

Legislative Task Force to Study School Discipline

2011 Report to Legislative Council

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November 2011

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Task Force Charge

Pursuant to Senate Bill 11-133, the Legislative Task Force to Study School Discipline was required to hold at least four public meetings during the 2011 interim. Additional public meetings were permitted to be held at the discretion of the chair. At the meetings, the task force was required to take public testimony on and discuss the following topics:

- current school discipline practices and statutes concerning zero-tolerance practices in Colorado schools;
- the use of law enforcement tickets, arrests, and other juvenile justice sanctions for school-based behaviors in elementary and secondary public schools in Colorado; and
- the interaction of school discipline practices with the juvenile justice system in Colorado.

The task force was also permitted to solicit and receive written comments from members of the public.

In addition, the task force was required to review any available, non-identifying Colorado data collected by the Department of Education, school districts, or law enforcement agencies in studying issues relating to zero-tolerance laws and practices and the use of juvenile justice sanctions for school-based adolescent behaviors. The task force was also permitted to solicit information from the National Conference of State Legislatures, other national research organizations, and other states or organizations that studied or introduced legislation concerning evidence-based practices for addressing school discipline issues.

Task Force Activities

The Legislative Task Force to Study School Discipline met six times during the 2011 interim. Task force meetings were devoted to discussions of the administration of school conduct and discipline codes and reported data, options for sharing discipline-related data among various departments, victims' rights, the role of school resource officers (SROs) and other law enforcement agencies when responding to school-based disciplinary or legal offenses, and legislation in other states addressing school discipline issues. The task force heard testimony from agencies of state and local governments, law enforcement, parents of students, education officials and teachers' representatives, restorative justice practitioners, district attorneys, criminal defense organizations, and the Colorado Commission on Criminal and Juvenile Justice. In addition, the task force heard regular testimony from a student advisory group. An opportunity for public testimony was provided at each meeting.

One bill was drafted at the request of the task force, and the task force ultimately recommended one bill to be forwarded to Legislative Council.

Zero-tolerance policies. "Zero-tolerance policies" are generally defined as discipline policies that prescribe a particular punishment, such as suspension or expulsion, for certain misconduct. Federal and state law mandate expulsion for a student who is determined to have brought or possessed a firearm on school grounds, and Colorado law also mandates expulsion for several other offenses.

The task force was briefed by various organizations, such as the Advancement Project, the National Association for the Advancement of Colored People, the National Conference of State Legislatures, the Education Commission of the States, and Legislative Council Staff, concerning the history of zero-tolerance policies at the state and federal levels. Information concerning legislation proposed in other states addressing the issue of zero-tolerance policies and possible ways to increase discretion was included in several presentations. The Colorado Department of Education (CDE), the Colorado Education Association, and the Colorado Association of School Executives provided additional detail concerning the administration of zero-tolerance policies in Colorado schools.

Several organizations and witnesses expressed concern that zero-tolerance policies may result in punishments that are not age-appropriate or that are disproportionate to the offense involved. In addition, the task force discussed data concerning whether non-white students are disciplined more harshly or more frequently than their white peers. Finally, the task force discussed whether involvement in the juvenile justice system or expulsion would provoke a student to commit more offenses or prevent the student from advancing in school. As such, the task force recommends that Bill A include provisions to give school administrators guided discretion when designing and enforcing school conduct and discipline codes. Specifically, the bill limits infractions for which expulsion is mandatory to incidents in which a student is determined to have brought or possessed a firearm on school grounds and requires school district boards of education to implement a graduated set of age-appropriate responses to student misconduct that are fair and proportionate in relation to a student's individual behavior.

Definitions. Throughout the task force's discussions, several task force members and presenters expressed interest in clarifying or supplementing certain statutory terms. Such terms included "referral to law enforcement," "suspension," "expulsion," "defiance," "disobedient," and "habitually disruptive student," among others. Conversation on this topic focused on the relationship between definitions and data-reporting, and on the possibility that schools across the state may report disciplinary incidents differently or use different terms. Provisions of Bill A define certain disciplinary-related terms.

Alternatives to traditional disciplinary measures. The task force heard a variety of information concerning alternatives to traditional disciplinary measures such as suspension and expulsion. Specifically, the task force discussed Positive Behavioral Interventions and Supports (PBIS) and restorative justice practices.

PBIS is a voluntary program offered by approximately 50 percent of the schools in Colorado. PBIS establishes the social culture and behavioral supports needed for a school to be an effective learning environment for all students. Some evidence-based features of PBIS include:

- defining and teaching positive social expectations;
- acknowledging positive behavior;
- arranging consistent consequences for problem behavior; and
- using a continuum of intensive, individual intervention supports.

Representatives from CDE shared information concerning the goals of and data related to PBIS. In response to this presentation, the task force recommends that Bill A encourage more schools to adopt policies that promote positive behavior and interventions.

Restorative justice practices generally seek to repair the harm to the victim and the school community caused by a student's misconduct. Currently, under Section 22-32-144 (4), C.R.S., schools are encouraged to develop and utilize restorative justice practices as part of the normal disciplinary program of each school. Restorative justice practices may include victim-initiated victim-offender conferences that may be attended voluntarily by the victim, a victim advocate, the offender, school members, and supporters of the victim and the offender. The outcome of such practices may include an agreement signed by all participants that specifies specific actions such as apologies, community service, restitution, restoration, and counseling. Several restorative justice practitioners from Denver Public Schools, ReSolutionaries, Inc., the Youth Transformation Center, the Longmont Community Justice Partnership, and the Colorado Restorative Justice Council explained how restorative justice practices have been implemented in schools and provided various measures of success related to these practices. The task force agreed to include restorative justice as one possible response to school misconduct and to include it as an "action taken" required to be reported by schools. Provisions in Bill A encourage the use of restorative justice and the training of teachers and school employees in disciplinary alternatives.

Victims' rights. Representatives from the Colorado Coalition Against Sexual Assault, the Colorado Coalition Against Domestic Violence, and the Rocky Mountain Victims' Law Center presented information to the task force concerning the prevalence of domestic violence and sexual harassment in schools and a school's obligations under Colorado's mandatory reporting law and Title IX of the federal Education Amendments of 1972. As such, the task force recommends that Bill A require schools to include within their codes of conduct a specific policy concerning the prevention of sexual assault and domestic violence.

School resource officers. To provide background for its conversations on the appropriate role of law enforcement agencies when responding to school-based behavior, the task force heard several presentations from school resource officers (SROs). SROs are law enforcement personnel who are affiliated with a Colorado school. Schools in Colorado are not required to have an SRO, and the role of SROs at schools varies across the state. An SRO can work at a school full-time, provide periodic visits to the school, or merely remain informed and react to the day-to-day activity at a school. Testimony provided to the task force from the Colorado Association of School Resource Officers (CASRO) and from individual SROs indicates that in addition to providing law enforcement services, SROs may teach courses, provide counseling, or help arbitrate conflicts.

Although CASRO and its affiliate, the National Association of School Resource Officers, educate officers in mitigating student misbehavior, there is currently no statutory requirement that SROs be trained prior to serving in a school. Conversations concerning the importance of training and of ensuring that the role of an SRO at his or her school is clear and beneficial for all prompted the task force to recommend provisions in Bill A addressing the use of SROs in schools and requiring SROs to receive training in curriculum designed by the Peace Officer Standards and Training (P.O.S.T.) Board.

Data-sharing. In response to task force interest, Legislative Council Staff summarized the disciplinary information that schools are required to report by state and federal law and presented an overview of available data concerning referrals to law enforcement, dropout rates, and juvenile delinquency filings over the past nine years. The CDE presented additional information concerning various disciplinary responses to certain types of offenses over time. In addition, the task force

discussed a 2011 study by the Council on State Governments and the Texas A&M Public Policy Research Institute concerning the long-term effects of involvement in the school discipline system for secondary students in Texas public schools.¹

In discussing the data that is currently available concerning the rate of disciplinary incidents at schools and the responses to those incidents, the task force sought a method of tracking incidents that begin at school through law enforcement agencies and the juvenile justice system in order to assess the long-term effects of zero-tolerance policies. Particular attention was paid to the lack of information currently available concerning the outcome of law enforcement referrals.

The task force sought information on Colorado-based studies to address data-sharing issues, such as:

- the Colorado Unique Personal Identification Project (CUPID) administered by the Governor's Office of Information Technology;
- the Colorado Children Youth Information Sharing Collaborative (CCYIS), a multi-agency, federally funded initiative to study information-sharing at the state and local level; and
- Colorado Trails, the statewide case management system for Child Welfare and the Division of Youth Corrections.

Representatives of several state departments provided an overview of the data that is currently tracked and the technological, legal, and financial considerations that a broad data-sharing initiative on the subject of school discipline would need to address. For example, two federal laws prohibit the sharing of certain educational- and health-related data.²

In response to the task force's discussions on the topic of data-sharing, Bill A includes provisions addressing safe school reporting requirements.

Student advisory group. A student advisory group organized by Padres y Jovenes Unidos presented to the task force on several occasions. The group, whose speakers varied over the course of the interim, presented case studies and personal experiences in an effort to demonstrate the practical effects of school disciplinary measures. One presentation featured parents who are seeking legal action due to what they term to be excessive discipline of their children. The student advisory group argued that zero-tolerance policies have resulted in severe punishments for infractions that would have carried less severe punishments in the past. The student advisory group advocated for the use of guided discretion in school discipline policies and for an increase in publicly available data concerning school discipline incidents. Provisions in Bill A address guided discretion and data-sharing.

¹Fabelo, Tony, Michael Thompson, Martha Plotkin, *et al.*, "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," The Council of State Governments Justice Center and the Public Policy Research Institute at Texas A&M University (2011).

²The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99 and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 201, *et seq.*, 42 C.F.R. Parts 160 and 164.

Task Force Recommendations

As a result of its deliberations, the Legislative Task Force to Study School Discipline recommends one bill for consideration in the 2012 legislative session.

Bill A — Discipline in Public Schools. Bill A alters an array of disciplinary policies in Colorado schools. Specifically, the bill:

- limits infractions for which expulsion is mandatory to incidents in which a student is determined to have brought or possessed a firearm on school grounds;
- requires school conduct and discipline codes to distinguish minor code violations from behavior that will result in the referral of an offending student to a law enforcement agency;
- requires school district boards of education to implement a graduated set of age-appropriate responses to student misconduct that are fair and proportionate in relation to a student's individual behavior;
- directs the Peace Officer Standards and Training (P.O.S.T.) Board to provide training for school resource officers, and specifies that schools may not accept the assignment of an officer who has not completed the P.O.S.T. training after October 1, 2013;
- alters data-collection and data-sharing processes among law enforcement agencies, schools, and the Colorado Department of Education; and
- defines a number of statutory terms, including "suspension," "in-school suspension," "out-of-school suspension," "expulsion," "referral to a law enforcement agency," and "habitually disruptive student."

The bill makes several suggestions for school district boards of education to consider when creating and enforcing school conduct and discipline codes. To the extent practicable, the bill encourages schools to prioritize in-school suspensions and to limit the use of out-of-school suspensions and expulsions to incidents that involve conduct that poses a serious and credible threat. According to the provisions of the bill, when a student is suspended, schools must provide an opportunity for the student to make up school work during the suspension for full academic credit. Also, to the extent practicable, the bill encourages schools to rely on prevention, intervention, restorative justice, peer mediation, counseling, and other approaches to address student misconduct, rather than approaches involving the arrest or issue of a summons to a student. To this end, the bill encourages local school boards to assist school employees in obtaining training in conflict resolution, disciplinary alternatives, and restorative justice. Finally, each school must require that students be familiar with the provisions of the school's conduct and discipline code.