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Jones, Catherine Wilson

Monterey, California: Naval Postgraduate School

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**NAVAL  
POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**ARMED TO LEARN: AIMING AT CALIFORNIA K-12  
SCHOOL GUN POLICY**

by

Catherine Wilson Jones

March 2016

Thesis Co-Advisors:

Kathleen Kiernan  
John Rollins

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**ARMED TO LEARN: AIMING AT CALIFORNIA K-12 SCHOOL GUN POLICY**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

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## **ABSTRACT**

Although the idea of a school shooting strikes fear in the hearts of school administrators, school employees, and parents, there is no agreement on whether arming employees is a sound strategy to counter this threat. There is a wide gap in viewpoints between gun control advocates who want tighter gun control and constitutionalists who believe as strongly in the Second Amendment right to bear arms. Whether or not to implement a weapons policy is an issue every school superintendent or school authority may need to face sooner or later. This research does not seek to answer the question of whether school districts should arm their employees. Rather, it seeks to provide a framework for each educational agency to explore, contemplate, and determine its course of action based upon risk-management principles that take into account the values, goals, and capabilities of the community in which the policy would apply. Possible outcomes include the policy options of MoreGuns (allow teachers to be armed), BanGuns (no one is armed), or SomeGuns (trained security or law enforcement can be armed but not teachers). This research is intended to stand as a resource for stakeholders such as legislators, parents, and employees; to equip them to engage in the policy debate; and to empower their participation in making informed decisions about school-district weapons policy.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

AB	assembly bill
BSIS	Bureau of Security and Investigative Services
Cal/OSHA	California Occupational Safety and Health Administration
CIS	COPS in Schools
COPS	Community Policing Services
FBI	Federal Bureau of Investigation
GAO	Government Accountability Office
GFSZA	Gun Free School Zone Act
IIPP	Injury and Illness Prevention Program (California)
NRA	National Rifle Association
POST	Peace Officer Standards and Testing
SB	Senate bill
Sgt.	sergeant
SRO	school resource officer
UC	University of California

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## EXECUTIVE SUMMARY

Although the idea of a school shooting strikes fear in the hearts of school administrators, school employees, and parents, there is no agreement on whether arming employees is a sound strategy to counter this threat. There is a wide gap in viewpoints between gun control advocates who want tighter gun control and constitutionalists who believe as strongly in the Second Amendment right to bear arms. Since 2007, more than 20 states have seen bills introduced into their legislature that propose the authorization or arming of school employees.<sup>1</sup> School weapons policy is an issue involving nearly every law enforcement agency (at state and federal levels), the first responder community, the public, and school administrators. The protection of children from active shooter/armed intruder incidents while in school has homeland security implications that require objective decision making.

The outcome of this research did not result in advocating for a particular policy *option*, but instead advocates for a policy *process*. One assumption of the research question is that there is no one correct nor universally applicable outcome; rather, there are possible options for every school district applicable to the unique environment, context, values, current capabilities and competencies (or those that could exist), and risk tolerance. The measure of effectiveness for each criterion considered is whether the risk associated with each criterion has been managed (or can be) in an acceptable manner. This research makes the assumption that given the current legal and social environment, there is no “one size fits all” answer; the same decision-making framework and process can be used regardless of whether the outcome supports MoreGuns (allow teachers to be armed), BanGuns (no one is armed), or SomeGuns (trained security or law enforcement can be armed but not teachers).

California was chosen for this research because unlike other states, it lacks a legislative framework outlining parameters for arming school employees. In addition, California is recognized as a state with more restrictive gun laws, thereby making the

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<sup>1</sup> David B. Kopel, “Pretend Gun-Free School Zones: A Deadly Legal Fiction,” *Connecticut Law Review* 42, no. 2 (2009): 515.

policy decision more difficult to navigate. Although California is the intended audience, there are broad implications for school districts nationwide. A collateral and intended impact will be a contribution to the education of all stakeholders and those interested in the dynamics and implications of school gun policy.

The following policy options discussed in this research represent the various paradigms that exist or can exist to create policy. Acknowledging the assertion of Donella Meadows that no paradigm is “true,” none of these policy options is truer than the next, but instead all are true.<sup>2</sup> In addition, it is the mission of the superintendent in partnership with the applicable stakeholders to determine which option is most true for them.

## **1. BanGuns**

A BanGuns ideology primarily comes as a result of any of the following:

- An unwillingness to incur any liability or any level of risk associated with firearms (risk avoidance).
- A culture that fundamentally does not support the presence of firearms on campus (risk avoidance).
- A determination that adequate insurance cannot be obtained or is cost prohibitive (the inability to transfer risk).
- A lack of capacity/capability to administer a weapons policy (inability to mitigate risk).

## **2. MoreGuns**

A MoreGuns ideology results when culture and capacity support firearms on campus. To date, this ideology has been most prevalent in states with liberal gun laws, which does not include California. In these instances the following characteristics apply:

- Parent and employee groups support guns on campus and no opposition is expressed toward arming staff or security personnel.
- The use of a firearm is a desired part of the job to provide enhanced security on campus (acceptance of risk).
- Attitudes are accepting of voluntary carry by personnel who have a license to carry a concealed weapon.

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<sup>2</sup> Donella Meadows, *Thinking in Systems: A Primer*, ed. Diana Wright (White River Junction, VT: Chelsea Green Publishing, 2008).

- The district is willing to incur liability, has adequate insurance in place, and uses indemnification agreements where appropriate, thereby achieving adequate risk transfer.
- Training for persons authorized to carry a firearm is robust and consistent with Peace Officer Standards and Training (POST) or other as prescribed by policy or regulation (risk mitigation).

### **3. SomeGuns**

This ideology is a middle ground where neither gun advocates nor gun opponents achieve their fundamental goal. This approach is characterized primarily by the following:

- The culture may be opposed to arming civilian employees but does not oppose armed security or law enforcement personnel.
- There is a willingness to incur some liability but in a limited fashion (risk acceptance).
- Adequate insurance is in place and contractual liability pertaining to the use of outside agencies or firms has been addressed (risk transfer).
- Training for persons authorized to carry a firearm is robust and consistent with Peace Officer Standards and Training (POST) or other as prescribed by policy or regulation (risk mitigation).

A successful policy approach considers the whole system of interconnected pieces and understands how one decision or action affects other parts. Using risk management principles as the backdrop and foundation for making policy provides the best opportunity for success moving forward by prompting policymakers to objectively assess culture, capability, and resources in creating sound policy.

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## ACKNOWLEDGMENTS

This thesis is dedicated to the school administrators who must navigate the potential minefield of deciding whether or not to allow guns on their campuses. This is an issue few, if any, administrators contemplated having to face when they pursued their academic credentials.

I am grateful to Chris Bellavita for believing that I belonged in the program and for the instructors associated with the Center for Homeland Defense and Security. The quality of instruction and commitment from the faculty was impressive, and I am truly honored to have been given this opportunity. I also want to thank my thesis advisors, Kathleen Kiernan and John Rollins, for their guidance and direction, and to thank David Linthicum for being excited about this topic from the beginning and for reading everything I sent him. To my classmates in Cohorts 1405/1406, it has been a privilege getting to know all of you. I am so impressed with what each of you do every day.

Finally, I want to thank my husband, Kent, for holding down the fort every time I was away and for tolerating all the time I spent doing homework. To my kids, Wilson and Emma, I'm sorry for all the time I spent away from you, but I hope you will see the effort is worth the sacrifice when you pursue something meaningful. Don't be afraid to reach beyond what you thought you could do.

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## I. INTRODUCTION

I have yet to see any problem, however complicated, which, when looked at in the right way, did not become still more complicated.

— Poul Anderson

### A. PROBLEM STATEMENT—BACKGROUND

On October 1, 1997, Luke Woodham grabbed a lever action deer rifle, donned a trench coat, and headed to Pearl High School in Pearl, Mississippi, where he shot and killed two students and wounded seven others.<sup>3</sup> Vice Principal Joel Myrick apprehended Woodham as he tried to escape, allegedly on his way to another school to continue his rampage. Hearing the shots, Myrick ran to his truck to retrieve his Colt .45 and bullets from a secured case.<sup>4</sup> Intercepting Woodham at his vehicle, Myrick held the Colt to the shooter's head and said, "Why are you shooting my kids?"<sup>5</sup> Woodham is one of the earliest school shooters of the modern day, and Myrick is one of the first armed school employees to stop an attack.<sup>6</sup> Although Myrick's actions were largely applauded as saving lives, he was not regarded universally as a hero; he soon felt betrayed and isolated.<sup>7</sup> Some of Myrick's colleagues simply could not accept that he had held a gun to a student's head.<sup>8</sup> This case provides an example of how the decision to arm school employees can be confounding and complex. The debate has been ongoing at the national level since the late 1990s, yet shows no sign of resolution or conclusion. Whether or not to implement a weapons policy is an issue every school superintendent or school authority may need to face sooner or later. With this in mind, how is a school

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<sup>3</sup> Wayne Laugesen, "A Principal and His Gun," October 15, 1999, Dave Kopel, <http://www.davekopel.com/2A/OthWr/principal&gun.htm>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Laugesen, "A Principal and His Gun;" Eugene Volokh, "Do Citizens (not Police Officers) With Guns Ever Stop Mass Shootings?" *Washington Post*, October 3, 2015, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/03/do-civilians-with-guns-ever-stop-mass-shootings/>; Mark Follman et al., "US Mass Shootings, 1982–2015: Data from Mother Jones' Investigation," *MotherJones*, December 28, 2012, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>.

<sup>7</sup> Laugesen, "A Principal and His Gun."

<sup>8</sup> Ibid.

superintendent to decide? There are a number of variables that must be considered in coming to a policy decision.

Peter Langman, Ph.D., maintains a comprehensive database of school shootings dating back to 1940, when Verlin Spencer, a principal from South Pasadena School District, shot and killed five people<sup>9</sup> to the most recent school shooting (as of this writing), which occurred in 2015. According to Langman, 89 school-related shootings have occurred through 2015 involving 95 perpetrators.<sup>10</sup> Of the total, 14 incidents occurred in California, eight of which occurred in K-12 schools.<sup>11</sup> Many school-related shooting incidents that receive national attention revive the discussion of whether or not school employees should be armed. There is wide discourse between gun control advocates who want tighter gun control and constitutionalists who believe as strongly in the Second Amendment right to bear arms. Since 2007, more than 20 states have seen bills introduced into their legislature that propose the authorization of arming school employees, and some states have seen multiple bills submitted.<sup>12</sup> School weapons policy is an issue involving nearly every law enforcement agency (at state and federal levels), the first responder community, the public, and school administrators. The protection of children from active shooter/armed intruder incidents while in school has homeland security implications that require objective decision making. This research seeks to provide an objective policymaking process.

## **B. PURPOSE OF STUDY**

The object and purpose of this research is to explore what decision-making criteria are used, exist, or are evident from existing practice to determine whether to arm school employees at a particular school. In addition, this research seeks to establish a decision-making model from the criteria identified to inform and support policy choices.

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<sup>9</sup> Peter Langman, "School Shootings in USA," January 10, 2016, <https://schoolshooters.info/browse-database>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Langman, "School Shootings in USA;" David B. Kopel, "Pretend Gun-Free School Zones: A Deadly Legal Fiction," *Connecticut Law Review*, 42, no. 2 (2009): 523–524.

The focus and outcome of the research is to identify or develop a framework based on risk management principles to guide and inform an objective decision-making processes. This research also explores whether the same criteria can inform legislators regarding school gun legislation. Douglas Hubbard defines risk management as, “The identification, assessment, and prioritization of risk followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events.”<sup>13</sup> More simply put, risk management is “being smart about taking chances.”<sup>14</sup> Risk management has a wide application, from physical security to financial and insurance applications, regulatory compliance, and government operations.<sup>15</sup>

This research does not seek to answer the question universally of whether school districts should arm their employees, but rather it seeks to provide a framework for each educational agency to explore, contemplate, and determine their course of action based upon risk management principles that take into account the values, goals, and interests of the community to which the policy applies.

### **C. RESEARCH QUESTION**

Can risk management principles and decision-making processes provide an actionable framework for deciding weapons policy in California K-12 schools? California was chosen for this research because unlike other states, it lacks a legislative framework outlining the parameters for arming school employees. Other states, such as Texas, already have such legislation in place. In addition, California is recognized as a state with more restrictive gun laws thereby making reaching the policy decision more difficult to navigate.

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<sup>13</sup> Douglas W. Hubbard, *The Failure of Risk Management: Why It's Broken and How to Fix It* (Hoboken, NJ: John Wiley & Sons, 2009), 10.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 11.

#### D. SIGNIFICANCE OF RESEARCH

The initial audience for this research is California school administrators. In the 2014/2015 school year, California had just over 1,000 K-12 school districts with student attendance of 6,235,520.<sup>16</sup> The size and demographic of these school districts are broadly different. For instance, Blake Elementary School District in Kern County is a rural school with five students, while Los Angeles Unified School District had an enrollment of 646,683 students.<sup>17</sup> This research suggests the same decision making process can be used for all California K-12 school districts and it is, in part, their differences that help drive the policy outcome. Although California is the intended audience, there are broad implications for school districts nationwide. A collateral (and intended) impact will be a contribution to the education of all stakeholders and those interested in the dynamics and implications of school gun policy. This research is intended to stand as a resource for stakeholders such as legislators, parents, and employees to equip them to engage in the policy debate and to empower their participation in making informed decisions about school district weapons policy.

The literature is filled with commentary and proposals about what schools should do on this issue and what policy they should adopt. Robert Birnbaum puts it best when he divides the two competing policy narratives into MoreGuns verses BanGuns. Advocates for arming school employees (MoreGuns) cite the need for school staff to become first responders in order to provide protection in the event of an active shooter scenario.<sup>18</sup> They say allowing concealed weapons provides a deterrent because a shooter would not know who is carrying a weapon and therefore would likely choose another target.<sup>19</sup> In addition, they also assert that gun prohibitions only make schools more vulnerable because the bad guys know staff are unarmed.<sup>20</sup> With law enforcement response times of

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<sup>16</sup> “Enrollment in California Public School Districts 1415,” California Department of Education, accessed January 10, 2016, [dq.cde.ca.gov/dataquest/content.asp](http://dq.cde.ca.gov/dataquest/content.asp).

<sup>17</sup> Ibid.

<sup>18</sup> Mark A. Velez, *Guns, Violence, and School Shootings: A Policy Change to Arm Some Teachers and School Personnel*, Selected Works, 2013, [http://works.bepress.com/mark\\_velez/1](http://works.bepress.com/mark_velez/1).

<sup>19</sup> Ibid.

<sup>20</sup> Kopel, “Pretend Gun-Free School Zones.”

20 minutes to an hour in rural areas, the MoreGuns folks assert that arming school employees is a prudent decision.<sup>21</sup> The Federal Bureau of Investigation (FBI) has noted the special vulnerability of rural schools and has acknowledged that armed citizen responders should be anticipated.<sup>22</sup> Lastly, the MoreGuns advocates are supporters of gun rights in general and big Second Amendment supporters. One of the most detailed resources on the subject of guns in schools is the National Rifle Association's (NRA's) National School Shield Program. Not surprisingly, it advocates for more guns in schools via more school resource officers and qualified school personnel.<sup>23</sup> For example, Congressman Asa Hutchinson (R-Ark) headed the NRA taskforce and supports weapon carrying for school employees in his home state of Arkansas.<sup>24</sup>

As passionate as the MoreGuns advocacy is, so is the BanGuns advocacy. Former New York Mayor Michael Bloomberg pledged \$50 million dollars to his group Everytown for Gun Safety to help fight the NRA.<sup>25</sup> The BanGuns constituency believes the gun problem cannot be solved by adding more guns. This constituency is comprised of school administrators, teachers' unions, law enforcement agencies, higher education officials, campus police chiefs, some student body associations, and the Brady Center to Reduce Gun Violence.<sup>26</sup> It is ironic that with an abundance of gun legislation proposing to lessen gun restrictions on primary, secondary, and higher education campuses, the recipients of the legislation are overwhelming opposed to adding more guns.<sup>27</sup> Their

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<sup>21</sup> Michael E. Buerger, and Geoffrey E. Buerger, "Those Terrible First Few Minutes," *FBI Law Enforcement Bulletin* (September 2010).

<sup>22</sup> *Ibid.*

<sup>23</sup> Asa Hutchinson, *Report of the National School Shield Task Force*, National School Shield, 2013, <http://s3.documentcloud.org/documents/671142/nss-final.pdf>.

<sup>24</sup> Kim Severson, "Guns at School? If There's a Will, There Are Ways," *New York Times*, September 27, 2013, sec. U.S., <http://www.nytimes.com/2013/09/28/us/guns-at-school-if-theres-a-will-there-are-ways.html>.

<sup>25</sup> Leigh Ann Caldwell, and Kevin Bohn, "Bloomberg to Spend \$50 Million to Challenge NRA on Gun Safety," *CNN News*, April 16, 2014, <http://www.cnn.com/2014/04/15/us/bloomberg-gun-safety-initiative/index.html>.

<sup>26</sup> Robert Birnbaum, "Ready, Fire, Aim: The College Campus Gun Fight" (presented at the 2012 Annual Meeting of the Association for the Study of Higher Education, Las Vegas NV, November 2012), <http://files.eric.ed.gov/fulltext/ED537905.pdf>.

<sup>27</sup> *Ibid.*

chief argument is increased risk due to the presence of firearms. A recent accident where a Utah teacher accidentally shot herself is a good example.<sup>28</sup> Although shooting herself is bad enough, if she had accidentally shot another staff member or student there would have been a great deal more public outrage. Utah has been allowing concealed carry on campuses for many years and has been heralded by the MoreGuns constituency as an example to follow.<sup>29</sup> The BanGuns constituency can now use Utah as rebuttal to the argument that accidents never happen. Other concerns on this side of the issue include increased liability, confusion during emergencies over who has a weapon, what level of training is appropriate when a teacher may have to shoot their own student, and that the unknown specter of guns on campus creates fear and paranoia that is not conducive to a healthy learning environment.<sup>30</sup>

The training element is one that is hotly debated and one where the BanGuns folks seem to have the upper hand. What is the minimum amount of training required to enable a layperson to develop an appropriate mindset and become proficient in handling a handgun under volatile, unpredictable, and stressful situations? For law enforcement and security personnel, a minimum of 24 hours of training is required for firearm certification, but the initial basic training is not enough, accurately shooting a weapon, especially under pressure, is a perishable skill, and ongoing training and range time is critical in order to maintain proficiency.<sup>31</sup> BanGuns advocacy says that educators are not warriors and cannot be trained to become so.<sup>32</sup> Lastly, they also claim that adding more guns will not provide a meaningful deterrent because it will not stop the individuals who are mentally ill or suicidal.<sup>33</sup> If anything, it increases the likelihood they choose a target where they know they will encounter armed individuals. It could become somewhat of a

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<sup>28</sup> Zoe Schlanger, "In Utah, Teachers Can Carry Guns into School and Not Tell Anyone," *Newsweek*, September 11, 2014, <http://www.newsweek.com/utah-teachers-can-carry-guns-school-and-not-tell-anyone-269923>.

<sup>29</sup> Kopel, "Pretend Gun-Free School Zones."

<sup>30</sup> Birnbaum, "Ready, Fire, Aim: The College Campus Gun Fight."

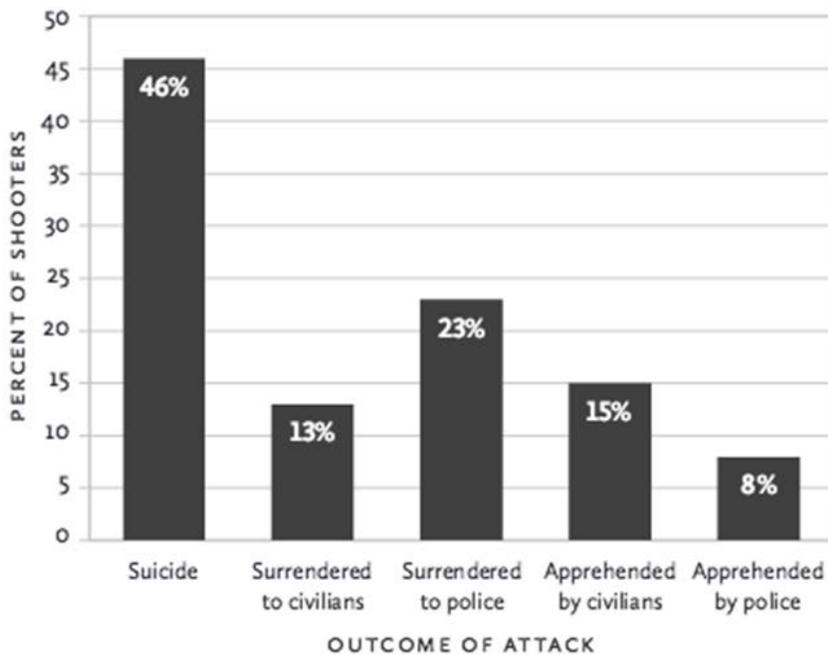
<sup>31</sup> Paul Rackley, "Perishable Skills," May 22, 2013, *American Rifleman*, <http://www.americanrifleman.org/articles/2013/5/22/perishable-skills/>.

<sup>32</sup> Birnbaum, "Ready, Fire, Aim: The College Campus Gun Fight."

<sup>33</sup> *Ibid.*

“suicide by cop” scenario. For some shooters, dying is part of their plan. “Take everyone down, turn the guns on the cop, take out myself. Perfecto,” were the words written in preparation for an attack at Connetquot High School in 2007.<sup>34</sup> In a study of 48 shooters conducted by Dr. Peter Langman, 46 percent died by suicide, thereby ending the attack.<sup>35</sup> In addition, many of the suicides occurred after police arrived and engaged the shooter with gunfire.<sup>36</sup> Figure 1 depicts Langman’s findings for school shooting outcomes.

Figure 1. Resolution/Outcome of School Shooting Attacks



Source: Langman, “On-Scene Behavior of School Shooters.”

This thesis uses Birnbaum’s MoreGuns and BanGuns policy option characterizations and uses them as the foundation for actual policy, rather than as the description of an ideology. A third policy option is also introduced: SomeGuns.

<sup>34</sup> Peter Langman, “Ten Lessons Learned from School Shootings and Foiled Attacks,” July 31, 2014, [https://schoolshooters.info/sites/default/files/ten\\_lessons\\_1.1.pdf](https://schoolshooters.info/sites/default/files/ten_lessons_1.1.pdf).

<sup>35</sup> Peter Langman, “On-Scene Behavior of School Shooters: The Resolution of Rampage Attacks,” August 12, 2015, [https://schoolshooters.info/sites/default/files/on\\_scene\\_behavior\\_1.1\\_0.pdf](https://schoolshooters.info/sites/default/files/on_scene_behavior_1.1_0.pdf).

<sup>36</sup> Ibid.

BanGuns, detailed in Chapter III, is the appropriate policy option for those districts who lack sufficient capacity and/or who are unwilling to incur any risk associated with firearms. MoreGuns, detailed in Chapter IV, acknowledges the cultural and capacity considerations for those school districts that want to adopt an aggressive security posture by adding firearms on campus. Key decision criteria and analysis of issues, such as liability, insurance, and training, are outlined along with the application of relevant risk management considerations and controls. Chapter V details the SomeGuns policy option, which is founded on the concept that not all firearms should be prohibited and therefore an acceptable compromise can be achieved. The SomeGuns policy option provides reduced risk and liability for the school district, restricts who can carry a firearm and requires less oversight than the MoreGuns policy approach.

#### **E. SCOPE AND LIMITATIONS**

The scope of this research and output is focused on California K-12 school districts. University and adult educational environments have different legal and property rights applications, and those are not contemplated or considered within this body of work.

One assumption of the research is that there is no one correct nor universally applicable outcome; rather, there are possible options for every school district applicable to the unique environment, context, values, current capabilities and competencies (or those that could exist), and risk tolerance. The measure of effectiveness for each criteria under consideration is whether the risk associated with each criterion has been managed (or can be) in an acceptable manner. This research makes the assumption that given the current legal and social environment, there is no “one size fits all” answer; the same decision-making framework and process can be used regardless of whether the outcome supports BanGuns, MoreGuns, or SomeGuns.

#### **F. LITERATURE REVIEW**

Much has been published on this subject in the form of pro-gun commentary, anti-gun commentary, legal analysis of case law, legal analysis of gun laws, and even proposals to change existing gun laws. There is a plethora of news articles stating

opinions from legislators, governors, scholars, lawyers, school officials, school employees, union officials, student body organizations, the National Rifle Association, parents who have lost children in shooting related incidents, and parents who have not. The list is long and the opinions are delivered with fervor. Although there is an abundance of material on the subject of guns in schools, there is little that is directly related to the decision-making process of whether to arm school employees. Therefore, this review includes materials, which if taken together, can support the ideology of a decision-making framework.

The relevant information used for this review is organized into the following categories:

- Gun laws
- Decision making and management
- Parsing the issue
- Proposals and case studies
- Legal liability

## **1. Gun Laws**

For some, the issue of guns (whether in schools or not) starts and stops with their interpretation of the Second Amendment. For more than 70 years, gun bans were successfully defended and upheld due to an interpretation of the Second Amendment known as the collective rights interpretation. This interpretation believes the Second Amendment merely granted states the right to form militias. Under this interpretation, individual rights are not considered.<sup>37</sup> An individual rights interpretation views the Second Amendment as providing the right for individuals to keep and bear arms absent involvement in, or presence of, any militia. In *District of Columbia v. Heller* in 2008, the Supreme Court changed the long-standing collective rights interpretation and held that the Second Amendment applies to and protects an individual's right to keep and bear

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<sup>37</sup> Amy Hetzner, "Comment: Where Angels Tread: Gun-Free School Zone Laws and an Individual Right to Bear Arms," *Marquette Law Review*, 95 no. 359 (2011): 361–408.

arms.<sup>38</sup> Although the *Heller* decision upheld the individual rights interpretation, it did not provide an absolute right to carry a firearm any time and any place an individual chooses.

Within the boundaries of the Second Amendment and the *Heller* ruling, each state has the authority to regulate firearms as they determine appropriate. This includes regulations for purchasing, ownership; use of, and, as it relates to this research, whether individuals can carry handguns in California K-12 schools.<sup>39</sup> According to the Government Accountability Office (GAO), as it relates to issuing concealed weapons permits, states can be classified into the following categories:

- No-issue: The state does not permit residents or nonresidents to carry concealed handguns.
- May-issue: The state applies discretion in granting permits to carry concealed handguns.
- Shall-issue: Issuing authorities are required to issue a permit to an applicant that fulfills the objective statutory criteria if no statutory reason for denial exists.
- Permit not required: States do not require a permit to carry a concealed handgun.<sup>40</sup>

California is a “may issue,” state and each county law enforcement jurisdiction determines through the permitting process whether there is good cause to issue the permit.<sup>41</sup> If approved, the individual is granted a permit and may carry a concealed weapon “at times or circumstances” specified in the permit. It is important to note that having a permit does not allow an individual to carry the weapon at all times; he or she is subject to the permit conditions. Violation of the permit conditions may be cause for revocation.<sup>42</sup> In addition, in some jurisdictions, like Kern County, applicants who desire

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<sup>38</sup> “District of Columbia v Heller,” *Casebriefs* [blog], accessed October 4, 2014, <http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/the-federal-judicial-power/district-of-columbia-v-heller/>.

<sup>39</sup> U.S. Government Accountability Office, *Gun Control States’ Laws and Requirements for Concealed Carry Permits Vary across the Nation* (Washington, DC: U.S. Government Accountability Office, 2012).

<sup>40</sup> *Ibid.*,

<sup>41</sup> Kamala D. Harris, *California Firearms Laws Summary*, California Department of Justice, 2013, <http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/cfl2013.pdf>.

<sup>42</sup> *Ibid.*

to carry a concealed weapon at their place of employment must submit a letter of acknowledgement/permission from their employer.<sup>43</sup> For school district employees, such a letter would come from the school superintendent or school board authority. The laws pertaining to gun ownership, use, and concealed carry are found in the California Penal Code,<sup>44</sup> and each state has its particular version.<sup>45</sup>

Although California is considered a “may issue” state, that status has been recently undermined in the decision regarding *Edward Peruta v. County of San Diego*. In the *Peruta* decision, United States Court for the Ninth Circuit ruled, “San Diego County’s rules requiring individuals to show good cause ... beyond a mere desire to carry a gun” when applying for a concealed weapons permit violated the Second Amendment. This ruling essentially turned San Diego into a “shall issue” county. Shortly after the ruling, San Diego was “inundated” by applications for concealed carry permits.<sup>46</sup> As predicted by the California Attorney General Kamala Harris, the *Peruta* decision quickly extended its reach beyond San Diego and has been used to challenge the concealed weapon application process in Kern County (*Kent Williams v. City of Bakersfield*) and Yolo County (*Richards v. Prieto*). Since its original decision, the court has agreed to hear the case en banc and oral arguments were heard on June 16, 2015. The outcome of this case could fundamentally change the concealed-carrying permitting process throughout California.

In addition to the California Penal Code, guns are further regulated specific to schools via the California Gun Free School Zone Act (GFSZA).<sup>47</sup> The GFSZA prohibits any person from possessing a firearm in a place the person knows to be or reasonable

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<sup>43</sup> Kern County, “Standard Initial and Renewal Application for License to Carry a Concealed Weapon,” Kern County Sheriffs Office, April 16, 2014, [http://www.kernsheriff.com/misc/FormsApps/Documents/CCW\\_Application\\_2015\\_2016%20%28New%29.pdf](http://www.kernsheriff.com/misc/FormsApps/Documents/CCW_Application_2015_2016%20%28New%29.pdf).

<sup>44</sup> Harris, *California Firearms Laws Summary*.

<sup>45</sup> U.S. Government Accountability Office, *Gun Control States’ Laws and Requirements*.

<sup>46</sup> Jill Cowan, “O.C. ‘Inundated’ with Hundreds of Concealed Weapons Applications,” *L.A. Times*, February 26, 2014, <http://articles.latimes.com/2014/feb/26/local/la-me-ln-oc-concealed-weapons-applications-20140225>.

<sup>47</sup> “Penal Code Section 626-626.11,” <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=626-626.11>.

should know is a school zone.<sup>48</sup> “School zone” means an area in, or on the grounds of, a public or private K-12 school or within a distance of 1,000 feet from the school grounds.<sup>49</sup> There are few exceptions to the prohibition, but one applicable to this research is that an individual may carry a concealed weapon on a school campus upon receiving written permission from the superintendent or school authority.<sup>50</sup> This means school superintendents have the authority to allow concealed weapons (i.e., arming school employees) should they desire to do so. Notwithstanding the requirement to obtain written permission to bring a concealed weapon onto campus, there are a number of exceptions to this requirement as well as various interpretations, which muddle effective enforcement. However, on October 10, 2015, the California Legislature chaptered Senate bill (SB) 707 to amend the existing GFSZA and to remove the exemption that previously allowed those with a concealed weapons permit to carry their weapon on school grounds.<sup>51</sup>

Guns are regulated in California to an almost exhaustive detail;<sup>52</sup> therefore, a thorough knowledge of the applicable gun laws in the jurisdiction where the school resides is essential for effective policy consideration. Understanding the written law is not enough, school authorities need to take the extra step to understand how the written law is interpreted and enforced in their particular jurisdiction.

## **2. Decision Making and Management**

As a result of the liability and potential litigation attached to the issue of guns, this research focused on decision-making processes that are based on risk management principles fostered by the Insurance Institute of America. Risk management is a discipline that strives to minimize the adverse effects of accidental or unintentional losses

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<sup>48</sup> Ibid., 626.9:(b).

<sup>49</sup> Ibid., 626.9:(e)(1).

<sup>50</sup> Ibid., 626.9:(b).

<sup>51</sup> “Senate Bill 707, Chapter 766,” accessed January 23, 2016, [http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0701-0750/sb\\_707\\_bill\\_20151010\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0701-0750/sb_707_bill_20151010_chaptered.pdf).

<sup>52</sup> Harris, *California Firearms Laws Summary*.

to an organization.<sup>53</sup> Risk management is both a decision-making process and a management process. As a management process, it includes the functions of “planning, organizing, leading, and controlling.”<sup>54</sup> As a decision-making process, it involves the following sequential steps:

1. Identify and analyze exposures/risk assessment.
2. Examining and evaluating options for dealing with the exposure/risk.
3. Selecting the apparently best risk management techniques/options.
4. Implementing the chosen techniques/options.
5. Monitor results to determine effectiveness.<sup>55</sup>

Although rooted in the insurance industry, the risk management process provides an applicable framework for use in decision making where any type of risk presents the possibility of unintended or undesired loss to an organization. Recognizing its value, the comptroller general of the United States hosted a forum in 2008 “to discuss strengthening the use of risk management principles in homeland security.”<sup>56</sup> One of the chief purposes of the forum was “to advance a national dialogue on applying risk management to homeland security” because the nation cannot fully protect against all risks. Recognizing this reality, using the risk management process helps “policymakers assess risk, strategically allocate finite resources, and take actions under conditions of uncertainty.”<sup>57</sup> In his presentation at the forum, Norman Rabkin, Managing Director of GAO’s Homeland Security and Justice Team, noted that Congress has recognized the value of risk management and its ability to assist policymakers, thereby charging federal agencies with incorporating the use of risk management principles into their program planning and

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<sup>53</sup> George Head, and Stephen Horn, *Essentials of Risk Management*, 3<sup>rd</sup> ed. (Malvern, PA: Insurance Institute of America, 2003), <http://www.theinstitutes.org/guide/designations/associate-risk-management-armtm>, xi.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., 1.4.

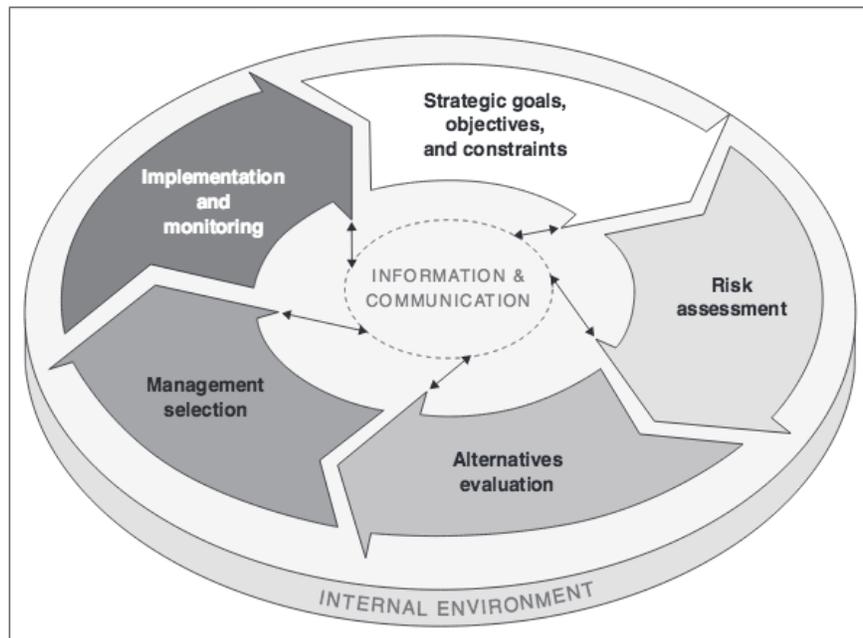
<sup>56</sup> Comptroller General of the United States, *Highlights of a Forum: Strengthening the Use of Risk Management Principles in Homeland Security* (Washington, DC: U.S. Government Accountability Office, 2008).

<sup>57</sup> Ibid.

budgeting processes.<sup>58</sup> His summary of the GAO framework is analogous to that of the Insurance Institute of America. Figure 2 illustrates how the component parts connect to form a cycle. It is important to note the interconnections of ongoing information and communication, which serve to provide ongoing feedback and additional data that is continuously feed into the cycle to ensure well-informed action or policy.

1. Set strategic goals and objectives, and determine constraints.
2. Assess risks.
3. Evaluate alternatives for addressing these risks.
4. Select the appropriate alternatives.
5. Implement the alternatives and monitor the progress made and results achieved.<sup>59</sup>

Figure 2. Relationship of the Risk Management Framework Components



Source: GAO.

Source: Comptroller General of the United States, *Highlights of a Forum*.

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

The principles of risk management and the risk management process have been increasingly adopted and incorporated into decision-making processes by many government agencies, including the U.S. Army. Its version, composite risk management, is also a five-step process, based on the same risk management principles, and its narrative provides more detail that is easier to translate and apply to the assessment of guns in schools:

1. “Identify hazards to the force. Consider all aspects of current and future situations, environments, and known historical problem areas.”<sup>60</sup>

Application of this element would include an assessment of the culture, demographic, identifying resources, capabilities, objectives, and policy goals.

2. “Assess hazards to determine risks. Assess the impact of each hazard in terms of potential loss and cost based on probability and severity.”<sup>61</sup>

Application of this element includes evaluating the risk posed by the presence of guns. Is there a difference between arming employees versus having armed security or police officers present? What are the storage, training, and ammunition requirements? What are the worst-case scenarios for various policy decisions?

3. “Develop controls and make risk decisions. Develop control measures that eliminate the hazard or reduce its risk. As control measures are developed, risks are re-evaluated until the residual risk is at a level where the benefits outweigh the cost.”<sup>62</sup>

Application of this element includes an evaluation of the available and feasible control measures that can effectively control/mitigate or transfer the risk of a gun policy (either pro or against).

4. “Implement controls that eliminate the hazards or reduce their risks.”<sup>63</sup>

Regardless of the policy position, the school district should formally adopt the policy at the governing board level. This provides the authority for implementation and enforcement.

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<sup>60</sup> *Composite Risk Management*, University North Carolina Charlotte, 2010, <http://arotc.uncc.edu/sites/arotc.uncc.edu/files/MSL%20401%20Officership%20Section%2006%20-%20Composite%20Risk%20Management.pdf>.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

5. “Supervise and evaluate. Enforce standards and controls. Evaluate the effectiveness of controls and adjust/update as necessary. Ensure lessons learned are fed back into the systems for future planning.”<sup>64</sup>

Risk management does not surface as a common decision-making framework in literature; however, its process and techniques provide relevant guidance and direction for policy assessment. Policy focus is shifted from subjective desires, agendas, or entrenched ideologies to a process that is objective and substantive. Moreover, risk management is a mechanism that helps ensure the greatest risks are identified and assessed in a way that leads to effective mitigation or control. The process also serves as the foundation for effective communication of outcomes and policy decisions.

### **3. Proposals, Case Studies, and Legislation**

Although the issue of whether to arm school employees is vigorously debated, there are some school districts that have carefully contemplated their options and implemented policies they believe suit their needs. The most comprehensive regulatory framework and guidance comes from Texas and several schools have moved forward implementing the provisions of the Texas Protection of Children Act (Texas Act).<sup>65</sup> The act creates a school marshal program, whereby a school employee can be designated as a school marshal, trained, and armed. Details of the Texas Act include the following:

- Voluntary participation; the board of trustees selects and appoints not more than one marshal per 400 students.
- Recognition of school marshals under Texas Code of Criminal Procedure and licensed under the Occupations Code as having arrest authority and all authority given peace officers, except traffic enforcement. They are not entitled to state benefits for peace officers.
- Complete of 80 hours of instruction focusing on preventing school shootings and securing victims during a shooting event, demonstrating proficiency with a handgun, legal issues relating to peace officers and the use of deadly force, and training for emergency situations requiring the use of deadly force.

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<sup>64</sup> Ibid.

<sup>65</sup> Protection of Texas Children Act (2013).

- Submit to and pass a psychological examination to determine if the marshal is psychologically fit to carry out the duties in an emergency shooting or situation involving an active shooter.
- Volunteers must bear their own costs for training and licensing.
- Satisfy all requirements for a concealed handgun license and license renewal requirements.
- School marshals may carry concealed weapons, but if their primary duties involve direct contact with students on a regular basis the handgun must be kept in a locked, secure location on campus. Only frangible ammunition (designed to disintegrate on impact to eliminate ricochet) is allowed.<sup>66</sup>

The training elements, psychological examination, and other components of the program are under the jurisdiction and administered by the Texas Commission on Law Enforcement Officer Standards and Education.<sup>67</sup> The legislation created a new level of law enforcement officer with the concomitant training and certification requirements. California's School Marshal Plan pales in comparison in both detail and authority. Simply put, California's plan proposed an amendment to the Education Code allowing school districts to expend general funds to provide training for school marshals.<sup>68</sup> Had the legislation passed, marshals would have been defined as those who were authorized under the Gun Free School Zone Act to possess a firearm at a school site. However, school superintendents would have been left with no guidance from the legislature about how best to proceed. With its lack of detail, it is perhaps a benefit the bill died in committee.

North Carolina has legislation similar to Texas wherein certification must be in accordance with the North Carolina Criminal Justice Education and Training Standards Commission.<sup>69</sup> The model legislation proposed by the School Shield NRA taskforce contains language that requires any training program for school marshals to be pursuant to the applicable state agency for setting law enforcement or armed security training

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> California Senate bill 202, California School Marshal Plan (2013).

<sup>69</sup> North Carolina General Assembly 27, Public School Protection/Firearms Amendments (2013).

standards.<sup>70</sup> Under rules designed for security companies, Arkansas allows employees with 60 hours of training to carry concealed weapons.<sup>71</sup> A plan for Nevada's higher education campuses proposed allowing professors and full-time employees to carry concealed weapons if they underwent the training necessary to become reserve police officers (at their own expense); however, the board of regents rejected the plan after vigorous opposition from staff and students.<sup>72</sup> Some districts require much less training or no training at all. Schools that allow individuals who have concealed weapons permits to carry on campus, they are staking the safety of students on as little as eight hours of training, most of which is not specific to the school environment.<sup>73</sup>

The above examples represent the diverse set of options either contemplated or implemented in various school districts. Other considerations found in the literature involve who is eligible to be armed, who pays for expenses associated with arming school personnel, how firearms will be worn or stored, guidelines for when the firearm can be used, and how emergency procedures should be adjusted.<sup>74</sup> Though these issues must be decided at the local school level, school administrators need resources to help them navigate the process. The Texas Association of School Boards published an excellent resource not only applicable to Texas schools but also useful for schools in other states that are looking for key decision criteria. Published in 2014, it was the result of the School Safety Task Force, which was charged with studying best practices for school multi-hazard emergency operations, including options for having armed individuals on school campus. It is a comprehensive document, folding the elements of the Texas Protection of Children Act into its contents thereby providing an excellent planning resource for the implementation of the Texas Act and detailing how firearms integrate into the overall mission of emergency planning.<sup>75</sup>

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<sup>70</sup> Hutchinson, *Report of the National School Shield Task Force*.

<sup>71</sup> Severson, "Guns at School?"

<sup>72</sup> Kopel, "Pretend Gun-Free School Zones."

<sup>73</sup> Kern County, "Standard Initial and Renewal Application."

<sup>74</sup> Velez, "Guns, Violence, and School Shootings."

<sup>75</sup> Texas Protection of Children Act (2013).

#### 4. School District Legal Liability

Pursuant to the California Tort Claims Act, a school district is liable for injuries proximately caused by an act or omission of an employee when that employee is acting within the scope of employment.<sup>76</sup> With very limited immunities, public employees are liable for their torts, and public entities are vicariously liable for the torts of their employees.<sup>77</sup> School districts are generally liable for the actions of their employees under the doctrine of *respondeat superior*.<sup>78</sup> This doctrine, which is Latin for “let the master answer,” holds an employer liable for the authorized action of an employee.<sup>79</sup> If a school district authorized employees to carry a concealed weapon within the scope of their job, the district is potentially liable for any injury or damage resulting from the use or presence of the weapon. In addition to being responsible/liable for the actions of their employees, employers are also responsible for the safety of their employees. The California Injury and Illness Prevention Program (IIPP) requires employers to train employees in the hazards specific to their jobs. Training in firearms safety becomes an employer requirement when the firearm is incorporated as a potential job function. Training and informing non-weapon-carrying personnel of potential hazards and policy is also required.<sup>80</sup>

*In loco parentis* is another Latin term applicable to this research. Meaning “in place of the parent,” it establishes the duty of school personnel under prescribed legal principles of negligence. Basically, educators have a duty to protect their students from foreseeable danger and to take reasonable steps to protect them from that danger.<sup>81</sup> In application, educators owe students the same duty of care and supervision that reasonable parents would employ in the same circumstances.

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<sup>76</sup> California Tort Claims Act, § 810 et seq.

<sup>77</sup> Ibid., §820(a) and 815.2(a).

<sup>78</sup> “California Civil Jury Instructions,” last modified September 2003, <https://www.justia.com/trials-litigation/docs/caci/3700/3701.html>.

<sup>79</sup> Ibid.

<sup>80</sup> “Subchapter 7. General Industry Safety Orders,” California Department of Industrial Relations, 1991, [www.dir.ca.gov/title8/3202.html](http://www.dir.ca.gov/title8/3202.html).

<sup>81</sup> “In Loco Parentis,” Education Law, accessed January 17, 2015, <http://educational-law.org/345-in-loco-parentis.html>.

It is an established principle under standards of legal liability that a duty voluntarily assumed must be performed with care. Whether the assumed duty is performed with reasonable care, such as protecting students via concealed weapons, or failure thereof, will be a decision for the trier of fact (judge or jury).<sup>82</sup> Because there is no statutory requirement in any state for schools to implement weapons programs or to allow employees to carry firearms, there is no liability for declining to do so. However, once the duty is accepted by implementing a firearm policy or allowing individuals to carry concealed weapons on campus, the district likely incurs liability for injury or damage.<sup>83</sup> In her article, “When Victims Become Responsible: Deputizing School Personnel and Destruction of Qualified Immunity,” Miljia Zgonjanin concludes,

School districts should avoid deputizing their faculty and staff. Educators are not trained law enforcement, and they should not be the first line of defense against a threat of violence. To require educators to do more than teach will expose them, as well as the district, to liability beyond their control.<sup>84</sup>

## **G. EVALUATIVE CRITERIA**

Using the policy narratives of BanGuns verses MoreGuns,<sup>85</sup> produce the essential criteria from each line of thinking to use for the foundational elements and by using other existing policies and programs, determine if additional criteria need to be added. The foundational elements, which will be detailed in policy option Chapters III, IV, and V as applicable, include the following:

- Social/cultural acceptance
- Course and scope of employment
- Voluntary carry
- Employment/legal liability
- Legal parameters (gun laws)
- Insurance

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<sup>82</sup> Miljia Zgonjanin, “Chalk Talks: When Victims Become Responsible: Deputizing School Personnel and Destruction of Qualified Immunity,” *Journal of Law & Education* 455, no. 43 (2014): 455.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight.”

- Training and certification
- Authorized use policy

The logic and measurement for assessing and validating policy options uses the established principles and techniques of risk management, which include:

- Risk avoidance—the decision to not proceed or perform an activity.
- Risk acceptance—the decision to proceed and accept or tolerate the risk presented or inherent in the activity.
- Risk mitigation—implementing measures to control the risk or reduce it to an acceptable level.
- Risk transfer—establishing a means to transfer the risk to another party, usually through contracts or insurance.

These elements have been selected because of the flexibility they lend to the decision maker in options to reduce or mitigate risk. They are proven techniques and provide a method for evaluating whether the risk has in fact been reduced or impacted. In addition, the steps of the risk management process (identifying risk, assessing risk, identifying risk mitigation approaches, selecting risk mitigation methods, and implementation and monitoring) are cyclical. As one decision or action impacts another, the risks must to be evaluated continuously and assessed to determine if a particular course of action actually increases risk (by creating another hazard) or reduces risk. If a decision increases risk or introduces another hazard, then the above techniques must be deployed in order to mitigate and manage risk effectively. For instance, one could argue that providing all employees with handguns in order to respond to an intruder shooter on campus may provide a level of increased security, but the hazard of uncontrolled weapons in the hands of untrained personnel presents a greater risk than the one initially being addressed. Therefore, without appropriate controls it is a risk that should be avoided.

## **H. METHODOLOGY**

The following information describes the research method used, the primary data sources used in the analysis, and the research output.

## **1. Policy Option Analysis**

The research follows a policy options analysis using identified criteria from the data sources noted above to inform and validate the options of BanGuns, MoreGuns, or SomeGuns. The process digested policy elements (from existing policies, programs, and published commentary), determined commonalities, evaluated whether fundamental elements are common to the decision-making process regardless of outcome, and used the criteria to build a model. If the risk is not adequately reduced or managed, the return on investment is considered insufficient and thus policy is impacted.

## **2. Data Sources**

The following data sources were used to cull, confirm, and establish the essential decision-making elements listed above:

- Existing legislation and policy including, but not limited to, those from Utah (where concealed weapons are allowed without the knowledge or consent of the school district required), Texas (where new legislation provides a structure for arming school employees), and Israel (which has armed large numbers of school employees for several years). These provide a broad range of policy elements and decision-making context. The diversity of these examples provides a wide-lens into the cultural and local context that drives outcomes.
- Case law applicable to legal liability, employment liability, and gun law specific to California. These are necessary parameters that bound the decision making and must be recognized and considered.
- Proposed policy (Nevada Board of Regents) or legislation (California School Marshal Program) that failed to pass or become implemented can also provide insight as to where gaps in decision making existed or where some criteria garnered more weight than others (i.e., social acceptance).

## **3. Output**

The central aim of this thesis is to pull key elements of existing policies and regulations, identify potential gaps, and apply all the elements against risk management principles and decision making to determine a holistic framework or guide. In doing so, the goal is to take a decision that can be subjective in nature and provide an objective process for developing policy. The finished product should be an actionable framework, reflected in a decision tree or algorithm, which can stand as a resource to inform decision

making whether by school authorities, legislators, or other stakeholders. It is contemplated that a simple Boolean fault tree can provide the structure for the framework, outlining dependent steps and milestones which must be answered affirmatively in order to arrive at an outcome supported by risk management logic. The framework is illustrated in Appendix B.

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## II. WHY RISK MANAGEMENT IS NEEDED TO ADDRESS PRIMARY EDUCATION SHOOTINGS AND HOW IT RELATES TO POLICY DECISIONS

Risk management is being smart about taking chances.

— Douglas Hubbard

### A. INTRODUCTION

Robert Brinbaum characterizes the MoreGuns/BanGuns debate as a wicked problem,<sup>86</sup> and he is correct. Wicked problems are distinguished as having the following: an illusive source, no clear solution or optimal solution, no opportunity for trial and error (as every attempt carries the potential to be good or bad and make the situation better or worse), its foundations can be the symptoms of other problems, solutions vary based on the explanation of the problem for which there is no logical way to determine, and are wholly unique.<sup>87</sup> As it applies to school shootings, research has shown there is no clear profile of a school shooter, and there are no definitive indicators to stop attacks before the perpetrator strikes.<sup>88</sup> There are behavioral indicators that rely on the expertise of school professionals, but these do not guarantee an intervention will be successful. With the case of several school shooters, the school disciplined the student for inappropriate behavior (e.g., Kip Kinkel was expelled for bringing a gun onto campus) only to have the student leave campus and return to carry out a shooting rampage.<sup>89</sup> In addition, decisions to arm employees or provide armed security are not guarantees a shooter will be stopped before killing or injuring victims, and they may even introduce a climate of fear or anxiety, thereby creating a new problem or worsening tensions on campus. Whether or not schools should arm employees, as a solution to stopping an armed intruder, is indeed a wicked problem; one that this thesis does not seek to resolve in a definitive way. Rather,

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<sup>86</sup> Ibid.

<sup>87</sup> Horst W. J. Rittel, and Melvin M. Webber, "Dilemmas in a General Theory of Planning," *Policy Sciences* 4 (1973): 155–69.

<sup>88</sup> Federal Bureau of Investigation, and Texas State University, *A Study of Active Shooter Incidents in the United States between 2000 and 2013* (Washington, DC: U.S. Department of Justice, 2013).

<sup>89</sup> Langman, "Ten Lessons Learned from School Shootings and Foiled Attacks."

this research seeks to use risk management principles to support the decision-making process. Birnbaum asserts that MoreGuns and BanGuns groups persist in their advocacy because they are promoting goals using data and arguments processed through the lens of their intrinsic values.<sup>90</sup> This prevents the objective assessment of the issue. Instead of basing policy on the “assessment of empirical evidence, empirical evidence is selectively collected, interpreted, and used to support *a priori* commitments to a policy view.”<sup>91</sup> This makes MoreGuns and BanGuns ideologies self-validating because selective data and arguments will always support and reinforce the desired interpretation.<sup>92</sup> The use of risk management principles introduces objective decision making where process drives outcome and ideology rather than the other way around. Brinbaum puts it as “ready (have an ideology), fire (attack using the ideology), and then aim (construct a narrative).”<sup>93</sup> In a risk-management driven approach, the ideology and resulting policy come as the end-result of the process, thereby righting the sequence to ready (setting goals and objectives), aim (assessing risks and constraints), and then fire (implementing corresponding policy).

## **B. BANGUNS**

A BanGuns ideology primarily comes as a result of any of the following:

- An unwillingness to incur any liability or any level of risk associated with firearms, resulting in risk avoidance.
- A culture that fundamentally does not support the presence of firearms on campus (risk avoidance).
- A determination that adequate insurance cannot be obtained or is cost prohibitive (the inability to transfer risk).
- A lack of capacity/capability to administer a weapons policy (inability to mitigate risk).

A BanGuns approach is also appropriate for districts where their limited resources have already been allocated to early intervention programs, such as school psychologists

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<sup>90</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight.”

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

or social workers who implement behavioral intervention strategies, and strive to address the underlying school culture.

### **C. MOREGUNS**

A MoreGuns ideology results when culture and capacity support firearms on campus. To date, this ideology has been most prevalent in states with liberal gun laws, which does not include California. In these instances the following characteristics apply:

- Parent and employee groups support guns on campus and no opposition is expressed toward arming staff or security personnel.
- The use of a firearm is a desired part of the job to provide enhanced security on campus (acceptance of risk). However, “To be clear, confronting an active shooter should never be a requirement of any non-law enforcement personnel’s job;” direct response is an individual choice.<sup>94</sup>
- Attitudes are accepting of voluntary carry by personnel who have a license to carry a concealed weapon.
- The district is willing to incur liability, has adequate insurance in place and uses indemnification agreements where appropriate, thereby achieving adequate risk transfer.
- Training for persons authorized to carry a firearm is robust and consistent with Peace Officer Standards and Training (POST) or other as prescribed by policy or regulation (risk mitigation).

### **D. SOMEGUNS**

The SomeGuns ideology is a middle ground where neither gun advocates nor gun opponents achieve their fundamental goal. This approach is characterized primarily by the following:

- The culture may be opposed to arming civilian employees but does not oppose armed security or law enforcement personnel.
- A willingness to incur some liability but in a limited fashion (risk acceptance).

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<sup>94</sup> Interagency Security Committee, *Planning and Response to an Active Shooter: An Interagency Security Committee Policy and Best Practices Guide* (Washington, DC: Interagency Security Committee, 2015), <http://www.dhs.gov/sites/default/files/publications/isc-planning-response-active-shooter-guide-non-fouo-nov-2015-508.pdf>.

- Adequate insurance is in place and contractual liability pertaining to the use of outside agencies or firms has been addressed (risk transfer).
- Training for persons authorized to carry a firearm is robust and consistent with Peace Officer Standards and Training (POST) or other as prescribed by policy or regulation (risk mitigation).

## **E. CONCLUSION**

Application of the risk management decision-making process provides a foundation for objective policymaking whether the issue is arming school employees or not. While an active shooter is the current black swan considered by most school districts, the next black swan may not be related to guns at all.<sup>95</sup> On November 5, 2015, a student from University of California (UC), Merced, who was armed with an eight- to 10-inch blade, perpetrated an attack on campus. He stabbed and injured four individuals before being confronted and shot by school police.<sup>96</sup> Maybe stabbings are the next black swan;<sup>97</sup> regardless, school administrators who become accustomed to using a risk management driven approach will have policies founded on a solid assessment of risk, capability, and culture. The Risk Assessment Matrix for Gun Policy in K-12 Schools (risk assessment matrix), shown in Appendix A, illustrates how key decision points move from conditions warranting risk avoidance, to conditions supporting policy and acceptable levels of risk. The Decision Framework for Determining Concealed Weapons Policy in California K-12 Schools (Decision Framework) in Appendix B, illustrates a decision-making matrix. While the risk assessment matrix is useful to assess individual criteria, the decision framework provides collective criteria assessment requiring affirmative responses prior to moving forward with policy.

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<sup>95</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight.”

<sup>96</sup> Michael Martinez, Greg Botello, and Amanda Watts, “Student Fatally Shot after Stabbing 4 at UC Merced,” *CNN News*, November 5, 2015, <http://www.cnn.com/2015/11/04/us/university-california-merced-stabbings/index.html>.

<sup>97</sup> *Ibid.*

### III. BANGUNS

Armageddon is not around the corner. This is only what people of violence want us to believe.

— Michael Palin

#### A. INTRODUCTION

The BanGuns ideology is driven first by culture and then by capability. Because of the complexity of implementing a gun policy, each district must assess its own culture, resources, and capabilities in order to determine a course of action appropriate for its environment. Districts that take a BanGuns stance believe there is more liability and risk in allowing guns onto campus than there is in prohibiting them. For these districts, safety, security, and emergency procedures are written with response options that do not include firearms. A BanGuns ideology is the appropriate stance for many districts. Furthermore, a decision otherwise would increase risk, introduce potential adverse liability, deplete, or strain inadequate resources, and most importantly, strain or fracture the culture of the district. A BanGuns ideology is also the appropriate choice for districts that are risk averse or not willing to incur any level of risk associated with firearms. Board policies articulating the BanGuns ideology are the logical and necessary response for many school districts.

#### B. CULTURE

Culture is by far the most significant factor supporting or driving a BanGuns ideology. Even the most well-defined and well-intentioned policies have not been implemented because the culture did not support bringing guns onto campus.<sup>98</sup> According to Jeffrey Connor, “To understand the culture, you need to think like an anthropologist in order to assess the norms and values shared by those who work in the unit. Leaders ignore the importance of culture at their peril.”<sup>99</sup> This is true for school districts whose

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<sup>98</sup> Jonathan Humbert, “Regents Vote against Controversial Gun Proposal,” 8 *Las Vegas News Now*, October 11, 2007, [www.8newsnow.com/story/7199415/regents-vote-against-controversial-gun-proposal](http://www.8newsnow.com/story/7199415/regents-vote-against-controversial-gun-proposal).

<sup>99</sup> Jeffrey Connor, “The Congruence Model, Understanding Alignment,” January 2010, handout, Naval Postgraduate School.

sites are led by principals, who is led by a superintendent, who is governed by an elected school board. These school authorities are all influenced and impacted by the parents and communities they serve. It is this community that elects the school board and the board in turn hires the superintendent. It is not uncommon for a superintendent to be released from their contract or not renewed for another term because of “cultural” conflicts.

The Nevada Board of Regents is a good example of smart governance driven by mindful attention to culture. University Regent Stavros Anthony, who is also a police officer, introduced a gun policy that allowed arming employees.<sup>100</sup> The policy, which has been cited by others as a good model to follow, addressed the necessary elements of which employees were eligible to carry, what level of training was required, and how the costs associated with training were to be paid. Although it was a well-articulated policy, it was rejected by the regents after vigorous opposition from staff and students.<sup>101</sup> Chancellor Jim Rogers of the University of Nevada said, “I think it’s a media nightmare. I think it’s a public relations nightmare.”<sup>102</sup> Opposition to arming staff seems to be the primary response in the education community. Ken Trump, a consultant with the National School Safety and Security Services, says, “The vast majority of teachers want to be armed with textbooks and computers ...to teach in the classroom—not guns.” He also asserts that most school boards lack the expertise necessary to appropriately supervise staff with weapons.<sup>103</sup> A California bill failed to pass in 2013, with Senator Leland Yee (D-Sacramento), who has worked as a school psychologist, saying “I don’t know of any educator who would be interested in packing a gun into a school.”<sup>104</sup> No matter how well intentioned the plan is, Jeffrey Connor is right; leaders ignore the importance of culture at their peril.

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<sup>100</sup> Humbert, “Regents Vote Against Controversial Gun Proposal.”

<sup>101</sup> Kopel, “Pretend Gun-Free School Zones;” Justin Moody, “Comment: How Arming Mississippi Teachers Would Protect Students,” *Mississippi Law Journal* 83, no. 1319 (2014).

<sup>102</sup> Humbert, “Regents Vote Against Controversial Gun Proposal.”

<sup>103</sup> Stacy Teicher Khadaroo, “School Shootings: In Nebraska, a Proposal to Arm Teachers,” *Christian Science Monitor*, January 19, 2011, <http://www.csmonitor.com/USA/Education/2011/0119/School-shootings-In-Nebraska-a-proposal-to-arm-teachers>.

<sup>104</sup> “AB 202: CA Schools Could Arm Teachers, Principals, Janitors If Republican Bill Passes (VIDEO),” *Huffington Post*, January 31, 2013, [http://www.huffingtonpost.com/2013/01/31/ab-202-ca-schools-arm-teachers-republican-bill\\_n\\_2591476.html](http://www.huffingtonpost.com/2013/01/31/ab-202-ca-schools-arm-teachers-republican-bill_n_2591476.html).

### C. CAPABILITY

The other key element supporting a BanGuns ideology is capability. School authorities must address many criteria in formulating and implementing sound gun policy to appropriately manage the risk guns inherently bring. Not only do the criteria require financial resources but also personnel resources for implementation, participation, and oversight. These are not one-time resource commitments but long-term. Districts that do not believe they can meet the challenges of the financial resource commitment or the personnel commitment rightly decline implementation of a gun policy, settling instead on a BanGuns ideology. To do otherwise brings unmanaged risk to the district.

A determination that a district lacks capability to arm employees does not correlate to increasing risk on campus from a potential shooter. Despite conventional wisdom, that most school shooting incidents are over before law enforcement arrives, Peter Langman has studied school shooting incidents and his analysis indicates that law enforcement plays a critical role in neutralizing school many shooters.<sup>105</sup> Because the “end” of a school shooting event is not a given nor can be predicted, adopting a BanGuns approach is a valid option. However, school administrators who reject the idea of armed personnel solely in favor of physical security are cautioned. As Langman points out, even if a shooter cannot get into a building, he or she can still “shoot people in the morning as they arrive at school, or wait until schools let out. If a door is locked, they may be able to shoot their way through.”<sup>106</sup> His point is that a multi-pronged approach is needed and that physical security, just like arming employees, has its limits. School administrators who want to fully assess whether their culture and capabilities might support some level of guns on campus can use the decision matrix shown in Appendix B. The matrix is formatted in such a way so as to require every element of the decision criteria to be addressed affirmatively in order to proceed. Failure to fully achieve an affirmative response on any level indicates a BanGuns ideology is the appropriate choice.

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<sup>105</sup> Langman, “On-Scene Behavior of School Shooters: The Resolution of Rampage Attacks.”

<sup>106</sup> Langman, “Ten Lessons Learned from School Shootings and Foiled Attacks.”

## D. POLICY

It is not enough for a school district to decide on a BanGuns stance or to vote down a pro-gun proposal. It is important for such districts to promulgate and adopt a formal BanGuns board policy. Such a policy is necessary to articulate the district's position, to guide actions (including employee disciplinary actions for violations) with respect to guns on campus, and to provide the authority for the district to take action for violations. Leaning on the Gun-Free School Zone Act (GFSZA) is not sufficient. Differing interpretations and enforcement can leave a district open to inconsistencies that jeopardize its desires. On August 28, 2014, the Panama-Buena Vista Union School District learned this lesson when its administration called the Bakersfield Police Department (BPD) to follow up on a report of a gun on campus. Vice Principal Kent Williams, who had a concealed weapons permit, was handcuffed and escorted off campus by BPD officers for bringing a gun onto campus in his backpack.<sup>107</sup> Debate arose about the details and requirements of concealed weapons permits, the Gun-Free School Zone Act, and an employer's right to regulate guns in the workplace. Questions were raised about the permit requirements, issued by the Kern County Sheriff's Department, and whether BPD acted prudently in its interpretation of the Gun-Free School Zone Act. Ultimately, Mr. Williams lost his employment with the district because he violated district policy prohibiting guns at school. Several months after his arrest, Mr. Williams filed suit against the City of Bakersfield over his arrest. Mr. Williams's case is significant because it uses the Second Amendment, *McDonald v. City of Chicago*, and *Peruta v. County of San Diego* as the basis for his suit in providing him the right to possess a gun on his person (including a school campus). These cases and his assertions are subject to inconsistent interpretation and lack clear reconciliation with the Gun-Free School Zone Act; therefore, districts cannot afford to rely on law enforcement alone to prevent employees from bringing guns onto campus. In Kern County, California, if individuals desire to carry a concealed weapon at their place of employment, they must provide a

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<sup>107</sup> Lauren Foreman, "Police: Junior High Vice Principal with Gun Broke No Law," *The Bakersfield Californian*, August 28, 2014, <http://www.bakersfieldcalifornian.com/local/breaking-news/x1762554975/Vice-principal-at-Tevis-JH-arrested-for-bringing-gun-on-campus>.

letter of approval from the employer as part of the application process.<sup>108</sup> Mr. Williams did not have his employer's permission, but differing interpretations of the Gun-Free School Zone Act and his concealed weapons permit by the Bakersfield Police Department, Kern County Sheriff's Department, and the Kern County District Attorney's office, ultimately led to no charges filed against Mr. Williams.<sup>109</sup> Hopefully, with the October 2015 amendments to the GFSZA, the elimination of the dubious exemption that allowed someone with a concealed firearms permit to carry a gun on school property will provide more consistent and reliable enforcement in the future. As the case of Williams illustrates, a clear board policy is the best and ultimate enforcement weapon; it would provide a school board the authority to discipline or terminate an employee for a policy violation even if law enforcement determines no law was broken.

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<sup>108</sup> Kern County, "Standard Initial and Renewal Application."

<sup>109</sup> Jonathan Gonzalez, "Vice Principal Plans Claim against City, Police over Gun Arrest," *KBAK and KBFX News*, September 7, 2014, <http://www.bakersfieldnow.com/news/local/Vice-principal-files-claim-against-police-over-gun-arrest-274369191.html>.

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## IV. MOREGUNS

Chaos is inherent in all compound things. Strive on with diligence.

— Buddha

### A. INTRODUCTION

The basic tenet of the MoreGuns ideology is that self-defense is an inherent right and that having armed individuals on a school campus is the only way to afford a reasonable defense if faced with an active shooter situation.<sup>110</sup> This is a hard ideology to defeat logically because many active shooter scenarios are concluded when someone confronts the offender with a weapon (either by a civilian or a law enforcement officer).<sup>111</sup> Although this may be true, it does not mean adding more guns on campuses leads to this as an inevitable consequence. Thorough consideration and analysis of issues such as culture, liability, insurance, training, and certification are necessary in order to establish whether a MoreGuns ideology can be effectively implemented with the risk effectively managed.

### B. CULTURE

Culture may not be the most important factor supporting a MoreGuns ideology, but it is a significant consideration. A MoreGuns culture can be characterized as an environment of Second Amendment supporters in which firearms are considered a normal, inherent part of society rather than a necessary evil that must be managed. This view is held most often in states with liberal, rather than conservative, gun laws. In these states, board policies to arm employees may not be viewed as radical and acceptance may come naturally without complication. In this culture, the sincere answer to gun violence is gun defense. California is not a liberal state with respect to gun laws and therefore, a MoreGuns culture is less likely to come from a Second Amendment foundation but rather

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<sup>110</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight;” Severson, “Guns at School?;” “NRA in Action [vs. Gun Banners’ Inaction]: How the NRA Advanced School Safety When No One Else Would,” accessed January 12, 2015, <https://www.nraila.org/articles/20130601/nra-in-action-vs-gun-banners-inaction>.

<sup>111</sup> Federal Bureau of Investigation, and Texas State University, *A Study of Active Shooter*.

from a pragmatic one. Harrold School District in Texas did not vote to allow employees to carry weapons because of a strong Second Amendment ideology; it did this because the nearest sheriff's office is 30 minutes away.<sup>112</sup> According to Harrold Superintendent David Thweatt, there was no opposition in the community, nor with the school board, when the district adopted its policy of arming employees. In fact, the response was in essence "Thank you for having the foresight to do something." CaeRae Reinisch specifically enrolled her children in Harrold School District because she felt they would be safer, saying "I think it's a great idea for trained teachers to carry weapons."<sup>113</sup> California school administrators need to understand that for their community, employee groups, and parents to substantiate a MoreGuns ideology, regardless of the foundation, it must be supported by the culture.

### **C. COURSE AND SCOPE OF EMPLOYMENT**

An intrinsic element in the MoreGuns ideology is the committed resolution for employees to carry firearms on campus and to use them if necessary as an integrated part of their employment. There can be no equivocation on this point. Acknowledging firearms as an integrated part of employment and accepting the associated liability provides school administrators the incentive and authority to rigorously administer their firearms policy. Training, certification, employee selection and authorization to carry, insurance, weapon selection, weapon storage, ammunition restrictions, and emergency procedures must all be prescribed, regulated, and managed by the school authority. This all becomes easier to do when carrying a firearm becomes a job function and therefore subject to the employer's authority.

### **D. VOLUNTARY CARRY**

School district administrators who believe their agency lacks the capacity to properly execute a firearms policy may adopt a voluntary carry policy in order to shift liability and/or the oversight components listed above. In this scenario, employees who

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<sup>112</sup> Angela Brown, "Texas Town Allows Teachers to Carry Concealed Guns," *Yahoo News*, December 20, 2012, <http://news.yahoo.com/texas-town-allows-teachers-carry-concealed-guns-081017416.html>.

<sup>113</sup> *Ibid.*

hold or obtain valid concealed weapons permits are authorized to carry their weapons on campus. Although this may seem like a practical way to provide security without the administrative overhead, there are still considerations that must be addressed or else the risk and liability to the district will be increased rather than reduced or mitigated. The most important feature of a voluntary carry policy is a clear detachment between carrying a firearm and the course and scope of employment. There must be no job duty or function that requires the use of a firearm; otherwise, the school agency will acquire all the risk and liability it seeks to transfer by having a voluntary carry policy. Properly identifying concealed carry as permissive is only the first step. Regardless of whether one is pro-gun or anti-gun, it is undisputed that firearms accidents do occur. Therefore, it is imperative that insurance and hold harmless agreements are a required component of a voluntary carry policy.

#### **E. LEGAL LIABILITY**

California school agencies have liability for the actions and in some instances the inactions of its employees in addition to liability for its failure to perform a statutory duty. The first category is known by the doctrine of *respondeat superior*, which is Latin for “let the master answer.” The latter is known as statutory liability. Simply put, this means tort claims must be supported by an assertion of a failure to perform a statutorily required mandate. Because there is no statutory requirement for schools to implement a weapons program or to allow employees to carry firearms, there is no liability for declining to do so. However, once a duty is accepted, by implementing a firearm policy or allowing individuals to carry concealed weapons, the district creates potential adverse liability for itself. This liability is found in the established principle that a duty voluntarily assumed must be performed with care. Whether or not the assumed duty is performed with reasonable care, such as protecting students, or the failure thereof, will be a decision for the trier of fact (judge or jury).<sup>114</sup> Another potential source of liability comes from the doctrine of *in loco parentis*, which is the Latin term for “in place of the parent.” Under tort principles of negligence, K-12 educators owe students a duty to

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<sup>114</sup> Zgonjanin, “Chalk Talks.”

anticipate foreseeable dangers and to take reasonable steps to protect those students from that danger.<sup>115</sup> To this end, K-12 educators owe the same degree of care and supervision to their students that reasonable and prudent parents would employ in the same circumstances for their children. Making the decision to arm employees because they had no other security policy in place, Sidney Ohio school district Superintendent John Scheu said, “We may not stop a shooter from getting into the building. If they want to, they will find a way, but if they enter, we can stop them in seconds.”<sup>116</sup> Approximately 40 teachers among the district’s seven schools are trained to be first responders.<sup>117</sup> Bulletproof vests as well as handguns are kept in biometric lock safes in various locations throughout the district sites.

While adding trained faculty to its current cadre of armed security at its entrances potentially increases security at its schools, the superintendent’s statement “we can stop them in seconds” is concerning. It could be argued that the Sidney policy creates for itself the duty to stop armed intruders in seconds. When (if) that does not happen, it logically follows that the district will have failed to fulfill its duty (even if self imposed) and therefore liability may attach. It can be said that, generally, immunity exists if the injury results from the public employee’s discretion to undertake an activity, liability if it results from his or her negligence in performing it after she or he has made the discretionary discretion to do so.

Providing armed security at schools may be a desired policy approach, but the outcomes of doing so should not be exaggerated. There is no evidence that having armed personnel on site effectively deters a potential shooter. Unfortunately, there have been several school shootings where the perpetrator knew there were armed personnel on site yet still continued with his plan.<sup>118</sup> A MoreGuns approach should not be portrayed as

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<sup>115</sup> “In Loco Parentis,” Education Law.

<sup>116</sup> Perry Chiramonte, “Classroom Firepower: Ohio Teachers Increasingly Pack Heat on Job,” *FoxNews*, November 16, 2015, <http://www.foxnews.com/us/2015/11/16/classroom-firepower-ohio-teachers-increasingly-pack-heat-on-job/>.

<sup>117</sup> *Ibid.*

<sup>118</sup> Langman, “Ten Lessons Learned from School Shootings and Foiled Attacks.”

anything other than a desire to expand response capabilities avoiding any commitments that can be used against the district for failure to act.

As it relates to MoreGuns, the associated liability leaves little margin for error. A MoreGuns approach may increase the level of safety, but it also brings the highest level of liability to the school agency. Every element of a MoreGuns policy can potentially form the basis for a lawsuit and adverse liability. Therefore, schools that adopt this ideology must have a high tolerance for risk, strong risk management oversight, and rigorous policy administration.

## **F. GUN LAWS**

The most significant aspects of California gun law applicable to a MoreGuns ideology are those that address licensing, storage, open carry, and some applicable exemptions to the Gun Free School Zone Act (GFSZA). Where employees are permitted to carry their own weapons on campus, the district must still ensure there is a process to verify all firearms are properly licensed. It is illegal to carry a concealed firearm in California without a license.<sup>119</sup> Penal Code 23635-23690 requires all firearms purchased in California to be accompanied with a firearms safety device or an affidavit declaring ownership of a Department of Justice approved lock box or gun safe that is capable of securing the firearm.<sup>120</sup> All firearms must be stored in a way so as to make them inaccessible to minors.<sup>121</sup> Regardless of whether a school adopts a MoreGuns ideology, it is generally illegal to openly carry a firearm in public. The most applicable exception is for law enforcement personnel and security guards who have been trained and received firearm qualification cards.<sup>122</sup> Lastly, although the 2015 amendments to the GFSZA removed the exemption for those who carry a concealed weapon permit, it did not

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<sup>119</sup> Harris, "California Firearms Laws Summary."

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

remove the exemption that allows individuals to have a firearm and ammunition on school grounds if they are contained in the locked trunk of a vehicle.<sup>123</sup>

## **G. INSURANCE AND INDEMNITY**

Litigation and financial considerations are secondary to personal safety yet must be part of the MoreGuns ideology. This is because few, if any, school districts have reserve funds sufficient to cover the cost of litigation and potential liability associated with firearms (or any uninsured risk). California school districts have endured the worst financial crisis in decades. One report asserts 89 percent of California school districts were unable to guarantee financial solvency.<sup>124</sup> If firearms are going to be allowed on a school campus, it must be with the acknowledgement that someday the weapon may be deployed and someone could be injured. Recently, a Utah teacher with a concealed weapons permit accidentally shot herself in the leg.<sup>125</sup> Had the discharge injured a student or other individual, lawsuits would likely have followed.

A desperate MoreGuns approach was recently implemented in Pakistan, a country that has experienced more school attacks than any other country in the world.<sup>126</sup> Within months of implementing the policy, an armed teacher accidently shot and killed a 12-year-old student. The teacher was cleaning the weapon in the staff room when it discharged and hit and killed a student immediately.<sup>127</sup>

While policy, built on sound risk management techniques, can help reduce the likelihood of such occurrences, adequate insurance is an important risk transfer component of any MoreGuns policy. Whether a school agency is insured through participation in a joint powers authority, a self-insured structure, commercial insurance,

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<sup>123</sup> “Senate Bill 707, Chapter 766.”

<sup>124</sup> “Cuts in California: How Billions in Budget Cuts Will Effect the Golden State,” *New York Times*, accessed November 18, 2014, <http://projects.nytimes.com/california-budget>.

<sup>125</sup> Schlanger, “In Utah, Teachers Can Carry Guns into School and Not Tell Anyone.”

<sup>126</sup> “Safe Schools Initiative: Protecting the Right to Learn in Pakistan,” Global Business Coalition for Education, February 17, 2015, <http://gbc-education.org/safe-schools-initiative-protecting-the-right-to-learn-in-pakistan/>.

<sup>127</sup> Vishakha Sonawane, “Pakistani Teacher Accidently Shoots Dead 12-Year-Old Student,” *International Business Times*, June 12, 2015, <http://www.ibtimes.com/pakistani-teacher-accidentally-shoots-dead-12-year-old-student-1963963>.

or a hybrid of all of these, the school agency administration must confirm there is adequate coverage in place. Consultation with the district's risk manager, and insurance coverage attorney if necessary, is recommended to determine the presence, absence, or limitation of coverage. Key items to note include the following: who is an insured, definition of occurrence (accident or event-based), definition of wrongful act and any exclusion that may apply (use of firearm, injuries that were expected or intended, etc.). A thorough coverage analysis, which compares the anticipated actions and outcomes of school district employees against policy language, and understanding how the claims administrator will interpret the policy language in the event a claim both help shape policy. The coverage analysis is not limited to whether or not school employees are covered within the scope of their employment. For the MoreGuns ideology that includes voluntary carry, the analysis needs to determine whether there is any coverage for liability associated with a firearm. It seems easy to assume the district would have no liability for those who voluntarily carry a firearm; however, the independent actions of someone acting in her or his own interests do not absolve the district of liability for what occurs on the campus.<sup>128</sup> For these reasons, insurance is not only necessary to protect the district from its employees' actions but also from the actions of others.

A common companion to insurance is an indemnification agreement, and where the MoreGuns ideology allows voluntary carry outside the scope of employment, indemnification agreements become applicable and important. An indemnification agreement is a legal promise whereby one party agrees to stand in the place of another financially pursuant to the terms of the agreement. Indemnification agreements are also known as "hold harmless agreements."<sup>129</sup> This is an oversimplification, but for the purposes of this thesis, it is sufficient to know that it is a promise made by one party to hold the other party harmless, which means financial assumption of liability.<sup>130</sup> Indemnification agreements come into the equation when the superintendent determines

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<sup>128</sup> Zgonjanin, "Chalk Talks."

<sup>129</sup> International Risk Management Institute, Inc., *Contractual Risk Transfer Strategies for Contract Indemnity and Insurance Provisions* (Dallas, TX: International Risk Management Institute, Inc., 2004), IV.D.

<sup>130</sup> Ibid.

that carrying a concealed weapon is not within the scope of employment and therefore the individual is not acting as an agent for the district, but the school allows voluntary carry on campus.

To protect the district from the independent actions of others, the superintendent should require an indemnification agreement. The thrust of the agreement means if a claim or lawsuit were brought against the district associated with the firearm, the owner of the firearm would bear the financial burden in place of the district. The superintendent or district risk manager should ensure indemnification agreements contain language triggering the responsibility to defend the lawsuit as well as covering any settlements or judgments.<sup>131</sup> This “duty to defend” language is important because the district will be able to tender the claim or suit directly to the owner of the firearm without expending financial resources to defend itself. The California application to carry a concealed weapon includes hold harmless language that can serve as an example for school districts to use in their own agreements.

I accept and assume all responsibility and liability for, injury to, or death of any person, or damage to any property which may result through an act or omission of either the licensee or the agency that issued the license. In the event any claim, suit, or action is brought against the agency that issued the license, its chief officer or any of its employees, by reason of or in connection with any such act or omission, the licensee shall defend, indemnify, and hold harmless the agency that issued the license, its chief officer or any of its employees from such claim, suit, or action.<sup>132</sup>

The superintendent should consult with the district risk manager or legal counsel to modify the language to meet district needs (e.g., substituting “agency that issued license” with “school district”). An indemnification agreement is only applicable when the superintendent has authorized carrying a concealed weapon outside the scope of employment. Such agreements would not apply, nor are appropriate, when carrying a weapon is part of the individual’s job duties. However, the best indemnification agreement in the world is useless without the means to provide financial coverage. If there is not sufficient insurance coverage that specifically extends to cover incidents

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<sup>131</sup> Ibid., IV.G.6.

<sup>132</sup> Kern County, “Standard Initial and Renewal Application.”

involving firearms, then the promise to indemnify the district is potentially worthless.<sup>133</sup> The coverage limits (dollar value of the insurance policy) backing an indemnification agreement should be comparable to what the school district carries for itself. If sufficient insurance cannot be secured (at a cost not borne by the district) to cover the indemnification agreement, then permission should not be given to allow firearms on campus. Assigning legal responsibility and financial accountability to those who voluntarily carry firearms on school campus can only be accomplished through effective indemnification arrangements. Without sufficient insurance covering the full scope of a MoreGuns policy and indemnification agreements where appropriate the school district is financially vulnerable.

## **H. TRAINING AND CERTIFICATION**

The California Occupational Safety and Health Administration (Cal/OSHA) enforces the safety orders enacted by the California Department of Industrial Relations.<sup>134</sup> The California Injury and Illness Prevention Program (IIPP) requires employers to train employees in hazards specific to their jobs.<sup>135</sup> Training in firearm safety becomes an employer requirement when the firearm is incorporated as a potential job function. Failure to implement a training program not only brings potential fines from Cal/OSHA, but also would certainly create adverse liability in the event something goes wrong. In addition, although a MoreGuns ideology supports voluntary carry outside the scope of employment, it is still incumbent upon the school agency to ensure individuals who carry firearms on campus have adequate training and are properly screened/certified. This leads to the question of “what is adequate training and certification?” Examples from Nevada, Texas, and South Dakota serve as useful examples of addressing this issue.

The Nevada regents proposed a policy that would allow any faculty or staff member to volunteer to be trained and armed as members of a special reserve officer

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<sup>133</sup> International Risk Management Institute, Inc., *Contractual Risk Transfer Strategies*.

<sup>134</sup> “California Occupational Safety and Health Administration,” Cal/OSHA Enforcement, July 2013, <https://www.dir.ca.gov/dosh/Enforcementpage.htm>.

<sup>135</sup> California Department of Industrial Relations, *Injury and Illness Prevention Program*.

corps.<sup>136</sup> The individuals would have to pass a physical and psychological examination and would complete classes on firearms and defensive tactics at the local Law Enforcement Training Academy.<sup>137</sup> Texas is another state that has not only contemplated but also implemented a program of arming school district employees.<sup>138</sup> Texas enacted a law in 2013 that allows schools to designate employees as “marshals” who have access to guns.<sup>139</sup> A psychological exam and 80 hours of instruction are required.<sup>140</sup> In 2013, the South Dakota “School Sentinels” law was enacted, allowing districts to arm employees.<sup>141</sup> The law provides that teachers wishing to carry firearms on campus must first obtain permission from the school district and then undergo rigorous training. Supporters said that such a law will make schools safer by allowing teachers to become “first responders.”<sup>142</sup> In the Nevada, Texas, and South Dakota examples, formalized and “rigorous” training is a necessary component of allowing employees to carry concealed weapons.<sup>143</sup>

As with many California jurisdictions using the Department of Justice concealed weapon application, Kern County only requires an eight-hour class to carry a concealed weapon, and no psychological evaluation is necessary.<sup>144</sup> Patrick Kilchermann, founder of Concealed Carry University, asserts that even seasoned officers with hundreds of hours of training still freeze.<sup>145</sup> If trained police officers hit their targets only 20 to 30 percent of the time,<sup>146</sup> it is unwise to think less trained school employees will perform

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<sup>136</sup> Moody, “Comment.”

<sup>137</sup> Ibid.

<sup>138</sup> Nathan Koppel, “More Texas Schools Allow Armed Employees,” *Wall Street Journal*, August 25, 2014, sec. US, <http://online.wsj.com/articles/more-texas-schools-allow-armed-employees-1408986620>.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Moody, “Comment;” Koppel, “More Texas Schools Allow Armed Employees.”

<sup>144</sup> Kern County, “Standard Initial and Renewal Application.”

<sup>145</sup> Patrick Kilchermann, “Concealed Carry Training,” Concealed Carry Confidence, accessed October 4, 2014, <http://concealedcarryconfidence.org/concealed-carry-training-d/>.

<sup>146</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight.”

any better. An eight-hour class is not enough to enable someone to be a first responder in a school district. If a California school district desires to adopt a MoreGuns ideology, comprehensive training requirements like that of Nevada, Texas, or South Dakota would provide a greater level of competency.

Fortunately, California does have a robust framework for training, which can be used to inform policy requirements and to establish recommendations for all school agencies wanting to adopt a MoreGuns policy. It is found within the regulatory framework of the California Penal Code and the Business and Professions Code. Depending on the scope of the job duties and expectations, the minimum amount of training for individuals who are assigned school security functions is 24 hours of instruction. If carrying a weapon is a desired component, as would be in a MoreGuns ideology, then firearms training pursuant to Penal Code 832 is required. The training must comply with the Commission on Peace Officer Standards and Training (POST) and is 24 hours of combined instruction, firearm handling, and demonstration of proficiency. Table 1 illustrates the various levels of required and recommended training applicable to specific roles and functions for staff carrying firearms.

## **I. EMERGENCY PROCEDURES**

Run, hide, fight<sup>147</sup> is a concept that is gaining traction across the country and is now taught in schools as the preferred philosophy for responding to active shooter incidents.<sup>148</sup> In Kern County, California, school staff are being taught this concept with the instruction they have the discretion to decide for themselves (and their students), which action is most appropriate in an active shooter situation, given their specific circumstance.<sup>149</sup> Running away is the desired outcome and whenever possible should be the option of choice. If running is not an option, hiding or fighting become alternate

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<sup>147</sup> “Run. Hide. Fight.® Surviving an Active Shooter Event—English,” posted by City of Houston, July 23, 2012, [http://www.youtube.com/watch?v=5VcSwejU2D0&feature=youtube\\_gdata\\_player](http://www.youtube.com/watch?v=5VcSwejU2D0&feature=youtube_gdata_player).

<sup>148</sup> U.S. Department of Education, Office of Elementary and Secondary Education, and Office of Safe and Healthy Students, *Guide for Developing High-Quality School Emergency Operations Plans* (Washington, DC: U.S. Department of Education, 2013), 63–66.

<sup>149</sup> Kern County Schools Threat Assessment Taskforce, *Responding to an Active Shooter Incident* (Bakersfield, CA: Kern County Superintendent of Schools Office, 2013).

possibilities. Advocates for a MoreGuns ideology argue that introducing firearms within the “fight” context of run, hide, fight is a logical and desired option.<sup>150</sup> Therefore, emergency procedures should be altered to account for the added element.<sup>151</sup> Staff should know who has a firearm and how it will be deployed within the run, hide, fight context. Staff who are designated or authorized to respond to an active shooter scenario may have to leave students to respond. Emergency plans must take this into consideration and provide alternate procedures to ensure students are not left unattended. Even in instances where voluntary carry is allowed but individuals are not identified, emergency procedures should be explicit regarding staff expectations and responsibilities. It is not enough to revise written plans to accommodate the introduction of armed employees; drills and exercises are of critical importance to develop skill and proficiency. School responders may find themselves in an environment of smoke filled areas where fire alarms are sounding and where fire sprinklers have activated. The shooter may have even taken hostages or is using another student as a human shield. Such chaotic environments are well beyond the scope of what most employees will be capable of navigating successfully.

Lastly, school authorities must work closely with first responders to identify staff who may be on school grounds responding with a firearm to help prevent misidentification and unintended casualties. Misidentification, or “friendly fire,” is a risk in any active shooter situations where there are multiple responders, particularly plain-clothed individuals not in police uniforms.<sup>152</sup> According to Dorfsman, “With adrenaline, stress and emotions at the forefront, such tragedies can occur.”<sup>153</sup> Therefore, it is imperative that school personnel train in collaboration with local law enforcement and develop a communication system to reduce the risk of responder casualties.

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<sup>150</sup> Velez, “Guns, Violence, and School Shootings,” 35.

<sup>151</sup> *Ibid.*, 34–37.

<sup>152</sup> Jeff Dorfsman, “Responding to the Active Shooter,” *Law and Order*, September 2014, [http://www.hendonpub.com/law\\_and\\_order/articles/2014/09/responding\\_to\\_the\\_active\\_shooter](http://www.hendonpub.com/law_and_order/articles/2014/09/responding_to_the_active_shooter).

<sup>153</sup> *Ibid.*

## **J. BOARD POLICY**

A MoreGuns ideology must be supported by a written board policy and administrative regulation. The board policy provides the legal authority to discipline or terminate employees for policy violations, and makes implementation of a MoreGuns policy explicit. Table 1 contains training requirements and recommendations for armed personnel for a board to consider when developing policy.

Essential components for an administrative regulation include the following:<sup>154</sup>

- Who is eligible to carry firearms?
- Whether voluntary carry is allowed
- What types of guns and ammunition is permissible and prohibited?
- Training and certification requirements
- Compliance with local firearms licensing requirements
- Requirement for mental health screening if not required by local law enforcement permitting agency
- Provisions for storage
- Conditions for authorized use
- Emergency response requirements and procedures

Considerations regarding authorized use go beyond active shooter scenarios. For instance, someone with a concealed weapons permit could legally use the weapon to break up a fight on campus if the shooter believed one of the participants was in grave danger. According to California Penal Code 197, “homicide is justifiable ... when resisting any attempt ... to do some great bodily injury upon any person.” Is this consistent with current district policies that outline and prescribe interventions using methods that do not include the use of guns? Would allowing an individual to discharge or brandish the weapon within the scope of their legal right conflict with the established protocols already in place? In many cases, the answer is yes, such actions will conflict

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<sup>154</sup> Velez, “Guns, Violence, and School Shootings;” Texas Association of School Boards, Inc., Firearms on School District Property (Austin, TX: Texas Association of School Boards, Inc., 2014), [https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/firearms\\_on\\_dist\\_property\\_oct15.pdf](https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/firearms_on_dist_property_oct15.pdf).

with current campus safety protocols. The conflict or divergence must be overcome and addressed adequately within policy.

Table 1. Training Requirements and Recommendations for Armed Personnel

<b>Training Requirements and Recommendations</b>					
	1. POST Basic (664 hours)	2. POST Campus Law Enforcement (40 hours)	3. POST Reserve Officer (144 hours)	4. POST Firearm (24 hours)	5. BSIS School Security (24 hours)
School Resource Officer <sup>1</sup>	x	x			
Reserve/Volunteer Officer <sup>2</sup>	x	x	x	x	
Commercial Security Firm <sup>3</sup>					
Without firearm					x
With firearm				x	x
School Employee					
School Police Officer <sup>4</sup>	x	x			
Reserve Police Officer <sup>5</sup>	x	x	x	x	
Security with Firearm <sup>6</sup>				x	x
Voluntary Carry <sup>7</sup>				x	x

1. A school resource officer is a sworn member of a law enforcement agency. Firearms training is included as part of the POST Basic Training. All POST training is pursuant to Penal Code 832.

2. A reserve officer may provide services to school agencies but must have completed either the POST Basic Training or the POST reserve officer training in combination with the POST Firearm training. The POST Campus Law Enforcement training is also required.

3. California Business and Professions Code 7583.45 governs security personnel assigned to provide services to a K-12 or community college who are employed by a commercial security agency. Background checks and screening requirements are incorporated into the code section. Training is pursuant to the Bureau of Security and Investigative Services (BSIS) of the Department of Consumer Affairs.

4. California Education Code 38000 authorizes a school district to establish a police department. These officers receive the same training as the school resource officers employed by a law enforcement agency.

5. California Education Code 350215.5 authorizes the use of unpaid volunteer school police reserve officers. However, such officers are only authorized when it supplements and is administered by a school police department. The same training requirements apply as listed in point 2 above.

6. Required training for personnel who work more than 20 hours a week as a security guard and are not sworn officers. Although the training is required at a threshold of 20 hours, this is the minimum level of training recommended for all personnel authorized to carry a firearm as part of their employment.

7. Recommended training for personnel who are allowed to voluntarily carry their firearm on campus.

Note: The above training requirements and recommendations are for initial certification/qualification to carry a firearm. Additional training for maintaining proficiency with the weapon and ongoing qualification requirements are recommended. The minimum recommendation for requalification (which is demonstration of proficiency at a test range) is every two years.

## V. SOMEGUNS

Step with care and great tact, and remember that Life's a Great  
Balancing Act.

— Dr. Seuss

### A. INTRODUCTION

With MoreGuns and BanGuns ideologies largely polarized, any middle ground is hard to imagine. Robert Birnbaum frames it as follows,

Each group has been looking for the unrealistic 100% solution; settling for the 80% solution might enable both of them to achieve many of their objectives. Like most compromises, this one would have to have something for everyone and will not completely satisfy anyone. Most important, it will have to move past the simple MoreGuns/BanGuns dichotomy.<sup>155</sup>

Perhaps a SomeGuns approach is enough of a compromise to provide both sides with a policy position they can support. Law enforcement intervention (either surrendered to or apprehended by) accounts for 31 percent of how school shootings have resolved as compared to 28 percent for civilian intervention;<sup>156</sup> however, many school shooters were neither apprehended nor surrendered, they committed suicide. Many of the suicides occurred after police arrived and engaged the perpetrator with gunfire.<sup>157</sup> In some instances, the police response was in the form of a school based school resource officer or security guard.<sup>158</sup> Clearly, having some guns on campus can be seen as providing an advantage. A SomeGuns approach provides reduced risk and liability, restricts who can carry a firearm, and requires less arduous oversight than the MoreGuns approach. The SomeGuns ideology is a good compromise for agencies that have a lower tolerance for risk and have a lower capacity for policy administration.

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<sup>155</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight.”

<sup>156</sup> Langman, “On-Scene Behavior of School Shooters: The Resolution of Rampage Attacks.”

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

## **B. CULTURE**

The most vigorous opposition to the MoreGuns ideology comes from school administrators and staff,<sup>159</sup> but a SomeGuns approach may address the element they most oppose: arming teachers. The SomeGuns approach does not include arming faculty and does not include voluntary carry. Under this ideology, the only individuals who are authorized to carry a firearm are security personnel or police officers. These restrictions can provide a palatable alternative to the anti-gun culture while still appeasing the culture whereby guns achieve/provide security. In 1999, the Department of Justice Office of Community Policing Services (COPS) initiated the COPS in Schools (CIS) grant program, which dramatically increased the use of school resource officers in schools.<sup>160</sup> Over \$760 million has been allocated in federal grants for the hiring of over 7,500 school resource officers across the country.<sup>161</sup> Although more funding is needed to expand the placement and utilization of school resource officers, the concept is well grounded and effective.

## **C. COURSE AND SCOPE OF EMPLOYMENT**

There are basically three types of personnel who may carry a firearm under the SomeGuns ideology. The district's tolerance for risk, capacity for policy administration, and financial resources will determine how the personnel are selected/decided. The first category is a school resource officer (SRO). An SRO is an officer of a local law enforcement agency providing services pursuant to contract. The second category is a school police officer employed by the school district. It is not uncommon for large schools districts to have their own internal law enforcement department. Kern High School District has one of the largest law enforcement agencies in Kern County, California. Its officers receive the same training as other law enforcement agencies, plus additional training specific to school district environments. The third category is security personnel employed by a third-party security company. Like an SRO, a security officer

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<sup>159</sup> Kopel, "Pretend Gun-Free School Zones."

<sup>160</sup> Chongmin Na, and Denise C. Gottfredson, "Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors," *Justice Quarterly* 30, no. 4 (2013): 619–650.

<sup>161</sup> *Ibid.*

would not be an employee of the school district but provides services under contract with the employing agency.

#### **D. VOLUNTARY CARRY**

A SomeGuns ideology does not support voluntary carry for all employees; however, there is a place for volunteers under the scope of a law enforcement agency. California Education Code 35021.5 allows a school district to, “establish an unpaid volunteer school police reserve officer corps to supplement a police department established pursuant to Section 38000.” These volunteers would be considered employees of the school district for purposes of liability, workers’ compensation, oversight, etc. Limiting voluntary carry to trained personnel under the supervision of a law enforcement agency meets the SomeGuns cautious approach to allowing firearms on campus. In 2013, assembly bill (AB) 202 was introduced into the California Legislature; it would have established the School Marshall Plan. The bill was a poor attempt at a SomeGuns ideology, lacking direction or detail for implementation and leaving training requirements up to the jurisdiction issuing concealed weapon licenses (in most California jurisdictions as little as eight hours of training). On the other hand, Texas has an excellent school marshal program, and other states wishing to explore such programs can learn from its structure and regulatory framework.

#### **E. LEGAL LIABILITY**

The use of contracted SROs and security firms reduces liability for a school district but does not eliminate it. Employment liability is clearly reduced or eliminated, but contractual liability is added. On January 10, 2013, the Taft Union High School District experienced an active shooter situation. The shooter, Bryan Oliver, targeted and shot Bowe Cleveland. Cleveland survived his injuries and subsequently filed a civil suit against the school district. The school district employed a Taft Police Department officer as a SRO under contract at the time of the shooting. Unfortunately, an unusual storm event prevented the SRO from reporting to school that day. After the school district received a tort claim and civil suit from Cleveland, it filed a complaint against the City of

Taft for breach of contract.<sup>162</sup> The school district alleges that had the officer reported for duty, Oliver would have been deterred or detected and therefore the shooting would not have occurred. The school district claims because the officer did not report for duty, Taft Police Department is therefore liable for the shooting. In its Notice of Demurrer, the City of Taft claims it has immunity under Government Code 820.2 and 815.2(b) and “is not liable for an alleged failure to exercise its police authority.” Furthermore, the city claims it is immune:

Except as provided otherwise by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused. Since the public employee is immune, the public entity employing the employee is also immune.<sup>163</sup>

The court overruled the city’s demurrer leaving whether or not the Taft Police Department has liability in question.<sup>164</sup> However, this suit raises the specter of adversarial relationships in SRO agreements between school districts and law enforcement agencies. Will this suit squelch or constrain SRO agreements in general? That remains to be seen. As of January 15, 2016, the lawsuit was still pending.

## **F. GUN LAWS**

The nuances of California gun laws are less burdensome to navigate in a SomeGuns policy application. Restricting firearms to law enforcement or security personnel allows a school district to benefit from the exemptions pertaining to open carry, concealed carry, and carrying on school property. Weapons storage must still preclude access by minors,<sup>165</sup> and the 2015 amendments to the GFSZA still allows individuals to

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<sup>162</sup> Taft Union High School District, William McDermott, Marilyn Brown, and Rona Angelo v. City of Taft (Superior Court of the State of California Kern County, 2015).

<sup>163</sup> Ibid.

<sup>164</sup> “Ruling on Defendant, City of Taft’s Demurrer to the First Amended Complaint; Heretofore Submitted on June 11, 2015,” 2015, <https://odyprodportal.kern.courts.ca.gov/PORTALPROD/DocumentViewer/Index/hC30wAd24CHVVr4um71bDmXegEDaGe3L8rxt9CY141B2KZcQt4-ttKTz4DaqN0Lz4UvjxOVKTC6k7K0e0HDrFw2?p=0>.

<sup>165</sup> Harris, “California Firearms Laws Summary.”

have a firearm and ammunition on school grounds if they are contained in the locked trunk of a vehicle.<sup>166</sup>

## **G. INSURANCE AND INDEMNITY**

Insurance and indemnity is less of an issue when those who carry firearms are limited and restricted as with the SomeGuns approach. However, it is still imperative that school administrators complete a coverage analysis to ensure adequate coverage is in place. As with the MoreGuns approach, consultation with the district's risk manager, and insurance coverage attorney if necessary, is recommended to determine the presence, absence, or limitation of coverage. Key items to note include the following: who is an insured, definition of occurrence (accident or event-based), definition of wrongful act and any exclusion that may apply (use of firearm, injuries that were expected or intended, etc.). A thorough coverage analysis, which compares the anticipated actions and outcomes of school district employees against policy language, and understanding how the claims administrator will interpret the policy language in the event a claim both help shape policy.

As demonstrated with the lawsuit filed against the Taft Police Department, insurance and indemnity are important elements when dealing with outside agencies. This applies whether SROs are employed by the local law enforcement agency or with security personnel contracted through a commercial firm. Scope of coverage and adequate limits are unlikely to be issues for a law enforcement agency. However, policies with commercial agencies bear scrutiny to ensure adequate coverage and policy limits are acceptable. Minimum acceptable limits should be specified in all contracts (law enforcement and commercial security) and indemnification language should also be included. The city of Taft's demurrer states the school district complaint failed to specify the existence of a contract and the explicit performance requirements and its resulting nonperformance.<sup>167</sup> This is a compelling argument that serves as a reminder: achieving

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<sup>166</sup> "Senate Bill 707, Chapter 766."

<sup>167</sup> Taft Union High School District, William McDermott, Marilyn Brown, and Rona Angelo v. City of Taft.

indemnification from third parties rests in the detail and precision of the contract language.

## **H. TRAINING AND CERTIFICATION**

As with a MoreGuns approach, the category of personnel in a SomeGuns approach dictates the level of training and certification required. As illustrated in Table 1, depending on the category, a minimum of 48 hours of training is required or recommended in order to carry a firearm. However, some districts are looking at alternative training with the intent of raising awareness, not arming employees. The Galt Joint Union Elementary School District is exploring such an alternative. It is not training employees to be first responders but are offering training to staff that desire to learn more about handling a gun. The three-hour training is aimed at familiarizing school staff with guns so that they would be prepared to safely pick up a dropped weapon, tell whether it is cocked or loaded, and describe types of weapons to first responders in the event of an active shooter scenario.<sup>168</sup> The district believes this type of innovative solution could increase safety without compromising district policies prohibiting concealed weapons. Of Galt's 500 employees, 139 signed up for the training, which is taught by the local police department.<sup>169</sup>

## **I. EMERGENCY PROCEDURES**

A SomeGuns ideology is easier to assimilate into emergency response plans than a MoreGuns approach. Limiting firearms to security or law enforcement personnel helps ensure that instructors stay with their students. For districts that have adopted the run, hide, fight philosophy, the fight element that involves firearms is left to individuals who have had sufficient training and who do not have to leave students unattended. However, it is still important that emergency response plans acknowledge armed responders may be present and outline the procedures for response. Where contract employees are utilized, the contract should specify expectations for emergency response in an active shooter

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<sup>168</sup> Frey, "Gun Safety Courses Offered to Elementary Teachers in Galt."

<sup>169</sup> Ibid.

scenario. As with the MoreGuns approach, coordinating the emergency plan with local law enforcement first responders is necessary to identify staff that may be responding with a firearm to help prevent misidentification and unintended casualties.

#### **J. BOARD POLICY**

The elements of a board policy under the SomeGuns approach articulate the district's policy regarding the restrictions for employees carrying firearms. Because only law enforcement or security officers are authorized to carry firearms, the policy in a SomeGuns approach will be similar to the policy under the BanGuns ideology. Because internal personnel are either police or security, operational policies and procedures are more likely addressed within departmental standard operating procedures and manuals than in board policy or administrative regulations.

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## VI. CONCLUSION

Knowledge of what is does not open the door directly to what should be.

— Albert Einstein

Although this research strives to highlight the essential elements in deciding whether to arm school employees or add armed personnel to a school campus, the overall issue is bigger than the scope contained here. One area in particular that could benefit from future research and consideration is the option of armed volunteers who are not employees of the school district but are under the jurisdiction of local law enforcement. This option has been successfully implemented in Israel in the form of its Civil Guard. The Civil Guard is comprised of police volunteers/community watch personnel who work under the Israeli police.<sup>170</sup> They are trained and qualified to carry firearms.<sup>171</sup> The United States saw what could have been the genesis of a civil guard in the aftermath of the Newtown shooting, when Sergeant (Sgt.) Craig Pusley, a marine veteran of Iraq and Afghanistan, took up a self-imposed duty in front of the Hughson Elementary School.<sup>172</sup> Harnessing the power of well-trained and committed volunteers can provide school safety without draining resources—Israel has demonstrated this is indeed the case.

The outcome of this research does not result in advocating for a particular policy option but instead advocates for a policy process. The process weighs existing paradigms, challenges them, and seeks to neutralize them in favor of a policy outcome most appropriate for a particular school district.<sup>173</sup> In this way, an agreed path, with agreed goals, feedback, and expectations, can be achieved. In her book, *Thinking in Systems*, author Donella Meadows notes, “when policymakers can detach from their paradigms, stay flexible, and realize that no paradigm is ‘true,’ then progress in changing a system

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<sup>170</sup> Janet E. Rosenbaum, “Gun Utopias? Firearm Access and Ownership in Israel and Switzerland,” *Journal of Public Health Policy* 33, no. 1 (2012): 46–58.

<sup>171</sup> *Ibid.*

<sup>172</sup> Associated Press, “Marine Vet Stands Guard Outside School after Shooting,” *CP24*, December 20, 2012, <http://www.cp24.com/world/marine-vet-stands-guard-outside-school-after-shooting-1.1086501>.

<sup>173</sup> Donella Meadows, *Thinking in Systems: A Primer*, ed. Diana Wright (White River Junction, VT: Chelsea Green Publishing, 2008).

can be achieved.”<sup>174</sup> The use of risk management principles introduces objective decision making where the process drives the outcome and the ideology rather than the other way around. Following this approach helps keep potential policy-blocking paradigms at bay because objectivity is introduced, achieving the detachment. Meadows advocates, “If no paradigm is right, you can choose whatever one will help to achieve your purpose.”<sup>175</sup>

Although the issue of whether or not to arm school employees can seem urgent, particularly with a recent event in the backdrop spurring policymakers to action, a calm and deliberate approach is necessary to make good policy. A superintendent who can lead a calm and deliverable approach may provide the opportunity “to look more closely at the feedback within the system, to understand the bounded rationality behind them, and to find a way to meet the goals of the participants in the system while moving policymaking in a better direction.”<sup>176</sup> The following policy options discussed in this research represent the various paradigms that exist or can exist to create policy. They include: MoreGuns (allow teachers to be armed), BanGuns (no one is armed), or SomeGuns (trained security or law enforcement can be armed but not teachers). Acknowledging Meadows’ assertion that no paradigm is “true,” none of these policy options is truer than the next, but instead are all true and it is the mission of the superintendent in partnership with the applicable stakeholders to determine which option is most true for them.

Application of the risk management decision-making process provides a foundation for objective policy-making whether the issue is arming school employees or not. While an active shooter is the current black swan considered by most school districts, the stabbing attack at UC Merced proposes that the next black swan may not be related to guns at all.<sup>177</sup> Regardless, school administrators who become accustomed to using a risk management driven approach will have policies founded on a solid assessment of risk, capability, and culture. Therefore, a successful policy approach considers the whole system of interconnected pieces and understands how one decision or action affects other

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<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Birnbaum, “Ready, Fire, Aim: The College Campus Gun Fight.”

parts. Meadows reminds us that we are not omniscient. Rather, “we are rational optimizers, blundering ‘satisficers,’ attempting to satisfy our needs well enough to move onto the next decision.”<sup>178</sup> She says:

We do our best to further our own nearby interests in a rational way, but we can take into account only what we know. We don’t know what others are planning to do, until they do it. We rarely see the full range of possibilities before us. We often don’t foresee (or choose to ignore) the impacts of our action on the whole system. So instead of finding a long-term optimum, we discover within our limited purview a choice we can live with for now, and we stick to it, changing our behavior only when forced to.<sup>179</sup>

Using risk management principles as the backdrop and foundation for making policy provides the best opportunity for success moving forward by prompting policymakers to overcome these tendencies to move from simply being a satisficer to being a sound policymaker.

Legislators across the nation, including California, continue to promote programs encouraging the presence of armed school employees, and they seem to be doing so en masse. The California School Marshal Plan has seven authors,<sup>180</sup> and a Texas bill in 2009 has 70.<sup>181</sup> More school gun bills are pending in the current legislative session,<sup>182</sup> which indicates elected officials think arming school employees is something for consideration. Sooner or later school superintendents and governing boards will be forced into considering whether arming employees, allowing voluntary concealed carry, or gun prohibitions are the right decision for their districts. Therefore, this research has sought to provide an objective, relevant decision-making process in a cohesive framework.

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<sup>178</sup> Meadows, *Thinking in Systems: A Primer*.

<sup>179</sup> *Ibid.*

<sup>180</sup> Donnelly, *California School Marshal Plan*.

<sup>181</sup> Kopel, “Pretend Gun-Free School Zones.”

<sup>182</sup> Peter Jackson, “Response Mixed on Bill to Let Teachers Carry Guns,” *KSL News*, September 12, 2014, <http://www.ksl.com/?nid=157&sid=31583104>.

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## **APPENDIX A. RISK ASSESSMENT MATRIX FOR GUN POLICY IN K-12 SCHOOLS**

The following risk assessment matrix illustrates how key decision points move from conditions warranting risk avoidance or areas of higher risk, indicating where policy or protocols need to be adjusted, to conditions supporting policy and acceptable levels of risk. The risk assessment matrix is intended to assess risk according to individual criteria and can help serve as a risk assessment audit tool of existing or desired policy options.

### Risk Assessment Matrix for Gun Policy in K-12 Schools

	Acceptable Risk Conditions Supporting Policy	Elevated Risk Conditions Warranting Caution or Further Risk Mitigation	Uncontrolled/Unmanaged Risk Conditions Warranting Risk Avoidance
<b>Social/Cultural</b>	Parent and employee groups support a culture of guns on campus. No opposition expressed toward arming staff or security personnel.	Parent groups support a policy of arming employees, but employee groups are resistant or opposed. Consider only arming administrators to avoid conflict with employee groups or hire security personnel.	Parent groups and employee groups do not support guns on campus.
<b>Course and Scope of Employment</b>	Use of firearm has been identified as desired and required part of job duties.	Use of firearm is desired but not required.	Use of firearms is not a required or desired element of job duties.
<b>Voluntary Carry</b>	Job duties do not require use of a weapon, but culture supports voluntary carry for employees who have a concealed weapons permit, proof of insurance, and hold harmless agreement. Local permit authority collaborates with school district on permit requirements.	Job duties do not require use of a firearm, but culture supports voluntary carry. Insurance is minimal. Local permit authority collaborates with school district on permit requirements.	Job duties do not require use of a firearm, and culture does not support voluntary carry. Insurance and hold harmless not executed. Local permit authority does not collaborate with school district on permit requirements.
<b>Employment/Legal Liability</b>	District is willing to incur liability for the presence of firearms on campus. No collective bargaining issues are present with respect to selection of employees designated or allowed to carry guns.	District is willing to incur liability for the presence of firearms on campus. No collective bargaining issues are present with respect to selection of employees designated or allowed to carry guns.	District is not willing to incur liability for the presence of firearms on campus.

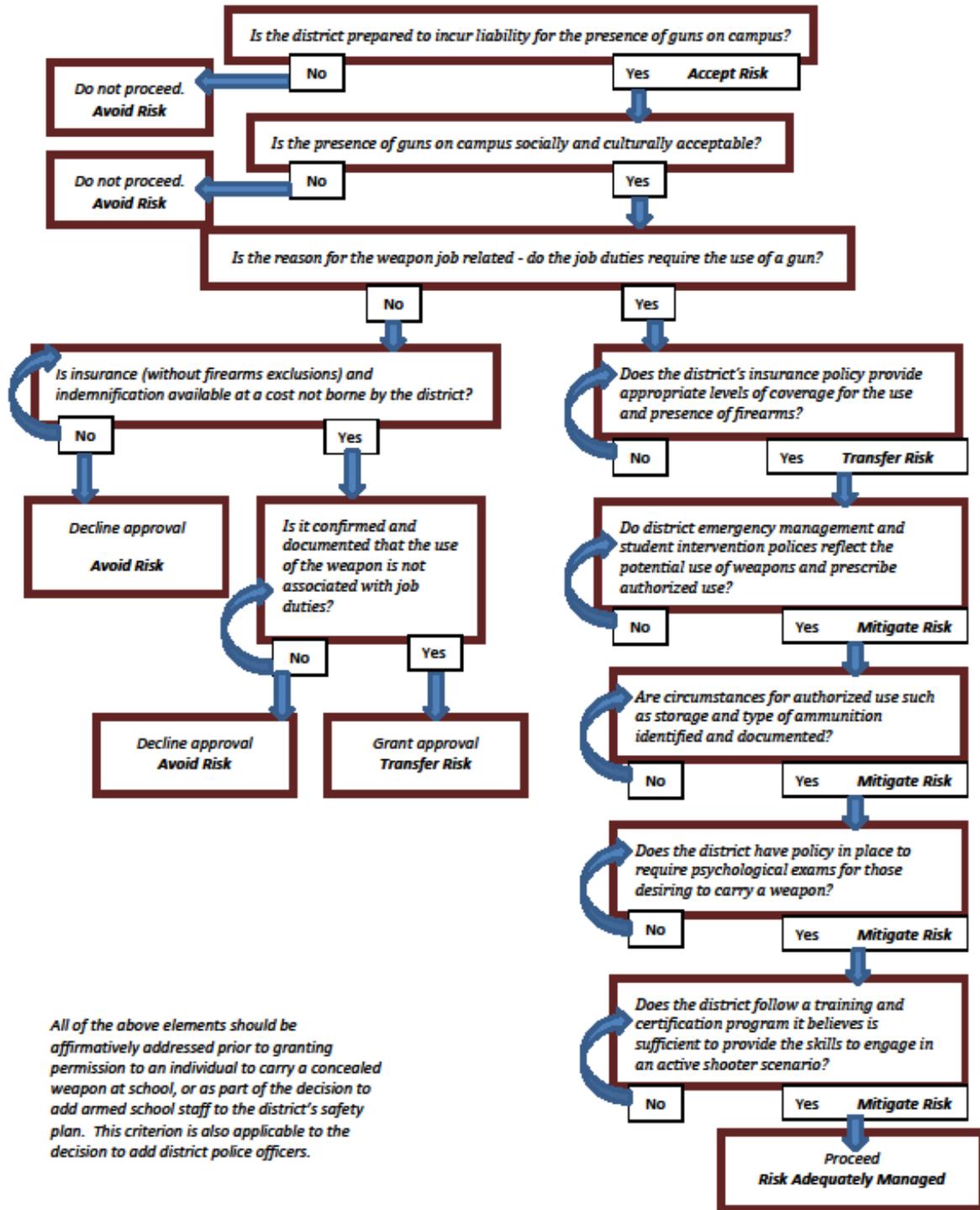
	<b>Acceptable Risk Conditions Supporting Policy</b>	<b>Elevated Risk Conditions Warranting Caution or Further Risk Mitigation</b>	<b>Uncontrolled/Unmanaged Risk Conditions Warranting Risk Avoidance</b>
	There are written procedures regulating storage, type of weapons approved, ammunition, and permissive/approved use of firearms.	There are no written procedures regulating storage, type of weapons approved, ammunition, and permissive/approved use of firearms.	
<b>Gun Laws</b>	School district administration collaborates with local permit authority regarding the policies and presence of guns on campus. School officials have a clear understanding of local and state gun laws and all school policies are consistent with such laws.	School authorities do not have a thorough understanding of gun law, but collaborates closely with local law enforcement. Local law enforcement policy/regulations regarding concealed carry are vague or unknown.	School authorities do not collaborate with local permit authority, or have a clear understanding of state and local gun law. Local law enforcement is vague or not clearly articulated as a basis for school policy.
<b>Insurance</b>	Insurance can be obtained or is in place covering the use and presence of firearms on campus at limits equal to the district's general liability limits.	Insurance is not in place, but can be obtained covering the use and presence of firearms on campus at an amount less than the district's general liability limits.	Insurance cannot be obtained for use or presence of firearms, or limits are substantially less than the district's general liability limits.
<b>Training and Certification</b>	Training consistent with Peace Officer Standards and Training (POST), or the Bureau of Security and Investigative Service (BSIS). A psychological examination is required for those who seek approval to carry.	Training consistent with POST is required for sworn officers, but BSIS is not required for others. A psychological examination is not required.	Training less than POST or BSIS and absence of psychological examination.

	<b>Acceptable Risk Conditions Supporting Policy</b>	<b>Elevated Risk Conditions Warranting Caution or Further Risk Mitigation</b>	<b>Uncontrolled/Unmanaged Risk Conditions Warranting Risk Avoidance</b>
<b>Emergency Procedures</b>	Written procedures detail the expectations and response of those individuals who carry firearms and the conditions under which use is warranted. Procedures account for those who carry voluntarily and those who carry within the course of employment. Expectations are clearly understood and communicated to local law enforcement with regard to the presence of firearms on campus.	Written procedures detail the expectations and response of those individuals who carry firearms and the conditions under which use is warranted. Expectations are clearly understood and communicated to local law enforcement as to the presence of firearms on campus. Procedures do not include protocols for those who carry voluntarily.	There are no written procedures detailing the expectations and response of those who carry firearms on campus.
<b>Board Policy</b>	Board policy is clear and consistent regarding guns on campus regardless of whether the policy is BanGuns, MoreGuns, or SomeGuns. If guns are approved, there is a detailed administrative regulation, which outlines the provisions of approved carry (including all the elements above).	Board policy is vague, and there is no administrative regulation, or it does not address all elements of the district's gun policy, including elements related to employee discipline for policy violations.	There is no board policy or administrative regulation regarding the presence or use of guns by employees.

## **APPENDIX B. DECISION FRAMEWORK FOR DETERMINING CONCEALED WEAPONS POLICY IN CALIFORNIA K-12 SCHOOLS**

The decision framework illustrates the decision-making process as a decision tree. It is intended to help policymakers assess a firearms policy collectively, requiring affirmative responses prior to moving forward with policy. The decision framework will be most useful to those who desire a more conservative approach to ensure risk is adequately managed or mitigated prior to enacting policy to validate the need to avoid adopting policy that allowing firearms on campus.

**Decision Framework for Determining Concealed Weapons Policy in California K-12 Schools**



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