

# CONTEMPORARY CRISIS ISSUES FACED BY SCHOOLS: LESSONS FROM LEGAL CASES

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# LEGAL CASES REVIEW

- There are many legal cases that have implications for crisis issues faced by schools
- The literature about legal and ethical issues in school crisis is lacking
- The following cases highlighted in a lessons learned format are all cases that I was personally involved in

# COULTER VS WASHINGTON TOWNSHIP NJ

- Superior Court of NJ. NO. MRS-L-326-04 (2005) Issue was parent notification of suspected cutting behavior by a middle school student
- Student was suspected of cutting in January but denied it on interview with the counselor
- The counselor said the parent was notified of suspected behavior but there were no records to verify it
- The student's mom stated she only found out about the cutting after the hospitalization of her child the next fall when two of her daughter's friends told her that they informed the counselor months ago
- The case went to court and what do you think the outcome was ?
- Does your school have a plan for non suicidal self injury?

# MORE CASES

- Szostek v Fowler and the Cypress-Fairbanks ISD Court of Appeals Texas (1<sup>st</sup> District) 1995
- B. Nelson-Szostek a middle school student suspected of selling drugs on campus was suspended and recommended for expulsion
- She shot herself when left at home alone on the day of her suspension
- The district was sued
- Do you see liability for the district?
- How could suspension and/or expulsion be handled differently at school if at all?
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# HOPE WITSELL TRAGEDY

- Middle school teen endured months of taunting after she texted a topless photo to a fellow student
- The day before her suicide, she met with a social worker who had her sign a no suicide contract
- No other school staff nor the parents were notified and parents found the no suicide contract after her suicide
- Do you see a defense in the lawsuit and how do we prevent tragedies like this?

# WITSELL V HILLSBOROUGH SCHOOLS

- U.S. District Court Middle Florida NO: 8: 2011 CV-00781-Doc 18 (2011)
- The district did not settle out of court
- The district maintained they were not responsible for the social worker who did not follow their procedures for parent notification
- The plaintiffs attorney failed to ask for documentation that the social worker was ever trained on those procedures
- The district prevailed and her parents could have refiled the case but chose not to

# BOEHM V WHITE PASS SCHOOLS SUPERIOR COURT LEWIS COUNTY, WA. (2013) NO.12-2-00392-9

- Sixteen year old male student was referred to school counselor after he wrote a suicide note and there were rumors he was in a suicide pact
- Student denied suicidal ideation when interviewed by counselor and stated he previously had a drinking problem but was now sober
- Please consider whether or not you would call parents after you review the following additional information that the counselor knew as a result of the enrollment conference with his grandmother

# COUNSELOR KNEW

- New to school had been there only 5 weeks
- His best friend attempted suicide yesterday and was hospitalized
- He was under stress as facing felony charges in court
- Got along well with grandmother (who he lived with) but not his mother and grandmother previously shared that his mother tried to kill herself last year
- Grandmother told counselor his mother told him he will probably kill himself someday




# BOEHM CASE CONTINUED


- How many protective factors do you see?
- How many risk factors do you see?
- Later that day the student had an argument with his grandmother about his grades and died by suicide
- What should the counselor have done differently?
- The Lewis Superior Court found the counselor had no duty to warn the grandmother
- The case was appealed and the White Pass School District settled out of court


# LANCE V LEWISVILLE ISD TX. U.S. 5TH CIRCUIT COURT 2014 NO.12-4439

- 9 year old boy M. hung himself in the school nursing clinic bathroom in 2010
- He was a special education student with Speech, Learning Disabilities and ADHD
- In 2008 his parents referred him for a psychological evaluation due to their concern that he was suicidal
- ARD in 2008 identified him with Emotional Disturbance when he was in 2nd grade

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- The district did not have the psychological evaluation that qualified M with ED
  - They only had BASC raw data that documented suicide/depression
  - He received special education counseling but there was no documentation that the counseling focused on suicidal ideation
  - From start of his 4<sup>th</sup> grade school year 2009-2010 until his death on 1/21/10 there were 30 behavioral incidents in 4 months that resulted in him being sent to the AP for discipline

- AP viewed each incident as conflict not bullying and no evidence existed that the AP reviewed his IEP or his BIP
- Why do you think the AP did not see a single one of 30 incidents in one semester as involving bullying?
- M saw the nurse on 16 occasions that semester and 7 times he had physical injuries suffered at school
- On 12/18/09 several students assaulted M in the cafeteria and he pulled a pocket knife from his pocket
- M was sent to the DAEP for 10 days and no MDR was held

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- Parents immediately appealed the DAEP to the Principal and then to the Assistant Superintendent
  - The appeals were denied
  - The DAEP was not notified that M was a special education student
  - M was suicidal at the DAEP and the H.S. counselor notified his father but failed to fill out required paperwork and did not notify his home school of M's recent suicidal ideation

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- M was in trouble on his second day back at his home elementary campus and he hung himself in the nurse clinic bathroom
  - Nurse knew that she did not have a key to unlock the bathroom door and M had previously locked himself in the bathroom
  - No one ever told the nurse that M was suicidal
  - The day after he died a new lock was installed and the nurse was provided a key to the bathroom

# LEGAL TERM: SPECIAL RELATIONSHIP

- “In loco parentis doctrine” raises the question of whether a special relationship exists between school officials and students as students are released by parents for control and supervision by school officials
- Critical issues are age and existence of disabilities for a student and whether or not the district placed the student in harms way
- What do you think the outcome of the case was in the TX. court?

# LANCE CASE: OUTCOME

- Texas Eastern District Court dismissed the case and placed emphasis on the 2012 Doe v Covington case decided by the U.S. 5th Circuit Court
- No Special Relationship existed as M was not incarcerated, involuntarily committed, nor in foster care
- He was not discriminated against as the AP failed to implement the bullying prevention policy for all students
- Lance case was appealed unsuccessfully to U.S. 5<sup>th</sup> Circuit



# GALLAGHER V BADER IN VA.

- A peer living in CO. reported a friend was suicidal to H.S. counselor Bader in Loudon, VA. in 2016. The counselor met with the 18 year old student suspected of suicide but the student denied it. The counselor did not notify the parents nor the principal as required by the district procedures. The counselor relied on the fact the student did not admit suicidal ideation and since he was 18 his parents did not need to be notified. The district procedures made no exception for parent notification for students over the age of a 18. The student died by suicide 3 weeks after meeting with the counselor.
- What do you think the outcome of the case will be?

# GALLAGHER V BADER IN VA.

- The counselor was sued personally as VA. law does not allow schools to be sued
- The first court found for the counselor citing a 2002 VA. statute that said parents only need to be notified if the suicide risk is believed to be imminent.
- The case was settled out of court but what was the lesson from the case?

# WILK V ST. VRAIN SCHOOLS U.S DISTRICT COURT CO. 2015

- A high school student B bragged to students about violent interests but denied he would really hurt anyone but stated his friend S might as he was planning something serious
- The threat was reported to administration and taken seriously with police notified
- Local police interviewed both students separately

# CASE CONTINUED

- S denied ever saying anything about school violence and remarked, “I do not know why my friend B threw me under the bus?”
- B recanted his story and said he was joking about S planning violence
- The police searched the home of S and there were no working weapons only replicas for re-enactment
- His Facebook page had over 200 photos and a few with violent themes and he was pictured with re-enactment rifles

# CASE CONTINUED

- School records indicated a few minor disciplines years ago
- He turned in several papers about Nazism and received good grades
- S liked to draw and his drawings often had violent themes and he read fictional books about serial killers
- He was almost an Eagle Scout

# CASE CONTINUED

- The police concluded their investigation and determine threat by S was unfounded
- The school convened its own threat assessment team without a counselor, composed of the principal, teachers and the safety director
- In an interview only with the Principal, S repeated again that he did not make the threat and also provided a written statement
- Does this sound like a substantial threat?

# CASE CONTINUED

- The principal did not share the results of the police investigation with the team nor the written statement of denial from S or the fact that B recanted his statement
- The counselor who knew S and had talked with him on several occasions was not included in the threat assessment meeting
- The school expelled S and did not put any emphasis on a private evaluation obtained by his parents that found he was very unlikely to be violent



# QUESTIONS

- Do you think the expulsion of student S was warranted?
- What would you have advised the administrator to do differently if anything?



# WILK CASE OUTCOME

- Civil Action No. 1:15-CV-01925-RPM
- Court concluded that in this day and age that the district had reason to fear school violence and acted reasonably in expelling the student.
- Comments?

# SCHOOL SHOOTING CASE JULY 2019

- Bowe Cleveland v Taft Union H.S. District in CA. Case NO:S-1500-CV-279256, Kern County Superior Court
- Bryan Oliver shot Bowe Cleveland at school in Jan. of 2013
- Bowe Cleveland survived but has had over 20 surgeries
- Bryan pleaded guilty and received a 27 year prison sentence
- Bryan had been the victim of bullying which he reported to school personnel and had made numerous violent threats
- Staff and students had reported numerous violence concerns to the school administration over a year period

# MY CRITICISM

- Bryan's threats of violence reported by students and staff were not taken seriously and school personnel failed to communicate with each other
- An inadequate initial threat assessment was done and continued red flag behaviors should have prompted further assessments
- Counseling interventions were not sufficient
- There was extensive documentation that Bryan was being bullied
- Bryan was a special education student and special education procedures were not followed

# MY CRITICISMS

- CA law requires teachers to be notified for three years when a student threatens violence and that was not done
- School personnel did not follow their own procedures for threat assessment
- Many warning signs of violence were ignored
- The campus gate on day of shooting was not locked as stated in school policy
- Campus security cameras were not monitored



# DISCUSSION

- Questions about the case?
- What do you think the outcome will be –will the school be liable?

Have schools been held liable after school shootings?

# LIABILITY PERCENTAGES

- In a historic precedent the jury awarded 3.8 million dollars and found the district 53% liable and there was no appeal by the district
- AP found 27% liable. My criticisms were failing to intervene with bullying reported by Bryan over several years and to take numerous threats reported by staff, students and parents seriously both before and after students and staff heard Bryan talk about shooting up the school in 2/12. Failing to notify teachers of threats as required by CA law and for poor communication with other school personnel

# LIABILITY PERCENTAGES

- School Psychologist found 19% liable. My criticisms conducting an inadequate, one time threat assessment, poor communication with staff and failing to provide sufficient counseling services to Bryan. SP did not care about details and thought all students needed a fresh start. SP counseled Bryan only a few times. Bryan was an identified special education student when he threatened to shoot up the school and his counseling should have been planned through special education. Bryan was dismissed from special education shortly after threatening a school shooting in 2/12.

# LIABILITY PERCENTAGES

- Superintendent/Principal for the 2011/2012 school year found 4% liable. My criticism poor communication especially with new principal and little involvement in threat assessment
- Principal for the 2012/2013 school year when shooting occurred found 3% liable. My criticism poor communication and little involvement in threat assessment
- Bryan (shooter) 27% responsible
- Bryan/s mother 10% responsible for allowing an unsecured shotgun in her home
- Bryan's older brother found 9% responsible for bringing the shotgun into the home



# HOW CAN SCHOOL STAFF PROTECT THEMSELVES FROM LIABILITY AND SAVE LIVES?

- Maintain liability insurance
- Seek supervision and consultation and keep good records of parent notification, referral to community based services and follow up
- Document training of all staff on suicide prevention/intervention
- Provide best practices responses and follow state requirements for suicide prevention in schools
- Create and train a school threat assessment team

# SUICIDE PREVENTION IS EVERYONE'S RESPONSIBILITY

- **More Information**

- [www.nova.edu/suicideprevention](http://www.nova.edu/suicideprevention)

- Suicide in schools by Erbacher, Singer & Poland (2015) Routledge with revision expected late 2021
- Lessons Learned from School Shootings: Perspectives from the United States by Poland and Ferguson for Springer Publishing expected publication date fall 2021
- GPS Guide to Prevent Suicide [www.Navigate360.com](http://www.Navigate360.com) expected 2021
- Comprehensive School Threat Assessment CSTAG [www.Navigate360.com](http://www.Navigate360.com)