

Keeping you
informed...



LAMB & BARNOSKY, LLP
ATTORNEYS AT LAW

MEMORANDUM

TO: OUR SCHOOL DISTRICT AND BOCES CLIENTS

FROM: LAMB & BARNOSKY, LLP

RE: NEW YORK SAFE ACT

DATE: JANUARY 21, 2013

We are writing to advise you about the New York Secure Ammunition and Firearms Enforcement Act of 2013 (New York SAFE Act), which is new gun control legislation signed into law by Governor Cuomo on January 15, 2013.

In addition to several provisions aimed at reducing gun violence, the New York SAFE Act includes the following changes that directly affect school districts and BOCES. These changes will become effective on March 16, 2013.

School Safety Improvement Teams

The Safe Schools Against Violence in Education Act (SAVE), which took effect in 2000, requires school districts and BOCES to maintain school safety plans to prepare for and respond to emergency situations (the requirements for these plans are set forth in our December 18, 2012 client memorandum, which is attached).

Pursuant to the New York SAFE Act, a school district with a population of fewer than 125,000 inhabitants, as well as a BOCES, may, on a voluntary basis, submit their school safety plans to newly created school safety improvement teams for review and assessment. The teams may, but are not required to, make recommendations to improve these school safety plans.

The Governor will establish the school safety improvement teams, which may be comprised of representatives from the Division of Homeland Security and Emergency Services, the Division of State Police, the Division of Criminal Justice Services and/or the Education Department.

Building Aid For Security Devices

The New York SAFE Act provides additional building aid for the purchase of stationary metal detectors, security cameras, electronic security systems and hardened doors, provided that

these projects are included in the school district's school safety plan and are approved by the Commissioner of Education on or after July 1, 2013 and before July 1, 2016.

If approved, the school district will receive state building aid reimbursement for these projects at a rate that is 10 percent higher than their current building aid ratio, subject to a special cost allowance that is to be prescribed by the Commissioner on an annual basis (the approved expenditures cannot exceed the special cost allowance). This reimbursement rate may not exceed 100 percent.

New Requirements For Mental Health Professionals

Mental health professionals, defined as including physicians, psychologists, registered nurses and licensed clinical social workers, are now required to report if an individual they are treating is likely to engage in conduct that would result in serious harm to the individual or to others.

The mental health professional is required to report the individual to the county Director of Community Services (or designee),¹ who must then report the individual to the Division of Criminal Justice Services if he or she agrees that the individual is likely to engage in the harmful conduct. The Division of Criminal Justice Services will then determine whether the individual is ineligible for a firearm license, should have his or her license suspended or revoked, or is no longer permitted to possess a firearm.

The law does not contain any penalties for a mental health professional's failure to report. Additionally, mental health professionals will not be subject to any civil or criminal liability for their decision to report or not to report an individual pursuant to this law, provided that the decision was made reasonably and in good faith.

Possessing a Weapon on School Grounds

The penalty for knowingly possessing a weapon on school grounds without the written authorization of the educational institution has been increased from a misdemeanor to a class E felony.

Please contact us if you have any questions regarding this new legislation.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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¹ The Director of Community Services is the chief executive officer of the county's mental health/hygiene department.

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LAMB & BARNOSKY, LLP

ATTORNEYS AT LAW

MEMORANDUM

TO: OUR SCHOOL DISTRICT AND BOCES CLIENTS

FROM: LAMB & BARNOSKY, LLP

RE: SCHOOL SAFETY PLANS

DATE: DECEMBER 18, 2012

We join you in being shocked and saddened by the recent events in Newtown, Connecticut. In the wake of this tragedy, school safety plans should be reviewed by school officials and emergency response teams.

To address issues of school safety and violence prevention, the Safe Schools Against Violence in Education Act (SAVE) was passed by the New York State Legislature and took effect in 2000. In accordance with SAVE, New York public schools are legally required to maintain both a district-wide school safety plan and a building level school safety plan to prepare for and respond to emergencies. Furthermore, codes of conduct must set forth requirements for students, visitors, and staff to increase the safety of the school community.

School safety plans must include the following essential elements:

- Viable chain of command to implement the safety plan;
- Communication system;
- Informed staff, student body and community;
- Procedures for people with special needs; and
- Practiced procedures.

The questions in the attached document, initially published in the New York State Education Department's *Guidance Document for School Safety Plans*, provide a solid basis to review school safety plan procedures and processes – both at the district and the building level.

Lockdown Procedures

While there are a range of potential situations with varying risk levels that a school may encounter, when there is an immediate threat to the school building population, a lockdown

procedure must go into effect. This procedure is most commonly used when a building has an intruder. School staff and students should be secured in the rooms they are currently in and no one should be allowed to leave until the school is safe. Districts and BOCES should review their school safety plans to ensure that they are detailed and contain specific steps to implement lockdown procedures after a threat has been identified. Some of these steps may include the following:

- 1) Lockdown signal is given – may be a code phrase or audible sound from speakers.
- 2) Call 911.
- 3) Teachers/Staff follow pre-set instructions to secure doors, turn off lights, cover windows, pull shades and move students out of line of sight of door windows.
- 4) Teachers/Staff take attendance and record students that are in the room, record missing and extra students from the hall, and await further instructions.
- 5) Teachers are not allowed to open doors for ANYONE under ANY circumstances.
- 6) All activities cease.
- 7) Students/Staff outside the building must evacuate to a pre-determined, off-campus location. This includes bus runs and field trips.

Please contact us if you have any questions regarding the information contained in this memorandum, or if you would like us to review your district-wide school safety plan or building level school safety plan.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

PROJECT SAVE
(Safe Schools Against Violence in Education)

**Sample DISTRICT-WIDE
SCHOOL SAFETY PLAN
GUIDING QUESTIONS**

Commissioner's Regulation 155.17

This resource has been developed to provide districts with a series of questions based on the intent of Project SAVE to ensure that all districts have a district-wide school safety plan. Questions have been developed by a group of state agencies, BOCES, and school districts and are designed to assist districts in the planning process. Questions relating to the requirements in the Commissioner's Regulation 155.17 are listed, as well as probing questions that can assist districts further in the planning process. The guiding questions may be useful as the district discusses and creates its plan. The questions are generally organized to reflect the framework provided in the sample district-wide school safety plan, and emphasize only those sections of the plan where additional guidance may be helpful.

General Considerations and Planning Guidelines

1. Has the district established the required district-wide school safety team?
2. Are all required members present, including representatives of the school board, students, teachers, administrators, parent organizations, school safety personnel and other school personnel?
3. Has the district given consideration to other members of the community who may be helpful as members of the district-wide school safety team?
4. Has the district considered the relationship between the district wide school safety team and the building-level school safety team? How will these groups interact?
5. In the event of an emergency or violent incident, does the district-wide plan reflect how the district will interact with an individual school emergency response team?
6. Has the district considered potential training for the members of the district-wide school safety team?
7. Have arrangements been made for regularly scheduled meetings and opportunities for communications?
8. Has the district made provisions for the review of the district-wide school safety plan by the District-wide School Safety Team?
9. Has the district made provisions for the scheduling of a public hearing at least 30 days prior to its adoption by the Board of Education?
10. Has the district made provisions for the submission of a full copy of the plan and any subsequent amendments to the New York State Education Department?

Continued

Risk Reduction/Prevention and Intervention

Prevention/Intervention Strategies: Program Initiatives

1. Has a local assessment been conducted to determine strategies appropriate to the local area?
2. Has local data, such as that reported and summarized from the Uniform Violent Incident Report, been used to substantiate the need for security procedures and devices?
3. Are selected prevention and intervention strategies based on research findings of effectiveness, and are they evaluated to determine their impact in the district?
4. Have prevention and intervention programs been linked to community resources, including health and mental health?
5. Have prevention and intervention strategies been included in the district's Professional Development Plan to cover identified and required school safety training components?
6. Have nonviolent conflict resolution training programs, peer mediation programs and youth courts, extended day and other school safety programs been considered as ways of preventing potential violence?
7. Have character, citizenship and civility education programs been included?
8. Have strategies been developed for improving communication among students and between students and staff?
9. Do the strategies include safe and confidential ways for students to report potentially violent incidents?
10. Have best practices and effective strategies used by others been considered for improving communication?
11. Are students involved in programs regarding policy development?
12. Are students encouraged to serve as peer leaders or mentors for younger students?

Prevention/Intervention Strategies: Training, Drills, and Exercises

13. Have policies and procedures been developed for annual multi-hazard school safety training for staff and students?
14. Have procedures been developed for review and the conduct of drills and other exercises to test components of the emergency response plan?
15. Are tabletop exercises used to simulate real-life emergencies and responses by staff?
16. Are the drills and exercises conducted in coordination with local and county emergency responders and preparedness officials?
17. Are policies and procedures updated and/or modified as a result of information gained during drills and exercises?

Continued

Sample DISTRICT-WIDE School Safety Plan – GUIDING QUESTIONS, continued

Prevention/Intervention Strategies: Implementation of School Security

18. Has the district developed a description of the policies and procedures related to school building security?
19. Have collaborative agreements been made with state and local law enforcement officials to ensure that school safety officers, if used, are adequately trained to de-escalate potentially violent situations, and are effectively and fairly recruited?
20. Have descriptions been developed of the duties of hall monitors and any other school safety personnel?
21. Has the training required of all personnel acting in a school security capacity been identified?
22. Has the hiring and screening process for all personnel acting in a school security capacity been identified?

Early Detection of Potentially Violent Behaviors

23. Have policies and procedures been developed for the dissemination of informative materials regarding the early detection of potentially violent behaviors?
24. Have materials been distributed to teachers, administrators, school personnel, persons in parental relation to students, students and others deemed appropriate to receive such information?
25. Have staff been trained on the U.S. Department of Education's "Early Warning, Timely Response" document relating to early identification of potentially violent behaviors?
26. Has consideration been given to integrating skills-based violence prevention education into health education and other related curricula?
27. Have staff been trained to identify family, community and environmental factors that may lead to potentially violent behaviors?
28. Are staff trained on identification of risk and protective factors to help children?

Hazard Identification

29. Have districts identified sites of potential internal and external emergencies?
30. Have potential hazards in the neighborhood and community been considered, such as facilities containing toxic, chemically reactive, and/or radioactive materials; high voltage power lines; transportation routes of vehicles including trucks and trains carrying hazardous materials; underground gas and oil pipelines; underground utility vaults and above-ground transformers; multi-story buildings vulnerable to damage or collapse; water towers and tanks; and other potentially hazardous sites in your community?
31. Has the district consulted with your local emergency managers on the hazard analysis for the area in which your school district is located?

Continued

Response

Notification and Activation

1. Are there policies and procedures for contacting appropriate law enforcement officials in the event of a violent incident or other emergency?
2. Are there provisions for notifying appropriate agencies, including police, fire, rescue, mental health, and others, where necessary?
3. Has an appropriate local law enforcement liaison for the district's area been identified?
4. Has a communication protocol been established with and between the local law enforcement agencies?
5. Have staff been trained on emergency reporting procedures?
6. Have appropriate responses been identified for responding to emergencies?
7. Are there protocols for responding to bomb threats, hostage-takings, intrusions and kidnappings?
8. Have local law enforcement officials been consulted about the protocols?
9. Have current State Education Department materials been reviewed to link protocols to recommended procedures?
10. Are students and teachers knowledgeable about what to do in an emergency?
11. Have policies and procedures been developed for contacting parents, guardians or persons in parental relation to the students in the event of a violent incident or an early dismissal?
12. Do the policies and procedures address issues of ensuring accurate, timely and consistent information to parents?
13. Do the policies and procedures identify the medium (i.e., telephone call, press release, letter, other) that will be used to communicate with parents?
14. Have parents been informed about the ways they will be contacted in the event of an emergency, including information provided in the primary language of the parents?
15. Do you have policies and procedures for responding to media inquires?
16. Do you have a media liaison or public information officer?
17. Do you have a dedicated emergency phone line to use in an emergency?

Situational Responses: Multi-hazard Responses

18. Are there provisions for taking action in emergencies?
19. Are there descriptions of actions to be taken in response to specific emergencies, including school cancellation, early dismissal, evacuation and sheltering?
20. Are both internal and external evacuation routes included in the plan?
21. Do these actions include provisions for incidents before, during and after school hours?
22. Are provisions included for evacuation of building occupants with special needs?
23. Has there been an identification of district resources that may be available during an emergency?

Continued

Sample DISTRICT-WIDE School Safety Plan - GUIDING QUESTIONS, continued

24. Are there provisions for emergency supplies and first aid kits for all schools?
25. Are portable communication devices available, if they are needed?
26. Are there provisions for transportation in an emergency?

Situational Responses: Responses to Acts of Violence, Including Implied or Direct Threats

27. Are there policies and procedures for responding to implied or direct threats of violence by students, teachers, other school personnel and visitors to the school?
28. Is there an agreement with state/local law enforcement offices to ensure that safety officers and other security personnel are adequately trained in de-escalation of potentially violent situations?
29. Do the policies and procedures include notification of appropriate school authorities in impacted buildings?
30. Have one or more members of school staff been trained in de-escalation of potentially violent situations?
31. Are staff and students knowledgeable about what to do when there is a direct or implied threat of violence?
32. Have the terms "implied" and "direct" threats been defined with input from the district's legal counsel, and are they included in the district's code of conduct?
33. Are there policies and procedures for responding to acts of violence by students, teachers, other school personnel and visitors to the school, including consideration of zero-tolerance policies for school violence?
34. If zero-tolerance policies are considered, are they age and incident appropriate?
35. Do teachers, students and school staff understand what to do in the event of a violent incident?

Situational Responses: Response Protocols and Relationships with Other Agencies

36. Has a description of procedures to coordinate the use of school district resources and manpower during an emergency been prepared?
37. Are the officials authorized to make decisions in an emergency identified?
38. Are staff members assigned or designated to provide assistance during an emergency identified?
39. Have all school buildings received information on district-wide procedures?
40. Are roles and responsibilities of district and school staff clearly defined?
41. Are there contingency provisions if one or more key individuals are not available, or unable to perform their roles and responsibilities?
42. Have descriptions been developed of the arrangements for obtaining assistance during emergencies from emergency services organizations and local governmental agencies?
43. Are the descriptions reviewed and updated on a periodic basis to reflect any changes in personnel, organizational structures or other conditions?
44. Has a system been developed for informing all educational agencies within the school district of a disaster?

Continued

Sample DISTRICT-WIDE School Safety Plan – GUIDING QUESTIONS, continued

45. Has information been gathered and documented about each educational agency located in the school district, including information on school population, number of staff, transportation needs, and the business and home phone numbers of key officials of each educational agency?
46. Do you know what type of internal communication system other schools in your area are using (i.e. code words or bells)?
47. Have procedures been developed for obtaining advice and assistance from local government officials including the county or city officials responsible for implementation of Article 2-B of the Executive Law?
48. Have policies and procedures been developed related to school building security, including, where appropriate, the use of school safety officers or security devices and procedures?
49. Has a security assessment of school buildings been conducted in cooperation with law enforcement, school security staff, teachers, other school staff, and others, where appropriate?
50. Has local data been used to substantiate the need for security procedures and devices?
51. Are school visitors required to sign in, sign out, and wear visible visitors passes when visiting school buildings?

Recovery

1. Do members of the District-wide School Safety Team know their roles and responsibilities?
2. Does each building in the district have a Post-Incident Response Team?
3. Have you identified district resources that will assist in the recovery process?
4. Have these resources been involved in the planning process?
5. Have you educated staff in the policies and procedures of recovery efforts?
6. Have you designated someone to coordinate resources from the county and state (i.e., Disaster Mental Health Services)?
7. How will the District-wide School Safety Team assist in response and recovery to an affected building(s) in support of local teams?
8. Who, at the district level, has been designated to respond to the affected building(s)?
9. Have you considered how you will relocate students and continue their education for an extended period of time if a disaster/emergency renders a building unsafe to occupy?
10. Have you identified personnel who will work with local, state, and federal officials, in evaluating damage assessment of district property?
11. Have you identified personnel that can document cost-related expenditures that may be incurred from a disaster/emergency?
12. Have you considered improvements that can be made to district facilities if such facilities are damaged or destroyed during a disaster/emergency? (These efforts would result in district facilities being more resistant to suffering similar or worse damage in the future.)

PROJECT SAVE
(Safe Schools Against Violence in Education)

**Sample BUILDING-LEVEL
EMERGENCY RESPONSE PLAN
GUIDING QUESTIONS**

Commissioner's Regulation 155.17

This resource has been developed to provide individual school buildings with a series of questions based on the intent of Project SAVE to ensure that all individual buildings within school districts have in place a building-level emergency response plan. Questions have been developed by a group of state agencies, BOCES, and school districts and are designed to assist individual school buildings in the planning process. Questions relating to the requirements in the Commissioner's Regulation 155.17 are listed as well as probing questions that can assist buildings further in the planning process. The guiding questions may be useful as the building discusses and creates its plan. The questions are generally organized to reflect the framework provided in the sample building-level emergency response plan.

General Considerations and Planning Guidelines

1. Has the school established the required building-level school safety team?
2. Are all required members present, including representatives of teachers, administrators, parent organizations, school safety personnel, other school personnel, community members, local law enforcement officials, local ambulance or other emergency response agencies and any other representatives?
3. Have team members been notified and their roles defined?
4. Has the school given consideration to including students who may be helpful as members of the building-level school safety team?
5. Has the school considered the relationship between the district-wide school safety team and the building-level school safety team and how these groups interact?
6. In the event of an emergency or violent incident, does the building-level school safety plan reflect how the school will interact with the district?
7. Has the building developed a list of building staff with names, addresses, and telephone numbers?
8. Has the school considered potential training for the members of the building-level school safety team in collaboration with district-wide training?
9. Have arrangements been made for regularly scheduled meetings and opportunities for communications?

10. Has the school made provisions for the review of the plan by the building-level school safety team?
11. In cooperation with the district, has the building made provisions for the scheduling of a public hearing at least 30 days prior to its adoption by the Board of Education?
12. Has a summary of the building-level plan been developed for the purposes of the public hearing?
13. Has the building team developed procedures for annually reviewing the building-level emergency response plan?
14. Has the plan been approved by the Board of Education after at least one public hearing?
15. Has the school made provision for and submitted a full copy of the plan and any subsequent amendments to the New York State Police and local law enforcement agencies?

Risk Reduction/Prevention and Intervention

Designation of School Teams

1. Has the building-level school safety team designated an emergency response team, other appropriate incident response teams, and a post-incident response team?
2. Do team members know their roles and have they been trained to perform them?
3. Are school personnel familiar with the local emergency planner and staff, including Disaster Mental Health staff?

Building/Personnel Training

4. Has training for emergency teams and safety officers, including de-escalation training been conducted?

Coordination with Emergency Officials

5. Is there a plan in place for annually testing components of the plan?
6. Are both evacuation and reverse evacuation plans practiced?
7. Are shelters in place and/or lockdown procedures drills practiced?
8. During drills, are student accountability systems tested (staff and visitors)?
9. During evacuation drills, are exits regularly blocked to test secondary evacuation routes?

Annual Multi-hazard Training

10. Is annual multi-hazard training for staff (including substitutes) provided?
11. Is annual multi-hazard training for students provided?

Identification of Sites of Potential Emergencies

12. Have potential internal and external hazards been identified? (Risk analysis)

Continued

Sample BUILDING-LEVEL Emergency Response Plan – GUIDING QUESTIONS, continued

Response*Assignment of Responsibilities*

1. Has the building-level chain of command been developed and communicated?
2. Have internal and external communication systems been identified, including notification requirements at the district level?
3. Do the participants know their roles within the ICS System?
4. Has ICS training been provided to appropriate staff?
5. Are there methods to identify staff (at least crisis team members) so that outside agency personnel can readily identify team members?

Continuity of Operations

6. Are there clear mechanisms in place to identify, at any point in the plan, who is in charge?
7. Is there a method to reassess needs, evaluate services to-date, and plan for transition to the recovery phase?
8. Are there follow-up procedures in place to individuals or groups in need of disaster mental health services?

Access to Floor Plans

9. Have you included floor plans and schematics in the plan?
10. Does the school have a procedure in place for updating the floor plans and schematics?

Notification and Activation

11. Are there mechanisms to ensure that all appropriate agencies are notified and that resources and services will be coordinated?
12. Has a person been identified to coordinate and interface with the media?
13. Are there public information campaigns related to available disaster mental health services?

Hazard Guidelines

14. Have you developed specific guidelines for: natural/weather related incidents, civil disturbances, bomb threats, intruders, school bus accidents, gas leaks, hazardous material, biological, threats of violence, hostage/kidnappings, radiological, and others as determined by the Building-level Safety Team?
15. Does your building-level plan address implied or direct threats of violence?
16. Does your building-level plan address responding to acts of violence?
17. Has the risk of a secondary device been addressed?

Continued

Evacuation Procedures

18. Does the building level school safety plan address incidents before, during, and after school hours?
Have procedures been developed to address medical needs?
19. Have sheltering agreements been identified and appended to the building-level plan?
20. Have internal and external shelter sites been identified?
21. Does your plan address internal and external evacuation routes?
22. Does the plan address emergency notification of persons in parental relationship to students?
23. Has a vehicle inventory list been developed?
24. Has the building developed an emergency supplies inventory?
25. Does your plan provide for evacuation of building occupants with special needs?

Security of Crime Scene

26. Has the building developed crime scene management guidelines?
27. Are policies and procedures for security of the crime scene understood by all parties?

Recovery

1. Has your post-incident response team been activated?
2. Has the building-level team addressed short-term and long-term recovery issues?
3. Does the plan provide access to local and state mental health resources?
4. Are there provisions to maintain contact with the County Disaster Mental Health Response Team to notify it of changing needs or potential problems?
5. Are there strategies in place to reassess disaster mental health needs of victims and relatives to evaluate and refer to ongoing treatment if Brief Critical Incident Stress Management techniques are not restoring children to pre-disaster levels both psychologically or scholastically?
6. Are there methods to debrief daily or as needed to ensure that changing conditions are accommodated?