

August 22, 2023

Florida Board of Education
ATTN: Rule 6A-1.0019 regarding Threat Management
325 West Gaines Street
Tallahassee, Florida 32399

Dear Sir or Madam,

I write on behalf of the Southern Poverty Law Center (“SPLC”) regarding the Department’s proposed regulations for school threat assessments. SPLC is deeply concerned that the proposed regulations do not adequately protect the rights of children with disabilities and students of color. This will result in infringement of the federal civil rights of children with disabilities involved in the threat assessment process and unnecessary law enforcement involvement for children with disabilities and children of color.

Students with disabilities have well-established rights under federal laws. By failing to address these rights the proposed rules open school districts and police agencies to potential liability and increase the likelihood that students with disabilities will be deprived of their civil rights. As the United States Department of Education’s Office of Civil Rights has explained¹, Section 504 of the Rehabilitation Act provides significant protections to students with disabilities experiencing threat assessments:

Some schools require students to undergo a ‘threat assessment’ or ‘risk assessment’ in connection with student discipline. These assessments are used to identify students who may pose a threat of physical violence to others at school or at school-sponsored events or to assess the level of risk that a student who previously engaged in serious misbehavior may pose to others in such settings. **Under Section 504, schools must avoid any disability discrimination in their use of threat or risk assessments**, such as unnecessarily treating students with disabilities differently from other students, and must safeguard a student with a disability’s FAPE rights throughout any threat or risk assessment process. Schools can do so by ensuring that school personnel who are involved in screening for and conducting threat or risk assessments for a student with a disability are aware that the student has a disability and are sufficiently knowledgeable about the school’s FAPE responsibilities so that they can coordinate with the student’s Section 504 team. **A school district whose threat or risk assessment team does not coordinate with the Section 504 team**

¹ United States Department of Education Office of Civil Rights, “Fact Sheet: Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973” (July 19, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-factsheet.pdf>.

of a student with a disability could risk violating the student’s FAPE rights (emphasis added).

...

Coordination with the Section 504 team prior to completing the threat or risk assessment determination could result in additional or different behavioral supports to mitigate or eliminate the threat or risk. For example, the Section 504 team can provide valuable information about: the nature of the student’s disability-based behaviors and common triggers; whether the student has been receiving behavioral supports, and, if so, the effectiveness of those supports; and specific supports and services that may be able to mitigate or eliminate the risk of harm without requiring exclusion from school. Even if a student is removed from school following a threat or risk assessment, the school must ensure that the student continues to receive the services required for FAPE and that the student is afforded any applicable procedural rights, including, as needed, by notifying and consulting the student’s Section 504 team (emphasis added).

Similarly, the Department of Education’s Office of Special Education and Rehabilitative Services has explained² that the Individuals with Disabilities in Education Act (IDEA) applies to threat assessments:

Under IDEA, the procedural safeguards and right to FAPE for a child with a disability must be protected throughout any threat or risk assessment process, including the provision of services during any removals beyond 10 cumulative school days in a school year. 34 C.F.R. §§ 300.101 and 300.530(d). **States and LEAs should ensure that school personnel involved in screening for, and conducting, threat or risk assessments of children with disabilities are aware that the child has a disability and are sufficiently knowledgeable about the LEA’s obligation to ensure FAPE to the child, including IDEA’s discipline provisions.**

Finally, the Department of Justice’s Office of Civil Rights has recently explained³ that law enforcement officers have an obligation to provide reasonable accommodations to students with disabilities:

A public entity is obligated to provide reasonable modifications to qualified individuals with disabilities where it knows or reasonably should know of the disability-based need for modifications. Second, modifications to a public entity’s behavioral response that utilize known strategies and interventions are reasonable and not a fundamental alteration.

Yet despite these clearly applicable federal civil rights laws, the proposed regulation is entirely silent on the rights of students with disabilities (though it does implicitly acknowledge the importance of these rights by requiring data collection on threat assessment rates for students with IEP, 504 or Behavior Intervention Plan). While the proposed rule requires the involvement of a counselor with mental-health expertise and knowledge of the student, many districts have separate departments of mental health and exceptional student education. Hence, even though an employee may be familiar

² United States Department of Education’s Office of Special Education and Rehabilitative Services, “Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline provisions” (July 19, 2022),

³ United States Department of Justice Office of Civil Rights, Statement of Interest of the United States in D.P. et al. v. School Board of Palm Beach County, 21-CV-81099 (M.D. Fla. June 26, 2023), https://www.justice.gov/d9/2023-06/statement_of_interest_-_d.p._et_al._v._sch._bd._of_palm_beach_cnty_.pdf.

with a student’s mental health records, they may not be part of the student’s IEP or 504 team or be familiar with likely manifestations of their disability.

To ensure that the rights of students with disabilities are protected, the proposed regulations should require that a staff member familiar with student’s disabilities and IEP or 504 Plan (if applicable) be part of the School Based Threat Management Team. They should also inform schools that a student in the threat assessment process is still entitled to a Free and Appropriate Public Education and any reasonable modifications appropriate given their disability.

SPLC is also concerned that the proposed regulations will perpetuate the school to prison pipeline by continuing a pattern of disproportionate enforcement against children with disabilities. Studies have shown that Black children are frequently regarded as more dangerous and older than white peers.⁴ The proposed regulations contain a data-collection requirement for race (among other characteristics) but make not effort to ensure that districts asses their own use of threat assessments to identify and, if necessary, address racial bias.

SPLC is also concerned that by replacing the prior regulations categorization of threats as “transient” or “substantive” with “low, medium, and high” the regulations may inadvertently recategorize some “transient” threats, which may not have been considered threats at all under the old system, as low level or medium level threats which nonetheless need to be assessed.

Best Regards
Samuel Boyd
Senior Staff Attorney
Southern Poverty Law Center