

IN THE COURT OF APPEALS OF OHIO
TWELFTH APPELLATE DISTRICT
BUTLER COUNTY

ERIN GABBARD, et al.,

Plaintiffs-Appellants,

v.

MADISON LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,

Defendants-Appellees.

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Case No. CA2019-03-51

AMICI CURIAE BRIEF OF
EXPERTS IN SCHOOL SAFETY AND FIREARMS TRAINING
IN SUPPORT OF PLAINTIFFS-APPELLANTS

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IDENTIFICATION OF AMICI CURIAE¹

Amici are experts in school safety and firearms training. They are deeply interested in protecting students and educators in a safe, responsible manner.

Derek Bauman was a police officer for 26 years, most with the Mason Police Department. He has been awarded the Medal of Valor. He retired in 2016, after suffering a career-ending injury during a felony arrest. During his long career, Mr. Bauman taught firearms curriculum as a trainer at the Ohio Peace Officer Training Academy.

Aaron Grant was teaching at Madison Local School District the day of the 2016 school shooting. He has a decade of experience as an educator. In 2016, Mr. Grant left teaching to become a police officer. He now works for the St. Bernard Police Department in Cincinnati.

John Rosiak has decades of experience in school safety. He has trained thousands of school resource officers and other law enforcement, developed and evaluated curricula for training school resource officers, and worked with thousands of educators and school administrators on school safety and crime prevention.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

Amici adopt the statement of the case and the statement of facts Appellants set forth in their merits brief.

ARGUMENT

I. ARMING TEACHERS CREATES SERIOUS SAFETY RISKS FOR KIDS.

One of the first things taught to new police officers is that, any time you respond to a situation, a weapon is involved: your weapon. Just by being there, you introduce a gun to every situation. And when you introduce a gun to the situation, you introduce serious safety risks.

¹ The parties have consented to the filing of this amicus brief. No counsel for any party has authored this brief in whole or in part, nor has made any monetary contribution to the preparation or submission of this brief.

Arming teachers and staff introduces the same serious risks, this time to children.

Understanding these risks is critical to understanding whether any particular firearms training is enough to keep kids safe.

A. Arming teachers increases students' access to guns, increasing the risks of death and harm.

In the last five years, there have been more than 70 publicly-reported incidents of armed adults mishandling guns at school.² Guns left in locker rooms, including a loaded weapon found by a sixth grader.³ Guns left in a bathrooms, including a loaded pistol found by four kids ages 6 to 8.⁴ Guns stolen by students, including one from a teacher with a concealed carry license who forgot to take the gun out of her purse before coming to class.⁵ These are just some of the reported incidents; it is fair to conclude there are more. Ultimately, more guns in school increases the chances that a child will access a gun.

Research strongly suggests that, when teachers and staff bring guns into schools, children likely will know where they are and will access them. For example, in a study published in the Archives of Pediatrics & Adolescent Medicine, a majority of children knew where their parents stored their guns.⁶ More than a third of the children had handled their parents' guns—many

² K. Drane, Giffords Law Center, *Every Incident of Mishandled Guns in Schools* (June 1, 2019), available at <https://bit.ly/2IbOCOW>.

³ Associated Press, *No charges after Isabella Co. sheriff accidentally leaves gun at school* (Apr. 3, 2018), available at <https://bit.ly/2GtNfeb>.

⁴ B. Metrick, USA Today, *Ex-teacher charged for leaving gun in school bathroom, police say* (Sept. 13, 2016), available at <https://bit.ly/2G9jlfF>.

⁵ D. Harten, Arkansas Democrat Gazette, *Police: Jacksonville High student steals gun from teacher* (Jan. 17, 2012), available at <https://bit.ly/2V3psWX>; see also R. Madden, Fox 2 Now, *Police find teacher's stolen gun with student* (Oct. 25, 2018), available at <https://bit.ly/2S9hqy7>; R. Danielson, Patch.com, *Central Middle Teacher Brought Gun to Class, Students Stole It* (Oct. 26, 2018), available at <https://bit.ly/2RaznZq>.

⁶ Frances Baxley & Matthew Miller, *Parental misperceptions about children and firearms*, Archives of Pediatrics & Adolescent Medicine. 160(5): 542-547 (2006).

without their parents' knowledge, since nearly a quarter of the parents did not know their child had handled the gun.⁷ And when children access guns, the risks of death and harm significantly increase.⁸

B. Arming teachers increases the risk of shootings.

Arming teachers and staff also increases the risk of shootings at school. There are dozens of reported cases of adults' guns being discharged unintentionally, adults' guns being mishandled during discipline, or adults' guns being used in times of personal stress or conflict at school.⁹

For example, just last year, during a firearm safety demonstration, a high school teacher accidentally fired his gun into the ceiling. The shooting injured three students, including a boy who ended up with bullet fragments lodged in his neck.¹⁰ Elsewhere last year, a third grader was able to get his finger onto a school liaison officer's holstered gun and pull the trigger, firing the weapon.¹¹ But most disturbing are the incidents of teachers or staff pulling guns on students as a disciplinary tactic.¹²

⁷ *Id.*

⁸ See A. Anglemyer, et al., *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis*, *Annals of Internal Medicine*, 2014; 160: 101–110 (irrespective of age, access to a firearm triples the risk of death by suicide and doubles the risk of death by homicide).

⁹ Drane, *supra* n.2.

¹⁰ A. Larson, KSBW8, *Seaside High teacher accidentally fires gun in class, students injured* (Mar. 14, 2018), available at <https://bit.ly/2Be9cub>.

¹¹ Minnesota Public Radio News (Feb. 5, 2018), available at <https://bit.ly/2PBbXKk>.

¹² See, e.g., Z. Koeske, *Dolton high school security guard threatened to kill student, held gun to his chest: police report* (Dec. 4, 2018), available at <https://bit.ly/2RaAuZ6>; R. Atkins, KRQE, *APS custodian arrested for pulling gun at elementary* (Dec. 22, 2018), available at <https://bit.ly/2IcXWlq>; S. Ash, 47ABC, *Del. Wrestling coach arrested for allegedly pulling a gun on a student* (Dec. 21, 2018), available at <https://bit.ly/2XHYN87>.

Again, the presence of guns—even on highly-trained staff, such as school resource officers—increases the risk of shootings at school.

C. Active shooter situations cause extreme stress, which decreases “hit rate.”

The physiological effects of acute stress are well-documented, and emergency situations are quite different than target practice on the firing range. The body’s responses to an active shooter situation decrease handgun shooting accuracy, or “hit rate.”

For example, in 2008 the New York City Police Department—which has some of the most highly-trained officers in the United States—studied the hit rate of its officers. Between 1998 and 2006, the average hit rate of NYPD officers in situations where gunfire was not returned was just 30 percent.¹³ When there was a gunfight, the hit rate dropped to 18 percent.¹⁴ If that is the hit rate of NYPD officers, who receive extensive and ongoing training and whose sole job is law enforcement, what can we expect of school teachers?

D. Law enforcement can think the armed teacher is the threat.

Active shooter situations are complex, quickly evolve, and require rapid responses by law enforcement. In the aftermath of some mass shootings, the public learns of communication errors, a lack of coordination during responses, and narrowly-avoided friendly fire. An armed teacher becomes a new variable in an already challenging equation.

In 2016, twelve police officers were shot during a protest in Dallas. Five officers died. Many protesters were armed and (legally) carrying openly. After the mass shooting, the Dallas Chief of Police pointed out that armed protesters complicated law enforcement’s attempts to

¹³ B. Rostker et al., Rand Corporation, *Evaluation of the New York City Police Department firearm training and firearm-discharge review process* (2008), available at <https://on.nyc.gov/1KQwfZL>.

¹⁴ *Id.*

identify the gunman: “We don’t know who the good guy is versus the bad guy when everyone starts shooting.”¹⁵

Armed law enforcement, including school resource officers, are in uniform. Armed teachers are not. When police respond to an active shooter at a school, and teachers have guns, it is more difficult for police to know who the true threat is, increasing the risks of death and harm to kids.

E. Lax “weapon retention” policies create deadly risk.

Police departments go to great lengths to ensure their officers’ duty belts, holsters, and other gear are high quality, and rated for safety and security of the weapon. Most officers now use Level Three retention holsters, which require manipulation of multiple things on the holster to access the weapon.

A policy that allows teachers to wear any holster greatly increases the likelihood that a person could disarm the teacher, or even that the weapon could fall out. Madison Local School’s policy allows authorized school employees to carry a firearm “in a holster with an appropriate trigger guard.” A trigger guard could be a safety switch on the gun. Thus, this lax holster policy creates additional risks to children.

Moreover, as part of their initial and ongoing physical training, police officers are trained in weapon retention, including ground fighting techniques. The goal is to do everything possible to not lose possession of the weapon, especially when someone bigger and stronger is trying to take it from them. Indeed, officers are trained that an attempt to take their weapon is considered deadly force, and thus deadly force may be used to retain the weapon. Are teachers prepared to

¹⁵ M. Hennessy-Fiske, Los Angeles Times, *Dallas police chief: Open carry makes things confusing during mass shootings* (July 11, 2016), available at <https://lat.ms/2GpxGUw>.

use deadly force on a student who tries to take their gun? Either way poses additional safety concerns for children.

F. Law enforcement, parents, teachers, and insurance companies recognize the serious safety risks.

Insurance companies certainly recognize the serious safety risks above. When a school arms teachers and staff, many insurance companies flat out refuse to offer liability insurance to the school, and others hike their premiums.¹⁶ Insurance companies are “worried more guns in schools might not only fail to stop mass shootings but lead to more accidents.”¹⁷

These risks may also be why some law enforcement,¹⁸ parents,¹⁹ and teachers²⁰ oppose arming teachers regardless of their training. For example, the president of the Major Cities Chiefs Association, which represents 75 big-city police forces in the United States and Canada, said, “A cop shows up and there’s people with guns in their hand. We don’t know who’s the good guy, who’s the bad guy. That’s very dangerous for the police. And it’s dangerous for the community.”²¹

¹⁶ See T. Frankel, The Washington Post, *One roadblock to arming teachers: Insurance companies* (May 26, 2018), available at <https://wapo.st/2IDclqd>; P. McCausland, NBC News, *Guns in schools: Insurance premiums could present hurdle in arming teachers* (Apr. 2, 2018), available at <https://nbcnews.to/2GsPsaT>.

¹⁷ Frankel, *supra* n.16.

¹⁸ National Association of School Resource Officers, *NASRO opposes arming teachers* (Feb. 22, 2018), available at <https://bit.ly/2K7iAq3>.

¹⁹ PDK Poll, *School security: Is your child safe at school?* (Sept. 2018), available at <https://bit.ly/2P6HXux>; R. Payton, et al., J. Community Health, *Parents' Expectations of High Schools in Firearm Violence Prevention*. 2017;42(6):1118–1126, available at <https://www.ncbi.nlm.nih.gov/pubmed/28527100/>.

²⁰ M. Brennan, Gallup, *Most U.S. Teachers Oppose Carrying Guns in Schools*, (Mar. 16, 2018), available at <https://bit.ly/2MPTRV5>.

²¹ B. Paterson, Mother Jones, *America's police chiefs call BS on arming teachers* (Mar. 8, 2018), available at <https://bit.ly/2HjsDT3>.

II. 27 HOURS OF TRAINING—LET ALONE ONLY 8 HOURS OF TRAINING—IS NOT ENOUGH TO ELIMINATE THESE SERIOUS SAFETY RISKS.

Given the serious safety risks posed by allowing teachers and staff to bring guns to school, what training is available to try to alleviate these risks? Amici see at least three tiers of training offered in Ohio:

1. Approved basic peace officer training program (728 hours)
2. FASTER training (27 hours)
3. Ohio concealed carry training (8 hours)

Each training is detailed below. It is clear that the FASTER training and concealed carry training are simply insufficient to mitigate the serious safety risks posed to kids.

A. Basic Peace Officer Training Program

The Ohio Peace Officer Training Commission (“OPOTC”) governs basic peace officer training in Ohio. The OPOTC sets rules and approves programs for certified peace officer training. Training takes place at the “Ohio Peace Officer Training Academy (“OPOTA”) or an approved local police academy.” *Martucci v. Civ. Serv. Comm.*, 194 Ohio App.3d 174, 2011-Ohio-1782, 955 N.E.2d 404, ¶ 2 (9th Dist.). There are more than 60 approved Peace Officer Basic Training Academies in Ohio. More than 500 courses are available, with more than half of those involving hands-on learning.²² The current curriculum requires a minimum of 728 hours of training (“OPOTA basic training”).²³ Generally, this takes approximately 15 weeks on a full-time basis, or approximately 9 months part-time to complete. Individuals must also pass a criminal

²² Ohio Attorney General’s Office, *2018 Ohio Peace Officer Training Commission and Academy Fiscal Year Annual Report*, available at <https://bit.ly/2XgJP7m>.

²³ Ohio Attorney General’s Office, *How to Become a Peace Officer in Ohio* (Sept. 2018), available at <https://bit.ly/2RiJHic>.

background check, a physical fitness test (consisting of sit ups, pushups, and a 1.5-mile run), and a drug screen before taking a state certification test.

The OPOTA basic training curriculum provides thorough and comprehensive instruction in 13 different areas, called Units. *See* OAC § 109:2-1-16. These Units are further broken down into 59 sub-Units, which include crisis intervention, subject control techniques, building searches, and critical injury first aid, among others. The 728 hours of training is broken down as follows:

1. Administration (43 hours)
2. Legal (110 hours)
3. Human Relations (77 hours)
4. Firearms (60 hours)
5. Driving (24 hours)
6. Investigation (52 hours)
7. Traffic (125 hours)
8. Patrol (69 hours)
9. Civil Disorders (8 hours)
10. Subject Control (78 hours)
11. First Aid (16 hours)
12. Physical Conditioning (44 hours)
13. Homeland Security (22 hours)

Pltf.'s MSJ, Ex. A, OPOTC Peace Officer Basic Training – Compliance Officer Audit Sheet.

According to the Ohio Attorney General's Office, OPOTA basic training is "unparalleled."²⁴ That is, in part, because of the state-of-the-art technology used to train students on the use of firearms:

Firearms and use-of-force training is offered on state-of-the-art simulators that can be set up in minutes within local training sites. Featuring high-definition video, recoil weapons, and other realistic equipment, the simulators offer hundreds of scenarios, drills, and exercises. *Id.*

²⁴ Ohio Attorney General's Office, *Ohio Peace Officer Training Commission and Academy*, available at <https://bit.ly/2XbfdEa> (accessed June 13, 2019).

The OPOTA basic training firearm unit includes a minimum of 46 hours of live-fire range time.

Underscoring the importance of practical training, then-Attorney General Mike DeWine said:

Scenario-based training gives officers the opportunity to enhance their communication, decision making, force-on-force, and other skills in a safe training environment. OPOTA launched the Scenario Training Equipment Program (STEP) in November 2017 as a customized, low-cost way for departments to receive scenario-based training.²⁵

OPOTA basic training is designed to prepare a person for a stressful career and teaches people to deal with that stress while carrying a firearm. The new Scenario Training Equipment described above provides immense benefits to participants:

A wide range of situations can be addressed in scenario-based training, such as *how to safely de-escalate a situation through verbal skills or non-lethal force and tactics for responding to a hostage situation, active shooter, ambush, or mass casualty incident.*²⁶

Indeed, the specific purpose of the OPOTA basic training is “to provide the student with a strong basic knowledge of the role, function, and practices of a peace officer.” OAC § 109:2-1-16. The Ohio legislature has decided that accomplishing this goal requires 728 hours of training in a myriad of different courses, not simply an introduction to extremely complicated topics over just three days.

It is no coincidence that absent OPOTA basic training, only a person with “twenty years of active duty as a peace officer” may carry a firearm in a school. *See* R.C. § 109.78(D). The OPOTA basic training is extensive and Ohio law is clear that if a teacher wants to carry a firearm in a school, they must either complete the 728 hours of OPOTA basic training or have twenty years of active duty experience as a peace officer. Using a firearm in a crisis is about more than

²⁵ Ohio Attorney General’s Office, *supra* n.22.

²⁶ *Id.*

just pointing the gun and squeezing the trigger. Anyone can shoot a gun at a shooting range at a piece of paper. Using a firearm in an active shooter situation forces an individual to fall back on their training or experience. A teacher at Madison School District, John Doe 1, agreed: “I’m going to fall back on my training” (Dep. of John Doe 1 at 34:6.)²⁷ Teachers who do not have twenty years of active duty peace officer work will *have* to fall back on their training, which is one of the reasons the Ohio legislature decided that OPOTA basic training is necessary before allowing a teacher to carry a firearm in a school.

B. FASTER Training

F.A.S.T.E.R. stands for Faculty/Administrator Safety Training & Emergency Responses. Unlike OPOTA basic training, FASTER requires just 27 hours of training. FASTER offers several levels of training, but only Level 1 is at issue here. Level 1 training takes place over three days and generally covers developing the right mindset, arming school staff, learning trauma combat casualty care.²⁸ The training is broken down into classroom training, live-fire training, tactics, decision making skills, tactical combat casualty care, force-on-force, and scenario-based training.

On the first day of training, participants are shown a PowerPoint presentation detailing, among other things, the “History of Active Mass Murder” and “3 Levels of Active Killers.” (Pltf.’s MSJ, Ex. V.) The PowerPoint also suggests that the reason there are “[n]o active killers in inner city schools” is because “[t]hey would be beat down before they could get started. The other students are fighters . . . and may be armed!” *Id.* There is no doubt that FASTER teaches

²⁷ As the Greek poet Archilochus said, “We don’t rise to the level of our expectations; we fall to the level of our training.”

²⁸ FASTER, *Be Prepared for the Next School Shooting*, available at https://fastersaveslives.org/wp-content/uploads/2016/09/FASTER-White-Paper_REV032816.pdf (last visited June 13, 2019).

participants to *actively engage* the shooter, to the exclusion of helping wounded students.

Participants are specifically taught that “[y]our primary job is to STOP THE KILLING. Walk over wounded, push away clinging survivors.” *Id.* After detailing the horrific attacks in Beslan in 2004 and Mumbai in 2008, the training materials ask “How Do We Respond?” *Id.* The answer—according to FASTER—is as follows:

- If you can not escape...You have no CHOICE
 - o You must FIGHT
 - o You will be KILLED
 - o Adult males will be tortured and killed
 - o Females will be raped and killed.

Id., p. 43.

FASTER participants are also taught that “[t]errorist will not stop when confronted and they will not commit suicide, they will have to be killed.” *Id.*, p. 26. After the classroom portion is complete, participants spend the remainder of the day learning stance and trigger management, and shooting at small, stationary targets. This takes approximately six hours.

On day two, FASTER participants spend the morning practicing magazine changes, loading magazines, shooting on the move, and off-hand shooting. In the afternoon, participants learn about setting an ambush and engage in additional roped gun practice. That evening, participants learn “Tactical Combat Casualty Care.” This includes identifying wound patterns, assessing injuries, and providing various types of treatment for typical gunshot wounds.

On day three—the final day of the FASTER Level 1 training—participants engage in one “force on force” drill and one live-fire scenario. John Doe 1 testified that he completed one live-fire drill that lasted approximately 10 minutes. (Dep., 48:2-8.) Participants play various roles using non-lethal firearm alternatives to roleplay different scenarios. At the conclusion of the training, participants must hit 26/28 targets, which includes 3 moving targets.

In just 27 hours spread out over the course of 3 days, the FASTER Training purports to cover the history of mass shootings, basic firearm training, advanced firearm training, live-fire drills, advanced tactics related to clearing a room, decision-making skills, first aid, and scenario-based training. OPOTA basic training takes more than 728 hours to complete and is designed “to provide the student with a strong basic knowledge of the role, function, and practices of a peace officer.” See OAC § 109:2-1-16. According to the Ohio legislature, it takes 728 hours—or nearly 2,700% more time than FASTER Level 1—to provide student with the necessary “basic knowledge.”

The FASTER training attempts to squeeze in to 3 days what the OPOTA basic training covers over nearly four months. The FASTER website claims that the program “exceeds the requirements of the Ohio Peace Officer Training Academy.”²⁹ Comparing OPOTA basic training to FASTER reveals there is simply no comparison. One is a comprehensive training program designed to prepare participants to carry firearms and how to deal with complicated situations. The other is simply a crash course in gun safety.

C. Concealed Carry Training

To obtain a concealed carry permit in Ohio, you must meet only two requirements: (1) be at least 21 years old and (2) complete an 8-hour course.³⁰ The 8-hour course includes six hours of education and two hours of in-person training consisting of live-fire training. The education portion of the training is designed to ensure a person has the bare minimum of knowledge of firearms, including:

²⁹ About FASTER, available at <https://fastersaveslives.org/about>.

³⁰ Ohio Attorney General’s Office, *Ohio’s Concealed Carry Laws and License Application*, available at <https://bit.ly/2KMsT1D> (accessed June 13, 2019).

- The ability to name, explain, and demonstrate the rules for safe handling of a handgun and proper storage practices for handguns and ammunition,
- The ability to demonstrate and explain how to handle ammunition in a safe manner,
- The ability to demonstrate the knowledge, skills, and attitude necessary to shoot a handgun in a safe manner, and
- Gun-handling training.

The 2-hour practical training is designed to ensure that applicants can safely handle, fire, and store a firearm. As part of the training, applicants must also receive and certify that they have reviewed a copy of the “Ohio’s Concealed Carry Law” booklet. The training and written exam may be completed online or as a combination of in-person and online training. The online portion of the training must include a component that regularly engages the person.

CONCLUSION

We often hear that police officers in high stress, high stakes situations “fall back on their training”—in other words, their muscle memory. Muscle memory is achieved through time and repetition. 27 hours of training, let alone only 8 hours, is simply not enough to form that critical muscle memory.

Given each of the serious safety risks posed to children, the General Assembly would not have wanted teachers and other staff to go armed all day every day at school, with such little training as the School Board suggests.

Amici respectfully urge this Court to reverse the trial court’s ruling to the contrary.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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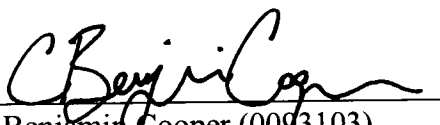
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