Considerations in Response to School Violence

Published online in TASB School Law eSource

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 school shootings 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 prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center (TxSSC) in conjunction with the governor’s office of homeland security and the commissioner of education or commissioner of higher education, as applicable. The plan must provide for training, drills, emergency communications, and coordination with state and local emergency services, among other details.

   A school district must undergo a safety and security audit at least once every three years, and the school board or superintendent must sign a report to the TxSSC with the results of the safety and security audit. Tex. Educ. Code § 37.108. See TASB Policies CK, CKC.

   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.

   In addition, each school district is required to have a safety and security committee established in accordance with guidelines established by the TxSSC. To the greatest extent possible, the committee will include at least the following: a representative from the county or city office of emergency management where the district is located; a representative of
the local police or sheriff; a representative of the school district police, if any; the board president; another board member; the superintendent; superintendent designees including at least one classroom teacher; a member of the governing body or designee from an Open Enrollment Charter School (O ECS), if the district partners with an OECS; and two parents. In addition to existing duties, the committee will periodically recommend updates to the EOP and consult with local law enforcement about how to increase law enforcement presence near campuses. Committees must meet at least three times per year (fall, spring, and summer), and are subject to the Open Meetings Act, including relevant exceptions to the Act. Tex. Educ. Code § 37.109. See TASB Policy CK.

The Texas legislature addressed numerous aspects of school safety, including the contents of district’s EOPs and the work of districts’ safety and security committees in Senate Bill 11 (2019). For more information, see TASB Legal Services’ article School Safety after Senate Bill 11.

2. Review school safety recommendations from state and national leaders.

On May 30, 2018, Texas governor Greg Abbott issued a School and Firearm Safety Action Plan detailing multiple recommendations for making schools safer. Most, but not all, of the governor’s recommendations were addressed in the 2019 state legislative session. 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.

In addition, the governor has issued executive orders “to help prevent further mass shootings by enhancing reporting requirements and ensuring law enforcement and the public have the training, tools, and resources they need to provide and respond to Suspicious Activity Reports.” Three of the orders will affect schools directly:

- **Order No. 5** The Department of Public Safety shall work with the Texas Education Agency and the Texas Higher Education Coordinating Board on ways to better inform schools, students, staff, and families about the importance of Suspicious Activity Reports and how to initiate that process.

- **Order No. 6** The Department of Public Safety shall work with local law enforcement, mental-health professionals, school districts, and others to create multidisciplinary threat assessment teams for each of its regions, and when appropriate shall coordinate with federal partners.

- **Order No. 7** The Department of Public Safety, as well as the Office of the Governor, shall use all available resources to increase staff at all fusion centers in Texas for the purpose of better collecting and responding to Suspicious Activity Reports, and better monitoring and analyzing social media and other online forums, for potential threats.
The federal government offers guidance to school districts on safety planning as well. The U.S. Department of Education advises school officials to review the 2013 *Guide for Developing High-Quality School Emergency Operations Plans* first, then look in detail at the 2019 *The Role of Districts in Developing High-Quality School Emergency Operations Plans*. Both align with the National Preparedness System and the National Incident Management System, a component of which is the Incident Command System (ICS), which provides a standardized approach for incident management and coordination with first responders.

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. These resources should be your district’s primary roadmap for address safety in your community.

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.
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).

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

**Arming school employees other than police officers:** Several Texas school districts have policies to permit the confidential identification of individual school employees who are trained to carry concealed firearms on school campuses, but who are not designated as school marshals. 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).

**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’ chart on Options for Employing School Safety Personnel and 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. For more information, see TASB Legal Services’ memo Metal Detectors in Schools.

**Student mental health and threat assessment:** Texas is the first state to require every school district to create a process for threat assessment through multidisciplinary teams. Each district must establish a threat assessment and safe and supportive school team to serve at each campus and adopt policies and procedures for the teams. Together, team members must have expertise in areas such as mental health, safety, law enforcement, special education, and classroom management. Texas Education Agency rules and TxSSC guidance will call for a systemic and coordinated, multitiered support system that addresses students’ social, emotional, behavioral, and mental health and allows for multiagency collaboration to assess risks and threats in schools and provide appropriate interventions. For more information, see TASB Legal Services’ article School Safety after Senate Bill 11. See also National Association of School Psychologists Threat Assessment at School Website (recommending multi-disciplinary threat assessment teams).
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.

10. **Demonstrate care and consideration for your employees.**

    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.