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## Personal Protective Orders (PPOs) Enter the Schoolhouse Gate

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*PGH&G*

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# Personal Protective Orders (PPOs)<sup>1</sup> Enter the Schoolhouse Gate

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*"This is your secret admirer. All the kids from yesterday and today better not get in trouble and go to the office. 'Cause if they do go to the office, the kids or anybody, your husband is gonna be dead meat and I swear to God this is true. I'll give you a clue, I'm in your second hour. I know your husband. He will not live very long if you do not do what I say. Thank you for your attention."*<sup>2</sup>

## I. INTRODUCTION

Over thirty years ago, the United States Supreme Court uttered the now famous words "that [n]either students or teachers shed their constitutional rights . . . at the schoolhouse gate."<sup>3</sup> Since that time, countless laws and court decisions have entered the hallowed hallways, creating a plethora of potential liabilities, legal rights, and management responsibilities for school officials. One of the more recent

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\* Hastings College, B.A., 1973; University of Nebraska College of Law, J.D., 1976. His works include *Arbitration of Professional Athletes Contracts: An Effective System of Dispute Resolution in Professional Sports*, 55 NEB. L. REV. 362 (1976); and *Fax Machines & Schools: Legal Ramifications & Practical Suggestions*, NAT'L COUNCIL OF SCH. ATTORNEYS, Nov. 1992. His practice centers on education and school law; Director, Nat'l School Board Council of School Attorneys 1994-98. The author would like to thank his family and Professor John Gradwohl for his mentorship.

1. PPOs are restraining orders. They exist in almost all states, and emanate from statutes prohibiting "harassment," "domestic-abuse," or "stalking." See, e.g., NEB. REV. STAT. § 42-924 (Reissue 1998); NEB. REV. STAT. § 28-311.09 (Cum. Supp. 1998).
2. *Spielman v. Hayes*, 3 P.3d 711, 712-13 (Okla. Ct. App. 2000).
3. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

legal issues to muddle the principal's desk is responding to various types of protective restraining orders.<sup>4</sup> These orders, referred to by many as Personal Protection Orders or "PPOs," are issued to victims of abuse, harassment or threatening conduct, and typically restrict contact or communication between two individuals. Presently, PPOs can be obtained with relative ease and in many cases are issued *ex parte*. There are many official court web sites explaining everything you need to know about PPOs, with some even suggesting that "[t]he law has been designed so you can get [a protective order] without a lawyer by filing the forms yourself."<sup>5</sup> In the school setting, PPOs may be issued between co-workers, classmates, parents, board members or visitors. In fact, they have become so popular that even school districts as entities consider them an option for handling unruly conduct.<sup>6</sup>

The student's message that begins this article is illustrative of PPOs at school. It was left on a teacher's voice mail at school causing her substantial emotional distress. As a result, she petitioned the court and obtained a PPO ensuring that the harassing student "stay away from . . . [her] at all times."<sup>7</sup> The school's response was to immediately expel the student, eliminating any chance of contact at school. In many states, however, expulsion or reassigning the student to another class may not be a response option, if the conduct occurs off school grounds.<sup>8</sup> In smaller districts, even when the conduct occurs on school grounds, reassignment may not be an option, because there

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4. See Anand Vaishnav & Doreen Iudica Vigue, *Restraining Orders Illustrate Greater Focus on School Safety*, BOSTON GLOBE, May 15, 2000, at B1 (stating "the idea of students obtaining restraining orders against classmates – and the challenge school administrators face in enforcing them – raises new questions. . . .") [hereinafter *Restraining Orders*]; *Difficult Parents – Take Six Steps to Deal with Parent's Restraining Order*, SCHOOL POL'Y LEGAL INSIDER, July 1998, at 7.
  5. *Ramsey County Courts – Domestic [sic] Abuse Court: On Harassment Restraining (HRO)* (visited Oct. 13, 2000) <[http://www.courts.state.mn.us/districts/second/ramsey\\_hro.htm](http://www.courts.state.mn.us/districts/second/ramsey_hro.htm)>; see also *King County District Court: Anti-Harassment* (visited Oct. 13, 2000) <<http://www.metrokc.gov/kcdc/ahinfo.htm>>; *Fourth Judicial District Court: Harassment Restraining Order* (visited Oct. 13, 2000) <<http://www.co.hennepin.mn.us/courts/family/da/daharass.htm>>.
  6. See, e.g., Lathrop & Clark, *Harassment Injunctions*, WIS. SCH. NEWS, April 1998, at 27 (suggesting schools themselves consider securing protective orders to deal with unruly students, parents, or visitors); *Village of Tigerton v. Minniecheske*, 565 N.W.2d 586, 588-89 (Wis. Ct. App. 1997) (stating that reference to "persons" in harassment injunction law includes municipalities within its scope).
  7. *Spielman*, 3 P.3d at 713.
  8. See, e.g., NEB. REV. STAT. § 79-267 (Reissue 1996) (allowing discipline by long-term suspension, expulsion, or mandatory reassignment only when the conduct "occurs on school grounds . . . or at a school-sponsored activity or athletic event. . . ."). For limitations on discipline or reassignment of employees, see NEB. REV. STAT. §§ 79-824-79-842 (Reissue 1996). See also M. Chester Nolte, Ed.D., *Establishing The Nexus: A School Board Primer*, 38 EDUC. L. REP. 1 (1987).

may be only one building or class. In addition, it is likely the PPO may last longer than the school's maximum permissible disciplinary sanction.<sup>9</sup> In these latter circumstances, schools face the ultimate challenge of how to properly respond when presented with PPOs, because some contact in school hallways, restrooms, lunchrooms, playgrounds, or assemblies is inevitable. This article will examine the growing problem of dealing with PPOs in the public school context.

## II. THE PPO PHENOMENON

Beginning in the early 1990s, triggered by a number of school-associated deaths and other serious crimes at school, much focus turned to issues involving school violence and classroom safety.<sup>10</sup> For example, Congress passed the Gun-Free Schools Act of 1994<sup>11</sup> and the Safe and Drug-Free Schools and Communities Act of 1994.<sup>12</sup> By the year 2000, almost every state had enacted new legislation to address some aspect of school safety.<sup>13</sup> The Nebraska Department of Education now devotes an entire section of its internet web page to Safe and Drug-Free Schools,<sup>14</sup> and that web page has links to Nebraska's school accreditation regulations, which require all school systems to adopt safety and security plans and procedures.<sup>15</sup>

Despite a decade of regulatory activity and the many pronouncements that schools remain safe places, concern for personal safety lingers.<sup>16</sup> This continued anxiety is undoubtedly one factor fueling the

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9. The protection order in *Spielman* was "continuous until modified or rescinded." 3 P.3d at 714. See also NEB. REV. STAT. § 42-924(3) (Reissue 1998)(stating that domestic orders are effective "for a period of one year . . . unless otherwise modified by the court"); NEB. REV. STAT. § 28-311.09(4) (Cum. Supp. 1998)(limiting duration of harassment orders to "a period of one year unless otherwise modified by the court"); NEB. REV. STAT. § 79-283(2) (Reissue 1996)(limiting expulsions to "the remainder of the semester").
  10. See generally Richard A. Schwartz, *Balancing Student Safety and Students' Rights*, 2000 SCH. L. IN REV. 1-1. Violence and safety issues are societal and certainly not limited to youth or school systems. See *id.*
  11. 20 U.S.C. §§ 8921-8923 (1994).
  12. 20 U.S.C. §§ 7107-7104, 7111-7118, 7131-7133, 7141-7143 (1994).
  13. See U.S. DEP'T OF EDUC., REPORT OF STATE IMPLEMENTATION OF THE GUN-FREE SCHOOLS ACT: SCHOOL YEAR 1997-8 (1999); OFF. OF JUV. JUST. AND DELINQ. PREVENTION, U.S. DEP'T OF JUST., 1999 NAT'L REPORT (1999).
  14. Nebraska Department of Education (visited Oct. 13, 2000) <<http://www.nde.state.ne.us>>.
  15. See NEB. ADMIN. R. & REGS. tit. 92, chap. 10 § 004.01B2 (requiring each school system to have a "safety and security plan" approved by the board); § 004.01B3 (mandating a "safety and security committee" to include faculty, parents, and so on); § 004.01B4 (requiring the plan to be reviewed annually by persons who are not school employees or members of the committee).
  16. See U.S. DEP'T OF EDUC., 1999 ANNUAL REPORT ON SCHOOL SAFETY (1999); *Restraining Orders*, *supra* note 4, at B1 ("[t]he family felt compelled to ask [the court] for a restraining order [against her classmate] because the school hadn't

PPO phenomenon. Another is reflected by victim perceptions. A recent U.S. Department of Justice study “reports that victims perceive protection orders as effective tools to stop or reduce domestic violence or stalking. . . .”<sup>17</sup> In addition, many professionals are suggesting PPOs as a viable response to harassing behavior. For example, the Washington Education Association advises its members that an option “to counteract student violence against school employees is to file an anti-harassment injunction keeping the student (or parent who is harassing an employee) from any contact with the employee.”<sup>18</sup>

These factors, along with liberal changes in statutory requirements, have prompted more teachers, students and parents to seek PPOs as a personal security measure or self-help safety remedy. In fact, some authors feel many state PPO laws have gone too far, claiming they were “intended to serve as a shield for victims, [but] are being misused as a sword by overzealous courts and unscrupulous pseudo-victims.”<sup>19</sup> Others argue these new state restraining-order laws violate civil rights.<sup>20</sup>

### III. PPO LAWS

As background, PPOs are analogous to injunctions. They are transitory, in that when one expires there is no prohibition against refileing for another.<sup>21</sup> They undoubtedly had their genesis in the “peace bond” or what some called “peace warrant” law and are grounded in the public policy notion that “preventive justice is preferable to punitive justice.”<sup>22</sup> At common law, a person in fear of harm or injury to person or property could petition courts of competent jurisdiction and require another to post a peace bond, typically conditioned that such person

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done enough to ensure the girl’s safety”); see also Mary Ellen O’Toole, Ph.D, *The School Shooter: A THREAT ASSESSMENT PERSPECTIVE* (visited Nov. 14, 2000) <<http://www.fbi.gov/library/school/school2.pdf>>.

17. Office of Justice Programs News, U.S. Dep’t of Justice, *1.4 Million Stalking Victims Annually; Justice Department Reports Latest Findings Regarding Stalking* (visited Nov. 14, 2000) <<http://www.usdoj.gov/vawo/press/vawnov1397.htm>>.
18. Washington Education Association Online, *Introduction: Violence in Our Schools* (visited Nov. 14, 2000) <<http://www.wa.nea.org/publicat/Legal/prvntsv2.htm>>.
19. Cathy Young, *Protection Orders May Go Too Far, Violate Civil Rights* (visited Nov. 14, 2000) <<http://detnews.com/editpage/9909/29/young/htm>>.
20. See Callie Anderson Marks, Note, *The Kansas Stalking Law: A “Credible Threat” to Victims. A Critique of the Kansas Stalking Law and Proposed Legislation*, 36 WASHBURN L.J. 468 (1997).
21. See *Lockenour v. Sculley*, 8 Neb. App. 254, 255-57, 592 N.W.2d 161, 162-63 (1999).
22. EDWARD COLE FISHER, *PRACTICE AND PROCEDURE IN COURTS OF LIMITED JURISDICTION IN NEBRASKA* 972 (Vol. II 1950).

would keep the peace and be of good behavior toward the person complaining.<sup>23</sup>

In Nebraska, the "Protection from Domestic Abuse Act" provides a domestic protection order.<sup>24</sup> In 1998, the Nebraska legislature joined many other states and enacted a statute creating the "harassment protection order."<sup>25</sup> That statute, in pertinent part, provides:

Any victim who has been harassed as defined by section 28-311.02<sup>26</sup> may file a petition and affidavit for a harassment protection order. . . . Upon the filing of such a petition and affidavit in support thereof, the judge or court may issue a harassment protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. . . .<sup>27</sup>

The Nebraska Supreme Court Administrator has adopted standard forms and orders to implement these laws.<sup>28</sup> PPOs may be issued ex parte and can last for up to one year. Violating a PPO is cause for arrest and a Class II misdemeanor.<sup>29</sup>

#### IV. SPEILMAN AND ITS KINDRED

To date, few appellate decisions can be found outlining school responsibilities when presented with PPOs. They do, however, identify the many circumstances in which schools might be forced to deal with protective order matters. The most common of these circumstances is PPO's between divorced or separated parents. In *Mak v. Mak*,<sup>30</sup> for

23. See *id*; see generally BLACK'S LAW DICTIONARY 1223 (6<sup>th</sup> ed. 1990)(defining protection order as an "[o]rder issued by court in domestic violence or abuse cases to, for example, protect spouse from physical harm by other spouse or child from abuse by parent(s). Such order may be granted immediately by court in cases where immediate and present danger of violence or abuse is shown. Such emergency orders are granted in ex parte type proceeding and are temporary in duration pending full hearing by court with all involved parties present.").

24. NEB. REV. STAT. § 42-924 (Reissue 1998).

25. NEB. REV. STAT. § 28-311.09 (Cum. Supp. 1998).

26. The word "harass" is broadly defined to include a "course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose." NEB. REV. STAT. § 28-311.02 (Cum. Supp. 1998). A "course of conduct" includes "a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning, contacting, or otherwise communicating with the person." *Id.*

27. See also NEB. REV. STAT. § 42-924 (Reissue 1998)(outlining similar procedure for the issuance of protection orders).

28. See NEB. REV. STAT. § 42-924.02 (Reissue 1998); NEB. REV. STAT. § 28-311.09(6) (Cum. Supp. 1998).

29. See NEB. REV. STAT. §§ 42-924, 42-928 (Reissue 1998); NEB. REV. STAT. § 28-311.09(4) and (9) (Cum. Supp. 1998); NEB. REV. STAT. § 28-106 (Cum. Supp. 1998)(stating that a Class II misdemeanor is punishable by a maximum of six months imprisonment, a one thousand dollar fine, or both).

30. 1999 WL 1052027, at \*1 (Neb. Ct. App., Apr. 4, 1999).

example, the mother obtained a protection order against the father. School officials were called upon to referee when "during the time the protection order applied, [the father] pulled the boys out of school early on a day [the mother] was to pick them up for visitation," and "[d]uring the same time period, he also met the boys after school and took them home, despite the fact that [the mother] was waiting to pick them up for visitation."<sup>31</sup>

*Speilman v. Hayes* involved a teacher and a student.<sup>32</sup> Another case, *Baker v. Mason*,<sup>33</sup> involved a secretary and a student. In *Baker*, a student at the University of Oklahoma became agitated on more than one occasion for not gaining access to air his complaints with the president.<sup>34</sup> A secretary in the office of the O.U. president, alleging annoyance, alarm and emotional distress, obtained "a protective order prohibiting [the student] from contacting [her] at her place of employment . . . and restricting [the student's] contact to O.U.'s legal counsel's office. . . ."<sup>35</sup>

A third Oklahoma case involved a teacher and board member or co-worker. In *Watts v. Hensley*,<sup>36</sup> a teacher sought protection against a school board member who angrily confronted the teacher in the gymnasium office after he found his daughter crying. The superintendent was summoned to intervene.<sup>37</sup> The board member "pointed his finger at [the superintendent] and yelled."<sup>38</sup> After the incident, the teacher attended a board meeting and asked the board member to resign.<sup>39</sup> When he did not, she filed for a protective order.<sup>40</sup> In granting the protective order, the trial court ordered the board member to "remain away from [the teacher] wherever she may be at any time."<sup>41</sup> It is interesting to note that the board member was also ordered to complete an "anger management course and to enroll in the Oklahoma State School Board Association's new school board member course."<sup>42</sup>

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31. *Id.* at \*6 (holding that full custody should be awarded to the mother, because the father's conduct is inflexible and not in the best interests of the boys).

32. *See Spielman*, 3 P.3d 711 (Okla. Ct. App. 1999).

33. 958 P.2d 808 (Okla. Ct. App. 1998).

34. *See id.*

35. *Id.* at 809. The court upheld the issuance of the order. *Id.* at 810.

36. 4 P.3d 45 (Okla. Ct. App. 1999).

37. *See id.* at 46.

38. *Id.*

39. *See id.*

40. *See id.*

41. *Id.*

42. *Id.* In reversing the trial court's decision, the appellate court reviewed the statutory requirement regarding a "course or pattern of conduct" and found a failure of proof noting the incident in the gymnasium "was a single event." *Id.* at 46-47. In light of the reversal, it was also decided to leave the anger management and new board member course issues to another day. *Id.*; *see also* NEB. REV. STAT. § 42-924(1)(g) (Reissue 1998)(allowing the court in domestic protection order cases to

The newest and perhaps most troublesome circumstance is PPOs between classmates. In *Lockenour v. Sculley*,<sup>43</sup> the Nebraska Court of Appeals reviewed a protective order between two students, stating:

On April 29, 1998, Connie Lockenhour filed an application and affidavit for a protection order . . . on behalf of her 13-year old son, Andrew Dorothy. The application was filed against a classmate of Andrew's at Lexington Junior High School, Joe Sculley. . . .

Lockenhour alleged that on April 28, 1998, Sculley harassed and bullied Andrew by kicking, hitting, and punching him. She also stated that Sculley threatened Andrew by sticking a pen in his face. Lockenhour further alleged that on April 9 or 10, Sculley threatened Andrew with "greater physical harm. . . ."

On May 1st, 1998, the district court issued an ex parte protection order against Sculley pursuant to Neb. Rev. Stat. § 42-924 (Reissue 1993), which was to remain in effect for a period of 1 year from the date of the order.<sup>44</sup>

It is worth noting here that the *Lockenour* Court addressed the "minority status" of the harassing student and the necessary procedures to be followed against any minor, holding:

Although we reverse on the basis that there was no verbatim record, we briefly touch upon Sculley's argument that the district court erred in entering a protection order against a minor without appointing a guardian for the suit. Sculley cites to Neb.Rev.Stat. § 25-309 (Reissue 1995), which states in part: "Except as provided by the Nebraska Probate Code, the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a county judge." See *Peterson v. Skiles*, 173 Neb. 470, 113 N.W.2d 628 (1962). See, also, *Omey v. Stauffer*, 174 Neb. 247, 117 N.W.2d 481 (1962)(holding that guardian ad litem for minor defendant in personal injury action is entitled to allowance of reasonable compensation for services to be taxed as costs). Thus, Sculley's point that the district court should have appointed a guardian is well taken.<sup>45</sup>

While these cases serve to illustrate the PPO dilemma public schools face, they do little to provide substantive guidance on important legal questions such as: Why be concerned? Do schools have a duty to protect? Do schools have a duty to respond and enforce protection orders?

## V. REASONABLE STEPS TO PROTECT

At first blush, it might seem that schools have no responsibility for enforcing PPOs. After all, it is likely the district was not a party to the initial proceeding, and general rules would suggest a judgment or decree against a specific person for injunctive relief is usually considered

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grant "such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member").

43. 8 Neb. App. 254, 592 N.W.2d 161 (1999).

44. *Id.* at 255-56, 592 N.W.2d at 162-63.

45. *Id.* at 259-60, 592 N.W.2d at 165.

"in personam" or binding only the persons who are parties to the injunction action.<sup>46</sup>

A nonparty argument, however, would not seem prudent as courts under many circumstances have also held that an injunction may bind nonparties who are in privity or who have notice or knowledge of the decree.<sup>47</sup> For example, in *In re Contempt of Liles*,<sup>48</sup> the Nebraska Supreme Court examined the legal status of nonparties to injunctions stating: "It is clear, and has long been the rule, that one who is in privity with an enjoined party and also has knowledge of the injunction, or one who aids and abets the violation of the injunction, is subject to the contempt powers of the court."<sup>49</sup>

Accenting the concepts of privity and notice in the PPO context is the unique function of public schools as acting *in loco parentis*. A person standing *in loco parentis* is one who has put himself/herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formalities necessary to a legal adoption, and the rights, duties, and liabilities of such person are the same as those of a lawful parent.<sup>50</sup> In *Vermillion v. State*,<sup>51</sup> the Nebraska Supreme Court held that while at school:

[The principal and teacher have] authority as *in loco parentis*, to enforce obedience to [their] lawful commands; subordination, civil deportment, respect for the rights of other pupils, and all obligations inherent in every school system constituting the common law of the school which every pupil is presumed to know.<sup>52</sup>

These factors would seem to weigh in favor of schools having some duty or responsibility in protection order cases, even though they were not parties to the original proceedings.

In addition, premises liability theories must also be considered. In *Tarnaras v. Farmingdale School District*,<sup>53</sup> a female high school student sued the school district, seeking to recover for personal injuries on the specific theory that the district failed to enforce a protection order. The Nassau County District Court had issued a protection order directing the student's estranged boyfriend to stay away from the

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46. See *State ex rel. Long v. Westover*, 107 Neb. 593, 186 N.W. 998 (1922)(holding that injunction is action *in personam* requiring jurisdiction of the person, either by proper service or appearance); *Boyd v. State*, 19 Neb. 128, 26 N.W. 925 (1886) (stating that injunctions are personal to the party against whom directed).

47. See *State ex rel. Beck v. Lush*, 170 Neb. 376, 103 N.W.2d 136 (1960); 42 AM. JUR.2D *Injunctions* §§ 298-300 (2000).

48. 217 Neb. 414, 349 N.W.2d 377 (1984).

49. *Id.* at 416, 349 N.W.2d at 378.

50. See *In re Estate of Kite*, 260 Neb. 135, 615 N.W.2d 481 (2000); *Weinand v. Weinand*, 260 Neb. 146, 616 N.W.2d 1 (2000); *Austin v. Austin*, 147 Neb. 109, 22 N.W.2d 560 (1946).

51. 78 Neb 107, 110 N.W. 736 (1907).

52. *Id.* at 111, 110 N.W. 737 (quoting *State v. Burton*, 45 Wis. 250 (1878)).

53. 264 A.2d 391, 694 N.Y.S.2d 413 (1999).

Tarnaras family.<sup>54</sup> Despite the order, the boyfriend stalked and harassed her at school and other locations in violation of the order.<sup>55</sup> Approximately one month after the order was issued, she was brutally attacked inside her home after being let out of school.<sup>56</sup>

The *Tarnaras* court held that an action for negligence would not lie against the school district under the circumstances, because the assault was perpetrated in the student's home after conclusion of the school day and because the district's physical custody and control of the student and its concomitant duty of care extended only to the boundaries of school property.<sup>57</sup> The court did note, however, that while not an insurer of the safety of its students, "[u]nder appropriate circumstances a school may be held liable for injuries to students or teachers under a theory of premises liability. . . ."<sup>58</sup> This cautionary message was tied to the concept of a school's negligent supervision of its premises and its physical custody and control over a child, for "[w]hen that custody ceases because the child has passed out of the orbit of its authority in such a way that the parent is perfectly free to reassume control over the child's protection, the school's custodial duty also ceases."<sup>59</sup>

Likewise, *Johnson v. New York City Board of Education*<sup>60</sup> involved a school administrator's suit to recover for personal injury. One theory of liability was the school's disregard of a protective order against a student's father.<sup>61</sup> The administrator obtained a PPO against the parent following an assault at school on January 27, 1995.<sup>62</sup> The evidence established that the school and various school officials were alerted to the existence of the order.<sup>63</sup> On March 3, 1995, the parent came to school and picked up his son, who had been injured in his physical education class.<sup>64</sup> The administrator did not see the parent on March 3rd and did not even learn he was on school property until March 6th – three days later.<sup>65</sup>

The administrator in *Johnson* argued that the discovery of the parent in school in violation of the PPO caused her to suffer post-trau-

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54. *See id.*

55. *See id.*

56. *See id.*

57. *See id.* at 392, 694 N.Y.S.2d at 414.

58. *Id.*

59. *Id.*

60. 676 N.Y.S.2d 444 (1998).

61. *See id.* at 445.

62. *See id.*

63. *See id.* at 447.

64. *See id.* at 447-48.

65. *See id.* at 448.

matic stress syndrome, making the school liable.<sup>66</sup> Under these circumstances, the court held:

While defendants may have breached a duty owed to plaintiff, there is no evidence that such breach endangered plaintiff's physical safety or caused her to fear for her safety. Indeed, plaintiff did not see [the parent] . . . and did not even learn that [the parent] was on school property until . . . three days after the incident. [The parent] arrived at the school to pick up his son, and there is absolutely no evidence that he intended to harm plaintiff. Plaintiff has failed to demonstrate that she was exposed to an unreasonable risk of harm, such that would support a finding of negligent infliction of emotional distress.<sup>67</sup>

Recently, the Nebraska Supreme Court considered a premises liability theory in *Sharkey v. Board of Regents*.<sup>68</sup> *Sharkey* did not involve a PPO. It did involve an assault and stabbing incident between two students.<sup>69</sup> In reversing and remanding for a new trial on the issue of liability, the court held that as a matter of law the University "owes a landowner-invitee duty to its students to take *reasonable steps to protect* against foreseeable acts of violence on its campus and the harm that naturally flows therefrom."<sup>70</sup> On the question of foreseeability, the court stated:

It is reasonably foreseeable that such harassment could escalate into violence when the harasser is confronted, even though Clark [the aggressor] had not displayed prior violent tendencies. We stated in *Gans v. Parkview Plaza Partnership*, 253 Neb. 373, 384, 571 N.W.2d 261, 269 (1997), . . . "[T]he law does not require precision in foreseeing the exact hazard or consequence which happens; it is sufficient if what occurs is one of the kinds of consequences which might reasonably be foreseen." Given Clark's persistent pattern of harassment, an escalation into violence is clearly one of the consequences, which may reasonably be foreseen from such behavior.<sup>71</sup>

The *Sharkey* court clearly held, at least in the University context, that schools owe a landowner-invitee duty to students and presumably other invitees, which requires them to take "reasonable steps to protect" as a matter of law.<sup>72</sup> The court's concomitant foreseeability analysis leaves little doubt that if schools have notice of PPOs and fail to respond, even though not parties to the earlier proceeding, liability may follow.<sup>73</sup>

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66. *See id.*

67. *Id.*

68. 260 Neb. 166, 615 N.W.2d 889 (2000).

69. *See id.*

70. *Id.* at 182, 615 N.W.2d at 902 (emphasis added).

71. *Id.* at 181, 615 N.W.2d at 901.

72. *Id.* at 182, 615 N.W.2d at 902; *see also* *Doe v. Gunny's Limited Partnership*, 256 Neb. 653, 659, 593 N.W.2d 284, 290 (1999)(landowner under duty to take precautions to protect against harm, and "to provide a reasonably sufficient number of servants to afford a reasonable protection").

73. *Sharkey* would seem to extend the duty to employees or coworkers as well. *See generally* Linda A. Sharp, Annotation, *Employer's Liability to Employee or Agent for Injury or Death Resulting from Assault or Criminal Attack by Third Person*,

## VI. CONCLUSION

When presented with PPOs, it is clear that schools must be more than spectators or passive referees. Even though not parties to the original PPO proceeding, courts will likely impose an affirmative duty on schools to take "reasonable steps to protect" the victim. When considering the reasonableness of steps taken, it must be remembered that existing circumstances and law confine schools. Despite PPOs, compulsory education laws require the provision of services.<sup>74</sup> In many schools, there is no place to reassign the employee or student, thereby making contact inevitable. If the conduct occurred off school grounds, there may be no required nexus for removal or other disciplinary action. Due to levy lids and spending limitations, school resources for programs, personnel and other security measures are greatly restricted.<sup>75</sup>

Nonetheless, PPOs will enter the schoolhouse gate, and school officials must be prepared to respond. What steps are reasonable will be decided case by case. The following steps<sup>76</sup> are offered as guidelines for assisting schools in ensuring the measures they take meet this reasonableness standard. They are by no means all inclusive nor will some be appropriate for all circumstances.

*Get copy of the order.* If anyone states they have a PPO, the principal should ask to see it. A photocopy should be made and kept in the appropriate school file. It can be referred to by staff or shown to the police if needed.

*Verify order.* Make sure the PPO is genuine. The order should be signed and dated by a judge. Call the issuing court and give the court clerk the case number listed. Confirm the name of the case, the expiration date, and the names of the victim and perpetrator. Or send a copy to the school attorney to confirm its validity and to get advice on what it means.

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40 A.L.R. 5TH 1 (1996)(discussing an employer's potential duty to protect employees).

74. See NEB. REV. STAT. §§ 79-201-210 (Reissue 1996).

75. See NEB. REV. STAT. §§ 77-3442-3445 (Reissue 1996); NEB. REV. STAT. §§ 79-1029-1033 (Reissue 1996).

76. Adapted from *Difficult Parents - Take Six Steps to Deal with Parent's Restraining Order*, *supra* note 4, at 7.

- Photo and description.* Depending on the case, ask for a photograph and detailed description of the harasser, and distribute it as appropriate to school personnel.
- Alert school employees.* Notify all school building staff and any security personnel of the PPO. Provide details and an explanation of its meaning.
- Emergency protocols.* Establish with school security personnel and local law enforcement emergency procedures and protocols. A close working relationship with local law enforcement is imperative.
- Intervention.* Consider intervening in the PPO proceedings for specific court guidance or direction on how to respond or accommodate the order at school. In proper cases, courts might consider including an incidental contact exception.

In today's violent and litigious society, PPOs in schools are no longer atypical, and many educators may find themselves in the middle of personal altercations between employees, students, parents and others wondering how to respond. It can be said with certainty that the school scene is now different and far more complex when it comes to personal security issues. Against this backdrop, the courts, attorneys, and educators must become enlightened about the PPO phenomenon and the problems it presents in the public school setting and gain a thorough understanding of the practical, educational, and legal sides of the issue.