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MEMORANDUM

October 24, 2016

TO: Representative Kevin Priola

FROM: Rachel Kurtz-Phelan, Senior Research Analyst, 303-866-3028

SUBJECT: School Discipline Policies

Summary

This memorandum responds to your request for information on school discipline policies. Specifically, you were contacted by a constituent expressing concern about several incidents at her granddaughter's elementary school in School District 27J. Please note that because Legislative Council Staff is unable to analyze whether there is a conflict between state law and the district's policies related to the circumstances the constituent describes, the memorandum provides background information on school discipline laws and regulations.

Background

Colorado Safe Schools Act. The Colorado Safe Schools Act¹ requires each school district board of education (board) to adopt and implement a safe school plan in 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. The plan must include a conduct and discipline code that incorporates, at a minimum:

- 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;
- provisions for the initiation of suspension or expulsion proceedings for students who qualify as habitually disruptive students; and
- policies and procedures for the use of acts of reasonable and appropriate physical intervention or force in dealing with disruptive students that are not in conflict with the definition of child abuse.

¹Section 22-32-109.1, C.R.S.

Open records requirements: Pursuant to Section 24-72-202 (6.5)(b), C.R.S., research memoranda and other final products of Legislative Council Staff are considered public records and subject to public inspection unless: a) the research is related to proposed or pending legislation; and b) the legislator requesting the research specifically asks that the research be permanently considered "work product" and not subject to public inspection. If you would like to designate this memorandum to be permanently considered "work product" not subject to public inspection, or if you think additional research is required and this is not a final product, please contact the Legislative Council Librarian at (303) 866-4011 within seven days of the date of the memorandum.

The board must 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), C.R.S. The board must adopt a policy to be used following instances of assault upon, disorderly conduct toward, harassment of, or any alleged offense under the Colorado Criminal Code directed toward a teacher or school employee, or instances of damage occurring on the premises to the personal property of a teacher or school employee by a student. Finally, an act of a teacher or any other person shall not be considered child abuse pursuant to Colorado law if the act was performed in good faith and in compliance with the conduct and discipline code adopted by the board.

School Discipline Policies

Policies for students with disabilities. A student may be suspended or expelled from school for behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel, except that if a student who creates the threat is a student with a disability pursuant to Colorado law, the student may not be expelled if the actions creating the threat are a manifestation of his or her disability.² However, the student must be removed from the classroom to an appropriate alternative setting within the district in which the student is enrolled for a length of time that is consistent with federal law. During this time, the school in which the student is enrolled must reexamine and amend if necessary the student's individualized education program (IEP) to ensure that his or her needs are addressed in a more appropriate manner or setting that is less disruptive to other students. A school district has the authority to suspend a child with a disability for up to ten consecutive school days in a school year.

Pursuant to Section 25.5-10-221, C.R.S., school districts are prohibited from using the following methods of discipline on a student with disabilities:

- corporal punishment;
- seclusion, which is defined as the placement of a person receiving services alone in a closed room for the purpose of punishment; or
- “time out” procedures, which are defined as separation from other persons receiving services and group activities, unless they are employed under close and direct professional supervision, and only as a technique in behavior-shaping programs.

Use of physical restraint. A school district may use physical restraint on a student in cases of emergency and after the failure of a less restrictive alternative, or after a determination that such alternatives would be inappropriate or ineffective under the circumstances.³ The holding of an individual for less than five minutes by a staff person for protection of the individual or other persons is not considered physical restraint.

A school district may only use physical restraint on a student with a disability when necessary to protect the student from injury to self or others. It may not be used as a form of punishment, for the convenience of staff, or as a substitute for a program of services and supports.

²Section 22-33-106 (1)(c), C.R.S.

³Section 26-20-103, C.R.S.

Federal Law

Individuals with Disabilities Education Act (IDEA). IDEA authorizes school personnel to implement a short-term, out-of-school suspension for a student with a disability who violates the school's code of student conduct. However, in August 2016, the U.S. Department of Education (department) sent a letter reminding schools that the authority to implement disciplinary removals does not negate a school's obligation to consider the impact and effects of the use of short-term removals on a student's behavioral needs. The letter also states that the failure to consider and provide needed behavioral supports through the IEP process is likely to result in a student not receiving a meaningful educational benefit, which would be a violation of the provisions in the IDEA that entitles each eligible child with a disability to a free, appropriate public education. In addition, the IDEA specifically requires IEP teams to consider the use of positive behavioral supports and intervention to address behavior that impedes the learning of the student or others. The department encourages the use of evidence-based behavioral supports as an effective alternative to unnecessary disciplinary removals for students with disabilities. A copy of the department's letter is included as Attachment A.