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School Safety: The Federal Answer to Parkland

Following the horrific events of February 14, 2018, at Marjory Stoneman Douglas High School in Parkland, Florida, President Trump held a series of meetings at the White House relating to school violence, including meeting with the victims, hosting a forum on video games and their role in societal violence, meeting with the National Governor's Association, and with local law enforcement.

As a consequence of these meetings, on March 12, 2018, the White House announced a series of proposals that will dramatically impact schools throughout the United States. By and large, the proposals recognize that states and localities continue to hold the primary role in education, but that the federal government can and should provide expertise and financial assistance. Key elements of the proposal¹ include the following:

- **"Hardening Our Schools"** – This proposal includes the so called "arming teachers" proposal, which is really a proposal for increased funding and training from the Department of Justice (DOJ) for "specially qualified personnel on a voluntary basis," which, at the discretion of local schools, can just as easily apply to current school resource officers (SROs) and school police as to other personnel, such as administrators and teachers. It also includes emergency preparedness measures as well as efforts to increase reporting of suspicious behavior.
- **"Strengthening Background Check & Prevention"** – This proposal promotes the use of extreme risk protective orders (ERPOs) to allow law enforcement "to remove firearms from individuals who are a demonstrated threat to themselves or others" and prevent them from purchasing firearms. It proposes increasing the scope of the National Instant Criminal Background Check System (NCIS) in accordance with current pending legislation. It also adopts the STOP School Violence Act proposals (H.R. 4909), which is a grant program of between \$50 and \$75 million dollars a year through 2028 to

fund state and local school safety proposals and proposes additional “jump start” funding in 2018. The funding will be handled by DOJ. This proposal presents a significant opportunity for schools to obtain increased funds to aid in implementing school safety measures immediately.

- **“Mental Health Reform”** – This proposal really appears to focus on information sharing between schools, law enforcement and mental health professionals to deal with potentially dangerous individuals. It specifically calls for a review of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) privacy protections in so far as they restrict coordination between the foregoing entities. This aspect of the plan presents schools the opportunity to propose changes to these two statutes to address long running concerns in the privacy area, particularly in the context of the Individuals with Disabilities Education Act (IDEA) and Sec. 504.
- **“Investigation: Federal Commission on School Safety”** – This is probably the most far-reaching and potentially impactful aspect of the plan. The Commission, chaired by Secretary DeVos, has the following investigatory mandates:
 - Age restrictions for certain firearm purchases.
 - Existing entertainment rating systems and youth consumption of violent entertainment.
 - Strategies to advance the science and practice of character development in youth and a culture of connectedness.
 - Effects of press coverage of mass shootings.
 - Repeal of the Obama Administration’s “Rethink School Discipline” policies.
 - Best practices for school buildings and campus security from federal government components, including the Department of State’s Bureau of Diplomatic Security, and also from other state, local, and private sector sources.

- A plan for integration and coordination of federal resources focused on prevention and mitigation of active shooter incidents at schools.
- Opportunities to improve access to mental health treatment, including through efforts that raise awareness about mental illness and the effectiveness of treatment, reduce barriers to the recruitment of mental health professionals, and provide training related to violence prevention.
- Best practices for school-based threat assessment and violence prevention strategies.
- The effectiveness and appropriateness of psychotropic medication for treatment of troubled youth.
- Ensuring that findings are sufficiently supported by existing and additional federal, state, and local funding sources.

The role of the Commission is only advisory, and many of these controversial areas fall under state control, such as raising the age to purchase “long guns” to 21. Indeed Florida has already done so, and the National Rifle Association (NRA) immediately sued Florida alleging the statute violated the Second Amendment.² That being said, this Commission is the most important part of the president’s plan as it allows a fulsome discussion of a wide variety of areas of special interest to schools beyond the nuts and bolts of securing schools (which it also addresses). Perennial problem areas where schools have a real opportunity to effectuate change include a return to state and local control of school discipline, the opportunity to address flaws in FERPA, a real discussion of the role of schools in the mental health area, including a potential rethink of the IDEA and Sec. 504, which will necessarily implicate student bullying and suicide issues, as well as an opportunity to specifically address the funding issue and the perennial problem of unfunded or marginally federal mandates, such as IDEA.

Frost Brown Todd has extensive experience in these areas, including working with schools on security and policy issues, obtaining funding for enhanced security measures, and unfortunately, with

handling the aftermaths of several school shootings. We are working with the federal and state authorities on these issues. If you would like assistance in dealing with these issues, or would like to be a part of the discussion, please contact [Tom Wheeler](#) or [Joe Scholler](#) in Frost Brown Todd's [Education Law Group](#).

¹ The full proposal may be accessed on the White House's website: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools>.

² <https://www.cnn.com/2018/03/09/us/nra-sues-florida-gun-law/index.html>.

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