

EXTREME RISK PROTECTION ORDERS (THE “RED FLAG LAW”)

() Required

() Local

(X) Notice

NOTE: State law now permits school administrators (defined as Building Principals or “other chief school officers”) or their designee to petition the courts for “extreme risk protection orders” against students who are at risk of physically harming themselves or others. These petitions are limited to currently-enrolled students and those who were enrolled in the previous six months. If the court grants the order, the student is prohibited from possessing or purchasing firearms, rifles, or shotguns, or attempting to do so. School administrators can also designate certain other school employees to petition the court for extreme risk protection orders. This law is also known as the “Red Flag Law.”

This policy summarizes the provisions of law as it applies to schools, and provides direction to staff regarding district expectations. We expect that guidance will be issued by the State on how to carry out this law, which may necessitate revisions to this policy. In a letter dated 9/20/19, NYSED recommends that Building Principals be designated as the main point of contact for addressing concerns, such that when staff receive concerns from other people, or they themselves have concerns about students, they should bring their concerns to the Building Principal.

In your district, it may make more sense for the Superintendent of Schools to be the main point of contact instead of the Building Principal, or another administrator at the district or building level. If that is the case, please modify this policy accordingly.

While the 9/20/19 NYSED guidance also recommends that Building Principals determine appropriate next steps once a staff member has brought forward their concerns, we advise that this be done in consultation with the Superintendent of Schools and school district attorney.

Extreme risk protection orders are court orders that restrict the ability of a person, who is judged likely to engage in conduct that would result in serious physical harm to him/herself or others, to purchase or possess firearms, rifles or shotguns, or attempt to do so.

NOTE: We use the phrase “recently-enrolled” as a simplified term, rather than reiterating the full phrasing from the law throughout this policy.

Under state law, Building Principals are permitted to petition the state Supreme Court for extreme risk protection orders for students currently enrolled in their building, or students who were enrolled in their building in the six months immediately before filing the petition (referred to in this policy as “currently-enrolled” and “recently-enrolled” students, respectively).

NOTE: While not mandatory, we believe it is in everyone’s best interest for employees to bring concerns forward to their building administrators when they suspect, or receive reports, that a student may be likely to physically harm themselves or others, regardless of whether they believe the student may have access to firearms.

When district staff members have reason to believe, either personally or through information received by others, that a currently-enrolled or recently-enrolled student is likely to engage in

conduct that would result in serious physical harm to him/herself or others, they are encouraged to report their concerns to the Building Principal or his/her designee. This is in keeping with employees' general responsibility for student safety, as well as their own interests for maintaining a safe working and learning environment.

Any other person, including but not limited to students, parents, and community members, may also bring their concerns to the Building Principal or his/her designee that a currently-enrolled or recently-enrolled student is likely to engage in conduct that would result in serious physical harm to him/herself or others.

If the Building Principal or his/her designee is absent from the building, the Superintendent of Schools (*or insert appropriate title*) will be the main point of contact to report concerns.

NOTE: The district's school attorney will be best able to provide advice as to whether sufficient evidence exists to support petitioning the court for an extreme risk protection order.

When a Building Principal receives concerns from persons under this policy, or has his/her own concerns about a student, he/she must immediately notify the Superintendent of Schools. The Superintendent will contact the school attorney, and both will assist the Building Principal in determining the appropriateness of petitioning the court for an extreme risk protection order.

When determining whether it is appropriate to petition the court for an extreme risk protection order, the district will consider, among other things, the following factors as they relate to the student:

1. Threats or acts of violence or physical force made against him/herself or another person;
2. Violating or allegedly violating orders of protection (i.e., restraining orders);
3. Pending criminal convictions or charges involving weapons;
4. Recklessly using, displaying, or brandishing a firearm, rifle or shotgun;
5. Violating previous extreme risk protection orders;
6. Evidence of recent or current drug or alcohol abuse; and
7. Evidence that the student has recently acquired a firearm, rifle, shotgun, other deadly weapon (including but not limited to knives, clubs, and metal knuckles), dangerous instrument (including items capable of causing death or serious physical injury, when used for that purpose), or ammunition.

NOTE: Outside of the Red Flag Law, schools are required to respond to students who make threats of violence within their Codes of Conduct and school safety/emergency response plans. Extreme risk protection orders are another avenue now available to schools.

Additionally, the Building Principal is directed to contact local law enforcement, in accordance with the Code of Conduct, district-wide school safety plan, and building-level emergency response plan.

NOTE: The law permits Building Principals or other school administrators to designate certain other individuals to petition the court. While districts may find a district administrator is the most

appropriate person to petition the court, we are including the full list of individuals who may be designated. We recommend that the Superintendent and school attorney be consulted when making this designation.

In consultation with the Superintendent and school district attorney, the Building Principal may designate, in writing, certain other employees at that school to petition the court for the extreme risk protection order. Such employees include: teachers, school guidance counselors, school psychologists, school social workers, school nurse, any other personnel required to hold a teaching or administrative license or certificate, and certain coaches (those who are full- or part-time paid employees required to hold either a temporary coaching license or professional coaching certificate).

Under Education Law section 3023, the district must defend and indemnify employees against lawsuits for negligence, accidental bodily injury or property damage where the employee is performing his/her duties within the scope of employment.

NOTE: The following paragraph is not required by law, but serves to help make sure that all employees understand the district's expectations for initiating extreme risk protection orders, and how to do so.

The Superintendent or his/her designee is directed to take appropriate steps to notify district staff of the provisions of this policy. This includes ensuring that employees are trained and knowledgeable about when and how to properly utilize the law to best protect the school from violence. Staff will be notified of who is designated to file extreme risk protection orders in the building or district.

Cross-ref:

5300, Code of Conduct

8130, School Safety Plans and Teams

Ref:

Civil Practice Law and Rules Article 63-A

Education Law §3023

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