



**PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY  
SCHOOL SAFETY AND SECURITY COMMITTEE**

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**Act 18 of 2019 Guidance for School Entities:**

Questions and Answers on K-12 Threat Assessment Procedures  
and School-based Intervention Teams

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## INTRODUCTION

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Article XIII-E (Threat Assessment) of the Pennsylvania Public School Code of 1949 established new requirements for school entities related to threat assessment. Among its many provisions, the law requires all school entities in Pennsylvania establish at least one multidisciplinary Threat Assessment Team by the start of the 2021-2022 school year. “School entities” include school districts, Intermediate Units (IUs), career and technical centers (CTCs), charter schools, regional charter schools, and cyber charter schools.

Threat Assessment Teams are responsible for the assessment of and intervention with students whose behavior may indicate a threat to the safety of the student, other students, school employees, school facilities, the community, or others.<sup>1</sup>

The law also charges the School Safety and Security Committee (SSSC) within the Pennsylvania Commission on Crime and Delinquency (PCCD) with providing guidance to Threat Assessment Teams to inform their communications and coordination with other school-based intervention teams, specifically Student Assistance Program (SAP) and Individualized Education Program (IEP) teams.

This Q&A guidance was developed by PCCD in collaboration with the Pennsylvania Department of Education (PDE) and other stakeholders to fulfill this legislative requirement, and to ensure that school entities can successfully implement threat assessment procedures that complement existing team-based efforts. While the law only identifies two school-based intervention teams, this guidance also provides information for other programs and frameworks, including Multi-Tiered Systems of Support (MTSS) and Positive Behavior Interventions and Support (PBIS).

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<sup>1</sup> PA Public School Code of 1949, [Article XIII-E, Section 1302.E. Threat Assessment Teams](#).

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## QUESTIONS AND ANSWERS: GUIDANCE FOR SCHOOL ENTITIES

### 1. COORDINATION BETWEEN SCHOOL-BASED TEAMS

#### 1.A. What resources are available to facilitate or enhance coordination of services to meet a wide range of students' needs?

Threat assessment is not designed to replace existing supports, referrals, and services provided through other school-based intervention efforts like SAP, MTSS/PBIS, suicide prevention and awareness, *Safe2Say Something* Crisis Teams, etc. School entities should promote and monitor coordination between its Threat Assessment Team(s) and other school-based teams to ensure appropriate referrals and responses, including evaluating relevant data and conducting after-action reviews to identify and learn from successes and challenges.

Under state law, Teams must also ensure that school employees are aware of the staff members who are appointed to the Threat Assessment Team(s), and how to report threatening or at-risk behavior, including through the *Safe2Say Something* Program. While not required, it is recommended that students, teachers, staff, School Resource Officers (SROs), and parents/guardians be provided training and guidance on recognizing behaviors of concern, their roles and responsibilities in reporting the behavior, and how they should report that information.<sup>2</sup>

PCCD's School Safety and Security Committee recently adopted a number of resources to aid school entities in implementing threat assessment procedures, including a *Model Threat Assessment Procedures and Guidelines* document, along with informational materials designed for a wide range of audiences (students, families, school personnel, etc.). Additional information regarding these and other resources – including future in-person and online training programs that will be provided to school entities at no cost beginning in the 2020-2021 school year through a 3-year federal grant – is available on PCCD's [School Safety and Security website](#).

#### 1.B. How might school entities consider integrating or aligning their threat assessment efforts within a more comprehensive MTSS/PBIS framework?

MTSS is a standards-aligned, comprehensive school improvement framework for enhancing academic, behavioral, and social-emotional outcomes for all students. As part of the MTSS framework, cross-disciplinary teams represented at the local education agency (LEA)/school entity, school, grade, and individual levels use a problem-solving process to integrate evidence-based academic, behavioral, and social-emotional practices matched to student needs and with fidelity of implementation. A continuum of supports and services exist across three tiers (Universal, Secondary, and Tertiary), and is undergirded by high-quality professional learning, cultural responsiveness, partnership, and meaningful involvement with families.

- Tier 1 (Universal): Provide preventive, proactive, and universal interventions to support all students
- Tier 2 (Secondary): Provide targeted interventions to support students classified as “at risk,” who require more intervention than is typically provided within Tier 1 (Universal) supports.

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<sup>2</sup> *Enhancing School Safety Using a Threat Assessment Model: An Operational Guide for Preventing Targeted School Violence*, National Threat Assessment Center, July 2018.

- Tier 3 (Tertiary): Requires the most intensive level of intervention for students with the most significant, high intensity support needs (assessment based).

In July 2018 the Secret Service released a report recommending that “the threshold for intervention should be relatively low so that schools can identify students in a distress before their behaviors escalates to the level of eliciting concerns about safety.” Addressing school safety in a Multi-Tiered System of Support (MTSS) framework allows for schools to accomplish this while using data to efficiently identify and align resources for students that need higher levels of support and intervention.

Universal practices for a trauma-informed MTSS system that also addresses a multi-tiered threat assessment system include components that address school climate and equitable practices and take into account aspects of student and staff development including: universal screenings of behaviors and academics, and data driven practices; social-emotional learning; culturally responsive pedagogy; common language and expectations; trauma-informed practices; community engagement and integration; and access to rigorous, differentiated, and core content.

Establishing frameworks at a Tier I level that enhance a positive school climate, provide supports for social-emotional learning of students, and engaging community and families can set the stage for establishing a multidisciplinary threat assessment framework that ensures prevention strategies are in place for students and staff.

Threats can be viewed as transient or substantive in a multi-tiered model of threat assessment. Research indicates that acts of violence are not impulsive acts, which allows opportunities for schools to focus on prevention and risk mitigation. This is done through a tiered system that allows for intervention during the grievance, ideation, planning, and preparation for threats phases. Increasing the prevention and predictability of school responses, while addressing fidelity of implementation can address the vast majority of behavioral needs in the school setting.

When universal methods are not sufficient to address the needs, and increasing behaviors are seen referrals to Tier II should be done based on data. Threats made by students are often the result of deficits related to a student’s ability to socially relate, emotional or behavioral dysregulation, or deficits in coping skills. Deficits in these areas can be mediated through intervention by the school or community teams. Referrals to the SAP team can provide schools with a way to address this need through already established teams. Referrals to the SAP teams also provide schools with a systematic data collection system that includes parent/guardian involvement, and referral to a community liaison to assess for underlying mental health or drug/alcohol needs that may be impacting the student’s behaviors.

**1.C. What training/professional development should occur across school-based teams to help them navigate these intersections?**

State law requires that Teams ensure school employees are aware of the staff members who are appointed to the Threat Assessment Team(s), and how to report threatening or at-risk behavior, including through the *Safe2Say Something* Program.<sup>3</sup> Similarly, the law requires that Teams provide information to other school personnel as well as members of the school community that

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<sup>3</sup> PA Public School Code, Article XIII-E.

will help them understand the process for identifying and reporting concerning behaviors and/or situations to the Team and what happens during the threat assessment process.

While not required by state law, cross-training Threat Assessment Team members with individuals serving on other intervention and response teams (both school- and community-based) is a recommended best practice. Doing so can help enhance relationships, create a common language, and improve communication and information sharing in the long run. Ultimately, these practices will improve a school entity's ability to respond appropriately and effectively to a continuum of concerns.

In providing information and training to members of the school community, Threat Assessment Teams should emphasize options for providing information anonymously (such as through the *Safe2Say Something* Program), and that reports will be acted upon, kept confidential, and handled appropriately.<sup>4</sup>

**NOTE:** In December 2019, PCCD's School Safety and Security Committee approved preliminary model resources to aid school entities as they begin planning for these new threat assessment requirements. Model informational materials for students, parents/guardians, and school employees as well as guidance for Threat Assessment Teams' coordination and communication with other school-based response/intervention teams are available on PCCD's [School Safety and Security webpage](#).

In addition to these preliminary resources, in October 2019, **PCCD secured a 3-year federal grant** through the **U.S. Department of Justice's STOP School Violence Technology and Threat Assessment Solutions for Safer Schools Program** to support the development and launch of a comprehensive **Pennsylvania K-12 Threat Assessment Technical Assistance and Training Network**.

- Through this federal support, PCCD will engage a qualified entity to design and deliver **free evidence-based threat assessment training curricula and supporting resources** tailored for K-12 multidisciplinary teams in Pennsylvania.
- PCCD will launch a **comprehensive online training platform** and host **regional in-person "train the trainer" sessions** across the Commonwealth during the 2020-2021 school year – all at **no cost** to school entities or their partners in threat assessment.
- The initiative will also provide **complimentary technical assistance and other supports** directly to at least 75 school entities each year seeking to establish or enhance multidisciplinary Threat Assessment Teams.

Finally, eligible school entities can apply for funding through **PCCD's School Safety and Security Grant Program** to support activities and costs associated with planning, implementing, and sustaining threat assessment protocols, including training and professional development for school staff and community partners. Additional information regarding funding criteria and resources for applicants is available on [PCCD's School Safety and Security webpage](#).

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<sup>4</sup> *Enhancing School Safety Using a Threat Assessment Model*, National Threat Assessment Center, July 2018.

## 2. CONFIDENTIALITY, PRIVACY, AND CONSENT

### 2.A. What laws address the disclosure of information on students?

Article XIII-E of the PA Public School Code explicitly provides Threat Assessment Teams with access to the following student information, to the extent necessary for fulfilling their duties and allowed by federal law:

- Student health records;
- Prior school disciplinary records;
- Records or information shared with the school entity related to adjudication;
- Records of any prior behavioral or mental health or psychological evaluations or screenings maintained by the school entity; and/or
- Other records or information that may be relevant to evaluating a threat or determining treatment/referral options for a student that are maintained by the school entity.

Several laws address privacy of student information, including the Family Educational Rights and Privacy Act (FERPA), which restricts disclosure of information from student education records, as well as the Individuals with Disabilities Education Act (IDEA), which protects certain special education information of students with disabilities.<sup>5</sup> State laws in Pennsylvania and adopted board-level policies also provide privacy protections for students.

Student records and information must be handled, created and accessed only to fulfill responsibilities for completing the threat assessment process, and in accordance with applicable law, regulations, board policy and the school entity's Student Records Plan. The rights and privacy of students and their families should be respected at all times.

The confidentiality and handling requirements for student information should be based on an analysis of:

- Who created the record or information (i.e., school administrator, nurse, law enforcement agency, juvenile court, outside behavioral health provider)?
- Where is the record or information stored (i.e., in the guidance office, in a psychologist's files, in an outside clinic)?
- Who has access to the record or information?
- What is the purpose of the record or information - why was it created?

Laws and regulations related to confidentiality of student information address exceptions for disclosing certain information in emergencies to protect the health and safety of students and others. School entities, law enforcement agencies, behavioral health providers and other organizations that may be involved in the threat assessment process should follow the requirements applicable to their creation and handling of confidential records and should seek the advice of legal counsel for guidance.

**NOTE:** School entities may use data collected through its Threat Assessment Team activities, and may release such data in the aggregate, in order to help the school entity develop a general approach to threat assessment, as set out in 1302-E(a)(2)(v).

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<sup>5</sup> FERPA 20 U.S.C. 1232g and 34 CFR Part 99; IDEA 20 U.S.C. 1400 et seq. and 34 CFR Part 300; School Code 24 P.S. 1306-A, 1402, 1409; 22 PA Code Chapter 12, 15.9, 16.65

The school entity's release of aggregate data collected through its Threat Assessment Team activities is permissible only where the release of such aggregate data may not result in the breach of federal and state confidentiality laws.

**2.B. How does a school entity know when a health or safety emergency exists so that a disclosure may be made under FERPA's exception to consent?<sup>6</sup>**

A school entity must make this determination on a case-by-case basis, taking into account the full picture and totality of circumstances pertaining to a specific threat to the health or safety of a student or others. If the school entity determines there is an "articulable and significant threat"<sup>7</sup> to the health or safety of a student or other individuals and that one or more third parties (e.g., law enforcement officials, public health officials, parents/guardians, trained medical personnel, etc.) need education records or the personally identifiable information included in those records in order to protect the health or safety of the student or others, it may disclose that information without consent to the appropriate parties.

Importantly, when a school entity makes a disclosure under the health or safety exception, it must record in the student's education records the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed.

School entities do not have to record requests for personally identifiable information from education records from or disclosures of that information made to: 1) the parent/guardian or eligible student; 2) a school official under 34 CFR § 99.31(a)(1); 3) a party with written consent from the parent/guardian or eligible student; 4) a party seeking directory information; or 5) a party seeking or receiving records in accordance with the provisions in FERPA related to non-consensual disclosures pursuant to certain types of lawfully issued subpoenas or court orders.

**2.C. Are law enforcement records considered education records?<sup>8</sup>**

Law enforcement records (i.e., those created by a law enforcement agency, created for a law enforcement purpose, and maintained by a law enforcement agency) are not education records subject to the privacy protections of FERPA. As such, law enforcement agencies are not required to provide a parent/guardian or student with an opportunity to inspect or review law enforcement records, and may disclose law enforcement records to third parties, including school entities, without the consent of a parent/guardian or student. However, education records, or personally identifiable information from education records, which a school entity shares with a law enforcement agency do not lose their protected status as education records by virtue of being shared with a law enforcement agency.

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<sup>6</sup> [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#), U.S. Department of Education, Privacy Technical Assistance Center, February 2019.

<sup>7</sup> As defined by guidance from the U.S. Department of Education, this standard is fairly flexible, deferring to local school officials so they may respond as needed. "In applying this standard, a school official should be able to explain the basis for his or her reasonable belief, based on all the available information, as to why a given student poses an 'articulable and significant threat.'" See [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#), U.S. Department of Education, Privacy Technical Assistance Center, February 2019.

<sup>8</sup> [Protecting Student Privacy: Frequently Asked Questions](#), U.S. Department of Education, Privacy Technical Assistance Center and the Student Privacy Policy Office.

**2.D. Are School Resource Officers (SROs) or other outside local law enforcement officials who serve as a school entity’s law enforcement unit automatically considered school officials?<sup>9</sup>**

No, SROs/local law enforcement officials serving in this capacity are not automatically considered to be “school officials.” These officials may be considered “school officials” with “legitimate educational interests” and have access to students’ education records only if they meet the following criteria:

- Perform an institutional service or function for which the agency or institution would otherwise use employees;
- Are under the direct control of the agency or institution with respect to the use and maintenance of education records;
- Are subject to federal requirements that the personally identifiable information from education records may be used only for the purposes for which the disclosure was made (e.g., to promote school safety and the physical security of students) and governing the redisclosure of personally identifiable information from education records (Section 99.33(a)); and
- Meet the criteria specified in the school entity’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

**NOTE:** When SROs/local law enforcement are not considered school officials, parents/guardians can still provide written consent for release of information and records the parent/guardian wants law enforcement agencies they can be aware of and consider the child’s behavior in a more complete context.

**2.E. What information can outside law enforcement officers who qualify as “school officials” receive from an education record, and can they share any information with their local law enforcement agency?<sup>10</sup>**

Off-duty police officers and SROs who qualify as “school officials” under FERPA may only use information from education records for the purposes for which the disclosure was made (e.g., to promote safety and security). In addition, they are subject to FERPA’s re-disclosure requirements in 34 CFR 99.33(a). This means that an officer who is acting as a “school official” under FERPA may not re-disclose, without appropriate consent, personally identifiable information from education records to outside parties, including other employees of their police department who are not acting as school officials, unless the disclosure satisfies an exception to FERPA’s general written consent requirement (e.g., if the re-disclosure is made pursuant to a lawfully issued subpoena or court order or to appropriate parties under the health and safety emergency exception).

**2.F. Does the information gleaned from a school-based threat assessment process – or the fact that an assessment took place at all – become part of a student’s education record?**

Article XIII-E of the PA Public School Code explicitly permits access to student information by Threat Assessment Team members in order to carry out their duties and facilitate the timely assessment of, and intervention with, students whose behaviors may indicate a threat to the safety of the student, other students, school employees, school facilities, the community, or

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<sup>9</sup> [Protecting Student Privacy](#), U.S. Department of Education.

<sup>10</sup> [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#), U.S. Department of Education, Privacy Technical Assistance Center, February 2019.

others. However, the use of these information or records is strictly limited for the purpose of fulfilling the Team's duty to evaluate a threat or the recommended disposition of a threat. No member of the Team may redisclose any record or information obtained or otherwise use any record of a student beyond the purpose for which the disclosure was made to the Team.

Generally speaking, unless formal actions (such as discipline or referrals to law enforcement, or the release of personally identifiable information from an education record without consent to a third party through a health/safety exception) result from an assessment conducted by the school entity's Threat Assessment Team, the fact that an assessment took place or the findings of the process would not necessarily be part of a student's education record. This information must be documented, secured, and accessed only by members of a school entity's Threat Assessment Team or other individuals explicitly authorized to access that information (i.e., a court order, subpoena, etc.).

Importantly, when a school entity makes a disclosure under the health or safety exception, it must record in the student's education records the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed.<sup>11</sup> As such, there are instances in which undertaking a comprehensive threat assessment process that involves exchange of information without prior consent may result in changes to a student's education record.

School entities do not have to record requests for personally identifiable information from education records from or disclosures of that information made to: 1) the parent/guardian or eligible student; 2) a school official under 34 CFR § 99.31(a)(1); 3) a party with written consent from the parent/guardian or eligible student; 4) a party seeking directory information; or 5) a party seeking or receiving records in accordance with the provisions in FERPA related to non-consensual disclosures pursuant to certain types of lawfully issued subpoenas or court orders.<sup>12</sup>

### **3. CONSIDERATIONS FOR STUDENTS WITH DISABILITIES**

#### **3.A. What should Threat Assessment Teams and school entities consider when evaluating options for addressing potential threats and/or concerning behavior by students receiving special education services?**

Threat Assessment Teams should review information about the student's disability to understand how, if at all, the student's disability impacts their behavior and communication and what behavior supports are included in the student's IEP or Section 504 plan.

Threat Assessment Teams should be aware of the legal requirements when removing a student with a disability from their educational placement. Teams should also have an understanding of the requirements surrounding least restrictive environment.

Title II of the ADA does not require a public entity to allow an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. (28 C.F.R. § 35.139(a)) The regulations state

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<sup>11</sup> <sup>11</sup> [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#), U.S. Department of Education, Privacy Technical Assistance Center, February 2019.

<sup>12</sup> <sup>12</sup> [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#), U.S. Department of Education, Privacy Technical Assistance Center, February 2019.

that a direct threat is “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services.” (28 C.F.R. § 35.104) In determining whether an individual with a disability poses a direct threat to the health or safety of others, the district must conduct an individualized assessment. The district must use reasonable judgement when conducting the individualized assessment, and look at current medical knowledge or the best available objective evidence to determine:

- The nature, duration, and severity of the risk;
- The probability that the potential injury will actually occur; and
- Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. (28 C.F.R. § 35.139(b))

**3.B. How should Threat Assessment Teams coordinate with a student’s IEP Team when an initial report of concern is received?**

The Threat Assessment Team should immediately contact the student’s IEP team and notify them of the concern. The teams should consider having a member of the Threat Assessment Team on the IEP team. Members of each team may consider a joint meeting to review pertinent documents related to the student. The IEP team should consider if it is necessary to hold an IEP meeting.

**3.C. What steps need to be taken by both the Threat Assessment Team and a student’s IEP Team while a threat assessment is ongoing?**

The involvement of a Threat Assessment Team with a student eligible under IDEA would necessitate immediate communication with the student’s IEP team. An IEP meeting may need to be held. Ongoing communication between the two teams is critical.

The IEP team may determine that a reevaluation, including a Functional Behavior Assessment (FBA), is warranted based on the outcome of the Threat Assessment.

An FBA must be conducted:

- Whenever the IEP team (1) determines that a student’s behavior is interfering with his/her learning or the learning of others, and (2) requires additional information to provide appropriate educational programming. (34 C.F.R. § 300.324(a)(1))
- When a behavior violates a “code of student conduct” that results in a change of placement and is determined by the IEP team to be a manifestation of the student’s disability. (34 C.F.R. § 300.530(f))
- When the school refers the student to law enforcement. (PA Code §14.133(h))
- When a student is removed from his/her current placement as a result of weapon possession, and/or illegal drug possession/use, and/or serious bodily injury.

The IEP team may determine that a Positive Behavior Support Plan (PBSP) is appropriate. The PBSP must be based on the FBA. The plan must include research-based practices and must utilize positive behavior techniques. (PA Code §14.133(a))

If the conduct that triggered the threat assessment resulted in a disciplinary change of placement, a meeting to determine if the conduct was a manifestation of the child’s disability must be held within 10 school days of the decision to change the placement. (34 C.F.R. §

300.530(e) A disciplinary change of placement occurs when a student who is receiving special education is excluded from school:

- For more than 10 school days in a row, or
- For more than 15 school days in any one school year, or
- When days 11-15 constitute a pattern of exclusion, or
- For even one school day for a student with an intellectual disability.

During this meeting, the LEA, the parent, and relevant members of the IEP team must conduct a review to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

If the team determines that the conduct was a manifestation, the IEP team must conduct an FBA and implement a PBSP or review and modify, if necessary, an existing PBSP; and return the student to the placement from which they were removed\*, unless the parent and LEA agree to a change of placement as part of the PBSP.

\*The IDEA does not require the student to be returned to the placement from which they were removed if the student-

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

In these special circumstances, the student may be removed to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability. (300.530(g))

If a restraint is used on an eligible student, the LEA must notify of the parent of the use of the restraint and an IEP meeting must be held within 10 school days, unless the parent agrees in writing to waive the meeting. (PA Code § 14.133)

If a student eligible under Section 504 exhibits behavior that results in a removal from school and it is considered to be a significant change in placement, the LEA must conduct a reevaluation prior to significant changes in placement. (34 C.F.R. § 104.35A)) the Office for Civil Rights considers an exclusion from the education program of more than 10 consecutive days, or a series of short-term exclusions from the education program, if the short-term exclusions total more than 10 school days and create a pattern of removal, to be a significant change in placement. The reevaluation should include consideration of if the behavior was due to the student's disability and what, if any, behavior supports should be included in the 504 Plan.

**3.D. What requirements exist for both Threat Assessment Teams and IEP Teams related to parent/guardian notification and consent?**

Federal law (34 C.F.R. 300.503(a)) requires written notice to be provided to parents of a child with a disability a reasonable time before the public agency proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (34 C.F.R §300.503(c))

The written notice must include:

- A description of the action proposed or refused by the agency;
- An explanation of why the agency proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parents of a child with a disability have protection under the procedural safeguards of this part;
- Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- A description of other options that the IEP team considered and the reasons why those options were rejected; and
- A description of other factors that are relevant to the agency’s proposal or refusal. (34 C.F.R. § 300.503(b))

Pennsylvania provides a format the many LEAs choose to use to communicate this required information to parents. The form is called “Notice of Recommended Educational Placement/Prior Written Notice” (NOREP/PWN).

34 C.F.R §300.530(h) requires the LEA to notify parents of the decision to make a disciplinary change of placement and provide the parents with a copy of the procedural safeguards notice on the date that such a decision is made.

LEAs are required to seek parent/guardian consent for initial evaluations, reevaluations (including FBAs), and consent for initial services under IDEA. (34 C.F.R. § 300.300). Consent is not required prior to reviewing existing data as part of an evaluation or reevaluation.

Generally, schools must have written permission from the parent/guardian or eligible student in order to release any information from a student’s education record. However, the Family Education Rights and Privacy Act (FERPA) allows schools to disclose those records without consent, to the following parties or under the following conditions (34 C.F.R. § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations to comply with a judicial order or lawfully issued subpoena;

- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

**3.E. What requirements exist when a referral to law enforcement is made regarding the actions of a student with a disability?**

Federal law (34 C.F.R. § 300.535(a)) does not prohibit school entities from reporting a crime committed by a child with a disability to appropriate authorities, nor does it prohibit law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law. A “referral to law enforcement” includes any time a school calls the police to report the activity of an eligible student, even if that referral does not result in subsequent charges and/or arrest.<sup>13</sup>

When reporting a crime committed by a student with a disability to law enforcement, a school entity must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by law enforcement as permitted under the Family Educational Rights and Privacy Act (FERPA).

Subsequent to a referral to law enforcement, for students who have positive behavior support plans, an updated functional behavior assessment and PBSP is required. (PA Code § 14.133(h)) For a student with a disability who does not have a positive behavior support plan, upon notification to a local police department that a student with a disability has committed an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act, the school entity shall convene the student’s IEP team. At this meeting, the IEP team shall consider whether a PBSP should be developed to address the student’s behavior. (PA Code § 10.23(g))

**3.F. What does current federal or state law require when law enforcement questions or temporarily detains a student with a disability?**

PA Code § 10.11 requires each school administrator to execute a memorandum of understanding (MOU) with each local police department having jurisdiction over school property of the school entity. In developing the MOU, the school entity shall consult and consider the model MOU promulgated by the Board and contained in Appendix A of Chapter 10. The model MOU indicates that in the event a child with a disability commits a mandatory notification offense under Subsection A, the School Entity must provide immediate notification to the Law Enforcement Authority regardless of the disability. Such notification will state that the child has an IEP or a service agreement that includes a behavior support plan and may include the School Entity’s recommendation that police intervention may not be required and advisement that the School Entity will act to address the student’s behavior need as required by applicable federal and state law and regulations. The Law Enforcement Authority may take the recommendation under advisement but reserves the right to investigate and file charges.

The Pennsylvania Department of Education is responsible for the education programs offered at the state juvenile facilities, including youth development centers, forestry camps, and secure treatment units. PDE contracts with local school districts, intermediate units, and private vendors to provide comprehensive education programs to students in the state juvenile facilities, including the provision of special education.

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<sup>13</sup> [Special Education Process Q&A Compendium](#), Pennsylvania Department of Education, Bureau of Special Education, May 15, 2019.

#### 4. CONSIDERATIONS FOR SAP TEAMS

##### 4.A. How should threat assessment protocols interface with existing SAP referral protocols?

The Student Assistance Program (SAP), established under [Section 1547 of the PA Public School Code](#), SAP is designed to assist school personnel in identifying issues including alcohol, tobacco, other drugs, and mental health issues which pose a barrier to a student's success. Pennsylvania requires all school entities (school districts, charter schools, and cyber charter schools) to have SAP programs for all grades (elementary and secondary).

In addition to SAP, Pennsylvania state law requires that school entities prepare written plans for implementing comprehensive K-12 program of student services in the areas of counseling, psychological services, health services, social work services, and other student supports.<sup>14</sup>

A student may be referred to the Student Assistance Program for follow-up and support pending the outcome of the threat assessment. This may be particularly important to do in lower level threats determined not to be an imminent threat to school/others.

If the student has been referred to the Student Assistance Program in the past, or if there is an open referral in which the SAP team is actively gathering data related to potential barriers to learning, the SAP team should consider what relevant data may be able to be utilized by those with legitimate educational interest that are involved in threat assessment procedures.

##### 4.B. What types of individuals should serve on both an SAP Team and Threat Assessment Team?

Individual districts/school buildings should determine how to most effectively engage in a teaming structure that allows for optimal usage of school personnel. Mental health professionals in the school setting should be dual members, as should staff with specific training in both SAP and threat assessments. This could include the nurse, school administrators, school safety and security coordinator, and district/building administrators.

Given the overlap in membership of SAP and Threat Assessment Teams, cross-training is recommended. Specifically, it is recommended that school staff members serving on SAP teams are trained in and familiar with the threat assessment protocols. Similarly, it is recommended that members of the Threat Assessment Team have been SAP trained.

##### 4.C. If comprehensive supports and/or student services are limited or unavailable at a school entity, what should SAP and Threat Assessment Teams consider as they identify necessary supports and interventions for a student?

Threat Assessment and SAP Teams operating in school entities and/or communities in which there are limited comprehensive supports and/or student services should respond consistent with how they would handle mental or behavioral health concerns in any other case. The list of community resources that could be engaged by these teams should include a greater variety of services and supports, including diversion programs through juvenile probation, community service opportunities, etc., assuming they are not already part of the referral network for that school entity.

It is important to reiterate that the need for referrals and supports must be determined on a case-by-case basis, and will depend upon the nature and motivations behind the threat. Teams

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<sup>14</sup> 22 Pa. Code [§12.41](#) and [§12.42](#)

should consider adopting a trauma-informed approach to their work, and consider ways to ensure the best interests of youth, families, and the school community are considered.

Schools should consider a comprehensive approach that addresses student social, emotional, behavioral, and mental health needs at the universal, secondary, and tertiary levels. Schools should map their resources to determine the types of in school supports that are available in in their district/buildings and within the community as delivered by community partners, including SAP liaisons, behavioral health providers, crisis services, and other youth-focused services and supports. Identify the individual student's needs and make appropriate referrals to those services where available. If unavailable, brainstorm ways to provide those services either through development of services or contracting with outside entities.

The School Health Assessment and Evaluation System provides an example of a school district profile which can be a useful way to start identifying school versus community partnerships, needs, and resource mapping. The Mental Health Technology and Transfer Center Network has published a National School Mental Health Curriculum: Guidance and Best Practices for States, Districts and Schools has resources to assist districts in engaging in school and community mapping around the role of school based mental health professionals and engaging in school based mental health alignment within the MTSS process.

**4.D. What information/records and documentation should each Team maintain related to students who are initially reported to the Threat Assessment Team and eventually referred to the SAP Team?**

Threat Assessment Teams should maintain records and document reports and responses consistent with the way other mental health issues, assessments and interventions, or referrals are documented.

The SAP Team should continue to maintain appropriate records according to the school district's existing protocol. All individuals with a legitimate educational interest can review SAP records in a threat situation. The school solicitor may need to determine if additional documentation is required for a student who was referred to SAP by the Threat Assessment Team. Additionally, SAP team members that are also members of the Threat Assessment Team should adhere to confidentiality guidelines with regard to information sharing about the threat situation.

**4.E. Are Threat Assessment Teams allowed to access information regarding students' mental health or behavioral health services?**

When a students' mental health or behavioral health service records are not part of the educational record, the mental health and drug and alcohol treatment records are bound by their own confidentiality regulations and cannot be shared without appropriate signed releases. However, individual members of Threat Assessment Teams (e.g., school counselors, school psychologists) may have access to this information if they possess the appropriate signed releases. When mental health or behavioral health records are part of the educational record confidentiality requirements associated with FERPA and release of information apply.

## 5. TRAINING AND PROFESSIONAL DEVELOPMENT

### 5.A. What training and professional development resources are available for Threat Assessment Teams and other school-based intervention teams?

Under state law, Teams must also ensure that school employees are aware of the staff members who are appointed to the Threat Assessment Team(s), and how to report threatening or at-risk behavior, including through the *Safe2Say Something* Program. While not required, it is recommended that students, teachers, staff, School Resource Officers (SROs), and parents/guardians be provided training and guidance on recognizing behaviors of concern, their roles and responsibilities in reporting the behavior, and how they should report that information.<sup>15</sup>

PCCD's School Safety and Security Committee recently adopted a number of resources to aid school entities in implementing threat assessment procedures, including a *Model Threat Assessment Procedures and Guidelines* document, along with informational materials designed for a wide range of audiences (students, families, school personnel, etc.). Additional information regarding these and other resources – including future in-person and online training programs that will be provided to school entities at no cost beginning in the 2020-2021 school year through a 3-year federal grant – is available on PCCD's [School Safety and Security webpage](#).

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<sup>15</sup> *Enhancing School Safety Using a Threat Assessment Model: An Operational Guide for Preventing Targeted School Violence*, National Threat Assessment Center, July 2018.