Tots, Blocks, and… Glocks?

The Perils of Arming School Staff

By Tia J. Combs

Although most courts addressing whether schools stand in a *DeShaney* special relationship with their students have held that they do not, they may create legal problems the districts choose to arm non-law enforcement school staff.

Sandy Hook changed everything. On December 14, 2012, at approximately 9:30 a.m., 20-year-old Adam Lanza walked into Sandy Hook Elementary School in Newtown, Connecticut, armed with three guns—a semi-automatic rifle and two handguns. Steve Vogel, Sari Horwitz, and David A. Fahrenthold, *Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say*, Wash. Post, Dec. 14, 2012. There were 700 elementary students present at school that day. By mid-morning, 20 students and six school staff members were dead. *Id.*

While that December day was not the first school shooting, or unfortunately, the last, it marked a turning in the national consciousness. For many, school shootings, while never an acceptable part of American life, now called for dramatic action.

One response was an increased push for gun control. In Connecticut, Governor Dannel P. Malloy signed into law "sweeping new restrictions on weapons and ammunition magazines similar to the ones used… at Sandy Hook" in April 2013. Associated Press, N.Y. Times, Apr. 14, 2013. Over 100 new firearms were added to the state's assault weapons ban, the state now has a weapon offender registry, and there are new eligibility rules for buying ammunition. Associated Press, *Connecticut Governor Signs Gun Measures*, N.Y. Times, Apr. 4, 2013.

On the opposite end of the spectrum, there has also been increased demand to arm teachers and staff in schools, putting them on the front lines of preventing school shootings. In 2013, lawmakers in more than 30 states proposed bills that would have authorized school districts to arm non-law enforcement in schools, mostly teachers and other staff members. Danielle Weatherby, *Opening the "Snake Pit": Arming Teachers in the War Against School Violence and the Government-Created Risk Doctrine*, 48 Conn. L. Rev. 119, 128 (2015).

This article examines the legal responsibility of schools districts, schools, and teachers to protect students from active shooter situations and the legal problems created when districts choose to arm non-law enforcement school staff.

■ Tia J. Combs is an associate in Mazanec Raskin & Ryder Co. LPA's Lexington, Kentucky, office. She has considerable experience representing school boards in matters ranging from employment and personnel conflicts to student disciplinary matters and civil rights. She has served as both general counsel to school boards and litigated cases in the defense of school boards, administrators, and teachers. Ms. Combs is the chair of the DRI Governmental Liability Committee's Education Specialized Litigation Group.

The Legal Problem of School Safety

When considering arming teachers and staff, the first question for districts should be: "What is the legal liability of schools for failing to protect students from the dangers posed by third-party actors?"

Federal Due Process Litigation, *DeShaney,* and Private Violence

As a general matter, the United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment does not require the state to protect the life, liberty, and property of citizens from private violence. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). In *DeShaney*, the petitioner, Joshua DeShaney, was a young boy injured by his biological father's abuse. *Id.* at 191. The respondents were social workers and other officials who received complaints that Joshua was being abused by his father, but who failed to stop the mistreatment. *Id.* As a result of his father's repeated abuse, Joshua eventually suffered brain hemorrhaging, causing irreparable damage and mental retardation. *Id.* His mother brought suit, on behalf of herself and Joshua, under 42 U.S.C. §1983, alleging violation of the Fourteenth Amendment Due Process Clause for the officials' failure to protect Joshua from a risk of which they knew or should have known. *Id.* The district court granted, and the Seventh Circuit and United States Supreme Court upheld, summary judgment in favor of the officials, holding that the Due Process Clause does not require states to protect individuals from private violence. *Id.* at 194–95.

In *DeShaney*, the Court left open the possibility that states might be liable to those injured by third parties by creating two exceptions that may create a state duty to protect or take responsibility for an individual's well-being: a state may have a duty (1) when the state and the individual have a special relationship; or (2) when the state has created the danger.

The DeShaney *Exceptions Applied to Violence in Schools*

Awareness of violence in schools is higher than ever. In one case, the Tenth Circuit lamented, "We are poignantly aware of the seeming transformation of our public schools from institutions of learning into crucibles of disaffection marred by increasing violence from which anguish and despair are often brought to homes across the nation." *Graham v. Indep. Sch. Dist. No. I-89*, 22 F.3d 991, 992 (10th Cir. 1994).

However, despite this growing cognizance of the violence perpetrated in America's schools, and explicit acknowledgment of the sadness of the situation, circuit courts have largely held in a variety of situations that states have no duty under the exceptions enumerated in *DeShaney* to do more.

The Special Relationship Exception

Despite compulsory attendance laws and the fact that schools act in loco parentis for their students, nearly all courts addressing the question of whether schools stand in a *DeShaney* special relationship with their students have held that they do not.

The analysis concerning special relationships largely stems from the Supreme Court's language in *DeShaney* itself. In *DeShaney*, the Supreme Court held that while generally the state owes no duty to protect individuals from private violence, a special relationship between the state and the individual might give rise to such a duty. *DeShaney*, 489 U.S. at 198. The Court recognized such a right to protection in the case of prisoners. For example, a prisoner's lack of liberty makes it impossible for him to care for himself, which makes the state responsible for the prisoner's care. *Id.* at 199 (citing *Estelle v. Gamble*, 429 U.S. 97 (1976)). The Court also recognized such a state duty in the case of involuntarily committed mental patients because these individuals similarly could not completely care for themselves due to their custodial relationship with the state. *DeShaney*, 489 U.S. at 199 (citing *Youngberg v. Romeo*, 457 U.S. 307 (1982)).

Despite the existence of this exception, case law concerning violence in schools shows it is notoriously difficult to establish a special relationship between schools and their students. Even in cases in which the students are disabled and significantly impaired in their abilities to care for themselves, most courts hold that the relationship between schools and students is not sufficiently custodial to impart liability.

For example, in *Walton v. Alexander*, 20 F.3d 1350 (5th Cir. 1994), *reh'g en banc, Walton v. Alexander*, 44 F.3d 1297 (5th Cir. 1995), the plaintiff was a male student at the Mississippi School for the Deaf, a residential boarding school for deaf and hard of hearing students. 20 F.3d at 1352. The plaintiff was described as "a handicapped child who lacks the basic communications skills that a normal child would possess." *Id.* at 1355. He was twice sexually assaulted by another male student at the school. *Id.* at 1353.

As a general matter, the United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment does not require the state to protect the life, liberty, and property of citizens from private violence.

A panel of the Fifth Circuit originally held that the school's 24-hour custody of the student, strict rules that the student was not free to leave, and the fact that most Mississippi families of deaf students could not afford to send their children to alternative private schools, created a "significant custodial component" and a special relationship between the school and the student plaintiff. *Id.* As such, the plaintiff's abuse at the hands of the other student created a Fourteenth Amendment due process violation. *Id.* This decision, however, was reversed by an en banc Fifth Circuit the next year. *Walton*, 44 F.3d at 1304–05. The Fifth Circuit en banc court held that the student was not involuntarily confined by the school because he had voluntarily enrolled without coercion by the state. *Id.* at 1305. The Fifth Circuit en banc court therefore held that the student could not assert a due process claim.

In a similar case, the Ninth Circuit also declined to find that the disabled condition of a student created a special relationship. *Patel v. Kent Sch. Dist.*, 648 F.3d 965 (9th Cir. 2011). In *Patel*, the victim was a developmentally disabled high school student. *Id.* at 968. The Ninth Circuit noted that the student's disabilities "affected her day-to-day life in various ways," and "[s]he was sometimes unable to complete basic tasks like holding her eating utensils correctly, blowing her nose, and zipping her clothes." *Id.* An Individualized Education Plan (IEP) was drawn up for the student during her freshman year, calling for her to be escorted by adults to and from all classes and to the bathroom. *Id.* at 969. Despite this, the plaintiff was sent to the bathroom alone by her special education teacher up to five times a day. *Id.* at 969. By the spring of her sophomore year, the plaintiff's mother learned that she was having sex in the bathroom with another developmentally disabled student. *Id.*

Case law concerning violence in schools shows it is notoriously difficult to establish a special relationship between schools and their students.

Despite the IEP and the developmental condition of the plaintiff, the Ninth Circuit held that the school and the plaintiff's teacher did not have a special relationship with the plaintiff and that there could therefore not be a due process violation. *Id.* at 973–74. The court held specifically that compulsory attendance and the school's status as in loco parentis did not confer a special relationship. *Id.* at 973. The court further held that the plaintiff's IEP did not create a greater obligation for the school because it did not increase the school's custody or restraint over her. *Id.*

The State-Created Danger Exception

While the elements of state-created danger vary somewhat among the circuits, in general, the elements are (1) foreseeable harm; (2) affirmative state action creating or increasing the risk to the victim; (3) a relationship between the state and the victim that created a special danger to the victim greater than the risk to the public at large; and (4) a degree of state culpability, usually deliberate indifference.

An illustration of a case in which a court found that the state-created danger theory was not applicable is *McQueen v. Beecher Cmty. Sch.*, 433 F.3d 460 (6th Cir. 2006). In *McQueen*, a student was fatally shot when her teacher left her and a few other students unsupervised in a classroom and one of the students pulled out a gun. *Id.* at 463. The shooter had previously been involved in several violent incidents at the school, which the *McQueen* plaintiff claims should have gotten him expelled. *Id.* at 462. The plaintiff brought a §1983 action against the teacher under a state-created danger theory. *Id.* at 463. The Sixth Circuit affirmed the district court's dismissal of the plaintiff's claims on summary judgment. *Id.* at 470. The court held that the plaintiff had shown that she was more likely to be injured than the general public: obviously, the shooter was more likely to shoot someone in the room than members of the general public. *Id.* at 468. However, the plaintiff had failed to prove that the teacher took affirmative action, putting her at risk, because it was pure speculation to say that the shooting would not have taken place had the teacher been in the room. *Id.* at 466. The court also held that the plaintiff had failed to prove the teacher acted with deliberate indifference because there was no evidence the teacher knew the shooter had a gun or would use a gun against his classmates. *Id.* at 469–70.

A different result was reached by the Third Circuit in *L.R. v. Sch. Dist. of Philadelphia*, 836 F.3d 235 (3d Cir. 2016). In *L.R.*, a kindergarten student was sexually assaulted off school premises after her teacher allowed her to leave her classroom with an unidentified adult. *Id.* at 240. The adult had come to pick up the child, and the teacher had requested to see his identification as the school policy dictated. *Id.* When he did not produce it, the teacher allowed the child to leave with the man anyway. *Id.* The Third Circuit court held that there was state-created danger because the teacher had taken affirmative action and greatly changed the child's status quo by releasing her to the perpetrator. *Id.* The court noted that kindergarten classrooms are often very tightly controlled, highly protective environments and that in releasing the student, the teacher had taken affirmative action to change the child's level of protection. *Id.* at 244. The court also held the harm was a direct result of the teacher's conduct because the perpetrator would have had no access to the child had the teacher not released her. *Id.* The court also believed the teacher's actions shocked the conscience and was a case of deliberate indifference since the teacher had plenty of time to make a decision about whether to release the student and knew, or should have known, of the grave risk of releasing the child to an unidentified adult. *Id.* The court further held the student was a foreseeable victim because the district's policy of checking identification was enacted specifically for the benefit of young children such as the plaintiff. *Id.* at 247.

State Court Litigation

There has also been significant state court litigation about school shootings, most notably, a case brought by the families of two victims of the Virginia Tech shooting, which went to the Virginia Supreme Court in 2013. While the case was eventually decided in favor of the school, the original jury trial awarded $4,000,000 to the victims' families. *Commonwealth of Va. v. Peterson*, 749 S.E.2d 307, 310 (Va. 2013).

The trial court in the Virginia Tech shooting case was mostly persuaded by the ability the school had to warn students of a live-shooter situation and its failure to give the students any warning. Evidence showed the shooting began at 7:30 a.m. in a residence hall. *Id.* at 308. When the incident was investigated by the Virginia Tech Police Department, the investigators did not find the shooter and believed the shooting was a domestic incident perpetrated by the female victim's gun-enthusiast boyfriend. *Id.* The investigators did not send out a "blast email" that would have warned all students of the possibility of a live shooter. *Id.* The Virginia Tech University Police Department continued with its decision not to inform students of the risk

even after it became clear the boyfriend was not the shooter. *Id.* The university president and other administrators were also notified of the events, but they chose not to release the information about the shooting to students until 9:26 a.m., and they still did not notify students that there had been a fatality or call for a campus lockdown. *Id.* At around 9:45 a.m., the same shooter opened fire in a classroom building, killing several additional students, including the students whose estates brought the suit. *Id.* at 310. The case was tried before a jury, and $4,000,000 was awarded to the victims' families.

The Supreme Court of Virginia reversed the verdict, holding that the facts did not give rise to a duty to warn students of the danger of third-party criminal acts. *Id.* at 311. The court noted that Virginia law does not generally confer a duty to warn or to protect others from the criminal acts of a third party unless there is "'an imminent probability of injury' from a third party criminal act." *Id.* at 312. The court went on to hold that in this case, no such probability existed, because the school did not know who the shooter was or that he continued to pose a threat to others. *Id.* at 313.

Thus, case law shows that despite public outcry for better student protection, as a legal matter, it is unlikely, but not impossible, for a school district, teacher, or administrator to be held liable for violence toward a student by a third party, non-state actor.

Legal and Practical Issues Concerning Use of Armed School Marshalls

Despite a lack of liability, many school officials feel that they have a moral imperative to protect students using armed school officials. For districts, and their counsel, contemplating this issue, the next question is whether such a plan is legally and practically feasible.

Legal Issues

To understand the legality, school districts wishing to arm school guards or teachers will want to understand the federal law landscape and the relevant state law landscape regarding guns on school property before arming takes place. The next step is to understand the liability that doing so, if it is legal, may create.

The Gun Free Schools Act, 18 U.S.C. §922(q)

The Gun Free Schools Act prohibits the knowing possession of a firearm within a "school zone" as defined by the act. 18 U.S.C. §922(q). A "school zone" under the act is defined as "in, or on the grounds of, a public, parochial or private school" and "within a distance of 1,000 feet from the grounds of a public, parochial or private school." 18 U.S.C. §921(25). "School" is defined as "a school which provides elementary or secondary education, as determined under State law." 18 U.S.C. §921(26).

The Gun Free Schools Act makes exceptions:

> (ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;
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> …
>
> (iv) by an individual for use in a program approved by a school in the school zone;
>
> (v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
>
> (vi) by a law enforcement officer acting in his or her official capacity;

18 U.S.C. §922(q).

Thus, the Gun Free Schools Act does not prevent schools from implementing programs allowing non-law enforcement to provide armed security in their schools.

State Laws Authorizing Guns on Campus

In addition to federal laws, school districts wishing to provide schools with armed guards will want to look to their individual state laws concerning guns on school property. Most states have laws prohibiting guns on campus; however, similar to the federal Gun Free Schools Act, most state laws provide an exception for those authorized by a school district to carry guns. In addition, many states have newly enacted statutes explicitly outlining procedures to be followed by districts authorizing teachers and staff to carry firearms in their schools. A few of these are detailed below.

- **Alabama:** Ala. Code §45-30-103 allows principals of schools in Franklin County, Alabama, to create volunteer emergency security forces consisting of current employees of the school, retired employees of the school, and residents of the school district to protect schools.
- **Arkansas:** Ark. Code Ann. §5-73-119 allows authorized persons to carry concealed handguns onto the property of private schools.
- **Kansas:** Kan. Stat. Ann. §75-7c10 allows the governing body of a unified school district to permit employees legally qualified to carry concealed handguns to carry a concealed handgun in any building of such institution, if the employee meets such institution's own policy requirements.
- **Oklahoma:** Okla. Stat. Ann. tit. 21, §1280.1 allows private schools to authorize a person licensed pursuant to the Oklahoma Self-Defense Act to carry concealed or unconcealed weapons onto private school property or private school buses or other vehicles. The statute also stipulates:

  Except for acts of gross negligence or willful or wanton misconduct, a governing entity of a private school that adopts a policy which authorizes the possession of a weapon on private school property, a school bus or vehicle used by the private school shall be immune from lia-

The Gun Free Schools

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bility for any injuries arising from the adoption of the policy.

Okla. Stat. Ann. tit. 21, §1280.1C.4.

- **South Dakota:** S.D. Codified Laws §13-64-1, *et seq*., lays out a plan for school boards to implement a "school sentinels" program. The program allows a board to:

  [C]reate, establish, and supervise the arming of school employees, hired security personnel, or volunteers in such manner and according to such protocols as the board may believe to be most likely to secure or enhance the deterrence of physical threat and defense of the school, its students, its staff, and members of the public on the school premises against violent attack.

S.D. Codified Laws §13-64-1.

- **Tennessee:** Tennessee has three statutes concerning the authorization of school marshals. Tenn. Code Ann. §49-50-803 allows for carrying of firearms on private school property by persons authorized by the board or governing entity of the school. Tenn. Code Ann. §49-6-815 allows for authorized faculty and staff who are former law enforcement officers with proper training to carry firearms on public school property. Tenn. Code Ann. §49-6-816 allows "distressed rural counties" to authorize properly trained faculty or staff who are not former law enforcement to carry firearms on school property.
- **Texas:** Texas state law specifically addresses arming non-law enforcement in schools, terming them "school marshals." Tex. Crim. Proc. Code Ann. art. 2.127. These officials are given the authority to "make arrests and exercise all authority given peace officers." *Id.* Texas' statutes call for the Texas Commission on Law Enforcement to establish and maintain a training program for school marshals to certify them. Tex. Occ. Code Ann. §1701.260. The statutes also limit the number of marshals that may be appointed by districts, conditions under which the appointed marshals may carry concealed weapons, and state that the names of those appointed as marshals can be maintained as confidential by the district and are not subject to open records requests under Texas law. Tex. Crim. Proc. Code Ann. art. 2.127; Tex. Educ. Code Ann. §37.0811.

Liability for Arming School Staff

Once a school district has established that it is legal to arm non-law enforcement in the district schools, the next concern is what liability is created for the armed individuals, school administrators, and the district. While the intentions of administrators in arming school staff and those of the individuals carrying guns on campus are undoubtedly pure, it is not difficult to imagine that arming teachers and other non-law enforcement opens a veritable Pandora's box of liability. For example, improperly (or even properly) stored guns may fall into the wrong hands and be used for nefarious purposes. Additionally, in the case of an emergency, tensions and adrenaline run high, creating an apt case for bystander injury.

Unauthorized Use

In the case of guns falling into unauthorized hands, the issue is once again the responsibility of the district to protect students from the wrongful acts of a third party under the Fourteenth Amendment's Due Process Clause. Thus, the analysis to be undertaken is similar to that of *DeShaney* and its progeny explained above. As noted above, the liability risk for districts under the *DeShaney* exceptions has previously been very low. However, that may not continue if districts authorize and encourage staff to carry firearms.

Nothing about arming teachers would change the analysis of whether students and schools have a special relationship. Giving guns to staff does not make the relationship between teachers and their students any more custodial because parents still have the primary responsibility for their children's care.

However, a policy and practice of putting guns on school property might change the analysis for the state-created danger exception. If districts enact policies that bring guns onto campus, this changes the situation significantly. Similar to the kindergarten classroom in *L.R. v. Sch. Dist. of Philadelphia*, schools are traditionally a place where guns are forbidden or allowed only under very limited circumstances. If a district arms school staff, it has arguably put a gun within firing distance of children who did not previously face that risk, making a better case for state-created danger than previously existed.

Liability for Misfire

In the case of a staff misfire, it is a state actor who has created the harm, thus *DeShaney* and its progeny would not be applicable. Instead, the liability would more likely be comparable to police liability for accidental bystander shootings. In such cases, courts will normally not hold officers responsible unless their actions "shock the conscience." For example, in *Claybrook v. Birchwell*, 199 F.3d 350 (6th Cir. 2000), a bystander was struck by a stray bullet during the course of a police shootout. *Id.* at 354. The Sixth Circuit refused to hold officers liable for the bystander's injuries because the officers had not acted "maliciously or sadistically" toward the injured party, and their actions therefore did not violate the Fourteenth Amendment Due Process Clause. *Id.* at 360. In the case of a school official misfire, the official would clearly not have acted "maliciously or sadistically" either.

Monell Liability

In addition, a person injured by a gun on campus might also attempt to sustain a claim under *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658 (1978). As a local governmental entity, a school district cannot be held vicariously liable under 42 U.S.C. §1983 for an injury inflicted solely by its employees or agents. *Id.* at 694. But under the Supreme Court's decision in *Monell*, a school district could be liable for an accidental injury as a result of its armed guards if execution of its policy or custom caused the injury. *See id.*

In *Monell* cases, plaintiffs generally establish municipal liability by (1) pointing to an officially adopted policy, (2) pointing to a custom or practice so pervasive and long-standing as to have the force of law, (3) pointing to a policy of inadequate training or supervision, or (4) pointing to a particular decision or act by a final policymaker.

In the cases of unauthorized use or armed personnel hitting bystanders, the most likely *Monell* claim is that a school district failed to train and to supervise armed staff. Under this approach, a municipality may be held liable if "the failure to train amounts to deliberate indifference to the rights" of people with whom the municipal employee or agent comes into contact. *City of Canton, Ohio v. Harris*, 489 U.S. 378,

388 (1989). To prove deliberate indifference, the plaintiff may argue that (1) there was an obvious need to train, or (2) a pattern of constitutional violations is apparent, putting the entity on constructive notice of a need to train. Karen M. Blum, *Making Out the Monell Claim Under Section 1983*, 25 Touro L. Rev. 829, 843 (2009). In addition, a plaintiff must prove that the inadequate training caused the underlying violation. *City of Canton*, 489 U.S. at 391.

If a district wishes to arm teachers and staff, there is a great need to provide adequate training and supervision. Using a weapon under stress is a very difficult proposition for which most educators are not prepared. Law enforcement officers have a missed shot rate between 52 and 82 percent. *See* Weatherby, *supra*, at 142. It's not hard to imagine that the misfire rate for teachers, who do not use weapons as part of their jobs every day and have considerably less training, would be much higher, creating much greater liability for school districts. In one highly publicized case, Arkansas State Senator Jeremy Hutchinson, a vocal advocate for arming school personnel, accidentally shot another participant playing a teacher when participating in an active-shooter training scenario about putting guns in the hands of school staff. Brenda Bernet, *School Districts Hoping to Keep Security Licenses*, Ark. Dem. Gaz. Aug. 28, 2013; Beth Stebner, *Arkansas State Senator Fires Back at Claims he Accidentally Shot Teacher in Simulated School Shooting Exercise*, N.Y. Daily News, Aug. 29, 2013. Notably, Senator Hutchinson said that the experience did not change his opinion on arming teachers.

Practical Issues

A school district will wish to understand and to evaluate insurance coverage and draft strong district policies before arming staff.

Insurance Coverage

One of the most practical and pressing problems of a school district that wishes to arm its teacher or other staff is providing insurance for that risk.

Unfortunately, finding coverage for armed guards in schools is not always easy. For example, at the beginning of 2013, at a time when 30 legislatures were considering new statutes detailing parameters for arming teachers and staff, some insurance companies simply said "no." EMC, the largest school insurer in Kansas, wrote a letter to all of its agents telling them that the company would not continue to provide insurance coverage to any district that armed its staff. Steven Yaccinno, *Schools Seeking to Arm Employees Hit Hurdle on Insurance*, N.Y. Times, July 7, 2013. Still other companies warned that increased premiums would follow district decisions to arm teachers and staff. *Id.*

District Policy

A district looking to arm its teachers and staff would likely need to answer, at a minimum, the following questions in the district policy:

- Does state law allow civilian staffers to carry firearms?
- Which individuals within the district will be authorized? What is the approval process?
- What screening should be required for those individuals authorized to carry firearms (background checks and mental health examinations)? How will the district revoke this authorization if it becomes necessary? Is such authorization automatically revoked if an employee receives any form of discipline related to a firearm? Are the revocations subject to any grievance or hearing process or procedure?
- What procedures will be used to secure the firearms during and after school hours?
- How will the district keep track of records relating to the authorization of individuals to carry firearms on campus (*i.e.*, valid, current permits; annual criminal background-check requirements; and annual mental health examinations)?
- What type of firearms will be allowed?
- Who will purchase the firearms? Who will pay for their upkeep? How will the district verify upkeep if the firearms are privately owned?
- What type of ammunition will be authorized? (Will the district specify only frangible ammunition to prevent ricochet? Does the damage done by frangible munitions in the event of a misfire present too great a risk?)
- How will the district train staff on appropriate use of force and the use of deadly force, storage, and security?
- Will the district share its policy with local law enforcement agencies likely to respond to an event involving firearms? What will be the interaction between local law enforcement and armed staff?

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- Does the district have a communication plan in place to deal with parents and media inquiries in the event of a firearm discharge?

Conclusion

No school administrator wants to face the prospect of students who are gravely injured by gun violence when an assault could have been prevented. While fervor for arming school staff has recently reached a fever pitch, careful legal analysis shows that putting guns in the hands of teachers might create more problems than it solves. There is little legal liability for a district that faces the tragedy of a school shooting, but a district that opts to arm its staff arguably takes on an enormous risk. The decision to arm district staff will fall in almost all cases to the elected school board members, who will undoubtedly make a decision while considering the unique circumstances of their district. However, counsel can assist in this decision by keeping members informed of the risks and the consequences of a policy to arm school staff. FD