

C.R.S. 22-32-109.1

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[Colorado Revised Statutes Annotated](#) [Title 22. Education \(§§ 22-1-101 – 22-107-105\)](#) [School Districts \(Arts. 30 – 38\)](#) [Article 32. School District Boards - Powers and Duties \(§§ 22-32-101 – 22-32-151\)](#)

22-32-109.1. Board of education - specific powers and duties - safe school plan - conduct and discipline code - safe school reporting requirements - school response framework - school resource officers - definitions.

(1) Definitions. As used in this section, unless the context otherwise requires:

(a) "Action taken" means a specific type of discipline, including but not limited to the following categories of discipline:

(I) In-school suspension;

(II) Out-of-school suspension;

(III) Classroom removal in accordance with board policy;

(IV) Expulsion;

(V) Referral to law enforcement; or

(VI) Any other form of discipline, which shall be officially identified as part of a board policy.

(b) "Bullying" means any written or oral expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student. Bullying is prohibited against any student for any reason, including but not limited to any such behavior that is directed toward a student on the basis of the student's academic performance or against whom federal and state laws prohibit discrimination upon any of the bases described in section 22-32-109 (1)(II)(I)(A). This definition is not intended to infringe upon any right guaranteed to any person by the first amendment to the United States constitution or to prevent the expression of any religious, political, or philosophical views.

(b.5) "Community partners" means, collectively, local fire departments, state and local law enforcement, local 911 agencies, interoperable communications providers, the safe2tell program described in section 24-31-606, C.R.S., local

emergency medical service personnel, local mental health organizations, local public health agencies, local emergency management personnel, local or regional homeland security personnel, and school resource officers.

(b.7) "Corporal punishment" has the same meaning as set forth in section 22-1-140.

(c) "Dangerous weapon" has the same meaning as set forth in section 22-33-102 (4).

(d) "Full-time teacher" means a person who is licensed pursuant to article 60.5 of this title, or is authorized pursuant to section 22-60.5-111 to teach, and is primarily engaged in teaching during a majority of the instructional minutes per school day.

(e) "Habitually disruptive student" has the same meaning as set forth in section 22-33-106 (1)(c.5).

(e.5) "Law enforcement" includes any law enforcement agency, law enforcement officer, or school resource officer.

(f)

(I) "Referral to law enforcement" means a communication between a school administrator, teacher, or other school employee and law enforcement that:

(A) Is initiated by the school administrator, teacher, or other school employee; and

(B) Concerns behavior by a student that the school administrator, teacher, or other school employee believes may constitute a violation of the school conduct and discipline code or a criminal or delinquent offense and for which the school administrator, teacher, or other school employee requests an investigation or other involvement by law enforcement.

(II) "Referral to law enforcement" does not include:

(A) Contact with law enforcement that is made for the purpose of education, prevention, or intervention regarding a student's behavior;

(B) Routine or incidental communication between a school administrator, teacher, or other school employee and law enforcement; or

(C) Any incident or communication that is initiated by law enforcement.

(g) "Restorative justice" has the same meaning as set forth in section 22-32-144 (3).

(g.3) "School" means a public school of a school district, a charter school, or an institute charter school.

(g.5) "School resource officer" means a peace officer, as described in section 16-2.5-101, C.R.S., who has specialized training, as described in section 24-31-312, C.R.S., to work with school staff and students and who is assigned to a public school or charter school for the purpose of creating a safe learning environment and responding to all-hazard threats that may impact the school.

(h) "School vehicle" shall have the same meaning as set forth in section 42-1-102 (88.5), C.R.S.

(1.5) Mission statement. Each school district board of education shall adopt a mission statement for the school district, which statement shall include making safety for all students and staff a priority in each public school of the school district.

(2) Safe school plan. To provide a learning environment that is safe, conducive to the learning process, and free from unnecessary disruption, each school district board of education or institute charter school board for a charter school authorized by the charter school institute shall, following consultation with the school district accountability committee and school accountability committees, parents, teachers, administrators, students, student councils where available, and, where appropriate, the community at large, adopt and implement a safe school plan, or review and revise, as necessary in response to any relevant data collected by the school district, any existing plans or policies already in effect. In addition to the aforementioned parties, each school district board of education, in adopting and implementing its safe school plan, may consult with victims' advocacy organizations, school psychologists, local law

enforcement, and community partners. The plan, at a minimum, must include the following:

(a) Conduct and discipline code.

(I) A concisely written conduct and discipline code that must be enforced uniformly, fairly, and consistently for all students. Copies of the code shall be provided to each student upon enrollment at the preschool, elementary, middle, and high school levels and be posted or kept on file at each public school in the school district. The school district shall take reasonable measures to ensure that each student of each public school in the school district is familiar with the code. The code must include, but need not be limited to:

(A) General policies on student conduct, safety, and welfare;

(B) General policies and procedures for dealing with students who cause a disruption on school grounds, in a school vehicle, or at a school activity or sanctioned event, including a specific policy allowing a teacher to remove a disruptive student from his or her classroom. The policy shall state that, upon the third such removal from a teacher's class, the teacher may remove the disruptive student from the teacher's class for the remainder of the term of the class; except that a disruptive student shall not be removed from a teacher's class for the remainder of the term of the class unless the principal of the student's school or his or her designee has developed and implemented a behavior plan for the student. A behavior plan may be developed after the first such removal from class and shall be developed after the second removal from class. The general policies and procedures shall include a due process procedure, which at a minimum shall require that, as soon as possible after a removal, the teacher or the school principal shall contact the parent or legal guardian of the student to request his or her attendance at a student-teacher conference regarding the removal. Any policy or procedure adopted shall comply with applicable federal and state laws, including but not limited to laws regarding students with disabilities.

(C) Provisions for the initiation of suspension or expulsion proceedings for students who qualify as habitually disruptive students;

(D) Policies and procedures for the use of acts of reasonable and appropriate physical intervention or force in dealing with disruptive students; except that a board shall not adopt a discipline code that includes provisions that are in conflict with the description of child abuse in section 18-6-401 (1) or 19-1-103 (1). Each conduct and discipline code must state that, in accordance with section 22-1-140, a person employed by or volunteering in a public school shall not impose corporal punishment on a child.

(E) General policies and procedures for determining the circumstances under and the manner in which disciplinary actions, including suspension and expulsion, shall be imposed in accordance with the provisions of sections 22-33-105, 22-33-106, and 22-33-106.1;

(F) A specific policy concerning gang-related activities on school grounds, in school vehicles, and at school activities or sanctioned events;

(G) Written prohibition, consistent with section 22-33-106, of students from bringing or possessing dangerous weapons, drugs, or other controlled substances on school grounds, in a school vehicle, or at a school activity or sanctioned event and from using drugs or other controlled substances on school grounds, in a school vehicle, or at a school activity or sanctioned event;

(H) Written prohibition of students from using or possessing tobacco products on school grounds, in a school vehicle, or at a school activity or sanctioned event;

(I) A written policy concerning searches on school grounds, including searches of student lockers;

(J) A dress code policy that prohibits students from wearing apparel that is deemed disruptive to the classroom environment or to the maintenance of a safe and orderly school. The dress code policy may require students to wear a school uniform or may establish minimum standards of dress;

(K) On and after August 8, 2001, a specific policy concerning bullying prevention and education. Each school district shall ensure that the school district's policy, at a minimum, incorporates the approaches, policies, and practices outlined in the model bullying prevention and education policy developed pursuant to section 22-2-144.

(L) Information concerning the school district's policies for the use of restraint and seclusion on students, including a reference to section 26-20-111 and information concerning the process for filing a complaint regarding the use of restraint or seclusion, as such process is set forth by rule of the state board pursuant to section 22-32-147.

(II) In creating and enforcing a school conduct and discipline code pursuant to subsection (2)(a)(I) of this section, each school district board of education, on and after August 1, 2013, shall:

(A) Impose proportionate disciplinary interventions and consequences, including but not limited to in-school suspensions, in response to student misconduct, which interventions and consequences are designed to reduce the number of expulsions, out-of-school suspensions, and referrals to law enforcement, except for such referrals to law enforcement as are required by state or federal law;

(B) Include plans for the appropriate use of prevention, intervention, restorative justice, peer mediation, counseling, or other approaches to address student misconduct, which approaches are designed to minimize student exposure to the criminal and juvenile justice system. The plans shall state that a school administration shall not order a victim's participation in a restorative justice practice or peer mediation if the alleged victim of an offending student's misconduct alleges that the misconduct constitutes unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.; a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1), C.R.S.; stalking as defined in section 18-3-602, C.R.S.; or violation of a protection order, as defined in section 18-6-803.5, C.R.S.;

(C) Ensure that the implementation of the code complies with all state and federal laws concerning the education of students with disabilities, as defined in section 22-20-103 (5);

(D) Ensure that, in implementing the code, each school of the school district shows due consideration of the impact of certain violations of the code upon victims of such violations, in accordance with the provisions of Title IX of the United States Code and other state and federal laws; and

(E) Ensure that, in implementing the code, each school of the school district complies with the requirements of section 22-33-106.1.

(b) Safe school reporting requirements. A policy whereby the principal of each public school in a school district is required to submit annually, in a manner and by a date specified by rule of the state board, and in accordance with standardized methods and any revised reporting categories identified and adopted through the stakeholder process set forth in section 22-1-138, a written report to the board of education of the school district concerning the learning environment in the school during that school year. The board of education of the school district shall annually compile the reports from every school in the district and submit the compiled report to the department of education in a format specified by rule of the state board. The compiled report must be easily accessible by the general public through a link on the department of education's website home page. The report must include, but need not be limited to, the following specific information for the preceding school year, including any disciplinary incident specified in subsection (2)(b)(IV)(E) or (2)(b)(IV)(K) of this section that requires additional reporting on the incident:

(I) The total enrollment for the school;

(II) The average daily attendance rate at the school;

(III) Dropout rates for grades seven through twelve, if such grades are taught at the school;

(IV) The number of conduct and discipline code violations. Each violation must be reported only in the most serious category that is applicable to that violation, including but not limited to specific information identifying the number of,

and the action taken with respect to, each of the following types of violations:

- (A)** Possessing a dangerous weapon on school grounds, in a school vehicle, or at a school activity or sanctioned event without the authorization of the school or the school district;
- (B)** Use or possession of alcohol on school grounds, in a school vehicle, or at a school activity or sanctioned event;
- (C)** Use, possession, or sale of a drug or controlled substance, other than marijuana, on school grounds, in a school vehicle, or at a school activity or sanctioned event;
- (C.5)** The unlawful use, possession, or sale of marijuana on school grounds, in a school vehicle, or at a school activity or sanctioned event;
- (D)** Use or possession of a tobacco product on school grounds, in a school vehicle, or at a school activity or sanctioned event;
- (E)** Being willfully disobedient or openly and persistently defiant or repeatedly interfering with the school's ability to provide educational opportunities to, and a safe environment for, other students. In addition to providing information on such disciplinary incidents in the compiled report required by this subsection (2)(b), the report filing must include any additional information deemed necessary by the department of education pursuant to the process required pursuant to section 22-1-138. Information included in reporting for incidents currently categorized as disobedience or defiance may include, but is not limited to, school and district code; location of incidents; description of the behaviors that constituted the violations; interventions or de-escalation strategies attempted leading up to the incident; and descriptive information of the student or students involved in the incidents, including, but not limited to, gender, grade level, ethnicity, race, and whether the student has federal section 504 accommodations or an individualized education plan. Information on the report must be submitted in accordance with the department of education's data privacy and reporting requirements.
- (F)** Commission of an act on school grounds, in a school vehicle, or at a school activity or sanctioned event that, if committed by an adult, would be considered first degree assault, as described in section 18-3-202, C.R.S., second degree assault, as described in section 18-3-203, C.R.S., or vehicular assault, as described in section 18-3-205, C.R.S.;
- (G)** Behavior on school grounds, in a school vehicle, or at a school activity or sanctioned event that is detrimental to the welfare or safety of other students or of school personnel, including but not limited to behavior that creates a threat of physical or emotional harm to the student or to other students;
- (G.5)** Bullying;
- (H)** Willful destruction or defacement of school property;
- (I)** Commission of an act on school grounds, in a school vehicle, or at a school activity or sanctioned event that, if committed by an adult, would be considered third degree assault, as described in section 18-3-204, C.R.S., or disorderly conduct, as described in section 18-9-106 (1)(d), C.R.S., but not disorderly conduct involving firearms or other deadly weapons, as described in section 18-9-106 (1)(e) and (1)(f), C.R.S.;
- (J)** Commission of an act on school grounds, in a school vehicle, or at a school activity or sanctioned event that, if committed by an adult, would be considered robbery; and
- (K)** Other violations of the code of conduct and discipline that resulted in documentation of the conduct in a student's record. In addition to providing information on such disciplinary incidents in the compiled report required by this subsection (2)(b), the report filing must include any additional information deemed necessary by the department of education pursuant to the process required pursuant to section 22-1-138. Information included in reporting for incidents currently categorized as disobedience or defiance may include, but is not limited to, school and district code; location of the incidents; description of the behaviors that constituted the violations; interventions or de-escalation

strategies attempted leading up to the incidents; and descriptive information of the student or students involved in the incidents, including, but not limited to, gender, grade level, ethnicity, race, and whether the student has federal section 504 accommodations or an individualized education plan. Information on the report must be submitted in accordance with the department of education's data privacy and reporting requirements.

(V) and **(VI)** (Deleted by amendment, L. 2012.)

(VII) The average class size for each public elementary school, middle school or junior high school, and senior high school in the state calculated as the total number of students enrolled in the school divided by the number of full-time teachers in the school;

(VIII) The school's policy concerning bullying prevention and education, including information related to the development and implementation of any bullying prevention programs; and

(IX) The number of acts of sexual violence on school grounds, in a school vehicle, or at a school activity or sanctioned event. Any information provided as a part of this subparagraph (IX) for the safe school reporting requirements must be reported as aggregate data and must not include any personally identifying information. For the purposes of this subparagraph (IX), "sexual violence" means a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent.

(b.5) In addition to the items specified in subsection (2)(b) of this section, each school district board of education or institute charter school board for a charter school authorized by the charter school institute shall annually review and submit data to the department of education concerning the number and types of disciplinary incidents and the disciplinary actions taken in response to such incidents. The department of education shall collect the data described in subsection (2)(b)(IV) of this section at the individual student level and report disaggregated student data on the type of disciplinary incidents and action taken. Such student data must be disaggregated by gender, grade level, race, ethnicity, disability, whether the student has federal section 504 accommodations or an individualized education plan, English language learner status, free and reduced-price lunch status, and homeless status, to the maximum extent possible in compliance with the "Colorado Privacy Act", established pursuant to part 13 of article 1 of title 6, the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g, and the "Student Data Transparency and Security Act", created in article 16 of this title 22. The department of education shall not publicly report individual student data for any purpose, shall include the application of data suppression policies to avoid the re-identification of any individual in any public reports, and shall ensure compliance with standards for reporting data for a student with a federal section 504 accommodation or an individualized education plan.

(c) Internet safety plan.

(I) Each school district is encouraged to provide a comprehensive, age-appropriate curriculum that teaches safety in working and interacting on the internet in grades kindergarten through twelve. At a minimum, the curriculum may address the following topics:

(A) Interaction with persons in the cybercommunity;

(B) Personal safety in interacting with persons on the internet;

(C) Recognition and avoidance of online bullying;

(D) Technology, computer virus issues, and ways to avoid computer virus infection;

(E) Predator identification;

(F) Intellectual property, including education concerning plagiarism and techniques to avoid committing plagiarism and laws concerning downloading of copyrighted materials including music;

(G) Privacy and the internet;

(H) Online literacy, including instruction in how to identify credible, factual, trustworthy websites; and

(I) Homeland security issues related to internet use.

(II) Each school district is encouraged to structure the internet safety plan so as to incorporate the internet safety topics into the teaching of the regular classroom curricula, rather than isolating the topics as a separate class. Each school district is encouraged to use available internet safety curricula resources, including but not limited to materials available through nonprofit internet safety foundations that are endorsed by the federal government. Each school district is also encouraged to work with local law enforcement for the jurisdiction in which the school district is located in developing the internet safety curricula, especially with regard to topics that address personal safety on the internet, internet predator identification, privacy issues, and homeland security issues. Each school district is also encouraged to collaborate with parents and teachers in developing the internet safety curricula, including collaborating with district and statewide organizations that represent parents and teachers.

(III) Each school district is encouraged to begin implementing the internet safety plan with the 2005-06 school year and to annually review and, as necessary, revise the plan. Each school district is encouraged to identify a person who is responsible for overseeing implementation of the internet safety plan within each public school of the school district to ensure that each public school complies with the requirements of the plan.

(IV) If a school district chooses to adopt an internet safety plan and to identify a person who is responsible for overseeing implementation of the plan, the person is encouraged to annually submit an internet safety plan implementation report to the school district board of education specifying the level of implementation achieved by each public school of the school district and providing an overview of the internet safety curricula adopted and implemented in each public school of the school district. The school district board of education of each school district that chooses to adopt an internet safety plan is encouraged to submit to the department of education an annual report summarizing the internet safety plan implementation report and is encouraged to make the annual summary report available on the school district website.

(2.5)

(a) Safe school plan - child sexual abuse and assault prevention plan. Each school district is encouraged, as part of its safe school plan, to adopt a child sexual abuse and assault prevention plan. Each school district is encouraged to include in the plan delivery of a comprehensive, age-appropriate curricula for kindergarten through twelfth grade regarding child sexual abuse and assault awareness and prevention. The curricula may address, but need not be limited to:

(I) The skills to recognize:

(A) Child sexual abuse and assault;

(B) Boundary violations and unwanted forms of touching and contact; and

(C) Behaviors that an offender uses to groom or desensitize a victim; and

(II) Strategies to:

(A) Promote disclosure;

(B) Reduce self-blame; and

(C) Mobilize bystanders.

(b) Each school district is encouraged to include in the child sexual abuse and assault prevention plan professional development for school personnel and parents in preventing, identifying, and responding to child sexual abuse and assault. Professional development may include providing training in preventing, identifying, and responding to child sexual abuse and assault, including using the child abuse reporting hotline system created pursuant to section 26-5-111, C.R.S., and distributing resources to raise the awareness of school personnel and parents regarding child sexual abuse and assault and preventing child sexual abuse and assault.

(c) A school district is encouraged to use curricula and professional development materials, training, and other resources available from the school safety resource center pursuant to section 24-33.5-1809, C.R.S.

(d) As used in this subsection (2.5), "school personnel" includes teachers, administrators, school resource officers, and other employees of a school district or a public school.

(3) Agreements with state agencies. Each board of education shall cooperate and, to the extent possible, develop written agreements with law enforcement, the juvenile justice system, and social services, as allowed under state and federal law, to keep each school environment safe. Each board of education shall adopt a policy whereby procedures will be used following instances of assault upon, disorderly conduct toward, harassment of, the making knowingly of a false allegation of child abuse against, or any alleged offense under the "Colorado Criminal Code" directed toward a school teacher or school employee or instances of damage occurring on the premises to the personal property of a school teacher or school employee by a student. Such procedures shall include, at a minimum, the following provisions:

(a) Such school teacher or school employee shall file a complaint with the school administration and the board of education.

(b) The school administration shall, after receipt of such report and proof deemed adequate to the school administration, suspend the student for three days, such suspension to be in accordance with the procedures established therefor, and shall initiate procedures for the further suspension or expulsion of the student where injury or property damage has occurred.

(c) The school administration shall report the incident to the district attorney or appropriate local law enforcement, which shall, upon receiving such report, investigate the incident to determine the appropriateness of filing criminal charges or initiating delinquency proceedings.

(4) School response framework - school safety, readiness, and incident management plan. Each board of education shall establish a school response framework that shall consist of policies described in this subsection (4). By satisfying the requirements of this subsection (4), a school or school district shall be in compliance with the national incident management system, referred to in this subsection (4) as "NIMS", developed by the federal emergency management agency. At a minimum, the policies shall require:

(a)

(I) Each school district, on or before July 1, 2009, to establish a date by which each school of the school district shall be in compliance with the requirements of this subsection (4); except that the date may be changed by the school board for cause.

(II) Each school district shall make the dates established pursuant to subparagraph (I) of this paragraph (a) available to the public upon request.

(b) Each school district to adopt the national response framework released by the federal department of homeland security and NIMS formally through orders or resolutions;

(c) Each school district to institutionalize the incident command system as taught by the emergency management institute of the federal emergency management agency;

(d) Each school district, on or before July 1, 2009, to start to develop a school safety, readiness, and incident management plan, including, to the extent possible, emergency communications, that coordinates with any statewide or local emergency operation plans. In developing the plan, a school district may collaborate with community partners. The school safety, readiness, and incident management plan shall, at a minimum, identify for each public school in the

school district:

- (I)** Safety teams and backups who are responsible for interacting with community partners and assuming key incident command positions; and
- (II)** Potential locations for various types of operational locations and support functions or facilities;
- (e)** To the extent possible, each school district to enter into memoranda of understanding with the community partners specifying responsibilities for responding to incidents;
- (f)** To the extent possible, each public school to create an all-hazard exercise program based on NIMS and to conduct tabletop exercises and other exercises in collaboration with community partners from multiple disciplines and, if possible, multiple jurisdictions to practice and assess preparedness and communications interoperability with community partners;
- (g)** To the extent possible, each public school, in collaboration with its school district, to hold coordinated exercises among school employees and community partners, including at a minimum:
 - (I)** Orientation meetings to inform all parties about emergency operation plans and procedures;
 - (II)** All-hazard drills, in addition to fire drills, to improve individual and student emergency procedures and to test communications interoperability; and
 - (III)** Tabletop exercises to discuss and identify roles and responsibilities in different scenarios;
- (h)** Each public school to conduct a written evaluation following the exercises and certain incidents as identified by the school or school district and identify and address lessons learned and corrective actions in updating response plans and procedures;
- (i)** Each public school, at least every academic term, to inventory emergency equipment and test communications equipment and its interoperability with affected state and local agencies;
- (j)** Each school district to adopt written procedures for taking action and communicating with local law enforcement agencies, community emergency services, parents, students, and the media in the event of certain incidents as identified by the school or school district;
- (k)** Key emergency school personnel, including but not limited to safety teams and backups, to complete courses provided by the federal emergency management agency's emergency management institute or by institutions of higher education in the state system of community and technical colleges;
- (l)** School district employee safety and incident management training, including provisions stating that completion of any courses identified by the department of public safety pursuant to section 24-33.5-1606.5 (3), C.R.S., as related to NIMS count toward the professional development requirements of a person licensed pursuant to article 60.5 of this title;
- (m)** Each school district to work with community partners to update and revise all standard operating procedures, ensuring that all aspects of NIMS are incorporated, including but not limited to policies and principles, planning, procedures, training, response, exercises, equipment, evaluation, and corrective actions;
- (n)** Each school district to coordinate with community partners to assess overall alignment and compliance with NIMS; identify requirements already met; establish a baseline for NIMS compliance; and determine action steps, including developing a plan and timeline, to achieve and maintain all NIMS goals;
- (o)** Each school district to develop a timeline and strategy for compliance with the requirements of this subsection (4) and to strategically plan, schedule, and conduct all activities with community partners; and
- (p)** School resource officers to be familiar with the school response framework outlined in this subsection (4), the all-hazard exercise program, and the interoperable communications of the school to which he or she is assigned.

(5) Safety and security policy. Each board of education shall adopt a policy requiring annual school building inspections to address the removal of hazards and vandalism and any other barriers to safety and supervision.

(6) Sharing information. Notwithstanding any provision to the contrary in title 24, each board of education shall establish policies consistent with section 24-72-204 (3) and with applicable provisions of the federal "Family Educational Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and all federal regulations and applicable guidelines adopted thereto, to share and release information directly related to a student and maintained by a public school or by a person acting for the public school in the interest of making schools safer. Sharing of information concerning an out-of-home placement student who is being transferred to a public school must comply with the rules established by the state board pursuant to section 22-2-139 (9).

(7) Open school policy. Each board of education shall adopt an open school policy to allow parents and members of the school district board of education reasonable access to observe classes, activities, and functions at a public school upon reasonable notice to the school administrator's office.

(8) Employee screenings. Each board of education shall adopt a policy of making inquiries upon good cause to the department of education for the purposes of screening licensed employees and nonlicensed employees hired on or after January 1, 1991. Licensed employees employed by school districts on or after January 1, 1991, shall be screened upon good cause to check for any new instances of criminal activity listed in section 22-32-109.9 (1)(a). Nonlicensed employees employed by a school district on or after January 1, 1991, shall be screened upon good cause to check for any new instances of criminal activity listed in section 22-32-109.8 (2)(a).

(9) Immunity.

(a) A school district board of education or a teacher or any other person acting in good faith in accordance with the provisions of subsection (2) of this section in carrying out the powers or duties authorized by said subsection shall be immune from criminal prosecution or civil liability for such actions; except that a teacher or any other person acting willfully or wantonly in violation of said subsection shall not be immune from criminal prosecution or civil liability pursuant to said subsection. A teacher or any other person claiming immunity from criminal prosecution under this paragraph (a) may file a motion that shall be heard prior to trial. At the hearing, the teacher or other person claiming immunity shall bear the burden of establishing the right to immunity by a preponderance of the evidence.

(b) A teacher or any other person acting in good faith and in compliance with the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section shall be immune from civil liability; except that a person acting willfully and wantonly shall not be immune from liability pursuant to this paragraph (b). The court shall dismiss any civil action resulting from actions taken by a teacher or any other person pursuant to the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section upon a finding by the court that the person acted in good faith and in compliance with such conduct and discipline code and was therefore immune from civil liability pursuant to paragraph (a) of this subsection (9). The court shall award court costs and reasonable attorney fees to the prevailing party in such a civil action.

(c) If a teacher or any other person does not claim or is not granted immunity from criminal prosecution pursuant to paragraph (a) of this subsection (9) and a criminal action is brought against a teacher or any other person for actions taken pursuant to the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section, it shall be an affirmative defense in the criminal action that the teacher or such other person was acting in good faith and in compliance with the conduct and discipline code and was not acting in a willful or wanton manner in violation of the conduct and discipline code.

(d) An act of a teacher or any other person shall not be considered child abuse pursuant to sections 18-6-401 (1) and 19-1-103 (1), C.R.S., if:

(I) The act was performed in good faith and in compliance with the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section; or

(II) The act was an appropriate expression of affection or emotional support, as determined by the board of education.

(e) A teacher or any other person who acts in good faith and in compliance with the conduct and discipline code adopted by the board of education pursuant to paragraph (a) of subsection (2) of this section shall not have his or her contract nonrenewed or be subject to any disciplinary proceedings, including dismissal, as a result of such lawful actions, nor shall the actions of the teacher or other person be reflected in any written evaluation or other personnel record concerning such teacher or other person. A teacher or any other person aggrieved by an alleged violation of this paragraph (e) may file a civil action in the appropriate district court within two years after the alleged violation.

(10) Compliance with safe school reporting requirements. If the state board determines that a school district or one or more of the public schools in a school district is in willful noncompliance with the provisions of paragraph (b) of subsection (2) of this section, the state's share of the school district's total program, as determined pursuant to article 54 of this title, may be subject to forfeiture until the school district and each school in the district attains compliance with the provisions of paragraph (b) of subsection (2) of this section.

(11) Repealed.

History

Source: **L. 2000:**Entire section added, p. 1957, § 1, effective June 2. **L. 2001:**(2)(b)(VII) amended, p. 1272, § 26, effective June 5; IP(2), (2)(a)(VIII), and (2)(a)(IX) amended and (2)(a)(X) and (2)(b)(VIII) added, pp. 494, 495, §§ 2, 3, effective August 8. **L. 2002:**IP(2) and IP(9)(d) amended, p. 1020, § 30, effective June 1. **L. 2004:**(2)(b)(VII) amended, p. 1285, § 18, effective May 28. **L. 2005:**(2)(c) added, p. 261, § 2, effective April 14. **L. 2006:**(2)(b)(IV) amended, p. 405, § 2, effective April 6. **L. 2007:**(9)(a), (9)(c), and (9)(e) amended, p. 686, § 1, effective May 3. **L. 2008:**(4) amended, p. 802, § 3, effective May 14. **L. 2009:**IP(2) amended,(SB 09-163), ch. 293, p. 1541, § 41, effective May 21; (2)(a)(III) amended,(HB 09-1243), ch. 290, p. 1423, § 2, effective May 21. **L. 2010:**(2)(a)(II) and (2)(a)(X) amended,(HB 10-1232), ch. 163, p. 569, § 4, effective April 28; (6) amended,(HB 10-1274), ch. 271, p. 1250, § 5, effective May 25. **L. 2011:**(2)(a)(IX), (2)(a)(X), and (2)(b)(IV)(G) amended,(HB 11-1254), ch. 173, p. 652, § 2, effective May 13; IP(4), IP(4)(d), (4)(f), (4)(g)(II), and (4)(i) amended,(SB 11-173), ch. 310, p. 1514, § 2, effective June 10; (6) amended,(HB 11-1303), ch. 264, p. 1161, § 46, effective August 10. **L. 2012:**IP(4)(d) amended,(SB 12-079), ch. 58, p. 213, § 6, effective March 24; (1), IP(2), (2)(a), and (2)(b) amended and (1.5) added,(HB 12-1345), ch. 188, p. 732, § 22, effective May 19; (4)(l) amended,(HB 12-1283), ch. 240, p. 1132, § 40, effective July 1. **L. 2013:**(1)(b.5), (1)(g.5), and (4)(p) added and IP(2), IP(4)(d), (4)(n), and (4)(o) amended,(SB 13-138), ch. 253, p. 1341, § 3, effective May 23. **L. 2014:**(1)(b.5) amended,(SB 14-002), ch. 241, p. 893, § 4, effective August 6. **L. 2015:**(1)(a)(V), (1)(b.5), (1)(f), IP(2), IP(2)(b), IP(2)(b)(IV), (2)(b)(IV)(C), (2)(b)(VII), (2)(b)(VIII), (2)(c)(II), IP(3), and (3)(c) amended and (1)(e.5), (2)(b)(IV)(C.5), (2)(b)(IX), and (11) added,(HB 15-1273), ch. 323, p. 1317, § 2, effective June 5; (2.5) added,(SB 15-020), ch. 277, p. 1133, § 3, effective June 5. **L. 2017:**(6) amended,(SB 17-294), ch. 264, p. 1395, § 47, effective May 25; (2)(a)(I)(L) added,(HB 17-1276), ch. 270, p. 1491, § 6, effective August 9. **L. 2019:**IP(11)(a) amended,(SB 19-241), ch. 390, p. 3467, § 19, effective August 2; IP(2)(a)(I), (2)(a)(I)(E), IP(2)(a)(II), (2)(a)(II)(C), and (2)(a)(II)(D) amended and (2)(a)(II)(E) added,(HB 19-1194), ch.

160, p. 1889, § 9, effective July 1, 2020. **L. 2020:**(1)(b) amended,(HB 20-1048), ch. 8, p. 20, § 12, effective September 14. **L. 2021:**(2)(a)(I)(K) and (2)(b)(IV)(G) amended and (2)(b)(IV)(G.5) added,(HB 21-1221), ch. 209, p. 1086, § 3, effective June 7. **L. 2022:**(1)(g.3) and (2)(b.5) added and IP(2), IP(2)(b), (2)(b)(IV)(E), and (2)(b)(IV)(K) amended,(HB 22-1376), ch. 243, p. 1801, § 5, effective May 26.; **L. 2023:** (HB1191), ch. 94, § 3, effective April 20, 2023.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 22

C.R.S. Title 22, Art. 32

State Notes

Notes

Editor's note:

Subsection (11)(b) provided for the repeal of subsection (11), effective July 1, 2020. (See L. 2015, p. 1317.)

ANNOTATION

Law reviews.

For comment, "Warning Bell: The Inherent Difficulties of Responding to Student-on-Student Sexual Harassment in Colorado Middle Schools", see 76 U. Colo. L. Rev. 813 (2005). For article, "Gun Violence on Campus", see 44 Colo. Law. 37 (Oct. 2015). For article, "Colorado School Discipline Law: Gaps and Goals", see 97 Denv. L. Rev. 347 (2020).

Subsection (9)(e) [formerly 22-32-110 (4)(c)] is to be viewed as an exception to the school board's discretion in the area of hiring and firing;

the proximity of the subsection to other provisions granting immunity does not assist an analysis. *Widder v. Durango Sch. Dist. No. 9-R*, 85 P.3d 518 (Colo. 2004).

A school district's decision is quasi-judicial and subject to review under C.R.C.P. 106(a)(4)

where the decision is whether to terminate an employee who claims that he acted in good faith and in compliance with a conduct and discipline code. The decision involves a determination of the rights, duties, or obligations of specific individuals on the basis of applying presently existing standards to past or present facts. *Widder v. Durango Sch. Dist. No. 9-R*, 85 P.3d 518 (Colo. 2004).

Trial court erred in determining de novo the facts underlying a dismissal decision.

The immunity granted school district employees in subsection (9)(e) does not divest a school board of its discretion to determine whether an employee's conduct was in good faith and in compliance with the school district's disciplinary code and so whether it warrants dismissal. *Widder v. Durango Sch. Dist.* No. 9-R, 60 P.3d 741 (Colo. App. 2002), *aff'd in part and rev'd in part on other grounds*, 85 P.3d 518 (Colo. 2004).

Research References & Practice Aids

Cross references:

(1) For the legislative declaration contained in the 2001 act amending the introductory portion to subsection (2) and subsections (2)(a)(VIII) and (2)(a)(IX) and adding subsections (2)(a)(X) and (2)(b)(VIII), see section 1 of chapter 154, Session Laws of Colorado 2001. For the legislative declaration contained in the 2005 act adding subsection (2)(c), see section 1 of chapter 72, Session Laws of Colorado 2005. For the legislative declaration contained in the 2006 act amending subsection (2)(b)(IV), see section 1 of chapter 117, Session Laws of Colorado 2006. For the legislative declaration contained in the 2008 act amending subsection (4), see section 1 of chapter 215, Session Laws of Colorado 2008. For the legislative declaration in the 2010 act amending subsection (6), see section 1 of chapter 271, Session Laws of Colorado 2010. For the legislative declaration in the 2011 act amending the introductory portions to subsections (4) and (4)(d) and subsections (4)(f), (4)(g)(II), and (4)(i), see section 1 of chapter 310, Session Laws of Colorado 2011. For the legislative declaration in the 2012 act amending subsection (4)(l), see section 1 of chapter 240, Session Laws of Colorado 2012. For the legislative declaration in the 2013 act adding subsections (1)(b.5), (1)(g.5), and (4)(p) and amending the introductory portions to subsections (2) and (4)(d) and subsections (4)(n) and (4)(o), see section 1 of chapter 253, Session Laws of Colorado 2013. For the legislative declaration in HB 15-1273, see section 1 of chapter 323, Session Laws of Colorado 2015. For the legislative declaration in HB 17-1276, see section 1 of chapter 270, Session Laws of Colorado 2017. For the legislative declaration in HB 19-1194, see section 1 of chapter 160, Session Laws of Colorado 2019.

(2) For the short title ("Creating a Respectful and Open World for Natural Hair Act of 2020" or the "CROWN Act of 2020") and the legislative declaration in HB 20-1048, see sections 1 and 2 of chapter 8, Session Laws of Colorado 2020.

(3) For the short title ("Jack and Cait's Law") in HB 21-1221, see section 1 of chapter 209, Session Laws of Colorado 2021.

Colorado Revised Statutes Annotated

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