



LEGAL CONSIDERATIONS TOWARD SCHOOL SAFETY

Presented by
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Nebraska Department of Education





Breach of Duty



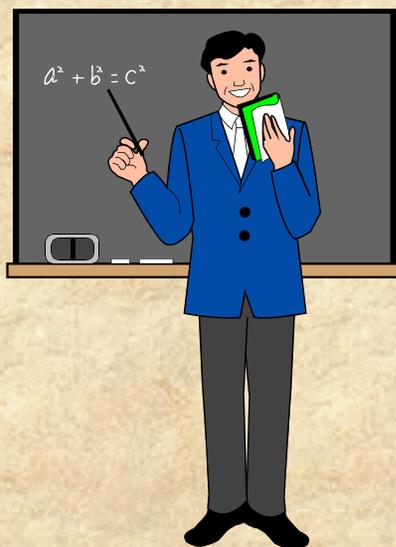
- ❖ Most law suits against schools are filed as a result of **“Breach of Duty”**.





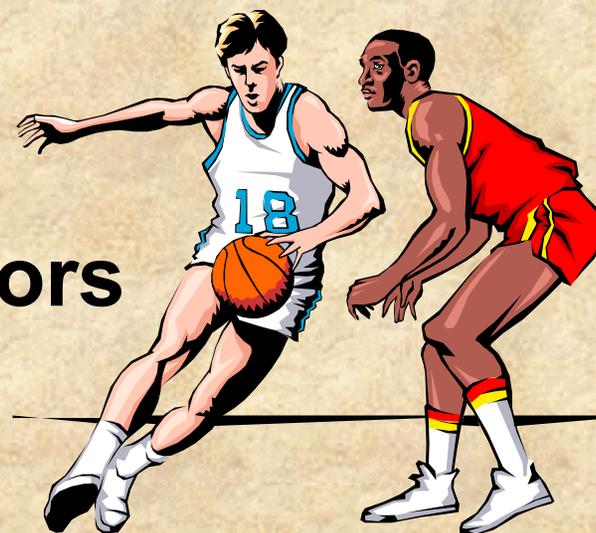
Breach of Duty

Applies to students,



Staff

and visitors





State Statutes



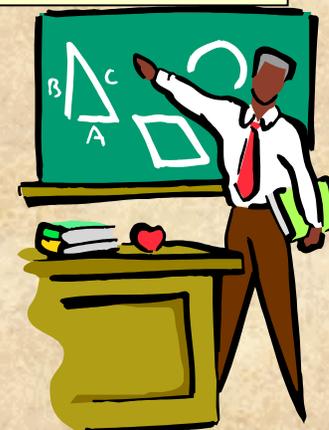
Neb. Statute 28-1204.03 (5)

Schools have a duty to protect their students...





DUTY TO PROTECT



Neb. Statute 48-443

... (any) employer subject to Neb. Workers' Compensation program...shall adopt and maintain written injury prevention program.





Breach of Duty



Duty to Supervise

Duty to Prevent

Duty to Protect

Duty to Provide





Considerations: Duty to Supervise



- ✓ Adequate number of staff for activity
- ✓ Properly trained staff
- ✓ Appropriate staff behavior
- ✓ Appropriate staff response to ...





Considerations: Duty to Prevent



- ✓ Accidents
- ✓ Unsafe student behaviors
- ✓ Unsafe staff behaviors
- ✓ Unsafe facility conditions
- ✓ Intruders
- ✓ Weapons on campus
- ✓ Alcohol / Drugs on campus





Considerations: Duty to Protect



- ✓ With safety plan
- ✓ With trained staff
- ✓ From threats
- ✓ From internal or external threats & hazards
- ✓ From injury (accident/deliberate)





Schools may wish to consider



- ❖ **Prevention/intervention methods for internal & external threats to school safety**
- ❖ **Preparation strategies for unavoidable incidents, emergencies, or crisis**
 - **Planning**
 - **Training**
 - **Equipment**
- ❖ **Response strategies and procedures for emergency and crisis situations**
- ❖ **Recovery plan**





If It Happens, They (Attorneys) Will Come!



- ❖ Legal problems for schools have occurred in crisis and emergency situations due to failure of the school to follow their own policies, procedures, or plans.
- ❖ The first questions often asked after many school incidents that result in investigations or litigation are:
 - 1) Does the school have a plan for handling this type of situation?
 - 2) Was the school plan adequate to address the potential outcomes?
 - 3) Did the school follow its' own plan?

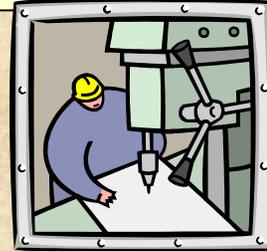


OSHA

Occupational Safety and Health Agency



- ❖ Nebraska is not an OSHA state, however...
- ❖ Unicameral passed 48-443 (LB 757) which gives the Nebraska Dept. of Labor the authority to establish safety standards, thus...
- ❖ Nebr Dept. of Labor uses OSHA standards for inspections and accident/injury reviews



Examples of OSHA Standards :

29 CFR 1910.1200 - **Hazard Communication** (MSDS sheets).

29 CFR 1910.1030 - **Blood borne Pathogens training**





Workmen's Compensation Act - LB 757



❖ Nebr. State Statute 48-443 - Safety Committee

- Every employer covered by Workmen's Compensation Act must establish safety committee.
- The Committee must have equal representation of management and labor
- The Committee must adopt and maintain an effective written injury prevention program.
- Failure to form a committee can result in a \$1,000 fine per day.





Workmen's Compensation Act - LB 757



- ❖ Nebr. State Statute 48-445 Commissioner of Labor shall adopt and promulgate rules...
 - NDL - Requires safety committee to meet once every quarter
 - NDL - Requires minutes to be taken at each meeting, and maintained on file.



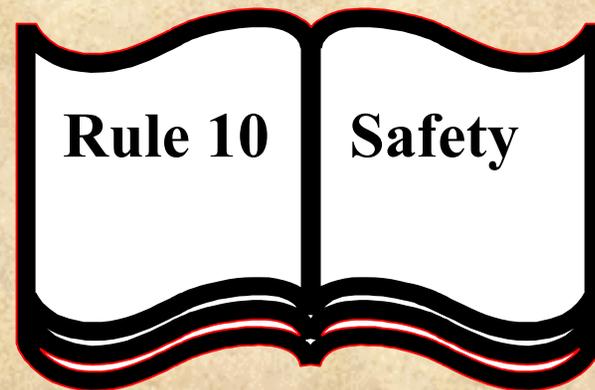


RULE 10 Safety Requirements



Each school must have a

1. A Safety Plan
2. A Safety Committee
3. An Annual Review





SAFETY COMMITTEE REQUIREMENTS



Labor Committee

- ❖ Injury prevention plan
- ❖ Meet once a quarter
- ❖ Discuss worker safety
- ❖ Keep Minutes



RULE 10

Safety Committee

- ❖ Safety/security plan
- ❖ Meet once a year
- ❖ Review safety & security plans and procedures



SAFETY COMMITTEES



Can Be Same Committee If:

- ✓ Labors' working conditions are discussed separately
- ✓ Minutes are kept
- ✓ Equal number of labor and management
- ✓ Non-School District members (i.e. parent, community member) do not participate in labor issues





ARTICLE 5 - State Fire Marshal



❖ Nebr. State Statutes 81-527 thru 81-5,157

- 81-527 State Fire Marshal: Schools: Exits; Fire Drills
- 81-5,148 Enforcement of Standards and Specifications
- State Fire Marshal's office uses the NFPA Life Safety Code as its standards.
(NFPA = National Fire Protection Association)

Direct Questions to:

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Life Safety Codes Impacting Schools



Chapter 7 - Means of Egress

Chapter 8 - Fire Protection Features



Chapter 9 - Building Services and Fire Protection Equip.

Chapter 10 - Interior Finishing and Furnishings

Chapter 12 - New Assembly Occupancies

Chapter 13 - Existing Assembly Occupancies

Chapter 14 - New Educational Occupancies

Chapter 15 - Existing Educational Occupancies

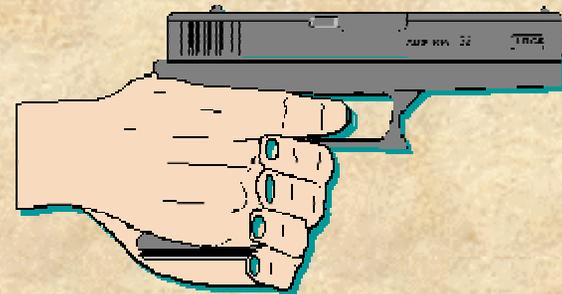


CRIMINAL CODES - Chapter 28



Article 3 - Offenses Against Person

- **Assault** 28-308, 28-309, 28-310
- **Terroristic Threats** 28-311.01
- **Stalking/Harassment** 28-311.02
- **Sexual Assault** 28-319, 28-320, 28-320.01
- **Robbery** 28-324





CRIMINAL CODES - Chapter 28



Article 5 - Offenses Against Property

- **Arson** 28-502, 28-503
- **Theft** 28-511
- **Extortion** 28-513
- **Criminal Mischief** 28-519
- **Criminal Trespass** 28-520, 28-521
- **Litter of Public and Private property** 28-523





CRIMINAL CODES - Chapter 28



Article 12 - Offenses Against Public Health

- **Carrying a Concealed Weapon** 28-1202
- **Unlawful Possession of Firearm on School Grounds** 28-1204.04
- **Threatening Use of Explosives** 28-1221 (Bomb Threat)





CRIMINAL CODES - Chapter 28



❖ 28- 1413 - Use of Force by person with special responsibility for care, or safety of others

The use of force upon or toward the person of another is justifiable if:

- 1) The actor is the parent or guardian, or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of the parent, guardian, or other responsible person and



- a) Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including prevention or punishment of his or her misconduct, and
- b) Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress, or gross degradation;



STATE BOARD of EDUCATION
Board Policy: Anti-Bullying - Passed February 2003

Paragraph 2 - New Board Policy

”For purposes of this policy, the State Board defines positive behaviors as those, which evoke non-violence, cooperation, teamwork, understanding, and acceptance, toward all students and staff in the learning and teaching environment.”



STATE BOARD of EDUCATION

Board Policy: Anti-Bullying - Passed February 2003



Paragraph #3 - New State Board Policy

“The State Board of Education encourages local school districts to establish policies and strategies to emphasize and recognize positive behaviors that promote a safe and secure learning environment for all students and staff. Local school policies should assist school personnel in identifying bullying, intimidation, and harassment; and provide a framework for an appropriate response that reinforces and encourages positive conduct.”



Unsafe School Choice Option

A student attending a persistently dangerous ...school, ... or who becomes a victim of a violent criminal offense,...be allowed to attend a safe public ...school with-in the local educational agency,...





NCLB Update - continued



Defining: Persistently Dangerous

❖ NCLB Sec. 9532

- ...a student attending a persistently dangerous public elementary school or secondary school, as determined by the State...

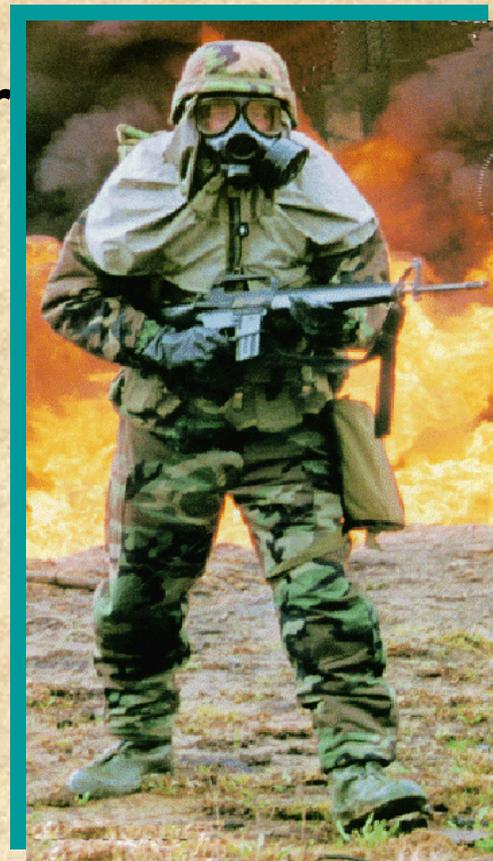




TERRORISM & SCHOOLS



- ❖ **Individual School Districts retain the right to cancel classes at their discretion, prior to a declaration.**
- ❖ **However, if a state of emergency is declared, and the Governor orders schools closed, they must close.**





HOMELAND SECURITY



Nebraska Emergency Management Act

81-829.31 - 81-829.72

81-829.37 - Purpose of Act

Sub-paragraph (4)

Authorize and provide for cooperation and coordination of activities ... to respond to disasters, emergencies, and civil defense emergencies...by agencies...of this state and its political sub-divisions...

81-829.39

Sub-paragraph (8)

Political sub-division means a city, village, county, **school district**, ...



THE NEVER ENDING STORY

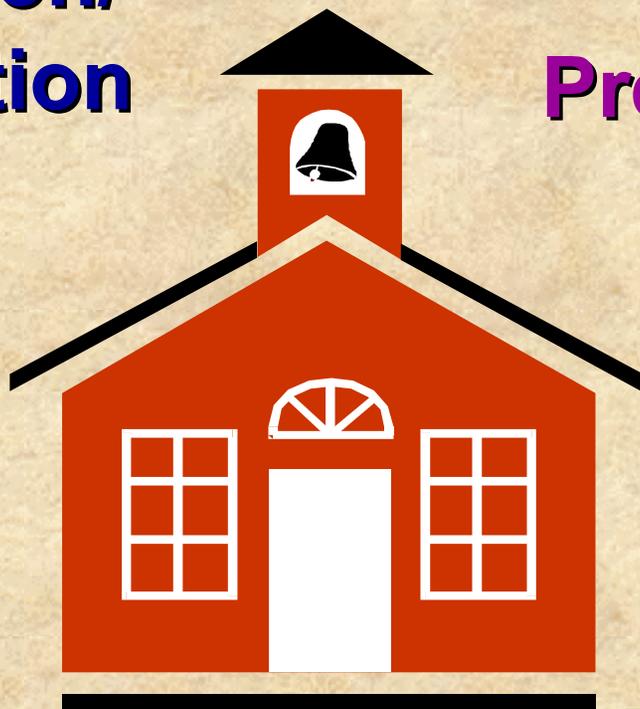


**Prevention/
Intervention**

Preparedness

Recovery

Response





SUMMARY



- ❖ **Breach of Duty**
- ❖ **OSHA**
- ❖ **Nebraska Work Place Safety Law (LB 757)**
- ❖ **Fire Codes**
- ❖ **Life Safety Code**
- ❖ **Criminal Codes**
- ❖ **Nebraska Emergency Management Act**
- ❖ **NCLB - Unsafe School Choice**



SOURCES



- ❖ **Nebraska Criminal & Traffic Law Manual,-** Lexis Nexis 2002
- ❖ **The OSHA Answer Book 4th Edition,** Moran Associates 1999
- ❖ **State of Nebraska School Laws,** Hammond & Stephens 2002
- ❖ **Inside School Safety** - Aspen Publishers, Various Issues
- ❖ **NDE School Safety Specialist**