

Disability Rights Iowa
HSB 47 - Memorandum of Impact
January 28, 2025

Chairpersons and honorable members of the Committee. My name is Catherine E. Johnson. I am the Executive Director of Disability Rights Iowa. DRI is an independent, non-profit agency, which serves as the designated protection and advocacy system for people with disabilities in the state of Iowa, pursuant to federal mandates. The mission of the agency is to protect and advocate for the human and legal rights of Iowans with disabilities. I appear before you to share DRI's concerns regarding the impact of HSB 47 on the Disability Community.

Overview of HSB 47:

HSB 47 has two main aims: 1) permit schools to form threat assessment teams and 2) allow government agencies to share information and coordinate efforts in addressing threats.

Threat assessment teams may be made up of local law enforcement, juvenile court services representatives, mental health professionals, social service representatives, and school officials. The team is tasked with conducting threat assessments for a student that “exhibits behavior that may pose a threat to the safety of the school district or accredited nonpublic school, employees of the school district or accredited nonpublic school, or other student enrolled in the school district or accredited nonpublic school.” Such a threat includes when there is a “credible danger of serious bodily injury or death” though the legislation does not define serious bodily injury. Additionally, the legislation does not contain any explanation of how the team should conduct the threat assessment or what information would be relevant for such an assessment. Members of the team who carry out or cause to be carried out an action have immunity from civil liability so long as they acted with good faith and reasonable cause without malice.

The members of the threat assessment team may share information with nonpublic schools, charter schools or innovation zones, judicial branch, criminal or juvenile

justice agency, political subdivision (e.g. city, county, school district, or township), state agencies, and any service or support provider that contracts with these agencies. These “covered entities” may share information regarding students “who are experiencing or at risk of an emotional disturbance or mental illness, or who pose an articulable and significant threat to the health and safety of any person.”

Relevant Federal Laws

HSB 47 interacts with several federal laws, including IDEA, ADA, Section 504, and FERPA.

Under the IDEA, threat assessments may constitute an evaluation which requires parental consent before conducting. Failure to obtain parental consent, or make use of IDEA exceptions to such consent, would violate the IDEA. Threat assessments cannot override a student’s IEP, nor can it make changes to the student’s IEP unless all members of the IEP team, including the parent, are present and such changes are supported by relevant data.

Such changes include changes to the student’s placement that would constitute a change in placement under the IDEA. A threat assessment cannot override a student’s due process rights under the IDEA. If a threat assessment team deems it necessary to change a student’s placement, they must follow proper IDEA procedures, file for expedited due process, or seek a *Honig* injunction. Threat assessment removals are also still subject to IDEA manifestation review procedures, and team members should be aware of the implications of any removals they recommend or carry out. This includes team members understanding how the student’s disability impacts their behavior, what is included in their IEP, and evaluations conducted by the school.

A threat assessment may, among other factors, trigger a school’s Child Find responsibilities. It may also be indication that the student’s current IEP is insufficient to meet their needs and the student is therefore not receiving FAPE. Further, actions carried out by the threat assessment team, such as changes in a student’s support and services or placement may become a barrier to the student receiving FAPE. Section 504 of the Rehabilitation Act of 1978 has similar requirements as IDEA, threat assessment teams and determinations must ensure consideration of how a student’s disability and 504 plans may be a factor in the student’s behavior. Additionally, Section 504’s general anti-discrimination requirements apply to threat assessments and team members. Students with disabilities are disproportionately subject to threat assessments in other states that

have already formalized this process.¹ Threat assessment teams should enact policies and practices to ensure their policies and procedures are not disproportionately identifying students with disabilities.

The Americans with Disabilities Act (ADA) contains anti-discrimination provisions similar to Section 504. Title II of the ADA specifically defines threat assessments as individualized assessments based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence. The purpose of these assessments is to ascertain the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aids or services will mitigate the risk.

Students have privacy rights regarding their educational records under FERPA. Schools are required to keep a student's educational records confidential unless a parent consents to their release. There are several exceptions to this requirement that may make disclosures under HSB 47 permissible. However, there are parameters and conditions regarding how these exceptions are carried out, as well as general regulations regarding re-dissemination of the records. Navigating these complex regulations is of paramount importance to protect the privacy rights of students.

Potential Impact on Iowans with disabilities

Law enforcement involvement for students with disabilities is rarely a positive or helpful interaction as such individuals are frequently not trained on the manifestation of disabilities, especially in children. Students with disabilities are already subject to a disproportionate amount of involvement with the judicial system because of their disability, and formalized threat assessments increases that likelihood.²

HSB 47 lacks specificity in key areas that can leave room for violations of the rights of students with disabilities. Under IDEA and Section 504, all decisions about a student's eligibility, services, and placement must be made using multiple

¹ *K-12 Threat Assessment Process: Civil Rights Impacts*, National Disability Rights Network (February 2022) <https://www.ndrn.org/wp-content/uploads/2022/02/K-12-Threat-Assessment-Processes-Civil-Rights-Impacts-1.pdf>.

² *K-12 Threat Assessment Process: Civil Rights Impacts*, National Disability Rights Network (February 2022) <https://www.ndrn.org/wp-content/uploads/2022/02/K-12-Threat-Assessment-Processes-Civil-Rights-Impacts-1.pdf>.

sources of data and information. HSB 47 includes no description of what information the threat assessment team can or should consider when making their decisions. If the decisions they make implicate the IDEA, failure to use sound data from multiple sources could be a violation.

The language in HSB 47 is also missing important requirements set by Title II of the ADA as to when a threat assessment may be reasonable, and what the purpose of the threat assessment is. Without such guidance, threat assessment teams may go far beyond what is legally permissible and be subject to legal liability.

The threat assessment teams described in the legislation do not include a student's special education teacher, a special education director, or education consultant from the AEA. These individuals would be knowledgeable about the student's disability and how it impacts their behavior, the services they're receiving, and the legal requirements and implications of the threat assessment team's actions.

The legislation gives threat assessment teams a great deal of leeway regarding which students may be subject to such assessments. Students who are deemed to be "at risk of an emotional disturbance or mental illness" may encourage stigmas, prejudices, and assumptions for students with disabilities, or students who are regarded as having a disability even if they do not.

There is no language regarding what a threat assessment team may or may not do once they have conducted their assessment. If the team were to take actions that contradict the student's IEP or make changes to it, doing so without going through the required IDEA procedures violates a student's due process rights. Such procedures include issuing a Prior Written Notice, conducting a manifestation meeting, using due process procedures, and implementing supports and services to address any risks.

HSB 47 permits sharing of information, including educational records of students, amongst threat assessment team members and other agencies as necessary to address the suspected threat. Schools must be careful when sharing such information amongst themselves and outside agencies or people to ensure they do not violate a student's privacy rights under FERPA.

DRI welcomes the opportunity to discuss our concerns more in-depth with any member of the Iowa Legislature. Thank you in advance for your thoughtful deliberation of our testimony in opposition to HSB 47.