A BILL FOR AN ACT

CONCERNING THE DISCIPLINE OF PRESCHOOL THROUGH SECOND GRADE STUDENTS ENROLLED IN PUBLICLY FUNDED EDUCATION PROGRAMS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

With regard to students enrolled in preschool, kindergarten, first grade, or second grade, the bill prohibits a school district, board of cooperative services, charter school, or public preschool program (enrolling entity) from expelling a student, except as specifically required by federal law, and allows the enrolling entity to impose an out-of-school
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Children in preschool and early elementary years are at a critical stage of development, and a child's early experiences in school have a dramatic impact on the child's health and future success in school;

(b) The practice of out-of-school suspension or expulsion of a young child may have profound consequences for the child, as these exclusionary measures come at a time when the child is supposed to be forming positive associations with school and building positive relationships with teachers and peers; and

(c) Research indicates that young children who are suspended or expelled from school are several times more likely to experience disciplinary action later in their academic careers, drop out or disengage from high school, report feeling disconnected from school, and be incarcerated later in life.

(2) The general assembly therefore declares that the standards for suspension and expulsion of young children should be developmentally
appropriate, and implementing inclusionary discipline practices, rather than out-of-school suspension and expulsion, is an important step in supporting a positive school experience for young children in preschool and early elementary programs that will result in greater long-term success for the child in school and in society.

SECTION 2. In Colorado Revised Statutes, 22-33-102, amend the introductory portion; and add (3.5) and (13) as follows:

22-33-102. Definitions. As used in this article ARTICLE 33, unless the context otherwise requires:

(3.5) "CHARTER SCHOOL" MEANS A CHARTER SCHOOL THAT IS AUTHORIZED BY A SCHOOL DISTRICT BOARD OF EDUCATION PURSUANT TO PART 1 OF ARTICLE 30.5 OF THIS TITLE 22 OR AN INSTITUTE CHARTER SCHOOL THAT IS AUTHORIZED BY THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5 OF THIS TITLE 22.

(13) "STATE-FUNDED PRESCHOOL PROGRAM" MEANS A COMMUNITY-BASED PRESCHOOL PROGRAM THAT INCLUDES STUDENTS WHO ARE FUNDED THROUGH THE "COLORADO PRESCHOOL PROGRAM ACT", ARTICLE 28 OF THIS TITLE 22, OR STUDENTS WHO ARE FUNDED WITH STATE OR FEDERAL MONEY TO EDUCATE CHILDREN WITH DISABILITIES.

SECTION 3. In Colorado Revised Statutes, add 22-33-106.1 as follows:

22-33-106.1. Suspension - expulsion - preschool through second grade - definition. (1) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE 33 TO THE CONTRARY, A SCHOOL DISTRICT, BOARD OF COOPERATIVE SERVICES, OR CHARTER SCHOOL SHALL NOT:

(a) EXPEL A STUDENT WHO IS ENROLLED IN PRESCHOOL, KINDERGARTEN, FIRST GRADE, OR SECOND GRADE, EXCEPT AS OTHERWISE
PROVIDED IN SUBSECTION (3) OF THIS SECTION; OR

(b) IMPOSE AN OUT-OF-SCHOOL SUSPENSION ON A STUDENT WHO IS ENROLLED IN PRESCHOOL, KINDERGARTEN, FIRST GRADE, OR SECOND GRADE UNLESS:

(I) THE STUDENT COMMITS AN ACTION ON SCHOOL GROUNDS THAT ENDANGERS OTHERS;

(II) FAILURE TO REMOVE THE STUDENT FROM THE SCHOOL BUILDING WOULD CREATE A SERIOUS SAFETY THREAT THAT CANNOT BE REDUCED OR ELIMINATED BY USING REASONABLE MODIFICATIONS TO MANAGE THE STUDENT’S BEHAVIOR; AND

(III) THE ENROLLING ENTITY HAS EXHAUSTED THE OTHER BEHAVIORAL AND DISCIPLINARY INTERVENTIONS THAT ARE APPROPRIATE TO THE CIRCUMSTANCES AND AVAILABLE TO THE ENROLLING ENTITY, AS DETERMINED BY THE ENROLLING ENTITY ON A CASE-BY-CASE BASIS.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, A STATE-FUNDED PRESCHOOL PROGRAM SHALL NOT EXPEL A PRESCHOOL STUDENT WHO IS IN A CLASSROOM THAT INCLUDES STUDENTS FOR WHOM THE PROGRAM RECEIVES FUNDING THROUGH THE "COLORADO PRESCHOOL PROGRAM ACT", ARTICLE 28 OF THIS TITLE 22, OR STUDENTS WHO ARE FUNDED WITH STATE OR FEDERAL MONEY TO EDUCATE CHILDREN WITH DISABILITIES. A STATE-FUNDED PRESCHOOL PROGRAM SHALL NOT IMPOSE AN OUT-OF-SCHOOL SUSPENSION ON A PRESCHOOL STUDENT WHO IS IN A CLASSROOM THAT INCLUDES STUDENTS FOR WHOM THE PROGRAM RECEIVES FUNDING THROUGH THE "COLORADO PRESCHOOL PROGRAM ACT", ARTICLE 28 OF THIS TITLE 22, OR STUDENTS WHO ARE FUNDED WITH STATE OR FEDERAL MONEY TO EDUCATE CHILDREN WITH DISABILITIES UNLESS THE STUDENT MEETS THE CRITERIA SPECIFIED IN SUBSECTION
(1)(b) of this section.

(3) An enrolling entity may expel a student only in accordance with the provisions of 20 U.S.C. sec. 7961, as amended.

(4) (a) If a student meets the criteria specified in subsection (1)(b) of this section, the enrolling entity may impose an out-of-school suspension that does not exceed three school days. The enrolling entity is strongly encouraged to minimize the length of the out-of-school suspension to the greatest extent possible.

(b) Notwithstanding the provisions of subsection (4)(a) of this section to the contrary, if a three-day out-of-school suspension is insufficient time for the enrolling entity to develop a safety plan for the student's return to school, identify and discuss interventions and supports with the student's parent, and address other significant circumstances, the enrolling entity may extend the student's out-of-school suspension for up to a total of five school days.

(5) If the behavioral challenges presented by a student who has not been identified as a child with a disability pursuant to article 20 of this title 22 and who is enrolled in preschool, including a state-funded preschool program, or in kindergarten, first grade, or second grade are so severe that the enrolling entity cannot safely educate the student, the student's school district of attendance shall consider, subject to the consent of the student's parent, initiating the child find procedures to determine whether the student is a child with a disability, as defined in section 22-20-103, and is eligible for services under the 1210-5-
FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C. Sec. 1400 et seq., as amended, or whether the student is eligible for a plan of services and accommodations under Section 794 of the federal "REHABILITATION ACT OF 1973", 29 U.S.C. Sec. 701 et seq., commonly referred to as a "504 PLAN".

(6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "EXPEL" MEANS TO DISCONTINUE A STUDENT'S ENROLLMENT IN A SCHOOL DISTRICT, PUBLIC SCHOOL OPERATED BY A BOARD OF COOPERATIVE SERVICES, CHARTER SCHOOL, OR STATE-FUNDED PRESCHOOL PROGRAM AS A DISCIPLINARY RESPONSE TO A STUDENT'S ACTIONS.

SECTION 4. In Colorado Revised Statutes, 22-2-117, amend (1)(b)(IV) and (1)(b)(V); and add (1)(b)(VI) as follows:

22-2-117. Additional power - state board - waiver of requirements - rules. (1) (b) The state board shall not waive any of the requirements specified in any of the following statutory provisions:

(IV) Any provision of this title TITLE 22 that relates to fingerprinting and criminal history record checks of educators and school personnel; or

(V) The "Children's Internet Protection Act", article 87 of this chapter;

(VI) SECTION 22-33-106.1 CONCERNING SUSPENSION AND EXPULSION OF STUDENTS IN PRESCHOOL THROUGH SECOND GRADE.

SECTION 5. In Colorado Revised Statutes, 22-30.5-104, amend (6)(c)(IV) and (6)(c)(V); and add (6)(c)(VI) as follows:

22-30.5-104. Charter school - requirements - authority - rules. (6) (c) A school district, on behalf of a charter school, may apply to the state board for a waiver of a state statute or state rule that is not an
automatic waiver. Notwithstanding any provision of this subsection (6) to the contrary, the state board may not waive any statute or rule relating to:

(IV) The "Public School Finance Act of 1994", article 54 of this title; or TITLE 22;

(V) The "Children's Internet Protection Act", article 87 of this title. TITLE 22; OR

(VI) SECTION 22-33-106.1 CONCERNING SUSPENSION AND EXPULSION OF STUDENTS IN PRESCHOOL THROUGH SECOND GRADE.

SECTION 6. In Colorado Revised Statutes, 22-30.5-106, amend (1)(p) as follows:

22-30.5-106. Charter application - contents. (1) The charter school application is a proposed agreement upon which the charter applicant and the chartering local board of education negotiate a charter contract. At a minimum, each charter school application includes:

(p) Policies regarding student discipline, expulsion, and suspension that are consistent with the intent and purpose of sections 22-33-106 and 22-33-106.1, provide adequately for the safety of students and staff, and provide a level of due process for students that, at a minimum, complies with the requirements of the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq.;

SECTION 7. In Colorado Revised Statutes, 22-30.5-507, amend (7)(b)(IV) and (7)(b)(V); and add (7)(b)(VI) as follows:

22-30.5-507. Institute charter school - requirements - authority - rules. (7) (b) An institute charter school may apply to the state board, through the institute, for a waiver of state statutes and state rules that are not automatic waivers. The state board may waive state
statutory requirements or rules promulgated by the state board; except that
the state board may not waive any statute or rule relating to:

(IV) The provisions of the "Public School Finance Act of 1994",
article 54 of this title; or TITLE 22;

(V) The "Children's Internet Protection Act", article 87 of this
title: TITLE 22; OR

(VI) SECTION 22-33-106.1 CONCERNING SUSPENSION AND
EXPULSION OF STUDENTS IN PRESCHOOL THROUGH SECOND GRADE.

SECTION 8. In Colorado Revised Statutes, 22-30.5-509, amend
(1)(p) as follows:

22-30.5-509. Institute charter school application - contents.
(1) The institute charter school application is a proposed agreement upon
which the institute charter applicant and the institute negotiate a charter
contract. At a minimum, each institute charter school application
includes:

(p) Policies regarding student discipline, expulsion, and
suspension that are consistent with the intent and purpose of sections
SECTIONS 22-33-106 AND 22-33-106.1, provide adequately for the safety
of students and staff, and provide a level of due process for students that,
at a minimum, complies with the requirements of the federal "Individuals
with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq.;

(2)(a)(I) introductory portion, (2)(a)(I)(E), and (2)(a)(II) as follows:

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 - repeal. (2) Safe school plan. In order 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 shall 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 shall 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 shall include, but need not be limited to:

(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, and 22-33-106, AND
(II) In creating and enforcing a school conduct and discipline code pursuant to subparagraph (I) of this paragraph (a) 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 AT ALL GRADE LEVELS INCLUDING PRESCHOOL 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 MUST 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); and
(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.

SECTION 10. In Colorado Revised Statutes, 22-33-201.5, amend (1) as follows:

22-33-201.5. Definitions. For purposes of this part 2, unless the context otherwise requires:

(1) "Educational services" means:

(a) Any of the following types of services to provide instruction in the academic areas of reading, writing, mathematics, science, and social studies:

(α) (I) Tutoring services;
(β) (II) Alternative educational programs; OR
(ε) (III) Vocational education programs; OR

(b) SERVICES TO SUPPORT FAMILIES AND STUDENTS ENROLLED IN PRESCHOOL, KINDERGARTEN, AND EARLY ELEMENTARY GRADES.

SECTION 11. In Colorado Revised Statutes, 22-33-202, amend (1) as follows:

22-33-202. Identification of at-risk students. (1) Each school district shall adopt policies to identify students who are at risk of suspension or expulsion from school, INCLUDING STUDENTS WHO ARE ENROLLED IN PRESCHOOL, KINDERGARTEN, AND EARLY ELEMENTARY
GRADES. Students identified may include those who are truant, who have been or are likely to be declared habitually truant, or who are likely to be declared habitually disruptive. THE SCHOOL DISTRICT SHALL ADOPT PREVENTION AND EARLY INTERVENTION STRATEGIES TO REDUCE THE NEED FOR EARLY CHILDHOOD AND EARLY ELEMENTARY GRADE SUSPENSIONS AND EXPULSIONS. The school district shall provide students who are identified as at risk of suspension or expulsion with a plan to provide the necessary support services to help them avoid expulsion. The school district shall work with the student's parent or guardian in providing the services and may provide the services through agreements with appropriate local governmental agencies, appropriate state agencies, community-based organizations, and institutions of higher education entered into pursuant to section 22-33-204. The failure of the school district to identify a student for participation in an expulsion-prevention program or the failure of such program to remediate a student's behavior shall not be grounds to prevent school personnel from proceeding with appropriate disciplinary measures or used in any way as a defense in an expulsion proceeding.

SECTION 12. In Colorado Revised Statutes, 22-33-204, amend (1) as follows:

22-33-204. Services for at-risk students - agreements with state agencies and community organizations. (1) Each school district, regardless of the number of students expelled by the district, may enter into agreements with appropriate local governmental agencies and, to the extent necessary, with the managing state agencies, including but not limited to the department of human services and the department of public health and environment, with community-based nonprofit and faith-based
organizations, with nonpublic, nonparochial schools, with the department
of military and veterans affairs, and with public and private institutions
of higher education to work with the student's parent or guardian to
provide services to any student, INCLUDING A STUDENT WHO IS ENROLLED
IN PRESCHOOL, KINDERGARTEN, OR AN EARLY ELEMENTARY GRADE, who
is identified as being at risk of suspension or expulsion or who has been
suspended or expelled and to the student's family. Any services provided
pursuant to an agreement with a nonpublic, nonparochial school shall be
subject to approval by the state board of education pursuant to section
22-2-107. C.R.S. Services provided through such agreements may
include, but are not limited to:
(a) Educational services required to be provided under section
22-33-203 (2) and any educational services provided to at-risk students
identified pursuant to section 22-33-202;
(b) Counseling services;
(c) Drug or alcohol-addiction treatment programs;
(d) Family preservation services.
(e) and (f) (Deleted by amendment, L. 98, p. 570, § 3, effective
April 30, 1998.)
SECTION 13. In Colorado Revised Statutes, 22-33-205, amend
(1)(a) as follows:
22-33-205. Services for expelled and at-risk students - grants
- criteria. (1) (a) There is hereby established in the department of
education the expelled and at-risk student services grant program, referred
to in this section as the "program". The program shall provide
grants to school districts, to charter schools, to alternative schools within
school districts, to nonpublic, nonparochial schools, to boards of
cooperative services, to facility schools, and to pilot schools established pursuant to article 38 of this title TITLE 22 to assist them in providing educational services, and other services provided pursuant to section 22-33-204, to expelled students pursuant to section 22-33-203 (2) to AND students at risk of expulsion as identified pursuant to section 22-33-202 (1), INCLUDING STUDENTS ENROLLED IN PRESCHOOL, KINDERGARTEN, AND EARLY ELEMENTARY GRADES, and to truant students.

SECTION 14. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.