





Michelle Berge
First Assistant Attorney General,
K-12 Education Unit

November 14, 2023
Discipline Taskforce

Please note that this presentation is not intended to convey legal advice and does not create an attorney-client relationship.

- Gun-Free School Zones Act
- Individuals with Disabilities Education Act (IDEA)
- Nondiscrimination laws (ADA, Section 504, and more)
- Title IX (sexual harassment and discrimination)
- ~~safe school plans and codes of conduct (§ 22-32-109.1)~~
- ~~suspension, expulsion, denial of admission (§ 22-33-105 & 106)~~
- ~~restorative justice practices (§ 22-32-144) (“encouraged” to develop RJ practices)~~
- ~~information on student offenses (§ 22-33-106.5)~~
- ~~at risk students (§ 22-33-201 to 205)~~
- ~~intervention for students at risk of dropping out (§ 22-32-118.5)~~
- ~~bullying prevention (§ 22-2-144)~~
- ~~safe2tell (§ 22-1-126 & 24-31-606)~~
- ~~Claire Davis School Safety Act (§ 24-10-106.3)~~
- ~~Data reporting (§§ 22-11-503, 22-32-109.1, 22-1-138)~~
- ~~restraints and seclusion (§ 22-32-147) (not discipline, but are important to school safety)~~
- ~~1 CCR 301-43 (At Risk Student Services Grant Program)~~

- 1 CCR 203-45 (Restraint and Seclusion Regs)

Overwhelming!



Comprehensive support...

Overview of Today's

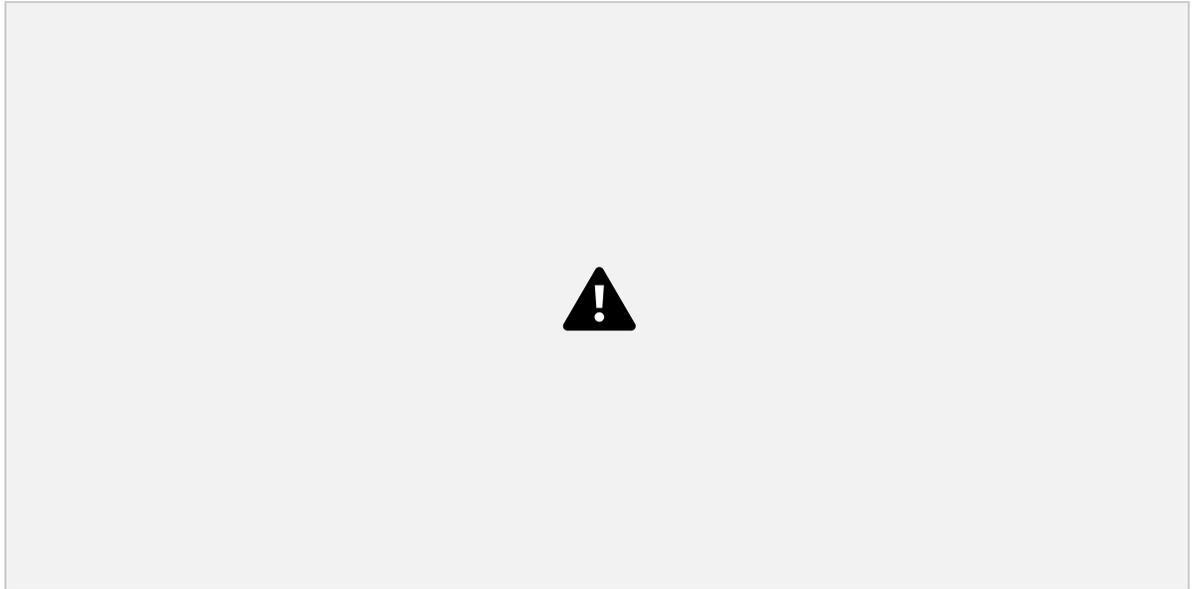


Discussion

- 1. Safe School Plan • 2. Suspension and Expulsion •
What is allowed?
 - What is required to be reported?
- 3. Student Searches and Restraints

Safe

School Plan





- concisely written conduct and discipline code that
- School district must take reasonable measures to
- Local board of education shall annually compile
- Reports must include the number of conduct and

must be enforced uniformly, fairly, and consistently for all students

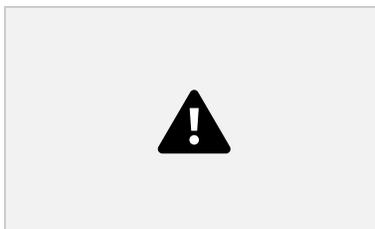
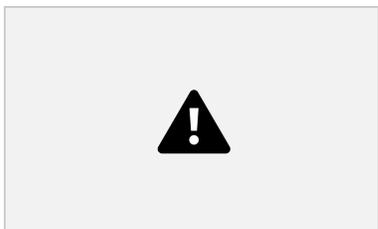
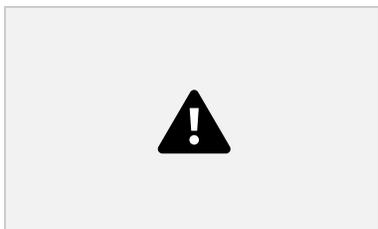
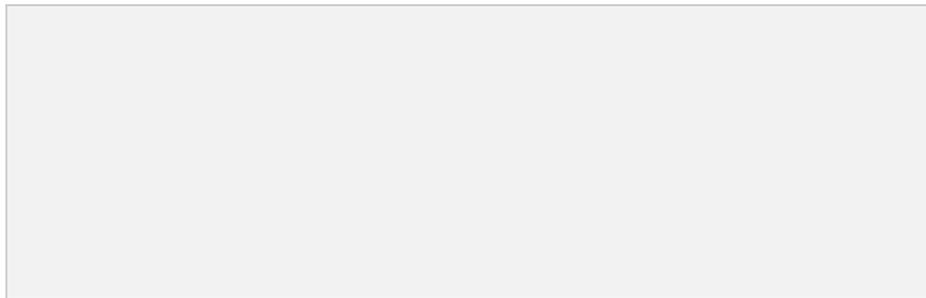
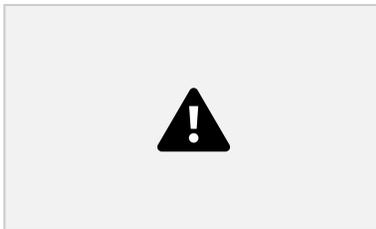
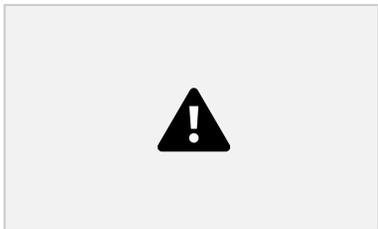
ensure that each student of each student is familiar with the code

reports from every school in the district and submit to CDE

discipline code violations by category (much more on this later!)



“Conduct and Discipline Code” includes a lot...





Laws Related to Suspension and Expulsion (“exclusionary discipline”)

Under current statute, § 22-33-106, the same

categories

- Declaration as a habitually disruptive student --~~a child who has caused a material and substantial disruption on school grounds, in a school vehicle, or at a school activity or sanctioned event three or more times during the course of a school year and the guardian has been notified in writing of each disruption~~
- The commission of an act that, if committed by an adult, would be robbery pursuant to part 3 of article 4 of title 18, C.R.S., or assault pursuant to part 2 ~~of article 3 of title 18, C.R.S., other than the commission of an act that would be third degree assault under section 18-3-204, C.R.S., if committed by an~~

can be used to justify suspension or expulsion:

- Continued willful disobedience or open and persistent defiance of proper authority;
- Willful destruction or defacing of school property;
- 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;

counting toward declaring the student to be habitually disruptive.

- Committing one of the following offenses on school grounds, in a school vehicle, or at a school activity or sanctioned event: • Possession of a dangerous weapon without the authorization of the school or the school district;
- The use, possession, or sale of a drug or controlled substance as defined in section 18-18-102(5), C.R.S.; or

adult.

- Repeated interference with a school's ability to provide educational opportunities to other students.
- Carrying, using, actively displaying, or threatening with the use of a firearm facsimile that could reasonably be mistaken for an actual firearm in a school building or in or on school property.
- Pursuant to section 22-12-105(3), making a false accusation of criminal activity against an employee of an educational entity to law

bl district officials or personnel.



C.R.S. § 22-33-106(1.2)

- (a) The age of the student;
- (b) The disciplinary history of the student; ^{the} student from school is necessary to preserve the learning environment.” C.R.S. § 22-33-105(4.5)
- (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.

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

- ~~Being willfully disobedient or openly and persistently defiant or repeatedly interfering with the school's ability to provide educational opportunities to, and~~
- ~~Behavior connected to school that is detrimental to the welfare or safety of other students or of school personnel, including but not limited to behavior that~~

Some similar, some different categories for data reporting required by 22-32-109.1(2)(b)(IV)...

- Possession of a dangerous weapon connected to school
- Use or possession of alcohol connected to school
- Use, possession or sale of a drug or controlled substance (other than marijuana) connected to school
- The unlawful use, possession, or sale of marijuana connected to school
- The use or possession of tobacco products connected to school

a safe environment for, other students. (More on this in a later slide.)

- Commission of an act connected to school 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.;

creates a threat of physical or emotional harm to the student or to other students; (More on this in a later slide.) • Bullying (the only one of the list that doesn't have the connected to school language)

- Willful destruction or defacement of school property

- Commission of an act connected to school 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.;

- Commission of an act connected to school that, if committed by an adult, would be considered robbery; and • Other violations of Code of Conduct that resulted in documentation of the conduct in a student's record

Challenge: Lack of alignment between grounds, reporting requirements, and

CASB's

- <https://docs.google.com/spreadsheets/d/1RmVyo4GIHd5H0gEQ2uj8SxLLGJQXVe0HG48VcqjfWMM/edit?usp=sharing>

Model Policy

What all this reporting currently looks like in CDE's SchoolViewData Center, for the state, each district, and each school...



Local practices and lack of consistency are evident...

Denver Adams 12



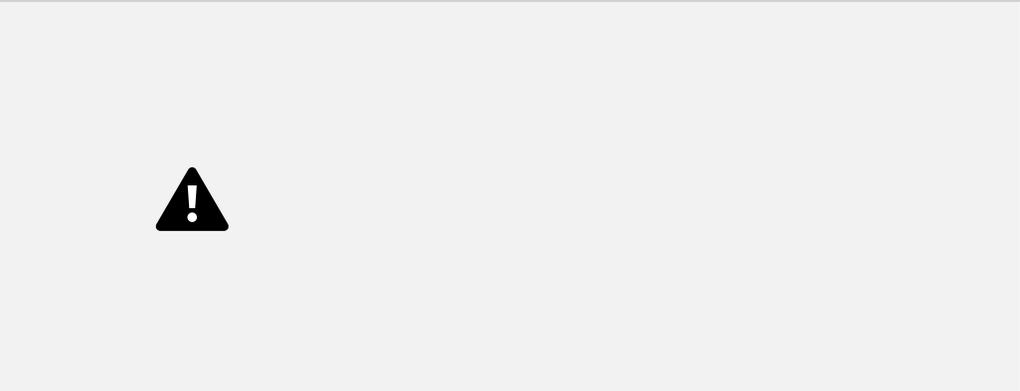
district- and state-level.





• ~~§ 22-32-109.1(2)(b.5)~~

- (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.

And then in August
2024,
there will also
be

“profile reports” for
each district and the
Charter School
Institute.

Guardrails on suspension when delegated to school
principal:

Continued willful disobedience or open and persistent defiance of proper authority Assault—2	5
Willful destruction or defacing of school property	5
Behavior on or off school property that is detrimental to the welfare or safety of other students or school personnel, including behavior that creates a threat of physical harm to the student or other students	5
Possessing a dangerous weapon on school grounds, in a school vehicle, or at a school activity or event (without authorization)	10
Drugs or controlled substances	10
Robbery	10
nd degree or greater	10
Repeated interference with the school's ability to provide educational opportunities to other students	5

Guardrails on suspension when delegated to the principal (cont.)

pressly d
ruptive st
arm
ion of cri





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



- 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 severe bullying or harassment targeting particular people.
“bout to exterminate some Jews”

- Schools may be able to regulate off-campus speech when it involves behavior like serious or AG Manual, pgs. 34-35

Off-campus crimes of violence (as defined in 18-1.3-406) or

unlawful sexual behavior (as defined in 16-22-102(9))

Manual, pgs. 32-22

- Proceed to suspension or expulsion (in statute) OR
- Implement safety plan based on threat assessment to
- Option to educate student in alternative education
- Proceed with expulsion after student pleads guilty or is

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

- Remain in school with or without safety plan.

§ 22-33-105(5)(a)

maintain in school with risk mitigated (not in statute)



adjudicated

program (online or home-based)

Note on re enrollment after

• A student expelled for a sex offense or crime of violence may not enroll or re-enroll in the

adjudication...

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.

• "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 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

Other key things to know about

expulsion... second chance for the student to succeed in achieving an education.”

high school equivalency examination, or to enroll in a nonpublic school or in an



- 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.

Search and Restraint Laws

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

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.

reat assessment safety plan. *but keep an eye out for Supreme Court ruling on this

~~arm before they throw a~~

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;

• ~~(e.g. grabbing a student's~~

- Protecting persons against physical injury or preventing the
destruction of property

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.

C.R.S. § 22-32-109.1(9).

- 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.

- 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:

[https://go.boarddocs.com/co/cde/Board.nsf/files/CRER9Z6CD468/\\$file/1%20CCR%20301-45_Redline%203.30.2023%20-%20Final.pdf](https://go.boarddocs.com/co/cde/Board.nsf/files/CRER9Z6CD468/$file/1%20CCR%20301-45_Redline%203.30.2023%20-%20Final.pdf)





Michelle.Berge@coag.gov

