

CERTIFIED PEER SPECIALISTS AND SCHOOLS

FIRST STEPS FOR CREATING A SUCCESSFUL CPS PARTNERSHIP

What is this Guide About?

This guide reviews key legal and liability considerations for schools and school districts incorporating Certified Peer Specialist (CPS) Practitioners, or "Peer Specialists," into school-based behavioral health (SBBH) initiatives. Information in this guide will help you create a successful CPS Partnership and Partnership Agreement to supplement ongoing SBBH services.

Who Is Georgia Appleseed and Why Have We Written this Guide?

Georgia Appleseed is a non-profit, nonpartisan law center focused on improved outcomes for Georgia's children. We work with stakeholders to develop and deploy tools to support students and keep children in school, learning and contributing. We developed this guide for school districts and schools to inspire interest and confidence in Peer Specialists. We hope that parents, community advocates, and policy makers will also find it useful.

You should use this guide to help you prepare for a productive discussion with legal counsel to design and start a CPS Partnership and draft a strong written agreement for the school and providers. This guide does not provide or contain legal advice.

The information in this guide applies only in the State of Georgia.

What are Certified Peer Specialists?

Certified Peer Specialists provide ongoing support to parents and students by promoting socialization, wellness, self-advocacy, and the development of natural supports. These practitioners work from their own lived experience—each Peer Specialist has a personal history with a mental health condition and/or substance use disorder.

The Georgia Department of Behavioral and Developmental Disabilities (DBHDD) trains and certifies Youth Certified Peer Specialists (CPS-Ys) and Parent Certified Peer Specialists (CPS-Ps).

- CPS-Ys are between the ages of 18 and 30 and practicing recovery from lived experiences, as a youth, of either a mental health condition and/or substance use disorder.
- CPS-Ps have been legal guardians for a period of at least three (3) years of youth or children with either a mental health condition or substance use disorder. CPS-Ps have supported that young person in a recovery process.

For more information on additional types of Certified Peer Specialists, visit:

<https://dbhdd.georgia.gov/recovery-transformation/cps>

Certified Peer Specialists and Schools

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What is a CPS Partnership?

Certified Peer Specialist (CPS) Partnerships connect Practitioners (Peer Specialists) with students and parents of students who are struggling with behavioral health challenges. Partnerships should be built on strong written agreements that reflect the community they will serve, demonstrate a clear purpose and vision for the services, and account for the legal considerations discussed below.

How Do I Begin?

Start by Listening to Community Members

Successful CPS Partnerships will need community support. You should engage with and listen to community members to better understand the community's needs and expectations, identify available resources, and build support. School community members, including parents, students, Peer Specialists, school leaders, and educators will play important roles in a successful CPS Partnership.

Develop a Clear Purpose and Vision

Take the time to craft a clear purpose and vision for the CPS Partnership. That purpose and vision must describe how the Partnership will support a student's well-being and academic education. The Partnership's purpose should account for the concerns and expectations of school community members (beyond just school leaders, providers, and students) as much as appropriate.

Draft a Thoughtful, Written Agreement for the CPS Partnership

Public school systems should formalize any CPS Partnership with a written agreement. The Partnership's purpose will guide the creation of the written agreement and govern the formal aspects of the CPS Partnership.

The CPS Partnership Agreement should outline the expectations of both the public school system and the Practitioner. A thoughtful agreement drafted with the assistance of your attorney will help the school deliver the best results for students and the community. Visit www.peerspecialists.org to find an example of a [CPS Partnership Agreement](#) or review the attached PDF.

The agreement should address (at a minimum) the legal and liability considerations following.

1. The School System and CPS Practitioner Are Separate Entities

A written CPS Partnership Agreement should contain clear language indicating that the school system and CPS Practitioner are separate entities. The agreement should make it clear that the CPS Practitioner and school staff are not acting as employees, agents, contractors, or volunteers of the other. Under the agreement, each party is only legally responsible for its own employees, agents, contractors, and volunteers.

This language, along with standard legal disclaimer, indemnification, and release of claims language, can be found in memorandum of understanding (MOU) agreements with other school contractors. Existing MOUs may provide helpful language to the school system in drafting similar language for its CPS Partnership.

2. Schools and Practitioners Should Get Consent in Writing

The written agreement should provide that the CPS Practitioner will obtain written consent/agreement from all individuals participating in the Partnership. The written agreement should contain a consent form similar to the model example on the attached PDF or on Georgia Appleseed's site accessed at www.peerspecialists.org.

In Georgia, parents can consent for themselves, as well as for any minor children who will participate in the Partnership. The consent form should clearly outline the purpose and activities of the Partnership and anticipated dates/duration of the service.

All consent forms should also provide the parent and student with the option to allow, or not to allow the school system to share otherwise confidential information about the child (particularly educational information) with the CPS Partnership or assigned CPS Practitioner. The consent form should also make clear that any consent is voluntarily given and may be rescinded in writing.

The written agreement should state that the CPS Partnership will be responsible for obtaining written consent from participants, and that a copy of completed consent forms will be provided in a timely manner to the school system.

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3. Keep Private Educational and Treatment Information Confidential

The agreement should protect private educational information about students who participate. CPS Practitioner will likely collect this information as part of their duties. The written agreement should include:

- language requiring that the Partnership maintain appropriate confidentiality of information, particularly student information
- detailed procedures for appropriate handling/return/destruction of confidential information at the termination of the contractual agreement
- language that the CPS Partnership is responsible for the appropriate handling of confidential information.

4. Ensure that Mandatory Reporters Understand and Comply with their Obligations

All individuals in the CPS Partnership must understand their reporting obligations as mandated reporters of suspected child abuse or neglect. The written agreement should provide that all CPS Practitioners understand, and will abide by, these mandated reporting obligations.

5. Document Operational Logistics in Detail

The agreement should include detailed procedures on how the Partnership will operate, including:

- Whether the school system will provide physical space for CPS Practitioners to engage with their clients and, if so, where. Any applicable restrictions should be included.
- Whether CPS Practitioners may engage with students during academic instructional time; and if so, include any restrictions that will be in place to ensure students do not miss core subject instructional time.
- Whether the school system will directly refer parents and students to the Partnership or provide information about the Partnership for parents to pursue on their own.

6. Require Fingerprinting, Background Checks, and Current Certification

The written agreement should mandate that all CPS Practitioners be fingerprinted and undergo a background check prior to accessing parent or student information. The agreement should require that all required certifications be current.

7. Require Partnerships to Purchase Worker's Compensation

The written agreement should specify that CPS Practitioners are not school system employees. The written agreement should require the CPS Partnership to purchase worker's compensation insurance for any employee providing services under the agreement with the school system. This will aid in protecting the school system from liability related to worker's compensation claims.

8. Clearly Define the Required Insurance Coverage for the CPS Practitioners

The written agreement should include insurance requirements for the CPS Partnership, including liability and workers compensation insurance.

9. Explain How Payment Works

The written agreement should include any payment provisions for CPS services. Among the options are:

- The school system pays for the CPS Program. The school system should clearly spell out the amount, method, and timing of payment.

- The CPS Program bills Medicaid or other third-party insurance as a reimbursement source. The written agreement should make clear that the school system is not responsible for any payment and that the CPS Program is solely responsible for requesting and securing third party payment.
- The CPS Program provides volunteer services, at no cost to the school system. The written agreement should clearly state that the services are free and ensure, at a minimum, that appropriate certifications are current.

What About Liability?

The terms of the CPS Partnership Agreement will help protect schools, students, and CPS Partnerships from four common liability concerns, including:

- Worker’s compensation claims by a Practitioner
- Potential injuries sustained by a Practitioner while on school district property
- Potential injuries sustained by a student, staff member or other person due to any negligence or wrongdoing by a Practitioner
- Abuse sustained by a student as a result of wrongdoing by a Practitioner.

In addition, Georgia law includes the sovereign immunity legal doctrine that generally protects school systems from liability. Sovereign immunity provides that the government cannot be sued without the government’s consent. This protection has been repeatedly and consistently extended to public school districts as political subdivisions of the State of Georgia. Even if someone attempts to hold a school system liable for the act of an independent contractor, sovereign immunity will likely protect the school from liability.

While public school systems are shielded from liability in most cases, this does not always deter potential litigants from filing lawsuits. Fortunately, courts can often dismiss school districts early in a lawsuit, because the sovereign immunity defense is one of the first issues that a court considers.

A well-written and well implemented CPS Partnership Agreement will help school districts avoid conflict.

Where Can I Find More Help?

School districts across the state have started or are starting CPS Programs. Reach out to them and see what has worked well.

You can find more information at:

<https://dbhdd.georgia.gov/recovery-transformation/cps>.

You can review the Georgia Appleseed model CPS Partnership Agreement and Consent Form at www.peerspecialists.org and attached here as PDFs. These forms include the provisions recommended in this Guide. The forms can be adapted to most situations. After reviewing the draft forms, please talk to legal counsel.

- 1 *The following court cases support this protection: Chisolm v. Tippens, 289 Ga. App. 757, 759, 658 S.E.2d 147, 151 (2008); Gamble v. Ware Cnty. Bd. of Educ., 253 Ga. App. 819, 823, 561 S.E.2d 837, 842 (2002)); Davis v. Dublin City Bd. Of Educ., 219 Ga. App. 121, 122, 464 S.E.2d 251, 252 (1995).*
- 2 *Considine v. Murphy, 327 Ga. App. 110, 111, 755 S.E.2d 556, 558 (2014), reconsideration denied (Apr. 10, 2014), cert. granted (Sept. 8, 2014).*

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