



## OPERATIONALIZING SCHOOL BEHAVIORAL THREAT ASSESSMENT FAQs

Since 2019, Texas law has required that school districts and open-enrollment charter schools have access to Safe and Supportive School Teams (SSSTs) to conduct behavioral threat assessments (BTA) and provide support to campuses. SSST members who have completed training and are working to operationalize the threat assessment procedures at their campuses frequently contact The Texas School Safety Center (TxSSC) with questions about this process. School officials also call the Texas Association of School Boards (TASB) with policy-related questions. Together, we answer some of the most common questions below.

### Establishing a Safe and Supportive School Team

**Q: Who is on the SSST performing BTA?**

A: Texas Education Code Section 37.115(d) requires superintendents to ensure, to the greatest extent practicable, that the members appointed to each SSST have expertise in counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement. School board policy FFB(LOCAL) typically requires the superintendent to ensure that a multidisciplinary SSST is established to serve each campus.

**Q. Should school districts and charter schools document what type of expertise is present or not present on each SSST?**

A. Since the passage of Senate Bill 11 in 2019, school districts have had questions about what they need to document with regard to the level of expertise on their local team(s). In 2021, the Texas legislature updated Texas Education Code section 37.115 to say that identified expertise should be included on the SSST “to the greatest extent practicable.” If a team will forego any of the areas of expertise listed in Texas Education Code section 37.115, the team should document why that expertise is absent.

**Q. Does my campus have an SSST, or is there a district-level behavioral threat assessment team?**

A. Speak with your campus administrator to determine how your campus is served by a threat assessment team. If your campus administrator does not know the answer, or if you are a campus administrator and are unsure if your campus is served by a team, then the next step is to ask the campus administrator supervisor or the district’s superintendent. State law requires every campus to be served by a team, but a team may serve more than one campus.

**Q. How do I find out who is on the SSST and if team members have been trained?**

- A. Speak with your campus administrator about who is on the team that serves your campus and whether all team members have been trained. This question provides an opportunity to learn about the expertise on the team that serves the campus. Training is offered by the TxSSC and the regional Education Service Centers. State law requires that those conducting BTA should be trained by the TxSSC or Education Service Center.

**SSST Operations**

**Q. What are “prohibitive and concerning behaviors” that warrant a BTA?**

- A. State law does not define *prohibitive and concerning behaviors*. A school district may reference Texas Education Code section 37.115(a)(1) that defines *harmful, threatening, or violent behavior* to include behaviors such as:

- Verbal threats
- Threats of self harm
- Bullying
- Cyberbullying
- Fighting
- Use or possession of a weapon
- Sexual assault
- Sexual harassment
- Dating violence
- Stalking
- Assault

*Harmful, threatening, or violent behavior* also includes behavior that could result in:

- Specific interventions, including mental health or behavioral supports
- In-school suspension
- Out-of-school suspension
- Expulsion or removal to a disciplinary alternative education program (DAEP) or a juvenile justice alternative education program (JJAEP)

These behaviors, along with other behaviors identified in local student codes of conduct, are a foundation for districts to define locally the prohibitive and concerning behaviors that will warrant BTA procedures. If your district has not defined prohibitive and concerning behaviors, we recommend that district and campus leadership who are involved in BTA meet to discuss and formalize this step. The eight steps to building a BTA program can be found in the [TxSSC School Model Policies and Procedures](#).

**Q. How often should the SSST meet, and who is responsible for gathering the team to assess whether to conduct a BTA?**

A. Texas Education Code section 37.115 does not mandate how often a team meets or who gathers the team to conduct a BTA. However, the law is designed to ensure that trained, designated team members are available when a threat arises. Unfortunately, there is no way to know when a threat will happen and how long it will take to assess. Teams should meet regularly in order to ensure that they are ready to respond to a crisis.

Some operational considerations include identifying:

- Who is the team leader.
- Which team members will gather the team to determine if a BTA is needed and to conduct the BTA.
- How team members will communicate in the event of a threat.
- What specific duties team members will assume during a BTA, including: interviewing relevant individuals, searching school network drives, searching the campus for a weapon, communicating with parents and district leadership, implementing screening tools to gather information about the presence of suicide ideation and/or bullying/cyberbullying, documentation, and organizing the transition from BTA to providing interventions.

*Note: This list is not exhaustive. It is important to recognize the needs and nuances of each campus and district are different.*

Lastly, after a BTA is complete, it is important for the entire team to come together to conduct an after-action review to determine what process improvements are needed to ensure the team functions more effectively and efficiently in future threat assessments. Experiencing an actual event may clarify information that was not known or adjustments that can be made in the future. This after-action review should be conducted after the conclusion of the BTA, and the team should meet privately to have an open and honest discussion in a supportive manner.

**Q. What are our BTA procedures?**

- A. BTA procedures vary by district due to factors such as district size, community makeup, staffing, expertise on the behavioral threat assessment team, and whether a team serves one or multiple campuses. Regardless of these variables, it is important to standardize the district's approach to threat assessment. Standardizing allows for reliable data collection and analysis, process improvement, and process equality for every student who is assessed. A district should ensure that the eight steps of building a BTA program are clearly defined and communicated to all teams in the district. Ideally, this planning is completed proactively in the summer before students return to campus, but it can be completed at any time of the year.

When it comes time to assess a threat, the BTA team is encouraged to use [The School Behavioral Threat Assessment Screening Tool](#) to determine if a threat assessment should take place. This document is especially helpful if a team is struggling to determine if a threat assessment should be conducted or not. If a BTA will be conducted, the team should use the [11 Key Investigative Questions](#) to guide data collection, decision making, and follow-up intervention planning.

Districts are encouraged to add additional district-approved screeners and tools, alongside the investigative questions to enhance the team's objective data gathering during a threat assessment. For example, a district may have an agreed-upon suicide screener within the BTA process to ensure a unified approach to the district's suicide prevention programming. Districts may also decide to include the [TxSSC Bullying Checklist](#) to determine if bullying has occurred, if bullying is the cause of the threat, or if the threat is indicative of bullying or cyberbullying, as defined by Texas law.

**Q. What behaviors or threats are referred to law enforcement?**

- A. When building a BTA program, districts should determine the threshold for law enforcement intervention. This step involves identifying which behaviors should be referred to law enforcement, with the understanding that many reported threats can be handled by the BTA team. State law requires that principals or their designees report certain offenses alleged to have occurred at school or school events to law enforcement. See TASB Policy GRAA(LEGAL).

Law enforcement can access information that schools do not have and thus should be part of the multidisciplinary team. Speak with your campus administrator about what policies currently support the BTA team. If a district has not defined the thresholds for law enforcement intervention, we recommend that district and campus leadership who are involved in BTA meet to discuss and formalize this step. The eight steps to building a threat assessment program can be found in the [TxSSC School Model Policies and Procedures](#).

**Q. How does someone report a threat?**

- A. When building a BTA program, districts should create and establish a central reporting mechanism. This step includes establishing one or more anonymous reporting mechanisms; providing staff, student, parent, and community training and guidance to encourage reporting; ensuring there is staff available to respond to a report; and establishing community trust that reports will be acted upon. The key to a successful reporting system is proactively ensuring that students, staff, parents, and the community have an easy and accessible method to quickly report a threat that results in a timely response by campus/district staff. The stronger your school culture is, the safer students, staff, parents, and the community feel in reporting their concerns.

If your district does not have a central reporting mechanism, we recommend that district and campus leadership who are involved in BTA programming meet to discuss and formalize this step. The eight steps to building a threat assessment program can be found in the [TxSSC School Model Policies and Procedures](#).

**Q. Who regularly monitors the anonymous reporting system?**

- A. State law requires that all districts have an anonymous reporting system to address bullying. It is best practice for a district to designate at least one person to monitor the anonymous reporting system regularly. That person should have responsibility to funnel reports to the district and/or campus level, depending on local procedures.

**Q. What types of post-behavioral threat assessment interventions are provided? Who provides and monitors them?**

- A. A key part of closing a BTA is determining if a student needs an intervention in order to avoid a pathway to violence. It is important that the multidisciplinary team collectively decide on appropriate interventions. This conversation is especially important if there are concerns of a suspected disability and/or mental health issue, as licensed campus/district staff need to be included in the intervention discussion.

A person on the SSST should be designated as the main point of contact to ensure the team's concerns are appropriately communicated to the correct campus/district staff who will coordinate the intervention cycle—planning, implementing, data gathering, and reviewing plans for next steps. The staff member(s) responsible for implementing the intervention cycle will likely vary from campus to campus and district to district, based on a number of variables, including: budget, availability of campus/district staff, access (or a lack of access) to partnerships with external providers, and student or parent/guardian willingness to participate in interventions.

Please also keep in mind that the student may not be on your campus for an immediate start of the intervention cycle. Staff should work on implementing an intervention at an alternative campus or when the student returns to campus.

**Q. Do school administration and mental health staff need to be aligned on school BTA?**

- A. Yes. It is important that school administration and mental health staff approach BTA from a unified approach. Having varied expertise in a BTA can help avoid isolated decision making and allow for a well-rounded intervention plan for the student. Different groups providing different types of support to students should collaborate to look at the whole child (instructional support, behavioral support and discipline, if determined).

**Q. How should the SSST communicate with the parent/guardian of a student who is being assessed?**

- A. Communication with the parent/guardian is dependent upon the risk of violence the student poses to self or others. Per Texas Education Code section 37.115, if the SSST determines that the student poses a serious risk of violence to self or others, the team shall immediately report the team's determination to the superintendent, who shall immediately attempt to inform the student's parent/guardian. This mandate does not prevent any school or district staff from acting immediately to prevent an imminent threat or respond to an emergency.

If the team determines the student requires an intervention plan that is not related to serious or imminent risk to self or others, or does not require any intervention at all, communication with the parent/guardian should still take place. Section 37.115 does not mandate exactly when to contact parents/guardians in the event that the incident is not considered to be a serious or imminent threat. However, it is important to balance the time needed to collect threat assessment data and make an informed decision about when to call parents/guardians to inform them of the situation.

Communicating with parents/guardians too early in the threat assessment may create confusion if the SSST has few concrete details to share. Early communication is valuable, however, because it creates an opportunity for collaboration and relationship-building. Communicating with parents/guardians well after the threat assessment has occurred, or not at all, runs the risk of harming relationships with parents/guardians.

Additionally, it is important to determine how the threat assessment team will communicate with parents/guardians of students who are part of the threat assessment process. Students who were interviewed by the threat assessment team or were a victim or target of the assessed student should be included in your plan to communicate with parents/guardians.

Ultimately, this decision is a local one that should be included in planning the threat assessment process.

**Q: What is a *mental health care service* for which parental consent is required?**

A: Texas Education Code section 37.115 (g) provides that an SSST may not provide a *mental health care service* to a student who is under 18 years of age unless the team obtains written consent from the parent or person standing in parental relation to the student before providing the mental health care service. The consent required by this subsection must be submitted on a form developed by the school district that complies with all applicable state and federal law. The student's parent or person standing in parental relation to the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion. See Policy Code FFB(LEGAL) on crisis intervention.

*Mental health care service* is not specifically defined in the Texas Education Code. The Education Code does define *mental health condition* as a persistent or recurrent pattern of thoughts, feelings, or behaviors that: (1) constitutes a mental illness, disease, or disorder, other than or in addition to epilepsy, substance abuse, or an intellectual disability; or (2) impairs a person's social, emotional, or educational functioning and increases the risk of developing such a condition. Tex. Educ. Code § 5.001(5-a). See Policy FFE(LEGAL) on mental health.

In addition, Texas Education Code section 38.0101 defines a *nonphysician mental health professional* to include a psychologist licensed to practice in this state and designated as a health-service provider; a registered nurse with a master's or doctoral degree in psychiatric nursing; a licensed clinical social worker; a professional counselor licensed to practice in this state; or a marriage and family therapist licensed to practice in this state. Because the Texas Education Code defines who may serve as a nonphysician mental health professional, we infer that the term *mental health care service* refers to intervention for a mental health condition provided by a medical provider or non-physician mental health practitioner as defined by the Texas Education Code.

State law does not require specific parental consent for programs that a school district is required to carry out as part of the school curriculum or pursuant to requirements of the Texas Education Code, even if some of these programs could be considered assessments or evaluations. This includes screening for bullying and harassment, suicide prevention, and the safe and supportive schools program, including BTA. Districts must seek parental consent separately for programs and interventions such as the school counseling program, instruction on abuse, assessment related to special education, and evaluations for disability-related accommodations.

**Recordkeeping Regarding BTA**

**Q: Where are BTA records stored?**

A: Documentation of a student's BTA will be considered part of the student's education records under the broad definition of *education record* in the federal Family Educational Rights and Privacy Act (FERPA). See FL(LEGAL). Not all education records have to be

retained, however. Disciplinary records regarding removal to a DAEP, suspension, or expulsion must be kept for at least five years, but other discipline and counseling records are kept only as long as administratively valuable. See Part Seven of the [TSLAC model local retention schedule](#) for school districts regarding Discipline and Counseling records.

At this time, BTA is not reported in the Public Education Information Management System (PEIMS), and neither the state Student Attendance Accounting Handbook nor the state education record exchange (“TReX”) address this issue. See Section One, [2019-2020 TReX version 4.8.1 Data Standards](#).

Because state law does not address recordkeeping for BTA, local practice determines whether BTA records are stored as discipline or counseling records. For better or worse, local recordkeeping practices differ widely between school districts. Most districts select from among a variety of software options while others still use paper records. Some districts try to consolidate student education records, pulling together records ranging from academic supports (like response to intervention, or RTI) to disciplinary and counseling records for each student. Other districts have a student’s education records, including BTA information, stored in multiple locations.

**Q: Who is responsible for sending BTA information to a student’s new school?**

A: Given the complexity of local recordkeeping for BTA (and other education records), Texas has no “one size fits all” procedure for identifying, locating, sharing, and receiving BTA information when a student changes schools. Even without statewide procedures, school officials are still responsible for conveying essential BTA information to a student’s new school. School officials should assess their local recordkeeping practices and determine a method for clearly and consistently flagging for registrars, attendance clerks, or others responsible for transmitting education records when additional BTA information may need to be shared and what steps to take to convey essential BTA information while safeguarding its confidentiality. Be sure to train new staff whenever there is turnover in these roles.

**Q: What should a student’s new school do when it receives BTA information?**

A: According to the TxSSC, BTA information (including the interventions provided to the student) should be shared with middle schools and high schools within the student’s educational time at the district. The purpose of sharing this information is to make the new campus aware of the student’s history and to continue to provide intervention supports for the student. In the event of a new BTA, the administration can also see the history of the student and assess if the behavior has a pattern. If a student is receiving ongoing interventions, as an outcome of a BTA, the student’s new intervention team should review the student’s BTA documentation for any ongoing support they must plan for before the new school year or whenever the student arrives within the school year. It is recommended that the incoming intervention team meet with the student and parents/guardians to begin building a positive relationship, answer any questions, and set goals and expectations. This



type of information sharing is of the highest importance when the student is transitioning from elementary into middle school or middle school into high school. A change in location, staff, and routine have the potential to disrupt intervention fidelity.

*Note: If the student's behavioral intervention needs are being served by an IEP/504 plan, be sure to include the appropriate IEP/504 staff in the transition.*

### **Information Sharing Regarding BTA**

**Q: Why is it necessary to share personally identifiable information (PII) from a student's education records during a Behavioral Threat Assessment (BTA)?**

A: Performing a BTA with a SSST, as required by Texas Education Code section 37.115, requires school officials to share PII about a student's behavior, academic supports, personal history, and disciplinary history among the individuals on the team.

In order to ensure the necessary level of collaboration, SSST members need to be able to share PII both internally and with relevant school officials.

For more information about BTA, please see the [TxSSC's Threat Assessment Toolkit](#).

**Q: If the SSST includes an individual who is not employed by the school district, can the team share PII with that member?**

A: In order to include each of the areas of expertise to the greatest extent practicable, an SSST may include members who are not employed by the school district. When this occurs, FERPA allows a school or school district to disclose PII from education records without parental consent to team members who are not employees of the school or school district if they qualify as "school officials" with "legitimate educational interests." See U.S. Dep't of Educ. [Student Privacy Policy Office FAQ](#), "Does FERPA permit the sharing of education records with outside law enforcement officials, mental health officials, and other experts in the community who serve on a school's threat assessment team?"

In Texas, school board policy FL(LOCAL) typically defines "school officials" to include "a person appointed to serve on a team to support the District's safe and supportive school program."

**Q: Can a school official be held liable for disclosing PII in education records about a BTA to individuals outside of the safe and supportive schools team?**

A: Probably not. FERPA and corresponding state laws protect the privacy of student education records by requiring parental consent before student records can be released to third parties absent specific exceptions. 30 U.S.C. § 1232g; 34 C.F.R. § 99.31. *See also* Tex. Gov't Code § 552.114(b), (c), (e) (making student record information confidential and excepted from disclosure unless disclosure is authorized by FERPA, the Texas Public Information Act, or other federal law). FERPA's nondisclosure provisions do not create a cause of action to sue a school district for monetary damages.

A parent can file a complaint with the U.S. Department of Education to complain that PII was revealed without parental consent. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002). In addition, school officials who disclose PII outside of the exceptions in FERPA may be sanctioned by the State Board for Educator Certification. See 19 Tex. Admin. Code § 247.2 (Enforceable Standards), “Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.”

The key is to stay within the exceptions provided by FERPA. The exceptions most likely to be used for exchanging information about a student’s BTA include:

**Disclosure with parental consent:** Written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. 30 U.S.C. § 1232g; 34 C.F.R. § 99.30.

**Disclosure of directory information:** Education records that have been appropriately designated as “directory information” by the school district may be disclosed without prior consent. See 34 CFR §§ 99.31(a)(11), .37. FERPA defines directory information as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. 34 CFR § 99.3.

**Disclosure to a school official for a legitimate educational interest:** Disclosure is permitted to other school officials, including teachers, who have legitimate educational interests, as determined by the district. 34 CFR § 99.31(a)(1)(i)(A). A “school official” includes a teacher, principal, board member, registrar, counselor, admissions officer, attorney, human resources professional, information systems specialist, and support or clerical personnel. Under certain conditions, contractors, volunteers, and other third parties can be considered school officials. See U.S. Dep’t of Educ. [Student Privacy Policy Office FAQ](#), “Who is a *school official* under FERPA?”

Law enforcement officers listed as “school officials” can access student records when they have a legitimate educational interest. For law enforcement unit officials to be considered school officials, they must meet the criteria and be included in the district’s annual FERPA notification to parents. See U.S. Dep’t of Educ. [Student Privacy Policy Office FAQ](#), “When can law enforcement unit officials serve as ‘school officials’ ”?

**Disclosure to protect health and safety:** A school district may disclose PII from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 C.F.R. §§ 99.31(a)(10), .36. In making this determination, school officials may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the school district determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. The phrase “articulable and significant threat” means that a school official is able to explain,

based on all the information available at the time, what the significant threat is when he or she makes and records the disclosure. This is a flexible standard under which school administrators may bring appropriate resources to bear on the situation. See U.S. Dep't of Educ. [Student Privacy Policy Office FAQ](#), "What does *articulable and significant threat* mean?" If, based on the information available at the time of the determination, there is a rational basis for the determination, the U.S. Department of Education will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination. 34 C.F.R. § 99.36(c).

**Officials at another school:** School officials at schools where a student is not enrolled may be appropriate parties to whom schools may disclose information under the health and safety emergency exception. Appropriate information may be disclosed to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student. 34 C.F.R. § 99.36(b)(3). For example, a coach with information about a student athlete's BTA might tell the coach of the opposing team the limited information necessary to protect the health or safety of the student or other persons before an away game. Of course, the coach receiving the information must safeguard the confidentiality of the information and use the information only to maintain safety.

**A transfer student's new school:** A school district may disclose PII from a student's education records to officials of another school or school district, including charter schools and private schools, where the student seeks or intends to enroll, or where the student is already enrolled, so long as the disclosure is for purposes related to the student's enrollment or transfer. 34 C.F.R. § 99.31(a)(2). The district's annual FERPA notification to parents should include notice that education records will be shared under this provision.

A student's previous school should provide a transferring student's education records, including appropriate BTA information, to the student's new school. If a BTA is incomplete at the time of the transfer, the previous school should share whatever is in the student's record at the time regarding the team's assessment process. If the team completes its assessment after the transfer occurs, the result will become part of the student's record and should be sent to the new school.

**Q: Can a school official be held liable for NOT disclosing PII about a BTA to an individual outside of the safe and supportive schools team?**

A: While a lawsuit based on a failure to disclose relevant information is unlikely, such a claim is possible if the official's decisions exhibit a disregard for the risk of harm to others. When an act of violence leads to personal injury at a school, the injured victims or families often ask whether someone at the school could have prevented the harm.

For example, imagine a student recently changed schools. The student's previous school had gathered information, performed a BTA, and determined the student was at high risk of violence to others. The student's parent, aware of the BTA and rejecting the school's recommendation of mental health treatment for the student, withdrew the student and

enrolled the student in a new school. Officials at the previous school failed to report their concerns to the new school. At the new school, the student committed an act of violence, attacking another student on the bus. The victim's parents sued officials from both schools saying they should have prevented the attack.

Officials at the new school will likely have immunity from the parents' claims. State law provides governmental immunity from most personal injury claims. *See* Tex. Civ. Prac. & Rem. Code §§ 101.001-.109 (Texas Tort Claims Act). In addition, under federal law, governmental entities do not have a duty to protect individuals from private violence absent a special relationship, which arises only when an individual is involuntarily in the care and custody of the government. *DeShaney ex rel. DeShaney v. Winnebago County Dept. of Social Serv.*, 489 U.S. 189 (1989); *Walton ex rel. Walton v. Alexander*, 44 F.3d 1297 (5th Cir. 1995). Compulsory attendance laws do not create a special relationship between students and public schools. *Doe ex rel. Doe v. Hillsboro Indep. Sch. Dist.*, 113 F.3d 1412 (5th Cir. 1997) (en banc).

But what about the officials from the previous school who failed to report the risk of violence? Generally speaking, school officials have immunity under state law while acting in good faith in the course and scope of employment. *See City of Lancaster v. Chambers*, 883 S.W.2d 650 (Tex. 1994); *see also* Tex. Educ. Code § 22.0511(a). Also, in Texas, mental health professionals cannot be held liable for failing to warn third parties when a patient makes specific threats of harm toward identifiable individuals. *Thapar v. Zezulka*, 994 S.W.2d 635 (Tex. 1999).

Nevertheless, aggrieved parents might claim the school officials should not have qualified immunity under federal law because they acted with *deliberate indifference*. A government official acts with deliberate indifference when the official "consciously disregard[s] a known and excessive risk to the victim's health and safety." *Hernandez v. Tex. Dep't of Protective & Regulatory Servs.*, 380 F.3d 872, 880 (5th Cir. 2004). On the other hand, if the school officials acted reasonably, within the scope of their responsibilities, without violating clearly established rights, they would not be held liable. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

School officials should share or withhold a student's BTA information in good faith, only when allowed by law and policy, and in a way that is not deliberately indifferent to the health and safety of students or others.

For more information, please contact the [Texas School Safety Center](#). School officials acting on behalf of TASB member school districts may contact TASB Legal Services at 800.580.5345 or [legal@tasb.org](mailto:legal@tasb.org).

*This document is provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.*

Published May 2022