



Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

MEMORANDUM

July 27, 2011

TO: Legislative Task Force to Study School Discipline
FROM: Hillary Smith, Research Assistant, 303-866-3277
SUBJECT: Overview of Federal and Colorado Law Concerning
Zero-Tolerance Policies in Schools

This memorandum provides an overview of federal and state law concerning zero-tolerance policies in schools. "Zero-tolerance policies" are generally defined as discipline policies that prescribe a particular punishment, such as suspension or expulsion, for certain misconduct. Often, zero-tolerance policies apply to serious offenses such as the possession of a firearm on school grounds. This memorandum summarizes federal and state law regarding school discipline codes and violations for which suspension or expulsion is mandated, with a focus on the legislative history of such policies.

Federal Law Concerning Zero-Tolerance Policies

A zero-tolerance policy regarding the possession of firearms in schools is mandated by the federal Gun-Free Schools Act (GFSA). Originally enacted in 1994, the GFSA was amended and reenacted as part of the No Child Left Behind Act of 2001.¹ In its original form, the law required school districts to mandate expulsion for at least one year of any student who brought a weapon to school or who was in possession of a weapon at school.

In its current amended form, states that receive federal funds under the Elementary and Secondary Education Act must enact a state law requiring school districts to expel, for at least one year, any student who brings a firearm to school or who possesses a firearm on school grounds. School events and activities are considered to be school grounds. In addition, school districts are required to refer any student who violates the policy to the criminal justice or juvenile delinquency system.

Exceptions. The GFSA does not apply to firearms that are lawfully stored inside a locked vehicle on school property, or to firearms used in activities that are approved and authorized by the school, provided that appropriate safety measures are in place.

¹20 U.S.C. §7151

The act permits the chief administering officer of a school district to modify an expulsion for a student on a case-by-case basis, if such modification is explained in writing. The school district may also provide expelled students with an alternative educational setting.

Reporting requirements. The GFSA requires school districts to report, on an annual basis, information that includes:

- an assurance that the school district is in compliance with the state expulsion law; and
- a description of the circumstances surrounding any expulsions imposed under the state law, including:
 - ▶ the name of the school concerned;
 - ▶ the number of students expelled from the school; and
 - ▶ the type of firearms involved.

State Law Concerning Safe School Plans and Discipline Codes

Safe school plans. Colorado law requires each school district to adopt certain plans and agreements that are intended to improve school safety and crisis management.² The safe school plan must include the following:

- a written conduct and discipline code;
- a policy requiring each principal to submit an annual written report to the school district board of education concerning the learning environment in the school. Each report must include the following specific information:
 - ▶ the total enrollment for the school;
 - ▶ the average daily attendance rate at the school;
 - ▶ the average class size for each school;
 - ▶ the dropout rates for grades seven through twelve, if applicable; and
 - ▶ the number of conduct and discipline code violations, including specific information on the number of violations, the actions taken by the school, and the category of violation. The report must also identify each conduct and discipline code violation by a student with a disability;
- written agreements with law enforcement officials, the juvenile justice system, and social services departments;
- an Internet safety plan;
- a crisis management policy; and
- a safety and security policy requiring annual school building inspections.

Conduct and discipline codes. School districts are required by state law to adopt a written conduct and discipline code.³ The code must be concisely written and must be enforced uniformly, consistently, and fairly for all students. The code is required to address the following issues:

²Section 22-32-109.1, C.R.S.

³Section 22-32-109.1 (2)(a), C.R.S.

- general policies on student conduct, safety, and welfare;
- policies for dealing with students who cause a disruption in the classroom, on school grounds or vehicles, or at school activities or events;
- provisions for the initiation of disciplinary proceedings against students who qualify as habitually disruptive by causing disruptions in school at least three times during a single school year or calendar year;
- policies and procedures for the use of acts of reasonable and appropriate physical intervention or force in dealing with disruptive students, provided that the procedures do not violate the statutory definitions of child abuse;
- policies on disciplinary actions, including suspension and expulsion;
- policies governing gang-related activity in the school;
- a written prohibition on students bringing dangerous weapons, drugs, or other controlled substances to school or to school activities;
- a written prohibition on students using drugs, other controlled substances, or tobacco products at school or at school activities;
- a written policy concerning searches on school grounds, including student lockers;
- a dress code policy that defines and prohibits students from wearing apparel that is deemed disruptive to the classroom environment or to the maintenance of a safe and orderly school; and
- a specific policy concerning bullying prevention.⁴

The written conduct and discipline code is required to be distributed to each student at least once upon enrollment at the elementary, middle, and high school levels, and must be posted or kept on file in each public school. School personnel acting in good faith in carrying out the provisions of a district conduct and disciplinary code are immune from civil liability or criminal prosecution, unless the person is found to have acted willfully or wantonly.⁵

School Policies Governing Suspension, Expulsion, and the Denial of Admission

Schools may suspend, expel, or deny admission to students in certain circumstances. Table 1 on the following page summarizes the basic differences among policies governing suspension, expulsion, and the denial of admission. Detail concerning the grounds for suspension or expulsion and violations for which expulsion is mandated is provided after the table.

⁴Section 22-32-109.1 (2)(a), C.R.S.

⁵Section 22-32-109.1 (9), C.R.S.

Table 1
Statutes Governing Suspension, Expulsion, and Denial of Admission

Penalty	Details	Citation
Suspension	The school principal may suspend a student for up to 5 days for specified violations, and for up to 10 days for serious violations for which expulsion is not mandatory. For any violation, the suspension may be extended for an additional 10 days. In addition, the superintendent may extend a suspension for an additional 10 days if necessary to present the matter at the next meeting of the board of education. However, the total term of suspension may not exceed 25 school days.	§ 22-33-105 (2), C.R.S.
Expulsion	The district board of education may expel a student for a violation of any of the grounds for suspension. Expulsion is mandatory for students who, on school grounds, possess a dangerous weapon, sell drugs or controlled substances, or who commit robbery or assault.	§ 22-33-106 (1)(d)(l), C.R.S.
Denial of Admission	The district board of education may deny admission to any student who was expelled from any school district during the preceding 12 months, and to any student whose behavior in another school district during the preceding 12 months was detrimental to the welfare or safety of other students or of school personnel. [†]	§ 22-33-106 (3), C.R.S.

[†]Denial of admission is also permitted by state law for reasons that are unrelated to a student's disciplinary record, such as due to a student's physical or mental illness or disease or due to his or her failure to meet age requirements.

Grounds for nonmandatory suspension or expulsion. A school principal or his or her designee may suspend a student for not more than five days for the following offenses:

- continued willful disobedience or open and persistent defiance of proper authority;
- willful destruction or defacing of school property; and
- behavior on or off school property that is detrimental to the welfare or safety of other students or of school personnel, including behavior that creates a threat of physical harm, unless the actions creating the threat are a manifestation of the student's disability; and
- repeated interference with a school's ability to provide educational opportunities to other students.⁶

A school principal, or his or her designee, may also suspend or expel a student who is declared to be an "habitually disruptive student."⁷ State law defines an habitually disruptive student as a child who has been suspended for the reasons listed above, or for serious violations, at least three times during the course of a school year. The definition indicates that the student has caused a material and substantial disruption in the classroom, on school grounds, on a school vehicle, or at school activities or events, because of behavior that was initiated, willful, and overt on his or her part.

⁶Section 22-33-105 (2)(a), C.R.S.; Section 22-33-106 (1)(a), (1)(b), (1)(c) and (1)(e), C.R.S.

⁷Section 22-33-106 (1)(c.5), C.R.S.

Students may also be suspended or expelled for 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 on school property.⁸ Each school district is required to develop a policy that authorizes students to carry, bring, use, or possess a firearm facsimile on school property for an activity, whether school-related or not. The policy is required to consider student violations of the ban on firearm facsimiles on a case-by-case basis using the individual facts and circumstances to determine whether suspension, expulsion, or any other disciplinary action is necessary.

Grounds for mandatory suspension or expulsion. A school principal, or his or her designee, *must* suspend a student for serious violations in a school building or on school property, unless expulsion is mandatory.⁹ Expulsion is mandatory for the following violations:

- carrying, bringing, using, or possessing a dangerous weapon without the authorization of the school or the school district;
- selling a drug or controlled substance; or
- committing an act which if committed by an adult would be robbery or assault (excluding third degree assault).¹⁰

State law defines a "dangerous weapon" as:

- a firearm, whether loaded or unloaded;
- any pellet or BB gun or other device, whether operational or not, designed to propel projectiles by spring action or by compressed air;
- a fixed-blade knife with a blade longer than three inches in length or a spring-loaded knife or pocket knife with a blade longer than three and one-half inches;
- any object, device, instrument, material, or substance, whether animate or inanimate, used or intended to be used to inflict death or serious bodily injury.¹¹

If a student discovers that he or she has carried, brought, or is in possession of a dangerous weapon and notifies a teacher, administrator, or other authorized person in the school district as soon as possible and delivers the weapon to such a person, the student is not subject to mandatory expulsion.¹²

Legislative history concerning mandatory expulsions. Table 2 on the following page summarizes the legislative history of state law concerning mandatory expulsions. Legislation specifying mandatory expulsion or suspension for certain violations was first enacted in 1984. Later legislation focused on the definition of a "dangerous weapon" and on whether students declared to be habitually disruptive must be subject to mandatory expulsion.

⁸Section 22-33-106 (1)(f), C.R.S.

⁹Section 22-33-105 (2), C.R.S.; Section 22-33-106 (1)(d), C.R.S.

¹⁰Section 22-33-106 (1)(d), C.R.S.

¹¹Section 22-33-106 (1)(d)(II), C.R.S.

¹²Section 22-33-106 (1)(d)(III), C.R.S.

Table 2
Legislative History of State Law Concerning Mandatory Expulsions

Bill	Explanation of Changes Made
Senate Bill 84-192	<ul style="list-style-type: none"> • mandated suspension or expulsion for the following serious violations committed on school property: <ul style="list-style-type: none"> ▸ possession of a deadly weapon, using the definition of "deadly weapon" in the Colorado Criminal Code, which encompasses any of the following devices when used or intended to be used in a manner capable of producing death or serious bodily injury: <ul style="list-style-type: none"> • a firearm, whether loaded or unloaded; • a knife; • a bludgeon; or • any other weapon, device, instrument, material, or substance, whether animate or inanimate; ▸ the sale of a drug or controlled substance; or ▸ the commission of an act which, if committed by an adult, would be robbery or assault.
Senate Bill 93-140	<ul style="list-style-type: none"> • changed "possession of a deadly weapon" to "<i>carrying, bringing, using, or possessing</i>" a deadly weapon.
House Bill 93-1093	<ul style="list-style-type: none"> • mandated expulsion for students declared to be "habitually disruptive students;" • stipulated that students must be <i>expelled</i>, rather than suspended or expelled, for possession of a deadly weapon, sale of drugs, or the commission of acts which would be robbery or assault if committed by an adult; and • clarified that the use or possession of a deadly weapon must be unauthorized to be grounds for mandatory expulsion.
House Bill 94-1073	<ul style="list-style-type: none"> • stipulated that the commission of an act by an elementary school student that would be third degree assault if committed by an adult is not grounds for mandatory expulsion.
House Bill 96-1203	<ul style="list-style-type: none"> • clarified that <i>any student</i> who commits an act that would be third degree assault if committed by an adult is not subject to mandatory expulsion; previously, only elementary students who committed such acts were exempt from mandatory expulsion; and • changed the grounds for mandatory expulsion from possession of a "deadly weapon" to possession of a "<i>dangerous weapon</i>," which was defined within the bill as: <ul style="list-style-type: none"> • a firearm, whether loaded or unloaded, or a firearm facsimile; • any pellet or BB gun, or other device, whether operational or not, designed to propel projectiles by spring action or by compressed air; • a fixed-blade knife with a blade longer than three inches or a spring-loaded knife or pocket knife with a blade longer than three and one-half inches; or • any object, device, instrument, material, or substance, whether animate or inanimate, used or intended to be used to inflict death or serious bodily injury.

Table 2
Legislative History of State Law Concerning Mandatory Expulsions (Cont.)

Bill	Explanation of Changes Made
House Bill 98-1371	<ul style="list-style-type: none"> • clarified that a firearm facsimile met the definition of a "dangerous weapon" <i>if it could be reasonably mistaken for an actual firearm</i>; and • stipulated that if a student discovers that he or she has carried, brought, or is in possession of a dangerous weapon and notifies a teacher, administrator, or other authorized person as soon as possible, and delivers the weapon to such a person, the student is not subject to mandatory expulsion.
Senate Bill 09-237	<ul style="list-style-type: none"> • removed "firearm facsimile that could be reasonably mistaken for an actual firearm" from the definition of a "dangerous weapon;" • permitted a school district to suspend or expel a student for carrying, using, actively displaying, or threatening with the use of a firearm facsimile that could be mistaken for an actual firearm; • required school districts to develop a policy authorizing a student to carry, bring, use, or possess a firearm facsimile on school property for an activity, whether school-related or not; and • stipulated that school policies must consider violations of the ban on firearm facsimiles on a case-by-case basis using the individual facts and circumstances to determine whether suspension, expulsion, or any other disciplinary action is necessary.
House Bill 09-1243	<ul style="list-style-type: none"> • removed "declaration as an habitually disruptive student" from the grounds for mandatory expulsion.