



School Safety: A Legal Manual

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CSSRC School Safety Academy

Please note that this presentation is not intended to convey legal advice.



Warm Welcome

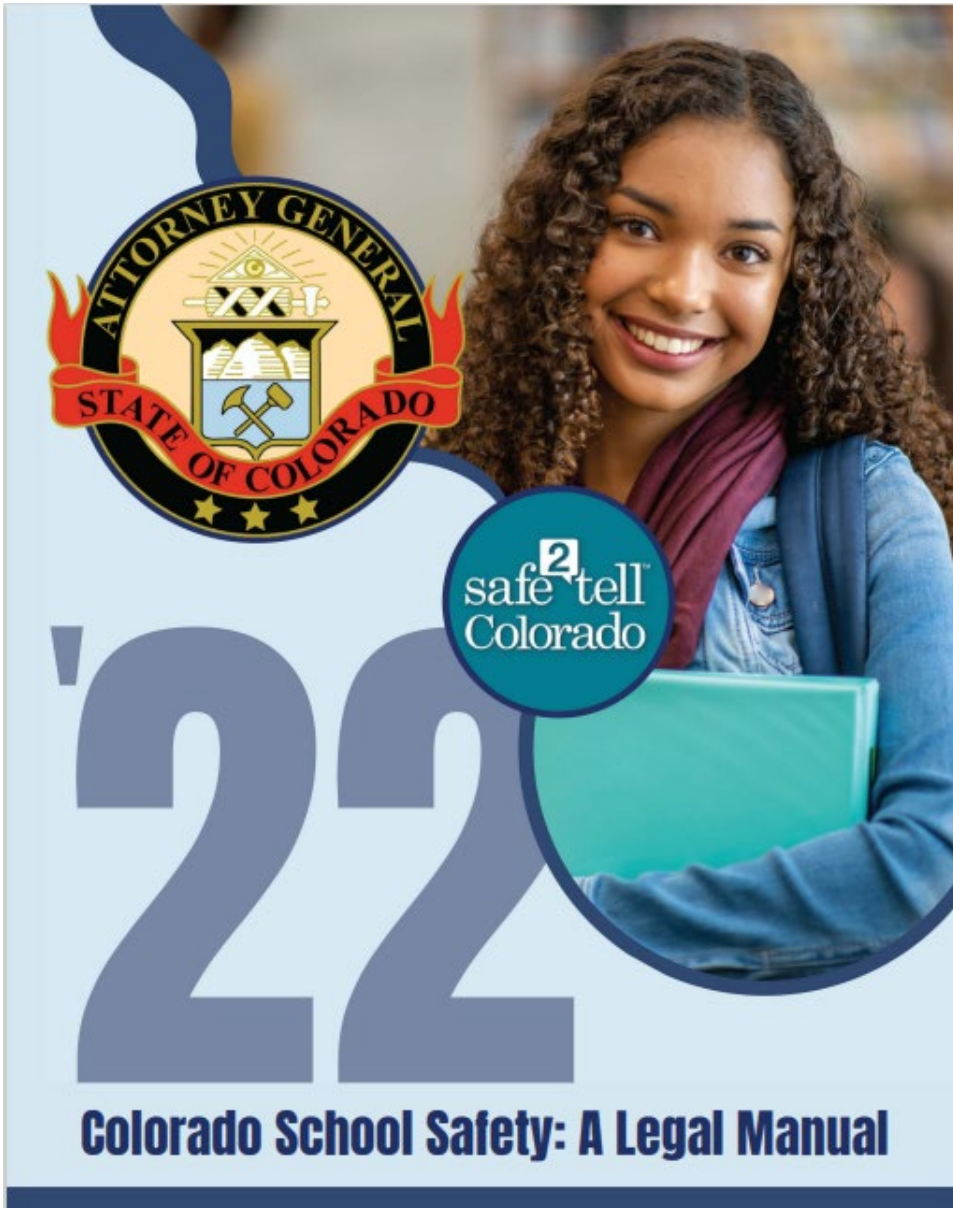
What districts, schools, or organizations do you represent?
What do you hope to take away from our time today?

Legal Framework (not an exhaustive list)

- **Federal Law**
 - Safe Schools Act
 - Gun-Free School Zones Act
 - Individuals with Disabilities Education Act (IDEA)
 - Nondiscrimination laws (ADA, Section 504, and more)
 - Title IX (sexual harassment and discrimination)
- **State Law**
 - safe school plans and codes of conduct (§ 22-32-109.1)
 - suspension, expulsion, denial of admission (§ 22-33-105 & 106)
 - school attendance (§ 22-33-104 & 13-5-145)
 - restorative justice practices (§ 22-32-144)
 - restraints and seclusion (§ 22-32-147)
 - information on student offenses (§ 22-33-106.5)
 - at-risk students (§ 22-33-201 to 205)
 - weapons on school grounds (§ 18-12-105.5)
 - intervention for students at risk of dropping out (§ 22-32-118.5)
 - gang, drug, anti-social behavior education (§ 22-25-104.5)
 - hazing (§ 18-9-124)
 - bullying prevention (§ 22-2-144)
 - safe2tell (§ 22-1-126 & 24-31-606)
 - Claire Davis School Safety Act (§ 24-10-106.3)
- **State Board of Education Regulations**
- **Local School District Policies, Codes of Conduct, Safe School Plans**

Overwhelming!





Comprehensive support...

Highlights of this manual include:

- I. Creating a Safe Schools Plan and a Safe School Climate
 - Discussion of Colorado's Safe Schools Act requirements
 - Threat assessment protocols
 - Climate and culture considerations
 - The importance of ongoing data review
- II. Student Discipline
 - Ensuring proportionate, non-exclusionary and non-discriminatory discipline
 - Trauma-informed, culturally responsive, and restorative protocols
 - Disrupting the school-to-prison pipeline
 - Discipline policy drafting and implementation, including due process considerations and special requirements for at-risk students and students with disabilities
- III. Search, Seizure, and Restraint
 - Legal limitations on searches and seizures of students and their property
 - Policy essentials for searches, seizures, and restraints
 - Practical and legal considerations for using physical interventions and restraints

And more!

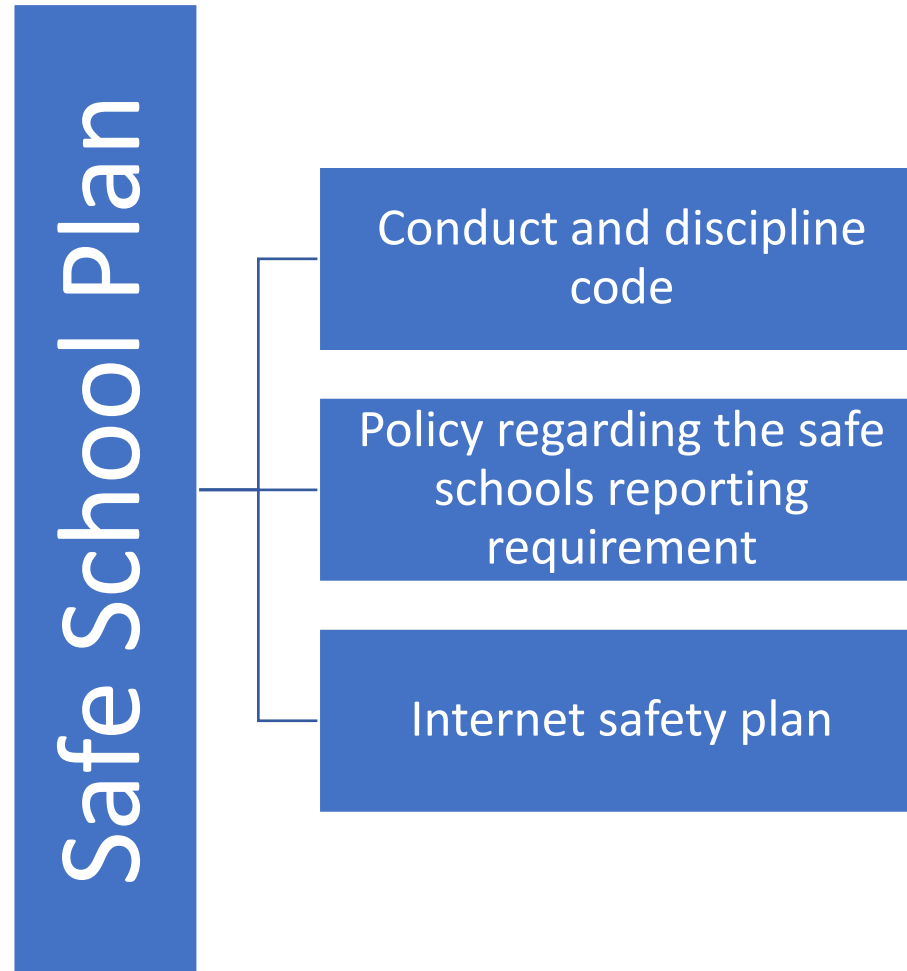
<https://coag.gov/app/uploads/2023/03/2022-AGs-Colorado-School-Safety-A-Legal-Manual.pdf>

Overview of Today's Discussion

- 1. Safe Schools Act – Primary Components
- 2. Suspension and Expulsion
- 3. Student Searches and Restraints
- 4. Information Sharing
- 5. Your Questions Answered!



Colorado Safe Schools Act



Colorado Safe Schools Act

And...

- Child sexual abuse and assault prevention plan
- Cooperate with law enforcement and, to the extent possible, develop written agreements with state agencies
- Build a school response framework for school safety, readiness and incident management plan
- Create a safety and security policy regarding annual building inspections
- Establish policies for information sharing with sharing

Conduct and Discipline Code

1. Student conduct, safety, and welfare policies generally;

2. Policies for handling disruptive students, and policies for suspensions and expulsions of habitually disruptive students;

3. Policies for the use of reasonable and appropriate physical intervention with students;

4. Policies for determining when disciplinary actions, including suspension and expulsion, may be imposed;

5. Policies on gang-related activities;

6. Prohibitions against the possession or use of dangerous weapons, drugs, controlled substances, and tobacco products;

7. Policies on searches on school grounds;

8. A dress code policy that prohibits students from wearing disruptive apparel;

9. Policies on bullying prevention and education; and

10. Policies on the use of restraint and seclusion on students.

CASB Model Policies



Laws Related to Suspension and Expulsion ("exclusionary discipline")

Each district shall
consider each of
the following
before
suspending or
expelling...

(Used to be
encouraged, now
is required!
H.B. 23–1291)

- (a) The age of the student;
- (b) The disciplinary history of the student;
- (c) Whether the student has a disability;
- (d) The seriousness of the violation committed by the student;
- (e) Whether the violation committed by the student threatened the safety of any student or staff member; and
- (f) Whether a lesser intervention would properly address the violation committed by the student.

C.R.S. § 22-33-106(1.2)

Also new: “The board of education of each district shall adopt a policy that states a student must not be expelled or denied admission unless the school district considers whether alternative remedies are appropriate and whether excluding the student from school is necessary to preserve the learning environment.” C.R.S. § 22-33-105(4.5)

SB 23-029: Creation of Disproportionate Discipline Taskforce → Report due in 2024

Quote...

- (1)(a) The general assembly finds and declares that:
 - (I) Students who are suspended and expelled are more likely to be without supervision during the suspension or expulsion period, causing students to fall behind in course work;
 - (II) Suspended and expelled students are fifty-one percent more likely to be arrested two or more times than their peers who are not suspended or expelled from school;
 - (III) For the 2018–19 school year in Colorado, Black students were 3.2 times more likely to be suspended than White students, and Hispanic students were 1.7 times more likely to be suspended than White students; and
 - (IV) Longitudinal research shows that twelve years after a suspension, suspended youth are less likely than nonsuspended youth to have earned a high school diploma or a bachelor's degree. Suspended youth are more likely to have been arrested and on probation, which suggests that suspension, rather than selection bias, explains negative outcomes.
- (b) The general assembly finds, therefore, that discrimination plays a significant role in perpetuating school safety policies that push students into the criminal justice system. Research demonstrates that Black and Hispanic students are often punished more harshly for the same infractions than White students, which reinforces the role of racial bias in the school discipline system. It is critical to understand disproportionate discipline policies and take steps to address and prevent the progression from school to the criminal justice system from occurring.

And at the same time the legislature is trying to decrease exclusionary discipline...

NEWS > EDUCATION • News

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Colorado student suspensions increase to highest level in a decade

Schools across state issued almost 97,000 suspensions last academic year



By **JESSICA SEAMAN** | jseaman@denverpost.com | The Denver Post

PUBLISHED: October 13, 2023 at 6:00 a.m. | UPDATED: October 13, 2023 at 6:03 a.m.

The legacy of COVID, increased behaviors in students and learning loss.

EDUCATION

National testing shows Colorado students are struggling post-pandemic

—
Colorado fourth and eighth graders showed regression in math proficiency and a slight decline in reading proficiency. Teachers are trying to fix that.



“Creative Discipline & Alternatives to Suspension”

- The Three Pillars of Effective Discipline:
 - **Reflective:** The student should be reflecting & gaining insight into their behavior.
 - **Restorative:** The student should have an opportunity to repair the relationships or items that were damaged.
 - **Instructional:** The student should gain specific knowledge and practice skills that will help them in the future.

<https://www.cde.state.co.us/mtss/creativedisdisciplinealternativestosuspensionhand-out>

Link in AG Manual, pg. 23.

What about
off-campus
conduct?

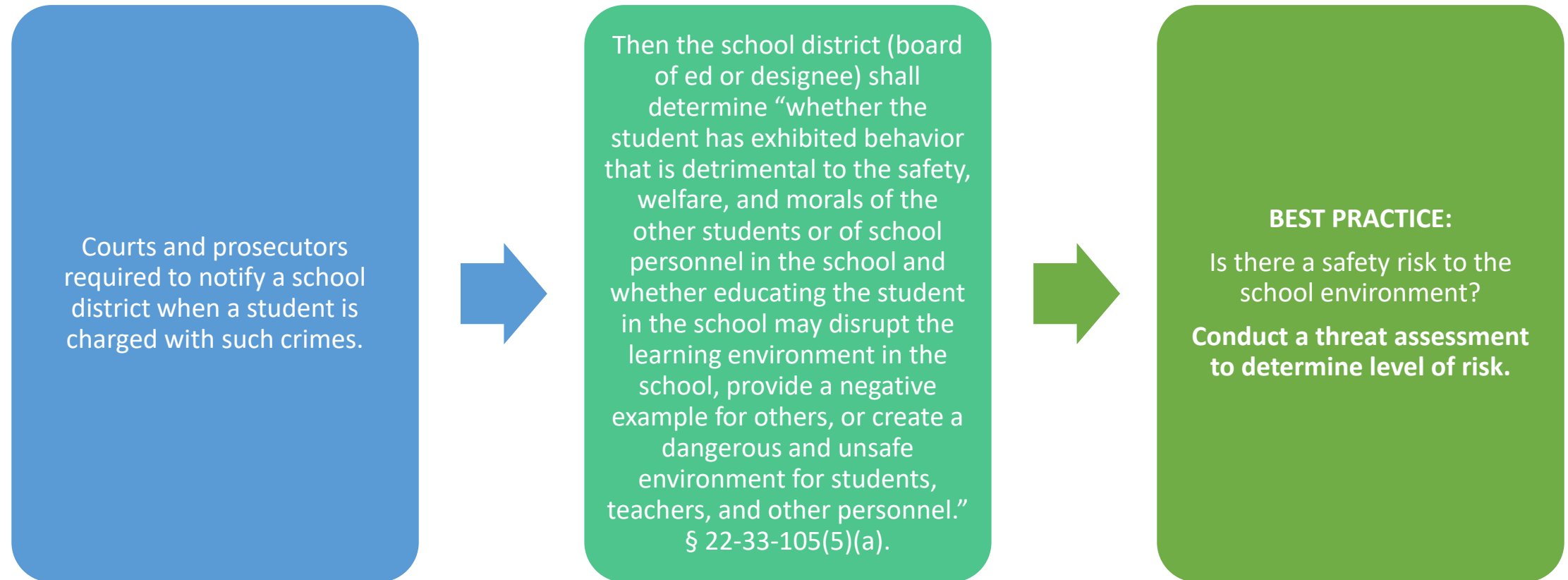
- Speech
 - Social Media Posts
 - Verbal Bullying
- Actions
 - Arrests
 - Convictions
 - Sexual or Physical Assaults
 - Possession of Guns



Discipline for off-campus speech

- Schools may restrict student speech only if it “would substantially interfere with the work of the school or impinge upon the rights of other students.”
- *C1.G on behalf of C.G. v. Siegfried*, 38 F.4th 1270, 1276 (10th Cir. 2022)
 - Suspension and expulsion not permitted for student who posted hateful language on Snapchat about how he and his friends were “bout to exterminate some Jews”
- Schools may be able to regulate off-campus speech when it involves behavior like serious or severe bullying or harassment targeting particular people.

Off-campus crimes of violence or unlawful sexual behavior



Off campus crimes of violence or unlawful sexual behavior (cont.)

With Finding

- Proceed to suspension or expulsion OR
- Implement safety plan based on threat assessment to maintain in school with risk mitigated

Wait until conclusion of juvenile proceedings

- Option to educate student in alternative education program (online or home-based)
- Proceed with expulsion after student pleads guilty or is adjudicated
- Remain in school with or without safety plan.

Note on re-enrollment after adjudication...

- A student expelled for a sex offense or crime of violence may not enroll or re-enroll in the same school where the victim or a member of the victim's immediate family is enrolled or employed.
- If the school district has only one school in which the expelled student can enroll, the school district may either prohibit the expelled student from enrolling, or, to the extent possible, design a schedule for the expelled student that prevents contact between the expelled student and the victim or victim's family member.

AG Manual, pg. 30.

Other key things to know about expulsion...

A student cannot be expelled for more than a year.

During the period of expulsion, the district must offer educational alternatives.

- “The educational services provided must be designed to enable the student to return to the school in which he or she was enrolled prior to expulsion, to successfully complete the high school equivalency examination, or to enroll in a nonpublic school or in an alternative school, including but not limited to a charter school.” C.R.S. § 22-33-203(2)(a).
- “The educational services provided pursuant to this section are designed to provide a second chance for the student to succeed in achieving an education.”

Additional rights for students with disabilities

- Students with disabilities cannot be expelled (or suspended for more than 10 days) without convening the IEP team and the parent to review whether the conduct was caused by or had a direct and substantial relationship to the student's disability or was a direct result of the failure to implement the student's IEP.
- Note: A soft push out may qualify as an unlawful expulsion.

Search and Restraint Laws

When can a student be searched?

When school officials have a reasonable suspicion of a policy violation or a law violation. Or if the student consents to be searched.

Only in places that could reasonably contain what you expect to find.

Can't be excessively intrusive considering the age and sex of the student and the nature of the infraction.

If based on a "tip" – and particularly an anonymous tip – it can't be too stale.

Pursuant to a threat assessment safety plan. *but keep an eye out for Supreme Court ruling on this issue.

Physical intervention and Restraints

Physical contact or intervention that does not qualify as a restraint could include minimal physical contact or brief holding (under 1 minute) for the purposes of:

- Comforting or calming a student;
- Assisting the student in completing a task;
- Escorting a student from one area to another (often called an escort hold);
- Quelling a disturbance threatening physical injury to the student or others;
- Protecting persons against physical injury or preventing the destruction of property
 - (e.g. grabbing a student's arm before they throw a laptop at another student or out the window);
- Self-defense

Important: never hold a student face-down in a prone restraint. Not allowed by law and dangerous!



Did you know?

- Under Colorado law, school and district employees who act in good faith to comply with the safe school plan are immune from civil liability or criminal prosecution.
- This includes a district's policies on restraint and physical intervention.
- If you intervene in a reasonable and appropriate way to prevent harm to students or staff, you have protection from being sued or prosecuted criminally.

C.R.S. § 22-32-109.1(9).



New restraint and seclusion regulations!

- 1 CCR-301-45: Biggest change...
- Physical restraint: involuntarily limiting freedom of movement for **one minute or more**.
- This used to be five minutes.
- If you use a restraint lasting one minute or more, notify the building leader because there are a number of important reporting requirements.

Redline:

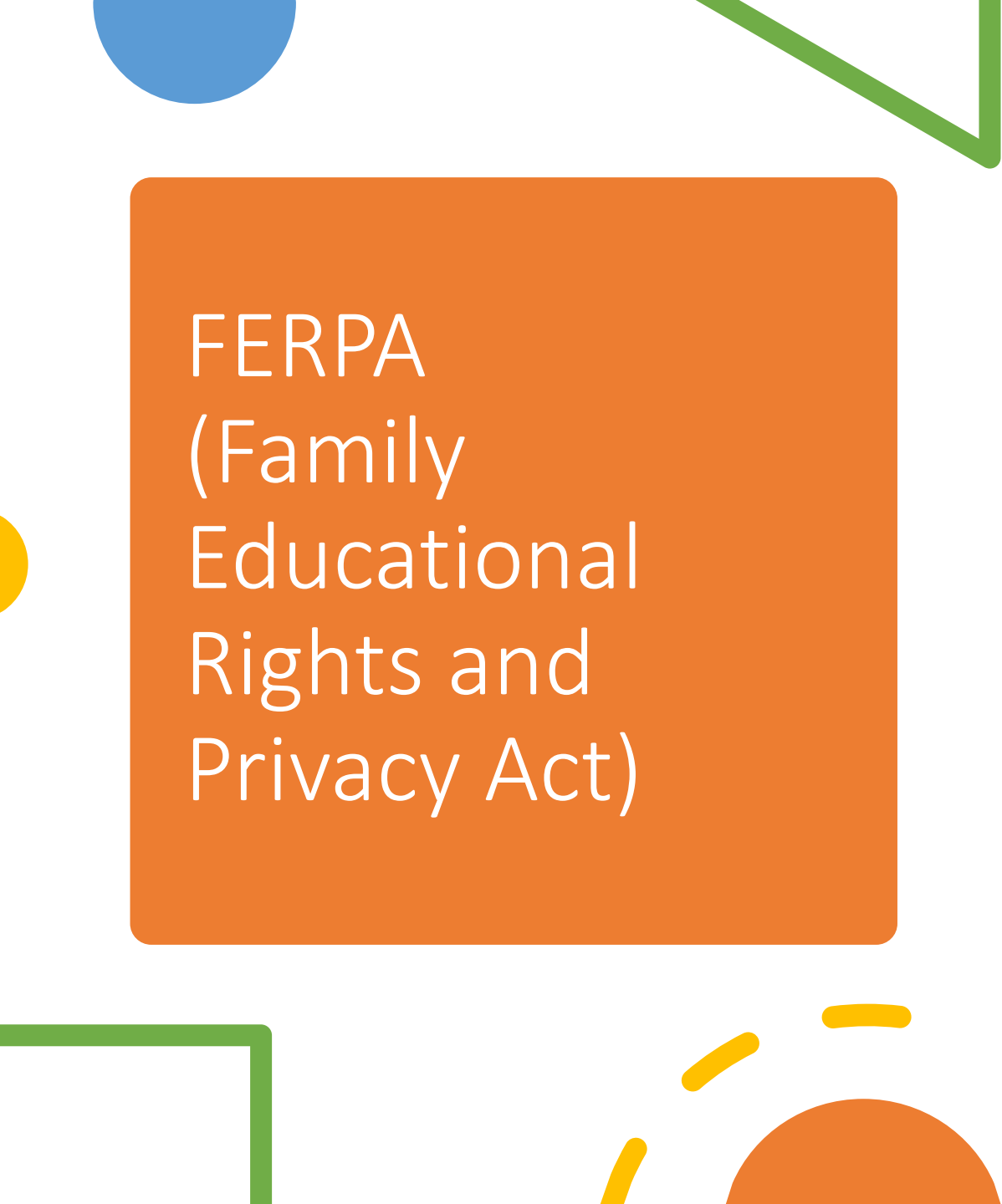
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Information Sharing




how the law can prohibit, permit, or even mandate the exchange of information between agencies in connection with keeping schools safe

AG Manual, pgs. 73-90

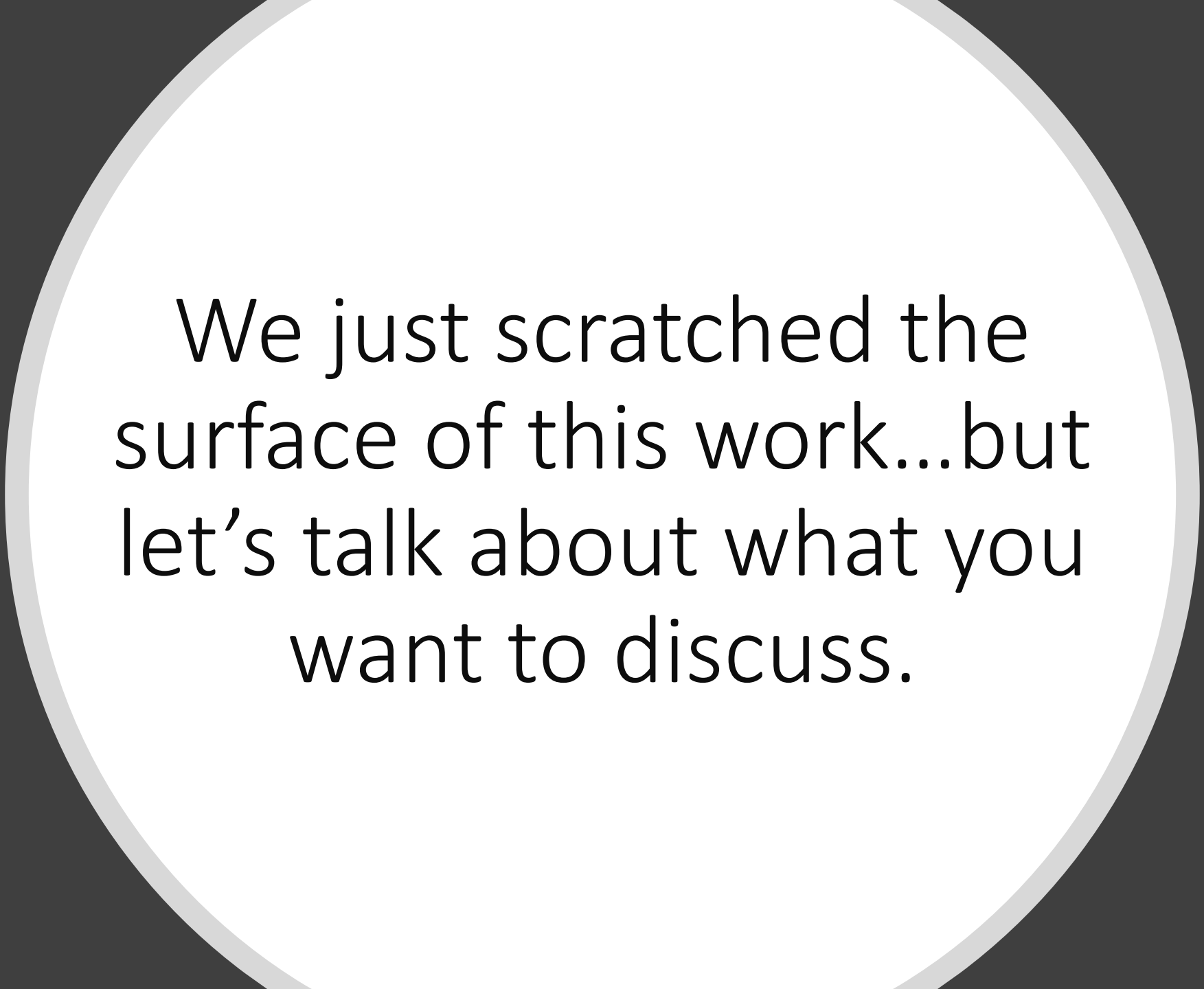


FERPA (Family Educational Rights and Privacy Act)

- General rule is that the parent or eligible student must provide written consent before a school discloses a student's education records or personally identifiable information (PII) contained in those records unless an exception applies.
 - Education records are records that are directly related to a student and maintained by a school.
 - PII is data that “would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”
- 

Exceptions on what can be shared...

- Personal knowledge or observation is not an educational record.
 - A school employee overhears a student threaten to “shoot up the school.”
 - A student tells a teacher that another student slammed them into a locker.
 - A student posts a list of “targets” on Instagram.
- Law enforcement unit records
 - E.g. SRO’s report is not an educational record *unless* it is provided to the school and they use it as grounds for discipline.
 - Security footage often designated as law enforcement records by school districts.
- Health or safety emergencies
 - If there is “an articulable and significant threat to the health or safety of a student or other individuals,” records can be shared.



We just scratched the
surface of this work...but
let's talk about what you
want to discuss.



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The End.

Please Share your Feedback!!