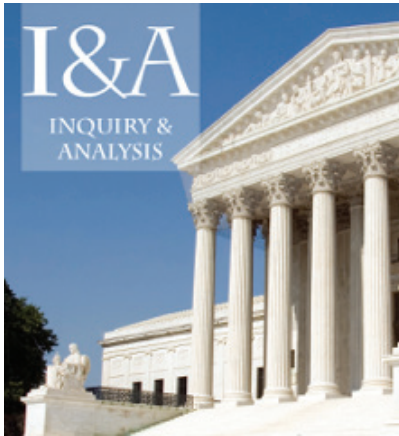


# Inquiry & Analysis



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# Summation and Response to the 2018 Review of Educational Services Provided to Nikolas Cruz by Broward County Schools

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## I. Introduction

In response to the February 2018 shooting at Marjorie Stoneman Douglas High School<sup>1</sup> (MSDHS), the Collective Educational Network, Inc. (Collective) was hired to conduct an independent investigation into the educational services provided to Nikolas Cruz, the alleged shooter, when he was a student of Broward County schools. Collective's investigation results were published on June 16, 2018. The Collective stated that their findings and recommendations were solely based upon information about Nikolas while he attended school.

The review discussed what, if any, violations of law MSDHS staff may have committed while Nikolas attended high school and made some recommendations that MSDHS school staff might consider taking to avoid future legal compliance issues. Although the published review was intended to be redacted so that private educational information about Nikolas was not disclosed, one newspaper did obtain and publish a non-redacted copy. Thus, what follows is a summation of the non-redacted version of the review and some recommendations for all schools to consider that may help avoid future school shootings.

## II. Nikolas's Educational History

Nikolas was a student of Broward County schools from pre-kindergarten until he dropped out of school during his junior year of high school. Starting at age three, Nikolas exhibited unacceptable aggressive behaviors. Then, when Nikolas was five, his father died unexpectedly. Shortly after, Nikolas started seeing a child psychologist to cope with his aggression and the loss of his father. He was found to qualify for and received Individuals with Disabilities Education Act<sup>2</sup> (IDEA) services from kindergarten until he refused offered IDEA services after turning eighteen

during the fall of his junior year in high school. The Collective's review found that until Nikolas revoked his consent for IDEA services, Broward County complied with all IDEA requirements by providing him with a Free Appropriate Public Education<sup>3</sup> (FAPE). The Collective's review confirmed that during these years, Broward County schools provided many services to Nikolas with the consistent goal of helping him make appropriate educational progress. Accordingly, any criticism claiming that Broward County continuously failed to meet Nikolas's educational needs is not supported by the uncontroverted evidence.

As Nikolas moved through the public school system, there were times when he was placed in an alternative school to help him deal with his behavioral problems. For example, Nikolas's educational placement was moved to Cross Creek, an alternative, non-general educational environment, in February of 2014 after making oral threats of violence to peers and staff and committing acts of vandalism to school property. Cross Creek was referred to as a "therapeutic environment" created to help students who had significant behavioral issues. Accordingly, Nikolas's Individual Educational Plan (IEP) team<sup>4</sup>, with the consent of his mother, agreed that starting in February of 2014, Nikolas's proper educational placement, where he could receive FAPE, was Cross Creek.<sup>5</sup>

Nikolas attended Cross Creek for his entire ninth grade year. As part of his IEP, a Behavioral Intervention Plan<sup>6</sup> (BIP) was created. During this school year, Nikolas received all A's and B's except for an art grade of "C." While at Cross Creek, he informed staff that his goal was to return to the regular educational environment at MSDHS and graduate. While at Cross Creek, the records

show that although Nikolas was making educational progress, at times he did have some peer-on-peer behavioral problems. Yet, because of Nikolas's educational progress and progress on most of his behaviors, his IEP team determined that Nikolas was to transition back into the general education environment at MSDHS the following school year (2015-2016) for the tenth grade. An IEP was then created for Nikolas that allowed him to spend part of his day at MSDHS and part of his day at Cross Creek. This plan, however, did not include a BIP because the school staff claimed that he had met all of his behavioral IEP goals contained within his 2014-2015 IEP.

As part of Nikolas's 2015-2016 IEP, he met with the school counselor once each week and was provided home counseling from a community mental health agency. In January of 2016, he became a full-time student at MSDHS. In the spring of 2016, school records indicate that Nikolas always asked staff for help and avoided what the Collective's review stated were "bad peers." What this points to, is that Nikolas had a good sophomore year with no indications of any future problems.

### III. Nikolas's Last Year at MSDHS

During his junior year at MSDHS, Nikolas turned eighteen, the age of majority in Florida. No court had declared Nikolas legally incompetent and in need of a guardianship. Therefore, once he turned the age of eighteen, he could make his own educational decisions.

In the fall of this year, 2016, Nikolas started exhibiting unacceptable behaviors that were causing disruptions in the school. The staff members of his IEP team and Nikolas's mother believed that the proper educational environment for Nikolas, so that he could receive a FAPE, was to return to Cross Creek. Yet, since Nikolas was eighteen years old, any decision impacting his IEP, including but not limited to his educational placement, was his to make independently. Despite Nikolas's mother's suggestions that he accept placement at Cross Creek, he refused.

Once Nikolas made this decision, the MSDHS IEP team informed him that he only had two choices: accept the offer of placement at Cross Creek and continue to receive IEP services or refuse the proposed placement. Nikolas was also informed that if he refused the offered placement, MSDHS would consider this as a withdrawal of

consent for IDEA services, and he would then be treated as a general education student with no IDEA services and no IDEA protections. Nikolas still refused the offered placement. Accordingly, MSDHS reclassified Nikolas as a general education student without a disability and did not provide him further IDEA services.

After Nikolas lost his IDEA qualifications and services, his grades dropped, and his inappropriate behaviors escalated. On February 7, 2017, Nikolas withdrew from MSDHS and enrolled in an off-campus learning center.

### IV. Nikolas After Leaving MSDHS

In April of 2017, Nikolas's mother informed MSDHS that her son was willing to accept placement at Cross Creek. MSDHS informed Nikolas and his mother that they would have to review existing data to determine whether he was qualified as an IDEA student who also needed placement at Cross Creek. Further, because Nikolas was considered a general education student in April of 2017, Cross Creek could not enroll him there without a referral from MSDHS. In addition, MSDHS informed staff at Cross Creek that because it was late in the school year, MSDHS staff could not complete an evaluation of Nikolas and if he then qualified for IDEA services, get him timely placed at Cross Creek before the end of the school year. So, no action by MSDHS was taken in response to Nikolas's request.

In addition, the school did not follow up with Nikolas's request at the beginning of the 2017-2018 school year. Among the reasons given by MSDHS for not moving forward with its assessment was that Nikolas did not follow up his April 2017 request and that MSDHS was not put on notice that Nikolas had filed a due process complaint, nor did he ask again for reinstatement at Cross Creek after the start of the 2017-2018 year. Instead, due to his behaviors, he "bounced around" in several programs where he attempted to obtain his high school diploma.

### V. MSDHS's Possible Violations of the IDEA

- A. MSDHS failed to obtain informed consent from Nikolas when he refused placement at Cross Creek.

Collective's review concluded that MSDHS failed to obtain from Nikolas, after he legally made his own deci-

sions, informed consent to reject IDEA services after MSDHS suggested educational placement at Cross Creek. The review stated that because Nikolas did not make his revocation of consent for services in written form, and that he did not fully understand the consequences of his revocation, MSDHS did not obtain “informed consent” to revoke services from Nikolas.<sup>7</sup> Although the records obtained by Collective confirm that Nikolas never made a written request revoking consent, interviews of MSDHS staff indicate that at least one staff member explained to Nikolas some of the consequences of his decision. Those witnesses stated that they believed he appeared to understand the consequences of revoking consent for IDEA services.

1. Procedural versus substantive violations of the IDEA have been differentiated.

The review’s conclusion that MSDHS violated the IDEA because it did not obtain informed consent from Nikolas when he refused placement at Cross Creek is misleading because not all procedural errors rise to the level of a substantive violation of the IDEA. To illustrate, the court in *T.B. v. Prince George’s County Board of Education*, 118 LRP 31408 (4<sup>th</sup> Circuit, July 26, 2018) dismissed a case filed by parents of an IDEA student who refused to use any of the special education services offered within his IEP. The Court found that the school violated the timelines for IDEA assessment and attempted implementation of the proposed IEP services. In addition, the Court also found that the teenage student refused any services offered and could not be forced to accept the services. Finding that the school did violate IDEA procedural requirements, the Court said that this did not end the inquiry. The Court continued, “A procedural violation may not be the basis of a recovery unless it results in the loss of an educational opportunity for the disabled child.”<sup>8</sup> Because the student refused services, the Court concluded that there was no deprivation of an educational opportunity. Accordingly, the Court ruled that although the school violated IDEA’s procedural requirements, there was not a substantive violation by the school of the IDEA and the case against the school was dismissed.<sup>9</sup>

Once Nikolas revoked his consent for IDEA services, moreover, MSDHS could have filed a due process complaint seeking an order confirming that the offer to change Nikolas’s educational placement did provide

a FAPE to Nikolas in the least restrictive environment (LRE). However, MSDHS was not obligated to file this due process request, and the failure to do so would not be a violation of the IDEA. Further, the review said that even if MSDHS had successfully filed a due process complaint that because Nikolas could make his own decisions, he could refuse to go to Cross Creek and revoke his consent for IDEA services. The due process hearing officer could not “order” Nikolas to attend Cross Creek. Thus, Collective’s review concluded that even if MSDHS moved forward with filing a due process complaint, the outcome might not have changed: Nikolas could refuse to go to Cross Creek, and nothing could be done to force him to go.

Collective’s review may have been correct in finding that MSDHS staff committed procedural violations. That said, the review also stated that Nikolas was not going to accept relocation to Cross Creek. And the review correctly stated that even if MSDHS had filed a due process complaint and received an order confirming that its offer was a FAPE in the LRE, Nikolas could not be ordered to go to Cross Creek. Hence, Nikolas’s actions were no different than that of the child in the *T.B.* case. So, procedural errors committed by MSDHS staff did not cause Nikolas to lose any educational opportunities. Nikolas’s rejection of the MSDHS offer produced the loss of his educational services. Therefore, a conclusion that MSDHS violated the IDEA because of a failure to obtain informed consent from Nikolas is not supported by the facts discussed within the review nor supported by case law discussing procedural violations of the IDEA.<sup>10</sup>

2. Failure by MSDHS to provide counseling services and other interventions offered to all general education students who needed help.

After Nikolas’s IDEA services were removed, he was considered a general education student who had to meet all educational requirements expected of all juniors at MSDHS and no longer had IDEA protections afforded to IDEA students who were accused of violating the school’s code of student conduct.<sup>11</sup> Yet, the review also stated that MSDHS staff did not offer or provide Nikolas any in-school counseling services or in-school interventions for inappropriate behaviors offered to all students attending the high school who were having behavioral issues that were interfering with their education.

Collective’s review concludes that the failure to provide assistance to Nikolas offered to all MSDHS students was not the best practice and may have contributed to Nikolas’s poor educational performance after IDEA services were removed, as well as the continued escalation of unacceptable behaviors. There was no explanation from MSDHS as to why it provided no help to Nikolas after he no longer was an IDEA student. The review concludes that this failure to provide any help to Nikolas indicated a lack of understanding of his mental health needs and may have contributed to his decision to leave school in February of 2017. Importantly, the review suggests that all MSDHS staff receive training on how to handle a student who rejects IDEA services but still needs assistance from the school. The review also suggests that MSDHS staff receive training to provide them with a better understanding regarding how to help students with significant mental health problems who refuse IDEA services or Section 504 accommodations.

The review, however, does suggest that this failure to provide any support to Nikolas, when all students at MSDHS were entitled to support (such as counseling or academic assistance), was a violation of the IDEA. In addition, the review does not address whether this lack of action could be considered a violation of Section 504<sup>12</sup> or a form of illegal retaliation because of Nikolas’s decision not to accept IDEA services offered by MSDHS.

B. MSDHS failed to conduct a timely reassessment of Nikolas when he asked to be placed at Cross Creek.

1. Duty to timely evaluate Nikolas was not done by MSDHS.

In this case, the review said that when Nikolas asked to be “reinstated” as a special education student under the IDEA and agreed to be placed at Cross Creek, this should have been treated by MSDHS as a request for an initial evaluation for IDEA eligibility<sup>13</sup> and that an initial evaluation must be conducted within sixty days of receiving consent for the evaluation.<sup>14</sup> The review opined that MSDHS failed to meet this obligation and, in fact, never conducted any evaluation of Nikolas after he sought “reinstatement.” Although MSDHS could argue that Nikolas never consented to be evaluated after he sought reinstatement, his request to be reinstated should have put MSDHS on

notice that it needed to obtain “consent” to move forward. And MSDHS’s failure to take any steps to address Nikolas’s request could be considered a failure to evaluate a student for IDEA services once a decision-maker asks for IDEA services. The “failure” for Nikolas to specifically ask for an IDEA evaluation when he asked for reinstatement did not relieve MSDHS of its duty to start the process to timely consider Nikolas’s request. The Collective’s review also questioned the need for MSDHS to obtain any additional data to determine whether Nikolas was a student with an IDEA disability. Schools have the right to review existing data to determine whether a student qualifies for IDEA services, which is a reason the IDEA allows schools up to sixty days to assess student.<sup>15</sup>

In this case, the review pointed out that MSDHS had existing data that was at most sixty days old to determine whether Nikolas was a student with an IDEA disability. In fact, Nikolas had been a student of the school district for over twelve years before he dropped out. In addition, he had been a student with an IDEA disability for over ten years. In the fall of 2016, after Nikolas’s IDEA services were removed, his grades dropped, and his inappropriate behaviors escalated. And within sixty days of dropping out, Nikolas asked to be reinstated and provided the exact educational placement that MSDHS and Nikolas’s mother wanted him to have before he rejected the proposal. Accordingly, the review concluded that MSDHS had all the data it needed to evaluate Nikolas and should have expedited its evaluation.

**VI. Possible Violations of Law Not Discussed by the Collective Review**

A. Should MSDHS have offered Nikolas an “alternative” IEP?

In the fall of 2016, MSDHS offered Nikolas what it believed to be an IEP providing him a FAPE in the LRE. This is what the IDEA requires schools to provide students who have a qualified disability under the IDEA.<sup>16</sup> If MSDHS decided to offer Nikolas an IEP that provided fewer services or a different placement that it knew was not supported by the existing data, this might be considered an admission that it was offering something to Nikolas that was not a FAPE in the LRE. If there was a less restrictive placement for Nikolas that would have provided him FAPE, why didn’t MSDHS make that the initial offer? It did not

because their proposal was what MSDHS believed was the minimum offer they could make that would comply with the IDEA. This case, moreover, was not one where the school made an offer and the parents or guardians rejected it because of their belief that it did not provide enough services to provide the student with a FAPE in the LRE. This situation was one where the school offered what it believed was a FAPE in the LRE, and the decision-maker rejected it not because it didn't offer a FAPE in the LRE, but because the decision-maker did not want to leave MSDHS.

That said, Nikolas did not ask MSDHS whether an IEP could have been created that provided him a FAPE at MSDHS. This may indeed bolster the review's claim that MSDHS did not receive informed consent from Nikolas when he would not consent to the offered IEP. Since no one brought this up to Nikolas, he may not have known that he could have made this request. Subsequently, considering Nikolas's age and mental health issues, this may have had an impact upon his ability to advocate for himself. The review suggested the MSDHS staff undergo training to have a better understanding of how to interact with students who reach the age of majority and have a history of mental health issues that might interfere with students' ability to not only understand the negative consequences of decisions, but also to learn how to advocate for themselves.

B. The impact Nikolas's rejection of the offered IEP had upon any rights granted to him under Section 504 is discussed.

The Collective's review does not indicate whether MSDHS staff discussed what, if any, Section 504 rights Nikolas may have had after he rejected the offered IEP. The question of whether rejection of services under the IDEA is also a rejection of any accommodations under a Section 504 plan has been an issue of debate for many years. In 1996, the Office for Civil Rights in *Letter to McKethan*, Office for Civil Rights, Southern Division D.C. (North Carolina) 25 LRP 4267 (December 31, 1996) said that rejection of offered IDEA services was also a rejection of Section 504 accommodations. Accordingly, the OCR said that if a parent or guardian rejects an offered IEP, then the school does not violate the IDEA or Section 504 when it refuses to offer Section 504 accommodations.<sup>17</sup>

One Missouri federal district court judge in *Lamkin v. Lone Jack School District*, 11S LRP 13571, (W.D. MO., March 1, 2012) relying upon *McKethan* dismissed a parent's claim that a school violated Section 504 after the parents rejected an offered IEP that provided placement in a state-run school, a fact pattern not unlike the situation with MSDHS and Nikolas. But a Florida federal court in *D.F. v. Leon County School Board*, 115 LRP 14797 (N.D. Fla. March 31, 2015) opined that *McKethan* "falls short of a full and correct analysis of the relationship between Section 504 and the IDEA" and would not dismiss a parent's Section 504 claim based upon the *McKethan* Letter.<sup>18</sup> So, MSDHS may have violated Section 504 when it did not offer Nikolas Section 504 accommodations because of the Florida federal court ruling. But, if Nikolas had resided within the jurisdiction of the *Lamkin*<sup>19</sup> court, MSDHS would not have to be concerned that it did not consider Section 504 after Nikolas would not consent to IDEA services. What this points to is that once a decision-maker withdraws consent for IDEA services, schools need to review the law of its jurisdiction to determine whether that is also deemed to be a rejection of Section 504 accommodations.

C. Child Find obligations were not met by MSDHS.

Child Find, under the IDEA, requires public schools to locate, identify and evaluate all students who reside in the district who need special education services.<sup>20</sup> Child Find includes students who are advancing from grade to grade and to students enrolled in private schools, homeless students and highly mobile students. A federal court judge in *D.B. v. Fairview School District*, 117 LRP 45742 (W.D.PA. October 31, 2017) reminded schools that Child Find had a "... continuing obligation ... to identify and evaluate all students who are reasonably suspected of having a disability under the statutes."<sup>21</sup> Nikolas was known to have been a student with a disability for many years by MSDHS. He had been qualified and did receive IDEA services from MSDHS for his entire freshman and sophomore years of high school, and MSDHS wanted him to continue receiving IDEA services when they made an offer to him during the fall of his junior year of high school. After Nikolas turned down services and he then became a "general" education student, his grades dropped, and his misbehaviors escalated. Nikolas then dropped out

but within two months of leaving MSDHS asked to be sent to the educational placement proposed by MSDHS with continued IDEA services. Under these facts, MSDHS knew or had reason to know that he was a child in need of special education services, yet they did nothing. So, starting shortly after Nikolas requested reinstatement at Cross Creek, he was denied educational services by MSDHS.

Although a court would need to determine whether or not this failure to comply with the Child Find obligations would have entitled Nikolas to an award of compensatory educational services from MSDHS because of all the known existing data, at a minimum the failure to offer Nikolas IDEA services at the beginning of the 2017-2018 school year would have shown a court that this was more than a mere procedural violation. The Sixth Circuit in *Somberg v. UTICA Community Schools*, 118 LRP 45495 (6<sup>th</sup> Cir. November 5, 2018) discussed how to determine what, if any, compensatory award a student is entitled to if a school violates the IDEA. Referring to the Supreme Court Ruling in *Endrew F.*,<sup>22</sup> the Sixth Circuit would require an inquiry into what, if any, progress a student made during the time a student was denied a FAPE. In Nikolas's situation, there would be no educational progress because MSDHS did not provide him any needed services. Therefore, in this case, MSDHS violation of its Child Find obligations to Nikolas was a substantive violation of the IDEA and would have entitled Nikolas to be awarded significant compensatory educational services.

D. Did MSDHS retaliate against Nikolas when it failed to assess him for a Section 504 disability or provide him services provided to all MSDHS students after he rejected the proposed IEP?

The Court in *D.F. v. Leon County School Board*, 115 LRP 14797 (N.D. Fla. March 31, 2015) discussed this issue. Because the school in that case offered the student IDEA services, the court concluded that its failure to then offer or conduct a Section 504 evaluation could not be considered deliberately indifferent to that student's rights under Section 504. It therefore concluded that the failure to offer the student in that case Section 504 accommodations after it was apparent that the child "rejected" offered IDEA services could not be considered illegal retaliation.<sup>23</sup>

As previously discussed, there are many similarities between Nikolas's case and the one discussed by the Flor-

ida Federal Court. In both cases, the student refused or turned down offered IDEA services. And, in both, the schools did not then consider assessing or offering Section 504 accommodations to the student. Because of MSDHS's offer to provide IDEA services to Nikolas, there is no evidence that MSDHS acted with deliberate indifference toward Nikolas. Accordingly, MSDHS did not retaliate against Nikolas.<sup>24</sup>

**VII. Recommendations Made Within the Review**

When an IDEA or Section 504 student reaches the age of majority and no court has declared the student legally incompetent, schools can face challenges not experienced before when the parents or guardians made all of their child's educational decisions. Now, for the first time, a new decision-maker is sitting at the table with school staff – an emancipated "child." The Collective's review, moreover, was concerned that a lack of understanding of the impact of Nikolas's mental health issues contributed to staff being unable to convince Nikolas to agree to his placement at Cross Creek and its failure to immediately respond to Nikolas's request for reinstatement as an IDEA student with an educational placement at Cross Creek. The review, therefore, discussed the need to train MSDHS staff on what impact, if any, a significant mental health illness has upon students.

That said, the review did not suggest that these failures by MSDHS were related to Nikolas's killing of students and staff at MSDHS. Instead, the review focused upon what it deemed were failures committed by MSDHS starting in the fall of Nikolas's junior year at high school and continuing up to the date of the killings. Then, the review suggested not only additional training of staff so that they had a better understanding of students suffering from severe mental health issues, but also development of policies to improve response time when request for reinstatement to a refusal of IDEA services is made by a student who at one time was an IDEA student.

Additionally, the review suggested that MSDHS staff receive additional training on IDEA timeline requirements regarding initial evaluations of students suspected of having an IDEA disability. In this case, it was concluded that the MSDHS staff's failure to timely respond to Nikolas's request for reinstatement as an IDEA student was a request to be evaluated for qualification as an IDEA

student. The review confirmed that MSDHS staff ignored this request, thereby violating the IDEA. Importantly, the review suggested that MSDHS create a policy that would detail all timeline requirements of the IDEA and provide staff training on this topic. The review concluded that MSDHS needed additional training and the development of written policies so that MSDHS staff would be fully informed of steps to be taken when a student seeks reinstatement of IDEA services.

### VIII. Suggestions for Best Practice

Doing nothing is never an option. In the context of Title IX and Section 504, the Supreme Court has ruled that before a school can be shown to have violated these laws, the school must have acted with “deliberate indifference.”<sup>25</sup> This has been interpreted to mean that a school is aware or should be aware of a problem and chooses to do little or nothing to correct the problem. Although this case is not either a Title IX sexual harassment case or a Section 504 claim of illegal discrimination, the guidance from the two Supreme Court cases is informative to this case and others that involve students who have significant mental health issues that a school either chooses to ignore or does not understand what needs to be done to help the student.

In this case, once Nikolas refused IDEA services, MSDHS provided no help to him. And even when he asked for help, MSDHS took no steps to provide help to a student whom it knew needed special education services. The review suggested that MSDHS staff should receive training on how to handle situations where a student, with a known mental health problem, refuses IDEA services but then asks for help later. This is good advice for all schools. Develop policies, protocols and procedures to address the situation when a student, who becomes his or her own educational decision-maker, elects against the advice from school staff or his or her parents or guardians, to reject the offered services and then seeks reinstatement. For students who have mental health issues, this may be even more critical because the student’s mental health disorder may interfere with his or her ability to understand the need for assistance. Even if a student turns down offered IDEA services or Section 504 accommodations, that does not mean the child should be excluded and not provided services given to all students within the school.

Using this case as an example, when Nikolas refused IDEA services and was considered a “nondisabled” student, MSDHS provided him none of the help given to any students who were having academic or behavioral problems. This is never acceptable. Schools need to be proactive and have a plan in place to address this kind of situation that includes providing all the services and assistance provided to any student that attends the school.

In this case and in the Sandy Hook situation, the school staff failed to respond to the needs of a student who had significant mental health issues. In Sandy Hook, the solution was to put the student on homebound instruction with no consideration to the mental healthcare needs of the student. In Nikolas’s case, once he turned down IDEA services, school staff elected to provide him no help while he was still in school and failed to address his request for help after he asked to be reinstated.

That said, this does not mean that even if each of the schools had taken all the appropriate steps to help these students, the shootings would not have occurred. Sometimes, no matter what anyone does, things go badly ranging from minor issues to tragedies like these. Still, doing nothing to a known problem does not make it go away. In fact, that is the definition of deliberate indifference. And finding of deliberate indifference results in school liability when schools are charged with violations of Section 504 and Title IX. Worse, especially in the areas where schools have older students who have significant mental health issues, the outcome, as has been evidenced, can be tragic. And tragic outcomes not only can result in death of students and staff, but also lead to massive trauma for not only the surviving students but surviving staff as well. Trauma, moreover, creates more problems for the school staff that now has even more problems to deal with in the aftermath.<sup>26</sup> Accordingly, doing nothing in some extreme cases can lead to tragedy.

### IX. Conclusion

In November of 2014, the State of Connecticut published a report prepared by the Connecticut Office of the Child Advocate<sup>27</sup> discussing what may have caused the Sandy Hook shooting. Although this review and the Sandy Hook Report discussed events leading to the shooting that included descriptions of school staff failures or possible federal law violations, neither concluded that these



failures directly caused the deadly shootings. Yet, both made suggestions to schools that, if followed, might be considered as leading to the reduced possibility of another school shooting.

In July of 2018, in response to the MSDHS shooting and the May 18, 2018 shooting at Santa Fe High School in Santa Fe, Texas, the United States Department of Homeland Security published its “National Threat Assessment Model.”<sup>28</sup> Although the model stated that there “is no profile for a student attacker,” it did discuss the need to understand student mental health issues and how bullying of students might be a contributing factor in these shootings. Schools now have at least three publications that might provide

some assistance in preventing these tragedies.

But sadly, even if schools were to adopt all the recommendations listed in the three publications and faithfully implemented those recommendations, this, in of itself, is no guarantee that another school shooting will not occur. Yet, doing nothing or ignoring possible warning signs is not an alternative. Today schools have no choice other than to be proactive and take all reasonable steps in helping students who might create a risk to school safety so that there is at least a possibility of a decrease in the kind of tragedies that took place in Sandy Hook, MSDHS, and Santa Fe and the aftermath shock and trauma caused by these events. It needs to be an imperative, as one life lost is too many.

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## Endnotes

<sup>1</sup> MSDHS is located within the Broward County Schools District

<sup>2</sup> Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*

<sup>3</sup> 34 CFR § 300.101

<sup>4</sup> 34 CFR § 300.321 (a)

<sup>5</sup> 34 CFR § 300.116

<sup>6</sup> 34 CFR § 300.530 (f)

<sup>7</sup> 34 CFR § 300.503 (a)

<sup>8</sup> *T.B. v. Prince George’s County Board of Education*, 118 LRP 31408 ( 4<sup>th</sup> Circuit, July 26, 2018)

<sup>9</sup> *T.B. v. Prince George’s County Board of Education*, 118 LRP 31408 ( 4<sup>th</sup> Circuit, July 26, 2018)

<sup>10</sup> Also see *Y.N. & S.H.N. v. Board of Education of the Harrison Central School District*, 118 LRP 43536 (S.D.N.Y. September 25, 2018)

<sup>11</sup> 34 CFR § 300.530; 34 CFR § 530 (e)

<sup>12</sup> Rehabilitation Act of 1973, 29 USC § 794

<sup>13</sup> 39 CFR § 300.301

<sup>14</sup> 20 USC 1414 (1) (C) (i) (I)

<sup>15</sup> 20 USC 1414 (1) (C) (i) (I)

<sup>16</sup> 20 U.S.C. §1400 *et seq.* Also see *Andrew F. v. Douglas County Sch. Dist. RE-1*, 117 LRP 9767 (U.S. March 22, 2017) where Chief Justice Roberts discusses the importance of the IDEA and students’ education.

<sup>17</sup> *Letter to McKethan*, Office for Civil Rights, Southern Division D.C. (North Carolina) 25 LRP 4267 (December 31, 1996)

<sup>18</sup> *D.F. v. Leon County School Board*, 115 14797 (N.D. Fla. March 31, 2015) citing *Letter to McKethan*, Office for Civil Rights, Southern Division D.C. (North Carolina) 25 LRP 4267 (December 31, 1996)

<sup>19</sup> *Lamkin v. Lone Jack School District*, 11S LRP 13571, (W.D. MO., March 1, 2012)

<sup>20</sup> 20 USC 1412(a)(3); 34 CFR § 300.101

<sup>21</sup> *D.B. v. Fairview School District*, 117 LRP 45742 (W.D.PA. October 31, 2017) citing *P.P. ex rel Michael P. v. Westchester Area Sch. Dist.*, 585 F.3d 727,735 (3<sup>rd</sup> Cir. 2009); 20 USC 1412(a)(3)

<sup>22</sup> Also see *Andrew F. v. Douglas County Sch. Dist. RE-1*, 117 LRP 9767 (U.S. March 22, 2017)

<sup>23</sup> *D.F. v. Leon County School Board*, 115 LRP 14797 (N.D. Fla. March 31, 2015)

<sup>24</sup> *D.F. v. Leon County School Board*, 115 LRP 14797 (N.D. Fla. March 31, 2015)

<sup>25</sup> *Gesber v. Lago Vista Independent School District*, 524 U.S. 274, (1998); *Davis v Monroe County Bd. of Educ.*, 526 U.S. 629 (1999)

<sup>26</sup> *Do Public Schools Have Assistance Obligations to Students Who Suffer from the Bystander Effect?*  
(Inquiry & Analysis, May 2018)

<sup>27</sup> *Shooting at Sandy Hook Elementary School*, THE CONNEXTICUT OFFICE OF THE CHILD ADVOCATE (November 2014)

<sup>28</sup> *Enhancing School Safety Using a Threat Assessment Model*, United States Department of Homeland Security, July 2018