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Colorado Department of Education

**Expelled and At-Risk Student Services**

“Engaging All Students: When All Really Means All”

Legal Responsibilities for Policy and Practice

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October 24, 2008

## **I. ATTENDANCE REQUIREMENTS**

- A. All children who have attained the age of six (6) years on or before August 1 of each year and are under the age of seventeen (17) shall attend public school for a minimum number of school hours each school year. During each school year, secondary school students must attend 1,056 hours and elementary school students must attend 968 hours. C.R.S. § 22-33-104(1)(a).
- B. State law places an obligation upon parents to ensure that their children attend school in compliance with the School Attendance Law. “The general assembly hereby declares that two of the most important factors in ensuring a child’s educational development are parental involvement and parental responsibility.” C.R.S. § 22-33-104(5)(a).
- C. The School Attendance Law shall not apply to students:
1. Who are temporary ill or injured, or whose absences are approved by the administrator in charge of a school;
  2. Who are enrolled in an independent or parochial school;
  3. Who are absent for an extended period of time due to a physical, mental, or emotional disability;
  4. Who have been suspended, expelled, or denied admission in accordance with provisions of Colorado law, except for those expelled for the remainder of the school year in which case the parent or legal guardian is responsible for seeing that either the student attends a public or private school, participates in a CDE-approved on-line program, or is instructed at home by a licensed teacher or pursuant to a nonpublic home-based educational program;
  5. To whom a current age and school certificate or work permit has been issued pursuant to “Colorado Youth Employment Opportunity Act of 1971”;
  6. Who are in the custody of a court or law enforcement authorities;
  7. Who are pursuing a work-study program under the supervision of a public school;
  8. Who have graduated from the twelfth grade;

9. Who are being instructed at home, by a licensed teacher or under a nonpublic home-based education program, or in an alternative program (C.R.S. § 22-33-140.6); or
  10. Who are enrolled in a school where the state board of education has approved a lesser number of days.
- D. An **habitually truant student** is one who has four (4) unexcused absences in a month or ten (10) unexcused absences in a school year. “Absences due to suspension and expulsion are considered excused absences for purposes of determining whether a child is habitually truant.” C.R.S. § 22-33-107(3).
1. The board of education shall adopt and implement policies and procedures concerning children who are habitually truant. The policies and procedures would cover areas such as:
    - a. Appropriate penalties for nonattendance due to unexcused absence;
    - b. Specify the maximum number of unexcused absences a child may incur before judicial proceedings are initiated;
    - c. Parent/guardian participation;
    - d. A system of monitoring individual unexcused absences and a process for notifying parent when child is absent without excuse.
  2. A district must develop a plan to assist an habitually truant student to remain in school.
  3. The plan should, when practicable, be developed with the full participation of the student’s parent or guardian. A school district must also make “all reasonable efforts” to meet with the parent or guardian of an habitually truant student to review the reasons for the student’s truancy.

## II. ENFORCEMENT OF COMPULSORY SCHOOL ATTENDANCE

- A. Every school district must designate one or more attendance officers for the district. The attendance officer is charged with counseling students and parents, investigating the causes of nonattendance, and enforcing the compulsory attendance provisions “in appropriate cases.” C.R.S. § 22-33-107(1).
- B. It is the duty of the attorney for the school district, an employee authorized by the local board of education, the attendance officer designated by board, or the local board of education itself to initiate, when appropriate, proceedings to enforce the

compulsory attendance provisions upon request by the district or state attendance officer.

- C. The attendance statute may be enforced through legal proceedings initiated by the school district's filing of a petition in juvenile court against both the truant student and his or her parent or guardian.
- D. Before initiating judicial proceedings, the attendance officer must notify the student's parent, by certified mail, that the student has unexcused absences in violation of the statute and that the district intends to initiate legal proceedings if the student does not comply with the attendance requirements. If the student has any additional unexcused absences after that letter has been sent, the district may initiate judicial proceedings.
- E. Court cases must be filed in the county where the child resides or is present.
- F. If the court finds that the student has violated the compulsory attendance requirements, the judge may order the student to attend school and order the parent or guardian to supervise and assure the student's attendance to the best of his or her ability.
- G. If the student continues to miss school without excuse after the court order has entered, the school district may file a contempt citation against the student and his or her parents. Once filed, the court may order an investigation under the Colorado Children's Code.
- H. If at the contempt hearing the court finds that the student has continued to miss school without excuse, the court may impose one or a combination of several possible sanctions including incarceration in a juvenile detention facility or an appropriate treatment plan that may include, among other things, community service, supervised activities, and "other activities having goals which shall ensure that the child has an opportunity to obtain a quality education." C.R.S. § 22-33-108(7)(a).
- I. In addition to imposing sanctions against a truant student, a court may also impose sanctions against the student's parents upon a contempt citation. Such sanctions include a fine of up to \$25 per day or confinement in the county jail until the student and parents comply with the court's order for the student to attend school.
- J. In determining whether to initiate legal proceedings against its truant students, a school district may wish to consider the implication of trancies on the district's student count under the Public School Finance Act of 1994.
  - 1. The regulations of the Colorado Department of Education define truant students as students under age 16 who do not attend school on the official

count day or in the five preceding or following days and those who have neither transferred or withdrawn from school nor provided written notice that they will return to school. 1 CODE COLO. REGS. 301-39, 2254-R-5.03(10).

2. A school district may include a truant student in its count if the district has notified the student's parents of its intent to file a truancy action with the court and has directed the school district's attorney to file the action or if the school district has filed an action with the court. *Id.*
3. Districts that wish to count truant students must send the required notification to parents and request court action no later than ten days following the official count date. *Id.*

### **III. NOTICE TO COURT OR PAROLE BOARD FOR STUDENT'S FAILURE TO ATTEND**

- A. If the school district receives notice from the court or parole board that a student is required to attend school as a condition of release pending trial or in connection with or as a condition of any court-imposed sentence, the school district must notify the appropriate court or parole board if a student fails to attend all or any portion of a school day. C.R.S. § 22-33-107.5.
- B. The school district shall also notify the appropriate court or parole board if a student who is required to attend school as a condition of release or as a condition of or in connection with any court-imposed sentence enrolls in a home-based program or in an independent or parochial school.

### **IV. PARENTAL NOTICE OF DROPOUT STATUS**

School districts are required to adopt and implement policies and procedures for giving written notice to parents or guardians of students who are no longer subject to the compulsory school attendance requirements concerning the long-term ramifications to the student of dropping out of school. C.R.S. § 22-33-107.1.

### **V. SUSPENSION AND EXPULSION – GROUNDS FOR DISCIPLINE**

- A. In Colorado, public-school students may be suspended for up to 25 days and expelled for up to one calendar year, but only for conduct specified both in Colorado statutes and in school district policies and regulations. The more general grounds for suspension and expulsion authorized by Colorado statutes are as follows:
  1. Continued **willful disobedience** or open and persistent defiance of proper authority. C.R.S. § 22-33-106(1)(a).

2. **Willful destruction** or defacing of school property. C.R.S. § 22-33-106(1)(b).
3. **Behavior on or off school property** that is detrimental to the welfare or safety of other pupils or of school personnel, including behavior that creates a threat of physical harm to the child or to other children. C.R.S. § 22-33-106(1)(c). Discipline for out-of-school conduct requires an evaluation of the “nexus” to school and the impact the behavior has on the school or its educational environment.
4. Declaration as an **habitually disruptive student**. (Expulsion mandatory.) C.R.S. § 22-33-106(1)(c.5)(I).
  - a. “Habitually disruptive student” means a child who has been suspended three times during the course of the school year pursuant to one or more of the grounds stated in sections V.A.1., 2., 3., 5., 6., 7., 8., or 9. of this outline under circumstances causing a material and substantial disruption in the classroom, on school grounds, on school vehicles, or at school activities or events, because of behavior that was initiated, willful, and overt on the part of the child. *Id.*
  - b. The student and the student’s parent must be notified in writing of each suspension counted toward declaring the student as habitually disruptive, and must be notified of the definition of “habitually disruptive student” and that expulsion of such students is mandatory, and such notice must be both in writing and by telephone or other means at the home or the place of employment of the parent. *Id.*
5. **Serious violations** in a school building or in or on school property. C.R.S. § 22-33-106(1)(d)(I).
6. Carrying, bringing, using, or possessing a **dangerous weapon** in a school building or in or on school property without the authorization of the school or the school district (expulsion mandatory). *Id.*
7. The **distribution, trade, exchange, or sale of a drug** or controlled substance in a school building or in or on school property (expulsion mandatory). C.R.S. § 22-33-106(1)(d)(I).
8. The commission of an act in a school building or in or on school property which if committed by an adult would be **robbery** (expulsion mandatory). *Id.* “Robbery” means knowingly taking anything of value from the person

or presence of another by the use of force, threats, or intimidation. C.R.S. § 18-4-301(1).

9. The commission of an act in a school building or in or on school property which if committed by an adult would be **first or second degree assault** (expulsion mandatory). C.R.S. § 22-33-106(1)(d)(I).
10. **Repeated interference** with a school's ability to provide educational opportunities to other students. C.R.S. § 22-33-106(1)(e).
11. **Assault** upon, disorderly conduct toward, harassment of, the making knowingly of a false allegation of child abuse against, or any offense under the Colorado Criminal Code directed toward a schoolteacher or school employee (minimum three-day suspension mandatory). C.R.S. § 22-32-109.1(3).
12. **Damage to the personal property** of a schoolteacher or school employee occurring on school premises (minimum three-day suspension mandatory).  
*Id.*

## VI. EXPULSION FOR TRUANCY AND WITHDRAWAL FROM SCHOOL

- A. Some school districts have policies that provide for suspension and even expulsion for truancy. Given the separate enforcement procedures provided under the compulsory school attendance laws, the ability to impose academic sanctions for unexcused absences, and the specific grounds for suspension and expulsion, referred to above, such policies are of questionable legal support and efficacy.
- B. Parents may voluntarily withdraw their students from school and many times do so in the event of impending suspension or expulsion or academic failure for nonattendance. What should the school district's role be in these circumstances? Should school districts allow withdrawal in lieu of proceeding with suspension or expulsion? What other negotiated options may be available? Should students be counseled to withdraw? What are the student's and parents' responsibilities after withdrawal?

## VII. DISCIPLINE PROCEDURES

### A. *Suspension*

#### 1. **Days of Suspension Permitted**

- a. Building principals or their designees may suspend a student for up to **five school days**. C.R.S. § 22-33-105(2)(a).

- b. In addition, a principal may suspend a student for **five additional school days** for “**serious violations**” as set forth in sections V.A.5. to 9. *Id.*
  - c. The superintendent or his or her designee may suspend a student for an **additional 10 school days**. C.R.S. § 22-33-105(2)(b).
  - d. The superintendent or his or her designee may extend a suspension an **additional 10 school days** if necessary to present the matter to the next meeting of the Board of Education, but the total period of suspension cannot exceed **25 continuous school days**. C.R.S. § 22-33-105(2)(b).
2. **Hearing procedure for suspension for 10 days or less.** C.R.S. § 22-33-105(3)(c). A student who is suspended for 10 days or less must be given oral notice of the charges against the student, what the student is accused of doing, the basis for the allegation, and an opportunity for the student to explain his or her position.
3. **Procedures following suspension.** C.R.S. § 22-33-105(3)(b).
- a. The student **cannot be readmitted** until either a meeting with the parent has taken place or until, in the opinion of the administrator, the parent has substantially agreed to review the suspension with the administrator. If the parent cannot be contacted or repeatedly fails to appear for scheduled meetings, the administrator may readmit the student.
  - b. The purpose of the readmittance conference is to answer questions about the suspension, clarify expectations regarding behavior, and consider alternatives or intervention to assist the student. The meeting must also address whether there is a need to develop a remedial discipline plan for the pupil in an effort to prevent further disciplinary action.
4. **Suspension for more than 10 days**
- a. A student who is suspended for more than 10 days has the right to request review of the suspension before an appropriate district official.
  - b. The suspending authority must attempt to meet with the student’s parent or guardian during the period of suspension. Failure to meet with the parent or guardian cannot, however, be grounds for extending the suspension. C.R.S. § 22-33-105(d)(I), (II).



- c. The student may appeal the determination to the Board. The Board's decision is final.
- d. The same readmittance procedures as for a shorter suspension must be followed.
- e. The school must provide a suspended student the opportunity to make up school work missed during the period of suspension. The amount of credit given to the student for such makeup work is left to the discretion of the district. The statute makes clear, however, that the purpose of this section is to "reintegrate" the suspended student into the educational program. C.R.S. § 22-33-105(3)(d)(III).

**B. *Expulsion***

**1. Authority**

- a. The Act grants the board of education the power to expel a student for up to one calendar year, and may delegate this power to the superintendent or designee. C.R.S. § 22-33-105(2)(c).
- b. The superintendent may delegate to a hearing officer the power to conduct an expulsion hearing.

**2. Notice**

- a. The superintendent must give written notice to the parent prior to the expulsion.
- b. The notice must state the reasons for the expulsion, explain the student's right to request a hearing and other details regarding the hearing, and state the effective date of the expulsion.

**3. Hearing**

- a. The hearing may be conducted by a hearing officer, who is either a district employee or an independent hearing officer, such as a retired attorney or judge.
- b. The student may be represented by counsel at the hearing.
- c. The student is afforded the opportunity to confront and cross-examine witnesses called by the school administration and may call

his or her own witnesses, whom the school administration may cross-examine. A tape recording of the hearing must be made. The hearing officer may limit the number of witnesses.

- d. There are limitations on the use of the student's written statement at the hearing.
- e. After the hearing, the hearing officer must make specific, written factual findings and must submit those findings and a recommendation regarding the expulsion to the superintendent.
- f. The superintendent reviews the hearing officer's factual findings and recommendation and issues a written decision usually within five days after the hearing.

#### **4. Appeal**

- a. The student and his or her parents may appeal the superintendent's decision to the Board.
- b. The student may be represented by counsel at the appeal.
- c. Representatives of the district and the parents may each make brief statements to the Board, but no new evidence will be presented unless such evidence was not reasonably discoverable at the time of the hearing.

#### **5. Readmittance Procedures**

- a. The same readmittance procedures as for a suspension must be followed.
- b. In addition, any student who has been expelled for any reason other than for a crime against property, who, as a result of committing the offense for which the student was expelled, has been convicted, adjudicated a juvenile delinquent, given a deferred judgment, or placed in a diversion program, must be prohibited from enrolling or re-enrolling in the same school in which the victim (if there is an identifiable victim of the offense) or member of the victim's immediate family is enrolled or employed. C.R.S. §§ 22-33-106(4)(a), (d).

## VIII. EXPULSION PREVENTION PROGRAMS AND EDUCATIONAL SERVICES DURING PERIOD OF EXPULSION

- A. Each school district must develop policies to identify students who are at risk of suspension or expulsion. Those may include students who may be (i) truant, (ii) declared habitually truant, or (iii) habitually disruptive. The school district shall work with students to develop a plan to help avoid expulsion and shall work with parents in providing services through agreements with local government, state agencies, community-based organizations, and institutions of higher education. C.R.S. § 22-33-202.
- B. Upon expelling a student, the school must provide information to the student's parent concerning the educational alternatives available to the student during the period of expulsion. C.R.S. § 22-33-203(1). *It is also a good idea to provide this information at the beginning of the discipline process, so that parents understand that expulsion does not mean total exclusion from the educational process.*
- C. Upon the request of the student or student's parents, the school district shall provide any educational services that are "deemed appropriate for the student by the school district." Educational services provided must be designed to enable the student to return to school or to successfully complete the GED. The school determines the amount of credit the student will receive toward graduation for completing the educational program. C.R.S. § 22-33-203(2)(a).
- D. Educational services shall be provided by the expelling school district and may do so either directly or through agreements with other entities. C.R.S. § 22-33-203(2)(c).
- E. Expelled students receiving educational services may be included in the expelling school's October 1 pupil count. C.R.S. § 22-33-203(2)(c)(II). (If the student is receiving educational services from a school district other than the expelling school, pursuant to an agreement between the districts, then the expelling school must transfer 95% of its per-pupil revenues for the student, pro-rated for the time period the student spent at the other school.) C.R.S. § 22-33-203(2)(d).
- F. If a student is expelled for the remainder of the school year and is not receiving educational service from the district, the school district shall contact the student's parent or guardian at least once every 60 days until the beginning of the next school year to determine whether the student is receiving service from another source.
- G. School districts are authorized to enter into agreements to work with the student's parent or guardian to provide services to any student who is identified as being at risk of suspension or expulsion or who has been suspended or expelled. The

district shall use a portion of its per pupil operating revenue to provide services under such agreements. C.R.S. § 22-33-204.

- H. **Sample Contract School Agreement : "Purpose of Agreement.** Justice School provides a full-time academic program for students who have struggled in traditional schools, have been expelled, are considered at risk of suspension or expulsion, are at risk of academic failure, or whose choices outside of school have had a negative effect upon their ability to be successful in a traditional educational environment. As authorized under C.R.S. §§ 22-32-122 and 22-33-204, the purpose of this Agreement is to specify the terms and conditions pursuant to which educational services will be provided at Justice School to such eligible District students in grades 6-12 who meet the nondiscriminatory enrollment eligibility criteria of the District and the School, have been referred to the School by the District as an option for the student's educational program, and wish to receive a public school education and a high school diploma from the Boulder Valley Public Schools."

## **IX. DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES**

- A. Except as otherwise provided below, students with disabilities may be disciplined on the same grounds and under the same procedures as students who do not have disabilities.
- B. The principal or designee shall immediately remove a student with a disability from a situation in which he or she poses a threat of physical harm to himself or herself, or to other persons, by placing the student in an appropriate alternative setting or by suspending the student, as set forth below.
- C. Students with disabilities who engage in misconduct may be removed from their current placement and be suspended, placed in an appropriate interim alternative educational setting, or placed in another setting for not more than 10 consecutive school days, and for additional periods of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under applicable law).
- D. In addition, a student with an IEP may be removed from his or her current placement and placed in an interim alternative setting chosen by the IEP team for not more than 45 consecutive school days if a hearing officer so orders, or if the student, while at school or at a school function: (1) carried or possessed a weapon; (2) knowingly possessed or used illegal drugs, or sold or solicited controlled substances; or (3) inflicted serious bodily injury upon another person. Such placement in an interim alternative educational setting is permissible even if the disabled student's behavior was a manifestation of his or her disability. Section 504 students may be disciplined for the use or possession of illegal drugs or alcohol to the same extent as students without disabilities.

- E. If school personnel seek to remove a student with disabilities from his or her current educational placement for more than 10 consecutive school days (except as provided above), then the school district must, no later than the date the decision to take such disciplinary action is made, notify the parent of that decision and of all procedural safeguards accorded under applicable law, and, no later than 10 school days after the disciplinary decision is made, meet with the parent and relevant members (as determined by the district or parent) of the student's IEP or § 504 team to determine in accordance with applicable law if the student's conduct was a manifestation of his or her disability.
1. If the IEP or § 504 team determines that the student's conduct was not a manifestation of the student's disability, then the school district may proceed with discipline in the same manner as with a student without disabilities, except that a student with an IEP must continue to receive educational services as determined by the IEP team. In addition, as deemed appropriate by the IEP team, the student may receive a functional behavior assessment and behavioral intervention services and modifications designed to address the behavior for which the student was suspended, or, if the behavioral intervention services and modifications are already in place, have them reviewed and modified as the IEP team deems necessary.
  2. If the IEP or § 504 team determines that the student's conduct was a manifestation of the student's disability, then the school district must discontinue the suspension proceedings and return the student to the placement from which he or she was removed, unless otherwise agreed to by the parent. In addition, for students with IEPs, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, or, if a behavioral intervention plan is already in place, review and modify it as the team deems necessary.