



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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The Honorable John Carney  
Governor

John McNeal  
SCPD Director

## MEMORANDUM

DATE: May 5, 2021

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Terri Hancharick – Chairperson *TH*  
State Council for Persons with Disabilities

RE: S.B. 71 (“Red Flag Indicator” Requirements for Schools)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 71, which proposes to create requirements for school districts and charter schools regarding so-called “red flag indicators” of school violence. The bill would require schools to provide training to employees regarding red flag indicators and to also create an internal framework for reporting, tracking and referral of instances where red flag indicators are identified. SCPD opposes the proposed legislation and has the following observations.

First, school district and charter school employees working with students in grades 6 through 12 would be required to complete annual training on red flag indicators. The initial required training would be three hours, with an additional hour of training required each year after the initial training and a further three hours of training required every five years after the initial training. Per the bill, “red flag indicator training must include... information that enables employees to recognize, identify, and understand the psychosocial indicators and behaviors that a student

who is dangerous to self or dangerous to others may exhibit” as well as information regarding “red flag reporting, tracking, and referral requirements.”

Second, each school district and charter school would be required to “establish and maintain a red flag indicator reporting, tracking, and referral policy to ensure that a student identified as likely being dangerous to self or others may be reported, tracked, and referred for appropriate mental health evaluation or treatment or law enforcement action.” The bill would provide immunity from civil and criminal liability as well as professional discipline for all school district and charter school employees complying in good faith with the red flag indicator requirements. The bill also clarifies that the red flag indicator requirements would not alter reporting requirements for school employees of certain suspected crimes under 14 Del. C. § 4112 (which requires reporting of certain suspected crimes involving students or school property, including violent felonies, assault, or unlawful sexual contact), or other mandated reporting requirements involving suspected abuse of minors.

Delaware has a “red flag” law specifically relating to possession of firearms, enacted as the Beau Biden Gun Violence Prevention Act in 2018, that created a procedure for the issuance of relinquishment orders that would remove firearms from an individual’s possession when a threat of imminent harm has been identified. Under that law, the process for requesting a relinquishment order can be initiated by either a law enforcement officer or mental health professional. While some other jurisdictions have red flag laws with specific provisions delegating similar authority to school officials in cases where students may be presenting a potential threat of harm, Delaware’s red flag law did not specifically create any authority or procedures with respect to school employees or administrators. It is likely however, that some school employees would qualify as either enforcement officers or mental health professionals for purposes of the existing law.

A major critique of “red flag” legislation in general has been that it may further stigmatize individuals with mental illness and other mental or emotional disabilities and perpetuate the conception that they are more likely to commit certain violent crimes, when data consistently shows that a history of violent behavior is a far stronger predictor of future violence than any specific diagnosis (further analysis of misconceptions surrounding mental health and gun violence can be found in the Coalition for Smart Safety and the Coalition for Citizens with Disabilities Rights Task Force’s publication *Debunking the Myths: Mental Health and Gun Violence*, available at:

Another common concern is that the existence of red flag protocols and laws might discourage some individuals from seeking mental health treatment when they really need support because they fear being labelled as a threat. In the school context, adolescent students may particularly fear being ostracized or bullied by peers if they are labelled as potential perpetrators of school violence.

While the synopsis of the bill specifically focuses on preventing “mass murder,” presumably school shootings, of which there have unfortunately been numerous horrifying examples in other states in recent years, the scope of this bill is potentially much broader. The bill does not provide a lot of specific guidance as to what the red flag indicator training or “reporting, tracking, and referral” requirements would entail, and appears to leave those details largely up to the individual districts and charter schools. It is not clear to what extent the bill intends that schools would be relying on the processes in Delaware’s existing red flag law to specifically address a person’s access to firearms if a risk is identified, or if schools would be encouraged to take other action. It does not provide any further guidelines as to how schools should handle the report of a student demonstrating red flag indicators such as when to involve family or mental health professionals versus involving the police, or what notification a student may receive that they have been reported and what if any rights a student may have following an initial report.

The lack of specifics in the bill is concerning, as without more clear limits the implementation of these requirements could further stigmatize students with certain types of disabilities. Additionally, depending on what protocols a school puts in place, well-intentioned reports based on genuine concerns for an individual student’s wellbeing could potentially expose that student to unnecessary law enforcement scrutiny and contact. This is of particular concern as, statistically speaking, students with disabilities and particularly students of color with disabilities, are already disproportionately likely to be arrested or otherwise referred to law enforcement. (See, e.g. American Civil Liberties Union, *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students* at p. 5, available at <https://www.aclu.org/report/cops-and-no-counselors>, which based on analysis of U.S. Department of Education data found that overall students with disabilities were nearly three times more likely to be arrested than students without disabilities, though “in some states, they were ten times as likely to be arrested.”).

The immunity provided to school employees may further encourage them to err on the side of reporting when they are not sure about a potential red flag indicator. While it is understandable why this would be included to encourage good-faith reports that may ultimately protect the safety of students and school staff, without a more clearly defined process for handling these reports it is unclear what impact this immunity could have on students who have been identified by school employees as displaying red flag indicators.

SCPD opposes the proposed legislation. If the bill is to be revised, it would be helpful for more specific guidance to be provided regarding the procedures it contemplates being used by schools to respond to red flag indicators, including the rights of a student who has been identified as displaying red flag indicators. It should also contain specific language to clarify that the existence of a mental health condition or other mental or emotional disability on its own should not be considered a red flag indicator. Without such parameters, this legislation is likely to unfairly target students with disabilities and potentially strengthen the school-to-prison pipeline.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position and observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

SB 71 "red flag indicator" requirements for schools 5-5-21