

Storm on the Horizon: Federal and State Proposals Re: “School Safety” March 22, 2019

Since the shooting at Marjory Stoneman Douglas High School on February 14, 2018, policy changes to address school safety have been proposed at the local, state, and federal level. The proposed changes are wide ranging, and some have the potential to cause great harm to children of color and children with disabilities.

Many of the proposals focus on increased access to personal information about students. The new anonymous reporting mechanisms and softened information barriers may be mis-used, permitting implicit bias to take hold and undermining civil rights protections. Children of color and children with disabilities are currently removed from school and arrested at disproportionate rates due to decisions by improperly trained, supported, and supervised school staff. It stands to reason that increased access to anecdotal information about behaviors, including non-violent but non-traditional behavior caused by disability, in a climate of fear will only increase this pattern. Removal of children from school for non-violent disability related behaviors does not prevent school shootings nor will it improve school safety.

Proposals to arm school staff increase the risk that children with disabilities and children of color will be injured by a firearm while at school. Data show that these children are disproportionately impacted by adult abuse (corporal punishment, restraint and seclusion) at school, at the hands of improperly trained, supported and supervised school staff. These data raise reasonable concerns that these same students are more likely than others to be the target of poorly trained school staff bearing weapons.

REPORTS

Marjory Stoneman Douglas High School Public Safety Commission

On March 9, 2018, Governor Scott signed the Marjory Stoneman Douglas (MSD) High School Public Safety Act into law in Florida, establishing the MSD High School Public Safety Commission. The Commission issued its initial report in January 2019, setting the stage for many of the policy recommendations that follow.¹

Some of the relevant recommendations include:

- Use of the guardian program (“guardians” are school staff with concealed firearms).
- Every school district should implement a policy that requires school personnel to report all indicators of “suspicious student behavior” to an administrator. “Suspicious student behavior” is not defined.

¹ Link: <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf>

- School districts and community behavioral health providers should increase clinical/behavioral information sharing. Sharing of information should be mandated when there is a “threat of harm” (also undefined).
- All school districts in Florida should utilize a standard threat assessment instrument, and citizens should be encouraged to report “concerning behavior.” “Concerning behavior” is undefined.
- “Behavior,” not just “threats” should be evaluated by the TATs. School personnel should be mandatory reporters to the TAT on behavior indicators, and TATs should actively seek out behavior information on students.

Federal Commission On School Safety

On March 12, 2018, President Trump established the Federal Commission on School Safety. Members of the Commission include the Acting Attorney General U.S. Department of Justice, and the Secretaries of HHS, Homeland Security, and Education. A report with recommendations was issued on December 18, 2018.²

When implemented together, the recommendations in the report could result in serious harm to youth who have no propensity for violence. As with the Parkland Commission report, there is a recurrent theme -- using the provision of services for youth as a method to provide threat data to law enforcement. The report appears to connect the identification of mental illness to preventing violence, even though the report itself states clearly that evidence does not support this connection.³

Some of the relevant recommendations include:

- States should define “concerning behaviors” that initiate the need for a threat assessment to include “sudden or dramatic changes in mood, appearance, or behavior.”
- There should be a low threshold for defining concerning behaviors, so that protocols address a continuum of behaviors, not just direct threats or behaviors indicative of planning an attack.
- Lowering a state’s legal commitment threshold for mandatory Assisted Outpatient Treatment (AOT), which can include mandatory medication.
- State policymakers should consider softening civil commitment standards, the standard by which a person is committed to a hospital for treatment.
- Amend the HIPAA Privacy Rule to make it easier for medical providers to disclose confidential patient information to a state public health or law enforcement authority.
- Determine, based on the unique circumstances of each school (such as anticipated law enforcement response times), whether or not it is appropriate for school staff to be armed.

² Link: <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

³ See page 27

- Monitoring of student’s social media.

LEGISLATION

Since the release of the Parkland Commission Report, there have also been state and federal legislative efforts on a host of issues included in these conversations.

A recent bill in the Florida Legislature to amend FL §24.1006.07(b) ⁴ proposes:

- The requirement to create a school guardian program in certain circumstances.
- Required promotion of an anonymous tipster program by the school district on school sponsored sites and platforms.
- Sharing of certain student mental health information with sources not currently in possession of it, including threat assessment teams. TATs include law enforcement. This sharing to include students who are “*at risk*” of developing emotional disturbance or mental illness if “*reasonably necessary to ensure access to appropriate services for the student or to ensure the safety of the student or others.*”

In Georgia, there is a bill containing related proposals. ⁵

FERPA Guidance

On February 12, 2019, USDOE issued a guidance document: “***School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA)***.” ⁶ Drafted in response to the report of the Federal Commission on School Safety, USDOE seems to take an unusual approach for a guidance document -- describing work-arounds to the statute to guide recipients how to increase access to private student information, rather than promoting faithful implementation of the law.

ACTION STEPS

Federal

- Inform the debate
 - Educate re: the current legal rights of student with disabilities/children of color with respect to FERPA privacy protections, civil rights laws, discipline rights,

⁴ Information on Florida Senate 2019 SB 7030 at <http://www.flsenate.gov/Session/Bill/2019/07030>; Bill text at <http://www.flsenate.gov/Session/Bill/2019/7030/BillText/Filed/PDF>

⁵ See GA SB 15: <https://www.legiscan.com/GA/bill/SB15/2019>.

⁶ See: https://www.ed.gov/news/press-releases/us-department-education-acts-school-safety-report-recommendation-improve-understanding-student-privacy-law?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

rights to parental notice and consent, and other issues raised by the documents above. These laws have not been amended and remain in full force.

- Educate re: the need for a reasoned and data driven discourse on the possible implications of proposed changes to laws such as FERPA and HIPAA on children with disabilities/ children of color. What are the consequences of these changes?
- Keep the public focus on the true drivers of school safety, and provide data and case examples about the ways in which privacy related reforms will not result in safer schools.

State

- Same as above with regard to federal law.
- Advocate regarding the significant impact of on children with disabilities/ children of color, of information bleed, especially in states that already have elevated school removal and segregation rates for students with disabilities.⁷

What are the likely impacts of:

- Information sharing between school and community based systems.
- Arming school staff.
- Encouraging referrals to threat assessment of behavior that does not constitute an actual threat by untrained community members and school staff.
- Track proposed legislation and work proactively in coalition.
 - Develop principles for the assessment of state legislation and regulation as it is proposed.
 - Collect data as appropriate for rebuttal.
 - Provide assistance in drafting testimony, op-eds and other forms of persuasive text.

Local

- Track and address proposed changes to school and district level policies regarding information sharing.
- Advocate on behalf of individual students whose rights to information privacy may be violated or who may be disciplined illegally as a result of these proposals.
- Work to prevent the creation of guardian programs at the LEA level.

For assistance with data and resources on this topic, please contact Diane Smith Howard at dianesmithhoward@ndrn.org.

⁷ Advocates may find the rates of removal for students with disabilities at the state and local level by accessing the Civil Rights Data Collection. <https://ocrdata.ed.gov/>

