

Invasion of the drones! Regulating UAV use at school

On Board Online • December 14, 2015

By the New York State Association of School Attorneys

At least 650 times this year, pilots and citizens have reported sighting unmanned aerial vehicles (UAVs), a.k.a. drones, flying dangerously close to aircraft, airports, military facilities, buildings and public events (such as a New York Mets game), according to the Federal Aviation Administration (FAA). That number is almost certain to rise, as an estimated one million or more drones will be available for purchase this holiday season for prices as low as \$59.98.

With the dramatic increase in drones flying our skies, concerns have arisen regarding the safety of individuals on the ground. For instance, in early October a drone crashed and burst into flames on Main Street in the Suffolk County community of Sag Harbor. An 11-year-old was struck by the propeller of the drone but, fortunately, was not seriously injured. Additionally, attendees at the U.S. Open escaped injury when a drone crashed into empty seats during tournament play. A Brooklyn teacher who had been practicing using the drone and, according to his attorney, had planned to use it in his science technology classes was sentenced to five days of community service.

School officials may have many concerns when it comes to drones hovering over school property and at school events. But the authority of school boards to regulate drones in flight is unclear. This article seeks to address the uncertainty in the law regarding UAVs, as well as possible options for school districts to address their use.

Who should regulate drones?

Many state and local government officials contend that existing federal oversight on drone use is not strong enough. The only action the FAA has taken regarding recreational drone use has come in the form of safety guidelines. The guidelines provide that a hobbyist may only operate UAVs (1) in daylight; (2) below 400 feet; (3) avoiding people, stadiums, and "no fly" zones; and (4) at least five miles from airports.

One unresolved issue involves whether state and local governments can regulate drones. The FAA maintains that it is the sole regulator of airspace and that state and local authorities lack the power to enact any regulations regarding drone use.

Nevertheless, 12 states have enacted UAV legislation, and multiple bills have been introduced at the state level in New York seeking to regulate drone use in some way. The "Empire State Citizens' Protection From Unwarranted Surveillance Act," sponsored by Sen. Carl Marcellino (R-Oyster Bay) is among several bills that address privacy issues. Another bill would prohibit the use of a drone for the hunting or taking of wildlife in New York State.

The FAA's asserted preemptive authority could be vulnerable to a challenge by state and local authorities. A U.S. Supreme Court case, *U.S. v. Causby*, has been cited in this regard. In *Causby*, the U.S. government maintained a military base close to a chicken farm. Low-flying military aircraft passed over the farm constantly, alarming the chickens and prompting them to fly into walls and die. The farmer brought an action against the government alleging an improper taking of property. The Supreme Court recognized that although buildings and plants were not erected on the property, a "landowner [still] owns at least as much of the space above the ground as he can occupy in connection with the land." The decision has been interpreted as raising a question on where "navigable airspace" begins and what airspace is controlled by a given property owner.

However, the FAA negates this ruling by arguing that the pervasive use of UAVs extends the definition of "navigable airspace" to the ground. Furthermore, the FAA asserts that noise and nuisance laws are meant to protect individuals from drones that enter their private property.

School district options

Despite the uncertainty in the law, school districts that are concerned about drone use have some options to consider. For instance, the New York State Parks and Recreation Department has issued one such policy. In order to operate a drone in a state park, recreational users must acquire a permit. However, the permit only allows the user to fly the drone in a designated area within the park. This ensures that every drone is accounted for and they are not operated in an area that would be likely to cause harm to others. However, emulating that approach may place a district in the position of having to determine which drones may or may not be issued a permit, which could leave the district vulnerable to legal action.

Another option is for districts to indirectly regulate drones by enforcing existing policies, such as a district's facility use policy and/or code of conduct, that are designed to ensure the safety and privacy of students. For instance, school policies and state laws prohibit students from bullying or harassing each other; the same student rights conceivably could be relevant in an instance of a drone being used to spy or eavesdrop on a student, on campus or possibly even off campus. Disciplining a student for violating the code of conduct by using a drone could avoid a claim the district encroached on the FAA's authority by regulating aircraft or airspace.

On the other hand, districts may also consider relying on *Causby* and eliminating drone use on school property altogether. However, absent new state legislation or relevant case law it is uncertain whether such a policy would withstand judicial scrutiny.

Before enacting a policy that attempts to limit drone use, school districts should also consider ways in which the district may benefit from drone use. For example, security personnel may use drones as a way to effectively monitor school property, which may be a more cost effective option than installing extra cameras throughout school property. A school district contemplating such a use should consult legal counsel to ensure it does not compromise individuals' privacy rights.

Also, a drone can be used as a tool to survey the property and inspect buildings. Districts may also wish to employ drones for educational purposes. In that regard, districts may wish to take an inventory of any drones that may already be used within the district.

Districts should also consult with their insurance carriers to determine what types of insurance should be requested of potential drone users from the community and/or insurance for staff who may wish to use drones for educational reasons.

As with many school decisions, districts may also wish to reach out to their communities to gauge how the community feels about the use of drones and the level of existing drone use in the community.

Drones are an example of the need for school boards to examine their policies routinely to keep up with changes in law, regulation and technology. The U.S. Department of Transportation announced in October that it will form a task force to create a registration process for all drones, and more developments are expected. With the recreational use of drones increasing by the day, this is an issue that will only continue to take flight.

Members of the New York State Association of School Attorneys represent school boards and school districts. This article was written by Laura J. Granelli of Jaspán Schlesinger LLP with the assistance of law clerk Edward Grimmett.

[Send Page to a Friend](#)

[Show Other Stories](#)