

Toolkit
Parental Notification Recommendations for
School Districts Pertaining to the Arrest of a Staff Member for the Sexual Exploitation of a Child

This toolkit has been the work of a multidisciplinary team initiated in November 2017 by the Colorado School Safety Resource Center of the Colorado Department of Public Safety. The members of the original team are listed at the end of the toolkit.

The purpose of compiling this toolkit is to assist schools in considering the consequences of the investigation and/or arrest of a staff member for sexually inappropriate contact with a student and to help school personnel respond as quickly as possible if an incident occurs. Beyond assisting school personnel, the toolkit is designed to help parents understand the complicated issues that must be considered during the investigation and/or arrest of a school employee for inappropriate sexual contact with a student.

Districts/schools always work in the best interest of children but at times their ability to act in a timely manner in notifying parents may be impacted by the investigation of a possible criminal act.

Definition of sexual abuse:

Sexual abuse of a child can take the form of contact and noncontact offenses. In cases of contact, abuse occurs when touch is for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. C.R.S. §18-6-403; 18-3-404.

Non Contact or exploitation offenses take the form of child pornography, exhibitionism or voyeurism in the broadest understandings of these terms. Sexual abuse causes social, developmental, and emotional injury to the child, in addition to any physical harm. *Ibid.*

District Obligations:

○ **District Mandatory Enforcement Reporting Requirements**

- ¹If an employee (or former employee, if the employee was employed within 12 months of a charge) who had access to students is charged with a felony that would otherwise require the denial, suspension, or revocation of a teacher license if the employee were a teacher, the district/charter/BOCES must notify parents of students enrolled in the school in which the employee is or was employed, or with whom the district has reason to believe the employee may have had contact.
- If an employee is dismissed or has resigned as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior, districts must report to the Colorado Department of Education (CDE). If the district learns that a current employee has been convicted of, pled *nolo contendere* to, or received a deferred sentence or deferred prosecution for any felony or misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, the superintendent shall immediately report this information to CDE. More information can be found at this link:

<https://www.cde.state.co.us/cdeprof/mandatoryreporting>

¹ This mandate, C.R.S. §22-1-130, was signed by the governor on May 29, 2018, with an effective date of August 15, 2018. The law was passed subsequent to the meetings convened by the working group that produced this toolkit. It created new obligations which were not considered by the group but have been added independently by the CSSRC.

- **C.R.S. §22-32-109.8 Applicants selected for non-licensed positions - submittal of form and fingerprints - prohibition against employing persons - department database non-licensed employees**
- **C.R.S. §13-80-103.9 Limitation of actions - failure to perform a background check by a public entity - injury to a child**
- **C.R.S. §22-32-109.9 Licensed personnel - submittal of fingerprints**
- **C.R.S. §22-60.5-10.3 Applicants - licenses - authorizations - submittal of form and fingerprints**

Additional Suggestions of Working Group:

- Districts must review all written documents, such as student or employee handbooks, written procedures and/or employment contract documents to determine what specific policies have been triggered or violated, and to ensure that any contractual rights or procedures are followed.
- Districts must make every effort to not only safeguard all students but must take every appropriate action to assist the victim(s) in dealing with his or her abuse.
- All steps taken in this process need to be carefully documented.
- At the conclusion of any action, the district should hold a debriefing with appropriate staff and legal counsel, as indicated, to discuss how the situation was handled and lessons learned.

Memoranda of Understanding (MOUs)

- The District should initiate MOUs with all local law enforcement agencies (agency) within the district boundaries. (Sample MOU in Resources.)
- These MOUs should include:
 - Agreement that the welfare of potential victims will be of paramount importance to both the agency and the district.
 - Agreement that law enforcement agencies will share with districts information necessary to protect students.
 - Agreement that when an investigation leads to an arrest, the agency and the district will prepare their communications collaboratively.
 - Agreement that both the agency and the district will make a joint decision as to the best method(s) of dissemination of the arrest information to the parents and the community.
 - MOUs to be reviewed annually and updated as often as necessary to account for changes in law enforcement and/or district personnel.

School Personnel:

- **Duties as Mandated Reporters:**
 - **C.R.S. §19-3-304** requires public and private school officials and employees to immediately report reasonable suspicion (or knowledge) of child abuse to the local county department, local law enforcement agency, or the statewide hotline established for that purpose.
 - Failure to meet that obligation can result in conviction of a 3rd degree misdemeanor, carrying a penalty of up to \$750 in fines and up to six months in jail.
- **Criminal laws in Colorado:**
 - **C.R.S. § 18-6-403** prohibits adults from having sexual contact with minors.
 - **C.R.S. §18-3-405.3 Colorado’s Sexual Assault by One in a Position of Trust** protects children under the age of eighteen from sexual misconduct by adults in a position of trust, such as educators.

- **Consequences for School Personnel:**
 - **C.R.S. § 22-63-301 Grounds for dismissal** Teachers may be dismissed for good and just cause.
 - **C.R.S. § 22-63-202 Employment Contracts** Teachers can be suspended or have their contract cancelled, and the information as to their performance can be shared with the next potential employer. Contracts may not contain non-disclosure clauses in this regard.
- **Protections for School Personnel:** Employees who are the subject of an investigation of sexual misconduct with a child may wish to contact their association, consult their employee handbook and/or contact legal counsel so that they are aware of their rights:
- **C.R.S. § 22-12-105 Teacher and School Administrator Protection Act. Prohibits false allegations of criminal activity against employees of educational entities:**
 - By persons eighteen years of age or older;
 - And by students in public school at least ten years of age but younger than eighteen.
 - Districts have the right to expel or suspend a student who intentionally makes a false accusation of criminal activity against an employee of an educational entity to law enforcement authorities, school district officials or personnel, or both. It is recommended that this option only be exercised in collaboration with legal counsel and in the presence of overwhelming evidence given the potentially dire consequences of erring with respect to the facts.

County Departments and Law Enforcement Duties C.R.S. §19-3-308 (5.7):

- Colorado law requires county departments of human services and/or local law enforcement investigating an initial report of child abuse or neglect to *immediately* notify the superintendent of the school district if the suspected perpetrator was acting in his official capacity as an employee of a school.
- **The superintendent shall consider the report to be confidential information, but notify the department of education.**

Considerations/Recommendations for Creating District Policies

- **Considerations for inclusion in district policies and/or procedures when a staff member is being investigated for possible sexual misconduct toward any child.**
 - School district administrators are aware that any time an accusation of sexual misconduct by a staff member towards a student comes to their attention, the district must **immediately** report it to law enforcement. C.R.S. 19-3-304.
 - The procedure should include notification to district legal counsel, the Colorado Department of Education (as outlined above) and the district's insurance carrier.
 - If notified by the local law enforcement agency that an investigation of an employee for possible sexual exploitation of a child is in progress, the district **must take** direction from the law enforcement agency so as not to interfere with the investigation.
 - The policy should reassure the community that the district will take every effort to secure the safety of all students during the investigative process. These efforts **MAY** include notification to the parents of the possible victim(s), supervision of the employee, removal of an employee from all interactions with students, placing the staff member on administrative leave or any other measures that protect students while not interfering with the investigation and also protects the rights of the employee under law.
 - The district's investigation will need to take into consideration a number of specifics:

- Nature of the allegations
 - Source of the information
 - Number and ages of the students involved
 - Size and structure of the school
 - Any other factors present with the particular incident
- If the employee resigns as a result of an investigation, the district should continue the investigation in order to determine what happened, how it can be avoided in the future and whether any changes are necessary to risk management, policies or procedures. Please see the **District Mandatory Enforcement Reporting Requirements from CDE** linked above. In addition to state law requirements, districts have similar obligations under Title IX.
 - Unless directed by law enforcement and conducted jointly, districts will not have the option of sharing information with the community during the investigative process. It must be remembered that personnel files are confidential per **C.R.S. §24-72-204(3)(a)(II)(a)**, and during the investigation stage, the superintendent shall treat child abuse reports as confidential pursuant to **C.R.S. §19-3-308 (5.7)**
 - ²Where an employee has been arrested and that information is provided to the district by the Colorado Bureau of Investigation, the district is required to monitor the criminal proceedings to determine whether the employee is charged with an offense that would give rise to parental notification. **C.R.S. §22-1-130(3)**. Those charges include felony child abuse, any felony with an underlying basis involving domestic violence, felony offenses involving sexual behavior, felony drug offenses, and certain other crimes of violence. See statute and confer with counsel for clarification on when the notification is triggered.
 - When notification is mandated, it must be made within two days after the preliminary hearing is held or waived; or within two school days after the employee is charged. Exceptions are allowed where requested by law enforcement.
 - Notification is made in the same manner by which the school notifies parents of important school business. That same method shall be used to notify parents of the disposition of the charge, within two school days of confirming the disposition.
 - The notification must include the name, position, duration of employment, and employment status of the accused, as well as the offense alleged and a statement that under state and federal law, the person is presumed innocent until proven guilty. The district may provide additional information, but not the identity of the alleged victim(s). **C.R.S. §22-1-130(4-5)**

When law enforcement determine that a crime has not been committed:

- It will be possible that in some cases, a school staff member has had inappropriate contact with a student that is not a crime. This might include: private correspondence with a student, personal attention not given to other students, inappropriate fraternization with students outside of school, etc. The district must then rely upon personnel policies that cover staff behavior and take appropriate disciplinary action. (Sample policies in Resources)

² This section was added post-workgroup to account for the change in the law.

- It is also possible that both the law enforcement investigation and the district investigation will determine that the allegations are unfounded. The district should work closely with the staff member to protect their reputation and assist them in either resuming their duties or finding an agreed upon alternative position that minimizes harm to them.

Policies and/or procedures when a staff member is arrested for possible sexual misconduct toward any child.

- **Notification to the district of a staff arrest on charges of sexual misconduct toward a child.**
 - Since 1990, school districts are required to fingerprint ALL employees and the Colorado Bureau of Investigation (CBI) is tasked with sending weekly updates to CDE for dissemination to districts on the arrest of any certified staff member for an incident that requires fingerprinting. This includes all sexual misconduct offenses involving children.
 - Non-certified staff members are also fingerprinted and any arrests within Colorado are sent to districts on an ad hoc basis.
 - Since there could be lag time between the arrest and the notification to CBI, CDE and then the district, the district may require self-reporting by employees.
 1. Currently, state employees must self-report crimes to their employer so this would not be asking school staff to do something others are not required to do as part of their employment.
 2. Some districts in Colorado already require staff members to self-report crimes to their employer. (See Sample Policies in the Resources)
 3. If the district is including this in their policy, here are further considerations:
 - a. Be clear on the crimes that need to be reported to the district: sexual exploitation of a child including pornography, exposure as well as any physical contact with the child.
 - b. How quickly must staff self-report?
 - c. In what manner must the report be made and to whom?
 - d. Penalties for failure to report?
- **Notification to parents of the staff arrest on charges of sexual misconduct toward a child.**
 - Although innocent until proven guilty in a court of law, an arrest takes place when there is probable cause that a crime has been committed. The affidavit of probable cause is a public record.
 - Reports to parents will include charges for felony child abuse, any felony with an underlying basis involving domestic violence, felony offenses involving sexual behavior, felony drug offenses, and certain other crimes of violence. See **C.R.S. §22-1-130(3)(b)** for specifics. Best practice would be to coordinate the notification of an arrest of a staff member to parents with the law enforcement agency's notification to the community.
 1. The district and law enforcement would prepare their communication jointly to guarantee consistency in messages.
 2. The district would have the opportunity to first alert the Colorado Education Association about the imminent arrest of a classified employee for child exploitation if that has been their practice.
 3. The district and the law enforcement agency would decide, based on the risk to victims, the timing, manner and method(s) of the communication to the parents and community, but

must use the same manner by which the school notifies parents of other important school business per **C.R.S. §22-1-130(4)(d)**.

4. The district and the law enforcement agency would decide how the communication should be shared, including but not limited to phone calls, emails, texts, alternative electronic communication, press conferences, letters, etc.
 5. Where practicable, any victims and their families should be provided with advance notice of the communication and an opportunity to object, suggest changes, and/or seek an injunction, although providing victims with notice or an opportunity to give feedback or seek an injunction should not unduly delay the community notification.
- At the conclusion of any action, the district should hold a debriefing with appropriate staff to discuss how the situation was handled and lessons learned.

Notification to the parents and community if the charges are dropped:

- If charges are dropped, the same methods and manner of dissemination that were utilized announcing the arrest should be utilized to announce the dropping of charges.
- The district should work closely with the employee to accommodate their requests to make the return to work as comfortable as possible as everyone works to regain the staff member's reputation. In the event reinstatement into the accused's original position becomes logistically impossible under the circumstances, the district should use best efforts to relocate the employee to an acceptable alternative placement.
- School/district behavioral health services should be made available to any students or staff who need support.

Notification to the parents if the staff member is convicted of the charges:

- The school community should be notified within two school days utilizing the same methods and manner of dissemination that were utilized announcing the arrest.
- School/district behavioral health services should be made available to any students or staff who need support.

Notification to the parents and community if the employee is exonerated at trial:

- If the employee is acquitted of the original charges in a court of law, that fact should be shared with the community within two school days.
- The same methods and manner of dissemination that were utilized announcing the arrest should be employed to announce the exoneration of the employee.

Resources:

Applicable Colorado Statutes:

- CDE Mandatory Reporting Requirements document
- C.R.S. §13-80-103.9 Limitation of actions - failure to perform a background check by a public entity - injury to a child
- C.R.S. §18-3-404 Unlawful sexual behavior
- C.R.S. §18-3-405.3 Sexual assault on a child by one in a position of trust
- C.R.S. §18-6-403 Offenses involving the family relations/wrongs to children
- C.R.S. §19-3-304 Persons required to report child abuse or neglect
- C.R.S. §19-3-308 Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules - report
- C.R.S. §22-1-130 Notice to parents of alleged criminal conduct by school employees

- C.R.S. §22-9-106 Local boards of education - duties - performance evaluation system - compliance – rules
- C.R.S. §22-12-105 False reports - misdemeanor
- C.R.S. §22-30.5-110.5 Background investigation - charter school employees - information provided to department
- C.R.S. §22-32-109.7 Board of education - specific duties - employment of personnel
- C.R.S. §22-32-109.8 Applicants selected for non-licensed positions - submittal of form and fingerprints - prohibition against employing persons - department database non-licensed employees
- C.R.S. §22-32-109.9 Licensed personnel - submittal of fingerprints
- C.R.S. §22-60.5-10.3 Applicants - licenses - authorizations - submittal of form and fingerprints - failure to comply constitutes grounds for denial
- C.R.S. §22-63-202 Employment contracts - contracts to be in writing - duration - damage provision - repeal
- C.R.S. §22-63-301 Grounds for dismissal
- C.R.S. §22-63-302 Procedure for dismissal - judicial review
- CCR 301-37
- Rules 2260.5-R-15.00 *et seq.*

Sample Policies:

- CASB Sample Regulation GCQC/GCQD Resignation of Instructional Staff/Administrative Staff - must be a CASB member to receive a copy.

Sample MOUs

- Between districts and police departments
- Between districts and sheriff offices

Sample Announcements to Parents

- Concerning the arrest of a school staff member
 - [Parent letter](#) (Sample based on letter provided by Cherry Creek School District meeting former CDE regulations, now rescinded. This sample letter complies with new statutory requirements. This is not intended as legal advice, please consult counsel with any questions about notification requirements.)
- Concerning the dismissal of charges
 - [Parent letter](#)
- Concerning acquittal after trial
 - [Parent letter](#)

References

- [A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting](#), Readiness and Emergency Management for Schools Technical Assistance Center, U.S. Department of Education, 2017
- [Educator Sexual Misconduct: A Policy and Audit Guide for Protecting Children](#), Karen-Ann Broe, Senior Claims Counsel at United Educators, 2007, reviewed 2016
- [Notification to School Districts When a Teacher is Arrested](#), John Moran, Principal Analyst, 2013

- [*Guidelines for Dealing with Educator Sexual Misconduct*](#), National Association of Independent Schools by Linda S. Johnson, Esquire, 2012
- [*Summary and text of HB18-1269: Parent Notice for Student Safety and Protection*](#), Colorado General Assembly