

2006 CUBE ISSUES SEMINAR

“Legal Issues Related to Developing School Board Policies to Support Safe Schools”

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James L. Bebley earned his Bachelor of Science in Finance from the University of Illinois (Urbana-Champaign) College of Commerce and Business Administration in 1982 and his Juris Doctor from the College of Law (the “College”) in 1985.

He began his legal career with the City of Chicago (the “City”) as an Assistant Corporation Counsel. He was quickly recruited to serve in Mayor Harold Washington’s administration as an assistant to the Deputy Chief of Staff and the Chief of Staff. After the Mayor’s death, Bebley returned to the City’s Law Department to concentrate on aviation development and finance, local and federal contracts and general obligation and revenue bonds.

Bebley entered private practice in 1990, with the firm of Carney & Brothers handling transactional matters and assisted in developing the firm’s municipal finance group. In 1997, he joined the firm of Ice Miller in Chicago where he concentrated on economic development and municipal finance and acted as bond counsel, issuer’s counsel and underwriter’s counsel for tax-exempt bond issues.

In February 2002, Bebley began as an Associate General Counsel at the Board of Education of the City of Chicago and was responsible for all finance legal matters for the nation’s third largest school system, with an annual budget in excess of \$3 billion. In July 2003, he was appointed First Assistant General Counsel, second in charge of the Law Department consisting of over forty attorneys, plus para-professionals, investigators and support staff. Bebley manages the daily operation of the department and supervises the transactional practices. He also represents the Law Department on policy committees including School Safety and Student Discipline, School Climate and Technology Governance and handles special projects at the direction of Board President, Chief Executive Officer and the General Counsel.

Bebley has served on the corporate board of Chicago Youth Centers, the City’s largest independent youth social service agency, and chaired the Crown South Shore Center for five years. He has also served on the board of Heartland Alliance for Human Needs & Human Rights, an organization that provides housing, health care and human services to more than 55,000 people. Bebley also served as an advisor to an exploratory mission to Cuba, which examined education, economic development and civil rights issues with Cuban officials and business leaders.

Heather K. Brickman
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Heather K. Brickman is a partner in the law firm of Hodges, Loizzi, Eisenhammer, Rodick & Kohn, with offices in the Chicago suburb of Arlington Heights, and Springfield and Belleville, Illinois. She has concentrated her practice for the past 15 years in all phases of school law including policies and governance, finance, personnel and student issues.

Ms. Brickman is a frequent lecturer on behalf of the Illinois Association of School Boards, Illinois Association of School Business Officials and other school associations on topics ranging from current legislative issues to employee benefits, general board governance issues, and student discipline. Ms. Brickman is an experienced trainer in school and law enforcement crisis prevention and response. She serves on the Executive Committee of the Illinois Council of School Attorneys and the Policy Advisory Committee of the Illinois Association of School Boards, and recently concluded service on a Committee of the Governor's Commission on Recodification of the Illinois *School Code*. She is co-author of a chapter in the recent American Bar Association book *School Violence: from Discipline to Due Process* and National School Boards Association publications *Selecting and Contracting with Construction Managers* and *Planning for a Terrorist Attack on Schools: Practical and Legal Considerations*.

Ms. Brickman is a graduate of Illinois Wesleyan University and the University of Illinois College of Law.

LEGAL ISSUES RELATED TO DEVELOPING SCHOOL BOARD POLICIES TO SUPPORT SAFE SCHOOLS

I. FEDERAL LAWS COMMONLY IMPLICATED BY SAFE SCHOOLS POLICIES

- A. The United States Constitution¹
 - 1st Amendment (freedom of speech, religion, association)
 - 4th Amendment (constraints on search and seizure)
 - 5th Amendment (due process requirements)
 - 14th Amendment (due process and equal protection requirements)

- B. Other Federal laws
 - Student Records Confidentiality (FERPA, IDEA, USAPA)²
 - Disciplinary procedure (GFSA, IDEA)³
 - Law Enforcement-School Reciprocal Reporting (FERPA)⁴
 - Mandatory Reporting of Crimes (NCLB, GFSA)⁵

II. POLICIES ADDRESSING STUDENT CONDUCT

- A. Violence Prevention and Early Intervention
 - 1. Aggressive behavior/bullying intervention⁶
 - 2. Peer mediation

- B. Screening and Searches
 - 1. Audio and video taping
 - 2. Metal detector screenings
 - 3. Drug testing (urine, hair)
 - 4. Breathalyzer tests for alcohol
 - 5. Locker searches
 - 6. Dog sniff searches

¹ This is a general summary of the Amendments from which these legal concepts arise. These and other legal concepts and protections arise from or have been held to be implicit in these and other Amendments to the Constitution.

² The Federal Educational Rights and Privacy Act, the Individuals With Disabilities Education Improvement Act of 2004, and the U.S.A. Patriot Act

³ The Gun-Free Schools Act, the Individuals With Disabilities Education Improvement Act of 2004

⁴ The Federal Educational Rights and Privacy Act

⁵ The No Child Left Behind Act, the Gun-Free Schools Act

⁶ See *Where We Learn: The CUBE Survey of School Climate* (2006) for a discussion of the need for further action in the area of student bullying.

- C. Discipline and Other Responses to Misconduct
 - 1. Types of Discipline
 - 2. Options to Traditional Discipline [such as peer justice options]
 - 3. Law Enforcement's Role
- D. Internet and Website Threats and Postings

III. POLICIES ADDRESSING SCHOOL STAFF CONDUCT

- A. Criminal Background Checks
- B. Sex Offenders and Predators
 - 1. Exclusion of known sex offenders under State and local laws
 - 2. Termination of staff for predatory behavior inside or outside the school environment
- C. Risk of Violent Behavior
 - 1. Termination of violent or potentially violent employees
 - a. State and local tenure and employment laws
 - b. Collective bargaining agreement procedures
 - 2. Disability accommodation obligations

IV. POLICIES ADDRESSING THIRD PARTY CONDUCT

- A. Sex offenders in the community
 - 1. Sex offender registries under State and local laws
 - 2. Sex offender housing and movement restrictions
 - 3. Transitional/rehabilitative housing
 - 4. Bus route complications
- B. Parents who are sex offenders
- C. Students who are sex offenders

V. POLICIES AND PLANS ADDRESSING SAFETY/CRISIS RESPONSE

- A. Violent Student Profiling
- B. Mandatory reporting requirements
- C. Liability for Inadequate Safety Measures

RESOURCES AND REFERENCES FOR SAFE SCHOOLS ISSUES

1. *Where We Learn: The CUBE Survey of School Climate* (2006), an extensive study of the essential elements of a good school climate based on student, staff, and parental perspectives
2. *School Violence: From Discipline to Due Process* (2004), a publication of the American Bar Association Section of State and Local Government Law
3. U.S. Department of Education Early Warning Signs, www.ed.gov/offices/OSERS/OSEP/earlywrn.html
4. *Assessing Potentially Violent Students*, ERIC Digest Identifier: ED435894
5. *In Search of Klebold's Ghost: Investigating the Legal Ambiguities of Violent Student Profiling*, 174 Ed. Law Rep. 793 (May 22, 2004)
6. American Academy of Pediatrics Violence Prevention Resources, www.agp.org/advocacy/violence.htm
7. American Association of School Administrators, www.aasa.org
8. Center for the Prevention of School Violence, www.ncsu.edu/cpsv/
9. ERIC Pathways on Youth Violence, www.ncela.gwu.edu/pathways/safeschools/programs.htm; www.bctf.ca/info/research/violence.html
10. National Alliance for Safe Schools, www.safeschools.org
11. National Association of Attorneys General, www.keepschoolssafe.org
12. U.S. Department of Justice Office of Juvenile Justice, <http://oojjdp.ncjirs.org>
13. U.S. Department of Safe and Drug-Free Schools, www.ed.gov/offices/OESE/SDFS

14. U.S. Department of Education general guidance and training on crisis management and safety and emergency plans at www.ed.gov, and *Emergency Planning for America's Schools*, www.ed.gov/emergencyplan
15. American Red Cross, Homeland Security Advisory System Recommendations: Schools (Aug. 2002), www.redcross.org