



TUETH KEENEY
COOPER MOHAN JACKSTADT P.C.

Impetuous Statements v. Sort of Threats v. True Threats

How to Tell the Difference and How to Respond

Presented by:
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Date:
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DIFFERENT
BY DESIGN

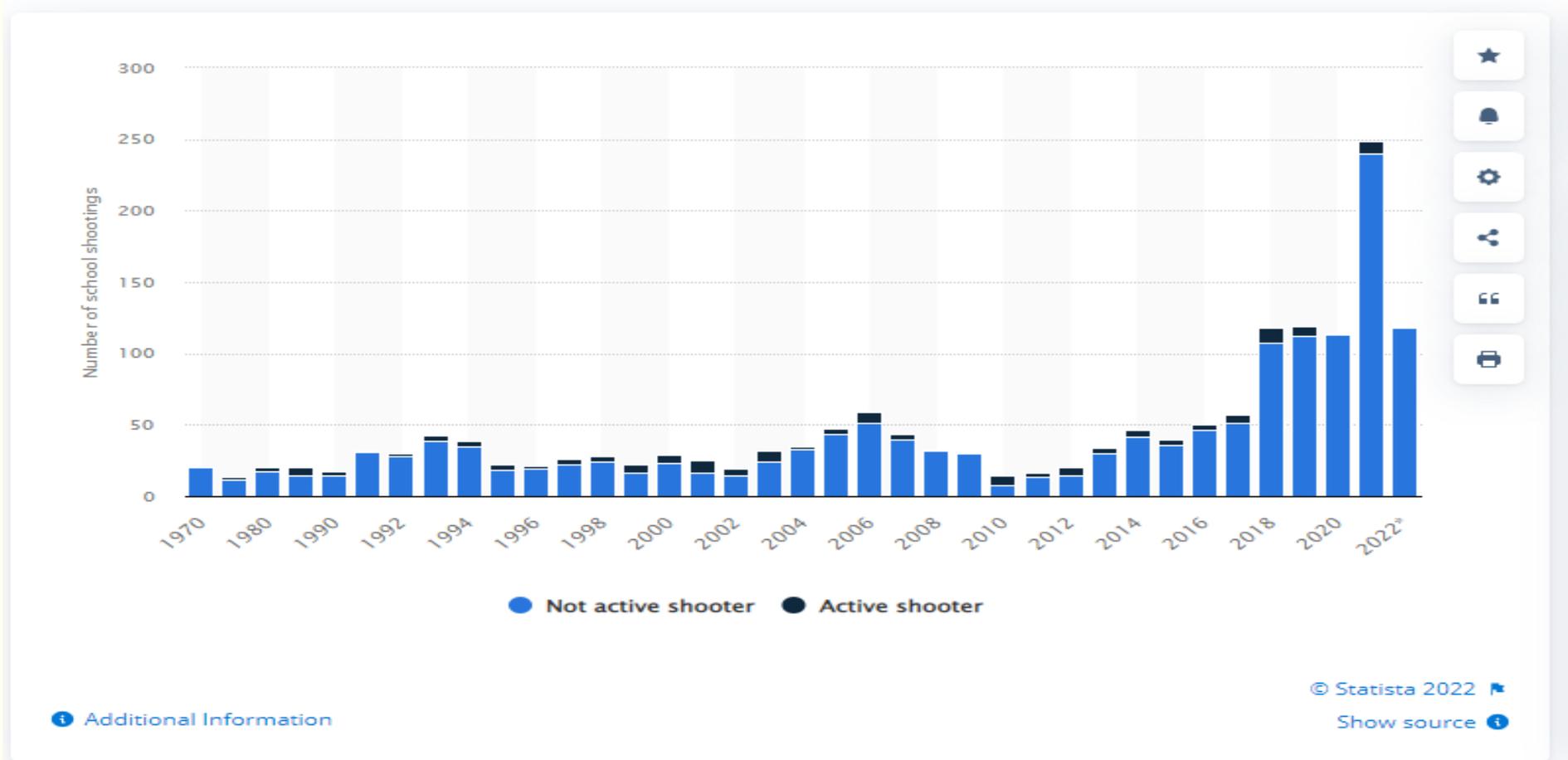
Agenda

- **School Threat Statistics**
 - 2019 U.S. Secret Service and the U.S. Department of Education Study
- **Threat Assessment Teams Overview**
- **Legal Considerations**
 - FERPA, Discrimination, Students With Disabilities



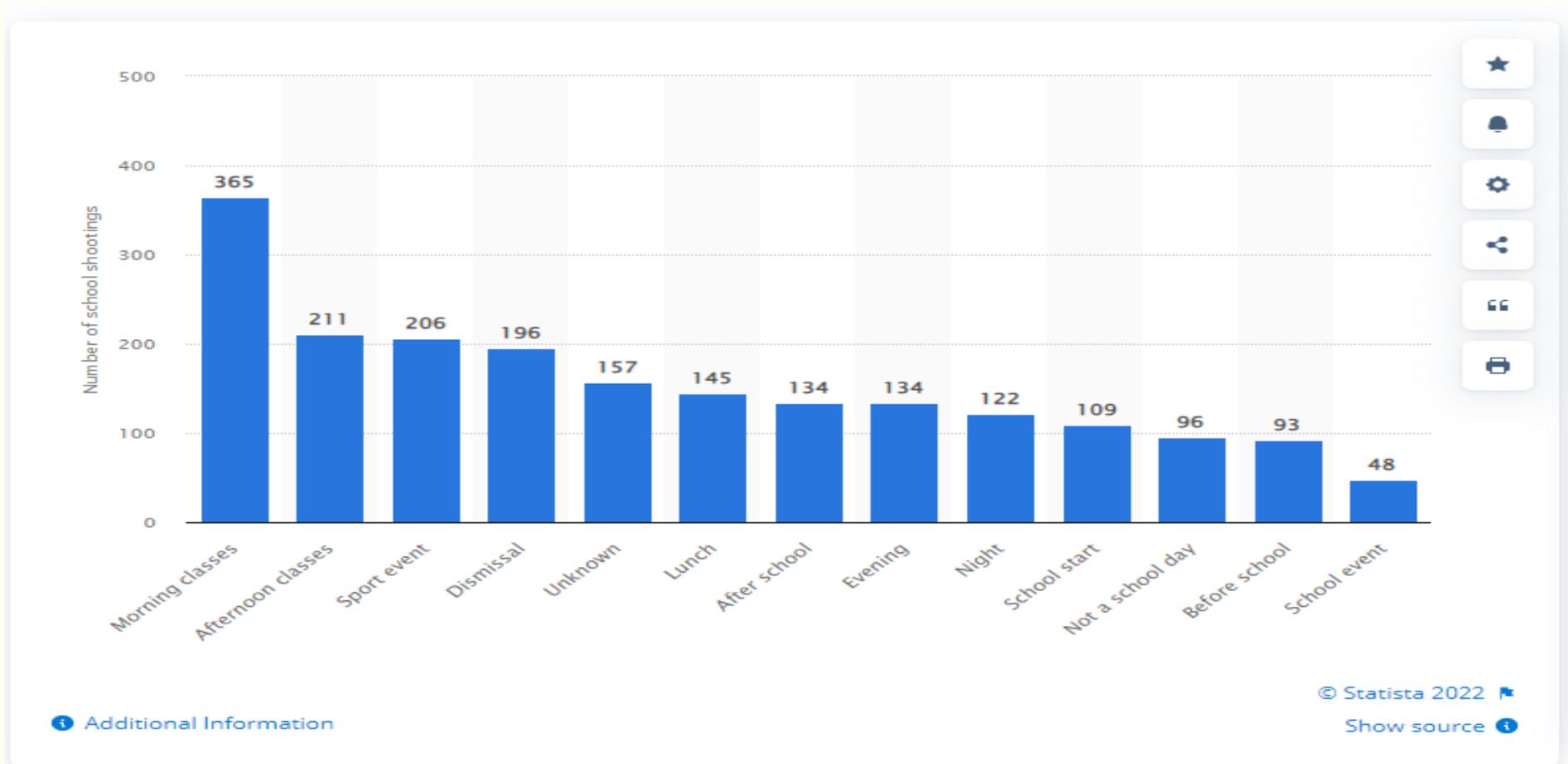
Importance of Threat Assessment Planning/Action

K-12 Shootings by Shooter Affiliation with School



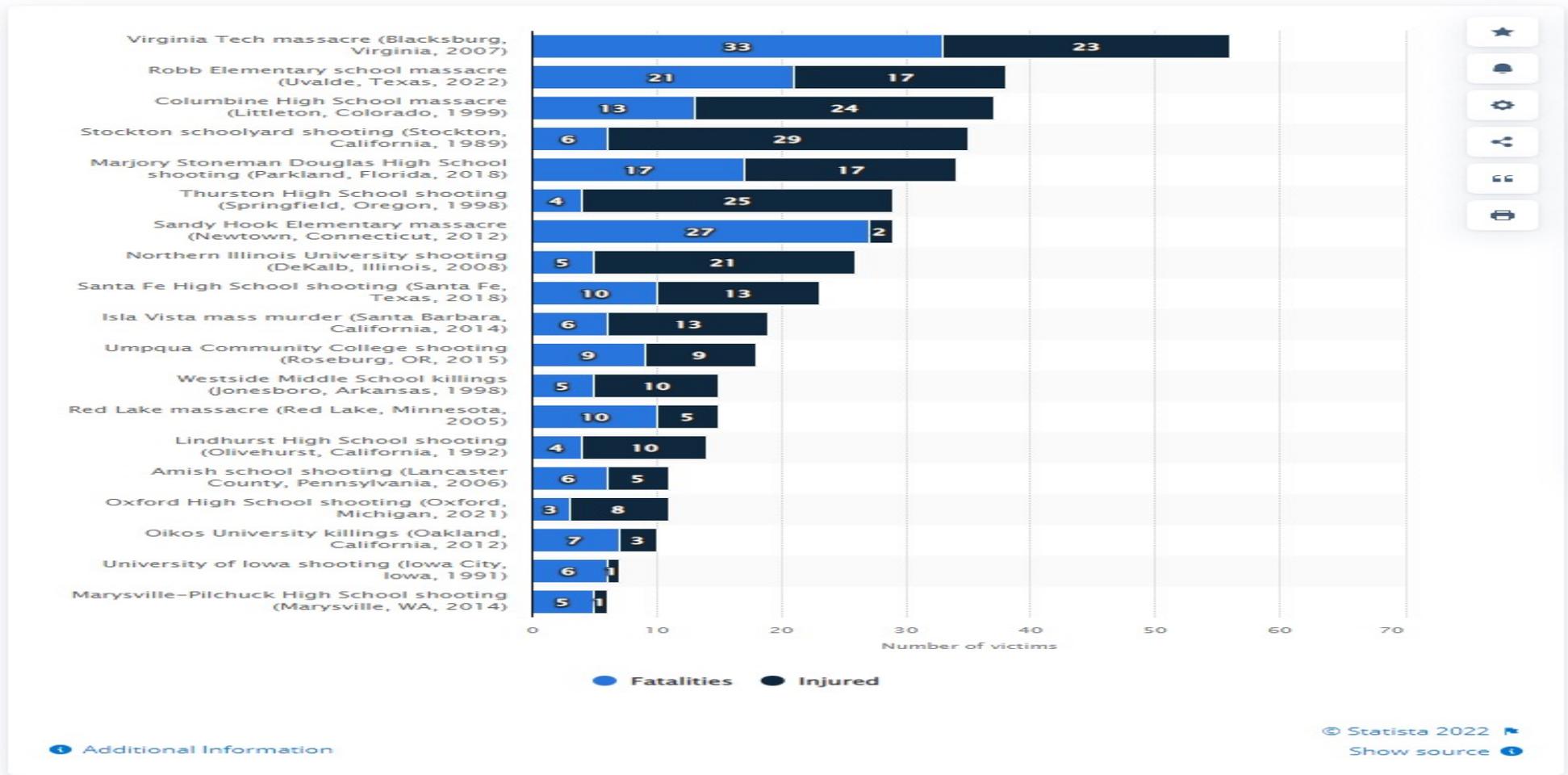
Importance of Threat Assessment Planning/Action

K-12 Shootings by Time of Day



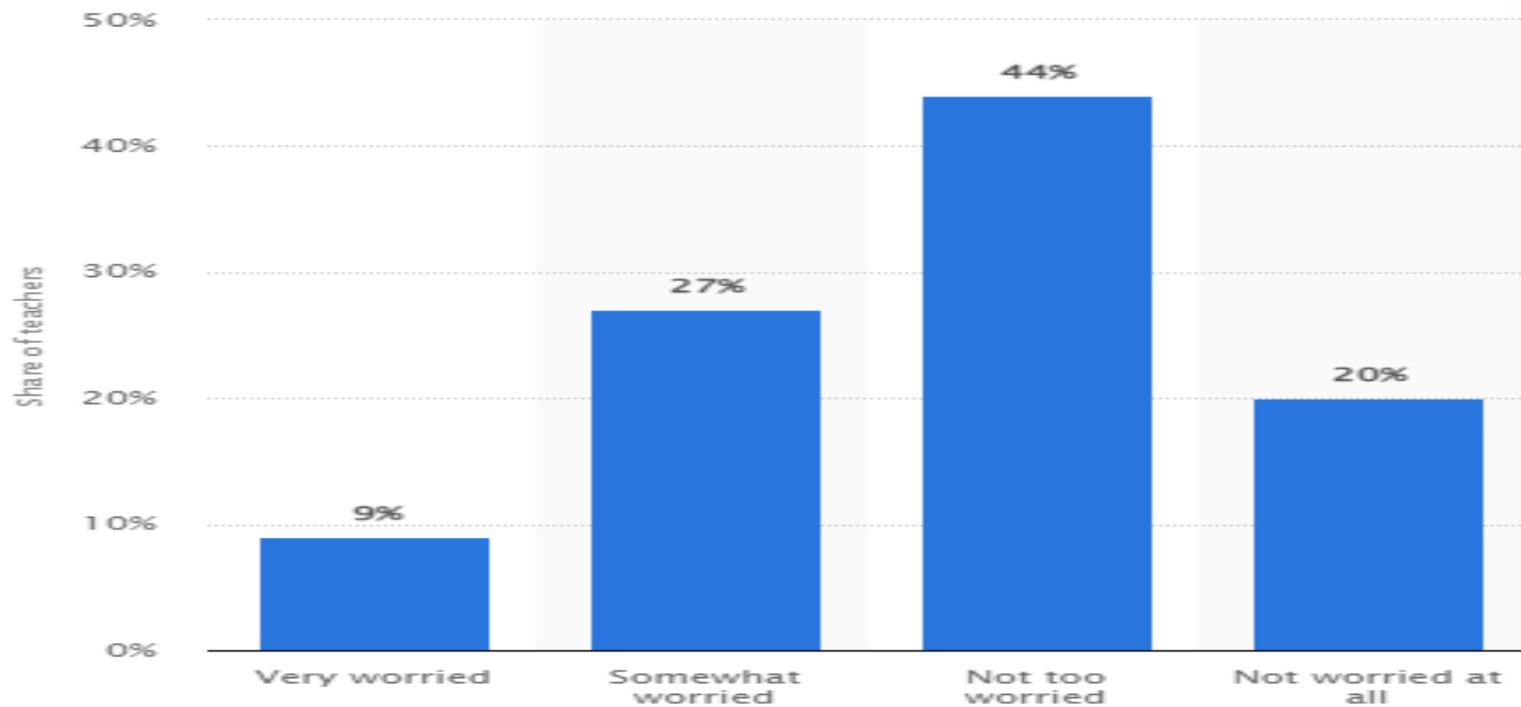
Importance of Threat Assessment Planning/Action

Number of Victims in School Shootings 1982 - May 2022



Importance of Threat Assessment Planning/Action

Teacher Report of Concerns about a School Shooting Happening



[Additional Information](#)

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School Shooting Statistic

Sources

- <https://www.chds.us/sssc/charts-graphs/> (Center for Homeland Defense and Security- "CHDS")
- Published by [Statista Research Department](#), Jun 2, 2023
- <https://www.statista.com/search/?q=school+shootings&Search=&p=1>

Key Findings

Key findings from a study conducted by the U.S. Secret Service and the U.S. Department of Education (2019)

- Targeted school violence is rarely sudden or impulsive
- There is no accurate or useful profile of a student attacker
- Many attackers felt bullied, persecuted, or injured by others prior to the attack
- Attackers usually have multiple motives, the most common involving grievances with classmates
- Most attackers engaged in some behavior, prior to the incident, that caused others concern or indicated a need for help.
- Most attackers had experienced psychological, behavioral, or developmental symptoms



Threat Assessment Teams

Missouri Behavioral Risk Assessment

MSBA Sample Policy JHDE:

- “The superintendent or designee shall establish one or more behavioral risk assessment teams (Team or Teams)... Each Team should include persons with expertise in **counseling, instruction, school administration and law enforcement**...Teams will utilize best practices in developing strategies for identifying and addressing potential threats to district students or staff.”

REPORTING OF VIOLENT BEHAVIOR

MCE Sample Policy 2673:

- “The Superintendent will establish a Behavioral Risk Assessment Risk Team (“BRAT”). The team will include individuals with expertise/experience in **counseling, school administration, learning and law enforcement**. The Team will identify, assess and prioritize key risk issues that may exist in District schools and facilities.”
- “The Team will meet on a regular basis and will report on an ongoing basis to the Superintendent concerning the status, needs and recommendations. The Team will report to the Board of Education... at a meeting designated by the Board.”

Threat Assessment Team

OVERALL GOAL OF THE TAT/BRAT:

- **Education and Awareness**

- Provide material for students, school employees and parents/guardians

- **Intake, Assessment and Response**

- Assess and respond to reports of threat from varying sources; make appropriate determinations, referrals and notifications

- **Communication and Information Sharing**

- Provide information necessary for reporting obligations

Threat Assessment Team

ROLE OF THE TAT/BRAT:

- **Protect:**

- Focus on maintaining the health, safety, and well-being of the school and community, including the at-risk student

- **Prevent:**

- Connect student(s) of concern with appropriate interventions and resources

Threat Assessment Team

TAT/BRAT COMMITTEE'S RESPONSIBILITIES:

- Obtains education and training resources
- Receives training by a threat assessment expert
- Works collaboratively with school staff and the community
- Actively, lawfully and ethically communicates with each other, District administrators and others
- Provides training to students, parents/guardians and community members
- Identifies and trains members of the school community who can receive reports of possible threats

Threat Assessment Process



Identify



Inquire



Assess



Manage

Identify

What is a threat?

- Concerning communication or behavior
- The communication or behavior indicates that an individual poses a danger to the safety of school staff or students
 - Communication can be through (1) behavior, (2) oral communication, (3) visual communication, (4) written communication, (5) electronic communication, (6) other means
- The dangers can be through acts of violence or other behavior that could cause harm to self or others
- Does not need to be communicated to the target
- Can be communicated through a 3rd party

Identify

What is targeted school violence?

- School was the intended target
- Typically, over days, weeks, months or even years
- The attacker's profile generally does not directly threaten the target, rather there was other communication of intent to a third party before carrying out the attack
- Pay attention to "leakage"
 - Indirect communication of an intent to cause harm

Identify

Transient Threat

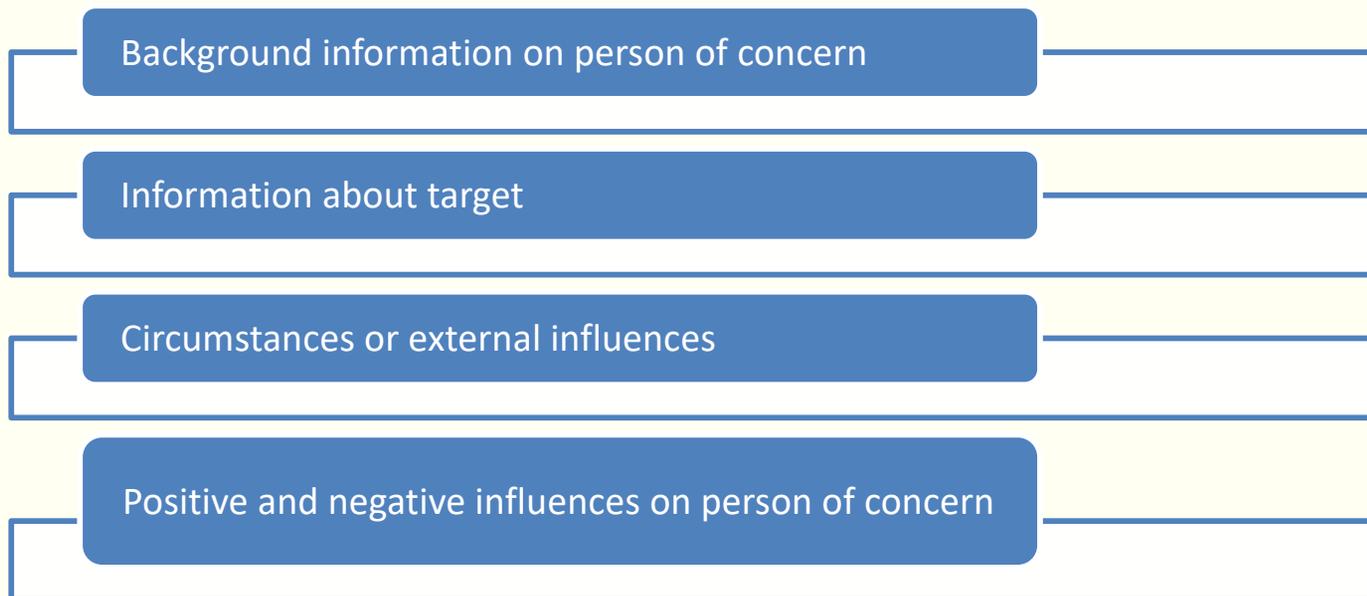
- Made a threat but does not pose a threat
- Person doesn't feel threatened
- Made in response to a specific situation, i.e. joke
- Manage through problem-solving

Substantive Threat

- Legitimate safety concern
- Intent to harm possible
- Perceived by recipient of intent to do harm
- Needs further assessment to determine level of concern

Inquire

Information to be obtained from inquiry



Inquire

School student records

- Discipline
- Prior threats
- Mental health concerns

Interviews

- Student of concern
- Parents of student
- School staff
- Classmates
- Friends

On-line history

- Social media posts
- Internet browsing history

Information from outside resources

- Probation, juvenile law enforcement
- SRO
- Outside agencies

Inquire



Assess

Low

Does not appear to pose a threat of violence or serious harm to self/others, and any exhibited issues/concerns can be resolved easily

Moderate

Does not appear to pose a threat of violence or serious harm to self/others at this time, but exhibits concerning behaviors requiring intervention

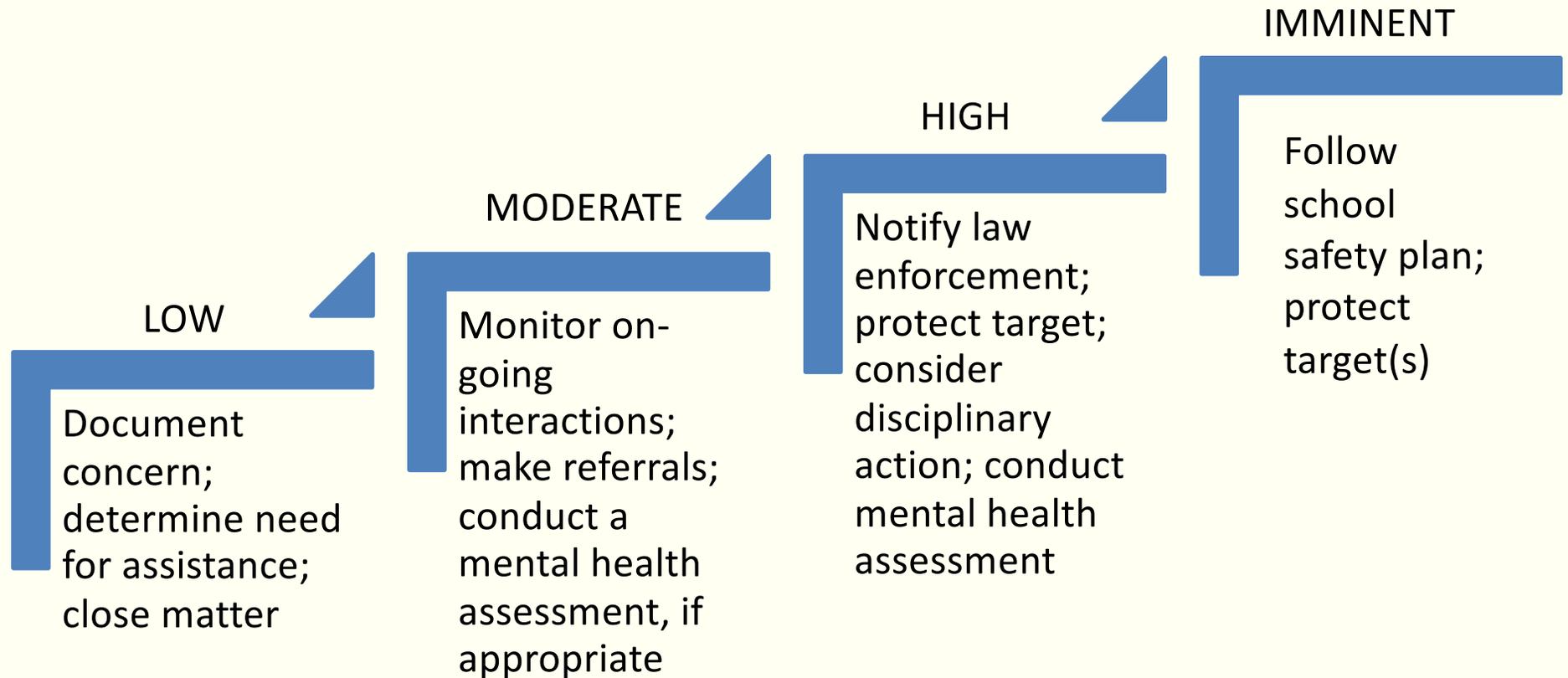
High

Does appear to pose a threat of violence, exhibiting behaviors of an intent to harm and has made efforts to acquire the capacity to carry out the plan

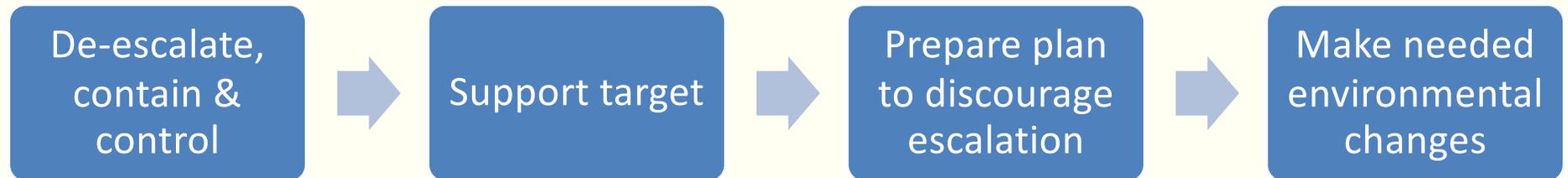
Imminent

Does appear to pose a clear and immediate threat of serious violence towards self and others and requires containment and action. May also exhibit other concerning behaviors that require intervention

Assess



Manage



Manage - Monitoring

Check-in/check out

Safety contract

Adult monitoring

Increased supervision

Restrictions

Ongoing collaboration between school and parent/guardian

Monitor for participating events

Manage – SEL Skill Development

Academic
supports

Anger
management
training

Social skills
group

SEL curriculum

Behavior
supports

Counseling/in-
school

Counseling/out-
of-school

FBA

BIP

Manage – Relationship Building

Establish system for student to seek support proactively from an adult

Peer mentor

Adult mentor

Increase engagement in school activities

Provide feedback and monitoring

Engage in leadership activities

De-escalation training for staff

Decrease isolation

Monitor reactions to grievances

Manage - Interventions

Revise IEP/504 Plan

Change in transportation

Evaluation—
psychological/mental health

Special Ed referral

Enhance SEL learning to
include: bullying, violence
prevention, suicide
prevention, emotional
regulation, conflict
management

Early intervention with
emerging problems

Let students know it's okay
to report a peer that is
struggling

Manage - Environment

Address systemic, procedural or policy problems that serve as precipitating events

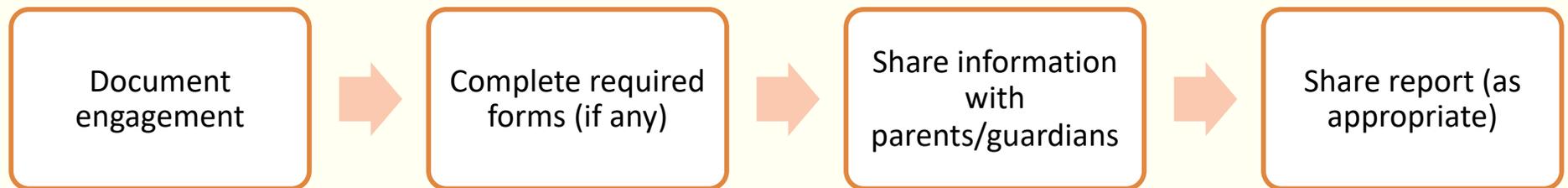
Build a caring and supportive environment

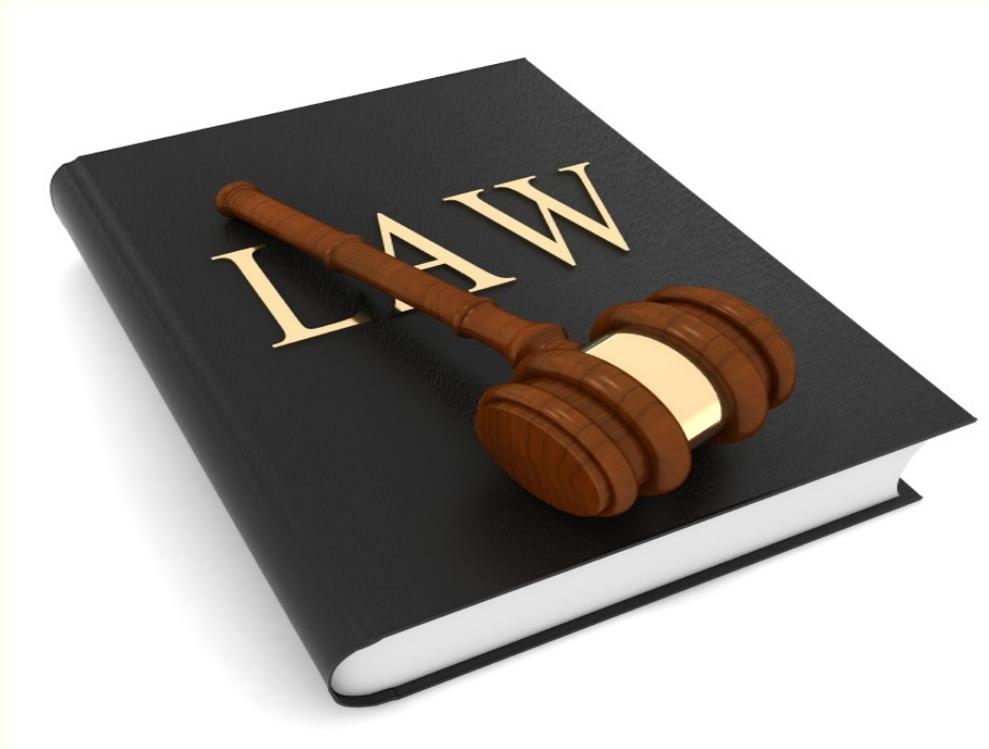
Implement on a non-bias basis effective threat and suicide assessment procedures

Assist staff in using positive dynamics throughout the school day

Encourage reporting of concerning behaviors

Documenting/Monitoring





Legal Considerations

Legal Considerations - FERPA

What About FERPA?

- A school or school district may disclose personally identifiable information (PII) from education records without consent to threat assessment team members who are not employees of the school district if they qualify as “school officials” with “legitimate educational interests.”
- Must follow the FERPA provisions in § 99.31(a)(1)(i)(B)
- Consider FERPA training and a written agreement for team members specifying requirements and responsibilities

Legal Issues - Discrimination

- Be mindful of legal protections for students
- Make sure that the criteria for assessing threats is consistently applied
- Apply discipline or interventions consistently for similar conduct
- Work with law enforcement to ensure consistent application of referred threats
- Document consistently in order to defend claims of discrimination

Legal Considerations – Psych Evals

A Note Re Psych Evals Related to Threat Assessments

- Consider practicality
- If district is requiring an eval, it must be paid for by the district
- What if district disagrees with psych eval?
- If student without a disability, are we complying with child find obligations?
- If student with a disability, there is a limited timeline before procedural safeguards are triggered, i.e., can't keep out indefinitely!

Legal Considerations- Students With Disabilities

- Two studies from districts in Colorado suggested that students with disabilities are up to **four times** as likely to be subjected to threat assessments as others.
- ADA's three part "direct threat" to health or safety analysis:
 1. What is the nature, duration and severity of the risk?
 2. What is the probability that the potential injury will actually occur?
 3. Could reasonable modifications of policies, practices, or procedures mitigate the risk?

Legal Considerations- Students With Disabilities

- Students with disabilities may need to be disciplined differently based on manifestation determination review.
- Districts may not impose harsher penalties on students with disabilities than they impose on students without disabilities for the same conduct.
- Threat assessments should not be used to circumvent procedural safeguards of disability laws.

Legal Considerations- Students With Disabilities

Removal (i.e., “change in placement)

- Removal for more than 10 consecutive days = change in placement.
- Series of removals that constitute a pattern = change in placement
 - More than 10 days total in a school year
 - Behavior is substantially similar to previous conduct that resulted in removals
 - Other factors: length of removal, proximity of removal to one another
- Districts may only “remove” student for up to 10 days without triggering manifestation determination review (“MDR”).

Legal Considerations- Students With Disabilities

If behavior/threat \neq a manifestation of disability

- District may impose same discipline as a student without a disability, including expulsion.
- For students with IEPs, District must provide educational services to enable student to participate in general education curriculum and progress toward IEP goals.

Legal Considerations- Students With Disabilities

If behavior/threat = a manifestation of disability

- Conduct functional behavior analysis (FBA) (if one was not already conducted); and *
- Implement or review/revise behavioral intervention plan (BIP) to address the behavior; and
- Return student to previous placement, unless parent and district affirmatively agree on change of placement.

Legal Considerations- Students With Disabilities

In limited circumstances, may consider unilateral removal to interim alternative educational setting (“IAES”), even when behavior is a manifestation of disability.

- Placement in IAES for up to 45 school days; but district must be able to prove one of the following:
 - student brought “weapons” to school or a school function;
 - possession, under the influence of, distribution of “illegal drugs or controlled substances” at school or a school function; or
 - caused “serious bodily injury” of someone at school, on school grounds or at a school function. Note: This is a high standard!

Legal Considerations- Students With Disabilities

Other Alternatives:

If no “serious bodily injury” has occurred, but we are concerned about threat of this:

- Consider whether maintaining current placement is “substantially likely to result in injury to the student or others”
- Can file for expedited due process hearing or seek court order for IAES

Questions?

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