

EXTENSION
GLOSSARY OF LEGAL ISSUES AND TERMS
Revised April, 2009

ADA Compliance

CSUE must comply with the ADA. Program and office locations must be handicapped-accessible. Individuals with disabilities must be encouraged to so identify themselves and accommodations must be made (i.e. providing signers for the hearing impaired, etc.). Since each circumstance is unique, specific questions should be directed to the Extension Human Resources Office, the CSU Office of Equal Opportunity and Diversity, or the CSU Resources for Disabled Students Office.

Advertising in Extension Publications/on Extension Web sites

Extension has a policy regarding advertising in Extension publications and on Extension Web sites. Please refer to the most recent CSUE *Employee Handbook* for the current policy.

Background Checks

CSU requires background checks on all Extension employees before they are offered a position with CSUE. Background checks are also *required* by CSU for all Extension volunteers. Current procedures for employees and volunteers are available on the CSU Web site (<http://www.hrs.colostate.edu/background/index.html>).

Bank Accounts

Under no circumstance should an extension agent/employee be a signer on any account other than the County Non-Appropriated Account. This would include 4-H club, council, and foundation accounts. Language is provided in the *Colorado 4-H Youth Development Handbook* (https://colorado4h.org/agent_resources/handbook/index.shtml) for use with banks to allow agents access to account information. See also Financial Issues.

Camps – Day Care Licenses

Residential camps of 72 hours or more, under state law, require licensing as a child care center. Day camps of more than 5 days also require licensing as a child care center. Therefore, CSUE recommends that residential camps be limited to LESS THAN 72 hours and day camps be no more than 5 days in length. In addition, receipts for camp registration should specify only that it is a receipt for attendance at the camp. Dates and time of the camp should be included on the receipt.

Certificate of Insurance

See Insurance.

Copyright Issues

Issues surrounding copyright are important to an academic institution. Resources to help avoid copyright infringement and plagiarism are available on the CSUE website.

Conflict of Interest

CSUE has a Conflict of Interest Policy. Please see the most recent copy of the *Employee Handbook-Administrative Guidelines* for the current policy.

Contracts

Only the Director has the authority to obligate CSUE, therefore, all contracts (with a few exceptions) must be signed by the Director. Requests for proof of insurance are made to the University Office of Risk Management. See Insurance in this glossary for more information.

The state of Colorado (CSU and CSUE) is not authorized to sign 'hold harmless' or indemnification clauses. Any contract containing such a clause must be amended to eliminate this requirement. MOU/MOA/Contracts clarifying ONLY programmatic responsibilities, with no insurance, indemnification, or monetary provisions may be signed by the extension employee involved in delivering the program.

Contracts Signed by Youth

See Signatures-Youth

County Fairs

Please see the *Employee Handbook-Administrative Guidelines* – Extension Involvement in County/Area Fairs for the most recent policies and procedures regarding Extension participation in county fairs.

Disclaimers

Should be used in publications (paper or electronic) where commercial products/services are mentioned. Sample wording is available on the CSUE Web site.

Documentation of Legal Status

See Legal Status Documentation

Donations

Extension and 4-H often receive donations. There are strict IRS rules regarding receipts for donations. See **Tax Issues** for additional information. Never provide a receipt for other than what was specifically donated; i.e. a case of potato chips, a quarter horse, etc. DO NOT attempt to value (in terms of dollars) a donation, other than cash itself.

Due Process/Fair Treatment

The fair treatment of individuals is essential in Extension work. Specific policies regarding fair treatment and due process are available in the *Employee Handbook-Administrative Guidelines*. See also Protest Policy.

Fax Legislation

The recent legislation regarding 'commercial faxes,' does not apply to non-profit educational institutions (i.e. CSUE).

Financial Issues

Because Extension is responsible for use of the 4-H name and emblem, Extension is also responsible to assure that funds raised in the name of 4-H are raised and handled appropriately. Information on handling 4-H finances is provided to all new employees at New Staff Orientation. The information includes:

- Specific practices/internal controls which constitute good financial management for 4-H entities.
- Instructions on the disbursement of funds when clubs dissolve.
- When a 1099-Misc. must be issued for prizes or awards.
- Sample language for bank signature cards to allow Extension agents to access 4-H bank records
- Examples of club annual financial reports.
- Information on charitable contributions and IRS requirements.

- Information on livestock sales and awards.
- Sample language to use when requesting financial records from a 4-H club/leader.
- Explanation of the restriction that funds raised in the name of 4-H may not flow to an individual.

Much of this information is also available in the *Colorado 4-H Youth Development Handbook* (https://colorado4h.org/agent_resources/handbook/index.shtml).

Owing money to the 4-H/Extension program may be the basis for denying participation in 4-H/Extension events/programs.

Health Forms

Health forms are required for all youth events longer than 72 hours. Sample forms are available in the *Colorado 4-H Youth Development Handbook* (https://colorado4h.org/agent_resources/handbook/index.shtml).

Insurance and Liability Issues

Liability Insurance protects individuals and organizations when they are accused of injuring another individual. As an employee of CSU, CSUE faculty/staff are protected from claims of liability as long as they are working within the scope of their work as an employee. Authorized volunteers are also protected from claims of liability if they are functioning within their responsibilities as an authorized volunteer. Liability insurance covers only claims of damages brought via a law suit. It does NOT cover medical expenses. Employees and volunteers acting outside the scope of their work would not be covered by the state's liability insurance. Parents of 4-Hers are not covered unless they are registered volunteers, nor are 4-Hers as they are minors.

Often extension agents need a Certificate of Insurance when providing programs at sites other than Extension offices. As of July 1, 2005, CSU is self insured for risk management purposes and no longer under State Risk Management. Since CSU is now self-insured, we are able to list entities/groups/facilities as additional insured on the Certificates. To obtain a certificate go to the CSU Web site, click on "E" under CSU A-Z, then Environmental Health Services, then Insurance in the right side column, then "Insurance Forms" drop down menu. The request for a Certificate of Insurance is listed under Insurance Forms. Fill out the form on line and submit it. The Certificate will be e-mailed/faxed to the requesting party. If you have questions, call the contact listed on the Insurance page. That's all there is to it!

Accident Insurance pays for costs incurred due to an accident. Personal health insurance may also cover costs due to accidents. In the event of **auto accidents** involving either an employee or authorized volunteer, the individual's **auto insurance** is the primary coverage. It would pay to the limits of its coverage before CSU's liability insurance would be activated.

If it is in the best interest of the institution to avoid a lawsuit and settle with a potential litigant, the department/ program (Extension) would stand the expense of the settlement. If a liability claim goes to court, the department/program (Extension) would pay for any settlement costs.

It is in CSUE's best interest to reduce exposure to claims of liability. Liability releases – permission slips, informed consent forms, and waivers are ways of doing this. Samples of these forms may be found in the *Colorado 4-H Youth Development Handbook* (https://colorado4h.org/agent_resources/handbook/index.shtml). In general, the more specific the waiver (to the event/activity), the more protection it will provide. Refusal to sign a waiver may be the basis for refusing participation in an event/program.

Supplemental 4-H Accident Insurance is available for counties to offer to their 4-Hers and leaders. It pays after all other insurance pays, but would cover deductibles, co-pays, etc. CSUE recommends that counties provide the supplemental insurance for all their 4-Hers through a county policy. However, it is also available on a club by club basis.

Leases

The legal entity for CSUE is CSU. Therefore, sub-entities of CSUE, such as 4-H clubs, Master Gardener groups, county leaders' councils, etc., MAY NOT LEGALLY sign leases for the rental of property. Leases signed by such entities will not be legally enforceable. All leases must be signed by the appropriate authorities of CSU. Notify the Director's Office immediately if a lease is being discussed. Note that separately incorporated entities (such as 501(c) (3) organizations) may legally enter into a lease.

Legal Status-Documentation

Colorado law, C.R.S. § 24-76.5-101, et seq., requires each state agency, including state-supported institutions of higher education, to verify the lawful presence in the United States of each natural person eighteen years of age or older who applies for a state or local public benefit or for a federal public benefit. C.R.S. § 24-76.5-103(1). In order to comply with these requirements, each institution must require each applicant for benefits to produce either a specified form of identification or to execute an affidavit stating that he or she is a United States citizen, a legal permanent resident, or otherwise lawfully present in the United States. C.R.S. § 24-76.5-103(4).

As used in the statute, the term "state or local public benefit" refers to any "postsecondary education" benefits for which payments or assistance are provided to any individual or household by a state agency or by appropriated state funds, including all of the state funded student financial aid programs, as well as any other payments or assistance provided by individual institutions, but not admission to a state-supported college or university. See C.R.S. § 24-76.5-102(3); 8 U.S.C. § 1621(c)(1)(B); Equal Access Education v. Merten, 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

For CSUE, this means that waiving fees for programs we provide, such as Master Gardener Training, does constitute "benefits" to the receiving individual(s). Therefore, we must document the legal status of individuals who receive these "benefits." State approved forms and directions for documenting legal status are available on the CSUE website (link). For more information on this requirement visit the Colorado Department of Revenue home page (<http://www.colorado.gov/cs/Satellite/Revenue-Main/XRM/1216289012112>).

All documentation relating to verification of lawful presence pursuant to C.R.S. § 24-76.5-101, et seq., must be retained for a minimum of three full fiscal years after the forms are completed. In addition, since the forms have Social Security numbers on them, they must be kept in a locked cabinet at all times.

Liens on Livestock

There is a Colorado state listing of liens on livestock. Livestock Sale Committees that are interested in pursuing this issue should be directed to the State of Colorado-Secretary of State's office. The responsibility for checking on liens lies with the Sale Committee, not Extension employees. Please be advised that there are differences of opinion as to how accurate the list is and how often it is updated.

Mailing Lists

Mailing lists are no longer protected by Federal Penalty Mail regulations and are, therefore, subject to release under the Colorado Open Records Act, **unless** they contain names and addresses of youth under the age of 18. If possible, maintain all mailing list names (youth and adult) in ONE database, thus providing the protection that the list cannot be released due to the fact that names of minor children are contained in the list. We are not obligated to 'sort' mailing lists to identify specific individuals/characteristics for release to outside entities.

MOU – MOA – Letter of Agreement

Memorandums of Understanding or Agreement and Letters of Agreement – a rose by any other name – these are all considered contracts and most often require the Director's signature, depending on the terms of the agreement. If money is changing hands, the Director probably needs to sign. Contact the Director's office for confirmation.

MOU – County

The county MOU is the contract between CSU Extension and individual counties or areas which defines the relationship between and responsibility of each party regarding staff and support.

Non-Discrimination Statement

Extension publications, letterhead and notices must contain a statement of non-discrimination. Examples of such statements can be found on the CSUE Web site (<http://www.ext.colostate.edu/non-discr.html>).

Open Meetings Law (Colorado)

The Colorado Open Meetings Law refers to policy making boards and committees. Since Extension committees are advisory in nature, not policy making, they are not subject to the open meetings law, even when the members of those committees may be appointed by the Board of County Commissioners or may operate at the state level.

Photo Releases

Photographs of individuals should not be used without the express permission of the individual (or parents if a minor). Photo release forms are available on the CSUE Web site under Staff Resources (<http://www.ext.colostate.edu/staffres/photorel.pdf>). Pictures taken of groups of people at public events do not require photo release forms. Pictures taken at livestock sales (of buyer and seller) should be handed out with the caution that they are for personal use only and are not to be used for promotional use without the express permission of either party.

Program Fees

The payment of program fees (4-H or other user fees) does not create a contractual obligation on the part of Extension to provide the program. The fee may need to be refunded if the program does not occur, but we are not legally obligated to provide the program should other circumstances make doing so impossible.

Property Ownership

The legal entity for CSUE is CSU, therefore sub-entities of CSUE, such as 4-H Clubs, leaders' councils, etc., **MAY NOT LEGALLY HOLD TITLE** to property. A separately incorporated entity, such as a 501(c)(3) organization, or a Colorado non-profit corporation may legally hold title. Notify the Director's Office immediately if property ownership is being discussed.

Protest by Volunteers, Parents, 4-Hers

Counties are encouraged to have a written protest policy in place where appropriate (for participation in contests, 4-H, etc.). When it is necessary to discipline a program participant, be sure all individuals involved understand the protest policy and have the opportunity to be heard. For more information refer to the Fair Treatment Policy found in the *Employee Handbook-Administrative Guidelines* section on the CSUE website under Staff Resources.

Raffles

In the State of Colorado, raffles are considered legalized gambling and are administered and controlled by the Secretary of State's office. There are strict rules regarding licensing and reporting. Contact the Director's Office for more complete information on how to obtain a raffle license.

Records Retention

In general, records should be maintained for 3 years. Financial records should be kept for 5 years. Volunteer records should be kept for one year past their involvement, unless there is controversy around their participation. Records of volunteer applicants who are denied a volunteer job should be kept for 3 years. Files of historical significance should be kept indefinitely. Consider how historical files are stored – electronic storage is fine, but consider the medium (i.e. 5" floppy disks!).

Release of Information

Colorado law states that we are not obligated to release **mailing lists** containing minors. We also have no obligation to provide tailored mailing lists that we do not maintain (such as – horse leaders in the county). Therefore, CSUE recommends that counties maintain a single database of all extension clientele, including 4-Hers. While it may be possible to sort on various characteristics (4-Hers, leaders, MGs, horse members, etc.), we would not be obligated to do so for anyone asking for such information, and because the list contains minor children, we could not be forced to release it.

In general, all other information commonly found in an extension office would be releasable under the Colorado Open Records Act, including personal notes, e-mail messages, etc. (An exception would be references relating to employment. Note: NOT volunteer references.) CORA requires that requests be presented in writing and allows a 72 hours response time.

Any office presented with a request for the release of records should contact the Director's Office for guidance on the appropriate response.

Restraining Orders

The obligation to enforce restraining orders lies with law enforcement authorities, not Extension. While we may be aware of orders being in place, it is up to the individuals involved to notify law enforcement authorities when a restraining order needs to be enforced.

Rules, Establishing & Enforcing

Please keep in mind that a rule that is not enforced, or is not enforceable, is not a rule. Before establishing specific county rules, be sure that your advisory committee is supportive, and that you are willing and able to enforce the rule (Ex.-driving policies for youth, requirements to show at fair, etc.). In addition, please note that CSU/the state 4-H program will not enforce county rules that are more stringent than state policies or rules at state/national level events and activities.

Sales Tax

The Colorado constitution says that a city or county cannot compel the state (CSU) to collect taxes for them. Therefore, CSU is under no obligation to collect sales tax at county offices; however, CSU does VOLUNTARILY collect tax on its retail sales in Larimer County. In addition, the tax office encourages

all Extension offices to collect sales taxes if the activity being conducted meets the state rules for collection of sales tax. Extension would be exempt if you are conducting sales for a total of 12 days or less and the NET PROCEEDS from the event(s) does not exceed \$25,000. If you conduct sales events for more than 12 days per year, regardless of the net proceeds, you should collect and file sales tax.

Search and Seizure for Illegal Substances

Because law enforcement personnel have different legal requirements regarding search and seizure, it is not advisable for Extension to assume that a search conducted by Extension will result in a legal charge. While it may be enough for Extension to have reasonable suspicion to conduct a search for an illegal substance (alcohol, drugs, and firearms), law enforcement may need probable cause (a different level of proof). So turning over any findings we have may NOT result in a legal consequence for the individual(s) involved. If the involvement of law enforcement is anticipated, they should be involved prior to any search of individuals or premises. Refer to the most recent 4-H policy on searches for more information.

Sexual Harassment/Assault

Any situation involving charges of sexual harassment, sexual assault, or assault MUST be immediately reported to the Director's Office.

Signatures – Youth

Under Colorado law, the signature of an individual under the age of 18 is NOT legally binding. Therefore, any document which is intended to be legally binding, or *might* be construed to be legally binding, may NOT be signed by 4-Hers under the age of 16. This would include the photo release form used by Extension. The 4-H enrollment form, code of conduct, and activity contracts that are commonly used in counties are NOT legally binding contracts and may be signed by 4-Hers and their parents. These documents are intended to clarify organizational expectations for participation. The MQA/Wholesome Meat Act forms may or may not allow for youth to sign. If the intent is to have the 4-Her pledge to follow the practices as set forth in the training, then the 4-Her can sign. If, however, this type of document is used by a Fair as a "legally binding agreement," then the Fair should assure, based on a recent ruling that the parent signs for the youth. The youth should not sign.

Tax Issues

Both CSUE and 4-H are considered to be tax exempt entities able to accept tax deductible contributions. However, contributions must be gifts (meaning no strings attached) and may not be made in return for a good or service. If a good or service is provided, the tax deductibility of the donation is reduced by the fair market value of the good or service received.

All 4-H clubs, councils, entities that have bank accounts should obtain their own EIN number issued by the IRS. They do this by submitting an SS-4. The form and instructions sheet is downloadable from the IRS website: www.irs.gov 4-H Clubs can apply for the EIN by phone, fax, or snail mail. It only takes a couple of weeks to get the number back. Please note that 8a should be checked as "Other nonprofit organization" and the GEN number is 2704.

An EIN number is an IDENTIFICATION number. It does NOT imply tax exempt status. The state tax exemption number for 4-H (98-00794) is used only for purchases for 4-H that will not be resold. It is not a federal tax exempt number and cannot be used for donation purposes. Please refer to the most recent

Colorado 4-H Youth Development Handbook

(https://colorado4h.org/agent_resources/handbook/index.shtml) and the national 4-H website for more information. (<http://www.national4-hheadquarters.gov/library>)

Separately incorporated 501(c)(3) organizations (4-H foundations) using the 4-H name do so with our permission. Any control that Extension has regarding these organizations stems from the use of the 4-H

name. The 4-H name is the property of the USDA and its use is controlled by the following chain of responsibility: USDA-CSREES-State Extension Directors-State 4-H Program Leaders-County Extension Directors-County 4-H Agents. No organization may use the 4-H name without permission. How much control a county 4-H agent or county director wants to wield is a county decision. How much control is allowed at the county level is a state decision. An issue arises when separate entities using the name of 4-H raise funds. Because Extension has the responsibility to assure that funds raised in the name of 4-H are raised and handled according to the law, it is necessary to obtain annual financial statements from such entities. Please refer to the national 4-H website for more information. (<http://www.national4-hheadquarters.gov/library>)

Threats

The threat of a law suit (on any basis) should be reported to the Director's Office. Physical threats should be reported immediately to law enforcement authorities (Dial 911, not CSU!).

Trespassing

Extension is not a regulatory agency, therefore Extension employees have no legal right to inspect property or enter onto an individual's property unless invited by that individual. This policy applies even to **Animal Care and Housing inspections** (4-H livestock) - so be sure to give adequate notice of your visit and get assurance from the family/individual that you are welcome on their property.

Violence

At any indication of physical violence, law enforcement authorities should be notified immediately. Dial 911!

Volunteers

Volunteers (4-H, MG, others) serve at the request of CSUE. We do not have to allow anyone who expresses an interest to volunteer. However, we may not discriminate in our selection of volunteers based on any protected class. We do not have to tell a volunteer why he or she is denied a volunteer opportunity. However, a current volunteer should be afforded 'fair treatment' if they are being denied continuation as a volunteer – including the reason for his/her dismissal and an opportunity to change their behavior once they are made aware of the concerns. Sample language for refusing or dismissing a volunteer, or for putting a volunteer on probation can be found in the *Colorado 4-H Youth Development Handbook* (https://colorado4h.org/agent_resources/handbook/index.shtml) available on the CSUE website.

Volunteer Applications

Volunteer applications are required of all Extension volunteers. Sample applications are available through 4-H or the Master Gardener program. Refusal to complete an application is grounds for denying a volunteer the opportunity to volunteer.