



**Written Testimony of the
Pennsylvania State Education Association (PSEA)**

**Public Hearing Regarding
Respecting Confidentiality While Preserving Accountability:
Protecting Students & Staff in Our Schools**

**Presented to the
House Children & Youth Committee
August 18, 2021**

On behalf of PSEA's 178,000 members, thank you for the opportunity to share our organization's statewide perspective regarding reporting and confidentiality requirements in cases of violence, or threats of violence, in or affecting the school setting.

PSEA members are united and guided by a shared mission: to promote, protect, and advocate for our students, schools, and the education profession. At the core of our mission, PSEA members are driven by our collective responsibility to promote safe, supportive, and effective learning environments for all students and staff. We also believe promoting safety and protecting each member of the school community must be a joint endeavor involving students, parents/guardians, school employees, school directors, and the community at large. This is especially true when it comes to violence or the threat of violence in the school setting.

PSEA has a long history of advocating for and leading efforts to make sure our schools are safe places to work and learn. This not only includes the physical conditions of our school buildings and other school infrastructure, but it also includes our ongoing advocacy for policies and practices that promote student and staff safety such as school nurse-to-student ratios, public sector OSHA, school safety grants, and the creation of threat assessment teams, just to name a few. Importantly, PSEA has been a steadfast advocate for adequate resources in all public schools, which are necessary to ensure the safety of all students and staff. These efforts and advocacy are driven and directed by PSEA members at the state and local levels, not only in the legislative arena, but also as part of the collective bargaining process.

PSEA's approach to school safety, and specifically the issue of violence in schools, begins with efforts to identify causes of school violence at all levels so that the school community can effectively plan and implement activities that prevent or eliminate violence in schools. For school staff, this includes the opportunity to offer input into policies and practices that are intended to promote safety and prevent violence. For example, clear and enforceable discipline policies must be in place at the local level, and school entities should utilize school employees' input in creating them. PSEA also believes that all public school personnel must be educated in effective strategies to employ when faced with a violent, or potentially violent, situation. In cases of abuse, all school employees should be able to access training in addressing any form of abuse including physical assaults, as well as crisis management. Finally, the public must be informed about the issue of violence in local school entities. It is essential that the local community supports school boards in developing and implementing alternative programs, providing safe facilities and appropriate personnel, and reducing class size so as to promote a healthy climate for the educational process that will reduce the potential for violence in schools.

A safe and supportive learning environment is one in which all students are treated with dignity. Research shows the overwhelming impact of ensuring every student feels supported by at least one adult in school. These meaningful connections help students navigate challenges and help ensure their basic needs are met so they can succeed in school and in life.

Public school employees are on the front line - they are often the first individuals to spot changes in student behaviors and mood, perhaps before anyone else. Sometimes the behavior is impossible to ignore – a student may lash out, causing harm to himself or other students or school staff. Or maybe a student’s problems are manifested in more subtle ways – changes in how the student interacts with his peers, or in how a student expresses himself in assignments. An educator can be the first to notice early warning signs that a student is struggling, and often is the essential first connector for getting that student the help he needs. If properly staffed and resourced, schools offer the ideal setting and infrastructure for students to access the full continuum of available supports, including prevention, intervention, and collaboration with families and community service providers. It is critical that schools also have in place evidence-based schoolwide intervention frameworks like the Multi-Tiered Systems of Support (MTSS), Positive Behavior Interventions and Support (PBIS), trauma-informed approaches, restorative practices, training for school staff, and an adequate complement of certified school counselors, social workers, psychologists, and nurses to address students’ mental, physical, and emotional needs.

PSEA is proud to have played a key role in Act 18 of 2019, which requires all school entities to establish multidisciplinary threat assessment teams. Threat assessment is a fact-based process for the 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 others. Act 18 of 2019 also provides a strong foundation for effective collaboration and information sharing between school staff, students, parents, social services, and law enforcement. These efforts should be part of a comprehensive, targeted violence prevention plan that addresses how schools and partners will define and address concerning behaviors, create systems for reporting and sharing information about concerns, and establish thresholds for response (including law enforcement intervention when necessary). An important element of the threat assessment process is understanding the circumstances surrounding the threat, which will help threat assessment teams to determine the likelihood that a threat may be carried out. Effective and appropriate interventions applied following the assessment process will assist in keeping our schools and communities safe, while assuring that youth receive the level of response and care reflective of the individual circumstances of the situation. Sometimes the appropriate level of response is not punishment or discipline, but more individualized support, understanding, and collaboration. Again, if properly staffed and resourced, schools offer the ideal setting to deliver and coordinate student supports.

Even though school employees and school systems can be extremely effective in identifying early warning signs in student interactions and behaviors, staff and resources are stretched thin. There are children in every school building in Pennsylvania who struggle with disabilities, poverty, trauma, neglect, and complex physical and emotional challenges. If left unaddressed, these challenges can quickly send a student into a downward spiral marked by poor academic performance, disengagement, school avoidance, and more severe behavioral problems that disrupt the educational process. Those students need support and encouragement – not isolation and punishment. PSEA is strongly committed to ending policies and practices that perpetuate the “school-to-prison pipeline,” whereby students are pushed out of the public school setting and into the juvenile and criminal justice systems. Zero-tolerance policies have fueled harsh disciplinary practices, resulting in suspension, expulsion, and school-based arrests, especially for students of color and those with disabilities or who identify as LGBTQ. These excessive measures not only interrupt a student’s educational experience but can also negatively impact the trajectory of a young person’s life, forever.

If policymakers wish to genuinely engage in a constructive dialogue around the necessary actions to prevent violence in our schools, then we must first acknowledge that chronically underfunded schools continue to funnel students into the pipeline toward court-involvement.

This is evident in the dramatic increase of police in schools, particularly in schools where social and emotional support services are severely lacking. As class sizes and workloads continue to grow for teachers, so does the need for more education specialists, such as certified school counselors, psychologists, social workers, and nurses. Education specialists are uniquely qualified to work with administrators, teachers, school support staff, parents, and community care providers to ensure students have the services they need.

In conclusion, the attachment includes several very specific suggested changes to current law that are aimed at improving information sharing with schools and school employees so that school communities can most successfully coordinate and deliver comprehensive and effective violence prevention, intervention, and rehabilitation as part of the educational process. Correspondingly, prevention, intervention, and discipline strategies are known to reduce suspensions, expulsions, and in-school arrests. Improved information sharing with schools and with those school staff who have a legitimate educational interest in a child can help keep at-risk kids in school - where they can make that vital connection with one or more caring adults, where they can receive comprehensive supports, and where they can learn in a school facility where everyone feels safe. These proposals allow for information sharing in a way that is accountable, protects student confidentiality, and does not conflict with FERPA.

Thank you for your consideration of our comments.

ATTACHMENTS

42 Pa.C.S.A. § 6352.2

§ 6352.2. Interagency information sharing

(a) Scope.--This section shall apply to court-approved interagency information-sharing agreements entered into in accordance with this section. Nothing in this section shall preclude the sharing of information not otherwise prohibited by law.

(b) General rule.--The contents of county agency, juvenile probation department, drug and alcohol, mental health and education records regarding a child who is the subject of an open child protective services or general protective services investigation, who is alleged to be dependent, who has been accepted for service by a county agency, who has been placed under supervision under an informal adjustment or consent decree, who has been found to have committed a delinquent act or who has been found to be dependent or delinquent shall be provided, upon request, to the county agency, court or juvenile probation department, under and except as prohibited **in section (b.2) of this section.**

(b.1) The county agency, or juvenile probation department shall consult and cooperate with the chief school administrator of the school entity in which a child is enrolled if the chief school administrator or designee determines under the totality of circumstances that the child is a threat to the health or safety of the child or others, except as prohibited in subsection (b.2).

(b.2) Information sharing otherwise authorized pursuant to subsections (b) and (b.1) is not permitted where it is prohibited under:

(1) This chapter.

(2) Section 5944 (relating to confidential communications to psychiatrists or licensed psychologists).

(3) The act of February 13, 1970 (P.L. 19, No. 10), entitled "An act enabling certain minors to consent to medical, dental and health services, declaring consent unnecessary under certain circumstances."

(4) The act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act.

(5) The act of November 29, 1990 (P.L. 585, No. 148), known as the Confidentiality of HIV-Related Information Act.

(6) Federal law, including the Family Educational Rights and Privacy Act of 1974 ([Public Law 90-247](#), [20 U.S.C. § 1232g](#)), the Health Insurance Portability and Accountability Act of 1996 ([Public Law 104-191](#), [110 Stat. 1936](#)) and the procedures, limitations and criteria set forth in regulations adopted by the Department of Health and Human Services relating to the confidentiality of drug and alcohol treatment records.

(c) Sharing of information.--

(1) The county agency, court or juvenile probation department shall, in accordance with the procedures established under this section, use the information contained in the records in furtherance of a disposition under this chapter of the child who is the subject of the records. Unless otherwise prohibited by this chapter or by the statutes or regulations listed under subsection (b)(2), (3), (4), (5) and (6), the information contained in the records may, notwithstanding any other provision of law, be shared among authorized representatives of the county agency, **school entity or entities in which the student is enrolled,** court and juvenile

probation department in furtherance of a disposition under this chapter of the child, or, if no child-specific or other confidential information is disclosed, in furtherance of efforts to identify and provide services to children who are determined to be at risk of child abuse, parental neglect or initial or additional delinquent behavior.

(2) Unless otherwise prohibited under this chapter or by the statutes or regulations listed under subsection (b)(2), (3), (4), (5) and (6) or any other provision of law, the information under paragraph (1) may also be shared with other agencies or entities if there is a specific need to do so. The information shall be shared for the limited purposes set forth under this section under an interagency information-sharing agreement developed under subsection (d) or upon order of court or the written consent of the parent or guardian of the child who is the subject of the records or any person, including the child, otherwise having the authority to consent to the sharing of the information.

(d) Interagency information-sharing agreements.--

(1) Subject to approval of the court and the requirements of this chapter and the statutes and regulations listed under subsection (b)(2), (3), (4), (5) and (6), an interagency information-sharing agreement may be developed in each county among the county agency, juvenile probation department, local law enforcement agencies, mental health agencies, drug and alcohol agencies, **school entities** and other agencies and entities as deemed appropriate, to enhance the coordination of case management services to and the supervision of children who have been accepted for service by a county agency, who are being supervised under an informal adjustment or a consent decree, who have been found to have committed a delinquent act, who have been found to be dependent or delinquent **or whom a school entity has determined is a threat to the health and safety of the child or others,** to enhance the coordination of efforts to identify children who may be at risk of child abuse, parental neglect or initial or additional delinquent behavior and to provide services to these children and their families. Any agreement under this subsection shall be signed by the chief executive officers of the entities referred to in this section as well as the public defender's office and guardian ad litem in each county and shall be submitted to the court for approval. In counties that do not have agencies with primary responsibility for representing delinquent or dependent children, the court shall designate attorneys at law with experience in representing those children to satisfy the requirements of this paragraph.

(2) All interagency information-sharing agreements shall, at a minimum, do all of the following:

(i) Provide that information will be shared under this chapter and the statutes or regulations listed under subsection (b)(2), (3), (4), (5) and (6) to enhance the coordination of case management services to and the supervision of children who have been found to be dependent or delinquent, who are being supervised under an informal adjustment or a consent decree, who have been found to have committed a delinquent act or who have been accepted for service by a county agency, and to enhance the coordination of efforts to identify children who may be at risk of child abuse, parental neglect or initial or additional delinquent behavior and to provide services to these children and their families.

(ii) Whenever possible, the preferred method for obtaining authorization to share confidential information shall be upon the written, informed consent of the person authorized under applicable law to consent to the release of information after that person has been provided a full understanding of the circumstances under which and with whom the information will be shared.

- (iii) Set forth the specific activities in which the signatories and the signatories' representatives will engage, either collectively or individually, in furtherance of the purposes of the agreement.
- (iv) Prohibit the release of information shared under this agreement with other parties, except as otherwise required or permitted by statute.

42 Pa.C.S.A. § 6341

§ 6341. Adjudication

(a) General rule.--After hearing the evidence on the petition the court shall make and file its findings as to whether the child is a dependent child. If the petition alleges that the child is delinquent, within seven days of hearing the evidence on the petition, the court shall make and file its findings whether the acts ascribed to the child were committed by him. This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section shall not be grounds for discharging the child or dismissing the proceeding. If the court finds that the child is not a dependent child or that the allegations of delinquency have not been established it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding. For cases involving allegations of delinquency where fingerprints or photographs or both have been taken by a law enforcement agency and where it is determined that acts ascribed to the child were not committed by him, the court shall direct that those records be immediately destroyed by law enforcement agencies.

(b) Finding of delinquency.--If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent it shall enter such finding on the record and shall specify the particular offenses, including the grading and counts thereof which the child is found to have committed. The court shall then proceed immediately or at a postponed hearing, which shall occur not later than 20 days after such finding if the child is in detention or not more than 60 days after such finding if the child is not in detention, to hear evidence as to whether the child is in need of treatment, supervision or rehabilitation, as established by a preponderance of the evidence, and to make and file its findings thereon. This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section shall not be grounds for discharging the child or dismissing the proceeding. In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation. If the court finds that the child is not in need of treatment, supervision or rehabilitation it shall dismiss the proceeding and discharge the child from any detention or other restriction theretofore ordered.

(b.1) School notification.--

(1) Upon finding a child to be a delinquent child, the court shall, through the juvenile probation department, provide the following information to the building principal or his or her designee of any public, private or parochial school in which the child is enrolled:

- (i) Name and address of the child.
- (ii) The delinquent act or acts which the child was found to have committed.
- (iii) A brief description of the delinquent act or acts.
- (iv) The disposition of the case.

(2) If the child is adjudicated delinquent for an act or acts which if committed by an adult would be classified as a felony **or for an act which involves violence or a threat of violence**, the court, through the juvenile probation department, shall additionally provide to the building principal or his or her designee relevant information contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the delinquent child.

(3) Notwithstanding any provision set forth herein, the court or juvenile probation department shall have the authority to share any additional information regarding the delinquent child under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision or rehabilitation of the delinquent child.

(4) Information provided under this subsection is for the limited purposes of protecting school personnel and students from danger from the delinquent child and of arranging appropriate counseling and education for the delinquent child. The building principal or his or her designee shall inform the child's **teacher] teachers and other school employees who have a legitimate educational interest in the child** of all information received under this subsection. Information obtained under this subsection may not be used for admissions or disciplinary decisions concerning the delinquent child unless the act or acts surrounding the adjudication took place on or within 1,500 feet of the school property.

(5) Any information provided to and maintained by the building principal or his or her designee under this subsection shall be transferred to the building principal or his or her designee of any public, private or parochial school to which the child transfers enrollment.

(6) Any information provided to the building principal or his or her designee under this subsection shall be maintained separately from the child's official school record. Such information shall be secured and disseminated by the building principal or his or her designee only as appropriate in paragraphs (4) and (5).

(b.2) Evidence on the finding of delinquency.--

(1) No statements, admissions or confessions made by or incriminating information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceeding.

(2) The provisions of paragraph (1) are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency and criminal proceedings of information obtained during screening, assessment or treatment.

(c) Finding of dependency.--If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed immediately or at a postponed hearing, which shall occur not later than 20 days after adjudication if the child has been removed from his home, to make a proper disposition of the case.

(c.1) Aggravated circumstances.--If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child is dependent, the court shall also determine if aggravated circumstances exist. If the court finds from clear and convincing evidence that aggravated circumstances exist, the court shall determine whether or

not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as required in section 6351(e)(3) (relating to disposition of dependent child).

(d) Evidence on issue of disposition.--

(1)(i) In disposition hearings under subsections (b) and (c) all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition.

(ii) Subparagraph (i) includes any screening and assessment examinations ordered by the court to aid in disposition, even though no statements or admissions made during the course thereof may be admitted into evidence against the child on the issue of whether the child committed a delinquent act.

(2) The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports. Sources of information given in confidence need not be disclosed.

(e) Continued hearings.--On its motion or that of a party the court may continue the hearings under this section for a reasonable period, within the time limitations imposed by this section, to receive reports and other evidence bearing on the disposition or the need for treatment, supervision or rehabilitation. In this event the court shall make an appropriate order for detention of the child or his release from detention subject to supervision of the court during the period of the continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from his home before an order of disposition has been made.

§ 13-1304-A. Sworn statement

(a) Prior to admission to any school entity, the parent, guardian or other person having control or charge of a student shall, upon registration, provide a sworn statement or affirmation stating whether the pupil was previously or is presently suspended or expelled from any public or private school of this Commonwealth or any other state for an act or offense involving **violence or a threat of violence**, weapons, alcohol or drugs or for the wilful infliction of injury to another person or for any act of violence committed on school property. The registration shall include the name of the school from which the student was expelled or suspended for the above-listed reasons with the dates of expulsion or suspension and shall be maintained as part of the student's disciplinary record.

(b) Any wilful false statement made under this section shall be a misdemeanor of the third degree.

24 P.S. § 13-1306-A

§ 13-1306-A. Availability of records

A student's disciplinary record, as well as records maintained under section 1307-A, shall be available for inspection to the student and his parent, guardian or other person having control or charge of the student, to school officials **including but not limited to school employees who have a legitimate educational interest in the student**, and to State and local law enforcement

officials as provided by law. Permission of the parent, guardian or other person having control or charge of the student shall not be required for transfer of the individual's student record to another school entity within this Commonwealth or in another state in which the student seeks enrollment or is enrolled.

24 P.S. § 13-1307-A

§ 13-1307-A. Maintenance of records

All school entities and private schools within this Commonwealth shall maintain updated records of all incidents of violence **or a threat of violence**, incidents involving possession of a weapon, **and incidents involving student arrests of which officials are aware and disposition of such arrests**, convictions or adjudications of **crimes or** delinquency for acts committed on school property by students enrolled therein on both a district-wide and school-by-school basis, **and records of threat assessment teams**. Records maintained under this section shall be contained in a format developed by the Pennsylvania State Police in cooperation with the office within ninety (90) days of the effective date of this section. A statistical summary of these records shall be made accessible to the public for examination by the public during regular business hours.