

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Inspired to lead

CASP Convention 2023

October 12, 2023

1

Your Presenters

Stephen E. Brock, PhD, NCSP, LEP

- School Psychologist (18 years, Lodi USD, Lodi, CA)
- Lead School Psychologist (6 years, Lodi USD, Lodi, CA)
- School Psychology Professor (22 years, CSU, Sacramento)
- School Psychology Program Coordinator (14 years, CSU, Sacramento)
- CASP & NASP Past President (2005/06 & 2014/15)
- Author, PREPqRE School Safety & Crisis Preparedness Curriculum
- brock@psis.edu

Melissa A. Reeves, PhD, NCSP, LPC

- Nationally Certified School Psychologist (25+ years in education; various roles/settings)
- Licensed Professional Counselor
- License Special Education Teacher
- Former Associate Professor
- Senior Threat Manager, DNTIC (formerly SIGMA Threat Management Associates)
- Threat Assessment & Mental Health Specialist, Safe & Sound Schools
- NASP Past President
- Author, PREPqRE School Safety & Crisis Preparedness Curriculum
- dmelissareeves@gmail.com

2

Disclosures

- We have no financial interest or know conflict of interest regarding the content of this workshop.
- This session will discuss youth suicide and targeted violence, topics that can be triggering.
 - If you are in crisis let some one know.
 - Call 988 for immediate crisis intervention assistance.

3

Disclosures

We are not attorneys. The information provided in this workshop does not, and is not intended to, constitute legal advice. All information, content, and materials provided are for general informational purposes only.

Local district counsel, should be contacted to obtain advice with respect to any particular legal matter. Only your school district's attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your school or district's particular situation.

It is important to assure your legal counsel has training in school safety and crisis law, and threat and suicide risk assessment law.

This workshop provides guidance regarding best practices from the presenters' professional experience and expertise in conducting threat and suicide risk screenings, serving as an expert witness in court cases involving threat assessment and targeted violence, and as national experts in comprehensive school safety, and crisis prevention through recovery.

4

Agenda and Objectives

From this workshop, you will increase knowledge of legislative, legal, and ethical issues relevant to ...

- 1 School suicide risk screening & intervention
- 2 School behavioral threat assessment & management (BTAM)

5

Preface

Suicide Risk Screening & BTAM are Separate but Related Processes

6

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

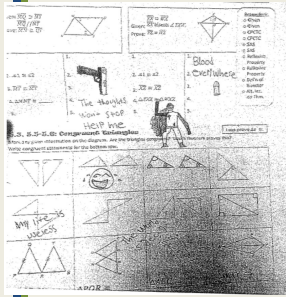
Suicide Risk Screening v. Behavior Threat Assessment

- Suicide risk screening & behavior threat assessment are distinct practices
 - **Rule** = these are independent practices
 - **Exception** = student who threatens self & others
 - For such cases, the overlapping nature did not automatically increase the severity of risk, as evidenced by the small number of attempts (p. 390).
 - Both suicide and threat assessment are appropriate in the hybrid cases, but the engagement of a multidisciplinary team and law enforcement are unnecessary for the large number of students threatening to harm themselves only (p. 390).
 - There is a difference between making and actual being a threat to others.

Burnette et al. (2019)

7

Suicide Risk Screening v. Behavior Threat Assessment



- Example of possible suicidal and homicidal thinking

8

Suicide Risk Screening v. Behavior Threat Assessment

- Rates of homicidal AND suicidal incidents low
 - Compared to rates of homicidal OR suicidal acts
- Involvement of a large team in suicide risk screening might be counterproductive to supporting and gaining student trust
 - As more states and school divisions adopt policies to implement school-based threat assessment, they should carefully consider the important distinctions between the types of threats identified in the current study to avoid suicide assessment being subsumed into the threat assessment process (p. 390).

Burnette et al. (2019)


9

BTAM vs Suicide Safety Assessment

Separate yet sometimes both needed

SIMILARITIES	DIFFERENCES
<ul style="list-style-type: none"> • Are NOT disciplinary processes • Are NOT educational, special education, and/or mental health evaluations • They are SAFETY ASSESSMENTS (or screenings!) • Both identify risk factors, warning signs, contributing factors, protective factors • Does individual POSE a risk of harm? • Best practices to avoid foreseeability and negligence 	<ul style="list-style-type: none"> • Team composition • Sources of information • Timing (BTAM data collection/decisions often take more time) • Management strategies

10



Profaco

Magnitude of the Problem

11

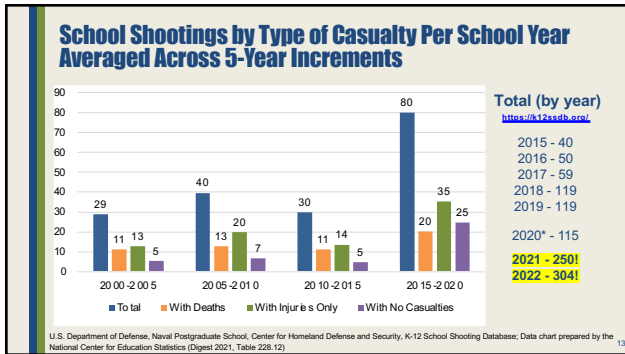
2021 Statistics & Demographics (2020 data)

Age in Years	Number of Deaths	Cause of Death Rank	Suicide Rate
5 to 6	0 (0)	NA	NA
7 to 9	<9 (20)	NA (0)	NA (0.16)
10	21 (25)	6 (4)	0.5 (0.6)
11	48 (42)	6 (4)	1.1 (1.0)
12	108 (93)	2 (2)	2.5 (2.2)
13	158 (172)	2 (4)	3.6 (4.1)
14	263 (248)	2 (3)	5.9 (6.0)
15	318 (233)	2 (2)	7.3 (7.7)
16	389 (384)	2 (2)	9.0 (9.2)
17	453 (371)	3 (3)	10.5 (8.9)
18	529 (498)	3 (3)	12.3 (12.0)
Total 5-18	2,296 (2,177)	3 (3)	3.9 (3.8)
Total 14-18	1,952 (1,825)	3 (3)	9.0 (8.5)

CDC (2023)

12

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening



13



14

Foreseeability & Negligence

Foreseeability of potential safety issues

- Must report and act upon

Negligent response on the part of the school

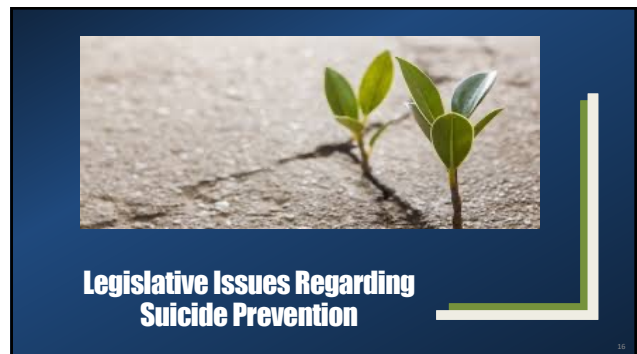
- Notification
- Supervision
- Staff training
- Identification
- Intervention

Tort Claim (under state law)

- Negligence claim - fail to intervene, meet standard of care
- Immunity???

Erbacher et al. (2015)

15



16

AB 2246 (Approved by the Governor 9-26-16)

Assembly Bill No. 2246

CHAPTER 442

An act to add Article 2.5 commencing with Section 215 to Chapter 2 of Title 1 of Division 1 of the Education Code, relating to pupil health.

APPROVED BY THE GOVERNING BOARD OF THE STATE BOARD OF EDUCATION

LEGISLATIVE COUNCIL'S RECOMMENDATION

AB 2246, CHAPTER 442, (Pupil suicide prevention policies). Existing law establishes a system of public elementary and secondary schools in this state and provides for the establishment of school districts and other local educational agencies to manage those schools and provide instruction to pupils. Existing law establishes the State Department of Education in state government and vests the department with specified powers and duties relating to the state public school system. This bill would require the governing board of a local educational agency, as defined in the 2011-12 school year, whose policy on pupil suicide prevention is outdated, that specifically addresses the needs of high-risk groups. By imposing additional duties on local educational agencies, the bill would require a state standard local program. The bill would require the requirement to develop and maintain a standard policy on pupil suicide prevention. The bill would require the state to maintain local agencies and school districts to continue those standards by the state. Summary: "The bill would provide that, if the governing board of a local educational agency determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions." The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following: (a) According to the latest 2013 data from the Institute of Medicine, Control and Prevention, suicide is the second leading cause of death for youth and young adults in the United States. (b) The incidence of suicide among youth is on the rise, and the percentage who attempt with their own hands has increased in a dramatic fashion in recent years. (c) The incidence of suicide among youth is on the rise, and the percentage who attempt with their own hands has increased in a dramatic fashion in recent years. (d) Although interventions and programs are not equally available to all youth, they may have a significant impact on the possibility of reducing such a policy.

Article 2.5. Pupil Suicide Prevention Policies

- Requires "...the governing board ... that serves pupils in grades 7 to 12 ... to ... adopt a policy on pupil suicide prevention ... that specifically addresses the needs of high-risk groups."
- High-risk groups include:
 1. Youth bereaved by suicide
 2. Youth with disabilities, mental illness, substance use disorders
 3. Youth experiencing homelessness or in out-of-home settings
 4. LGBTQ youth

TREAVOR: saving young lives

https://leginfo.ca.gov/pub/09_26_16/bills_001-0100/09_26_16_2246_00_00_00_00.html

17

AB 2246 (Approved by the Governor 9-26-16)

Model Youth Suicide Prevention Policy

Introduction

California Education Code (EC) Section 215, as added by Assembly Bill 2246, Chapter 442, Statute of 2016, mandates that the governing board for any local educational agency (LEA) that serves pupils in grades 7 to 12 develop, adopt, and implement a pupil suicide prevention, intervention, and postvention policy. The policy shall specifically address the needs of high-risk groups, including students and staff who are bereaved and grieving, and shall be updated at least every five years or upon the termination and issue of the employee's credential as follows:

"For each LEA that is an AB 2246-eligible School-Prevention Policy, go to the California Legislative Information this page at: https://leginfo.ca.gov/pub/09_26_16/bills_001-0100/09_26_16_2246_00_00_00_00.html

For resources regarding youth suicide prevention, go to the State Department of Education (CDE) page regarding School-Prevention Resource Hub on the California Department of Education (CDE) Web page at: <https://www.cde.ca.gov/ft/fo/fo/fo01.asp>

Additionally, the CDE encourages each LEA to work closely with their county behavioral health department to identify and access resources at the local level.

While the requirement does not apply to private schools or to private before public events, we do encourage them to consider adopting a suicide prevention policy as a way of life for all students. This opportunity encourages them to be the general leading cause of death for youth and young adults in the United States. (b) The incidence of suicide among youth is on the rise, and the percentage who attempt with their own hands has increased in a dramatic fashion in recent years. (c) The incidence of suicide among youth is on the rise, and the percentage who attempt with their own hands has increased in a dramatic fashion in recent years. (d) Although interventions and programs are not equally available to all youth, they may have a significant impact on the possibility of reducing such a policy.

TREAVOR: saving young lives

Article 2.5: Pupil Suicide Prevention Policies

- Required CDE to develop a model policy
- Policy shall ...
 - "be developed in consultation with ... school-employed mental health professionals ..."
 - "...address procedures relating to suicide prevention, intervention, and postvention"
 - "be written to ensure that a school employee acts only within the authorization and scope of the employee's credential ..."

https://www.cde.ca.gov/ft/fo/fo/fo01.asp

18

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

AB 1808 (Approved by the Governor 6-27-18)

CHAPTER 12

- Education Finance: Education Omnibus Trailer Bill
- §216 added to Article 2.5
 - "The department shall identify ... evidence-based online training programs that a local education agency can use to train school staff and pupils ... on pupil suicide prevention ..."

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180A1808

19

AB 1808 (Approved by the Governor 6-27-18)

CHAPTER 12

- June 17, 2020, Online Training Program
- For an introduction to suicide prevention
- LivingWorks Start program (free for CA middle and high school staff)

Powerful, intuitive skill-building model

<https://www.carhooschoolstart.livingworks.net/copy-of-staff-access>

20

SB 972 (Approved by the Governor 9-17-18)

CHAPTER 960

- Pupil and Student Health: Identification Cards
- Suicide Prevention Hotline Telephone Numbers
- §215.5 added to Article 2.5
 - Schools serving pupils in any of grades 7 to 12 ... and that issues pupil identification cards shall have printed on either side of the pupil identification cards ... the following:
 1. National Suicide Prevention Lifeline, 1-800-273-8255
 2. Crisis Text Line, which can be accessed by texting HOME to 741741
 3. A local suicide prevention hotline telephone number

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20172018SB972

21

AB 2639 (Approved by the Governor 9-17-18)

CHAPTER 417

- Amended §215 of Article 2.5
 - 2639 = Policy shall ...
 - be reviewed "at a minimum every fifth year..."

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180A2639

22

AB 1767 (Approved by the Governor 10-9-19)

CHAPTER 054

- Amended §215 of Article 2.5
- Requires the "... governing board ... that serves pupils in kindergarten and grades 1 to 6 ... to ... adopt a policy on pupil suicide prevention ... that specifically addresses the needs of high-risk groups."
- To do so before 2020-21 school year

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200A1767

23

Legislative Issues Regarding BTAM

24

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

CA Legislation SB 906 School Safety: Homicide Threats

- Start of SY 2023/24
- Require LEA's to share with primary K-12 caregivers information related to safe gun storage practices
- Grades 6-12
 - All school employees to immediately report (perceived) threats of a homicidal act to Law Enforcement (LE)
 - LE must immediately conduct a threat assessment and investigation, including reviewing DOJ firearm registry
 - LE required to keep a record of reports received

POORLY WRITTEN!!!!

25

CA Legislation SB 906 School Safety: Homicide Threats

- **Incompatible with decades of research and practice** within the broader context of comprehensive school safety!!!
- NO mention of engagement of multi-disciplinary school BTAM teams
 - Schools have access to the most data points and often the greatest insight into life circumstances
- Immediately requires the direct engagement of law enforcement
 - No requirement Law Enforcement Officer (LEO) be trained in K-12 BTAM
 - Could actually INCREASE the school-to-prison pipeline!
 - No requirement LEO communicate concern to school if LE receives initial report
 - Potential to overwhelm already under-resources LE agencies
- And so many more concerns...

26

U.S. Constitution



- 1st Amendment: Freedom of speech
 - Not entitled to protection
 1. fighting words, obscenity, and defamation
 2. causes substantial disruption or material interference with school activities or invades rights of others
 3. "true threat"


27

Supreme Court Case (2023): Counterman vs Colorado

- Adult defendant charged with crime – stalking and numerous threats via Facebook to local musician
- Defendant moved to dismiss charges saying not "true threats"
- Court ruling
 1. Prosecution must prove some level of "mens rea" – state of mind
 - Aware of threatening nature
 2. Prosecution only need to prove recklessness – consciously ignored risk that communication perceived as threatening
- Case is related to litigating criminal prosecutions – Schools don't do this!
- While may be exempt from criminal prosecution (lack awareness was threatening) it does not exempt from determining if a safety issues that necessitates safety interventions (e.g., mental health inquiries) and public protection
- Bottom Line = does not change what schools do for BTAM
 - must look at multiple data points to determine safety risk

28

U.S. Constitution



- 14th Amendment: Due process & equal protection
 - Action must be related to school's interest in protecting students/maintaining order
 - Failure to adopt & implement adequate safety measures can be grounds for tort claim in event of school violence
 - Avoid discriminatory practices
 - Must follow IDEA guidelines
 - A TA does not replace SpEd protocols & procedures
 - www.nasponline.org/btam-sped

29




Legislative Issues Relevant to Both Suicide Prevention & BTAM

30

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

U.S. Constitution



4th Amendment: Unreasonable search & seizure

- Reasonable suspicion
- Scope of search reasonably related to objective and not excessively intrusive

31

31

Family Educational Rights and Privacy Act (FERPA)

Educational records are...

- Directly related to student
- Maintained by the LEA

Exceptions for disclosure to “appropriate party” w/out consent

- When necessary to protect the health & safety of student/others
 - Must be directly related to actual, impending, or imminent emergency
- Court order/subpoena or criminal investigations
- School officials with “legitimate educational interests” where student is enrolled or seeks to enroll – covered in annual FERPA notification

Joint Guidance of the Application of FERPA, US Dep’t of HHS and US Dep’t of Ed. (updated 2019)

32

32

Educational Records	Not Educational Records
Transcripts, screening and test results, disciplinary records	Grades on peer-graded papers before they are collected and recorded by a teacher
Health records (including mental health) & family history	Records created/received after individual is no longer in attendance not related to attendance
Intervention records maintained by the school/district	Employee records that relate exclusively to an individual’s capacity as an employee
Records on services provided to students under the <i>IDEA</i>)	Law enforcement unit records
Records on supports provided under <i>Section 504</i> and <i>Title II</i>	Information obtained through personal knowledge or observation and not from education records
Email (7 years!)	Records kept in the sole possession of the maker and used only as personal memory aids

33

33

Protection of Pupils Rights Amendment (PPRA) – Screening/Evaluations

- Governs administration survey/evaluation that concerns specific protected areas
- Relevant to Suicide Risk Screening & BTAM
 - Assessment** of mental or psychological problems of the student or the student’s family
- Requires parents receive notice & opportunity to opt student out of
 - “Any **non-emergency**, invasive physical examination or screening required by an LEA as a condition of attendance; administered by the school and scheduled by the school in advance; and, that is not necessary to protect the immediate health and safety of a student, with some exceptions”

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/20-0379_PPRA_508_0.pdf

34

34

Protection of Pupils Rights Amendment (PPRA) – BTAM Full Assessment

“Specifically, a threat assessment may implicate the Protection of Pupil Rights Amendment (PPRA), which requires parental notice and consent if the school is inquiring about, among other things, mental or psychological problems of a student or family; illegal, anti-social, or incriminating behaviors; critical appraisals of close family members; or religious practices or beliefs. Accordingly, parent consent may be required (regardless if Board Policy says otherwise) if your threat assessment delves into these issues (which I’m assuming it would)”

-Michigan Law Firm – arguing BTAM could fall under PPRA
May also be relevant to school wide screenings

35

35

Protection of Pupils Rights Amendment (PPRA) – BTAM Full Assessment

- Another perspective
 - Advice from MI law firm is overly cautious
 - BTAM does not fall into PPRA
 - However, may depend upon what model using!!!
 - Even if falls within PPRA, are there consequences for school districts?
 - ...unlikely

So PPRA or NOT???????

36

36

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Protection of Pupils Rights Amendment (PPRA) – BTAM Full Assessment


- Differing opinions and uncharted waters
- Choice of words is important:
 - "inquiring about, among other things, mental or psychological problems of a student or family; illegal, anti-social, or incriminating behaviors; critical appraisals of close family members; or religious practices or beliefs."
- We are not looking for problems, labeling, making critical appraisals, nor evaluating a person. We're looking to see how these stressors and challenges may be affecting safety and how we can mitigate risk (and provide supports). This is an important distinction.
 - BTAM is NOT a special education assessment. BTAM is not to be confused with SpEd or MH evaluation where you do need parental consent.

37


Protection of Pupils Rights Amendment (PPRA) – Considerations

Considerations:

- How in-depth are the MH questions?
- Different threat assessment models and mental health screenings may tread into this territory more than others
- Engage district legal counsel



38



Legal Issues Relevant to School Suicide Prevention

39

Case Law

Kelson v. The City of Springfield (1985): Prevention Training/Policy

- Held that parent of a deceased child could bring action against the school because his death allegedly resulted from inadequate staff training in suicide intervention.

Eisel V. Board of Education of Montgomery County (1991): Duty to Warn

- If the student denies suicidal intent, but collaborative teams suspects otherwise, there is an obligation to notify parents.

40

Case Law

Wyke V. Polk County School Board (1997): Prevention Programs, Supervision, Duty to Warn

- School districts must offer suicide prevention programs, adequate supervision of suicidal students, and notify parents when children are suicidal.

Armijo v. Wagon Mount Public Schools (1998): Increasing the Risk of Self Harm

- A 16-year-old, while being disciplined for harassing an elementary student, threatened a teacher, the teacher's son, and damage the teacher's car. The principal suspended the student. W/out notifying his parents, the principal directed the counselor to drive him home. Done despite the fact the student was visibly upset, known to have been depressed/nervous, had access to firearms at home, and had a history of suicidal thinking. Later that day parents found him dead by suicide. 10th Circuit Court asserted that there may be liability if schools create a danger that, in turn, harms the individual. This danger was suggested to have been made more acute by the fact student was in SpEd (SLD w/ known impulsivity/depression).

41

Case Law

The Estate of Montana Lance et al. v. Kyer et al (2011): Duty to Protect, Training & Policy

- 9-year-old SpEd student (ED, SLD, speech) subjected to bullying; hung self in school bathroom. Claimed school failed in duty to protect & provide safe environment; failed to provide staff training on policies/procedures, and trainings on how to work with him and protect from bullying.

Witsell et al. v. School Board of Hillsborough (2011): Duty to Warn

- Student completed suicide after signing no-harm contract; parents not notified of cutting and suicidal ideation; victim of teasing, bullying, harassment. Signed no-harm contract. School board argued not responsible for an employee who did not follow policy.

Rogers v. Chistina School District (2013): Duty to Warn

- Delaware Supreme court ruled that school district not liable under the state's Wrongful Death Statute for a suicide that occurred off campus. However, parents had a valid negligence claim against the district for failure to notify parent/guardian of the student's crisis situation.

42

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Case Law

Baab v. Medina City Board of Education (2019): Duty to Warn

- 8th grade student made repeated threats of self-harm reported to school counselor. Counselor intervened, called parent, and MH supports initiated. Subsequent reports ignored by counselor and Ohio Court of Appeals ruled the counselor's actions (or inactions) were reckless (deliberately indifferent) and thus potentially eliminated professional immunity.

Beam v. Western Wayne School District (2019): Failure to Address Special Needs

- 16-year-old with ADHD and 504 plan. Plan included alerting parents of educational concerns. Had reported to therapist suicidal thinking and 504 Plan strengthened. Continued lack of home-school collaboration and after failing 3 classes on last day of school, getting into fight, and being told police were coming to home, grandma found him dead by suicide. School failed to implement appropriate educational program, and was deliberately indifferent, thus sufficient evidence for lawsuit to proceed.

43

Suicide Litigation


- Risk of liability associated with student suicide is low, but not absent
- Taking reasonable action to ensure student safety, reduces liability
- Litigation typically results from negligent actions or inactions
 - Reckless/deliberately indifferent to suicidality
 - Significantly increased risk of such suicide
- Current cases also focus on training received and if followed best practices/standard of industry care

44

Avoiding Liability: Suicide

- Know/follow state/local suicide prevention policy
- Ensure primary caregivers are immediately made aware of the student's suicidal thoughts
- Do not increase the risk
 - e.g., by sending a student at risk to an unsupervised environment
- Recognize some students are more vulnerable than others and require greater attention/care
 - e.g., students in SpEd and/or with mental illness
- Attend professional development and training

45



Legal Issues Relevant to School BTAM

46

Case Law


- Witsell et al. v. School Board of Hillsborough (2011): District/School v. Individual Responsibility**
 - Student completed suicide after signing no-harm contract; parents not notified of cutting and suicidal ideations; victim of teasing, bullying, harassment; signed no-harm contract
 - School board argued not responsible for an employee who did not follow policy
- Charter Schools – Responsibility, Negligence, Duty of Care**
 - District vs. Charter Schools Responsibility?

47

Case Law

Bowe Cleveland v Taft Union H.S. District, CA

- Case NO:S-1500-CV-279256, Kern County Superior Court
- Jury awarded 3.8 million dollars to student victim
 - District = 53% liable
 - AP = 27%
 - School Psychologist = 19%
 - Superintendent/Principal (SY 2011/2012) = 4%
 - Principal (SY 2012/2013 - when shooting occurred) = 3%
 - Bryan (shooter) = 27%
 - Bryan's mother = 10%
 - Bryan's older brother = 9%
 - Bryan and his family = 47% liable



Appellate decision: <https://www.courts.ca.gov/opinions/documents/E079926.PDF>

48

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Case Law – Standard for future cases

Bowe Cleveland v Taft Union H.S. District, CA

- District employees breached their duty of care because ...
 - the threat assessment was not carried out by the team collectively
 - the school resource officer (i.e., the law enforcement officer assigned to the school) should have been a core member of the team
 - the threat assessment team failed to communicate amongst themselves about student of concern
 - the threat assessment team failed to adequately communicate with student of concerns parent
 - the threat assessment team failed to recommend counseling to the parent as an intervention technique; and
 - the threat assessment team did not continue to collectively monitor student of concern and reassess the safety plan.
- These acts and omissions fell outside the immunity provided for mental examinations

Reid Meloy – expert witness in case; case text <https://caselaw.com/case/cleveland-v-taft-union-high-sch-dist>

49

Case Law

Michigan lawsuit – Oxford HS

*Will be testing.....
Foreseeability – Negligence – Immunity
Parent Responsibility*

Lawsuit over Oxford High School shooting claims negligence by some school staff and the shooter's parents

By Taylor Thomas, CNN
Published 1:27 AM EST on January 28, 2022

50

Litigation: BTAM

- Risk of liability is lower if following established best practices in BTAM, but not absent
- Taking reasonable action to ensure student safety, reduces liability
- Litigation typically results from negligent actions or inactions
 - Reckless/deliberately indifferent
 - Breaching "Duty of Care"
 - Failed to attend/receive BTAM training
 - Failed to follow BTAM protocol with fidelity
 - Failure to utilize multi-disciplinary team

51

Mitigating Liability

52

BTAM & Suicide Risk Screening

- Know/follow state assessment/screening legislation
- Receive training in evidence-based/evidenced-informed approaches
- Recognize some students are more vulnerable than others and require greater attention/care
- Do not increase risk
- Ensure primary caregivers are made aware of student's homicidal/suicidal thoughts

53

Informing Caregivers – Suicide & BTAM


- Must inform even if case was resolved with the screening or you determine a low level of concern on the full assessment/screening
- Transfer of responsibility
- If the student has outside care, obtain release of information
- Document phone call/meeting, and the caregiver's response
- What do you do if caregivers refuse to cooperate?
 - Try to see their perspective
 - Validate current stressors and that the goal is to help
 - If still uncooperative, and concerns about safety remain, refer to appropriate authorities (e.g., law enforcement, child protective services)

PARENT NOTIFICATION AND RE-ENTRY/FOLLOW-UP MEETING FORMS

54

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Defensible Process: BTAM




1. Follow 8-Steps Secret Service/NTAC model
2. BTAM model must be based in best practices evidenced-based/informed
3. Training conducted by experts who have worked in school and/or actually worked K-12 cases
4. High quality, ongoing training
5. Maintain records of ALL trainings and attendance
6. Carefully selected & well-trained **multi-disciplinary** team
7. Must include/communicate with SRO/LEO/Security
8. Consistent BTAM process used among all teams/cases
8. Documentation supports best practices followed, decisions made, and management
9. Forms guide process BUT are not just a checklist
10. Work BTAM process before making disciplinary/programming/placement changes
11. **MUST** involve special education/504, & MH expertise
12. Designated team leader
13. Accountability for fidelity of implementation
14. Clear distinction between BTAM & special education policies/procedures
15. Parent engagement
16. Any and all communications can/will be subpoenaed!

55

USSC/NTAC: Building a School BTAM Program 8 Steps

1. Establish a multidisciplinary team
2. Define prohibited and concerning behaviors
3. Create a central reporting mechanism
4. Define threshold for law enforcement intervention
5. Establish threat assessment procedures
6. Develop risk management options
7. Create and promote safe school climates
8. Conduct training for all stakeholders



https://www.cis.org/sites/default/files/041817/13_0711_USSC-NTAC-Enhancing-School-Safety-Toolkit.pdf

56

Building a Suicide Prevention Program

1. Comprehensive suicide prevention policy
2. Mandate annual training for all staff on signs
3. Establish suicide risk screening team & protocol
4. Properly supervise suicidal students
5. Parent notification procedures
6. Know community resources and protocols for hospitalization
7. Ensure meet state legal requirements
8. Mental health presentation for parents
9. Local, state, and national crisis hotlines
10. Suicide prevention task force
11. Depression screening programs (e.g., SOS, Riding the Waves)
12. SEL Programming

Poland & Lieberman (2018)


57

Legal & Ethical Implications

- No maleficence/Do No Harm
- Competence
- Use team approach
- Confidentiality & Exceptions
 - Notify and involve parents
 - *Transfer of responsibility*
- Provide appropriate postvention response
- **DOCUMENT, DOCUMENT, DOCUMENT!!!!**
- Liability insurance



58



Documentation and Fidelity of Implementation

THERE IS NO FORMAL GUIDANCE FROM US DEPARTMENT OF EDUCATION NOR MOST STATE DEPARTMENTS OF EDUCATION

59

Standardization is Key!

- Same process used in each school
- Multi-disciplinary team must be engaged for BTAM/Suicide risk response
 - *Special education/504 representation a MUST if have 504, IEP, or if suspected disability or prior concerns (i.e., school psychologist)*
- Follow the best practices
- Team "personal" notes vs. formal documentation
- Documentation must support thoroughness of process
- Documentation of management/intervention decisions and follow-up is critical!
- Records and communications can and will be subpoenaed!

60

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Documentation: Standard of Care vs Negligence

Fidelity
Objective
Reasonable
Timely


- Fill out screening and full assessment forms
 - use with consistency across cases and schools
- Documentation MUST support fidelity and include:
 - team composition and process followed
 - data gathered (do NOT identify specific sources in BTAM!)
 - conclusions reached by team and data to support
 - re-entry meetings/return-to-school transition plans, if appropriate
 - supports offered/recommended/implemented
 - progress monitoring
 - rationale when closing the case

61

Documentation

Parent Request for Records?

- Decide where documentation will be stored and accessibility
 - Copy kept at school and also send to district office
 - Centralized database
 - How long will keep?
 - Paper and/or electronic copies?
 - Secure platform
- Information may be disclosed to staff on a need-to-know basis
- If student transfers to another district:
 - What info and records will be shared?
 - How will the receiving district be notified?




62

Evaluating Fidelity of Implementation

- Develop and review checklists and flow charts to ensure fidelity to established protocols and procedures
- Clearly define roles and expectations for all team members
- Assign one person to manage documentation (hard copies, electronic logs, etc.)
- Schedule regular follow-up meetings and reviews for individual students
- Schedule regular follow up meetings and reviews for the system and teams

[BTAM FIDELITY IMPLEMENTATION CHECKLIST](#)


63



Ethical Issues

64

10 Ethical Issues



1. Student Welfare and Safety
2. Knowledge of the Law and School Policies
3. Informed Consent and the Maintenance of Confidentiality
4. The Expectation of Privacy and the Disclosure of Information
5. Competent Practice and the Need for Consultation
6. Student Referrals for Community Based Services
7. Student Records
8. Supervision of the Student with Suicidal Ideation
9. Parental Consent for Services
10. Suicide Risk Screening

65



Resources & References

66

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

NATIONAL SUICIDE PREVENTION LIFELINE
1-800-273-TALK (8255)
suicidepreventionlifeline.org

988 SUICIDE & CRISIS LIFELINE

CRISIS TEXT LINE |
Text HELLO to 741741
Free, 24/7, Confidential

Hot lines and Text

It's ok to ask for help!

67

Suicide & Threat Assessment Resources

Suicidal Thinking and Threats: Helping Handout for Home

Suicidal Thinking and Threats: Helping Handout for School

Threats of Violence: Helping Handout for Assessing Risk at School

<https://www.nasponline.org/books-and-publications/books/files/helping-handouts-supporting-children-at-home-and-at-school>

68

Suicide & Threat Assessment CSP Resources

School Behavioral Threat Assessment and Management
Helen A. Lewis, PhD, "School's Role?"

School Suicide Risk Assessment
Helen A. Lewis, PhD, "School's Role?"

School-Based Threat Assessment
Helen A. Lewis, PhD, "School's Role?"

Volume 22, issue 2, June 2018
School Based Threat Assessment

69

Suicide Prevention Resources

PREVENTING SUICIDE
A Toolkit for High Schools
SAMHSA

Florida School Toolkit for Educators to Prevent Suicide
NSU

Treatment for Suicidal Ideation, Self-Harm, and Suicide Attempts Among Youth
SAMHSA

<https://store.samhsa.gov/product/Preventing-Suicide-A-Toolkit-for-High-Schools/SMA12-4669>

www.flcrisis.com/resources/suicide-suicide-toolkit-for-k-12-educators-to-prevent-suicide.pdf

<https://store.samhsa.gov/product/Treatment-for-Suicidal-Ideation-Self-harm-and-Suicide-Attempts-among-Youth/PEP20-06-01-002>

70

School-Based Suicide Postvention

1. Crisis Response
2. Helping Children Cope
3. Working with the Community
4. Working with the Media
5. Memorialization
6. Social Media
7. Suicide Contagion
8. Bringing in Outside Help
9. Going Forward
10. Appendices
 - Tools & Templates
 - Additional Resources

After a Suicide: A Toolkit for Schools
Second Edition
SPRC, EDC

American Foundation for Suicide Prevention (2018)
<https://afsp.org/our-work/education/after-a-suicide-a-toolkit-for-schools/>

71

Suicide Prevention: Suicide Prevention Policy

It is the policy of the Governing Board that all staff members learn how to recognize students at risk, to identify warning signs of suicide, to take preventive precautions, and to report suicide threats to the appropriate parental and professional authorities.

Administration shall ensure that all staff members have been issued a copy of the District's suicide prevention policy and procedures. All staff members are responsible for knowing and acting upon them.

<https://afsp.org/model-school-policy-on-suicide-prevention>

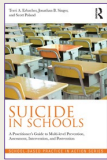
72

Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening

Resources

National Association of School Psychologists

- <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/covid-19-resource-center>
 - Comprehensive School Suicide Prevention in a Time of Distance Learning
 - Preparing for Virtual School Suicide Risk Assessments
 - Conducting a Virtual Suicide Risk Assessment
 - And many other COVID-19 related resources!
- "Suicide in Schools, 2nd ed." (coming soon!): Amazon or Routledge Publishing
- Suicide Prevention Resource Center (SPRC)
 - <https://www.sprc.org/>
 - <https://www.sprc.org/settings/colleges-universities>
- National Suicide Prevention Lifeline 1-800-273-8255
 - <https://www.relias.com/blog/assessing-and-preventing-suicide-telehealth>



73

Virtual Suicide Resources

- Comprehensive School Suicide Prevention in a Time of Distance Learning
- Preparing for Virtual School Suicide Risk Assessments
- Conducting a Virtual Suicide Risk Assessment
- And many other COVID-19 related resources!

National Association of School Psychologists

<https://www.nasponline.org/resources-and-publications/resources-and-podcasts/covid-19-resource-center>

74

Additional Resources



Youth Suicide Prevention and Intervention Resources
<https://wke.it/w/s/nuk3A>



Supplemental Crisis Intervention Resources
<https://wke.it/w/s/muYMyY>



SEL Resources
<https://wke.it/w/s/muYMyY>

From Ben Fernandez

75

15-Minute Focus Series

Practitioner and parent friendly

Includes:

- BTAM
- Anger, Rage and Aggression
- Anxiety, Depression, Suicide
- Behavior Interventions
- Counseling Techniques
- Diversity, Bias, and Privilege
- Trauma
- And more!!!

[Link to the Series Website](#)
\$12.95-17.95

76

BTAM Informed by Research & Practice

- National Threat Assessment Center Documents
- REMS Publications and Guidance Documents
- CISA School Safety Resources
- FBI Making Prevention a Reality Document Download

Best Practice Resources

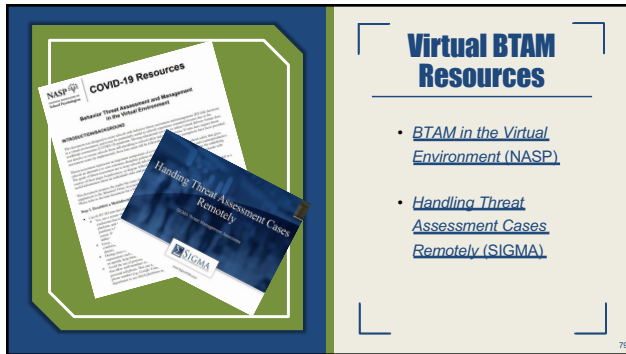
77

NASP Resources

- BTAM: Best Practice Considerations for K-12 Schools
- Upholding Student Civil Rights and Preventing Disproportionality in BTAM

78

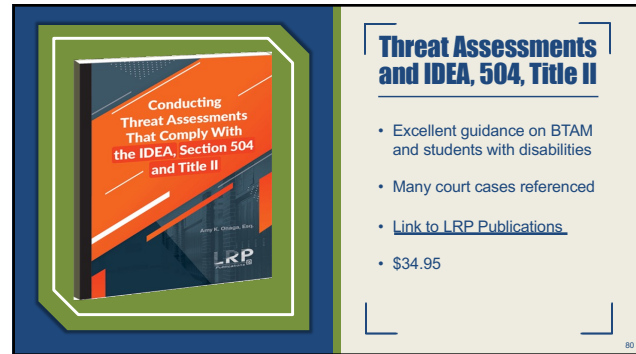
Legislative, Legal, & Ethical Issues in School Behavior Threat Assessment & Suicide Risk Screening



Virtual BTAM Resources

- [BTAM in the Virtual Environment](#) (NASP)
- [Handling Threat Assessment Cases Remotely](#) (SIGMA)

79



Threat Assessments and IDEA, 504, Title II

- Excellent guidance on BTAM and students with disabilities
- Many court cases referenced
- [Link to LRP Publications](#)
- \$34.95

80

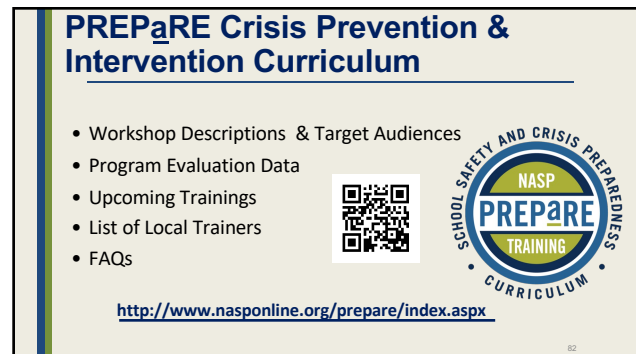


Digital Threat Assessment Training & Digital Documentation

- Safer Schools Together
 - <https://saferchoolstogther.com/>
 - how to assess and verify social media activity/threats
 - online behavioral trends
- Public Consulting Group (PCG)
 - <https://www.publicconsultinggroup.com/education/education-products/edplans-student-behavioral-threat-assessment-plan-and-suicidal-risk-assessment-solution/>
 - Document and store threat and suicide assessment protocols on a secured online platform

Contact Bill Reynolds for info: breynolds@pcgus.com


81



PREPaRE Crisis Prevention & Intervention Curriculum

- Workshop Descriptions & Target Audiences
- Program Evaluation Data
- Upcoming Trainings
- List of Local Trainers
- FAQs

<http://www.nasponline.org/prepare/index.aspx>



82



Q AND A

Dr. Stephen E. Brock – brock@csus.edu
Dr. Melissa A Reeves – djmelissareeves@gmail.com

83