

Legal Firearms in Schools

An analysis of the appropriateness and legality of several proposals

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School districts and legislatures have recently been considering proposals to introduce firearms into schools for the explicit purpose of increasing safety and security. Some of these proposals are attempts to resolve major persistent safety and security issues while others are reactions to recent events, not necessarily within the district. For the purpose of this analysis, these proposals are grouped into three categories, as follows:

- state law or board policy would permit the carrying of firearms by personnel who hold concealed weapons permits and may be required to undergo prescribed additional training,
- the district would train, or facilitate the training of, teachers or security personnel in the safe use of firearms and would arm them,
- or the district would hire, train, or otherwise acquire sworn officers who would be armed while on duty in schools.

Each category is examined in terms of how well proposals within it would address the following issues:

- the statutory and constitutional legality of proposed policies, regulations, or laws,
- the origin of any authority that armed personnel would have to use force and any conditions,
- the potential exposure of the district to liability for injuries or other claims,
- and the expenses involved and the parties that would bear them.

The appropriateness of adopting a policy from any of the above categories is also examined in terms of predicted effectiveness at increasing school safety and security. Most proposals are initiated by the affected district, or have the Board's explicit support. In an appendix, proposals which do not have the Board's support are examined.

### Passive Allowance<sup>1</sup>

In 2007, state senator Bob Beers of Las Vegas proposed that teachers be allowed to carry concealed weapons on campus with 40 hours of training (Richmond 2007). Although the proposal was intended to apply to college campuses, and died in committee, it is representative of attempts to explicitly extend to the school building the rights of individual personnel to carry firearms. Another bill proposed in 2007 is sponsored by state representative Jeff Duncan of South Carolina. The bill would allow anyone with a permit to carry a concealed weapon to do so in schools (elementary through college) (Gormley 2007).

Both of these proposals were from lawmakers, meaning any statutory conflicts could be overcome. In neither case was it asserted that the bills would conflict with the respective state constitutions. It is unlikely that a board would adopt a policy such as this, but if it did the policy would have to conform to any applicable state law prohibiting weapons in schools.

Of considerable concern with respect to a law or policy permitting civilians to carry firearms in schools are restrictions on the use of force by civilians. Most states limit civilian use of force to instances of self defense, defense of others, or in some cases the protection of property. For the use of *lethal* force by a civilian, some states impose even greater restrictions, such as a requirement that the person contemplating using lethal force first attempt to flee. It is unclear whether armed school personnel would be legally justified in seeking out and attacking an armed intruder.

One positive aspect of proposals such as these is the lack of direct expenses to the district or municipality. It is unlikely that any state law would include funding for training civilians. Any district that decided to pay for such training would be engaging in more than just passive allowance.

A state law permitting firearms to be carried in schools could increase district liability in the sense that damages for injuries caused by inappropriate use of a weapon by district personnel may be higher than damages for injuries caused without a weapon. It is difficult to argue that the district would be more liable percentage wise for a particular incident since they had no role in introducing the weapon into the situation other than hiring the employee. If a district adopted a policy explicitly permitting the carrying of such weapons, in the absence of a state law, it could

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<sup>1</sup> I coined the phrase “passive allowance” myself. If it is similar to any legal terminology, it is unintentional. The same applies to the titles of other sections.

conceivably increase their potential liability since they could presumably have prohibited the weapon.

### Training and Arming of Civilian Staff

In recent years, a number of discussions and a few proposals have sprung up concerning the training and arming of school personnel for the explicit purpose of increasing school security. Although it does not directly suggest arming school personnel, an article summarizing the U.S. Secret Services Safe School Initiative Report states that many violent incidents in schools are resolved by students or faculty before law enforcement arrives (Department of Justice 2002). In 2007 Anthony Ruggiero, a member of the Nevada State Board of Education, proposed to that K-12 teachers be trained as reserve (sworn) police officers, armed, and paid an extra annual stipend (Richmond 2007). An article in Education Week discusses a Tulsa, Oklahoma district that contracts for armed security personnel from a private company. The guards earn standard law-enforcement certification in safe weapons use, but are not sworn police officers (Trotter 2005).

Proposals in this category tend to come from within the district, as opposed to from the legislature. As a result, any policies adopted would have to comply with statutory and constitutional requirements. A state law prohibiting weapons in schools would quash such an effort, unless a provision for staff to obtain sworn officer status was included. Even if this were the case, it is questionable whether teachers during the school day could be considered as acting in the role of a sworn officer.

Deliberately arming, and even training, civilian staff does not bestow upon them the same legal authority to use force as sworn police officers enjoy. The limitations presented earlier with respect to personnel that the district has passively allowed to carry weapons still apply. Some proposals suggest that the district can send some of its personnel to become sworn officers. In this case, their authority and jurisdiction would depend on the agency swearing the officers, such as the local municipal police department or the county sheriff. Two major concerns in this case would be whether an officer-teacher could use greater force than a civilian teacher in restraining an unruly student in class and whether such teachers would be expected to abandon their classes to respond to a school emergency (Trotter 2005).

A district choosing to train and arm its personnel would likely have to absorb the majority of associated costs itself. Research did not reveal any state or federal programs that would fund the

training or arming of civilian personnel, even if they are to acquire the status of sworn officers. At least one proposal would require teachers seeking police status to pay for their training as any other police recruit would. While this appears to transfer that cost to the teachers, in actuality, the extra bonus pay also proposed would more than reimburse the teachers. If a state law were to require that districts maintain armed personnel, it could conceivably include funding.

The liability exposure of a district that employed armed personnel is likely to be greater than in the case of passive allowance. Employers are generally liable for the actions of their employees when those employees are performing their duties. Even if the district contracted for armed guards, they would still likely be held liable for any incidents. Interestingly, in the case of the Tulsa district, the only occasion in the 5 years preceding the article on which a guard drew his weapon resulted in accidental injury to an innocent student and a legal settlement (Trotter 2005). Even if the employees are sworn officers, if they are employed by the district, the district is likely to be liable for any injuries they cause, especially if it is unclear in which capacity they were acting.

#### Utilizing Sworn Police Officers

There is little argument that sworn police officers may legally be armed within schools. The federal government has provided funds for the purpose of providing schools with such personnel since at 1999 through the Community Oriented Policing in Schools grant program (Trotter 2005).

Using sworn officers as the only armed force within schools unambiguously resolves the issue of authority to use force. Officers can derive their authority by being part of the municipal police department or from the county sheriff (Gran 2007). The Palm Beach County, Florida district maintains its own police force. The officers are sworn, carry pistols, and have access to rifles and other weapons (Trotter 2005).

Districts using school resource officers are often reimbursed, at least in part, through the COPS program mentioned above. When municipal officers are used, the cost may be borne entirely by one party, or shared as in the case of the Milwaukee School Board's proposal (Borsuk 2006). When a district maintains its own police force, it generally bears the cost, such as in Palm Beach County.

Using sworn officers can dramatically reduce a district's exposure to liability. In the case of school resource officers, who are not employed by the district, liability would generally rest with the municipality (Trotter 2005). In districts with their own police force, liability would presumably rest with the district; however, the actual exposure would be less than with private armed guards since sworn officers enjoy arrest powers and clear guidance on the use of force.

#### Appropriateness of Initiating or Expanding an Armed Force

The justification for maintaining an armed force, whether formally organized, or consisting of individual armed teachers is that it increases the school's safety and security. While this has not been convincingly refuted, it is also not supported by current research into best practices. This is especially true of proposals that are created as immediate responses to recent threats or which are proposed by legislatures instead of boards of education.

The Safe School Initiative, a collaborative effort between the U.S. Secret Service and the U.S. Department of Education researched a large number of violent and other incidents in schools and came up with observations and recommendations. The report notes that most attacks on schools are planned in advance and are in many ways predictable. It suggests using threat assessment to detect potential attacks and strongly recommends that teachers be trained in spotting warning signs and in useful reporting methods. Schools are encouraged to foster the ability and willingness of students to notify adults when they witness behavior of concern. Nowhere does the report suggest that armed guards are sufficient to prevent and attack, nor does it recommend them (Vossekuil 2002).

Even the Palm Beach County district, which took the dramatic step of forming its own police force, insists that armed officers are only part of a comprehensive security plan. The district's spokesman credits measures such as cracking down on bullying and training teachers and students to alert administrations of suspicious behavior with reducing incidents (Trotter 2005). Success with initiatives such as these confirms the value of advice provided by the Safe School Initiative and the U.S. Department of Education (DOE 2006).

The view that measures other than armed guards are by far more important is echoed by nearly every research based report. A report by the National School Boards Association makes a number of recommendations, but not armed guards (Lewis 2000). An ERIC digest that attempts

to summarize research regarding the fundamentals of school security also makes no mention of arming staff or acquiring armed guards (Gaustad 1999).

### Recommendations

Districts with severe security problems are strongly urged to pursue other options already supported by research before resorting to attempting to arm any staff or acquire any other type of armed protection. In the event that a sincere effort has been implemented using traditional methods, and a safety and security problem is still severe enough that armed guards are still being considered, districts are urged to consider existing programs and arrangements first. The federal COPS program to provide school resource officers to districts is likely to provide increased safety with a minimum amount of extra cost, controversy, and exposure of the district to liability. If a district does not qualify or can not obtain sufficient numbers of officers through the program, they are urged to pursue partnerships with local, county, and state law enforcement organizations. Given the lack of research on effectiveness, the dramatically increased exposure to liability, and the ambiguity of authority, districts are urged to avoid arming civilian staff, permitting civilian staff to carry firearms, or acquiring private armed guards.

## Appendix

### Situations in which the Board does not initiate or is opposed to the introduction of weapons into schools

Research reveals two ways in which legal weapons could be introduced to schools when no such introduction has been initiated by the district and potentially in spite of opposition from the Board. The state legislature could pass a law explicitly permitting permit holders to carry concealed weapons inside schools. Such a bill was introduced in South Carolina (Gormley 2007). Although the bill was defeated, it is conceivable that such a law could be passed over the objections of boards of education. The courts could also allow weapons in schools by ruling that concealed carry permits are valid inside schools. A teacher in Oregon is petitioning the court for such a ruling (Sleeth 2007). Although that decision would apply only within a single county in Oregon, there is nothing to prevent such a decision on a state level.

In either of these cases, the Board may not have an option to completely ban weapons from its schools. It could conceivably face increased liability in the event that a teacher carrying a weapon injures a student. Schools facing a situation in which weapons can not be banned can still introduce programs to make any weapon holders, whether known or otherwise, aware of the restrictions on civilian use of force, individual liability for any injuries caused, and appropriate responses to emergency situations.

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