

School Liability and the Law of Unintended Consequences

In the years since the tragic shooting at Sandy Hook Elementary School, some companies have responded to the threat of active shooters on school property by offering retrofit security devices designed to barricade classroom doors. But because classroom barricade devices can block egress from classrooms, many of these products conflict with existing accessibility, fire, and life safety codes. Despite objections from fire marshals and other code officials, some state legislators have pushed to override local codes and allow wider use of barricade devices. 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 schools safer.

From a legal compliance and liability perspective, what issues should a school district consider when deciding whether to install door barricades or other active shooter defense systems? At Allegion, safety and security is our core mission. While we cannot offer you legal advice, we have consulted our own lawyers about this issue and hope you will find the following analysis helpful as you and your legal team consider what security measures would be best for your facilities.

- *Duties of Care:* All property owners have a duty to keep their premises safe for anyone legally allowed to be there, but a higher degree of care is required when dealing with young children than when dealing with adults. This is especially true for schools, which have special responsibilities as custodians of their students.
- *Foreseeable Harms and Unintended Consequences:* As every school administrator knows, and as documented by the Centers for Disease Control and Prevention, the persons most likely to commit violence on school grounds are students themselves. A person injured in a barricaded classroom could have a strong argument that the school district should have recognized that a student, or someone else lawfully on the premises, might 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 consider the possibility of an exit being accidentally or maliciously blocked during an emergency.

- *ADA Compliance:* The Department of Justice has published regulations adopting the 2010 ADA Standards for Accessible Design (the “ADA Standards”) as the accessibility standard used throughout the US. The ADA Standards require that all “operable parts” on accessible routes be operable with one hand and not require tight grasping, pinching or twisting of the wrist. Additionally, operable parts on doors and gates must be within 34-48 inches above the finished floor or ground. Although the ADA Standards provide for some exceptions to these requirements (for example, for operable parts in correctional facilities and around swimming pools), those exceptions do not apply to classroom settings. For that reason, a school district using devices that do not meet the ADA Standards could be exposing itself to negligence and discrimination claims.
- *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 the published model codes commonly used in the US. Even if a state legislature allows districts within its jurisdiction to override certain code requirements, that would not mean that the decision to do so in a particular classroom, 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.
- *Compliance versus Liability:* In states where codes have been modified in order to allow barricade devices, the fact that a device may be “legal” under the revised statutes and codes doesn’t necessarily mean that the building’s owner has met its duty of care. Consider the case of traditional wired glass. For decades, school districts across the country installed windows and doors with wired glass in the belief that all such products were stronger and safer than regular glass. In fact, wires have the potential to weaken glass and to hold large, dangerous pieces in place when broken. Modern building codes address this issue by imposing impact-resistance standards for glass used in new construction, but local rules typically allow building owners to leave existing glass in place. A school district that chooses to leave traditional wired glass in place for budgetary or other reasons may not be breaking any laws, but may be exposing itself to the possibility of a suit such as the one the Kent (WA) Unified School District settled for \$2 million when a student suffered serious injuries from wired glass after a fall. In the same way, even a “legal” barricade device could raise liability issues for a school district.
- *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 to purchase certain security devices was negligent, whether its employees are entitled to indemnification from the district, or whether the decision to use particular security hardware in a particular location was a protected “policy” decision or merely an unprotected “operational” decision. Likewise, a code official who overlooks issues relating to security hardware might be thrust in the middle of a dispute about whether addressing those issues falls within the zone of protected “discretionary” activity or unprotected “ministerial” activity. Even prevailing on these issues could involve years of legal wrangling.

In summary, while the risk of liability for a school district certainly isn't an overriding issue in itself, it has a direct relation 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:

- The final report of the Sandy Hook Advisory Commission includes many recommendations for school safety, including the recommendation for classroom doors to be lockable from inside the classroom, with the capability of being released from the interior with one motion. The report states: *"The testimony and other evidence presented to the Commission reveals that there has never been an event in which an active shooter breached a locked classroom door."* Barricading of doors is not mentioned in the Commission's report, which can be downloaded by visiting: http://www.shac.ct.gov/SHAC_Final_Report_3-6-2015.pdf
- The following links include examples of school shootings where barricaded doors delayed law enforcement response and may have increased the number of casualties, and a study of barricading and hostage taking incidents in schools:
 - Inside the Classroom at Platte Canyon High School – SWAT Team Faced Difficult Decision (ABC News) - <https://www.thedenverchannel.com/news/inside-the-classroom-at-platte-canyon-high-school>
 - Police Describe Struggle to Enter Hall at Virginia Tech (Washington Post) - <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/26/AR2007042602558.html>
 - Police share lessons from Amish shooting (US News) - http://usatoday30.usatoday.com/news/nation/2007-08-23-amish-shooting_N.htm
 - Barricaded Captive Situations in Schools: Mitigation and Response - https://www.researchgate.net/publication/226050904_Barricaded_Captive_Situations_in_Schools_Mitigation_and_Response
- 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 <http://www.cdc.gov/violenceprevention/youthviolence/schoolviolence/>.
- 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.") (<https://searchworks.stanford.edu/view/8519895>).

- The ADA Standards are available at https://www.ada.gov/2010ADASTandards_index.htm. See § 309.4 (operable parts) and § 404.2.7 (door and gate hardware). The United States Access Board, a federal agency charged with promoting accessible design, offers a detailed discussion of the “operable parts” door hardware requirements in its “Guide to the ADA Standards,” available at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards>.
- For an example of a disability rights organization’s position on barricade devices, visit <http://www.ndrn.org/en/media/releases/631-press-release-ndrn-testifies-at-hearing-to-improve-fire-safety.html> (National Disability Law Center press release, “NDRN Testifies at Hearing to Improve Fire Safety”) (“We are very pleased that the [National Fire Protection Association] voted against potentially dangerous barriers in schools. . . . While security in schools is a very real concern, security cannot come at the expense of safety.”)
- For a discussion of the distinction between protected “policy” decisions and unprotected “operational” decisions, see *Rogers v. State*, 459 P. 2d 378 (Haw. 1969)) (<https://www.courtlistener.com/opinion/2612137/rogers-v-state/>).
- For examples of statutes requiring or permitting a governmental entity to defend or indemnify its employees, see Me. Rev. Stats. Ann Title 14, § 8112 (<http://www.mainelegislature.org/legis/statutes/14/title14sec8112.html>); Minn. Stat. Ann. § 3.736, subd. 9 (<https://www.revisor.mn.gov/statutes/?id=3.736>). For a general discussion of the liability and immunity of state and local officers and employees, see Dobbs, et al., *The Law of Torts* (2d ed.), § 350.