

Education Law Update - One Year Later - Campus Safety Efforts Following the Virginia Tech Tragedy

April 1, 2008

April 2008 marked both the one year anniversary of the April 16, 2007, Virginia Tech tragedy and the announcement of an \$11 million settlement between the State of Virginia and some of the victims' families. The settlement serves as an important reminder that, in the post-Virginia Tech era, higher education institutions will likely face legal arguments that they have increased responsibilities to maintain more careful, thoughtful violence prevention and response plans. In the past year, many institutions have heeded the call to implement or update safety plans. Such plans should take into account lessons learned from the Virginia Tech and other campus shootings, and plans should be regularly reviewed and updated. It seems appropriate, therefore, with the passing of the one year anniversary of the Virginia Tech shootings, to review some lessons we've learned regarding violence prevention planning and response efforts. While not exhaustive and while institutions need to customize planning efforts, the following is a checklist of actions that institutions might consider as they create or update campus safety plans:

1. Prepare a Written Violence Prevention and Response Plan. The first step to consider is forming an interdisciplinary team to prepare a customized violence prevention and response plan. Interdisciplinary team members bring unique expertise to the table that should result in a more thoughtful, comprehensive, and customized plan. Members to consider include individuals from the administration, faculty, Human Resources, mental health, facilities, security, public relations, and outside consultants in areas such as law enforcement, violence prevention, crisis response, and legal matters. Once completed, the plan should be put in writing to be communicated throughout campus, used for training, and to be available if an emergency occurs.

2. Be Able to Quickly Implement Access Restrictions, Lock-downs, or Evacuations. One of the key lessons of the Virginia Tech tragedy is that institutions need to decide in advance what events might trigger campus access restrictions, lock-downs, or evacuations, and how to quickly implement such measures. A review panel established by the Virginia Governor to study the Virginia Tech shootings concluded that, while Virginia Tech could not logistically have locked down its entire campus on April 16, 2007, its delay in sending more accurate, mass communications about the first set of shootings might have made a difference. It has also become clear that e-mails alone aren't a sufficient emergency communication tool, because e-mails may not be received quickly enough. Since Virginia Tech, numerous institutions have invested in multi-

media emergency notification systems, such as text messaging systems, PA systems, sirens, electronic messaging boards, and additional web site capability to handle increased web traffic following an incident. Some institutions have also drafted emergency announcements in advance that can be quickly customized and disseminated if needed.

3. Conduct a Campus Security and Preparedness Assessment. Institutions should also consider conducting a security and preparedness assessment to identify areas for improvement. Such an assessment might include reviewing the adequacy of security and emergency response measures such as: lighting; locks or access security codes; remote locking capabilities for use, if appropriate, in a lock-down; campus security and/or police; campus EMT and medical providers; emergency call stations; emergency communication systems; technology, and other emergency equipment. In addition, while more controversial, some institutions are promoting campus safety through surveillance cameras in certain public areas.

4. Create an Emergency Response Team and Emergency Operations Center. Institutions should create an interdisciplinary emergency response team in advance that can quickly assemble to implement the emergency response plan if needed. The team's chain of command and authority should be determined in advance, and the team should include back-up members in case a primary member is unavailable during an emergency. In addition, institutions should consider establishing a well-supplied emergency operations center in advance so that the response team has a known place to quickly assemble in the event of emergency and has readily available resources and supplies. The center can also serve as a central point of communication with the campus population, friends and family, alumni, emergency responders, grief counselors, the media, and the like.

5. Regularly Train on the Emergency Response Plan. For a safety plan to be effective, an institution must regularly communicate and provide training on the plan to its emergency response team and campus population. Opportunities for such communication and training might include new student/new employee orientation, refresher sessions, the institution's website or intranet, bulletin boards and newsletters. Ideally, students and employees should be trained a least annually and provided multiple reminders of how to access plan information during the year. The emergency response team should also receive regular training, and institutions should consider desk-top or simulated emergencies that provide valuable hands-on training.

6. Assess Employee and Student Application Screening Processes. Campus and school violence is often committed by insiders - students or employees. Therefore, as part of its safety review, institutions should review employee and student applicant screening processes to determine if additional screening to obtain more information about prospective students and employees might be appropriate. For employees, such screening might include criminal background checks, drug testing, or reference checking. For students, it might include background checks or requiring essays, personal interviews and letters of

recommendations as part of the application process. Some of these measures involve added legal requirements, and not all measures have to be adopted by each institution. After a review of options, an institution may decide that countervailing interests outweigh the benefits of certain screening measures. For example, criminal background checks of students are costly and unlikely to provide full information given that juvenile records are often sealed. Similarly, if faculty members oppose background checks, adopting such a policy may create political issues. Nonetheless, it is important to consider the costs and benefits of various screening processes in order to make a reasoned decision about which processes are appropriate for the institution.

7. Implement and Enforce Appropriate Campus Policies: Adequately enforced campus policies are another step that can aid in violence prevention. One sad lesson of Virginia Tech is that enforcement of campus policies may help avert later violent behavior. Prior to the shootings, the shooter reportedly engaged in behavior that violated campus policies, including stalking and harassing two female students. Although the female students reported the behavior and campus police became involved, the university did not institute any disciplinary proceedings against the shooter.

All institutions should have a policy prohibiting unlawful harassment and discrimination that explains how to report any possible violations. In addition, issues such as bullying, threats of violence, and other inappropriate behavior should be addressed in appropriate policies. Institutions should also consider implementing policies regarding weapons on campus. The institution's policies should make clear that students and employees who violate the policy will be subject to discipline, up to and including termination or expulsion. In addition, an institution may want the right to search campus property or an individual's e-mail, phone, or other technology when investigating safety risks, and, therefore, might want to consider a policy notifying students and employees of the institution's ability to search such property and material. The policies should be reviewed by legal counsel to ensure legal compliance and should be published in the student, staff, and faculty handbooks and on the institution's website. The policies should also be communicated on a regular basis and campus employees and student leaders, such as resident hall assistants, should be trained on how to respond to known or suspected inappropriate behavior and possible policy violations.

8. Regularly Train on Warning Signs and Information Sharing: Institutions should also regularly train employees and students on warning signs, permissible information sharing, and policies involving troubled students and employees. The Virginia Tech Review Panel found that the Virginia Tech shooter showed warning signs of potentially violent behavior, but the institution did not share information or intervene effectively to address potential risks. It is important that students and employees be aware of potential warning signs a troubled student or employee may exhibit and be trained about reporting such signs to appropriate campus officials.

Another key finding of the Virginia Tech Governor's Review Panel is that there is widespread misunderstanding of information privacy laws and that, too often, employees default to not disclosing critical information about a potential threat. Although it is important to handle personal information discretely, in almost all cases, the laws allow campus employees to share information about a troubled individual or a potential threat with campus officials who have a legitimate need to know such information. Employee and student leaders should receive training on information privacy laws and permissible information sharing. Institutions may also want to consider asking students to sign consent forms when they enroll that would allow the institution to share information from student records with the student's parents if the institution feels that the student's health or safety or the health and safety of other students may be at risk. The Virginia Tech shooter's parents were not notified by the university of his troubling behavior and, following the shootings, have indicated that they would have taken steps to try to remove the shooter from school had they know of his behavior.

9. Identify and Build Relationships with Outside Resources: Another lesson of Virginia Tech is that it pays to identify and develop good relationships ahead of time with outside resources on whom an institution will rely in the face of an emergency, such as local law enforcement, EMT and medical providers, other emergency responders, grief counselors, governmental and other emergency funding resources, and the like. In addition, it is beneficial to include such resources in emergency training efforts, as appropriate. The Virginia Tech Governor's Review Panel found that local law enforcement and EMT providers responded quickly and effectively to the Virginia Tech incident, in part because of good relationships with Virginia Tech and past joint training sessions of the university and local law enforcement.

10. Establish a Threat Assessment Team and Process. Following the Virginia Tech incident, more and more institutions are establishing an interdisciplinary threat assessment team to be a centralized place to receive reports of troubling behavior by students or employees and to conduct threat assessments when safety concerns arise. Both the Virginia Tech Review Panel's report and the 2002 report issued by the U.S. Secret Service and Department of Education regarding school shootings recommended such teams. The Virginia Tech Review Panel noted that, while many individuals at Virginia Tech knew of troubling behavior by the shooter, no one person or centralized team knew all the information or connected the dots. For a threat assessment team to be effective, institutions must regularly communicate with the campus population about how to make reports. In addition to other reporting avenues, institutions should consider an anonymous reporting option given that some individuals may fail to report possible threats due to social or peer pressure. The threat assessment team should meet regularly to review concerns that have arisen and will also need to meet quickly on an ad hoc basis when necessary.

11. Consider Situation Specific Prevention Measures: Institutions should also consider situation specific risk reduction measures when faced with campus safety concerns. While each situation must be dealt with

on a case by case basis, some risk reduction measures that institutions might consider include: involving law enforcement if appropriate; increasing security measures on campus; e-mail or other searches; additional mentoring or other support for a troubled individual; communications with a student's or employee's family if permitted; voluntary or mandatory counseling or other interventions; fitness for duty/school exams; deciding whether the person of concern should remain on campus and/or should be placed on a remote school/work arrangement, put on leave, disciplined, suspended, expelled, or terminated; and deciding whether commitment and/or civil restraining order are warranted. In addition, institutions should consider whether there are known or suspected potential targets of violence and, if so, what steps might reduce the risk to the targets and the campus. For example, in some situations, placing possible targets on a remote or alternative work/school arrangement, or on a leave, might better protect the target and the general campus population. In addition, it may be appropriate to put potential targets in touch with the police or other experts for assistance with personal security measures or to assist them in obtaining counseling or other emotional support. Because all of these measures involve legal issues unique to the specific situation, it is advisable to consult with counsel when considering which of these measures an institution might adopt.

12. Regularly Review and Update Campus Safety Plan. Institutions should also regularly review and update their safety plans so that the plan takes into account changes in the law, technology, the campus, higher education best practices, and lessons learned from other school shootings, which, unfortunately, have continued in the wake of the Virginia Tech incident.

Unfortunately, even the best planning efforts cannot prevent every tragedy or outbreak of campus violence, but careful planning and alertness to potential threats can help to reduce risk and may avert, or at least allow a faster, more effective response, to a student's or employee's violent behavior.

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