

Armed Security Officer Requirement in House Bill 3 (2023)

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House Bill 3 (HB 3), effective September 1, 2023, adds new Texas Education Code section 37.0814. This new law requires each school board to determine the appropriate number of armed security officers for each district campus and, absent a good cause exception, ensure at least one armed security officer—specifically, a commissioned peace officer—is present during regular school hours at each campus. A school board can claim a good cause exception to this requirement due to lack of funding or qualified personnel. If the board claims a good cause exception, the board must provide an alternative standard that may include reliance on a school marshal or an employee or contracted individual who has completed the handgun safety course required for handgun license holders and is authorized to carry a firearm by the district (often called a “guardian” in school board policy). Each district must create and maintain documentation of its compliance with this section.

The following are answers to questions presented about HB 3’s armed security officer requirement.

- 1. HB 3 broadens the options for school security personnel; does the list of broader options mean a district can meet the standard of at least one armed security officer present during regular school hours at each campus with individuals other than commissioned peace officers?**

No, not without first claiming a good cause exception. The statute states that an armed security officer described by Section 37.0814(a) must be: (1) a school district peace officer; (2) a school resource officer; or (3) a commissioned peace officer employed as security personnel.

- 2. Who is a school district peace officer?**

A school district peace officer is a district employee licensed by the Texas Commission on Law Enforcement (TCOLE) and commissioned by the district. This option is available only if the district has its own police department.

- 3. Who is a school resource officer?**

A school resource officer (SRO) is a commissioned peace officer employed by another commissioning entity (e.g., county sheriff, city police department) who is assigned to a specific school district through a memorandum of understanding (MOU). The officer works for the commissioning entity, not the school district.

4. Who is a commissioned peace officer employed as security personnel?

Texas Education Code section 37.081 states that a school board has four options for employing *security personnel*:

- employing or contracting with security personnel;
- entering into an MOU for SROs provided by a local law enforcement agency or a city or county that employs commissioned peace officers;
- contracting with a security services contactor licensed under Texas Occupations Code chapter 1702 for a commissioned security officer who has completed the Department of Public Safety (DPS) Level II or III training course; and/or
- commissioning its own peace officers.

5. What is necessary in MOUs regarding school district security?

For a school district with its own police department, the district and law enforcement agencies with which it has overlapping jurisdiction must enter an MOU that outlines reasonable communication and coordination efforts between the school police department and the other agencies. Tex. Educ. Code § 37.081(g).

For a school district with SROs, the district's MOU providing for the SROs must include a statement of the SROs' law enforcement duties as determined by the school board. Tex. Educ. Code § 37.081(d). Preexisting MOUs for SROs may need to be updated in light of HB 3. Under HB 3, an MOU for SROs must be an interlocal contract under Texas Government Code Chapter 791 and must use a proportionate cost allocation methodology that allows the commissioning entity to recover direct costs but does not allow the entity to profit. HB 3 adds that a school district, local law enforcement agency, county, or municipality that enters into an MOU for SROs may seek funding from federal, state, and private sources to support the cost of providing SROs. Moreover, now that compliance with Section 37.0814 requires the officer to be present during regular school hours, MOUs that said the officer could be called to other duties as needed by the officer's employer may need to be adjusted.

School districts can get guidance on MOUs and mutual aid agreements from the Texas School Safety Center (TxSSC), which is charged with providing guidelines on key provisions, including sample language. School districts shall, at the TxSSC's request, provide a copy of any safety-related MOU to the TxSSC, and the MOU will remain confidential under the Texas Public Information Act. Tex. Educ. Code § 37.2121.

6. What counts as a *campus*? For example, what if a middle school and high school are located on the same property and share facilities? Does this require one officer or two?

The Texas Education Agency (TEA) has answered this question in a [video](#) with this and other guidance about HB 3. (See minute 1:08 of the video.) If, based on TEA's understanding of the term *campus*, a school board determines it is best to have one commissioned peace officer serving more than one campus, the school board should seek a good cause exception and choose an alternative standard that allows a single officer to be shared by two or more campuses in immediate proximity.

7. What counts as being *present*? Can simply being on patrol in the general area count? What about when an officer is absent from work?

Talk to your school attorney, but conservatively, if a commissioned peace officer is not assigned full time to the campus, the board should seek a good cause exception. School district police department schedules, MOUs for SROs, and contracts with security companies should provide for coverage when an officer is on leave.

8. What are *regular school hours*?

The phrase is not defined in law. Future regulations may address this question. For now, if an officer will not be present during regular instructional hours, a school board should pursue a good cause exception.

9. Can a school district employ retired commissioned peace officers to meet the statutory requirement?

Yes, but a retired peace officer's license is likely inactive and needs to be reactivated in order to serve as a commissioned peace officer. A retired peace officer's license becomes inactive at the end of the most recent training unit or cycle in which the licensee was not appointed and did not meet the continuing education requirements. 37 Tex. Admin. Code § 219.11(a). A retired inactive peace officer continues to hold the license the officer held at the time the officer last served unless the license was revoked for cause under Texas Occupations Code section 1701.501. A retired peace officer who holds an inactive license may not serve as a peace officer unless the person reactivates the license. Tex. Occ. Code § 1701.159.

A retired peace officer whose license is inactive and not reactivated is not a commissioned peace officer as required by Texas Education Code section 37.0814(a). If the school district wants a retired officer to serve in another security personnel capacity, the school district should work with its school attorney to review the employment arrangement.

10. Can a school district hire off-duty commissioned peace officers to meet the statutory requirement?

A commissioned peace officer, who is not a school district police officer and not an SRO but is contracting directly with the school district or working for a security services contractor licensed under Texas Occupations Code chapter 1702, is likely an off-duty commissioned peace officer. A commissioned peace officer who works full time for a commissioning entity may moonlight on an individual or independent contractor basis with the permission of the officer's commissioning entity if the officer meets certain criteria, including working an average of at least 32 hours per week for the officer's commissioning entity. Tex. Occ. Code § 1702.322. Because these individuals are committed to working 32 hours per week for the entity holding their commission, multiple individuals would need to be assigned to an individual campus to ensure coverage during regular school hours. For example, a security services contractor may assign a different officer to a campus each day of the week. A school district that relies on off-duty officers commissioned by other entities should ask its school attorney to review the employment arrangement and be aware of any limitations commissioning entities place on the officers' employment, as well as their use of uniforms, equipment, insignia, and other resources.

11. How does a school board claim a good cause exception?

The new statute does not address the mechanics, but clearly the law calls for board action, and a board resolution makes the most sense. A sample resolution is attached. By law, TEA does not have regulatory authority to monitor compliance with Section 37.0814. As such, TEA is not going to pursue mass collection of good cause documentation. Each board with an exception must, however, make documentation of good cause available to TEA on request. For this reason, we encourage board resolutions to go beyond simple recitation of the statute. Add enough local detail about lack of funding or lack of qualified personnel to withstand scrutiny by TEA and your community. For example, if the district is claiming lack of funding, add a short statement about the district's current budgetary pressures or the cost of compliance. If the district is claiming lack of qualified personnel, add a short statement about the district's efforts to recruit officers or contract with other local governmental entities for SROs.

12. What is in an alternative standard?

If the district can't meet the requirement to have an armed security officer present at each school campus during regular school hours due to lack of funding or qualified personnel, the board may claim a good cause exception and develop an alternative standard with which the district can comply. Districts' alternative standards should meet local security needs using available resources and personnel. There is no "one size fits all" alternative. Again, TEA has no regulatory authority to oversee district compliance

with this requirement, but the most natural reading of the statute is that the alternative standard is a standard for how to provide armed security at all campuses throughout the regular school day. Talk to your school attorney before setting an alternate standard that disregards this legislative purpose.

13. Can an alternative standard include armed security guards?

HB 3 eliminates a previous requirement that a person employed as security personnel and authorized by the board to carry a weapon had to be a commissioned peace officer. HB 3 specifically allows a district to contract directly with security personnel or with a security services contractor to provide commissioned security officers as defined by Texas Occupations Code section 1702.322. These individuals are not commissioned peace officers and are required to have completed DPS Level II or III training courses.

Representative Dustin Burrows, author of HB 3, has written a statement of legislative intent explaining that one purpose of the new law was to open the option for districts to employ armed security guards. That said, security guards licensed under Texas Occupations Code chapter 1702 (even those commissioned by DPS under Section 1702.321) are not “peace officers” under Texas Code of Criminal Procedure article 2.12 (to be recodified at 2A.001). They do not satisfy the armed officer requirement in Section 37.0814(b) without a good cause exception. Instead, they are a potential option for a board’s alternative standard.

Note that a person who is permitted to carry a firearm but is not a commissioned peace officer performing law enforcement duties as determined by the board, may not perform routine law enforcement duties, including making arrests, except during an emergency presenting a risk of death or serious bodily injury to someone at the campus.

14. What are a school district’s options for employing security guards?

As described by Texas Education Code section 37.081, a school board has two options for employing security guards as *security personnel*:

- employing or contracting with security personnel; or
- contracting with a security services contractor licensed under Texas Occupations Code chapter 1702 for a commissioned security officer who has completed the Department of Public Safety (DPS) Level II or III training course.

To the extent a school district hires a security guard directly, as opposed to through a security services contractor, the school district should seek commission for the security officer from DPS. (To be clear, a *commission* for a security officer from DPS is not the equivalent of a commissioned peace officer under Texas Education Code section 37.0814(a)).

DPS commissions will apply to a person employed by a political subdivision whose duties include serving as a security guard, security watchman, or security patrolman on property owned or operated by the political subdivision if the governing body of the political subdivision files a written request with the department for the department to issue a commission to the political subdivision's employees with those duties. The commission expires at the time the officer's employment as a security officer by the political subdivision is terminated. Tex. Occ. Code § 1702.321.

15. Does a district's alternative standard have to involve reliance on school marshals or guardians?

No, but it can. HB 3 specifically states that a board that claims a good cause exception must develop an alternative standard with which the district is able to comply, which "may include providing a person to act as a security officer who is a school marshal or a school district employee or a person with whom the district contracts who has completed school safety training provided by a qualified handgun instructor certified in school safety under Section 411.1901, Government Code and carries a handgun on school premises in accordance with written regulations or written authorization of the district under Section 46.03(a)(1)(A), Penal Code." The locally authorized individual with school safety training by a qualified handgun instructor is often called a "guardian" in local school board policy.

16. What is the difference between a school marshal and a guardian? Is one option better than the other?

Both options are lawful, and both are in wide use across the state. TASB Policy Service has model local policy language that can support the board's choices in this regard. A school marshal is licensed and certified by TCOLE after completion of a specific training program, passing a state licensing exam, and meeting all statutory requirements, including psychological fitness. See Tex. Educ. Code § 37.0811 and TASB Policy CKEB(LEGAL). Typically, school marshals are employed by the district in another capacity and are selected by their school board to obtain the school marshal credential in addition to their regular duties. On the other hand, school boards can also choose to authorize other individuals to carry firearms on school premises. In order to be designated as part of an alternative standard, these "guardians" must complete school safety training provided by a qualified handgun instructor certified in school safety. This course is only 16 hours, compared to the 80 hours of training required for marshals, but many local districts impose greater training, practice, and other requirements for locally appointed guardians.

Additional information about school marshals and guardians can be found in the TASB School Law eSource's [School Marshals and Other Personnel Carrying Firearms](#). As to which approach is "better," the choice is up to the local school board. The formality of the school marshal training, screening, and licensure, along with its additional statutory immunity and confidentiality provisions, make the marshal approach increasingly

appealing from a legal standpoint. HB 3 may cause many school boards to reexamine their school safety staffing choices. Talk to your school attorney if you have questions about these options.

17. How is a board’s alternative standard documented?

According to Section 37.0814(e), the board must develop and maintain documentation of the district’s implementation of and compliance with this section, including documentation related to a good cause exception, and shall, if requested by TEA, provide that documentation in the manner prescribed by TEA. Documentation of compliance would include documentation of the board’s alternative standard, even if the details of that alternative plan are confidential.

18. How much detail should the board share publicly about its safety plans, including its alternative standard?

Undoubtedly, parents and other community members have a heightened interest in matters of school safety and may expect the board to disclose significant details about its implementation of Section 37.0814. However, the degree to which the board discloses details of its security planning is a local choice given the strong statutory confidentiality surrounding this topic. The new statute requires the board to determine the appropriate number of armed security officers for each district campus and, if necessary, claim a good cause exception. Board action must take place through a formal vote in a posted public meeting. Beyond that, the details of the district’s security plans can be protected.

The board may meet in closed session to deliberate its security audit or the deployment, or specific occasions for implementation, of security personnel or devices. Tex. Gov’t Code § 551.076. The board may also meet in closed session to deliberate security assessments or deployments relating to information resources technology; network security information; or the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices. Tex. Gov’t Code § 551.089. In addition, the Texas Public Information Act protects the confidentiality of school district records made confidential by law, including new protections in HB 3, and information held by a law enforcement agency, including a school district police department, the disclosure of which would hinder law enforcement. Tex. Gov’t Code § 552.108.

19. If a district is able to comply with Section 37.0814(a) by providing a commissioned peace officer at every campus during regular school hours, does the school board need to take any public action?

Even a board that is able to meet the legal standard of placing a commissioned peace officer at every campus still has to “determine the appropriate number of armed security officers for each district campus.” Because a school board can act only through

formal action at posted public meeting, a resolution or at least a vote in open session may still be in order. That said, for the reasons described above, the details of district's security plans should remain confidential. A board could vote that it has determined that "at least one" commissioned peace officer and potentially other armed individuals (e.g., marshals, guardians, armed security officers) are placed at each campus, leaving the details to the district's emergency operation plan which is confidential.

20. What further guidance should we anticipate from the TxSSC or TEA?

The TxSSC is an important resource for school safety guidance, but the TxSSC does not have specific statutory authority regarding Section 37.0814. TEA does not have rulemaking or enforcement authority over Section 37.0814, but it does have statutory authority to request documentation of compliance. TEA has announced that it will provide guidance on HB 3 on August 24, 2023, to be followed by webinars in September. Districts are encouraged to pay close attention to TEA's guidance and webinars. To the extent any TEA guidance contradicts this FAQ, TASB defers completely to TEA.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-essource/business/documents/armed-security-officer-requirement.pdf. For more information on school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

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**Resolution to Declare a Good Cause Exception for House Bill 3
Armed Security Officer Requirement**
[\(Editable version\)](#)

WHEREAS, Section 37.0814 of the Texas Education Code requires the board of trustees of each school district shall determine the appropriate number of armed security officers for each district campus;

WHEREAS, Section 37.0814(a) of the Texas Education Code requires the board to ensure that at least one armed security officer is present during regular school hours at each district campus;

WHEREAS, Section 37.0814(b) of the Texas Education Code requires that at least one armed security officer at each campus be a commissioned peace officer, namely a school district peace officer; a school resource officer; or a commissioned peace officer employed as security personnel under Section 37.081 of the Texas Education Code;

WHEREAS, Section 37.0814(c) of the Texas Education Code provides that if the board of trustees of a school district is unable to comply with this section, the board may claim a good cause exception if the district's noncompliance is due to the availability of funding or qualified personnel;

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of _____ School District hereby determines that the School District is unable to ensure that at least one armed security officer, as defined by law, is present during regular school hours at each district campus;

BE IT FURTHER RESOLVED that the Board of Trustees determines that:

[Choose one or both.]

The District's noncompliance is due to lack of available funding. ***[Add local details about lack of available funding here.]***

[AND/OR]

The District's noncompliance is due to lack of available qualified personnel. ***[Add local details about lack of available qualified personnel here.]***

FINALLY, BE IT RESOLVED that the Board of Trustees, having claimed a good cause exception, will develop and document an alternative standard with which the district is able to comply, in accordance with Sections 37.0814(d) and (e) of the Texas Education Code.

Adopted this _____ (date) day of _____ (month), _____ (year), by the Board of Trustees.

Presiding officer's signature: _____

Secretary's signature: _____