

July 23, 2019

The Honorable Ron Johnson Chairman  
U.S. Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Gary Peters Ranking Member  
U.S. Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Johnson, Ranking Member Peters, and Members of the Senate Homeland, Security & Governmental Affairs Committee:

On behalf of the Council of Parent Attorneys and Advocates (COPAA), thank you for holding the July 25, 2019 hearing, *“Examining State and Federal Recommendations for Enhancing School Safety Against Targeted Violence.”* All students have a right to an education that is safe, addresses their individual needs, and affords them equal opportunities in a safe school. We believe safe school climates include a comprehensive, multi-tiered systems of support; integrating school crisis preparation, safety procedures, counseling and mental health support, positive behavior intervention and support, restorative practices and trauma-informed care. Efforts to keep schools safe must not only be based on hardening schools, but also on protecting students’ privacy, dignity, and right to an equal education.

The Council of Parent Attorneys and Advocates (COPAA) is the premier advocacy organization for the six million children with disabilities eligible for special education services under IDEA and the 400,000 additional students with disabilities protected by Section 504 of the Rehabilitation Act of 1973. COPAA is a national non-profit organization of more than 2,600 parents of children with disabilities, their attorneys, and their advocates. Its mission is to protect the legal and civil rights of students with disabilities and their families.

COPAA advocates that the key to making schools safe is prevention. We therefore urge the committee to closely examine and discuss school and district use of a multi-tiered system of support that integrates school crisis preparation, safety procedures, counseling and mental health support, positive behavior intervention and supports (PBIS), restorative practices and trauma informed care. Programs utilizing PBIS focus on schoolwide strategies to improve climate as well as targeted and individualized supports for students having difficulty coping with trauma, managing and expressing their emotions or handling stress provide the basis for research-based social-emotional and behavioral health development.<sup>1</sup> Such programs include trauma-informed practices and provide access to comprehensive school and community-based mental health service, culturally responsive teaching as well as effective screening through functional behavior assessment and implementation of a student’s behavior intervention plan where required are not parenthetical to learning—they are essential. Key to establishing such a system

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<sup>1</sup> Brandi Simonsen, Jennifer Freeman, Steve Goodman, Barbara Mitchell, Jessica Swain-Bradway, Brigid Flannery, George Sugai, Heather George, and Bob Putman, 2015.

<https://www.pbis.org/common/cms/files/pbisresources/Supporting%20and%20Responding%20to%20Behavior.pdf>

includes ongoing, robust training in evidence-based practices for all staff. We know that use of these practices make it less likely that an alienated youth will become a violent one and in order to support students and teachers, schools need to end the practice of criminalizing students in lieu of educating them.

In addition to examining the many positives of investing in and supporting ways to prevent violence, the committee has the opportunity to gain greater understanding of the privacy and equity implications of recent state school safety proposals and laws calling for increased surveillance or data sharing in an attempt to reduce school violence. In particular, we are concerned that some of these proposals may discriminate against or target students based on their disability or perceived differences. We invite the committee to seek answers about how privacy and equity guardrails are or are not being incorporated into state and local school safety initiatives, and to encourage local and state policymakers to use COPAA's priorities [outlined below] as well as the Principles for School Safety, Privacy, & Equity<sup>2</sup> as high-level guideposts to guide school safety conversations. We also urge the committee to support and push for transparency from state and local entities as school safety data collection or sharing initiatives occur, so parents and students can help guide the conversation and ensure not only their safety, but also their privacy and civil rights are protected.

Many recent state school safety proposals call for increased surveillance in an attempt to reduce school violence; in 2018, Florida passed SB 7026, the Marjorie Stoneman Douglas High School Public Safety Act. This law created a school safety “centralized integrated data repository and data analytics resource” that would collect, compile and analyze sensitive information about children and young people, to be shared with school threat assessment teams, state employees, and law enforcement to identify threats. As *Education Week* recently detailed, some of the potential categories for data collection include children who have been victims of bullying based on protected statuses such as race, religion, disability, and sexual orientation; student social media activity; and children who have been homeless or in foster care.<sup>3</sup>

As our organization wrote in a letter to Florida Governor DeSantis,<sup>4</sup> we believe that if the state collects and stores some of this information, it will deter many students and their families from seeking the services they need in school. Students who are homeless, in the foster care system, or who have mental health disabilities may limit the services they use, out of concern that the state may use the information to flag them as potential threats. Likewise, students who are bullied may choose not to report the abuse to their schools if they or their family fear the schools will respond by identifying them as threats. This could create a perverse incentive leading students to avoid reporting serious or life-threatening behavior because they fear being labeled rather than helped.

This trend is not unique to Florida. Virginia House Bill 1734, just signed into law this month, requires the development of a case management tool to centralize the data collected by threat assessment teams in Virginia schools, and does not provide information about who can access that data and how long information will be kept.<sup>5</sup> In New York, Bill No. A04484 would require that schools, in consultation with law enforcement, install “security cameras supported by artificial intelligence” as appropriate, without clarifying what is meant by AI or providing privacy protections for the data to be collected.<sup>6</sup>

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<sup>2</sup> *Principles for School Safety, Privacy, and Equity*, March 29, 2019, <https://ferpasherpa.org/schoolsafetyprinciples>.

<sup>3</sup> Benjamin Herold, *Florida Plan for a Huge Database to Stop School Shootings Hits Delays, Legal Questions*, *Education Week*, May 30, 2019, <https://www.edweek.org/ew/articles/2019/05/30/florida-plan-for-a-huge-database-to.html>.

<sup>4</sup> *33 Organizations Send Letter to Florida Governor DeSantis*, July 9, 2019, <https://ferpasherpa.org/letterdesantis>.

<sup>5</sup> Virginia House Bill 1734, 2019, <http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+HB1734>.

<sup>6</sup> New York State Assembly Bill A04484, 2019, [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A04484&term=2019&Summary=Y&Actions=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A04484&term=2019&Summary=Y&Actions=Y&Text=Y).

Many of these school safety initiatives in the past two years came about in response to a growing public fear about children's safety. While fear can be a very powerful motivator, it can also cloud judgement. It can foster a kind of tunnel vision that, in its extreme focus on solving one problem, loses sight of, or even causes, others. In this case, we now have polices that, in their urgency to prevent targeted violence, could sacrifice student privacy, undermining the safety and civil rights of some of our most vulnerable students. Rather than fear, a far more stable foundation for lasting and effective school safety measures comes from the careful consideration of evidence-based safety goals, strategies, and their potential consequences.<sup>7</sup> Additionally, schools and districts must seek to create a stable foundation for school safety that is based in a climate of support and inclusion. It is important for policymakers to understand that safety and privacy are not competing goals; rather, they are complementary—and vital to keeping students safe.

It is essential that privacy and equity guardrails be integral to school safety initiatives. Our organization recommends that the committee examine the *Principles for School Safety, Privacy, and Equity*, which we signed on to with forty other diverse organizations.<sup>8</sup> First and foremost, students deserve safety measures that are evidence-based.<sup>9</sup> If these measures include physical or digital monitoring, it must be developed transparently, in consultation with experts and community stakeholders, and must focus on real threats of harm. Students deserve schools where decisions about threats are made by school administrators, counselors, and educators—human beings who can account for students' particular needs—not by an algorithm. And when students are identified as a threat,<sup>10</sup> they and their families deserve access to the information used to make that decision and must have an opportunity to dispute the decision.

Studies show that school surveillance can disproportionately target students with disabilities<sup>11</sup> and students of color and students of color.<sup>12</sup> Moreover, there is no evidence to suggest that creating a massive digital surveillance infrastructure helps to prevent school violence. But studies do suggest that such an apparatus may cause students to feel less safe at school—the opposite of its intention.<sup>13</sup> And without privacy safeguards and protections, policymakers may risk building a structure to systematically discriminate against students based on protected statuses. Students deserve assurance that the data will not be misused and that data collection and storage will comply with relevant privacy laws. Students deserve schools that are held accountable, with clear consequences for those who put student privacy at risk by violating data-sharing protocols. And students, parents, and educators all deserve transparency.

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<sup>7</sup> National Criminal Justice Technology Research, Test & Evaluation Center, *A Comprehensive Report on School Safety Technology*, Johns Hopkins University Applied Physics Laboratory in cooperation with The Johns Hopkins University School of Education Division of Public Safety Leadership, October 2016, <https://www.ncjrs.gov/pdffiles1/nij/grants/250274.pdf>; Heather L. Schwartz, Rajeev Ramchand, Dionne Barnes-Proby, Sean Grant, Brian A. Jackson, Kristin J. Leuschner, Mauri Matsuda, Jessica Saunders, *The Role of Technology in Improving K–12 School Safety*, RAND Corporation, 2016, [https://www.rand.org/pubs/research\\_reports/RR1488.html](https://www.rand.org/pubs/research_reports/RR1488.html).

<sup>8</sup> See footnote 2.

<sup>9</sup> See footnote 7.

<sup>10</sup> Bethany Barnes, *Targeted: A Family and the Quest to Stop the Next School Shooter*, *The Oregonian/OregonLive*, June 24, 2018, [https://expo.oregonlive.com/news/erry-2018/06/75f0f464cb3367/targeted\\_a\\_family\\_and\\_the\\_ques.html](https://expo.oregonlive.com/news/erry-2018/06/75f0f464cb3367/targeted_a_family_and_the_ques.html).

<sup>11</sup> Azza Altiraifi and Valerie Novack, *Efforts to Address Gun Violence Should Not Include Increased Surveillance*, *Center for American Progress*, February 20, 2019, <https://www.americanprogress.org/issues/disability/news/2019/02/20/466468/efforts-address-gun-violence-not-include-increased-surveillance>.

<sup>12</sup> Melinda D. Anderson, *When School Feels Like Prison*, September 12, 2016, <https://www.theatlantic.com/education/archive/2016/09/when-school-feels-like-prison/499556>.

<sup>13</sup> National Association of School Psychologists, *School Security Measures and Their Impact on Students*, 2018, [https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/School\\_Security\\_Measures\\_Impact.pdf](https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/School_Security_Measures_Impact.pdf); Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 *Emory Law Journal* 765 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2830885](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2830885).

COPAA believes that we cannot simply ignore the complex issues that arise when children feel threatened, exhibit challenging coping behaviors, (reactivity, aggression or social withdrawal) and/or develop clinical disorders. Maintaining such supports in individual silos denies the need for a whole child and whole school community approach and coordination of care. School disciplinary practices, zero-tolerance policies, suspension, expulsion, the increased presence of law enforcement in school and school arrests all contribute to the feelings of fear, rejection and alienation in some students. Children with histories of trauma and those with disabilities are disproportionately targeted by these school policies which aim to punish students rather than teach and support them. Such policies serve to promote the school-to-prison pipeline.

To that end, COPAA recommends:

1. School safety measures must focus on prevention, through creation of a supportive, inclusive, and safe school climate for all students.
2. Safe school climates include a comprehensive, multi-tiered systems of support; integrating school crisis preparation, safety procedures, counseling and mental health support, positive behavior intervention and support, restorative practices and trauma-informed care.
3. Teachers must be provided the training and support they need to teach and provide engaging and academically rich educational programs in inclusive classrooms.
4. Teachers must have training in positive behavior support and classroom management, and have access to personnel trained and knowledgeable in conducting functional behavioral assessments and designing school, classroom and individualized positive behavioral programs.
5. Schools need to track and actively monitor all disciplinary actions on the basis of a student's race, ethnicity gender, and disability. Where the data show disproportionate impact, schools need to review their policies and train personnel to avoid adverse impact in accordance with federal and state statute and regulations.
6. Students whose behavior is consistently leading to disciplinary action and who have not been assessed for a disability must be properly screened and evaluated as required under Child Find. A functional behavior assessment must be conducted, and a behavior intervention plan implemented when a disability is diagnosed.
7. Students with a disability diagnosis, a history of receiving services for a disability, or an individualized education program (IEP) or 504 plan that addresses disability-related behaviors needs support and services and should not be automatically targeted as a potential perpetrator of violence.
8. Districts must clearly define the role and responsibility of school safety personnel and law enforcement within a school by written Memorandum of Understanding. They must receive comprehensive training to enable them to work in collaboration with school personnel to maintain a safe and positive school climate; interact effectively and appropriately with students; understand types of disability diagnosis and how such disability may manifest; and the relationships between disability, behavior and communication. Schools should not utilize law

enforcement officers to for behavior management or in attempts to scare students into compliance.

9. School administrators need to be trained in investigating incidents of bullying and alleged misconduct to protect the rights of all students.
10. If there is safety monitoring in schools that uses security cameras or other types of surveillance, it must ensure that the data collected is not unlawfully disclosed or compromised in compliance with all applicable privacy laws. Furthermore, videotapes of alleged incidents, if available, must be made available to the family of any student that is subject to discipline for the activity in question.
11. Schools should provide comprehensive school-based mental and behavioral health services as they are critical to ensuring a positive and safe school climate and need to be the first response to most incidents of challenging behavior. Referral to law enforcement should only occur in the most extreme cases that involve potential criminal behavior.
12. Students who are designated as a threat using a valid threat assessment instrument, and their families, must have an opportunity for recourse, have access to the information used to identify them as a threat, and have the opportunity to dispute the information.
13. Suspension and expulsion are not educative strategies. Research shows that excluded students disproportionately drop out of school and become part of the criminal justice system. Further, excluding students communicates that the school cannot handle challenging behavior.
14. Alternative educational programs for students should be appropriately funded so that they provide the full panoply of educational and therapeutic services required to serve students appropriately.

For too long, we have been overspending on crude and counterproductive policing strategies and underspending on the services that can prevent a recurrence of violence in schools. We urge you to converse about and examine the best practices mentioned and recommendations made by COPAA.

We appreciate this opportunity to provide a comment and are available as a resource at any time.

Sincerely,



Denise Marshall  
Executive Director