

## Memorandum

To: Mancos School District (“District”)

Re: Answers to Questions about Medically Excused Absences

From: Miller Farmer Carlson Law LLC

Date: September 6, 2023

### **I. Questions Presented**

Can the School District require medical documentation (i.e. a doctor’s note) before excusing a student absence? What about privacy issues?

### **II. Excused Absences and Documentation**

Under Colorado law, school districts are required to excuse student absences when a student is “temporarily ill or injured” or “for an extended period due to a physical disability or a mental or behavioral health disorder.”<sup>1</sup> Further, Colorado regulations define an "Unexcused Absence" as "a student . . . absent from school without a valid and verifiable excuse by the parent/guardian that is consistent with school or board policy."<sup>2</sup> If school officials determine "that a parent's excuse is not valid or verified, the absence shall be unexcused."<sup>3</sup> As a result, the school district is extended discretion to determine how an absence can be “valid or verified,” which one could reasonably conclude includes requiring medical documentation. As a practical matter, many of the school district policies surveyed, including the board policy JH for Mancos School District includes language that, “. . .the district may require suitable proof . . . including written statements from medical sources.”

### **III. Student Confidential Information**

Schools receive and maintain a lot of private/confidential information about students. To address privacy/confidentiality concerns there are privacy laws in place to ensure students and families can more comfortably share that information with schools. The primary law covering the confidentiality of student information is the federal Family Educational Rights and Privacy Act (“FERPA”). Under FERPA, a school district must keep confidential any “educational records,” defined as records that are directly related to a student and maintained by an educational agency. Medical or doctor’s notes would generally meet this definition and be considered an educational record, and therefore should be kept confidential.

<sup>1</sup> C.R.S. 22-33-104(2)

<sup>2</sup> 1 CCR 301-78 2.00(6))

<sup>3</sup> 1 CCR 301-78 3.02(2)(b)

However, the educational agency may disclose personally identifiable information from an education record of a student without consent if the disclosure is to other school officials within the agency whom the agency has determined have legitimate educational interests.<sup>4</sup> The federal

Department of Education has provided guidance that a “school official” includes a teacher, school principal, president, chancellor, board member, trustee, registrar, counselor, admissions officer, attorney, accountant, human resources professional, information systems specialist, and support or clerical personnel.<sup>5</sup> Other federal guidance states that “Typically, a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.”<sup>6</sup> So, the medical documentation may be shared with or among school officials, but should only be done on a need-to-know basis.

<sup>4</sup> 34 CFR 99.31

<sup>5</sup> See <https://studentprivacy.ed.gov/faq/who-%E2%80%9Cschool-official%E2%80%9D-under-ferpa>

<sup>6</sup> See

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/A%20parent%20guide%20to%20ferpa\\_508.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf)