

# Reliable Enough to Punish

*K-12 Surveillance AI and the Section 504 Evaluation the District Insists It Is Not Conducting*

A school district will tell you the software is accurate enough to suspend a child on. Ask whether it is accurate enough to owe that child anything, and the answer changes.

## WHERE THIS STARTS

# A court in Kansas, April 2026

Students and parents sued a school district over software that reads pupils' accounts and flags what it finds. The children had been summoned to the office one at a time, without their parents, over photography coursework the system had marked as indecent.

The official who questioned them walked free on qualified immunity. The judge could find no law saying that where such software flags material as possibly criminal, a school official may not reasonably act on it. No precedent, no established right, no claim.

## WHY THAT MATTERS

# Novelty becomes dismissal, and disability law does not work that way

Constitutional theories against school surveillance are new because the systems are new, and qualified immunity turns newness into a dismissal.

The disability statutes behave differently. One has bound every federally funded district since 1973. The other has bound every public one since 1990. The meaningful access principle has been settled since 1985. All of them run against the institution, where qualified immunity gets no grip at all.

**Those plaintiffs pleaded the First Amendment, the Fourth Amendment and a state records act. Nobody pleaded disability. This paper supplies that pleading.**

## THE CLAIM

# You may call your system reliable or unreliable. You may not pick by consequence.

Districts running these products treat the output as trustworthy when it supports a suspension, and as too informal to count when acting on it would oblige the district to do something for the child.

This paper argues the second half of that position has run out.

# What Is Actually Deployed

*the scale, the incidents, and what the vendor now sells*



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The product stopped monitoring activity. It monitors the child.

## SCALE

# Most American schoolchildren, most of the day

89%

of teachers said their school monitors pupils' online activity, and that survey is four years old

37%

reported that alerts arriving outside school hours route straight to police

A Senate inquiry announced its conclusion in the title of its own report. It never stops, it runs day and night, it covers school accounts and school hardware, and it does not switch off when the bell goes. The products read email, documents, chat and search history, and in some setups the keystrokes themselves.

## ONE MORNING IN ARIZONA

# The district had an eyewitness and believed the software instead

A sixteen-year-old sat at home before school in October 2024, asked his mother how to deal with a bad grade, and opened his school laptop to write to his English teacher. He typed and deleted a run of jokes as he went. The final one was a pretend threat, performed out loud to his mother in a daft voice, then wiped moments afterwards.

Within the hour the head teacher rang. The software had lifted the deleted draft out of the keystroke stream and sent a screenshot. His mother, who had watched the whole thing happen, explained there was no threat. He was suspended anyway, and the suspension was extended after a hearing.

**An algorithmic flag on one side, a live parental witness on the other. The district went with the flag, and the record preserves the choice.**

## AND IN MARYLAND

# A crisp packet, read as a firearm

A pupil was surrounded, handcuffed and searched at gunpoint after a weapons detection system flagged the crumpled crisp packet in his pocket as a gun.

Both incidents describe the same operating characteristic. The output is treated as good enough to act on immediately, against the child, without waiting to check.

## WHAT THE FLAGS PRODUCE

# It punishes more often than it helps

**78%**

of teachers reported monitoring flags being used to discipline pupils

**54%**

reported flags producing a referral to counselling

Something marketed as a way of stopping suicides ends up handing out sanctions more often than assistance. That gap between what it is marketed as and where its outputs actually route is not incidental here. It is the factual foundation of the whole argument, because it establishes that districts are treating these flags as reliable, for the purpose the district prefers.

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WHAT IS KNOWN ABOUT ACCURACY

# Nothing, and the makers will not say

When researchers at RAND examined this class of product, the firms refused to say which signals their systems act on, or how much weight any signal carries. The one correlational study available for review never looked at whether the alerts were right in the first place, that is, whether the pupils being flagged were actually having thoughts of suicide.

What the pupils themselves report fills in what it does to behaviour. Roughly six in ten being watched said they stop short of saying what they actually think online. Of those who knew monitoring was running, eight in ten said they had grown warier about what they typed into a search box.

**So: a device nobody outside the company can inspect, with no established accuracy, whose demonstrated effect is that children stop putting down what they actually think. Everything in those discipline files sits on top of it.**

## THE NEWEST THING

# The product now scores the child, not the activity

One company now hands each watched pupil a wellness rating across three bands, displayed on a screen that tells senior staff how many children are sitting in each band and lets them open up any single child. In the company's own words it is a two-month rolling picture of how a pupil is doing emotionally, refreshed continuously, produced by its model out of triggered alerts and the child's past activity, and supplemented through a tool letting teachers log what they have noticed.

It invites schools to take a preventative approach by screening pupils for signs of depression and anxiety before any alert fires, and calls the addition a move away from watching what pupils do and toward watching how they are.

**The company has spelled this out itself. Activity has stopped being the subject. The subject is the pupil, and what gets appraised is how they are feeling and thinking, without pause, shown to staff, and opaque to the very parents it makes claims about.**

# This Is An Evaluation

*two bodies of law already say so, in the school's own vocabulary*



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Congress named this category, and courts already know how to spot an assessment wearing another label.

## CONGRESS NAMED IT

# The category exists, word for word

A federal statute says in any programme the education department pays for, no pupil can be made to undergo a survey, an analysis, or an evaluation that brings out information about their mental or psychological difficulties, unless a parent has given written permission beforehand. Analysis and evaluation stand alongside survey for a reason: so that the safeguard does not hinge on whether a child was ever handed a form.

Software that swallows what a child writes, looks up and sends, measures all of it against patterns of psychological crisis, and then puts out alerts and scores characterising that child's state of mind is performing an analysis whose entire function is to reveal exactly what the statute names.

## WHAT THAT ESTABLISHES

# The informality defence is gone

Legislators settled long ago that studying pupils in order to surface their psychological difficulties is a kind of school activity the law regulates, and that written permission from a parent has to come first. Districts deployed the category at scale and skipped the consent.

Whatever else follows from that, it forecloses the claim that continuous psychological scoring is too casual to count as an evaluation of anything, because the statute governing evaluations of pupils describes this one.

## THE SECOND BODY OF LAW

# Courts already know how to spot an assessment wearing another label

The source of it is employers who put psychological tests in front of staff and described them as personality assessments. A federal appeals court applied the regulator's criteria for identifying a medical examination: who gives it and who reads the result, whether its purpose is to bring an impairment of body or mind to light, how intrusive it is, whether it takes readings off the body, where it is carried out, and whether any clinical kit is used.

One factor can be enough. The court held the instrument in front of it medical on two findings: it was designed at least partly to reveal mental illness, and using it damaged the employment prospects of somebody with a mental disability.

**| Design plus effect. No clinician required. No diagnosis required.**

## THE REGULATOR'S WORKED EXAMPLE

# The vendor wrote its product into the definition

The guidance the court applied contains a worked example. The example it gives is a test showing whether somebody has traits pointing to unusual levels of anxiety, to depression, or to particular compulsive conditions, every one of them listed in the diagnostic manual. About that test the guidance says, without qualification, that it is a medical one.

On its own sales page the company urges schools to get ahead of the problem by screening pupils for indications of depression and anxiety.

**The sentence written to sell the product and the sentence written to define a medical examination describe the same instrument. None of this depends on how hard the comparison is pushed. It depends on whose words those are, and they are the company's.**

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ESCAPE ROUTES, CLOSED IN ADVANCE

# No psychologist reads it, and it is scored for safety not diagnosis

The employer tried both arguments. To the first, that no psychologist read the output, the court replied that having a non-clinician read it settles nothing, since in practice the thing does much the same work however it is applied or marked. To the second, that the marking scheme was occupational rather than clinical, the court replied that it remained a medical examination whichever scheme was used.

Substitute the vendor's language and both rulings read as though written for this deployment. No clinician touches a flag or a wellness level: not decisive. The vendor scores for safety rather than diagnosis: the scoring system does not matter.

## THE LIMIT OF THE ANALOGY

# Stated as plainly as the analogy itself

That case construes express restrictions on medical examinations in the employment title, and the public-body title contains no parallel provision. Nothing in this part claims a district breaks an examination ban simply by scoring.

The criteria are doing different work. What they give you is the test judges already use to work out whether something being done to a person amounts to examining their mental health, no matter what the packaging claims. Run the wellness level through it and out comes a mental health evaluation.

# The Fork

*a duty with a deliberately low trigger*



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Believing the flag is what starts the clock, and the discipline record proves the belief.

## THE DUTY

# A district must evaluate any pupil it believes may need help because of disability

Under the rules, any district taking the money must assess anybody who, on account of a disability, needs or is thought to need special education or associated support, and must do so ahead of any first placement decision and ahead of any substantial change to one. Notice and procedural protections attach.

Note the trigger. Not proof. Not diagnosis. Belief that the child may need something.

## THE TRAP THE DISTRICT BUILT

# Punishing on the flag is a written statement that you believe it

When a school punishes a child because software raised an alert, it has written down, in its own files, that it took the alert seriously. And once a school credits an alert saying a child is hurting themselves, in emotional trouble, or in a psychological crisis, it now holds exactly the belief that sets the evaluation duty running, the duty it then ignored.

So the district may characterise its system as reliable, or as unreliable. What it cannot do is choose the characterisation according to what the characterisation would cost.

**Reliable enough to suspend a child on. Too informal to owe that child anything. Both positions are on the record, and only one of them can be true.**

# Three More Failures

*underneath the fork*

IV

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Scoring every enrolled child manufactures claimants at the scale of enrolment.

## REGARDED AS

# A system that flags perceived abnormality creates claimants wholesale

Disability law has always protected people treated as impaired whether or not they are. Software that tags pupils as psychologically out of the ordinary and then feeds those tags into the discipline process is doing precisely that, to as many children as are on the register.

The district does not need to be right about any individual child for the claim to attach. Being wrong is the ordinary case, and being wrong is what the statute was written to reach.

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MEANINGFUL ACCESS

# Compulsory education delivered only through watched platforms

Where the whole of a compulsory education runs through monitored software, pupils the system routinely misreads are denied usable access to it. An unvarying tone, odd turns of phrase, dark subject matter in a piece of creative work. Those are what set the classifiers off, and they are also simply how a good many disabled children write.

The pupils injured first and worst are those on the psychotic spectrum, for a reason the treatment literature supplies rather than the legal one. Being told they are watched without pause takes away the one thing their treatment needs them to be able to put to the test.

## THE PAPER TRAIL

# The system documents the case against the district

Every one of these products generates records: what fired, when, on which child, and what the school did next. A district that acted on hundreds of flags describing psychological crisis, and opened no evaluations, has created the evidence of both halves of the fork.

The discovery request writes itself, and unlike the constitutional theories, none of it depends on a court finding a right that was previously unclear.

# Remedy And Objections

*what a court can order, and what the district will say*



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The statutes are forty years old, run against the entity, and nobody has pleaded them.

## WHAT A COURT CAN ORDER

# Four things, all ordinary

## 1 Evaluate the children you flagged

Where the district acted on a flag describing crisis, the duty it skipped comes due, with notice and safeguards attached.

## 2 Stop routing flags to discipline first

A change to how the programme is administered, which is precisely what the modification machinery reaches.

## 3 Get consent, or stop scoring

The category Congress regulated requires written parental consent in advance. Districts deployed it and skipped that step.

## 4 Produce the records

What fired, on whom, and what happened next. A district that will not disclose this cannot maintain that it never believed its own instrument.

## THE DISTRICT'S BEST ANSWER

# We never believed it, we were just being careful

That answer is available, and it is expensive. Say you never trusted the output and you have just admitted excluding children on the basis of something you did not accept as true. That is a different problem, sitting in the same files, over the same signatures.

And it cannot be said selectively. A district maintaining that position must maintain it whenever the flag is inconvenient too.

**There is no version of this where the instrument is trustworthy for the purposes that cost the district nothing and untrustworthy for the purposes that cost it something.**

## THE CLAIM, RESTATED

# Forty-year-old statutes, and nobody has pleaded them

The constitutional cases against school surveillance are failing on qualified immunity for want of precedent, and that will keep happening, because the systems are new and the doctrine is not there yet.

The disability statutes have been clearly established for four decades. They run against the institution, where immunity does not reach. And the districts have spent four years generating exactly the records those statutes need, by treating the output as reliable every time reliability was in their interest.

**The vendor says it screens children for depression and anxiety. The district says it believed the flag, and suspended a child. After that, an evaluation is owed, and the only question left is who asks for it.**

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