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M E M O R A N D U M

July 13, 2015

TO: Members of the School Safety and Youth in Crisis Interim Committee

FROM: Kerry White, Principal Fiscal Analyst, 303-866-3469

SUBJECT: School Safety and Mental Health Treatment Laws

Summary

In preparation for the work of the School Safety and Youth in Crisis Interim Committee, this memorandum provides information about the following:

- current state and federal law with respect to school safety and emergency response plans;
- reporting on school-based incidents, school safety resources;
- at-risk youth and mental health treatment for youth; and
- and federal student privacy and confidentiality laws.

School Safety and Emergency Response Plans

Safe school plans.¹ Each school district board of education (BOE) is required to have a safe school plan. At a minimum, the plan must include a conduct and discipline code, safe school reporting requirements, an Internet safety plan, agreements with state agencies (law enforcement officials, the juvenile justice system, and social services), and a school response framework that conforms with the National Incident Management System (NIMS) developed by the Federal Emergency Management Agency.

School conduct and discipline codes.² Within the conduct and discipline code, policies must address:

- removal of a disruptive student from a classroom;
- initiation of suspension or expulsion proceedings for habitually disruptive students;
- use of acts of reasonable and appropriate physical intervention or force in dealing with disruptive students;

¹Section 22-32-109.1 (2), C.R.S.

²Section 22-32-109.1 (2)(a), C.R.S.

- prohibition of students from bringing or possessing dangerous weapons, drugs, other controlled substances, or tobacco on school property, in a school vehicle or to a school sanctioned activity or event;
- gang-related activities;
- searches of students and student lockers; and
- bullying prevention and education.

Emergency response.³ Public schools are required to have emergency response plans that align with NIMS. Each school response framework includes an incident command system and a school safety, readiness, and incident management plan that coordinates with local first responders and state agencies; memoranda of understanding (MOUs) with local or state agencies specifying responsibilities during emergency incidents; and a plan for testing of the incident management plan. The Division of Fire Prevention and Control in the state Department of Public Safety (DPS) is responsible for assessing these frameworks and providing technical assistance as needed.

School safety personnel. A school safety officer is contracted with or hired by a school to provide physical security on school property. Pursuant to Section 18-12-214 (3), C.R.S., a school security officer may carry a concealed handgun on school property if that person holds a valid permit. A school resource officer (SRO) is a certified peace officer, employed by a local law enforcement agency, who provides law enforcement services on a school's campus.

Reporting on School-Based Incidents

Safe school reporting requirements.⁴ Each public school in a school district is required to submit a report to its BOE each year, and the BOE must submit the compiled reports to the Colorado Department of Education (CDE). The CDE is required to make the reports available to the general public. Reports must include specified data including:

- attendance rates;
- numbers of conduct and discipline code violations, including specific information identifying the number of, and the action taken with respect to, each of 11 types of violations;
- average class size; and
- the school's policy concerning bullying prevention and education.

The most recent school year report, through school year 2013-14, is attached to this memorandum as Attachment A.

Reporting of school-based criminal activity.⁵ On or before each August 1, the district attorney of each judicial district is required to report to the Division of Criminal Justice (DCJ) in the DPS information about offenses alleged to have been committed by a student on school grounds, in a school vehicle, or at a school activity or sanctioned event within the judicial district during the preceding 12 months. Law enforcement agencies employing SROs are required to report to the DCJ aggregate data about cases handled on school property. A SRO who arrests a student on school grounds, in a school vehicle, or at a school event is required to report such

³Sections 22-30.5-503.5, 22-32-109.1(4), 24-33.5-1203, and 24-33.5-1213.4, C.R.S.

⁴Section 22-32-109.1 (2)(b), C.R.S.

⁵Sections 20-1-113 and 22-32-146, C.R.S.

fact to the school principal within 24 hours. A SRO who issues a summons to a student must report such fact to the principal within ten days.

School Safety Resources

School Safety Resource Center.⁶ The School Safety Resource Center (SSRC) and its advisory board were established within the DPS in 2008. Among its many activities, the center assists schools in developing safety and preparedness plans, establishing emergency response practices and strategies, and ensuring safe and secure schools through prevention and intervention efforts, including providing information regarding child sexual abuse and assault. The advisory board is set to repeal on July 1, 2017.

Bullying prevention and education.⁷ The CDE operates a grant program providing funding for efforts to reduce the frequency of bullying incidents and maintains a website providing evidence-based practices in bullying prevention, which is maintained in cooperation with the SSRC.

Safe2Tell program.⁸ The Safe2Tell program within DPS provides students and the community a means for anonymously reporting unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of such activities, to law enforcement and public safety agencies and school officials.

At-Risk Youth and Mental Health Treatment for Youth

At-risk youth transitioning between public schools and state-licensed day treatment facilities providing behavioral health treatment or hospitals providing inpatient acute care or psychiatric services.⁹ State law requires a state-licensed day treatment facility, facility school, or hospital that is transferring a student to a public school to notify the school if the student has been determined to be a risk to himself or herself or to the community. Depending on the context, this notification must be provided either five days or ten days prior to the student's transfer. The notification must include an invitation to the school to participate in the development of a transition plan for the student.

Pursuant to Section 22-2-139, C.R.S., the Department of Human Services (DHS) and CDE have entered into an MOU concerning the enrollment of students in public schools from state-licensed day treatment facilities, facility schools, and hospitals. The MOU includes a policy concerning the sharing of data about students — including data about students' medical histories, mental health, sociological condition, and scholastic achievement — within the limits of state and federal privacy and confidentiality laws.

Mental health referrals and psychotropic drugs in schools.¹⁰ Current law requires each school district BOE to adopt a policy prohibiting school personnel from recommending or requiring the use of a psychotropic drug for any student. School personnel are not permitted to test or require a test for a child's behavior without prior written permission from the parents or guardians or the child and prior written disclosure as to the disposition of the results of the

⁶Section 24-33.5-1801 *et. seq.*, C.R.S.

⁷Section 22-93-101 *et. seq.*, C.R.S.

⁸Sections 22-1-126 and 24-31-606, C.R.S.

⁹Sections 22-2-139, 22-2-409, and 22-32-138, C.R.S.

¹⁰Section 22-32-109 (1)(ee), C.R.S.

testing. BOE policies encourage school personnel to discuss concerns about a child's behavior with his or her legal guardian, and such discussions may include a suggestion that the parent or guardian speak with an appropriate health care professional.

Mental health treatment for youth.¹¹ A minor age 15 or older may consent to receive mental health treatment. Youth under the age of 15 require the consent of a parent or guardian. State law also provides for emergency procedures when a person appears to have a mental illness and pose an imminent danger to himself or herself or to others. In an emergency, a 72-hour mental health hold may be initiated by a:

- peace officer;
- person licensed to practice medicine;
- psychologist;
- registered professional nurse;
- licensed marriage and family therapist;
- licensed professional counselor or addiction counselor; or
- licensed clinical social worker.

Federal Student Privacy and Confidentiality Laws

Family Educational Rights and Privacy Act (FERPA). Among its many provisions and with respect to student behavior issues, FERPA prevents, with certain exceptions, school employees from releasing information about a student without the written permission of the student or his or her parent or guardian.

Health Insurance Portability and Accountability Act (HIPPA). The Privacy Rule of HIPPA regulates the use and disclosure of protected health information. Generally, a person's written permission is required in order to release information about the person's medical records. Exceptions are provided to facilitate treatment and for law enforcement purposes, such as court orders and subpoenas.

¹¹Sections 27-65-103 and 27-65-105, C.R.S.