Supreme Court of Ohio Clerk of Court - Filed September 15, 2020 - Case No. 2020-0612

IN THE SUPREME COURT OF OHIO

ERIN G. GABBARD, *et alia*,	:	
	:	Case No. 2020-0612
Plaintiffs-Appellees,	:	
	:	
v.	:	Appeal from the Butler County Court of
	:	Appeals, Twelfth Appellate District
MADISON LOCAL SCHOOL DISTRICT	:	
BOARD OF EDUCATION, *et alia*,	:	Court of Appeals Case No. CA2019-03-0051
	:	
Defendants-Appellants.	:	

MERIT BRIEF OF APPELLANTS MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION AND DR. LISA TUTTLE-HUFF

Rachel Bloomekatz (0091376)
COUNSEL OF RECORD
BLOOMEKATZ LAW
37 West Dominion Boulevard
Columbus, Ohio 43201
Phone: (614) 259-7611
Fax: (614) 559-6731
rachel@bloomekatzlaw.com

Alla Lefkowitz
James Miller
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, New York 10017
Phone: (646) 324-8365
alefkowitz@everytown.org
jedmiller@everytown.org

Counsel for the Appellees Erin G. Gabbard et alia

Matthew C. Blickensderfer (0073019)
COUNSEL OF RECORD
FROST BROWN TODD LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
Phone: (513) 651-6162
Fax: (513) 651-6981
mblickensderfer@fbtlaw.com

Brodi J. Conover (0092082)
FROST BROWN TODD LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
Phone: (513) 870-8200
Fax: (513) 870-0999
bconover@fbtlaw.com

Counsel for the Appellants Madison Local School District Board of Education and Dr. Lisa Tuttle-Huff

(additional counsel listed on next page)

Attorney General Dave Yost (0056290)
Benjamin M. Flowers (0095284)
COUNSEL OF RECORD
Michael J. Hendershot (0081842)
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 466-8980
Fax: (614) 466-5087
benjamin.flowers@ohioattorneygeneral.gov

Counsel for Amicus Curiae
Ohio Attorney General Dave Yost

Jonathan N. Fox (0040264)
LYONS & LYONS, CO., LPA
8310 Princeton-Glendale Road
West Chester, Ohio 45069
Phone: (513) 777-2222
jfox@lyonsandlyons.com

Counsel for Amici Curiae School Districts

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INTRODUCTION

In 2016, a high school student brought a gun into the Madison Junior-Senior High School in Butler County and opened fired in the cafeteria. Four students were shot; fortunately, none of the injuries was fatal. At the time, the school employed a single Butler County deputy sheriff as a school resource officer. It took nearly fifteen minutes for additional law enforcement to respond to the small, rural school. School personnel later recounted their feelings of helplessness when faced with an active shooter inside the school.

The Madison Local School District Board of Education responded with a variety of measures to protect students and staff against a future attack, one of which led to this lawsuit: the board adopted a policy authorizing a limited number of school personnel to carry concealed weapons on school property. The policy requires those authorized employees to meet a variety of safety-oriented requirements, including receiving training specific to active-shooter situations.

Ohio law permits the choice made by the Madison Board, as well as the particulars of its policy. While possession of a deadly weapon on school grounds is generally prohibited, law enforcement officers, school resource officers, and school security guards are exempted from this ban. R.C. 2923.122(D)(1). The General Assembly also enacted the exception at issue here: a board of education has the right to authorize "any other person" to carry a deadly weapon on school grounds. *Id.* This statute does not prescribe the terms or conditions under which a board of education may exercise this right, or the qualifications or training an authorized individual must have.

The General Assembly, instead, let boards of education decide what best fits the individualized needs of their districts. And many school districts in Ohio have concluded, as did the Madison Board, that the best way to provide for the safety of their students and staff is to arm

certain administrators, teachers, and support staff. Many other districts have come to a very different conclusion, as is their prerogative. These differences reflect local government at work – different districts facing different conditions, different risks, and different community sentiment have appropriately adopted different approaches to the paramount issue of school safety.

The Twelfth District's statutory interpretation gutted this framework. It held that the right granted to boards of education to authorize individuals to carry firearms in schools was limited by R.C. 109.78(D), a statute dealing with the Attorney General's duty to ensure that law enforcement officers—including those employed by schools—are properly trained and certified. The court of appeals concluded that a board of education cannot authorize any school staff member to carry a weapon on school grounds unless that staff member has completed the training required of *full-time peace officers*. Under this interpretation, no school district can exercise the right to arm its staff unless it turns teachers into police officers, or police officers into teachers. This is both entirely impractical and demonstrably wrong as a matter of statutory construction.

Reasonable people may disagree about how best to respond to gun violence in schools. But this case is not about whether it is wise to arm teachers in public schools. The General Assembly has already decided that question for Ohio, and it decided that local boards of education should make that call. The issue here is whether, despite having granted local school boards the ability to decide whether and under what conditions to arm school staff, the General Assembly effectively removed that right with unrealistic training requirements found in a separate statute in an entirely different chapter of the Revised Code.

The answer to that question is "no" – the General Assembly requires peace officer training only for peace officers, and it appropriately left the training and qualifications for armed teachers to the discretion of local boards of education. This conclusion follows from the plain language of

the statutes at issue. This Court should apply that language as the General Assembly wrote it, and the judgment of the court of appeals should be reversed.

STATEMENT OF FACTS

I. The Madison Local School District Board of Education chose to arm a limited number of staff after experiencing a school shooting.

The Madison Local School District Board of Education implement a package of security measures in response to the February 2016 shootings at its junior-senior high school building. (Supp. 1-2) These measures included improving the District's communication system, installing a new security camera system, hiring an additional school resource officer, reinforcing windows, and installing more secure doors throughout school buildings. (*Id.*)

The Madison Board also unanimously passed a resolution authorizing a limited number of staff to carry concealed weapons on school grounds. (Supp. 3) The Board engaged with the local community to get input on what would eventually become its Firearms Authorization Policy. (Supp. 4-6) The Board adopted this policy to "address concerns about effective and timely response to emergency situations at schools, including invasion of the schools by an armed outsider, any active shooter, hostage situations, students who are armed and posing a direct threat of physical harm to themselves or others, and similar circumstances." (Supp. 4) The policy is premised on the authority granted to a board of education in R.C. 2923.122. (*Id.*)

The Madison Board's policy includes a process to vet and train any employee authorized to carry a concealed weapon on school property. Because Ohio law requires it, the first requirement, of course, is that an authorized staff member must have a valid concealed handgun license. (Supp. 5) The policy also requires that any authorized staff member must: (1) complete a minimum of 24 hours of active-shooter-response training from an approved vendor, such as the

Faculty/Administrator Safety Training and Emergency Response ("FASTER") Saves Lives program; (2) have a handgun qualification certificate; (3) receive training regarding mental preparation in response to active killers; (4) undergo a mental health exam; (5) pass a criminal background check; and (6) pass an annual drug screening exam. (Supp. 5-6)

II. Ohio's legislative and executive branches have supported efforts of local school districts to arm staff and train staff to handle active-shooter situations.

The Buckeye Firearms Foundation has been active in promoting school safety measures in Ohio. In 2013, prior to the Madison school shooting and the Madison Board's adoption of its firearms policy, the Foundation solicited an opinion from then-Attorney General Mike DeWine on the very issue presented by this case. The Attorney General's opinion letter concluded that R.C. 2923.122(D)(1)(a) allows boards of education to arm teachers and administrators without subjecting them to the peace officer training that R.C. 109.78(D) requires for school resource officers and school security guards. (Supp. 7-8)

The Buckeye Firearms Foundation also helped to create the FASTER Saves Lives program, one of the approved vendors under the Madison Board's policy. T.d. 48, Exhibit D. FASTER is intended to provide administrators, teachers, and staff with the ability to respond quickly and effectively to active-shooter situations in schools. *Id.* The program recognizes that armed teachers are only one possible component of an overall program to protect students and school staff. *Id.*

The General Assembly supports FASTER and the active-shooter training it provides to school personnel throughout Ohio. The General Assembly appropriated $75,000 in FY2018 and $100,000 in FY2019 to provide FASTER training for selected school staff "for the purpose of stopping active shooters and treating casualties." *Id.* at Exhibit E. In the most recent biennium budget, the General Assembly increased its support – it appropriated $200,000 in each of FY2020 and FY2021 to train armed school staff members. Am. Sub. H. B. No. 166, Section 265.120, 133

G.A. (2019), at 2294. Because of the bipartisan support of Ohio's Legislature, school districts from 79 of Ohio's 88 counties have sent staff to FASTER training to help protect Ohio's students. T.d. 48, Exhibit F.

III. The Twelfth District concluded that Ohio schools may not arm staff members unless those staff members have undergone training sufficient to qualify them as peace officers.

Five parents of Madison students brought this action to challenge the Madison Board's decision to authorize certain administrators, teachers, and staff members to carry concealed weapons on school property. Their complaint alleged that (1) the Board illegally authorized certain administrators, teachers, and staff to carry concealed weapons, and (2) the District failed to comply with a public records request. *See* Complaint. During the course of the litigation, the Butler County Court of Common Pleas entered a protective order keeping confidential the identities of the authorized staff members under the Madison Board's policy. The common pleas court later granted summary judgment in favor of the Madison Board on both issues raised by the complaint. (Appx. 28) The trial court agreed that Ohio's statutory scheme grants local boards of education the authority and ability to arm certain administrators, teachers, and support staff without requiring those authorized individuals to receive the training required of peace officers. (Appx. 26)

The plaintiffs appealed the statutory interpretation issue and the granting of the protective order. The Twelfth District unanimously affirmed the entry of the protective order. (Appx. 9-12) That decision was not appealed further and is no longer at issue in this case. In a 2-1 decision, the court of appeals reversed on the statutory interpretation issue. The Twelfth District majority held that the Madison Board's decision to authorize certain staff members to carry concealed weapons in a school safety zone did not follow Ohio law because those authorized individuals did not

complete the full training required of peace officers and did not have twenty years' experience as a police officer. (Appx. 8) Judge Stephen W. Powell dissented on this issue. (Appx. 15-21)

This Court unanimously accepted jurisdiction on a single proposition of law. 159 Ohio St.3d 1463, 2020-Ohio-3882, 150 N.E.3d 109. The Court stayed the Twelfth District's judgment pending the outcome of this appeal. *08/26/2020 Case Announcements #2*, 2020-Ohio-4197.

After this appeal was filed (but before the Court accepted jurisdiction), Senate Bill 317 was introduced in the Ohio Senate to overturn legislatively the Twelfth District's decision. 2020 Am. Sub. S. B. No. 317. This bill has not passed the Senate at this time.

ARGUMENT

Proposition of Law: Ohio law does not require school administrators, teachers, and support staff to attend the police academy or have twenty years' experience as a police officer in order to be authorized by a board of education to carry a firearm in a school safety zone.

This case involves the construction of two statutes: R.C. 2923.122 and R.C. 109.78. On matters of statutory interpretation, this Court decides the issues without any deference to the lower court rulings. *Ceccarelli v. Levin*, 127 Ohio St.3d 231, 2010-Ohio-5681, ¶ 8, 938 N.E.2d 342.

The objective in interpreting a statute is to determine and give effect to the legislative intent. *Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526, ¶ 23, 91 N.E.3d 716. That inquiry starts – and often ends – by looking to the statute's language, and "reading words and phrases in context and construing them in accordance with rules of grammar and common usage." *Fraley v. Estate of Oeding*, 138 Ohio St.3d 250, 2014-Ohio-452, ¶ 16, 6 N.E.3d 9. Context can be critical; courts should not "pick out one sentence and disassociate it from the context" but should instead look to the entire statute to determine its intent. *State v. Wilson*, 77 Ohio St.3d 334, 336, 673 N.E.2d 1347 (1997). But "[w]hen the words of a statute are unambiguous, then, this first canon is

also the last: 'judicial inquiry is complete.'" *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 252, 112 S. Ct. 1146, 117 L. Ed.2d 391 (1992). When statutory language is unambiguous, courts must apply it as it is written. *Pelletier v. Campbell*, 153 Ohio St.3d 611, 2018-Ohio-2121, ¶ 14, 109 N.E.3d 1210.

I. Ohio law – specifically R.C. 2933.122 – allows a board of education to authorize individuals to possess weapons in a school safety zone and to set the requirements for such authorization.

Under Ohio law, it is illegal to carry a firearm – open or concealed – in a school, on school property, or on a school bus. "No person shall knowingly possess a deadly weapon or dangerous ordnance in a school safety zone." R.C. 2923.122(B). Despite this general prohibition on weapons in a school safety zone, the statute carves out several exceptions. One of these exceptions is at issue here:

> This section does not apply to any of the following:
>
> (a) An officer, agent, or employee of this or any other state or the United States who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a law enforcement officer who is authorized to carry deadly weapons or dangerous ordnance, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization.

R.C. 2923.122(D)(1). This brief refers to this statutory provision as the "Authorization Statute."

Three critical points are clear from the text of the Authorization Statute. *First*, the statute unambiguously authorizes local school districts to allow staff members to carry weapons on school grounds for the protection of school occupants. The General Assembly left no room for doubt on this point. Some districts have chosen to exercise this authority; others have not. But each board

of education in Ohio has the right to make its best judgment on this issue involving the protection of their district's students and staff.

Second, by carving out exceptions for (1) law enforcement officers, (2) school security officers, and (3) "any other person" with written authorization from a board of education, the Authorization Statute indicates that these are distinct categories. This is because only one of these categories – "any other person" – requires written authorization for a board of education. That category therefore cannot mean the same thing as the other two categories, which do not require written authorization. So, "any other person" necessarily means someone other than a law enforcement officer or school security officer.

Third, the Authorization Statute does impose any additional training requirements, prerequisites, or other qualifications on "any other person" whom a board of education might authorize to carry a weapon in a school safety zone. The statute makes no reference – not even an implicit one – to R.C. 109.78(D) or any other statute that might limit the discretion enjoyed by a board of education. Rather, the sole requirement is that such an individual has written authorization from the board of education. The Authorization Statute allows a board education to provide that authorization to *any other person*, not "any other person who has completed peace officer training."

This reflects a legislative judgment to defer to the judgment of local school districts. Local boards of education are best situated to determine – under the particular circumstances faced by their respective districts – whether to arm staff and how to do so safely. Local districts are free to determine what qualifications authorized individuals should have and what training should be required of them. And what works best in an urban school in Cleveland may not be what works best in a largely rural district like Madison. Each district's board of education, and ultimately the

community that elects local board members, may decide the solution that fits the particular circumstances of that district. Indeed, in larger districts, there may be school-specific solutions, not a district-wide one.

Of course, if a board of education authorizes individuals to carry a *concealed* weapon on school grounds, then the individual must comply with the background requirements of Ohio law concerning concealed weapons. The Authorization Statute does not displace Ohio's concealed-carry statutes. It is generally illegal to carry a concealed weapon in Ohio without a concealed handgun license. R.C. 2923.12(A) and (C)(2). The State heavily regulates the issuance of such licenses. *See* R.C. 2923.125. For example, a license holder must be over 21 years old (R.C. 2923.125(D)(1)(b)), cannot have been convicted of specified felonies (R.C. 2923.125(D)(1)(e)), and cannot have been subject to a civil protection order (R.C. 2923.125(D)(1)(j)). All individuals seeking a license must complete a firearms safety and training course. R.C. 2923.125(B)(3); *see also* T.d. 48, Exhibit H (Ohio's Concealed Carry Laws and License Application). That course must include at least eight hours of training in the safe handling and use of a firearm and two hours of in-person range time and live-fire training. R.C. 2923.125(G)(1); *see also* T.d. 48, Exhibit H. In addition, a concealed handgun licensee must pass a competency examination, including a written test on the physical safe handling and firing of a handgun. R.C. 2923.125(G)(2).

Thus, the Authorization Statute allows local board of education to authorize individuals to possess firearms in a school safety zone based on criteria each board sees fit to establish. If a board provides such authorization only for the open carrying of weapons, then the board's own qualifications and training requirements are the only ones applicable. If a board provides such authorization for the concealed carrying of weapons, then the authorized individuals must also have a concealed-carry license, having satisfied all the statutory prerequisites for such a license.

The Authorization Statute does not hint at additional requirements. It does not suggest that the authority provided by this framework to local boards of education is seriously circumscribed by a provision in an entirely different chapter of the Revised Code. When the words of a statute are clear, courts should not impose additional requirements beyond what the statute prescribes. "Unambiguous statutes are to be applied according to the plain meaning of the words used and courts are not free to * * * insert other words." *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997) (citations omitted), *opinion corrected on reconsideration*, 78 Ohio St.3d 1505, 679 N.E.2d 7 (1997).

Given this principle and the clear statutory framework, the central issue in this case is whether R.C. 109.78(D) guts the Authorization Statute. The answer is "no," as explained next.

II. R.C. 109.78(D) does not impose the training required of Ohio peace officers on teachers or school administrators who are authorized by a board of education to carry a weapon on school grounds.

Located in the Attorney General's chapter of the Revised Code, R.C. 109.78 governs the training of special police officers, security guards, and individuals privately employed in a police capacity. Section 109.78 requires the Ohio Peace Officer Training Commission to oversee those individuals and certify that they "satisfactorily complete approved training programs designed to qualify persons for positions as special police, security guards, or persons otherwise privately employed in a police capacity * * * *" R.C. 109.78(A). This statute also empowers the Commission to certify firearms training programs for those individuals. R.C. 109.78(B). The statute concludes with this provision:

> No public or private educational institution, or superintendent of the state highway patrol shall employ a person as a special police officer, security guard, or *other position in which such person goes armed while on duty*, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.

R.C. 109.78(D) (emphasis added).

The statute makes no reference to R.C. 2923.122 or to the authority of a board of education to authorize individuals to possess weapons in a school safety zone. Does R.C. 109.78(D) nonetheless eviscerate the power granted to boards of education by the Authorization Statute to arm staff for the protection of schools? It does not, because the training requirements in R.C. 109.78 apply to school districts in the limited context expressly stated in the statute: that is, when districts employ a special police officer, or a security guard, or a school resource officer, or some other position like those listed. These training requirements do not apply to librarians, algebra teachers, or custodians who are authorized to carry a weapon for the protection of students and school staff. This conclusion follows from the words used by the General Assembly in R.C. 109.78 and from the context in which these words appears – as well as from what the General Assembly did *not* say in that statute.

First, R.C. 109.78(D) does *not* state that any person who is armed while on school property must have completed peace officer training or have twenty years' experience as a police officer. Rather, it says that someone in any "other *position* in which such person *goes armed while on duty*" must follow those requirements. R.C. 109.78(D) (emphasis added). So, this phrase applies to someone in a *position*, the *duties* of which involve being armed; it does not apply broadly to any person who is armed in a school safety zone.

The statute emphasizes that the *position* that is armed while on duty is the focus of the training requirements. A "position" is defined as a "relative place, situation, or standing" such as an "office, employment, vocation." Webster's Third New International Dictionary Unabridged (2020), *available at* https://www.unabridged/merriam-webster.com/unabridged/position (last accessed September 15, 2020). And individuals who are authorized by a board of education to be

armed in a school safety zone do not hold such offices or employment. An elementary school teacher or a softball coach is not hired to carry a weapon to protect a district's students and staff. Instead, they are hired to teach or coach. There is nothing about these *positions* that necessarily involves being "armed while on duty." To the contrary, individuals whose job duties involve teaching mathematics or cleaning classrooms *volunteer* to be part of the Madison Board's program. Being armed on duty, in other words, is not an inherent aspect of teaching or coaching duties – in contrast to a position as a police officer, school resource officer, or school security guard, for which being armed *is* an inherent part of the position.

Second, a classic canon of statutory interpretation limits the scope of the phrase "other position in which such person goes armed while on duty." When "specific items in a list are followed by a more general category, a familiar rule of statutory construction, ejusdem generis, says that the more general item is to be construed as of a similar character as the specific items." *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, ¶ 56, 136 N.E.3d 466 (DeWine, J., concurring); *see also State v. Aspell*, 10 Ohio St.2d 1, 4, 225 N.E.2d 226 (1967). In fact, the general words "apply only to persons or things of the same general kind or class specifically mentioned." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, at 199 (2012). The word "other" is the usual trigger for the use of ejusdem generis. *Moulton Gas Serv. v. Zaino*, 97 Ohio St.3d 48, 2002-Ohio-5309, ¶ 14, 776 N.E.2d 72.

Applying this canon, the phrase "other position in which such person goes armed while on duty," then, is a general item that should be construed consistently with the specific items used immediately before it: "special police officer" and "security guard." The scope of the phrase therefore would include some school-related positions that are of a "similar character" to a special police officer – for example, a school resource officer or a school security officer. But it does not

include administrators, teachers, or support staff authorized by a board of education to carry a firearm in a school safety zone. The roles of an administrator or teacher are not comparable to those of a security guard or school resource officer; the *positions* are qualitatively different with fundamentally different duties.

Third, what R.C. 109.78(D) does *not* say confirms this interpretation of what it *does* say. R.C. 109.78(D) makes no reference to the Authorization Statute. It makes no reference to the authority of boards of education to authorize individuals to carry firearms in a school safety zone. It does not say that *anyone* who carries a firearm in a school safety zone must undergo peace officer training or have twenty years' experience as a police officer. Had the General Assembly intended for the statute to apply to educators or other staff who are authorized to carry a firearm in a school safety zone, it would have been easy to express that intent. The General Assembly could have enacted a version of R.C. 109.78(D) that said, for example, "No public or private educational institution shall allow any of its employees to be armed while on duty unless such employee has received a certificate of having satisfactorily completed an approved basic peace officer training program."

But that is nothing like the provision the General Assembly actually enacted. And that Court should not presume that the General Assembly intended this phrase to sweep much more broadly than its words indicate – especially when the effect would be to undermine the power conferred on boards of education in the Authorization Statute. The point of R.C. 109.78(D) is clear – individuals employed by educational institutions as police officers, security guards, or *similar* enforcement positions (*e.g.*, school resource officer) must have completed peace officer training or have twenty years' experience as a police officer. It is not intended to impose the same

qualifications on an English teacher who volunteers under a school district's program under the Authorization Statute.

III. The Twelfth District's conclusion reflects errors of statutory interpretation and creates results of practical concern.

The construction adopted by the court of appeals – that any school district employee who is authorized to carry a firearm in a school safety zone must have completed peace officer training or have twenty years' experience as a police officer – creates serious interpretative and practical problems. The court of appeals failed to consider any of these consequences of its statutory construction. But these problems are disqualifying. No reasonable statutory interpretation should produce such problematic consequences.

For starters, the Twelfth District's construction nullifies the Authorization Statute's "any other person" exception as to school district employees. Under that interpretation, the only school employees a board of education can authorize to possess a weapon in a school safety zone are those who have completed peace officer training and those who have twenty years' experience as a police officer. This limits a school board's choices from among school staff to veteran police officers and security personnel who have completed peace officer training. But R.C. 2923.122(D)(1)(a) already includes an exception to the general ban on concealed weapons on school grounds for "a law enforcement officer who is authorized to carry deadly weapons * * * *" And it already includes an exception for a "security officer employed by a board of education * * * during the time that the security officer is on duty pursuant to that contract of employment." R.C. 2923.122(D)(1)(a). So, under the Twelfth District's holding, a board of education's authority to authorize "any other person" on the school's staff to carry a concealed weapon on school property is limited to personnel who are already authorized to do so by the plain language of the statute – and who do not need any additional authorization to do so anyway. As to school personnel, the

Twelfth District's interpretation makes the Authorization Statute meaningless, because the only personnel a board of education could authorize to carry a weapon in a school safety zone are those who are already statutorily authorized to do so.

The Twelfth District's interpretation also creates an untenable distinction between school personnel and individuals not employed by a school district. The prerequisite of completion of peace officer training or twenty years' service as a police officer applies only to police officers, security guards, and "other position[s] in which such person goes armed while on duty" that are *employed* by an educational institution. R.C. 109.78(D) ("No public or private education institution * * * *shall employ* * * * *") (emphasis added). A school board therefore could authorize anyone not employed by the district – perhaps a parent or a retired teacher – to carry a concealed weapon on school property and have them sit in each classroom or at each school entrance. That decision would not trigger the requirements in R.C. 109.78(D) – even under the Twelfth District's decision – because those individuals are not "employed" or "on duty." But, under the Twelfth District's interpretation, that same school board could not authorize any of its staff to carry a firearm on school property unless those individuals completed peace officer training. Any statutory interpretation that produces such an odd result is suspect.

The Twelfth District's interpretation also creates several undesirable, real-world consequences. Of course, courts should not reason backwards from real-world consequences of legislation to an interpretation of that legislation, especially when the statutory language is clear. The point here is simply that the Twelfth District's result is both incorrect as a matter of statutory interpretation and undesirable as a matter of policy.

First, as a practical matter, the Twelfth District's interpretation eliminates the ability of a local board of education to decide that the best way to protect students and staff from a hostile

actor is by allowing some staff to carry concealed weapons on school grounds. Why? Because the requirements of R.C. 109.78(D) are onerous – appropriately so for someone employed as a peace officer or security guard at a school or college. Completion of the peace officer curriculum requires over 700 hours of classroom instruction. The alternative prerequisite in R.C. 109.78(D) is twenty years' service as a policy officer. Those requirements are wholly unrealistic in a school program of the type allowed by the Authorization Statute. Districts cannot hire retired police officers to teach algebra. And districts cannot send their teachers to many months of peace officer training. Yet those are the (entirely impractical) choices left to districts by the Twelfth District's construction of the statutes.

Second, the Twelfth District's interpretation hamstrings the ability of local school districts to determine for themselves the best way to protect their students and staff. The Authorization Statute reflects the General Assembly's decision to leave to local school boards, which can consider local conditions and concerns, the decision as to whether and how to authorize individuals to be armed in school zones. Some districts may choose not to permit any firearms on school grounds. Others may decide that only resource officers or security guards who have completed peace officer training will be permitted to carry a weapon on school grounds. Still others may decide to authorize other staff to carry firearms on school grounds. And districts in the latter category may choose for themselves what requirements to establish and what training to require for such authorization, all based on the unique security situation and risks faced by that district. The Twelfth District's interpretation, however, destroys any ability to make local decisions on this issue based on local conditions. Instead of local autonomy on this issue, districts face a one-size-fits-all mandate that is not achievable in practice.

Third, peace officer training in Ohio is simply not designed for the history teacher who is authorized to carry a firearm in a school safety zone. As the Attorney General explains in his *amicus curiae* brief, peace officer training includes multiple subjects and hundreds of hours of instruction that are totally irrelevant to an individual authorized by a board of education to carry a firearm in a school safety zone. *See* Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellant Madison Local School District Board of Education, et. al., at 18. The Twelfth District's interpretation attempts to force the square peg of peace officer training into the round hole of the Authorization Statute.

IV. The Madison Board's policy complies with the correctly interpreted statutory scheme.

Correctly interpreted, the statutory framework is as follows. A school resource officer, security guard, or someone in a comparable position involving enforcement of laws and protection of school staff, students, and property must have completed peace officer training or have twenty years' experience as a police officer. A board of education may authorize someone who is *not* in such a position, including a teacher, administrator, or other staff member, to carry a firearm on school property. And if that authorization involves carry a *concealed* firearm, then the authorized individual must hold an Ohio concealed-carry license.

Given this framework, the Madison Board's policy complies with Ohio law in all respects. The Madison Board employs two school resource officers who are Butler County sheriff's deputies and who therefore have satisfied the training requirements for peace officers. The Madison Board's policy authorizes up to ten staff members to carry a concealed weapon on school property. Each authorized individual must have a valid concealed handgun license. (Supp. 3-6) While that would meet the minimum requirements under the statutory framework, the Madison Board's policy requires much more. Each authorized individual must also complete a mental health

evaluation, an annual drug screening, and a criminal background check. (*Id.*) Each authorized individual must complete a training program specifically designed to teach participants how to deal with active shooter situations, such as the FASTER program. T.d. 105, 108:14-109:9, 113:13-114:4; T.d. 102, 105:16-106:16. Fully compliant with Ohio law, the Madison Board's approach is the one its board of education has decided best fits the district's unique circumstances. This is exactly what the Authorization Statute permits and, indeed, encourages.

CONCLUSION

Under the Twelfth District's statutory interpretation, school districts must turn teachers into police officers, or police officers into teachers, to exercise the authority granted to them by the Authorization Statute. But that statute clearly permits boards of education to authorize staff members to carry firearms in a school safety zone without forcing those staff members to undergo peace officer training. Local districts get to determine whether to grant such authorization and, if so, the requirements for such authorization – all based on local conditions and needs. The judgment of the court of appeals should be reversed, and this case should be remanded with instructions to enter judgment in favor of Appellants Madison Local School District Board of Education and Dr. Lisa Tuttle-Huff.

Respectfully submitted,

/s/ Matthew C. Blickensderfer
Matthew C. Blickensderfer (0073019)
COUNSEL OF RECORD
FROST BROWN TODD LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
Phone: (513) 651-6162
Fax: (513) 651-6981
mblickensderfer@fbtlaw.com

Brodi J. Conover (0092082)
FROST BROWN TODD LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
Phone: (513) 870-8200
Fax: (513) 870-0999
bconover@fbtlaw.com

Counsel for Appellants Madison Local School District Board of Education and Dr. Lisa Tuttle-Huff

PROOF OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following individuals by e-mail on this 15th day of September, 2020:

Rachel Bloomekatz
BLOOMEKATZ LAW
37 West Dominion Boulevard
Columbus, Ohio 43201
rachel@bloomekatzlaw.com

Alla Lefkowitz
James Miller
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, New York 10017
alefkowitz@everytown.org
jedmiller@everytown.org

Counsel for the Appellees

Attorney General Dave Yost (0056290)
Benjamin M. Flowers (0095284)
COUNSEL OF RECORD
Michael J. Hendershot (0081842)
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
benjamin.flowers@ohioattorneygeneral.gov

Counsel for Amicus Curiae
Ohio Attorney General Dave Yost

Jonathan N. Fox (0040264)
LYONS & LYONS, CO., LPA
8310 Princeton-Glendale Road
West Chester, Ohio 45069
jfox@lyonsandlyons.com

Counsel for Amici Curiae School Districts

/s/ Matthew C. Blickensderfer
Matthew C. Blickensderfer

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APPENDIX

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

FILED
2020 MAR 30 AM 11:28
BUTLER COUNTY
CLERK OF COURTS

ERIN G. GABBARD, et al.,	:	
Appellants,	:	CASE NO. CA2019-03-051
	:	JUDGMENT ENTRY
- vs -	:	
MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,	:	FILED BUTLER CO. COURT OF APPEALS MAR 30 2020 MARY L. SWAIN CLERK OF COURTS
Appellees.	:	

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part, reversed in part, and this cause is remanded for further proceedings according to law and consistent with the Opinion filed the same date as this Judgment Entry.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 50% to appellants and 50% to appellees.

Robert A. Hendrickson, Presiding Judge

(Dissents)
Stephen W. Powell, Judge

Robert P. Ringland, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

ERIN G. GABBARD, et al.,	:	
Appellants,	:	CASE NO. CA2019-03-051
	:	OPINION
- vs -		3/30/2020
	:	
MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,	:	
	:	
Appellees.		

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. 2018-09-2028

Bloomekatz Law, Rachel Bloomekatz, 37 W. Dominion Blvd., Columbus, Ohio 43201 and Everytown Law, Alla Lefkowitz, James E. Miller, 450 Lexington Avenue, P.O. Box 4184, New York, New York 10017, for appellants

Frost Brown Todd LLC, Thomas B. Allen, W. Joseph Scholler, Alexander L. Ewing, Brodi J. Conover, Matthew C. Blickensderfer, 9277 Centre Pointe Drive, Suite 300, West Chester, Ohio 45069, for appellees

Cooper & Elliott, LLC, C. Benjamin Cooper, Sean R. Alto, 2175 Riverside Drive, Columbus, Ohio 43221, urging reversal for amicus curiae Experts in School Safety and Firearms Training

James P. Sean Maloney, 8917 Eagle Ridge Court, West Chester, Ohio 45069 and Law Office of Ronald Lemieux, Inc., Ronald Lemieux, P.O. Box 19183, Cleveland, Ohio 44119, urging affirmance for amicus curiae Buckeye Firearms Foundation, Inc.

Dave Yost, Benjamin M. Flowers, Jason Manion, Shams Hirji, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, urging affirmance for amicus curiae David A. Yost, Ohio Attorney General

Vorys, Sater, Seymour and Pease LLP, Daniel E. Shuey, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio, 43216, urging affirmance for amicus curiae Professor Peter M. Shane

RINGLAND, J.

{¶ 1} Appellants, Erin Gabbard and several other parents of students enrolled in the Madison Local School District (collectively, "Gabbard"), appeal from the decision of the Butler County Court of Common Pleas granting summary judgment to Madison Local School District Board of Education and Madison Local School District Superintendent Dr. Lisa Tuttle-Huff (collectively, "Madison Local"). For the reasons stated below, we affirm in part, reverse in part, and remand.

{¶ 2} In the aftermath of a 2016 school shooting at the Madison Junior-Senior High School, Madison Local passed a resolution that allowed it to authorize several Madison Local School District employees to carry concealed firearms into the Madison Local School District's school safety zones.[1] Madison Local claimed authority for this resolution on application of R.C. 2923.122(D)(1)(a), a criminal statute that excludes certain individuals from the offense of possessing a deadly weapon in a school safety zone.

{¶ 3} The persons authorized by Madison Local to carry concealed firearms under this resolution were deemed "approved volunteers" employed by the Madison Local School District who were licensed to carry a concealed firearm in Ohio and who had undergone 24 hours of active shooter/killer training. The authorized employees had also completed and passed a criminal background check, a drug screen, and a mental health evaluation.

1. The resolution passed by Madison Local referred to "deadly weapons" or "dangerous ordnances" rather than firearms. This court will use the term firearm for clarity and ease of discussion.

{¶ 4} The training requirement passed by Madison Local differs from the requirement passed by the General Assembly set forth in R.C. 109.78(D). Pursuant to that provision:

> No public or private educational institution * * * shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.

{¶ 5} 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. Akron Civ. Serv. Comm.*, 194 Ohio App.3d 174, 2011-Ohio-1782, ¶ 2 (9th Dist.); R.C. 109.75(A) (allowing the executive director of OPOTC to approve peace officer training schools); R.C. 109.79 (establishing OPOTA). This training requires a minimum of 728 hours of training, divided into units and subunits. Ohio Adm.Code 109:2-1-16. Individuals must also pass a criminal background check, a physical fitness test, and a drug screen. The purpose of OPOTA training is "to provide the student with a strong basic knowledge of the role, function, and practices of a peace officer." *Id.*

{¶ 6} After Madison Local passed the resolution, Gabbard moved for a permanent injunction estopping Madison Local from implementing the resolution unless the employees completed an approved basic peace officer training program in accordance with R.C. 109.78(D). Gabbard also sought the public disclosure of certain court documents that Madison Local had provided to the trial court under seal. This included, among other documents, the mental health evaluations of the Madison Local School District employees authorized to carry concealed weapons in accordance with the resolution passed by

Madison Local.

{¶ 7} Following discovery, both Gabbard and Madison Local moved for summary judgment on Gabbard's request for a permanent injunction. In addition, Madison Local moved for a protective order restricting the disclosure of the mental health evaluations. After taking the matter under advisement, the trial court granted Madison Local's request for a protective order. The trial court also granted Madison Local's motion for summary judgment on the Gabbard's request for a permanent injunction of the resolution. Gabbard now appeals, raising two assignments of error for review.

{¶ 8} Assignment of Error No. 1:

{¶ 9} THE COURT OF COMMON PLEAS ERRED IN CONCLUDING THAT THE RESOLUTION, WHICH REQUIRES ONLY 24 HOURS OF TRAINING FOR ARMED STAFF, DOES NOT VIOLATE R.C. 109.78(D).

{¶ 10} In the first assignment of error, Gabbard argues the trial court erred by granting summary judgment in favor of Madison Local. We sustain Gabbard's first assignment of error.

{¶ 11} This court reviews summary judgment decisions de novo. *Ludwigsen v. Lakeside Plaza, L.L.C.*, 12th Dist. Madison No. CA2014-03-008, 2014-Ohio-5493, ¶ 8. Pursuant to Civ.R. 56(C), summary judgment is proper when (1) there are no genuine issues of material fact to be litigated, (2) the moving party is entitled to judgment as a matter of law and, (3) when all evidence is construed most strongly in favor of the nonmoving party, reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St. 3d 367, 369-70 (1998).

{¶ 12} The moving party bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Robinson v. Cameron*, 12th Dist. Butler No. CA2014-09-191, 2015-Ohio-1486, ¶ 9. Once this burden

is met, the nonmoving party has a reciprocal burden to set forth specific facts showing there is some genuine issue of material fact yet remaining for the trier of fact to resolve. *Id.* In determining whether a genuine issue of material fact exists, the evidence must be construed in favor of the nonmoving party. *Vanderbilt v. Pier 27, L.L.C.*, 12th Dist. Butler No. CA2013-02-029, 2013-Ohio-5205, ¶ 8.

{¶ 13} In construing a statute, the primary goal "is to ascertain and give effect to the intent of the legislature as expressed in the statute." *Stewart v. Vivian*, 12th Dist. Clermont No. CA2015-05-039, 2016-Ohio-2892, ¶ 44. Legislative intent is determined from the plain language of the statute. *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, ¶ 18. "If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary." *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St.3d 543, 545 (1996). However, when a statute is ambiguous, a court must interpret the statute to determine the General Assembly's intent. *Sherwin-Williams Co. v. Dayton Freight Lines, Inc.*, 112 Ohio St.3d 52, 2006-Ohio-6498, ¶ 15. Therefore, when interpreting a statute, the threshold question is whether the statute at issue is ambiguous. *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, ¶ 8.

{¶ 14} This matter does not call upon the court to decide the wisdom of permitting concealed firearms in a school safety zone. Rather, the issue is how much training a teacher or school employee must receive before carrying a firearm into a school safety zone while on duty, a matter that the General Assembly has decided. As noted above, the General Assembly enacted R.C. 109.78(D), which provides:

> No public or private educational institution * * * shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.

{¶ 15} Despite R.C. 109.78(D), Madison Local maintains that R.C. 2923.122 permits them to authorize any individual, including its staff, to carry weapons on school property. R.C. 2923.122 prohibits a person from knowingly possessing a deadly weapon or firearm in a school safety zone. The General Assembly crafted several exceptions including, in relevant part:

> any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization

R.C. 2923.122(D)(1)(a).

{¶ 16} Following review, we find that R.C. 2923.122 does not provide Madison Local with authority to enact a resolution above the clear and unambiguous dictates of R.C. 109.78(D). Contrary to the trial court's decision, R.C. 109.78(D) and R.C. 2923.122 do not conflict with one another and this court must apply the statutes as written.

{¶ 17} The plain and unambiguous language found in R.C. 109.78(D) makes clear that the Madison Local is prohibited from employing a person as a "special police officer, security guard, *or other position in which such person goes armed while on duty*" unless that person has either completed an approved basic peace officer training program or has 20 years of active duty as a peace officer. While Madison Local asks this court to consider rules of statutory interpretation and find ambiguity in the phrase "other position in which such person goes armed while on duty," we find that such a request would violate this court's duty to apply, not interpret, an unambiguous statute. *Jacobson*, 2016-Ohio-8434 at ¶ 8, citing *Sears v. Weimer*, 143 Ohio St. 312, (1944), paragraph five of the syllabus; *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553 (2000) ("[w]hen the language of a statute is plain and unambiguous and conveys a clear and definite meaning,

there is no need for this court to apply the rules of statutory interpretation").

{¶ 18} Though the school board may provide written authorization so that an individual is not subject to prosecution under R.C. 2923.122, the school board is still subject to the training requirements mandated by the General Assembly in R.C. 109.78(D) when employing a person as a "special police officer, security guard, or other position in which such person goes armed while on duty." The express language of the statute does not suggest an intention to allow teachers or staff to carry a firearm while on duty with less training than that indicated in the statute. Rather, the plain language of the statute reveals that a board of education may only employ such persons if they have received significant training or have more than 20 years of experience. Madison Local cannot circumvent R.C. 109.78 by relying on R.C. 2923.122, a criminal statute, to implement its resolution. Should the legislature want to reduce the amount of training or experience for teachers and staff, it is their legislative prerogative to create such an exception. This court cannot ignore the requirements of R.C. 109.78.

{¶ 19} We are likewise unpersuaded by the designation that the persons authorized to carry concealed firearms under the resolution were "approved volunteers." The "approved volunteer" designation does not alter the inevitable conclusion that the Madison Local employees are "armed while on duty." The resulting application is clear. As the teachers and staff members are employed by Madison Local in a position in which they go into school "armed while on duty," Madison Local was obligated to follow the dictates of R.C. 109.78(D), which mandates the training requirements. Madison Local cannot unilaterally change the training requirements set forth by the General Assembly.

{¶ 20} We recognize that the parties share an urgent desire to make Madison Local as safe as possible. Madison Local presents compelling testimony detailing the horror surrounding the school shooting that gave rise to the resolution. However, the power to

create and amend the Ohio Revised Code belongs specifically to the General Assembly. Ohio Constitution, Article II, Section 1; *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 135, 2000-Ohio-116 (separation of powers is a fundamental feature of our system of constitutional government). The judiciary must accept the limitations upon our constitutional authority and exercise judicial restraint:

> Judges are men and women just like everyone else in society. We are not infallible, but we do have a job to do. But in performing our duties, we should do so fairly and impartially, setting aside our own personal opinions and feelings, and render decisions in accordance with the law as adopted by the General Assembly and not attempt to impose our own personal views of what the law should be, in order to remake and control society in our own personal concept of what society should be.

Cox v. Franklin Cty. Court of Common Pleas, 42 Ohio App.3d 171, 176 (10th Dist.1988). It is not the role of the courts "to establish legislative policies or to second-guess the General Assembly's policy choices. 'The General Assembly is responsible for weighing [policy] concerns and making policy decisions.'" *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 35, quoting *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶ 212.

{¶ 21} As a result, we find the trial court erred in granting summary judgment in favor of Madison Local. Since the resolution does not comply with the General Assembly's dictates in R.C. 109.78, we find Gabbard's permanent injunction must be granted. Gabbard's first assignment of error is sustained.

{¶ 22} Assignment of Error No. 2:

{¶ 23} THE TRIAL COURT ERRED IN GRANTING A PROTECTIVE ORDER OVER THE REDACTED EVALUATIONS AND RELATED TESTIMONY.

{¶ 24} In the second assignment of error, Gabbard argues the trial court erred by granting Madison Local a protective order restricting the public disclosure of the mental

health evaluations that were provided to the trial court under seal, excluding names and any other identifying information, of the Madison Local School District employees who were authorized by Madison Local to carry concealed firearms into the Madison Local School District's school safety zones. We disagree.

{¶ 25} Both Gabbard and Madison Local argue that a de novo standard of review applies. The issue raised in this assignment of error, however, is whether the trial court erred by granting Madison Local a protective order. "We review an order granting or denying a motion for a protective order for an abuse of discretion." *Schmidt v. Krikorian*, 12th Dist. Clermont No. CA2011-05-035, 2012-Ohio-683, ¶ 24.

{¶ 26} The trial court determined that the Health Insurance and Portability and Accountability Act, also known as HIPAA, supported its decision to grant Madison Local's motion for a protective order. Specifically, as the trial court stated:

> Here, provisions of [HIPAA] as codified in CFR 45 §65 FR 8446, support [Madison Local's] position. Unlike a personal injury action or similar tort, the individuals have not granted counsel, the court, [Madison Local], or medical treatment providers permission to access and/or release health information in furtherance of a legal claim. Rather, the individuals granted permission to the providers to share limited, specific information for purposes of an employment decision. That information may not be shared without violating individual [HIPAA] rights.

{¶ 27} Gabbard and Madison Local, however, agree that HIPAA is not applicable to the case at bar. We also agree that HIPAA is not applicable in this case. But a trial court can be right for the wrong reason. *Este Oils Co. v. Federated Ins. Co.*, 132 Ohio App.3d 194, 198 (1st Dist.1999). What is applicable, and what is in dispute, is whether the trial court erred by applying Rule 45(E)(2) of the Ohio Rules of Superintendence when granting Madison Local's motion for a protective order by ordering the parties to submit all depositions, trial exhibits, and other evidence "for public consumption with: 1) all personal identifiers redacted; and 2) all references and testimony as to mental health evaluations

redacted." After a full and thorough review of the record, we find no abuse of discretion in the trial court's decision. The trial court's decision granting Madison Local a protective order restricting the disclosure of these court records to the public was not unreasonable, arbitrary, or unconscionable.

{¶ 28} As noted above, Gabbard sought the public disclosure of certain court documents that Madison Local had provided to the trial court under seal. This included, among other documents, the mental health evaluations of the Madison Local School District employees.

{¶ 29} The Rules of Superintendence provide for public access to court records. *Woyt v. Woyt*, 8th Dist. Cuyahoga Nos. 107312, 107321, and 107322, 2019-Ohio-3758, ¶ 59, citing *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 23. There is a general presumption that court records are publicly accessible. *State ex rel. Harris v. Pureval*, 155 Ohio St.3d 343, 2018-Ohio-4718, ¶ 11 citing Sup.R. 45(A) ("[c]ourt records are presumed open to public access"). However, pursuant to Sup.R. 45(E)(2), there are circumstances in which a court is justified in restricting access to court records to the public. Specifically, as Sup.R. 45(E)(2) states:

> A court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:
>
> (a) Whether public policy is served by restricting public access;
>
> (b) Whether any state, federal, or common law exempts the document or information from public access;
>
> (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

{¶ 30} Despite Gabbard's argument, in accordance with Sup.R. 45(E)(2), we find the

trial court's decision to grant Madison Local a protective order is supported by clear and convincing evidence that the presumption allowing public access to these court records is outweighed by at least one, if not more, higher interests. These interests include, the individual privacy rights and interests of those Madison Local School District employees. While transparency and accountability are fundamental public interests, we are also cognizant that public disclosure of these sensitive records could reveal the employees' identities. This holds true even where names and other identifying information are excluded.

{¶ 31} We further agree that, although we find that the relevant resolution impermissibly violated R.C. 109.78, the public policy behind arming school district employees would be served by restricting access to the records in order to ensure the anonymity of the employees who were authorized to carry concealed firearms in a school safety zone. Therefore, we find no error in the trial court's decision granting Madison Local a protective order in this case. Accordingly, because we find this to be one of the circumstances in which a court is justified in restricting access to court records to the public under Sup.R. 45(E)(2), Gabbard's second assignment of error is overruled.

{¶ 32} Judgment affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

HENDRICKSON, P.J., concurs.

S. POWELL, J., concurs in part and dissents in part.

HENDRICKSON, P.J., concurring separately.

{¶ 33} I concur in the majority opinion in whole. R.C. 109.78(D) is unambiguous and must be applied as written. The express language found in R.C. 109.78(D) prohibits a public or private school from employing a person as a "special police officer, security guard,

or other position in which such person goes armed while on duty," unless that person has completed an approved basic peace officer training program or has 20 years of active duty as a peace officer. (Emphasis added.) R.C. 109.78(D). I write separately, however, to express my view that even if the dissent were correct in its assertion that the phrase "or other position in which such a person goes armed while on duty" is unclear and ambiguous, I would nonetheless find that Madison Local's authorized armed employees must still meet either the training or the peace officer experience requirements set forth in R.C. 109.78(D) before carrying a firearm into the school's safety zones.

{¶ 34} The dissent applies the principle of ejusdem generis in an attempt to determine the legislative intent behind the phrase "or other position in which such person goes armed while on duty." In doing so, the dissent concludes that the authorized staff carrying firearms in the school are "volunteer school employees" that do not fit into the same category as special police officers and security officers. However, these "voluntary school employees" are hired by the school and go armed while on duty.

{¶ 35} While teachers, administrative staff, or other school employees have volunteered to carry a firearm while in a school safety zone, the undeniable fact is that these individuals have been hired by Madison Local as employees. These employees have been advised by Madison Local of their ability to carry a firearm *while on duty* as follows:

> Please note that this letter authorizes, but does not require, you to possess a firearm *while on duty*. You are granted this authorization as an additional safety measure to protect our students and staff from harm. You must only wield or use the weapon to protect students, staff, and other civilians from deadly harm." (Plaintiffs' Exhibit 10.)

(Emphasis added.) Madison Local's objective is, therefore, for authorized staff to possess a firearm in order to protect students and staff from deadly harm while carrying out the duties they were hired to complete. Thus, the authorized staff, while performing their hired

responsibilities, are policing classrooms, hallways, and school facilities in order to immediately respond to an active shooter incident. In this respect, the authorized staff, while on school property, are performing tasks no different than a hired special police officer or security guard.

{¶ 36} The legislature intended for Madison Local authorized staff to comply with the rigorous training and peace officer experience required by R.C. 109.79 before carrying a firearm into a school safety zone. By requiring more than 700 hours of training or 20 years of peace officer experience, the legislature expressed its clear intent that only individuals of the highest caliber, with significant training and experience, be permitted to carry a firearm on school grounds. Madison Local simply cannot circumvent the legislature's intent by labeling authorized staff as volunteers.

{¶ 37} During oral argument before this court, counsel for Madison Local argued that the legislature could have intended for local school boards to decide the degree of training staff should have, based on local needs, in order for staff to be authorized to carry a firearm on school grounds. This argument, if adopted, would create vast discrepancies among school districts throughout the state as to the extent of training and experience necessary to provide protection to Ohio school children. When enacting laws regarding the amount of training required to become a peace officer, the legislature did not permit localities or individual police departments to determine training requirements based on their respective local needs. Rather, the legislature required standardization and uniformity throughout the state by requiring officers to complete a minimum of 728 hours of OPOTA training. The legislature then required that only those individuals who have completed this standard peace officer training or those individuals who have had 20 years of active duty peace officer experience, be employed by a school and be permitted to be armed while on duty. R.C. 109.78(D). It makes little sense that the legislature would recognize the need to protect

students by ensuring that school peace officers and security guards who are armed are properly trained and experienced, but then allow administrative staff and teachers employed by the school to walk around armed after having only minimal training (in this case, 24 hours) and minimal exposure to active shooter incidents.

{¶ 38} There is no doubt that the parties in this action care deeply about protecting Madison school children while they are on school grounds. I applaud Madison Local for trying to take immediate steps to ensure the safety of their students. However, such immediate steps must comply with the law. R.C. 109.78(D), as it is currently written, sets forth the parameters that school boards must follow when employing armed individuals in their schools. This court cannot ignore the requirements of R.C. 109.78. Should the legislature want to reduce the amount of training or experience employed teachers and staff need to have in order to carry a firearm in a school safety zone, it is in the legislature's hands to do so.

S. POWELL, J., concurring in part and dissenting in part.

{¶ 39} I agree with the majority's resolution of Gabbard's second assignment of error. However, because I find no error in the trial court's decision granting summary judgment to Madison Local upon finding R.C. 109.78(D) did not require Madison Local School District employees who were granted written authorization by Madison Local to carry concealed firearms into the Madison Local School District's school safety zones to complete the same basic training required of Ohio peace officers, I must dissent from the majority's resolution of Gabbard's first assignment of error. This is because, as discussed more fully below, R.C. 2923.122(D)(1)(a) permits Madison Local to authorize teachers, administrators, and support staff to carry concealed firearms into Madison Local School District's school safety zones without the need for those teachers, administrators, and support staff to comply with

the requirements set forth in R.C. 109.78(D).

{¶ 40} As noted by the majority, Gabbard's assignment of error of presents a straightforward question of statutory interpretation regarding the language found in R.C. 109.78(D), which, as noted above, states:

> No public or private educational institution * * * shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.

{¶ 41} Gabbard argues the language found in R.C. 109.78(D) is plain, unambiguous, and sets forth the General Assembly's clear intent that Madison Local School District employees must complete the same basic training as an Ohio peace officer, or have 20 years of active duty as a peace officer, before Madison Local could authorize them to carry a concealed firearm into the Madison Local School District's school safety zones under R.C. 2923.122(D)(1)(a). Therefore, based on this reading of the statute, Gabbard claims the resolution enacted by Madison Local allowing it to authorize Madison Local School District employees to carry concealed firearms into the Madison Local School District's school safety zones violates R.C. 109.78(D) and cannot be implemented by Madison Local since it permits "school staff to go 'armed while on duty' without peace officer training." I find no merit to Gabbard's claim.

{¶ 42} "Our duty in construing a statute is to determine and give effect to the intent of the General Assembly as expressed in the language it enacted." *Pelletier v. Campbell*, 153 Ohio St.3d 611, 2018-Ohio-2121, ¶ 14, citing *Griffith v. Aultman Hosp.*, 146 Ohio St.3d 196, 2016-Ohio-1138, ¶ 18; *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589, ¶ 20. "To discern legislative intent, we read words and phrases in context and construe them in accordance with rules of grammar and common usage." *Mahoning Edn. Assn. of Dev.*

Disabilities v. State Emp. Relations Bd., 137 Ohio St.3d 257, 2013-Ohio-4654, ¶ 15. This means that when "'[w]hen the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation.'" *McConnell v. Dudley*, Slip Opinion No. 2019-Ohio-4740, ¶ 19, quoting *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553 (2000). This is because "'an unambiguous statute is to be applied, not interpreted.'" *Id.*, quoting *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus; *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, ¶ 20.

{¶ 43} I find the plain and unambiguous language found in R.C. 109.78(D) makes clear that the Madison Local School District is prohibited from employing a person as a "special police officer" or "security guard" unless that person has either completed an approved basic peace officer training program or has 20 years of active duty as a peace officer. What is unclear, however, is what the General Assembly meant when it stated that public or private educational institutions are also prohibited from employing persons in "other position[s] in which such person goes armed while on duty" unless those persons had also completed an approved basic peace officer training program or had 20 years of active duty as a peace officer. In my opinion, this creates a question of statutory interpretation as to what the General Assembly intended by including the phrase "or other position in which such person goes armed while on duty" within the otherwise plain and unambiguous language found in R.C. 109.78(D).

{¶ 44} Gabbard claims the phrase "or other position in which such person goes armed while on duty" includes any employee who is employed by a public or private education institution regardless of their assigned job responsibilities so long as that employee has been authorized to carry a firearm while on the job. This, according to Gabbard, would include teachers, administrators, and support staff. Madison Local, on the

other hand, claims that phrase should not be read so broadly and must instead be read in context with the rest of the otherwise plain and unambiguous language found in the statute. This more limited, contextual reading, as Madison Local argues, would necessitate the general term, "other position," being construed to mean a position having similar character to the two specific terms immediately preceding, "special police officer" or "security guard." I agree with Madison Local.

{¶ 45} Where, as here, "specific items in a list are followed by a more general category, a familiar rule of statutory construction, ejusdem generis, says that the more general item is to be construed as of a similar character as the specific items." *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, ¶ 56 (Dewine, J., concurring); *George H. Dingledy Lumber Co. v. Erie R. Co.*, 102 Ohio St. 236, 245 (1921) ("where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase should be held to include only things of the same general nature as those specified"). This "principle 'parallels common usage' in that '[w]hen the initial terms all belong to an obvious and readily identifiable genus, one presumes that the speaker or writer has that category in mind for the entire passage.'" *Id.*, quoting Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 199 (2012). Therefore, in the absence of a clear legislative manifestation to the contrary, "where the statute enumerates specific subjects or things of a similar nature, kind, or class, followed by general words prefaced by 'or other,' the meaning of the general words ordinarily will be construed as restricted by the specific designations and as including only things of the same nature, kind, or class as those specifically enumerated." *Sells v. Historical Center*, 10th Dist. Franklin No. 82AP-508, 1982 Ohio App. LEXIS 15081, *4 (Nov. 30, 1982), citing *Glidden Co. v. Glander*, 151 Ohio St. 344, 350 (1949).

{¶ 46} "'In accordance with the rule of ejusdem generis, such terms as 'other,' 'other

thing,' 'others,' or 'any other,' when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described.'" *Glidden,* quoting 37 Ohio Jurisprudence, 779, Section 450; *Middletown v. Baker*, 73 Ohio App. 296, 301-302 (12th Dist.1943). Applying this well established principle of statutory construction to the case at bar, I would find the general catchall phrase "or other position in which such person goes armed while on duty" was intended by the General Assembly to be given a restricted meaning so that the general term, "other position," would be construed in a similar vein as the two specific terms listed immediately preceding, "special police officer" and "security guard." Therefore, rather than applying to any employee who is employed by a public or private education institution who may go armed while on duty as Gabbard suggests, I find the language found in R.C. 109.78(D) applies to "special police officers," "security guards," and "other positions" of the same nature, kind, or class. This would include, but would not be limited to, school resource officers and school security officers.

{¶ 47} When taking the phrase "position in which such person goes armed while on duty" in isolation, Gabbard's reading of the statute makes some sense. Teachers, administrators, and support staff who are authorized by Madison Local to carry concealed firearms into the Madison Local School District's school safety zones under R.C. 2923.122(D)(1)(a) are, at least arguably, armed while on duty. However, if that had been the General Assembly's intent, the General Assembly could have easily done so by requiring *any person* employed by a public or private educational institution who goes armed while on duty to complete the basic training required of Ohio peace officers. The General Assembly did not go that far. The General Assembly instead limited that requirement to persons employed as a "special police officer, security guard, or other position in which such person goes armed while on duty[.]" Applying the basic rules of statutory construction,

this would include school resource officers and school security officers, but not teachers, administrators, and support staff.

{¶ 48} The two key words in R.C. 109.78(D) that Gabbard routinely sidesteps are the words "or other." The General Assembly's use of the words "or other" presents a classic example of when the rule of ejusdem generis applies. *See Moulton Gas Serv. v. Zaino*, 97 Ohio St.3d 48, 2002-Ohio-5309, ¶ 14 ("[w]hen there is a listing of specific terms followed by a catchall word or phrase which is linked to the specific terms by the word 'other,' and the statute is to be strictly construed, we apply the doctrine of ejusdem generis"). Again, under the rule of ejusdem generis, "where the statute enumerates specific subjects or things of a similar nature, kind, or class, followed by general words prefaced by 'or other,' the meaning of the general words ordinarily will be construed as restricted by the specific designations and as including only things of the same nature, kind, or class as those specifically enumerated." *Sells*, 1982 Ohio App. LEXIS 15081 at *4, citing *Glidden*, 151 Ohio St. at 350. This, as noted above, would include school resource officers and school security officers, but not teachers, administrators, and other support staff.

{¶ 49} Just as the majority, I reach this decision irrespective of, and without deference to, my own beliefs as to whether it is sound public policy to permit teachers, administrators, and support staff to carry concealed firearms while fulfilling their chosen profession of teaching and mentoring the students entrusted to them by their parents and guardians. However, contrary to the majority's decision, I believe the General Assembly, through the passage of R.C. 109.78(D) and 2923.122(D)(1)(a), determined that it was. So, too, did this state's former Attorney General, who is now serving as this state's Governor, in an opinion letter issued on January 29, 2013. While it may be persuasive, such an opinion issued by the now sitting Governor is not binding. *See State ex rel. N. Olmstead Fire Fighters Assn. Local v. N. Olmstead*, 64 Ohio St.3d 530, 533 (1992) (finding the analysis

offered by an Attorney General opinion persuasive even though the opinion was not binding on the court).

{¶ 50} It is not my role as a judge to second-guess the General Assembly's decisions as to what may or may not be sound public policy. My role is instead to interpret and apply the law as written. Adhering to my duty as a jurist, thereby interpreting and applying the law as written, I would hold that the language found in R.C. 109.78(D) did not require Madison Local School District employees who were granted written authorization by Madison Local to carry concealed firearms into the Madison Local School District's school safety zones to complete the same basic training required of Ohio peace officers. Therefore, because it does not violate the language found in R.C. 109.78(D), I would find the resolution passed by Madison Local allowing it to authorize several Madison Local School District employees to carry concealed firearms into the Madison Local School District's school safety zones is valid and enforceable. Accordingly, because I find no merit to any of the arguments raised by Gabbard herein, I must dissent for I would overrule Gabbard's first assignment of error.

FILED BUTLER COUNTY
COURT OF COMMON PLEAS
FEB 28 2019
MARY L. SWAIN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
BUTLER COUNTY, OHIO

ERIN GABBARD, et al

Plaintiff,

vs.

MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al

Defendants.

FILED BUTLER COUNTY
COURT OF COMMON PLEAS
FEB 28 2019
MARY L. SWAIN
CLERK OF COURTS

Case No. CV 2018 09 2028

Judge Charles L. Pater

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Final Appealable Order)

This matter is before the court on Defendants', Madison Local School Board of Education and others', (the Board's), motion for summary judgment, and Plaintiffs' Erin Gabbard and others', (Plaintiffs') motion for summary judgment. These competing motions address the only remaining issue in the case, count one of the complaint.

For the reasons set forth hereafter, the Board's motion is granted and Plaintiffs' motion is denied.

PROCEDURAL POSTURE

Gabbard and a coalition of other parents filed a two count complaint challenging the Board's April 24, 2018 decision to arm district employees, in response to a February, 2016 school shooting incident at Madison High School. Count two has been addressed already. In count one Plaintiffs seek a permanent injunction barring the board from implementing its decision to arm employees, unless those armed persons complete the same training as required by peace officers under Ohio law. The parties generally agree that there are no material

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issues of fact. Plaintiffs propose, however, that if the court's interpretation of law is contrary to their view of it, then a factual question for resolution is whether or not armed school staff are "security personnel."

Plaintiffs suggest that the sole legal issue is whether or not armed school staff are governed by the requirements of R.C.§109.78(D), which reads, in part: "[N]o public or private educational institution. . .shall employ a person as a special police officer, security guard, or ***other position in which such person goes armed while on duty***, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program. . . ," Emphasis added. Their position is that the personnel authorized by the Board to carry firearms are employed by the Board precisely in such other positions in which they go armed while on duty. Plaintiffs' back-up legal position is that if the armed personnel are deemed not to have such "other positions," then they should be classified as security guards. This, of course, would result in the same training requirement for the armed personnel — the basic peace officer training.

Further, they argue, that any other code section [such as R.C. §2923.122(D)(1)(a)] granting, or seeming to grant a school board permission to authorize personnel to carry firearms on school property, does not abrogate the training requirements of R.C.§109.78(D).

The Board, curiously, does not challenge Plaintiffs' reading of R.C.§109.78(D). Its position is that the General Assembly specifically carved out an exception to the firearms training requirement in the peace officer statue, R.C.§109.78(D), when it later enacted R.C. §2923.122(D)(1)(a). The general thrust of this code section is that no one may convey into, or possess in a school

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safety zone a deadly weapon. This prohibition, however, is subject to exceptions. The exception carved out in (D)(1)(a) is "any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons. . .into a school safety zone or to possess a deadly weapon. . .in a school safety zone and who conveys or possesses the deadly weapon. . .in accordance with that authorization." This exception, the Board contends, encompasses the armed personnel at issue here.

DECISION

Under Civ.R. 56(C), a trial court may grant a motion for summary judgment when there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and it appears that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. See, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The burden of demonstrating that there is no genuine issue of material fact is on the moving party. *Re v. Kessinger*, (2008), Ohio App. 12th, 2008-Ohio-167, ¶17, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64. To prevail on a motion for summary judgment, the moving party must be able to point to evidentiary materials that show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Re v. Kessinger*, supra, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The court views the facts in a light most favorable to the nonmoving party. See, *Wilkerson v. O'Shea*, 2009, Ohio App. 12th, 2009-Ohio-6550, ¶11. However, in response to a properly supported motion for summary judgment, the nonmoving party must set forth specific facts which demonstrate

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that there is a genuine issue of material fact for trial, and may not rest on mere allegations or denials in the pleading. *Chase Manhattan Mtge. Corp. v. Urquhart*, (2005), Ohio App. 12th, 2005-Ohio-4627, ¶12; *Phoenix Presentations*, (1996), Ohio App. 12th, 116 Ohio App.3d 500, 506, citing *Dresher v. Burt*, supra; Civ.R. 56(E).

Regarding the Board's policy of allowing some of its employees to carry firearms, there is a seeming contradiction between R.C. §109.78(D) and R.C. §2923.122(D)(1)(a). The questions to be resolved are whether the apparent conflict is reconcilable; if reconcilable, how; and if not, which statute takes precedence.

R.C. §1.51 states that "[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." *State v. Conyers*, 87 Ohio St.3d 246, 719 N.E.2d 535, 1999-Ohio-43, (1999).

Looking at the first two questions together, the court holds that the two statutes do not contradict each other and any apparent conflict is reconcilable. The question then is how to reconcile them? Plaintiff's approach to the reconciliation is to posit that the statute permitting school boards to authorize certain of its employees to carry firearms does not abrogate the training requirement set forth in the other statute. This view is unpersuasive.

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The more reasonable way to read the two statutes together, giving full effect to each, is to keep in mind the context of R.C. §109.78(D). The descriptive heading for this code section is "Certification of special police, security guards, or ***other persons otherwise privately employed in a police capacity***." Emphasis added.

Division (D) of the statute prohibits educational institutions from employing certain types of persons unless they have basic peace officer training. One of the categories under the prohibition is a "position in which such person goes armed while on duty . . . ."

Plaintiffs' reading of this part of the statute results in the conclusion that the Board's armed personnel fit within this category. They maintain that these people have positions in which they go armed while on duty, and thus are prohibited from carrying firearms unless they have the basic peace officer training.

The plaintiffs' proposed reading of the statute is untenable based upon the context of the statute. The phrase at issue, "a position in which such person goes armed while on duty," in context, must refer to "persons otherwise privately employed in a police capacity." These are employees whose position is such that by its very nature it mandates the person holding it to go armed while on duty. Clearly teachers, administrators, administrative assistants, and custodians, along with most, if not all, other school employees are not employed by educational institutions in such capacity, unlike someone such as a school resource officer who is. Therefore, the school employees authorized by the Board to carry firearms on school premises are not under the training requirements as set forth in R.C. §109.18(D).

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Even if the above reading of R.C. §109.18(D) were incorrect and there were an irreconcilable conflict between that statute and §2923.122(D)(1)(a), Defendants would still prevail.

"After an irreconcilable conflict is determined to exist, the next inquiry is whether the provisions at issue are general or specific. See *State v. Chippendale* (1990), 52 Ohio St.3d 118, 120, 556 N.E.2d 1134, 1136. If one of the conflicting statutes is a general provision and the other is a special provision, then R.C. 1.51 applies and the special provision prevails." *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 122, 18 OBR 151, 152, 480 N.E.2d 412, 414; see, also, *Lake Cty. Natl. Bank of Painesville v. Kosydar* (1973), 36 Ohio St.2d 189, 191, 65 O.O.2d 404, 406, 305 N.E.2d 799, 801. Quoted in *State v. Conyers*, 87 Ohio St.3d 246, 719 N.E.2d 535, 1999-Ohio-43, (1999).

If the two statutes at issue were deemed to be irreconcilable, R.C. §2923.122(D)(1)(a) would be deemed a special statute and R.C. §109.78(D) a general statute. As such, the special statute takes precedence over the general one. Additionally, the court notes R.C. §2923.122(D)(1)(a) is the later enacted law.

In response to Plaintiffs' back-up legal theory, the court holds that nothing in the record supports the proposition that the Board's armed personnel are security guards.

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In the present matter, Plaintiffs have failed to point to evidentiary materials showing a genuine issue as to any material fact, even when the court views the facts in a light most favorable to them. In response, however, Defendants are entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED, AJUDGED AND DECREED, that the Board's motion for summary judgment on count one is granted. Plaintiffs' motion for summary judgment is denied. This is a final, appealable order.

SO ORDERED.

ENTER,

Charles L. Pater, Judge

CC: Alla Lefkowitz, Esq.
James Miller, Esq.
Rachel Bloomekatz, Esq.
Gupta Wessler PLLC

Attorneys for Plaintiffs-Petitioners

Alexander Ewing, Esq.
Thomas B. Allen, Esq.
W. Joseph Scholle, Esq.

Attorneys for Defendants-Respondents

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R.C. 2923.122

(A) No person shall knowingly convey, or attempt to convey, a deadly weapon or dangerous ordnance into a school safety zone.

(B) No person shall knowingly possess a deadly weapon or dangerous ordnance in a school safety zone.

(C) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired.

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(D)

(1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a law enforcement officer who is authorized to carry deadly weapons or dangerous ordnance, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of section 109.801 of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (D)(1)(b) of this section does not apply to the person.

(2) Division (C) of this section does not apply to premises upon which home schooling is conducted. Division (C) of this section also does not apply to a school administrator, teacher, or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher, or employee, or any other person who with the express prior approval of a school administrator possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, reenactment, or other dramatic presentation, school safety training, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity.

(b) The person is carrying a valid concealed handgun license or the person is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of section 2923.125 of the Revised Code.

(c) The person is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B).

(d) The person is not knowingly in a place described in division (B)(1) or (B)(3) to (8) of section 2923.126 of the Revised Code.

(4) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if at the time of that conveyance, attempted conveyance, or possession of the handgun all of the following apply:

(a) The person is carrying a valid concealed handgun license or the person is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of section 2923.125 of the Revised Code.

(b) The person leaves the handgun in a motor vehicle .

(c) The handgun does not leave the motor vehicle.

(d) If the person exits the motor vehicle, the person locks the motor vehicle.

(E)

(1) Whoever violates division (A) or (B) of this section is guilty of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone. Except as otherwise provided in this division, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fifth degree. If the offender previously has been convicted of a violation of this section, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fourth degree.

(2) Whoever violates division (C) of this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of

this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony of the fifth degree.

(F)

(1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section and subject to division (F)(2) of this section, if the offender has not attained nineteen years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit, or probationary commercial driver's license that then is in effect from the range specified in division (A)(4) of section 4510.02 of the Revised Code and shall deny the offender the issuance of any permit or license of that type during the period of the suspension.

If the offender is not a resident of this state, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in division (A)(4) of section 4510.02 of the Revised Code.

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits, or privileges specified in division (F)(1) of this section or deny the issuance of one of the temporary instruction permits specified in that division, the court in its discretion may choose not to impose the suspension, revocation, or denial required in that division, but the court, in its discretion, instead may require the offender to perform community service for a number of hours determined by the court.

(G) As used in this section, "object that is indistinguishable from a firearm" means an object made, constructed, or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.

R.C. 109.78

(A) The executive director of the Ohio peace officer training commission, on behalf of the commission and in accordance with rules promulgated by the attorney general, shall certify persons who have satisfactorily completed approved training programs designed to qualify persons for positions as special police, security guards, or persons otherwise privately employed in a police capacity and issue appropriate certificates to such persons. Application for approval of a training program designed to qualify persons for such positions shall be made to the commission. An application for approval shall be submitted to the commission with a fee of one hundred twenty-five dollars, which fee shall be refunded if the application is denied. Such programs shall cover only duties and jurisdiction of such security guards and special police privately employed in a police capacity when such officers do not qualify for training under section 109.71 of the Revised Code. A person attending an approved basic training program administered by the state shall pay to the agency administering the program the cost of the person's participation in the program as determined by the agency. A person attending an approved basic training program administered by a county or municipal corporation shall pay the cost of the person's participation in the program, as determined by the administering subdivision, to the county or the municipal corporation. A person who is issued a certificate for satisfactory completion of an approved basic training program shall pay to the commission a fee of fifteen dollars. A duplicate of a lost, spoliated, or destroyed certificate may be issued upon application and payment of a fee of fifteen dollars. Such certificate or the completion of twenty years of active duty as a peace officer shall satisfy the educational requirements for appointment or commission as a special police officer or special deputy of a political subdivision of this state.

(B)

(1) The executive director of the Ohio peace officer training commission, on behalf of the commission and in accordance with rules promulgated by the attorney general, shall certify basic firearms training programs, and shall issue certificates to class A, B, or C licensees or prospective class A, B, or C licensees under Chapter 4749. of the Revised Code and to registered or prospective employees of such class A, B, or C licensees who have satisfactorily completed a basic firearms training program of the type described in division (A)(1) of section 4749.10 of the Revised Code.

Application for approval of a basic firearms training program shall be made to the commission. An application shall be submitted to the commission with a fee of one hundred dollars, which fee shall be refunded if the application is denied.

A person who is issued a certificate for satisfactory completion of an approved basic firearms training program shall pay a fee of ten dollars to the commission. A duplicate of a lost, spoliated, or destroyed certificate may be issued upon application and payment of a fee of five dollars.

(2) The executive director, on behalf of the commission and in accordance with rules promulgated by the attorney general, also shall certify firearms requalification training programs and instructors for the annual requalification of class A, B, or C licensees under Chapter 4749. of the Revised Code and registered or prospective employees of such class A, B, or C licensees who are authorized to carry a firearm under section 4749.10 of the Revised Code. Application for approval of a

training program or instructor for such purpose shall be made to the commission. Such an application shall be submitted to the commission with a fee of fifty dollars, which fee shall be refunded if the application is denied.

(3) The executive director, upon request, also shall review firearms training received within three years prior to November 23, 1985, by any class A, B, or C licensee or prospective class A, B, or C licensee, or by any registered or prospective employee of any class A, B, or C licensee under Chapter 4749. of the Revised Code to determine if the training received is equivalent to a basic firearms training program that includes twenty hours of handgun training and five hours of training in the use of other firearms, if any other firearm is to be used. If the executive director determines the training was received within the three-year period and that it is equivalent to such a program, the executive director shall issue written evidence of approval of the equivalency training to the licensee or employee.

(C) There is hereby established in the state treasury the peace officer private security fund, which shall be used by the Ohio peace officer training commission to administer the training program to qualify persons for positions as special police, security guards, or other private employment in a police capacity, as described in division (A) of this section, and the training program in basic firearms and the training program for firearms requalification, both as described in division (B) of this section. All fees paid to the commission by applicants for approval of a training program designed to qualify persons for such private police positions, basic firearms training program, or a firearms requalification training program or instructor, as required by division (A) or (B) of this section, by persons who satisfactorily complete a private police training program or a basic firearms training program, as required by division (A) or (B) of this section, or by persons who satisfactorily requalify in firearms use, as required by division (B)(2) of section 4749.10 of the Revised Code, shall be transmitted to the treasurer of state for deposit in the fund. The fund shall be used only for the purpose set forth in this division.

(D) No public or private educational institution, or superintendent of the state highway patrol shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.