



**Texas Association of School Boards**

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*Serving Texas Schools Since 1949*

## **Considerations in Response to School Violence**

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In light of mass shootings at public schools across the country, we at TASB have joined the nation in mourning the loss of life and questioning why such events happen. With the benefit of hindsight, many are probing the events leading up to the shootings in Florida and Texas in hope of finding ways to prevent another tragedy. Every school official and peace officer, every student and school employee, every mother and father are all asking the same question: Is there more we can do to protect schools?

Below are ten considerations for Texas public school officials searching for answers to that difficult question:

### **1. Familiarize yourself with your district's emergency operations plan and safety and security audit results.**

Every Texas public school district is required to have a multihazard emergency operations plan (EOP) that addresses mitigation, preparedness, response, and recovery as defined by the commissioner of education in conjunction with the Texas Division of Emergency Management. The plan must provide for training, drills, coordination with emergency services, and a safety and security audit at least once every three years. Tex. Educ. Code § 37.108. See TASB Policies CK, CKC.

In addition, each school district is required to have a safety committee to advise on the local EOP and related matters. Tex. Educ. Code § 37.109. See TASB Policy CK. To the extent possible, districts must follow the safety and security audit procedures developed by the [Texas School Safety Center](#) (TxSSC) or a comparable public or private entity. School districts are required to report the results of their safety and security audits to the school board and the TxSSC. Tex. Educ. Code § 37.108. See TASB Policy CK.

A school district EOP is not subject to public disclosure. However, an interested person may request access to a document that verifies that the district has established an EOP, the district has reviewed its plan within the last twelve months, and district employees have been trained to respond to an emergency, among other things. For a complete list of information that such a document may verify for a requestor, see Texas Education Code section 37.108(c-2) and TASB Policy CKC.

On February 21, 2018, Governor Greg Abbott sent a [letter](#) to Texas Education Agency (TEA) Commissioner Mike Morath. The letter directed Commissioner Morath to gather and share TxSSC resources and make recommendations to the legislature about school security. The letter also directed the commissioner to publish online, and in a press release, the names of any school districts that are not in compliance with the requirements of having an EOP and conducting timely audits within 45 days (approximately April 7, 2018). On April 19, 2018, Governor Abbott announced that all Texas public school districts were in compliance with the EOP requirements.

## **2. Review school safety recommendations from state leaders.**

On March 2, 2018, the commissioner of education responded to Governor Abbott's request for school safety recommendations with a [To the Administrator Addressed Letter](#). The letter listed school districts' options for employing commissioned peace officers and other security personnel. The letter advised school districts to work closely with first responders and local law enforcement in making critical decisions about how best to provide for local security.

The letter also encouraged the use of available funds to enhance security and safety measures at school premises by adding features such as security cameras or fortified doors and windows. Finally the letter reminded districts about a law passed in 2015 (Senate Bill 788, known as "Kari's Law"), which requires all multi-line telephone systems that permit outbound calling to allow for direct dialing of 9-1-1 without requiring an initial digit to reach an outside line.

On May 30, 2018, the governor issued a [School and Firearm Safety Action Plan](#) detailing multiple recommendations for making schools safer. While many of the recommendations involve potential legislative action, the plan also discusses "about three dozen strategies that can be implemented by Texas schools, law enforcement, and healthcare providers before the next school year begins." Greg Abbott, Governor of Texas, [School and Firearm Safety Action Plan](#) (May 30, 2018). District officials should review these recommendations and seek legal advice regarding whether any of the specific strategies would be appropriate for their school districts.

## **3. Review your local practices and planning in light of recommendations by the Texas School Safety Center.**

The TxSSC has its [resources on school violence](#) and [emergency management](#) front and center on its website. In his letter, the commissioner of education advised districts to consult the TxSSC Website for additional information on school safety measures and emergency operations planning.

**4. Work with your Risk Management team to update the security of your school facilities and improve training.**

For more specific analysis of your local risks and facilities, consider reaching out to your insurer for risk management support. For example, the TASB Risk Management Fund (the Fund) provides members of the Workers' Compensation, Property, Liability and Auto programs support and training at no additional charge. The Fund has numerous resources online for members with log-in credentials. In addition, the Fund shares resources online for all school districts on the following topics:

[Emergency Management and School Security Program](#)

[Emergency Operations Plans and Campus Safety](#)

[Tips on Emergency Operations Plans](#)

[Polling Place Security](#)

**5. Renew your relationship with local law enforcement and other first responders.**

Events in the news are a reminder that emergencies arise without warning, and districts cannot wait for an event to occur to establish clear lines of communication with first responders across the local area. School districts have multiple options under Texas law for providing security and law enforcement protection at schools. Each of these arrangements calls for unique protocols for emergency response and MOUs to establish clarity regarding the jurisdiction and expectations of each entity responding in a crisis. Districts are required to meet regularly with local first responders to keep communications open and clear. Consider meeting more frequently if questions arise or staff positions change. See TASB Policy CKE.

The events in Parkland and Santa Fe, as well as changes in Texas laws regarding [cyberbullying](#) and online harassment, may provide a platform for revising your school district's approach to coordinating with local law enforcement and mental health resources in response to students' social media posts that suggest the potential for harm to others or self.

**6. Understand your options for obtaining security services.**

School districts have several options for obtaining security services at school facilities. Districts typically weigh these options based on factors such as district need, size, location, and cost.

**School Resource Officer (SRO):** A district may enter into a memorandum of understanding (MOU) with another governmental entity to have a peace officer, who is commissioned and employed by the other governmental entity, placed at the school district on a full or part time basis. Depending on the number of officers and the amount of time they will be stationed at the district, the MOU typically requires the school district to cover the proportional cost of their salary, benefits, and equipment.

**School district commissioned peace officers:** A school district can also create its own police department by commissioning school district peace officers. Any peace officer commissioned under Texas Education Code section 37.081 must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE). The school board may determine the jurisdiction of its commissioned officers, which may include all property under the control of the school district. To the extent school district commissioned peace officers have jurisdiction that overlaps with another law enforcement agency (e.g., the city or county), the school district and the other entity must have a memorandum of understanding (MOU) for communication and coordination. Tex. Educ. Code § 37.081(a). In school districts with a student enrollment of 30,000 or more, SROs and school district commissioned peace officers must undergo model training for school police officers created by TCOLE in association with the TxSSC. Tex. Educ. Code § 37.0812.

**School marshals:** Since 2013, Texas law has permitted school districts to appoint one or more specially trained and licensed employees as school marshals, as described below. Tex. Educ. Code § 37.0811.

**Arming school employees other than police officers:** Some have suggested that permitting or requiring trained school employees to carry firearms would be a way to increase security in school buildings. Some Texas school districts already have policies to permit the confidential identification of individual school employees who are trained to carry concealed firearms on school campuses. (This is sometimes referred to as a “Guardian Plan.”) A school district has the option to authorize through local policy the designation of one or more individual employees who may carry firearms on school premises. Tex. Att’y Gen. Op. No. GA-1051 (2014). For the most part, districts that have adopted this approach are located in rural areas where the response time by law enforcement would be more than a few minutes.

**Security personnel:** If a school district employs an individual as security personnel, the individual must be a commissioned peace officer in order for the school district to authorize the individual to carry a weapon. Tex. Educ. Code § 37.081(a).

**Security company:** If a school district employs a private company, rather than its own employees, to provide security, state law does not directly address whether the company’s employees may be authorized to carry firearms on school premises. A school district exploring the option of employing an outside security firm should do so in consultation with its school attorney.

For more information, please review TASB Legal Services’ memo [School Marshals and Other Personnel Carrying Firearms](#).

## 7. Recognize when proposed security measures implicate legally protected rights.

The legal and practical risks of arming school employees have been extensively discussed at local, state, and national levels. Other school security measures may lead to less obvious risks. School district officials should discuss these issues with the district's attorney before deciding whether any specific strategy is a viable option.

**Security cameras:** Increased school surveillance implicates a student's right to privacy and parental rights. Texas public schools can make video or audio recordings of students without parental consent for purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses. Tex. Educ. Code § 26.009. Federal and state law govern the circumstances in which a recording of a student can be released without the parent's prior written consent, including release to law enforcement in an emergency. See 34 C.F.R. § 99.31 (defining when the Family Education Rights and Privacy Act (FERPA) does not require consent to release personally identifiable student information). See also U.S. Dept. of Education Family Policy Compliance Office, [FAQs on Photos and Videos under FERPA](#) (discussing when a photo or video of a student is an education record under FERPA).

**Metal detectors:** A proposal to place more metal detectors in schools also implicates a student's right to be free from unreasonable searches and seizures under the Fourth Amendment. See *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (generally requiring a school administrator's search of a student to be reasonable in inception and in scope). Currently, many districts have metal detectors in disciplinary alternative education programs (DAEP) but they are not as common at regular campuses. A Texas court of appeals upheld a search procedure at a disciplinary alternative learning center that required all students entering the center to empty their pockets and walk through a metal detector. In upholding the search, the court relied on the school district's interest in maintaining a safe and disciplined learning environment at the alternative learning center, which the court considered to be at high risk for drugs and violence. Also, all students and their parents were given notice of the procedures, and the uniform searching of all students protected against administrative abuse of discretion in deciding which students to search. *In re O.E.*, No. 03-02-00516-CV, 2003 WL 22669014 (Tex. App.—Austin 2003, no pet.) (mem. op.).

In the event of a legal challenge to a metal detector search, the court would likely apply U.S. Supreme Court precedent involving other types of random student searches. This requires balancing the nature of the privacy interest involved and the character of the intrusion with the nature and urgency of the school district's concerns and the efficacy of the metal detectors in addressing the concern. See *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (applying three-part balancing test to random urinalysis drug testing of students in district's athletic program).

**Student mental health and threat assessment:** Finally, some have questioned whether it should be easier for a school district to expel, or require psychological evaluation of, a student who is believed to pose a threat. Districts should collaborate with mental health experts, law enforcement, and administrators to develop behavioral threat assessment protocols to identify when a student may be in danger of harming the student or others. See [National Association of School Psychologists Threat Assessment at School](#) Website (recommending multi-disciplinary threat assessment teams). These protocols must recognize a student's rights to due process and state disciplinary procedures under Chapter 37 of the Texas Education Code, as well as legal protections for students with disabilities. Notably, a school district employee may not use a parent's refusal to consent to a psychiatric evaluation of a student as grounds, by itself, to prohibit the student from attending school. Tex. Educ. Code § 38.016. Nonetheless, employees who work with students need to recognize when student mental health issues may warrant appropriate intervention, such as a referral for an evaluation for services under Section 504 or the Individuals with Disabilities Education Act (IDEA). See TASB Policies FB(LLEGAL) and EHBAA(LLEGAL).

**8. Monitor and offer guidance on social media use by employees and board members.**

Much of the national attention and dialogue about school shootings has unfolded on social media. Many school officials and school employees have gone online not only to express condolences, but also to search for answers and share ideas about how to prevent future tragedies. Most of these communications about the news and national conversations around school safety would be categorized as "matters of public concern," meaning that school officials and school employees have a First Amendment right to express their views and be a part of the dialogue without fearing retaliation. That said, if online communications harm the district by threatening the district, revealing confidential school district information, criticizing individual schools officials with personal attacks, or otherwise interfering with district operations, the school district may have a governmental interest in stopping the harmful communications and punishing the speech.

For more information on employee use of social media, see TASB Legal Services' article [Employee Free Speech Rights](#). For more information on trustees' use of social media, see TASB Legal Services' article [Social Media Guidelines for School Board Members](#).

**9. Be prepared and proactive regarding protests by students.**

The student-led #neveragain movement has captured the attention of Americans of all ages, as young people speak out about the impact of school violence on their generation. TASB Legal Services' article [Student Protests](#) addresses issues that schools may encounter when dealing with student protests.

From a legal standpoint, state and federal law permit school districts to treat absences as unexcused and impose discipline on disruptive conduct, even if the absences or disruptions are related to a matter of public concern. Only non-disruptive student speech carries the protection of the First Amendment, and walk-outs, for example, are inherently disruptive to school operations. On the other hand, state and federal law do not *require* school districts to respond by imposing discipline. While some districts will choose to discipline for a walk-out or other disruption, others may attempt to accommodate free speech by working with school leaders to schedule a “walk-in,” where students remain safely on school grounds with adult supervision, but have an appropriate period of time to express their views. This is truly a matter of local control. To assist school officials with their decision-making, NSBA has shared a [process document](#) with questions for consideration before responding to protest speech.

**10. Demonstrate care and consideration for your employees during this stressful time.**

Understandably, school officials are focused on the needs of students first. Realize, however, that the pressure on your staff to bravely answer students’ questions, conduct drills, and discuss the news may be overwhelming at times. Consider creating private forums for employees to debrief, ask questions, share ideas and concerns, and simply comfort each other, out of the view of parents and students.

We realize there are more questions than answers on this topic, but if TASB can be of any help to your school district, please do not hesitate to contact us.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/considerations-in-response-to-school-violence.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/considerations-in-response-to-school-violence.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schollawesource.tasb.org](https://schollawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

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