

CHAPTER 10 GUIDELINES FOR STUDENTS WITH DISABILITIES

INTRODUCTION

When Act 104 of 2010 was signed into law, it amended the Safe Schools Act, 24 P.S. §§ 1301-A *et seq.*, and required the State Board of Education to develop regulations to include: a model memorandum of understanding between school entities and local police departments; protocols for the notification to law enforcement when certain offenses occur on school property; protocols for emergency and nonemergency response by law enforcement; and procedures and protocols for the response and handling of students with disabilities 24 P.S. § 13-1302.1. The Safe Schools Act and the regulations promulgated by the State Board of Education in response to Act 104 apply to public school districts, intermediate units, area vocational-technical schools and charter schools (collectively, “school entities”). These regulations can be found at 22 Pa. Code Chapter 10 and are referred to throughout this document as “Chapter 10.”

Chapter 10 provides for cooperative arrangements between school entities and law enforcement agencies with jurisdiction over the school entities. This cooperative approach includes inviting local law enforcement to participate in training programs regarding the use of positive behavior supports, de-escalation techniques, and appropriate responses to student behaviors that may require immediate intervention. Also as part of this cooperative arrangement, Chapter 10 requires school entities and law enforcement agencies with jurisdiction over the school entities to enter into a memorandum of understanding (MOU). The MOU provides for procedures for law enforcement and the school entities to follow when certain incidents of student misconduct occur on school property, as well as information related to law enforcement involvement in school activities and safety planning.

While the Safe Schools Act and Chapter 10 mandate that when certain defined offenses occur on school property law enforcement must be immediately notified, there are other offenses for which school entities have discretion whether to notify law enforcement. In those instances, school entities may first investigate these incidents before requesting law enforcement involvement. In making the determination whether to notify law enforcement, school entities may consider extenuating circumstances and make decisions based on information obtained through their investigation.

These guidelines: (1) outline procedures for school entities to follow when notifying law enforcement about the occurrence of certain offenses for students with disabilities; and (2) create opportunities for school entities to encourage law enforcement officials to become more knowledgeable about appropriately responding to students with disabilities, including inviting law enforcement officials to participate in trainings in positive behavior supports.

MANDATORY REPORTING

The occurrence of certain defined offenses triggers a school entity's duty to notify the appropriate law enforcement agency. The offenses that trigger this responsibility are listed in section 1303-A(b)(4.1) of the Safe Schools Act (24 § 13-1303-A(b)(4.1)). In the event a student with a disability commits an offense, which requires notification to law enforcement, the school entity must immediately notify the appropriate law enforcement agency, regardless of the student's disability. Such notification must include, among other facts, notice that the student has a disability, the type of disability and its impact on student behavior. This may include notice that the student has an individualized education plan (IEP) or a service agreement that includes a behavior support plan and may include the school entity's recommendation that police intervention may not be required and advisement that the school entity will act to address the student's behavioral needs as required by applicable federal and state law and regulations, including 22 Pa. Code §§ 14.133 (relating to positive behavior support), 15.3 (relating to protected handicapped students-general) or 711.46 (relating to positive behavior support). The law enforcement agency may take the school entity's recommendation under advisement, but maintains sole discretion to investigate and file charges.

The list of mandatory notification offenses occurring on school property, at any school sponsored activity or on any conveyance (e.g., a school bus) providing transportation to or from a school entity or school sponsored activity, include Violations of the Crimes Code, not limited to:

- **Section 908 (relating to prohibited offensive weapons)**

Offensive Weapons: Any bomb, grenade, machine gun, sawed-off shotgun with a barrel less than 18 inches, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, any stun gun, stun baton, taser or other electronic or electric weapon or other implement for the infliction of serious bodily injury which serves no common lawful purpose.

- **Section 2702 (relating to aggravated assault)**

Aggravated Assault:

- (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;
- (2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in

- subsection (c)¹ or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty;
- (3) attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty;
 - (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon;
 - (5) attempts to cause or intentionally or knowingly causes bodily injury to a teaching staff member, school board member or other employee, including a student employee, of any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school;
 - (6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury; or
 - (7) uses tear or noxious gas as defined in section 2708(b) (relating to use of tear or noxious gas in labor disputes) or uses an electric or electronic incapacitation device against any officer, employee or other person enumerated in subsection (c) while acting in the scope of his employment.
 - (8) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than six years of age, by a person 18 years of age or older; or
 - (9) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child less than 13 years of age, by a person 18 years of age or older.

- **Section 3126 (relating to indecent assault)**

Indecent Assault: A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1) The person does so without the complainant's consent;
- (2) The person does so by forcible compulsion;

¹ Subsection (c) includes, but is not limited to a(n): police officer; firefighter; county juvenile probation or parole officer; sheriff or deputy sheriff; Federal law enforcement official; State law enforcement official; local law enforcement official; person employed to assist or who assists any Federal, State or local law enforcement official; emergency medical services personnel; magisterial district judge; psychiatric aide; teaching staff member; a school board member or other employee, including a student employee, of any elementary or secondary publicly funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school; and employee or agent of a county children and youth social service agency or of the legal representative of such agency.

- (3) The person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) The complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5) The person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) The complainant suffers from a mental disability which renders the complainant incapable of consent;
- (7) The complainant is less than 13 years of age; or
- (8) The complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

- **Section 6110.1 (relating to possession of firearm by minor)**

Possession of Firearm by Minor: Except as provided in subsection (b), a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth.

Firearm: Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon. Most of Pennsylvania's firearms laws are contained in the Uniform Firearms Act (UFA). In Pennsylvania, Firearms under the UFA are defined as:

Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

- **Chapter 25 (relating to criminal homicide)**

Criminal Homicide: A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide shall be classified as murder, voluntary manslaughter, or involuntary manslaughter.

In addition to those listed and defined above, the Safe Schools Act requires schools entities to notify law enforcement upon the occurrence of the following offenses:

- **Section 2709.1 (relating to stalking)**
- **Section 2901 (relating to kidnapping)**
- **Section 2902 (relating to unlawful restraint)**

- **Section 3121 (relating to rape)**
- **Section 3122.1 (relating to statutory sexual assault)**
- **Section 3123 (relating to involuntary deviate sexual intercourse)**
- **Section 3124.1 (relating to sexual assault)**
- **Section 3124.2 (relating to institutional sexual assault)**
- **Section 3125 (relating to aggravated indecent assault)**
- **Section 912 (relating to possession of weapon on school property)**
- **Section 3301 (relating to arson and related offenses)**
- **Section 3307 (relating to institutional vandalism) when the penalty is a felony of the third degree**
- **Section 3502 (relating to burglary)**
- **Section 3503(a) and (b)(1)(v) (relating to criminal trespass)**
- **Section 5501 (relating to riot)**

The possession, use or sale of a controlled substance or drug paraphernalia as defined in the Controlled Substance, Drug, Device and Cosmetic Act

Any attempt, solicitation, or conspiracy to commit any of the above offenses

An offense for which registration is required for under 42 Pa. C.S. § 9795.1 (related to registration).

DISCRETIONARY NOTIFICATION TO LAW ENFORCEMENT

In exercising its discretion to determine whether to notify law enforcement of incidents listed under section 1303-A(b)(4.2) of the Safe Schools Act (24 § 13-1303-A(b)(4.2)), school entities may consider the following factors:

- the seriousness of the situation
- the school's ability to defuse or resolve the situation
- the student's intent
- the student's age
- whether the student has a disability and, if so, the type of disability and its impact on the student's behavior
- other factors believed to be relevant.

The list of discretionary notification offenses occurring on school property, at any school sponsored activity or on any conveyance (e.g., a school bus) providing transportation to or from a school entity or school sponsored activity, include: Violations of the Crimes Code, but not limited to:

- **Section 2701 (relating to simple assault)**
- **Section 2705 (relating to recklessly endangering another person)**
- **Section 2706 (relating to terroristic threats)**
- **Section 2709 (relating to harassment)**

- **Section 3127 (relating to indecent exposure)**
- **Section 3307 (relating to institutional vandalism) when the penalty is a misdemeanor of the second degree**
- **Section 3503(b)(1)(i), (ii), (iii) and (iv), (b.1) and (b.2) (relating to criminal trespass)**
- **Chapter 39 (relating to theft and related offenses)**
- **Section 5502 (relating to failure of disorderly persons to disperse upon official order)**
- **Section 5503 (relating to disorderly conduct)**
- **Section 6305 (relating to sale of tobacco)**
- **Section 6306.1 (relating to use of tobacco in schools prohibited)**
- **Section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages)**

Responding to Students with Disabilities

In responding to students with disabilities who commit an offense under section 1303-A(b)(4.2) of the Safe Schools Act (24 § 13-1303-A(b)(4.2)), a school team should consider the intent of the student's behavior and utilize available school-based programs or positive behavior supports in the student's IEP, such as de-escalation techniques and other non-intrusive positive behavior supports, to address the student's behavior. The school team should also consider if there is intent to commit an unlawful act. The behavior may be a manifestation of the student's disability.

For example, a student with intellectual disabilities may not have mastered dressing or undressing techniques. He walks out of the school bathroom partially undressed, then physically prompts another person to assist him with dressing. This incident might, at first glance, be described as an "indecent assault"; however, if the school team reviews the disability, behavior, and current functional performance of the student involved in this incident, the intent to commit an unlawful act will not be present. Another example is a student with autism who reflexively responds to physical intervention by an adult via a fight or flight response. As flight is not an option during restraint, the student strikes the adult in the face. This incident taken out of context might meet the "aggravated assault" definition; however, review of the disability, behavior, and functional performance of this student will reveal lack of intent to commit harm to the adult.

The use of positive school-based alternatives and the determination that the behavior was a manifestation of the disability and that the student had no intent to commit an unlawful act in no way limits the law enforcement agency's discretion to investigate and file charges. While law enforcement may take this information under consideration prior to or while conducting an investigation and determining whether to proceed with criminal charges, the law enforcement agency maintains all discretion in this regard. It is very important for the school team to take into consideration that the student's behavior may be a manifestation of the disability and there may be no intent to commit an unlawful act prior to notification to law enforcement.

Checklist for School Team (after notification to law enforcement)

- ✓ Contact the parent/guardian and document attempts made to reach the parent or guardian of a victim or suspect directly involved in an incident on school property.
- ✓ Convene the IEP team of a student with a disability who does not have a positive behavior support plan when local police are notified that the student has committed an incident on school property. The IEP team must discuss whether a positive behavior support plan should be developed to address the student's behavior.
- ✓ For students with IEPs who have positive behavior support plans, an updated functional behavior assessment and positive behavior support plan are required subsequent to a referral to local law enforcement.
- ✓ Consult with the parents of a protected handicapped student who does not have a positive behavior support plan when local police are notified that the student has committed an incident on school property to consider whether a positive behavior support plan should be developed to address the student's behavior.
- ✓ For protected handicapped students who have positive behavior support plans, the school must continue to provide those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities.
- ✓ **To the extent permitted by the Family Educational Rights and Privacy Act (FERPA), ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the Law Enforcement Authority to whom the incident is reported.²**

Notifications To Parents

Chapter 10 requires that school entities immediately notify the parent or guardian of a victim or suspect directly involved in incidents subject to either mandatory or discretionary reporting to a law enforcement agency. The parent or guardian must be informed as to whether the police department has been, or may be, notified. Additionally, all efforts to reach the guardians or parents of both the victim and the suspect must be documented.

² Under FERPA, personally identifiable information (such as the child's status as a special education child) can only be released with parental consent, except in certain very limited circumstances. School districts should consult the FERPA regulations, U.S. Department of Education policy, and their solicitors for additional guidance.

When an Incident Requires a Report to Law Enforcement³	<ul style="list-style-type: none"> <input type="checkbox"/> Notify the offending student's parent or guardian of the incident immediately. <input type="checkbox"/> Inform the parent that law enforcement has been or will be notified. <input type="checkbox"/> Document all attempts to contact the parent. <input type="checkbox"/> Inform the parent that they have a right to be present when law enforcement agency interviews the student or to refuse permission for law enforcement to interview the student. <input type="checkbox"/> Do NOT stand in loco parentis (in the place of the parent/guardian) during an interview with law enforcement.
When a Report to Law Enforcement is at School's Discretion⁴	<ul style="list-style-type: none"> <input type="checkbox"/> Notify the offending student's parent or guardian of the incident immediately. <input type="checkbox"/> Inform the parent as to whether law enforcement has been or may be notified. <input type="checkbox"/> Consider the seriousness of the situation, the school's ability to defuse or resolve the situation, the student's intent, the student's age, whether the student has a disability and, if so, the type of disability and its impact on the student's behavior, in determining whether to notify the police. <input type="checkbox"/> Seek parent's input on alternatives to notifying law enforcement, including the use of school-based diversion programs and school-wide positive behavior supports. <input type="checkbox"/> Document all attempts to contact the parent. <input type="checkbox"/> If a report to law enforcement is made, inform the parent that they have a right to be present when law enforcement agency interviews the student or to refuse permission for law enforcement to interview the student. <input type="checkbox"/> Do NOT stand in loco parentis (in the place of the parent/guardian) during an interview with law enforcement.
When an Incident Involves a Victim	<ul style="list-style-type: none"> <input type="checkbox"/> Notify the student victim's parent or guardian immediately. <input type="checkbox"/> Inform the parent as to whether law enforcement has been or may be notified. <input type="checkbox"/> Discuss any immediate needs the student victim may have and how the school can assist in meeting those needs. <input type="checkbox"/> If student victim is to be interviewed by law enforcement, offer the supportive presence of a guidance counselor or other school personnel. <input type="checkbox"/> Document all attempts to contact the parent.

School-Wide Positive Behavior Support (SWPBS) Positive Behavioral Interventions and Supports (PBIS)

In order to reduce negative behaviors and avoid incidents requiring mandatory or discretionary reporting decisions, schools entities should have a proactive support system in place that reduces or diffuses such behaviors. Several practices exist that, when implemented properly, have resulted in a decrease in inappropriate student and adult responses within their environments. These practices require training, commitment and consistency in order to be effective: all involved parties must be dedicated to the

³ Incidents requiring immediate notification to police are listed on page [2-5].

⁴ Incidents for which a report to police is at school's discretion are listed on page [7].

process in order to result in success for the students. Provided below are some examples of such practices that school entities may want to consider employing in order to decrease problem behavior and the number of incidents resulting in law enforcement referrals.

What is SWPBS?

SWPBS is a framework or approach comprised of intervention practices and organizational systems for establishing the social culture, learning and teaching environment, and individual behavior supports needed to achieve academic and social success for all students.

SWPBS is not a specific model but a compilation of effective practices, interventions, and systems change strategies. SWPBS has a long history of empirical support and development and individually has been demonstrated to be effective. In addition, SWPBS has relevant applications to educating all students in schools, not just students with disabilities.

For more information on SWPBS, please visit www.papbs.org

Restorative Practices

What is Restorative Practices?

Restorative Practices is the science of building social capital and achieving social discipline through participatory learning and decision-making.

Restorative Practices have been shown to be an effective way to hold young people accountable for their actions while supporting them to make positive changes in their behavior. Several districts within the Commonwealth of Pennsylvania have implemented the Restorative Practices design. They have seen significant reduction in behavior problems.

For more information on Restorative Practices, please visit www.iirp.edu/pennsylvania-restorative-practices-project.php

Positive Behavior Support Plans (PBSP) [developed from data collected through a Functional Behavior Assessment (FBA)].

What do these terms mean?

FBA is a process for gathering information to understand the function (purpose) of behavior in order to write an effective positive behavior support plan.

Completing the FBA process allows patterns to be analyzed.

Completing an FBA allows us to create a summary statement:

1. When this occurs...
(describe circumstances/antecedents)
2. the child does...
(describe target behavior)
3. to get/to avoid...
(describe consequences)

Positive Behavior Support Plans are plans for students with disabilities and eligible young children who require specific intervention to address behavior that interferes with learning. A positive behavior support plan must:

- ✓ Be developed by the IEP Team
- ✓ Be based on an FBA
- ✓ Become part of the eligible child/student's IEP

Subsequent to a referral to law enforcement, for students with disabilities who have positive behavior support plans, an updated functional behavior assessment and positive behavior support plan must be completed. 22 Pa. Code §14.133(h), §711.46(h)

For more information on Positive Behavior Support Plans, please visit www.pattan.net.