

Liability of School Personnel/Staff Protection

Protection from lawsuits

In order to provide teachers, principals and other school professionals the tools they need to maintain order, discipline and an appropriate environment, state and federal law provide certain liability protections. The federal liability protections preempt state law to the extent state law is inconsistent, but do not preempt state law that is consistent and provides additional protection from liability. Applicability of state and federal liability protections to specific circumstances shall be made on a case-by-case basis. Exceptions stated in state and federal law may reduce or preclude liability protection.

Immunity for enforcement of discipline code and other actions

An act of a teacher or other employee shall not be considered child abuse if the act was performed in good faith and in compliance with Board policy and procedures.

A teacher or any other person acting in good faith and in compliance with state and federal law and regulation, the discipline code adopted by the Board and other policies, regulations, rules and procedures of the district shall be immune from criminal prosecution or civil liability, unless the person acted willfully or wantonly, for:

1. taking action regarding the supervision, grading, suspension, expulsion or discipline of a student
2. making a report consistent with federal law to the appropriate law enforcement authorities or officials of a school or school district if the employee had reasonable grounds to suspect that the student was:
 - under the influence of or in possession of alcohol or a controlled substance not lawfully prescribed to the student
 - in possession of a firearm
 - involved in the illegal solicitation, sale or distribution of alcohol, a controlled substance not lawfully prescribed to the student or a firearm

A teacher or any other person claiming immunity from criminal prosecution may file a motion with the court prior to trial. If immunity is not granted and a criminal action is brought, it is an affirmative defense that a person is acting in good faith and in compliance with the discipline code.

A teacher shall not be subject to any disciplinary proceeding including dismissal for actions that were in good faith and in compliance with the district's discipline code, nor shall a contract nonrenewal be based on such lawful actions.

Disciplinary information to school personnel

In accordance with state law, the principal or designee is required to communicate disciplinary information concerning any student enrolled in the school to any teacher who has direct contact with the student in the classroom and to any counselor who has direct contact with the student. The purpose of this requirement is to keep school personnel apprised of situations that could pose a risk to the safety and welfare of others.

Any teacher or counselor to whom disciplinary information is reported shall maintain the confidentiality of the information and shall not communicate it to any other person. The principal or designee is required to inform the student and the student's parent/guardian when disciplinary information is communicated and to provide a copy of the disciplinary information. The student and/or the student's parent/guardian may challenge the accuracy of disciplinary information through the process outlined in JK-R, Student Discipline.

False reports against employees

State law provides criminal penalties for certain persons, including students at least ten years of age, who intentionally make false accusations of criminal activity against school district employees.

Adopted: October 12, 2010

LEGAL REFS: C.R.S. 22-12-101 *et seq.* (*Teacher and School Administrator Protection Act*)
C.R.S. 22-32-109.1 (9) (*immunity provisions in safe schools law*)
C.R.S. 22-32-126 (5) (*disciplinary information to staff*)
C.R.S. 24-10-102 *et seq.* (*governmental immunity*)
20 U.S.C. 6731 through 6738 (*Coverdell Teacher Protection Act contained in No Child Left Behind Act of 2001 limits the liability of school personnel*)

CROSS REFS.: GCQF, Discipline, Suspension and Dismissal of Professional Staff
JK, Student Discipline and subcodes

Swink School District #33, Swink, Colorado