

# Security Do's & Don'ts



A Q&A on School Safety Legal Considerations

*by Joy Baskin*

**Q: What is an EOP? Is a plan required? Is the plan public?**



**A: EOP required:** 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 Texas Division of

Emergency Management. The plan must provide for training, drills, coordination with emergency services, and a safety and security audit at least every three years. (Tex. Educ. Code §37.108; 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; 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; TASB Policy CK)

**Full compliance:** On February 21, 2018, Governor Greg Abbott sent a letter to Education Commissioner Mike Morath directing the Texas Education Agency 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 were not in compliance with the requirements of having an EOP and conducting timely audits. On April 19, 2018, Abbott announced that all Texas public school districts were in compliance with the EOP requirements.

**Public disclosure:** 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 12 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); TASB Policy CKC. Members of the TASB Risk Management Fund may seek support for the development of an EOP, including a template wherein the plan's first few pages are designed to confirm the information necessary for public disclosure.

**Q: What are the legal options for employing security personnel in Texas public schools?**



**A:** School districts have several options for obtaining security services at school facilities. School districts 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, 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 an 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)

**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))

**Q: Is it legal in Texas to allow school employees to carry firearms?**



A: In most cases, school districts limit employee authorization to commissioned peace officers. In some districts, however, authorization has been granted to other school officials or even classroom teachers who commit to specified training and engage in concealed carry on school

campuses. For the most part, these are rural school districts where the response time by law enforcement would be more than a few minutes.

**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) The appointment must be made by the board of trustees, and a marshal must have the appropriate licensing and certification by TCOLE. (Tex. Code Crim. Proc. art. 2.127(d)) The specialized marshal training program must require a psychological exam and include 80 hours of instruction.

A school marshal appointed by a school board may carry or possess a handgun on the physical premises of a school, but only as provided by written regulations adopted by the board and only at the school specified by the board. The board must require that a designated school marshal may carry a concealed handgun on his or her person, unless the primary duty of the school marshal involves regular, direct contact with students; in that case, the school marshal must place the handgun in a locked and secured safe on the physical premises of the school and within the marshal's immediate reach.

A school marshal may access a handgun only under circumstances that would justify the use of deadly force for the safety or protection of others as provided by law, and the marshal may use only frangible duty ammunition approved for the purpose by TCOLE. (Tex. Educ. Code §37.0811)

**Local authority:** School marshals are one option—but not the only option—for school districts that wish to authorize designated employees to carry firearms on school premises. A second option is for a school board to adopt a local policy that authorizes the designation of specific employees who are authorized to carry firearms on school premises. (This is sometimes referred to as a “Guardian Plan.”) A school

district has the option to appoint one or more school marshals, authorize through local policy the designation of one or more individual employees who may carry firearms on school premises, or both. (Op. Tex. Att’y Gen. No. GA-1051 (2014))

While state and federal law gives school districts broad discretion to authorize the possession of firearms and other weapons on school premises, granting such authority brings a host of practical concerns, including safety and liability. If questions arise in your community about the risks or benefits of this option, review TASB Legal Services’ memo “School Marshals and Other Personnel Carrying Firearms” ([tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/sch\\_marshall\\_and\\_other\\_personnel\\_carrying\\_firearms-en.aspx](https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/sch_marshall_and_other_personnel_carrying_firearms-en.aspx)).

**Q: Are employees allowed to park with firearms in their cars during the work day?**



A: Absent special permission from the school district, firearms may not be carried inside of school district buildings, vehicles, or on the grounds where a school activity is taking place. (Tex. Penal Code §46.03(f)) Visitors may, however, drive or park with firearms inside their

vehicles on school district property. Federal law provides that, unless otherwise authorized, individuals may have a firearm unloaded and in a locked container or in a locked firearms rack on a vehicle. (18 U.S.C. §922(q)(2)(B)(iii)) Under state law, an individual may transport a firearm inside his or her private vehicle.

Texas Education Code Section 37.0815 provides that a school district may not prohibit an employee who is licensed to carry a handgun from transporting or storing a handgun, other firearm, or ammunition in a locked, privately owned vehicle in a school district parking lot, provided that the firearm or ammunition is not in plain view. (See TASB Policy GKA.)

In light of the fact that school employees may have access to firearms in their personal vehicles, a district may wish to clarify that any action an employee takes with regard to his or her firearm is not taken at the district's direction and is outside the course and scope of employment. Acting outside the course and scope of employment, even in an emergency situation, may expose an individual employee to personal liability for his or her actions.

**Q: Is school-based law enforcement allowed or required to assist with immigration enforcement?**



federal detainer requests. (Tex. Code Crim. Pro. Art. 2.251)

These provisions do not apply to a school district or an open-enrollment charter school, including a peace officer employed or contracted by a district or charter school during the officer's employment with the district or charter school or while the officer is performing the contract. The state mandates also do not apply to the release of educational records, except in conformity with the Family Educational Rights and Privacy Act of 1974 (FERPA). (Tex. Gov't Code §752.052 (d))

Moreover, schools, school events, and school bus stops are sensitive locations where federal immigration enforcement actions are to be avoided. Enforcement actions include apprehensions, arrests, interviews, searches, and surveillance. Without prior approval from a supervisor, enforcement actions may take place at sensitive locations only in exigent circumstances related to national security, terrorism, public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case. (Immigration and Customs Enforcement, Sensitive Locations FAQs, [ice.gov/ero/enforcement/sensitive-loc](http://ice.gov/ero/enforcement/sensitive-loc))

**Q: Is video surveillance allowed in schools? Under what circumstances can parents view the footage?**



A: Since 2017, Texas law (known as Senate Bill 4) has provided that local officials cannot prohibit or materially limit the enforcement of US immigration laws through their local policies or practices. (Tex. Gov't Code §752.053(a)) In addition, local governmental entities may not decline to honor

A: Texas public schools can make video or audio recordings of students, even 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)

**Law enforcement records:** Law enforcement records are not subject to FERPA. Consequently, if surveillance video footage was made and maintained by a law enforcement unit for the purpose of law enforcement, FERPA does not prevent a school law enforcement division from disclosing the footage to outside parties in accordance with state law. (20 U.S.C. §1232g(a)(4)(ii). US Dept. of Educ., FPCO, *Letter to Montgomery County Public Sch. (MD) re: Law Enforcement Unit Records* (February 15, 2006))

**Education records:** The US Department of Education's Family Policy Compliance Office's (FPCO) FAQs on *Photos and Videos under FERPA* formalizes guidance concerning when a video or photo is a student's education record covered by FERPA. According to the FAQ, when a video or photo maintained by a school district depicts multiple students, the district must examine the context in order to determine if it is an education record of any particular student. If a student's image is incidental or captured only as part of the background or if a student is shown participating in school activities that are open to the public, without a specific focus on any individual, the video is not a record for that student.

On the other hand, if the video captures one or more students engaged in activities that may be the subject of disciplinary action, the video is a record of those students. FPCO's guidance allows disclosure of a surveillance video depicting multiple students to the parent of a student involved in the video, without consent from the other students' parents, when the video cannot be reasonably redacted or segregated without destroying the meaning of the record. (US Dept. of Educ., FPCO, *Letter to Wachter* (Dec. 7, 2017))

**Special education surveillance:** Texas law requires video and audio surveillance in certain special education classrooms. (Tex. Educ. Code §29.022) A district must release a recording to an employee or a parent of a student who is involved in an incident documented by the recording for which a complaint has been reported to the district. (Tex. Educ. Code §29.022) (See TASB Policy EHBAF(LEGAL)) The statutes and rules implementing the law purport not to limit the access of a student's parent to a record regarding the student under FERPA, however. (Tex. Educ. Code §29.022(j)) This would mean that a student's parent has the right to access a recording that constitutes an education record of the student as well as the related right to consent to disclosure to others of the student's personally identifiable information in the record, unless an exception under federal law applies. ★

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