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Rhode Island's Right to a Safe School: A Means to an End or an End Without Means?

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[I]f the Money laid out in Rods, was but duly distributed amongst the diligent and orderly Boys, for their Encouragement . . . [they] would by that means be as effectually moved to be behaved well, and mind their Books . . . [and] that they will hereby be made in love with their Master, and their Books too: whereas the rough Discipline of the Lash, will be sure to create in them an utter aversion for both.[1]

The kids are strappin' on their way to the classroom
Getting weapons with the greatest of ease
The gangs stake their own campus locale
And if they catch you slippin' then it's all over pal . . . .[2]

INTRODUCTION

American society has always held youth sacred and placed a high value on education. However, as a comparison of the above quotes demonstrates, our conceptions of discipline and safety in public schools have greatly evolved over time. With the increase in school violence over the last decade and the subsequent increase in media attention, the creation of safer schools must be of paramount importance. Not surprisingly, the creation of safer schools has evolved into a prominent legal issue. This Comment seeks to analyze education law and discern some of the most effective tools the legal profession can employ to aid in the creation of safe schools.

Rhode Island is an illuminating backdrop for this discussion. While the entire nation continues to feel the repercussions of the horrible attack of 1999 at Columbine High School in Colorado, now

1. John Clarke, *Classical Program of Studies*, *in* THEORIES OF EDUCATION IN EARLY AMERICA, 1655-1819, at 61, 89 (Wilson Smith ed., 1973).

2. The Offspring, *Come Out and Play*, *on* SMASH (Epitaph Records 1994), *available at* http://www.offspring.com/lyrics/lyrics_smash_coap.html.

known as the "worst school shooting in U.S. history,"[3] several recent events in the Rhode Island area serve as proximate reminders of the potential for tragedy. Just prior to Thanksgiving 2001, police disrupted a Columbine-esque plot by students at New Bedford High School in nearby Massachusetts.[4] The students planned to set off explosives within the school, gun down students as they fled, and then turn the guns on themselves.[5] In the spring of 2002, police arrested a Newport High School student upon finding homemade bombs at his residence after fellow students verified that he had openly discussed "blowing the school up."[6] In January 2003, a student fired a gun into the ceiling of a cafeteria at Mount Pleasant High School while school officials attempted to break up a fight between three other boys.[7] Sadly, similar incidents have occurred in many other states.[8]

Coupled with the potential for school violence, a Rhode Island statute includes interesting language that may have great legal significance in the ongoing pursuit of school safety. Section 16-2-17 of the Rhode Island General Laws begins with the statement

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3. Mark Obmascik, *High School Massacre: Columbine Bloodbath Leaves Up to 25 Dead*, DENV. POST, Apr. 21, 1999, at A1 (describing the attacks – where two high school students killed thirteen people, wounded twenty-three others, before turning their guns on themselves – in shocking detail); *see also* Ann Imse & Lynn Bartels, *Massacre Hints Missed Web Site Pages in '98 Talked of Pipe Bombs, Mass Random Killings, Columbine Dad Says*, DENV. ROCKY MTN. NEWS, Apr. 23, 2002, at 4A, *available at* 1999 WL 6646897 (documenting community outrage in the immediate aftermath of the attacks).

4. Megan Tench & David Abel, *New Bedford School Assault Plot Foiled*, BOSTON GLOBE, Nov. 25, 2001, at A1; *see also* Franci Richardson, *Fear Keeps Students Home; Quiet New Bedford High Echoes With Anger, Concern*, BOSTON HERALD, Nov. 27, 2001, *available at* 2001 WL 3817774.

5. Tench & Abel, *supra* note 4, at A1.

6. Bryan Rourke, *Student, 17, Accused of Bomb Threats at Rogers*, PROVIDENCE J., May 17, 2002, at B1.

7. Gina Marcis, *Cicilline Says City's Schools Are Safe*, PROVIDENCE J., Jan. 24, 2003, at B1. Ironically, as newly elected mayor of Providence David N. Cicilline visited Mount Pleasant a week after the attacks to discuss safety issues with students, a shoving match between a student and a teacher in a different part of the school detracted from the "school safety" message. Karen A. Davis, *Police Probe Altercation Between Teacher, Student*, PROVIDENCE J., Feb. 1, 2003, at B4. Cicilline was following through on his pledge "to visit 53 schools in 53 weeks in an effort to solicit student input on ways to improve city schools." *Id.*

8. *E.g.*, Carl W. Chamberlin, *Johnny Can't Read 'Cause Jane's Got a Gun: The Effects on Gun Control After Lopez*, 8 CORNELL J.L. & PUB. POL'Y 281, 282 n.7 (1999) (delineating school massacres in Jonesboro, Arkansas; Paducah, Kentucky; Edinboro, Pennsylvania; and Pearl, Mississippi during the 1997-98 academic year).

"[e]ach student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure."[9] This language originated in a 1982 amendment to the California State Constitution,[10] and no other state in the nation has included such language in its education law.[11] In order to aid Rhode Island in its interpretation of section 16-2-17, much of this Comment will be dedicated to the history of the provision in California.

At first blush, the creation of a right to a safe school may seem to offer an innovative solution to the problems of violence and fear in schools. An oversimplified yet illustrative syllogism works as follows: our government grants rights to protect what society believes to be important, safe schools are important, therefore, a right to safe schools will protect our youth.[12] Theoretically, the granting of an enforceable right to public school students mandates individual schools, school districts, and ultimately our state governments must ensure school safety.[13] This Comment will challenge this basic premise and question whether Rhode Island's choice to implement the "safe school" language was the best means to create school safety.

This Comment will conduct a comprehensive analysis of the safe school language both in California and Rhode Island. The question to be posed in analyzing both provisions is whether the right to safe schools: (1) provides a meaningful judiciable standard for our courts to apply;[14] (2) provides an adequate remedy for courts to apply;[15] and (3) does not require subsequent legislation to

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9. R.I. GEN. LAWS § 16-2-17(a) (2001).

10. CAL. CONST. art. I § 28(c) (amended 1982).

11. For example see ARK. CODE ANN. § 6-15-1005 (1997); TEX. EDUC. CODE ANN. § 4.001 (1996), for states with safe school statutes that do not include "a right to a safe school."

12. *See generally* CARL WELLMAN, THE PROLIFERATION OF RIGHTS: MORAL PROGRESS OR EMPTY RHETORIC? 1-2 (1999) (acknowledging the recent proliferation of rights in the United States and providing examples of rights for animals and trees as evidence of this growing trend).

13. *See* George Nicholson et al., *Campus Safety: A Legal Imperative*, 33 EDUC. L. REP. 981 (1986) (praising the California safe school provision as the solution to the ills plaguing public schools).

14. *See* Bandoni v. State, 715 A.2d 580, 587 (R.I. 1998) (holding a violation of the victims' rights amendment to the state constitution did not give rise to a cause of action because it offered no meaningful judiciable standard).

15. *See id.* at 589 (holding a violation of the victims' rights amendment to the state constitution did not give rise to a cause of action because it did not provide victims with a remedy).

enforce the right.[16] In the absence of these three factors, the right may not be "self-executing."[17] If the safe school language is not found to be self-executing, then it is unenforceable by a court.[18] Part I of this Comment analyzes the determination by both the California Legislature and the California judiciary that the right in the California Constitution is non-self-executing. Part II discusses the adoption and the application of similar safe school language in Rhode Island. Part III compares the two provisions and concludes the Rhode Island statute is also non-self-executing. Part IV offers an amendment to the Rhode Island statute and recommends alternative safeguards that could be employed to create safer schools in Rhode Island. This Comment concludes that, in order to create safe schools, the Rhode Island Legislature must correct the error made in the enactment of the safe school provision, and then must fill the void by enacting practical safeguards to prevent school violence.

I. THE BIRTH OF A "RIGHT TO A SAFE SCHOOL" – A DISCUSSION OF CALIFORNIA LAW

The origins of the "safe school" language are found in the 1982 California initiative Proposition 8, better known as the Victims' Bill of Rights.[19] Amid provisions for restitution paid to the victims of criminal activity,[20] truth-in evidence requirements,[21] and guidelines for setting bail,[22] California voters amended their state constitution to read: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peace-

16. *See id.* at 593 (holding a violation of the victims' rights amendment to the state constitution did not give rise to a cause of action because "the framers intended to leave the enactment of an enforcement provision to the General Assembly."). *See generally* Stuart Biegel, *The "Safe Schools" Provision: Can a Nebulous Constitutional Right Be a Vehicle for Change?*, 14 HAST. CONST. L.Q. 789 (1987) (discussing these three factors in a self-execution analysis of the California safe school provision).

17. *See Bandoni*, 715 A.2d at 586-87.

18. *See id.*

19. *See* Bill Winter, *Truth In Evidence: California Law in Turmoil*, A.B.A. J., Jan. 1983, at 32. This article claimed there may be "an appellate case in each of the constitutional amendment's 2,400 words." *Id.*

20. CAL. CONST. art. I § 28(b) (amended 1982).

21. *Id.* § 28(d).

22. *Id.* § 28(e).

ful."[23] Those who championed the safe school provision hoped to alleviate the growing trend of crime and violence on school campuses.[24] Some even labeled the passing of this amendment a great triumph in the evolution of education law that would ultimately "make every school a safe haven, indeed, a sanctuary."[25]

After the passing of the amendment, commentators began to debate the proper implementation of the safe school provision.[26] One interpretation maintained that this "inalienable" right gave rise to a cause of action.[27] It imposed an affirmative duty on a school district to make its schools safe.[28] California schools, therefore, now owed a greater duty than the duty imposed at common law to supervise their students.[29] Due to the self-executing nature of the statute, no subsequent legislation would be needed to enforce the right.[30] Although the language of the amendment did not offer a remedy to enforce this actionable right, a co-author of Proposition 8[31] advocated an equitable remedy where "a court may actually take indefinite jurisdiction of a school district and maintain oversight until dangers of campus crime and violence, including drug traffic and abuse are effectively resolved."[32] A California trial court held that monetary damages were an appropriate remedy should a school fail to provide a safe environment to a student.[33] While acknowledging the potential cost to California schools, both in meeting this affirmative duty and in litigating any

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23. *Id.* § 28(c); *see also* Biegel, *supra* note 16, at 801 (claiming the safe school provision is "literally hidden within a lengthy proposition" that could cause one to wonder "how many people actually knew they were voting for an initiative that had anything to do with school safety?").

24. Kimberly A. Sawyer, *The Right to Safe Schools: A Newly Recognized Inalienable Right,* 14 PAC. L.J. 1309, 1311 (1983) (supporting the contention that the right should be interpreted as self-executing by claiming violence in schools experienced a steady incline since the late 1960s and "at least 100,000 incidents of violence occurred on school campuses" over a five-month period in 1981).

25. Nicholson et al., *supra* note 13, at 996.

26. *Compare* Sawyer, *supra* note 24, at 1321 (claiming the right is self executing), *with* Biegel, *supra* note 16, at 805 (claiming the right is not self-executing).

27. Sawyer, *supra* note 24, at 1310.

28. *Id.*

29. Dailey v. Los Angeles Unified Sch. Dist., 470 P.2d 360 (Cal. 1970).

30. Sawyer, *supra* note 24, at 1310.

31. Biegel, *supra* note 16, at 791.

32. Nicholson et al., *supra* note 13, at 986.

33. Hosemann v. Oakland Unified Sch. Dist., No. 583092-9 (Alameda County Super. Ct., May 12, 1986) (unpublished trial court decision), *rev'd,* No. A035856 (1st Dist. Cal. Ct. App., 1989); *see also* Brenda Turner, *California's Safe Schools*

claims should a parent believe a school had not met that duty, advocates of an actionable right maintained the passing of Proposition 8 was necessary to the achievement of the paramount public concern: prevention of school violence and crime.[34]

Although we can assume that a vast majority of Californians agreed that public schools should be safe and free of violence, another school of thought maintained the California safe school provision did not grant the public an actionable right because the right itself was not self-executing.[35] A non-self-executing provision is one that fails to supply "a sufficient rule by means of which the right may be enjoyed or protected or the duty imposed may be enforced" and "it merely indicates principles without laying down the rules by means of which those principles may be given the force of law."[36] Although most constitutional rights are presumed to be self-executing,[37] three aspects of the "safe school" provision prove it is indeed an exception to the rule: the language fails to supply a judiciable standard to aid a court's determination of safe schools,[38] subsequent legislation is necessary for a school to meet the affirmative duty to make schools safe,[39] and the provision offers no remedy.[40]

A. *Judiciable Standard*

If the right to a safe school is self-executing, the affirmative duty must be enforceable against the school via a meaningful judiciable standard.[41] Such a standard allows a court to readily discern a safe school from an unsafe school. School safety, like all other security issues, can be characterized "as a matter of degree."[42] The black and white language of safe schools versus unsafe schools fails to recognize the varying degrees of school

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Law Tested, SCH. SAFETY, Fall 1989, at 33 (reporting on the appeal process of the *Hosemann* case in California).

34. Sawyer, *supra* note 24, at 1332-33; *see also* Brosnahan v. Brown, 651 P.2d 274 (Cal. 1982) (refusing to invalidate Proposition 8 because of potential cost of implementation).

35. Biegel, *supra* note 16, at 805.

36. Davis v. Burke, 179 U.S. 399, 403 (1900).

37. Sawyer, *supra* note 24, at 1322.

38. Biegel, *supra* note 16, at 797, 806.

39. *Id.* at 805-10.

40. *Id.* at 810.

41. *See Davis*, 179 U.S. at 403.

42. Biegel, *supra* note 16, at 826.

safety.[43] Without a standard recognizing these varying degrees of safety in order to discern whether a school is unsafe, a court would be hard pressed to enforce the affirmative duty of school safety.[44]

When a school experiences a violent incident, the school is readily identifiable as unsafe. Such identification is less than efficacious, because the goal of the California provision was to prevent school violence *before* it occurred.[45] A court could attempt to identify an unsafe school, prior to a violent incident, by documenting the accumulation of several smaller incidents, pregnant with violent behavior, that thereby indicate a greater problem in the school. By allowing a judge to infer an unsafe school from less severe incidents, he or she would have to take an "I know it when I see it" ad hoc approach.[46] This approach forces judges to "vote their lower intestines," which creates "serious problems of consistency" that are "the antithesis of justice under law."[47] Accordingly, the lack of a judiciable standard renders the "safe school" language non-self-executing.

California courts have agreed that the "safe school" standard is not judiciable, and, therefore, is not self-executing. *Leger v. Stockton Unified School District*[48] held that the right was not self-executing because it declared "a general right . . . *devoid of guidelines, mechanisms, or principles*."[49] The court distinguished *White v. Davis*,[50] which held that the right to privacy is self-executing, by

43. *See generally* Biegel, *supra* note 16, at 826 (arguing the varying degrees of safety render the duty to make California's schools safe nearly impossible to achieve).

44. *Id.*

45. *See generally* Nicholson et al., *supra* note 13, at 987 ("One of the easiest and ultimately least expensive ways to facilitate positive campus climates and safe schools is by environmental design for criminal prevention.").

46. *See* United States v. Miller, 891 F.2d 1265, 1272-73 (7th Cir. 1989) (Easterbrook, J., concurring) (criticizing the standard of "outrageousness" applied to police conduct to determine whether the police violated defendant's due process rights).

47. *Id.*

48. 249 Cal. Rptr. 688, 690 (Cal. App. 3d Dist. 1988); *see also* Clausing v. San Francisco Unified Sch. Dist., 271 Cal. Rptr. 72, 78 (Cal. App. 1st Dist. 1990) (holding the California safe school provision did not "impose an expressed affirmative duty on any government agency to guarantee the safety of schools"); Rodriguez v. Inglewood Unified Sch. Dist., 230 Cal. Rptr. 823 (Cal. App. 2d Dist. 1986) (refusing to discuss any affirmative duty to make schools safe because the student injury occurred prior to the passing of Proposition 8).

49. *Leger*, 249 Cal. Rptr. at 690 (emphasis added).

50. 533 P.2d 222 (Cal. 1975).

determining the legislative intent of the California voters.[51] The *Leger* court claimed that the language in the election brochure of the "right to privacy" initiative provided key legislative history indicating the right was "intended to be self-executing."[52] In contrast, the court noted no such language in the Victims' Bill of Rights election brochure, and instead theorized Proposition 8 as a whole aimed at reforming criminal law rather than granting actionable rights to the public.[53] In accord with *Leger*, no California appeals court has ever held that the "safe school" language of the Victims' Bill of Rights is a self-executing judiciable standard.

B. *Need for Subsequent Legislation*

A second indication of non-self-execution is the need for subsequent legislation to meet the goal of school safety.[54] If subsequent legislation is needed, the right is non-self-executing.[55] Advocates of the "safe school" language readily point out school violence and crime are salient problems in need of immediate remedy.[56] In the midst of such a dire situation, California Supreme Court Justice Stanley Mosk noted the seeming necessity for practical safeguards designed to prevent school violence.[57] The California safe school

51. *Leger*, 249 Cal. Rptr. at 690.

52. *Id.* at 691.

53. *Id.*

54. Without subsequent legislation employing practical safeguards aimed at limiting school violence, the potential liability stemming from this actionable right would theoretically provide the impetus for a school district to make its schools safer. This impetus is flawed in two crucial respects. First, an individual school district does not have access to legislative findings designed to predict the practical safeguards that will be the most efficacious in prevention of school violence. A trial and error, district-by-district approach to the prevention of school violence threatens the immediate safety of school children. Second, assuming that a school will operate under the same budget that it did prior to the institution of an actionable right, the financial ramifications of an actionable right could prove disastrous. Without an increase in funding and a mere allocation change between budget items, other items in the school budget will either be decreased dramatically or eliminated entirely. With an increase in funding for school safety, which may accompany the institution of any practical safeguards, schools will be able to retain many of the programs paramount to a student's educational needs. Fear of litigation, without sufficient resources, is not an adequate impetus for schools to make themselves safe.

55. Biegel, *supra* note 16, at 805-06.

56. Sawyer, *supra* note 24, at 1314.

57. *See* Brosnahan v. Eu, 641 P.2d 200, 203 (Cal. 1982) (Mosk, J., concurring and dissenting) (discussing possible voter expectation of subsequent legislation

provision, however, omits any mention of such safeguards.[58] Despite the apparent value of subsequent legislation to the ultimate prevention of school violence, those who believed the right to be self-executing refused to concur that such legislation would be necessary to enforce the right.[59]

In the years since the adoption of Proposition 8, the California Legislature has passed multiple legislative acts erecting practical safeguards against school violence such as the School Violence Reduction Program of 1994,[60] the Machado School Violence Prevention and Response Act of 1999,[61] and a penal code criminalizing the failure of visitors to register with the school prior to entering school grounds.[62] The School Violence Prevention and Response Task Force attempts to foster statewide coordination of school safety by making policy recommendations to school districts "to meet the challenges stemming from disruptive and violent acts,"[63] and by suggesting methods for training school personnel "to recognize risk indicators for pupils that could eventually lead to violence."[64] This coordination at the state level prevents the ills associated with a district-by-district, trial and error approach to school safety.

The registration of visitors on school grounds, mandated by section 627-627.4 of the California Penal Code, also seeks to create safer schools. The required registration of any "outsider"[65] combats the fact that "serious crimes of violence are committed on school grounds by persons who are neither students nor school employees and who are not authorized to be present on school grounds."[66] When analyzing the registration statute, a California

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aimed at "some protection of that right" to safe schools in the absence of such provisions in the amendment itself).

58. CAL. CONST. art. I § 28(c) (amended 1982).

59. Sawyer, *supra* note 24, at 1321.

60. CAL. EDUC. CODE §§ 32230-32234 (repealed Sept. 2002) (this statute clearly sought to enforce article I, section 28(c) when the legislature declared in 1994 "schools in California are in need of *security and preventative programs* in order to provide a safe school environment.") (emphasis added).

61. CAL. EDUC. CODE § 32239.5 (West 2002) (establishing the School Violence Prevention and Response Task Force).

62. CAL. PENAL CODE §§ 627-627.4 (West 1999).

63. CAL. EDUC. CODE § 32239.5 (d)(2).

64. *Id.* § 32239.5 (d)(3).

65. CAL. PENAL CODE § 627.1.

66. *Id.* § 627(2). An outsider must supply name, address, occupation, age if less than twenty-one, purpose for entering school grounds, proof of identity, and

court noted that the statute was the natural progeny of the California safe school provision.[67] Like the California courts, the California Legislature has recognized that the California safe school provision is non-self-executing, by in turn enacting legislation necessary to effectuate its goal: the creation of safer school environments.

C. *Possible Remedies*

One of the central tenets of the jurisprudence of rights is "a person has a legal right when one can make a prediction that a court will recognize that right and afford a remedy."[68] A right coupled with a remedy allows a court to give it "the force of law."[69] A right without a remedy has been labeled a "monstrous absurdity."[70] The California safe school provision omits any mention of a remedy that would be available to those students and staff who have the misfortune to attend schools that are not deemed to be "safe, secure, and peaceful."[71] California courts have expressly struck down all claims for monetary damages based on the safe school provision.[72] As noted previously, at least one commentator has proffered an equitable remedy where a judge would take indefinite jurisdiction over a school until safety was restored.[73] Although arguably efficacious in the prevention of school violence, this remedy would be an unprecedented amplification of judicial

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other information consistent with the purposes of the statute. *Id.* § 627.3. The school principal retains the right to refuse or revoke registration of anyone who may "disrupt the school, its students, its teachers, or its other employees." *Id.* § 627.4.

67. *See In re* Joseph F., 102 Cal. Rptr. 2d 641, 650 (Ca. App. 1st Dist. 2000) (recognizing the registration mandate "would not be justified on a public street, but is quite reasonable" given the safe school provision and also noting the deterrence effect to potential violent actors on school grounds).

68. SAMUEL J.M. DONNELLY, THE LANGUAGE AND USES OF RIGHTS 2 (1994).

69. *See* Davis v. Burke, 179 U.S. 399, 403 (1900) (defining a judiciable standard as one that can be given the "force of law" by a court).

70. Kendall v. United States *ex. rel.* Stokes, 37 U.S. 524, 624 (1838).

71. CAL. CONST. art. I § 28 (c) (amended 1982).

72. Clausing v. San Francisco Unified Sch. Dist., 271 Cal. 72, 78 (Cal. App. 1st Dist. 1990); Leger v. Stockton Unified Sch. Dist., 249 Cal. Rptr. 688, 690 (Cal. App. 3d Dist. 1988).

73. Nicholson et al., *supra* note 13, at 986.

authority without statutory basis.[74] Accordingly, no California court has entertained the notion of such a remedy.[75]

Over the last twenty years, a great amount of California's legal resources have been concentrated on the interpretation of the language of Proposition 8. Interpretation of statutory or constitutional language enacted via direct democracy is frequently problematic because it never undergoes the debate over interpretation inherent in the legislative process.[76] The eventual problems in the interpretation of such language after enactment are common.[77] One California court went as far as to characterize the general language of Proposition 8 as an example of "poor draftsmanship."[78] Put another way, perhaps the sort of language that attracts voters at the ballot box is not the same language that enables our nation's courts to easily interpret the duties and rights stemming from that legislation.

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74. If this remedy were employed, a judge, though assumingly uneducated in the intricacies of psychology and education theory, would become an emergency superintendent of the school district and would take on the massive endeavor of making a school safe. Arguably, in this capacity, a judge would have to institute the very practical safeguards that are conspicuously omitted in article 1, section 28(c). However, those who advocate this remedy are many of the same who believe the right is self-executing and, therefore, believe these practical safeguards are unnecessary. The apparent contradiction of allowing a judge to enact practical safeguards, which are allegedly not a necessary part of the enforcement of the right, remains unresolved.

75. Rhode Island has employed a much more benign version of this equitable remedy. *See infra* text accompanying notes 115-18.

76. Phillip P. Frickey, *Interpretation on the Borderline: Constitution, Canons, Direct Democracy*, 1996 ANN. SURV. AM. L. 477 (1996) (acknowledging direct democracy is probably more likely than legislative lawmaking to produce ambiguous statutory text).

77. *See, e.g.*, Elizabeth Garrett, *Who Directs Direct Democracy?*, 4 U. CHI. L. SCH. ROUNDTABLE 17 (1997) (discussing the problems of interpreting popularly enacted laws caused by the difficulty in determining "popular intent"); Jack L. Landau, *Interpreting Statutes Enacted by Initiative: An Assessment of Proposals to Apply Specialized Interpretative Rules*, 34 WILLAMETTE L. REV. 487 (1998) (calling for application of a special rule designed to alleviate the problems interpreting initiative enacted legislation).

78. People v. Juarez, 197 Cal. Rptr. 397, 400 (Cal. App. 1st Dist. 1983) (predicting the potential problems in the interpretation of Proposition 8 shortly after its enactment in 1982); *see also* People v. Skinner, 704 P.2d 752 (Cal. 1985) (pertaining to a different part of Proposition 8 concerning the defense of not-guilty by reason of insanity, this case held the strict interpretation of the amendment was likely unconstitutional and, therefore, a conjunctive "and" should be read as disjunctive "or").

Since the initial passage of Proposition 8, the California state courts and the legislature have acted independently to limit the applicability of the "safe school" provision. Although enacted as an amendment to the state constitution via initiative, California has extracted the teeth of the "safe schools" provision, rendering it little more than a mission statement for California schools. In light of all the problems, the debate, and the eventual conclusion that the "safe school" provision should only have minor substantive effect on education law in California, the question remains: Why would another state legislature adopt similar language?

II. ADOPTION AND APPLICATION OF THE RHODE ISLAND SAFE SCHOOL PROVISION

A. *Adoption*

From 1896 to 1992, section 16-2-17 of the Rhode Island General Laws read, "The school committee may suspend during pleasure all pupils found guilty of incorrigibly bad behavior or of violation of the school regulations."[79] The Rhode Island Commissioner of Education held that this statute was not void for vagueness and that it provided "sufficient procedural safeguards to satisfy due process requirements."[80] This statute granted broad authority to suspend students in an effort to create a safe school environment.[81] Suspensions were reversed when "not supported by evidence or . . . in violation of the procedural rights of a stu-

79. R.I. GEN. LAWS § 16-2-17 (2001) (amended 1992). This statute implied an important aspect of school discipline, that it need not be comprehensive and outline all potential actions that could result in suspension. "The school disciplinary rules need not be as detailed as a criminal code" because the maintenance of order is of greater importance in our nation's schools than the need to give students specific notice that their actions may result in disciplinary consequences. Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 686 (1986).

80. William C. Hill v. Tiverton Sch. Comm., R.I. Commissioner of Education, at 3 (May 16, 1988) (on file with Rhode Island Department of Education (RIDE)).

81. *See, e.g.*, Timothy Beausoliel v. N. Smithfield Sch. Comm., R.I. Commissioner of Education, (September 16, 1987) (on file with RIDE) (holding requirements of suspension statute had been satisfied even though student later controverted his earlier confession of smoking marijuana on school grounds); Student Doe II v. Burrillville Sch. Comm., R.I. Commissioner of Education, (April 20, 1987) (on file with RIDE) (holding requirements of suspension statute had been satisfied through circumstantial evidence); Labossionniere v. Sch. Comm. of the Town of Johnston, R.I. Commissioner of Education, (July 28, 1975) (on file with RIDE) (holding requirements of suspension statute had been satisfied upon a finding the student actions were disruptive).

dent."[82] Under this version of section 16-2-17 from 1896-1992, Rhode Island education case law includes no case in which a school sought unsuccessfully to suspend a student for behavior that either threatened the safety or impeded the learning of other students.

The amendment of this statute signified that the public's perception of this law differed from the reality.[83] Enacted in 1992, this amendment sought to grant Rhode Island schools greater authority to suspend students.[84] Educators who advocated the amendment felt they could not lawfully suspend "this kind of kid: not necessarily violent, but menacing in other ways, who will verbally threaten a teacher – but not throw any punches – or constantly disrupt class so that nobody [sic] can learn."[85] Thus, the amendment of section 16-2-17 of the Rhode Island General Laws follows from the unsubstantiated contention that students whose behavior falls short of violence, such as a verbal threat to a teacher, could not be suspended under the previous standard of suspending "during pleasure all pupils found guilty of incorrigibly bad behavior."[86]

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82. *Student Doe II*, R.I. Commissioner of Education, at 5.

83. Misconception of the law by educators is understandable. For example, one of the most prominent education law decisions over the last thirty years is Goss v. Lopez, 419 U.S. 565 (1975). While most educators generally understand that this case granted greater rights to those students facing suspension, far fewer apply the specific holding, which mandates a school must give a student suspended for ten days or less "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Id.* at 581. However, this case did not limit the substantive reasons for suspending a student. The distinction between procedural rights and substantive rights of a student may be lost on some educators. The failure to draw this distinction creates the general impression that a teacher's right to discipline a student is greatly limited. This misconception can result in an educator's insistence that the law be modified to recapture authority that he or she never really lost. *See* Nicholson et al., *supra* note 13, at 993 (recommending local bar associations educate the educators in order to correct any misconceptions of law).

84. Elizabeth Abbott, *House Oks 'Safe School' Provision*, PROVIDENCE J., June 9, 1992, at A3.

85. *Id.*

86. *See* R.I. GEN. LAWS § 16-2-17 (2001) (amended 1992). As a matter of state policy, the Rhode Island Legislature does not compile legislative history. Therefore, legislative intent must be inferred from other primary sources. At the time of the passing of this statute, the Providence Journal Bulletin documented that the proponents of the amendment, including thirty-six high school principals, believed

The current version of section 16-2-17 of the Rhode Island General Laws,[87] (the Rhode Island safe school provision), adopts similar language to article I, section 28(c) of the California Constitution:[88]

> (a) Each student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied of physical harm by a disruptive student.[89]

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the pre-1992 version of the statue "protected troublemakers at the expense of the well-behaved students." Abbott, *supra* note 84.

87. The current version of the statute reads in its entirety:

> (a) Each student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student. A disruptive student is a person who is subject to compulsory school attendance who exhibits persistent conduct which substantially impedes the ability of other students to learn or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.
>
> (b) The school committee, or a school principal as designated by the school committee, may suspend all pupils found guilty of this conduct or of violation of those school regulations which relate to the rights set forth in subsection (a), or where a student represents a threat to those rights of students, teachers or administrators, as described in subsection (a). Nothing in this section shall relieve the school committee or school principals from following all procedures required by state and federal law regarding discipline of students with disabilities.
>
> (c) A student suspended under this section may appeal the action of the school committee, or a school principal as designee, to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved. Any decision of the commissioner in these matters shall be subject to appeal by the student to the board of regents for elementary and secondary education and any decision of the board of regents may be appealed by the student to the family court for the county in which the school is located as provided in § 42-35-15.

§ 16-2-17.

88. The statute, as amended in 1992, retained the "incorrigibly bad behavior" language in its definition of disruptive students. However the legislature abandoned the standard entirely by a subsequent amendment in 1998, and replaced it with "persistent conduct which substantially impedes the ability of other students to learn." *See* R.I. GEN. LAWS § 16-2-17 (1896) (amended 1992, and amended 1998).

89. R.I. GEN. LAWS § 16-2-17(a) (2001).

While the California provision only modified the "safe" standard with the language "secure and peaceful,"[90] the Rhode Island provision offers two additional phrases that may indeed qualify the nature of the right: (1) a safe school is one that is "conducive to learning," and (2) a safe school is one that is "free from the threat, actual or implied, of physical harm by a disruptive student."[91] Whether these differences in language between the two similar laws add the necessary substance to a "safe school" provision will be addressed in Part III.[92]

Prior to analyzing the right, attention must be directed to the possible interpretation that the Rhode Island safe school provision does not grant a right at all.[93] If the Rhode Island safe school provision is interpreted as little more than a preamble or introduction, then the substance of the statute lies in sections (b) and (c).[94] The "safe school" language, therefore, would be an ultimate goal for Rhode Island public schools, and the authority to suspend disruptive students would be applied to meet that goal.[95] In support of this interpretation, the media coverage regarding the passage of the amendment focused on the right of a school to suspend a student, while merely mentioning the safe school language in passing.[96]

Although one can argue the legislators may never have intended to grant a right,[97] the canons of statutory construction

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90. CAL. CONST. art. I § 28 (c) (amended 1982).

91. R.I. GEN. LAWS § 16-2-17(a).

92. *See infra* Parts III.A.

93. *See* School Department's Closing Brief at 4, Bonnie S. v. Newport Sch. Comm., R.I. Commissioner of Education, (August 30, 2002) (on file with RIDE) [hereinafter Bonnie S. Brief]. *See generally* V. James Santaniello, *School Law: A Legacy of the Twentieth Century*, 46 R.I. B.J. 5 (1998) (focusing on the right to suspend students, while omitting any discussion of the "right to a safe school" language in a brief analysis of section 16-2-17).

94. *See* Bonnie S. Brief, *supra* note 93, at 4.

95. In specific instances, rights may be interpreted as goals. DONNELLY, *supra* note 68, at 3-4 (for example, economic rights often depict ultimate goals to be reached over time). Under this interpretation, the statute would list three independent goals: (1) a safe school, (2) a school conducive to learning, and (3) a school free from actual and implied threats of physical harm by disruptive students.

96. Abbott, *supra* note 84.

97. *See* Bonnie S. Brief, *supra* note 93, at 4 (arguing the statute should not be interpreted to grant an actionable right to students which could be enforced against a school system); *see also* Abbott, *supra* note 84 (focusing on the school's power to suspend students in a report on the passage of the amendment).

trump the local media.[98] To interpret the text of a statute, the reader must use legal terms "in their legal sense."[99] A "right" is defined as "something that is due to a person by just claim, legal guarantee, or moral principle" or "a legally enforceable claim that another will do or will not do a given act."[100] Furthermore, the statute never offers a prohibiting statement declaring that the word "right" should not be given its legal meaning.

A preamble section of a statute is defined as "statements which come before the enacting clause in a statute."[101] If the legal meaning of "right" is employed, then section (a) cannot be a preamble because the granting of a right is in itself an enacting clause, rather than merely a statement preceding the enacting clause.[102] Had the Rhode Island safe school provision been written as a preamble to the suspension statute, it would likely read as follows: "The *goal* of every school must be to provide a safe, secure and peaceful environment for each student, staff member, teacher and administrator." However, if interpreted as written, the statute grants a right to those who attend public schools in Rhode Island.

The arguments that a right is non-self-executing and that a right is a goal are both directed to the similar end of convincing a court not to enforce the right.[103] However, the key distinction between these two arguments is that the latter places the cart before the horse. As evidenced by California case law, the determination of whether a right is self-executing is a determination of whether a court can enforce such a right.[104] If a right "cannot be immediately enforced by a court," then it is merely a goal or a statement of policy.[105] The fact that the Rhode Island Commissioner of Education is currently hearing appeals based on a student's right to a safe school indicates that some are interpreting the term "right" in ac-

98. In interpreting a statute, all words must be given meaning according to the statute's "composition and structure." NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 47:01, at 208 (6th ed., 2001); *see also* KENT GREENAWALT, LEGISLATION: STATUTORY INTERPRETATION: 20 QUESTIONS 57 (1999) (stating the text of the statute is "the most straightforward evidence of what legislators were seeking to accomplish").

99. SINGER, *supra* note 98, § 47:30, at 362.

100. BLACK'S LAW DICTIONARY 1322 (7th ed. 1999).

101. SINGER, *supra* note 98, § 47:04, at 208.

102. *Id.*

103. Biegel, *supra* note 16, at 806; Bonnie S. Brief, *supra* note 93, at 4.

104. Biegel, *supra* note 16, at 805.

105. DONNELLY, *supra* note 68, at 2.

cordance with its legal meaning. The self-execution analysis will, therefore, ultimately determine whether the right is in fact "a right," or merely a goal.

B. *Application*

The Rhode Island Department of Education, in its interpretation of the Rhode Island safe school provision, has begun to hold hearings concerning a school's failure to afford a student the right to a safe school. In *In re Jane A.K. Doe*[106] (*Jane A.K. Doe*) and *Bonnie S. v. Newport School Committee*[107] (*Bonnie S.*), the Rhode Island Commissioner of Education has applied the safe school language to determine whether a school has failed to provide a safe school environment for individual students.[108] Neither of these cases held that these students do not have an actionable right to a safe school.[109] Instead, both toiled with the meaning of the safe school provision in an attempt to ensure each student is safe in his or her school environment.[110]

In *Jane A.K. Doe*, the Commissioner found that student Doe had been living with her grandparents for the sole purpose of attending school in the North Kingstown School District in violation of the state residency law.[111] The proper placement for student Doe was Newport School District, the district in which her parents resided and where she had formerly attended school.[112] The parents of the student claimed they sent their daughter to North Kingstown because of "hostile and threatening behavior by several other students . . . of a severe and escalating nature" culminating in an assault by one of those students against their daughter.[113] Student Doe's parents contended "the Newport school system is incapable of providing their daughter with an education in a safe en-

106. R.I. Commissioner of Education, (Mar. 6, 1996) (on file with RIDE) [hereinafter Jane A.K. Doe].

107. R.I. Commissioner of Education, (Aug. 30, 2002) (on file with RIDE) [hereinafter Bonnie S. Opinion].

108. *See* Bonnie S. Opinion, *supra* note 107, at 5 n.7; Jane A.K. Doe, *supra* note 106, at 3.

109. *See* Bonnie S. Opinion, *supra* note 107, at 5 n.7; Jane A.K. Doe, *supra* note 106, at 3.

110. *See* Bonnie S. Opinion, *supra* note 107, at 3-5; Jane A.K. Doe, *supra* note 106, at 4.

111. Jane A.K. Doe, *supra* note 106, at 3.

112. *Id.* at 4.

113. *Id.* at 1.

vironment."[114] When mandating that student Doe return to the Newport School District, the Commissioner did so while mindful of student Doe's entitlement "to receive a public-school education in a safe environment" under the Rhode Island safe school provision.[115] Due to the absence of any recognized statutory remedy to give the right the force of law, the Commissioner directed the Newport School Department to supply home-tutoring services at the Newport residence of student Doe until Newport School officials "develop[ed] a plan which reasonably ensures student Doe's safe return" to school.[116] To enforce this remedy, the opinion stated that the local police could be instrumental in creating a safe school environment.[117] Moreover, the Commissioner retained jurisdiction over this matter until a safe school environment had been created.[118]

In *Bonnie S.*, parents of children C, R, and M asserted that their children attended school in an unsafe environment in the Newport School District.[119] C, the eldest student, suffered an assault at the hands of a student who brandished a three-inch knife while slashing a seat cushion on a bus.[120] The student who slashed the seat cushion received a five-day suspension, agreed to stay out of school for an additional five days, and sought counseling in response to the incident.[121] C's parents requested C be moved to another school and Newport responded by placing C in Gaudet Middle School located in neighboring Middletown.[122] A Reciprocity Agreement, made in 1992 between Newport, Middletown, and neighboring Portsmouth, provides that the school districts could exchange students when a student's needs are best served by attending school in a district other than the one in which

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114. *Id.* at 2.

115. *Id.* at 4.

116. *Id.*

117. *Id.*

118. *Id.* The retention of jurisdiction over a school district was also discussed in California. *See supra* note 73-75 and accompanying text.

119. Bonnie S. Opinion, *supra* note 107, at 3.

120. *Id.* at 1. The school failed to provide a bus monitor at the time of the incident. *Id.*

121. *Id.* at 1.

122. *Id.*

he or she resides.[123] Although each town reserved the right not to accept a particular student,[124] the agreement likely appeals to all three districts because the former school district pays no tuition when a student is exchanged between the three towns.[125] Because C was moved under the Reciprocity Agreement to Gaudet, his parents never brought suit under the Rhode Island safe school provision regarding his safety.[126]

His parents did bring a suit, however, under the Rhode Island safe school provision regarding the safety of their other two children, R, a soon-to-be sixth-grader, and M, a soon-to-be first-grader.[127] R testified that he was scared to attend school where C had been the victim of an assault, that he had also experienced several minor physical assaults at his prior school, such as being shoved and punched in the arm while in the fifth grade, and that he had witnessed his sister, M, in an unsupervised kindergarten classroom.[128] In denying the appeal, the Commissioner held this evidence insufficient to support a finding that the Newport schools were the type of unsafe school environments that require the removal of R and M.[129]

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123. NEWPORT SCHOOL DISTRICT PROCEDURES FOR QUESTIONABLE RESIDENCY, Item 10 (Nov. 23, 1987) (Item 10 added Dec. 8, 1992) [hereinafter Reciprocity Agreement]; Bonnie S. Opinion, *supra* note 107, at 1.

124. Transcript from *Bonnie S. v. Newport Sch. Comm.*, R.I. Commissioner of Education, at 165 (August 30, 2002) (on file with RIDE) (documenting the primary reason a receiving school would refuse a transfer under the Reciprocity Agreement is "no space available" in that school) [hereinafter *Bonnie S.* Transcript].

125. *Id.* at 11-12, 18 (documenting three separate contentions by petitioner claiming that Newport's placements in Middletown, in accordance with the Reciprocity Agreement, are tuition free); *see also* Reciprocity Agreement, Item 10 *and* Bonnie S. Opinion, *supra* note 107, at 1 (omitting any discussion of tuition when outlining the provisions of the Reciprocity Agreement, thereby suggesting transfers would be tuition free). *But see Bonnie S.* Transcript, *supra* note 124, at 166 (suggesting that a transfer to Portsmouth High School under the Reciprocity Agreement may not be tuition free). *See generally Bonnie S.* Transcript, *supra* note 124, at 158-64, 172-79 (documenting the direct examination and re-direct examination of the Newport School official who oversees the transfer of students under the Reciprocity Agreement, which fails to offer any direct contradiction to petitioner's claim that a transfer to Middletown is tuition free).

126. *See* Bonnie S. Opinion, *supra* note 107, at 1 (although C's testimony was the primary focus of the hearing, petitioner appeared before the Rhode Island Commissioner of Education requesting the transfer of her two younger children, as C had already been transferred to Middletown).

127. *Id.*

128. *Id.* at 2.

129. *Id.* at 4-5.

While two cases over the first ten years since the statute's enactment scarcely suffices as a tidal wave of litigation, a common thread in both of these cases indicates that the Rhode Island safe school provision may be employed by a greater number of parents in the future. In *Jane A.K. Doe*, the parents never petitioned the Commissioner's office for relief regarding their daughter's problems at school.[130] Instead, a neighboring school district brought the parents before the Commissioner because it did not want to finance the education of a child who did not live in that district.[131] Only after that hearing did the parents of student Doe learn of the right to a safe school.[132] In *Bonnie S.*, the parents brought a petition before the Commissioner's office only after the school granted a remedy regarding the safety of their eldest son.[133] The fact that neither family initiated suit upon the in-school incident that brought the student's safety into question indicates parents of Rhode Island students may be unaware that the Rhode Island Legislature has recognized "[e]ach student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe."[134] With the relatively extensive press coverage of the *Bonnie S.* hearing, more parents will learn that the Rhode Island safe school provision exists, that the Rhode Island Commissioner of Education is hearing parental complaints related to that right, and ultimately that schools must be responsive to parental demands related to school safety.[135] Furthermore, the Rhode Island Legislature has since employed similar language in a statute governing safety in Rhode Island's schools of higher educa-

130. Jane A.K. Doe, *supra* note 106, at 2.

131. *Id.*

132. *Id.*

133. Bonnie S. Opinion, *supra* note 107, at 1.

134. R.I. GEN. LAWS § 16-2-17(a) (2001).

135. *See American Scene: State Denies Mother Public School Transfer*, WASH. TIMES, Sept. 2, 2002, at A9 (national newspaper reporting the results of the hearing before RIDE); Richard Salit, *Students Not Allowed to Transfer to Middletown*, PROVIDENCE J., Sept. 2, 2002, at C1 (state newspaper reporting the results of the hearing before the Rhode Island Department of Education); Richard Salit, *Family Presents its Case to Transfer Their Child*, PROVIDENCE J., Aug. 8. 2002, at D1 (state newspaper reporting on the hearing itself); *Quote of the Day*, PROVIDENCE J., Aug. 8. 2002, at B2 (state newspaper highlighting the following quote by Bonnie Sullivan: "I don't believe Newport schools can protect my children."); Katie Mulvaney, *Mother Appeals Transfer School Transfer Request*, PROVIDENCE J., Aug. 2, 2002, at C1 (state newspaper reporting the initial filing of the hearing by the petitioner).

tion.[136] Thus, increased public awareness should result in a greater potential for litigation regarding the Rhode Island safe school provision.

III. THE RHODE ISLAND SAFE SCHOOL PROVISION AS A NON-SELF-EXECUTING RIGHT

Rhode Island currently stands in a place similar to California in the early 1980s. The "safe school" provision is in force, but now Rhode Island courts must determine whether it is enforceable. The test to determine whether the Rhode Island safe school provision is self-executing is the same,[137] but the analysis will be notably different. As explained in the discussion of the California provision, a safe school is not a meaningful judiciable standard because safety is more a matter of degree, rather than a simple black and white distinction.[138] The Rhode Island safe school provision,

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136. R.I. GEN. LAWS § 16-81-1 (2001). This statute reads:

> (a) Each student, staff member, teacher, and administrator has a right to attend and/or work in an institution of higher education which is safe and secure and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student. A disruptive student is a person who exhibits persistent conduct, which substantially impedes the ability of other students to learn or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.
>
> (b) The governing body as designated by each institution of higher education may suspend or expel all students found guilty of this conduct or where a student represents a threat to those rights of students, teachers, or administrators, as described in subsection (a). Nothing in this section shall relieve the institution of higher education from following all procedures required by state and federal law regarding discipline of students with disabilities.
>
> (c) Any decision of the designated governing body shall be subject to appeal by the student as provided by the rules and regulations of each institution of higher education. These procedures shall assure due process which shall include at a minimum time-lines for a prompt hearing; adequate notice to the student stating the rule allegedly violated and giving a specific description of the incident and evidence that will be used against the student; an opportunity prior to the hearings to review any evidence supporting the allegation; an impartial decision maker or team of decision makers; a right to confront and cross-examine witnesses; the opportunity to be represented by counsel; and a written decision setting forth clearly the grounds for the action of the school.

Id.

137. *See* Bandoni v. State, 715 A.2d 580, 587 (R.I. 1998).

138. Biegel, *supra* note 16, at 826. For further discussion see *supra* Part I.A.

however, does not stand on its own, but is instead one provision in a three clause statement.[139] Those three clauses are: (1) "Each student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure"; (2) "conducive to learning"; and (3) "free from the threat, actual or implied of physical harm by a disruptive student."[140] According to the rule of statutory construction, *noscitur a sociis*, "[i]f the legislative intent or meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their relationship with other associated words and phrases."[141] The two additional clauses, therefore, must be analyzed to determine if the Rhode Island Legislature has created a self-executing right.

According to the Rhode Island Supreme Court in *Bandoni v. State*,[142] a right is not considered to be self-executing if it does not provide a meaningful judiciable standard and a remedy for a court to apply.[143] In addition, *Bandoni* also held that the Rhode Island Legislature must enact subsequent legislation to enforce the right.[144] This test, as it was applied to the California provision, will be applied below to determine whether the right to a safe school is an enforceable right.

A. *Judiciable Standard*

1. *Conduciveness to Learning*

The second part of the Rhode Island safe school provision recognizes that the primary goal of a school is to educate its students.[145] If a student does not feel safe in school, then that student's ability to learn is drastically impaired.[146] Therefore, the

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139. R.I. GEN. LAWS § 16-2-17(a).
140. *Id.*
141. SINGER , *supra* note 98, § 47:04, at 265.
142. 715 A.2d 580 (R.I. 1998).
143. *Id.* at 587-93.
144. *Id.*
145. R.I. GEN. LAWS § 16-2-17(a) (2001).
146. *See, e.g.*, Chamberlin, *supra* note 8, at 291 (recognizing that fear of violence results in students not going to school and inhibits the learning of those who attend); R. Craig Wood & Mark D. Chestnutt, *Violence in U.S. Schools: The Problems and Some Responses*, 97 EDUC. L. REP. 619 (1995) (describing the cyclical effect of the detection of weapons in school, which leads to media coverage and public debate of safe schools, which in turn leads to fear that schools are not safe, which ultimately leads back to students carrying guns to school because they are fearful for their safety).

association between an environment that is safe and an environment that is conducive to learning may provide a factor in determining a "safe school." Through grades and tests, schools specialize in quantifying how much an individual student has learned about any given subject. An evaluation of these grades on the school-wide level could indicate whether a school is conducive to learning and, therefore, "safe" for the purposes of the statute.

Conduciveness to learning, though relevant, is not solely determinative on the issue of school safety. A school environment, which is not conducive to learning, can be caused by an endless variety of school related impetuses, such as poor teacher performances, substandard study aids and school facilities, and lack of family support for students. Therefore, although an unsafe school is necessarily one that is not conducive to learning, a school, which is not conducive to learning, is not necessarily one that is unsafe. In other words, the causal connection between a school's conduciveness to learning and a school's safety is not reciprocal. Although a judge may take the "conducive to learning" clause into consideration under the Rhode Island safe school provision, it is not a determining factor.

The "conducive to learning" clause could pose another problem for Rhode Island courts. In an age of medical and legal malpractice, some courts have entertained a cause of action known as "educational malpractice," which alleges a school has failed to properly educate a student.[147] With the conjunctive "and" between the phrases "right" and "conducive to learning," one could make the argument that in addition to a safe school, a school also has a duty to provide a competent education to all its students.[148] Arguably, such statutory language is fertile ground on which a court could hold a school to an affirmative duty to educate.

147. *See, e.g.*, Peter W. v. San Francisco Unified Sch. Dist., 131 Cal. Rptr. 854, 861 (Cal. App. 1st Dist. 1976) (holding that schools owed no duty of care as to a negligence count asserted by a high school graduate claiming educational malpractice or failure to adequately educate because the court could not find a "conceivable 'workability of a rule of care' against which defendants conduct may be measured").

148. R.I. GEN. LAWS § 16-2-17(a).

2. *Threats of Harm by Disruptive Students*

The third clause of the Rhode Island safe school provision is the phrase "free from the threat, actual or implied, of physical harm by a disruptive student."[149] The identification and definition of the "disruptive student" offers the most descriptive language in the statute and, therefore, may be helpful in discerning a meaningful judiciable standard. The lone definition supplied within this statute is that of a disruptive student, who is defined as "[a student] subject to compulsory school attendance who exhibits persistent conduct which substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators."[150] The statute further identifies such a student's "threat[s], actual or implied, of physical harm"[151] as an impediment to a safe school.[152] Whether a meaningful judiciable standard can be gleaned from the definition and identification of a disruptive student will be explored below.

The United States Supreme Court has recognized the importance in allowing schools to monitor and discipline its students.[153] Students who commit crimes while attending school are often less interested in an education and, thus, impede the education of their classmates.[154] Therefore, a school with a high percentage of disruptive students may indicate that a school is not safe. In addition, failure to discipline students acting disruptively may also indicate a school is not safe. Whether these indications offer a

149. *Id.*

150. *Id.*

151. *Id.*

152. The phrase as a whole modifies the safe school language. Within this phrase, the prepositional phrase, "by disruptive students," indicates disruptive students are the source of "threats, actual or implied, of physical harm" which are in turn an impediment to a school's safety. *Id.*

153. *See generally* New Jersey v. T.L.O., 469 U.S. 325 (1985) (allowing searches of students on a basis of reasonable suspicion, rather than probable cause).

154. See Chamberlin, *supra* note 8, at 291 for the general contention that fear of violence results in students not going to school and inhibits the learning of those who attend. This is not to say that students should be divided into two camps, the good students who want to learn and the bad students who want to commit crimes. The difficulty in deciding what sort of punishment should be imparted to a particular student is a question to be discussed *infra* Part IV.A.

meaningful standard for the purposes of determining a safe school depends upon the language qualifying disruptive students.[155]

Although detailed, the language qualifying "disruptive students" is at once both overly broad and restrictively narrow. The manner in which a disruptive student impedes a safe school is through either an "actual" threat or an "implied" threat.[156] First, the notion of an implied threat is overly broad. The claim in *Bonnie S.*, that a younger sibling did not feel safe because his brother experienced a violent incident in a different school, illustrates the breadth of this language.[157] Although the Commissioner did not rule in favor of that student,[158] the argument that the actual cause of fear to one student could also create an implicit fear of physical harm in another student has merit.[159] Suppose twin brothers attended the same school, but only one actually witnessed a frightening incident. Has the right to a safe school been violated for the twin brother who lives through the aftermath of the attack both at home and at school? If a teacher were a victim of a violent act, could all of his or her students be found to be victims of an implied threat of physical harm? Under this implied threat standard, school administrators are put in the unenviable position of determining what act by a student, which falls short of an actual threat, still constitutes an implied threat of physical harm.

As broad in scope as an "implied threat" is, the definition of a disruptive student is equally narrow.[160] The three phrases defining a disruptive student are connected by the conjunctive "and," which means a student must meet all three requirements before he or she can be found "disruptive."[161] First, the "subject to compul-

155. *See* SINGER, *supra* note 98, § 47:16, at 265.

156. R.I. GEN. LAWS § 16-2-17(a) (2001).

157. Bonnie S. Opinion, *supra* note 107, at 1.

158. *Id.* at 4-5.

159. Worthy of further note is the fact that the petitioner in this hearing was a pro se litigant who, although aware of the factual intricacies of her children's problems, may have been unaware of the breadth of the legal term "implied threat." According to the transcript, the petitioner did not advance the implied threat argument regarding her two younger children. *Bonnie S.* Transcript, *supra* note 124.

160. The definition of a disruptive student can be broken down into three parts: (1) subject to compulsory school attendance, (2) persistent in conduct which substantially interferes with the rights stated above, (3) failure to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators. R.I. GEN. LAWS § 16-2-17(a).

161. *Id.*

sory school attendance" requirement simply applies to all students under the age of eighteen.[162] Secondly, the requirement of "persistent conduct" seems to exclude unsafe or violent conduct by a normally well-behaved student. Lastly, the requirement of "corrective or rehabilitative measures" seems to allow the school an escape hatch by claiming a student is not "disruptive" for purposes of this statute because the school has yet to offer adequate corrective or remedial measures. Ironically, one could argue that a failure to offer corrective or remedial measures instead indicates an unsafe school, rather than indicating that a student is not disruptive. The "disruptive student" definition is much too narrow because it excludes conduct, both on the part of the school and a misbehaving student, which could indicate the school is not safe.

As ineffective as either of these standards is on its own, the dual employment of each in the determination of a disruptive student exacerbates their weaknesses. To find one student disruptive for implying a threat of harm, while holding that the same conduct is not disruptive when exhibited by another student, who is either normally well-behaved or over the age of eighteen, is the sort of anomaly which renders the "disruptive student" standard meaningless for purposes of determining school safety. As a result, both the "conducive to learning" and "disruptive student" language fails to distinguish a safe school from an unsafe school. The Rhode Island version of the safe school provision, therefore, offers no more of a meaningful judiciable standard than the California provision.

B. *Possible Remedies*

Following in the misguided footsteps of California, the Rhode Island Legislature failed to provide a remedy for a court to apply should a school fail in its duty to maintain a safe school.[163] In con-

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162. *See* R.I. GEN. LAWS § 16-19-1(a) (2001) (declaring that all children under the age of sixteen must attend school, but also including a disclaimer stating "nothing in this section shall be construed to allow the absence or irregular attendance of any child who is enrolled as a member of any school, or of any child sent to school, or of any child sent to school by the person having control of the child," which likely would be interpreted to also apply to all students between the ages of sixteen and eighteen whose parents desire to have their children attend public school). The reasons as to why the legislature would choose to exclude all those students who are over the age of eighteen from the mandate of school safety remain unclear.

163. *See* R.I. GEN. LAWS § 16-2-17 (omitting any suggestion of a remedy).

trast to California, no Rhode Island court has had the opportunity to rule on the issue of whether the right supports a claim for monetary damages.[164] The lack of a meaningful judiciable standard will likely lead Rhode Island to follow the California precedent and prohibit any award of monetary damages.[165]

The Rhode Island Commissioner of Education does not have the authority to grant monetary damages to a student who attends school in an unsafe environment.[166] The Commissioner does, however, have the authority to grant equitable remedies much like the one in *Jane A.K. Doe*.[167] Motivated by the best interests of a child who was being repeatedly harassed by a group of students, the Commissioner mandated that the school must furnish home-tutoring services to the student until the parents, the local police, and the school could agree on a plan to ensure her safe return to school.[168] Under such a remedy, the school would have to pay for at least some home-tutoring services while conducting the changes necessary to create a safe school environment.[169] Although no

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164. *See* Leger v. Stockton Unified Sch. Dist., 249 Cal. Rptr. 688, 690 (Cal. App. 3d Dist. 1988) (holding the California safe school provision did not supply a right to sue school for money damages).

165. Some may argue the threat of monetary damages could provide the necessary impetus for schools to make themselves safer. *See supra* note 54 and accompanying text. This argument assumes schools have the resources to make themselves safer, but have failed to do so because they simply have not given the proper attention to safety. A more convincing argument for why a school fails to make itself safe is the opposite: that a school does not have the resources to ensure school safety, despite its concerns.

166. The Commissioner of Education reviews decisions made by Rhode Island school districts on issues varying from school suspensions to termination of teachers. Equitable remedies, much like the one instituted in *Jane A.K. Doe*, are within the province of the Department of Education. Should a plaintiff bring an action against a school district seeking monetary damages, he or she would likely file suit in Rhode Island Superior Court.

167. The lack of a meaningful judiciable standard was of relative minor importance in this case because the harassment suffered by the student was of such severity that most would agree she was not attending school in a safe environment. In cases where the danger is less overt, the lack of a meaningful judiciable standard will be more problematic.

168. Jane A.K. Doe, *supra* note 106, at 4. Though a practical remedy to cognizable problem, this solution was not based on statute or precedent and, therefore, should not be automatically accepted as the proper remedy for all claims brought under the Rhode Island safe school provision.

169. In *Jane A.K. Doe*, the Commissioner retained jurisdiction over the issue of whether a safe environment had been supplied to the student in question. *Id.* Therefore, the furnishing of home-tutoring services was not a negligible punishment, because the home-tutoring services could be extensive in the event the Com-

monetary damages are paid to the petitioner, the cost of furnishing home-tutoring services to a student is a substantial burden on the school district.

Although such potential costs may force a school to concentrate on safety issues, it may also result in a school's attempt to avoid that burden in the future through other means.[170] In incidents like those exhibited in *Jane A.K. Doe* or *Bonnie S.*, a school can ensure that the Rhode Island Commissioner of Education, and perhaps even the local media, will not receive notice of the problem by simply taking advantage of the Reciprocity Agreement. For example, the school's transfer of C, the eldest son in *Bonnie S*, to Gaudet Middle School resolved all of the issues pertaining to that student.[171] Thus, the Reciprocity Agreement, although arguably not originally designed for such a purpose,[172] allows the school to avoid both negative press and the type of unfavorable ruling as suffered in *Jane A.K. Doe*.

Although on the micro-level such a transfer remedies an isolated problem, when the school is forced to deal with these issues on the macro-level, the Reciprocity Agreement implodes. A troubled school district cannot feasibly establish the sort of policy that results in the transfer of all victims of school violence. If such a policy were established, then a troubled school would eventually only contain students who had perpetrated violent acts because the other students, as victims, would have been transferred.[173]

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missioner were to determine the school had once again not met its duty to provide a safe environment for the student.

170. The following discussion does not insist the Newport School System has erected some diabolical scheme to evade the Rhode Island Commissioner of Education, the safe school provision, and the local media. In fact the Reciprocity Agreement can be employed in other situations, for example to adhere to a no-contact order between students issued by the Family Court. *Bonnie S.* Transcript, *supra* note 124, at 159. However, the Newport School District readily acknowledges a student's safety is a factor in determining whether it should transfer that student to another school. *Id.* at 167. Also, the fact that the Newport School District was a party in both suits at least suggests awareness of a possible monetary cost should a situation similar to *Jane A.K. Doe* arise again. Furthermore, the Reciprocity Agreement between Newport and the neighboring school systems was put in place in late 1992, not long after the amendment of section 16-2-17 of the Rhode Island General Laws enacting the safe school provision.

171. Bonnie S. Opinion, *supra* note 107.

172. *Bonnie S.* Transcript, *supra* note 124, at 159.

173. This *reductio ad absurdum* argument is made to illuminate a theoretical weakness of the employment of the Reciprocity Agreement, rather than predict a

The Reciprocity Agreement also collapses when a previous perpetrator of violence becomes himself the victim of a separate violent incident and an accepting school must then decide whether to turn away a formerly violent student who now fears his current school environment. Recognizing some of the problems inherent in applying the Reciprocity Agreement on a district-wide basis, the Newport School District could not allow for the transfer of the younger siblings to neighboring school districts in *Bonnie S.*[174] In the end, the Newport School District found itself back before the Rhode Island Commissioner of Education.[175]

Observing the transfer of victims in the larger picture of school safety, the remedy provided by a Reciprocity Agreement is counterproductive. Any disciplinary action, for example a brief suspension, taken against the student-perpetrator, coupled with the transfer of the other student, fails to rehabilitate either party. To send away a child who was the victim of the incident creates a psuedo-voucher program among students who have the unfortunate experience of being harassed or being shown a knife on the bus. By being transferred, the victim is made to abandon his or her support structure and forced to begin anew in a foreign environment. The offending student is never given an opportunity to atone for his conduct with an apology to the victim, and the lofty ideal of the two learning to coexist peacefully in a positive environment is completely abandoned. Also, when the offending child returns to his school, the rest of his classmates are likely to deem him "so bad" that he caused a fellow classmate to go to a different school. This reputation could result in the offending student's virtual isolation from the main portion of the student body, until he commits another violent or dangerous act, possibly brought on by his isolation. These cyclical effects of transferring the victim away from the school where the incident occurred, while retaining the perpetrator, could actually cause more safety problems in the school.

These problems are even more disturbing when one refocuses on the language of the safe school provision. A different school of thought on the jurisprudence of rights contends, "[t]he assertion

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possible outcome if the Reciprocity Agreement were to be employed over an extended period of time.

174. Bonnie S. Opinion, *supra* note 107, at 1.

175. *Id.*

that X has a right is a way of drawing a conclusion within that legal system."[176] Perhaps the public at large will draw the conclusion that schools are safer simply because of the aesthetic of a right to a safe school.[177] Therefore, the granting of a right to a safe school, without the employment of a practical means to create such, might eventually lead the citizens of Rhode Island to believe schools are safer than they actually are.

Void of a meaningful judiciable standard or a proper remedy, Rhode Island's safe school provision is non-self-executing and, therefore, unenforceable. Though the Rhode Island Legislature has yet to pass legislation establishing practical safeguards to prevent school violence, the time has come to correct the confusion and take the affirmative steps to create safer schools in Rhode Island.

IV. AMENDMENT AND RECOMMENDATION FOR ADDITIONAL LEGISLATION

A. *The Proposed Amendment*

The confusion stemming from the Rhode Island safe school provision will no doubt be remedied by the natural evolution of this legal issue. If left in its current form, a Rhode Island court will eventually make the prudent ruling that the Rhode Island safe school provision does not create an actionable right for the students of Rhode Island public schools. Rhode Island schools, however, may suffer in the interim. While the Rhode Island Commissioner of Education endeavors to create safer schools, school actions, aimed at preventing negative publicity and unfavorable rulings, may actually make schools less safe.[178]

The Rhode Island Legislature should amend the current statute to preempt the inevitable ruling of non-self-execution and thus ensure safer schools. The word "right" should be omitted from the statute entirely to eviscerate any confusion caused by the current version of the Rhode Island safe school provision. A preamble could read: "The goal of every Rhode Island public school is the creation and maintenance of a safe learning environment for its

176. DONNELLY, *supra* note 68, at 2.

177. *See id.* at 16 (discussing H.L.A. Hart's theory of rights, through an analogy to a game of cricket, where a fan's belief that a player is safe is meaningful because it refers "to the system of rules," even when the referee declares the player out).

178. *See supra* text accompanying notes 174-76.

students and a safe working environment for its employees." The term "goal" rather than "right" prevents the interpretation that this section should be read as the enabling portion of the statute.[179] The terms "safe learning environments" and "safe working environments" express the dual importance of safety and education in schools, while acknowledging the strong correlation between the two.[180]

The enabling portion of the statute should read: "To meet this goal, a school may discipline, *including suspension when necessary*, all students who violate school regulations, for any behavior that substantially inhibits the education of other students, or for any behavior which represents a threat to the safety of any member of the school community." A disclaimer could be added to this section identifying the principle announced in *Bethel School District v. North Fraser*[181] that the school need not erect a comprehensive criminal code outlining every potential punishable offense.[182] Such a disclaimer could read: "Nothing in this section shall be read as a limitation on the types of student conduct that a school may punish." Furthermore, the three sections of this enabling clause are intended to be broad, while pertaining to the two principal concerns discussed throughout this Comment – safety and education. The phrase "substantially inhibits" will help curtail any abuse of the authority granted to a school under this clause. For example, conduct such as one incident of talking in class would not likely rise to a substantial inhibition of the education of other students, but persistence of such conduct could potentially rise to such a level. These three sections should grant broad power to schools, while still containing them within the proper guidelines of school discipline.[183]

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179. *See supra* text accompanying notes 93-105.

180. A "safe working environment" is not intended solely to maintain teacher safety, but also to foster a productive learning environment for both teachers and students.

181. 478 U.S. 675, 686 (1986).

182. *See supra* note 79.

183. A proposed amendment would read:

(a) ~~Each student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student. A disruptive student is a person who is subject to compulsory school attendance who exhibits persistent conduct which substantially impedes the ability of other students to learn~~

A recent study by the Department of Education documents some disturbing trends regarding school suspensions.[184] The report shows that Rhode Island schools suspend a disproportionate number of "low-income and/or minority students," mirroring a nationwide trend.[185] One possible solution to this problem is the re-

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~~or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.~~ **The goal of every Rhode Island public school is the creation and maintenance of a safe learning environment for its students and a safe working environment for its employees.**

(b) ~~The school committee, or a school principal as designated by the school committee, may suspend all pupils found guilty of this conduct or of violation of those school regulations which relate to the rights set forth in subsection (a), or where a student represents a threat to those rights of students, teachers or administrators, as described in subsection (a).~~ **To meet this goal, a school may discipline, *including suspension when necessary*, all students who violate school regulations, or for any behavior that substantially inhibits the education of other students, or for any behavior which represents a threat to the safety of any member of the school community. Nothing in this section shall be read as a limitation on the types of student conduct that a school may punish.** Nothing in this section shall relieve the school committee or school principals from following all procedures required by state and federal law regarding discipline of students with disabilities.

(c) A student suspended under this section may appeal the action of the school committee, or a school principal as designee, to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved. **The commissioner of elementary and secondary education may reverse the discipline actions of a school when the allegations of student misconduct are not based in fact, when the school has violated a student's procedural rights, or when the punishment is so clearly excessive that it must be viewed as an abuse of discretion.** Any decision of the commissioner in these matters shall be subject to appeal by the student to the board of regents for elementary and secondary education and any decision of the board of regents may be appealed by the student to the family court for the county in which the school is located as provided in § 42-35-15.

184. RHODE ISLAND RACIAL BIAS AND SCHOOL DISCIPLINE TASK FORCE: REPORT TO COMMISSIONER PETER MCWALTERS 3 (Aug. 28, 2002) [hereinafter SCHOOL DISCIPLINE TASK FORCE]; *see also* Marion Davis, *Education Panel Proposes Curbing Suspensions*, PROVIDENCE J., Sept. 27, 2002, at A1 (reporting the findings of the task force).

185. SCHOOL DISCIPLINE TASK FORCE, *supra* note 184, at 3. For an opposing view on the suspension and expulsion of students, see Cathi M. Kraetzer, *Does the Missouri Schools Act Pass the Test? Expelling Disruptive Students to Keep Missouri's School Safe*, 67 MO. L. REV. 123 (2002); Susan Anderson, *The Safe Schools Act Protects Missouri Students*, 55 J. MO. B. 264 (1999); Stanley Matthew Burgess, *Missouri's Safe School Act: An Attempt to Ensure a Safe Education Opportunity*, 66

duction of the number of suspensions because, "[i]f [students] are to learn respectful and responsible behavior, it will be best for them to be in school."[186] Mindful of the delicate balance between suspension and education, the phrase "a school may discipline, *including suspension when necessary*" recognizes that although suspension is an effective method of discipline, it is not the only method of discipline available to a school. A school also should not have unfettered discretion in suspending students. A provision could be, therefore, added to section (c), such as: "The commissioner of elementary and secondary education may reverse the discipline actions of a school only when the allegations of student misconduct are not based in fact, when the school has violated a student's procedural rights, or when the punishment is so clearly excessive that it must be viewed as an abuse of discretion." This provision prevents a school from actually increasing the number of suspensions by abusing the powers granted in section (b).

B. *Recommendations for Additional Legislation*

The following discussion is not intended to be an all-encompassing list of potential safeguards against school violence, but rather an initial hypothesis in the discourse on safety in Rhode Island public schools. All of these safeguards offer solutions to complex problems. As a practical means to reach the goal of safer schools, they aim to succeed where the right to a safe school currently fails.

UMKC L. REV. 603 (1998) all praising a state statute, passed in the aftermath of the brutal rape and murder of a high school student on school grounds, authorizing the expulsion of students for violent behavior and preventing their transfer to other schools in the state.

186. SCHOOL DISCIPLINE TASK FORCE, *supra* note 184, at 3. In contrast to this assertion, one Rhode Island school system has broadened the authority to suspend or expel students who repeatedly "bully" other students. "Bullying" is defined as "unwelcomed physical contact with the intent to embarrass or demean another student; verbal abuse, including teasing, name-calling and harmful gossip; and emotional abuse, including humiliation, shunning, and exclusion." Amanda Milkovitz, *Anti-Bullying Measure Ok'd for Schools*, PROVIDENCE J., Nov. 13, 2002, at B1; *see also* Carmen M. Snook, Comment, *Oregon's "Bully Bill:" Are We Needlessly Repressing Student Speech in the Name of School Safety*, 38 WILLAMETTE L. REV. 657 (2002) (endorsing an Oregon education statute designed to limit the bully problem in schools while recognizing the potential for "overbroad application to constitutionally protected student speech").

1. *Peer Mediation Boards*

One possible alternative to suspension is a peer mediation board, which is designed to "reduce or eliminate the symptoms that sometimes lead to conflict in a school environment."[187] The mediation board offers a resolution to relatively minor problems such as bullying and harassment.[188] The board is made up of students, who first are nominated by either teachers or other students, then undergo a screening process, and finally receive forty hours of training on anger, conflict, and communication techniques.[189] Student involvement in discipline will empower the student body to believe that they as a group can make their school safer.[190] The development of these peer mediation groups in school systems has led to a "positive calmer climate."[191]

2. *Clarifications of Student Handbooks*

Another possible method of limiting the number of suspensions is the clarification of standards in the student handbook.[192] The installation of civic virtues in America's youth could help to curb student violence.[193] To that end, students must be made aware of their obligations related to the creation of a safe school

187. Lawrence T. Kajas et al., *The Use of the Peer Mediation Program to Address Peer-to-Peer Student Conflict in Schools: A Case Study*, 146 EDUC. L. REP. 605 (2000); *see also* T. Nikki Eckland, *The Safe Schools Act: Legal and ADR Responses to Violence in Schools*, 31 URB. LAW. 309, 320 (1999) (advocating the teaching of dispute resolution tactics to both school personnel and students).

188. Kajas et al., *supra* note 187, at 309 (stating serious disciplinary problems are still handled at the administrative level, but the goal of the mediation board is to offer a solution to small problems before they escalate).

189. *Id.*

190. *Id.*

191. *Id.* at 311. Student operated peer mediation groups must be closely monitored by teachers to ensure students do not exploit their minimal authority. An unsupervised mediation group could evolve into an institutionalized bullying system where a student's social status, rather than his or her conduct, becomes the determining factor.

192. Peter Sansom & Frank Kemerer, *It's All About the Rules*, 166 EDUC. L. REP. 2 (2002) (recognizing clear handbook standards, although important, are not the sole answer in the problem of school violence).

193. Judge George Nicholson, Judicial and Legal Leadership in the New Millenium: Helping to Make Schools Safer, Improve Legal Literacy, and Promote Civic Participation Through Public Education, Testimony Before the Machado School Violence Prevention and Response Task Force, State of California (Dec. 9, 1999) (advocating increased awareness of the social contract theory as a method to combat school violence).

environment.[194] If students are apprised of clearly worded standards that are made known in advance and consistently applied, then the school has set a tone of fundamental fairness for its students to observe, to learn from, and hopefully employ in their lives.[195] Students who believe that a school has been fair to them will in turn conduct themselves in such a way that will promote a safe school environment.

3. *Metal Detectors*

A much more common, and frequently debated, safeguard against school violence has been the installation of metal detectors on school grounds. Metal detectors have been criticized as too expensive and time consuming for schools to employ.[196] A novel innovation on the metal detector debate is schools may conduct searches of students by random sampling.[197] By requiring every fifth student entering school in the morning to pass through the detectors, many of those common concerns are alleviated.[198] Many students claim, however, the metal detectors are easy to circumvent, regardless of how they are employed.[199] Furthermore, the prison-like environment created by metal detectors might actually increase school violence because children, fearful for their lives, may be more likely to try to bring guns to school in self-defense.[200]

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194. Sansom & Kemerer, *supra* note 192, at 2.

195. *Id.* at 2.

196. Wood & Chestnutt, *supra* note 146, at 625. Another technological safeguard employed by many school districts is the installation of surveillance video cameras on school buses. *E.g.*, *Watching More Than the Road*, TIMES-PICAYUNE, Feb. 25, 2003, *available at* 2003 WL 3994598 (reporting the installation of video cameras in Head Start busses in the St. John the Baptist School District in Louisiana); Susan Palmer, *Videotaped Attack in Eugene, Ore., Prompts Claim Against District*, KNIGHT-RIDDER TRIB. BUS. NEWS, Dec. 16, 2002, *available at* 2002 WL 104725168 (reporting the lawsuit stemming from an videotaped attack on a school bus where a student was beaten and kicked by a group of his classmates); Katherine Cromer, *Cameras to Keep Eye on Shelby Students – District Cites Safety Factors in Plan for Five High Schools*, COM. APPEAL, Nov. 26, 2002, *available at* 2002 WL 102832408 (reporting the installation of video surveillance cameras in five high school busses in Tennessee).

197. Wood & Chestnutt, *supra* note 146, at 625.

198. *Id.*

199. Burgess, *supra* note 185, at 606 (claiming students hide weapons near their sexual organs because a standard frisk search at a school avoids such areas).

200. Wood & Chestnutt, *supra* note 146, at 621; *see also* Karen A. Davis, *Being True to His Schools*, PROVIDENCE J., Jan. 31, 2003, at B1 (documenting Providence Mayor David N. Cicilline's aversion to metal detectors in schools).

If metal detectors are to be employed in a school, they must be done while mindful of all potential effects.

4. *Funding*

An inherent challenge to the institution of these programs, and any others designed to create safer schools, is the enormous financial burden placed on a school district. In the wake of the recent increase in school violence, Congress passed the Safe School Act of 1994.[201] This program grants up to $3,000,000 over a two-year period to school agencies demonstrating need.[202] A school's suspension rate and high juvenile violent crime rates as compared to crime rates of the surrounding community indicate a school's need for funding.[203] These funds can be used in a multitude of ways, such as,

> [t]o conduct studies assessing violence, develop strategies to combat violence, train school personnel, conduct community education programs to promote safety and reduce school violence, teach students conflict resolution skills and conduct other violence prevention activities, create "safe zones of passage" through increased law enforcement and neighborhood patrols, educate students and parents on the dangers of guns, counsel victims, purchase metal detectors, hire security personnel and reimburse local law enforcement for participation in activities permitted under the statute.[204]

To receive funding, school agencies must apply to the Secretary of Education, and such applications must include the demonstration of need, the existence of "written policies dealing with school safety and discipline," and an outline of how the money will be allocated to meet the local safety needs of a school.[205] In any effort to make schools safer, Rhode Island schools should take full advantage of this federal program.

5. *A Duty to Warn*

Should Rhode Island courts or the legislature decide to impose a duty on schools to provide safer environments for students, that

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201. 20 U.S.C. §§ 5961-5968 (2000).
202. *Id.* §§ 5962-5963.
203. *Id.*; *see also* Chamberlin, *supra* note 8, at 341; Eckland, *supra* note 187, at 312-13.
204. Chamberlin, *supra* note 8, at 341.
205. 20 U.S.C. § 5964; *see also* Eckland, *supra* note 187, at 313.

duty must be confined to a narrow scope.[206] One such duty of care would be a duty for school personnel "to act affirmatively to protect students" when a member of the school personnel knows of a threat to a student.[207] Analogizing a school's relationship with its students to the relationship between therapist and patient in *Tarasoff v. Regents of the University of California*,[208] this duty offers a meaningful judiciable standard by protecting a "named or readily identifiable potential victim"[209] triggered by notification to school personnel "of the existence of the threat."[210] The element of notice in this duty of care acts to limit its scope to only school personnel who fail to readily act to prevent an identified danger, rather than a broad duty to ensure the safety of all students.[211] In addition to preventing actual violence, the increased attention to all threats of violence should deter students from making violent statements even when they have no intention of acting on those threats.[212] A negligence standard of this sort should create safer environments without placing an overwhelming burden on schools.

This section has sought to demonstrate that the Rhode Island safe school provision, as a hollow aesthetic, should be amended to correct any confusion created by various interpretations of the word "right." In its place, practical safeguards should be employed to meet the end that the "safe school" language purports to create.

CONCLUSION

This Comment has demonstrated that the best approach to creating safer schools does not include the adoption and enforce-

206. The following suggested duty of care differs drastically from the broad general duty to make schools safer that may exist under the safe school provision. Nowhere in its election of the safe school provision did the Rhode Island Legislature suggest that "a right to a safe school" created a negligence standard. Therefore, the Rhode Island Legislature could act to affirmatively recognize this narrow common law duty through statute, but the current safe school provision should not be read to suggest such a duty.

207. Melissa L. Gilbert, Comment, *"Time-Out" for Student Threats?: Imposing a Duty to Protect on School Officials*, 49 UCLA L. REV. 917 (2002).

208. 551 P.2d 334 (Cal. 1976) (holding a hospital owes a duty to a third party when a patient in the hospital's care poses a serious danger of violence to that third party).

209. Gilbert, *supra* note 207, at 933.

210. *Id.*

211. *See id.* at 938-39.

212. *Id.* at 939.

ment of a right to a safe school. Such language was found to be a hollow declaration of a goal rather than an actionable right in California. Despite its dubious status in California, the Rhode Island Legislature made the questionable decision to adopt similar language. Nothing in the Rhode Island safe school provision suggests it will meet a different fate if left in its current form. Ironically, the implementation of this right may actually create schools that are less safe through the combination of transferring the victims of violent incidents to new schools while retaining the perpetrators, coupled with the false sense of security fostered in the public at large. For these reasons, Rhode Island's safe school provision should be amended.

The goal of the safe school provision, ultimately, is the creation of safe schools. Under the self-execution analysis, the *right* to a safe school is determined to be unenforceable. School safety is, therefore, the ultimate *goal* for Rhode Island public schools. Now that the goal has been clearly identified, the Rhode Island Legislature must create the means by which Rhode Island public schools will meet that goal. Practical safeguards against student violence, not non-self-executing rights, create safer schools.

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