

July 20, 2022

The Honorable Patty Murray
Chair
Health, Education, Labor and Pensions Committee
U.S. Senate
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Health, Education, Labor and Pensions Committee
U.S. Senate
Washington, DC 20510

Dear Chair Murray and Ranking Member Burr,

We write in strong opposition to the *Behavioral Intervention Guidelines Act (S.1383)* or the “*BIG Act*.” Together, our organizations represent disability rights, civil rights, education, and other organizations working together to protect students, especially students with disabilities and Black and Brown students (including those with disabilities) who we know would be disproportionately harmed by the *BIG Act*.

Through its school hardening requirements, the *BIG Act* would encourage the use of threat assessments, violence risk assessments, and the preemptive use of law enforcement, including School Resource Officers, to address student behaviors deemed inappropriate for school. Threat assessment and violence risk assessment systems are well-known to put the well-being of students, especially Black and Brown students and students with disabilities (some as young as age 5) at risk of school removal, referrals to the criminal justice system, and in some cases serious physical injury or even death.

There is a trove of evidence-based research supporting what we already know — students need positive behavioral support, a welcoming environment, and social and emotional support¹ at school, not to be treated as threats. The *BIG Act* works counter to this by supporting the use of threat assessment and violence risk assessments which have no national data to support their use²; and by ignoring the real-world harm created when school officials see students — particularly Black and Brown students — as potential dangers. By its design, the bill promotes practices based on the flawed notion that behavioral intervention begins with the assumption that the student is a threat and that a threat must be mitigated. As noted by experts, “the built-in bias [of threat assessment systems] turns the goal of school safety on its head by encouraging school officials to see the students themselves as threats, rather than valued community members and children worthy of protection. Within that lens, not all students are viewed equally.”³

Also inherent to the *BIG Act* is its disregard for the civil rights protections for students with disabilities provided under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. This causes great concern, particularly since threat assessments in particular have resulted in children being removed from school for prolonged periods of time and/or referred to the criminal justice system due to disability-related behaviors that should be addressed by the school. 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.⁴ We take issue with the bill’s language that seeks to defeat the law’s legally required civil rights protections because it encourages behavioral intervention teams to find ways “to mitigate attempting to substitute the behavioral intervention process in place of a criminal process, inappropriately limiting or restricting law enforcement’s jurisdiction over criminal matters; or impede a criminal process,

¹ “...To manage discipline and make schools safer, teachers believe positive behavioral reinforcement (74 percent) and restorative practices (64 percent) are most effective, greatly preferring them to punitive and exclusionary measures, such as out-of-school suspensions (39 percent) and expulsions (39 percent). Press Release: Educators for Excellence, “Educators for Excellence Releases Nationwide Survey of Teachers on Education Issues,” (2018) at: <https://e4e.org/blog-news/press-release/educators-excellence-releases-nationwidesurvey-teachers-education-issues-5> as quoted by the U.S. Commission on Civil Rights, (2019), *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* at: <https://www.usccr.gov/files/pubs/2019/07-23-Beyond-Suspensions.pdf>. See also, U.S. Department of Education: *Mental Health/Social-Emotional Well-Being* at: www.pbis.org

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

³ *Id.*

⁴ *Id.*

when an individual’s behavior has potential criminal implications.”⁵ If enacted, the *BIG Act* requirements would not protect students and would usurp the role of educators and mental health professionals (including counselors, psychologists, social workers, nurses etc., from diverse and culturally relevant backgrounds) and other school community professionals.

We also oppose the *BIG Act* placing the onus on the U.S. Department of Health and Human Services to develop “tools and resources for schools and districts” when that agency does not have primary jurisdiction over schools and likely lacks the capacity and expertise to do so. This intentional back door approach to hardening schools seeks to directly bypass the critical role played by the U.S. Department of Education. Finally, we oppose the use of federal funds to promote and support resources known to further entrench law enforcement in schools, further the school-to-prison pipeline, and deny students their education and civil rights.

Schools, educators, caregivers, and communities are in the best position to notice and address concerning student behavior. Experts agree behavioral interventions are most effective at reducing behavioral problems when they incorporate educators’ knowledge of their students, are non-punitive, and avoid removal from school.⁶ Congress must do more to assure that education funding supports critical programs that help schools and districts build positive school cultures and promote alternatives to exclusionary discipline and criminalization.

Again, we write in strong opposition to the *BIG Act* (S. 1383), and urge you not to move this legislation. Please contact Laura Kaloi, lkaloi@stridepolicy.com or Cyrus Huncharek, cyrus.huncharek@ndrn.org with any questions.

Respectfully,

The Honorable Tony Coelho
Coelho Center for Disability Law, Policy & Innovation
Council of Parent Attorneys and Advocates
Bazelon Center for Mental Health Law
Center for Learner Equity
Public Advocacy for Kids
The Advocacy Institute
Strategies for Youth
National Association of Councils on Developmental Disabilities
National Disability Rights Network
National Center for Learning Disabilities
Disabilities Law Program of the Community Legal Aid Society, Inc.
Autistic Self Advocacy Network
The Gault Center
The Trevor Project
Special Education Equity for Kids in Connecticut
The Arc of the United States
Advocates for Children of New York
National Education Association

⁵ See: Sec. 520H, Behavioral Intervention Guidelines Act (S.1383), at: <https://www.congress.gov/bill/117th-congress/senate-bill/1383/text?q=%7B%22search%22%3A%5B%22behavior+intervention+guidelines%22%2C%22behavior%22%2C%22intervention%22%2C%22guidelines%22%5D%7D&r=2&s=3>

⁶ “Interventions, school-wide and individual, that use proactive, preventative approaches, address the underlying cause or purpose of the behavior, and reinforce positive behaviors, have been associated with increases in academic engagement, academic achievement, and reductions in suspensions and school dropouts.” U.S. Department of Education, *School Climate and Discipline*, (2017), at: <https://www2.ed.gov/policy/gen/guid/school-discipline/index.html#suspension-101>

Girls Inc.
Autism Society of America
Center for Popular Democracy
New York Association of Psychiatric Rehabilitation Services
Autism National Committee
National Alliance for Partnerships in Equity
Elite Educational Consulting
Parents Organized for Public Education
Nollie Jenkins Family Center, Inc.
The Education Trust
Access Living of Metro Chicago
Legal Aid Justice Center
Disability Rights Maryland
Center for Law and Social Policy
Advancement Project National Office
Disability Rights New Mexico
Disability Rights Florida
Unchained, NY
Center for Disability Rights
National Center for Parent Leadership, Advocacy, and Community Empowerment
Parent to Parent of Georgia, Inc.
Center for Public Representation
National Center for Youth Law
Brain Injury Association of America
Disability Rights Education & Defense Fund
American Civil Liberties Union
Access Ready
Epilepsy Foundation
Division for Learning Disabilities, Council for Exceptional Children
Japanese American Citizens League
Autistic Women & Nonbinary Network
Federal School Discipline and Climate Coalition
Open Society Policy Center
National Parents Union
Missouri Council of Administrators of Special Education

cc: U.S. Senate