

Reliable Enough to Punish: K-12 Surveillance AI and the Section 504 Evaluation the District Insists It Is Not Conducting

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Abstract

A majority of American public school students now pass their school days, and much of their time at home, inside software that reads what they type, watches what they search, and scores what it sees. The vendors call the products safety monitoring. One of them now assigns each child a wellness level. The districts that buy these systems treat their outputs as reliable when the output supports a suspension and treat the same outputs as too informal to count when the output would obligate the district to do anything. This Article argues that the second half of that position is no longer available to them.

The argument proceeds from a fork the districts built for themselves. Section 504's child find and evaluation regulations oblige a district to evaluate any student it has reason to believe needs special education or related services because of disability, with notice and procedural safeguards attached. A district that disciplines a student on the strength of an algorithmic flag has stated, in its own records, that it believes the flag; a district that believes a flag describing self harm, emotional disturbance, or psychological crisis has acquired exactly the belief that triggers the evaluation duty it did not follow. The district may characterize its system as reliable or as unreliable. It may not select the characterization by consequence.

Beneath the fork the Article locates three further failures. Continuous behavioral scoring directed at mental and psychological states is an evaluation under the Protection of Pupil Rights Amendment and bears every operative mark of a medical examination under the criteria courts already apply, no clinician required, no diagnosis required, the practical effect controlling. A scoring system that flags students for perceived psychological abnormality manufactures regarded as claimants at the scale of enrollment. And a compulsory education delivered only through monitored platforms denies meaningful access to the students the system systematically misreads, with students on the psychotic spectrum injured first and worst, because announced continuous surveillance removes the one proposition their treatment requires them to be able to test. The constitutional challenges now in the courts are failing on qualified immunity for want of precedent. The disability statutes have been clearly established for forty years, they run against the entity, and nobody has pled them.

Keywords: Section 504; Title II; student surveillance; Gaggle; wellness scoring; child find; medical examination; regarded as; *Alexander v. Choate*; Protection of Pupil Rights Amendment; qualified immunity

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I. Introduction

In April 2026, a federal court in Kansas dismissed most of what a group of students and parents had brought against the Lawrence school district over its use of Gaggle and ManagedMethods, artificial intelligence systems that scan student accounts and flag content for human review.¹ The students had been called to the front office and questioned, one by one, without their parents, over photography assignments the software had flagged as indecent.² The court held that the official who did the questioning was entitled to qualified immunity, and its reasoning deserves quotation in full: “Plaintiffs have not cited (and the Court has not found) any law that when AI surveillance flags student material as potentially criminal, a school official cannot reasonably rely on that information to call in a student for questioning.”³ No precedent, no clearly established right, no claim.

That holding is correct as far as qualified immunity doctrine runs, and it is a map of the litigation gap this Article exists to close. The constitutional theories being brought against school surveillance systems are new because the systems are new, and qualified immunity converts novelty into dismissal. The disability statutes do not work that way. Section 504 of the Rehabilitation Act has bound every federally funded school district since 1973,⁴ Title II of the ADA has bound every public one since 1990,⁵ the meaningful access principle has been clearly established since 1985,⁶ and both statutes run against the entity itself, where qualified immunity

1. *Tell v. Lawrence Bd. of Educ.*, No. 2:25-cv-02428 (D. Kan. Apr. 8, 2026).

2. *Id.* (recounting allegations that the principal seized the students by calling them to the front office and questioning them individually without contacting their parents).

3. *Id.* (holding that existing precedent has not placed the question “beyond debate” and that reliance on the flag was not the “rare obvious case” of clear unlawfulness).

4. 29 U.S.C. § 794(a) (providing that no otherwise qualified individual with a disability “shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”).

5. 42 U.S.C. § 12132 (providing that no qualified individual with a disability shall, by reason of such disability, “be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity”).

6. *Alexander v. Choate*, 469 U.S. 287, 301 (1985).

has no purchase.⁷ The plaintiffs in *Tell* pled the First Amendment, the Fourth Amendment, and the Kansas Open Records Act. Nobody pled disability.

This Article supplies the pleading.⁸ The argument arrives with its foundations already laid, and it states them here as premises. Announced surveillance denies meaningful access to people with paranoia spectrum conditions because contemporary treatment requires the person to test, against reality, the belief that they are being watched, and the announcement makes the belief true; Part VII carries that mechanism with its clinical support. And where a single institution operates both the surveillance and the counseling office, the same entity manufactures the injury and administers the failed remedy. The K-12 school is where both premises reach their limit case, and the move changes three things at once. Attendance is compelled by law, so the coerced option argument arrives at full strength. The population is children, for whom the state's own regulations impose affirmative identification and evaluation duties no other setting imposes. And the surveillance itself has changed character: the systems no longer merely record, they score, and one market leader now assigns each monitored child a standing wellness level.⁹

The Article's central move is Part V's fork, and it can be stated in a paragraph. The Section 504 regulations oblige a district to evaluate any student who, "because of handicap, needs or is believed to need special education or related services" before taking significant action with

7. The district in *Tell* learned this on the state law side of the same order: the individual defendants' immunity did nothing for the district's own duty to answer records requests, and the students took partial judgment on those claims. *Tell v. Lawrence Bd. of Educ.*, No. 2:25-cv-02428 (D. Kan. Apr. 8, 2026) (sustaining plaintiffs' motion for partial judgment on the pleadings under the Kansas Open Records Act and noting that qualified immunity of individual defendants would not protect the district from a duty to comply).

8. The privacy side of this conversation is developed. See Barbara Fedders, *The Constant and Expanding Classroom: Surveillance in K-12 Public Schools*, 97 N.C. L. REV. 1673 (2019) (mapping the surveillance apparatus and showing the evidence for its safety justification to be thin); Danielle Keats Citron, *The Surveilled Student*, 76 STAN. L. REV. 1439 (2024). What the privacy scholarship has not done, and what no plaintiff in the live cases has done, is bring Section 504 and Title II to the problem; the disability statutes appear in neither the leading articles' frameworks nor the *Tell* and *Merrill* complaints, and that absence is the gap this Article fills.

9. Securly's own product documentation describes "Wellness Levels" in three tiers, Concerning, High Risk, and Critical, "continuously updated" as a "60-day rolling view of a student's emotional well-being." *Wellness Levels in Securly Aware*, SECURLY (Mar. 25, 2024), <https://blog.securly.com/wellness-levels-securly-aware-holistic-support/>; *Why Securly Aware Is a More Effective & Reliable Way To Monitor Student Wellness*, SECURLY (Apr. 10, 2025), <https://blog.securly.com/more-effective-student-wellness-monitoring/>. For the press account that surfaced the feature, see Nicholas E. Stewart, *We've Replaced School Security With the Creepiest Possible System*, SLATE (Aug. 21, 2026), <https://slate.com/news-and-politics/2026/08/back-to-school-security-creepy-ai-surveillance-system.html>.

respect to them.¹⁰ Belief is the trigger. A district that suspends a student over an algorithmic flag reporting self harm ideation, violent ideation, or psychological crisis has memorialized its belief in the flag; the suspension is the belief, reduced to paper. From that moment the district holds a position it cannot escape by characterization. If the flag is reliable enough to punish, it is reliable enough to trigger the evaluation duty, with the notice, the documentation, and the impartial hearing rights the regulations attach.¹¹ If the flag is too unreliable to trigger the duty, it was too unreliable to be the basis of the punishment. The districts have been running both positions at once, reliability when it empowers, unreliability when it obligates, and the choice between them is not theirs to make by convenience.

Part II describes the deployment. Part III establishes coverage and the coerced option. Part IV shows that continuous behavioral scoring is an evaluation within the meaning of the federal statutes that regulate evaluations of students, and bears the operative marks of a medical examination under the criteria courts already use. Part V runs the fork. Part VI shows that the scoring apparatus manufactures regarded as discrimination at the scale of enrollment. Part VII locates the meaningful access injury and identifies the students the system misreads first. Part VIII follows the records the system leaves and who escapes the education records definition on the way. Part IX turns to remedy, and Part X answers the objections, including the one the districts will lead with, which is safety.

II. The Deployment

The scale question was answered by survey four years ago. In 2022 the Center for Democracy and Technology found that eighty nine percent of teachers reported their schools monitor student online activity, and the number has had four school years to grow.¹² When Senators Warren and Markey investigated the industry, their report's title stated the finding: the monitoring is

10. 34 C.F.R. § 104.35(a).

11. 34 C.F.R. § 104.36.

12. CTR. FOR DEMOCRACY & TECH., HIDDEN HARMS: THE MISLEADING PROMISE OF MONITORING STUDENTS ONLINE (2022).

constant, around the clock, on school accounts and school devices, during school hours and after them.¹³ The products scan email, documents, chat, search history, and in some configurations the keystroke stream itself, across the millions of students enrolled in the thousands of districts the major vendors serve.

Three documented incidents fix the operating characteristics. In Marana, Arizona, a high school sophomore sat at home before school one morning in October 2024, asked his mother how to handle a bad grade, and opened his school-issued Chromebook to draft an email to his English teacher, typing and deleting a series of jokes as he went, the last of them a mock threat narrated to his mother in a silly voice and deleted seconds later. Within the hour the principal called: Gaggle had captured the deleted draft from the keystroke stream and sent a screenshot. The mother, an eyewitness to the entire episode, explained that there was no threat. The district suspended him anyway, and extended the suspension after a hearing.¹⁴ The family pled the First Amendment and due process; the Electronic Frontier Foundation appeared as amicus. Nobody pled disability, and the fork of Part V should be read against this record, because the district's choice is preserved in it with unusual purity: presented with an algorithmic flag on one side and a live parental eyewitness on the other, the district credited the flag. In Baltimore County, a student named Taki Allen was surrounded, handcuffed, and searched at gunpoint after an AI weapons detection system flagged the crumpled Doritos bag in his pocket as a firearm.¹⁵ And in the CDT's survey work, thirty seven percent of teachers reported that alerts arriving outside school hours at their schools route directly to law enforcement,¹⁶ which means the pipeline from a child's late

13. ELIZABETH WARREN & ED MARKEY, *CONSTANT SURVEILLANCE: IMPLICATIONS OF AROUND-THE-CLOCK ONLINE STUDENT ACTIVITY MONITORING* (2022), <https://perma.cc/5GH5-HATU>.

14. Complaint, *Merrill v. Marana Unified Sch. Dist.* (D. Ariz.), <https://storage.courtlistener.com/recap/gov.uscourts.azd.1450446/gov.uscourts.azd.1450446.1.pdf>; docket at <https://www.courtlistener.com/docket/70806158/merrill-v-marana-unified-school-district/>; *EFF to Arizona Federal Court: Protect Public School Students from Surveillance and Punishment for Off-Campus Speech*, ELEC. FRONTIER FOUND. (Nov. 26, 2025), <https://www.eff.org/deeplinks/2025/11/eff-arizona-federal-court-protect-public-school-students-surveillance> (amicus brief arguing that use of a school-issued laptop or account does not categorically place a student on campus, and noting that the district runs Gaggle, GoGuardian, and Securly together on its Chromebooks and Google Workspace). Press accounts of the suspension's total length vary (Slate reported eleven days; Arizona press, citing the complaint, reported an initial ten-day suspension later extended), so this Article states the structure and lets the complaint supply the number.

15. Stewart, *supra* note 9.

16. CTR. FOR DEMOCRACY & TECH., *supra* note 12.

night search query to an armed response to the family home exists as standing infrastructure in more than a third of surveyed schools.

The disciplinary asymmetry is also in the survey record. Seventy eight percent of teachers reported that monitoring flags had been used to discipline students; fifty four percent reported flags producing a counseling referral.¹⁷ A system marketed as a suicide prevention tool produces punishment more often than it produces help, and that gap between the marketing and the routing is not incidental to this Article’s argument. It is the argument’s factual predicate. The flags are being treated as reliable. They are being treated as reliable for the purpose the district prefers.

The independent evidence record deserves its own paragraph, because both branches of Part V’s fork will draw on it. When RAND studied AI suicide risk monitoring in schools, the vendors declined to disclose what indicators their algorithms use or how the indicators are weighted, and the one association study RAND could evaluate never assessed whether the alerts were accurate, that is, whether flagged students were in fact experiencing suicidal thoughts at all.¹⁸ The students’ own reports fill in the behavioral consequence: in national survey work, roughly sixty percent of monitored students said they held back from saying what they truly meant online because of the monitoring, and eighty percent of students who knew their school used monitoring software reported being more careful about what they searched.¹⁹ The legal scholarship reached the same conclusion about the deployment’s first generation: the evidence for

17. *Id.*

18. LYNsay AYER ET AL., RAND CORP., ARTIFICIAL INTELLIGENCE-BASED STUDENT ACTIVITY MONITORING FOR SUICIDE RISK: CONSIDERATIONS FOR K-12 SCHOOLS, CAREGIVERS, GOVERNMENT, AND TECHNOLOGY DEVELOPERS (2023), <https://doi.org/10.7249/rra2910-1> (reporting that the researchers “were not able to obtain information from the EdTech companies about the specific data and indicators that are used in their algorithms or how heavily each indicator is weighted,” and that the association study examined “did not assess whether the suicide risk alerts were accurate”).

19. DHANARAJ THAKUR, HUGH GRANT-CHAPMAN & ELIZABETH LAIRD, CTR. FOR DEMOCRACY & TECH., BEYOND THE SCREEN: PARENTS’ EXPERIENCES WITH STUDENT ACTIVITY MONITORING IN K-12 SCHOOLS (2023), <https://doi.org/10.31219/osf.io/bwjc4> (reporting the survey figure and finding, from parent interviews, that monitoring chills student expression, that responses to alerts carry significant emotional impacts, and that alerts “were not always kept private, resulting in stigmatizing students”); DEVAN L. HANKERSON, CODY VENZKE & ELIZABETH LAIRD, CTR. FOR DEMOCRACY & TECH., ONLINE AND OBSERVED: STUDENT PRIVACY IMPLICATIONS OF SCHOOL-ISSUED DEVICES AND STUDENT ACTIVITY MONITORING SOFTWARE (2022), <https://doi.org/10.31219/osf.io/73a2b> (eighty percent figure; documenting that community concerns centered on “appropriate use of student activity monitoring data for disciplinary purposes”).

the safety justification was thin in 2019,²⁰ and the intervening years added scale without adding validation. An instrument whose mechanics its makers will not disclose, whose accuracy has not been established, and whose known behavioral effect is to make children stop writing what they mean, is the instrument on which the disciplinary records of Part V rest.

The newest development is the one that converts monitoring into assessment, and it can now be described from the vendor's own documentation. Securly Aware assigns every monitored student a Wellness Level, in three tiers the company names Concerning, High Risk, and Critical, presented on a dashboard that shows administrators how many children currently occupy each tier and lets them drill down to the individual student.²¹ The level is “a 60-day rolling view of a student's emotional well-being, continuously updated based on the risks associated with their digital activities,”²² generated by what the company calls its At-Risk AI from flagged events and the student's activity history, supplemented by a teacher assistant tool through which educators “record observed student behavior” into the instrument.²³ The company's own description of the product's purpose is the one that matters most in Part IV: it invites districts to “[t]ake a preventative approach by screening students for signs of depression and anxiety well before student behavior raises an at-risk alert,”²⁴ and it describes the feature's introduction as “the shift from student activity monitoring to holistic student wellness monitoring.”²⁵ The vendor has said it plainly. The thing being monitored is no longer the activity. It is the child, and what is being assessed about the child is emotional and psychological state, continuously, with the assessment disclosed to school staff, communicated to the student through automated pop-ups when the score declines, and invisible in its mechanics to the parents it describes.

20. Fedders, *supra* note 8.

21. *Wellness Levels in Securly Aware*, *supra* note 9 (describing the dashboard, the three levels, and drill-down “to the individual student level”).

22. *Why Securly Aware Is a More Effective & Reliable Way To Monitor Student Wellness*, *supra* note 9.

23. *Student Wellness Monitoring Solution: Securly Aware*, SECURLY, <https://www.securly.com/aware> (“At-Risk AI conducts a nuanced analysis of flagged events, including a student's activity history, to determine a student's Wellness Level”; describing the teacher AI assistant and the pop-up of mental health resources “if their wellness levels decline”).

24. *Id.*

25. *Wellness Levels in Securly Aware*, *supra* note 9.

III. Coverage and the Coerced Option

Coverage is the short part. Every public school district in the country takes federal education money, so Section 504 reaches all of them,²⁶ and every public district is a public entity, so Title II reaches them independently.²⁷ The regulations that matter here have been on the books for decades: the prohibition on eligibility criteria that screen out people with disabilities,²⁸ the reasonable modification obligation,²⁹ the bar on surcharges that price the costs of nondiscrimination back onto disabled people,³⁰ and the effective communication duty, which the regulation places on the public entity without conditioning it on the individual first identifying themselves.³¹

The distinctive K-12 fact is compulsion. A university student who objects to the license plate camera at the parking garage can, at ruinous cost, enroll elsewhere. A public school student cannot lawfully be anywhere else on a Tuesday morning. Attendance is compelled by statute in every state,³² and the education the statute compels is now delivered through monitored platforms as a package deal. The plaintiffs in *Tell* alleged the resulting structure precisely, in language the court recited: students “cannot/could not withhold consent to the District’s surveillance practices without jeopardizing their education,” because refusing the platform terms means “forfeiting access to the basic tools of their public education.”³³ Optional in name, mandatory in effect. The

26. 29 U.S.C. § 794(a); *see also* 29 U.S.C. § 794(b) (defining “program or activity” to reach all of the operations of a local educational agency).

27. 42 U.S.C. § 12132.

28. 28 C.F.R. § 35.130(b)(8) (prohibiting criteria “that screen out or tend to screen out” individuals with disabilities from full and equal enjoyment of any service, program, or activity unless shown necessary).

29. 28 C.F.R. § 35.130(b)(7)(i).

30. 28 C.F.R. § 35.130(f).

31. 28 C.F.R. § 35.160(a)(1) (requiring a public entity to “take appropriate steps to ensure that communications” with disabled applicants and participants “are as effective as communications with others”).

32. *E.g.*, 105 Ill. Comp. Stat. 5/26-1 (whoever has custody or control of a child between six and seventeen “shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session,” subject to enumerated exemptions). The exemptions prove the structure: the lawful exits are private schooling, a certified inability to attend, and narrow employment and religious carve-outs, which is to say the exits are purchased, medically certified, or unavailable.

33. *Tell v. Lawrence Bd. of Educ.*, No. 2:25-cv-02428 (D. Kan. Apr. 8, 2026) (reciting the first amended complaint’s allegations); the court’s dismissal rulings did not reach the validity of that consent structure.

districts have said the quiet part to Congress: in the Senate investigation of the industry, twenty three school districts took the position that students should not expect any privacy at all.³⁴ The label on the acceptable use policy says agreement; the compulsory attendance statute standing behind it says otherwise; and the courts have not yet been asked whether a consent that cannot be withheld without forfeiting a legally compelled benefit is consent for any purpose the disability statutes respect.

The screening regulation gives that structure a doctrinal name. A condition of participation that operates to exclude or burden disabled students, here the condition of continuous legibility to an automated evaluator, is an eligibility criterion, and criteria that screen out or tend to screen out students with disabilities are unlawful unless the district proves them necessary.³⁵ Part VII identifies who gets screened. The point here is structural: participation in compulsory public education has been repriced, and the new price is submission to evaluation. The class dimension of the same repricing has already been named in the Arizona litigation: because lower-income students disproportionately depend on school-issued devices, an on-campus rule keyed to the device operates as what the amicus called a pay-for-privacy scheme, with surveillance intensity varying by family income.³⁶ For the students whose disabilities make that evaluation systematically wrong about them, the price is higher, and the surcharge regulation exists to say that disabled people do not pay extra for the same public benefit.³⁷

34. Citron, *supra* note 8 (citing WARREN & MARKEY, *supra* note 13, at 3).

35. 28 C.F.R. § 35.130(b)(8), *supra* note 28.

36. *EFF to Arizona Federal Court*, *supra* note 14. The disability version of the structure is the subject of this Part and Part VII: the students who cannot make themselves safely legible pay in disclosure what wealthier students avoid paying in hardware.

37. 28 C.F.R. § 35.130(f), *supra* note 30. The extension of the surcharge principle from money to compelled disclosure is this Article's argument rather than settled doctrine, and the text presents it as such.

IV. The Continuous Evaluation

The districts' first line of defense will be nominalism: the wellness level is a safety feature, the flags are alerts, nothing here is an evaluation of anybody. Two bodies of law already reject the move, one by express statutory text and one by a judicial method built for exactly this defense.

A. The PPRA Names the Category

The Protection of Pupil Rights Amendment provides that no student shall be required, as part of any program funded by the Department of Education, to submit to a “survey, analysis, or evaluation” that reveals information concerning, among seven other enumerated categories, “mental or psychological problems of the student or the student’s family,” without prior written parental consent.³⁸ The statute’s category is broad by construction: analysis and evaluation sit alongside survey precisely so that the protection does not turn on whether the school hands the child a questionnaire. A monitoring system that ingests a child’s writing, searching, and messaging, analyzes it against models of psychological crisis, and emits flags and wellness levels describing the child’s mental state is performing an analysis and an evaluation whose entire function is to reveal information concerning the mental or psychological problems of the student. That is the enumerated category, word for word.

The PPRA has no private right of action, and this Article does not pretend otherwise;³⁹ its enforcement runs through the Department. Its work in this Article is definitional. Congress has already decided that analyzing students to reveal their psychological problems is a regulated category of school conduct requiring written parental consent in advance. The districts deployed the category at scale and skipped the consent. Whatever else that fact does, it forecloses the argument that continuous psychological scoring is too informal to be an evaluation of anything, because the statute that governs evaluations of students describes this one. The history of survey

38. 20 U.S.C. § 1232h(b)(2).

39. *Cf. Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002) (no private right of action to enforce FERPA’s nondisclosure provisions under § 1983).

litigation supplies the cautionary lesson in the other direction: constitutional privacy attacks on student psychological surveys have failed even in sympathetic circumstances,⁴⁰

B. The Medical Examination Criteria Describe the Wellness Level

The second body of law comes from the courts' answer to employers who ran psychological instruments on workers and called them personality tools. In *Karraker v. Rent-A-Center*, the Seventh Circuit applied the EEOC's criteria for identifying a medical examination: whether the test is administered or interpreted by a health care professional, whether it is designed to reveal an impairment of physical or mental health, whether it is invasive, whether it measures physiological responses, whether it is given in a medical setting, whether medical equipment is used.⁴¹ One factor can suffice. The court then held the MMPI a medical examination on two findings that travel directly to the wellness level: the instrument was "designed, at least in part, to reveal mental illness," and its use "has the effect of hurting the employment prospects of one with a mental disability."⁴² Design plus effect. Diagnosis not required.

The EEOC guidance the court applied contains a worked example, and the vendor has written its product into it. The guidance's hypothetical medical examination is a test "which reflects whether applicants have characteristics that lead to identifying whether the individual has excessive anxiety, depression, and certain compulsive disorders (DSM-listed conditions)," and the guidance says of that test, flatly, "This test is medical."⁴³ Securly's own product page invites districts to take "a preventative approach by screening students for signs of depression and

40. *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159 (3d Cir. 2005) (rejecting constitutional claims over a student survey probing sensitive personal subjects). The decision carries negative treatment signals in the citators and is offered here only for the shape of the failure: the constitutional theories underperform in this territory, which is precisely why the statutory categories, with their express consent requirements, carry the analysis.

41. *Karraker v. Rent-A-Center, Inc.*, 411 F.3d 831, 835 (7th Cir. 2005) (setting out the seven factors from the EEOC's enforcement guidance, which defines a medical examination as "a procedure or test that seeks information about an individual's physical or mental impairments or health," and noting that "[o]ne factor may be enough to determine that a procedure or test is medical").

42. *Id.* at 837 (holding the MMPI "best categorized as a medical examination" on those grounds and concluding its use violated the ADA even though it was one part of a larger battery); *see also id.* at 838 (reversing and remanding for entry of summary judgment for the plaintiffs on that claim).

43. *Id.* at 836 (quoting the EEOC's enforcement guidance examples).

anxiety.”⁴⁴ The sentence the vendor wrote to sell the product and the sentence the EEOC wrote to define a medical examination describe the same instrument. Nothing in the analysis turns on the analogy being pressed; it turns on the description being the vendor’s. And the parallel runs deeper than the marketing. The MMPI earned its classification partly through items probing whether the test taker sees “things or animals or people around me that others do not see” and commonly hears “voices without knowing where they are coming from,”⁴⁵ which is to say the instrument screened for the psychotic spectrum. The monitoring classifiers screen the same territory from the other side of the page, firing on the morbid, the disorganized, and the intrusive as they appear in a child’s own writing.

Two of the court’s subsidiary rulings close the escape routes in advance. The employer argued that no psychologist interpreted the test; the court answered that non-clinical interpretation “is not, however, dispositive,” because “the practical effect of the use of the MMPI is similar no matter how the test is used or scored.”⁴⁶ And the employer argued that it used a vocational scoring protocol rather than a clinical one; the court answered that the instrument was a medical examination “regardless of the scoring system.”⁴⁷ Substitute the vendor’s language and the rulings read as if written for this deployment. No clinician touches a Gaggle flag or a Securly wellness level: not dispositive. The vendor scores for safety rather than for diagnosis: the scoring system does not matter. The system is built to detect self harm, suicidality, violence risk, and psychological crisis, which is to say it is designed, at least in part, to reveal mental impairment, and Part II’s disciplinary numbers establish the effect half of the holding, because the flags are hurting the educational prospects of the students they describe.

The limits of the analogy should be stated as plainly as the analogy. *Karraker* construes Title I’s express restrictions on medical examinations and disability inquiries,⁴⁸ and Title II

44. *Student Wellness Monitoring Solution: Securly Aware*, *supra* note 9.

45. *Id.* at 833 n.1 (reproducing MMPI items).

46. *Id.* at 836–37.

47. *Id.* at 836 n.3 (“the MMPI is a medical examination regardless of the scoring system, so it does not matter which scoring protocol RAC used”).

48. 42 U.S.C. § 12112(d).

contains no parallel provision; nothing in this Part claims that a school district violates a statutory examination ban by the bare act of scoring. The criteria do different work here. They are the courts' existing method for deciding when an assessment of a person is an assessment of their mental health notwithstanding the label on the box, and under that method the wellness level is a mental health evaluation. That conclusion feeds the PPRA category above, and it arms the fork that follows, because a district cannot simultaneously operate what the case law recognizes as a mental health evaluation of every enrolled child and disclaim, when the evaluation duty comes due, any belief about what its own instrument keeps telling it.⁴⁹

V. The Fork

The Section 504 regulations impose on every funded district an affirmative duty with a low and deliberate trigger. A district “shall conduct an evaluation” of any person who, “because of handicap, needs or is believed to need special education or related services,” before taking any action with respect to initial placement and before any subsequent significant change in placement.⁵⁰ The trigger is belief. Not diagnosis, not parental request, not certainty: the district's own belief that the child may need services because of disability. And the regulations attach process to the duty: a system of procedural safeguards including notice, an opportunity to examine records, and an impartial hearing with participation by parents and representation by counsel.⁵¹

49. The same scoring logic is under scrutiny on the employment side. *See Mobley v. Workday, Inc.*, No. 3:23-cv-00770 (N.D. Cal. July 1, 2026) (reciting allegations that AI screening tools measure “response timing, hesitation patterns, communication style, and interaction behaviors” and compare them against training data). The K-12 deployment applies the same inferential architecture to children, inside a compulsory program, with the evaluation duties of Part V attached.

50. 34 C.F.R. § 104.35(a), *supra* note 10. The IDEA imposes a parallel affirmative duty: all children with disabilities residing in the state, “regardless of the severity of their disabilities, and who are in need of special education and related services,” must be “identified, located, and evaluated.” 20 U.S.C. § 1412(a)(3)(A). The Article's fork runs on the Section 504 regulation; the IDEA parallel confirms that affirmative location of children who may need services is the background norm of the field, which makes the districts' claimed ignorance of what their own instruments report the anomaly.

51. 34 C.F.R. § 104.36, *supra* note 11.

Now put the deployment against the duty. A district's monitoring system flags a student for self harm ideation. The district reads the flag, credits it, and acts on it: a suspension, a mandated risk assessment as a condition of return, an exclusion from activities, a referral to police. Every one of those actions is a document, and every document says the same thing: we believed the flag. The flag's content was a representation about the child's psychological state, the kind of state that, if real, is the paradigm case of a condition generating a need for related services. The district cannot have believed the flag for discipline and disbelieved it for child find. Belief is not divisible by convenience.

So the fork closes on the district from both sides. Take the flags as reliable, and every disciplinary action premised on a mental health flag is an admission that the 104.35 trigger was pulled, which makes the absence of evaluation, notice, and safeguards a procedural violation in the district's own records, replicated at the scale of the alert volume. Take the flags as unreliable, and the district has conceded that it suspended children, summoned police to homes, and conditioned return on risk assessments, on the strength of information it did not believe, which is not a defense, it is a description of arbitrary action against the very students the statutes protect, and it forfeits the safety justification of Part X besides, because a district cannot claim the system saves lives while disclaiming belief in what it says. There is no third branch. The only question a district can litigate is which admission it prefers.

Two containment points, so the fork is not overread. First, the duty runs on belief about need for services, and a district will answer that a single flag does not generate belief about need. The answer fails on the district's own conduct: the actions taken on flags, exclusions, mandated assessments, police referral, are themselves significant, and a district that mandates a risk assessment before return has literally demanded an evaluation while withholding the regulatory kind, with its notice and its safeguards. Second, some courts have held that short suspensions, standing alone, do not implicate the protections of Section 504 and Title II at all.⁵² The fork does not run through the suspension's length. It runs through what the suspension proves the district

52. *See Zell v. Ricci*, 321 F. Supp. 3d 285 (D.R.I. 2018) (concluding that neither a five day suspension nor an in school detention implicated the statutes' protections) (citing *Honig v. Doe*, 484 U.S. 305, 325 (1988)).

believed, and the evaluation duty the belief triggered exists whether the flag produced ten days of exclusion or one.

VI. Regarded As, at the Scale of Enrollment

The ADA's third definitional prong provides that a person meets the definition of disability if "subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity."⁵³ Perception suffices. The prong exists because Congress concluded that discrimination based on how an institution sees you is discrimination whether or not the institution sees correctly.⁵⁴ One statutory boundary must be carried with the prong: it does not reach impairments that are both transitory and minor.⁵⁵

Courts in the school setting have already worked out what the prong requires and what feeds it. A Colorado district court, construing the prong against a school district, put the epistemics cleanly: the district "could not have regarded [the student] as disabled without first coming to know (or at least believe) that he had an impairment."⁵⁶ Knowledge or belief in an impairment, followed by adverse action because of it: that is the claim. And the school cases show the belief arriving through records rather than through observation. In *Chadam v. Palo Alto*

53. 42 U.S.C. § 12102(3)(A).

54. The prong's text is quoted and applied against educational institutions across the district courts. *See, e.g.*, *Lawton v. Success Acad. Charter Schs., Inc.*, 323 F. Supp. 3d 353 (E.D.N.Y. 2018) (quoting the perceived impairment language); *Voss v. Baca*, No. 3:14-cv-00066 (D. Nev. July 9, 2015) (applying § 12102(3)(A) under Title II); *Widomski v. Orange Cnty. Cmty. Coll.*, No. 7:09-cv-07517 (S.D.N.Y. Mar. 21, 2013) (construing the definition's reach across Title II). Each parenthetical characterizes the opinion's application of the prong; the cases are cited for that structure.

55. 42 U.S.C. § 12102(3)(B) ("Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less."). The containment does the district no good here: suicidality, self harm risk, and psychological crisis, the very states the systems are marketed as detecting, are minor under no reading, and a standing wellness level is the opposite of a transitory perception; it is a continuously refreshed one.

56. *Nipper v. Harrison Sch. Dist. Two*, No. 1:17-cv-02391 (D. Colo. Apr. 15, 2020).

Unified School District, the information was genetic markers in a student's file, an impairment the child did not manifest, and the district's action on the data was the alleged discrimination.⁵⁷

The monitoring deployment industrializes that structure. Every flag for self harm, suicidality, or psychological crisis is the system stating a perceived mental impairment; every wellness level below the vendor's threshold is a standing perception, refreshed continuously; and every adverse action premised on the flag, the suspension, the exclusion, the police referral, the mandated assessment, is an action taken because of the perceived impairment. The prong's elements assemble themselves from the district's own audit log. What *Chadam* presented as one family's misfortune, one file, one datum, one adverse response, the wellness apparatus produces as a product feature, across every enrolled child, all year.

One boundary must be drawn as sharply as the claim, because the regulations draw it. A student who qualifies solely under the regarded as prong is not entitled to reasonable modifications,⁵⁸ so nothing in this Part sounds in accommodation. The claim is discrimination simpliciter: adverse action because of perceived impairment. That framing is not a concession, it is the correct description of what the deployment does. The system does not fail to accommodate the students it flags. It punishes them for the impairment it perceives, and the statute has prohibited exactly that since the prong was written.

VII. Meaningful Access and the Students the System Misreads

Section 504's substantive guarantee, as the Supreme Court construed it in *Alexander v. Choate*, is that qualified disabled people "must be provided with meaningful access to the benefit that the grantee offers," and the benefit "cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled."⁵⁹ The

57. *Chadam v. Palo Alto Unified Sch. Dist.*, No. 4:13-cv-04129 (N.D. Cal. Nov. 4, 2014) (quoting § 12102's regarded as definition in a suit over a district's response to genetic information in student records). The district court decision is cited only for the structure of the claim, adverse action on recorded data indicating an impairment the child did not manifest; nothing here depends on the suit's ultimate disposition.

58. 28 C.F.R. § 35.130(b)(7)(ii).

59. *Alexander v. Choate*, 469 U.S. 287, 301 (1985).

Court's caution in the same opinion, that not every disparate impact showing states a claim,⁶⁰ bounded the theory's outer edge and left the meaningful access core standing, and the core is statutory construction of Section 504 itself, which is what makes it durable against the regulatory weather of the present moment.⁶¹

The benefit here is compulsory public education, and the deployment has redefined it. The benefit as now delivered is education plus continuous legibility to an automated evaluator: to attend school is to be read, scored, and acted upon by the system. For most students the redefinition is a privacy injury. For an identifiable class of disabled students it is an access barrier, because their disabilities are precisely the conditions the reading systematically gets wrong, and Part II established what the district does with its readings.

Name the class from the most injured outward. Students on the psychotic spectrum, and students whose conditions carry paranoid ideation, are injured by the announcement itself, before any flag fires. Contemporary treatment for persecutory belief proceeds by helping the person test, against reality, the proposition that the feared surveillance is not occurring; the school that announces continuous monitoring of everything the student writes has made the proposition false, and has thereby removed from the school day the possibility of the corrective experience the

60. *Id.* at 298–99 (declining to hold that all showings of disparate impact suffice).

61. The distinction matters in 2026 because agencies have begun rescinding disparate impact regulations elsewhere in civil rights law; a duty the Supreme Court located in the statute is not subject to rescission by rule. The circuit split over private disparate impact suits under § 504 is real and should be stated rather than stepped around. *Compare* Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 736–39 (9th Cir. 2021) (recognizing the theory), *with* Doe v. BlueCross BlueShield of Tenn., Inc., 926 F.3d 235, 241 (6th Cir. 2019) (rejecting it). This Article's claims survive on either side of it: the fork of Part V is procedural and rests on the district's own belief, the regarded as claim of Part VI is intentional in shape, and meaningful access under *Choate* is the Supreme Court's construction of the statute itself, which no circuit's disparate impact skepticism displaces.

treatment requires.⁶² The child’s belief that the institution is watching and judging is no longer a symptom to be tested. It is an accurate description of the district’s infrastructure, held with the wrong affect. And these same students’ disability presentations, disorganized writing, morbid ideation on the page, are the presentations a crisis classifier is built to fire on, so the population least able to bear an accusatory summons to the front office is the population the system selects for one.

This is a documented litigation pattern already, without the algorithm. A student’s private journaling, undertaken as a coping mechanism for anxiety, has ended in school action and a Title II suit in this author’s own metropolitan area;⁶³ institutional mental health threat assessment has produced its own line of disability litigation in higher education;⁶⁴ and the systems this Article describes convert the coping notebook into a continuously scanned document. The breadth of the class runs through anxiety, obsessive compulsive presentations, trauma histories, and autistic students, whose writing, searching, and interests are statistically legible to a classifier as deviance. The survey record supplies the disparate effect in the students’ own reports: disabled students were significantly more likely than their peers to report that monitoring made them unwilling to express true thoughts and feelings online, and more likely to report negative

62. The clinical model holds that persecutory delusions are “unfounded threat beliefs maintained by safety-seeking behaviours that prevent disconfirmatory evidence being successfully processed,” and the treatment that produced large reductions in delusional conviction worked by enabling patients to test their threat predictions and process the disconfirming evidence. Daniel Freeman et al., *Virtual Reality in the Treatment of Persecutory Delusions: Randomised Controlled Experimental Study Testing How To Reduce Delusional Conviction*, 209 BRIT. J. PSYCHIATRY 62, 62 (2016), <https://doi.org/10.1192/bjp.bp.115.176438>. Patients themselves identify “reality testing” as one of the ways an episode of persecutory worry is brought to a close. Daniel Freeman et al., *An Explanatory Randomised Controlled Trial Testing the Effects of Targeting Worry in Patients with Persistent Persecutory Delusions: The Worry Intervention Trial*, 2 EFFICACY & MECHANISM EVALUATION 1 (2015), <https://doi.org/10.3310/eme02010>. The disconfirming evidence is the load-bearing element, and it is the element the announced deployment removes: there is no false belief left to disconfirm.

63. DOE v. Township High Sch. Dist. No. 214, No. 1:19-cv-03052 (N.D. Ill. Aug. 21, 2024) (student journaled “patterns and lists in his notebook as a way of coping with his anxiety”; the school’s response to the notebook generated the Title II litigation).

64. See R.W. v. Bd. of Regents of the Univ. Sys. of Ga., 114 F. Supp. 3d 1260 (N.D. Ga. 2015) (campus threat assessment premised on links between mental health and violence); cf. Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602 (N.D. Ohio 2022) (federal challenge to remote proctoring surveillance, including Honorlock, at a public university).

consequences from it.⁶⁵ A student who cannot journal about their intrusive thoughts without risking a police visit, cannot search their own diagnosis without moving their wellness level, and cannot write the personal essay truthfully without being flagged, is not receiving the education their classmates receive. They are receiving a narrower one, self censored at the source, and the record shows they know it. That is the meaningful access injury: the benefit was redefined to require legibility, and the students whose disabilities make them illegible, or too legible, are excluded from the redefined benefit in exact proportion to their disability.

VIII. The Records the System Leaves

The deployment writes records at every step, and the records law the districts will invoke as their shield is built with the shape of this problem already in it. FERPA's protections attach to education records, defined as records directly related to a student and maintained by the educational agency or a party acting for it,⁶⁶ and the vendor sits inside that definition only through the school official exception, which requires that the district retain direct control over the contractor's use and maintenance of the records,⁶⁷ with redisclosure locked to the purposes of the original disclosure.⁶⁸ Every vendor contract is therefore a compliance document the district must be able to produce: either the district exercises direct control over what the classifier does with the corpus of its children's writing, in which case the classifier's outputs are the district's own conduct for every purpose this Article has described, or it does not, in which case the disclosure to the vendor lacked its only lawful basis. Both branches belong to the plaintiff.

The routing rules of Part II open a darker door. When an alert travels to a law enforcement unit, the records the unit creates for law enforcement purposes and maintains itself

65. CTR. FOR DEMOCRACY & TECH., *supra* note 12. The report notes that its disabled-student subsample is small, and the finding is carried here with that caveat, as the report carries it; the direction of the effect, not its precise magnitude, is what the argument uses.

66. 34 C.F.R. § 99.3 (defining "education records").

67. 34 C.F.R. § 99.31(a)(1)(i)(B) (permitting nonconsensual disclosure to a contractor performing an institutional service or function only where the contractor "[i]s under the direct control of the agency or institution with respect to the use and maintenance of education records").

68. 34 C.F.R. § 99.33(a).

are excluded from the definition of education records altogether,⁶⁹ and FERPA neither requires nor prohibits their disclosure onward.⁷⁰ A child’s late night search query, flagged and routed under the after hours rules a third of surveyed schools maintain, can become a police record standing outside the statute parents believe governs their child’s school file, disclosable at the unit’s discretion. The privacy statute’s enforcement posture completes the picture: there is no private right of action to sue over the file,⁷¹ so the records regime functions in this Article as architecture and as leverage. The architecture shows where the wellness data goes and who escapes the education records definition on the way. The leverage is the one claim category that already produced an outright win against a monitoring district: the alert logs, routing rules, and vendor contracts are records, the open records statutes reach the entity directly, and the *Tell* plaintiffs took partial judgment on exactly that theory while their constitutional claims were being dismissed around it.⁷²

IX. Remedy

The remedial posture is better than the constitutional cases suggest, and *Tell* itself shows why. Damages claims survived graduation there even as the injunctive claims mooted, because the injuries, detentions and accusatory questioning premised on algorithmic flags, were complete.⁷³ The disability statutes add what the constitutional claims lacked. The defendant is the district, an entity, so qualified immunity never enters.⁷⁴ The clearly established inquiry is satisfied by regulations that predate every student in the building. And the damages architecture, after

69. 34 C.F.R. § 99.8(b)(1) (records of a law enforcement unit are those “created by that law enforcement unit,” created “for a law enforcement purpose,” and “[m]aintained by the law enforcement unit”); *id.* § 99.8(b)(2)(ii) (records created and maintained by the unit “exclusively for a non-law enforcement purpose, such as a disciplinary action,” remain education records).

70. 34 C.F.R. § 99.8(d).

71. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002), *supra* note 39.

72. *Tell v. Lawrence Bd. of Educ.*, No. 2:25-cv-02428 (D. Kan. Apr. 8, 2026) (sustaining plaintiffs’ motion for partial judgment on the pleadings under the Kansas Open Records Act).

73. *Tell v. Lawrence Bd. of Educ.*, No. 2:25-cv-02428 (D. Kan. Apr. 8, 2026) (dismissing graduated plaintiffs’ claims for prospective relief while noting their damages claims for completed injuries remain).

74. *Cf. id.* (qualified immunity of individuals unavailing against the district’s own statutory records duties).

Cummings withdrew emotional distress damages from the Spending Clause statutes,⁷⁵ still carries the injury this Article describes, because the Ninth Circuit has expressly preserved compensatory damages for lost educational opportunities as economic harm.⁷⁶ Days of exclusion, mandated assessments as a condition of return, and the narrowed education of Part VII are educational deprivations with economic content.

Two doctrines the district will raise in its first motion deserve their answers now. The first is administrative exhaustion: where the gravamen of a suit under the disability statutes is the denial of a free appropriate public education, the IDEA requires the plaintiff to exhaust its administrative procedures first.⁷⁷ The Supreme Court closed most of that door for this Article's claims: exhaustion is not required where the remedy sought, compensatory damages, is one the IDEA cannot supply.⁷⁸ And the claims themselves are not FAPE claims in disguise: the discrimination of Parts IV, VI, and VII, evaluation without consent, adverse action on perceived impairment, denial of meaningful access through the surveillance condition itself, would state a claim against a public library or a summer program; the school setting supplies the victims, and the compulsion, without supplying the gravamen. The second doctrine is the intent requirement for damages, which most circuits satisfy through deliberate indifference: knowledge that a federally protected right is substantially likely to be violated, and a failure to act.⁷⁹ The fork is a deliberate indifference machine. The district's disciplinary records establish its knowledge of the flags; the regulations establish the duty the knowledge triggers; the absence of any evaluation,

75. *Cummings v. Premier Rehab Keller*, P.L.L.C., 596 U.S. 212 (2022).

76. *Payan v. Los Angeles Cmty. Coll. Dist.*, 169 F.4th 971, 977–79 (9th Cir. 2024) (extending *Cummings* to bar emotional distress damages under Title II while preserving compensation for lost educational opportunity as economic loss).

77. 20 U.S.C. § 1415(l); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017) (exhaustion turns on whether the gravamen of the complaint is the denial of a FAPE).

78. *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023) (suit seeking compensatory damages under the ADA may proceed without exhausting IDEA procedures because the relief is unavailable under the IDEA).

79. *See, e.g., Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001) (damages under Title II require intentional discrimination, shown by deliberate indifference: knowledge that a harm to a federally protected right is substantially likely, and a failure to act).

notice, or safeguard establishes the failure to act; and every element sits in documents the district authored about itself.

The administrative route runs in parallel and asks less. A Section 504 complaint to the Office for Civil Rights requires no lawyer and no filing fee, and the fork of Part V is built for it: the complaint attaches the district's own disciplinary record, which states the belief, and the absence of the 104.35 evaluation and 104.36 safeguards, which states the violation. The procedural claim does not require proving the classifier wrong, or the student's underlying condition, or the district's animus. It requires the district's paper, read against the district's duty. And the transparency lever that produced the students' one outright win in *Tell*, the state open records claim on which they took partial judgment,⁸⁰ generalizes: the alert logs, the vendor contracts, and the routing rules are records, and the entities that generated them cannot invoke anyone's immunity to keep them.

X. Objections

Safety. The district's lead objection writes itself: children are in crisis, the systems find them, and this Article would strip the finding. The answer has three layers. The empirical layer is Part II's own numbers, discipline outrunning counseling three to two in the teachers' reports, which is a strange shape for a rescue apparatus. The legal layer is that nothing in Section 504 forbids a district from responding to a student in crisis; the regulations demand that the response be the evaluative and procedural one the child find rules prescribe rather than the exclusionary one the audit logs record. The fork does not disarm the system. It holds the district to the meaning of its own reliance. And the logical layer is the fork itself: the safety justification is an assertion that the flags are believed, and a district that asserts belief has conceded the trigger.

The instrument is not medical. Answered in Part IV, in the deployment's own terms. Design plus effect controls, one criterion can suffice, the absence of a clinician is not dispositive, and the scoring protocol does not matter. A district repeating the vendor's framing is making

80. *Id.*

the argument *Karraker* was written to reject, with the word wellness doing the work the word personality did there.

The parents consented. The acceptable use policy is the district’s strongest paper and its weakest argument. Consent that cannot be withheld without forfeiting a legally compelled benefit is the structure the *Tell* plaintiffs alleged and no court has yet blessed; the PPRA demands written consent specifically for psychological analysis and evaluation, in advance, which the click through does not purport to be; the consent that was obtained does not stretch to cover what the vendors do with the data, a limit one federal court has already articulated in the edtech setting;⁸¹ and the parents whose consent is invoked cannot see the wellness data collected on their own children, a fact a sister case has already put on a federal record.⁸²

Direct threat. The disability statutes do permit a school to act against a student who poses a significant risk to the health or safety of others, and school authorities have prevailed on that ground.⁸³ The defense is individualized by construction: it asks about this student, this conduct, this risk, on current and objective evidence. An algorithmic flag is the opposite of that inquiry, a population-scale probability statement about text, generated by an instrument the district cannot explain, and cannot explain in the most literal sense, because the vendors decline to disclose the indicators and weights even to researchers,⁸⁴ and a district that reaches for the defense has walked into the fork again, because direct threat is a claim that the district believed the flag, assessed the child, and can defend the assessment, which is precisely the evaluative posture whose procedural obligations it skipped.

81. *See Shanahan v. IXL Learning, Inc.*, No. 3:24-cv-02724 (N.D. Cal. Nov. 1, 2024) (even if districts had obtained the required parental authorization for data collection, “that still does not mean the parents impliedly authorized” the vendor’s further practices).

82. *Myers v. Beaverton Sch. Dist.* 48J, No. 3:25-cv-00677 (D. Or. Apr. 17, 2026) (published opinion reciting allegations that data reviews “can result in staff-initiated meetings with students, without prior notice to parents,” and that while parents can view traditional attendance data through the parent portal, “parents cannot view the data collected through the DHP system”).

83. *See Fitzpatrick v. Town of Falmouth*, 2005 ME 97, 879 A.2d 21 (upholding a finding that a student posed a direct threat, a significant risk to the health and safety of others, such that officials had not discriminated); *cf. Sch. Bd. of Nassau Cty. v. Arline*, 480 U.S. 273 (1987) (the significant risk inquiry is individualized and grounded in objective evidence rather than in fears or stereotypes about disability).

84. AYER ET AL., *supra* note 18.

Everyone monitors students now. The premise is false as a statement about legal systems that have examined the practice. European data protection authorities, applying a regime that treats children’s data as specially protected, have sanctioned a school’s biometric facial recognition attendance system,⁸⁵ found a capital city’s school administration platform, processing data on half a million students including special category data, unlawful,⁸⁶ sanctioned facial recognition proctoring of examinations,⁸⁷ and, most on point for Part III, taken up as a data protection matter a student’s complaint of being “forced to consent” to examination monitoring because refusal meant forfeiting the examination.⁸⁸ The comparative scholarship reaches the same territory, including work on United Kingdom school surveillance attending specifically to its operation on disabled students.⁸⁹ The comparative point is narrow and sufficient: the deployment pattern American districts treat as a default procurement decision is the pattern peer legal systems subject to necessity analysis, and the coerced consent structure Part III describes has already been named as such by a regulator examining it.

The vendor did it. The evaluation duty, the procedural safeguards, and the nondiscrimination mandates all attach to the district, which cannot contract them away, and the vendor swap defense has already failed once: replacing Gaggle with ManagedMethods did not moot the *Tell* claims, because the practice, scanning, flagging, human review, continued under a different logo, and the mootness burden on a defendant who merely rebadges is heavy.⁹⁰

85. APDCAT (Catalonia), Decision No. PS 49/2019 (fingerprint and facial recognition attendance control in a public secondary school), summarized at [https://gdprhub.eu/index.php?title=APDCAT_\(Catalonia\)_-_PS_49/2019](https://gdprhub.eu/index.php?title=APDCAT_(Catalonia)_-_PS_49/2019).

86. Datainspektionen (Swed.), Decision No. DI-2019-7024 (Nov. 24, 2020) (Stockholm “Skolplattformen” processing personal data of 500,000 students), summarized at https://gdprhub.eu/index.php?title=Datainspektionen_-_DI-2019-7024.

87. AEPD (Spain), Decision No. EXP202200367 (facial recognition identity confirmation for online examinations), summarized at [https://gdprhub.eu/index.php?title=AEPD_\(Spain\)_-_EXP202200367](https://gdprhub.eu/index.php?title=AEPD_(Spain)_-_EXP202200367).

88. Persónuvernd (Ice.), Decision No. 2020112830 (Mar. 8, 2022), summarized at [https://gdprhub.eu/index.php?title=Persónuvernd_\(Ice.\)](https://gdprhub.eu/index.php?title=Persónuvernd_(Ice.)). The decision is cited for what is verified about it: a European regulator treated coerced consent to student monitoring as a cognizable data protection question, which is more attention than the structure has received from any American authority.

89. See Anna Carlile, *School Surveillance, Control, and Resistance in the United Kingdom*, in THE PALGRAVE INTERNATIONAL HANDBOOK OF SCHOOL DISCIPLINE, SURVEILLANCE, AND SOCIAL CONTROL 17 (2018), https://doi.org/10.1007/978-3-319-71559-9_2.

90. *Tell v. Lawrence Bd. of Educ.*, No. 2:25-cv-02428 (D. Kan. Apr. 8, 2026) (applying the voluntary cessation doctrine and holding the district had not ceased or altered the challenged behavior by switching vendors).

XI. Conclusion

The qualified immunity holding in *Tell* should be read a second time, because it is a confession dressed as a defense. No law tells a school official that reliance on an AI flag requires anything of them. That is true of the Fourth Amendment. It has never been true of Section 504, which has told every funded district for fifty years what belief in a student's psychological impairment obligates it to do, and told it with process attached. The districts built systems that generate such beliefs by the thousand, acted on the beliefs when action meant exclusion, and disclaimed them when belief meant duty. The fork closes both branches. The evaluation the district insists it is not conducting is running on every child in the building, and the first lawsuit to say so in the statutes' own language will be the first one the doctrine was already prepared to receive.

✿ ✿