

# ARMING SCHOOL PERSONNEL IN GEORGIA'S K-12 PUBLIC SCHOOLS

A TOOL KIT FOR SCHOOL BOARDS,  
ADMINISTRATORS, PARENTS AND ADVOCATES



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This educational and advocacy toolkit is designed for members of local school communities in Georgia.<sup>1</sup> Its aim is to help them – and you – better understand the current law and policy of arming school teachers, staff, and other personnel. Since the Parkland, FL shooting, such policies have been implemented in some states already, including Florida, Georgia, and Wyoming.<sup>2</sup> This toolkit focuses specifically on the law and policy in Georgia, and what Georgians can do to react: what does the law provide for, exactly – and what are the implications, and what can you potentially do about it?

Broken up in the following sections, this toolkit will review:

- **Law on armed school personnel:** What does the law permit, mandate, and prohibit?
- **Liability and safety risks:** what liability do local school boards implementing armed personnel – as well as armed personnel themselves – retain? What law governs the actual use of force by armed personnel?
- **Procedure:** what procedures must a local school board follow in order to implement such a program?
- **Accommodations:** what accommodations can a school make for those who wish to keep their kids away from guns as much as possible?

Note: the relevant Georgia statutory provisions are reproduced in the Appendix.

### **Law on armed school personnel: what does it allow, mandate, and prohibit?**

This section looks at what the law on armed school personnel states – and what local school community members can do, under the scope of that law, to ensure that armed school personnel policies are implemented narrowly.

Each local school board in Georgia has the power – but is not required to – pass a policy allowing school personnel to carry weapons. The statutory provision giving local school boards

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<sup>1</sup> **Disclaimer: This toolkit is provided as general information, and is not to be construed in any way as legal advice.**

<sup>2</sup> By one estimate, before Parkland, at least 14 states already armed teachers in fact, including: Alabama, Arkansas, Colorado, Idaho, Indiana, Missouri, Montana, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Washington. Tess Owen, Here's All the States Where Teachers Already Carry Guns in the Classroom, VICE NEWS (Mar. 10, 2018), [https://news.vice.com/en\\_ca/article/ywq8b5/teachers-armed-guns-classroom-state-laws](https://news.vice.com/en_ca/article/ywq8b5/teachers-armed-guns-classroom-state-laws).

this power, O.C.G.A. § 16-11-130.1, is reproduced in the **Appendix**, in the section entitled “Provisions on Armed School Personnel.”<sup>3</sup>

If a local school board adopts such a program, Georgia law mandates that it must provide for:

- training (except where personnel has had law enforcement or military experience that involved similar weapons training);
- a list of approved weapons and ammunition, and quantities;
- screening out personnel who have a history of any type of mental or emotional instability (as determined by the local board of education);
- a prescribed method of securing weapons, including at minimum that the gun must be carried on the person (including in an accessory secured on the body), or in a safe lockbox;
- conducting a criminal history background check of the personnel annually, to determine whether they are (and remain) qualified to be a license holder;
- any costs associated with approving personnel to carry or possess weapons.

The Code also provides that the selection of approved personnel shall be done strictly by voluntary basis.

The provision also mandates confidentiality, stating that “documents and meetings pertaining to personnel” approved to carry weapons are considered employment and public safety records (and are exempt from disclosure by the Georgia Open Meetings Act). O.C.G.A. § 16-11-130.1(f). Arguably, this provision means only that documents and meetings that reveal individual, specific personnel to be approved to carry cannot be disclosed. A school board should not be able to shield meetings where they decide whether or not to adopt an armed school personnel policy (as discussed in the Procedure section). Furthermore, there may be circumstances – for example, in the case of a live shooting – where schools must be able to disclose identities of armed personnel (e.g., to distinguish such personnel from the active shooter).

Beyond state statute, there may be other provisions limiting what school districts can and cannot do with armed personnel – such as school board governance policies and procedures. These policies, for example, may have provisions against the distribution of literature for “political” purposes,<sup>4</sup> provisions that could limit, among other things, the training mandated under the armed personnel provision (e.g., the exclusive use of heavily-politicized NRA “training” materials).

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<sup>3</sup> This Code provision is an exception to the Georgia firearms preemption statute, which states that school districts cannot regulate firearms possession “by rule or regulation or by any other means . . . in any manner.” O.C.G.A. § 16-11-173(b)(1)(A).

<sup>4</sup> See, e.g., Savannah-Chatham County Schools KJ-R(1) (“Schools shall not be used as a means of distributing literature for commercial, political, or religious purposes.”).

## **What local school community members can do**

Under these laws and provisions, local school community members can attempt a number of different actions, holding their local school boards accountable by pushing them to:

- implement strict training requirements for armed school personnel – training that is not “politicized”
- implement requirements for screening potential/existing armed personnel, with respect not only to criminal background checks they are required to run, but also ensuring – as is the local school board’s power – that personnel do not have a history of instability, whether or not they have a criminal record
- define approved weapons and ammunition – particularly limiting those weapons to handguns, as well as the quantity of ammunition that can be carried
- define the method of carrying and storing firearms, including more specifically defining the types of acceptable carry methods on the person, and the acceptable safety lockbox devices
- make publicly available these policies (without making available the personnel armed) – as well as the costs of implementing these policies

## **Liability and safety risks: what liability do local school boards implementing armed personnel – and armed personnel themselves – retain? What law governs the actual use of force by armed personnel?**

The goal of this section is to give local school community members information regarding liability risks that armed school personnel policies create – information that members can use to limit the implementation of these policies.

The Code section authorizing local school boards to implement armed school personnel states that its provisions do not “create any liability for adopting or declining to adopt such practice or program.” O.C.G.A. § 16-11-130.1(b).

However, merely because that particular Code provision does not create liability does not mean liability, arising from other legal provisions, would not exist. Though the provision does not create new liability provisions, general laws (i.e., not specific to guns) of tort such as negligence, or other applicable fields, can still apply. If a school adopts an armed school personnel policy, then fails to supervise it, then it could theoretically be held liable under Georgia tort law.<sup>5</sup> Similarly, armed personnel themselves could be held liable for negligence themselves.<sup>6</sup> As

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<sup>5</sup> Any liability will be subject to “sovereign immunity” provisions in state law, provisions that dictate when public officers can and cannot be sued. See id. §§ 50-21-20 through 50-21-37.

<sup>6</sup> See, e.g., id. §§ 51-4-1 through 51-4-6 (regarding wrongful death civil actions)

Bernard James, Pepperdine University Professor of Constitutional Law, noted “[t]he inadequacy of training and supervising armed school personnel will lead to liability under both federal and state tort standards. Under these laws, liability is based on a finding that the failure to train to train amounts to a deliberate indifference to the rights of the students.”<sup>7</sup>

Liability for school districts will likely also be affected by criminal laws governing the use of firearms in the state. Armed school personnel are not, within the words of the provision, defined as law enforcement. Indeed, by the words of the provision, armed school personnel are not given any particular responsibility or duty to protect anyone in the school; the provision merely authorizes local school districts to allow personnel to carry, for whatever purposes. Therefore, criminal provisions applicable to any Georgia citizens’ possession, carry, and use of firearms should apply – including, for example, the laws of self-defense that dictate when deadly force can and cannot be deployed.<sup>8</sup> This may provide another reason against implementation of armed school personnel, considering that Georgia law, such as “Stand Your Ground,” more liberally permits deadly force.<sup>9</sup>

### **What local school community members can do**

Concerned members of the local school community can publicize information about the risks that these policies will create, including:

- the risk of civil liability, for either local school boards or armed personnel, that this policy creates (even though the armed personnel law itself does not “create” any liability)
- the increased risk to safety created by these policies, in light of fact that armed personnel are civilians, not police officers charged with any particular duty, and civilian self-defense laws apply that liberally authorize the use of force

### **Procedure: what procedures must a local school board follow in order to implement such a program?**

This section lays out what local school community members can do to ensure transparency on the part of their local school board, by ensuring (suggest deleting “by ensuring” and insert, and that) that those boards follow proper procedures when deciding whether or not to implement an armed school personnel policy.

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<sup>7</sup> Bernard James, *Arming School Personnel: School Safety Reform & Liability*, NASRO J. SCHOOL SAFETY 14-15 (Spring 2015) (“Once educators voluntarily assume a specific, additional safety policy by arming teachers or other school personnel, the law imposes a duty to exercise reasonable care in light of foreseeable and unreasonable risks.”).

<sup>8</sup> See e.g., *id.* §§ 16-5-1 through 16-5-4 (regarding homicide).

<sup>9</sup> See *id.* § 16-3-21, 16-3-23.1, 16-3-24 (Stand Your Ground provision).

School districts are subject to Georgia Open Meetings Act. The statutory provision laying out this Act, as well as others governing procedural matters for school boards, are reproduced in the Appendix, in the section entitled “Provisions Related to Procedure.”

Under the Act, school district meetings must be open to the public, with regular meetings and non-regularly scheduled meetings alike needing to have been posted to the public in advance. Meeting agendas must be announced in advance, votes must be publicly taken, audio-visual recording of meetings must be permitted, and regular minutes shall be recorded, with those records open to the public once officially approved. Any rule adopted at a meeting not open to the public as required by law is not binding. The Act also mandates that legal actions contesting a rule adopted in violation of this provision can be taken, generally within 90 days of the contested action.

As a caveat, the Code provision on arming school personnel attempts to exempt this subject from the Open Meetings Act, stating: “documents and meetings” pertaining to armed school personnel are exempt from disclosure under the Act. However, again, this provision arguably means only that documents and meetings that reveal individual, specific personnel to be approved to carry cannot be disclosed. A school board should not be able to shield meetings where they decide whether or not to adopt an armed school personnel policy.

### **What local school community members can do**

- ensure that the passage of any armed school personnel policies comply with these transparency laws
- resist any efforts by local school boards to shield decision-making on these policies (even those boards can shield information on which school personnel are authorized to carry)

### **Accommodations: what accommodations can a school make for those who wish to keep their kids away from guns as much as possible?**

This section looks at what types of accommodations local school community members might ask of their schools, to keep their kids as safe from guns as possible under an armed school personnel regime.

Schools are able to make many types of accommodations – and some do so with some frequency, depending on local policy. It may be possible for schools to make accommodations for students whose parents do not want them in a classroom or other settings with an armed teacher or with other armed personnel. It may even be possible for parents to request a transfer to another school, to effectuate this request. Nothing in the Code provision regarding armed school personnel (or any other provision) prohibits such accommodations.

Note that, while the confidentiality provision of the armed personnel statute states that “documents and meetings” pertaining to armed personnel are not subject to the Open Meetings Act, this standing alone cannot be read as meaning that a local school board must take every possible step to shield the identifies of armed school personnel. It only means that they must shield “documents and meetings.” Again, there may be circumstances – for example, in the case of a live shooting – where schools must be able to disclose identities of armed personnel (e.g., to distinguish such personnel from the active shooter).

As that provision pertains to accommodations, it should be practically possible for many accommodations to be met (e.g., a request that a child be placed in gun-free classrooms) without direct disclosure of any documents or meetings divulging who carries.

### **What local school community members can do**

- ask for accommodations for their children into gun-free settings
- research local policy as it pertains to accommodations in general

## APPENDIX

### Provisions on Armed School Personnel

#### Ga. Code Ann. § 16-11-130.1

(a) As used in this Code section, the term:

(1) “Bus or other transportation furnished by a school” means a bus or other transportation furnished by a public or private elementary or secondary school.

(2) “School function” means a school function or related activity that occurs outside of a school safety zone for a public or private elementary or secondary school.

(3) “School safety zone” means in or on any real property or building owned by or leased to any public or private elementary or secondary school or local board of education and used for elementary or secondary education.

(4) “Weapon” shall have the same meaning as set forth in Code Section 16-11-127.1.

(b) This Code section shall not be construed to require or otherwise mandate that any local board of education or school administrator adopt or implement a practice or program for the approval of personnel to possess or carry weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school nor shall this Code section create any liability for adopting or declining to adopt such practice or program. Such decision shall rest with each individual local board of education. If a local board of education adopts a policy to allow certain personnel to possess or carry weapons as provided in paragraph (6) of subsection (c) of Code Section 16-11-127.1, such policy shall include approval of personnel to possess or carry weapons and provide for:

(1) Training of approved personnel prior to authorizing such personnel to carry weapons. The training shall at a minimum include training on judgment pistol shooting, marksmanship, and a review of current laws relating to the use of force for the defense of self and others; provided, however, that the local board of education training policy may substitute for certain training requirements the personnel's prior military or law enforcement service if the approved personnel has previously served as a certified law enforcement officer or has had military service which involved similar weapons training;

(2) An approved list of the types of weapons and ammunition and the quantity of weapons and ammunition authorized to be possessed or carried;



(3) The exclusion from approval of any personnel who has had an employment or other history indicating any type of mental or emotional instability as determined by the local board of education; and

(4) A mandatory method of securing weapons which shall include at a minimum a requirement that the weapon, if permitted to be carried concealed by personnel, shall be carried on the person and not in a purse, briefcase, bag, or similar other accessory which is not secured on the body of the person and, if maintained separate from the person, shall be maintained in a secured lock safe or similar lock box that cannot be easily accessed by students.

(c) Any personnel selected to possess or carry weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be a license holder, and the local board of education shall be responsible for conducting a criminal history background check of such personnel annually to determine whether such personnel remains qualified to be a license holder.

(d) The selection of approved personnel to possess or carry a weapon within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be done strictly on a voluntary basis. No personnel shall be required to possess or carry a weapon within a school safety zone, at a school function, or on a bus or other transportation furnished by a school and shall not be terminated or otherwise retaliated against for refusing to possess or carry a weapon.

(e) The local board of education shall be responsible for any costs associated with approving personnel to carry or possess weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school; provided, however, that nothing contained in this Code section shall prohibit any approved personnel from paying for part or all of such costs or using any other funding mechanism available, including donations or grants from private persons or entities.

(f) Documents and meetings pertaining to personnel approved to carry or possess weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be considered employment and public safety security records and shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50.

**Provisions Related to Procedure**

**Ga. Code Ann. § 20-2-57**

(a) The votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the local board of education, provided there is a quorum present. Any action taken by less than a majority of the board members may be rescinded by a majority of the board members at the next regular meeting or within 30 days of such action, whichever is later. It shall be the duty of the superintendent as secretary to be present at the meetings of the local board, to keep the minutes of its meetings and make a permanent record of them, and to do any other clerical work it may direct the superintendent to do. The superintendent shall cause to be recorded in a book, to be provided for the purpose, all official proceedings of the local board, which shall be a public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairperson and countersigned by the secretary.

(b) Pursuant to the authority of this subsection, any local board of education whose chairperson is required to be a member of that board who is elected at large from its school district, when such requirement is imposed by the terms of a local law which became effective before this subsection may become effective under the Voting Rights Act of 1965, as amended, shall continue to have as its chairperson that same member who is elected at large as designated by that local law, unless thereafter changed by local law.

**Ga. Code Ann. § 50-14-1**

(a) As used in this chapter, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, office, commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;

(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a sub agency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Executive session" means a portion of a meeting lawfully closed to the public.

(3)

(A) "Meeting" means:

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

(B) "Meeting" shall not include:

(i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

(ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

(iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

(v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term "meeting" shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

(b)

(1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.

(d)

(1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

(2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that, in counties where the legal organ is published less often than four times weekly, sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.

(3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

(e)

(1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be

required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

(2)

(A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.

(B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

(f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.

(g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.