, text, images, recorded in audio or video format, posted online or in any combination. Oftentimes, the report will come into a school district via a concerned parent or peer. More and more, it appears schools receive anonymous tips via note, email or message.

2. Timely Focus on Assessment

When a potential threat is examined with the benefit of hindsight, school district staff often raise the issue of workload as an excuse for delays or outright failure to message the possible threat up the chain of command or to engage in initial assessment. Workload is certainly an issue for any administrator or school professional. That is not the issue. Clear expectation of taking a threat seriously must be conveyed to all staff by school district leadership. There is usually no disagreement in the abstract to this concept but in practice it may prove inconsistent. Clearly, attention to a possible threat has immediate value: it focuses on the issue at hand; it validates the individual or community that has raised the issue; it allows timely engagement of resources and decision-making; it can save lives. Once a "threat" issue is presented, time is always of concern.

3. Gathering of Information

The process of gathering information is usually necessary to even assess context for a possible threat. There will be occasions where a threat will be disclosed where information-gathering will not generally be necessary at the outset and action to be taken clear. Some articulated potential acts are so violent or potentially destructive that mere review of the threat itself is all that is necessary to complete a meaningful immediate assessment. For instance, a tweet to numerous persons enclosing a picture of a firearm

and a desire to murder a certain group of student peers that, once confirmed to be from the student in question, resulted in emergency removal, modified school scheduling, and law enforcement intervention. Some concerns over particular students or conduct may grow steadily over time. Many possible threats will require further investigation, perhaps even to determine the very existence of a threat.

a. Role of law enforcement

If there is any legitimacy to an expression of threat, the first move is to contact law enforcement to make them aware. They can escalate resources, conduct significant investigation in a short time, perform welfare checks at student residences, and, if deemed necessary, station a uniformed officer at every school at issue to put students, staff, and stakeholders at ease. In the present day, anonymous messaging and email can create great difficulty in identifying the origin of a threat such that increased involvement of law enforcement can bring resources to bear that many school districts cannot, whether because of skill set limitation or a lack of legal authority. Articulating collaboration with law enforcement can also serve to deflect criticism of the school district's reaction.

Often law enforcement will complete an initial investigation and conclude there is no criminal threat and that a return to school is acceptable. Depending on the particular agency or officer, this can be a legitimate means of final assessment. Alas, however, the opposite is also true. In such cases where school district administrators are not confident in the conclusion of law enforcement, it is legitimate to pursue evaluation by a mental health professional. Further, law enforcement's investigative mandate may be to determine whether a criminal law has been violated and is not as sweeping as the school district's interest. Mere possibility of homicidal ideation without planning, preparation, or active training (rehearsal) may be insufficient to justify greater investigation or resources relating to a crime, but the school district still has a significant obligation to investigate and intervene further.

b. Process should be followed

If there is an articulated process for threat assessment to be used for a school district it should be followed, unless some greater interest dictates departure from it. Without reviewing in too much detail, most assessments of threats of violence follow the same general process, though reordering can occur based on the facts:

- Notification of possible threat;
- Notification of appropriate response personnel;
- Review/investigation of possible threat;
- Reporting to law enforcement/911;
- Lockdown/closure of school facilities;
- Emergency removal of students of concern;

- Further investigation as appropriate:
  (1) Interviews
  (2) Records
  (3) Expert assessment as appropriate
- Determine response to alleged threat and student outcomes;
  (1) Student discipline
  (2) Support and/or safety plan
  (3) Assess placement in light of continued concerns
- Messaging to staff, student, parents, involved stakeholders.

Initiating a process in a school district should involve some level of tiered reporting and assessment to the site and central administration, such as a Critical Response Team (CRT), Emergency Response Team (ERT) or Threat Assessment Team (TAT). Normally this occurs via email, but increasingly occurs via text, instant messaging, or conference call where infrastructure is developed. Priority of notification is usually conducted on a case by case basis, where low level disclosures may not mandate a full initiation of process (i.e. threat of low level harm) and more pronounced merit full deployment (i.e. threats to kill).

c. Online information

Many threats are made online. Most are in the context of a comment posted on a social media site. Where a screenshot is conveyed to a school district of an online comment or post that presents concern, time is of the essence to assess and react. Often the post will already be attracting significant attention and causing concern among school district stakeholders.

Where there is a controlling third-party host for online content of concern, social reporting to that entity should be used to take down or remove offensive or illegal content. Each social media site, including Instagram, Facebook, and Twitter, has its own specific process of social reporting. Care should be taken where the school district has real-time actual access to content to take screenshots or recordings to preserve evidence for follow-up use.

There is no reason, as a part or investigation of a possible threat, that publicly available online information cannot be viewed or used. This includes personal web or social media pages, message boards, or chat rooms for students. Oftentimes students do not configure privacy settings so that access is available and such information may be considered public. It is important that the social media be open and accessible to all viewers.[3]

[3] The exception to this would be access to content on a school district laptop or social networking device to which access was conditioned on consent to search or on a district-hosted social media platform.

Law enforcement can execute warrants to secure account information from social media sites such as Facebook to further investigate. In such instances, the turnaround for information has improved in the last 5 years. Sometimes, however, the issuing authority (prosecutor's office) will refuse to secure the warrant as they do not find the alleged action to constitute a crime justifying the issuance of a warrant. This can leave a school district in a bit of a conflict where stakeholders remain concerned over a potential "threat."

Utilizing subterfuge or covert surveillance to access information restricted by passwords or closed discussion groups is not recommended due to privacy concerns and possible issues under the Stored Communications Act (SCA). 18 U.S.C. §§ 2701-2712.[4] If it merits that much concern, perhaps law enforcement should be re-contacted to explore a warrant option.

Overall, the rise of social media and online networking has fostered greater opportunity for deviancy and acceptance of controversial ideas and articulation. While this is one of the accepting aspects of its development and spread, from a threat assessment perspective, it complicates things, validating potential violent ideas and "stoking behavioral escalation." Kris Mohandie, *Threat Assessment in Schools* (2014).

4. Emergency Removal is a Necessary Tool

Where there is a legitimate concern over safety, the student causing that concern should be removed from school as much as possible within the bounds of the law. Law enforcement should be contacted. Where a student or staff member is a specific target, any threat or safety concerns should be disclosed in an appropriate fashion and reviewed. Enlisting the support of parents for the removed student is recommended as this can avoid issues caused by time limits for removal by agreeing to alternative placement (online schooling, alternative learning, etc.) while full assessment is completed or support/supervision plans perfected.

[4] The SCA provides that it is illegal to "intentionally access[] without authorization a facility through which an electronic communication service is provided or … intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system." 18 U.S.C. § 2701. The SCA was invoked in *Robbins v. Lower Merion School District*, wherein the plaintiffs alleged two Philadelphia high schools secretly spied on students by surreptitiously and remotely activating webcams embedded in school-issued laptops the students were using at home, violating their right to privacy. *See Robbins v. Lower Merion School District,* No. CV00665, Pennsylvania Eastern District Court (February 2010). Over 66,000 images were captured, including depictions of sleeping students. The SCA has also been found by to apply to Facebook comments and posts.

5. Independent Evaluation of a Student

Whenever a student is removed from a school environment over concern for safety related to a possible threat, confidence should be pursued that the threat has been reduced to an acceptably low level before re-entering school. This is critical where the incident was an expression of ideation but did not convert to activation. Normally this evaluation is associated with a process of rescinding or modifying a return to the school environment after an emergency removal. It often can be something provided as a part of the resolution of a criminal cause of action via plea.

As the skillset of professionals in a community may vary, it is recommended that each school district develop a contact with an evaluator experienced in such matters and available to conduct such a determination. Some school districts ask that the student and their family pay for the evaluator but there is a trend among many school districts that the school district pays the costs of evaluation. Such evaluations can exceed $1,000 in costs and often are not covered costs under an individual family insurance policy.

6. Staff

Staff, although less likely, can be purveyors of threats as much as students. Indeed, most of the literature that has grown up around threat assessment occurs in the context of employers and the workplace. Information on staff may be more readily available in a process of assessing a possible threat, including personnel records, criminal records, and court processes. Further, if online, staff may typically be less savvy as to maintaining confidentiality on posts or comments of concern. Where staff appear to be discussing the workplace, caution is warranted to the extent they are engaging in a legitimate individual discussion of work conditions, wages, or terms of employment. Depending upon a school district's knowledge of a staff member's presentation of a threat of violence, there could be exposure for a failure to warn.[5]

[5] Duty to warn is generally based on state law and often concerns the information provided to prospective employers about former employees. For example: In Florida, families of five office workers shot by a co-employee were allowed to proceed to trial against a defendant insurance company, who had been the former employer of the killer. Even though the killer had been fired from the insurance company for carrying a gun in his briefcase, the insurance company provided a letter of recommendation that stated he had been fired as part of a corporate restructuring. The families of the victims argued that the insurance company had unleashed a dangerous employee on the victims by failing to notify the subsequent employer of the true reason for his firing. *Jerner v. Allstate Insurance Co.,* No. 93-09472 (Fla. Cir. Ct. Aug. 10, 1995).

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