

SCHOOL SAFETY BLUEPRINT: Empowering District Personnel on Safety and Mental Health Challenges (Unlocking the Behavioral Threat Assessment Process)

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[Photo credit to Joshua Hoehne](#)



The Washington Post
Democracy Dies in Darkness

School violence is so bad in this district that even teachers are targets

Several dramatic incidents in Clark County, Nev., reflect the strain school security officials are under.

By Zoë Bernard

May 21, 2022 at 6:00 a.m. EDT



Source: <https://www.washingtonpost.com/education/2022/05/21/school-violence-las-vegas-teachers/>



LAS VEGAS — Teachers in Clark County, Nev., say they have never felt less safe.

In February, a teenage girl [pummeled](#) another student at Vegas Valley High while the classroom mutely looked on. In April, county police [reported](#) a spate of violent incidents against staff members, including one incident in which a 15-year-old girl threatened a teacher with a pair of scissors and another in which a 14-year-old girl wielding an eight-inch kitchen knife forced a high school teacher outside his classroom.

That month, 16-year-old Jonathan Eluterio Martinez, a student at Eldorado High School, [allegedly choked](#) his teacher with a computer cord, then beat and raped her, after she'd pulled him aside to discuss his grades. Martinez was charged as an adult with multiple felonies including attempted murder, kidnapping, and sexual assault.

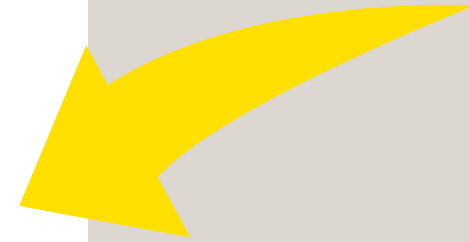


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As of April 20, the Clark County Police dispatch center received 3,260 calls reporting harassment and threats and 232 reporting sexual assault. These figures have already eclipsed the number of calls for 2018-2019 (the last cycle when students attended in-person classes for the entire year), which totaled 2,340 calls reporting harassment and threats and 159 reporting sexual assault, a 46 percent rise.

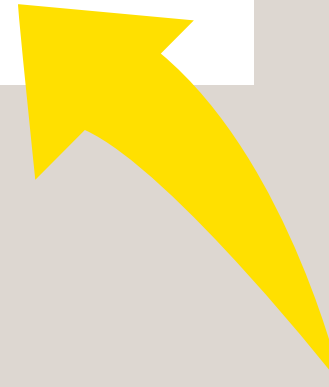
“The sexual violence is astonishing,” said Alexis Salt, who teaches middle school and high school English at Indian Springs. “We knew something was going to happen because the fights [at school] have been getting progressively more violent.”



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While there is no comprehensive data on school violence at a national level for the current school year, school districts across the country are reporting an uptick in bad behavior, fighting and violent incidents based on anecdotal reports. Sixty percent of people working in schools, including educators and bus drivers, have experienced physical or verbal aggression from students during the pandemic, according to a survey by the American Psychological Association. Additionally, there's been a significant increase in the number of students showing up to campuses with guns: 249 incidents were reported in 2021 as compared to 112 in 2019.

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National Mental Health Initiatives

- ❑ Addressing rise in prevalence of mental illness in youth and young adults
- ❑ Rate for mental illness increased from 18.3% in 2016 to 21% in 2020 (increase largely driven by increase among young adults)
- ❑ Schools serve as critical intervention point
- ❑ Increase of funding for mental health professionals in schools
- ❑ Among high schoolers in 2019, 1 in every 3 students reported persistent feelings of sadness and hopelessness and 1 in 5 reported considering suicide
 - USC-Brookings Schaeffer Initiative for Health Policy

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SCHOOL SAFETY BLUEPRINT #1
District and Personal Liability in the
Context of School Violence

The New York Times

Michigan High School Shooting: 3 Students Killed and Several Critically Injured

A 15-year-old sophomore was taken into custody with a semiautomatic handgun that was bought by his father four days before the fatal shooting.

Published Nov. 30, 2021 Updated Dec. 1, 2021



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY FRANZ and BRANDI FRANZ, as
NEXT FRIEND For RILEY FRANZ, a Minor,
and JEFFREY FRANZ and BRANDI FRANZ,
as NEXT FRIEND For BELLA FRANZ, a
Minor,

Plaintiffs,

Case No.:
Hon.

Vs.

OXFORD COMMUNITY SCHOOL DISTRICT,
SUPERINTENDENT TIMOTHY THRONE,
PRINCIPAL STEVEN WOLF, DEAN OF
STUDENTS RYAN MOORE, COUNSELOR
#1, COUNSELOR #2, STAFF MEMBER,
TEACHER #1 and TEACHER #2

In their Individual Capacity,

Defendants.

GEOFFREY N. FIEGER (P30441)
JAMES J. HARRINGTON (P65351)
ROBERT G. KAMENEC (P35283)
NORA Y. HANNA (P80067)
MILICA FILIPOVIC (P80189)
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COMPLAINT AND DEMAND FOR JURY TRIAL

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Can a School District Be Held Liable for the Death or Injury of Victims of School Violence?

- ❑ Maybe. 42 U.S.C., Section 1983 provides an avenue of recourse for citizens when a governmental entity deprives them of a federal statutory or constitutional right.
 - There are monetary damages available under this provision.

Can an Individual Be Held Liable for the Death or Injury of Victims of School Violence?

- ❑ Yes. Under Section 1983, individuals who are government officials, including employees, school board members, and administrators, may be sued. However, individuals may assert the defense of qualified immunity when confronted with claims under Section 1983.

For Victims of School Violence, What Constitutional Right Would Be Implicated?

- The 14th Amendment of the United States Constitution:
 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In Order for the School District To Be Held Liable Under Section 1983, a Plaintiff Must Show:

- The existence of a policy or custom attributable to the district that was the “moving force” behind the deprivation of rights.
- That the policymaker of the district showed deliberate indifference to any violations of constitutional rights.
- The district’s failure to train its employees.
- The district’s failure to protect a student from the actions of third parties.

What is Needed to Establish a Claim for State-Created Danger?

- ❑ An affirmative act by the state that either created or increased the risk that the plaintiff would be exposed to an act of violence by a third party.
- ❑ A special danger to the plaintiff wherein the state's actions placed the plaintiff specifically at risk, as distinguished from a risk that affects the public at large.
- ❑ The state knew or should have known that its actions specifically endangered the plaintiff.

School Safety Blueprint #1 Tactical Strategies (Avoiding Liability)

Avoid the appearance of deliberate indifference by:

1. Immediately addressing any threat of targeted violence;
2. Following existing systems (e.g., Engaging threat assessment team);
3. Documenting;
4. Informing;
5. Taking measures to remove individuals from harm's way;
6. Continuing to gather and consider relevant information including from outside agencies;
7. Following up as necessary to address new information; and
8. Conducting searches consistent with the 4th amendment.

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SCHOOL SAFETY BLUEPRINT #2
Threat Assessment Teams and the
Duty To Warn

Do School Officials Have a Duty To Warn?

- ❑ Known or reasonably foreseeable danger
- ❑ Student with propensity to commit targeted school violence
- ❑ Deliberate indifference remains the standard
- ❑ Affirmative action is expected with Safe and Supportive School Teams and threat assessments

So if We Have a Threat Assessment Team, How Can There Be Any Liability?

- ❑ In 2019, Texas requires Safe and Supportive School Teams, threat assessments, and providing school support for violent behavior.
- ❑ Texas School Safety Center coordinates training and provides model policies on threat assessments.
- ❑ Effective and Defensible strategies must include **both** federal and state law.

In Texas, Who Should Be on the Threat Assessment Team?

- ❑ Supt to the “greatest extent practicable” should have members with expertise in counseling, behavior management, mental health and substance use, special education, school administrators, school safety and security, emergency management and law enforcement.
- ❑ The key is coordination with mental health professionals... it is that simple.



Are There Any National Models on Threat Assessments for Preventing Targeted School Violence?

- While there are a multitude of Threat Assessment Models, the one that set the stage was the United States Secret Service July 2018 report, *Enhancing School Safety Using a Threat Assessment Model: An Operational Guide for Preventing Targeted School Violence*.
- A guidance document that was developed to aid in the development of accurate and useful information about prior school attacks that could help prevent some future attacks from occurring.

What Is the Goal?

- ❑ The goal of a threat assessment is to identify students of concern, assess their risk for engaging in violence or other harmful activities and identify intervention strategies to manage that risk.

What Were Some Recommended Proactive Measures?

- ❑ Among the proactive measures set forth in the Threat Assessment Guide / Model, what are some elements essential to the development of an effective school threat assessment program?
 - Schools should have policy on conducting a threat assessment inquiry or investigation.
 - Sharing information should be consistent with FERPA.
 - Creation of a threat assessment team prior to a crisis.

What Does the U.S. Secret Service National Threat Assessment Center Recommend for a Prevention Plan?

- Establish a multidisciplinary threat assessment team.
- Define concerning and prohibited behaviors.
- Create a central reporting mechanism.
- Determine the threshold for law enforcement intervention.
- Establish assessment procedures.
- Develop risk management options.
- Create and promote safe school climates.
- Conduct training for all stakeholders.

What About the Impact of Emotional or Developmental Issues?

- ❑ These need to be evaluated in the context of each diagnosis and the student's known baseline behavior.
- ❑ Don't forget about child find duties and special education eligibility categories.

When Conducting Threat Assessments What About FAPE?

- ❑ The U.S. Dept. of Education is clear that the procedural safeguards and right to FAPE for a child with a disability must be protected throughout the threat risk or assessment process.
- ❑ This includes the provision of services during removals beyond 10 days.
- ❑ Threat Assessment Teams do not have authority to change the student's placement under the IDEA/504 or to deny a student's access to school.
- ❑ Threat Assessment Team members should be familiar with the special education referral process.
- ❑ Review Threat Assessment Team forms to ensure compliance with federal laws.
- ❑ Understand the importance of the IEP team when making decisions about students with disabilities.

As a district employee serving in the role of an administrator, school psychologist, diagnostician, special education director or special education teacher, how does the Threat Assessment Guide / Model implicate me?

- ❑ Special education teachers and administrators have access to records, such as full and individual evaluations, psychological reports, and functional behavioral assessments that may contain information deemed helpful for deciding on precautionary measures.



Give Us an Example of How This Plays Out in the Context of Violent (Or Threatening) Students and Situations.

- ❑ Student eligible for special education as a student with autism makes a terroristic threat.
- ❑ Classmates report incident to parents, who contact police.
- ❑ Student with disabilities is arrested.
- ❑ Student's parents requested a special education due process hearing, challenging district had not provided appropriate programming in the area of social skills.

School Safety Blueprint #2 Tactical Strategies

1. Actively vet any policies and procedures for threat assessment, including by seeking legal counsel review (e.g., threat assessment audit), before adopting for local use.
2. When vetting, review against the National Threat Assessment Center (2018) Enhancing School Safety Using a Threat Assessment Model, An Operational Guide for Preventing Targeted School Violence, U.S. Secret Service, Department of Homeland Security.
3. Review your Threat Assessment Team procedures to ensure compliance with all federal laws, including Section 504 of the Rehabilitation Act (Section 504) and the Individuals with Disabilities Education Act (IDEA).

School Safety Blueprint #2 Tactical Strategies (Cont.)

4. Effectively staff your Threat Assessment Teams by including, among others, special educators and persons with expertise in mental and behavioral health (e.g., school psychologist).
5. Ensure proper training of your Threat Assessment Teams consistent with National Threat Assessment Center (2018) Enhancing School Safety Using a Threat Assessment Model, An Operational Guide for Preventing Targeted School Violence, U.S. Secret Service, Department of Homeland Security.
6. Consider having a special educator on your district's School Safety and Security Committee.
7. Seek from the parent a release to exchange confidential information with any private mental health providers who are serving or have served the student, and actively seek to obtain those records as part of risk management and ensuring a FAPE.

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SCHOOL SAFETY BLUEPRINT #3
Confidentiality and Student
Violence in the School

The Threat Assessment Guide / Model seems to encourage sharing information when it comes to a threat assessment inquiry and students who may pose a risk to targeted school violence.

Does FERPA Remain Applicable?

- ❑ Absolutely. However, according to the FPCO, if a threat is deemed “articulable” and “significant,” disclosure can be made to members of the threat assessment team if they are designated as “school officials.” This is the health and safety exception.
- ❑ School officials may share information with each other consistent with School Board Policy FL.

Confidentiality and Student Violence in the School

- ❑ In the context of school violence, does the health and safety exception automatically allow for disclosure of confidential student records to third parties?
 - No. The district may disclose personally identifiable information to appropriate parties only in connection with a safety emergency. A bomb threat or threat of targeted school violence would be an example of a safety emergency.

Is a Psychological Report, Maintained by the School District, Treated Under the Law as Any Other Education Record?

- Yes. FERPA does not impose greater protections for disclosure of special education records, including psychological reports.

Does FERPA prohibit a school official from disclosing information obtained through personal knowledge or observation and not a student's educational records?

- No. FERPA applies to the disclosure of education records and from information derived from education records.
- A school official may disclose what he overheard to appropriate law enforcement authorities.



After conducting a psychological evaluation of a student, which included a number of projective measures, the results indicated the student had homicidal thoughts and ideations and showed personality traits that fell clearly in line with the Threat Assessment Guide / Model.

Can I Disclose To Local Law Enforcement?

- This information may be disclosed to school officials as previously discussed. However, it would have to satisfy the health and safety exception under FERPA to be disclosed to local law enforcement.



During the course of this psychological evaluation, the student gave me the names of students he wished were dead.

Should I Notify the Parents of Those Students?

- If the health and safety exception was satisfied under FERPA, share information with law enforcement.
- It would be both prudent and consistent with FERPA to disclose that specific information to school officials so that internal protections could be put in place.

As a school counselor, isn't it true that student communications in the context of counseling are confidential and cannot be disclosed to other parties, including other school officials?

- ❑ Not necessarily. While school counselors should remain diligent to preserve the confidentiality inherent to the counseling relationship, they are also district employees responsible for determining when to disclose information and to comply with mandatory reporting requirements.



For students who commit acts of school violence, are their records protected by FERPA when sought through discovery by a plaintiff (parent of a student) who pursues litigation against the perpetrator or school?

- No. FERPA allows for production of otherwise confidential documents to comply with a court order.
- Simply because records are considered confidential according to a statute does not mean that they are privileged when it comes to discovery.

What remedies are available to parents or eligible students for violation of FERPA or a wrongful disclosure of educational records?

- To date, the courts indicate that parents cannot bring private actions.
- If the FPCO concludes that a district violated FERPA, the standard procedure is to advise the school of what actions it must take, and afford the school a reasonable amount of time to come into compliance with FERPA.
- If school complies, typically no further action is taken.



School Safety Blueprint #3 Tactical Strategies

1. Determine appropriate parties/outside agencies (e.g., law enforcement, probation, prosecuting attorney), whose knowledge of a threat of targeted violence may be needed on either a proactive or reactive basis.
2. Make sure any FERPA health or safety exception disclosure is (a) in response to “an articulable and significant threat to the health or safety of the student or another individual,” and (b) pursuant to a determination that the parties to whom the information is disclosed need the PII from education records, to protect the health or safety of the student or another individual.
3. Develop a form and process to document the articulable and significant threat.
4. Be careful not to treat the FERPA health or safety exception as a blanket release of PII from student education records.
5. Ensure school counselors and other school mental health providers understand that the FERPA standards and exceptions are not different for school mental health records.

SCHOOL SAFETY BLUEPRINT #9
Summary on Risk Management
When Threats Are Identified

Are Schools a Place of Special Danger?

- ❑ "School attendance can expose students to threats to their physical safety that they would not otherwise face."
- ❑ "Students may be compelled on a daily basis to spend time at close quarters with other students who may do them harm. Experience shows that schools can be places of special danger."
- ❑ Justice Alito: *Frederick v. Morse* (2007)



Image source: Walsh Gallegos Toolbox 4.2



Schools Are Required to Balance Safety with the Needs of Students Who May be Dangerous?

- ❑ IDEA imposes two requirements that are in tension with each other.
- ❑ Schools have a duty to provide an appropriate education to every student, regardless of the student's behavior.
- ❑ Schools also have a duty to maintain a safe and orderly campus.
- ❑ And the authority of school officials is constrained—on purpose.

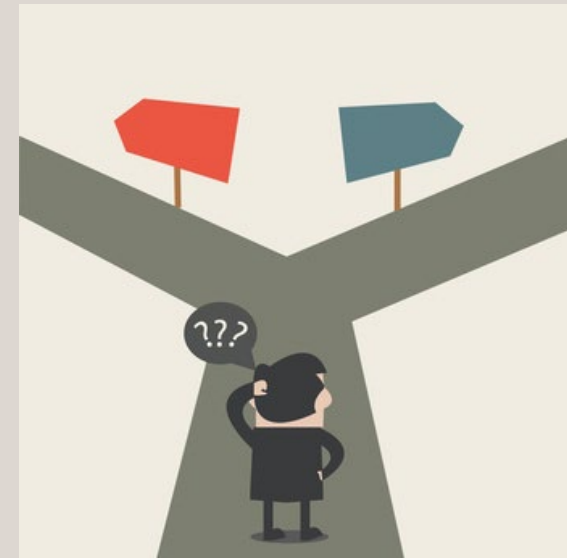


Image source: Walsh Gallegos Toolbox 4.2



The Only SCOTUS Case on Dangerous Students is from 1988?

- ❑ In *Honig v. Doe* the school argued that “stay put” did not apply when a student was dangerous. Due to the responsibility of the school to maintain safety, a school administrator could order a student’s removal from the IEP placement, despite the “stay put” rule.
- ❑ This issue went to SCOTUS.

So SCOTUS Intends to Remove a School's Unilateral Authority?

- Yes.
- "We think it clear, however, that Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school."
- Honig v. Doe*, 1988.
- So authority is limited, constrained.



Image source: Walsh Gallegos Toolbox 4.2



A School District Continues To Have 10 FAPE-Free Days?

- ❑ It is not a denial of FAPE to fail to serve a student for ten school days, cumulatively, through the school year.
- ❑ No services are required, so long as non-disabled students would be treated the same for similar misconduct.
- ❑ See 34 CFR 300.530(b) and (d)(3).
- ❑ Count your days!

What About More Restrictive Behavioral Settings?

- When a student's behavior is a manifestation of the disability, a therapeutic behavior setting (educational placement) may be appropriate and the parents may agree.
- This would involve a change of placement to an MRE (More Restrictive Environment) such as a self-contained behavior unit.
- Or it could be to an MRE for just part of the day.
- Parents may also agree to a disciplinary change of placement.

What if the Parents Disagree With the Change of Placement?

- ❑ Schools always have the option of proposing a change of placement to a More Restrictive Environment (MRE); however, parents may challenge this through a due process hearing.
- ❑ Be prepared to defend a change of placement decision, including LRE challenges.

What About Special Circumstances?

- ❑ Principals can order removal to IAES (Interim Alternative Educational Setting) for up to 45 school days without regard to manifestation in three cases:
 - Carrying or possessing a weapon;
 - Knowingly possessing, using, selling or soliciting the sale of illegal drugs;
 - Inflicting “serious bodily injury.”

What is the continuum of alternative placements? Are residential placement or residential treatment facilities a part of the required continuum?

- Yes. Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- 34 CFR § 300.115



So, what about centralized self-contained behavior classes? Should those be placement options available pursuant to the continuum?

- Yes.
- Self-contained behavior classes should be placement options if the student's individualized needs require that type of program for a FAPE. Some behavior classes may be centralized or located outside of the school district, or at a campus not considered the student's home campus. The law is clear that, while the location of services must be discussed by the IEP Team, location of services is an administrative decision, and many courts have affirmed the provision of centralized programs as appropriate, without regard to location.
- White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003).

How are these restrictive placement decisions made? Could a Threat Assessment Team make this determination?

- Any placement decision is based upon the LRE mandate as set forth in 34 CFR § 300.114 and § 300.116.
- A Threat Assessment Team has no authority to make placement decisions, as that falls within the purview of the IEP team.



I hear that RTC placements are very costly to a school district. What is the formula for federal funding to be applied toward a student's placement in an RTC as set forth in federal law?

- Yes. RTC placements are expensive and may range from \$100,000 to \$220,000 annually for one student. The Texas Education Agency provides financial assistance to districts placing students residentially, consistent with 19 TAC § 89.1092.



If the student continues to present a danger or threat to the health and safety of self or others despite behavioral interventions and campus therapeutic behavior classes, does the school have any options?

- ❑ According to the U.S. Supreme Court, in *Honig v. Doe*, 484 U.S. 305 (1988), the District has the option to seek injunctive relief in a court of competent jurisdiction. As described above, that option has been expanded to allow districts to seek an expedited special education due process hearing.



Isn't That Exactly What That Honig v. DOE Case Was All About? And Didn't the School Lose the Argument?

- ❑ It is exactly the same fact pattern as in Honig. You are right that the school lost the argument. But the school was seeking unilateral authority to declare the student dangerous and remove the student. SCOTUS rejected the argument that a principal or school superintendent could simply order the removal of a student due to a perception of danger. Instead, the Court told us that schools would have to apply for help in a case like this. The school can seek that help from a hearing officer or a judge.

Here's a Case Where the District Persuaded the Judge...

- ❑ Wayne-Westland Comm. Schs. v. V.S., 65 IDELR 13, 2014 WL 509081 (E.D. Mich. 2014).
- ❑ Wayne-Westland got a Temporary Restraining Order (TRO) on October 9, 2014, followed by a Temporary Injunction on October 16.
- ❑ The evidence showed that the student was:
 - a big kid—6 feet tall, 250 pounds;
 - physically attacked a student and several staff members, spitting at and kicking them;
 - “menaced” two staff members with a pen held in a stabbing position and refused to put it down when told to do so;
 - punched a student;
 - punched the principal;
 - threatened to rape a female staff member;
 - punched another staff member in the face;
 - made racist comments toward African American staff members; and
 - punched the director of special education in the face.
- ❑ That was enough to convince the court



If a student is a juvenile on probation, or you have received notice from law enforcement that the student has committed a felony offense, how can the district obtain additional information to more accurately and comprehensively assess the risk of the student?

- ❑ According to the Texas Code of Criminal Procedure art. 15.27, a law enforcement agency that arrests any person or refers a child to authorities for any felony offense and some misdemeanors shall orally notify the superintendent or designee in the school district in which the student is enrolled, of that arrest or referral within 24 hours after the arrest or referral is made, or before the next school day, whichever is earlier.

Beyond the notice of the particular offense under the Tex. Code Crim. Proc. § 15.27, may a superintendent obtain additional information from law enforcement?

- Yes.
- The oral and written notice must contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or designee to determine whether there is a reasonable belief that the student has engaged in the conduct or whether it is necessary to conduct a threat assessment or prepare a safety plan related to the student. TEX. CODE CRIM. PROC. § 27(a) The information contained in the notice shall be considered by the superintendent or designee in making such determination.

What is the procedure for a school district to access juvenile records when a significant risk of health and safety is at hand?

- ❑ The district may file a petition to access juvenile records with the juvenile court or county court.
- ❑ Pursuant to TEX. FAM. CODE § 58.007(b)(8), an institution, individual, or agency having a legitimate interest in the juvenile proceeding may obtain permission from the juvenile court to access more in-depth juvenile records.

School Safety Blueprint #9 Tactical Strategies

1. Ensure compliance with TEX. CRIM. PROC. § 15.27, and document.
2. Develop a Receipt of Notice of TEX. CRIM. PROC. § 15.27 protocol, to include an advisory team to the superintendent or designee to review the information received and determine whether it is sufficient to provide the superintendent or designee with adequate information to conduct a threat assessment and/or develop a safety protocol.
3. Make follow-up calls to local law enforcement as necessary to obtain additional information beyond the commission of a felony offense.
4. Consider petitioning the juvenile court to access more in-depth juvenile records pursuant to TEX. FAM. CODE § 58.007(b)(8).
5. Provide any information to the appropriate team(s) (e.g., IEP Team, 504 Committee, Threat Assessment Team) to consider the information as needed to fulfill the respective team's obligations and manage the risk.



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Our attorneys are trained in the School Safety Blueprint and are available to help you navigate and boldly solve your targeted school violence issues. Please give us a call at any of our offices and you will be directed to one of our trained and knowledgeable attorneys for assistance.



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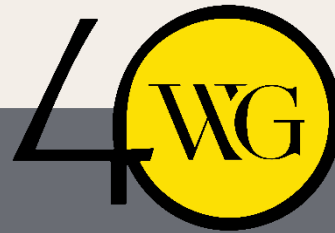
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We personally thank each one of you for participating in the School Safety Blueprint and express our gratitude for your contribution to public education, democracy and ultimately civilization.

Public education opens minds and hearts, to make the world a better place and educators give us hope of those possibilities.

The information in this presentation was prepared by Walsh Gallegos Kyle Robinson & Roalson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

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— YEAR —
ANNIVERSARY

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