

K-12 Threat Assessment Processes

Civil Rights Impacts

February 2022

INTRODUCTION

Public safety in the United States is defined and experienced differently for Black and Brown families than it is for white ones. The use of law enforcement to ensure “public safety” equates to harm and death for members of Black and Brown communities.

Safety from catastrophic events, such as a mass shooting that occurs at school, is critically important. A very real concern about such events has spawned a series of “solutions” to prevent them, some of which will not make schools safer, but will instead seriously harm certain children and their families.

The very concept of “threat assessment” as it is actually implemented, turns the goal of school safety on its head by encouraging school officials to see the students themselves as potential dangers to the school community, rather than valued community members and children worthy of protection. Within that lens, not all students are viewed equally.

It is important to be clear what we mean by “threat assessment,” because how it is described in literature and what occurs in the field are drastically different things. In practice, threat assessment most often consists of a meeting between a law enforcement officer, and one or two school staff. These staff are generally the administrator in charge of school discipline and a school counselor or teacher. This team evaluates a situation, as described below, and makes a recommendation regarding discipline for the student. School staff have shared with advocates that they do not feel comfortable speaking up in the presence of the law enforcement officer, and that the meeting generally goes in the direction the officer recommends. Parents and school staff who know the child personally are often not consulted at all.

There are layers of protection against discrimination that threat assessment as it is commonly implemented, tears away.

- It places law enforcement directly into the life of the student and into what are often mundane discipline situations, in place of decision making by trained educators.

- It provides a functional end run around legal/civil rights protections for children that are necessary to prevent discrimination.
- It may be used as a way to suspend and remove children “off the books,” without the legally required due process intended to prevent incorrect discipline decisions (e.g. caused by insufficient evidence or unsubstantiated reports).
- It sidesteps school discipline codes that have been developed specifically to prevent the kind of subjective decision making that opens the door to bias and discrimination. Some school districts have intentionally developed discipline codes that provide these protections.

For students who experience frustration, loneliness, or bullying at school, school counseling, intervention by a caring adult and the involvement of the [IEP](#) team (when appropriate) are better solutions than involving law enforcement. If a child’s behavior truly presents a danger, law enforcement is never prevented from intervening to protect school safety.

Even when it does not result in a suspension or other discipline, the threat assessment process itself has negative consequences for students, such as:

- A report that remains in the student’s school records regardless of the outcome;
- Significant intrusion into the child and family’s private information and private lives;
- Financial burden as families are asked to pay for evaluations and to miss work to cooperate with the collection of records and interviews; and
- Educational disruption as families must often homeschool or find a separate placement for the child during the evaluation process.

The process places a huge burden of stress, time and worry upon the child and family.

In practice threat assessment is not a benign method to prevent more severe discipline, nor is it needed to provide children with services. Threat assessments of this type provide a way for law enforcement to intervene directly into a student’s education and the lives of their family members.

Threat assessments can result in:

- Profiling of and discrimination against Black and Brown students, and children with disabilities, especially those who are multi-marginalized.
- Inappropriate sharing of private student information with law enforcement, increasing the already outsized role of law enforcement in the lives of students and their families.
- Long-term educational consequences impacting future opportunities and unfair labeling and stigma for the student.
- Compounding the trauma that students and families who have had negative interactions with law enforcement have experienced, both personally and intergenerationally.
- Discriminatory discipline and inappropriate arrests or referrals to law enforcement, immigration authorities or child protective services.
- “Mission creep,” by purporting to solve a series of social and educational problems that go beyond protecting school communities from serious threats of violence. These social and educational problems already have effective, evidence-based solutions that are underfunded and underutilized.
- Draining resources (funds and staff time) from school districts and communities.

Threat assessment teams, in some places, have become “judge, jury, and executioner,” going far beyond a role of assessing risk of serious imminent harm, to determining guilt and specifying punishment. In this way, they defeat legally required civil rights protections, usurping the role of education, mental health — including counselors, psychologists, etc., from diverse and culturally relevant backgrounds — and other professionals. Threat assessments can fracture important bonds and relationships of trust that are essential for families to access school-based supports and resources, as they situate the school in opposition to a student.

Here are some real-life examples

1. An elementary student with a disability made a non-specific threat to bring a weapon to school. The threat was an expected manifestation of his disability, and it was not possible for him to act on it due to his disability.

His parents immediately offered to:

- *Permit the district to search him and any possible storage spaces he used daily.*
- *Provide a clear plastic backpack for anything he needed to carry.*
- *Cut the pockets from all of his pants.*

The threat assessment team, which did not include any professionals knowledgeable about disability, insisted that the family agree to a search of the family home. The child's parents were shocked and refused. The child remained out of school for months while this situation was resolved. He did not receive any education or behavior-related services while he was out.

2. *A 10th grade student with a disability was excluded from school indefinitely pending the results of a "threat assessment" that the school district required his parent to get at her own expense, causing him to miss almost an entire month of school.*

It had been alleged that the student made a threat to a teacher and students. He was not officially suspended, but the school told his parent that he could not return to school until he got a mental health assessment. Due to confusion on the school's part about the type of evaluation needed (the school used psychological evaluation, mental health assessment, and threat assessment interchangeably), limited access to in-person testing opportunities because of COVID-19, and the parent's lack of transportation, it took almost two weeks for the evaluation to be completed.

Even after receiving a copy of the evaluation, it took over a week for the school to allow the student to return to school, even though there was no reason to believe that he was dangerous. The student missed almost an entire month of school and did not receive the services outlined in his IEP during this time. Because he was never technically suspended, he did not receive the discipline protections under federal and state education laws related to disability, nor the benefit of the due process right to appeal a long-term suspension required by state and federal law.

In response to a complaint, the state department of education found the school district violated state and federal disability law.

3. In [Tampa, Florida](#), based on interviews from families across Tampa Bay, threat assessment results in intrusive and harmful [involuntary hospitalization](#).

“Families across Tampa Bay who said their children have been placed under the Baker Act for behavior that alarmed police but is, for those children, normal....Deputies in Pasco check the credibility of every threat a student makes, said Lt. Troy Ferguson, who oversees those who work in schools. They visit the child’s home, talk to parents, look for means and take note of the conditions. But that doesn’t always happen before the Baker Act is invoked. The timing depends on multiple factors, like the severity and specificity of the threat and the age of the student, Ferguson said. The problem is compounded by the fact that resources aren’t always available to kids who need mental health care but not [hospitalization](#).”

Definition of “Threat Assessment”

“Threat Assessment” is difficult to define because the practice(s) vary so dramatically.

One analyst has provided [this summary](#) of the stated intent of threat assessment:

“Threat assessment is promoted as a process for evaluating communicated threats to the school community, within their context, to determine whether threats are likely to be carried out. The goal is to be in a position to take preventative action on true threats without overreacting to normal juvenile venting, joking or personal characteristics common among young people (as styles of dress, communication, etc.).”

Several states have passed laws or regulations requiring its use, but the practice remains highly variable. Citations to some of these state laws are included at the end of this report. The number of states and school districts that require a threat assessment are proliferating, but the laws are vague, resulting in great variability in how they are implemented at the local level. In addition, some schools and districts use threat assessment when state law does not require it.

In the field, “threat assessment” is used in a broad range of circumstances, including in circumstances involving no actual threat. It is often an informal process that varies not only from district to district, but also from day to day and child to child within the same district.

For example, the team may meet to discuss a child who *appears* in need of extra services but has not made a threat at all. In addition to situations with no threat, the “threat” analyzed may not be viable on its face, for example a non-specific threat written by a child whose IEP team agrees is simply unable to act on it. These processes and practices invite the biases endemic to our education system, such as racism and ableism, to become central to decision making.

PROBLEMS: The Use of “Threat Assessment” Processes Has Negative Consequences For Black And Brown Children And Children With Disabilities.

Nationwide, policies are being created and funding increased for law enforcement response rather than increasing funding for critical engagement with diverse clinicians who are trained in conflict resolution, mental health services and support to students and families. Students and communities have reported that the increased use of threat assessment in schools has led to abusive profiling of students by local law enforcement. The case examples above highlight the intrusive nature of threat assessment into the private lives of Black and Brown families and the families of students with disabilities.

Suspension is extremely harmful to students. Researchers find that the frequent use of suspension in a school brings no benefit to other students in terms of test scores or graduation rates. Even a single suspension can severely [decrease the likelihood that a student graduates](#) from high school, threatening negative long-term career and economic consequences. Research also suggests that a relatively lower use of out-of-school suspensions, after controlling for race and poverty, correlates with higher test scores and [college enrollment rates](#), not lower for all students.

With regard to students with disabilities, IEP teams were explicitly included in federal legislation during the 1970s to draw upon the expertise of professionals

and parents in making decisions about student programs. Needs assessment regarding student behavior was intentionally included as a role for the IEP team, which is much better equipped than a threat assessment team to evaluate the child's needs and determine changes in the child's program.

PROBLEMS: DISCRIMINATION The Threat Assessment Process Permits Subjective Bias In Decision Making with Regard to Black And Brown Students And Students With Disabilities.

It is incumbent upon those advocating for threat assessment to show that threat assessment team decisions are unbiased, not vice versa. That case has not been made. Given the subjective nature of the threat assessment process as it occurs in the field, the need to comply with civil rights laws, and this nation's history of discrimination, the proof that it will not result in harm to children must be unassailable.

Instead, there is minimal if any research or data to analyze. What little research exists on bias in the use of threat assessments has been very limited in scope and size, and almost exclusively focused on a single state. Nationwide data regarding the actual impact of threat assessment is not available, so these processes are not transparent to communities and to the government agencies that enforce civil rights laws. The fact is that we do not know how many of the Black and Brown students and students with disabilities referred to threat assessments are also suspended or expelled.

If Black and Brown students and students with disabilities are referred for threat assessment at higher rates than white peers without disabilities, they are in serious jeopardy of receiving harsher discipline as a result. Research has repeatedly borne out that Black and Brown students do not engage in behavior that violates school rules at rates higher than white students, yet schools punish them more frequently and more severely. There is reason to worry that if threat assessment referrals mirror the disparities found in suspension data, the outcome is likely to result in discrimination.

Black and Brown students and those with disabilities are suspended from school at a rate that is disproportionate to that of their white and nondisabled peers for

comparable behaviors and they are frequently punished more harshly than white peers for similar offenses. For example, in the 2015-2016 school year, students with disabilities lost 44 days of instruction — more than double the loss of days for peers without disabilities. Black students lost 5 times the amount of instruction (66 days) as white students (14 days) due to suspensions, even though they represent only 15% of the student population. In the 2017-2018 school year, Black girls were 5 times more likely than white girls to be suspended. These patterns begin before some students are out of diapers: 47% of Black preschool students receive more than one out-of-school suspension, even though they make up only 19% of the public preschool population.

The percentage of students referred to law enforcement by school staff is also disproportionate. For example, in 2015-2016, 31% of public school students referred to law enforcement or arrested were Black students, which is highly disproportionate. Black students make up just 15% of the student population. Students with disabilities were similarly over-represented as they comprised 28% of students referred to law enforcement or arrested, yet 12% of the student population. For both groups, their share of the referred was more than double their share of the enrolled.

Threat assessment referrals do seem to track the discriminatory trends seen in other school discipline decision making. See this example from [“Who’s The Threat”](#) in Albuquerque: Children with disabilities made up 18% of the total student population but made up 56% of all threat assessments. Black children made up only 2.6% of the student population but made up 9.6% of threat assessments.

Disproportionate Referral for Threat Assessment is NOT Simply a Function of Student Behavior.

Increasingly, research shows that individual implicit bias and systemic factors are as or more responsible for disciplinary disparities than student behavior or poverty. Although racial/ethnic disparities in school suspension and expulsion rates are sometimes attributed to differential rates of disruptive behavior for Black and Brown students, research shows that [Black and Brown](#) students are not more likely than other students to misbehave.

For example, studies show that combined sex and race stereotypes lead school educators and administrators to [“adultify” Black girls](#), perceiving them as loud, defiant, sexually provocative, and less innocent and less in need of care than their white counterparts. This gendered, racial bias combined with vague school policies that allow for broad administrator discretion in imposing discipline, lead school staff to punish Black girls more often and more harshly for normal, childlike behaviors, even though they are not more likely to misbehave. Adultification bias applied in the education context has meant that Black girls are overrepresented in every aspect of the school discipline continuum, leading to lost instruction time, school pushout, and long-term economic consequences. When law enforcement officers are involved in school discipline, adultification bias leads them to disproportionately arrest, detain, and physically harm Black girls.

Research on the extent to which bias exists in the threat assessment process is unlikely to yield results that are different from research into bias affecting other school disciplinary processes.

PROBLEMS: POLICING

Threat Assessment Teams Further Entrench Law Enforcement In The Lives Of Black And Brown Students And Students With Disabilities

Involving police in threat assessment practices gives officers decision-making authority about student behavior in a manner that is often not governed by constitutional protections, and it grants them access to private student information. School staff report that in practice, threat assessment teams often do not engage in a collaborative discussion when a law enforcement officer is present on the team; what the officer recommends is generally what occurs.

While there are times that a real threat to school safety must be thwarted, there needs to be a better way to achieve this goal that is transparent and prevents bias. School districts are required to report referrals to law enforcement, but those that occur as a result of the threat assessment process may not be

reported. This information is necessary for stakeholders to address negative impacts on groups of children.

Involvement of law enforcement in threat assessment increases the likelihood of a punitive and exclusionary response. Police officers are not psychologists, nurses, guidance counselors, or certified educators. Police are police. They are trained in enforcement, not prevention or remediation. A respected researcher has found that even [“well-intentioned SROs \[school resource officers\] can still influence schools to be somewhat more focused on law and order and less focused on students’ social and emotional well-being.”](#)

PROBLEMS: NOT A BENIGN REFERRAL SOURCE

Threat Assessment Is Not Necessary Or Effective As A Helpful Source of Services For Troubled Youth, Nor Is It Benign.

Referral and screening resources currently exist and are required by law — it’s the services that are unavailable. There are screening and referral procedures already embedded in state and federal programs that cover infants, toddlers, children and youth, from birth through high school. It is harmful to children and families to refer them to services that they cannot access, wasting their time and resources, and provides a false sense of usefulness to those making the referral.

If more screening and referral services are needed, it would be far better to fund them sufficiently and to provide them early on, than to wait to address the problem when it reaches a crisis point. Services provided earlier are more effective. The solution is to improve existing programs, especially those that serve very young children, rather than to create new ones.

Some of the current referral and screening requirements include:

- Multi Tiered Systems of Support (MTSS)(General Education)¹.

¹ For more information about how multi-tiered systems of support can assist in identifying and supporting students in need of services, from the U.S. Department of Education: [Mental Health/Social-Emotional Well-Being \(pbis.org\)](https://www2.ed.gov/programs/mentalhealth/social-emotional-well-being/)

- The “Child Find” requirement in the IDEA and Section 504².
- The screening requirement of the Early and Periodic Screen, Diagnostic and Treatment (EPSDT) program of Medicaid, which is free to all Medicaid eligible children (General Education).³

Headstart and other early childhood programs also identify needs early on.

It is difficult for families to access services once the need is identified. For example, community mental health programs often have long waiting lists for therapy. A “referral to nowhere” does more harm than good, and certainly does not increase public safety.

PROBLEMS: School Districts Already Have Ways To Prevent The Use Of Harsh Punishments

It has been argued that threat assessment protects Black and Brown students and children with disabilities from suspension by overreacting school staff. There are a number of laws and regulations that govern when and how students and children can be removed from public school. — passed to prevent that very problem. They also protect against unfair punishments that are disproportionate to the offense or actually committed by other students.

State and federal laws also address how students' private information can be used and publicized by schools and law enforcement. The following summary is intended only to provide a brief review of statutory and regulatory protections.

Applicable Laws and Protections:

- **Americans with Disabilities Act, [Title II Direct Threat regulation](#)**: Individualized analysis of threat; a requirement that the school district implement reasonable modifications/steps before removing the child from school.

² See: [Sec. 300.111 Child find - Individuals with Disabilities Education Act](#)

³ For more information about how EPSDT can assist in identifying and supporting Medicaid eligible children and youth in need of services, from the U.S. Department of Health and Human Services: [Early and Periodic Screening, Diagnostic, and Treatment | Medicaid](#)

- **Individuals with Disabilities Education Act (IDEA) and Section 504:** Protections against disability discrimination in discipline; services and supports; legally required quality protections for evaluations.
- **Constitutional Equal Protection under the 14th Amendment; Constitutional Due Process protections under the 4th, 5th and 6th Amendments:** Safeguard students' liberty and property interests (reputation, education); limits on search and seizure, interrogation.
- **Federal Education Rights and Privacy Act ([FERPA](#)):** Protections regarding child and family privacy.
- **Titles IV and VI under the Civil Rights Act; Title IX of the Education Amendments of 1972:** Correction and prevention of discrimination based on race, sex, and other protected classes.

School Districts Have Legally Permissible Options to Protect School Safety

The delicate balance of student rights and safety has been addressed intentionally in the drafting of federal education laws. When a student's behavior presents a true threat to the school community, the student can be removed from school.

Section 504 and the IDEA are intended to prevent students with disabilities from being removed from school for behavioral manifestations of their disabilities *but not at the expense of school safety*. These statutes contain numerous overlapping protections to ensure the safety of students and staff. Some of these include: 1) the right to remove students short-term pending a review; 2) the right to seek an expedited due process hearing to remove the child in the event of a truly dangerous circumstance; and 3) the right to seek an injunction in court if other methods are insufficient. Threat assessment teams do not have the benefit of information about the child, nor the expertise in addressing disability that IEP teams do. They may both overestimate and underestimate the viability of a threat.

Students in general education can be removed immediately if needed. [Due process protections](#) are intended to prevent the very subjective, over-reactive,

zero tolerance punishment that threat assessment advocates raise as a primary concern, but they do not prevent removal.

Threat assessment as it currently occurs in the field does not provide these protections. The threat assessment process, including its inclusion of law enforcement membership on the threat assessment team and the threat assessment process itself, often has the practical effect of shifting the burden to prove safety onto the student and family. Families may be required to obtain psychological evaluations at their own expense and provide law enforcement access to sensitive information about the child and family, even in situations in which there is no actual threat, simply student misbehavior. These information requests come without the protections of the 4th, 5th and 6th Amendments (e.g. searches of the family home without a warrant in order to permit the child to return to school, lack of *Miranda* warnings, and lack of legally required privacy protections.)

If there is a problem with school districts using harsh punishments at the expense of Black and Brown students and those with disabilities, the solution is not to increase law enforcement involvement, which is exactly what threat assessment does, but to ensure the protections the law already requires.

RECOMMENDATIONS

There is a trove of evidence-based research supporting what we already know — students need warmth and support at school, not to be treated as threats.

There are bills currently in Congress that are drafted specifically to create safe school environments where all students can thrive.

Congress must pass:

- Counseling Not Criminalization in Schools Act of 2021 (HR. 4011/S. 2125).
- KASSA - Keeping All Students Safe Act of 2021 (S. 1858/ H.R. 3474).

- Protecting our Students in Schools Act of 2021 (S.2029/H.R. 3836).

Government should focus on: 1) shoring up legally required protections under the Constitution and federal laws, to prevent the biased use of harsh punishments; 2) improving access to current programs that provide referral, screening, and services; and 3) providing evidence-based behavioral interventions by trained professionals that have proven outcomes.

The student and family must be included in any discussions about how best to provide any help that is needed.

CONCLUSION Beware of crisis decision making

Decisions made during the emotional aftermath of crises often result in the loss of rights, especially for Black and Brown students and students with disabilities. Instead, current legally required processes should be implemented with fidelity, and supportive, evidence-based services should be funded sufficiently.

For more information, please contact:

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State Law Links

[Virginia \(2013\)](#)

[Florida \(2018\)](#) and [\(2019\)](#);

[Maryland \(2018\)](#);

[Colorado \(2018\)](#);

[Kentucky \(2019\)](#);

[Pennsylvania \(2019\)](#);

[Rhode Island \(2019\);](#)

[Tennessee \(2019\);](#)

[Texas \(2019\);](#) and

[Washington \(2019\).](#)



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