

# Legal considerations when seeking to improve school security

By the New York Association of School Attorneys

In the wake of the school shooting in Parkland, Fla., as well as other senseless acts of violence in our nation's schools, communities are demanding that school districts renew their focus on the complex issue of school safety and security, particularly the challenges associated with potential active shooter scenarios.

District-level efforts to address security require a multifaceted approach that involves listening to many different district constituencies and building strong relationships with contractors, local law enforcement and first responders. Any analysis of school security requires a look at, among other things, the district's infrastructure, visitor policies, exit and entrance protocols, technology, security personnel, social, mental and emotional health programs and emergency preparedness. Obviously, anything that can be done to prevent injury or death to even one district student, employee, volunteer or other member of the school community is worthy of consideration.

A number of bills that relate to school security are pending in the state Legislature. Topics include state aid for infrastructure improvements, increasing access to school-based mental health services, hiring of security personnel, increasing penalties for certain crimes on school grounds and enhancing information sharing. In addition to this pending legislation, school board members should be familiar with several laws that may come into play.

## School safety plans

Your school district has a school safety team that develops a comprehensive district-wide school safety plan as well as building-level emergency response teams that develop building-level emergency response plans. These plans are required by the Safe Schools Against Violence in Education Act ("Project SAVE"), a state law passed after the Columbine shootings in 1999. Project SAVE and commissioner's regulations also have requirements regarding codes of conduct, uniform violent incident reporting, instruction in civility, citizenship and character education and school violence prevention training.

Under Project SAVE, district-wide school safety teams are appointed by local school boards (or the chancellor of education in New York City), while building-level emergency response teams are appointed by building principals in accordance with board or chancellor-established guidelines or regulations. The makeup of these teams is, in part, controlled by the applicable law and regulations and must include representatives of specific school constituencies. (For details, see [www.p12.nysed.gov/sss/ssae/schoolsafety/save/](http://www.p12.nysed.gov/sss/ssae/schoolsafety/save/) or the Project SAVE portion of the New York



State Center for School Safety's website, at [www.nyscfss.org](http://www.nyscfss.org).)

Safety plans must be reviewed at least annually and updated as needed. A constructive response to any school shooting, no matter how tragic, is to evaluate how your safety plans would have worked under similar conditions. Also, the committees should keep up-to-date on new forms of technology, construction and best practices that can enhance security. Your district teams should convene regularly and recommend updates to the school board.

Pursuant to a 2013 law, BOCES and school districts having a population of less than 125,000 are among entities that have the option (but are not required) to submit school safety plans to a state-established school safety improvement team to obtain recommendations for improvements to the safety plans (Education Law section 2018-b).

Given the recent surge in the public's interest in safety and security, it is important to note that a district-wide school safety plan is a publicly available document that must be posted on the district's website (see a state Q&A document at [goo.gl/LFo5Ai](http://goo.gl/LFo5Ai)). Community members are likely to be reviewing and analyzing existing district-wide school safety plans and other applicable district policies and regulations and, therefore, district officials and board members should ensure they are familiar with these documents as well as any other applicable written policies or regulations. At a minimum, district officials must ensure that the district's practices and protocols are in compliance with the district's own plans, policies and regulations.

While district-level plans are documents available to the public, building-level emergency response plans MUST be kept confidential pursuant to law. Build-



ing-level plans may only be disclosed to district staff, authorized staff of the State Education Department and law enforcement officers.

Building-level plans are required to be filed with the State Police and local law enforcement.

## Armed security

Although all aspects of school security are worthy of review, the one that seems to be receiving the most attention after Parkland is the potential use of armed guards on school grounds. Generally, the possession or discharge of guns on school premises violates both federal and New York law. However, with written authorization from the district, non-students – including local law enforcement and security guards – may possess licensed firearms on school property.

School boards have the discretion to place armed or unarmed security guards in their buildings or on school grounds. There are at least three ways that a district can deploy armed guards: (1) using security guards provided by a private security company that is retained as an independent contractor pursuant to a written agreement; (2) hiring security guards as district employees; or (3) using police officers, called school resource officers (SROs), who have received special training for working in a school environment. Here are some legal issues related to each of these options:

**1. Hiring a private security company.** If a district wishes to hire a private security company to provide guards, it must comply with applicable procurement laws and policies. Annual training requirements for armed personnel are detailed in Section 2.30 of the Criminal Procedure Law. It is recommended that districts review their collective bargaining agreements and past practices prior to engaging a private

security company to determine whether utilizing an outside agency could be considered subcontracting of the work of a collective bargaining unit. Districts should also ensure that a written contract is drafted, reviewed and/or negotiated by the district's legal counsel and has been approved and fully executed prior to allowing armed guards to commence work for the district. The contract should include defense and indemnification provisions and require the company to maintain adequate insurance coverage including, but not limited to, naming the district as an additional insured on the security company's policies.

**2. Using district employees as armed guards.** Instead of hiring a private security company, a district may also hire armed security guards as district employees or authorize a current school employee to be armed. If a district chooses to employ armed guards, it must comply with all applicable laws and regulations regarding the employment of security guards, including the requirements of the Security Guard Act of 1992 (Article 7-a of the General Business Law). In addition, the district would need to comply with any other laws, rules or regulations applicable to the hiring of a public sector employee (e.g., Labor, Civil Service and Retirement and Social Security Laws and related rules and regulations).

**3. Hiring SROs.** A third option is the use of a school resource officer. An SRO is generally a member of the local police department or, sometimes, a retiree who is put back on the police department's staff. SROs are employed, trained and supervised by the local police department and the district will not have direct control over the SROs. Districts may be required to pay a fee to the police department for the SRO's services.

Any deployment of armed guards has the potential of exposing a school district to new liabilities. When making a decision to have armed guards, a district should also consult with its insurance professionals and carefully review its insurance policies to ensure that adequate amounts and types of coverage are provided for accidental or intentional discharges of a firearm.

School security cannot be handled with a cookie-cutter approach. Each district must carefully look at its entire security program and determine what is best for its students and employees.

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