

Final
STAFF SUMMARY OF MEETING
SCHOOL SAFETY AND YOUTH IN CRISIS

Date: 10/27/2015

Time: **10:10 AM to 01:47 PM**

Place: RM 271

This Meeting was called to order by
Senator Scheffel

This Report was prepared by
Kerry White

ATTENDANCE

Cadman	X
Crews	X
Ganahl	*
Harms	X
Kerr	X
Lawson	X
McDonald	X
Moreno	X
Newell	X
O'Donnell	X
Silvia	E
Weinerman	X
Willett	X
Wilson	X
Duran	X
Scheffel	X

X = Present, E = Excused, A = Absent, * = Present after roll call

Bills Addressed:	Action Taken:
Panel on Student Privacy	Witness Testimony and/or Committee Discussion Only
Teacher Panel	Witness Testimony and/or Committee Discussion Only
Public Testimony	Witness Testimony
Student Safety: Title IX and Sexual and Gender-based Harassment	Witness Testimony and/or Committee Discussion Only
Student Safety: St. Vrain Valley School District	Witness Testimony and/or Committee Discussion Only
Discussion and voting on bills	Recommendation(s) not Approved
Discussion about next steps	Committee Discussion Only

10:11 AM -- Panel on Student Privacy

Senator Scheffel, Chair, called the meeting to order and introduced the panel participants, including:

- Dale King, Director, Family Policy Compliance Office, U.S. Department of Education (ED);
- Ilana Spiegel, Parent Advocate, Seeking Equity and Excellence for Kids (SEEK);
- Callan Clark, Director of Student Services, Englewood School District;
- Stuart Stuller, Attorney, Caplan and Earnest, LLC; and
- Michael Roche, Partner, Lathrop & Gage, LLP and counsel to the Davis Family.

Dale King, representing ED, introduced himself and discussed his office's role in investigating complaints and providing technical assistance to schools with respect to the Family Educational Rights and Privacy Act (FERPA). Mr. King stated that FERPA was enacted in 1974 to protect the privacy rights of students and that schools are required to notify parents of their rights and when a student turns 18, those rights transfer to the student.

Mr. King reviewed how and when disclosures about a student may be made. He said that specific exceptions allow for the release of information in order to protect the health and safety of the student or others and noted that although information can be disclosed to first responders in an emergency situation, it cannot be released for emergency preparedness or training activities unless parental consent is provided. He reviewed the options for enforcement of FERPA, which may include notice, cease and desist orders, withholding funding, or lawsuits.

10:24 AM

Senator Scheffel asked for clarification about whether students are tagged as posing a threat to others and how that information may be disclosed. Mr. King responded that student information is confidential unless there is a health and safety risk to the student or others and that disciplinary records may only be shared with school officials and only when the school administrator needs it for a legitimate educational purpose.

Representative Moreno asked about exceptions to FERPA as a result of a subpoena and for clarification on the health, safety, and emergency exception. Mr. King said there must be an imminent threat and without action, the event is likely to happen. Representative Moreno asked for clarification about whether the exception depends on who is the subject of an imminent threat. Mr. King responded that it is not dependent on the subject of the threat.

Senator Newell asked for clarification on whether the school or the ED is making determinations about when to release information. Mr. King responded that schools make these determinations. Senator Newell asked whether school officials can share information within the school on a need-to-know basis. Mr. King said that if there is a health or safety emergency, then the school can disclose to anyone that needs to know, such as law enforcement or health officials. Senator Newell followed up by asking how the disclosure requirements may differ for students in foster care. Mr. King responded that there is a section in FERPA that allows for additional disclosures to be made to a case worker in that situation.

Senator Scheffel asked whether the ED has a database with a list of troubled youth and who has threat assessments. Mr. King responded not that he is aware of the ED maintaining a database with individual student data. He noted that there may be some records of which schools and school districts have threat assessment teams. Senator Scheffel asked how the ED is involved in specific situations at individual schools. Mr. King replied that the ED does not participate in threat assessments or other situations in specific schools unless there is a complaint and they are required to investigate.

10:38 AM

Linda Weinerman commented that the disclosure standard may be subjective and that different schools may judge the same situation differently. Ms. Weinerman asked whether the ED provides threat assessment training to schools. Mr. King said the ED has issued guidance to schools regarding threat assessment teams, but they don't set standards or require standardization within schools.

Representative Moreno asked how the ED defines school officials. Mr. King said a school official is an employee of the school or someone who is outsourced or contracted by the school.

Senator Scheffel asked about training provided by the ED. Mr. King said that they try to accommodate requests from schools, most of which is conducted by webinar and through technical assistance.

Gregory McDonald asked about the intersection between FERPA and Colorado's Senate Bill 15-213. Mr. King responded that he is not familiar with Colorado's law.

Representative Duran asked about the rational basis standard, noting that most of the time schools will have a basis for releasing information. Representative Duran asked if there was data on the number of times or percentage of cases where this standard was not met. Mr. King said complaints are rare and that in his experience as director, schools are cautious about how they set up threat assessment teams.

10:46 AM

Callan Clark introduced herself to the committee. Staff distributed a packet of school threat assessment materials (Attachment A). Ms. Clark said that there are themes, but not predictors about which students may be dangerous. She said school districts have very real limitations for intervention because a school can't require mental health treatment or arrest a juvenile. Absent outside interventions, Ms. Clark said that a school can only use disciplinary tools or it's own limited mental health services. She said that schools rely on parents to share information, however they can't compel medical records be released unless a parent consents or the student consents if he or she is over the age of 18. Ms. Clark said schools are concerned that students with disabilities, especially those with emotional or social communication challenges, will be forced into alternative schools and that there is a need to clarify the threat assessment process. Ms. Clark recommended that the School Safety Resource Center be designated as the lead agency for threat assessments and training. She said options for different threat assessment models should be made available to account for differences in geography, resources, and staffing. She continued by noting that school districts may need clarity about informational sharing -- i.e. what FERPA protects; who should get threat assessment information; guidance on sharing information with students and school safety personnel; searches of student property; and interacting with students with disabilities. Ms. Clark recommends that a local anonymous tip line be implemented and stated that school districts will need increased resource support and sufficient funds to adequately staff mental health supports.

10:57 AM

Ilana Spiegel introduced herself as a parent of four children and reviewed her professional and personal background. She said that despite threat assessments, lives are still being lost. Ms. Spiegel said threat assessments don't predict or prevent harm because they capture a slice in time. She said students with disabilities may be subject to more assessments, causing labeling, mislabeling, and segregation of students. She said that there is an expectation of foreseeability with threat assessments, which is problematic because the test instruments are not designed to be diagnostic or predictive. She said that privacy is compromised for students as a result of these expectations, which is a major concern for parents.

11:05 AM

Stuart Stuller introduced himself as an attorney that represents school districts and reviewed his background as a professor. Mr. Stuller said that his clients include the Jefferson County and Platte Canyon School Districts. He briefly commented on the interaction between the ED and school districts, noting that the ED defers to school districts. He cautioned the committee about legislating decision-making concerning discretion to release student data.

11:10 AM

Michael Roche introduced himself as a partner with Lathrop & Gage and as the Davis family attorney. Mr. Roche said that he agreed with Mr. King and that FERPA was never intended to be an impediment to school safety. He stated his belief that in cases where it is such, that has happened as a result of misinterpreting FERPA, which does not create liabilities for schools. Mr. Roche said that the U.S. Supreme Court has ruled that schools cannot be sued for damages under FERPA. He reviewed disclosures of information and concluded that, due to the language about legitimate educational interest, schools should be disclosing information about students who appear to be in crisis to teachers. Mr. Roche said that he believes teachers are very committed to students and are capable of exercising good judgment. Mr. Roche said that one way FERPA is implemented is through the code of federal regulations, which makes clear that records of a school's law enforcement unit (school resource officers and campus security) are not school records and are not protected. He said that another category of information is what teachers, administrators, and security personally observe. Mr. Roche said that information is not protected -- it can and should be shared because its not educational.

Mr. Roche said he thinks it is important to ask the forthcoming teacher panel about their role in conducting threat assessments. He said the point is not to predict school violence, it is to prevent it. Mr. Roche opined that there is no useful profile for a school shooter, but that there are useful behaviors that can help prevent targeted school violence. Mr. Roche reviewed threat assessments, noting that often the rational basis standard is used, which is the lowest legal standard and essentially says that if a school can explain what it is doing, it is fine. Mr. King said he was not aware of any complaints being asserted under that standard because it is so low and that FERPA has not been used to defund schools.

Mr. Roche continued by saying that Colorado's stated policy in interpreting FERPA is to facilitate the exchange and sharing of student information to the greatest extent possible, but that this is not happening. He said that Littleton Public School's policy demonstrates a core misunderstanding of what FERPA permits. According to Mr. Roche, this school district's policies say that, even in the case of an emergency, it can only disclose information to specific authorities, which is not what FERPA says. He provided an example of how the Arapahoe County sheriff released data, but the school district would not. He expressed the concern that FERPA is being used as a shield behind which schools can hide when they are uncomfortable. Mr. Roche commented that he believes a central clearinghouse is needed and the information sharing must support the threat assessment process. He complimented the School Safety Resource Center's work. Staff distributed a federal report that was issued in 2007 following the incident on the campus of Virginia Tech (Attachment B), which Mr. Roche discussed, noting that generally schools undershare information versus overshare information.

11:28 AM

Senator Scheffel asked Ms. Clark about the effectiveness of the Safe2Tell program. Ms. Clark responded that it is used and is effective.

Senator Newell asked Ms. Clark about other programs within the Englewood School District. Ms. Clark discussed a program called Public Schoolworks, which is connected to their website and operates like Safe2Tell, but is connected to the district's administration.

David Crews asked whether the School Safety Resource Center can support school districts with threat assessments. Chris Harms responded that the center has been providing this support and will continue to help train schools.

Staff distributed a packet of information about school-based health care (Attachment C). Senator Newell asked about the Health Insurance Portability and Accountability Act (HIPAA). Mr. Stuller responded that HIPAA does not necessarily pose a concern for schools because if the school is in possession of a student record, the governing law is FERPA. Ms. Spiegel said there are concerns when outside personnel are involved. Senator Kerr reviewed information in Attachment C, which discusses the intersection of FERPA and HIPAA on page 3. Ms. Clark said HIPAA stops entities from sharing information with schools unless the parent consents. Senator Newell asked how schools balance these laws and whether schools encourage parents to share HIPAA data. Ms. Clark said it is a fine balance and depends on the individual student, but a school's goal is to partner with the family to support the student.

Representative Willett asked about FERPA and discovery issues. Mr. Roche responded that discovery is limited by law. Mr. Roche said that he has reviewed the legislation that the committee is considering, and that in his view, none of the proposed bills will conflict with FERPA. Representative Willett commented that he applauds Bill 3 because it requires full compliance with federal law. Representative Willett asked whether the attorneys on the panel believe that schools can meet that standard. Mr. Stuller responded that having done teacher dismissal hearings which have similar requirements, the answer is yes. According to Mr. Stuller, school officials are more worried about school shootings than they are about being sued.

Sharyl Kay Lawson thanked the panelists for their participation and commented that as a special education teacher, it can be difficult to help kids when parents don't share information.

11:46 AM

The committee recessed for lunch.

12:41 PM -- Teacher Panel

Senator Scheffel called the meeting back to order and convened the teacher panel.

Kiki Leyba introduced himself as an English Teacher at Columbine High School. He noted that on April 20, 1999, he was in his first year as a teacher at Columbine and detailed his experiences supporting staff in other schools that have experienced acts of school violence, including Platte Canyon, Sandy Hook, and Arapahoe High School.

Christian Adams introduced himself as a special education teacher at Broomfield Heights Middle School. He reviewed the composition of this school, which has about 500 students. He said that they have a lot of structures available to hear from students, including an annual student climate survey.

Jonathan Ail introduced himself as a teacher and math department chair at Skyview Academy. He said charter schools have limited resources and budgets and, as such, that can be a challenge for school safety purposes. He reviewed his school's resources, including learning specialists; an on-site school psychologist, social worker, and therapy dog; training; two counselors; student programs; and an active shooter training.

Todd Churchwell introduced himself as a social studies teacher in Wray. He spoke about his school's lack of resources and told the committee it just recently acquired cameras and door locks. Mr. Churchwell reviewed his district's protocols, which include using materials from the I Love U Guys Foundation. He said an advantage in Wray is that the community is small and therefore teachers and kids have relationships outside of school, which may facilitate identifying students who are struggling.

Imogene Higgins introduced herself as a first grade teacher in the Genoa-Hugo School District. She reviewed the school district composition and resource sharing that occurs as a result of its small size and budget. She discussed the value of building relationships and how a smaller community helps to facilitate that. She reviewed the roles of faculty and staff and the overlap in functions as a result of having no dedicated school safety personnel. Ms. Higgins said small schools need clarity and guidance on how to perform duties of threat assessment and as safety coordinators. She said the Genoa-Hugo School District also uses the I Love U Guys Foundation protocols, and reviewed its implementation. She suggested that the committee consider developing a model protocol so that students who move between school districts know what to do in an emergency.

01:31 PM

Representative Duran thanked the panel members for their participation and asked them to comment on the training they receive, as teachers, on FERPA. Mr. Ail reviewed the in-service training at his school and said that teachers are not familiar with FERPA and its requirements per se, but if a threat has been communicated, teachers know to communicate it to school administration.

Mr. Crews thanked the panel for their participation and asked if the I Love U Guys Foundation protocol is working well. Mr. Leyba and Ms. Higgins each responded affirmatively.

Ms. Harms asked about mental health professionals, professional development days, and threat assessment protocols in small, rural school districts. Ms. Higgins said there are no mental health professionals in her school, but they have a threat assessment team that consists of the principal, superintendent, and sheriff. She said they have to go to Limon or another area for mental health services, so it can take many days to get an assessment done. Mr. Churchwell said his district has a counselor for middle and high school students and there is a mental health center in town. He said that their threat assessment team includes a counselor, the principal, and others as needed, including law enforcement or mental health professionals.

Ms. Weirnerman thanked the panel and asked if bigger districts are able to identify and assist students struggling with mental health issues, like suicide. She asked about training students to identify needs among their peers. Mr. Adams responded that he is in agreement.

Representative Wilson thanked the panelists and asked how student relationships with teachers can happen in a school where there are 1,000 or 2,000 students. Mr. Leyba responded that there are many similarities; he feels like he knows the name of 800 students every school year and as such, they have been able to identify students who are struggling. Mr. Leyba said it would be easier if class sizes were smaller.

Senator Scheffel asked if any of the panelists have participated in the threat assessment process. Mr. Leyba said threat assessments happen at the administrator level and he is not aware of any teachers being involved. Mr. Adams said he was involved when one of his students was threatened and he was brought in to assess communication issues. Ms. Higgins said she had a first grader who was making threats and displaying violent behavior and was able to work with her school administrators. Mr. Ail said he has been asked for input on students, but never formally as part of a threat assessment. Mr. Churchwell said he has been asked for input and participated in student reentry plans.

Mr. McDonald thanked the panel for their emphasis on relationships. He said there were concerns over threat assessments and students receiving special education might be at a higher risk for a threat assessment. Mr. Adams responded that each threat assessment is different.

Senator Newell thanked the panel. She asked about the lessons learned from a teacher perspective. Mr. Leyba responded that schools should put programs and resources in place prior to a tragedy. He said some schools don't have school resource officers or mental health workers and that the limited resources of trauma workers is crippling.

Kate O'Donnell also thanked the panel. She asked whether the teachers felt supported by school administration, to which Mr. Churchwell and Mr. Adams each replied affirmatively.

02:01 PM -- Public Testimony

Senator Scheffel invited public testimony to begin.

Carol Meredith, Executive Director of the Arapahoe Douglas County ARC and a parent of an adult child with disabilities, discussed the stigma facing people with disabilities and discrimination experienced by parents. She encouraged the committee to approve Bill 5.

Cheri Kiesecker, representing herself, said parents resist sharing information because it is not clear where that data is going, who has it, and in what form. She noted that there are many bills being considered at the federal level and that how and by whom a school official is defined poses a problem for parents because that can include contractors. Ms. Kiesecker recommends that legislation clarify what a legitimate educational need is.

Kristin Melton, Education Program Director at Rocky Mountain Childrens Law Center, said that the passage of the Claire Davis Act has resulted in more discipline and threat assessments and that schools are acting out of a fear of what reasonable care means.

John Simmons, representing School Safety Partners, spoke about the relationship between school district immunity and the Claire Davis Act. He suggested that schools be provided immunity in exchange for demonstrating proof of a variety of protective acts, such as providing written communication plans, safety drill evaluations, FEMA training certifications, testing reports on communications equipment, emergency operations plans, and other related items.

02:26 PM

Ms. Weinerman asked Ms. Melton whether some school districts do a better job than others in terms of using threat assessments. Ms. Melton said she does not have examples of a good threat assessment tool and that is part of the difficulty. Ms. Melton stated that, to her knowledge, no evidence based tool is being used.

Senator Newell asked Ms. Meredith if she has seen or experienced more fear for parents sharing information. Ms. Meredith said she has not seen a huge uptick in that fear; she is proactive about telling parents to share their information.

02:30 PM -- Student Safety: Title IX and Sexual and Gender-Based Harassment

Kimberly Hult introduced herself and began her remarks by defining sexual harassment. She said 48 percent of students surveyed recently felt that they had been harassed and that one out of ten girls will have been physically forced to engage in sexual intercourse. She spoke about court decisions relating to Title IX and what constitutes actual notice and deliberate indifference and a school's obligation to investigate claims of harassment and assault. Ms. Hult said that under federal law, there are no caps on damages and victims can be entitled to attorney and other fees. She said that the statute of limitations does not start until the child turns 18 and then it is two years. Ms. Hult said many Colorado policies do not meet Title IX requirements.

02:52 PM

Representative Duran asked about situations where an allegation is made and there is no follow up. Ms. Hult responded that she is not at liberty to discuss current cases.

Mr. Crews asked whether rural school districts can have the Title IX coordinator located in the BOCES. Ms. Hult responded that there would be concerns about having adequate time to perform the functions of that role and that in fact some districts may require more than one coordinator.

Senator Newell asked about sexting, its prevalence in schools, and how Title IX applies. Ms. Hult responded that about 30 percent of students experience sexual harassment through social media, but that Title IX guidelines do not specifically address sexting. She said that depending on the content of the message, child pornography statutes may apply.

02:58 PM -- Student Safety: St. Vrain Valley School District

Former Senate President Brandon Shaffer introduced himself and staff distributed a proposal titled the School Safety Confidential Information Act (Attachment D). According to Senator Shaffer, there are very few exceptions under state law where a mental health professional can share information, and he wants to carve out an exception. Senator Newell expressed support for the proposal. Ms. O'Donnell asked for clarification about the reporting process. Senator Shaffer responded that communication would be restricted to within the school. He said that his policy would not be proscriptive about identifying specific people within the school and instead to allow the schools to decide that for themselves.

Ms. Weinerman asked for clarification about what would occur when a patient makes a direct threat. She asked whether having an exception would create a dampening effect on the therapeutic relationship. Senator Shaffer replied that it might, but said that under HIPAA, there are already some restrictions. He said it depends on professional judgment and this is the policy issue he is asking for the committee to discuss.

Ms. Harms asked for clarification between the proposal and a therapist's duty to warn in current law. Senator Shaffer reviewed the disclosure of confidential communications found in Section 12-43-218, C.R.S. and said that he wants to add a direct threat against a school or occupants, rather than specific persons.

03:17 PM

Representative Willett discussed an expulsion in the St. Vrain School District following a threat assessment. President Cadman and Senator Shaffer discussed the proposal and the accountability mechanism for protecting confidentiality.

03:24 PM

The committee took a brief recess.

03:47 PM -- Discussion and voting on bills

The committee came back to order. Senator Scheffel talked about the report that will be issued at the end of the year examining the Arapahoe High School shooting. He explained Bills 2, 3 and 7, and stated that he would be withdrawing the bills until further work can be done with stakeholders. Senator Newell stated that she would be withdrawing Bill 6 for the same reasons. Representative Willett explained Bill 3 and discussed the possibility of withdrawing the bill as well. Senator Newell explained Bill 5 and distributed prepared amendment 1 (Attachment E) and explained the amendment. She discussed the bill's fiscal note.

BILL:	Bill 5	
TIME:	04:03:51 PM	
MOVED:	Newell	
MOTION:	Moved amendment 1 (Attachment E). The motion passed without objection.	
SECONDED:		
		VOTE
	Cadman	
	Crews	
	Ganahl	
	Harms	
	Kerr	
	Lawson	
	McDonald	
	Moreno	
	Newell	
	O'Donnell	
	Silvia	
	Weinerman	
	Willet	
	Wilson	
	Duran	
	Scheffel	
YES: 0 NO: 0 EXC: 0 ABS: 0 FINAL ACTION: Pass Without Objection		

04:05 PM

The committee discussed the merits of the bill.

04:20 PM -- Former State Senator Moe Keller, representing Mental Health America of Colorado, came to the table to testify in support of Bill 5.

BILL:	Bill 5	
TIME:	04:04:13 PM	
MOVED:	Newell	
MOTION:	Move that Bill 5 be included as one of the bills forwarded by the School Safety and Youth in Crisis Committee to Legislative Council. The motion failed on a vote of 2-6.	
SECONDED:		
		VOTE
	Cadman	No
	Crews	
	Ganahl	
	Harms	
	Kerr	Yes
	Lawson	
	McDonald	
	Moreno	No
	Newell	Yes
	O'Donnell	
	Silvia	
	Weinerman	
	Willett	No
	Wilson	No
	Duran	No
	Scheffel	No
Final YES: 2 NO: 6 EXC: 0 ABS: 0 FINAL ACTION: FAIL		

04:23 PM

Representative Willett explained Bill 8 which expands the duty to exercise reasonable care to protect students, faculty, and staff from harm within school facilities or while participating in school-sponsored activities to include all public entities and employees. He answered questions from the committee members.

BILL:	Bill 8	
TIME:	04:27:33 PM	
MOVED:	Willett	
MOTION:	Move that Bill 8 be included as one of the bills forwarded by the School Safety and Youth in Crisis Committee to Legislative Council. The motion failed on a vote of 3-5.	
SECONDED:		
		VOTE
	Cadman	No
	Crews	
	Ganahl	
	Harms	
	Kerr	Yes
	Lawson	
	McDonald	
	Moreno	No
	Newell	Yes
	O'Donnell	
	Silvia	
	Weinerman	
	Willett	Yes
	Wilson	No
	Duran	No
	Scheffel	No
Final YES: 3 NO: 5 EXC: 0 ABS: 0 FINAL ACTION: FAIL		

04:30 PM

Representative Willett explained Bill 1, which clarifies that nothing in the "Claire Davis School Safety Act" of 2015 is intended to contradict or alter court precedent or the applicability of jury instructions in Colorado courts.

04:33 PM -- Michael Roche, representing himself and the Davis family, came to the table to express his concerns about the bill and answer questions from the committee members.

BILL:	Bill 1	
TIME:	04:44:14 PM	
MOVED:	Willett	
MOTION:	Move that Bill 1 be included as one of the bills forwarded by the School Safety and Youth in Crisis Committee to Legislative Council. The motion failed on a vote of 3-5.	
SECONDED:		
		VOTE
	Cadman	No
	Crews	
	Ganahl	
	Harms	
	Kerr	Yes
	Lawson	
	McDonald	
	Moreno	No
	Newell	Yes
	O'Donnell	
	Silvia	
	Weinerman	
	Willett	Yes
	Wilson	No
	Duran	No
	Scheffel	No
Final YES: 3 NO: 5 EXC: 0 ABS: 0 FINAL ACTION: FAIL		

BILL:	Bill 5	
TIME:	04:03:51 PM	
MOVED:	Newell	
MOTION:	Moved Amendment 1 (Attachment E). The motion passed without objection. The motion passed without objection.	
SECONDED:		
		VOTE
	Cadman	
	Crews	
	Ganahl	
	Harms	
	Kerr	
	Lawson	
	McDonald	
	Moreno	
	Newell	
	O'Donnell	
	Silvia	
	Weinerman	
	Willett	
	Wilson	
	Duran	
	Scheffel	
YES: 0 NO: 0 EXC: 0 ABS: 0 FINAL ACTION: Pass Without Objection		

04:45 PM -- Discussion about next steps

Senator Scheffel told the committee that the next meeting is tentatively planned for Friday, January 22, 2016, at 1:30 pm. He explained that at this meeting, the committee will discuss next steps and the possible formation of subcommittees.

04:47 PM

The committee adjourned.