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Reporting Apps, Email Scanning, and Beyond:

What Boards of Education Should Know About the Latest Trends in School Safety

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In the wake of violence affecting schools around the country, school districts nationwide are exploring new ways to keep schools and students safe. At the same time, technological advances and increased access to technology in schools have created new opportunities for school districts to adopt safety measures that sometimes reach beyond the school building and the school day.

There are two primary types of new safety measures used in schools. One type is a monitoring system, which uses a text recognition feature that scans email messages and other computerized text for concerning key words. Examples of such systems include Gaggle; STOPit; GoGuardian; and Soter Technologies. Another type is a reporting system, which employs technology (including mobile applications) and/or personnel to receive and process reports, often made anonymously, of possible safety threats. Examples of such systems include Anonymous Alerts; Awareity; report it Classroom Connect; the See it, Say it, Send it app; and the Sandy Hook Promise Foundation's Say Something Anonymous Reporting System. Certain systems offer additional features. For example, the See it, Say it, Send it app can send geofenced "push notifications" to the school community warning students and personnel of possible safety threats or other issues affecting their school.

While adopting some form of monitoring or reporting system may sound like something that all boards of education should do without question, it is important to keep in mind that currently there is no legal obligation to do so in Connecticut. It is therefore important to carefully weigh the pros and cons of implementing a monitoring or reporting system before deciding whether any such system is right for your school district.

Boards that decide to use a monitoring or reporting system should do their due diligence before selecting a system, as different systems offer different features and some may come with greater inherent risks. After selecting a system, boards can take certain steps to limit risk and establish appropriate expectations among students and parents regarding the system's function and purpose.

Should you adopt a monitoring or reporting system in your school district?

School employees generally owe a duty of care to students at school during school hours. This duty typically ends when the school day ends, and it typically does not extend to incidents that occur off school grounds and have no nexus with the school apart from the fact that students

were involved. Certain monitoring and reporting systems can significantly alter this dynamic by creating a channel through which school community members can notify school employees of incidents occurring off school grounds and outside normal school hours. This change can significantly expand the risk of board liability in the following ways.

First, once the system notifies school employees of a potential safety threat, school employees must respond to the notification in accordance with applicable board policies and regulations, as well as any additional protocols established in connection with the system's implementation. If employees fail to follow established policies, regulations, and protocols in responding to a report, the board could face liability for a possible claim of negligence.

On a related note, it is essential to ensure there are personnel in place to receive and respond to reports made through a system at all times when the system sends reports to school employees. Boards may face challenges with respect to their collective bargaining obligations if unionized employees are involved in responding to reports received through a system, and such responses require employees to be "on duty" beyond the working hours memorialized in the applicable collective bargaining agreement or established through past practice.

Second, there is a risk that a board of education could face liability if the monitoring or reporting system malfunctions due to a technical glitch or human error, or otherwise fails to operate in accordance with expectations. This concern applies particularly with respect to reports that involve threats to safety. If there is a breakdown in the system that prevents the report from reaching law enforcement or school personnel and harm to an individual results, it is possible the board could be held liable simply by virtue of the fact that it invited students and parents to rely on the system in lieu of contacting the police or the school directly.

Third, providing a system vendor with access to confidential student information could put boards of education at risk of violating student privacy laws. It is essential to ensure that the system vendor agrees to comply with the federal Family Educational Rights and Privacy Act (FERPA) and Connecticut's student data privacy statutes. Absent such agreement, the board of education could be held liable for violating FERPA and/or Connecticut data privacy laws.

Although monitoring and reporting systems are not legally required at this time, there may come a day when a decision *not* to use a such a system could expose a board of education to liability for failure to take what may eventually be perceived as a reasonable step to keep schools safe. Indeed, at least nine school districts in Connecticut and more than one thousand school districts nationwide now use some form of monitoring or reporting system (or both) as part of their overall safety plan. Evaluating these trends is an appropriate part of the process of deciding whether to implement a system in your school district.

Which system should you choose?

Given that the use of monitoring and reporting systems for identifying safety threats in a school setting is a recent phenomenon, best practices and legal principles for selecting and implementing a system are not well-developed at this time. However, in reviewing any system for possible use in your school district, it is critical to consider the following key issues (among others):

- On which days and at which times does the system send reports to the school district and which employees receive the reports? Can these features be customized?

- What mechanisms, if any, does the system have for addressing technical glitches or human error that could prevent the appropriate or timely processing of a report?
- Does the system classify the reports received in any manner (such as reports that involve life-threatening matters versus reports that do not involve life-threatening matters) and process the reports differently depending on the assigned classification? If the system classifies reports, who is responsible for determining the classification, and have those individuals received background checks and appropriate training?
- Does the school district have a response team available and prepared to respond to reports as needed on the days and at the times when the system sends the reports?
- Are there collective bargaining agreements or a past practice that could affect the school district's ability to assign certain employees the task of responding to reports made through the system?
- Does the system comply with applicable student privacy laws?
- Is the system vendor appropriately insured?

What are some ways to limit risk and establish appropriate expectations?

As noted above, many types of monitoring and reporting systems come with certain inherent risks. The following steps (among others) may help limit these risks:

- Ask for references and consult with other school districts that have used a particular system before implementing the system in your school district.
- Negotiate a contract with the system vendor that addresses all key issues affecting liability exposure.
- Send written communications to parents and students establishing reasonable expectations regarding the function and purpose of the system. Advise parents and students that they cannot rely exclusively on the system to report emergencies or safety threats, and that the system is not monitored 24/7.
- Work with employees early in the process of selecting a system to address collective bargaining issues and to generate good will among employees who may be required to assume increased responsibility and workload by virtue of the system's implementation.

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It may be years before the courts (and possibly the legislature) give us guidance on liability issues relating to the use of monitoring and reporting systems to address safety threats in a school setting. Until then, it is important to take care in making decisions regarding the use, selection, and implementation of these systems, and to seek counsel, as appropriate, in navigating the thorny legal issues that can arise from shifting the paradigm in the world of school safety.