

House Committee on Education
Testimony on School Safety Bill
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Mr. Chair and Members of the Committee,

Thank you for the opportunity to testify on your School Safety Bill.

My name is Rachel Seelig, I am director of the Disability Law Project at Vermont Legal Aid. Our project represents people with disabilities who have legal problems arising out of those disabilities. We are part of the state Protection & Advocacy System, along with Disability Rights Vermont. Over the past five years, we have represented or advised nearly six hundred students with disabilities and their parents on education law issues. Approximately 20% of these cases involve school removals, often because a child with a disability has engaged in some kind of behavior that school personnel have decided is a threat.

While I applaud the intent to protect students in our schools from harm, I am here to ask that we implement policies that treat students as in need of protection and services and supports, rather than the danger.

In the Senate, this bill was amended to no longer *require* that schools have these teams, and to no longer *require* membership of particular people, including police officers. The bill also explicitly does not allow the BTAT to exclude a student from school. The bill has also been amended to require additional data collection on which students are subject to assessment by these teams. I applaud these changes.

I want to emphasize that there is a difference between a school safety team, which examines at the system level how to keep schools safe, and these BTATS which look at specific students as a potential harm to, rather than an integral part of, a school community.

What the bill still does not do, and what continues to concern me, is define the scope of the role and the specific powers of these teams, if they are going to be permitted. For example, if a BTAT recommends a child be removed from a school, that does not on the face of this bill, or under existing state discipline regulations

deprive the student of their right to due process before loss of access to school, but in practice, this is what we have seen time and again.

In addition, the bill does not address the very real, not theoretical problem, of how a school must respond if a BTAT decides a student poses a threat, but the student has not actually done anything to violate the school's code of conduct.

There are some significant shortcomings and problems with BTATs across the country, and I think putting the legislature's stamp of approval on these teams is something that should be approached very cautiously. I would recommend against it. If I were in your chairs, I would suggest that you prohibit these teams, and instead improve monitoring, corrective action, training, and technical assistance, on Rule 4300, the school discipline rule series, and the additional protections for students with disabilities in disciplinary processes, which are too often ignored or misunderstood in Vermont schools.

Research has found problems with Behavioral Threat Assessment Teams, including:

- Variation in fidelity to “best practices” including lack of sufficient staff training, lack of sufficient understanding of FERPA, and lack of school mental health involvement.ⁱ
- Disparities in threat identification exist based upon race, special education classification, and mental illness.ⁱⁱ
- Lack of cultural competence elements in such teams.ⁱⁱⁱ

In addition, our experience has shown that requiring risk assessments, whether or not the child is ultimately assessed to be a risk, have negative consequences, including denial of due process protections prior to, or subsequent to, school exclusion, extended periods of time with little to no interaction with same age peers, minimal provision of educational services, and increased ostracization from community, school anxiety, feelings of isolation, and rejection by adults in school.

Students with Disabilities are Already Overrepresented in Discipline, Restraint & Seclusion, and Chronic Absenteeism

It is also important to consider the context that students with disabilities make up about 20% of the student population in Vermont, but 50.66% of suspensions that are less than 5 days, almost 2.5 times their representation in the overall student

population.^{iv} Students with disabilities are also overrepresented in reporting of chronic absenteeism (30.98%). And US Department of Education Civil Rights data shows that the vast majority of restraints and seclusions are conducted on students with disabilities^v:

- Mechanical Restraint: 6 reported mechanical restraints (prohibited by Rule 4500), 5 were students on IEPs; 83.33%
- Physical Restraint: 464 reported physical restraints, 330 were students on IEPs (71.1%), and 34 were students on 504 plans (7.3%)
- Seclusion: 208 reported seclusions, 134 were students on IEPs (64.4%), 20 were students on 504 plans (9.6%)

Furthermore, we believe that the effectiveness of Behavioral Threat Assessment Teams at accurately predicting risk or preventing harm remains an open question.

Board of Education Rules already allow removal of students who pose an immediate threat, but these rules are not applied with fidelity

Rule 4100 of the Board of Education Rules already requires school districts to have safety programs and emergency plans that are tested annually, including for natural disasters, bomb threats, and civil disturbances.

Rule 4300 addresses disciplinary action. Students who are subject to disciplinary action that involves a short-term suspension are entitled to limited due process protections, including an informal hearing with a school official, notice of the charges, an explanation of the evidence, an opportunity to tell their side of the story, and a written decision. Students facing a long-term suspension have a right to a school board hearing, written notice of the nature of the charges and the date, time, and place of the hearing, their right to have legal representation (not provided), and the possible penalties. At the hearing, they have the right to present evidence and cross-examine witnesses. And, after the hearing, they also have the right to a written decision. In most cases, this due process is required to be provided *before* a suspension begins. In practice, many districts implement a suspension and may or may not provide any due process.

Rule 4300 also allows the *immediate* removal of a student whose conduct or condition poses an immediate threat to themselves, others, property or the

educational environment. However, a suspension hearing must occur as soon as possible after the removal. And, cases involving bringing a weapon to school default to a one year expulsion and referral to law enforcement, unless an extraordinary circumstance applies.

Additional protections do apply for students with disabilities. Students with disabilities cannot be removed for more than ten days with a re-evaluation and manifestation determination review. If the behavior was a manifestation of disability, the students IEP or 504 team can change the program or placement, and design, amend, or enforce a behavior management plan. For students on IEPs, there is also an explicit requirement to conduct a Functional Behavioral Assessment and provide behavioral intervention services to prevent recurrence. If a case involves a weapon, a child can be removed to an interim alternative education setting for up to 45 days.

Importantly, in these cases, the adults responsible for making this determination know the child, they include the LEA, the parent, and relevant members of the IEP team.

These rules have no place for a Behavioral Threat Assessment Team. Here in Vermont, and in other states, risk assessment requirements have served as an end run around these due process rights.

For example, last year, we represented a child who was too young to be suspended under Act 35, but was nevertheless removed from school and not allowed to return after two risk assessments for several months. The child was never provided a disciplinary hearing because the school did not view the removal “disciplinary” but rather felt that the child could not be allowed to return until additional staffing was available, because of the behaviors that led to the removal.

Given the already-existing state regulations on imposing school discipline, which cover scenarios where a student poses an immediate threat, creation of Behavioral Threat Assessments teams is redundant, and outweighed by the negative consequences such teams cause.

Recommendation

Our recommendation is to provide additional resources to improve training and technical assistance to districts in order to ensure that Rule 4300 is followed, and to expand the use of the Manifestation Determination Review tool, even when the potential outcome is less than 10 days of exclusion from school. This process seeks to understand behavior and needed behavior supports by developing and performing a functional behavioral assessment, and implementing a positive behavior plan to prevent recurrence.

ⁱ Louvar Reeves & Brock, 2017. School Behavioral Threat Assessments, *Contemp School Psychol*. <https://ncyi.org/wp-content/uploads/2018/03/Reeves-SchoolThreatAssessment.pdf>; Goodrum, S., Thompson, A. J., Ward, K. C., & Woodward, W. (2018). A case study on threat assessment: Learning critical lessons to prevent school violence. *Journal of Threat Assessment and Management*, 5(3), 121–136. <https://doi.org/10.1037/tam0000104>

ⁱⁱ Crepeau-Hobson, Franci & Leech, Nancy. (2021). An Exploratory Investigation of Threat Assessment Practices in Colorado Schools. *Contemporary School Psychology*. 26. 10.1007/s40688-021-00356-7; Dorie Ross, Nathaniel von der Embse, Jessica L. Andrews, Mollie McCullough Headley & Caroline Mierzwa (2022) A systematic review of threat assessment in K-12 schools: Adult and child outcomes, *Journal of School Violence*, 21:4, 444-458, DOI: [10.1080/15388220.2022.2108434](https://doi.org/10.1080/15388220.2022.2108434).

ⁱⁱⁱ O'Malley, MD, Wolf-Prusan, L, Lima Rodriguez, C, Xiong, R, Swarts, MR. Cultural-competence considerations for contemporary school-based threat assessment. *Psychol Schs*. 2019; 56: 255– 275. <https://doi.org/10.1002/pits.22197>.

^{iv} Available at: <https://education.vermont.gov/data-and-reporting/vermont-education-dashboard/student-characteristics>; <https://education.vermont.gov/content/vermont-education-dashboard-exclusionary-discipline>.

^v Available at; <https://ocrdata.ed.gov/estimations/2017-2018>; 2017-18 is most recent available data.