ESTABLISHING A SCHOOL-BASED BEHAVIORAL HEALTH PROGRAM

Legal, Funding, and Operations Considerations for Georgia

GEORGIA APPLESEED™
Center for Law & Justice

Table of Contents

Acknowledgements **4**

What Is this Handbook and Who Is it for? **5**

What Is Georgia Appleseed? **5**

Why Should Georgia Schools Provide SBBH Services? **5**

Georgia's students need significant behavioral health support. **5**

Schools can provide successful behavioral health support for students **6**

How Do Georgia Schools Integrate SBBH with Other Student Supports? **6**

Figure 1: The three-tiered interventions model for systems of support 6

Figure 2: Examples of MTSS across academic, behavior, and behavioral health supports 7

Bringing Behavioral Health Services to Your School: Getting Started **8**

1. **Assess your needs—talk to students, parents, and providers in the school and in the community.** **8**
2. **Match an SBBH service model to needed services, provider availability, and funding.** **8**

Service Model A - School-Community Partnerships 9

Service Model B - Georgia Apex-supported programs 10

Service Model C - Screening and Referring Services 10

Service Model D - In-House programs 11

3. **Seek funding from a variety of sources.** **11**
4. **Mitigate liability with written agreements, policies, and procedures.** **12**

Craft Comprehensive Partnership Agreements 12

Separate Entities 12

Confidentiality 12

Mandatory Reporting Obligations 13

Program Logistics 13

Background Checks/Fingerprinting 13

Insurance 13
Payment..........13
Protect Partnerships and In-House Programs with Policies and Procedures 13
Eligibility and Non-Discrimination 13
Continuous Support..........14
SBBH Services and Special Education 14
Licensure, Certification, and Procedures..........14
Federal and State Privacy Laws 14
FERPA: Student Education Records..........14
PPRA: Student Health Screening Records 15
HIPAA: Student Health Information..........15
Consent..........15
Consent to Refer 15
Consent for Intake..........16
Consent to Treatment..........16
Consider telehealth as an alternative to in-person treatments..........16
Appendix A: Certified Peer Specialists 17
Appendix B: SUD After School Recovery Programs.......... 18
Appendix C: Common SBBH Acronyms 19
Endnotes 20

Acknowledgements

We are grateful for the hundreds of individuals who contributed to the development of this handbook by sitting for interviews, taking our phone calls and emails, sharing research, and providing tours of schools and behavioral health facilities. In particular, we are grateful to the following individuals and organizations for their pro bono contributions and expertise.

Mary Benton, Esq., Alston & Bird
R. Ross Burris, III, Esq., Polsinelli, PC
Daniel Crimmins, Ph.D., Crimminz & Associates, LLC & Clinical Prof. Emeritus, Georgia State University
David Crooke, Chief Exec. Officer, CarePartners of Georgia
Taylor Daly, Esq., Nelson Mullins
Layla Fitzgerald, Dir. of Community Programs, Off. of Children, Young Adults & Families, DBHDD
Nina Gupta, Esq., Parker Poe
Rebecca Hsu, Esq. Polsinelli, PC
Laura Little, Esq., Children's Healthcare of Atlanta
Chad Jones, Vice-Pres. of Business Development, Viewpoint Health
Dante McKay, Dir., Off. of Children, Young Adults & Families, GA DBHDD
Garry McGiboney, Ph.D., Exec. Dir. of Gov. and Ed. Programs, ShareCare
Reagan Sauls, Esq., Parker Poe

Georgia Appleseed staff:
Becky Hudock, Esq., Senior Policy Counsel
Caren Cloud, Esq., Legal and Policy Director
Kate Swett, Director of Operations
R. Michael Waller, Esq., Executive Director

Special thanks for critical pro bono support from Polsinelli PC, Nelson Mullins Riley & Scarborough LLP, and Parker Poe Adams & Bernstein LLP. In addition, we offer special thanks to The Carter Center Mental Health Program and Director Eve Byrd, D.N.P. for financial support and guidance.

What Is this Handbook and Who Is it for?

This handbook describes how Georgia schools offer successful school-based behavioral health (SBBH) services that complement existing frameworks of academic support. The handbook reviews basic program models, and primary legal, funding, and operational concerns for schools and school districts when establishing SBBH programs.

Georgia Appleseed created this handbook to prepare schools and school districts for a productive discussion with behavioral health service providers and legal counsel. We hope that community members and behavioral health advocates find it helpful as well.

This handbook does not contain legal advice. School administrators should retain legal counsel with respect to any specific legal matter related to establishing or operating an SBBH program.

What Is Georgia Appleseed?

Georgia Appleseed Center for Law & Justice is a non-profit, nonpartisan law center that advances justice for all of Georgia's children. Through legal advocacy, policy research, and community engagement, we pursue systemic change, including reforms to the behavioral health system for children and youth. We work with behavioral health stakeholders to develop and deploy tools to support students' behavioral health and keep children in school, learning and contributing.

Why Should Georgia Schools Provide SBBH Services?

Georgia's students need significant behavioral health support.

The percentage of American youth with behavioral health disorders rose significantly in the fifteen years leading up to the writing of this handbook. From 2005 to 2017, survey responses from more than 200,000 adolescents (ages 12 to 17) showed an increase in major depression, serious psychological distress, and suicidal thoughts.[1]

Currently, estimates indicate that between 12% and 22% of school-aged youth have a diagnosable behavioral health disorder. A study from the Centers for Disease Control & Prevention (CDC) showed that 37% of U.S. high school students experienced poor behavioral health, including anxiety and depression.[2] Behavioral health worsened during the COVID-19 pandemic. During the first six months of the pandemic, behavioral-health related emergency department visits increased by 24% for children aged five to 11, and 31% for adolescents aged 12 to 17.[3]

Of the 386,700 Georgia middle and high school students who completed 2022's Georgia Student Health Survey, 157,321 reported they felt anxiety or fear that got in the way of their daily activities in the last 30 days.[4] Seventy-three thousand reported that they had seriously considered harming themselves in the past 12 months.

Undiagnosed and untreated behavioral health issues can significantly interfere with a student's ability to learn, grow, and develop into adulthood. Mentally and physically healthy students are more likely to learn, actively engage in school activities, have supportive and caring relationships with peers and adults, and solve personal challenges successfully.

Schools can provide successful behavioral health support for students.

Studies show that SBBH services – including elements of prevention, awareness, and evidence-based interventions – are safe and improve student well-being,[5] improve discipline rates over time, and help to create a positive school climate.[6]

Students are six times more likely to complete mental health treatment in schools than in a community setting.[7] Bringing behavioral support directly to the students removes or reduces barriers to care, such as transportation, stigma, and scheduling issues.[8] Regular contact with students creates an opportunity to identify and address behavioral health issues among students. SBBH stakeholders report that some students are more comfortable accessing behavioral health care services through school-based clinics, at a location with which they are familiar, and with a person that they are used to seeing in their school building. School personnel may find it easier to refer students to a school-based therapist whom they see and work with every day.

How Do Georgia Schools Integrate SBBH with Other Student Supports?

Many of Georgia's public schools with SBBH programs integrate their mental health supports with other services through a Multi-Tiered System of Support (MTSS) framework. The Georgia Department of Education (GaDOE) promotes MTSS as a best practice for teaching and learning in Georgia schools. MTSS integrates academic, behavioral, and social skills support through three intervention tiers. See Figure 1.

Figure 1: The three-tiered interventions model for systems of support[9]

Georgia schools that integrate behavioral health support services through the MTSS model show improvement in student academic achievement and have fewer incidents that lead to disciplinary referrals and expulsions.[10]

Figure 2 demonstrates how schools integrate academic, Positive Behavioral Interventions and Supports (PBIS, a school climate model),[11] and SBBH services in Tiers 1, 2, and 3.

Figure 2: Examples of MTSS across academic, behavior, and behavioral health supports

Tier	Academic	PBIS	SBBH
1 Primary or Universal – all settings, all students	Core curriculum with differentiated instruction that promotes success for all; regular assessment; heterogeneous work groups; use of Universal Design for Learning (UDL) in planning and delivery of instruction; seeing a school nurse for asthma or ADHD medications	Instruction in schoolwide behavioral expectations; rewards and recognition for positive behavior; effective instruction in classrooms; effective monitoring and supervision in common areas	Interventions are often informational or educational in nature. *Examples:* universal screening; behavioral health awareness training for students and staff on depression, anxiety, and suicide prevention; schoolwide programs promoting healthy school climate; Youth and Adult Mental Health First Aid
2 Secondary or Supplemental -- small groups	Supplemental small group instruction; coaching or booster instruction; mentoring	Social skills or self-management instruction; check-in/check-out; check and connect; restorative practices	Short-term group or individual counseling; *Examples:* social skills training focused on anger management, social engagement or test anxiety; parent-teacher conferences to discuss concerns
3 Tertiary or Individualized -- intensive	Intensive and frequent instruction with individualized goals and regular progress monitoring	Functional Behavioral Assessment (FBA) and Individual Behavior Intervention Plan (BIP); wraparound services; collaboration with family and outside providers	Individual therapy or counseling for eligible students with a diagnosed behavioral health disorder; behavioral health assessment and diagnosis; crisis management; Substance Use Disorder (SUD) treatment programs; Certified Peer Specialist (CPS) practitioners may offer peer support to youth and/or parents as appropriate (see Appendix A).

Bringing Behavioral Health Services to Your School: Getting Started

Georgia SBBH programs come in a wide array of service models. Schools should carefully consider the particular needs of students and families, provider availability, and funding options, among other factors, when choosing a service model for their school community. In the sections below, we discuss sources of information about community needs, the various SBBH service models in Georgia, potential funding sources, and best practices for provider contracts and SBBH programs.

1. Assess your needs—talk to students, parents, and providers in the school and in the community.

Reach out to a wide range of stakeholders to identify your community's behavioral health needs and the service providers who can partner with you. School leaders should consult with the school's existing school counselors, social workers, psychologists, nurses, and the community's behavioral health providers.

School behavioral health professionals can describe the schools' existing services, needs of the school community, and perceived barriers to accessing services. A conversation with existing student service providers is an opportunity to ensure that SBBH programs augment existing support.

Local community mental health providers can provide information about their willingness and capacity to provide school-based services, including whether they have sufficient workforce and the necessary infrastructure. Local providers can also help determine schools' funding needs and where to find funding.

Review existing data to understand how behavioral health affects your school community. Commonly available sources of this data include:

- Requests from current school personnel for additional resources;
- Frequency of your school's use of disciplinary suspensions or expulsions;[12]
- Georgia Student Health Survey results for your school or district;[13] and
- Informally sourced information about community-defined needs, such as a local cluster of suicidal behaviors or suicides.

2. Match an SBBH service model to needed services, provider availability, and funding.

In general, Georgia SBBH programs use one of four service models:

School-Community Partnerships

Georgia Apex-supported programs

Screening and Referring Services

and In-House programs

The next section overviews these SBBH services models and funding considerations unique to each service model.

SERVICE MODEL A

School-Community Partnership

OVERVIEW

School-community partnerships are contractual relationships between a school/school district and a community behavioral health provider to deliver SBBH services to students. Services can range from a full-array (Tiers 1 through 3) of support to more limited services, such as integrating Certified Peer Specialists (CPSs) (see Appendix A) or Substance Use Disorder (SUD) After-School Recovery Programs (see Appendix B). The program agreement with the provider determines which SBBH services students and families will receive.

Behavioral health providers must ensure that employees or contractors meet specific qualifications and staffing requirements required by the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD). [14] Community providers should employ a program coordinator to be responsible for the overall management and quality assurance of the program.

When a student needs behavioral health support, a school counselor, teacher, parent, or other school personnel refers the student to the SBBH provider. Schools provide clinical space for licensed clinicians (LCSW, LMFT, LPC, or Associate Trainee, as permitted by law) to assess students, discuss the results with parents/legal guardians, and provide treatment.

The Georgia HOPE collaboration with school districts is an example of school-community partnership. Georgia HOPE is a community-based provider of behavioral health, substance abuse, and family preservation services. Qualified behavioral health therapists serve pre-k through 12th grade students, in 125 schools and 20 counties. Local schools furnish office space to Georgia HOPE therapists to provide services and multi-tiered support. Georgia HOPE therapists also work within schools to eliminate stigma that prevents students from accessing behavioral health treatment.

FUNDING

Community providers bill for services to insurers or other third-party payors. Successful SBBH providers must have the back-office capacity to bill third party payors (often dozens of separate insurers).

SBBH partnerships fund their services with sources such as:

- Insurance payments from a student's insurance provider — whether commercial insurance or a federally funded healthcare plan (FHP) such as Georgia Medicaid/Peachcare for Kids[15] or TriCare[16]
- Georgia DBHDD funding through a local Community Service Board
- School or school system funding
- Federal and/or county funding
- Private philanthropy or nonprofit foundation grants.

The characteristics and demographics of the school community determine which combination of funding sources are successful. For instance, one Georgia partnership model based in a Title 1 school cluster relies heavily on billing Medicaid. Another partnership in a well-resourced school funds its programming through a combination of philanthropic donations, grants, and county financial support. Another community-provider partnership utilizes a "copay match" system that uses copay fees paid by families who can afford the copay to supplement the cost of behavioral health services for those who cannot afford copays.

SERVICE MODEL B

Georgia Apex-supported Programs

OVERVIEW

The Georgia Apex Program (Apex) is the most widely used SBBH model in the state. Apex is a publicly funded, collaborative model for SBBH services that relies on partnerships among schools, community behavioral health providers, and Community Service Boards (CSBs). [17] Hundreds of Georgia's schools have Apex-funded programs that serve thousands of students in rural, suburban, and urban school settings in approximately one hundred (100) counties.[18]

Apex schools and providers offer services to school communities across all three tiers but prioritize Tier 3, intensive interventions. The Apex community provider oversees program quality.

Schools and community provider partners interested in Apex support services apply to DBHDD through a DBHDD-issued Request for Proposals (RFP). DBHDD requires providers to submit a packet of materials, consisting of a Program Proposal, Letter of Support from the school or district, attestations, and a Technical Proposal (collectively, the Bid). The Technical Proposal describes the provider's ability, capacity, and proposed approach to providing program services as well as its timeline for starting Apex services at a specific location. The Program Proposal details the proposed scope of services, budget, expected funding and reimbursement options, patient population, and other details.

If the Bid is accepted, the Provider becomes an Apex Provider for the identified location, and the details included in the Bid documents (including the Technical Proposal and Program Proposal) *legally bind* the Provider. Applying providers should carefully draft the Bid to reflect their capabilities and commitments.

FUNDING

Providers bill Medicaid, PeachCare for Kids, TriCare, and private insurance for covered treatment costs. DBHDD funding covers many non-billable expenses necessary to establish and sustain the SBBH program, including operations (e.g., salaries for administrative personnel, costs for school office supplies, equipment, and technology for clinicians) and expenses incurred in the provision of Tier 1 and Tier 2 interventions.

Schools and providers must look to other sources to cover shortfalls. Such sources may include insurance payments from a student's insurance provider, school or school system funding, and private philanthropy or nonprofit foundation grants.

SERVICE MODEL C

Screening and Referring Services

OVERVIEW

Screening and Referring Services (SRS) programs are school-community partnerships that conduct student screenings for behavioral health concerns and student needs. SRS programs do not provide interventions and treatment. The program refers parents to community providers for support services.

School districts structure SRS Programs on a school-by-school basis, through contracts between providers and schools. The school or school district should provide oversight for SRS program quality. Contracted providers conduct student screenings and send the results to the student's parent/legal guardian with referral lists of available providers in the community. The parent/legal guardian arranges services with an outside provider of their choice.

Project AWARE (Advancing Wellness and Resilience in Education) is an SRS program in Bibb, Hall, and Houston counties schools.[19] A five-year federal grant from the Substance Abuse

and Mental Health Services Agency (SAMHSA) to the Georgia Department of Education funds Project AWARE. Georgia State University's Center for Leadership in Disability provides training and evaluation.

Schools use Project AWARE funds to:

- Increase understanding of behavioral health by training school personnel and community members on Youth Mental Health First Aid;
- Develop local resources to support behavioral health;
- Develop a universal screening program that connects school-aged youth and their families to needed services; and
- Evaluate outcomes.

Project AWARE offers training and assistance to schools outside of Bibb, Hall, and Houston counties, including training in mental health first aid, community resource mapping, and technical assistance for universal behavioral health screening programs.

FUNDING

Private insurance, Georgia Medicaid, and PeachCare for Kids do not typically fund screening and referral services. To fund an SRS program, a school district may need to re-direct existing funding (e.g., Title IV funds) or seek outside resources. Funding sources could include state or federal grants, Every Student Succeeds Act (ESSA) Title IV funds, private donations, or community sponsorships.

SERVICE MODEL D

In-House Model

OVERVIEW

Some schools and school districts meet student behavioral health needs by hiring therapists and social workers as school employees. This "in-house" model allows school districts to have greater control over the nature of the behavioral health services and to deploy providers where and when students need them. For instance, Dublin City Schools hired therapists who are "on-call" 24 hours a day, 7 days a week.

3. Seek funding from a variety of sources.

Funding sources for any of the above models may come from federal, state, and local government grants, insurance reimbursement, local school district funds, and philanthropic funding. If possible, seek a variety of funding sources. Using multiple funding sources can improve the sustainability of a program because any single funding source may be time-limited or unpredictable. Providers should be aware of all criteria for reimbursement required by funding sources. Grant funded programs may have additional program requirements.

In addition to funding sources described above, Georgia school districts received funding from the following sources in 2022 (as we were writing this handbook):

- The federal government provides SBBH grants through the Education Department or the Substance Abuse and Mental Health Services Administration (SAMHSA). In 2022, the bipartisan Safer Communities Act dedicated $300 million for investments in school based mental health programs nationally, including $140 million in grants that provide in-school behavioral health services.

- Some Georgia county governments provide funding for SBBH programming from their own budgets. For instance, Fulton County provides funding to support SBBH services in dozens of Fulton County schools.
- Certain Georgia school districts provide support for SBBH services funded by the local tax levy and state aid. These funding sources would generally be limited to Tier 1 and some Tier 2 interventions provided by school counselors, social workers, or psychologists.
- Local and national nonprofits, corporations, and other foundations provide donations or grant funding to support SBBH operations. For instance, in one Georgia school, the local parent association held a fundraising gala that raised funds to sustain a full-time therapist in their local school.

4. Mitigate liability with written agreements, policies, and procedures.

Schools have great flexibility in how they design their SBBH programs, and Georgia law provides important legal protections for schools. However, these protections are not absolute. Successful SBBH programs minimize legal pitfalls and risk and maximize effectiveness with well-crafted partnership agreements and policies.

Georgia law includes a legal doctrine that generally protects school systems from liability called sovereign immunity. According to this doctrine, the government (including public school districts) cannot be sued without the government's consent. [20] 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 (though it may not deter a litigant from filing a lawsuit).[21]

In-house service models that rely on school employees as providers risk higher potential liability than districts entering a partnership agreement with a third-party provider. For example, current Georgia law is unclear about a school district's liability for acts or omissions of mental health providers working as school district employees, particularly in the context of self-injury.[22]

In the sections below, we provide guidance on how written partnership agreements and policies should anticipate and address challenges and the expectations of students, parents, school districts, and providers. Although the legal and operational concerns are similar for partnership models (where a third-party provides SBBH services) and in-house services (provided by a school employee), there are important differences in how schools successfully manage those concerns.

Craft Comprehensive Partnership Agreements

Schools and providers establishing SBBH programs as partnerships should adopt a comprehensive partnership agreement that includes the following provisions.

Separate Entities

Partnership agreements should make it clear that the school district and the contracted provider are separate entities and are not employees or agents of the other. The written agreement should include standard language that makes it clear that each party is legally responsible for its own employees, agents, and contractors. The agreement should also include disclaimer language, indemnification, and release of claim provisions. The written agreement may use language from existing contracts with other community organizations and providers.

Confidentiality

Contracted providers are likely to receive private educational information about students who may participate in a program. To ensure appropriate handling of information, the written agreement should provide that the provider program maintains appropriate confidentiality of information, particularly student information. The

written agreement should provide for appropriate handling, return, and destruction of confidential information once the contractual relationship ends. The written agreement should clarify that the provider is responsible for the appropriate handling of confidential information and include a requirement to notify the school district immediately if a provider discovers that confidential records have been compromised.

Mandatory Reporting Obligations

All contracted providers must understand their obligation to report suspected abuse and neglect under Georgia's mandated reporter statute, O.C.G.A § 19-7-5. Partnership agreements should provide that the contracted provider understands and will abide by mandated reporting obligations.

Program Logistics

Partnership agreements should govern operational logistics including the location of the physical space that the provider will work in, and any limitations on the timing of provider services, to preserve student instructional time. The more forethought and details that the school district and the contracted provider can put into the written agreement, the smoother the program will operate.

Background Checks/Fingerprinting

Partnership agreements should require fingerprinting and background checks for contracted provider personnel prior to providing services or accessing parent and student information, without exception.

Insurance

Partnership agreements should address insurance requirements for the provider, including liability and workers compensation insurance.

Payment

Partnership agreements should include how the SBBH program will bill and be paid for services. Payment arrangements may vary. If the school system pays for the community provider services, the school district should specify the amount, method, and timing of payment and whether the contracted provider may bill Medicaid or other third parties. In the case of Medicaid or a third-party payment, the written agreement should make clear that the school system is not responsible for payment and that the contracted provider has the sole responsibility to request and secure third-party payment.

Protect Partnerships and In-House Programs with Policies and Procedures

SBBH programs are most successful if providers and schools adopt and follow best practices and implement appropriate policies and procedures to meet the specific needs and challenges of the community. With In-House programs, school districts hire their own mental health professionals as school employees. These districts must adopt and enforce policies and procedures that maximize effectiveness of service delivery, ensure fairness, and minimize harm to students, staff, and the school system.

Regardless of the type of SBBH program, school district policies and procedures should anticipate and address the following concerns (the list below is not a complete list).

Eligibility and Non-Discrimination

Districts must implement a non-discriminatory process of offering behavioral health services outside of any obligation for services under the Individuals with Disabilities Education Act (IDEA)[23] or Section 504 of the Rehabilitation Act (Section 504).[24] This may include determining a process to obtain funding from other sources to provide services to eligible students without insurance.

Continuous Support

When a school district uses an In-House SBBH service model and school employees provide behavioral health services, the district should use best practices standards for continuous behavioral health support for students beyond traditional school hours that include evening, weekend, and vacation coverage.

SBBH Services and Special Education

IDEA and Section 504 do not obligate schools to provide behavioral health services. Likewise, SBBH services provided to a student do not imply that the student is eligible for special education services under IDEA and Section 504.

Licensure, Certification, and Procedures

School districts must ensure that behavioral health service provider employees have and maintain the necessary state certification and licensure requirements. Districts should implement procedures to determine who at the district level will supervise the confirmation of credentials. Districts should train school employee providers on school procedures and requirements relating to harassment, discrimination, bullying, IDEA and Section 504, and suicide protocols.

Federal and State Privacy Laws

School systems must protect students' privacy and comply with federal and state law on records management. The paragraphs below explain the most significant federal privacy laws for SBBH: The Family Educational Rights and Privacy Act (FERPA), [25] The Protection of Pupil Rights Amendment (PPRA),[26] and The Health Insurance Portability and Accountability Act (HIPAA). [27] These federal laws apply to all SBBH providers and programs.

In addition to the three federal laws discussed below, state laws, regulations, and licensure requirements may govern health records in SBBH programs. Talk to your attorney about the applicable state laws and regulations to ensure SBBH program compliance.

FERPA: STUDENT EDUCATION RECORDS

FERPA protects the privacy of student education records and students' personally identifiable information. The law applies to all schools that receive U.S. Education Department funding, including all public and charter schools. Under FERPA, schools must obtain written consent from the parent or legal guardian of a student before they can disclose any education records or "personally identifiable information" of the student, or information from the student's education records, to a third party SBBH provider. "Personally identifiable information" includes the student's name, parents' names, address, personal identifiers (social security number), indirect identifiers (birth date), and other information that is linkable to a specific student.

There are two criteria for a document to be considered part of the education record:

1. The record must directly relate to the student; and
2. The record must be maintained by an educational agency.

FERPA provides strict requirements on records management and sharing of personally identifiable information.

In health and safety emergencies, FERPA permits student education records and personally identifiable information to be disclosed without parent/guardian consent. If the school believes that there is a significant threat to the health or safety of a student or others *and* knowledge of the information is necessary to protect the students' health or safety, disclosure of information does not violate FERPA. For more information visit FERPA | Protecting Student Privacy (ed.gov) .

PPRA: STUDENT HEALTH SCREENING RECORDS

The Protection of Pupils Rights Amendment (PPRA) requires schools to seek parental/legal guardian consent before screening students for behavioral health concerns. Consent is required prior to any psychological or psychiatric screening, examination, testing, or treatment in which the primary purpose is to reveal information concerning one of the following protected areas:

- Political affiliations
- Mental or psychological problems potentially embarrassing to the student or student's family
- Sex behavior or attitudes
- Illegal, anti-social, self-incrimination, or demeaning behavior
- Critical appraisals of others with whom the student has close family relationships
- Legally recognized privileged relationships, such as with lawyers, doctors, or ministers
- Religious practices, affiliations, or beliefs of the student or a student's parents
- Income (other than as required by law to determine program eligibility or financial assistance).

The school district sets the PPRA policies governing which consents and disclosures each school must collect before screening or referring students for services. For more information, visit PPRA | Protecting Student Privacy (ed.gov) .

HIPAA: STUDENT HEALTH INFORMATION

HIPAA sets national standards for safeguarding the use and disclosure of protected health information (PHI) in medical and behavioral health records. HIPAA requires that all protected health information be kept secure and confidential with proper administrative, technical, and physical safeguards. SBBH clinical records are protected health information—they are not educational records. SBBH programs must maintain clinical records independently from educational records and keep them under the SBBH program's sole custody and control. For more information, visit HIPAA Home | HHS.gov .

Consent

Schools cannot provide SBBH services to students without consent from the student and legal guardian(s). Consent occurs at three stages of SBBH service delivery: (i) consent to refer; (ii) consent for intake; and (iii) consent for treatment. The paragraphs below contain best practices based on federal and state law and experiences of schools and providers.

CONSENT TO REFER

The school must obtain the parent/legal guardian's consent before the school refers the student to a SBBH program and shares student information with the program. The student's parent/legal guardian must sign and date the consent in writing. The consent should specify what student information may be disclosed, the purpose of the disclosure, and the parties to whom the disclosure will be made. It is the school's obligation to seek consent from parent/legal guardian. The school should also provide a copy of the information and records disclosed to the parent/guardian upon their request. FERPA permits student records and personally identifiable information to be shared with some school counselors and some school contractors without parental consent. However, SBBH providers, as outsiders, are likely to require parental consent before the school can disclose the information to them.

As a matter of practice, the SBBH program should require that the school provide the service provider with a copy of all consents collected before performing any screening. SBBH programs should work with the school to draft consents to ensure that the consent forms include the required information and accurately detail the program's services.

CONSENT FOR INTAKE

SBBH programs must also obtain consent from the parent/legal guardian to contact a student for an intake assessment. The consent should comply with HIPAA requirements, be in writing, signed by the parent/legal guardian, and identify what information may be disclosed and the purpose of the disclosure. The SBBH program must obtain consent before contacting a student.

CONSENT TO TREATMENT

Georgia law requires that parents or guardians provide written consent to treatment before a school or provider may treat a student under 18 years old.[28] To access treatment, parents/legal guardians sign a written consent form that outlines the specifics of the proposed intervention, who will be providing the services, and the risks and benefits of the proposed services. The consent form should specify that the parent/legal guardian authorizes the SBBH provider to bill and collect payment from the student's private insurance (if indicated) and that the parent/legal guardian will be financially responsible for any cost-sharing amounts for such services (e.g., deductibles and co-payments). Georgia law provides some exceptions to the parental consent requirement for instance, in a medical emergency.[29] All treatment providers should familiarize themselves with state consent laws prior to beginning services.

Consider telehealth as an alternative to in-person treatments.

Throughout the Covid-19 pandemic, DBHDD temporarily permitted SBBH services via telehealth when applicable law and DBHDD guidance otherwise permitted. Georgia law, however, imposes prerequisites that providers must meet before providing telehealth services.

Georgia law requires providers to obtain special consent to use telehealth technologies from parent/legal guardian before providing such services.[30] The consent form should disclose whether third-party vendors will be used for record keeping, billing services, or legal counsel.

To bill Georgia Medicaid, the provider must obtain a consent form that conforms to the *Telehealth Member Consent Form* published by DBHDD including a description of the risks, benefits, and consequences of telehealth. The provider must include the form in the patient's medical record where the telehealth practitioner is located *and* where the child receives the telehealth service.

Additional Telehealth considerations

- Providers using telehealth technologies should receive training on the privacy and security standards imposed by applicable laws, including HIPAA, and appropriate methods to protect electronic information.
- Telehealth services require that communications occur on a secure network with a secure encryption that complies with HIPAA's patient privacy and security requirements.
- Telehealth providers must carefully assess the student to determine if the use of telehealth technologies is appropriate. Providers must ensure all services rendered via telehealth meet applicable standards of care.
- The provider's scope of practice under their licensure must authorize the services offered. Telehealth does not expand the scope of services a provider may lawfully provide beyond what is authorized by their licensure.

gaappleseed.org
(678) 426-4640
info@gaappleseed.org

Justice at our core
since 2005

Georgia Appleseed is a non-profit, nonpartisan law center with the mission to advance justice in Georgia through law and policy reform and community engagement.

Appendix A: Certified Peer Specialists

Certified Peer Specialist (CPS) practitioners include youth (CPS-Ys) and parents (CPS-Ps) who provide ongoing support to peers by promoting socialization, wellness, self-advocacy, and the development of natural supports. Practitioners work from their own lived experience.

CPS-Ys are between the ages of 18 and 26 with experience living with a mental health, substance use disorder, or co-occurring disorder. Youth peer specialists are willing to identify as living with a behavioral health condition and are prepared to use their experiences to support similarly situated youth. CPS-Ps must be parents or legal guardians for a period of at least three (3) years of a child with either a mental health condition, substance use, or co-occurring disorder who use their experience to support similarly situated parents.

Certified Peer Specialist practitioners can provide support to students and parents of students who are struggling with behavioral health challenges. Schools and school districts may implement Certified Peer Specialist support as part of their school-based behavioral health (SBBH) initiatives.

Georgia Appleseed's Certified Peer Specialists and Schools: First Steps for Creating a Successful CPS Partnership provides legal guidance (and, we hope, inspiration) for school districts to utilize certified peer support in the school community. Find our guide at www.peerspecialists.org The guide reviews key legal and liability considerations for successful implementation of certified peer support into SBBH programs and includes customizable documents – a Practitioner Agreement and Consent Form – to supplement ongoing SBBH services.

Appendix B: SUD After School Recovery Programs

Substance Use Disorders (SUD) After-School Recovery Programs are school-community partnerships that offer students recovery supports on school grounds after the school day. SUD After School Recovery Programs obtain a state license to operate as a "drug abuse treatment and education program."[31] The contract with the school must require strict compliance with state and federal laws governing SUD treatment providers.

SUD After School Recovery Programs in Georgia often follow the Seven Challenges Brief therapy model for adolescents who have a known or suspected SUD. The brief therapy model provides four, one-hour individual therapy sessions that serve three primary functions: (1) assess the student for SUDs and co-occurring problems and provide feedback; (2) provide brief treatment for SUDs; and (3) help the student respond to external pressures to abuse drugs or alcohol. These sessions stand alone or serve as a starting point for additional counseling services

Minors Can Consent to SUD Programs without Parent Permission

Georgia law permits minors (individuals under 18 years old) to consent to receive SUD treatment without parental consent. Written consent may be signed by the minor alone. In addition, SUD programs may disclose information to the criminal/juvenile justice systems without consent when a court mandates participation in the SUD program as a condition of court supervision.

SUD Programs Require Specific Safeguards Against Referral Kickbacks

Georgia and federal law contain requirements specific to SUD services. The Federal Eliminating Kickbacks in Recovery Act of 2018 (EKRA) prohibits offering, paying, soliciting, or receiving any remuneration in exchange for referrals related to SUD treatment services that are payable in total or in part by a federal healthcare program (e.g., Medicaid).[32] EKRA makes it illegal to knowingly and willfully offer or make any payment for referring a patient to a recovery home, clinical treatment facility, or laboratory. Georgia subsequently enacted their own Anti-Kickback Statute (AKS), SB4, in 2021 that prohibits soliciting or receiving payment in exchange for referrals.[33]

Any contract entered between a SUD After School Recovery Program and a school system is likely to trigger these statutes. EKRA defines a "clinical treatment facility" as "a medical setting, other than a hospital, that provide detoxification, risk reduction, outpatient treatment and care, residential treatment, or rehabilitation for substance use, pursuant to licensure or certification under state law."

Appendix C: Common SBBH Acronyms

AWARE	Advancing Wellness and Resilience in Education
BIP	Behavior Intervention Plan
CMO	Care Management Organization
CPS	Certified Peer Support
CSB	Community Service Board
DBHDD	Department of Behavioral Health and Development Disability
EKRA	Eliminating Kickbacks in Recovery Act
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
HIPAA	Health Insurance Portability and Accountability Act
IDEA	Individuals with Disabilities Education Act
PBIS	Positive Behavior Interventions and Supports
PHI	Protected Health Information
PPRA	Protection of Pupil Rights Amendment
SBBH	School-Based Behavioral Health
SRS	Screening and Referral Services
SUD	After School Recovery Programs
UDL	Universal Design for Learning

Endnotes

[1] J. Twenge, A.Bell Cooper, T. Joiner, M. Duffy, and S. Binau. (2019). *Age, Period, and Cohort Trends in Mood Disorder Indicators and Suicide Related Outcomes in a Nationally Representative Dataset, 2005-2017*. Journal of Abnormal Psychology. Vol. 128. (No. 3). 185-199. https://www.apa.org/pubs/journals/releases/abn-abn0000410.pdf

[2] Centers for Disease Control and Prevention, March 31, 2022*, New CDC Data Illuminate Youth Mental Health Threat During the COVID-19 Pandemic*, [Press Release], New CDC data illuminate youth mental health threats during the COVID-19 pandemic | CDC Online Newsroom | CDC

[3] Leeb RT, Bitsko RH, Radhakrishnan L, Martinez P, Njai R, Holland KM. *Mental Health–Related Emergency Department Visits Among Children Aged <18 Years During the COVID-19 Pandemic — United States*, January 1–October 17, 2020. MMWR Morb Mortal Wkly Rep 2020;69:1675–1680. DOI: http://dx.doi.org/10.15585/mmwr.mm6945a3

[4] Find more information about the Georgia Student Health Survey and results at Georgia Student Health Survey Dashboard (gadoe.org).

[5] National Association of School Psychologists. (2021). *Comprehensive School-Based Mental and Behavioral Health Services and School Psychologists* [handout].

[6] A. DiGirolamo, D. Desai, D. Farmer, S. McLaren, A. Whitmore, D. McKay, L. Fitzgerald, S. Pearson & G. McGiboney (2021) *Results From a Statewide School-Based Mental Health Program: Effects on School Climate*, School Psychology Review, 50:1, 81-98, DOI: 10.1080/2372966X.2020.1837607

[7] Nadeem E, Jaycox LH, Kataoka SH, Langley AK, Stein BD. *Going to Scale: Experiences Implementing a School-Based Trauma Intervention*. School Psych Rev. 2011 Dec; 40(4):549-568. PMID 27346911; PMCID: PMC4917015.

[8] Nadeem E et al. *Going to Scale*.

[9] Find Figure 1 and more information at Chicago Public Schools website, https://www.cps.edu/services-and-supports/special-education/understanding-special-education/multi-tiered-system-of-supports/.

[10] Georgia State Center of Excellence for Children's Behavioral Health evaluates outcomes for the Georgia Apex Program. Apex Program Overview Brief. 3/27/2020. More information from the Apex Program Overview Brief can be found at dbhdd.georgia.gov/georgia-apex-program-overview

[11] Positive Behavioral Interventions and Supports (PBIS) is a tiered framework that integrates data, systems and practices to improve students' social, emotional, academic and behavioral health; reduce discipline referrals; and promote a positive school climate. For more information on PBIS, please see Positive Behavioral Interventions and Supports (gadoe.org).

[12] Find your school's use of disciplinary suspensions or expulsions can be found at Georgia Appleseed Center for Law & Justice | Find My School's Suspension Rate (gaappleseed.org).

[13] Find more information about the Georgia Student Health Survey and results at Georgia Student Health Survey Dashboard (gadoe.org).

[14] Provider Manual for Community Behavioral Health Providers for The Department of Behavioral Health & Developmental Disabilities. These manuals are updated quarterly during the fiscal year. The current version can be found at dbhdd.georgia.gov/be-connected/community-provider-manuals

[15] The Medicaid program and the Children's Health Insurance Program (CHIP) provide health coverage for children living in households with incomes up to 247% of the federal poverty level, as well as certain groups of low-income adults. In the State of Georgia, nearly two million people, most of whom are children, receive health coverage through either Medicaid or CHIP, which is referred to locally as "Peachcare for Kids" or "PeachCare".

[16] TRICARE is the health care program for uniformed service members, retirees, and their families.

[17] Community Service Boards (CSBs), as public corporations and instrumentalities of the state, provide services for mental illness, intellectual/developmental disabilities, and/or addictive diseases. See OCGA §37-2-6 et seq. There are 22 CSBs across Georgia with Boards of Directors appointed by the governing authorities of the counties within the CSB area. For more information on Community Service Boards see GASCB.org. Find a complete list of Georgia's Community Service Boards at dbhdd.georgia.gov/ locations/community-service-board.

[18] Georgia DOE provides a complete list of current Georgia Apex Schools, found at Apex August 2019 2.0 Exp Schools and District.pdf (gadoe.org), accessed 10/14/2022.

[19] Visit Georgia Project AWARE State Education Agency Grant (AWARE-SEA) (gadoe.org) for more information.

[20] See *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).

[21] See *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).

[22] The following are cases from around the country where school districts were sued due to a student self-injuring. *Estate of Smith v. W. Brown Local Sch. Dist*., 26 N.E. 3d 890 (Ohio App., 2015); *Armijo By & Through Chavez v. Wagon Mound Pub. Sch*., 159 F.3d 1253 (10th Cir. 1998); *S.D. v. Moreland Sch. District*, No. 14-cv-00813, 2014 WL 3772606 (N.D. Cal. 2014); *Eisel v. Bd. Of Ed. Of Montgomery County*, 376 A.2d 447 (Md. 1991).

[23] 20 U.S.C. § 1400, et. seq.

[24] 29 U.S.C. 794; Federal law provides some protections against discrimination claims. For example, in federal cases, a plaintiff must show that the district's actions were deliberately indifferent for the district to be held liable. "[A] school district is not deliberately indifferent simply because the measures it takes are ultimately ineffective in stopping harassment. *Sauls v. Pierce County School District*., 399 F.3d 1279, 1285 (11th Cir. 2005); see also, *Long v. Murray Cnty. Sch. Dist*., No. 4:10-CV-00015-HLM, 2012 WL 2277836, at *30 (N.D. Ga. May 21, 2012) aff'd in part, 522 F. App'x 576 (11th Cir. 2013).

[25] 20 U.S.C. § 1232g; 34 CFR Part 99

[26] 20 U.S. Code § 1232h

[27] Health Insurance Portability and Accountability Act [HIPAA] of 1996, Pub. L. No. 104-191

[28] O.C.G.A. § 31-9-2(a)

[29] O.C.G.A. §19-7-2

[30] See Ga. Comp. R. & Regs. 135-11-.01.3.

[31] O.C.G.A. § 26-5-7

[32] 18 U.S.C. 220

[33] O.C.G.A. 25-6-580