

School Discipline Representation



Elie Zwiebel / elie@cjdc.org / 720-772-1731

1

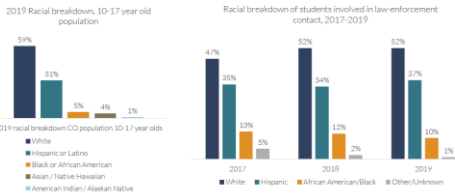
School To Prison Pipeline



2

School/Law Enforcement contact

Contact by race/ethnicity, K-12 schools



3

Timeline of a Case

- Day of Incident
 - Informal School Investigation
 - Referral for Suspension; Referral to Law Enforcement
- DoI +~5-10 Days: Extension of Suspension; Referral for Expulsion
- DoI +~10-15 Days: Deadline for Requesting an Expulsion Hearing
- DoI +~25-30 Days: Expulsion Hearing (if requested)
- DoI +~28-37 Days: Expulsion Ruling
 - +~10 days to request an appeal

4

Grounds for Suspension and Expulsion

- C.R.S. § 22-33-106
 - “willful disobedience or open and persistent defiance”
 - “Behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel”
 - Being a “habitually disruptive” student
 - “Repeated interference with a school’s ability to provide educational opportunities to other students”

5

Habitual Disruption

- ≥3 “material and substantial disruption[s]” in a school year
- Notice Requirements

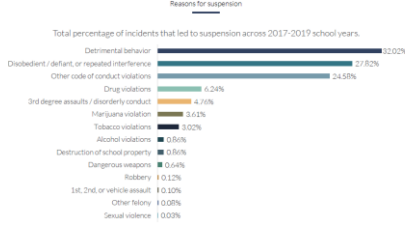
6

Mandatory Expulsion

- Bringing or being found to have brought a firearm to school
- Except...

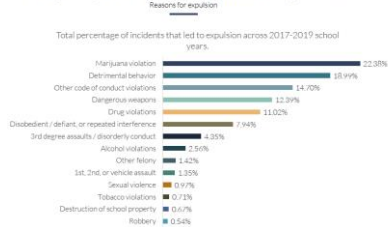
7

Disciplinary actions such as suspension and expulsions



8

Disciplinary actions such as suspension and expulsions



9

Extensions of Suspensions

- Depending on Incident: Initial suspension cannot be more than 5 or not more than 10 days
- **All** suspensions may be extended for up to 10 days...
- ...and then may be extended *another* 10 days*...
- **...but suspensions shall not exceed 25 days.**

10

Suspensions: Procedural Rights 22-33-105

- Habitual Disruption Notice Rights
- Parent or guardian must be notified of the suspension immediately
 - Grounds
 - Duration
 - Time and place to meet with school

11

Suspensions: Procedural Rights 22-33-105

- ≤10 days: “informal hearing”
- >10 days: opportunity to request a review

12

Suspensions: Procedural Rights
22-33-105

- Reentry Meeting
 - Must address whether there is a need for a remedial discipline plan (i.e. a safety plan, threat assessment, etc.)
 - School cannot extend suspension because parents fail to meet with school
 - Reasonable efforts to meet
 - Opportunity for make-up work

13

The “Ultimate” Punishment

- The board of education of each district shall establish, as an alternative to suspension, a policy that allows the pupil to remain in school and attend with his or her parent. Colo. Rev. Stat. 22-33-105(4)

14

How does Special Education Affect Suspensions?

- Prevention?
- Service Provision
- Missed Work
- ≥10 Days: Let’s put a pin in this...(Spoiler: Manifestation Determination)

15

Negotiate

- Reduce to suspension (i.e. "time served")
- Deferred Expulsion
- Safety Plan
- Transfer of school
- Online education period
- Reduction in Expulsion Time

19

How to prepare

1. Meet with client
2. Meet with parents, defense atty/GAL, social workers etc.
 1. **Make sure client is getting work!**
3. Inform principal/school/district of your representation
 1. **Ask to set out if you need time***
4. Get expulsion packet
5. Review policies and law
6. Check notice requirements met
7. Coordinate with defense attorney
8. Talk with collateral players: Coaches, counselors, etc.
9. Get reference letters (ministers, youth group leaders, teachers, etc.)

20

Potentially Useful Records

- Discipline
- Grades and tests
- Special education (incl. evaluations)
- Medical
- Psychological/mental health
- Social service records
- Discovery from defense attorney

21

How to prepare

1. Review police reports or other harmful evidence
2. Compile professional evaluations, reports
3. Deliver mitigation to relevant parties (and make copies for hearing just in case)
4. Prepare direct and cross
5. Advise client about 5th amendment issues*

22

Hearing Standards



23

Hearing Standards

Colo. Rev. Stat. 22-33-106(1.2): Hearing officer is "encouraged" to consider:

- Age
- Disciplinary history
- Disability
- Seriousness of violation
- Threat to safety (of a person)
- "Whether a lesser intervention would properly address the violation committed by the student."

24

Use of Student's Statements

Colo. Rev. Stat. 22-33-106.3

- Broadly admissible
- Except in cases of mandatory expulsion, when student statements cannot be admitted unless:
 - 1) Statement signed by student **AND**
 - 2a) Parent/Guardian/Legal Custodian is present at signing **OR**
 - 2b) "a reasonable attempt was made to contact"

25

Expulsion Appeals

- **10 days** to request
- To the district's board of education (which has discretion to grant or deny appeal)
- Review of facts, arguments ("de novo")
- Board questions

26

Second Appeal: Challenge in Court

Colo. Rev. Stat. 22-33-108

- **Within ten days**
- Board's statement of reasons
- Petition requesting that the order of the board of education be set aside
- Append the statement of the board of education
- No docket or other fees
- Court shall notify the board and shall hold a hearing

27

Post-Expulsion Transfer

- May be denied admission
- Within last 12 months:
 - "Behavior in another school district during the preceding twelve months that is detrimental to the welfare or safety of other pupils or of school personnel."
 - Victim in attendance at desired school*

28

Post-Expulsion Education

Colo. Rev. Stat. 22-33-104

- Mandatory enrollment and truancy
- "alternative" or "expulsion" schools

29

Expulsion Limit

- Expulsion cannot be for more than one year. Colo. Rev. Stat. 22-33-105(2)(c)

30

Post-Discipline Re-entry

Plan. ahead.

31

How does Special Education Affect Expulsions?

- Majorly: Manifestation Determination. 20 U.S.C. § 1415(k)(1)(E)(i)
- (1) Was the “conduct in question . . . caused by, or [did it] ha[ve] a direct and substantial relationship to, the child’s disability”; or
- (2) was the “conduct in question . . . the direct result of the [school district’s] failure to implement the IEP.”

32

What Does This Look Like in the COVID Times?

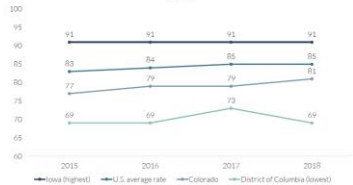
33

Fighting for Opportunity

Low high school graduation rate

Adjusted Cohort Graduation Rate (ACGR)

Colorado is consistently among the lowest states in the country for ACGR



Source: Institute of Educational Sciences, National Center for Education Statistics

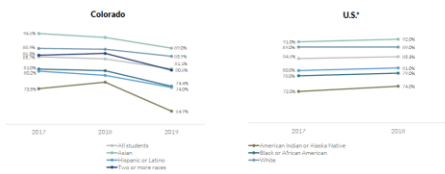
34

Fighting Inequity

Disparity in graduation rates

Colorado and the U.S.

The high school graduation rate in Colorado decreased between 2017 and 2019 among all race categories.



Source: Colorado Department of Education

*U.S. 2017 graduation rate data were not available.

35

Recap of Laws Cited

- § 22-33-105 (Procedures)
- § 22-33-106 (Grounds)
- § 22-33-106.3 (Written Statements)
- § 22-33-108 (Appeal to Court)
- § 22-33-104 (Education During Expulsion)
- 20 U.S.C. § 1415(k) (Manifestation Determination)

36

Questions?

○

Thank you!



Elie Zwiebel / elie@cjdc.org / 720-772-1731
