

BUTLER COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

ERIN GABBARD, et al.,

Plaintiffs/Relator,

v.

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

Defendants/Respondents,

Case No. CV 2018-09-2028

Judge Charles L. Pater

SUPPLEMENTAL AFFIDAVIT OF
ALLA LEFKOWITZ IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' CROSS-MOTION
FOR SUMMARY JUDGMENT

(UNREDACTED VERSION)

I, **ALLA LEFKOWITZ**, having been first duly sworn upon oath, depose and say:

1. I am an attorney for the plaintiffs-relator in this case, Deputy Director for Affirmative Litigation at Everytown Law, and a member in good standing of the bars of the State of New York and the District of Columbia. I submit this supplemental affidavit in support of the plaintiffs' opposition to the defendants' cross-motion for summary judgment.

2. Attached are true and accurate copies of the following documents:

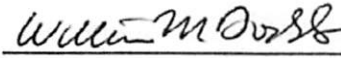
- a. An email chain dated February 4, 2014, between Mary Davis, Executive Director of the Ohio Peace Officer Training Academy (OPOTA) and Jonathan Fulkerson, Deputy Chief Counsel, Office of the Ohio Attorney General Mike DeWine, produced by the Attorney General's Office as OHAG-001353 – 001359 in response to public records request, attached as Exhibit X;
- b. Excerpts of the Deposition Transcript of Dr. Paul Jennewine, Board Member, dated January 11, 2019 (containing information designated by defendants as highly confidential), attached as Exhibit Y;

- c. Excerpts of the Deposition Transcript of John Doe 2, dated January 12, 2019,
(containing information designated by defendants as highly confidential),
attached as Exhibit Z;
- d. Excerpts of the Deposition Transcript of Pete Robinson, Board Member, dated
January 10, 2019 (containing information designated by defendants as highly
confidential), attached as Exhibit AA.

DATED this 11th day of February, 2019


ALLA LEFKOWITZ

SUBSCRIBED AND SWORN TO before me this 11th day of February, 2019



Notary Public for the State of Ohio



WILLIAM M. DODDS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES
MARCH 19, 2022

EXHIBIT X

Pamela Vest Boratyn

From: Mary E. Davis
Sent: Tuesday, February 04, 2014 12:07 PM
To: Jonathan R. Fulkerson; Erica Wilson; Pamela Vest Boratyn
Cc: William O'Gorman; Dan Tierney; Lisa Peterson Hackley
Subject: RE: Buckeye Firearms HB 8 Article
Attachments: image002.jpg

I've challenged my staff on the working group to really look hard at the recommendations we sent in October, and the items that came up during the commission meeting (e.g., webcheck, inclusion of local law enforcement and school's specific safety plan, CPT type training annually, etc) which we'd include for Thursday's meeting. What's the need, justification, and rationale for the topics and associated hours suggested?

Let me know what else is needed. Thanks, Mary

From: Jonathan R. Fulkerson
Sent: Tuesday, February 04, 2014 11:38 AM
To: Mary E. Davis; Erica Wilson; Pamela Vest Boratyn
Cc: William O'Gorman; Dan Tierney; Lisa Peterson Hackley
Subject: RE: Buckeye Firearms HB 8 Article

This makes total sense. Pam sent this along to our media folks – we should have some talking points prepared for the AG. There is a honest debate that could be had about the necessary time for training - this will come up again.



Jonathan R. Fulkerson
Deputy Chief Counsel
Office of Ohio Attorney General Mike DeWine
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Office number: 614-644-8901
Fax number: 866-403-3978
Jonathan.Fulkerson@OhioAttorneyGeneral.gov

From: Mary E. Davis
Sent: Tuesday, February 04, 2014 11:20 AM
To: Jonathan R. Fulkerson; Erica Wilson; Pamela Vest Boratyn
Cc: William O'Gorman
Subject: RE: Buckeye Firearms HB 8 Article

You are correct John and the AG was correct in his quote "It's not just about can I shoot a gun. That's just a small part of it."

I spoke with Jim Irvine from buckeye firearms for about an hour last night. Very early in the conversation he made reference to our recommendation being 5x more training than a police officer. I pointed out to him that training to be a peace officer will be around 620 hours July 1st. And while he may be referring solely to the minimum of 60 hours of firearms training in peace officer basic, model curriculum would be no means be model curriculum if we only were training school employees to proficiently hit a paper target in a controlled setting. I explained that the topics we are looking at and which make up the hours (around 150, not 200) have to be included for the welfare of the children and in the best interest of the employee and district. For example, is it appropriate to train someone to respond to an active shooter situation and not train them on use of force, building search techniques, weapons retention, or using

environmental tools? Is it fair to anyone to leave the employee with the only option of deadly force and not include training on de-escalation/crisis intervention, subject control, or restraint tactics? How can we in good conscious train someone to be the on-scene responder to a school shooting and not recommend collaboration with the local officers which will also be responding with guns?

Does all that make sense?

From: Jonathan R. Fulkerson
Sent: Tuesday, February 04, 2014 9:32 AM
To: Erica Wilson; Pamela Vest Boratyn
Cc: William O'Gorman; Mary E. Davis
Subject: RE: Buckeye Firearms HB 8 Article

Mary – do we have good answer to the argument that 200 hours of training for an armed teacher is “five times” the amount of firearms training a police officer has in basic?

I think the best argument is that officers and teachers need a lot more training than simply shooting a pistol – judgment, tactics and liability are big issues to consider.



Jonathan R. Fulkerson
Deputy Chief Counsel
Office of Ohio Attorney General Mike DeWine
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Office number: 614-644-8901
Fax number: 866-403-3978
Jonathan.Fulkerson@OhioAttorneyGeneral.gov

From: Erica Wilson
Sent: Tuesday, February 04, 2014 7:44 AM
To: Jonathan R. Fulkerson; Pamela Vest Boratyn
Cc: William O'Gorman
Subject: Buckeye Firearms HB 8 Article

Fyi

From: erica wilson [<mailto:wilson.ERICA@gmail.com>]
Sent: Monday, February 03, 2014 11:48 PM
To: Erica Wilson
Subject: Buckeye Firearms HB 8 Article

Should teachers be required to have five times more firearms training than law enforcement to carry in a school?

printable page

Submitted by cbaus on February 3, 2014 - 8:00am.

- Ohio Legislation
- Ohio Politics

To: Jonathan R. Fulkerson; Pamela Vest Boratyn
Cc: William O'Gorman
Subject: Buckeye Firearms HB 8 Article

Fyi

From: erica wilson [<mailto:wilson.ERICA@gmail.com>]
Sent: Monday, February 03, 2014 11:48 PM
To: Erica Wilson
Subject: Buckeye Firearms HB 8 Article

Should teachers be required to have five times more firearms training than law enforcement to carry in a school?

printable page

Submitted by cbaus on February 3, 2014 - 8:00am.

- Ohio Legislation
- Ohio Politics
- BFA News
- Education
- Guns in the News

The Ohio Peace Officer Training Academy (OPOTA) says yes. Simple logic says hell no.

by Chad D. Baus

In the wake of the horrific attack on a Connecticut elementary school in December 2013, many Ohio boards of education finally realized that "no-guns" signs and zero-tolerance policies have utterly failed their promise to protect our children, and were ready to do something different. **More than two dozen schools** around the state have since elected to exercise their right to authorize employees to carry concealed firearms inside the school.

Ohio's state legislators also seemed ready to act to improve school security, introducing House Bill 8, a place-holder bill that, it was announced, would eventually be amended to contain language intended to enhance school safety. At the time it was introduced, the bill's sponsor, Rep. Kristina Roegner (R), was quoted as saying that "it's a priority for the House, not

only in this state but I imagine across the nation, to make sure that our children are safe. So that's what this legislation will do."

Since the time it was introduced one year ago up until very recently, HB 8 has received very little attention. The reason? No one knew for sure what was in it.

Although HB 8 is not considered to be a gun rights bill in the sense that much of the other legislation we follow is, Buckeye Firearms Association is committed to ensuring that the legislature not make it *harder* for local boards of education to take the steps they believe they need to take to ensure the safety of their students. As such, at various times over the past year, public comments made by various legislators, public officials or interested parties have been cause for concern.

Last April, for example, the **Gongwer News Service** reported that the state Fraternal Order of Police was pushing to use the bill to strip the right of boards of education to arm staff to protect students altogether.

Then in June, even bill sponsor Rep. Roegner made comments to Ohio NPR's **StateImpact** that seemed to suggest she was hoping to make it *tougher* on local boards of education to make these decisions for themselves.

Despite these media reports, however, Buckeye Firearms Association chose to take a "wait and see" approach. Thankfully, the actual wording of the legislation was finally amended into the place-holder bill and **passed by the Ohio House 63-29**, and we were pleased to see that the bill did not restrict the local control that boards of education currently enjoy.

Indeed, there are **several provisions in the bill** that show it is intended to maintain, even enhance, local control.

The danger, however, has not passed. The bill must still be taken up by the Ohio Senate. And as recent coverage by *The Dayton Daily News* shows, pressure remains to restrict the ability boards of education currently enjoy to authorize persons to carry concealed in the school.

From the article:

A bill making its way through the Ohio legislature would expand who can carry a firearm on school grounds, the training required, exempt school districts from civil liability should an injury or death occur from someone designated to carry a gun and keep parents in the dark about who is in possession of a gun.

One of the bill's sponsors said it clarifies current Ohio laws and makes it tougher to carry a weapon on school property even for those designated to do so.

...Rep. Kristina Roegner, R-Hudson, a co-sponsor of the bill, said Ohio law already allows school districts to grant permission for anyone to carry a firearm on school property, but doesn't specify training requirements.

...House Bill 8 aims to develop clear guidelines for firearms on school grounds while allowing local districts to maintain control.

"What we're saying is let's be safe about it if you decide to arm an employee. Let's do it thoughtfully and be safe about it," Roegner said.

House Bill 8 would:

- * Allow off-duty police officers to possess guns at schools;
 - * Allow school boards to designate employees who could carry weapons and exclude from collective bargaining how these employees are designated;
 - * Require the Ohio Attorney General to develop a firearms training curriculum for these employees;
 - * Provide immunity from civil liability to school districts and those they have designated to carry weapons should injury or death occur and protect the identity of the employee designated to carry the weapon.
-

As passed by the House, the bill says boards of education *may*, but would not be forced, to consult with local law enforcement about their plans, just as they *may*, but would not be forced, to utilize the model training curriculum the bill would require to attorney general to create.

And what of the model curriculum? Again, from the article:

Attorney General Mike DeWine agrees that decisions about who to arm at schools should be made by the local boards. Having a school resource officer, which is a trained police officer, is the best practice, DeWine said.

"I'm not saying they shouldn't do it (designate staff to carry), but it's a serious thing when a school does it," DeWine said.

DeWine said he started looking into firearms training recommendations after a local school district superintendent asked for advice.

DeWine said he asked the Ohio Peace Officer Training Academy (OPOTA), which trains police officers, to develop recommendations for what training would be appropriate for school personnel.

"I think it's clear that they should have more than just 12 hours of carrying a concealed", DeWine said.

The preliminary recommendation is for about 200 hours of training before the AG's office would recommend someone be allowed to carry a concealed weapon on school property, DeWine said. He said the recommendations, which still must be approved by the Ohio Peace Officer Training Commission, could be enforced only if the H.B. 8 becomes law.

The OPOTA recommendations will be made public even if the bill fails, DeWine said.

The biggest concern is whether the person has enough training to react correctly in an active shooter situation, DeWine said.

"It's not just about can I shoot a gun. That's just a small part of it. It's: Do I have enough training to be able to react so that my training goes into effect and I don't end up shooting someone who's innocent," DeWine said.

It is disappointing to see that OPOTA seems to be joining the FOP in seeking to make it nearly impossible for boards of education to authorize people to protect students, and this is *exactly* why boards should not be forced to follow the curriculum, just as they should not be forced to develop a safety plan with local law enforcement - especially if the agency opposes civilian gun ownership.

There are several things to consider when weighing the OPOTA 200 hour proposal:

First, law enforcement officers receive nowhere near this level of training. A typical officer will receive 40 hours of firearms training, with much of it irrelevant to a school shooter scenario. Indeed, most officers only receive *four* hours or so of active killer training. And yet no one is questioning whether or not an officer has enough training to stop a threat inside a school. So why should teachers and faculty be asked to receive so much *more* training than the law enforcement officers that pretty much *everyone* agrees can be trusted in our schools? Before teachers be required to get 200 hours of firearms training, law enforcement officers should get 200 hours of firearms training.

Teachers and faculty who have been through **Buckeye Firearms Foundation's Faculty/Administrator Safety Training and Emergency Response (FASTER)** program have already received an almost identical amount of training as officers straight out of the academy - 12 hours of concealed handgun license instruction, and 27 hours in FASTER. But when it comes to active killer situations, FASTER participants receive a much greater level of task specific training than those fresh out of police academy.

Furthermore, FASTER is not some government-run, lowest common denominator class. It is advanced and moves quickly. Most importantly, as mentioned above, it is task specific. Dealing with an active killer is very different than dealing with a traffic stop or searching a field or warehouse looking for a criminal hiding from police - all things that are included in

the 40 hours that academy cadets must be trained on. Indeed, it is the task-specific nature of the FASTER program that has led some school resource officers to request to take the FASTER training, because of what they hear from teachers. *They know it's better training than they received as law enforcement officers!*

We are reaching out to Attorney General DeWine's office to discuss these facts with him, and to invite him and members of his staff to attend one of Buckeye Firearms Foundation's upcoming FASTER program classes.

In the meantime, Buckeye Firearms Association remains committed to ensuring that the legislature not make it *harder* for local boards of education to take the steps they believe they need to take to ensure the safety of their students.

Chad D. Baus is the Buckeye Firearms Association Secretary, and BFA PAC Vice Chairman.

EXHIBIT Y

1 IN THE COURT OF COMMON PLEAS

2 BUTLER COUNTY, OHIO

3 * * *

4 ERIN GABBARD,

5 et al.,

6 Plaintiffs/Relators,

7 vs.

CASE NO. CV 2018 09 2028

8 MADISON LOCAL SCHOOL

9 DISTRICT BOARD OF EDUCATION,

10 et al.,

11 Defendants/Respondents.

12 CONFIDENTIAL - ATTORNEYS' EYES ONLY

13 Deposition of PAUL R. JENNEWINE,

14 M.D., Witness herein, called by the

15 Plaintiffs/Relators for cross-examination

16 pursuant to the Rules of Civil Procedure, taken

17 before me, Karen M. Rudd, a Notary Public in and

18 for the State of Ohio, at the Courtyard

19 Marriott, 1 Riverfront Plaza, Hamilton, Ohio, on

20 Friday, January 11, 2019, at 1:09 p.m.

21 * * *

CONFIDENTIAL - ATTORNEYS EYES ONLY

<p style="text-align: right;">Page 42</p> <p>1 property?</p> <p>2 A. Yes.</p> <p>3 Q. And what's the reason for that?</p> <p>4 A. To avoid ricochet.</p> <p>5 Q. Because if there's an instance of</p> <p>6 ricochet, someone unintended could get hurt,</p> <p>7 correct?</p> <p>8 MR. CONOVER: Objection.</p> <p>9 THE WITNESS: That is a</p> <p>10 possibility.</p> <p>11 BY MS. LEFKOWITZ:</p> <p>12 Q. That's the animated concern behind</p> <p>13 setting a rule about what kind of ammunition can</p> <p>14 be brought, correct?</p> <p>15 MR. CONOVER: Objection.</p> <p>16 THE WITNESS: I think it's to limit</p> <p>17 any possible consequences, whether it be damage</p> <p>18 to the school or anything.</p> <p>19 BY MS. LEFKOWITZ:</p> <p>20 Q. Is damage to school property the</p> <p>21 primary reason for only allowing hollow-point or</p> <p>22 frangible ammunition to be brought onto school</p> <p>23 property?</p> <p>24 MR. CONOVER: Objection.</p> <p>25 THE WITNESS: I did not say that.</p>	<p style="text-align: right;">Page 44</p> <p>1 themselves.</p> <p>2 Q. The individuals who are bringing</p> <p>3 the firearms onto the school?</p> <p>4 A. That we have allowed to, yes.</p> <p>5 Q. There was some testimony earlier</p> <p>6 today that after this firearms authorization</p> <p>7 policy was issued, that certain clarifications</p> <p>8 were made to it. Are you aware of</p> <p>9 clarifications being made to this policy?</p> <p>10 MR. CONOVER: Objection.</p> <p>11 THE WITNESS: No, I'm not.</p> <p>12 BY MS. LEFKOWITZ:</p> <p>13 Q. Do you think if there had been</p> <p>14 clarifications made to this policy, you would be</p> <p>15 aware of it?</p> <p>16 A. Not necessarily.</p> <p>17 Q. Why do you think you wouldn't be</p> <p>18 aware of it?</p> <p>19 A. Because it was our attorney who</p> <p>20 would probably be doing the clarifications.</p> <p>21 Q. So what I mean is -- let me strike</p> <p>22 that.</p> <p>23 Anyone who is carrying a firearm on</p> <p>24 school property has -- is required to have</p> <p>25 reviewed this policy, correct?</p>
<p style="text-align: right;">Page 43</p> <p>1 BY MS. LEFKOWITZ:</p> <p>2 Q. So my question is, is the reason --</p> <p>3 is one of the reasons that only certain type of</p> <p>4 ammunition can be brought onto school property</p> <p>5 is to minimize the chance of an innocent</p> <p>6 bystander getting hurt?</p> <p>7 A. Yes.</p> <p>8 Q. Would you say that's the primary</p> <p>9 reason?</p> <p>10 A. I think so, yes.</p> <p>11 Q. So would it be fair to say that the</p> <p>12 rules that are codified in this firearms</p> <p>13 authorization policy are there for safety</p> <p>14 reasons?</p> <p>15 A. I think they are there for</p> <p>16 protection of the teacher who wishes to do that,</p> <p>17 and perhaps anyone in their immediate zone that</p> <p>18 they feel they could help protect.</p> <p>19 Q. Those individuals' safety, correct?</p> <p>20 A. Their protection, yes.</p> <p>21 Q. What's the difference between</p> <p>22 protection and safety?</p> <p>23 A. I'm not sure. You're asking me.</p> <p>24 Q. My question is --</p> <p>25 A. I look at it as them protecting</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes.</p> <p>2 Q. And do you have any reason to think</p> <p>3 that clarifications about this policy were made</p> <p>4 to those individuals?</p> <p>5 A. Explain better, please.</p> <p>6 Q. These are the rules that authorized</p> <p>7 individuals have to follow if they are going to</p> <p>8 bring a gun onto school property, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Were any further rules provided to</p> <p>11 them?</p> <p>12 A. Any further rules beyond these</p> <p>13 rules?</p> <p>14 Q. Exactly.</p> <p>15 A. Not to my knowledge, no.</p> <p>16 MS. LEFKOWITZ: Why don't we take a</p> <p>17 really -- a five-minute break. Is that okay?</p> <p>18 MR. CONOVER: Off the record.</p> <p>19 (Recess taken.)</p> <p>20 MS. LEFKOWITZ: Let's get back on</p> <p>21 the record.</p> <p>22 BY MS. LEFKOWITZ:</p> <p>23 Q. So before the break, we were</p> <p>24 talking about the firearms authorization policy,</p> <p>25 correct?</p>

12 (Pages 42 - 45)

EXHIBIT Z

BUTLER COUNTY, OHIO

ERIN GABBARD, et al.,

Plaintiffs,

-VS-

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

Defendants.

CASE NO. CV 2018 09 2028

JUDGE CHARLES L. PATER

DEPOSITION OF: JOHN DOE

TAKEN: By the Plaintiffs

PURSUANT TO: Subpoena

DATE: January 12, 2019

TIME: Commencing at 8:00 a.m.

PLACE: Frost Brown Todd LLC
9277 Centre Pointe Drive
Suite 300
West Chester, Ohio 45069-4866

REPORTER: IRENE D. DONNER, RPR-RMR
Notary Public-State of Ohio

DONNER REPORTING
1921 Harrowgate Hill Lane, Fairfield, OH 45014
idonner@fuse.net

DONNER REPORTING
(513) 829-5099

73

1 August -- Could it have been the August Board meeting?

2 A It could have been the August Board

3 meeting.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] When were you

15 provided the letter from -- a letter authorizing you to

16 carry a firearm?

17 A It may have been in August. I believe

18 it was August.

19 Q And when were you provided the verbal

20 instruction you referred to?

21 A It was probably -- It could have been

22 prior to that. The verbal instruction was with the

23 Board. I can't recall if they were all in there. But

24 the verbal was done with at least the Board president.

25 I don't recall when or where it was.

74

1 Q Who do you -- On how many occasions

2 did you receive verbal instruction?

3 A It could have been once or twice.

4 Q And you said you recall receiving

5 verbal instruction from the Board president

6 specifically?

7 A Yes.

8 Q Anyone else?

9 A It may have been one or two other

10 Board members as well who were involved, maybe the

11 names that I mentioned before. It's quite possible

12 they were there.

13 Q And the one or two names you mentioned

14 before were who?

15 A Dr. Jennewine and Pete Robinson.

16 Q Was Dr. Tuttle-Huff part of this

17 verbal instruction?

18 A No.

19 Q She was not present when you received

20 verbal instruction?

21 A I don't recall if she was there. I

22 don't believe at least one of the times that she was

23 there.

24 Q Was this verbal instruction provided

25 as part of the interview that you conducted with -- I

75

1 don't know whether you referred to it as the safety

2 team, I believe, in prior testimony?

3 A I believe that's what he called it,

4 yes.

5 Q Was the interview done with the safety

6 team the occasion on which you received the verbal

7 instruction?

8 A I don't recall if it was said in that

9 interview.

10 Q Was David French present at that

11 safety team meeting?

12 A No.

13 Q And you do recall receiving this

14 instruction specifically from David French?

15 A Yes.

16 Q What was the content of this verbal

17 instruction you received?

18 A It was as far as what our conduct is

19 regarding how we use or do not use our weapon. And it

20 was pretty much, the instruction was we are -- As I

21 mentioned before, our role is not as law enforcement,

22 it is to hold in place or escape or not to pursue.

23 Q The verbal instruction included a

24 direction not to pursue?

25 A Not to pursue an active shooter.

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1 Q Do you remember anything else about

2 the verbal instruction other than what you have just

3 described?

4 A I don't recall the rest of the

5 conversation. I just remember that as part of the --

6 probably the most important part of that instruction.

7 Q You characterize that as the most

8 important part of the instruction. What are you

9 referring to as the most important part of the

10 instruction?

11 A As far as what our role is as far as

12 whether or not we are to pursue.

13 Q Is it fair to say that that is in fact

14 the most important instruction you received regarding

15 your conduct as an armed staff person?

16 MR. CONOVER: Objection.

17 A I don't know if it is the most

18 important, it's one of the items I deem important.

19 Q Why do you deem it important?

20 A Well, you need to know what you're

21 allowed to do and what the expectation is of the Board.

22 Q Was that instruction regarding your

23 role and, as you have describe it, what to do provided

24 to you in written form at any time?

25 A No, other than what is in the Firearms

EXHIBIT AA

1 IN THE COURT OF COMMON PLEAS

2 BUTLER COUNTY, OHIO

3 * * *

4 ERIN GABBARD,

5 et al.,

6 Plaintiffs/Relators,

7 vs.

CASE NO. CV 2018 09 2028

8 MADISON LOCAL SCHOOL

9 DISTRICT BOARD OF EDUCATION,

10 et al.,

11 Defendants/Respondents.

12 CONFIDENTIAL - ATTORNEYS' EYES ONLY

13 Deposition of PETE ROBINSON, Witness

14 herein, called by the Plaintiffs/Relators for

15 cross-examination pursuant to the Rules of Civil

16 Procedure, taken before me, Karen M. Rudd, a

17 Notary Public in and for the State of Ohio, at

18 the Courtyard Marriott, 1 Riverfront Plaza,

19 Hamilton, Ohio, on Thursday, January 10, 2019,

20 at 4:20 p.m.

21 * * *

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<p style="text-align: right;">Page 14</p> <p>1 proactive, go towards anything, you know, that 2 would -- might be happening, whereas keeping 3 safe would be more or less just defending in 4 place if they -- if anything would occur. 5 Q. So your understanding with regard 6 to this resolution is personnel who are armed 7 pursuant to this resolution are expected to be 8 defensive? 9 A. Only, yes. 10 Q. We can put this aside for now. And 11 I want to take us to an exhibit that was 12 introduced earlier today in a previous 13 deposition, Exhibit F. 14 (Thereupon, Plaintiffs' Exhibit F, 15 Firearm Authorization Policy, having been 16 previously marked, was presented for purposes of 17 identification.) 18 MR. CONOVER: Do you have that? 19 MS. LEFKOWITZ: Yeah, I can -- 20 MR. CONOVER: For him, F. Is it 21 not in the stack over there? 22 MR. MILLER: I would show him the 23 one that is already marked. 24 MS. LEFKOWITZ: Good point. 25 BY MS. LEFKOWITZ:</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Oh, no. 2 Q. Are you aware of any other policy 3 at Madison setting forward rules on how staff 4 can be armed? 5 A. One minute, please. I believe this 6 is the crux of what we passed. 7 Q. If you could take a look through 8 this document, and could you point to the 9 portion of this document where it says that 10 individuals who are armed pursuant to this 11 policy can only act in a defensive nature? 12 A. It would be under the review of 13 qualifications. I believe it's clearly stated 14 in the FASTER program that our people were 15 actually sent through under review of 16 qualifications. 17 Q. Are you -- 18 A. That would be part of the 19 qualification. That would be part of what was 20 put up there. 21 Q. So I just want to clarify. Are you 22 looking at the bottom of the page that's marked 23 264? 24 A. Uh-huh, and the top. 25 Q. The top of 265?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. The document that you have in front 2 of you, can you confirm that that is marked as 3 Exhibit F? 4 A. Yes. 5 Q. Why don't you take a minute to look 6 over it, and then when you're ready, if you 7 could let me know. Is this a document that you 8 are familiar with? 9 A. Yes. 10 Q. What is your understanding of the 11 purpose of the document that you have in front 12 of you? 13 MR. CONOVER: Objection. Go ahead. 14 THE WITNESS: Oh, okay. I'm sorry. 15 This is the authorization to add armed staff. 16 BY MS. LEFKOWITZ: 17 Q. So this is the firearm 18 authorization policy for Madison? 19 A. That's correct. 20 Q. And is it fair to say this sets 21 forth the rules pursuant to which certain 22 authorized staff can be armed? 23 A. Yes. 24 Q. Do you want to take a few more 25 minutes to look at it?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes. 2 Q. And where exactly does it say that 3 the individual -- strike that. 4 Where exactly does it say that 5 armed individuals can only act defensively? 6 MR. CONOVER: Objection. 7 THE WITNESS: Like I said, it's 8 part of the training that they had gone through. 9 That's part of the precursor in the review of 10 qualifications. 11 BY MS. LEFKOWITZ: 12 Q. So your testimony is the defensive 13 aspect is taught in the training, but it is not 14 explicitly laid out in the policy? 15 MR. CONOVER: Objection. 16 THE WITNESS: No, I believe it's 17 clearly spelled out in the policy. If you look 18 at the precursors where you have the 19 qualifications listed, and then if you go down 20 through these different -- you have to have -- 21 some of these -- I believe it's on the ones that 22 are followed. It shows the minimum training and 23 whatnot. It's part of the curriculum on that. 24 BY MS. LEFKOWITZ: 25 Q. All right. I just want to make</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 sure we are clearly talking about the same 2 thing. So I'm looking at the review of 3 qualifications, and the first bullet point that 4 I see is holding a valid Ohio concealed handgun 5 license. Do you see that bullet point? 6 A. Yes. 7 Q. Is that the course that you are 8 speaking about? 9 A. It would be holding -- it would be 10 that one, completing a minimum 24 hours of 11 response to active shooter/killer training from 12 an approved vendor, and then it lists the 13 vendors on the next page, and then it also has 14 the handgun qualifications. But in the training 15 that was received, that was part of the 16 training. This is not an offensive program by 17 design. 18 Q. Have you taken one of the trainings 19 that are listed in these bullet points? 20 A. The CCW I have, but none of the 21 others. 22 Q. So how do you know that these 23 trainings are defensive and not offensive? 24 A. That's the whole syllabus. I'm 25 certain that you have the FASTER training</p>	<p style="text-align: right;">Page 20</p> <p>1 authorization. On the first page under board 2 authorization, Ohio Revised Code 2923.122. 3 Q. And that -- 4 A. The authorization -- I'm sorry. Go 5 ahead. 6 Q. I just want to be clear. We're 7 looking at page 263? 8 A. Yes. 9 Q. And that is the paragraph where it 10 says authorization, A, board authorization, 11 correct? 12 A. Yes. 13 Q. And where in that paragraph does it 14 say that the authorized personnel can only act 15 defensively? 16 A. Last -- the last sentence, for the 17 welfare and safety of students. It clearly 18 states safety and not security, just as I spoke 19 earlier in one of your previous questions. 20 Q. So your testimony is that from 21 seeing the phrase for the welfare and safety of 22 the students, combined with the training that 23 the armed personnel receive, they know that they 24 are only allowed to act defensively? 25 MR. CONOVER: Objection.</p>
<p style="text-align: right;">Page 19</p> <p>1 documents, and I'm sure you guys have that, and 2 it's in there. And I don't believe anywhere in 3 there it states that these are offensive. 4 Q. Other than the trainings that you 5 have mentioned that are referenced in this 6 policy under review of qualifications, is there 7 anything else in this policy that says that 8 authorized personnel can only act in a defensive 9 manner? 10 A. Well, that's part of the whole 11 curriculum. So yes, it would be stated in the 12 training that they have had, that's correct. 13 And they are bound by that training as part of 14 this. 15 Q. So my answer is in addition -- 16 let's set aside for a minute the reference to 17 the training. Is there any -- there's -- is 18 there anything else in this policy that 19 references that the armed personnel have to act 20 defensively? 21 A. Will you give me a minute to review 22 this again? 23 Q. Absolutely. You can take more than 24 a minute. 25 A. Yeah, it would be under the board</p>	<p style="text-align: right;">Page 21</p> <p>1 THE WITNESS: Defensively. 2 BY MS. LEFKOWITZ: 3 Q. Strike that. Is your testimony 4 that from seeing this phrase for the welfare and 5 safety of the students and the training that 6 authorized personnel received through FASTER 7 and anything else listed under review of 8 qualifications, that they know they can only act 9 defensively? 10 MR. CONOVER: Objection. 11 THE WITNESS: Yes. 12 BY MS. LEFKOWITZ: 13 Q. Actually, while we're on this 14 document, I do have a question under permitted 15 ammunition. That's on page 265. Let me know 16 when you see that. 17 A. Yes, I see it. 18 Q. Can you actually read that sentence 19 out loud? 20 A. Only hollow-point or frangible 21 ammunition, i.e., ammunition designed to have 22 reduced ricochet hazard, will be permitted in 23 firearms authorized to be on school property 24 under this policy. 25 Q. Do you know what hollow-point</p>

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<p style="text-align: right;">Page 86</p> <p>1 possess firearms shall be trained on the 2 firearms and caliber and shall only possess 3 firearms of the caliber for which they have 4 received training. 5 It says authorized school employees 6 may possess and use personal firearms subject to 7 the completion of training requirements stated 8 in this policy with a personal firearm. 9 So the answer would be a personal 10 firearm of their choice that they own that they 11 are trained with. 12 Q. Are there any other rules that 13 authorized personnel have to follow? 14 A. Once again, I'll refer back to the 15 training that they received and what was laid 16 out there. 17 Q. So they are required to act in the 18 manner that -- strike that. 19 They are required to do what the 20 training told them to do? 21 A. Defend in place, yes. 22 Q. Is there any material -- rule 23 issued by the board or the superintendent which 24 explicitly says that they can only act 25 defensively?</p>	<p style="text-align: right;">Page 88</p> <p>1 I do not see in this policy, but in order for 2 this policy to be in place, you have to go 3 through the training that's here, and it's 4 certainly part of all the training. 5 And just as an example, the Ohio 6 concealed carry weapons permit that you have to 7 go through, that is self-defense. So it's 8 just -- no, it is not directly in there, but 9 it's kind of all of your training is based on 10 that. 11 BY MS. LEFKOWITZ: 12 Q. So the text of the firearms 13 authorization policy does not have the word 14 defensively anywhere in it; is that correct? 15 MR. CONOVER: Objection. I think 16 he has answered that. Go ahead. 17 THE WITNESS: Not that word and 18 that statement, but in order to qualify for 19 the -- to be armed in the school, you have to 20 complete all the items that are listed on this 21 document. 22 Once again, just to start with the 23 holding of a valid Ohio concealed carry 24 license -- concealed handgun license, that is 25 defensive. And then on the training courses</p>
<p style="text-align: right;">Page 87</p> <p>1 A. I go back again to where they are 2 required -- the requirements of the policy when 3 it states of the authorized courses, you know, 4 they are this, and it's part of the course. 5 That's clearly spelled out during the course. 6 Q. But the word defensively does not 7 actually appear anywhere in the firearms 8 authorization policy, right? 9 A. It's in the training that they 10 receive through the FASTER program. 11 MS. LEFKOWITZ: Can you repeat my 12 question, please? 13 (Record read.) 14 THE WITNESS: Under review of 15 qualifications, any one of the things that they 16 have there, holding an Ohio valid concealed 17 handgun license, you know, it comes under there. 18 That's for self-defense. I'm sorry. Repeat the 19 question. 20 (Record read.) 21 THE WITNESS: It's in the different 22 prerequisites that are in the policy. 23 MS. LEFKOWITZ: You do have to 24 answer my question that I'm actually asking. 25 THE WITNESS: I think I have. No,</p>	<p style="text-align: right;">Page 89</p> <p>1 that they had to go through, that is all based 2 on defensive. It is not offensive. 3 BY MS. LEFKOWITZ: 4 Q. If the armed personnel break any of 5 the rules that they are expected to follow, 6 their authorization can be revoked; is that 7 right? 8 A. Yes. 9 Q. Has anyone's authorization been 10 revoked since this policy has started? 11 A. No. 12 Q. So if one of the authorized 13 personnel were to act offensively, their 14 license -- their authorization would be revoked; 15 is that right? 16 MR. CONOVER: Objection. 17 THE WITNESS: Yes, if they violate 18 the policy. That's correct. 19 BY MS. LEFKOWITZ: 20 Q. So if they -- if there was an 21 active shooter, and one of these authorized 22 personnel went and chased after the shooter, 23 that individual's authorization would be 24 revoked? 25 MR. CONOVER: Objection.</p>

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