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MEMORANDUM

August 2, 2011

TO: Legislative Task Force to Study School Discipline
FROM: Kelli Kelty, Senior Research Assistant, 303-866-3518
SUBJECT: Overview of State Laws Addressing Bullying in Schools

This memorandum examines current state law concerning bullying in schools and provides an overview of other states' laws addressing this issue.

Colorado Law

Safe school plans and bullying. State law requires each school district to adopt a safe school plan that includes a conduct and discipline code for all students. The policies that a school district must include in a conduct and discipline code are:

- general policies on student conduct, safety, and welfare;
- general policies and procedures for dealing with students who cause a disruption in a classroom, on school grounds, in school vehicles, or at school activities or sanctioned events;
- provisions for the initiation of expulsion procedures for students who qualify as habitually disruptive by causing a disruption in the classroom, on school grounds, in school vehicles, or at school activities or sanctioned events for a third time during a year;
- policies for the use of "reasonable and appropriate physical intervention or force" in dealing with disruptive students;
- general policies and procedures for determining disciplinary action, including suspension and expulsion;
- a policy concerning gang-related activities in the classroom, on school grounds, in school vehicles, or at school activities or sanctioned events;
- written prohibition of students from bringing dangerous weapons, drugs, or other controlled substances to school, on school grounds, in school vehicles, or at school activities or sanctioned events; and from using drugs, controlled substances, or tobacco on school grounds, in school vehicles, or at school activities or sanctioned events;
- a written policy concerning searches on school grounds;
- a dress code policy; and
- a policy concerning bullying prevention and education.¹

¹ Section 22-32-109.1 (2), C.R.S.

2011 legislation. In the 2011 legislative session, the Colorado General Assembly enacted House Bill 11-1254 concerning school bullying. The bill creates a number of initiatives designed to deter bullying. The bill amended the definition of "bullying" to mean any written or verbal expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student. Specifically, the bill:

- establishes a grant program in the Colorado Department of Education (CDE) for bullying prevention programs in schools;
- creates a cash fund to pay for these grants, funded by gifts, grants and donations;
- encourages a student survey program querying the severity of bullying at each school; and
- requires charter schools to adopt a bullying prevention policy on or before October 1, 2011.

The bill prohibits bullying against any student for any reason, including but not limited to behavior that is directed toward a student on the basis of his or her academic performance or any other type of discrimination.

Immunity. Current law provides that a school district board of education or teacher or any other person acting in good faith and in compliance with the conduct and discipline code adopted by the board of education is immune from criminal prosecution or civil liability; unless the teacher or any other person acts willfully or wantonly. A teacher or any other person claiming immunity from criminal prosecution may file a motion to be heard prior to trial. At the hearing, the teacher or other person must demonstrate the right to immunity by a preponderance of evidence. In addition, a teacher or any other person who acts in good faith and in compliance may not have his or her contract nonrenewed or be subject to any disciplinary proceedings, including dismissal, and the actions of the teacher or any other person must not be reflected in any written evaluations or other personnel records.²

Other States

Approximately 45 states have anti-bullying provisions in statute. At least two — New Jersey and Nevada — have enacted legislation to require greater accountability by schools in incidents of bullying.

New Jersey. In 2011, the New Jersey legislature enacted legislation concerning bullying in schools. Assembly Bill 3466, the "Anti-Bullying Bill of Rights Act," strengthens the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises. Under the bill, a member of a board of education, school employee, contracted service provider, student, or volunteer who has witnessed, or has reliable information that a student has been subject to, harassment, intimidation, or bullying is required to report the incident to the appropriate school official designated by the school district's policy. A school administrator who receives a report of

² Section 22-32-109.1 (9), C.R.S.

harassment, intimidation, or bullying from a district employee and fails to initiate or conduct an investigation, or who should have known of an incident and fails to take sufficient action to minimize or eliminate the harassment, may be subject to disciplinary action.³

The bill, which was signed into law on January 5, 2011, also:

- requires the Commissioner of Education to submit an annual report to the Education Committees of the Senate and General Assembly detailing the extent of violence, vandalism, and harassment, intimidation, or bullying in public schools and make recommendations to alleviate the problem;
- requires each school district to adopt a policy prohibiting harassment, intimidation, or bullying on school property, at a school-sponsored function, or on a school bus;
- requires schools and school districts to annually establish, implement, document, and assess bullying prevention programs or approaches, and other initiatives involving school staff, administrators, volunteers, parents, law enforcement, and community members;
- requires the principal in each school to appoint a school anti-bullying specialist;
- requires each school district to form a school safety team in each school to develop, foster, and maintain a positive school climate by focusing on the ongoing, systemic process and practices in the school; and
- creates the Bullying Prevention Fund to be used to offer grants to school districts to provide training on harassment, intimidation, and bullying prevention and on the effective creation of positive school climates.

Nevada. In 2011, the Nevada General Assembly introduced legislation prohibiting bullying, cyber-bullying, harassment, and intimidation in schools. Senate Bill 276, which was modeled after New Jersey's legislation, requires a teacher or other staff member of a school who witnesses a violation of the prohibition on bullying, cyber-bullying, harassment, and intimidation, or who receives information of such a violation, to verbally report the incident to the principal. The bill provides that a teacher who intentionally fails to report an incident of bullying, cyber-bullying, harassment, and intimidation may be demoted, suspended, dismissed, or not reemployed.

The bill, which was signed into law on June 17, 2011, also:

- requires the Department of Education to establish a training program on the prevention of bullying, cyber-bullying, harassment, and intimidation for members of the State Board of Education and to recommend a training program for members of the boards of trustees of school districts and school district personnel;
- requires the principal of each public school to: (1) establish a school safety team; (2) conduct investigations of reported incidents of bullying, cyber-bullying, and harassment, and intimidation; and (3) collaborate with the board of trustees of the school district and the school safety team to prevent, identify, and address reported incidents;
- requires the principal of each school to submit to the board of trustees of the school district a report on the number of incidents of bullying, cyber-bullying, harassment, and intimidation during the previous school semester;

³ NJST 18A:37-16

- requires the board of trustees of each school district, in conjunction with the school police officers of the school district, if any, and the local law enforcement agencies that have jurisdiction over the school district, to establish a policy for the procedures which must be followed by an employees when reporting a violation of the prohibition of bullying, cyber-bullying, harassment, and intimidation; and
- creates the Bullying Prevention Fund.