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STUDENT ACHIEVEMENT

Supporting student achievement has become an even greater challenge in the 21st century economy. The world has changed, as have students' technological and curricular needs.

Groups such as the Partnership for 21st Century Skills and the Re-Inventing Schools Coalition define the concept of a 21st century education and the methods for achieving it. Generally, these definitions include core skills such as mathematics and reading, but also focus on building skills that help students compete in a global marketplace—a place that demands workers who can think on their feet, be team players, work collaboratively and embrace technology.

In 2006, your colleagues proved they are ready for the challenges the 21st century brings to education. CASB's report, "The Next Generation of Colorado Education, Colorado School Board Members Speak Out on Transforming Education for the 21st Century", shows that school board members are eager to provide students the education, opportunities, challenges and support they need to prepare them to succeed in the 21st century, even if that means restructuring the current educational system.

The challenge continues, and it is now more important than ever to recognize and build upon the positive relationship between school board effectiveness and student achievement.

In the past, and often today, the work of the school board is commonly defined in terms of processes rather than results: running a successful meeting, working well with the superintendent and relating to the community. While these components of board work are important, board members can and should make student achievement their ultimate goal. When they do, they can make a significant difference in the performance of all students.

The powerful influence of the board on student learning was revealed by recent research that studied the school board/superintendent teams of districts in which student achievement was unusually high over a period of several years. Interestingly, the governance teams in these districts share a number of attributes with those in districts where student achievement is not noteworthy:

- They care deeply about children and doing what is right for them
- The board and the superintendent work well together and all the boards were satisfied with the work of the superintendent
- The board members have similar backgrounds

However, those boards associated with higher student performance share a set of characteristics that go beyond:

- They have very high expectations for students, regardless of socio-economic status, and believe it is the job of the school system to reach all students and make them successful
- They create an urgency to improve and a climate in which increased student performance is imperative
- They are highly knowledgeable about topics that impact student achievement, such as curriculum, instruction, assessment, district and school goals for improvement, and the staff development efforts underway in their district
- They understand the board's role in supporting and sustaining initiatives aimed at improved achievement
- They view improvement efforts systemically, seeing connections between efforts underway across the district
- They routinely monitor progress toward district achievement goals and make changes in direction as a result
- They encourage efforts to upgrade teaching/administrative skills and create a supportive workplace
- They connect with, listen and involve their communities

("Compass," Iowa Association of School Boards Volume V, No.2, Fall, 2000)

School boards hold a key to educational effectiveness, and those boards that demonstrate certain characteristics will surely enhance student performance.

This chapter provides you with an overview of federal, state and local accountability requirements and how they fit into Colorado's educational structure. You will read about the variety of choices in Colorado education, employment contracts and school safety. Most of all, you will gain a better understanding of the inseparable connection between school boards and increased student achievement.

STATE ACCOUNTABILITY REQUIREMENTS

The development of academic content standards in Colorado was launched when the Colorado General Assembly adopted the Colorado Education Reform Act of 1993. Colo. Rev. Stat. § 22-7-401 *et seq.* The legislature declared, "This system of standards-based education will serve as an anchor for educational reform, promote authentic assessment of student learning, reinforce accountability and encourage equity."

Education standards are statements of what students should know and be able to do at various stages of their education. Colorado uses "content standards" to refer to the content of the school curricula and "performance level" to refer to how well students are doing on the content standards. The Colorado State Board of Education has adopted model state content standards that describe what students should know and be able to do in the core disciplines. As of January 1997, local school districts were required to adopt their own content standards in the first priority content areas that met or exceeded the state model standards.

The goal of standards-based education is to provide children with schools that reflect the state's high expectations and create conditions where these expectations are met through a shared sense of accountability and cooperation between state government, school districts, educators, parents, business persons and community. Colorado employed a "meet-in-the-middle" approach to standards where the state developed model content standards and districts subsequently developed their own content standards to meet or exceed the state model.

MEETING HIGHER EXPECTATIONS

Economic and technological changes throughout the nation and state and local communities create a need for students to be prepared for a new variety of possible futures. Students must graduate from high school prepared for an increasingly challenging future. According to a national study, all students need to take a rigorous curriculum in high school to be prepared for their futures.

Recent initiatives, including new admission requirements for higher education institutions, have increased expectations for the coursework students must complete in high school. State and local policymakers acknowledge the importance of obtaining core competency skills to succeed in the 21st century, including proficiency in math, science and written and verbal communication. The challenge is to address 21st century skills in a system where there are multiple and diverse pathways to a high school diploma so that more students will successfully complete high school.

Colorado implemented a state policy in 2007 intended to spur local boards to adopt high school graduation requirements within the context of standards-based education. The first step in this process is for the State Board to adopt a comprehensive set of guidelines regarding high school graduation requirements. Those guidelines will serve as a model as each local school board develops or revises local graduation requirements.

At the direction of former Gov. Bill Ritter, the state legislature passed The Preschool to Postsecondary Alignment Act (CAP4K) in 2008. This bill takes standards-based education to the next level by requiring the State Board and the Colorado Commission on Higher Education (CCHE) to create a seamless system of public education standards, expectations and assessments. This alignment is intended to ensure that a student who achieves the required level of proficiency on standards as he/she progresses through the system will achieve postsecondary and workforce readiness when the student graduates from high school, if not earlier. As a result, the student will be ready to enter the workforce or postsecondary education without need for remediation.

Although most of the responsibilities for implementation of CAP4K are placed on the State Board and CCHE, local school boards must undertake a community-based process to develop a blueprint for the education system in the community and determine the skills students will need to be successful after graduation. School boards must then use this blueprint, along with the State Board's guidelines for high school graduation requirements, to adopt high school graduation requirements applicable to students enrolling in the ninth grade. Current law states the deadline for school districts to adopt those guidelines is 2012–13; however, as this workbook goes to print, CASB fully expects the deadline to be extended, giving the State Board and local districts more time. Similar to the approach taken with content standards, the local board's high school graduation requirements must meet or exceed the minimum standards or basic core competencies identified in the State Board's high school graduation guidelines. Colo. Rev. Stat. § 22-32-109(1)(kk).

Because CAP4K was passed in 2008, many local boards have already undertaken a comprehensive community-based process and revised their high school graduation requirements. However, the State Board has yet to adopt its high school graduation guidelines. Current law states the deadline for school districts to adopt those guidelines is 2012–13; however, as this workbook goes to print, CASB fully expects the deadline to be extended, giving the State Board and

local districts more time. The state legislature revised the law in 2010 to provide that if the local board has completed the community-based process and adopted new graduation requirements within the previous two years, the board is not required to develop a new blueprint or make any revisions to its high school graduation requirements. Regardless of when the local board revised its high school graduation requirements, however, the board must still demonstrate that its high school graduation requirements meet or exceed any minimum standards or basic core competencies identified in the State Board's high school graduation guidelines. Colo. Rev. Stat. § 22-2-106(1)(a.5); 22-32-109(1)(kk)(II).

STATE ACCREDITATION AND ACCOUNTABILITY

The state accreditation program was enacted into law in 1998. The purpose of accreditation is to provide a process for the State Board of Education to fulfill its constitutional responsibility for supervising the state's public schools and to encourage excellence by assessing student performance in relation to state standards and assessments. A major focus of the accreditation program is to close the achievement gap between children of poverty and color and their counterparts in the educational system.

In 2007, the state legislature called for student growth to be used as the "cornerstone of the state's accountability system." In response, CDE developed the Colorado Growth Model. As explained by CDE, the Colorado Growth Model offers a way for educators to understand how much growth a student made from one year to the next in the context of a student's "academic peers." The growth model compares each student's performance to students in the same grade throughout the state who had similar scores on the Colorado Student Assessment Program (CSAP) tests in past years. The model then produces a growth percentile, much like children's height and weight growth charts. If a student grew as well or better than 60 percent of her academic peers, she would be at the 60th percentile. The growth model also shows how much progress a student needs to make to reach proficiency on the CSAP within one, two or three years.

Relying upon the development of the Colorado Growth Model, the state accreditation program was significantly overhauled in 2009 by the Education Accountability Act of 2009 (the Act). Colo. Rev. Stat. § 22-11-101, *et seq.* The Act required the State Board to adopt numerous rules to implement the state's new accreditation and accountability system. After receiving valuable input from school districts, CASB and other education organizations, the State Board adopted new accreditation rules in the spring of 2010.

The Act creates an expanded set of state performance indicators for the state, districts and schools that includes: (1) student academic growth (as measured by the Colorado Growth Model); (2) student achievement levels (as measured by the percent of students scoring advanced, proficient, partially proficient and unsatisfactory on CSAPs); (3) extent of achievement gaps based on income and ethnicity; and (4) postsecondary readiness (as measured by graduation rates and ACT scores/Postsecondary Workforce Readiness).

Based primarily on these four state performance indicators, the Act creates the following accreditation categories:

- Accredited with distinction
- Accredited
- Accredited with improvement plan
- Accredited with priority improvement plan
- Accredited with turnaround plan
- Unaccredited

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The Local Role
Given the federal government's far-reaching effects on local communities, how is your local role even more important?

The State Board's accreditation rules specify the content and terms of the accreditation contract between each school district and the State Board. The rules also determine the appropriate accreditation category for each district, which considers the duration of the district's performance challenges and progress made under current improvement efforts. Lastly, the rules specify the circumstances in which the CDE may recommend the removal of a district's accreditation.

Regarding the accreditation of schools, the Act requires local boards of education to assign accreditation categories to schools in a manner that is aligned with and meets or exceeds the rigor of the state's accreditation system for districts and is in accordance with the Act and the State Board's accreditation rules. As discussed throughout this workbook, policymaking is one of the board's most important jobs. The Act emphasizes this important role by requiring each local school board to adopt policies for the accreditation of its schools.

Finally, the Act builds upon the Colorado Growth Model to provide state, district and school performance reports that will include the state performance indicators and data required by state and federal law. School districts must report the required information to CDE, which will then place all data onto its new online data portal called SchoolView®. In addition to the minimum information required by the Act and the State Board's accreditation rules, school performance reports must include information formerly required to be included in School Accountability Reports (SAR), such as information about the school environment, including discipline information, student attendance, teacher experience, student-teacher ratios and non-CSAP course offerings, among others.

In summary, the Act represents significant changes for districts and schools concerning state accreditation and accountability. As before, however, the challenge for local boards of education, in conjunction with school staff and the local community, is to develop an educational mission for the school district and a plan for academic achievement that goes beyond these state accreditation and accountability efforts. This work is ongoing and involves many indicators of success other than CSAP results alone.

FEDERAL ACCOUNTABILITY REQUIREMENTS

The Elementary and Secondary Education Act (ESEA) was last reauthorized as the No Child Left Behind (NCLB) Act and signed into law Jan. 8, 2002. NCLB is one of the most comprehensive education reform plans ever passed by Congress. NCLB impacts Title I schools (which receive federal financial assistance targeted at low-income students) and programs most dramatically, but affects all school districts, schools and students. The goal of the Act is for all students to be proficient in core academic subjects by 2013–14.

CASB, in conjunction with NSBA, has worked to identify much needed changes that we want to see enacted when the ESEA is reauthorized. This information was communicated to Colorado's congressional delegation through the Colorado Federal Relations Network. Because of the anticipated revisions to the law and the likelihood that states will be granted waivers to specific components of the NCLB law, the summary of NCLB has been condensed in this workbook to its major provisions.

ADEQUATE YEARLY PROGRESS

The law requires all public school students in grades three through eight to take state-administered tests in reading and math. States are responsible for establishing a minimum proficiency level, which for Colorado includes proficient and partially proficient on CSAP assessments, and for bringing all students up to that level by the year 2014. States, school districts and schools are required to report progress on several identified subgroups of 30 or more students, including economically disadvantaged students, students from major racial and ethnic subgroups, students with disabilities and students with limited English proficiency.

Schools must demonstrate they are making Adequate Yearly Progress (AYP) based on test scores, as well as graduation rates for secondary schools and percentage of students performing at the advanced level in elementary and middle schools.

CHOICE PROVISIONS

Under NCLB, students who attend Title I schools identified as “low performing” have the option of attending a different school, with transportation to be provided at the school district’s expense.

If a Title I school does not make AYP for two or more consecutive academic years, it is designated as either on “school improvement,” “corrective action” or “restructuring” status, depending upon the number of years it has failed to make AYP. If a single subgroup (e.g. students with disabilities or English Language Learners) fails to achieve AYP, then the school as a whole fails to make AYP, and choice must be offered to every student in the school. All students attending such schools are eligible to transfer to another school and to have the school district provide transportation free of charge. The school to which the student transfers must not be one that is on “school improvement,” “corrective action,” or “restructuring” status or defined as “persistently dangerous” by the state.

If there are no schools within a district that meet performance expectations under the law, the district must “to the extent practicable” enter into a cooperative agreement with a neighboring school district to provide choice.

SUPPLEMENTAL SERVICES

If a Title I school does not make AYP for three consecutive academic years, its low-income students become eligible to receive supplemental educational services, such as tutoring, at district expense. If a school continues to miss AYP, these students continue to be eligible for supplemental services.

QUALIFICATIONS OF TEACHERS AND PARAPROFESSIONALS

NCLB requires all teachers of core academic subjects to be “highly qualified.” Core academic areas include: English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.

Colorado defines “highly qualified” teachers as teachers who are fully licensed and able to demonstrate subject matter competency in all core academic areas in which they are assigned. How teachers are expected to demonstrate content knowledge in all assigned core academic areas depends on the school level: elementary (K–6) or secondary (6–12). There are requirements for content assessments and coursework that are considered.

Under NCLB, paraprofessionals who provide instructional support for students in Title I programs must have completed at least two years of higher education study or obtained an associate’s degree or demonstrated, through a formal examination, the knowledge of and ability to assist in instructing reading, writing and math.

ENGLISH LANGUAGE ACQUISITION

NCLB requires states to set annual measurable achievement objectives for English Language Learners (ELL) so that all ELL students are English proficient by 2013–14. ELL students must meet the annual measurable achievement objectives on English proficiency, as well as AYP on CSAP.

Students who have attended school in the U.S. for at least three consecutive years and who participate in a program funded under Title III (providing federal financial assistance to schools for language instruction for limited English proficient and immigrant students) must be tested in English for reading and language arts. Waivers may be granted for an additional two years on a case-by-case basis for students who show need.

LOCAL ACCOUNTABILITY REQUIREMENTS

Until roughly 20 years ago, the most important institution for accountability was the locally elected school board. The various state and federal accountability systems described above either did not exist or existed only as rudimentary and unobtrusive programs. Similarly, most of the choice options described below in this chapter did not exist. In large measure, the accountability systems and the choice options that have been imposed on local school districts by the state and federal government were adopted based on the perception, whether right or wrong, that local school boards had failed in their role to make local school systems highly effective.

Nonetheless, it remains true, even with all the changes over the last 20 years, that the local school board is the key focus of accountability in every school district. Local taxpayers will look to the school board if school finances are not handled in an appropriate way. Parents still look to the school board on matters of student safety, teacher quality, student achievement and on every other matter pertaining to the district or their child. Much of this workbook is designed to flesh out those skills and the knowledge school board members must have to serve successfully in their traditional accountability role.

Board members should be mindful of the perception that has driven so much of the federal and state accountability legislation and the choice options described in this chapter. If school boards govern local school districts effectively, much of the energy of those kinds of legislation disappear. This is easier said than done. Strategic leadership is hard and time consuming. Setting policies to hold all district personnel accountable for high student achievement is difficult and sometimes resisted by staff. Managing district finances in a time of scarcity and high expectations requires the board to be thoughtful, knowledgeable and courageous.

CHOICES IN PUBLIC EDUCATION

TRADITIONAL PUBLIC SCHOOL AND OPEN ENROLLMENT

Colorado provides many avenues for parents to select a public school for their child to attend. Usually, a family that chooses their child's neighborhood school is happy with that choice. However, school districts are now required to have open enrollment policies that allow students within the district to select any school or program in the district, provided there is space available in the requested school. Nonresident students may also request to attend school within the district on a space-available basis. This is called "inter-district" choice. No tuition can be charged to Colorado parents who enroll their students in another district within the timelines

and procedures established by the district of choice. The district of choice is not required to enroll nonresident students after the Oct. 1 pupil count deadline.

PRIVATE SCHOOL AND HOME SCHOOL STUDENT PARTICIPATION

Students participating in a private school or schooled at home are permitted to participate in the district's extracurricular or interscholastic activities. Colo. Rev. Stat. § 22-32-116.5.

COLLEGE COURSEWORK

There is also an opportunity for high school students to enroll in courses offered by institutions of higher education under the Concurrent Enrollment Programs Act. Colo. Rev. Stat. § 22-35-101 *et seq.* It is possible for students to obtain both high school and college credit for course work taken under this program.

In addition, students may enroll in postsecondary courses through a program called the "Accelerating Students through Concurrent Enrollment Program" (ASCENT) administered by the CDE. The ASCENT program allows a student to concurrently enroll in postsecondary courses in the year directly following the year in which the student was enrolled in 12th grade. The Concurrent Enrollment Programs Act specifies how school districts must count these ASCENT program students for purposes of per pupil funding.

CHARTER SCHOOLS

Colorado was one of the first states in the nation to implement charter schools. In 1993, the Colorado General Assembly enacted the Charter Schools Act that authorizes the local board of education to enter into a charter with parents, teachers or others to operate a school. Colo. Rev. Stat. § 22-30.5-101 *et seq.* A charter school is a public, non-sectarian, non-religious, non-homebound school that continues to be a part of the public school district in accordance with the terms and conditions of the charter. Each charter school has its own governing board but is accountable to the local board for compliance with the charter. Charter schools are subject to all laws governing public schools, unless specific requirements are waived as part of the charter process. The school is responsible for its own operation, including budget, personnel and contracts.

The Charter Schools Act creates an appeals process that enables a charter applicant or any other person to appeal a decision of the local board concerning a charter school to the State Board. The State Board has authority to require a local board to accept a charter application.

Among other things, the application to create a charter school must include: a mission statement; evidence that an adequate number of parents, teachers, and pupils support the formation of a charter school; and a description of the charter school's research-based educational program, pupil performance standards and curriculum, which must meet or exceed any content standards adopted by the district. Students enrolled in the charter school are included in the pupil enrollment of the school district within which the pupil resides.

Many of the services provided by the school district and contracted for by the charter school are subject to negotiation. The district is required to provide funding based on a formula set forth in statute for each student enrolled in the charter school.

In 2010, the Colorado General Assembly created House Bill 10-1412 Advisory Committee to make recommendations to the State Board and the House and Senate Education committees concerning standards for charter schools and charter school authorizers. The committee's final report recommends standards for charter school application and renewal processes, performance contracts, oversight and

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Choice

Take some time to familiarize yourself with your district's and surrounding districts' educational offerings.

evaluation, ethics (e.g. excess benefits, executive compensation, nepotism, and conflicts of interest) and compliance with federal and state anti-discrimination laws. The State Board will promulgate rules based on the committee's recommendations in early 2012.

THE CHARTER SCHOOL INSTITUTE

In 2004, the Charter School Institute (CSI) was created to encourage creation of charter schools serving at-risk students and to model best practices in charter school authorizing. The board of directors for CSI is comprised of nine people, seven of whom are appointed by the governor, with the remaining two members appointed by the Colorado Commissioner of Education.

A local school board never loses its authority to authorize charter schools under this law, but it may share that authority with CSI in some communities. For some school boards, this exclusive chartering authority is assured (those with fewer than 3,000 students). Other school boards must demonstrate to the State Board that they have treated charter schools in a fair and equitable manner to retain their exclusive chartering status.

CSI cannot approve a charter school within the boundaries of a school district when the board has exclusive chartering authority to authorize charter schools. All charter schools authorized by the school district will continue to be district charter schools unless they go through a process to convert to Institute schools.

The application and requirements for an Institute school are essentially the same as those for district charter schools. Institute school students are included in the funded pupil count of the district where the school is located. The funding is then transferred out of the state equalization payments that otherwise would have been paid to the school district. In this way, the funding is based solely on state funds, using the same per pupil funding formula currently in place for school districts.

A charter school, charter school applicant or an organization that represents charter schools may request revocation of a local board's exclusive chartering authority by filing a request for revocation with the State Board. State law limits the grounds upon which such a revocation request may be filed and also prescribes the process the State Board must follow when considering a revocation request.

CSI is a Local Education Agency (LEA) under federal law and an administrative unit under state law for purposes of serving the special education needs of Institute school students. CSI may also serve as the LEA for a district charter school that wishes to apply for state and/or federal competitive grants. Any charter school that pursues a grant through CSI must provide notice and a copy of the grant application to its authorizer.

The Institute school must administer the state assessments and comply with the federal requirements of NCLB and the state's Education Accountability Act of 2009. Colo. Rev. Stat. § 22-30.5-501 *et seq.*

ONLINE PROGRAMS

School districts may incorporate online coursework into the district's curriculum to enhance, supplement or enrich the existing curriculum and provide an alternative means of instruction. These supplemental online courses can be an effective tool to expand the educational opportunities for students at all levels of achievement. There is a state grant program available to remove financial and technical barriers to school districts with fewer than 3,000 students interested in using supplemental online courses.

State law allows school districts and charter schools to operate online education programs in which a student can enroll and take all his or her coursework over the

Internet. A 2007 state law created a statutory framework for quality oversight of online education programs. The Division of Online Learning at the CDE provides support for online education programs, and rules adopted by the State Board establish quality standards for the operation of such programs.

In 2011, the Legislature shifted some of the division's oversight responsibilities to local districts. School districts that authorize online programs will now be required to review their online program's alignment with the State Board's quality standards as part of its accreditation process. CDE's Online Division will continue to collect information regarding online schools' financial and accounting practices. Each student in an online school is evaluated, tested and monitored at the same intervals as other students of the same grade level in the student's regular school and takes all state assessments.

Colorado resident students are eligible to participate in online programs offered by other districts. A student participating in the online program may participate on an equal basis in any extracurricular or interscholastic activity offered by the district. Colo. Rev. Stat. § 22-30.7-108.

Colorado school districts, charter schools and BOCES may apply for funding for students who qualify for per pupil funding for online enrollment. Per pupil funding for online students is set by the School Finance Act.

CASB's conferences and Convention offer members avenues for learning from other districts about their successes and challenges with choice options.

INNOVATION SCHOOLS AND SCHOOL ZONES

The Legislature passed the Innovation Schools Act of 2008 (Innovation Act) to encourage creativity and innovation by giving greater autonomy and managerial flexibility to school leaders. Colo. Rev. Stat. § 22-32.5-101 *et seq.* Recognizing the ultimate responsibility for controlling instruction continues to lie with the local school board, the Innovation Act strongly encourages a local board to delegate to each of its schools a high degree of autonomy in implementing curriculum, making personnel decisions, organizing the school day, determining the most effective use of resources and generally organizing the delivery of high-quality educational services.

A school's designation as an innovation school will reflect its autonomy. A group of schools within a school district that share common interests, such as geographical location or educational focus, or that sequentially serve classes of students as they progress through elementary and secondary education, may jointly submit to their local school board a plan to create an innovation school zone. The Innovation Act prescribes specific steps that must be followed to seek designation as an innovation school or school zone, including providing evidence that a majority of the administrators and teachers employed at each school consent to designation as an innovation school or school zone.

The board may also initiate or collaborate with one or more schools to create an innovation school or school zone. Through policy, the board can establish its desired focus areas for innovation schools and any limitations the board believes are necessary.

An increasing number of districts and schools are seeking innovation status as a means of waiving state mandates that some perceive as burdensome and costly.

PERSONNEL OVERSIGHT

Successful school districts are first about people. Quality instruction, sound fiscal management, visionary leadership and effective governance cannot happen without a capable staff, beginning with the superintendent, and the policies and contracts necessary to carry forward the district's mission. Local accountability starts here.

EDUCATOR EFFECTIVENESS

It's not difficult to uncover stories of inspirational teachers – those who transform teaching from a profession into a true art. Educators are, of course, central to student achievement and can be more important to student success than any other factor including race, poverty level or parents' education, according to the Alliance for Quality Teaching's 2006 "Guide to Teacher Quality."

So, if school board members are committed to providing resources so each student has the opportunities to learn skills to succeed in the 21st century, they must lead the charge to ensure a quality teacher is at the head of every classroom.

The Colorado Legislature also took on that work in 2010 when it passed Senate Bill 191. Signed into law by former Gov. Bill Ritter, SB 191 launched a revolutionary evaluation system for Colorado's educators.

The new law mandates that all school districts measure teacher performance in accordance with the state's definition of effectiveness. Under the new system, at least half of a teacher's evaluation must be determined by his or her student's academic growth. At least half of a principal's evaluation must be determined by students' academic growth, according to the law. Upon implementation statewide in 2014-15, teachers will lose their tenure, or non-probationary status, if their evaluations indicate ineffective performance for two consecutive years. This new provision will provide school boards and districts with increased flexibility regarding personnel decisions.

As of press time for this workbook, CDE staff was working to implement the new system through a number of pilots statewide. The State Board was scheduled to vote on rules defining effectiveness as well as other details of district's evaluation system. The Legislature will review the rules when it reconvenes in January 2012.

Colorado students deserve great teachers. While the state is setting rules and guidelines to achieve that goal, local school board members must lead their communities in this important work. CASB will continue to serve as a resource for school board members as this important new law is implemented.

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Information



[www.cde.state.co.us/
EducatorEffectiveness](http://www.cde.state.co.us/EducatorEffectiveness)

[www.casb.org/
member-resources/
Issues-in-Education/SB_191](http://www.casb.org/member-resources/Issues-in-Education/SB_191)

[www.colegacy.org/
educator-effectiveness](http://www.colegacy.org/educator-effectiveness)

SB 191 is designed to improve educator performance by requiring evaluations to set clear expectations and provide meaningful opportunities for professional growth and development.

EMPLOYMENT PRACTICES

Guidelines for the selection and appointment of personnel should be included in district policies. It is the board's responsibility, by official action, to approve the appointments of all instructional personnel who work for the district. The courts have held that while the administration may directly hire and terminate the employment of non-instructional personnel, the responsibility to hire and terminate the employment of instructional personnel belongs to the board and may not be delegated to others.

This does not mean that board members must be deeply involved in seeking out and screening teacher candidates. That is a proper administrative function. It does mean that the board should review the appointment recommendations made by the superintendent or administrative staff regarding instructional personnel and pass judgment.

The superintendent should expect to be held accountable for the performance of all employees. Accordingly, it is important that he or she be given authority to select people the administration believes would be best suited to the positions. If the board feels a recommendation should not be accepted, the superintendent should be asked to come forth with another recommendation.

The board is legally responsible for the appointment of all personnel, not just those who serve on the instructional staff. It is a good practice to screen prospective employees with care. It is easier to determine in advance that an employee would not be suited to a given position than to dismiss that employee at a later date.

The district is required to conduct reference checks of applicants and to see that the applicants selected for classified positions are fingerprinted. Licensed employees are fingerprinted during the licensure process.

As a result of legislation passed in 2011, individuals are barred from employment in classified positions if they have been convicted of one of the criminal offenses listed in Colo. Rev. Stat. 22-32-108(8). This prohibition applies only to convictions that appear on background checks completed after Aug. 10, 2011, and, except in unique circumstances, districts are not required to run background checks on existing employees.

NEGOTIATING PROCESSES

Colorado law does not require, authorize or prohibit collective bargaining between the board and an organization representing a group of employees. The Colorado Supreme Court has determined that it is permissible for a school district to enter into a master agreement with a group of employees on a collective basis, but it is not required for the district to do so. Further, there can be nothing in the agreement that is in conflict with any pertinent statute.

The approaches used by Colorado school districts for negotiation with employees vary throughout the state from very informal models, which are often called "meet and confer," to more formal collective bargaining. It is important to remember that employment relationships are governed by law and by board policy with the board retaining decision-making authority.

THE TEACHER EMPLOYMENT, COMPENSATION AND DISMISSAL ACT OF 1990

A comprehensive state law, known as The Teacher Employment, Compensation and Dismissal Act of 1990, sets forth specific practices to be observed in the process of teacher employment and dismissal. Colo. Rev. Stat. § Title 22, Article 63. The law defines a teacher as one who is regularly licensed and employed to instruct, direct or supervise the instructional program. Colo. Rev. Stat. § 22-63-103(11). This means that classroom teachers, as well as most principals, assistant superintendents, etc., are legally classified as teachers. The law excepts the superintendent and persons holding letters of authorization from the definition of the word “teacher” for the purposes of this Act. Following is a discussion of some of the provisions in this law.

L I C E N S U R E

All persons who fall under the definition of “teacher” must have a teaching license or letter of authorization issued by the CDE. The board may not enter into a contract for instructional services with persons who do not have a teaching license or letter of authorization. Colo. Rev. Stat. § 22-63-201. Further, the board may not order the payment of salaries to teachers if they do not have a current license or letter of authorization. Colo. Rev. Stat. § 22-63-402.

C O N T R A C T S

Except for part-time or substitute teachers, the law requires all employment contracts with teachers to be in writing. The contract must contain a damage provision that permits the board to collect or withhold an amount up to $\frac{1}{12}$ of the annual salary if the employee abandons, breaches or otherwise refuses to perform services pursuant to the contract. Colo. Rev. Stat. § 22-63-202(2). The teacher is exempt from such penalties if a resignation is submitted 30 days prior to the beginning of the school year. After the beginning of the academic year, the teacher is exempt from damages if a 30-day notice of resignation is provided. The teacher’s contract must also include a provision requiring the teacher to sign and return the contract within 30 days of receipt, unless the district and teacher agree to a different time frame.

Contracts must also include a provision stating that a teacher who is “displaced,” as defined by. Colo. Rev. Stat. § 22-63-202(c.5)(VII), may be assigned to a particular school only with the consent of the hiring principal and with input from at least two teachers employed at the school. The concept of displacement was added to the law by SB 191, and school districts and attorneys are struggling to understand the scope and meaning of the new requirements. Boards should discuss the concept of displacement with their attorneys.

Part-time or substitute teachers need not be issued written contracts, but they must have a teaching license or letter of authorization. Part-time teachers, as defined by state law, are those who normally perform services less than four hours during each regular school day. Substitute teachers are those who work on one continuous assignment for a total of less than 90 days during the academic year or one semester or its equivalent. The definition of a “substitute” also includes an itinerant teacher who performs service on a day-to-day or similar short-term basis during the academic year as a replacement teacher.

As amended in 2009, state law permits school districts to hire “alternative teachers” participating in a state-approved alternative teacher preparation program.

The 2009 revisions to state law replaced and updated the state's former "teacher-in-residence" program. Alternative teacher programs offer an opportunity for nontraditional teacher candidates to enter the profession and for school districts to customize the preparation of their teacher candidates. These programs are designed to provide nontraditional candidates with adequate supervision and education in teaching methods and practices as they "learn the ropes" and work toward initial teacher licensure. An alternative teacher may be offered a contract containing terms and conditions which differ from other teacher contracts. Colo. Rev. Stat. § 22-60.5-207.

EVALUATION

All school districts are required to have a written system and related procedures to evaluate the performance of school district licensed personnel, including all teachers, principals and administrators. In 2010, the General Assembly passed SB 191, which amended the existing Licensed Personnel Evaluation Statute. Colo. Rev. Stat. § 22-9-101, *et. seq.* As amended, the evaluation statute still requires each district to create a district personnel performance evaluation council, which then consults with the board as to the fairness, effectiveness, credibility and professional quality of the evaluation system and its processes. The law expressly allows district accountability committees, or other district committees, to serve in this advisory role so long as their membership complies with statutory requirements.

Districts without operating councils are encouraged to convene these groups to advise the board with regard to the development and implementation of the evaluation system required by SB 191.

Under the current law, the evaluation system must contain, among other things, the standards for satisfactory performance for licensed personnel and criteria used to determine whether the teacher's performance meets such standards. One of the standards for measuring classroom performance must be directly related to classroom instruction and include multiple measures of classroom performance.

A teacher whose performance is deemed unsatisfactory must be given notice of deficiencies. A remediation plan must be developed and the teacher must be given a reasonable period of time for remediation before the district considers a dismissal proceeding on the basis of unsatisfactory performance.

SB 191 is designed to improve educator performance by requiring evaluations to set clear expectations and provide meaningful opportunities for professional growth and development. Locally-developed standards for satisfactory performance will be replaced by a statewide definition of "effectiveness" and "quality standards" used to measure that effectiveness. Under the new system, student growth will account for 50 percent of each teacher's and principal's evaluation.

The State Board will promulgate rules in November 2011 defining these important terms. Districts will be required to align their evaluation systems to the State Board's requirements by 2013-14. CDE will provide an online resource bank, which will include critical resources to assist districts when designing and implementing the new evaluation systems. Districts may choose to adopt the model evaluation system developed by CDE or develop their own systems, as long as those systems comply with the State Board's rules. School boards should begin to review their existing evaluation tools and engage their local licensed personnel performance evaluation councils to identify areas of concern and improvement with regard to these tools.

PROBATIONARY TEACHERS

Prior to the passage of SB 191, teachers were considered probationary during the first three years of employment in a school district. Under changes implemented by SB 191, a probationary teacher is defined as one who has not completed three consecutive years of demonstrated “effectiveness” or a nonprobationary teacher who has two consecutive years of demonstrated “ineffectiveness.” Effectiveness and ineffectiveness are statutory terms that will be defined by State Board rule in November 2011 and reviewed by the General Assembly in early 2012. Ineffective teachers will not be subject to the loss of their nonprobationary status until after 2013-14, when SB 191 is implemented statewide.

A probationary teacher does not have a right to annual renewal of his or her teaching contract during the probationary period. The board of education has complete discretion when it reviews the annual contracts and decides which of the probationary teachers it will reemploy.

To preserve the concept of annual contracts, it is important that care be taken throughout all board policies and procedures so that no statements are made, either directly or indirectly, which would imply that the annual contract will automatically be renewed during a teacher’s probationary period.

A teacher employed after the year starts is deemed to have worked the entire academic year if he or she works continuously and without interruption for the last 120 days of the academic year.

AUTOMATIC REEMPLOYMENT

A provision in Colorado law establishes that a probationary teacher shall be deemed to be reemployed for the succeeding academic year at the salary that he or she would be entitled to receive under the general salary schedule unless the board of education notifies the teacher to the contrary, in writing, prior to June 1. Colo. Rev. Stat. § 22-63-203(3).

NONRENEWAL VS. DISMISSAL

It is important to distinguish between the terms “nonrenewal” and “dismissal.” The term “nonrenewal” is the process whereby the board takes appropriate action to establish that a probationary teacher shall not be re-employed for the succeeding academic year. “Dismissal” means the involuntary termination of employment of a non-probationary teacher or of a probationary teacher during the academic year while his or her annual contract is still in effect.

NONRENEWAL PROCEDURES

The process of nonrenewal requires board consideration well in advance of the June 1 deadline. The nonrenewal may be initiated only upon the recommendation of the superintendent. Colo. Rev. Stat. § 22-63-203(4).

The process of nonrenewal requires that the board in a legally constituted open meeting vote on a motion not to reemploy the individual for the succeeding academic year. The board also must take action to see that written notice is delivered to the individual prior to June 1.

A probationary teacher who is notified of contract nonrenewal may request and receive the reasons for nonrenewal from the superintendent. Presumably, this means the reasons on which the superintendent based the recommendation; it could also mean the reasons board members acted upon the recommendation, if not the same. Nonrenewal may be based on any rational and bona fide cause or ground deemed sufficient. However, it may not be based on the teacher’s exercise of a constitutional right.

Thus, during this process or in developing a written statement of reasons, there should be no reference to discussion or any other concern expressed with the teacher's constitutionally protected rights or status, such as exercise of free speech, union membership, union activities, political activities, sex or race, and so forth. It is recommended that boards consult with an attorney for guidance through the nonrenewal process.

Each year, CASB legal counsel reviews the nonrenewal process and distributes recommended guidelines for board consideration at no cost to CASB's member districts.

RESIGNATIONS

Resignations are not effective until acted upon by the board.

When a licensed employee resigns or is dismissed under circumstances that may give rise to a loss of the professional license, the board of education has a mandatory duty to report this to the commissioner of education no later than 30 days after acceptance of the resignation or action taken to dismiss the licensed employee. The CDE then will follow its own procedures to determine whether the employee's license will be withdrawn.

If an employee is dismissed or resigns as a result of an allegation of unlawful behavior involving a child, which is supported by a preponderance of the evidence, the board must immediately notify the CDE. Colo. Rev. Stat. § 22-32-109.7(3).

DISMISSAL PROCEDURES

Specific procedures are set forth in law for the dismissal of non-probationary teachers and for the dismissal of probationary teachers during the academic year while their contracts are still in effect. The legal grounds for dismissal are "physical or mental disability, incompetence, neglect of duty, immorality, unsatisfactory performance, conviction of a felony (including certain pleas), insubordination or other good and just cause." Colo. Rev. Stat. § 22-63-301.

To initiate the dismissal process, the law provides that the superintendent recommends to the board that a teacher be dismissed. Colo. Rev. Stat. § 22-63-302. The superintendent would be well advised to proceed under the direction and guidance of an attorney who has carefully studied the detailed provisions of law, which relate to the dismissal of a teacher. One can reasonably expect that the case will be referred to the courts if the district fails to follow any of the procedures set forth in law.

Once the superintendent recommends dismissal, the teacher has the right to request a hearing before an impartial hearing officer. The hearing officer recommends either dismissal or retention. The board, after reviewing the hearing officer's findings and recommendation, may order that the teacher be dismissed, retained or placed on probation for one year.

It should be noted that the teacher may be suspended with pay. Subject to limited exceptions, state law requires the school district to continue to pay the teacher 100 days after the dismissal recommendation has been accepted by the board for review. If the teacher's compensation is discontinued and the board ultimately takes action to retain the teacher, any compensation beyond the 100 days must be paid to the teacher.

The board may take immediate action to dismiss a teacher, without a hearing, when the teacher is found guilty of certain criminal offenses involving unlawful sexual behavior or sale of controlled substances.

To ensure procedural due process and fairness during the dismissal process, it is important that the attorney who prosecutes the case on behalf of the district be

different from the one who advises the board of education. Likewise, any district personnel who were witnesses during the hearing, including the superintendent, should not be invited by the board into executive session while it considers the hearing officer's finding and recommendation.

If the teacher does not request a hearing, the board may take action to dismiss the teacher at its next regular meeting or at a special meeting called for that purpose.

SALARY SCHEDULES

Another provision of the teacher's employment law requires boards to adopt a salary schedule that may be by job description and job definition, a teacher salary policy based on performance demonstrated by the teacher, or a combination of the salary schedule and salary policy for teachers prior to or in conjunction with the adoption of the budget for the following calendar year. Colo. Rev. Stat. § 22-63-401. Each teacher must be compensated as provided in the schedule or policy. During the contract year, the board may not change the schedule or policy so as to reduce the salary of any teacher. Pay may be modified for succeeding years, but no classroom teacher's salary may be reduced unless the new schedule or policy provides for a general reduction in the salaries of all teachers.

The law permits a reduction in salary if an individual's job classification is changed or if the teacher has been relieved of additional duties for which he or she received additional compensation. It is advisable to consult an attorney in such cases and whenever a change in the salary schedule or policy is contemplated.

RETIREMENT AGE

Federal law protects all persons 40 years of age or older from discrimination in employment based on age. Any school district policy that sets an automatic mandatory retirement age for any school district employee may be in violation of the federal law.

REDUCTION IN FORCE

The teacher's employment law allows the board to cancel a teacher's employment contract during the contractual period when there is a justifiable decrease in the number of teaching positions. Colo. Rev. Stat. § 22-63-202(3). Procedures for a reduction in force (RIF) are generally set out in school board policy, as there is no due process procedure provided in statute. Generally, a RIF occurs when there is a program change or a financial exigency to create a justifiable reduction in the number of teaching positions. SB 191 amended the statutory RIF provision. Under prior law, a school board had discretion whether to address RIFs in a contract between the school board and teachers, in board policy, or not at all. The law now requires school boards to define their RIF process. This requirement may be satisfied by school board policy or language in employee contracts or collective bargaining agreements.

SB 191 removed the statutory default language, applicable in the absence of contrary provisions in contract or policy, requiring cancellation of teacher contracts essentially by seniority, beginning with first year teachers. Instead, the statute now requires boards to give significant consideration to teachers' performance or "merit," as reflected in their performance evaluations, when determining which contracts to cancel. Effective Feb. 15, 2012, the law requires each school board's policy or contract to include consideration of length of service in the district and probationary and nonprobationary status but only after the consideration of merit, and only if such consideration is in the best interest of the students in the school district.

MUTUAL CONSENT / DISPLACEMENT

The concept of mutual consent, as defined in SB 191, affects school boards' ability to transfer nonprobationary teachers who are displaced as a result of board action taken pursuant to a drop in enrollment, turnaround, phase-out, reduction in program or reduction in building. Colo. Rev. Stat. 22-63-202(2)(c.5). In summary, the law requires both the teacher and receiving school's principal to consent prior to the teacher's transfer. The law also allows a school board to terminate a nonprobationary teacher who is unable to secure a mutual consent placement after one year or two hiring cycles, whichever is longer. Mutual consent has limited application in smaller districts because the consent requirements only apply when a displaced teacher's transfer places him/her under the supervision of a new principal. Mutual consent is a complex process and districts should discuss these requirements with counsel before taking any personnel action.

SAFE AND SUPPORTIVE SCHOOLS

A safe and supportive learning community is as essential as any other tool to a child's educational success. This community is powerful because it fulfills students' basic psychological needs for belonging, autonomy, influence, competence and physical security. As those basic needs are met, students tend to become increasingly committed to the school community's norms, rules and values. This sense of belonging changes student behavior in a positive way and sets students up for high achievement.

What makes school a place where students feel safe and supported? Four core elements were identified by the Learning First Alliance, an organization of 12 leading national education associations in *Every Child Learning: Safe and Supportive Schools*, a report published in November 2001.

The four core elements are:

1. A supportive learning community, including:
 - A challenging and engaging curriculum for all students
 - Respectful, supportive relationships among and between students, school staff and parents
 - Frequent opportunities for student participation, collaboration, service, and self-direction
 - A physical plant that promotes safety and community
2. Systematic approaches to supporting safety and positive behavior, including:
 - Schoolwide approaches to climate, safety, and discipline
 - Orderly and focused classrooms
 - A continuum of support for the few students who need them
3. Involvement of family, students, school staff, and the surrounding community.
4. Standards and measures to support continuous improvement based on data.

Leadership LEARNING



Safe Schools

What steps are your school leaders taking to ensure a safe learning environment?

SCHOOL CLIMATE AND SAFETY

In order to provide a learning environment that is safe, conducive to the learning process and free from unnecessary disruption, the board of education is required to adopt and implement a safe schools plan. Colo. Rev. Stat. § 22-32-109.1.

As a starting point, boards are required to adopt a mission statement for the district that includes making safety a priority. Boards also have a duty, as part of the safe schools plan, to adopt a conduct and discipline code that must include a bullying prevention and education policy and be enforced uniformly, fairly and consistently for all students. Copies of the code must be provided to each student upon enrollment at the elementary, middle and high school levels and posted or kept on file at each school.

It is important to remember that parents and students often form their strongest impressions of a school's climate from rules established by the board and administration. It is up to the board of education to establish the tone.

Each local board must establish a crisis management policy that, at a minimum, sets forth written procedures for taking action and communicating with local law enforcement agencies, community emergency services, parents, students and the media in the event of a crisis. In an effort to facilitate the sharing of information among various agencies that serve juveniles, local boards of education are responsible, to the extent possible, for developing written agreements with law enforcement officials, the juvenile justice system and social services to keep each school environment safe.

All these issues related to student discipline and school safety are critical to the daily operation of the school district and have a significant impact on the board's efforts to focus on and improve academic achievement. The learning environment must be safe, secure and free from disruption for teaching and learning to occur. At the same time, it is important to remember that the rights of school officials to adopt and enforce reasonable rules of student conduct are not unlimited. Certain constitutional, statutory and regulatory laws protect students from arbitrary and unreasonable discipline.

While school board members need to be mindful of the legal issues at stake when student discipline matters arise, it is essential that school administrators have a thorough understanding of the law because they are the people responsible for imposing consequences on students on a daily basis. The constitutional rights that students learn about in the classroom can best be modeled through a judicious approach to discipline.

THE BOARD'S ROLE IN STUDENT DISCIPLINE

Boards become involved in discipline by setting policies that comply with current laws and meet the unique needs of the district and its students.

Student codes of conduct and sanctions for violating the conduct code are developed by boards of education through policy. Enforcement is generally an administrative function carried out by the building principal or classroom teachers. Discipline policies are sometimes challenged in court, but the courts will generally defer to the decisions of school officials in enacting rules of conduct if the rule relates to legitimate school concerns, such as avoiding disruption, maintaining a safe school environment, or promoting learning. However, if the rule infringes on the constitutional rights of a student, it will be judged by a higher standard, generally balancing the student's and the school's interest.

Discipline policies will be upheld by the courts if they are:

- Clear and understandable
- Provide fair notice to students (generally through a student handbook)
- Provide a rational relationship between the rule and the educational purpose, such as avoiding disruption, promoting a safe learning environment and protecting property

In addition to policy development, a board of education becomes involved in student discipline when it is necessary to expel a student from school. In many districts, the boards have delegated authority to an administrator or third party to hear the expulsion case. However, even when such authority is delegated, the student is provided an opportunity to appeal the expulsion decision to the board of education. In those cases, the board of education acts as an impartial decision-maker, listening to the recommendations of the administration and the defense of the student. All parties, including the board, are often represented by legal counsel during the proceeding.

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