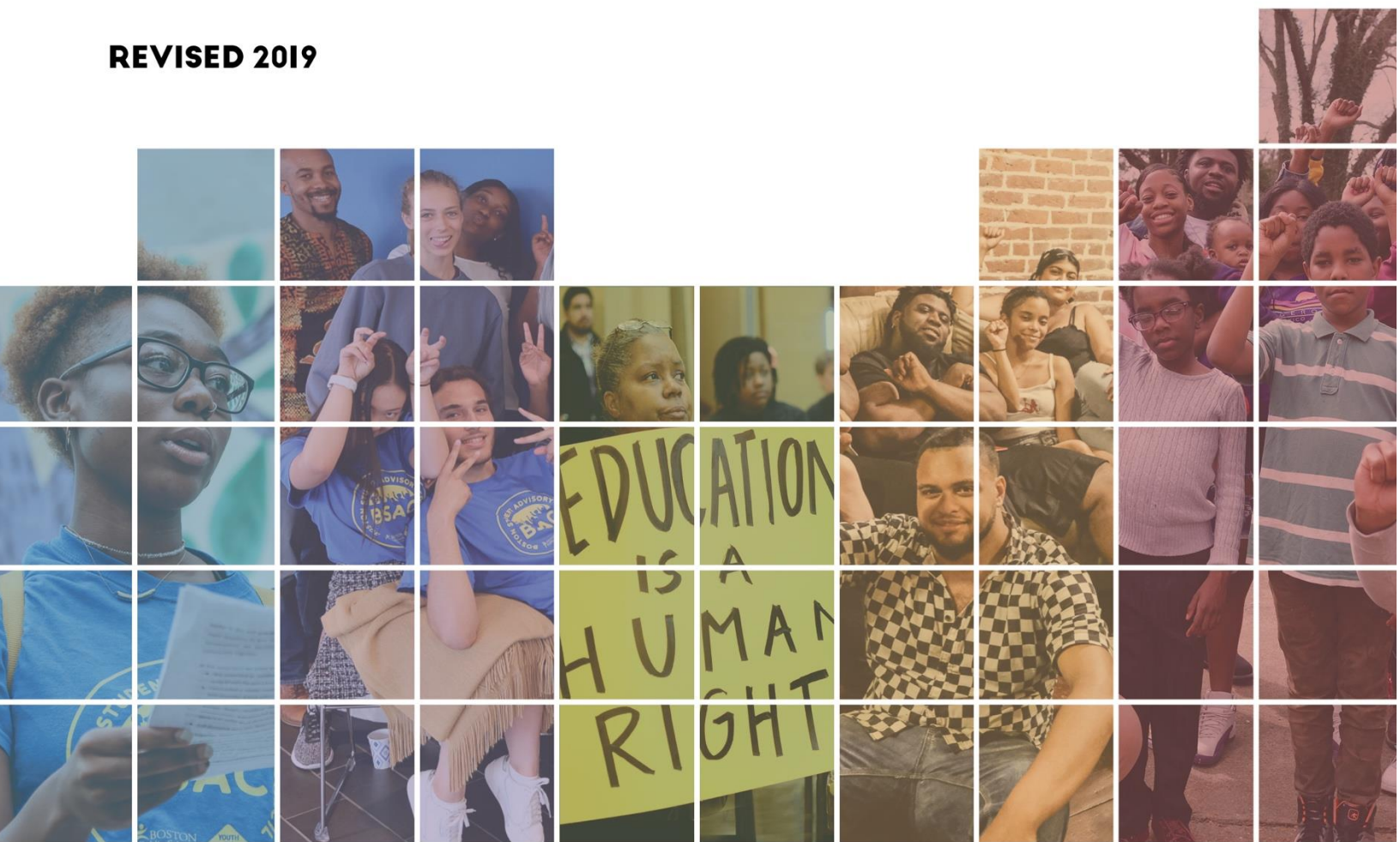


# A MODEL CODE on Education and Dignity

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PRESENTING A HUMAN RIGHTS  
FRAMEWORK FOR SCHOOLS

REVISED 2019



## DIGNITY IN SCHOOLS

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# Acknowledgements

The first draft of the Model Code, circulated for comment in 2009, was developed by members of the Model Code Working Group from the Dignity in Schools Campaign, the Children’s Rights Litigation Committee of the American Bar Association Section on Litigation and various other individuals and organizations that contributed to the project. Members of the Model Code Working Group then reviewed drafts of the Code and gathered input at Dignity in Schools Campaign meetings and at a summit organized by the Children’s Rights Litigation Committee.

The first complete version of the Model Code was published in August 2012. Based on feedback and input from communities, educators and advocates across the country, the Dignity in Schools Campaign updated and re-released a second edition in 2013 and this third edition in 2019.

The following individuals drafted and edited sections of the Model Code as different editions have been published over time: Sarah Biehl, Brittany Brathwaite, Natalie Chap, Maisie Chin, Richard Cohen, Hillary Coustan, Stephanie Coyle, Matthew Cregor, Ruth Cusick, Julia Daniel, Chloe Dugger, Karla Estrada, Laura Faer, Nancy Franklin, Jim Freeman, Christina Gilbert, Chris Gowen, Dean Hill Rivkin, Rosa K. Hirji, Hashim Jabar, Gregory Johnson, Harold Jordan, Cierra Kaler Jones, Monica Llorente, Dan Losen, Tarek Maassarani, Denise Marshall, Kim McGill, Theshia Naidoo, Udi Ofer, Brent Pattison, John Pollock, Charlotte Pope, Marlene Sallo, Zakiya Sankara-Jabar, Benetta Standly, Liz Sullivan-Yuknis, Chris Tan, Marlyn Tillman, Julie Waterstone, Paul Weckstein and Melanie Zuch.

## Early Review Process

The Code was initially reviewed by participants at the American Bar Association Section of Litigation Children’s Rights Litigation Committee Summit, Raising our Hands: Creating a National Strategy for Children’s Right to Education and Counsel, October 23, 2009, Northwestern University School of Law, Chicago, IL; and presented by a panel at the American Bar Association National Conference in August 2010.

## 2011-2012 Editorial Committee

The Editorial Committee collected and reviewed the feedback from editors and communities and completed the final draft in summer 2012. Members of the Editorial Committee include: Sarah Biehl, Ohio Poverty Law Center; Ruth Cusick, Public Counsel Law Center; Joyce Parker, Citizens for a Better Greenville; Liz Sullivan, National Economic and Social Rights Initiative.

## 2011-12 and 2018-19 Community Engagement Processes

In 2011, the Dignity in Schools Campaign launched a community engagement process to gather input from members in 8 states around the country—California, Florida, Georgia, Illinois Louisiana, Mississippi, New York and Pennsylvania—bringing together students, parents and educators to review the draft of the Model Code and provide comments and input. In 2018 and 2019, as we prepared for our updated Model Code to be released, member organizations participated in editing and providing feedback on drafts, primarily through our monthly Campaigns Call. Organizations that participated in either of those community engagement processes in 2011-12 and/or 2018-19 include: ACLU of PA, Access Living (IL), Action Communication and Education Reform (MS), Activists with a Purpose (MS), Advocates for Children of New York, Atlanta Community Engagement Team, Blocks Together (IL), Blue Ribbon Leadership Institute (NC), Children’s Defense Fund Los Angeles, Center for Civil Rights Remedies at UCLA (CA), Children’s Defense Fund New York, Citizens for a Better Greenville (MS), Citizens for Educational Awareness (MS), Community Asset Development Re-Defining Education (CADRE, CA), COFI/ POWER PAC (IL), Concerned Citizens for a Better Tunica County (MS), Desis Rising Up and Moving (DRUM, NY), Elite Education Consultants (VA), Families and Friends of Louisiana’s Incarcerated Children (FFLIC), Generation Y (IL), Girls for Gender Equity (NY), Gwinnett Parent Coalition to Dismantle the School to Prison Pipeline (GA), Labor/Community Strategy Center (CA), Law Office of Piper A. Paul (CT), Mississippi Delta Catalyst Roundtable, New York Civil Liberties Union, Nollie Citizens for Quality Education (MS), Parents and Youth United for a Better Webster County (MS), Parents Across America (NC), Philadelphia Student Union, Philadelphia Teacher Action Group, POWER U (FL), Public Counsel (CA), Racial Justice NOW! (OH and MD), Restorative-DC, Restorative Schools Vision Project (CA Southern Echo (MS), Sunflower County Parents and Students Organization (MS), Teachers Unite (NY), Village of Wisdom (NC) Youth Innovation Movement Solutions (MS), Youth Justice Coalition (CA) and Youth on the Move (NY) and many others.

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# INTRODUCTION

## INTRODUCTION

All children and youth have a human right to quality public education in safe and supportive learning environments. Such an education provides a foundation for access to higher education, meaningful employment and full participation in society. Although communities have fought to secure and improve public education, our educational policies and practices throughout U.S. history have failed to reflect that commitment. As a result, millions of young people are being pushed out of school every year, denying them the opportunity to reach their full potential.

This nation-wide “pushout” crisis is fueled by many factors, including unwelcoming school environments, low expectations for students, zero-tolerance discipline policies and practices, school policing and other punitive disciplinary measures, lack of adequate resources and support for teachers, high stakes testing and narrow curricula, and a lack of needed resources for students like counselors and social workers<sup>1</sup>. School systems also exclude the voices of youth, parents and educators from important educational decisions and adopt top-down approaches that result in policies and practices that fail to address the needs of school communities. Furthermore, the negative effects of these policies and practices disproportionately impact children of color (impacting Black students at the highest rates), English language learners, children with special needs, children from low-income families, students experiencing homelessness or in temporary housing situations, students in the foster care system and children in other marginalized communities. As a result, increasing numbers of these youth are being pushed out of school and into poverty, unemployment and prison<sup>2</sup>. This kind of inequity and structural racism means that in this country students are not getting an equal chance at success, starting as early as pre-K and continuing throughout their education.

Punitive and ineffective approaches to school safety and discipline have dramatically increased over the last three decades, as schools rely more and more on suspensions, expulsions, police interventions and arrests. In the 2015-2016 school year roughly 2.7 million students across the country were suspended and over 120,000 expelled.<sup>3</sup> Perversely, these punitive practices do not improve student behavior; rather, they increase the likelihood that students will fall behind academically and drop out, contributing to an unhealthy atmosphere that affects the entire school community<sup>4</sup>. These practices have proliferated in schools as mass incarceration in the United States has continued to swell, mirroring the same extreme racial disparities. Both systems utilize harsh punishment and removal as their main tools to control behavior, despite the fact that these tactics do not prevent harm and often leave individuals, families and communities worse off. Our failure to end this system of punitive and criminalizing school discipline stymies national efforts to reduce dropout rates, close the achievement gap and improve teacher effectiveness, and continues to feed the school-to-prison pipeline.

Fortunately, best practices for improving school climate and discipline have been developed, and a diverse array of community, civil rights, research, policy and education organizations are working towards their implementation<sup>5</sup>. Across the country, communities are advocating for and winning policy changes to implement school-wide discipline models such as Restorative Justice Practices and School-Wide Positive Behavior Interventions and Supports (SWPBIS), which give teachers and students the tools to build positive school environments and to prevent and respond to conflict in ways that address students’ social, emotional and academic needs. These approaches support young people in learning how to take accountability for their actions without punishment or removal. They can reduce suspensions by up to 50 percent, improve school climate, increase teacher effectiveness and support better educational outcomes for all students.<sup>6</sup> As a result of organizing by the Dignity in Schools Campaign and allies across the country, in 2014, the Obama Administration released the Federal School Discipline Guidance which outlined the civil rights obligations of states, districts and schools under existing law to address racial discriminatory discipline practices. The guidance provides resources for how to implement positive alternatives and promote positive school climates.<sup>7</sup>

This Model Code articulates a vision for all community stakeholders based on the best practices, research and personal experiences of students, parents and educators from around the country. It is also built around a human rights framework for schools which recognizes that the goal of education must be to support all children and young people in reaching their full potential.<sup>8</sup> This human rights framework envisions an educational system where schools adapt to meet the academic, social and emotional needs of every student; where students, parents, and teachers all participate in decisions affecting education; where all students are treated with dignity and attend school free from discrimination of any kind; and where communities play a central role in monitoring education policies and practices to continuously improve educational outcomes for students. In adopting a human rights approach to education, we aim to respect the rights and needs of every individual who studies in, works in and supports our schools.

The Model Code also presents policymakers with recommended language for alternatives to pushout and zero-tolerance practices. We present our recommendations in concrete, prescriptive language, in the form of procedures, criteria and standards to be used by states, districts, schools, educators, students and parents. The Model Code is designed so that communities and policymakers can identify individual topic areas they wish to address, and implement the recommended language while taking into account the diverse needs and characteristics of individual communities. The centerpiece of the Model Code is Chapter 3, which provides a comprehensive framework for school climate and discipline policies. Because all of the policies in this Model Code are part of a broader focus on children's human right to an education, it should be noted that implementing any part of this Code requires communities to engage in a broader conversation about how to shift their collective approach to education. Therefore, we recommend that advocates, schools and communities view this document not only as a prescription for policy change, but also as a catalyst for transforming school culture.

Included in the Model Code are areas of law and policy that break new ground. These innovative recommendations—such as in the areas of right to counsel, right to specific procedures and protections in school suspension and expulsion hearings, removal of all law enforcement from schools, substance abuse prevention, and the right to participation of all stakeholders—are set forth as recommended language to advance the Code's overall goal of protecting children's human right to education. Since we originally published the Code in 2012, we have seen support for these policy recommendations grow as communities across the country are winning major changes in school discipline policies that once seemed impossible.

## Structure of the Model Code

The Model Code is organized into five chapters: 1) Education, 2) Participation, 3) Dignity, 4) Freedom from Discrimination and 5) Data, Monitoring and Accountability. Each of these chapters addresses a key component of providing a quality education and reflects core human rights principles and values. Each chapter includes recommended policies for states, districts and schools.

Chapters 1 and 2 on Education and Participation outline broad principles and standards for high quality education and community participation that lay the groundwork for positive school climates and discipline. Chapter 3 on Dignity focuses on the issue of positive school climate and constructive approaches to discipline. It provides detailed language that can be adopted by states, districts and schools in education codes and policies. Chapters 4 and 5 on Discrimination and Monitoring and Accountability present recommended policies and practices for addressing the disproportionate impact of punitive discipline, and for ensuring quality data collection and effective monitoring of policies.



## 5 Chapters of the Model Code

Education	Participation	Dignity	Freedom from Discrimination	Monitoring & Accountability
<p>Education for the Full Potential of Children &amp; Youth</p> <p>Equity in Education</p> <p>Culturally Relevant Curriculum &amp; Teaching</p>	<p>Stakeholder Participation</p> <p>Rights of Children &amp; Youth to Participation</p> <p>Rights of Parents &amp; Guardians to Participation</p>	<p>School Climate &amp; Positive Discipline</p> <p>Suspensions, Expulsions &amp; Removals</p> <p>Law Enforcement &amp; Criminalization In Schools</p> <p>Truancy Prevention &amp; Status Offenses</p> <p>Alternative Schools</p> <p>Education for System-Involved Youth</p> <p>Model Policies on Specific Topics</p>	<p>Right to Freedom from Discrimination</p> <p>Disproportionate Use of Discipline</p> <p>Racial Disparities in School Discipline</p> <p>Immigrant &amp; Undocumented Students</p> <p>Students with Disabilities</p> <p>LGBTQ+ &amp; Gender Non-Conforming Students</p>	<p>Right to Information &amp; Data Collection</p> <p>Monitoring &amp; Community Analysis</p>

## Content of the Model Code Chapters

**Background:** The background section introduces current educational policies and practices that contribute to school pushout, as well as research and best practices to support the positive solutions presented in the Model Code.

**Chapter Sections:** Each chapter is divided up into sections that address particular areas of concern. In Chapter 3 on Dignity for example, there are seven main sections: 3.1 Key Elements of School Climate and Positive Discipline, 3.2 Guidelines for Suspensions, Expulsions and Removals, 3.3 Law Enforcement and Criminalization in School Environments, 3.4 Truancy Prevention and Dismantling Status Offense Laws, 3.5 Alternative Schools, 3.6 Right to Education for System Involved Youth, and 3.7 Model Policies on Specific Topics.

**Sub-Sections:** Some sections are further divided into more specific sub-sections. For example, within section 3.7 Model Policies on Specific Topics, there are sub-sections on 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports, 3.7.b Model Policy on Restorative Justice Practices, 3.7.c Model Policy on Fighting, 3.7.d Model Policy on Dress Codes, 3.7.e Model Policy on Bullying Behavior, 3.7.f Model Policy on Drugs and Alcohol, and 3.7.g Model Policy on Using an Intervention Team Support Model for “Threat Assessments.”

**Human Rights Goal:** Each individual sub-section identifies a Human Rights Goal on which the policy recommendations are based. This goal reflects the shift in values necessary to achieve not only a change in policy, but also to create a culture that guarantees the rights of students and other stakeholders.

**Definitions:** We provide definitions for terms used in some sections that may require more information.

**Recommended Language:** Each sub-section includes recommended language for policy makers at the school, district and/or state levels to adopt as law or regulation. The Recommended Language in most sub-sections includes the following components:

- General standards or principles that apply to the state, district and school level
- State, district and/or school-level planning teams and policies
- Trainings and other support necessary to implement those policies
- Evaluation and monitoring
- Additional state or federal actions required to fully implement those policies

## The Human Rights Framework in the Model Code

In this Model Code, we take research and best practices for effective education policy from across the country, and place them within a human rights framework that identifies the full development of the child, dignity and participation as key principles necessary for ensuring a quality education. This human rights framework emerged from the struggles of communities around the world to claim their rights and is also recognized by governments in treaties and declarations.

In the United States, human rights have been a fundamental part of our movements for social justice. U.S. civil rights leaders, for example, recognized their work to end segregation as part of a broader human rights movement.<sup>9</sup> Struggles to achieve women's rights, workers' rights and the rights of individuals with disabilities have been framed around notions of human rights as well. The United States, through the leadership of Eleanor Roosevelt, was one of the main authors of the Universal Declaration of Human Rights in 1948.<sup>10</sup>

International documents such as the Universal Declaration and the Convention on the Rights of the Child set out standards for education developed with participation of the United Nations. The Model Code is grounded in these principles because they provide a framework that can help transform our schools by:

- Setting forth a vision for learning environments that support every young person in reaching their full potential and treat students with dignity and respect;
- Shaping a positive message for combating school pushout that shifts practices away from punishing and excluding children towards policies that meet students' needs;
- Calling for school systems to guarantee the right of students, parents and all members of the school community to participate in decision-making; and
- Uniting people through the common message that human rights are universal and apply to everyone.

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<sup>1</sup> ACLU, Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students (2018). Available at: <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors?redirect=copsandnocounselors>

<sup>2</sup> ACLU of PA, Students and the Justice System: Collateral Consequences (2019). Available at: [https://drive.google.com/file/d/1U\\_rBQ0d96-9MupB\\_VczuSldofctIYEi/view](https://drive.google.com/file/d/1U_rBQ0d96-9MupB_VczuSldofctIYEi/view)

<sup>3</sup> Office for Civil Rights, Dept. of Educ., Civil Rights Data Collection 2015-2016. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

<sup>4</sup> Council of State Governments Justice Center, Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement (2011). Available at: [https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf)

<sup>5</sup> Communities for Just Schools Fund, Do the Harder Work--Create Cultures of Connectedness in Schools: A Youth & Parent Organizer Response to the Federal Commission on School Safety (2018) Available at: <https://www.cjsfund.org/do-the-work>

<sup>6</sup> Southern Poverty Law Center, Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in Alabama (2008), available at [http://cdna.splcenter.org/sites/default/files/downloads/Effective\\_Discipline\\_ALA.pdf](http://cdna.splcenter.org/sites/default/files/downloads/Effective_Discipline_ALA.pdf).

<sup>7</sup> Federal School Discipline Guidance Package (2014). Available at: <https://safesupportivelearning.ed.gov/events/webinar/overview-school-discipline-guidance-package>

<sup>8</sup> Foundational human rights provisions for the right to education can be found in: Universal Declaration of Human Rights (UDHR), Article 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 13; Convention on the Rights of the Child (CRC), Articles 28 and 29.

<sup>9</sup> See generally, Carol Anderson, The United Nations and the African American Struggle for Human Rights, 1944–1955 (2003).

<sup>10</sup> See generally, A Brief History of Human Rights: The Universal Declaration of Human Rights (1948), <http://www.humanrights.com/what-are-human-rights/brief-history/the-united-nations.html>.



# A MODEL CODE on Education and Dignity

## CHAPTER I: EDUCATION

### CHAPTER 1: EDUCATION

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#### Background

Children and youth have a fundamental right to a public education that develops their full potential and guarantees equal educational opportunities for all. Guaranteeing a comprehensive human right to education is a necessary prerequisite to increasing achievement, ensuring college readiness and ending school pushout. While state constitutions afford protections for specific aspects of the right to education, and with a few exceptions attempt to establish some minimum standards,<sup>11</sup> there is no fundamental right to education in the U.S. Constitution.<sup>12</sup> Our current legal and policy framework falls significantly short of ensuring equal access to high quality education for all our children and young people. Consequently, our school systems are failing entire communities.

Despite a high level of wealth, the U.S. sends millions of children and youth to schools with insufficient textbooks, high rates of teacher turnover, disproportionately high numbers of teachers without appropriate credentials or training, a low-quality curriculum and crumbling facilities.<sup>13</sup> Schools serving low-income students, students of color, English Language Learners, students experiencing homelessness or in temporary housing situations, and students in the foster care system in particular, have the lowest percentages of highly qualified and experienced teachers.<sup>14</sup> In addition, students of color are disproportionately deprived of high-level courses and challenging curriculum, factors which are strongly related to achievement and educational opportunity.<sup>15</sup> These students are tracked early on towards a lesser education, and afforded “[d]ramatically different learning opportunities—especially disparities in access to well-qualified teachers, high quality curriculum and small schools and classes—[which] are strongly related to differences in student achievement.”<sup>16</sup>

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#### A Guide to Chapter 1

This chapter of the Model Code describes a human rights vision for education aimed at the full academic, social and emotional development of all children and youth. This chapter does not attempt to provide a comprehensive set of recommended policies or implementation guidelines, but rather to identify key principles and standards for federal, state and local governments to adopt, with the aim of ensuring a high-quality education for all young people and an equitable system of education. This chapter lays the groundwork for the rest of the Code. It is divided into three sections.

**Section 1.1 on Education for the Full Potential of Children and Youth** lays out the core program elements of a right to education, including challenging learning goals for all students, an enriched and culturally relevant curriculum, effective instruction tailored to students’ needs, individual attention for students experiencing difficulty, ongoing and accurate assessment of student progress, fair decisions about student promotion and graduation, and the necessary resources and materials to fulfill the right to education. It also calls on school systems to continuously evaluate and adjust educational policies and practices to improve teaching methods and educational outcomes.

**Section 1.2 on Equity in Education** identifies areas of policy and practice where inequities exist that school systems must address in order to level the playing field and ensure that each student reaches their full potential. These include providing access to early education, high quality instruction and culturally relevant curriculum, allocation and distribution of funding to target resources to those students who need additional supports, and equitable teacher distribution and training. Particular concerns related to education equity in charter schools are highlighted as well.



**Section 1.3 on Culturally Relevant Curriculum and Teaching** explains how to ensure that the curriculum, teaching methods and school environment are responsive to all the cultures and communities represented in the school. The policy calls for an assessment of what those cultures are, an assessment of how much each culture is represented in the current curriculum, and methods for integrating examples of each student's culture into the curriculum and school community.

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- <sup>11</sup> Global Rights, The Justiciability of Economic, Social, and Cultural Rights in The U.S.: Domestic Implementation of The Right to Equal Education: A Plan for Action 13-15 (2004), available at [http://www.globalrights.org/site/DocServer/Final\\_Right\\_to\\_Education\\_11.12.pdf?docID=1363](http://www.globalrights.org/site/DocServer/Final_Right_to_Education_11.12.pdf?docID=1363); Roni R. Reed, Note, Education and the State Constitutions: Alternatives for Suspended and Expelled Students, 81 CORNELL L. REV. 582, 94 (1996).
- <sup>12</sup> San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 4-5 (1973).
- <sup>13</sup> For example, in California, "five out of every six schools serving 90-100% Latino, African American, and American Indian students are high poverty schools. By contrast, almost two in three schools serving 0-49% Latino, African American, and American Indian students are low-poverty schools." John Rogers Et Al., California Educational Opportunity Report 2010: Educational Opportunities In Hard Times: The Impact Of The Economic Crisis On Public Schools And Working Families 10 (2010), available at <http://idea.gseis.ucla.edu/publications/eor-10/files-and-documents/EOR-2010-CA-Report.pdf>.
- <sup>14</sup> See generally John Rogers Et Al., California Educational Opportunity Report 2006: Roadblocks to College (2006), available at <http://idea.gseis.ucla.edu/publications/eor-06/EOR-2006.pdf>; Jennifer Imazeki & Laura Goe, The Distribution of Highly Qualified, Experienced Teachers: Challenges and Opportunities (2009), available at <http://www.tqsource.org/publications/August2009Brief.pdf>; Linda Darling-Hammond, The Color Line in American Education: Race, Resources, and Student Achievement, 1 W.E.B. Dubois Rev. (2004), available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEIQFjAA&url=http%3A%2F%2Fwww.stanford.edu%2F~ldh%2Fpublications%2FLDH%2520-The-Color-Line.doc&ei=BO\\_MT4PJFq6E0QG5LB5&usq=AFQjCNGIn4sovo90Dn4bnbj8SvfAflZ6Ww&sig2=b-P4b0Lq7I5nu23x4rn-jg](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEIQFjAA&url=http%3A%2F%2Fwww.stanford.edu%2F~ldh%2Fpublications%2FLDH%2520-The-Color-Line.doc&ei=BO_MT4PJFq6E0QG5LB5&usq=AFQjCNGIn4sovo90Dn4bnbj8SvfAflZ6Ww&sig2=b-P4b0Lq7I5nu23x4rn-jg).
- <sup>15</sup> Darling-Hammond, *supra* note 14.
- <sup>16</sup> In this regard, several studies have shown that class size, at the critical point of a 1 to 18 teacher/student ratio, was a statistically significant determinant of student outcomes, as was small school size. Darling-Hammond, *supra* note 14. Researchers have found that 31% of the predicted difference in mathematics achievement between districts in the top and bottom quartiles was explained by teacher qualifications and class sizes, while 29.5% was explained by poverty, race, and parent education. *Id.*



# A MODEL CODE on Education and Dignity

## CHAPTER I: EDUCATION

### 1.1 Education for the Full Potential of Children and Youth

#### Human Rights Goal

To guarantee the human right to education, schools shall provide all children and youth with the learning tools and content necessary to reach their full potential, to participate fully and effectively in a free society, to live and work in dignity, to improve the quality of their lives, to make informed decisions and to continue learning throughout life.<sup>17</sup>

#### Recommended Language

- A. All children and youth from birth to age 21<sup>18</sup> shall have a fundamental right to education that shall develop each child's mental and physical abilities, personality and talents to their fullest potential<sup>19</sup> and that guarantees equal educational opportunity to all.<sup>20</sup>**
1. This right to education is guaranteed regardless of immigration status (see also Section 4.4 Immigrant and Undocumented Students), or homelessness<sup>21</sup> experienced by a student or their family.<sup>22</sup>
  2. Schools and districts shall not delay<sup>23</sup> or block enrollment due to a lack of specific documents,<sup>24</sup> or place undue burdens on students and their families such as "re-registration"<sup>25</sup> or other procedural barriers to accessing their right to an education.
- B. The aims of the fundamental right to an education shall be to:**
1. Prepare young people for a meaningful life, which includes participating actively in society, attaining employment for a living wage to support themselves and their families, developing understanding, peace and respect among all people, and the opportunity to reach their full potential.
  2. Provide a high-quality education that:
    - a. Addresses the mental, physical, social and emotional needs of children and youth, including adequate access to nutrition and exercise;
    - b. Adapts to different learning needs and styles of individual students;
    - c. Provides appropriate instruction, experiences and discipline for each age and grade level;
    - d. Is relevant to the changing social, cultural, environmental and economic context of different young people; and
    - e. Involves youth as active and effective participants in the educational process.
- C. States, districts and schools shall specify a set of core program elements of a high quality education to which every student is entitled in areas that include learning goals and standards, curriculum, instruction, individual attention, student assessment, rights and responsibilities of each stakeholder, placement and promotion decisions, and participatory decision-making<sup>26</sup> to ensure that every student has a right to:<sup>27</sup>**
1. A school-wide commitment to a clear and specific set of challenging learning goals for all students, consistent with state and district academic standards, and designed to prepare all children and youth to use their minds well—so as to be able to participate in activities characteristic of authentic adult achievement.
  2. An enriched and culturally relevant curriculum that is aligned with the school's learning goals (see Section 1.3 Culturally Relevant Curriculum and Teaching) and includes:
    - a. Core subject areas in English language arts, history, social studies, math and science;
    - b. Students' rights as individuals and the skills to be agents of change in their communities;

- c. Critical thinking, problem solving, respect for oneself and others, and effective communication skills;
  - d. History and culture of the students attending that school and political education about the history and culture of the broader community;
  - e. Knowledge and skills to be able to succeed in entry-level, credit-bearing academic college courses and in workforce training programs;
  - f. Art, music and other creative and engaging subjects that foster academic achievement, school engagement, mental and physical health and creative thinking; and
  - g. Access to recess and physical education, and for elementary and middle school students, access to free play activities.<sup>28</sup>
3. An emphasis on the social and emotional development of students, utilizing culturally affirming social and emotional learning (SEL) (see Section 3.1 for detailed information on SEL).
  4. Effective instructional methods that enable all students to achieve the learning goals, provided by staff who are highly qualified and who in turn regularly participate in ongoing, high quality, intensive professional development. These methods must include:
    - a. Training teachers to have diversified teaching methods in their classroom for students with different learning styles and at different readiness levels;
    - b. Engaging students in the learning process to mentor one another and engage in group and peer-to-peer learning;
    - c. Empowering students to develop independent learning skills through taking individual responsibility for learning and completing necessary tasks; and
    - d. Incorporating youth culture into teaching and learning through art, music, dancing, physical education and the written and spoken word.
  5. Individual attention needed to fully achieve the learning goals, including effective methods for addressing the student's particular learning needs and timely and effective intervention whenever the student is experiencing difficulty in mastering any of the learning goals, including:
    - a. An individualized educational assessment and academic intervention plan that is flexible to meet the needs of each individual student;
    - b. Social and emotional supports and interventions; and
    - c. Access to mentoring, support and counseling to ensure that each student has a relationship with at least one adult in the school.
  6. Regular, ongoing, accurate assessment of the student's progress and mastery of the learning goals, that uses multiple methods for allowing students to fully demonstrate what they know and can do; is an integral part of the classroom instruction; is shared with the student, their parents or guardians and appropriate school staff; and is used to improve the instruction and achievement of the student.
  7. Valid, reliable and fair decisions concerning program placement, promotion, graduation and other actions that may affect the child's access to post-school options, including valid use of assessment information, and full and adequate opportunity to learn any skills and knowledge being assessed.
  8. Resources and materials needed for students to fully avail themselves of the rights set forth in this section, provided in a safe and healthy learning environment conducive to achieving the learning goals.

**D. States, districts and schools shall create a continuous improvement model for education whereby:**

1. Teachers, principals and superintendents are in a position to consistently improve teaching and student outcomes through a cycle of goal setting and resource alignment, instruction, assessment, analysis and adaptation;<sup>29</sup> and
2. Each and every student's progress is tracked and interventions with targeted supports quickly provided so that all students have the opportunity to master challenging curricula.<sup>30</sup>

**E. Youth placed in juvenile or adult correctional settings and youth placed in alternative settings (as described in Section 3.5 and 3.6), are entitled to the same standard and quality of education as every student in a traditional education setting.<sup>31</sup>**

<sup>17</sup> U.N. Convention on the Rights of the Child art. 29 cmt. 1.

<sup>18</sup> Colo. Const., art. IX, § 2.

<sup>19</sup> Mont. Const., art X § 1, cl. 1.

<sup>20</sup> Id.

<sup>21</sup> McKinney Vento Homeless Education Improvement Act of 2001 available at: <https://www2.ed.gov/policy/elsec/leg/esea02/pg116.html>.

<sup>22</sup> UD Department of Health and Human Services Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully in Educational Programs (2014) available at: <https://www2.ed.gov/about/overview/focus/rights-unaccompanied-children-enroll-school.pdf>.

<sup>23</sup> NCHE-Enrolling Children and Youth Experiencing Homelessness available at: <https://nche.ed.gov/downloads/briefs/enrollment.pdf>; see also 42 U.S.C. §11432(g)(3)(C).

<sup>24</sup> US Department of Education Dear Colleague Letter on School Enrollment Processes (2014); 42 U.S.C. §11432(g)(3)(C).

<sup>25</sup> NYCLU Warns New Rochelle School District Against Plans to Re-register Students (2018). Available at: <https://www.nyclu.org/en/press-releases/nyclu-warns-new-rochelle-school-district-against-plan-re-register-students>; Jhone M. Ebert, Residency Guidance, July 19, 2018, available at <https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/89196290-7837-4056-99c9-3da650534e68?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYO&Expires=1847738006&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22ResidencyGuidance%25207-19-18.pdf%22&response-content-type=application%2Fpdf&Signature=EdTSaR2hPIUUMWHz2%2B76mTBoTSo%3D>.

<sup>26</sup> Am. Bar Ass'n Comm'n On Youth At Risk & Am. Bar Ass'n Comm'n On Homelessness And Poverty, Resolution 118A, available at <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/118A.pdf> [hereinafter RESOLUTION 118A] (calling on local, state, and national legislative bodies and educational agencies to implement policies the set out the core program elements of the right to high quality education).

<sup>27</sup> See generally CTR. FOR LAW & EDUC., EDUCATIONAL QUALITY BILL OF RIGHTS (2009), available at <http://www.cleweb.org/sites/default/files/EQBR.FullVersion.pdf>.

<sup>28</sup> COFI/POWERPAC, WBEZ "Recess is Back in Chicago" (2012). Available at: <http://www.cofionline.org/COFI/wp-content/uploads/2015/06/Recess-is-back-at-Chicago-Public-Schools-WBEZ-8-12.pdf>.

<sup>29</sup> See generally Nat'l Working Grp. on Funding Student Learning, Funding Student Learning: How to Align Education Resources with Student Learning Goals 11-12 (2008), available at [http://www.crpe.org/cs/crpe/download/csr\\_files/pub\\_sfrp\\_wrkgrp\\_oct08.pdf](http://www.crpe.org/cs/crpe/download/csr_files/pub_sfrp_wrkgrp_oct08.pdf).

<sup>30</sup> See generally Carol Ascher & Cindy Maquire, Beating the Odds: How Thirteen New York City Schools Bring Low-Performing Ninth Graders to Timely Graduation and College Enrollment (2007), available at <http://annenberginstitute.org/publication/college-pathways-tool-series>.

<sup>31</sup> See Deborah Gordon Klehr, Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students, 16 GEO. J. ON POVERTY L. & POL'Y 585, 589 (2010).



# A MODEL CODE on Education and Dignity

## CHAPTER I: EDUCATION

### 1.2 Equity in Education

#### Human Rights Goal

Schools must ensure equitable access to and implementation of high-quality educational services without discrimination based on race/ethnicity, gender, ability, sexual orientation, gender identity, or any other aspect of their identity. In order to assure equitable access to the right to education, schools shall set high goals and expectations for all children and youth, and ensure that resources, services and instruction are allocated and aligned so that children and youth with the greatest needs have the same opportunity to reach the goals and meet the expectations as their peers.<sup>32</sup>

#### Recommended Language

**A. States, districts and schools shall provide the resources, services and supports necessary to ensure equitable access to education and to achieve equitable outcomes in education for all students.**

1. States, districts and schools shall identify and address particular areas of policy and practice where inequities exist, including but not limited to access to early education, high quality instruction and curriculum, funding and alignment of resources, and teacher distribution and training.

**B. High Quality Early Education and Assessment**

1. All students shall have access to a universal pre-k program that is geared toward age-appropriate development, creative thinking, identity development and school readiness preparation that goes beyond preparation for testing.
2. In all pre-k classes, Early Intervention Assessments must be conducted to identify and address learning disabilities using proven research-based interventions.

**C. High Quality Instruction and Curriculum (see Section 1.3 for model language on Culturally Relevant Curriculum and Teaching)**

1. All students shall have access to high quality instruction and curriculum, including advanced placement and college preparatory classes.
2. In order to place students in a less rigorous or non-college preparatory curriculum, schools must provide parents or guardians with notice including a reason for the change in curriculum, and must obtain written approval for the change from the parent or guardian.

**D. Equitable Funding and Alignment of Resources to Standards**

1. States shall conduct a needs assessment of every district and school to establish the amount of educational resources needed for every student to meet the prescribed learning goals. Resources should be aligned with goals so that all students have a meaningful opportunity to learn.<sup>33</sup>
  - a. At the district level, districts, openly and with community input, shall investigate whether adequate funds are available to schools to:
    - i. Support instructional goals;
    - ii. Provide guidance on practices that best support staff, such as prioritizing resources towards professional development, realigning staffing structures to accommodate strengths and weaknesses of



- existing staff, and finding ways to recruit and retain quality staff through compensation and support systems; and
- iii. Collect timely, detailed fiscal and performance data and train local decision makers in the use of this data for tracking spending and analyzing effectiveness of spending (data on resources shall be tied directly to specific educational programs, staffing configurations and other improvement strategies so that cost-benefit and other analyses can be conducted).
- b. School and student needs shall be established using input and collaboration from parents or guardians, teachers and administrators who have access to data, including on academic achievement, school climate, disciplinary responses, graduation rates and other relevant information. Once clear goals and objectives for student success are identified, they must be clearly communicated so that appropriate district resources can be allocated to support them at the classroom, school and district levels.
- 2. A secure and reliable funding source shall be provided to meet identified costs per student, tied to the actual resources a student needs to master the State's prescribed education program.
- 3. State and local governments shall deliver funding to schools using a formula based on a range of factors that includes but is not limited to: 1) the number of students attending school on a daily basis; and 2) the counts of economically disadvantaged students, students with disabilities, English Language Learners, students experiencing homelessness or in temporary housing situations, students in the foster care system and other indicators at a given school site.

#### **E. Equitable Distribution of High-Quality Teachers**

1. To eliminate teacher shortages and ensure a consistent supply of high quality teachers, states shall raise standards for teacher education and licensing, initiate scholarships and forgivable loans to recruit high-need teachers into the profession (including teachers in shortage fields, those who are from and would teach in high-need locations and teachers of color<sup>34</sup>), create a mentoring and assessment program for all beginning teachers, and invest money in high quality professional development (with special aid to low-achieving districts and schools).<sup>35</sup>
2. States shall provide targeted incentives for highly skilled and specially trained teachers to work in historically underperforming districts and schools.
3. Schools shall invest significant time and money in quality professional development, using the best practices in professional development, including ongoing mentor teacher programs, overstaffing of teaching staff to allow for planning and professional development meetings, and additional paid days for professional development and evaluation. Culturally relevant professional development shall be provided in:
  - a. Subject area knowledge and pedagogy;
  - b. Skills to provide social-emotional support and mentoring to students;
  - c. Building democratic classrooms and participatory approaches to teaching, classroom management and discipline;
  - d. Positive approaches to discipline, including Restorative Justice Practices and School-wide Positive Behavior Interventions and Supports (SWPBIS and
  - e. Understanding structural racism and other economic and social factors in society that impact the educational system, including inequality and the criminalization of youth.
4. Specialists in high quality instruction and research-based services for special needs students shall be available on a regular basis to all school sites with significant numbers of students from socioeconomically disadvantaged backgrounds and students with disabilities in order to attract and retain highly skilled teachers.
5. States and districts shall actively recruit and retain teachers from the communities where schools are located and who reflect the demographics of the student population.<sup>36</sup>
6. States and districts shall review and revise all policies and procedures to eliminate any policies, practices, or systems that discourage or create disincentives for quality teachers to teach at historically underperforming

schools or at schools with high percentages of socioeconomically disadvantaged students or students of color and:

- a. Establish mechanisms that include participation of students and parents or guardians in ensuring equitable distribution of teachers within districts; and
- b. Review and revise all policies and procedures that may cause or result in disproportionate teacher disruption or teacher turnover, including processes for school closure or turnaround that arbitrarily dismiss all staff and/or force all staff to reapply for their jobs.

**F. Charter Schools and Equitable Education – In addition to following all of the above, states, districts and charter schools shall:**

1. Ensure that across both traditional public and charter schools all students, including students with disabilities, English Language Learners, students receiving free or reduced price lunch, homeless students, students in temporary housing situations or students in the foster care system, have equitable access to high quality education, qualified, certified teachers and a full complement of educational and enrichment programs, including in the arts, athletics, music, advanced coursework, Culturally-affirming social and emotional learning (SEL) and school-wide positive approaches to discipline;
2. Ensure that across both traditional public and charter schools' resources are distributed equitably. This means more resources go to schools with student populations that have greater needs and require more services, including students with disabilities, English Language Learners, students receiving free or reduced-price lunch, homeless students or students in temporary housing situations and students in the foster care system;
3. Ensure that the distribution of resources avoids competition between schools or the underfunding of traditional public schools; and
4. Develop a transparent district-wide assessment plan—with participation of communities—which documents the impact of charters on demographic changes, public school closings and geographic distribution of schools and students. The plan should also outline protections to ensure that schools with the highest-need student populations receive more resources and that all students have access to high quality education, in particular addressing inequities in funding that result from students starting at charter schools in the beginning of the year and transferring to public schools later in the year.

<sup>32</sup> U.N. Comm. On Econ., Soc., & Cultural Rights, International Covenant on Economic, Social and Cultural Rights art. XIII (1976), available at <http://www2.ohchr.org/english/law/cescr.htm>.

<sup>33</sup> NESRI, What is Human Rights Budgeting? Available at: <https://www.nesri.org/programs/what-is-human-rights-budgeting>.

<sup>34</sup> Teachers Unite. The Disappearance of Black and Latino Teachers in NYC (2017). Available at: <https://teachersunite.org/wp-content/uploads/2017/10/Disappearance-report-October-17-2014-1.pdf>.

<sup>35</sup> See generally Darling-Hammond, *supra* note 14. Darling-Hammond also cites research that such programs are highly effective. In North Carolina, for example, “the Teaching Fellows Program has encouraged thousands of high-ability college students—a disproportionate number of them male and minority—to enter teaching by underwriting their entire teacher preparation program in state universities. More than 75 percent have stayed in teaching and a large share has gone on to leadership in the public education system.” *Id.*

<sup>36</sup> NBER. The Long-Run Impacts of Same-Race Teachers (2018). Available at: <https://www.nber.org/papers/w25254>.



# A MODEL CODE on Education and Dignity

## CHAPTER I: EDUCATION

### 1.3 Culturally Relevant Curriculum and Teaching<sup>37</sup>

#### Human Rights Goal

In order to fully realize the human right to education, all students must have access to materials, curricula, teaching practices and a school community that affirm and celebrate their varied identities and cultures. A culturally relevant school environment and curriculum means that all students would see themselves in the material they are learning and that their cultures' and communities' accomplishments are celebrated, their histories lifted up, and their stories told.

#### Definitions

1. **Curriculum** – Lessons and academic content taught in a school or in a specific course or program; the courses that are taught by a school or college.<sup>38</sup>
2. **Pedagogy** – Science and art of education, specifically instructional theory; the art or science of teaching; instructional methods.<sup>39</sup>
3. **Culture** – Customary beliefs, social forms, and material traits of a racial, religious, or social group; also the characteristic features of everyday existence (as diversions or a way of life shared by people in a place or time). There are seven elements of culture: Social Organization, Customs and Traditions, Religion, Language, Arts and Literature, Government and Economic Systems.<sup>40</sup>
4. **Culturally Relevant Teaching** – A term created by Gloria Ladson-Billings (1994) to describe “a pedagogy that empowers students intellectually, socially, emotionally, and politically by using cultural referents to impart knowledge, skills, and attitudes.”<sup>41</sup> Culturally relevant teaching creates a bridge between students’ home and school lives, while meeting the expectations of academic requirements.<sup>42</sup>
5. **Intersectionality** – A theory that seeks to examine the ways in which various socially and culturally constructed categories interact on multiple levels to manifest themselves as inequality in society. Intersectionality holds that the classical models of oppression within society, such as those based on race/ ethnicity, gender, religion, nationality, sexual orientation, class, or disability, do not act independently of one another; instead, these forms of oppression interrelate creating a system of oppression that reflects the “intersection” of multiple forms of discrimination.<sup>43</sup> Kimberle Crenshaw developed this framework as a way to describe the particular ways Black women experience oppression.<sup>44</sup>

#### Recommended Language

- A. **States, districts<sup>45</sup> and schools shall ensure that in addition to meeting all the requirements listed for providing a quality education and using effective instructional methods (see Section 1.1 Education for the Full Potential of Children and Youth), the curriculum, teaching methods and school environment for each grade level must have cultural relevance to all the students in the classroom. States, districts and schools shall:**
  1. Complete a yearly assessment of the demographic and cultural make-up of the student body and surrounding community and compare it to the representation of different cultures in the curriculum,<sup>46</sup> teaching style, physical environment, events and holidays of the school system and of individual schools.<sup>47</sup>

- a. This assessment should look at all the different forms of diversity in the student body and surrounding community. A student's culture can include their racial and ethnic identity, language, ability, religion, immigration story, sexual orientation, gender identity, or other identities they bring into the classroom.
  - b. The school's culturally relevant practices should be intersectional and reflect the full diversity of the classroom, not just the majority of the students in the classroom or one aspect of their identity. Be sure to include examples that reflect the intersecting identities the students hold, for example race and ability, or gender and ethnic identity.
2. Ensure that the curriculum includes lessons, readings, activities and examples that are relevant to every student in the classroom and that connect to their culture and multiple identities throughout the school year. Examples across different subject areas include:
  - a. English/Language Arts/Literature curriculum that include authors and subject matter that reflect the students' experiences;
  - b. Math and Science topics, word problems and science experiments that are culturally relevant and highlight achievements of members of different students' cultures;<sup>48</sup> and
  - c. Social Studies/History curriculum that include readings and political education on the history of students' culture, especially told or written from the perspective of members of that community.<sup>49</sup>
  - d. Other examples that incorporate different elements of culture (across Social Organization, Customs and Traditions, Religion, Language, Arts and Literature, Government and Economic Systems).
3. Ensure that teaching styles are responsive to the different cultures represented in the classroom, including but not limited to:
  - a. Adopting "the Centric Idea"<sup>50</sup> that students will learn best when their cultures are centered and they are empowered;
  - b. Finding ways to bridge the material that must be learned with the students' lived experiences so that it is relevant to their lives, also known as "cultural referents";<sup>51</sup>
  - c. Bringing in outside speakers or members of the students' communities to highlight diverse voices and role models for the students;
  - d. Using culturally responsive classroom practices like talking circles;
  - e. Teaching to a full range of learning styles to help students learn in the ways they learn best, such as techniques that support kinesthetic learners;<sup>52</sup>
  - f. Ensuring that increasing self-esteem, pride, self-reassurance and a positive self-outlook are part of the goals of teaching (see Section 3.1 Key Elements of School Climate and Positive Discipline, sub-section B on culturally affirming social and emotional learning);
  - g. Ensuring that all school staff have at minimum basic cultural competence<sup>53</sup> in relation to the cultures represented in the student body and encouraging staff to take additional opportunities to learn more about their students cultures and communities (for example, attending events in the local community; or reading material that will expand their understanding); and
  - h. Adopting positive approaches to managing classroom behavior that are relevant to different learning styles and cultures (see Section 4.2 Disproportionate Use of Discipline, sub-section C on Culturally Responsive Classroom Management).
4. Provide professional development and ongoing access to resources for all school staff to support them in crafting culturally relevant curriculum.<sup>54</sup>
  - a. Trainings should instruct teachers how to center and empower the students in their own cultures, and help teachers unlearn any ethnocentrist views they may have.
  - b. Training should be developed in consultation with youth and parents from the various identities and cultures reflected in the school community. When possible, youth and parents can also be involved in providing the trainings.
5. Ensure that the physical environment, including artwork, decorations, and overall feel of the space is reflective of and welcoming to the cultures of all members of the school community.

- a. Ensure that there is visual representation of people of different racial and ethnic identities on the walls of the school and classroom, while making sure that those images are not limited stereotypical roles or imagery.<sup>55</sup>
  - b. Encourage spaces for students and school staff to bring their own artwork or examples of their cultural aesthetic into the school environment.
6. Ensure that school-wide celebrations, events and the schedule of holiday days off are reflective of the whole student body's culture and traditions.
- a. Ensure that decorations are put up to reflect all the different holidays and important cultural events, not just those celebrated by the majority of the students in the school or those that the staff celebrate.
  - b. Include age-appropriate information and critiques about holidays that may have different cultural connotations for different students, including negative ones (like Thanksgiving, Fourth of July, Columbus Day, etc). Allow time for students to bring their own perspectives on these holidays to the discussion.
  - c. If even a small number of students in the school celebrate a particular holiday or date that requires them to miss school,<sup>56</sup> where possible offer this as a day off for the whole school or district.<sup>57</sup> If that is not possible, avoid scheduling tests or other activities that would be difficult for those students to miss.
  - d. Educate students on holidays that some of their peers may celebrate. Do not expect students who have traditions that are different from others in the school community to be the ones to have to explain their culture if they don't want to (but allow them the space if they do).
  - e. In order to address any first amendment concerns around discussing religious holidays or traditions in a school environment, follow guidance developed by the National Education Association, the American Federation of Teachers and the National PTA in their guide "Finding Common Ground,"<sup>58</sup> which states:
    - i. Have an approach that is academic and not devotional;
    - ii. Focus on the awareness of religions rather than acceptance of any one religion;
    - iii. Sponsor study about religion, not the practice of religion;
    - iv. Expose students to a diversity of religious views and do not impose any particular view;
    - v. Educate about all religions — do not promote or denigrate any religion; and
    - vi. Inform students about various beliefs, rather than conform students to any particular belief.
7. Respond to the requests of students, parents and community members when they propose ideas for improving or adding to the curriculum, especially where the administration or teaching staff does not reflect the cultural background of the parents and students in the school community.
- B. States, districts<sup>59</sup> and schools shall preserve<sup>60</sup> ethnic studies programs where they exist and create new programs where possible.<sup>61 62</sup>**
- C. States, districts and schools shall ensure that other school-wide practices are culturally responsive including:**
1. Any school-wide approach to discipline including Restorative Justice Practices, Positive Behavior Interventions and Supports. (see Chapter 3 generally, and Sections 3.1 Key Elements of School Climate and Positive Discipline and 3.7 Model Policies on SWPBIS and Restorative Justice Practices);
  2. Culturally affirming social and emotional learning (SEL) (see Section 3.1 Key Elements of School Climate and Positive Discipline, sub-section B on social and emotional learning); and
  3. Culturally Responsive Classroom Management techniques (see Section 4.2 on Disproportionate Use of Discipline, sub-section C on Culturally Responsive Classroom Management).

<sup>37</sup> This section is based heavily on the work of Racial Justice NOW! and West Dayton Youth Taskforce, who have been leading local and national work promoting culturally relevant curriculum including releasing a joint toolkit with DSC available at: <http://dignityinschools.org/crctk> and <https://rjnow.org/>.

<sup>38</sup> The Glossary of Education Reform. Available at: <https://www.edglossary.org/curriculum/>.

<sup>39</sup> Adapted from Merriam-Webster Dictionary.

<sup>40</sup> Adapted from Merriam-Webster Dictionary.

<sup>41</sup> Ladson-Billings, G. (1994). *The Dreamkeepers*. San Francisco: Jossey-Bass Publishing Co.



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- <sup>42</sup> Coffey, Heather (2008) Culturally Relevant Teaching. Available at: <http://k12blendedandonlinelearning.weebly.com/uploads/2/3/1/9/23193436/culturallyrelevantteaching.pdf>.
- <sup>43</sup> Girls for Gender Equity, Schools Girls Deserve. Available at: <https://www.ggenyc.org/the-schools-girls-deserve/>.
- <sup>44</sup> Kimberlé Williams Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color (1991). Available at: <https://www.racialequitytools.org/resourcefiles/mapping-margins.pdf>.
- <sup>45</sup> NYC Schools recently adopted Culturally Responsive-Sustain Education <https://www.schools.nyc.gov/about-us/vision-and-mission/culturally-responsive-sustaining-education>.
- <sup>46</sup> Coalition for Educational Justice - Culturally Responsive Curriculum Scorecard. Available at: <https://steinhardt.nyu.edu/scmsAdmin/media/users/atn293/ejroc/CRE-Rubric-2018-190211.pdf>.
- <sup>47</sup> Examples of questions for the assessment can be found in the SCAM Matrix by Victor Gibson, available at: <http://dignityinschools.org/wp-content/uploads/2017/10/SCAM-School-Cultural-Assessment-Matrix-.pdf>.
- <sup>48</sup> A Culturally Relevant Curriculum Webinar on "Histematics" with Mathematics Teacher Akil Parker. Available at: <https://www.youtube.com/watch?v=KjWPAo0tewl>.
- <sup>49</sup> New Jersey Department of Education, New Jersey Amistad Commission. "The Amistad Bill" (2002) Available at: <https://www.nj.gov/education/amistad/about.htm>.
- <sup>50</sup> Dr. Molefi Asante "Afrocentric Curriculum" (1991).
- <sup>51</sup> Ladson-Billings, G.J. (1995). Toward a theory of culturally relevant pedagogy. *American Education Research Journal*, 35.
- <sup>52</sup> University of Massachusetts, Tips for Educators on Accommodating Different Learning Styles. Available at: <https://www.umassd.edu/dss/resources/faculty--staff/how-to-teach-and-accommodate/how-to-accommodate-different-learning-styles/>.
- <sup>53</sup> National Education Association. Diversity Toolkit: Cultural Competence for Educators. Available at: <http://www.nea.org/tools/30402.htm>.
- <sup>54</sup> Johnston, E., D'Andrea Montalbano, P., & Kirkland, D.E. (2017, August 17). Culturally responsive education: A primer for policy and practice. Available at: [https://steinhardt.nyu.edu/scmsAdmin/media/users/atn293/pdf/CRE\\_Brief\\_2017\\_PrintBooklet\\_170817.pdf](https://steinhardt.nyu.edu/scmsAdmin/media/users/atn293/pdf/CRE_Brief_2017_PrintBooklet_170817.pdf).
- <sup>55</sup> Dr. Cynthia Lundgren, Giselle Lundy-Ponce. Culturally Responsive Instruction for Holiday and Religious Celebrations. Available at: <https://www.colorincolorado.org/article/culturally-responsive-instruction-holiday-and-religious-celebrations>.
- <sup>56</sup> Washington Post (2018) "Holidays for all: Asian students ask for a day off school on Lunar New Year". [https://www.washingtonpost.com/local/education/holidays-for-all-asian-students-ask-for-a-day-off-school-on-lunar-new-year/2018/07/08/e7f3d004-7bf3-11e8-80be-6d32e182a3bc\\_story.html?utm\\_term=.2d982dfe4f16](https://www.washingtonpost.com/local/education/holidays-for-all-asian-students-ask-for-a-day-off-school-on-lunar-new-year/2018/07/08/e7f3d004-7bf3-11e8-80be-6d32e182a3bc_story.html?utm_term=.2d982dfe4f16).
- <sup>57</sup> NY Times (2015) "New York City Adds 2 Muslim Holy Days to Public School Calendar". Available at: <https://www.nytimes.com/2015/03/05/nyregion/new-york-to-add-two-muslim-holy-days-to-public-school-calendar.html>.
- <sup>58</sup> Religious Freedom Center, Finding Common Ground. Available at: <https://www.religiousfreedomcenter.org/wp-content/uploads/2015/01/Religion-in-the-Public-School-Curriculum-Questions-and-Answers.pdf>.
- <sup>59</sup> New York Times. "Philadelphia Mandates Black History for Graduation" (2005). Available at: <https://www.nytimes.com/2005/06/25/education/philadelphia-mandates-black-history-for-graduation.html>.
- <sup>60</sup> Where political opposition or budget concerns threaten these programs, using the latest research to show the positive impact of ethnic studies programs on overall academic success for students.
- <sup>61</sup> Nolan L. Cabrera, Jeffrey F. Milem, Ozan Jaquette, and Ronald W. Marx, "Missing the (Student Achievement) Forest for all the (Political) Trees: Empiricism and the Mexican American Studies Controversy in Tucson" *American Educational Research Journal* 51, no. 6 (2014): 1084-1118.
- <sup>62</sup> Lopez, F. A. (2016). Culturally responsive pedagogies in Arizona and Latino students' achievement. *Teachers College Record*, 118 (5). Retrieved from <http://www.tcrecord.org/Content.asp?ContentID=19369>.



# A MODEL CODE on Education and Dignity

## CHAPTER 2: PARTICIPATION

## CHAPTER 2: PARTICIPATION

### Background

More than a system of “checks and balances,” effective stakeholder participation creates quality public school environments that are student, community and success-oriented, builds the social and political capital of all stakeholders to collectively self-govern, creates high level educational processes and fulfills all human rights standards.

Ensuring that students, parents and other stakeholders have a voice in the vast range of school decisions enhances preparation for citizenship, improves schools and leads to a well-supported educational system.<sup>63</sup> It also builds relationships across generations while creating community investment in quality schools for all students. Finally, creating democratic institutions in schools gives teachers and non-administrative school staff a voice in decisions that affect their employment, builds teacher investment and involvement in the school community, and helps establish supportive systems to improve teacher retention.

It is essential that stakeholder participation be re-characterized as both an active, inclusionary practice in and out of the school environment, as well as a means of preventing discrimination in the provision of high-quality education to all children. To invoke a process in the name of stakeholder participation is to invoke the fundamental challenge of our democracy—effective and inclusive self-governance ‘by the people for the people.’ While this challenge has not always been met in practice, our efforts towards democratically based schooling must go unabated—the health of our public education system depends on it. Schools must develop the infrastructure for supporting and sustaining themselves, and the shared commitment, vision and focus required to educate all students.

### A Guide to Chapter 2

Chapter 2 focuses on policies and practices for ensuring the participation of all stakeholders in designing, implementing and monitoring all aspects of the educational system. The processes for stakeholder participation described should be used in implementing the other chapters of the code, especially where stakeholder committees and implementation teams are described. The chapter is divided into four sections.

**Section 2.1 on Stakeholder Participation** identifies students, parents or guardians, community members, teachers, school staff, administrators and all other members of the school community as stakeholders with a right to participate in education at the school, district and state levels. It describes procedures for establishing an advisory committee to design effective processes for stakeholder participation, informing stakeholders of their rights, identifying areas of decision-making requiring stakeholder participation, building the capacity of stakeholders to be informed decision-makers, and monitoring the process of stakeholder participation. The section also specifies how to uphold stakeholder participation in Charter Schools by identifying particular areas of charter school governance where states, districts, charter management organizations and charter schools must support the full participation of all stakeholders.

**Section 2.2 on the Rights of Children and Youth to Participation** describes the processes schools must create to ensure student participation in decisions affecting their right to education, including student councils and advisory bodies, representation on any decision-making bodies, school-wide forums, peer-led disciplinary processes and grievance procedures. It also requires that students be engaged as active participants in the learning process through participatory instructional methods.

**Section 2.3 on the Rights of Parents and Guardians to Participation** calls on schools to create welcoming environments for parents and guardians and to ensure their participation in decision-making affecting school policies

and practices. It also describes their right to observe, monitor and evaluate school policies and practices, to be informed of and participate in decisions affecting their individual child, and to access grievance procedures. Finally, it includes a provision calling on states to guarantee parents or guardians the right to take reasonable leave from employment to attend meetings or events related to their child's education.

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<sup>63</sup> Neville Harris, *Playing Catch-Up in the Schoolyard? Children and Young People's 'Voice' and Education Rights in the U.K.*, 23 INT'L J. L. POL'Y & FAM. 331, 338 (2009).



# A MODEL CODE on Education and Dignity

## CHAPTER 2: PARTICIPATION

### 2.1 Stakeholder Participation

#### Human Rights Goal

Schools and communities must work together to create the methods, procedures and structures to guarantee the rights of students, parents and families, educators, communities and other stakeholders to meaningfully participate in decisions that affect their schools and the right to education.<sup>64</sup>

#### Definitions

1. **Stakeholder** – Any person/group with a vested interest in the educational outcomes at public schools, with such interests including but not limited to: the life success and potential of students and their families; the quality of working conditions for those who are employed at or rendering services to public schools; and the credibility and reputation of those who are charged with the responsibility of producing educational outcomes, paid or unpaid. This includes students, parents or guardians, community members (including the religious community), teachers, school staff and administrators.
2. **Participation** – Any and all forms of involvement in decision-making that produces, impacts or ensures educational outcomes.
3. **Procedural protections** – Procedures defined as fundamental and necessary by law and/or to protect human rights standards.

#### Recommended Language

- A. **Schools shall ensure effective participation of all stakeholders in the school community in developing, implementing and maintaining school systems, educational policies and practices (see Section 3.1 Key Elements of School Climate and Positive Discipline and Section 5.2 Monitoring and Community Analysis).**
- B. **All school and community stakeholders shall have a right to be included in state, district and school-level decision-making processes.**
  1. Schools and stakeholders shall develop clear procedures for shaping, evaluating and revising the process and nature of stakeholder participation.<sup>65</sup>
    - a. A Stakeholder Advisory Committee comprised of a representative of each key stakeholder group—at a minimum, school administration, teachers, parents or guardians and students—shall be formed to oversee the development and enforcement of inclusive decision-making processes and bodies and to disseminate information to stakeholders.
    - b. The Advisory Committee and other bodies for stakeholder participation shall have representation of the demographic groups served by the school system (including race and ethnicity, socio-economic background, nationality, language, ability and other demographic categories).
  2. All methods and procedures for participation shall be available to all stakeholders without discrimination.
    - a. Schools and the Stakeholder Advisory Committee shall establish clear lines of responsibility and a consistent process for airing and remedying grievances of intentional or unintentional exclusion of any stakeholder, with particular communication tactics for ensuring that historically underrepresented

stakeholders such as low-income families, communities of color, immigrants and non-English speakers are aware of and understand how to redress any such grievances.

3. Procedures that are designed to ensure stakeholder participation must allow for the ability to go beyond minimum procedures required by federal, state or local laws and statutes.
4. Stakeholders shall be informed of their right to participate. Schools shall utilize multiple methods of notification, as appropriate, to ensure all stakeholders are aware of existing processes, decision-making bodies or persons and the decisions made.
5. All stakeholders shall have equal responsibility for adhering to, and rectifying any breaches of, the principles and procedures guiding decision-making processes.

**C. Representatives of all stakeholders shall participate in decisions affecting all relevant aspects of education and be accountable to ensure that every student has access to a high-quality education.**

1. The Stakeholder Advisory Committee shall develop transparent, structured opportunities for multiple levels and areas of influence within the educational process and school environment, including but not limited to:
  - a. Needs assessment;
  - b. Program planning;
  - c. Prevention and intervention strategies;
  - d. Training;
  - e. Monitoring; and
  - f. Accountability for the fundamental components of a high quality, highly functioning educational system.
2. The Advisory Committee shall develop and implement a process in which all stakeholders are involved in the early identification of systemic and/or school conditions and practices that impede the fulfillment of a right to quality education, before their consequences are exacerbated.
3. Stakeholders shall be consulted and involved in developing problem-solving and intervention strategies that are designed to involve all stakeholders in protecting and fulfilling students' rights to remain in and/or return to school in the event high quality standards are not met, or circumstances lead to some form of disengagement and re-entry.

**D. States and districts shall provide local schools with control over critical decisions ensuring that principals, teachers, parents or guardians, students and other stakeholders have ownership over critical decisions—paired with adequate monitoring and oversight—related to budgeting, classroom size, hiring and curriculum customization so that instruction can be individualized and tailored to meet students' needs.<sup>66</sup>**

**E. Schools shall build the capacity of all stakeholders to participate in decision-making bodies and processes.**

1. Schools shall create and promote opportunities for all stakeholders to acquire the information and training needed to effectively participate in decision-making bodies and processes, including information and training on:
  - a. All legally binding procedural protections;
  - b. All rights and standards defining a high-quality public education system;
  - c. Skills needed for effective leadership and problem-solving to prepare stakeholders to develop, amend and monitor educational policies and practices;<sup>67</sup> and
  - d. Restorative Justice-based principles and procedures for input gathering, decision-making and addressing post-decision concerns.
2. The Stakeholder Advisory Committee shall develop and oversee distribution of information about such opportunities.
3. Resources for information and training shall be targeted to ensure the equitable representation of all stakeholders.



**F. Processes for stakeholder participation shall be clearly documented and evaluated.**

1. Results of stakeholder participation shall be documented, archived and made available to the public wherever possible, including, but not limited to, multiple perspectives, areas of agreement/disagreement, decision-making processes/persons that led to decisions made, decisions made, concerns raised as a result of decisions made and how concerns are addressed.
2. Clear roles and responsibilities shall be developed for all stakeholders and stakeholder groups, with frequent opportunities for stakeholder groups to engage their representatives and/or submit feedback, input and/or grievances, and for representatives to respond to their stakeholder groups.

**G. Stakeholder Participation in Charter Schools**

1. All publicly funded schools, including charter schools shall support the full participation of stakeholders in the school community to make decisions that impact them. Even where state and district rules do not mandate this participation, charter management organizations and charter schools shall proactively engage their communities in shaping their schools through meaningful decision-making processes.
2. States, districts and charter management organizations and charter schools shall:
  - a. Require that decisions on when to open, when to renew and where to locate charter schools be made with community input and approval, assessments of educational impact and need, and with the collective needs of the district's parents and students in mind.
  - b. Require that the governance of charter schools, as publicly funded institutions, be local, transparent, responsive and accessible to parents, students and the general public.
  - c. Require that any state boards established to review and approve new charters, and renew and monitor existing charters, include representation of all stakeholders, including parents, students and community leaders.
  - d. Require that any district-level boards or committees overseeing charters include community stakeholder representation, such as parents, students, teachers and other members of the broader community that are impacted by those schools.
  - e. Ensure that both parents and the broader school community are part of a democratic and transparent process to elect the governing boards of charters, and ensure that parents and other stakeholders from each school have majority representation on those boards.
  - f. Require all charter schools to be fully compliant with state open meetings/open records laws, including requiring that board meetings to be well publicized and held at times that are convenient for parents, and include designated opportunities for public comment, testimony and input.
  - g. Ensure that all charter schools create welcoming and transparent environments for parents and students to participate in decision-making processes.
  - h. Ensure that all charter school policies, information about staff, instructional strategies, curriculum, school rules, behavior codes and data on educational outcomes and disciplinary practices be accessible and available online and in hard copy by request and in a timely manner.

<sup>64</sup> The right to participation is a cross-cutting human rights principle found in many human rights documents, including the International Covenant on Civil and Political Rights (art. XXV), the Dakar Framework for Action on Education for All, and the International Covenant on Economic, Social, and Cultural Rights (art. XIII).

<sup>65</sup> Teachers Unite. Schools Are Us (2012) Available at: <https://teachersunite.org/publications/schools-are-us/>.

<sup>66</sup> See The Boston Pilot Schools Network Principles, <http://www.ccebos.org/pilotschools/principles.html> (last visited June 4, 2012).

<sup>67</sup> See Paul Abowd, Tired of Teacher-Bashing, Union Educators Grow Their Own Schools, Labor Notes, Nov. 26, 2009, available at <http://labornotes.org/2009/12/tired-teacher-bashing-union-educators-grow-their-own-schools>. Examples of community-run and other alternative models for school governance, both in traditional public schools and in charter and privatized schools, are plentiful.



# A MODEL CODE on Education and Dignity

## CHAPTER 2: PARTICIPATION

## 2.2 Rights of Children and Youth to Participation

### Human Rights Goal

Schools shall enable students to be active and effective participants in the learning process, to express their views and to give input into decisions that affect their lives and education. Schools shall inform students about school policies and practices and their rights connected to them.<sup>68</sup>

### Recommended Language

- A. States, districts and schools shall develop structures that allow students to be heard on issues affecting their education and school policies and procedures, including, but not limited to:**
1. Age-appropriate student councils and advisory bodies providing for student input into the design and function of policies and procedures affecting students;
  2. Student representation on school-wide decision-making bodies (i.e. school leadership teams) and on district and state-level boards of education;
  3. Age appropriate student participation in hiring, granting tenure to and developing training programs for school staff;
  4. School-wide forums—for example, town hall meetings—that offer students an opportunity to voice their opinions about school decisions and policies;
  5. Processes to repair harm, restore trust and identify solutions to school conflict and disciplinary incidents through methods such as peer counseling and mediation, restorative circles, or conferences;<sup>69</sup>
  6. Student participation on School Climate and Culture Leadership Teams and discipline committees, such as fairness committees (see Section 3.7.b Model Policy on Restorative Justice Practices); and
  7. Grievance procedures and a process for appealing decisions that affect students directly, including on issues of curricula, school policy, discipline, and school climate and culture.
- B. States, districts and schools shall ensure that all students and school staff are made aware of and have access to detailed information about school rules, policies, and procedures and state and local laws guaranteeing or affecting students' right to participation, made available in the language the students' understand best.**
- C. States, districts and schools, in partnership with students and other members of the school community, shall create a Students' Bill of Rights.**
- D. States, districts and schools shall ensure that students are active participants in the educational process by working with educators and staff to adopt instructional techniques and classroom management systems that encourage student participation in decision-making, take into account student views, teach students effective leadership and participation skills, and provide explanations to students when decisions go against their views.**

<sup>68</sup> U.N. Convention on the Rights of the Child art. 29 cmt. 1.

<sup>69</sup> Telling it Like It Is. Power U Center. Available at: <https://poweru.org/wp-content/uploads/2018/10/Tell-It-Like-It-Is.pdf>



# A MODEL CODE on Education and Dignity

## CHAPTER 2: PARTICIPATION

### 2.3 Rights of Parents and Guardians to Participation<sup>70</sup>

#### Human Rights Goal

Schools shall enable parents or guardians to be active and effective participants in their child's learning process, to express their views and to give input into decisions that affect their child's education. Schools shall inform parents or guardians about school policies and practices and their rights connected to them.

#### Recommended Language

**A. States, districts and schools shall create welcoming environments for parents or guardians.**

1. Where schools have policies that require official identification to enter the school building, they should give parents or guardians the option to receive an official ID from the school in case they do not have access to an ID through other sources.

**B. States, districts and schools shall ensure that parents or guardians have a right to participate in decision-making affecting school policies and procedures, including, but not limited to:**

1. Informing parents or guardians in a timely and clear manner as to when and how they can participate, and ensuring that all parents or guardians have equal access to information on opportunities for participation,<sup>71</sup> Made available in the language they understand best.
2. Ensuring that parents or guardians have concrete opportunities to make recommendations to schools about effective methods for participation.<sup>72</sup>
3. Creating structured opportunities for parents or guardians to give input, get information and help make decisions (see Section 2.1 Stakeholder Participation and Section 5.2 Monitoring and Community Analysis), including but not limited to:<sup>73</sup>
  - a. Parent or guardian representation on school-level committees and district and state boards of education; and
  - b. Parent Associations and/or Parent-Teachers Associations that are representative of the parent community of a school (ensuring diversity in grade levels and demographic backgrounds of students), and that provide services and information to parents or guardians to support their participation in the school.
4. Providing trainings for parents or guardians on how to effectively hold schools accountable.<sup>74</sup>

**C. States, districts and schools shall ensure that parents or guardians have a right to monitor and evaluate implementation of school policies and practices, including, but not limited to:<sup>75</sup>**

1. Regular, parent or guardian-led school forums at which school staff must listen and respond to parent and guardian assessments;<sup>76</sup>
2. Open and clear communication to parents or guardians about their right to visit schools and classrooms;<sup>77</sup>
3. Parent or guardian-led assessments of schools to identify areas that need more accountability;<sup>78</sup> and
4. Policies that protect parents' and guardians' right to monitor schools' implementation of programs without retaliation.<sup>79</sup>

**D. States, districts and schools shall ensure parents or guardians have a right to participate in decisions affecting their individual child's education including, but not limited to:<sup>80</sup>**

1. Adherence by teachers, administrators and other school staff to an "early warning" system that identifies academic or behavioral challenges as soon as possible and works with parents or guardians to identify solutions;<sup>81</sup>
2. Participation in restorative discipline solutions (see Section 3.7.b Model Policy on Restorative Justice Practices); and
3. Protection of due process rights, including as related to school discipline (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals).
4. Participation in the creation of their child's Individualized Education Plan (IEP) and/or placement in special education services or programs.<sup>82</sup>

**E. States, districts and schools shall establish mechanisms for parents or guardians to participate directly in the educational process in schools, including, but not limited to mentoring and providing supports for students****F. States, districts and schools shall establish policies that outline clear grievance procedures that parents or guardians can use to file complaints, with due process, and establish a clear process of recourse if parents' or guardians' grievances are not resolved with due process.<sup>83</sup>****G. States, districts and schools shall create tools to evaluate parent or guardian participation, including surveys to identify barriers to parental participation and seek recommendations for how to improve participation.****H. States shall enact legislation allowing parents or guardians of students the right to take reasonable leave from employment to attend meetings, events or activities that are related to their child's educational achievement, which includes matters of school discipline.<sup>84</sup>**

1. An eligible employee shall be entitled to a minimum of 24 hours of leave during any 12-month period, in addition to leave available under federal law,<sup>85</sup> to:
  - a. Participate in school activities directly related to the educational advancement of a child of the employee, such as parent-teacher conferences, disciplinary meetings, or interviewing for a new school; and
  - b. Accompany the child of the employee to any hearing, meeting, or proceeding, whether under the school's jurisdiction or otherwise, that could result in the suspension, expulsion or transfer of a student,
2. If the necessity for leave under this section is foreseeable, the employee shall provide the employer with not less than seven days' notice before the date the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as is practicable.

**I. Where a student is a ward or dependent of the state, identified through processes outlined in federal or state law, notification regarding educational or disciplinary decisions made by the student's school shall be provided to the education rights holder, foster parent or legal guardian, student's counsel or guardian ad litem, and the student's child welfare social worker or caseworker and, if the student has one, Probation Officer.**

1. Additionally, where school districts do not have information regarding the education rights holder for a student, they shall work with the above-mentioned parties to ensure notification to the student's holder of education rights.
2. Under no circumstances, however, shall a student who is a ward or dependent of the state be denied full access to his or her education rights due to an adult caretaker or rights-holder's inability or refusal to act on behalf of the child.

<sup>70</sup> This section is guided by the "CADRE Standards of Dignity and Respect for Parents" developed by Community Asset Development Re-defining Education (CADRE), a community-based, membership parent organization in South Los Angeles.

<sup>71</sup> Cmty. Asset Dev. Redefining Educ., CADRE Standards of Dignity and Respect for Parents Standard 3 [hereinafter CADRE]; see also No Child Left Behind Act of 2001, 20 U.S.C.A. § 1118 (West 2003).

<sup>72</sup> CADRE, *supra* note 71 at Standard 5; see also No Child Left Behind Act of 2001, 20 U.S.C.A. § 1114(b)(2) (West 2003).

<sup>73</sup> CADRE, *supra* note 71 at Standard 2; see also No Child Left Behind Act of 2001, 20 U.S.C.A. § 1112 (West 2003).

<sup>74</sup> CADRE, *supra* note 71 at Standard 8.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at Standard 6.

<sup>77</sup> *Id.* at Standard 1.

<sup>78</sup> *Id.* at Standard 9.

<sup>79</sup> *Id.* at Standard 7.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at Standard 4.

<sup>82</sup> 34 C.F.R. § 300.322 and <https://sites.ed.gov/idea/regs/b/d/300.322>.

<sup>83</sup> *Id.* at Standard 10.

<sup>84</sup> See, e.g., The Small Necessities Leave Act, MASS. ANN. LAWS ch. 149, § 52D(b) (LexisNexis 2012). The Massachusetts law itself incorporates the federal Family and Medical Leave Act (FMLA), which provides a ready-made framework for the leave provisions. It is worth noting that the FMLA, and any law incorporating its definitions of eligibility, would not apply to smaller employers with less than fifty (50) employees. States may want to consider lowering that threshold for the school leave provisions, to accommodate parents who work for smaller employers.

<sup>85</sup> Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2611-2615 (2012).



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

## CHAPTER 3: DIGNITY

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### Background

In order to ensure that every child receives a high-quality education, schools must create healthy, respectful climates for learning where the fundamental dignity of students and all members of the school community is protected and nurtured. A school climate that protects human dignity exists when students feel socially, emotionally and physically safe, when there is mutual respect between teachers, students, parents or guardians, and when students' self-expression and self-esteem are supported.

Yet in schools across the United States, degrading school environments and exclusionary discipline practices are undermining teaching and learning, and are pushing young people out of school. In the 2015-2016 school year, roughly 2.7 million students across the country were suspended and over 120,000 expelled.<sup>86</sup> Rather than improve student behavior, these punitive practices increase the likelihood that students will fall behind academically and drop out, and contribute to an unhealthy school atmosphere affecting students and teachers alike. They also reflect a growing criminal justice approach to our schools, utilizing harsh punishment and exclusion as the main tools to control behavior, rather than focusing on meeting students' needs and teaching them how to address conflict and hold each other accountable in healthy ways.

Part of creating positive school climates is preventing schools from too hastily removing students from school without considering the full effect of such action. Exclusionary discipline practices like suspension and expulsion result in a loss of valuable learning time and do not typically change the behavior or deter it from occurring again. In rare cases when exclusion must be an option, schools need to ensure that students and their parents or guardians have a right to fully participate in a fair process for determining appropriate consequences.

To achieve this, states, districts and schools must adopt preventive and positive approaches to discipline that support students in building social and behavioral skills, resolving conflicts in a non-violent manner, and creating productive learning environments. Research has shown that positive approaches to discipline can improve student engagement, academic performance and teacher satisfaction, while also reducing violence and disciplinary incidents in schools.<sup>87</sup> Across the country, educators and communities are advocating for school-wide models for discipline such as Restorative Justice Practices and School-Wide Positive Behavior Interventions and Supports (SWPBIS), which give teachers and students the tools to build a positive school community and to prevent and respond to conflict in ways that address students' social, emotional and academic needs. When implemented, these interventions can reduce suspensions by up to 50 percent, improve school climate, increase teacher effectiveness and support better educational outcomes for all students.<sup>88</sup> They also treat students with dignity and respect, implicitly and explicitly communicating that the students can be trusted to take accountability for their actions without threats of harsh punishment and exclusion.

In order for positive approaches like Restorative Justice Practices and SWPBIS to be successful, states, districts and schools must also minimize and work towards removing all police personnel from schools and eliminating the use of metal detectors and other criminalizing tactics.<sup>89</sup> The presence of police or other law enforcement personnel increases anxiety and contributes greatly to the criminalization of low-income youth,<sup>90</sup> youth of color, youth with disabilities and LGBTQ+ youth. Disproportionate rates of arrest and referrals to the juvenile courts and detention system<sup>91</sup> in turn lead to push out and incarceration later in life.<sup>92</sup> This is how the school-to-prison pipeline operates, feeding mass incarceration in the U.S and denying millions of people the opportunity to reach their full potential.

Change is also essential in the juvenile and criminal justice systems to ensure students' human right to education. Criminal penalties for status offenses, including truancy, should be eliminated and juvenile detention, jails and all "lock-ups" must provide educational services that meet the same standards as regular schools. Juvenile and criminal justice facilities, as well as school systems, must also ensure smooth transitions for students from lock-ups back to schools.

## A Guide to Chapter 3

Chapter 3 on Dignity is the most comprehensive and detailed chapter of the Model Code. It is focused on transforming our school system's approach to discipline in order to end the exclusion and criminalization of youth and create safe and supportive learning environments. The chapter is divided into seven different sections.

**Section 3.1 on Key Elements of School Climate and Positive Discipline** outlines the key elements necessary for any discipline policy to be effective and supportive, including creating a positive school climate and an approach to discipline that responds to misbehavior in constructive ways. It also calls for the elimination of zero-tolerance policies, culturally affirming social and emotional learning (SEL), building Trauma-Sensitive schools and strict limits on the use of exclusion in the form of suspension or expulsion.

**Section 3.2 on Guidelines for Suspensions, Expulsions and Removals** provides additional detailed policies for when and how to use suspensions and expulsions as a last resort, including placing limits on the number of days students can be suspended or expelled, describing the factors schools must consider before excluding a student, prohibiting exclusion for specific behaviors, and providing for quality educational services during the period of exclusion. The section also outlines standards for guaranteeing full due process rights for students facing suspension or expulsion, including the right to an exclusion conference for students facing suspension and the right to a full hearing with appointed counsel at public expense for expulsions.

**Section 3.3 on Law Enforcement and Criminalization in School Environments** calls on states, districts and schools to remove all law enforcement personnel stationed in schools on a regular basis, including School Resource Officers (SROs), police, security guards, probation officers and other law enforcement personnel. It provides model policies to minimize the role of law enforcement that are called into schools, prohibiting involvement of law enforcement in school disciplinary matters as defined in the section. It also outlines guidelines for the training and oversight of any law enforcement personnel that come into contact with schools.

**Section 3.4 on Truancy Prevention and Dismantling Status Offense Laws** directs schools to respond to truancy and improve attendance rates through prevention and intervention strategies, not through criminal penalties, tickets or fines. It calls on school systems and juvenile and criminal justice systems to end the criminalization of students for all status offenses, including for truancy.

**Section 3.5 on Alternative Schools** sets out guidelines for voluntary transfer or placement in alternative schools for students who would benefit from an alternate learning environment. It prohibits involuntary placement for academic reasons, and places limits on placement for disciplinary reasons. It requires that alternative schools meet the same standards as regular educational environments, work with students to conduct progress reviews and ensure that students have the right to return to their original school or a new school placement.

**Section 3.6 on Education for System-Involved Youth** describes students' right to attend school during periods of detention or incarceration and their right to return immediately to regular school with the necessary transition plans, critical supports and transfer of school credits after the period of detention or incarceration.

**Section 3.7 includes Model Policies on Specific Topics**, each one focused on prevention and intervention rather than punishment and criminalization. The Model Policies are on: School-wide Positive Behavior Interventions and Supports (SWPBIS), Restorative Justice Practices, Fighting, Dress Codes, Bullying Behavior, Drugs and Alcohol and an Intervention Support Team Approach for "Threat Assessments."

<sup>86</sup> Office for Civil Rights, Dept. Of Educ., Civil Rights Data Collection 2015-2016. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.



- <sup>87</sup> See generally Russell Skiba Et Al., Are Zero Tolerance Policies Effective in The Schools? An Evidentiary Review and Recommendations (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.
- <sup>88</sup> Instead of Suspension: Alternative Strategies for Effective School Discipline. Available at: [https://law.duke.edu/childdedlaw/schooldiscipline/downloads/instead\\_of\\_suspension.pdf](https://law.duke.edu/childdedlaw/schooldiscipline/downloads/instead_of_suspension.pdf).
- <sup>89</sup> See generally Dignity In Schs. Campaign-N.Y., Platform for Positive School Discipline In New York City Schools (2011), available at [http://www.nesri.org/sites/default/files/DSC-NY\\_Discipline\\_Platform.pdf](http://www.nesri.org/sites/default/files/DSC-NY_Discipline_Platform.pdf).
- <sup>90</sup> See generally Justice Policy Inst., Education Under Arrest: The Case Against Police in Schools (2011), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf); DIGNITY IN SCHS. CAMPAIGN-L.A., Youth Justice Coal & Cmty. Rights Campaign, Solutions for Los Angeles School Police Department: A Blueprint for School Police Reform (2010), available at <http://www.thestrategycenter.org/sites/www.thestrategycenter.org/files/Solutions%20for%20LASPD%20-%202006%20-%20cover.pdf>.
- <sup>91</sup> See generally Justice Policy Inst., Education Under Arrest: The Case Against Police in Schools (2011), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf); DIGNITY IN SCHS. CAMPAIGN-L.A., Youth Justice Coal & Cmty. Rights Campaign, Solutions for Los Angeles School Police Department: A Blueprint for School Police Reform (2010), available at <http://www.thestrategycenter.org/sites/www.thestrategycenter.org/files/Solutions%20for%20LASPD%20-%202006%20-%20cover.pdf>.
- <sup>92</sup> See generally Education Under Arrest, *supra* note 234.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.1 Key Elements of School Climate and Positive Discipline

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#### Human Rights Goal

The purpose of discipline must be to understand and address the causes of behavior, resolve conflicts, repair the harm done, restore relationships and reintegrate students into the school community.<sup>93</sup> School discipline policies shall be aimed at creating a positive school climate, supporting the social and emotional development of students, and teaching non-violence and respect for all members of the school community.<sup>94</sup> By viewing social development as a critical aspect of discipline, states, districts and schools shall anticipate and respond to school disciplinary matters in a manner that is consistent with students' sense of dignity and self-worth, thus creating safer schools<sup>95</sup> In addition, particular attention and intervention support shall be provided to vulnerable families and youth at risk of being pushed out.<sup>96</sup> Schools must adopt a school-wide trauma-sensitive approach that ensures that students who have experienced trauma have space to heal, and are not re-traumatized by school policies or practices.

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#### Definitions

1. **Discipline** – To understand and address the causes of behavior, resolve conflicts, repair the harm done, restore relationships and reintegrate students into the school community. Also, to teach, model and instruct.
2. **Preventive and Positive Discipline** – Preventive and positive approaches to discipline create safe, supportive and positive school climates and respond to misbehavior with interventions and consequences aimed at understanding and addressing the causes of misbehavior, resolving conflicts, meeting students' needs and keeping students in school. There are a variety of school-wide models for positive discipline and this section describes key elements that any model should incorporate. Model Policies in Section 3.7 describe two models in particular that implement those key elements—School-wide Positive Behavior Interventions and Supports (SWPBIS) and Restorative Justice Practices.
3. **Culturally Affirming Social and Emotional Learning (SEL)** – The processes of developing social and emotional skills or competencies in students critical to supporting success in school and throughout life. SEL is based on the understanding that the most effective ways for students to learn is in the context of collaborative and supportive relationships with teachers, staff and their peers to make learning challenging, engaging, and meaningful and to prevent and reduce disruption and conflict. SEL strategies are found to be effective in reducing behavioral problems and increasing academic achievement and should be implemented at all grade levels.<sup>97</sup> These approaches are considered culturally affirming when they seek to build on the students' strengths and culture, rather than applying a single view of what positive social and emotional skills look like to all students.
4. **Exclusion** – Any removal, suspension, expulsion or involuntary transfer that removes a student from their regular classroom. Exclusion should only be used as a last resort and only for a school-based infraction (that takes place on school grounds and during the school's operating hours). More detailed definitions and guidelines for exclusion are provided in Section 3.2 Guidelines for Suspensions, Expulsions, and Removals.
5. **Zero-tolerance** – Any school discipline policy or practice that results in an automatic disciplinary consequence such as suspension or expulsion for a student who commits a listed offense. A school discipline policy may be a zero-tolerance policy even if administrators have some discretion to modify the consequence on a case-by-case basis. Zero-tolerance policies should be eliminated.

- 6. Trauma-Informed/Trauma-Sensitive** – Describes an environment (like a school) that is grounded in an understanding of and responsiveness to the impact of trauma, and that emphasizes physical, psychological, and emotional safety for survivors of trauma. Survivors have support and space to rebuild a sense of control and empowerment. These schools anticipate and avoid policies and practices that are likely to re-traumatize people, and center student voice and participation in the development, delivery, and evaluation of services. Unlike trauma-specific services defined below, this is more of a universal framework that requires changes to the practices, policies, and culture of an entire school, so all staff have the awareness, knowledge, and skills needed to support trauma survivors.<sup>98</sup>
- 7. Trauma-specific Services** – Clinical interventions that are designed to address trauma related symptoms and PTSD directly in individuals and groups.<sup>99</sup> These services may come from social workers, counselors, therapists or other service providers, whereas all school staff can use trauma-sensitive approaches in their day-to-day work with all students.
- 8. Healing Centered Engagement**<sup>100</sup> – Approaches that are similar to trauma-informed care in that they recognize that people who have experienced trauma require additional support, but seek to center the healing and resilience of the person, rather than the trauma. This approach also looks to address the root causes of the trauma in a way that trauma-sensitive approaches may not. For example, many young people may be experiencing trauma due to gun violence in their neighborhood. In healing-centered engagement, while supporting the young people who are impacted by this violence, the school would also be working to address the root causes of the gun violence itself.

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## Recommended Language

- A. States, districts and schools shall establish positive school climates as an essential component of supporting positive educational outcomes and preventing disciplinary problems in schools, including:**
  1. Creating a positive physical environment to foster healthy, respectful climates for learning:
    - a. Displaying positive messages and visuals that convey shared community norms and values and celebrate students' learning and accomplishments;
    - b. Keeping schools clean and healthy for all members of the school community, including ensuring that student bathrooms are kept clean and unlocked for students' use;
    - c. Designating physical spaces in the school where students can go to meet with counselors, support staff and peers, as well as to de-escalate and resolve conflicts; and
    - d. Avoiding bars on windows, gates in hallways or fences with barbed wire that create degrading or criminalized environments (see Section 3.3 Law Enforcement and Criminalization in School Environments for a full list of items to be avoided, including metal detectors, and surveillance technology).
  2. Promoting a participatory and supportive school community<sup>101</sup> to build strong connections between students and staff (see also Chapter 2 on the Right to Participation):
    - a. Creating structures and practices that enable students to be active and effective participants in the learning process, to express their views and to give input into decisions that affect their education (see Section 2.2 Rights of Children and Youth to Participation);
    - b. Holding school-wide conversations through town halls, advisory classes or other mechanisms to develop and regularly discuss shared values, norms and practices for the school to build trust and develop positive relationships between students and staff;
    - c. Creating opportunities for students to express themselves through art, music, cultural celebrations, sports, free play and other activities;
    - d. Making it clear for students who they can go to for help and support; and
    - e. When crisis situations or traumatic incidents occur in the school or community, creating a time and space to discuss what happened and its impact on the school community and to identify supports for students.

3. Providing early intervention for students at risk of being pushed out of school, including students with disabilities, students with behavior issues, students with unstable family and home lives, homeless students, students who have been the target of bullying behavior and students who have a history of discipline problems. Early intervention services may include:
  - a. Ensuring that teachers and other adults listen to students needs and concerns;
  - b. Recognizing and accommodating the responsibilities that some students have with family and work obligations, including having children of their own;
  - c. Conducting surveys asking students what they need and what their concerns are and creating mechanisms to work with students to provide the necessary support;
  - d. Creating a clear process for students, parents or guardians to ask for help or counseling with a quick turnaround time to respond to crisis situations; and
  - e. Developing and supporting student leaders to provide mentoring, intervention and mediation to other students.

**B. States, districts and schools shall implement equity-focused,<sup>102</sup> culturally affirming social and emotional learning (SEL) strategies, which are at the foundation of creating a positive school environment and effectively implementing positive discipline approaches. Schools must:<sup>103</sup>**

1. Teach and reinforce the following competencies in students: self-awareness, self-management and management of feelings, social awareness, how to give and receive criticism, constructive communication skills, relationship skills and responsible decision-making;<sup>104</sup>
  - a. These skills should be building off of the strengths of each student and their culture, rather than having one view of how these skills should be applied to all students.<sup>105</sup> The approach should focus on students' assets and should not assume that students have a deficit of social and emotional skills.<sup>106</sup>
  - b. School staff should also model these competencies in their interactions with students and each other.
2. Adopt specific, structured SEL curricula into classrooms which last at least nine months, (i.e. lesson plans designed specifically to teach core SEL competencies, including self-efficacy, clear and positive identity, recognition for positive behavior, etc.).
3. Infuse SEL activities into regular academic curricula (i.e. introduce restorative circles as routine practice, structure lessons to enhance students' pro-social involvement, ability to work in groups, and/or relationship with parents, etc.).
4. Infuse SEL activities into extracurricular and school-wide activities (i.e. recess, school field days, assemblies, etc.).
5. Incorporate lessons that connect SEL skills to daily life outside the classroom through interactive instruction and providing frequent opportunities for student self-direction.
6. Foster respectful, collaborative and supportive relationships among students, school staff and parents and increase opportunities for healthy bonding among these groups (i.e. providing opportunities for parents to volunteer in classrooms, setting up parent training courses on using SEL techniques at home, creating a parent-teacher SEL book club<sup>107</sup>).
7. Routinely evaluate the effectiveness of such practices, including staff's ability to relate to students through the programs, and adjust them as necessary.

**C. States, districts and schools shall adopt evidence-based, school-wide, preventive and positive discipline policies<sup>108</sup> that are developed with the participation of students, parents or guardians, educators and other stakeholders. These policies must be aimed at understanding and addressing the root causes of behavior; resolving conflicts and repairing the harm done; restoring relationships in the school community; and reintegrating students into the school community (see Section 3.7 Model Policies on School-wide Positive Behavior Interventions and Supports and Restorative Justice Practices) for detailed information on**

**implementing two examples of models that fit these requirements. Whatever model or combination of models that is chosen, the approach must include the following elements:**

1. Creating clear expectations and graduated levels of support and intervention for all students with consequences for misbehavior that are individualized, consistent, reasonable, fair, age appropriate and match the severity of the student's behavior.<sup>109</sup>
  - a. In determining interventions and consequences, schools shall take into account the range of factors described in Section 3.2 Guidelines for Suspensions, Expulsions and Removals, sub-section B on factors that can affect a student's behavior in order to determine appropriate consequences on a case-by-case basis.
  - b. Schools should utilize non-exclusionary discipline responses and alternatives to suspension with support by qualified staff that have the necessary training to carry them out effectively, with the goal of getting to the root of the problem that led to the student's behavior. Some examples of disciplinary responses are listed below that can be used with various approaches (for more information on strategies specific to SWPBIS or Restorative Justice Practices, see Section 3.7 Model Policies on School-wide Positive Behavior Interventions and Supports and Restorative Justice Practices):
    - i. Mediation and conflict resolution;
    - ii. Restorative circles, conversations and family group conferences;
    - iii. Transformative justice approaches;
    - iv. Counseling;
    - v. Tiered Support Team interventions;
    - vi. Community Service; and
    - vii. Written and verbal apologies.
2. Limiting the use of exclusion in the form of suspension or expulsion to only the most serious offenses. Exclusion shall only be used after non-exclusionary discipline alternatives have been carefully considered, tried and documented to the extent reasonable and feasible and only if, after that consideration, it is determined that exclusion from school is absolutely necessary to protect the safety of the school community (Section 3.2 Guidelines for Suspensions, Expulsions and Removals).
3. Eliminating zero-tolerance laws and policies. Federal and state legislators shall repeal zero-tolerance laws<sup>110</sup> and districts and schools shall revise Discipline Codes, Codes of Conduct and discipline policies to eliminate zero-tolerance policies which mandate suspension or expulsion for one or more listed offenses.
4. Prohibiting the use of corporal punishment, restraints, seclusion or physical abuse against students.
5. Ending the regular presence of law enforcement in schools by removing any law enforcement personnel that are assigned to be present on a regular basis in and around a school or set of schools during regular school hours and any school-run activities in the building (see Section 3.3 on Law Enforcement and Criminalization in School Environments).
6. Ensuring that students, parents or guardians, and teachers know and understand all of the school norms, expectations, rules and disciplinary processes. Schools and districts shall:
  - a. Ensure that every student and parent or guardian receives a copy of the discipline policies and student Code of Conduct before school starts or within the student's first week of school. Students that transfer schools or register late throughout the year must receive the policies within a week of registration.
  - b. Host student assemblies or other school-wide forums at each school at least twice per school year to communicate positive core values and behavioral expectations and to explain in an age-appropriate manner the discipline policies and Code of Conduct.
  - c. Conduct classroom lessons on the core values, behavioral expectations and discipline policies at least once a year.
  - d. Hold informational sessions for parents, including one before the start of the school year and at least twice per school year at each school, regarding the discipline policies and Code of Conduct, including:

- i. A clear explanation of the range of disciplinary responses, including preventive and positive approaches to school discipline, suspension, expulsion and referral to law enforcement, students' and parents' rights and responsibilities, and culturally responsive classroom management strategies;
- ii. Due process and appeal procedures, including parents' rights within the disciplinary process and how parents can file complaints regarding disciplinary incidents;
- iii. The school's and district's efforts to reduce exclusionary discipline and racial disparities in discipline referrals and consequences; and
- iv. An opportunity to raise any questions or concerns about the fairness, equity, or clarity of the district's administration of discipline.

**D. Schools shall be Trauma Sensitive<sup>111</sup> by directly engaging the whole school community in addressing the root causes of trauma<sup>112</sup> and dedicating resources to improving students' behavioral health<sup>113</sup> using the strategies listed below. Schools should ensure that students who have experienced trauma are not stigmatized or viewed as having a deficit. Rather, schools should use a healing-centered engagement approach that builds upon the strengths and particular resiliency of each individual student and seeks to address some of the root causes of trauma in the healing process.<sup>114</sup> This includes:**

1. Training administrators, teachers and support staff, including behavior specialists, to understand the sources of trauma, identify the signs of trauma, and be aware of the services and interventions most effective for responding to trauma.<sup>115</sup>
  - a. Staff should understand that students who have experienced trauma may be particularly sensitive to changes in routines, general lack of structure, or other potentially overwhelming situations.
  - b. Schools should work to keep a predictable schedule, avoid disruptions as much as possible, and where they are unavoidable, communicate clearly and work directly with students who have experienced trauma to support them through unexpected challenges (examples could range from sudden changes to their class schedule, to a death in the school community or fire/active shooter drills<sup>116</sup>).
2. Establishing a School Climate and Culture Leadership Team (detailed in Appendix and Section 3.7.a Model Policies on School-wide Positive Behavior Interventions and Supports), that includes staff trained on responding to trauma and parents of students with behavioral health challenges, to address behavioral health needs of individual students and the student body as a whole by planning, coordinating and evaluating services within the school.
3. Developing trauma-sensitive discipline policies, including:
  - a. Using positive disciplinary approaches, including School-wide Positive Behavior Interventions and Support<sup>117</sup>, counseling, Restorative Justice Practices, guidance interventions and other non-exclusionary practices, as a primary response to student misbehavior;
  - b. Balancing accountability with understanding of traumatic behavior so that students are not penalized for behavior that is actually a direct response to trauma triggers; and
  - c. Minimizing disruption to education that results from disciplinary responses.<sup>118</sup>
4. Integrating trauma-sensitive strategies into the whole school climate so that all students gain skills around emotional self-regulation and healthy responses to stressors, including:<sup>119</sup>
  - a. Culturally affirming social and emotional learning (explained in detail above);
  - b. Integrating "brain breaks" into the day;
  - c. Giving students practice in transitioning from different energy levels for different kinds of activities (for example: giving a speech to the class then transitioning to working independently on a written assignment);
  - d. Making sure students have opportunities for physical activity ranging from high-energy activities to stretching or breathing exercises during class; and
  - e. "Peace Corners" or "Cool-down Kits" in classrooms that allow students to notice their own stress levels begin to rise and practice how to take steps to self-regulate through using available self-care items like

scented lotions, weighted blankets, pinwheels for breathing exercises and anything that may help students release stress for 5-10 minutes so they can return to their class work.

5. Linking students who may have experienced trauma to mental health professionals and services within the school and community, including ensuring access to the counseling, supports and accommodations at school guaranteed in Section 504 of the Rehabilitation Act of 1973 and to early intervening services funded through the Individuals with Disabilities in Education Act.<sup>120</sup>
6. Using a youth-centered cross-systems approach that supports students and their families if they must engage with multiple systems, including the juvenile justice and child welfare systems.<sup>121</sup>

**E. States, districts and schools shall provide training, resources and monitoring to ensure implementation of positive school climates and discipline practices and policies, including:**

1. Ensuring that staff at the district level responsible for overseeing design and implementation of the positive discipline policies, as well as school staff responsible for carrying them out, are trained in the theory, principles and strategies of evidence-based culturally-affirming social and emotional learning (SEL) culturally responsive and developmentally appropriate instruction and classroom management, the causes of and effective responses to trauma, positive and restorative approaches to discipline, youth development and other strategies for creating positive school climates.<sup>122</sup>
2. Providing ongoing support and technical assistance for schools to implement and monitor positive approaches (See Chapter 5 on Data, Monitoring and Accountability).<sup>123</sup>
3. Creating a Code of Ethics or Code of Professional Standards for teachers and other staff to promote positive interactions between teachers, students, parents, staff and administrators.
4. Working to provide families and youth training on integrating positive approaches to discipline in school with positive discipline approaches at home and in community institutions.

<sup>93</sup> See *id.* at art. 28 (requiring that governments take “appropriate measures” to ensure that school discipline safeguards the child’s human dignity, and that discipline is consistent with the treaty as a whole); *id.* at art. 38 (protecting children from all forms of cruel, inhuman, and degrading treatment and punishment); *id.* at art. 40 (requiring that children accused of breaking the law must also be treated with dignity, and that any punishment be administered with the goal of reintegration into society).

<sup>94</sup> See U.N. Convention on the Rights of the Child art. 29 (1989) (including the teaching of human rights and fundamental freedoms and the development of personality, abilities, and respect for parents among educational goals).

<sup>95</sup> CASEL. The Impact of Enhancing Students Social and Emotional Learning (2011). Available at: <https://casel.org/the-impact-of-enhancing-students-social-and-emotional-learning-a-meta-analysis-of-school-based-universal-interventions/>.

<sup>96</sup> Prevention efforts include support for particularly vulnerable families, involvement of schools in teaching basic values, and extending special care and attention to young persons at risk.

<sup>97</sup> Collaborative For Academic, Social, And Emotional Learning (CASEL), WHAT IS SOCIAL AND EMOTIONAL LEARNING (SEL)?, available at <http://casel.org/why-it-matters/what-is-sel/>.

<sup>98</sup> American Institutes for Research (2014) Trauma-Informed Care and Trauma-Specific Services: A Comprehensive Approach to Trauma Intervention.

<sup>99</sup> *IBID.*

<sup>100</sup> Shawn Ginwright, “The Future of Healing: Shifting from Trauma Informed Care to Healing Centered Engagement” (2018). Available at: <https://medium.com/@ginwright/the-future-of-healing-shifting-from-trauma-informed-care-to-healing-centered-engagement-634f557ce69c>

<sup>101</sup> See generally Ctr. For Soc. & Emotional Educ. & Nat’l Ctr. For Learning & Citizenship, The School Climate Challenge: Narrowing the Gap Between School Climate Research and School Climate Policy, Practice Guidelines and Teacher Education Policy (2007), available at <http://www.schoolclimate.org/climate/documents/school-climate-challenge.pdf>.

<sup>102</sup> REL Midwest. Integrating an Equity Focus into Social and Emotional Learning. Available at: [https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL\\_MW\\_Integrating\\_a\\_Focus\\_on\\_Equity\\_into\\_Social\\_and\\_Emotional\\_Learning.pdf](https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL_MW_Integrating_a_Focus_on_Equity_into_Social_and_Emotional_Learning.pdf)

<sup>103</sup> Collaborative for Academic, Social and Emotional Learning, Implementation Guidance (2011), available at <http://casel.org/in-schools/implementation/implementation-guidance/>. Greenberg, M. T., Weissberg, R. P., O’Brien, M. U., Zins, J. E., Fredericks, L., Resnik, H., & Elias, M. J., Enhancing school-based prevention and youth development through coordinated social and emotional learning, *American Psychologist*, 58, 466–474 (2003).

<sup>104</sup> Collaborative for Academic, Social, And Emotional Learning (CASEL), Skills & Competencies, available at <http://casel.org/why-it-matters/what-is-sel/skills-competencies/>.



- <sup>105</sup> Simmons, Dena. Why We Can't Afford Whitewashed SEL. (2019) Available at: [http://www.ascd.org/publications/newsletters/education\\_update/apr19/vol61/num04/Why\\_We\\_Can%27t\\_Afford\\_Whitewashed\\_Social-Emotional\\_Learning.aspx](http://www.ascd.org/publications/newsletters/education_update/apr19/vol61/num04/Why_We_Can%27t_Afford_Whitewashed_Social-Emotional_Learning.aspx).
- <sup>106</sup> National Equity Project. Social and Emotional Learning Equity. Available at: <https://nationalequityproject.org/about/social-emotional-learning-equity>.
- <sup>107</sup> See generally Fredericks, L. ET AL., Ideas and Tools for Working with Parents and Families, Collaborative For Academic, Social And Emotional Learning, (2005), available at <http://casei.org/publications/sel-parent-packet-ideas-and-tools-for-working-with-parents-and-families-full-packet/>
- <sup>108</sup> See Am. Bar Ass'n Comm'n On Youth At Risk & Am. Bar Ass'n Comm'n On Homelessness & Poverty, Resolution 118B, available at <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/118B.pdf> [hereinafter RESOLUTION 118B] (calling for implementation of "evidence-based preventive school-wide practices for improving student behavior and creating a safe school climate more conducive to learning").
- <sup>109</sup> See generally L.A. UNIFIED SCH. DIST., Discipline Foundation Policy: School Wide Positive Behavior Support (2007). Available at: [http://notebook.lausd.net/pls/ptl/docs/page/ca\\_lausd/fldr\\_organizations/student\\_health\\_human\\_services/shhs/discipline\\_policy/discipline\\_policy\\_presentations/discipline\\_policy\\_presentations\\_introduction/basic%20policy%201.pdf](http://notebook.lausd.net/pls/ptl/docs/page/ca_lausd/fldr_organizations/student_health_human_services/shhs/discipline_policy/discipline_policy_presentations/discipline_policy_presentations_introduction/basic%20policy%201.pdf).
- <sup>110</sup> See generally Am. Bar. Ass'n Juvenile Justice Comm., ABA Zero Tolerance Policy Report (2010), available at <http://www.maine.gov/education/speced/tools/b4se/reports/discipline/policyaba.pdf>.
- <sup>111</sup> Fix School Discipline Coalition. Available at: <http://www.fixschooldiscipline.org/trauma/>.
- <sup>112</sup> Dorado, J., Martinez, M., McArthur, L., & Leibovitz, T. (2016). Healthy Environments and Response to Trauma in Schools (HEARTS): A whole-school, multi-level, prevention and intervention program for creating trauma-informed, safe and supportive schools. *School Mental Health*, 8, 163-176. Available at <http://dx.doi.org/10.1007/s12310-016-9177-0>.
- <sup>113</sup> ACES Too High, Massachusetts, Washington State Lead U.S. Trauma-Sensitive School Movement, available at <http://acestoohigh.com/2012/05/31/massachusetts-washington-state-lead-u-s-trauma-sensitive-school-movement>.
- <sup>114</sup> Shawn Ginwright, "The Future of Healing: Shifting from Trauma Informed Care to Healing Centered Engagement" (2018). Available at: <https://medium.com/@ginwright/the-future-of-healing-shifting-from-trauma-informed-care-to-healing-centered-engagement-634f557ce69c>.
- <sup>115</sup> National Child Traumatic Stress Network Schools Committee. (October 2008). Child Trauma Toolkit for Educators. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress. Available at: [https://www.nctsn.org/sites/default/files/resources/child\\_trauma\\_toolkit\\_educators.pdf](https://www.nctsn.org/sites/default/files/resources/child_trauma_toolkit_educators.pdf)
- <sup>116</sup> [https://www.nctsn.org/sites/default/files/resources/fact-sheet/creating\\_school\\_active\\_shooter\\_intruder\\_drills.pdf](https://www.nctsn.org/sites/default/files/resources/fact-sheet/creating_school_active_shooter_intruder_drills.pdf).
- <sup>117</sup> Webinar- Integrating Trauma-Informed Approaches within School-Wide Systems of PBIS. Lucille Eber Ed.D. Available at: <https://www.google.com/url?client=internal-uds-cse&cx=007731054799584076895:wuykrqxnm&q=https://www.pbis.org/Common/Cms/files/pbisresources/TX%2520PBIS%2520L.Eber%2520Integrating%2520Trauma%2520Informed%2520in%2520PBIS.%2520June%252027.%25202017.pptx&sa=U&ved=2ahUKewjM4f6AxoXkAhWxT98KHeOqDGYQFjABegQIDxAC&usq=AOvVaw0xD3The8SKaMqtIjzc1o9I>.
- <sup>118</sup> See generally Massachusetts Advocates for Children and Harvard Law School, Helping Traumatized Children Learn (2009), available at [http://www.massadvocates.org/documents/HTCL\\_9-09.pdf](http://www.massadvocates.org/documents/HTCL_9-09.pdf).
- <sup>119</sup> Fix school Discipline Webinar: Addressing Adverse Childhood Experiences in School Discipline. Available at: <https://www.youtube.com/watch?v=hR5NFDUBEtY>.
- <sup>120</sup> Losen, Daniel J. And Tia Elena Martinez, Out of School & Off Track: The Overuse of Suspensions in American Middle and High Schools, 27 (2013), available at [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack\\_UCLA\\_4-8.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf). Also see General Accounting Office, Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education, GAO-13-137 (2013), available at <http://www.gao.gov/assets/660/652437.pdf>.
- <sup>121</sup> The National Child Traumatic Stress Network, Center for Juvenile Justice Reform: Cross System Collaboration (2014) Available at: [https://www.nctsn.org/sites/default/files/resources/cross\\_system\\_collaboration.pdf](https://www.nctsn.org/sites/default/files/resources/cross_system_collaboration.pdf).
- <sup>122</sup> See generally Elizabeth Sullivan & Elizabeth Keeney, Nat'l Econ. & Soc. Rights Initiative & Teachers Unite, Teachers Talk: School Culture, Safety, And Human Rights (2008), available at [http://www.nesri.org/sites/default/files/Teachers\\_Talk.pdf](http://www.nesri.org/sites/default/files/Teachers_Talk.pdf).
- <sup>123</sup> See generally Nat'l Univ. of Ireland, Galway, Pilot Implementation of Restorative Practices in Post-Primary Schools in The Northwest Region (2006), available at <https://www.google.com/search?q=successful+training+for+restorative+practices+teacher&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.2 Guidelines for Suspensions, Expulsions and Removals

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#### Human Rights Goal

Schools must take appropriate measures to ensure that school discipline respects a student's rights to education and dignity by minimizing disruption to the learning process,<sup>124</sup> protecting students from harsh or degrading punishment,<sup>125</sup> and preventing and eliminating discrimination.<sup>126</sup> Schools shall avoid penalizing a student for behavior that does not cause serious damage to the development of that student or harm to others.<sup>127</sup> Schools must guarantee that children and youth have a right to full due process before they can be removed from school and to an opportunity to be heard in any judicial and administrative proceeding affecting them.<sup>128</sup> In any hearing regarding the denial of educational rights, the school system must guarantee that child or young person adequate representation, including the appointment of public counsel. After a student has completed their period of exclusion, they have a right to return to their regular classroom or school. Schools shall provide specialized programs, educational curricula, and wrap-around services to meet the varying needs of young people who were out of school and are at risk of dropping out.<sup>129</sup>

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#### Definitions

- 1. Exclusion** – A removal, suspension, expulsion, or involuntary transfer for discipline reasons from a students' regular classroom.
- 2. Suspension** – Temporary exclusion from the student's daily class schedule, not to exceed 5 consecutive days or 10 total days per school year. Additional limits on the use of suspension are described below in D. The term of suspension shall be served in a classroom at the student's school or in a classroom at an off-site school district facility. In both cases, the student shall receive quality instruction as defined in Chapter 1 on Education. Suspension from a student's daily class schedule or from an individual classroom for more than 5 consecutive days or 10 cumulative days is prohibited in this Model Code.
- 3. Expulsion** – Any long-term exclusion from school attendance and school privileges for a period of more than 5 consecutive days of school or 10 cumulative days of school over the course of a school year, including long term suspensions and expulsions and permanent exclusions from school. Expulsion shall not be a complete cessation of educational services but the removal of the student from his or her current school environment, with alternative educational services provided. Those alternative educational services shall be of the quality defined in Chapter 1 on Education and Section 3.5 Alternative Schools.
- 4. Involuntary Transfer** – Unlike voluntary transfers, involuntary transfers are a school administrator-initiated intervention in which the student is removed from his or her school of attendance to another comprehensive school or continuation school site, usually for the remainder of the school term. Involuntary transfers for academic reasons are prohibited in Section 3.5 Alternative Schools, sub-section C. Policies for involuntary transfers for disciplinary reasons must contain the same due process protections as expulsions, outlined in Section 3.2 Guidelines for Suspensions, Expulsions, and Removals, including guaranteeing the right to a hearing and to appointed counsel at public expense.
- 5. School-based Infraction** – An action taken by a student on school grounds during the school's operating hours or at a school-sponsored function in violation of the school's discipline policies.

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## Recommended Language

### **A. States, districts and schools shall require that exclusion from a student's regular classroom or school only be considered when a student commits the most serious offenses.<sup>130</sup>**

1. No student may be excluded from their regular classroom or school:
  - a. Until and unless non-exclusionary discipline alternatives have been carefully considered, tried and documented to the extent reasonable and feasible;
  - b. Only if, after that consideration, it is determined that exclusion is absolutely necessary to protect the safety of the school community; and
  - c. Only after considering the full impact of the decision to exclude a student on both the student and the school community.
2. Schools shall adopt a school-wide preventive and positive discipline policy as a necessary foundation to addressing safety and discipline in schools (see Section 3.1 Key Elements of School Climate and Positive Discipline and Section 3.7.b Model Policy on Restorative Justice Practices).

### **B. Factors to consider in deciding whether to exclude a student from their regular classroom or school**

1. School administrators must consider whether other factors outside of the student's control contributed to the problem behavior and whether such behavior could be alleviated by helping the student deal with the factors causing the behavior. Examples of such factors include, but are not limited to:
  - a. Mental illness or undiagnosed disabilities;
  - b. Appropriateness of the student's placement or setting;
  - c. Whether the student is or has been a victim of bullying behaviors or classroom environments;
  - d. Family situations such as involvement in foster care, domestic violence, homelessness, poverty, recent death of a loved one, or immigration status;
  - e. Substance abuse or addiction;
  - f. The student's disciplinary history;
  - g. The student's age and ability to understand consequences;
  - h. The student's expression of remorse;
  - i. Whether the student was acting in self-defense;
  - j. Whether the school district made any effort to address the student's behavior using positive, preventive methods prior to the incident at issue;
  - k. If the misconduct involved possession of a "weapon," as defined under school policy, whether the "weapon" in question was brandished or employed as a weapon or in an otherwise threatening fashion;
  - l. The egregiousness of the student's conduct and whether it placed students or staff at serious risk of emotional or physical harm;
  - m. Whether other interventions, such as positive behavior supports and Restorative Justice Practices, can adequately address the behavior at issue while enabling the student to remain in school, and whether such interventions have been tried before with this particular student;
  - n. Whether the student is being disciplined for engaging in bullying behavior and, if so, whether Restorative Justice Practices have been in place, whether the student was exposed to them previously, whether there is a restorative approach to disciplining the student that would be more effective than exclusionary discipline at addressing the problem; and
  - o. Any other relevant circumstances, including whether the student should have been identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. If the student has not previously been evaluated for a disability but has engaged in a pattern of behavior that suggests the student should have been, the school shall immediately begin the procedure to conduct an evaluation as set forth in Section 1414 of U.S. Code Title 20 on evaluation of students with disabilities.<sup>131</sup>

2. If such factors exist, the school administrator must refer the student to appropriate services or interventions as outlined in Section 3.1 Key Elements of School Climate and Positive Discipline before the child may be referred for exclusion. If no such services exist in the community, the school administrator must consult with the student's parent, guardian, or another trusted adult in the student's life before pursuing exclusion.
3. The school administration must document all positive interventions and other disciplinary measures it has tried in addressing the student's behavior and explain why those measures have not worked before choosing to pursue exclusion to address the behavior.

### **C. Limitations on use of school exclusion**

1. No student shall be excluded from school for a first-time offense unless otherwise required by federal or state law, except in the case of an emergency removal.<sup>132</sup>
2. No student under the age of 10 may be excluded from school for disciplinary reasons.<sup>133 134</sup>
3. No student under the age of 15 may receive a suspension of more than 3 days.
4. No student shall be issued a suspension for more than 5 consecutive days or 10 cumulative days total during an academic year.
5. No student shall be issued an involuntary transfer for disciplinary reasons for more than one school term. In order to issue an involuntary transfer, schools shall guarantee the same due process protections as required for expulsions as outlined in Section 3.5 Alternative Schools, sub-section C of this code. At the end of the term, the student shall have a right to reenroll in their home school or previous school of attendance.
6. Suspension shall be prohibited for:
  - a. Being late to school or class or being absent (see Section 3.4 Truancy Prevention and Dismantling Status Offense Laws);
  - b. Violating school dress code or uniform rules (see Section 3.7.d Model Policy on Dress Codes);
  - c. Minor behavior infractions, including but not limited to insubordinate behavior, defiance, disobedience, disrespect, or disruptive or rowdy behavior, classroom disruption or other disruption of school activity; and
  - d. Behavior that happens off of school grounds and not as part of a school-sponsored activity.
7. Schools shall not withhold recess as a punishment.<sup>135</sup>
8. Students may exercise the rights of speech, assembly, press and association, in accordance with the First Amendment of the United States Constitution and any applicable state laws. District and school rules should be (a) written and (b) applied so as not to infringe on those rights to the greatest extent possible. Except in the most serious circumstances, schools shall use non-exclusionary responses when students violate school rules in the process of exercising their First Amendment rights.

### **D. Right to remain in school and continue education during exclusion**

1. If a district or school proposes to exclude a student, regardless of whether that exclusion is a suspension or an expulsion, that student shall remain in school pending the conference/hearing and outcome of that student's exclusion conference or expulsion hearing as outlined in Section 3.2 Guidelines for Suspensions, Expulsions and Removals.
2. If a student is suspended from school, that student has a right to continue to access and complete regular academic work during the suspension. No school policy shall prohibit a student who has been suspended from school from completing assigned work during that time and earning credit towards promotion or graduation.
  - a. Schools shall provide quality instruction in an alternative classroom or place students in an alternative school that provides the same quality instruction (see Section 3.5 Alternative Schools).
    - i. Quality instruction is defined as instruction by a certified teacher with grade and class appropriate material that allows the student to earn equal credits and receive parallel education as if they had been

in their regular class and allows them to join their regular class after the term of the exclusion on pace with their classroom peers.

- b. The school shall ensure the student gets all the assignments for the time the student is not in class.
  - i. If the school cannot get assignments to the student, it shall document those reasons and provide them to the student, the student's parent or guardian, the student's representative or counsel and the Board of Education, and shall assist the student in making up the work after they return from suspension.
3. If a student is expelled from school, that student shall have a right to attend a high quality alternative school where the student shall receive a complementary education that allows them to continue to progress toward graduation and will help the student develop a plan to reintegrate into the student's home school at the end of the exclusion period (see Section 3.5 Alternative Schools).
4. Districts and schools must ensure that students with disabilities receive a Free Appropriate Public Education (FAPE) during periods of exclusion in accordance with Section 504 of the Rehabilitation Act of 1973 (see Section 4.5 Students with Disabilities).

#### **E. Limits on the use of suspension and expulsion in charter schools**

1. In addition to the policies listed above, states, districts and charter schools shall:
  - a. Require that charter schools implement Codes of Conduct that meet the same requirements as all public schools to provide clear expectations and graduated levels of support and interventions with consequences for behavior that are individualized, consistent, reasonable, fair, age appropriate and proportional to the severity of the student's behavior. The Codes should limit the use of suspension, expulsion and other exclusionary practices to only the most serious behaviors and only after non-exclusionary disciplinary alternatives have been carefully considered, tried and documented.
  - b. Ensure that charters are not informally pushing students out of school for disciplinary reasons, including by advising students and families to transfer under threat of disciplinary action.
  - c. Prohibit the use of fees, tickets and other financial penalties for disciplinary reasons.
  - d. Require charter schools to adopt evidence-based, school-wide, preventive and positive discipline policies that are developed with the participation of students, parents or guardians, educators and other stakeholders. Such policies must: establish positive school climates; implement Culturally-affirming social and emotional learning (SEL); adopt positive approaches to discipline; limit the use of exclusion; eliminate zero-tolerance policies; adopt preventive and restorative responses to bullying behavior; and provide training and support to teachers, other school staff and peer leaders/mediators to implement those policies.
  - e. Require that charter schools adhere to due process requirements for students facing exclusion, including parental/guardian notification, a review of what positive interventions and supports have been provided and any resources allocated to support those students, and the right to a hearing before long-term removal, suspension, expulsion, disciplinary or safety transfers or alternative school placements.
  - f. Require that if a student is excluded, schools must detail what educational services or supports that student will continue to receive during the exclusion (even if in an alternative placement) in order to meet the student's educational needs.

#### **F. All students have a right to adequate and meaningful due process prior to being excluded from school for any length of time.**

1. Prior to the beginning of such process, non-exclusionary disciplinary alternatives must be considered, tried and documented to the extent reasonable and feasible.
2. Prior to and during such process, schools shall provide quality instruction and an opportunity to complete all assignments and earn credit as described above in sub-section D.

3. Due process protections for any exclusion of students with disabilities shall follow the recommendations in Section 4.5 Students with Disabilities and federal law.

#### **G. Due Process for Suspension**

1. If the school recommends a suspension of less than five days, the student has a right to:
  - a. Written notice to the student and to the student's parent or guardian within 24 hours of the incident leading to the proposed suspension, describing the infraction, the length of the proposed suspension and the student's rights as described in this section.
    - i. The written notice must be in the primary language spoken by the parent or guardian.
    - ii. The notice must include an invitation to the parent or guardian to attend an exclusion conference to discuss the proposed suspension at the parent or guardian's earliest possible availability.
  - b. An exclusion conference to discuss the explanation of the evidence and version of facts that the school is relying on, the student's version of the facts and/or explanations for the alleged behavior, student's defense and whether or not the recommendation to exclude the student is consistent with sub-section M below<sup>136</sup>
    - i. The school is not required to present live testimony or physical evidence and may rely on written statements about the incident.
    - ii. The school must find a time that allows the student's parent or guardian to attend the exclusion conference.
  - c. A neutral decision-maker as described in L below who makes the decision whether to suspend the student.
  - d. An appeal of the decision as described in I below if they do not agree with the outcome of the exclusion conference.
2. If the school recommends a suspension of 5 or more days consecutively or cumulatively, but fewer than 10 days consecutively or cumulatively, the student has a right to:
  - a. All of the procedures set forth above in sub-section G; and
  - b. A formal review of attempted interventions as outlined in Section 3.1 Key Elements of School Climate and Positive Discipline and initiation of interventions not yet attempted.

#### **H. Right to Confidentiality About Suspension or Expulsion Processes<sup>137</sup>**

1. All information and documentation pertaining to a student's suspension or expulsion records must be kept confidential, and only shared amongst staff directly connected to the incident or incidents related to the suspension or expulsion, in accordance with the Family Educational Rights Privacy Act (FERPA)<sup>138</sup> and other state and federal student privacy laws and policies.
2. Where FERPA does not apply and they are legally allowed to share this information, the school should elect not to share suspension or expulsion records, either formally or informally, with the following people or institutions unless directly required by law:
  - a. School Resource Officers or other law enforcement officers stationed in the school, especially where there is a threat that a student may be placed in a gang database or otherwise flagged by the criminal justice system;
  - b. Local police or other law enforcement agencies;
  - c. Immigration Customs Enforcement (ICE) or US Customs and Border Protection; and
  - d. Colleges and universities where the student has applied for admission.<sup>139</sup>
3. School Resource Officers or other law enforcement should not be allowed to attend discipline hearings or exclusion conferences where they are not witnesses or otherwise part of the incident or investigation, nor should they have access to information on those hearings/conference.

4. School staff should be made aware that they have no legal obligation (unless under subpoena or other court order) to share student information with law enforcement, and in fact, school staff have obligations under FERPA to protect student information, including enrollment records. Staff should be aware that negative reports given to law enforcement can expose students to a myriad of life altering, unintended harmful consequences.

#### **I. Due Process and Right to a Hearing for Expulsion<sup>140</sup>**

1. If the school recommends an expulsion, which is any exclusion of 6 or more days consecutively or 11 or more days cumulatively, or if the student faces an involuntary transfer for disciplinary reasons to another school site, the student has a right to a full hearing as described by Sections J-P below.

#### **J. Right to Counsel**

1. Any low-income student who is facing exclusion for ten days or more, whether consecutively or cumulatively during a school year,<sup>141</sup> shall be provided upon request with legal counsel in any administrative or judicial proceeding (including appeal) as a matter of right and at public expense.<sup>142</sup> All students are presumed low-income, and the income of the student's family shall not be considered in determining whether a student is low-income. Immediately upon written notice of the proposed disciplinary response, the school shall notify the student that they are entitled to counsel upon request and ask the student whether they wish to have counsel appointed.
2. The student also has a right to be accompanied by a parent, guardian and/or any other representative of their choosing during the hearing process. The student is not restricted to one such representative.

#### **K. Right to Notice**

1. Prior to the full hearing for an exclusion of 10 days or more, the school must take steps to ensure that the student and their parents or guardians are aware of the charges the student is facing and have a meaningful opportunity to attend the hearing. To this end, the school must provide notice to the student and their parents or guardians of the hearing early enough to ensure that they will have an opportunity to attend, schedule the hearing at a mutually agreed-upon time and place, and document the means (letter, telephone call, email), date and time of each attempt to notify both the student and the parent or guardian(s).<sup>143</sup> All such notices must be provided in the language the parent or guardian understands best.
2. Notice to the parent or guardian about the recommended exclusion must include:
  - a. The purpose, time and location of the hearing;
  - b. The charge the student is facing and any supporting evidence that will be introduced at the hearing, including copies of witness statements, investigative reports and video or photographic surveillance;
  - c. Notice of the student's right to have an attorney, to call witnesses and present evidence, to view the student's records, including discipline files and to challenge the school's evidence;
  - d. Notice of the right to translation and interpretation in the language that the parent or guardian understands best; and
  - e. A list of all people that will be present at the hearing, at least 2 days in advance of the hearing.
3. If the student and/or the parent or guardian are unable to attend the hearing during the date and time proposed by the school, the student and parent or guardian must be given the opportunity to suggest at least three alternate times that will work with their schedules.

#### **L. Right to a Neutral Decision Maker**

1. The hearing shall be conducted by a neutral hearing officer or panel who was neither directly involved with nor a witness to the alleged incident.<sup>144</sup>
2. Recommendations for acceptable hearing officers include:



- a. A neutral school district employee who is not an employee of the school recommending the student for suspension or expulsion.
  - b. A three-person panel made up of a school staff member, a parent or guardian and a student, each with equal voting rights.
  - c. A peer jury or other student-run panel organized through a program that trains and monitors student involvement in discipline decisions.
  - d. The elected Board of Education for the school district or any individual member thereof.
3. A scheduled neutral hearing officer shall recuse themselves if there is a conflict of interest, including personal involvement with the facts or a relationship with any of the parties or witnesses.
  4. Hearing officers and members of panels that serve as hearing officers must understand the purposes of the school code and receive training in applying the human rights principles underlying the code as well as how to conduct a fair and organized hearing as outlined in the code.
  5. The neutral hearing officer shall make a decision on the exclusion impartially and based exclusively on the evidence presented at the hearing.

#### **M. Evidence**

1. The school bears the burden of proving, by clear and convincing evidence, that the student committed the charged infractions and that exclusion is the only acceptable option.
2. The student shall have the right to call all persons with direct knowledge as witnesses at the hearing and they shall be subject to cross-examination by the student or the student's representative or counsel.
3. All witnesses shall be required to appear and testify in person, unless one of the following exceptions applies:
  - a. A student witness/person who was harmed may submit written or recorded testimony if their presence would endanger their safety.
  - b. If a criminal or juvenile delinquency case is pending regarding the incident, the prosecutor's office may request that the person harmed not testify.
  - c. In situations where a witness cannot attend the hearing (e.g., cannot get time off from work, does not live in the area), the witness may submit written or recorded testimony, or may testify by telephone, if the parties consent.
4. The student shall have the right to confront anyone whose statement is introduced to the hearing if such a statement would be considered testimonial in a court of law.
5. The student shall have a right to refuse to testify and to keep their parent or guardian from testifying.
6. The student and their parent or guardian shall have a right to access all tangible evidence the school possesses regarding the alleged incident, including, but not limited to, documents, reports, video surveillance footage, photos and other physical evidence at least 48 hours prior to the hearing. Physical evidence may be redacted if its disclosure would violate FERPA.
7. The hearing shall be recorded or transcribed and a copy of the recording transcription shall be made available as soon as possible to the student, their parent or guardian, or attorney upon request.
8. If a juvenile delinquency or criminal case is pending against the student based on the incident giving rise to the proposed exclusion, the hearing shall be postponed at the request of the student, parent or guardian, or student's attorney until the conclusion of the delinquency or criminal case. In no circumstances shall the student be required to testify about the incident if they have a currently pending delinquency or criminal case.

#### **N. Notice of hearing decision**

1. The student and their parent or guardian have a right to a notice of the decision in the language they understand best, including a written explanation detailing the reasons for the decision, within 48 hours of the hearing.

2. This notice must also include notice of the student's right to appeal the decision and an explanation of the steps to take to pursue an appeal.

#### **O. Right to Appeal**

1. A student who has been excluded from school has the right to appeal an exclusion. Appeals shall be heard by a neutral hearing officer designated by the district Board of Education or equivalent entity.<sup>145</sup>
2. When hearing the appeal, the hearing officer shall consider whether the student's rights were violated during the hearing process, including whether:
  - a. All proscribed timelines were met;
  - b. All notifications were proper;
  - c. The student was afforded the right to counsel;
  - d. The student was represented at the hearing;
  - e. The facts indicate that the arbiter was not neutral;
  - f. The facts as presented at the hearing were fairly and fully considered;
  - g. The school considered all possible alternatives before proposing to exclude the student from school;
  - h. The school tried non-exclusionary alternatives to address the student's behavior before proposing exclusion and how well those alternatives were implemented;
  - i. Other factors outside the student's control caused the behavior, including whether the student has or might have a disability or need treatment for mental health concerns;
  - j. New facts have been uncovered that are exculpatory;
  - k. The reasons set forth by the school describing why alternative, non-exclusionary forms of discipline were not appropriate have changed in a positive way for the student; and
  - l. Any other relevant factors or procedures.
3. If any of the above factors are established on appeal, a re-hearing may be granted and/or the decision to exclude overturned.
4. If a student appeals to the Board of Education and loses, they must have the option of appealing the Board's decision in civil court, in accordance with state law. Such appeals shall be considered emergency appeals and treated as such so that they can be heard and decided within, at most, 30 days.<sup>146</sup>

#### **P. Emergency Removal**

1. "Emergency" means only those situations in which the student in question is a direct and immediate threat to the safety of themselves or another person in the school and the only way to avert the threat is to temporarily remove the student from the school environment.
2. If the student is removed pursuant to an emergency, the school must send notice home to the parent or guardian immediately following the removal.<sup>147</sup>
3. If the student is removed pursuant to an emergency, a full hearing, as outlined in this section, must be scheduled within 5 school days of that removal or the student must be returned to school and the non-emergency due process protections shall apply.<sup>148</sup>
4. A student may only be removed after the emergency situation is documented and the school communicates with the student and, if possible, the student's parent or guardian. Examples of emergency situations include, but are not limited to:
  - a. A direct, serious threat to cause serious bodily injury or death.
  - b. Conspiring with others to cause serious bodily injury or death.
  - c. Threatening the entire school environment with immediate harm.
  - d. Committing or having committed a violent criminal offense against another member of the school community.

5. Emergency removal should end when the emergency conditions set forth in paragraph P.1 above no longer exist. Students and parents or guardians must be made aware that the student can seek to return to school at that time, pending the due process hearings and determinations. To justify a continuing emergency, a school must provide clear and convincing evidence that there is a continuing threat.

**Q. All students who have been expelled shall have the right, full opportunity, and support to re-integrate into public school and receive a high-quality education.<sup>149</sup>**

1. All expelled students shall have the right to immediately return to public school upon the conclusion of their expulsion period.
2. The school or district shall initiate an Intervention Support Team (see Section 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports (SWPBIS) to assist with the return to the school environment. The Intervention Support Team shall:
  - a. Consist of a multi-disciplinary panel of stakeholders;
  - b. Develop an agreement that assigns roles and responsibilities among all the stakeholders, delineates communication procedures and requirements, and specifies accountability standards required of all of the parties involved with the youth seeking re-entry into the school system;
  - c. Make available the resources necessary to assist the student in accomplishing their re-entry goals; and
  - d. Develop a transition educational program, including:
    - i. Setting non-academic and academic goals, taking into account each individual student's cultural, emotional and behavioral needs and the availability of community support and resources to address these needs;
    - ii. Addressing special education needs; and
    - iii. Providing support in obtaining a high school diploma.
3. The school district shall maintain continuous contact with the parent(s) or guardian(s) and shall encourage parental involvement during every stage of the re-entry process.

<sup>124</sup> U.N. Guidelines for The Prevention of Juvenile Delinquency ¶ 21(H) (1990) [Hereinafter The Riyadh Guidelines]; U.N. Comm. On Econ., Soc., & Cultural Rights, *supra* note 8 at cmt. 13, ¶ 41.

<sup>125</sup> U.N. Convention on the Rights of the Child art. 37.

<sup>126</sup> *Id.* at art. II.

<sup>127</sup> THE RIYADH GUIDELINES, *supra* note 124 at ¶¶ 5, 31.

<sup>128</sup> U.N. Convention on the Rights of the Child art. 14.

<sup>129</sup> THE RIYADH GUIDELINES, *supra* note 124 at ¶ 30.

<sup>130</sup> See Resolution 118B, *supra* note 26 at 9-11; see also Denver Public Schools Discipline Matrix, [http://webdata.dpsk12.org/policy/pdf/Policy\\_JK-R\\_Attachment\\_B.pdf](http://webdata.dpsk12.org/policy/pdf/Policy_JK-R_Attachment_B.pdf) (restricting expulsion from school only to Type 4 and 5 offenses, with an expulsion recommendation optional for Type of offenses and mandatory for Type 5 offenses); Denver Public Schools Discipline Ladder, [http://webdata.dpsk12.org/policy/pdf/Policy\\_JK-R\\_Attachment\\_C.pdf](http://webdata.dpsk12.org/policy/pdf/Policy_JK-R_Attachment_C.pdf) (making out-of-school suspension an option only for Level E and F interventions, after other, non-exclusionary interventions have been tried).

<sup>131</sup> 20 U.S.C. § 1414 requires a State educational agency, other State agency, or local educational agency to conduct a full and individual evaluation to determine if a child is a child with a disability.

<sup>132</sup> See, e.g., WASH. ADMIN. CODE § 393-400-245 (2012).

<sup>133</sup> There are several cities and states with this policy or similar in place, for example: California, Oregon, Minneapolis MN, New York City, Paterson NJ.

<sup>134</sup> Banning Classroom Removals for Young Children Policy Guide Texas Appleseed (2016). Available at: <https://www.texasappleseed.org/sites/default/files/Yg-Stud-SuspensionBanPolicyGuide.pdf>.

<sup>135</sup> Centers for Disease Control: Recess Recommendations available at: <https://www.cdc.gov/healthyschools/physicalactivity/recess.htm>.

<sup>136</sup> See, e.g., D.C. CODE MUN. REGS. tit. 5 § B2505.4 (LexisNexis 2012) (describing a disciplinary conference).

<sup>137</sup> See ACLU of California Model Sanctuary School Board Policy, [https://www.aclusocal.org/sites/default/files/february\\_2018\\_aclu\\_model\\_sanctuary\\_school\\_board\\_policy.pdf](https://www.aclusocal.org/sites/default/files/february_2018_aclu_model_sanctuary_school_board_policy.pdf).

<sup>138</sup> US Dept. of Education-FERPA General Guidance for Students, available at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>

<sup>139</sup> Education Suspended: The Use of High School Disciplinary Records in College Admissions (2015) Available at: <http://www.communityalternatives.org/fb/education-suspended.html>.

- <sup>140</sup> The ABA resolution calls for the need to “provide full procedural protections, including the opportunity to have representation by counsel in proceedings to exclude students from their regular education program, appropriate provisions of due process in other school disciplinary processes, and implementing disciplinary procedures in a fair, non-discriminatory and culturally-responsive manner” RESOLUTION 118B, *supra* note 26 at 8-12.
- <sup>141</sup> This section focuses on proposed disciplinary exclusions of more than ten days. There are many other kinds of disciplinary exclusion, including short term suspension (10 days or less), in-school suspension, or even disciplinary transfers to new or alternative schools. There are also informal ways children are excluded from school; for example, being removed from a particular class or sent home early from school.
- <sup>142</sup> The ABA resolution calls for the need to “provide full procedural protections, including the opportunity to have representation by counsel in proceedings to exclude students from their regular education program.” RESOLUTION 118B, *supra* note 26 at 8-9. See generally *In re Gault*, 387 U.S. 1 (1967) (children entitled to appointed counsel in delinquency proceedings); *Kenny A. ex rel Winn v. Perdue*, 454 F. Supp. 2d 1260 (N.D. Ga. 2006) (children entitled to appointed counsel in child welfare proceedings); *Bellevue Sch. Dist. v. E.S.*, 199 P.3d 1010 (2009) (children entitled to appointed counsel in truancy proceedings), *rev’d*, 257 P.3d 570 (2011). In *Bellevue*, the Washington State Supreme Court reversed the Court of Appeals and held that neither federal nor state due process compels the appointment of counsel for a truancy proceeding. The court first applied a 3-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), namely 1) “the private interest that will be affected by the official action” (here, the student’s private interest in liberty, privacy and education); 2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and 3) “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.” The court then concluded that a *Mathews* analysis did not support that counsel must be appointed in an initial truancy hearing pursuant to the federal constitution. The court then applied a second analysis (citing *State v. Gunwall*, 106 Wash. 2d 54 (1986))) to determine if it should analyze the Washington Constitution’s due process clause independently of the federal constitution, but ultimately determined that independent inquiry into the state due process clause was not warranted in this instance. The Chief Justice wrote the concurring opinion and agreed that there is no due process right to counsel at the truancy hearing, but agreed with the Court of Appeals that having an attorney present would facilitate a better outcome for children, families and the district. She urged the Washington State Legislature to consider passing a statute to provide counsel at such hearings, similar to ABA Resolution 109A. The two dissenting judges believed that *Gunwall* justified an independent inquiry into the due process clause of the Washington Constitution, especially when it came to a child’s right to education, given that such a right is specifically located in the Washington Constitution at article IX, section 1. The dissent then applied the same *Mathews* factors and came to the conclusion that article I, section 3 of the Washington Constitution guaranteed the right to counsel.
- <sup>143</sup> See 34 C.F.R. 300.322 (rules implementing the parental participation provisions of the Individuals with Disabilities Education Act).
- <sup>144</sup> The neutral arbiter should not be involved with the facts of the situation in any way. See, e.g., WASH. ADMIN CODE § 392-400-270(4) (2012) (“The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing”).
- <sup>145</sup> See, e.g., *Bos. Pub. Schs.*, *supra* note 135 at 22.
- <sup>146</sup> Appeals of school exclusion decisions must happen quickly so as to avoid making the statutory appeals process moot. Many states provide appeals through their administrative appeals statute, which typically means that by the time the appeal is heard in court, the student’s period of exclusion is over and/or the harm resulting from an extended removal from school is already significant.
- <sup>147</sup> See, e.g., N.Y. EDUC. LAW § 3214(3)(b) (Consol. 2012); N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(1)(4) (2009).
- <sup>148</sup> See, e.g., *Bos. Pub. Schs.*, *supra* note 135 at 21 (describing a limited emergency suspension procedure).
- <sup>149</sup> See Resolution 118C, *supra* note 26.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.3 Law Enforcement and Criminalization in School Environments

#### Human Rights Goal

In order to best meet the developmental needs of young people, schools shall be safe and supportive places to learn where teachers and students have training and support to prevent and resolve conflicts in positive ways. In order to guarantee students' rights to education and dignity, schools must avoid any disciplinary policies or practices that criminalize young people.<sup>150</sup>

No law enforcement personnel should be stationed in schools, and local police should not be assigned to patrol schools<sup>151</sup>. Law enforcement entering schools shall be avoided whenever possible and shall be prohibited for incidents considered school discipline matters. The arrest or detention of a student shall be used only as a measure of last resort<sup>152</sup>, and law enforcement should not come into schools for the purpose of arresting or questioning students about a non-school related incident. Any law enforcement personnel that come into contact with schools shall be trained in youth development and to respond to the special needs of young persons and shall use, to the maximum extent possible, techniques to de-escalate conflict, minimize the involvement of law enforcement and refer matters to be dealt with by school personnel.<sup>153</sup>

The physical school environment should be a reflection of the positive school climate the school is fostering. Schools and districts should use the funds they have for building maintenance and technological infrastructure to invest in improvements that will create a better learning environment, rather than investing in more criminalization and surveillance.

#### Definitions

- 1. Law Enforcement (prohibited from being stationed in schools)** – Includes sworn police officers (and unsworn if they are School Resource Officers), sheriff's deputies, parole and probation officers, tribal officers, truancy officers, ICE officers or other immigration officials, armed security guards and any other law enforcement personnel who fit any of the criteria below:
  - a. Have the power to arrest, detain, interrogate, question, fine or ticket students on municipal code, juvenile, criminal or immigration related matters, and/or have the power to punish youth for violations of probation or parole;
  - b. Carry any type of weapon, including but not limited to a firearm, baton, taser, rubber bullets, bean bags, and/or mace/pepper/OC spray, and/or carry handcuffs or other forms of restraint; and
  - c. Report to, are certified by, or receive training from a police department, including personnel who can report students to a gang database or other police databases.
- 2. School Resource Officers (SROs)** – Any safety officers permanently assigned to work in a school or set of schools. Currently, in some localities, they are sworn or certified law enforcement officers employed by city police departments, whereas in other localities they make up an independent school police department and are employed directly by the school district.<sup>154</sup>

3. **Security officers or security guards** – Non-sworn personnel—either armed or unarmed—and hired or sub-contracted with individual schools or school districts to patrol in or around campuses.
4. **Police Officers** – Armed, sworn or certified law enforcement officers employed by city and/or school police departments. Police officers may be assigned to patrol schools, rotated in and out of schools as part of their regular duties, assigned to patrol the area around a school or nearby public transportation stops, or summoned in cases of emergency.<sup>155</sup>
5. **Community Intervention Workers** – Community members trained as peacebuilders working in schools, around schools and/or in the larger community. Intervention workers can replace the traditional role of security officers or police on or around school campuses. In schools they may be paid staff or volunteers. In the community they often have a “license to operate” or agreement with local leaders to work in the community. Intervention workers have trusted and deep relationships with local communities and both recognized and underground leaders. These trusted relationships are at the root of their effectiveness in identifying, resolving and preventing conflict, violence and crime. Their work includes mentoring youth, preventing and addressing bullying, preventing and resolving conflicts and connecting people to needed services. The role of community intervention workers includes:<sup>156</sup>
  - a. Mentoring youth, particularly those youths who most often witness, are victims of and/or cause violence;
  - b. Preventing and addressing bullying and providing rumor control;
  - c. Preventing and resolving conflicts between youth, groups of youth and/or neighborhoods (gangs); preventing retaliation; and coordinating mediation, conflict resolution and restorative/transformational justice;
  - d. Helping youth to avoid and/or leave neighborhoods and providing safe passage to and from school; and
  - e. Connecting people to needed services.

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## Recommended Language

- A. **Districts and schools must remove any law enforcement personnel that are assigned to be present on a regular basis in and around<sup>157</sup> a school or set of schools during regular school hours and any school-run activities in the building.**
  1. This would prohibit a regular presence, such as being stationed full or part-time in a school or set of schools, making daily or weekly visits, or the inclusion of a school in an officer’s regular beat.
  2. This includes School Resource Officers (SROs), police, security officers and any other law enforcement personnel<sup>158</sup> that meet the criteria listed above.
- B. **States, districts and schools shall adopt safety and discipline policies that emphasize ways of maintaining safety that minimize the involvement of outside law enforcement to the greatest extent possible, and identify steps for ending any contact with law enforcement in schools.**
  1. Such policies must be preventive and positive, not reactive and punitive, and they must rely on proven approaches for creating positive school climates (see Section 3.1. Key Elements of School Climate and Positive Discipline), with the goal of building relationships with students and getting to the root of problems in the school and surrounding community.
  2. States, districts and schools should shift resources away from practices and staffing that criminalize students, and invest in positive approaches and school staff funded through the core education budget<sup>159</sup> including:
    - a. Employing staff<sup>160</sup> trained to ensure safe and positive school climates, such as community intervention workers, peacebuilders, transformative or restorative justice coordinators, behavior interventionists, school aides, counselors and other support staff<sup>161</sup> who can:
      - i. Help prevent and address safety concerns and conflict;
      - ii. Monitor school entrances and ensure a welcoming environment;

- iii. Respond to the root causes of behavior;
  - iv. Prevent and intervene to stop intergroup and interethnic tension;
  - v. Provide opportunities for “safe surrender” of weapons brought to school for self-defense;
  - vi. Address students’ needs; and
  - vii. Work with stakeholders to create a school safety plan, including a plan for evacuation should the need arise, and ensure all staff are trained to carry out the plan.
- b. Providing ongoing training and support for all school staff in positive approaches to school climate and discipline, including:
  - i. Trauma-informed practice;
  - ii. Child and adolescent development and psychology;
  - iii. Comprehensive youth development practices and programming;
  - iv. Conflict resolution and peer mediation;
  - v. De-escalation techniques;
  - vi. Violence prevention and intervention;
  - vii. Intergroup and interethnic conflict intervention and truce-building strategies;
  - viii. Bias-based and sexual harassment and violence;
  - ix. Working with youth with disabilities or physical, emotional, or mental conditions;
  - x. Working with LGBTQ+ and gender non-conforming youth;
  - xi. Cultural competencies (including understanding and addressing racism, sexism, homophobia, transphobia, ableism, adultism/ageism, and other implicit and explicit biases);
  - xii. The impacts of arrest, court, detention, incarceration and/or deportation on youth life chances;
  - xiii. Effective strategies for building safe schools without relying on suppression;
  - xiv. Restorative and transformative justice practices;
  - xv. School-Wide Positive Behavioral Interventions and Supports; and/or
  - xvi. Other positive approaches to school climate and discipline being used in the district.
- c. Promoting youth and parent leadership within the school through leadership councils that have an integral role in creating, implementing, monitoring and evaluating safe and supportive school climates. This may include serving as restorative justice facilitators in the school, ensuring there are trainings for all parents, students and community members to fully understand how positive alternatives are being implemented and who is responsible for different aspects of maintaining a positive school climate, and monitoring any agreements with law enforcement (detailed below).
- d. Developing district-level structures, such as a Student and Teacher Supportive Services Department, that will:
  - i. Coordinate support staff, including counselors, social workers, nurses, dropout prevention coordinators, community intervention workers, peacebuilders, behavior interventionists, parent coordinators and others, who are working to promote safe and positive school environments and address the root causes of problems; and
  - ii. Monitor implementation and provide support and coaching for schools that are struggling to implement these practices.
- e. Intentional recruiting of Black and Latino administrators, teachers, school safety staff and support staff trained in the positive approaches above to ensure that school staff reflect the communities in which they are working.

**C. Districts and schools must limit the rare cases when law enforcement can be called into schools and recognize the principal as the primary authority responsible for school climate and safety.**

1. Absent a “real and immediate”<sup>162</sup> threat of serious physical injury to a student, teacher, or other member of the school community, school discipline issues must be handled by school personnel and not by SROs, police, security officers or other law enforcement. School administrators shall have final responsibility and jurisdiction over the building, the grounds and all members of the school community.<sup>163</sup>



**D. All school districts shall adopt a publicly accessible Memorandum of Understanding (MOU) between schools and local police departments (including tribal controlled schools) that limits the role of any law enforcement personnel who come in to contact with schools, including by:**

1. Prohibiting the regular presence of law enforcement in schools (as detailed in sub-section A above).
2. Identifying incidents for which the school shall not call the police, and if called, the police will not respond,<sup>164</sup> including but not limited to the following behaviors:
  - a. Disorderly conduct;
  - b. Trespassing or loitering;
  - c. Insubordination/defiance;
  - d. Profanity, verbal abuse and/or harassment;
  - e. Vandalism and/or graffiti;
  - f. Failure to wear or correctly wear school uniform or follow policies regarding clothing;
  - g. Inappropriate use of electronics like cell phones;
  - h. Possession of a prohibited item that does not violate the penal code;
  - i. Being late, cutting class, absenteeism or truancy;
  - j. Fighting that does not involve a deadly weapon or a real and immediate threat of serious physical injury to other students;
  - k. Perceived drunkenness or intoxication;
  - l. Participation in protests, demonstrations or other political activities;
  - m. Possession of markers, pens, black books or other items that are alleged “graffiti tools;”
  - n. Possession of drugs or alcohol for personal use<sup>165</sup>;
  - o. Possession of a tool or object that could be taken to be, but is not intended as a weapon or dangerous instrument—such as a nail clipper or file, small pen knife, butter knife or other eating utensils, toy gun or other imitation weapon, pepper spray, box cutters, multi-finger rings or other fashion accessories, tools used for sports or crafts, etc.;
  - p. Possession of a weapon for self-defense purposes, especially for travel to and from school such as pepper spray or electroshock weapons; and
  - q. Alleged or witnessed promoting or claiming of a neighborhood<sup>166</sup> or crew/gang (including verbally, through graffiti, through clothing or hand signs).
  - r. Although municipal and state penal codes may allow for arrest, fines and other court involvement for the behaviors listed above, such actions undermine positive school climate, student attendance and achievement. Further, municipal and state penal codes often contain clear provisions that encourage community diversion by law enforcement officers. School personnel, in partnership with community diversion organizations—not police—must develop positive behavioral interventions and supports to address typical adolescent behavior.
3. Ensuring that any SROs, police or security officers that are called into a school are not involved in school discipline issues. They shall be responsible only for responding to serious criminal law matters where there is a real and immediate threat<sup>167</sup> of serious physical injury or where it is mandated by law that such offenses be referred to the criminal justice system.
  - a. SROs, police, security guards, probation officers and other law enforcement personnel who witness school discipline issues as described above in D.1 and E.2 shall locate school personnel (including when available community intervention workers) to respond to the situation. In the case of fighting, they may de-escalate the situation using conflict resolution techniques that are age appropriate and leverage existing positive relationships with those involved, and must then refer the incident to school personnel (see Section 3.7.c Model Policy on Fighting).
4. Setting strict limits on what law enforcement personnel can and cannot do when they are called to schools to respond to serious criminal matters, including but not limited to:
  - a. Requiring notifying the school before entering school property;

- b. Requiring that school officials immediately contact a student's parents or guardians when law enforcement is called, and whenever possible, before law enforcement is called;
  - c. Requiring caregiver notification before interrogating or questioning of students and eliminating the ability of law enforcement to question or interrogate students in schools without a parent or guardian present, and allow adequate time for parents or guardians to arrive;
  - d. Prohibiting law enforcement from approaching, interrogating, questioning, fining, ticketing, responding to warrants, or arresting students on school grounds for non-school related incidents;
  - e. Where a law enforcement official is going to detain or arrest a young person, making all reasonable attempts to do so outside the view of other youth and school staff;
  - f. Eliminating the ability of law enforcement (including probation or parole officers) to listen to the questioning or interrogation of students by others (such as school officials), or accessing documents pertaining to the student;
  - g. Ensuring that students are made aware of their rights and have an opportunity for consultation with counsel (See Appendix II of the DSC Model Code) and/or another trusted adult selected by the student prior to any interrogation by the police; and
  - h. Ensuring that students who are also parents or guardians must have an immediate opportunity to ensure their children are in the custody of a trusted caregiver and have the opportunity to arrange for their children's care for the duration of the time in custody.
5. Protecting students', parents' and school staff's right to film police activities.
6. Ensuring that if the police remove a student from school, that there is a follow up process for when that student returns to school that addresses the root cause of the situation and a plan put into place that will support the success of that student.
7. Requiring that all law enforcement personnel who come in to contact with schools receive training to ensure they are responding appropriately to youth, including at least 105 hours of training before being assigned to respond to schools and at least 10 hours of annual professional development. Decisions on the training requirements and specific training curriculum of SROs, police and other law enforcement personnel that come into contact with schools shall be developed in consultation with students, parents or guardians, teachers, school administrators and other stakeholders. Trainings shall cover the following topics:
  - a. Trauma-informed practice;
  - b. Child and adolescent development and psychology;
  - c. Youth development skills and competencies;
  - d. Conflict resolution and peer mediation;
  - e. De-escalation techniques;
  - f. Violence prevention and intervention;
  - g. Intergroup and interethnic conflict, intervention and truce-building strategies;
  - h. Bias-based and sexual harassment and violence;
  - i. Working with youth with disabilities or physical, emotional, or mental conditions;
  - j. Working with LGBTQ+ and gender non-conforming youth;
  - k. Cultural competencies (including understanding and addressing racism, sexism, homophobia, transphobia, ableism, adultism/ageism, and other implicit and explicit biases);
  - l. The impacts of arrest, court, detention, incarceration and/or deportation on youth life chances;
  - m. Effective strategies for building safe schools without relying on suppression;
  - n. Restorative and transformative justice practices;
  - o. School-Wide Positive Behavioral Interventions and Supports; and
  - p. Other positive approaches to school climate and discipline being used in the district.
8. Developing an explanatory guide and presentation on how school administrators and SROs, police, security officers or other law enforcement will respond to particular behaviors and the consequences that students face.

9. Ensuring community monitoring, oversight and access to data on law enforcement contact with schools, including:
  - a. Equipping parent and youth councils to monitor law enforcement that come into schools, including through having timely access to data on arrests and referrals to law enforcement disaggregated by student subgroup, holding regular joint meetings with the police department and school district to ensure the MOU is being followed, and potentially acting as a liaison between the police, school staff and any students they are interacting with.
  - b. Publishing all the above restrictions on law enforcement in the school or district code of conduct so that parents and students are made aware of what police can and cannot do in their schools.
  - c. Collecting and reporting data on all police interactions with students, including calls to police for services, referrals to law enforcement, school-based arrests, tickets and summonses, disaggregated by student subgroup. The data should be made publicly available and accessible, including through posting data on school districts' websites and translating data reports into all the languages represented in the school community.
- E. Districts and schools shall make every effort to avoid involvement of SROs, police or other law enforcement personnel in responding to drug or alcohol use and shall refer students to harm reduction programs, counseling and/or treatment by trained professionals. In cases where students are suspected of distributing or selling drugs, every effort shall be made to respond through positive disciplinary measures<sup>168</sup> and to partner with the justice system to avoid arrests, and if arrests occur, to refer students to alternatives to court, detention, incarceration, probation violation and/or deportation (see Section 3.7.f Model Policy on Drugs and Alcohol).**
- F. States, districts and schools must adopt clear limits on tickets, summonses and referrals to the criminal justice system. Ticketing, issuance of summonses, and referrals of students to the criminal justice system shall be prohibited for all school disciplinary matters and status offenses (see Section 3.4 Truancy Prevention and Dismantling Status Offense Laws).**
- G. States, districts and schools must adopt clear limits on searches of students.**
  1. SROs, police and all other law enforcement must have probable cause to suspect that the student has committed or is attempting to commit a criminal offense in order to search the student, including the student's outer clothing, possessions, or locker.
  2. SROs, police and all other law enforcement shall obtain the permission of the school principal prior to conducting a search of the student.
  3. The individual conducting the search shall be the gender the student has requested, and a school official and community intervention worker (if applicable) shall be present at the time of the search.
  4. School officials shall not ask law enforcement to be present or participate in a search of a student about a suspected discipline issue, absent a real and immediate threat to the physical safety of a member of the school community.
  5. SROs, police and all other law enforcement shall comply with the probable cause requirement even where school officials ordered or requested the search.
  6. Probation officers shall not use schools as a place to conduct searches, questioning or pat downs of students unless there is a safety emergency to prevent harm or injury.
  7. All searches and pat downs that do take place at school should happen (unless emergency situations make it impossible) outside the view of other youth and school staff in order to maintain privacy and decrease public embarrassment, humiliation and any future stigmatization and discrimination against the student(s) involved.

**H. States, districts and schools must adopt clear limits on “Gang” profiling**

1. Schools and districts shall provide youth suspected of membership or association with crews, gangs or neighborhoods with increased supports, mentoring and resources—including access to intervention workers or peacebuilders—recognizing that youth who are involved in or drawn to gangs and the underground economy are most in need of the positive environment and opportunities that schools provide.
2. Students shall not be suspended, expelled or referred to law enforcement for suspected gang-affiliation that is based on:
  - a. Minor behaviors, such as dress code violations, for which suspensions, expulsions or referrals to law enforcement are otherwise prohibited (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals, and Section 3.7.d Model Policy on Dress Codes);
  - b. Racial/ethnic profiling (meaning a student of another race or ethnicity who exhibited the same behavior would not receive the same consequences); or
  - c. Misinterpretation of behavior based on incorrect information.
3. Schools must clearly communicate what kinds of behavior are prohibited related to gang affiliation and ensure that these rules are being implemented fairly and that school staff are not being influenced by racial or ethnic bias as they determine who is in violation of the rules.
  - a. Vague language prohibiting “gang-related behavior” or “gang affiliation” or “prohibited group affiliation” is not sufficient.
  - b. Typical behavior that can be incorrectly identified as being gang-related could be using certain hand signs or handshakes, wearing particular clothes or accessories, posts on social media, drawing graffiti, tagging or doodling, or profiling based on home address/neighborhood.
  - c. Where there is a compelling safety reason for codes of conduct or dress codes to prohibit particular behavior, items of clothing, accessories, colors or logos (see Section 3.7.d Model Policy on Dress Codes), schools and districts shall take the following steps to avoid incorrectly identifying students as “gang affiliated” based on their clothing:
    - i. Clearly communicate those rules before the start of the school year, or give warning to students and their families before a new policy is being implemented. This allows the students and their families to adequately plan, including for the potential financial burden of purchasing new clothes to replace the prohibited items.
    - ii. Students who are unable to afford the new clothing requirements shall either be provided suitable clothing options from the school, or be connected with resources in the community that can provide options. These resources should be identified before the policy is implemented.
4. 4SROs, security officers, administrators, teachers or other school staff shall not add students to gang databases, provide information to law enforcement who have authority to add students to a gang database or injunction, and/or search or work with law enforcement to search municipal databases to find information on students.
  - a. All school staff must be made aware of the grave consequences for youth who are placed on these databases<sup>169</sup> and the lack of due process protections in place.<sup>170</sup>
  - b. For particular students, especially immigrant and undocumented students, students with previous involvement in the criminal justice system, and those who are on parole or probation, being added to a gang database could have life-altering consequences including deportation and long-term incarceration.
5. Parent and youth councils, or other community oversight teams that include parents, students, advocates and social service providers, shall regularly review all instances in which students are accused of “gang-related” behavior or labeled as being “gang-affiliated” by police, SROs, security officers, teachers or school staff, to ensure that no racial profiling, or other targeting of certain students or groups of students is taking place. These oversight teams will also be made aware of the consequences listed above for students if they are

labeled as gang-affiliated in any way, through injunctions, databases, suspension or expulsion, or other records.<sup>171</sup>

## **I. Complaint Process and Community Oversight**

1. Any SROs, police, security officers or other law enforcement personnel that come into contact with schools must be subject to clear and transparent civilian complaint processes that include real methods of accountability and correction. Noting the complex nature of personnel complaints and individual employee privacy rights, local unions should work collaboratively to address these issues and meet the community's right to information.<sup>172</sup>
  - a. In jurisdictions with independent civilian police review boards, such boards shall also accept complaints against SROs.
  - b. Students, parents or guardians, teachers, administrators and principals must have easy access to a simple and straightforward complaint process which is clearly outlined, and must be notified of any investigation and outcome in a timely matter.
    - i. Every student, parent and guardian in the school system shall be adequately informed of the complaint procedure.
    - ii. The information on the complaint process as well as complaint forms shall be distributed to every student household in print form at the start of each semester and at parent/teacher nights, posted in the school's front office, in parent resources rooms, in the school library or other common spaces and on the school's website.
    - iii. Any student, parent or guardian, teacher, administrator, or principal shall have the opportunity to submit a complaint in writing, verbally or on-line; the system shall incorporate a mechanism for receiving online complaints.
    - iv. Every version of the procedure—printed, posted and online—shall be available in all languages represented in the student and parent body, and parents or guardians and students may submit the complaint in their preferred language.
    - v. All school staff shall be trained in the complaint process and shall have access to complaint forms in order to answer student and parent or guardian inquiries as needed.
    - vi. The complaint system must be confidential and protect students, parents or guardians, school staff and community members against retaliation.
  - c. The complaint system shall provide for a fair, thorough and transparent investigation into the allegations in the complaint. The investigation must involve supervisors from the police department as well as school administrators and/or Department of Education staff.
  - d. The complainant shall be entitled to a written response to the complaint within 30 days in their preferred language. Translators shall be made available to help with this reporting as needed.
  - e. The system shall report to the complainant, school administration and the district on both the findings and any discipline or re-training of officers that occurs as a result.
  - f. The SROs', police officers' or other law enforcement personnel's due process rights shall be honored throughout the process, including providing the officer with a copy of the complaint, and providing an opportunity for the officer to defend themselves.
  - g. Complainants and officers shall have the right to representation before the system in a process that is fair, safe and whenever possible promotes restorative and transformative justice principles and practices.
  - h. Where serious allegations of wrongdoing are raised, SROs, police or other law enforcement personnel shall be removed from having contact with students until the investigation is completed. Such matters would include allegations of physical assault, verbal threats of violence, sexual advances or assaults and/or discriminatory language or practice based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability, economic or other status.
  - i. Where allegations of abuse or misconduct are substantiated, SROs, police or other law enforcement officers shall be prohibited from contact with schools, and their personnel file must indicate the incident in

order to inform other potential sites where youth are present. These officers may be reassigned or receive additional training, where appropriate.

2. A community board that includes parents or guardians, youth advocates, students and social service providers shall regularly review all school-based incidents leading to law enforcement intervention to ensure that no abuse, racial profiling, or other targeting of certain students or groups of students is taking place.

*Note: These policy recommendations call for an end to the regular presence of law enforcement in schools. In cases where schools still have regularly stationed law enforcement, we recommend the following steps for reducing their presence as much as possible towards the ultimate goal of removing all law enforcement from schools.*

**J. Steps for districts and schools to reduce their reliance on SROs, police and security officers if they have not yet removed them from a regular presence in schools through implementing the following**

1. Replacing SROs, police, security officers and other law enforcement personnel stationed in schools with community intervention workers, school aides, counselors, social workers and other support staff to facilitate implementation of positive school-wide safety and discipline policies.
2. SROs, police or security officers shall not be responsible for school discipline issues. They shall be responsible only for responding to serious criminal law matters where it is mandated by law that such offenses be referred to the criminal justice system.
3. SROs shall not be employed, trained or supervised by city, town or state police departments. Instead, all SROs shall be employed and supervised by the district, Department of Education and/or school board.
4. The services of SROs, police or security officers must not be used when other interventions and programs, such as School-wide Positive Behavior Interventions and Supports (PBIS), trauma-sensitive training and Restorative Justice Practices are available that aim to address root causes of student behaviors and provide needed services.
5. Schools where more than 3% of students have been arrested or received summonses by SROs shall trigger an immediate audit by the state Department of Education (or other body governing the school) and the Attorney General's office to investigate the number of charges, the kinds of behavior being charged, the types of students who are being charged, whether charges are being overused in certain schools and by certain school officials, and the use of alternative sanctions that shall not result in criminal records.

**K. Schools shall create welcoming and positive environments and avoid physical features and practices that create a criminalizing environment. Schools shall:**

1. Avoid surrounding buildings or campuses with razor wire, spiked fences and security gates. Lower gates or chain link fences are a better alternative if a gate is mandated
2. Avoid covering windows with bars, security gates or mesh.
3. Avoid locking bathrooms or various sections of the school off from one another, and avoid surrounding different sections with internal gates and fences.
4. If a school or district requires uniforms, involve students and parents or guardians in their design and/or selection, and avoid colors and styles that are used in juvenile halls, jails and prisons.

**L. Schools shall not invest in or enter into agreements/MOUs regarding technological infrastructure that can have a criminalizing effect on the student body such as:**

1. Body cameras for law enforcement in schools or school staff.
2. Any form of predictive tool or algorithm that claims to predict whether students will engage in misbehavior, or are at risk for future involvement in the criminal justice systems, for example risk assessments.
3. Facial recognition software.

4. Data sharing agreements between schools and law enforcement agencies that would share data gathered by any of the above means.<sup>173</sup>

**M. Districts and schools shall refrain from utilizing metal detectors—either standing or wands.**

1. Districts and schools shall not introduce new metal detectors and shall take steps to eliminate the use of metal detectors<sup>174</sup> and employ more effective, less costly and less intrusive means of promoting school safety.<sup>175</sup>
2. Where metal detectors are employed:
  - a. Metal detector use shall always coincide with the simultaneous use of less intrusive, evidence-based preventive and positive alternatives and shall be implemented for a time-bound period of no more than one year requiring review with the school community before their use can be continued
  - b. Steps shall be taken to ensure quick access to school and minimize disruption to the school schedule.<sup>176</sup>
  - c. Schools shall maintain the following data to determine the metal detectors' impact on the school environment disaggregated by race and other demographic characteristics:
    - i. The number of metal detector scans conducted each day;
    - ii. The wait-time for metal detector scans;
    - iii. The number of students subjected to a secondary scan;
    - iv. The number of students subjected to a body search;
    - v. The number of altercations between students and staff/SRO's that arose due to a metal detector scan;
    - vi. A description of all items seized because of a metal detector scan;
    - vii. An analysis of lost student class time associated with metal detector scans;
    - viii. An analysis of whether certain student populations have been disproportionately impacted by the metal detectors;
    - ix. An analysis of student attendance, retention and drop-out rates; and
    - x. A qualitative analysis of the social and emotional impact on students of the metal detectors.
3. At the end of each school year, schools with metal detectors shall conduct an evaluation to assess what steps can be taken to remove the metal detectors.
  - a. Students, parents or guardians, other community members and school staff shall be consulted as part of such evaluations, including through at least one public hearing on the matter.
  - b. Such evaluations shall include: publicly available analysis of the data collected by the school about the scanner implementation; analysis of student attendance, retention and drop-out rates and loss of student class time due to waiting at metal detectors; and a clear explanation or rationale as to the reasons to either retain or remove the metal detectors. Special consideration shall be given to whether certain student populations have been disproportionately impacted by the metal detectors.
  - c. No school or district shall continue the use of metal detectors without first, considering evidence-based preventive and positive alternatives, Restorative Justice Practices or other methods for promoting safety, and second, determining that those positive, less intrusive means alone are unable to protect student safety in the face of a credible danger.

<sup>150</sup> The Riyadh Guidelines, supra note 124 at ¶ 5.

<sup>151</sup> School Policing: What the Research Shows. ACLU of PA (2019) Available at: <https://drive.google.com/file/d/1yXBHTRHRRy0VaPm7zcl1PL04rcpnou/view>.

<sup>152</sup> U.N. Convention on the Rights of the Child art. 37.

<sup>153</sup> The Riyadh Guidelines, supra note 124 at ¶ 58.

<sup>154</sup> See generally Catherine Y. Kim & I. India Geronimo, Am. Civil Liberties Union, Policing In Schools: Developing A Governance Document For School Resource Officers In K-12 Schools (2009), available at [http://www.aclu.org/pdfs/racialjustice/whitepaper\\_policinginschools.pdf](http://www.aclu.org/pdfs/racialjustice/whitepaper_policinginschools.pdf); Jason Langberg Et Al., Advocates For Children's Servs., Law Enforcement Officers In Wake County Public Schools: The Human, Educational, And Financial Costs (2011), available at [http://www.legalaidnc.org/public/ACS/IssueBrief\\_Feb-11\\_SROs\\_Rev.pdf](http://www.legalaidnc.org/public/ACS/IssueBrief_Feb-11_SROs_Rev.pdf).

<sup>155</sup> Id.

- <sup>156</sup> Youth Justice Coalition, Welcome Home L.A. From The Cell Block To The Corner Block, <http://www.youth4justice.org/wp-content/uploads/2012/12/2012WelcomeHomeLA.pdf>. Use of the word neighborhoods refers to gangs, but is less criminalizing in that not all alleged gangs and the vast majority of people affiliated with them are not involved in crimes.
- <sup>157</sup> For the purposes of these recommendations, “in and around” is meant to encapsulate the criminalization by law enforcement that specifically targets students while they are coming in and out of school.
- <sup>158</sup> Law enforcement includes sworn officers (and unsworn if they are armed security), municipal police officers, school police officers, school resource officers (SROs), sheriff’s deputies, parole and probation officers, tribal officers, truancy officers, ICE officers or other immigration officials and armed security guards.
- <sup>159</sup> Whether these roles are school-based staff or employed by community-based organizations or government institutions, they must be funded through a district’s core education budget and considered a permanent part of the school community.
- <sup>160</sup> These staff should be protected by all applicable labor laws, including overtime pay where applicable, and should not be expected to perform these duties outside of their paid hours.
- <sup>161</sup> Each school must determine what their needs are in terms of supportive school staff, which may include both guidance counselors and therapeutic counselors, social workers, therapists, psychologists, substance abuse counselors, and other mental health professionals. All of these roles are meant to address the root causes of issues impacting students and the larger school climate.
- <sup>162</sup> A “real and immediate” threat occurs when an individual “‘has sustained or is immediately in danger of sustaining some direct injury’ as the result of the...conduct and the injury or threat of injury must...not [be] ‘conjectural’ or ‘hypothetical.’” City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983).
- <sup>163</sup> Resolution 118B, supra note 26 at 16-17.
- <sup>164</sup> See sample policies in Philadelphia and Los Angeles available at: [https://docs.wixstatic.com/ugd/10497b\\_f7d8280b96464077a7fb1da49c4f85f0.pdf](https://docs.wixstatic.com/ugd/10497b_f7d8280b96464077a7fb1da49c4f85f0.pdf); and <http://www.fixschooldiscipline.org/wp-content/uploads/2014/10/LASPD-Arrest-and-Citation-Reform-Policy.-8-15-14.pdf>
- <sup>165</sup> Where state laws prohibit school staff from processing or disposing of drugs, that a designated school staff person would be able to gather the drugs for later disposal by a law enforcement official.
- <sup>166</sup> Youth Justice Coalition, Welcome Home L.A. From The Cell Block to The Corner Block, <http://www.youth4justice.org/wp-content/uploads/2012/12/2012WelcomeHomeLA.pdf>. Use of the word neighborhoods refers to gangs, but is less criminalizing in that not all alleged gangs and the vast majority of people affiliated with them are not involved in crimes.
- <sup>167</sup> A “real and immediate” threat occurs when an individual “‘has sustained or is immediately in danger of sustaining some direct injury’ as the result of the...conduct and the injury or threat of injury must...not [be] ‘conjectural’ or ‘hypothetical.’” City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983).
- <sup>168</sup> See generally Cristiana Pereira Baptiste, Therapeutic Justice and Peace Circles: A Restorative Opportunity for Youth Drug Users in Conflict with the Law, available at <http://www.iirp.edu/pdf/Nova-Scotia-2011-Presentations/Nova-Scotia-2011-Pereira-Baptista.pdf>.
- <sup>169</sup> Youth Justice Coalition, Negative Impact of Gang Injunctions on Youth and Communities. Available at: <http://www.youth4justice.org/wp-content/uploads/2013/07/Negative-Impacts-of-Gang-Injunction.pdf>.
- <sup>170</sup> CalGang Criminal Intelligence System (2015) available at: <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>.
- <sup>171</sup> Allegations of gang affiliation can have harsh immigration consequences for children, making immigrants ineligible for certain types of immigration relief and increase the likelihood that an immigrant will be detained while their immigration case is pending. *Deportation by Any Means Necessary: How Immigration Officials are Labeling Immigrant Youth as Gang Members*, Immigrant Legal Resource Center, [https://www.ilrc.org/sites/default/files/resources/deport\\_by\\_any\\_means\\_nec-20180521.pdf](https://www.ilrc.org/sites/default/files/resources/deport_by_any_means_nec-20180521.pdf).
- <sup>172</sup> See generally Elora Mukherjee, N.Y. Civil Liberties Union & Am. Civil Liberties Union, *Criminalizing The Classroom: The Over-Policing Of New York City Schools* (2007), available at [http://www.nyclu.org/files/publications/nyclu\\_pub\\_criminalizing\\_the\\_classroom.pdf](http://www.nyclu.org/files/publications/nyclu_pub_criminalizing_the_classroom.pdf); Udi Ofer Et Al., N.Y. Civil Liberties Union, Annenberg Inst. For Sch. Reform At Brown Univ. & Make The Road N.Y., *Safety With Dignity: Alternatives To The Over-Policing Of Schools* (2009), available at [http://www.nyclu.org/files/publications/nyclu\\_pub\\_safety\\_with\\_dignity.pdf](http://www.nyclu.org/files/publications/nyclu_pub_safety_with_dignity.pdf).
- <sup>173</sup> Twin Cities Pioneer Press “St. Paul, Ramsey County to end youth data-sharing agreement after withering criticism” (January 28, 2018). Available at: <https://www.twincities.com/2019/01/28/st-paul-ramsey-county-to-end-youth-data-sharing-agreement-after-withering-criticism/>.
- <sup>174</sup> ACLU of Southern California, *Here to Learn* (2018). Available at: [https://www.aclusocal.org/sites/default/files/aclu\\_socal\\_report\\_here\\_to\\_learn.pdf](https://www.aclusocal.org/sites/default/files/aclu_socal_report_here_to_learn.pdf)
- <sup>175</sup> Girls for Gender Equity, *Schools Girls Deserve* (2017). Available at: [http://www.ggenyc.org/wp-content/uploads/2017/11/GGE\\_school\\_girls\\_deserveDRAFT6FINALWEB.pdf](http://www.ggenyc.org/wp-content/uploads/2017/11/GGE_school_girls_deserveDRAFT6FINALWEB.pdf).
- <sup>176</sup> See generally, Jennifer Medina, The New York Times, *Metal Detectors Making Students Late, If Not Safer*, available at <http://www.nytimes.com/2002/11/06/nyregion/metal-detectors-making-students-late-if-not-safer.html>.





# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.4 Truancy Prevention and Dismantling Status Offense Laws

#### Human Rights Goal

In order to prevent the criminalization, institutionalization, detention, incarceration and/or deportation of young people and ensure their right to dignity, any conduct not considered an offense if committed by an adult, including truancy, shall not result in criminal penalties if committed by a young person.<sup>177</sup> Schools shall take measures to encourage regular attendance and reduce of drop-out rates through specialized services and educational approaches to address the underlying causes of truancy and avoid the criminalization of youth.<sup>178</sup>

#### Definitions

1. **Status offenses** – Offenses that target behaviors that are unlawful for children and youth under 18, but not unlawful for adults. It is the status of childhood that allows children to be the subject of a status offense.<sup>179</sup> Such policies include but are not limited to truancy, school absence, violation of daytime or night-time curfews, running away or homelessness, and use of alcohol or tobacco.

#### Recommended Language

- A. **Juvenile and criminal justice authorities shall not impose criminal penalties (including ticketing, citations, fines, detention, probation violation, incarceration or deportation) on any student for any status offense and all such offenses shall be removed from local municipal and state penal codes.**
- B. **Such matters shall be treated as issues in need of prevention, intervention and student and family outreach and supports. Funds used for suppression, prosecution, collection, incarceration and/or deportation shall be redirected to provide for needed interventions and supports.**
- C. **Education Policy Regarding Truancy Prevention and Correction**
  1. Schools shall not punish students based on previously criminalized status offenses, such as truancy.
  2. Schools shall adopt a school-wide prevention policy that addresses social and emotional development, family support, and early intervention as a necessary foundation to a truancy policy.<sup>180</sup> (See 3.1 Key Elements of School Climate and Positive Discipline)
    - a. Efforts must include early assessment and intervention in elementary, middle, junior high and high school levels to both predict and prevent future school push-out and absence of students.
  3. Students shall not receive financial penalties, fines, criminal sanctions, loss of privileges (such as driver's licenses) or municipal code sanctions for truancy.
  4. All responses to and consequences for truancy shall be handled within the school setting using relevant interventions that identify and address the individual reasons for a student's lateness and/or absenteeism.
    - a. Upon 5 days of unexcused absences, the school system shall initiate meaningful communications with the student and family or guardian to determine the underlying cause(s) of the unexcused absences and to develop a plan to ensure school attendance.

- b. Upon 10 days of unexcused absences, the school system shall meet in person with the student and family or guardian, conduct appropriate evaluations of the student, and provide necessary supports and services to ensure school attendance.
  - c. Schools shall not use exclusion as a response to truancy.<sup>181</sup>
  - d. Only when all school-based interventions have been exhausted and student and parent meetings have occurred shall schools consider voluntary transfer of students to another school setting. Involuntary transfers are not permitted for truancy. If voluntary transfer is considered, efforts must be made to refer youth to schools that better meet their individual educational, social and emotional needs, and which do not provide an inferior education setting. Voluntary school transfers must be made in order to facilitate and support rather than curtail a student's current or future efforts to prepare for college or career.
5. Schools shall screen all students who are truant for suspected disabilities and make referrals in compliance with federal and state special education laws with a particular emphasis on the Child Find provisions of the IDEA.
  6. Schools shall align their truancy prevention program with the McKinney-Vento Act by:<sup>182</sup>
    - a. Placing homeless students either in their original school or within a school in the district in which they currently reside;<sup>183</sup>
    - b. Prohibiting requirements that force homeless students to attend school exclusively with other homeless students;<sup>184</sup>
    - c. Providing "comparable services...including transportation services, educational services and meals through meals programs"; and<sup>185</sup>
    - d. Prohibiting any stigmatization of homeless students by school staff.<sup>186</sup>

#### **D. Juvenile Policy Regarding Truancy Prevention and Correction**

1. School and law enforcement authorities shall not institute court proceedings against a student for truancy, whether for a new case or for a probation violation.<sup>187</sup>
2. School and law enforcement authorities shall not arrest or institute court proceedings against parents or guardians for student truancy unless it is documented that this is part of an ongoing pattern of neglect or abuse. In such cases, school attendance can be used to bolster other allegations of neglect/abuse but cannot be the only indication. Where abuse or neglect of students has or is occurring, efforts shall be made whenever possible to implement family preservation and other supports and/or to allow for family healing and—if removal—family reunification. Where youth are removed from their home, special emphasis shall be given to reducing stigma and maintaining the student in their school, unless they request a transfer to another school or district.
3. Once any court proceeding is initiated, students must be provided with counsel at public expense to help them understand the legal process, to defend against the allegations made by the school, and to protect the wide variety of legal and educational interests at stake in a truancy proceeding.<sup>188</sup> (See Appendix II)
4. During the transition back into school for court involved youth, Valid Court Orders (VCO) shall not be employed in truancy cases to incarcerate students who have failed to comply with the school-related provisions of the VCO.

<sup>177</sup> The Riyadh Guidelines, *supra* note 124 at ¶ 56.

<sup>178</sup> U.N. Convention on the Rights of the Child art. 38; The Riyadh Guidelines, 96 note 85 at ¶ 30.

<sup>179</sup> H. Ted Rubin, Juvenile Status Offenders – Historical Antecedents, The Breadth of Proscribed Behaviors, Separation of Non-Criminal Conduct from Delinquent Conduct, Constraints on Judicial Powers, <http://law.jrank.org/pages/1543/Juvenile-Status-Offenders.html>.

<sup>180</sup> Resolution 118B, *supra* note 26 at 2-3.

<sup>181</sup> The ABA report recommends prohibiting the use of exclusion as a response to truancy. *Id.* at 11.

<sup>182</sup> Under Title 7-B of the McKinney-Vento Homeless Assistance Act, the Education for Homeless Children and Youth Program is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this program, State educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth. Homeless children and youth should have access to the educational and

other services that they need to enable them to meet the same challenging State student academic achievement standards to which all students are held. In addition, homeless students may not be separated from the mainstream school environment. States and districts are required to review and undertake steps to revise laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth. See generally, U.S. DEPT. OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM: TITLE VII-B OF THE MCKINNEY- VENTO HOMELESS ASSISTANCE ACT: NON-REGULATORY GUIDANCE (2004), available at <http://www2.ed.gov/programs/homeless/guidance.pdf>.

<sup>183</sup> 42 U.S.C. § 11432(e)(3)(C)(i)(III)(aa) (2002).

<sup>184</sup> Id. at (bb).

<sup>185</sup> Id. at (cc).

<sup>186</sup> Id. at (bb).

<sup>187</sup> The ABA resolution calls for the need to “reduce criminalization of truancy, disability-related behavior, and other school-related conduct.” Resolution 118B, *supra* note 26 at 16-17.

<sup>188</sup> Bellevue Sch. Dist., 199 P.3d at 1010. The problems children, as young as five years old, can face when they are forced to defend themselves in court without counsel are easy to identify, and it is unrealistic to expect them to be able to understand the court proceedings or any defenses they might have. Students, or even their parents, are also unlikely to know about their rights under the McKinney Act, or special education law, even though those rights might be implicated in a truancy proceeding. In addition, programs that provide counsel to children in such proceedings have shown promising results. See [www.truancyproject.org](http://www.truancyproject.org). While there is case law from Washington State holding that a child is not constitutionally entitled to counsel at a truancy hearing when there is no risk of incarceration at the hearing, Bellevue Sch. Dist., 257 P.3d at 570 (divided court reverses Court of Appeals decision finding constitutional right to counsel), the Chief Judge’s concurring opinion urged the legislature to create a statutory right to counsel in accordance with ABA policy.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.5 Alternative Schools

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#### Human Rights Goal

Alternative schools offer alternative learning experiences beyond those provided in traditional schools and shall be based on personal need and preference and be provided to students who need extra supports at no additional cost. Alternative schools must work to help students who are struggling to be successful in a traditional school setting and must not operate to punish students.<sup>189</sup> Any decision to transfer a child or young person shall require the full consideration of the child's right to an education and to develop their full potential with dignity. Schools must ensure children, youth and their families have a right to be heard and to participate in the decision to transfer a student to another school or alternative educational environment.<sup>190</sup>

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#### Definitions<sup>191</sup>

- 1. Alternative Schools** – Alternative schools shall be defined as any educational setting designed to accommodate educational, behavioral, or medical needs of children and adolescents that cannot be adequately addressed in a traditional school environment and that is meant to be the primary source of education for those students. Alternative schools may include programs or schools commonly referred to by different jurisdictions as Continuation Schools, Second Opportunity Schools, Second Chance Schools, Career Academies and a variety of other classifications.
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#### Recommended Language

##### A. Standards for Alternative Schools

1. Alternative schools, as defined above, must meet the same requirements and standards as any traditional public school whether they are described as a school or program by the jurisdiction.
2. Alternative schools and programs shall operate for a full school day<sup>192</sup> of equal length to that provided to all other students (night programs or other programs designed to accommodate students' work or family obligations may use a flexible schedule as long as the same total number of instructional hours are provided).<sup>193</sup>

##### B. Voluntary Placement

1. Placement in or transfer to an alternative school shall be allowed where initiated by the student and their parent or guardian in situations including but not limited to:
  - a. Students who are struggling to succeed in traditional school environments and are seeking individualized approaches to learning, therapeutic environments, career specific training or other specialized approaches to learning;
  - b. Students at-risk of being pushed out, including over-age and/or under-credited students;
  - c. Students returning to school after having dropped out or faced a period of incarceration; and
  - d. Students facing behavioral or disciplinary problems in schools.
2. Districts and schools must have clear and transparent policies in place to review and respond to requests by students, parents or guardians, school administrators or teachers for transferring students out of a traditional

school environment. The policies must ensure that the student's individualized educational needs are met and the right to a quality education is maintained, including:

- a. Considering an alternative learning strategy for students within the traditional school environment to determine whether transfer to an alternative school is necessary. Such an alternative learning strategy would support students to successfully meet their needs through an individualized alternative educational program without disengaging the student from a traditional school setting. This alternative strategy shall include:
  - i. Low student-teacher ratio;
  - ii. Individualized instruction and assessment; and
  - iii. Maximum collaboration with the school district's support service resources, including but not limited to, school psychologists, academic counselors and school counselors.
- b. Ensuring that students who show signs of a possible disability, but who have not yet been evaluated, shall not be transferred to alternative schools until a full evaluation and diagnosis of the disability is completed and appropriate services and placement options are reviewed.

### **C. Involuntary Placement**

1. Involuntary transfer or placement of any student is prohibited for academic purposes only, including for students who are over-age or under-credited.
2. Involuntary transfer or placement of any student for disciplinary reasons can only occur after a full hearing is conducted and the student's due process rights are fulfilled equivalent to those guaranteed for expulsion hearings (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals).
3. Involuntary transfer or placement of any student under 10 years old for disciplinary reasons is prohibited.

### **D. Content of Alternative School Programs**

1. Alternative schools shall use approaches of proven effectiveness in both academic and behavioral areas (see Section 1.1 Education for Full Potential of Children and Youth and Section 3.1. Key Elements of School Climate and Positive Discipline), such as:
  - a. Individualized academic plans, instruction and assessment;<sup>194</sup>
  - b. Experiential and service-based learning;
  - c. Support service resources, including counseling and mentoring; and
  - d. Positive behavioral supports and restorative approaches to discipline.
2. Alternative schools shall establish clear performance targets relative to student outcomes, both academic and behavioral. Data collection and assessment regarding the progress of students must be aligned to these targets (see Chapter 5 Data, Monitoring and Accountability).

### **E. Services to students with disabilities<sup>195</sup>**

1. Alternative schools shall be closely and frequently monitored to ensure they are in compliance with laws ensuring the rights of students with disabilities, including but not limited to monitoring:
  - a. The number of students with disabilities served and the types of disabilities represented;
  - b. The nature of the programming provided for students with disabilities; and
  - c. The availability of related services.
2. Monitoring of alternative schools must include frequent site visits.
3. Where monitoring of alternative schools or programs reveal deficiencies in programming for students with disabilities, prompt correction must follow. Alternatively, if such monitoring is not possible, students with disabilities shall be prohibited from placement in that alternative school.

**F. Services to English language learners (ELLs)**

1. Alternative schools and programs shall provide quality services to ELLs and shall be required to report on the number of ELLs served by each program and the services offered.<sup>196</sup>

**G. Staff Qualifications**

1. States, districts and schools shall establish competencies and preparation requirements for all personnel in alternative schools and programs and shall gather information from alternative schools and programs to determine whether these requirements are being met.
2. All personnel in alternative schools and programs shall be required to have the certification of “highly qualified teacher” as defined by federal law.

**H. Progress Reviews and Length of Stay<sup>197</sup>**

1. States, districts and schools shall monitor alternative schools frequently to ensure that adequate procedures are in place for reviewing student progress at least every semester and that students, parents or guardians and representatives of the student’s home school participate in the process.
2. States, districts and schools shall adopt a performance target relative to students’ length of stay in alternative schools and programs, and must have clear policies allowing for transfer from alternative schools back to traditional school settings.
3. States, districts and schools shall adopt targets and collect data on the academic and behavioral success of students once they return from alternative schools to traditional school settings.

**I. Parent and Guardian Participation**

1. States, districts and schools shall develop requirements and performance measures for parent and/or family participation in alternative schools and programs.<sup>198</sup>
2. States, districts and schools must make clear to alternative schools and programs that they are obligated, no less than traditional schools, to carry out parent participation standards (See Section 2.3 Rights of Parents and Guardians to Participation).
3. States, districts and schools shall develop information on students’ and families’ rights within alternative schools and programs, including how to resolve problems and how to obtain help from the governing bodies when problems are not resolved at the site of the alternative school or program. The governing bodies must ensure that this information is provided to all families whose children are assigned to an alternative school or program.

**J. Public Reporting and Accountability<sup>199</sup>**

1. States, districts and schools shall make publicly available the data that it collects concerning alternative schools and programs, including information on the extent to which each program meets criteria and performance targets established by the governing bodies.
2. States, districts and schools shall publicize the results of any studies or reports that it commissions concerning alternatives schools and programs.
3. States, districts and schools must provide timely annual reports to the family and community as required by law. These reports must include comprehensive data and analyses (see Chapter 5 of this Code), and must be readily made available to the public.
4. States, districts and schools shall respond to allegations or findings of deficiencies in alternative schools and programs, mandate that corrective action is taken if deficiencies are found, and terminate the program if deficiencies are not corrected.

5. Where it is found that students of color, students with disabilities, or any other group are disproportionately represented in alternative school programs, the operating body shall investigate the reasons and require corrective action.<sup>200</sup>

<sup>189</sup> See generally Camilla A. Lehr & Cheryl M. Lange, *Alternative Schools and the Students They Serve: Perceptions of State Directors of Special Education*, 14 *Institute on Community Integration (UCEDD)* (2003), available at <http://ici.umn.edu/products/prb/141/>.

<sup>190</sup> See generally Ron Miller, *The Almanac of Education Choices: Private and Public Learning Alternatives and Home Schooling* (1995).

<sup>191</sup> See generally Mary Ann Raywid, *History and Issues of Alternative Schools*, 64 *The Educ. Digest* 47-51 (1999).

<sup>192</sup> See generally Nathaniel S. Hosley, *Survey and Analysis of Alternative Education Programs* (2003) (indicating that between 8.4% and 28.2% of programs operated for one to three and a half hours per day and that an additional 45.8% to 64.2% operated for three and a half to six hours per day).

<sup>193</sup> Under Nevada law, an alternative program may operate shortened days, but must also provide a total “number of minutes of instruction that is equal to or greater than that which would be provided under a program consisting of 180 school days.” NEV. REV. STAT. § 388.537(5)(a) (2012). Virginia’s grant program allows for “extended day” services, but not shortened day services. VA. CODE ANN. § 22.1-209.1:2(B)(7) (2011).

<sup>194</sup> New Jersey law requires that “[a]n Individualized Program Plan shall be developed for each general education student enrolled in the [alternative education] program,” and describes the process for development and review of the plan. N.J. Admin. Code § 6A:16-9.2(a)(3) (2012). Section 20-30-8-11 of the Indiana Code contains a similar requirement.

<sup>195</sup> See generally Robert B. Rutherford & M. Magee Quinn, *Special Education Alternative Programs*, 73 *Special Educ.* 79-81 (1999).

<sup>196</sup> See Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (2012); 42 U.S.C. § 2000d (2012); 34 C.F.R. 100.3 (2012).

<sup>197</sup> See generally Mary Ann Raywid, *Alternative Schools: The State of the Art*, 52 *Educ. Leadership* 26-31 (1994).

<sup>198</sup> See, e.g., 20 U.S.C. § 6318 (2012) (parent involvement generally); 20 U.S.C. § 6316 (2012) (parent involvement in school and district improvement).

<sup>199</sup> *Qualitative Solutions and Research Pty Ltd*, (1996). QSR NUD-IST. Thousand Oaks, CA. Sage Publications Inc.

<sup>200</sup> See 34 C.F.R. 104.4 (2012); see also 34 C.F.R. 300.170(a) (2012); 34 C.F.R. 300.646 (2012).



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.6 Right to Education for System-Involved Youth

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#### Human Rights Goal

Schools must ensure that all young people have equal access to quality educational services regardless of past behavior or involvement with the juvenile justice system.<sup>201</sup>

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#### Definitions

1. **System-involved youth** – Youth with charges against them who are attending court or youth who have received disposition in juvenile court or a sentence in criminal court. International human rights definitions often use the term youth in conflict with the law.
    - a. Common U.S. terms, including youth offenders, inmates, minors and wards as well as labels based on behaviors such as drug addict, pregnant teen, gang member, or drop out, stigmatize youth and infer that all system-involved youth are immoral, in need of correcting/fixing, and/or guilty of all they are charged with, and permanently label them based on their convictions dramatically impacting how they view themselves and how their families, schools and communities view them as damaged or bad.
    - b. Programs for system-involved youth often have high recidivism (failure rates) because they focus on strategies proven to be ineffective, such as abstinence/sobriety, zero-tolerance and boot camps. Adolescents respond instead to programs that focus on asset-based youth development, harm reduction, healthy choices and risk avoidance. Further, youth appreciate programming that enables them to critique and shape the world around them, including focusing on changes that need to occur in communities and systems rather than on changing youth and families.
  2. **Lock-ups** – can include, but are not limited to: minimum, medium or maximum security placements; court-ordered or probation-run group homes; court-ordered drug treatment; juvenile halls or other youth detention facilities for youth pre-disposition (those in custody while traveling back and forth from court), or youth who have completed the court process and are awaiting transfer to placement or incarceration; adult jails (where youth under age 18 are required by federal law to be outside adult sight or sound); ICE (Immigration and Customs Enforcement) detention centers; and minimum, medium or maximum security youth prisons (including camps, ranches and youth authorities).
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#### Recommended Language

- A. **All youth who are or have been suspended, expelled, detained, incarcerated or who are returning home from Immigration and Customs Enforcement (ICE) detention or deportation have the right to high quality education<sup>202</sup> and the right, full opportunity, and support to re-integrate into public school.**
- B. **Right to Education for System-Involved Youth**
  1. Districts shall establish a contract or a memorandum of agreement between themselves, the juvenile justice system, mental health and social service agencies and any other child-serving public or private agencies to:
    - a. Assign roles and responsibilities for ensuring the right to education for system-involved youth;



- b. Clearly delineate and explain communication procedures and requirements, including all rights and responsibilities of the youth, other family members and school and system staff; and
  - c. Specify accountability standards required of all the parties involved regarding the services a youth has a right to receive while in custody (including arrest, detention, immigration detention and while on probation) and upon release.
- 2. Districts, schools, courts, juvenile and criminal justice systems and facilities, and other public agencies, must be made aware that:
  - a. Involvement with either juvenile or adult court and corrections systems—even minor involvement such as citations, brief custody and court—has devastating impacts on a student’s life chances including discrimination in accessing employment, higher education, financial aid, housing and public entitlements.
  - b. Entire families often face discrimination, exclusion from resources and/or criminalization based on the system involvement of even one child. This can include but is not limited to loss of income and employment due to absence to attend court, eviction from Section 8 or public housing, loss of entitlements and public assistance, and in the most extreme cases arrest of parents or guardians for the school truancy record of their child.
  - c. There are discriminatory policies and practices that lead to unequal policing, criminalization, unfair sentencing and disproportionate contact at all levels of the system based on race, income, gender, sexual orientation and immigration status. Districts, schools, courts, juvenile and criminal justice facilities must challenge and work to correct any discrimination that leads to greater criminalization, punishment, mistreatment or isolation of a young person or a group of youth.
  - d. System involvement—because of the incredible financial hardship and emotional stress placed on families—often erodes relationships between an impacted student and their parents or guardians and siblings, making school success as well their future progress and stability in all other areas immensely harder to obtain.
- 3. Districts and schools shall work with State and County Juvenile Justice Agencies to develop a Transitional Team for System-Involved Youth in every county to assist with entry of youth into detention or incarceration, and to assist youth to re-enter the community. The Transitional Team shall be a multi-disciplinary panel consisting of formerly incarcerated advocates, parent advocates, representatives from the school system, juvenile court, mental health, social services, assigned probation or parole officer, members of business and professional organizations, a member of the local community in good standing, and any other relevant child-serving public or private agency. The Transitional Team shall be led by a transition coordinator or specialist.
  - a. Jurisdictions shall create family resource centers connected to courts, juvenile halls and prisons staffed by social workers, formerly incarcerated peer educators and parent advocates who have experienced the system with their own children to walk youth and their families through the entry and re-entry process and help them to identify, access and maintain relationships with resources and opportunities, including educational settings.
- 4. Upon entry into the facility representatives from the school system shall:
  - a. Be notified within 24 hours (not including weekends and holidays) by the lock-up facility that the youth is in their custody.
  - b. Advocate with court, detention, probation and other necessary systems for the immediate and/or soonest possible release of students to school and community supervision and/or a similar diversion in order to minimize the negative impact of periods of court custody and address disproportionate contact of youth of color.
  - c. Take all steps necessary to facilitate the school attendance of students on house arrest or probation.
  - d. Work with the juvenile hall, placement or prison Transitional Team to ensure the commencement of the transition process from detention to community within 72 hours of a student’s custody. The re-entry plan must begin at the start not at the end of lock-up.

- e. Immediately transfer relevant records (transcripts, test scores, immunizations, health/mental health and IEPs) to the record custodian at the juvenile detention facility or placement within 72 hours of the student's detention, incarceration or placement not including weekends and holidays.
- f. Be responsible for the transfer of school records to the receiving school upon release from the juvenile detention facility.

### C. Quality, Full-Day Educational Services

1. Lock-ups must provide all youth in custody a quality, full-day education program:<sup>203</sup>
  - a. Youth shall be assessed and placed within a full-day, quality education program within 72 hours of custody not including weekends and holidays. During the assessment period, youth shall have access to reading and other educational materials—and when possible—pencil and paper, in order to prevent mental stress and encourage learning.
  - b. Youth shall be integrated into a classroom setting, and not be subjected to completing packets from a locked cell unless they are isolated temporarily for their own or others' safety.
  - c. If isolated in solitary or another similar environment, youth shall have access to reading and other educational materials—and when possible—pencil and paper.
  - d. Youth shall not be subjected to classroom instruction from within an individual cell, or while shackled or handcuffed.
  - e. Students who complete their high school degree while in lock-up shall have access to college courses—either online or through co-located programs. Students who are still in high school shall also have access to college programs in order to earn dual credits whenever possible.
  - f. Schools inside lock-ups, as well as locked facilities, shall create environments that inspire learning and decrease dehumanization and institutionalization including creating interactive and experiential learning; teaching to all learning styles; decorating classrooms, dorms and environments; allowing for bright colors and murals outside and inside classrooms, cells, dorms and cafeterias; exhibiting and rewarding student work and achievements; and painting/mounting positive and inspiring messages.
  - g. Students inside lock-ups shall be encouraged to read books and write outside class—including in their dorms or cells—in order to encourage learning and literacy. Schools and institutions shall create libraries and access to books and writing materials as much as possible throughout the facility.
  - h. As with adult facilities, families and friends will be encouraged to send books and other reading materials to youth in lock-up. (If systems are concerned with the smuggling of contraband, materials can be ordered on-line and delivered by mail.)
  - i. Schools inside lock-ups shall make every effort possible to provide youth with a college and career preparatory program—including seeking partnerships with community colleges, unions and community organizations—in order to better ensure successful re-entry of youth to community, prevent recidivism and facilitate greater career and educational advancement.
  - j. Schools inside lock-ups, and the volunteers, community and faith-based organizations that contribute to the education of detained and incarcerated youth shall work to create innovative and relevant curricula and programming that build on youth strengths and resilience; celebrate youth's culture, history and community; and teach youth skills that contribute to their ability to transition out of the system, prepare for college and career, serve their family and community, repair harm and heal from past trauma.
2. School districts and states must ensure that lock-ups contain schools, that they meet state educational standards, that credits are fully transferable to other schools, and that credits, test scores and degrees earned are recognized by all institutions of higher learning.
3. Schools within lock-ups shall ensure maximum credit opportunities, and shall maintain accurate and timely record keeping and reporting to ensure that youth are credited for all their work, and do not fall behind their peers in the community:
  - a. Schools inside lock-ups shall prevent students from repeating classes or assignments they have already completed to avoid the duplication of lessons or credits.

- b. Schools inside lock-ups shall ensure that youth earn credits for every hour of classroom and experiential learning they complete (including groups, therapy/counseling, recreation and arts, drug education and treatment, vocational instruction or actual work, or workshops and activities run by community and faith-based organizations inside) to ensure that they go home with the greatest number of credits possible, regardless of whether they complete a few days, a few weeks or a partial semester inside.
- c. Schools in lock-ups shall ensure that youth who are detained for longer periods while going back and forth to court, those who are incarcerated longer than the average length of stay, and those who are re-incarcerated after release do not repeat assignments, courses or credits already completed in order to ensure maximum credit recovery, to provide a challenging learning environment and to inspire a love for learning.
- d. Schools inside lock-ups shall ensure that youth return home with a complete, cumulative transcript and test scores in order to ensure that they do not lose credits or have to retake courses or tests.
- e. Schools inside lock-ups and the districts they operate within shall make student records available on-line to ensure they can be easily and immediately accessed by other schools either when the youth is transferred to another institution or returns to a community school.

#### **D. Addressing Factors that Contribute to Arrest, Detention, Incarceration and Recidivism**

1. School systems, lock-ups and the schools that operate within them shall address the factors that contribute to student arrest and prosecution, re-arrest and re-incarceration (recidivism) by:
  - a. Ensuring that all courts, law enforcement agencies (police, probation and immigration) and school districts collect and regularly release data based on RREGGO (race, referring agency, ethnicity, gender, geography/zip code and offense/charges) in order to track and correct overuse and misuse of citations, school suspensions and expulsions, arrest, detention, disproportionate police or system contact, unequal use of diversion or violations and unfair sentencing based on race or other characteristics;
  - b. Investing in school and community-based alternatives to suspension/expulsion, arrest, detention and incarceration;
  - c. Working to prevent and end local law enforcement's and school districts' participation in Secure Communities and other federal, state or local initiatives that ask people's immigration status and criminalize people based on that status;
  - d. Working to prevent and end use of computerized databases to label and track youth as criminals, including gang and sex offender databases. Where those databases are already in place, work to dismantle them and ensure in the meantime that youth and others have the rights to notification (as well as parent or guardian notification of a youth under 18), appeal, removal (clear and fair process) and resources (including eliminating any discrimination and exclusion from school and other opportunities based on the label); and
  - e. Working to prevent and end the use of court enhancements that give youth longer sentences based on labels; the transfer of youth into adult court; or the extreme sentencing of youth to Life or Life Without Parole.
2. Lock-ups and the schools that operate within them shall work to prevent further student contact with the system:
  - a. Staff shall integrate School-Wide Positive Behavior Intervention and Supports and Restorative or Transformative Justice processes to teach youth and staff new skills for resolving conflict and increasing both youth and staff safety and success, and to minimize the use of punishment and removal for behaviors such as failure to complete work, to follow school or institutional rules and student altercations.
  - b. Removal from school and isolation or solitary confinement, shall be used only when all other means of correction are exhausted or when immediate safety requires it. School and system staff shall avoid the use of additional charges (refilling) or increased time in custody as a punishment.

- c. System reports to judges regarding students—whether in the community or within lock-ups—must make equal efforts to report on student achievements as they do on students’ educational challenges or behavioral problems.
  - d. Probation and other agencies shall not use detention, incarceration or other forms of secure placement as a punishment for truancy or low grades, including when truancy and poor grades represent a violation of probation or youth/adult parole (furlough).
  - e. School and other staff within courts, probation departments and lock-ups shall not use a youth’s charges or convictions, or their life circumstances or experiences as a way to publicly humiliate them, and shall keep all conversations and details of a youth’s file confidential.
  - f. Systems and all school and other staff within them shall use positive language when referring (verbally or in writing) to system-involved youth and shall erase degrading language that negatively labels a youth based on their behaviors or otherwise dis-empowers youth and communities. Such labels include but are not limited to offender/ex-offender, inmate, ward, minor, underprivileged, high risk/at risk, gang member, minority, illegal immigrant. Staff shall not make degrading comments including but not limited to telling youth in their custody that they expect to see them back, will “graduate” to state prison, or otherwise communicate low expectations for the youth’s ability to free themselves from the system.
3. Lock-ups and the schools that operate within them shall ensure family contact as an important factor in preventing recidivism, and shall:
- a. Create family-teacher conferences, parent and student councils, evaluation processes and other mechanisms to involve youth and families in the design, running and evaluation of the educational program as well as the student’s individual educational plan;
  - b. Prohibit denial of family visits and phone calls as forms of punishment;
  - c. Make every effort to enable families to maintain contact, including securing youth no more than 50 miles from their family, immediately notifying families of their child’s location or any transfers, providing for transportation or gas/public transportation funding to travel to the institution, providing for free telephone or video conferencing, and facilitating the timely and consistent transfer of mail to and from youth and their families;
  - d. For youth in custody who are also parents or guardians, facilitate parenting education and face-to-face visits between youth and their children;
  - e. Take no measures that unnecessarily criminalize parents or guardians and other family members, including inquiring about or checking immigration status, drug testing families before visits, or punishing families for the time their child is absent from school; and
  - f. Prohibit the billing of families for the time their child is in custody, including garnishing wages, withholding tax refunds or confiscating property. Such actions decrease family stability and increase tensions between families and their children at the very time youth most need family support.
4. Lock-ups and the schools that operate within them shall recognize that many system-involved youth suffer from high levels of Post-Traumatic Stress Disorder as well as from stress stemming from periods of incarceration.<sup>204</sup> (see Section 3.1 Key Elements of School Climate and Positive Discipline, sub-section D on Trauma Sensitive Schools)
- a. Education and other programming both inside institutions and for youth once they return to their home schools, must be trauma-informed and support youth and their families to uncover, address, heal from and reduce the harm of community, system and family violence, emotional, physical and sexual abuse, and other victimization that youth have witnessed or experienced.
  - b. Programming must focus on asset-based youth development. Rather than simply identifying, isolating and “treating” youth based on pathologies or categories (teen pregnancy, gang involvement, substance abuse, etc.), youth development builds on youth strengths and focuses on a holistic approach that addresses both healing and harm reduction strategies while also celebrating and promoting positive peer support, interests and talents.

- c. Schools and other programs shall integrate system-involved youth fully into community and school-based programs and avoid labeling and segregating youth according to their charges and convictions. This includes creating separate classrooms and buildings for system-involved youth.
- d. Probation and other law enforcement visits or checks should happen discretely. Once home, youth shall not be pulled out of class in ways that are obvious or disrespectful, be publicly patted down or wanded by probation and other law enforcement, be called out publicly for drug testing, or be made to stand at attention, walk in single file, be handcuffed or stand or kneel with hands on their heads or behind their backs in front of other classmates or staff.

#### **E. Transition Back to Schools and Communities**

1. The school district shall identify a liaison to work with the transitional coordinator from the juvenile or criminal justice system facility and other members of the Transitional Team (described in section B.3. above) to ensure:
  - a. A smooth transition for the young person upon their release;
  - b. All necessary information and documents are transferred to the community school (including updated and cumulative transcripts with all credits earned, coursework completed and student grades previous to and during lock-up, test scores and skills levels, reading and math achievement, vocational skills, health and mental health diagnosis, immunizations, treatment needs and prescriptions, and special education status and IEPs);
  - c. All youth who spend a month or more in custody shall return to the community with a school placement and all necessary documents needed to enroll in school and access other essential services (including their birth certificate, social security number, state picture identification and/or driver's license, and proof of residence); and
  - d. Undocumented youth shall also be transitioned to a home school without delay, and shall receive information on the benefits and process for citizenship, college access (DACA) and other options.
2. The Transitional Team shall assess every youth prior to release to develop an individualized transition plan (ITP) that shall promote a successful re-entry into all relevant facets of the community including, but not limited to: school, employment, housing, family readiness and social integration. The school system liaison shall participate in the creation of the ITP. The plan must address the appropriate delivery of training in the areas of social skills, independent living skills and employment training.
3. While in custody and upon their release, students and their families must be made aware of their legal rights and responsibilities in schools, in lock-ups and on the street, including the conditions they must follow upon their release and risks of violation and re-incarceration, including the risks they face if they are not in school. Youth must have access to advocacy support to argue for alternatives to violation and re-incarceration in the case of future contact with law enforcement, probation or courts.
4. Similarly, while in custody and upon their release, undocumented students and their families must be made aware of the risks of system-involved youth for Immigration detention and deportation and must be given referrals to legal services that can accurately communicate their rights and any additional resources that are available.
5. School districts must take all steps necessary to prevent and remedy discrimination against and illegal blocking of system-involved youth from returning to their home school, another school they choose or an entire district.
  - a. The student shall be returned to an appropriate and quality educational placement in the least restrictive environment.
  - b. Every effort shall be made to re-enroll and fully integrate system-involved students in the most resourced and enriched educational setting possible, ensuring that arts, team sports and recreation, college preparation and job/career exploration are available.
  - c. Each student's placement shall be based on the presumption that the youth has been rehabilitated with the goal of avoiding automatic placement in alternative programs for students with discipline problems.

- d. School staff shall work with the returning student and their family to ensure that their school placement is safe, including consideration for conflict between neighborhoods and groups attending and surrounding the school, as well as conflicts in the communities the student must travel in order to attend school.
  - e. School districts and staff must recognize that LGBTQ+ youth, youth with disabilities, immigrant youth and other marginalized youth are at greater risk of bullying and victimization either in schools or the community. School districts and staff must further recognize that their contact with law enforcement and the courts often occurs because they are defending themselves against such victimization, as well as because they are often re-victimized by systems that fail to recognize the impact that prejudice and hate violence have in causing their own criminalization and eventual prosecution. Thus, special attention must be given to ensure the safest and most supportive educational environment possible for youth returning from custody.
6. Upon release, the school system in collaboration with the Transitional Team shall:
- a. Provide on-going supervision in conjunction with the youth's probation or parole supervisor and re-assess, periodically, to determine if the plan shall be modified in the best interest of the child and community;
  - b. Provide wrap around services for a minimum of six months, twelve months preferably, upon release to minimize the risk of recidivism; and
  - c. Ensure that youth are fully integrated into the school setting.
7. The school system liaison, along with the Transitional Team, shall ensure that the parent(s) or guardian(s) and the youth are engaged in planning, decision-making, implementation and evaluation throughout the entire process, from the time the youth enters the facility until their release. Parental participation and involvement shall be encouraged via continuous communication that is respectful and culturally competent and through parental training.

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<sup>201</sup> The Riyadh Guidelines, *supra* note 124 at ¶ 30.

<sup>202</sup> See generally Am. Bar Ass'n Comm'n On Youth At Risk & Am. Bar Ass'n Comm'n On Homelessness & Poverty, Resolution 118C, available at <http://cleweb.org/sites/default/files/ABA.118C.RighttoResumeEducation%20%281%29.pdf> [hereinafter Resolution 118C].

<sup>203</sup> See, e.g., *Green v. Johnson*, 3 EHLR 550, 552 (D.M.A. 1981).

<sup>204</sup> The Youth Justice Coalition has identified stress associated with incarceration as a yet undiagnosed challenge faced by youth which they call Post Incarceration Stress Disorder.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7 Model Policies on Specific Topics

School districts all over the country are currently implementing a variety of school-wide preventive and positive approaches to discipline. This section of the Code describes model policies on various topics related to school discipline policies.

The first two model policies describe two of the most successful and widely used approaches:

- 3.7.a School-Wide Positive Behavior Interventions, and
- 3.7.b Supports (SWPBIS) and Restorative Justice Practices.

Both approaches could be adopted together,<sup>205</sup> either one could be adopted on its own, or another preventive, positive approach or combination of approaches could be used. These model policies, however, provide guidance for achieving a positive school climate that meets all of the characteristics described in Section 3.1 Key Elements of School Climate and Positive Discipline.

Where possible, we have included references to examples of the policies described that are already in place in school districts throughout the United States.

The section also includes five additional Model Policies for how to address a variety of behaviors and school procedures, including:

- 3.7.c Fighting,
- 3.7. d Dress Codes,
- 3.7.e Bullying Behavior,
- 3.7.f Drugs and Alcohol, and
- 3.7.g Intervention Support Team Approach for “Threat Assessments.”

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<sup>205</sup> National PBIS Leadership Forum Webinar: Aligning Facility Wide PBIS and Restorative Practices: Lessons Learned and Future Directions. Available at: [https://www.pbis.org/Common/Cms/files/Forum16\\_Presentations/C6\\_Sprague\\_et\\_al.pdf](https://www.pbis.org/Common/Cms/files/Forum16_Presentations/C6_Sprague_et_al.pdf)

## 3.7.a Model Policy on School-Wide Positive Behavior Interventions and Supports (SWPBIS)

### Definitions

**1. School-wide Positive Behavior Intervention Supports (SWPBIS)** – SWPBIS is a research-based framework that can help schools design, implement and evaluate their approach to school discipline. Since every school is unique, SWPBIS does not prescribe a specific program or curriculum, rather sets out a process and key criteria for schools to follow. Under the SWPBIS framework, schools must:

- a. Use data to make decisions and solve problems;
- b. Focus on both prevention of problem behavior and positive interventions, such as counseling, mediation, Restorative Justice Practices and other interventions (listed under 3.1 Key Elements of School Climate and Positive Discipline, sub-section C.1);
- c. Model and teach behavior expectations and positive skills among students; and
- d. Continuously monitor implementation and adjust approaches as necessary.

SWPBIS uses a three-tiered approach to preventing and intervening in problem behavior. Tier 1 focuses on supports for all students in the classroom and school-wide to prevent problem behavior. Tier 2 focuses on “specialized” supports tailored to target groups of students who engage in misbehavior. Tier 3 provides highly individualized responses for those students who continue to face disciplinary problems despite the presence of Tier 1 and 2 supports. SWPBIS is meant to work collaboratively with specific practices, such as Restorative Justice Practices, to promote positive behavior in classrooms and on school campuses.<sup>206</sup>

**2. Wraparound Services** - Individualized community-based services that focus on the strengths and needs of the individual child. Wraparound services are developed through a team-planning process, where a team of individuals who are relevant to the well-being of the child (such as family members, service providers, teachers, and representatives from any other public health agency or community-based organization) collaboratively develop and implement an individualized “wraparound plan” that is culturally relevant.<sup>207</sup>

### Recommended Language

#### A. School Climate and Culture Committees and Teams

1. States and districts shall establish School Climate and Culture Committees that include representation from all stakeholders to develop guidelines for implementing SWPBIS policies and procedures at the state, district and individual school level.<sup>208</sup>
2. Schools shall establish School Climate and Culture Leadership Teams (or utilize an existing school-level team or decision-making body) to implement SWPBIS, using a process that considers available data and solicits input from the entire school community.
  - a. School administrators shall use a democratic approach to solicit stakeholder involvement in the Team, which shall include representatives of all stakeholder groups, including an administrator, a general education and a special education teacher, support staff, students, parents or guardians and other relevant community members.
  - b. The Team shall have regular meetings, a clear purpose, efficient internal processes and build caring relationships with each other and with other members of the school community.



- c. The school district and school administrators shall actively support the Team by providing adequate resources for fulfilling its responsibilities, implementation materials and ongoing trainings. The Team shall undergo a training of at least two to three days provided by skilled trainers on SWPBIS.
- d. The Team is responsible for securing school-wide agreements and support from the entire school community for the implementation of SWPBIS<sup>209</sup> on the:
  - i. Nature and priority of staff development efforts and needs;
  - ii. Long term (3-4 year) commitment and investment in the effort; and
  - iii. Importance of taking a preventative and instructional approach to behavior management and school-wide discipline.

## **B. Defining Expectations**

1. School shall define behavioral expectations for all members of the school community to serve as the foundation of school-wide prevention and intervention.<sup>210</sup>
2. Every three years, the School Climate and Culture Leadership Team shall use a participatory process to solicit input from the school community, including students, to:
  - a. Develop three to five behavioral expectations that are positively stated and easy to remember;
  - b. Create a matrix of how the behavioral expectations look, sound and feel in all the classroom and non-classroom areas;
  - c. Develop lesson plans and strategies on how the behavioral expectations will be taught in and around school; and
  - d. Ensure that all teachers and staff have training in culturally relevant instruction so that behavioral expectations are taught in ways that fully engage the student.

## **C. School-Wide Teaching and Classroom Management Practices**

1. States, districts and schools must implement culturally affirming social and emotional learning practices that are found to be effective in reducing behavioral problems and increasing academic achievement<sup>211</sup> (see Section 3.1 Key Elements of School Climate and Positive Discipline, sub-section on Culturally Affirming Social and Emotional Learning). Students shall be taught at a school-wide level how to resolve conflicts, manage their emotions and learn empathy skills. This must include classroom instruction that explicitly teaches these skills multiple times each school year as well as curricula that embed culturally affirming social and emotional learning (SEL) in content instruction.<sup>212</sup>
2. The classroom management practices of teachers must engage students as partners and leaders in the classroom, stressing prevention and the teaching of desirable behaviors rather than focusing on consequences.<sup>213</sup> Schools must:
  - a. Provide staff with classroom management training that includes strategies for adapting to the specific contexts of each classroom and each individual student beginning at the pre-service level;
  - b. Use a problem-solving and a lesson-study approach that supports ongoing classroom management;<sup>214</sup> and
  - c. Regularly review data to determine the amount of classroom management training that should be provided to teachers.
3. Teachers shall engage in culturally responsive classroom management (see Section 4.2 Disproportionate Use of Discipline, sub-sections C and D) to help analyze their understanding of the role of culture in student behavior, reflect on their judgments about appropriate behavior and cultural differences, and support the use of culture in classroom contexts. It is also especially important for teachers to be knowledgeable about the different cultures of their students.<sup>215</sup>
4. Schools shall engage in continuous reflection and evaluation so that teaching teams can give and receive feedback on ways to achieve high levels of academic engagement and low levels of classroom misconduct.

Data must be shared at faculty and grade level meetings in regard to achievement and disciplinary responses (see Chapter 5 on Data, Monitoring and Accountability).

#### **D. Positive Approaches to Behavior<sup>216</sup>**

1. All members of the school community are responsible for teaching and reinforcing appropriate school behavior.
  - a. Administrators, teachers and other staff shall model appropriate and respectful behavior in their interactions with students and each other, and must commit to teaching students how to behave respectfully and appropriately toward each other and toward adults.
  - b. Students and staff must be given the tools to prevent behavior problems and, if they occur, to keep them from escalating.
2. School Climate and Culture Leadership Teams shall develop a procedure for responding to problem behavior that provides clear consequences that are both instructional and constructive. Schools shall provide staff with the professional development, guidance and support needed to implement this procedure, and coordinate the necessary services and any additional instruction for students. This procedure shall include:
  - a. A continuum of behavior supports (see Section 3.7.b Model Policy on Restorative Justice Practices) to identify what should be in place to prevent behavior and includes a range of responses that could be utilized when misconduct occurs;
  - b. A clear delineation of responsibilities for all members of the school community, including a distinction between behaviors that are managed by staff/classroom teachers and by office/administrative staff; and
  - c. A referral procedure for individualized intervention.
3. All consequences for inappropriate behavior must be consistent with the requirements in Section 3.1 Key Elements of School Climate and Positive Discipline, in particular:
  - a. Consequences must be individualized, consistent, reasonable, fair, age appropriate and should match the severity of the student's behavior.<sup>217</sup> The consequence must be a natural and logical match to the inappropriate behavior.<sup>218</sup>
  - b. Consequences must be paired with meaningful instruction and guidance, including corrective feedback and re-teaching, and offer students an opportunity to connect their misconduct with new learning and participate in contributing back to the school community.
  - c. The use of consequences must be carefully planned with well-defined outcomes in order to provide the greatest benefit to students.
4. Consequences must be administered by an Intervention Support Team that includes people who know the student best and have a vested interest in a positive outcome. The student must be part of the team and have a role in determining the consequence. For in-classroom consequences, the team can include the teacher and the student. The Intervention Support Team must:
  - a. Consider the range of appropriate responses;<sup>219</sup> and
  - b. Provide continuous monitoring of student behavior and responses to the consequences.

#### **E. Students Requiring Individualized Interventions**

1. Students who exhibit a pattern of problem behavior or exhibit behaviors that are dangerous, highly disruptive, and/or impede learning and result in social or educational exclusion<sup>220</sup> require a more intensive level of intervention that is individualized and includes a team approach. In order to provide effective interventions:
  - a. School-site staff must have training, information and resources available;
  - b. All interventions must be tailored to the students' specific needs and circumstances;
  - c. Schools and classrooms must have screening methods to identify and collect data on students with social and academic difficulties who require differentiated support and provide them with necessary interventions;

- d. The School Climate and Culture Leadership Team must develop the process for teachers and other staff to make a referral for intervention to address behavior patterns which may include office discipline referrals, low academic achievement, poor attendance or other challenges; and
  - e. There must be progress monitoring, a scientifically based practice that is used to assess students' academic performance and evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class. This process should enable teachers or other school staff to identify which students need referrals for intervention.
2. All decisions related to intensive interventions must be made by the Intervention Support Team that includes the student and people who know them best, including the student's family. The Support Team may also include the classroom teacher, administrator, school psychologist, counselor, social workers and mental health experts.
- a. The Intervention Support Team shall use a problem-solving approach in an effort to help the student to be more successful in school, at home or in the community.<sup>221</sup> This approach includes:
    - i. Receiving referrals;
    - ii. Identifying and assessing problems;
    - iii. Collecting data for use in decision-making;
    - iv. Communicating with family members and provide opportunities for training on behavior support and positive parenting strategies;
    - v. Identifying action steps and develop strategies for coordination and implementation of programs and resources (e.g., conflict-resolution, opportunities to develop social and emotional skills, mentoring);
    - vi. Making a referral for special education if appropriate;<sup>222</sup> and
    - vii. Monitoring behavior and modifying the action steps appropriately.
  - b. For some students who require a more intensive level of intervention, the Support Team shall:
    - i. Include one person qualified to conduct a Functional Behavior Assessment (FBA),<sup>223</sup> and conduct the FBA if the student is not responding to Tier I and Tier II interventions;
    - ii. Integrate community-based resources in action planning and service delivery when necessary; and
    - iii. Develop a support plan comprised of individualized goals, data collection and analysis, assessment-based intervention strategies and monitoring systems to address the needs of the student.<sup>224</sup>

## **F. Wraparound Services**

- 1. Districts and schools shall provide wraparound services for students with complex and multiple needs. Schools shall collaborate with public agencies, community-based organizations and families to develop individualized plans to provide a variety of services, such as healthcare, counseling, social work and mentoring, that are driven by the needs of students, not the services provided.<sup>225</sup>
- 2. Wraparound plans for individual students shall be developed by the Intervention Support Team of people who know the students best and must include the following best practices:
  - a. Wraparound efforts must be based in the community;
  - b. The plan must be individualized to meet the needs of students and families;
  - c. The process must be culturally competent and build on the strengths of the students and families;
  - d. Parents or guardians must be included at every level;
  - e. Agencies must have access to flexible, non-categorized funding;
  - f. The process must be implemented on an inter-agency basis and be owned by the larger community;
  - g. Services must be unconditional. If the needs of the student and family change, the student and family are not to be rejected from the service. Instead, the service must be changed; and
  - h. Outcomes must be measured.

## G. Evaluation

1. Every state, district, and school must have an evaluation process carried out by the School Climate and Culture Leadership Team that occurs on a regular and consistent basis to:
  - a. Monitor implementation of SWPBIS and disciplinary data showing trends in disciplinary actions (office disciplinary referrals, suspensions, expulsions, referrals to law enforcement and referrals to alternative schools—disaggregated by race, gender and special educational status);
  - b. Report back to the school and community;
  - c. Review all referrals for Individualized Interventions and Wraparound Services; and
  - d. Make recommendations for on-going training, implementation and modification of the SWPBIS plan and the allocation of resources.

<sup>206</sup> What Is School-Wide PBS?, <http://www.pbismaryland.org/LeadershipForum2008/WhatisPBIS.pdf>.

<sup>207</sup> Bazelon Center for Mental Health Law, Wraparound Services available at <http://www.bazelon.org/Where-We-Stand/Success-for-All-Children/Mental-Health-Services-for-Children/Wraparound-Services-.aspx>

<sup>208</sup> Supra note 208.

<sup>209</sup> See Positive Behavior Intervention and Supports Tutorial: Securing School Wide Agreements And Supports, [http://cte.jhu.edu/courses/pbis/ses2\\_act3\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses2_act3_pag1.shtml).

<sup>210</sup> "SWPBS for Beginners," OSEP: Technical Assistance Center of Positive Behavior Interventions & Supports, available at [http://www.pbis.org/school/swpbs\\_for\\_beginners.aspx](http://www.pbis.org/school/swpbs_for_beginners.aspx).

<sup>211</sup> Evidence based programs such as Positive Action and Second Step: A Violence Prevention Curriculum have been found to positively support the social- emotional development of students.

<sup>212</sup> See generally Jeffrey R. Sprague & Annemieke Golly, Best Behavior: Building Positive Behavior Support in Schools 4 (2005); Hill M. Walker Et Al., Antisocial Behavior In School 32 (2004); Ctr. For Effective Collaboration and Practice, Second Step: A Violence Prevention Curriculum, [http://cecp.air.org/resources/success/second\\_step.asp](http://cecp.air.org/resources/success/second_step.asp).

<sup>213</sup> See generally G. Roy Mayer, Constructive Discipline for School Personnel, 22 Educ. and Treatment of Children 36-54 (1999).

<sup>214</sup> The use of a problem-solving team and a lesson-study approach supports such reflection. Infusing classroom management discussions into discussion about instruction supports both instruction and behavior. Teachers are able to do this by using key access methodologies including building cooperative and communal learning environments, holding instructional conversations so that students arrive at a deeper understanding of academic content, focusing on academic language development in teaching specialized language, building on conceptual knowledge brought from home and community, and utilizing advanced graphic organizers for active learning. See generally L.A. Unified Sch. Dist., Multi-Tiered Framework for Instruction, Intervention, And Support (2009), available at [http://www.lausd.net/math/Memos&Bulletins/BUL-4827\\_RTI\\_Policy.pdf](http://www.lausd.net/math/Memos&Bulletins/BUL-4827_RTI_Policy.pdf).

<sup>215</sup> See generally Elizabeth Bondy et al., Creating Environments of Success and Resilience: Culturally Responsive Classroom Management and More, 42 URBAN EDUC. 326-348 (2007).

<sup>216</sup> See generally L.A. Unified Sch. Dist., Discipline Foundation Policy: School Wide Positive Behavior Support (2007), available at [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/FLDR\\_ORGANIZATIONS/STUDENT\\_HEALTH\\_HUMAN\\_SERVICES/SHHS/DISCIPLINE\\_POLICY/BUL-3638.0.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/STUDENT_HEALTH_HUMAN_SERVICES/SHHS/DISCIPLINE_POLICY/BUL-3638.0.PDF).

<sup>217</sup> See generally L.A. Unified Sch. Dist., supra note 109.

<sup>218</sup> See generally BEVERLY H. JOHNS ET AL., REDUCTION OF SCHOOL VIOLENCE: ALTERNATIVES TO SUSPENSION (4th ed. 2007); Sprague, supra note 214; George Sugai & Robert H. Horner, Introduction to the Special Series on Positive Behavior Support in Schools, 10 Journal Of Emotional And Behavioral Disorders 130-135 (2002).

<sup>219</sup> These can include: loss of privileges, restitution, Saturday school, mentoring programs, and behavioral contracts that include earning privileges.

<sup>220</sup> See generally Frequently Asked Questions: What Is Tertiary Prevention? Available at: [http://www.pbis.org/school/tertiary\\_level/faqs.aspx](http://www.pbis.org/school/tertiary_level/faqs.aspx).

<sup>221</sup> See generally Positive Behavior Intervention and Supports Tutorial: Individual Systems. Available at: [http://cte.jhu.edu/courses/pbis/ses5\\_act2\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses5_act2_pag1.shtml).

<sup>222</sup> See generally Stephanie Martinez, A System Gone Berserk: How Are Zero Tolerance Policies Really Affecting Schools?, 53 Preventing Sch. Failure 153-157 (2009); Joseph B. Ryan et al., IDEA 2004 and Disciplining Students with Disabilities, 91 NASSP Bulletin 130-140 (2007).

<sup>223</sup> PBIS.org When to Use a Functional Behavior Assessment. Available at: [https://www.pbis.org/Common/Cms/files/pbisresources/EvalBrief\\_Oct2015.pdf](https://www.pbis.org/Common/Cms/files/pbisresources/EvalBrief_Oct2015.pdf)

<sup>224</sup> See generally Tertiary Prevention, supra note 222.

<sup>225</sup> See generally What Is The Wraparound Process? Available at: <http://cecp.air.org/wraparound/intro.html>.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.b Model Policy on Restorative Justice Practices

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#### Definitions

1. **School community** – Includes students, teachers, administrators, counselors, social workers and other school staff, families and the surrounding neighborhood/community.
  2. **Restorative Justice** – A theory of justice that emphasizes seeking to repair rather than to punish when there is harm, using practices that:
    - a. Bring understanding to how harm took place, its root causes and impacts;
    - b. Include those involved and affected by the harm;
    - c. Seek to support the needs of all involved;
    - d. Center values of growth, safety, empathy, shared power, choice, and healing; and <sup>226</sup>
    - e. Build mutual responsibility and constructive responses to conflict.
  3. **Restorative Justice Practices** – A framework for a broad range of restorative justice approaches that proactively build school community based on cooperation, mutual understanding, trust and respect, and respond to conflict by including all people impacted by a conflict in finding solutions that restore relationships and repair the harm done.<sup>227</sup> These practices can be used to implement positive behavior in classrooms and on school campuses consistent with the framework in Section 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports (SWPBIS).
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#### Recommended Language

- A. **School districts shall provide the resources, training and technical assistance for schools to implement Restorative Justice Practices district wide.**
  1. School districts shall incorporate a restorative philosophy into their school-wide mission, imbed Restorative Justice Practices into their curriculum and classroom teaching methods, and integrate Restorative Justice Practices into their Discipline Codes or Student Codes of Conduct as the primary process by which schools respond to behavior and conflict.
  2. School districts shall create a School Climate and Culture Committee at the central district level that includes individuals who have engaged in Restorative Justice Practices in school settings. The Committee shall provide ongoing training, evaluation and technical assistance such as coaching, mentoring, observations, demonstrations, or co-facilitation to schools in implementing Restorative Justice Practices. The School Climate and Culture Committee shall create the mechanisms to collect and evaluate data on school climate, discipline and safety, as well as mechanisms to intervene to ensure that schools with higher suspension, expulsion and arrest rates receive the resources and technical assistance they need to implement Restorative Justice Practices.
  3. School districts shall fund a Restorative Coordinator position in each school that shall support development and implementation of a school-wide plan, and provide ongoing support and coordination for administrators, teachers and students. The Restorative Coordinator should be someone selected by the School Climate and Culture Leadership Team below with whom students can build positive relationships.

**B. Schools shall establish a School Climate and Culture Leadership Team<sup>228</sup> that is responsible for developing and implementing a plan to integrate Restorative Justice Practices into school policies, practices and culture.**

1. The School Climate and Culture Leadership Team shall include representatives of all stakeholders in the school community, including administrators, teachers, counselors and other support staff, students, parents or guardians, and other relevant community members who receive training in Restorative Justice Practices. The Team shall periodically recruit new members from the school community so that the knowledge and leadership on Restorative Justice Practices is shared and perpetuated.
2. The School Climate and Culture Leadership Team is responsible for disseminating information about Restorative Justice Practices and engaging all members of the school community in supporting its implementation on campus. The Team is responsible for gathering input from the broader school community and developing a plan for what Restorative Justice Practices trainings and technical assistance shall be provided to staff, students and parents or guardians and what structures, policies and practices shall be created.
3. The School Climate and Culture Leadership Team is responsible for presenting quarterly reports on school climate, discipline, safety and implementation of Restorative Justice Practices.
4. The School Climate and Culture Leadership Team shall also reach out to community-based organizations and other actors in the community to build support for Restorative Justice Practices inside and outside of the school.

**C. Schools shall actively create a positive school climate for all members of the school community through the regular and ongoing use of classroom-level practices, staff-focused processes and school-wide Restorative Justice Practices that build community, strengthen relationships, promote inclusiveness, enhance communication and promote culturally affirming social and emotional learning.**

1. Strategies that can be implemented on a school-wide level include but are not limited to:
  - a. Discussions in the classroom and school-wide forums about how members of the school community should treat one another;
  - b. Time to share the highs and lows of the day in advisory classes or forums;
  - c. School-wide restorative conversation and communication that provoke student reflection on how their actions impact others;
  - d. Creating a welcoming environment where parents or guardians and community members are invited to volunteer and participate in the school community, including creating a parent room on campus; and
  - e. Creating mechanisms for students to check-in when they enter school each day to share concerns and/or request a meeting with a counselor to discuss problems they are facing.
2. Teachers shall use restorative circles as a classroom teaching method to work collaboratively with students to build relationships, set academic goals, foster culturally affirming social and emotional learning, explore the curriculum and set classroom norms for behavior, including:
  - a. Morning "Check-in" Circles for teachers and students to share what is going on in their lives, center themselves and focus on the day ahead; and
  - b. Discussion Circles to talk about a topic they are currently studying and delve into more depth on the subject.

**D. In response to harms or conflict, schools shall use a continuum of practices that are restorative rather than punitive.<sup>229</sup> Schools shall only use exclusion from a student's regular classroom for the most serious incidents when it is absolutely necessary to protect the safety of the school community (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals).**

1. All individuals who are impacted by a behavior or conflict shall talk about the harm, its root causes and impacts, and collectively develop agreements for how the harm will be addressed that meet the needs of all involved.<sup>230</sup>
2. If appropriate, the students or staff who committed the behavior or were involved in the conflict may participate in a restorative process to hear from all stakeholders and determine actions that meet restorative practice principles. Restorative processes should be conducted in a student-friendly space with both students and staff trained to support the discussion.
3. The continuum of practices includes but is not limited to:
  - a. Restorative Chats – One-on-one informal conversations that are held as an immediate response or follow up to an action that has somehow caused harm, to help the individual understand the impact of their action, and find ways to repair harm and prevent it from happening again.<sup>231</sup>
  - b. Restorative Circles – Processes in which participants take turns speaking to a topic, guided by at least one circle keeper, using a talking piece and going around to ensure that everyone has an equal opportunity to speak. There are many different types of circles that can be used to promote a positive learning environment and deal with issues as they arise (for circles used in classroom teaching see C.2 above). Some of the main circles that schools can utilize for discipline include:
    - i. Responsive Circles or Discipline Circles to address what occurred, repair the harm and develop solutions to prevent reoccurrence, involving relevant parties and support people if helpful. Responsive Circles bring together those who were involved in and affected by a significant incident of harm (as well as anyone invited to provide support and resources) to rebuild trust, understand what happened, express how they have been affected, and agree on how to repair the harm and prevent it from happening again. Pre-circle meetings are typically used to individually prepare participants in advance. Agreements may be written and signed. Follow-up ensures there is reflection, support, adjustment, and affirmation in carrying out the agreement. This process can be used as an alternative to exclusionary interventions such as suspensions;<sup>232</sup>
    - ii. Classroom or Staff Circles can be used proactively to build community, establish norms, check in, and collectively solve problems and make decisions. In the classroom, they are also a vehicle for social emotional learning and content instruction, offering youth an opportunity to take an active role in creating a safer and supportive space in their own classroom. In any context, the circle gives equal opportunity for all to listen, contribute, and practice key life skills;<sup>233</sup>
    - iii. Intensive Support Circles are a preventative circle process to weave struggling individuals or families together with community members, youth workers, and others into a web of support characterized by strong relationships and shared responsibility. They may occur as a series of circles for relationship-building, resource mapping, action planning, check-ins, and celebration;<sup>234</sup>
    - iv. Reintegration Circles are a form of support circle for those who have been excluded from the school or neighborhood community on account of suspension, arrest, incarceration, illness, etc. Reintegration Circle provides an opportunity to welcome the individual back, reaffirm their importance in the community, and provide support their successful reintegration;<sup>235</sup> and
    - v. Culturally affirming social and emotional learning circles used to role-play and work with students to develop positive behavioral models.
  - c. Restorative Conferencing (or Community Conferencing) is used as an alternative to exclusionary forms of discipline or justice. A facilitator individually prepares those involved and affected by an incident of harm (as well as anyone invited to provide support and resources) and then convenes a conference for them to share what happened, how they have been affected, and what is needed to repair the harm and prevent it from re-occurring. Like responsive circles, agreements may be written and signed and follow-up ensures agreements are honored and supported.<sup>236</sup>
  - d. Fairness Committees – A Fairness Committee is made up of students, teachers and other school staff who have been trained in Restorative Justice Practices to work with students or staff who have violated core community norms and values to create agreements through dialogue and by consensus. The committee

takes referrals from staff or students to 1) inspire empathic and critical self-reflections by confronting a member of the community with his or her actions and how they have affected others; 2) collectively determine how best to restore and mend the community in the wake of actions inconsistent with its values; and 3) determine how to reintegrate the member of the community who has violated the shared values back into the fabric and culture of the school.<sup>237</sup>

- e. Impact Panels – A forum for students or adults who were harmed by an incident to tell other students that caused harm about the impact of the incident on their lives and on the lives of their families, friends and neighbors. Panels typically involve three or four speakers who have experienced harm, each of whom spends about 15 minutes telling their story in a non-judgmental, non-blaming manner. These forums are used to educate other students about the impacts of harm in the school community. While some time is usually dedicated to questions and answers, the purpose of the panel is for those impacted by the harm to speak, rather than for those who have caused harm to engage in a dialogue.<sup>238</sup>
- f. Restorative Mediation – A process that provides those harmed by an incident an opportunity to meet the person who caused the harm, in a safe and structured setting, and engage in a mediated discussion of the offense. With the assistance of a trained mediator, those who were harmed are able to tell the person who caused the harm about the incident’s physical, emotional and other impacts; to receive answers to lingering questions about the incident; and to be directly involved in developing a plan for the harm to be repaired.<sup>239</sup>

#### **E. Student and Family Rights<sup>240</sup>**

Information about the use of Restorative Justice Practices at schools shall be provided to all students and parents or guardians.

1. The person who has committed the behavior shall have the right to participate in restorative responses instead of more traditional forms of discipline such as suspension and expulsion.
2. The person who has committed the behavior has the right to participate actively in identifying the solutions and responses to repair the harm done.
3. The people who were impacted by the behavior shall have the option, but are not required to participate in Restorative Justice Practices and identifying the solution to repair the harm done.
4. Families and friends of the person who committed the behavior and the students impacted by the behavior have the right to participate in the restorative process.

#### **F. School districts shall provide Restorative Justice Practices training by experienced practitioners for all members of the school community with resources for ongoing technical assistance, and districts shall further engage teachers, students and parents/guardians to help design and lead the trainings.**

1. All administrators and support staff shall receive training on using Restorative Justice Practices in interacting with staff, parents or guardians, students and the community and in responding to conflict.
2. All teachers, counselors, social workers and other support staff shall receive training in incorporating Restorative Justice Practices into lessons and day-to-day classroom activities and as a technique for classroom management and conflict resolution.
3. All students shall receive instruction on Restorative Justice Practices in the classroom through appropriate activities and shall receive academic and/or community service credit for attending classes on Restorative Justice Practices and/or participating in restorative committees, groups or boards.
4. All families and members of the community shall have access to training in Restorative Justice Practices through regular workshops and community building activities.

<sup>226</sup> See generally Skiba et al., *supra* note 87.

<sup>227</sup> What is Restorative Practice? Safer Saner Schools, available at <http://www.saferanerschools.org/What-Is-Restorative-Practices.html>.



<sup>228</sup> This role maybe be carried out by a similarly mandated body that already exists rather than duplicating efforts.

<sup>229</sup> See generally International Institute for Restorative Practices, <http://www.iirp.edu/index.php>; Restorative Solutions, <http://www.restorativesolutions.us/schools.html>; Safer and Saner Schools, <http://www.safersanerschools.org/>.

<sup>230</sup> Chi. Pub. Sch. Policy Manual, Student Code of Conduct For Chicago Public Schools For The 2009-2010 School YEAR 5 (2009), available at <http://policy.cps.k12.il.us/documents/705.5.pdf>.

<sup>231</sup> See generally, The Restorative Schools Vision Project, <http://www.restorativeschoolsproject.org/>.

<sup>232</sup> Restorative DC, Glossary of Terms

<sup>233</sup> IBID

<sup>234</sup> IBID

<sup>235</sup> IBID

<sup>236</sup> IBID

<sup>237</sup> See generally, Teachers Unite For Restorative Justice And Dignity In Schools, <http://teachersunite.net/340>.

<sup>238</sup> Chi. Pub. Sch. Policy Manual, *supra* note 234 at pg 38.

<sup>239</sup> *Id.* at pg 52.

<sup>240</sup> Parent-to-Parent Guide on Restorative Justice. COFI/POWERPAC (2015). Available at: [https://docs.wixstatic.com/ugd/10497b\\_59239a172e49412f8fecefc0b2e7c66c.pdf](https://docs.wixstatic.com/ugd/10497b_59239a172e49412f8fecefc0b2e7c66c.pdf).



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.c Model Policy on Fighting

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#### Human Rights Goal

School fighting policies shall address the root cause of the behavior and equip students with the tools to learn how to make better decisions. The policies regarding school fighting shall be fair, proportionate, reasonable, and lay out clear expectations for student conduct. The policy shall not criminalize student behavior that is developmentally appropriate and not likely to result in serious bodily harm, such as play or unintentional contact, nor shall it redefine non-physical behaviors such as verbal conduct, body language, or gestures as fighting. States, districts, and schools shall create a discipline system that is restorative not punitive and that is separate from the state's juvenile justice system.

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#### Definitions

1. **Fighting** – Mutual, intentional participation in a physical altercation occurring between two or more persons with no one main offender. Fighting does not include verbal confrontation, unintentional contact that does not cause serious bodily harm, or self-defense.
  2. **Credible Threat** – A threat that is “real and immediate, not conjectural or hypothetical.”<sup>241</sup>
  3. **Self-Defense** – Right to use reasonable force to protect oneself or others from the fear of or infliction of bodily injury or violence.
  4. **Serious Bodily Harm** – Bodily injury that will occur without significant delay which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
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#### Recommended Language

- A. **States, districts, and schools shall create a positive school climate that responds to school fighting as an opportunity to correct behavior and contribute to students’ personal growth, rather than excluding or criminalizing students involved. Fighting, as defined above, is an unacceptable response to conflict. Districts and schools shall collaborate to ensure that the school discipline response to fighting is administered in such a way as to keep students within their traditional learning environment, and avoid law enforcement involvement to the greatest extent practicable.**
  1. Out-of-school suspensions, expulsions, exclusions, and arrests shall be limited to fighting incidents that involve conduct which poses a serious and credible threat to the safety of the school environment.
  2. Schools shall use non-punitive interventions whenever possible in response to school infractions, including fighting that does not pose a serious and credible threat to safety of the school environment. Non-punitive options include but are not limited to: School-wide Positive Behavior Interventions and Supports (SWPBIS), counseling services, Restorative Justice Practices, and peer mediation.
- B. **Schools and districts shall make reasonable and fair distinctions in assessing student conduct to determine if a student has violated the school’s rule against fighting. In order for discipline to be effective, the rules governing student conduct must be clear and consistent and discipline must be proportionate to the**

**student conduct. The following factors must be considered when determining if a student has violated the school's policy against fighting:**

1. Distinction between intentional and unintentional contact. Unintentional contact shall not be considered fighting; students shall only be disciplined for conduct in which the student intentionally participates. Unintentional contact includes, but is not limited to, bumping, brushing or tripping.
2. Verbal misconduct, including gestures and profanity, are not fighting.
3. Distinction shall be made between minor contact and serious physical injury with severe discipline reserved only for intentional contact that results or could result in serious physical injury.
4. Students have the same right to self-defense on school property and at school sponsored events as they have off- campus. It is unjust to subject students to adult punishment, such as arrest and detention, without providing students with the same rights that adults enjoy and that the students themselves enjoy off campus.
5. Schools should consider the location where the incident occurred as they determine how to respond:
  - a. Students should not face suspension or expulsion for incidents that take place off school grounds unless they are directly school-sponsored or school supported.
  - b. Students should not face suspension or expulsion in cases where a student has been arrested or is otherwise is facing criminal justice system consequences (including alternatives like deferred action or diversion) for actions off school grounds, as adding a second form of punishment is unnecessary and harmful.
  - c. Where one or more students in the school are involved in a fighting incident that does not occur on school grounds, but could escalate during school or otherwise negatively impact school climate, school staff should use the same kinds of non-exclusionary, restorative responses listed above to help students get to the root causes of their conflict and repair any harms that have occurred instead of responding by excluding students.

**C. Process of Responding to School Fighting Incident- School fights shall be handled utilizing the continuum of behavior supports referenced in Sections 3.7.a School-wide Positive Behavior Interventions and Supports and 3.7.b Restorative Justice Practices summarized below).**

1. Schools shall support non-punitive interventions by providing:
  - a. Ongoing training and support for teachers and staff to serve as effective de-escalation intervention practitioners;
  - b. Counseling services;
  - c. Restorative measures that allow all parties to be heard which include peer counseling, mediation, restorative circles and conferences;
  - d. Positive Behavior Interventions and Supports to address the root cause of the behavior of all students and staff with transparent, measurable goals and published results;
  - e. Training and information for all members of the school community that acknowledges that:
    - i. Overly harsh and exclusionary punishments not only miss the opportunity to teach the student positive communication and behavior skills but also detrimentally affect the student's life chances years after the incident; and
    - ii. Research shows that before adulthood the brain is not fully developed and children and young people are unable to fully rationalize decisions and consequences.
  - f. School policies and practices which reflect these facts (described above) and create an environment where students learn academics, positive behavior and receive trauma sensitive care
2. **Schools shall use a continuum of strategies that are restorative rather than punitive<sup>242</sup>** except for the most serious and dangerous offenses when exclusion is absolutely necessary to protect the safety of the school community.

- a. All individuals who are impacted by a behavior or conflict shall collectively identify the harm done, develop solutions for how the harm will be addressed, and identify the needs and obligations of all involved in order to heal and repair the situation as fully as possible.<sup>243</sup>
  - b. The continuum of strategies include but are not limited to: Restorative Chats,<sup>244</sup> Restorative Circles (including Discipline Circles to address what occurred and Proactive Behavior Management circles used to role-play and work with students to develop positive behavioral models), Fairness Committees,<sup>245</sup> Restorative Group Conferencing, Restorative Peer Juries, Impact Panels,<sup>246</sup> and Mediated Conferencing.<sup>247</sup>
3. **Students requiring individualized interventions** who exhibit a pattern of problem behavior or exhibit behaviors that are dangerous, highly disruptive, and/or impede learning and result in social or educational exclusion<sup>248</sup> (for example students who have repeatedly engaged in fighting) require a more intensive level of intervention that is individualized and includes a team approach that includes the student and people who know them best, including the student's family, the classroom teacher, administrator, school psychologist, counselor, social workers and mental health experts. An Intervention Support Team shall use a problem-solving approach in an effort to help the student to be more successful in school, at home or in the community.<sup>249</sup>
  4. **Districts and schools shall provide wraparound services** for students with complex and multiple needs, for example a student who has repeatedly engaged in fighting, especially due to trauma or other serious issues they may be dealing with. Schools shall collaborate with public agencies, community-based organizations and families to develop individualized plans to provide a variety of services, such as healthcare, counseling, social work and mentoring, that are driven by the needs of students, not the services provided.<sup>250</sup> Wraparound efforts must be based in the community, individualized to meet the needs of students and families, culturally competent and build on the strengths of the students and families, and the outcomes must be measured.

**D. States, districts, and schools shall invest in training and other preventative measures to avoid disparate impacts to any particular student population including but not limited to: students of color, students with disabilities, students of low income and students who identify as LGBTQ+.**

*Note: The DSC Model Code calls for eliminating the presence of law enforcement stationed in schools, including School Resource Officers (see Section 3.3 Law Enforcement and Criminalization in School Environments). However, we are including the guidelines below to help schools and districts which have not yet eliminated law enforcement from their schools to mitigate the harm to students.*

**E. States, districts, and schools shall prohibit the involvement of police (including School Resource Officers/SROs) in fighting and other school-based infractions. They shall only involve law enforcement in serious incidents (detailed below) occurring on school property or at school sponsored events. When an SRO is involved, the SRO is bound by the same constitutional and legal restrictions as any other police officer. As such, law enforcement's non-custodial options may include: verbal warnings; conferences with the student, parents, teachers and/or others pertinent to the process in resolving the matter; and referrals to a community agency.**

1. Custodial police involvement in school-based infractions like fighting shall be limited to situations in which:
  - a. It is necessary to protect the school community from a credible threat of serious bodily harm or death;
  - b. It is appropriate to address persons exhibiting criminal violations who are not students;
  - c. Someone is engaged in the commission of a felonious act; or
  - d. There is the threat of an external predator.
2. The district and schools shall have a shared goal to reduce justice system involvement of all students. Therefore, school administration and the SRO must be equipped to adequately differentiate between school rule violations and crime, and thus respond appropriately. A typical fight does not require law enforcement intervention.

<sup>241</sup> *Kegler v. United States DOJ*, 436 F. Supp. 2d 1204, 1212 (D. Wyo. 2006)

<sup>242</sup> See generally International Institute for Restorative Practices, <http://www.iirp.edu/Index.php>; Restorative Solutions, <http://www.restorativesolutions.us/schools.html>; Safer and Saner Schools, <http://www.safersanerschools.org/>.

<sup>243</sup> Chi. Pub. Sch. Policy Manual, Student Code of Conduct for Chicago Public Schools for the 2009-2010 School Year 5 (2009), available at <http://policy.cps.k12.il.us/documents/705.5.pdf>.

<sup>244</sup> See generally, The Restorative Schools Vision Project, <http://www.restorativeschoolsproject.org/>.

<sup>245</sup> See generally, Teachers Unite for Restorative Justice and Dignity in Schools, <http://teachersunite.net/340>.

<sup>246</sup> Chi. Pub. Sch. Policy Manual, *supra* note 243 at pg 38.

<sup>247</sup> *Id.* at pg 52.

<sup>248</sup> See generally Frequently Asked Questions: What Is Tertiary Prevention?, [http://www.pbis.org/school/tertiary\\_level/faqs.aspx](http://www.pbis.org/school/tertiary_level/faqs.aspx).

<sup>249</sup> See generally Positive Behavior Intervention and Supports Tutorial: Individual Systems, [http://cte.jhu.edu/courses/pbis/ses5\\_act2\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses5_act2_pag1.shtml).

<sup>250</sup> See generally What Is The Wraparound Process?, <http://cecp.air.org/wraparound/intro.html>.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.d Model Policy on Dress Codes

#### Human Rights Goal

All students should have a right to express themselves fully in school through choosing clothing, hair styles, jewelry and accessories that appropriately represent and affirm their varied identities, without the threat of punishment, removal, criminalization or harassment. Schools should be safe and affirming spaces for all students.<sup>251</sup>

#### Definitions

1. **Culture** – The customary beliefs, social forms, and material traits of a racial, religious, or social group; also the characteristic features of everyday existence (as diversions or a way of life shared by people in a place or time).<sup>252</sup>
2. **Gender Identity** – One's innermost concept of self as male, female, a blend of both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.<sup>253</sup> A Transgender Person is someone who identifies with a different gender from the gender they were assigned at birth. For example: your birth certificate says male, and you identify as a woman. Gender Nonconforming refers to people who do not follow other people's ideas or stereotypes about how they should look or act based on the female or male sex they were assigned at birth.<sup>254</sup>

#### Recommended Language

- A. **States, districts and schools should limit the number of cases where students are prohibited from wearing certain clothing, hairstyles, jewelry or other accessories to those where there is a clear and evidence-based rationale for banning the item.**<sup>255</sup>
  1. Schools should assess what the purpose of their dress code or uniform is and how it impacts the school environment and relationships between school staff and students.
  2. Schools should consider both parent and student empowerment in the decision-making around how students are dressed at school. Each prohibited item takes away the ability of individuals to choose how they or their child will present themselves on a daily basis.
  3. Schools should engage students, parents and community stakeholders in any decision-making processes or assessments of dress codes or uniform policies.
- B. **States, districts and schools should never prohibit clothing, hairstyles, jewelry or other accessories that deny or criminalize racial, ethnic or religious culture or expression, or would lead to the targeting of particular students. Codes must be assessed to remove any language or policies that imply that clothing, hairstyles, jewelry or other accessories that are associated with particular cultures are improper, unprofessional or distracting.**<sup>256</sup> **Some examples of items or dress that should never be prohibited are:**
  1. Hair styles such as braids, locs, beads, afros, afro-puffs, particular hair colors, combs, extensions, weaves, or hair worn naturally.
  2. Head coverings including but not limited to those with religious or cultural significance, including hair wraps or scarves, du rags, hats or bandanas. If schools have particular concerns, rather than prohibiting those items,

codes may include a requirement that a hairstyle, hat or hoodie does not cover the student's face (except in cases of religious expression).

3. Clothing such as sagging or baggy pants, hoodies, white t-shirts or particular brands of shoes (see Section 3.3 Law Enforcement and Criminalization in School Environments, sub-section on Gang Profiling for model policies around items prohibited due to associations with gangs, crews or neighborhoods).

**C. States, districts and schools should avoid dress code prohibitions that restrict students' dress based on their gender identity or perceived gender. They must ensure that dress codes do not discriminate against LGBTQ+ (Lesbian, Gay, Bisexual, Trans, Queer or Questioning) and TGNC (Trans and Gender Non-Conforming) students by enforcing strict gender roles that do not allow them to express their full identities.<sup>257</sup> Some examples of things that should not be included in a dress code:**

1. Prohibiting students from wearing jewelry, dresses, skirts, long hair or any particular hairstyles, nail polish or make-up because they are or are perceived to be male.
2. Prohibiting students from wearing shorts or skirts of a certain length, tank tops or bare shoulders/arms, sneakers, ties, or baggy pants because they are or are perceived to be female.
3. Requiring students to wear certain items of clothing based on their gender or perceived gender, such as:
  - a. Having a different uniform based on students' perceived gender (i.e. skirts for girls and pants for boys) and not allowing students themselves to choose which option they prefer.
  - b. Requiring male students to wear belts, or female students to wear bras.
4. Codes should not include vague terms that are open to interpretation by school staff such as "tight-fitting," or "appropriately sized."
5. Codes should not include language that sexualizes students including describing their clothing as "revealing," "distracting," or "inappropriate."

**D. Discrimination based on body-type must be avoided. As stated above, dress codes should avoid vague language that leaves enforcement of the code up to the discretion of school staff. In particular, schools must ensure that students of larger size or curvier shape are not targeted for dress code violations while students of smaller size wear similar clothes without repercussions.**

**E. Dress Codes should not prohibit political expression through clothing, hairstyles, jewelry or other accessories. If schools have particular concerns about messages on clothing, they may choose to give the following restrictions:<sup>258</sup>**

1. Clothing may not depict, advertise or advocate the use of alcohol, tobacco, marijuana or other controlled substances.
2. Clothing may not depict pornography, nudity or sexual acts, or feature profanity.
3. Clothing may not use or depict hate speech targeting groups based on race, ethnicity, gender, sexual orientation, gender identity, religious affiliation or any other protected groups.

**F. Enforcement of Dress Codes must be approached with sensitivity with the ultimate goal of supporting the student in reaching their full potential, not shaming or criminalizing them.<sup>259</sup>**

1. Avoid Loss of Learning Time<sup>260</sup> (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals and Section 3.3 Law Enforcement and Criminalization in School Environments)<sup>261</sup>
  - a. Students must never be suspended, expelled, arrested or referred to law enforcement for uniform or dress code violations.
  - b. Students should not be pulled out of class for dress code or uniform violations.
  - c. Students should not be sent home to get a change of clothes unless they can leave and return without missing class time.

## 2. School Entrances and Enforcing Dress Code

- a. No law enforcement of any kind should be commenting on students' attire or appearance, or enforcing the school dress code (see Section 3.2 on Law Enforcement and Criminalization in School Environments).
  - b. If school staff see at the school entrance or anywhere else in the building that a student is not meeting the requirements of the dress code:
    - i. An effort should be made to have a school staff person that has a positive relationship with the student address the issue.
    - ii. If there is enough time to discuss the issues before class begins, then they can approach the student sensitively and take them to a private area to discuss the dress code.
    - iii. If they will be late to class, they should allow them to proceed to class and wait to have the conversation during a lunch or free period, or after school.
    - iv. School staff should determine if there are other factors for why a student may not be meeting the dress code, and try to help them address those barriers. For example, not knowing or understanding the dress code rules, lack of access to the required clothes, or no clean clothes (See 3. Below).
  - c. Under no circumstances should a school staff person:
    - i. Touch a student, or their clothing, or attempt to remove anything from a student's body;
    - ii. Apply or require the student to apply items like tape or Band-Aids to their skin;
    - iii. Require a student to wear an item of clothing provided by the school, such as a school loans shirt;
    - iv. Gesture or point in a shaming way to a student's clothing or their body; or
    - v. Use offensive words to characterize the students dress including "ghetto" or "trashy."
3. Schools should address the financial burden of dress codes or uniforms by having options available for students who do not have the money to buy the required clothes, or connecting them to resources that will help them, including those that will give them access to the ability to launder their clothes. If the school requires the purchase of a specific uniform it must be available free of charge to families that cannot afford it.
  4. Especially where students may face threats of violence or abuse at home, school staff should use discretion and maintain student privacy in disclosing the specific dress code or uniform violation to their parent or guardian (for example if the student is gender non-conforming at school but not at home due to threat of abuse).

## **G. Dress codes should never contain prohibitions that apply to parents, guardians, community members or anyone else who may be coming into the school to pick up a child or participate in school activities.<sup>262</sup>**

<sup>251</sup> Girls for Gender Equity, Schools Girls Deserve (2018) Available at:

[http://www.ggenyc.org/wpcontent/uploads/2017/11/GGE\\_school\\_girls\\_deserveDRAFT6FINALWEB.pdf](http://www.ggenyc.org/wpcontent/uploads/2017/11/GGE_school_girls_deserveDRAFT6FINALWEB.pdf).

<sup>252</sup> Racial Justice NOW!, West Dayton Youth Task Force and DSC, Culturally Relevant Curriculum and Culturally Responsive Schools Toolkit (2017). Available at: <http://dignityinschools.org/crctk>.

<sup>253</sup> Definition from Human Rights Campaign. Available at: [www.hrc.org](http://www.hrc.org).

<sup>254</sup> Supra note 3.

<sup>255</sup> OR National Organization for Women, Model Dress Code (2015) available at: <https://noworegon.org/issues/model-student-dress-code/>.

<sup>256</sup> National Women's Law Center, Let Her Learn (2016) Available at: [https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/04/5.1web\\_Final\\_nwlc\\_DressCodeReport.pdf](https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/04/5.1web_Final_nwlc_DressCodeReport.pdf).

<sup>257</sup> Know Your Rights- LGBTQ Student Rights. ACLU. Available at: <https://www.aclu.org/know-your-rights/students-rights/#lgbtq-student-rights>

<sup>258</sup> Language adopted from Portland Public Schools Dress Code. Available at: <https://www.pps.net/Page/5888>.

<sup>259</sup> Supra note 9.

<sup>260</sup> Philadelphia Student Code of Conduct Prohibits loss of instruction time for dress code violations. Available at:

<https://www.philasd.org/edmonds/wp-content/uploads/sites/288/2018/08/SDP-Code-of-Student-Conduct-20182019-AY.pdf>

<sup>261</sup> Id.

<sup>262</sup> New Dress Code for Parents Being Called Racist. Essence Magazine (2019). Available at: <https://www.essence.com/news/new-dress-code-policy-for-houston-parents-being-called-racist/>.





# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.e Model Policy on Bullying Behavior

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#### Human Rights Goal

No student should have to experience bullying behavior or any kind of targeted harassment from their peers in the school environment. Where students exhibit bullying behavior, schools will adopt positive and restorative responses that get to the root of the problem and teach students why bullying each other is wrong. Students should not be viewed only as “bullies” who must be excluded from school; rather they are young people who need to be held accountable for their actions in order to grow as individuals and repair any harm they have caused.

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#### Recommended Language

- A. States, districts and schools shall adopt a policy for prevention of and response to bullying behavior by students and adults. This policy shall be developed with the participation of administrators, teachers, parents or guardians, students and community members and shall contain the key elements described below.<sup>263</sup>**
- B. States, districts and schools shall define “Bullying behavior” as behavior that takes place in a pattern that is repeated over time that harms or threatens to harm any student’s physical, social, or emotional well-being. Bullying behavior may be connected to a negative and biased view of a targeted student due to an actual or perceived characteristic, such as race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity and expression, mental or physical disability, or by any other distinguishing characteristic. Bullying behavior may adversely affect the student’s ability to participate in school activities or even to attend school at all, and may involve an imbalance of power or strength.**
- C. State, district and school policy shall prevent bullying behavior through:<sup>264</sup>**
1. Implementation of school-wide and classroom-based culturally affirming social and emotional learning (SEL) strategies and positive approaches to discipline (described in Section 3.1 Key Elements of School Climate and Positive Discipline) including relationship-building circles and other Restorative Justice Practices preventatives measures;
  2. Age-appropriate instruction on prevention of bullying behavior in each grade that is incorporated into the curriculum;
  3. Creation of a school-wide and classroom climate that supports racial, cultural and other forms of diversity, (i.e. clear communication of behavioral expectations, incorporation of lesson plans on prejudice reduction, modeling unbiased behavior, empathy development and cooperative learning) (see Section 1.3 Culturally Relevant Curriculum and Teaching); and
  4. Encouragement of parent participation in bullying behavior prevention initiatives.
- D. Schools and districts shall intervene to put an end to bullying behavior, utilizing discipline methods that reflect a commitment to Restorative Justice Practices and without criminalizing student behavior, including:**
1. Immediate referral of the student harmed to appropriate support services in the school and community;
  2. Referral of those who caused harm to counseling to address underlying behavior and/or to administrators for appropriate discipline;

3. Notification of parents of all those involved;
  4. Processes for resolution, such as restorative justice circles led by an experienced circle leader or peer support interventions such as Circle of Friends;<sup>265</sup>
  5. Ongoing actions intended to prevent recurrence, such as increasing adult supervision of an activity in which incidents have occurred and close monitoring of the security of those harmed; and
  6. Restrict the use of removal, suspension, expulsion, arrest or other forms of exclusion as a measure of last resort and in accordance with the Section 3.2 Guidelines for Suspensions, Expulsions and Removals.
- E. Schools and districts shall conduct ongoing professional development to build the skills of all staff members, including, but not limited to, teachers, administrators, school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors to extracurricular activities and paraprofessionals, to prevent, identify and respond to bullying. The content of such professional development shall include, but not be limited to:**<sup>266</sup>
1. Developmentally appropriate strategies to prevent and respond to bullying behavior;
  2. The complex interaction and power differential that can take place between all parties involved in bullying behavior;
  3. Information about specific categories of students who have been shown to be particularly at risk for bullying behavior in the school environment; and
  4. Information on the incidence and nature of cyber-bullying.
- F. States, districts and schools shall document and conduct regular assessment of the effectiveness of efforts to prevent and respond to bullying behavior.**

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<sup>263</sup> See, e.g., The Olweus Bullying Prevention Program, <http://www.violencepreventionworks.org/public/index.page>.

<sup>264</sup> U.S. Department of Education Office for Civil Rights and National Association of Attorneys General, Protecting Students from Harassment and Hate Crime, A Guide for Schools (1999), available at <http://www2.ed.gov/offices/OCR/archives/Harassment/fundamentals1.html>.

<sup>265</sup> Circle of Friends Anti-Bullying Intervention. Available at: <http://www.antibullyingworks.co.uk/resources/intervention-strategies/circle-of-friends/>.

<sup>266</sup> MASS. ADV. LEGIS. SERV. CH. NO. 92-2010 (LEXIS NEXIS 2010).



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.f Model Policy on Drugs and Alcohol

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#### Human Rights Goal

Schools shall provide comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons, as well as harm reduction strategies for youth who are already users of drugs, alcohol or other harmful substances. Teachers and other professionals shall be equipped and trained to prevent and deal with these problems in effective and appropriate ways that emphasize harm reduction, healing, counseling, assistance and therapy-oriented interventions.<sup>267</sup>

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#### Recommended Language

**A. Schools must adopt a school-wide prevention and harm reduction policy as a necessary foundation to a drug and alcohol prevention and intervention policy.**

**B. Drug Education**

1. The school district shall provide age-appropriate, school-tested, evidence-based drug education to help prevent or reduce the use of alcohol, tobacco and other substances by students. Such programs must assist with the development of students' life skills and protective behaviors and ensure that students are connected to their schooling.
2. The school district shall cease any DARE<sup>268</sup> programming or similarly modeled programs as they have been overwhelmingly proven to be both costly and grossly ineffective in reducing either current or later onset of alcohol or drug use or abuse.

**C. Elements of Effective Drug Education Curriculum**

1. The drug education process must be honest, balanced, interactive and respectful of students' intelligence and experience, and delivered in a way that ensures the full participation of students.
2. Such instruction must go beyond abstinence-only messages and emphasize safety and harm reduction.<sup>269</sup> The drug education curriculum shall be incorporated into the students' general curriculum and conducted by school-based education, health and/or mental health personnel.
3. The drug education process must consist of a continuum of practices. Rather than rely on lectures by teachers or experts, films, posters and brochures, the school district shall implement interactive drug education programs involving role-plays, small group discussions, skills-based training, interactive games and exercises, debates and student-led presentations and discussions.<sup>270</sup> By educating students in an interactive setting, these prevention and education programs shall target students' influences and misconceptions regarding their peers' social attitudes surrounding drug use.<sup>271</sup> These interactions aid students by helping them develop refusal skills and by providing true data on drug use. This counters the anecdotal "everybody is doing it" mentality, which reinforces the unhealthy behavior as normal, when in fact it is not.<sup>272</sup> The programs shall be tailored to the age of the students, and shall respond to and reflect students' changing perceptions of drug use.
4. Schools are encouraged to train and integrate peer health educators and promoters into all aspects of the school environment in order to model harm reduction and prevention strategies and transform the culture of the school and the larger community. Peer educators and promoters shall be encouraged to integrate fully into

student life both during and outside of school and shall reflect the full diversity of the student population with a special emphasis on involving trusted youth leaders from the sub-groups most impacted by addiction.

5. Where available, the school's health education department and/or staff shall provide assistance with the design and implementation of the drug education program and shall coordinate student assistance programs with its drug education program.
- D. Searches – The school or district shall not conduct unreasonable searches and seizures of students. Strip-searches of students to detect the presence of alcohol or other drugs shall be prohibited, and the district shall not permit School Resource Officers, police or other law enforcement to conduct random drug raids, nor use drug-sniffing dogs to investigate the prevalence of drugs on campus.**
- E. Random Drug Testing – The school or district shall prohibit the use of random drug testing of students.<sup>273</sup> Where students are on probation or parole and required to test, such testing shall take place outside of school in order to protect youth from ridicule or discrimination by peers, school staff or the larger community.**
- F. Resources – Schools or districts shall develop a list of programs and services related to drug, alcohol and tobacco use and abuse that are available to the school population, students' families and the larger community.**
- G. Intervention – The school or district shall recognize that student drug and alcohol abuse is a public health issue and not a school discipline, juvenile justice or criminal justice issue. Therefore, students suspected of using or abusing drugs shall be referred to student assistance programs and shall be provided with harm reduction, counseling and/or treatment by trained professionals.**
1. Every effort shall be made to retain students within the educational setting and keep students out of the juvenile or criminal court setting. All school staff and law enforcement working in or around school campuses shall understand the lasting and often irreversible impact that drug allegations or convictions (whether for intoxication (DUI), possession, distribution or sales) have on a young person's life chances, including opportunities for employment, higher education, financial aid, public housing and other public benefits. The school shall assist recovering students to avoid re-involvement with substances by providing school and/or community-based services and activities designed to increase students' sense of community and connectedness with school.<sup>274</sup>
  2. Suspension and expulsion are not considered intervention.<sup>275</sup> The school shall coordinate student assistance programs and intervention services with its drug education program, and use preventive and positive discipline measures, especially Restorative Justice Practices, which are particularly suited to addressing issues of drug use or abuse.<sup>276</sup>
  3. In cases where students are suspected of distributing or selling drugs, every effort shall be made to keep the student in an educational setting and to respond through positive disciplinary measures as well as positive interventions, such as:<sup>277</sup>
    - a. Partnering with the justice system to avoid arrests and if arrests occur, to refer students to positive programs that serve as alternatives to court, detention, incarceration, probation violation and/or deportation;
    - b. Job training and placement to help students find positive sources of income outside of the underground economy;
    - c. Connecting youth to trained intervention workers that can coach them on the negative impacts of distributing and selling drugs on communities, families and individual sellers; and
    - d. Transformative justice processes which focus on connecting youth to people most impacted by the underground economy and providing youth with real opportunities to repair harm that they have caused their peers, their peers' families and the larger community. Such programs can include visits with hospital neo-natal wards, emergency rooms, lock-ups and morgues, but should focus on healing, harm reduction

and accountability as more effective interventions than “scared straight” models which have been proven ineffective.<sup>278</sup>

4. For a student with a qualifying disability and an existing IEP or 504 plan under the Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, the student’s IEP or 504 team shall re-evaluate the student’s plan to make sure that the accommodation plan is meeting the student’s needs.<sup>279</sup> Changes to the plan should assist the student in addressing the risky behaviors, reducing harm, and healing from any trauma and/or other root causes of substance use or abuse.

**H. Confidentiality – The school or district shall create an environment in which students are encouraged to seek help from teachers and administrators. Student records are confidential and shall not be disclosed unless required by federal, state or local laws as ordered by a search warrant or similar court order. Documents generated, obtained, or maintained during the course of an investigation pertaining to a student’s violation of school policy concerning the use of alcohol, tobacco or other drugs, are deemed student records, and all school personnel must exercise great care to protect the confidentiality of this information.<sup>280</sup>**

<sup>267</sup> The Riyadh Guidelines, *supra* note 124 at ¶ 35.

<sup>268</sup> Project DARE, the Drug Abuse Resistance Education program, was developed in 1983 as a joint project of the Los Angeles Unified School District and the Los Angeles Police Department. It is the most visible and widely used drug abuse prevention program in the United States. 86 percent of school districts reported using DARE programs. See generally Dion Hallfors, Will the ‘Principles of Effectiveness’ Improve Prevention Practice? Early Findings from a Diffusion Study, 17 *Health Educ. Research* 461-470 (2002), available at <http://her.oxfordjournals.org/content/17/4/461.full>.

<sup>269</sup> See generally Rodney Skager, Drug Policy Alliance, Beyond Zero Tolerance: A Reality Based Approach to Drug Education and Student Assistance (2007), available at <http://www.drugpolicy.org/sites/default/files/beyondzerotolerance.pdf>.

<sup>270</sup> “Interactive programs which foster interpersonal skills and active engagement between students and teachers... are more effective at reducing, preventing, or delaying adolescent drug use for all substances...” *Id.*

<sup>271</sup> See generally Alice Evans & Kris Bosworth, Building Effective Drug Education Programs, 19 *PHI DELTA KAPPA Ctr. For Evaluation, Dev., And Research* (1997).

<sup>272</sup> See generally Skager, *supra* note 273.

<sup>273</sup> The first large-scale national study on student drug testing found virtually no difference in rates of drug use between schools that have drug testing programs and those that do not. Based on data collected between 1998 and 2001 from 76,000 students nationwide in 8th, 10th and 12th grades, the study found that drug testing did not have an impact on illicit drug use among students, including athletes. Drug-testing is counter-productive by erecting barriers to participation in the very activities likely to increase students’ connection to caring adults at school, and provide structure and supervision during the peak hours of adolescent drug use, 3-6 P.M. Ryoko Yamaguchi et al., Relationship Between Student Illicit Drug Use and School Drug-Testing Policies, 73 *Journal Of Sch. Health* 159-164 (2003), available at <http://www.monitoringthefuture.org/pubs/text/ryldjpom03.pdf>. “Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers. See Nicholas Zill Et Al., U.S. Dept. Of Health & Human Servs., Adolescent Time Use, Risky Behavior and Outcomes: An Analysis of National Data (1995), available at <http://aspe.hhs.gov/hsp/cyp/xstimuse.htm> (“students who reported spending no time in school-sponsored activities were 49 percent more likely to have used drugs”). Additionally, studies have shown that drug-testing is not sufficiently reliable, is cost-prohibitive, and wastes scarce dollars that could be better spent on other, more effective programs that keep young people away from drugs. “Drug testing costs schools an average of \$42 per student tested, which amounts to \$21,000 for a high school testing 500 students. This figure is for the initial test alone and does not include the costs of other routine components of drug testing, such as additional tests throughout the year or follow-up testing. The cost of drug testing often exceeds the total a school district spends on existing drug education, prevention and counseling programs combined.” Jennifer Kern et al., Making Sense of Student Drug Testing: Why Educators Are Saying No (2006), available at [http://www.aclu.org/images/asset\\_upload\\_file598\\_23514.pdf](http://www.aclu.org/images/asset_upload_file598_23514.pdf).

<sup>274</sup> See generally Cotati-Rohnert Park Unified Sch. Dist. Governing Bd., Policy on Alcohol and Other Drugs, <http://www.crpisd.org/stuserv/5131%206%20BP%20Alcohol%20and%20Other%20Drugs%206%2006.pdf>.

<sup>275</sup> See generally L.A. Unified Sch. Dist., Preventive Measures and Mandatory Procedures for Students Who Violate Laws Regarding Drugs, Alcohol, And Tobacco (2006), available at [http://www.lausd.oehs.org/docs/SSPVolume1/SSP%20V1\\_ResourceDocuments/Bul-3277.pdf](http://www.lausd.oehs.org/docs/SSPVolume1/SSP%20V1_ResourceDocuments/Bul-3277.pdf).

<sup>276</sup> See generally David Karp & Beau Breslin, Restorative Justice in School Communities, 33 *YOUTH & SOC’Y* 249-272 (2001), available at [http://www.skidmore.edu/~dkarp/Karp%20Vital\\_files/Restorative%20Justice%20in%20School%20Communities.pdf](http://www.skidmore.edu/~dkarp/Karp%20Vital_files/Restorative%20Justice%20in%20School%20Communities.pdf).

<sup>277</sup> See generally Cristiana Pereira Baptista, Therapeutic Justice and Peace Circles: A Restorative Opportunity for Youth Drug Users in Conflict with the Law, available at <http://www.iirp.edu/pdf/Nova-Scotia-2011-Presentations/Nova-Scotia-2011-Pereira-Baptista.pdf>.

<sup>278</sup> See generally Tara Andrews & Idit Knaan, Scared Straight: Don’t Believe the Hype (Facts from CJJ), <http://www.reclaimingfutures.org/blog/juvenile-justice-reform-Scared-Straight-Facts-vs-Hype> (Aug. 8, 2012).

<sup>279</sup> Office for Civil Rights, Dept. Of Educ., Protecting Students with Disabilities: Frequently Asked Questions About Section 504 And the Education of Children with Disabilities, <http://www2.ed.gov/about/offices/list/ocr/504faq.html>.

<sup>280</sup> See generally Preventive Measures and Mandatory Procedures, *supra* note 279.



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.g Model Policy on Intervention Support Team Approach for “Threat Assessments”

#### Human Rights Goal

Schools shall provide students who are in any kind of distress additional supports, including counseling, wrap-around services, Restorative Justice Practices and other approaches so that they can receive resources proactively before there are imminent safety concerns. Schools shall implement positive school climate and discipline measures (detailed in Section 3.1 Key Elements of School Climate and Positive Discipline and Section 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports and 3.7.b Restorative Justice Practices) so that school staff and students’ peers will have positive, trusted relationships and have processes in place to respond when they notice changes in behavior or other concerns. Schools shall proactively address issues with students as they come up, including concerns about violence or other serious issues, by addressing the root causes of the issues the student is facing and using exclusion from the student’s regular classroom or school or involvement of law enforcement only as a last resort.

#### Definitions

- 1. Threat Assessment** – The process of determining if a particular threat or concerning behavior is something that requires intervention may be called a “Threat Assessment” or it may be called something else depending on the school and their approach. The term “Threat Assessment” is a concern because it immediately labels the student as a threat rather than focusing on the supports that may be needed. Whether termed “Threat Assessments” or not, this process should not be set up as something distinct from the positive approaches to school climate and discipline that a school has in place.
- 2. Intervention Support Team** – The group that determines what kinds of consequences or interventions are required based on a student’s behavior. They should consider the range of appropriate responses; and provide continuous monitoring of student behavior. Schools should be responding to student behavior using a graduated approach that seeks to understand and begin to address the root causes of the behavior, from minor discipline issues to students requiring more intensive interventions (see Section 3.1 Key Elements of School Climate and Positive Discipline). Schools should have structures in place to respond proactively to students who require different kinds of interventions, including those where safety may be a concern.

#### Recommended Language

- A. States, districts and schools shall ensure that when a student shows some indication that they may engage in violence, that there is a serious and unbiased assessment by an Intervention Support Team to ensure the safety of the student and the school community.**
  1. This process should be embedded in the school-wide preventative and positive school discipline practices the school has in place, and follow the same protocols to ensure that responses to behavior are individualized, consistent, reasonable, fair, age appropriate and match the severity of the student’s behavior.<sup>281</sup>
  2. The Intervention Support Team should use an assessment tool or process that is evidence-based (with up-to-date research that does not rely on stereotypes about who is more likely to engage in violence) and must include the following considerations:

- a. The result of an assessment should not lead to further isolation or reduction in social supports, including recommending suspensions and expulsions, especially if there are concerns about student violence. Complete school exclusion can exacerbate risk to a student body and the student in question.<sup>282</sup> Schools should make every effort to limit complete school exclusion and instead partner with the family, community mental health, community nonprofits and other key partners to safely plan and provide supportive services.
  - b. The assessment tool or process should include specific questions or prompts to ensure that the team is considering the context for the concerning behavior, and whether or not any threats of violence were jokes or said in anger without a likelihood that they would be acted upon.<sup>283</sup>
  - c. A student or their family’s race, ethnicity, national origin, religion, or political activities must not be considered a risk factor of any kind, either in the written tool or as part of the discussion.
  - d. Include instructions for referring the student to appropriate teams under IDEA or Section 504 to identify the possible need for additional supports once the assessment is completed, if applicable.
  - e. Involvement of law enforcement should be presented as a last resort in cases where the assessment has shown that there is an imminent threat of violence. The assessment tool should refer to a list of behaviors for which schools should not contact law enforcement, and if called, law enforcement should not respond (see Section 3.3 Law Enforcement and Criminalization in School Environments)
3. The Intervention Support Team must respond effectively to concerning student behavior using a SWBPIS model as described below (see Section 3.1 Key Elements of School Climate and Positive Discipline and 3.7.a Model Policy on School-wide Positive Interventions and Supports for additional detailed information):
- a. Students who exhibit a pattern of problem behavior or exhibit concerning behaviors<sup>284</sup> require a more intensive level of intervention that is individualized and includes a team approach.
  - b. All decisions related to intensive interventions must be made by the Intervention Support Team.
  - c. The Intervention Support Team shall use a problem-solving approach in an effort to help the student to be more successful in school, at home or in the community.<sup>285</sup> This approach includes:
    - i. Receiving referrals;
    - ii. Identifying and assessing problems;
    - iii. Collecting data for use in decision-making;
    - iv. Communicating with family members and providing opportunities for training on behavior support and positive parenting strategies;
    - v. Identifying action steps and developing strategies for coordination and implementation of programs and resources (e.g., conflict-resolution, opportunities to develop social and emotional skills, mentoring);
    - vi. Making a referral for special education if appropriate;<sup>286</sup> and
    - vii. Monitoring behavior and modifying the action steps appropriately.
  - d. For some students who require a more intensive level of intervention, the Intervention Support Team shall:
    - i. Conduct an assessment if the student is not responding to preventive and positive interventions;
    - ii. Integrate community-based resources in action planning and service delivery when necessary; and
    - iii. Develop a support plan comprised of individualized goals, data collection and analysis, assessment-based intervention strategies and monitoring systems to address the needs of the student.<sup>287</sup>
  - e. Schools shall provide wraparound services for students with complex and multiple needs. Schools shall collaborate with public agencies, community-based organizations and families to develop individualized plans to provide a variety of services, such as healthcare, counseling, social work and mentoring, that are driven by the needs of students, not the services provided.<sup>288</sup> Wraparound plans for individual students shall be developed by the Intervention Support Team of people who know the students best and must include the following best practices:<sup>289</sup>
    - i. Wraparound efforts must be based in the community;

- ii. The plan must be individualized to meet the needs of students and families;
  - iii. The process must be culturally competent and build on the strengths of the students and families;
  - iv. Parents or guardians must be included at every level;
  - v. Agencies must have access to flexible, non-categorized funding;
  - vi. The process must be implemented on an inter-agency basis and be owned by the larger community;
  - vii. Services must be unconditional. If the needs of the student and family change, the student and family are not to be rejected from the service. Instead, the service must be changed; and
  - viii. Outcomes must be measured.
4. The Intervention Support Team should always include school staff who know the student being assessed, and should include individuals with multiple perspectives including teachers, psychologists, social workers, community intervention workers, and restorative justice coordinators. Private therapists or other outside consultants may be utilized if they bring a unique expertise but only in concert with school-based staff that have a relationship with the student.
  5. Members of the team should be culturally responsive to the cultures and communities the student belongs to, and ensure that biases (implicit or explicit) are not impacting the outcome of the assessment, or the triggering of the assessment in the first place.
  6. A School Climate and Culture Leadership Team (see Section 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports) will help coordinate school and community stakeholder engagement in the formation of the assessment policy and tool, particularly around the following items:
    - a. What kinds of behaviors trigger the formation of an assessment process;
    - b. Who are the members of the team;
    - c. Examples of possible interventions the teams can consider;
    - d. Ensuring that community and mental health service providers should be proactively engaged in the development of the assessment process so that school officials are aware of how to connect students to their services, and the organizations are aware that students may be referred to them;
    - e. What kinds of due process and privacy protections will be in place (in addition to the recommendations below); and
    - f. How the process will be monitored and evaluated.

**B. States, districts and schools shall ensure that where formalized “Threat Assessments” or “Threat Assessment Teams” are required, they include the following protections:**

1. Change the term used for this process to something less stigmatizing and criminalizing of students, like Intervention Support Team Assessment.
2. Law enforcement, including School Resource Officers, should not be a part of the Threat Assessment Team.
3. The following due process and privacy protections must be in place:
  - a. Parent/guardian and student notification that a threat assessment is taking place and what the outcome is.
  - b. Ensuring that anonymous reporting is not being used in a way to harass or target students by filing false reports.
  - c. Ensuring threat assessments have a clear ending and outcome (meaning students are not under surveillance without their knowledge indefinitely).
  - d. Transparency around who will have access to the information gathered during the threat assessment process and the recommended outcomes, with strict limitations on the sharing of information outside of those involved in the threat assessment beyond what is necessary.
  - e. Restrictions on creating or sharing student information on law enforcement databases.
4. Algorithms, predictive analytics or other automated tools must never be used to conduct a threat assessment.<sup>290</sup>



5. Require annual reporting of data on threat assessments all disaggregated by race/ethnicity, gender, special education status, and age including:
  - a. Generally how threat assessments were triggered;
  - b. The outcomes of the assessments;
  - c. The number of referrals to the team; and
  - d. Out of those, the number the team recommended for further action.

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<sup>281</sup> See generally L.A. Unified Sch. Dist., Discipline Foundation Policy: School Wide Positive Behavior Support (2007), available at [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/FLDR\\_ORGANIZATIONS/STUDENT\\_HEALTH\\_HUMAN\\_SERVICES/SHHS/DISCIPLINE\\_POLICY/DISCIPLINE\\_POLICY\\_PRESENTATIONS/DISCIPLINE\\_POLICY\\_PRESENTATIONS\\_INTRODUCTION/BASIC%20POLICY%201.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/STUDENT_HEALTH_HUMAN_SERVICES/SHHS/DISCIPLINE_POLICY/DISCIPLINE_POLICY_PRESENTATIONS/DISCIPLINE_POLICY_PRESENTATIONS_INTRODUCTION/BASIC%20POLICY%201.PDF).

<sup>282</sup> Linda Darling Hammond “Arming Teachers and Expelling Students is Not the Answer to School Shootings” Available at: <https://www.forbes.com/sites/lindadarlinghammond/2018/06/08/arming-teachers-and-expelling-students-is-not-the-answer-to-school-shootings-and-its-dangerous/#47ad61247aeb>.

<sup>283</sup> Dewey G. Cornell, Overview of the Comprehensive School Threat Assessment Guidelines (CSTAG) (2019).

<sup>284</sup> See generally Frequently Asked Questions: What Is Tertiary Prevention?, [http://www.pbis.org/school/tertiary\\_level/faqs.aspx](http://www.pbis.org/school/tertiary_level/faqs.aspx).

<sup>285</sup> See generally Positive Behavior Intervention and Supports Tutorial: Individual Systems, [http://cte.jhu.edu/courses/pbis/ses5\\_act2\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses5_act2_pag1.shtml).

<sup>286</sup> See generally Stephanie Martinez, A System Gone Berserk: How Are Zero Tolerance Policies Really Affecting Schools?, 53 Preventing Sch. Failure 153-157 (2009); Joseph B. Ryan et al., IDEA 2004 and Disciplining Students with Disabilities, 91 NASSP BULLETIN 130-140 (2007).

<sup>287</sup> See generally Tertiary Prevention, *supra* note 222.

<sup>288</sup> See generally What Is The Wraparound Process?, <http://cecp.air.org/wraparound/intro.html>.

<sup>289</sup> *Id.*

<sup>290</sup> The Marshall Project. Can Racist Algorithms Be Fixed? Available at: <https://www.themarshallproject.org/2019/07/01/can-racist-algorithms-be-fixedkmm-p/>.



# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

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### Background

In the United States, disparities in access to educational opportunities and outcomes are denying millions of students their right to quality education based on race, poverty, sexual orientation, gender, disability, language, immigration status and other factors. There is extensive research showing that students of color, particularly Black and Latino students, students with disabilities, LGBTQ+ students and other vulnerable populations, such as students in foster care, court-involved youth and students who are homeless, face disproportionately harsh and exclusionary discipline.<sup>291</sup> In the 2015-2016 school year, Black students were 2 times more likely to be suspended than white students, and students with disabilities were 2 times more likely to be suspended than general education students.<sup>292</sup>

Such discrimination may take the form of either policies that intentionally discriminate or policies that have a disparate and negative impact on groups that have faced, and continue to face, discrimination. It is crucial that the standard of discrimination employed by our educational system include discrimination that results in “disparate impact.” Our school systems must identify and address the factors that create unequal and unnecessary obstacles to student development and provide the resources and supports necessary to counteract the impacts of pervasive yet often undetected entrenched systemic discrimination. Discrimination based on disparate impact must be regularly and effectively identified and monitored through statistics, empirical studies and anecdotal data.<sup>293</sup>

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### A Guide to Chapter 4

Chapter 4 lays out the policies and practices necessary to address discrimination in education, with a particular focus on discrimination related to disciplinary policies and practices based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability, economic or other status. It is divided into six sections.

**Section 4.1 on the Right to Freedom from Discrimination** defines discrimination to include policies that are intentionally discriminatory, as well as policies that are not intentionally or consciously discriminatory but have a disparate impact on educational access, services or outcomes. It requires school systems to eliminate discriminatory policies, practices and structures, including through equitable distribution of resources, addressing language and other barriers, eliminating segregation and tracking of students, and providing teacher training. It also provides guidelines for engaging all stakeholders in developing strategies to eliminate discrimination and harassment in the school environment.

**Section 4.2 on Disproportionate Use of Discipline** describes guidelines for districts and schools to eliminate any disparities in the use of disciplinary referrals and exclusion, the severity of disciplinary consequences, or the impact of disciplinary actions on students. This includes culturally responsive classroom and school-wide discipline practices, community dialogues with staff, students and parents, professional development for teachers and staff, eliminating minor and subjective offenses from discipline codes, stakeholder teams to monitor disparities in discipline and grievance procedures for students.

**Section 4.3 on Racial Disparities in School Discipline** is different from other sections in the code because the entire Model Code on Education and Dignity represents our holistic recommendations for how to end racial disparities in school discipline. This section summarizes other parts of the code, and provides examples of resources, both from inside the model code and from other sources.

**Section 4.4 on Immigrant and Undocumented Students** provides guidelines for protecting the rights and preventing criminalization of undocumented and other vulnerable students.

**Section 4.5 on Students with Disabilities** describes guidelines for preventive and positive discipline policies tailored to meet the particular needs of students with disabilities, procedural protections to ensure students and parents are meaningful partners in addressing behavioral problems, requirements for positive discipline, and restrictions on removal of students from their current educational placement and referrals to law enforcement.

**Section 4.6 on LGBTQ+ and Gender Non-Conforming Students** provides a framework for creating school environments where all students, regardless of sexual orientation, gender identity or gender expression can feel safe, supported and free from discrimination.

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<sup>291</sup> See, e.g., Russell Skiba, Changing The Data, Changing Our Minds: Disproportionality And Improving Schools (2008), available at <http://www.indiana.edu/~equity/docs/SkibaChangingDataMinds.pdf>; Joseph B. Ryan et al., IDEA 2004 and Disciplining Students with Disabilities, 91 NASSP Bulletin 130-140 (2007); Dalun Zhang et al., Disciplinary Exclusions in Special Education, a 4-Year Analysis, 29, Behavioral Disorders 337-347 (2004); K. Himmelstein et al. Criminal-justice and school sanctions against non-heterosexual youth: a national longitudinal study, 127(1), PEDIATRICS, 53 (2011); Heather Cobb, Note, Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court, 44 HARV. C.R.-C.L. L. REV. 581-596 (2010); Advancement Project & The Civil Rights Project, Opportunities Suspended: The Devastating Consequences Of Zero Tolerance And School Discipline Policies (2000), available at <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf>.

<sup>292</sup> Office for Civil Rights, Dept. of Educ., Civil Rights Data Collection 2015-16. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

<sup>293</sup> *Guardians Assoc. v. Civil Serv. Comm'n of N.Y.*, 463 U.S. 582, 622 (1983) (Marshall, J., dissenting).



# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.1 Right to Freedom from Discrimination

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#### Human Rights Goal

In order to protect all students' human right to an educational system that supports their full development, school systems must take steps to eliminate all forms of discrimination based on race, ethnicity, sex, gender identity, sexual orientation, language, national origin, religion, disability, economic or other status.<sup>294</sup> School systems must engage the students, parents and communities most impacted by discrimination in identifying solutions to ensure equitable access and outcomes in education. Schools must be culturally responsive and address the needs of all students.

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#### Recommended Language

- A. Discrimination consists of any distinction, exclusion, limitation or preference<sup>295</sup> based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability, economic or other status which has the purpose or effect of limiting access to educational opportunities or services or which leads to discriminatory outcomes in education. Accordingly, discrimination may consist of either:**
1. Intentional policies based on such invidious distinctions; or
  2. Policies that are not intentionally or consciously discriminatory but nevertheless have a disparate, adverse impact on disadvantaged or stigmatized groups.
- B. States, districts and schools must eliminate discriminatory policies, practices and structures, as well as embedded effects of past discrimination, including by:**
1. Ensuring equitable distribution of resources to direct the necessary funding, staff and other support to address the educational disparities impacting traditionally marginalized groups;
  2. Ensuring representation of all communities served by a school system in their governance structures;
  3. Addressing language and other barriers to effective communication and learning;
  4. Partnering with social services and other public agencies and community-based organizations to support student, family and community needs;
  5. Eliminating the segregation and tracking of students based on distinctions such as gifted or non-gifted, levels of exposure to education, learning patterns or modes, disability, or other status;
  6. Ensuring that faculty and staff, who are identified as demonstrating discriminatory behavior, are trained and held accountable following those trainings with appropriate disciplinary measures; and
  7. Educating and informing those impacted by discriminatory policies and practices of the resources, tools, and processes that are available to protect and support them.
- C. Schools shall create a School Climate and Culture Leadership Team (see Section 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports), including educators, parents or guardians, students and administrative staff, to identify, design and implement strategies for preventing and eliminating discrimination and harassment in the school environment, including:**

1. Providing training and facilitating conversations among school staff about race, class, sexuality and other identities to examine biases and how they impact the school community including disproportionate application of discipline;
2. Working with teachers to recognize and end stereotyping, name-calling, labeling and separation of students within the classroom, and to better understand and respond to students' personalities and learning styles to create positive classroom environments;
3. Holding ongoing dialogues throughout the school year with students on cultural understanding and teaching differences; and
4. Engaging the support of parent or guardian, teacher and student organizations as well as third party organizations to monitor classrooms and provide feedback and offer best practices and advice

**D. States, districts and charter schools must remove all formal and/or informal practices that can lead to selective enrollment and discrimination in access to educational opportunities for different students, in particular, students of color, students with disabilities, English Language Learners, homeless students or students in temporary housing situations and other populations in need of specialized programs. States, districts and charter schools shall:**

1. Ensure that charter schools eliminate discriminatory enrollment or selection policies, practices and structures, which have the purpose or effect of limiting access to educational opportunities or services or which lead to discriminatory outcomes in education, based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability or economic or other status.
2. Ensure that charters, by law and in practice, are not discriminating in enrollment policies and practices that result in students with disabilities, with behavioral needs, of certain racial/ethnic groups or who are English language learners being excluded from enrollment, including screening through formal or informal strategies, such as limited registration periods, required contracts, interviews, English-only outreach materials, identification documents, academic or special education documents or other means that diminish equal educational opportunities for all students.
3. Require that all applications to create charters include detailed plans for outreach and enrollment and registration procedures in order to ensure that they will not result in selectivity. Require charter authorizers to provide ongoing monitoring of these procedures and of student data to identify disparities that might indicate discriminatory practices.
4. Ensure equal access for all to the admissions process and prohibit policies that would create barriers or discrimination in the selection and placement of students.
5. Ensure that in all practices, including enrollment and disciplinary processes, charters comply with state and federal civil rights laws, including prohibitions on discrimination on the basis of race, sex or national origin.
6. Ensure that school discipline policies and practices are constructed, implemented and practiced in ways to avoid discriminatory and/or disproportionate impacts on students based on race, gender, special education status, LGBTQ+ status, homelessness or other characteristics and are consistent with civil rights laws and the federal school discipline guidance.
7. Require that charter schools by law should provide the resources, staff and supports necessary to serve students with special needs, including, but not limited to students with disabilities, English Language Learners, students with behavioral needs, students who receive free or reduced price lunch and homeless students or students in temporary housing situations.
8. Pushing out or turning away students because of special needs must be prohibited, and compliance monitored.

<sup>294</sup> U.N. Convention on the Rights of the Child art. 2; International Covenant on Civil and Political Rights art. II, ¶ 1.

<sup>295</sup> International Convention on the Elimination of Racial Discrimination art. I, ¶ 1.



# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.2 Disproportionate Use of Discipline

#### Human Rights Goal

Schools must take steps to eliminate any disparities in the use of disciplinary referrals, in the severity of punishments or in the impact of disciplinary action on students based on race, ethnicity, sex, gender identity, sexual orientation, language, national origin, religion, disability, economic, or other status.<sup>296</sup> School discipline must be administered in a fair and non-biased way.

#### Definitions

1. **Culturally Responsive Classroom Management (CRCM)** – An approach to running classrooms in a culturally responsive way. More than a set of strategies or practices, CRCM is a pedagogical approach that guides the management decisions that teachers make. It is a natural extension of culturally responsive teaching which uses students' backgrounds, rendering of social experiences, prior knowledge, and learning styles in daily lessons. Teachers, as culturally responsive classroom managers, recognize their biases and values and reflect on how these influence their expectations for behavior and their interactions with students as well as what learning looks like. They recognize that the goal of classroom management is not to achieve compliance or control but to provide all students with equitable opportunities for learning.<sup>297</sup>

#### Recommended Language

- A. **States, districts and schools shall take steps to eliminate any disparities in the use of disciplinary referrals and exclusion, in the severity of punishments or in the impact of disciplinary action on students.**
  1. Districts shall establish a School Climate and Culture Committee made up of diverse representatives of administrators, teachers, students, parents or guardians, and community members to advise the District on:
    - a. Promoting culturally responsive and non-discriminatory discipline strategies;
    - b. Reducing racial disproportionality in discipline referrals and consequences;
    - c. Improving dialogue about discipline among students, parents, teachers, and administrators; and
    - d. Developing structures and strategies that reflect restorative justice principles.
  2. The School Climate and Culture Committee shall, among other duties:
    - a. Consult with the District on revision of the Code of Conduct and other disciplinary policies;
    - b. Identify training needs for staff and administrators;
    - c. Review discipline data and, if racial disparities in referrals and consequences are identified, make recommendations to the District for setting measurable objectives for reductions in those disparities; and
    - d. Make recommendations to the District on an ongoing basis to assist the District in implementing its behavior and discipline system and in fostering and maintaining safe and orderly schools.
- B. **Schools shall actively create a positive school climate for all members of the school community through the regular and ongoing use of culturally responsive classroom management and discipline practices that build community, strengthen relationships, promote inclusiveness, and enhance communication and problem solving skills (see Section 3.1 Key Elements of School Climate and Positive Discipline).**

1. Administrators, teachers and other school staff shall:<sup>298</sup>
    - a. Organize the physical classroom and school environment to communicate respect for diversity, to reaffirm connectedness and community, and to promote social interaction (i.e. through the display of maps, art and books about the history and culture of students, arranging desks in clusters rather than rows, etc.);
    - b. Establish expectations and norms for behavior in collaboration with students, which include understanding and preventing discrimination, and provide opportunities for students to practice and reflect on those norms;
    - c. Communicate with students in culturally consistent ways, including modifying discourse styles to ensure that communications are consistent with students' cultural backgrounds;
    - d. Create caring, inclusive schools and classrooms by learning about students' interests, inviting students to make decisions about class activities, deliberately modeling respect for diversity, and setting a positive classroom tone (i.e. by greeting students at the door and in their native languages);
    - e. Work with families to provide insight into students' behavior, culture and prior educational experiences, as well as what their educational goals for their children are and whether their children may be experiencing cultural conflicts in the classroom; and
    - f. Address teacher and staff behavior by reflecting on their own biases and values, and how they may affect their interactions with students, including the kinds of behaviors they judge to be problematic, and how these are related to race and ethnicity.
  2. Schools shall create small community dialogue sessions at the beginning of each year to explain the school expectations and to orient the family to the school and the school to the family in order to facilitate more comprehensive understanding and combat bias that contributes to disproportionality in discipline.
- C. Districts and schools shall provide training and ongoing professional development for all teachers, administrators and school staff on cross-cultural understanding and culturally responsive classroom management and disciplinary policies.**
1. All school administrators, including principals and deans of discipline, and all district staff and school board members who are making decisions about school discipline policy, shall receive training to monitor and intervene to address the discriminatory application of exclusionary and other disciplinary measures.
- D. Districts and schools shall ensure that Codes of Conduct are constructed and implemented to avoid discriminatory and/or disproportionate punishments of students based on race, gender or other characteristics. Districts and schools shall:**
1. Avoid listing vague and subjective behavior infractions in the Code of Conduct such as "disrespect," "willful defiance," "insubordination," or "classroom disruption" that may be understood differently by different staff members and may allow for more bias in the administration of the policy; and
  2. Ensure that all stakeholders have a shared understanding of the behaviors being addressed in the district's Code of Conduct.
- E. Schools shall create a School Climate and Culture Leadership Team, including educators, parents or guardians, students and administrative staff, to monitor implementation of the district's discipline policy, including quarterly reviews of compiled discipline data. The Leadership Team must:**
1. Track data regarding all disciplinary incidents including the type of behavior, teacher or staff member reporting the behavior and the consequence, including office referrals, exclusionary or punitive consequences (in school suspensions, suspensions, expulsions, police referrals, etc), and proactive approaches (referrals to counseling, community service, peer counseling, etc.).
  2. Disaggregate this data by race, age, grade, gender, ethnicity, zip code, disability and family status (i.e. in foster care/homeless).

3. In reviewing data on disciplinary referrals, if schools identify a staff member that has engaged in a pattern of referrals that are disproportionate with regard to any groups, the school shall observe the teacher's classroom management and provide targeted professional development and feedback for that staff member.

**F. Schools shall create student grievance procedures regarding inappropriate, biased or disproportionate disciplinary tactics.**

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<sup>296</sup> U.N. Convention on the Rights of the Child art. 2.

<sup>297</sup> Metropolitan Center for Urban Education, Culturally Responsive Classroom Management, (2008).

<sup>298</sup> Weinstein, C., Curran, M., Tomlinson-Clarke, S., Culturally Responsive Classroom Management: Awareness into Action, Theory Into Practice, 42(4): 269-276 (2003).





# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.3 Racial Disparities in School Discipline<sup>299</sup>

#### Human Rights Goal

Schools must ensure that students of every race and ethnicity receive equitable treatment when it comes to school climate and discipline. Students of color must not experience disproportionate use of harsh discipline policies and exclusionary discipline like suspensions, expulsions, arrests and referrals to law enforcement. To fully protect students' human right to education, schools must fully acknowledge the ways in which the education system has promoted racial injustice historically and currently, and proactively work to dismantle systemic racism inside and outside of the school. In order to address racial disparities in school discipline, schools must also actively address the impact of systemic racism on all of their policies and practices to ensure that students are not being denied equal opportunities to an education based on their race.

#### Definitions

1. **Four Dimensions of Racism** (definitions below from Race Forward/Colorlines<sup>300</sup>):
  - a. **Internalized Racism** – The private racial beliefs held by an individual. Examples include: Prejudice, internalized oppression and internalized privilege.
  - b. **Interpersonal Racism** – How we act upon our racial beliefs when we interact with others. Examples include: Bias, bigotry, hate speech and violence.
  - c. **Institutional Racism** – Racial inequities within institutions and systems of power. Examples include: School systems that provide unequal opportunities for people of different races.
  - d. **Structural Racism** – Racial bias across institutions and society. Examples include: The racial wealth gap which reflects the cumulative effects of racial inequities.
2. **Implicit Bias** – The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. They cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance. These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages. In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.<sup>301</sup>
3. **Explicit Bias** – Conscious thoughts or beliefs about other people based on characteristics such as race, ethnicity, age and appearance that impact how we perceive or treat them. Individuals may choose to conceal these biases for the purposes of social and/or political correctness, but that is not the same as the unconscious implicit bias explained above.<sup>302</sup>

## Recommended Language

### A. States, districts and schools must implement the following key elements for ending racial disparities in school discipline:

1. Commit to upholding the human right to quality education for all students, and understand how exclusionary discipline is a barrier to that right.
  - a. Strictly limit exclusionary discipline, which takes students out of the classroom and robs them of critical learning time—without evidence that it leads to improvement in student behavior—and is correlated with students not completing school and later involvement in the juvenile justice system.
  - b. Resources:
    - i. Model Code Chapter 1 Education for the Full Potential of Children and Youth.
    - ii. Department of Education Office of Civil Rights and Department of Justice Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,<sup>303</sup> which describes how schools can meet their legal obligations under federal civil rights law to administer student discipline without discriminating against students on the basis of race, color or national origin.
    - iii. Council of State Governments “Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’ Success and Juvenile Justice Involvement.”<sup>304</sup>
    - iv. ACLU and Center for Civil Rights Remedies “11 Million Days Lost: Race, Discipline and Safety in US Public Schools”<sup>305</sup>
2. Understand the history of racial injustice in education and how it impacts current experiences for students and their families in school.
  - a. Schools and districts must understand the connection between harsh school discipline practices, racial disparities in discipline rates and the historic and systemic failure of the education system to provide an equitable education for students of color, including other connected issues like extreme resource inequity, racial segregation and overt discrimination.
  - b. These topics should be part of the student curriculum, as well as onboarding and professional development for all school staff
  - c. Resources:
    - i. Alliance for Educational Justice and Advancement Project’s “We Came to Learn: A Call for Police-Free Schools.”<sup>306</sup>
    - ii. NAACP LDF’s “Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline.”<sup>307</sup>
3. Address the impacts of institutional and structural racism in schools beyond school discipline.
  - a. At the State and District level, address issues of resource equity and school segregation to ensure that all schools have the resources they need to provide a quality education, and students of color are not segregated into lower resourced schools.
  - b. Invest in creating a pipeline for teachers of color so that school staff are more representative of the communities they are teaching in.<sup>308</sup>
  - c. Ensure universal access to quality instruction, including gifted and talented programs where they exist, Advanced Placement courses, art, music, physical education and culturally relevant curriculum, and end the practice of putting students on “tracks” that limit their opportunities for success.
    - i. See Chapter 1.3 Culturally Relevant Curriculum and Teaching.
4. Adopt a school-wide preventative positive approach to discipline that creates a positive school climate for students and addresses misbehavior in ways that get to the root causes of the behavior and repairs the harm that was done.

- a. Resources:
  - i. See Section 3.1 Key Elements of School Climate and Positive Discipline and 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports and 3.7.b Model Policy on Restorative Justice Practices.
  - ii. See Section 4.2 Disproportionate Use of Discipline.
  - iii. See U.S. Department of Education "Directory of Federal School Discipline Resources."<sup>309</sup>
5. Proactively engage all stakeholders in understanding why racial disparities in school discipline are happening, and to hear solutions for how to address the problem.
  - a. Use school climate surveys to gather this information, in addition to other outreach both formal and informal.
  - b. Resources:
    - i. Chapter 2 on Participation.
    - ii. The National Center on Safe Supportive Learning Environments (NCSSLE) School Climate Compendia.<sup>310</sup>
6. Assess and update school discipline policies to end reliance on harsh exclusionary discipline, remove any vague policies that may lead to unequal treatment based on implicit or explicit biases, and ensure that all policies are clear to students, parents, school staff, and the larger community.
  - a. Eliminate all suspensions and other exclusionary discipline responses for vaguely defined behaviors such as "disruption," "willful defiance" or "defying authority" that are highly subjective, leaving an opening for implicit and explicit biases to impact how a student's typical adolescent behavior is perceived.
  - b. Resources:
    - i. Section 3.2 Guidelines for Suspensions, Expulsion and Removals.
    - ii. Section 4.2 Disproportionate Use of Discipline.
    - iii. See the National Compendium on School Laws and Regulations for examples of policies in place across the country.<sup>311</sup>
7. Use accurate data to understand how school discipline is being implemented across all student groups, and use that information to improve.
  - a. Data should be disaggregated by age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care, all consistent with privacy constraints established under federal and state laws and regulations.
  - b. Resources:
    - i. Chapter 5 Data, Monitoring and Accountability.
    - ii. Race Forward's Racial Equity Impact Assessment.<sup>312</sup>
8. Be responsive to student, parent, and community concerns that are brought to the school about inequitable treatment of students, and see them as an opportunity to improve.
  - a. This includes concerns brought through official roles that stakeholders may play in the school (for example participation on the School Climate and Culture Leadership Team), concerns raised by community organizations, or informally raised by any stakeholder in the school community.
  - b. Ensure there is a clear complaint process for stakeholders to formally share their concerns or complaints
    - i. This should include a process for when the person or people responsible for taking complaints are involved in the original concern.
    - ii. The process should be transparent about what will be triggered once a complaint is filed.
  - c. Resources:

- i. Chapter 2 Participation.
  - ii. Section 5.2 Monitoring and Community Analysis.
9. Provide training and support to school staff that allows for real and honest dialogue that lead to changes in practices. Trainings should include information on how both implicit and explicit bias may be contributing to school staff response to students.
- a. School staff trainings should be an integral part of a school or district strategy to end racial disparities, but it cannot be the only step that is taken. Without the other steps listed here, and ongoing follow up and support for staff, trainings are likely to be ineffective.
  - b. Resources:
    - i. Fix School Discipline "Toolkit for Educators."<sup>313</sup>
    - ii. Kirwan Institute "Implicit Bias Module Series"<sup>314</sup>
10. Use accountability measures that work when school staff are not following the policies or upholding the value of equity in your school community, for example, disproportionately targeting Black students for suspensions, referrals to law enforcement and for over-identification of certain disabilities such as "emotional disturbance."
- a. Resources:
    - i. Educators for Excellence "Ending Racial Discipline Disparities: An Educators Guide to School-based Change."<sup>315</sup>
    - ii. Fix School Discipline "Toolkit for Educators", in particular the Implementation and Monitoring Section.
    - iii. Safe and Supportive School Discipline Initiative "Addressing the Root Causes of School Discipline Disparities: An Educators Action Planning Guide"<sup>316</sup>
    - iv. Discipline Disparities Research to Practice Collaborative "How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions"<sup>317</sup>

**B. States, Districts and Schools Must Comply with Federal Civil Rights Law and Use the 2014 Federal School Discipline Guidance as a Resource in Ending Racial Disparities in School Discipline**

1. Comply with legal obligations under existing federal civil rights law to administer student discipline without discriminating against students on the basis of race, color or national origin, as outlined in the Department of Education Office of Civil Rights and Department of Justice Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline.<sup>318 319</sup>
2. Share the following provisions in the guidance with schools and districts that have racial disparities, which lay out the legal framework coming out of Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c *et seq.* and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulations, 34 C.F.R. Part 100:
  - a. "When schools respond to student misconduct, Titles IV and VI require that the school's response be undertaken in a racially nondiscriminatory manner."
  - b. "These statutes cover school officials and everyone school officials exercise some control over, whether through contract or other arrangement, including school resource officers. Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or law enforcement personnel."
  - c. "The administration of student discipline can result in unlawful discrimination based on race in two ways: first, if a student is subjected to *different treatment* based on the student's race, and second, if a policy is neutral on its face—meaning that the policy itself does not mention race—and is administered in an evenhanded manner but has a *disparate impact*, *i.e.*, a disproportionate and unjustified *effect* on students of a particular race." (emphasis in original).
  - d. "Intentional discrimination occurs when a school has a discipline policy that is neutral on its face (meaning the language of the policy does not explicitly differentiate between students based on their race), but the

school administers the policy in a discriminatory manner or when a school permits the *ad hoc* and discriminatory discipline of students in areas that its policy does not fully address.”

- e. “Selective enforcement of a facially neutral policy against students of one race is also prohibited intentional discrimination.”
- f. “If school officials believed that students of a particular race were likely to wear a particular style of clothing, and then, as a means of penalizing students of that race (as opposed to as a means of advancing a legitimate school objective), adopted a policy that made wearing that style of clothing a violation of the dress code, the policy would constitute unlawful intentional discrimination.”
- g. “Schools also violate Federal law when they evenhandedly implement facially neutral policies and practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as “disparate impact.”
- h. “In determining whether a facially neutral policy has an unlawful disparate impact on the basis of race, the Departments will engage in the following three-part inquiry:
  - i. (1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races? ... If there were no adverse impact, then, under this inquiry, the Departments would not find sufficient evidence to determine that the school had engaged in discrimination. If there were an adverse impact, then:
  - ii. (2) Is the discipline policy necessary to meet an important educational goal?<sup>320</sup> In conducting the second step of this inquiry, the Departments will consider both the importance of the goal that the school articulates and the tightness of the fit between the stated goal and the means employed to achieve it...If the policy is necessary to meet an important educational goal, then the Departments would ask:
  - iii. (3) Are there comparably effective alternative policies or practices that would meet the school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group, or is the school’s proffered justification a pretext for discrimination? If the answer is yes to either question, then the Departments would find that the school had engaged in discrimination.”

<sup>299</sup> Ending racial disparities in school discipline is central to the work of the Dignity in Schools Campaign, and The Model Code on Education and Dignity is a holistic set of policies that if implemented with fidelity, would greatly reduce or remove completely, disparate treatment of students. Therefore, in addition to the elements listed in this section on approaches that seek to end racial disparities in school discipline, the entire code represents our recommended framework in a systemic and transformational way, and there is much more detailed information on some of these approaches in other sections of the code.

<sup>300</sup> Race Forward “Race Reporting Guide” (2015) Available at:

[https://www.raceforward.org/sites/default/files/Race%20Reporting%20Guide%20by%20Race%20Forward\\_V1.1.pdf](https://www.raceforward.org/sites/default/files/Race%20Reporting%20Guide%20by%20Race%20Forward_V1.1.pdf)

<sup>301</sup> Kirwan Institute “Understanding Implicit Bias” Available at: <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>.

<sup>302</sup> Id.

<sup>303</sup> While this guidance was rescinded in 2019, this letter outlines schools’ obligations under existing law, so the information is still useful as a resource in constructing school discipline policies that are not racially discriminatory.

<sup>304</sup> Council of State Governments (2011) Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’ Success and Juvenile Justice Involvement. Available at: <https://csgjusticecenter.org/youth/breaking-schools-rules-report/>.

<sup>305</sup> 11 Million Days Lost: Race, Discipline and Safety in US Public Schools. ACLU and Center for Civil Rights Remedies. Available at: [https://www.aclu.org/sites/default/files/field\\_document/final\\_11-million-days\\_ucla\\_aclu.pdf](https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf).

<sup>306</sup> Alliance for Educational Justice and Advancement Project (2018) “We Came to Learn: A Call for Police-Free Schools. Available at: <https://advancementproject.org/wecametolearn/>.

<sup>307</sup> NAACP LDF (2017) “Locked Out of the Classroom: How Implicit Bias Contributes to Racial Disparities in School Discipline” Available at: [https://www.naacpldf.org/files/about-us/Bias\\_Reportv2017\\_30\\_11\\_FINAL.pdf](https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf).

<sup>308</sup> IZA Institute of Labor and Economics. The Long-Run Impacts of Same-Race Teachers (2017). Available at: <https://www.iza.org/publications/dp/10630>.

<sup>309</sup> U.S. Department of Education “Directory of Federal School Discipline Resources”. Available at: <https://www2.ed.gov/policy/gen/guid/school-discipline/appendix-1-directory.pdf>.

<sup>310</sup> Many examples of school climate surveys can be found here: <https://safesupportivelearning.ed.gov/topic-research/school-climate-measurement/school-climate-survey-compendium>.

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- <sup>311</sup> National Compendium on School Laws and Regulations. Available at: <https://safesupportivelearning.ed.gov/school-discipline-compendium>
- <sup>312</sup> Race Forward “Racial Equity Impact Assessment” Available at: <https://act.colorlines.com/acton/attachment/1069/f-011e/1/-/-/-/Racial%20Equity%20Impact%20Assessment.pdf>.
- <sup>313</sup> Public Counsel, Fix School Discipline Toolkit for Educators. Available at: [http://www.fixschooldiscipline.org/wp-content/uploads/2017/02/FSD\\_EducatorToolkit\\_small.pdf](http://www.fixschooldiscipline.org/wp-content/uploads/2017/02/FSD_EducatorToolkit_small.pdf).
- <sup>314</sup> Available at: <http://kirwaninstitute.osu.edu/implicit-bias-training/>.
- <sup>315</sup> Educators for Excellence “Ending Racial Discipline Disparities: An Educators Guide to School-based Change Available at: <https://e4e.org/what-we-do/policy-solutions/ending-racial-discipline-disparities>.
- <sup>316</sup> Addressing the Root Causes of School Discipline Disparities: An Educators Action Planning Guide. Safe and Supportive School Discipline Initiative. Available at: <https://safesupportivelearning.ed.gov/sites/default/files/ActionPlanningGuide508.pdf>.
- <sup>317</sup> How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions. Discipline Disparities Research to Practice Collaborative (2014) Available at: [http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Disparity\\_Intervention\\_Full\\_121114.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Disparity_Intervention_Full_121114.pdf).
- <sup>318</sup> While this guidance was rescinded in 2019, this letter outlines schools’ obligations under existing law, so the information is still useful as a resource in constructing school discipline policies that are not racially discriminatory. It did not create any new laws or policies. Those legal obligations still stand.
- <sup>319</sup> Dignity in Schools Campaign “Delayed and Denied: Rescinded Federal Guidance Threatens Students’ Rights Protections. Available at: <http://dignityinschools.org/delayed-and-denied-rescinded-federal-guidance-threatens-students-rights-protections/>.
- <sup>320</sup> See generally *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394 (11th Cir. 1993) at 1411-12 (explaining that courts have required schools to demonstrate an “educational necessity” for the challenged program, practice, or procedure); Title VI Manual at 51.



# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.4 Immigrant and Undocumented Students

#### Human Rights Goal

Districts and schools shall ensure the rights and freedoms of all students, and prevent discrimination against and the isolation, surveillance, criminalization, detention or deportation of any students, including undocumented students, students with expired documents or their family members.

#### Recommended Language

- A. No law enforcement officials (including immigration officials, ICE agents or US Border Patrol) shall enter school property for the purposes of interrogating or detaining a student or their family member on immigration-related matters.**<sup>321</sup>
- B. Districts and schools shall not collect or share any information related to the immigration status of students or their families.**<sup>322</sup>
1. In accordance with federal law, schools cannot directly ask about citizenship or immigration status or deny entry to enrollment because of immigration status.<sup>323</sup>
    - a. Districts and schools cannot require social security numbers and birth certificates as the only options for documentation to prove residency and/or the age of a student.
    - b. Parents, guardians and students must be informed that: 1) they can prove residency and age via other forms of documentation, 2) sharing a social security number or birth certificate is voluntary, and 3) they cannot be barred from attending school if they do not have a social security number or birth certificate.
    - c. Schools and districts shall not delay,<sup>324</sup> block or revoke enrollment due to a lack of specific documents,<sup>325</sup> or place undue burdens on students and their families such as “re-registration”<sup>326</sup> or other procedural barriers to accessing their right to an education.
  2. If school staff is aware of a student or their family member’s immigration status, they must not share this information with anyone, including other school staff, law enforcement officials, or other government agencies (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals, sub-sections on Due Process and the right to confidentiality in relation to FERPA, summarized below).
    - a. Districts should not designate any information as “directory information” under FERPA that could reveal the immigration status of students, including but not limited to place of birth and language(s) spoken.<sup>327</sup>
    - b. In the case of disciplinary action:
      - i. All information and documentation pertaining to a student’s suspension or expulsion records must be kept confidential in accordance with FERPA<sup>328</sup> and other state and federal student privacy laws and policies.
      - ii. Where FERPA does not apply and the school is legally allowed to share this information, the school should elect not to share suspension or expulsion records, either formally or informally with any law enforcement agency or personnel, including ICE.
- C. Districts and schools shall not participate in any local, state or federal initiatives or mandates (including Secure Communities) that require the reporting of undocumented students, exposing of documentation**

**status to law enforcement or media, or the barring of students from any protections, programs or opportunities available to other students.<sup>329</sup>**

**D. Schools shall post a written statement on the rights of immigrant students in a public place within each school building or provide handouts, articulating the following rights and policies:**

1. The right to a free public education as found in the Supreme Court case *Plyer v. Doe*. This right extends to all educational services, including special education and afterschool programs.
2. An ICE Sensitive Locations Memo<sup>330</sup> that outlines ICE's policy against conducting immigration related matters in sensitive locations such as schools.
3. The right to Fourth Amendment Protections against unreasonable searches and seizures.<sup>331</sup>
4. The right to freedom from discrimination either through intentional policies or actions, or those that are not intentionally or consciously discriminatory but nevertheless have a disparate, adverse impact on disadvantaged or stigmatized groups (as described in detail in Section 4.1 Right to Freedom from Discrimination).

**E. Districts and schools shall provide training to:<sup>332</sup>**

1. All school staff on the rights of immigrant and undocumented students and on creating welcoming and supportive school environments for those students; and
2. Counselors and advisers on working with immigrant and undocumented students to assist them in applying for school lunch, joining school clubs and organizations, applying to college, preparing for the SAT and ACT, and applying for scholarships and financial aid.

<sup>321</sup> ICE Sensitive Locations Memo available at: <https://www.ice.gov/ero/enforcement/sensitive-loc>; See also NYSED Memo available at: <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>.

<sup>322</sup> Los Angeles Unified School District adopted a resolution entitled "Reaffirmation of Los Angeles Unified School District Schools as Safe Zones for Families Threatened by Immigration Enforcement." <https://dignityinschools.org/wp-content/uploads/2017/12/May-9-2017-Immigration-Resolution.pdf>.

<sup>323</sup> Department of Justice Fact Sheet. Available at: <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plyerfact.pdf>

<sup>324</sup> NCHE-Enrolling Children and Youth Experiencing Homelessness available at: <https://nche.ed.gov/downloads/briefs/enrollment.pdf>; see also 42 U.S.C. §11432(g)(3)(C).

<sup>325</sup> US Department of Education Dear Colleague Letter on School Enrollment Processes (2014) ; 42 U.S.C. §11432(g)(3)(C) .

<sup>326</sup> NYCLU Warns New Rochelle School District Against Plans to Re-register Students (2018). Available at: <https://www.nyclu.org/en/press-releases/nyclu-warns-new-rochelle-school-district-against-plan-re-register-students>; Jhone M. Ebert, Residency Guidance, July 19, 2018, available at <https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/89196290-7837-4056-99c9-3da650534e68?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYQ&Expires=1847738006&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22ResidencyGuidance%25207-19-18.pdf%22&response-content-type=application%2Fpdf&Signature=EdTSaR2hPIUUMWHz2%2B76mTBoTSo%3D>.

<sup>327</sup> "FERPA defines 'directory information' as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed....A school may disclose 'directory information' to third parties without consent if it has given public notice of the types of information which it has designated as 'directory information,' the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as 'directory information.'" Available at: <https://www2.ed.gov/policy/gen/guid/fpco/faq.html#q4>; 34 CFR § 99.37.

<sup>328</sup> US Dept. of Education-FERPA General Guidance for Students, available at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>

<sup>329</sup> Desis Rising Up and Moving (DRUM) and Advancement Project Immigrant Safe Zones? Immigrant Students' Access to Quality Education in New York City Public Schools (2013).

<sup>330</sup> John Morton, Memo re Enforcement Actions at or Focused on Sensitive Locations, October 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

<sup>331</sup> ACLU, Students Have a Right to Keep Cell Information Private. Available at: <https://www.aclu.org/blog/smart-justice/mass-incarceration/hello-students-have-right-keep-cell-information-private>.

<sup>332</sup> Supra Note 14.





# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.5 Students with Disabilities

Unlike other areas of the Model Code where existing laws vary state by state, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 provide a strong federal law to protect the rights of students with disabilities by ensuring that everyone receives a free appropriate public education, regardless of ability. The IDEA in particular strives to grant equal access to students with disabilities and also provides additional special educational services and procedural safeguards. This section of the Model Code refers to the implementation of the IDEA and calls for some specific changes to the provisions of the IDEA.

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#### Human Rights Goal

Students with disabilities are members of their communities and have the right to attend their neighborhood schools or other schools that meet their needs as determined in consultation with students and their families. Students with disabilities shall be provided with effective support measures in environments that maximize academic and social development, consistent with the goal of full participation in the least restrictive environment. To foster the full development of the child, corrective consequences for misconduct must be part of an instructional framework. All students shall be treated with respect and dignity, free from cruel, inhuman, or degrading treatment or punishment.<sup>333</sup>

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#### Recommended Language

- A. States, districts and schools shall establish school-wide preventive and positive discipline policies that support all members of the school community (see Section 3.1) and that address the particular needs of students with disabilities,<sup>334</sup> including:**
1. Proactive systems to identify, adopt and sustain effective practices and routines that prevent problematic behavior, reinforce appropriate behavior and have organized responses to misconduct.
  2. A multi-tiered approach that outlines the skills necessary to meet individual needs and ensure that cultural and individual differences are valued rather than criticized.
  3. Providing staff, families and students with the necessary information and training to ensure that behavioral expectations are clearly communicated, that behavior plans are developed collaboratively and understood by all, and that those plans are aligned with supporting the educational programs of students.
  4. Ensuring that no behavioral intervention shall cause physical or psychological injury, harm and/or deprive a student of basic human necessities or rights (including food, hydration and bathroom visits) or demean the student in any way.
- B. Federal and state laws must strengthen procedural protections to ensure that students and parents or guardians are meaningful partners in the provision of special education services, particularly when addressing the needs of a child with behavior problems:<sup>335</sup>**
1. Amend laws, regulations and policies to clarify that students themselves, along with their parents, guardians, or surrogate parents, have the right to participate fully in proceedings to determine the education and related services they shall receive. This includes a student's right to direct their own procedural rights under the IDEA in situations where the child's parent, guardian, or surrogate parent cannot or will not assert the child's rights themselves.<sup>336</sup>

2. Amend procedural safeguards to allow parents or guardians and professionals brought by parents or guardians the right to meaningful observation of the child in their classroom and provide clear guidelines and support in conducting observations.
3. When parents, guardians or students exercise their right to an independent educational evaluation (IEE), school districts shall either pay for independent educational evaluations or file for due process.
  - a. 34 C.F.R. § 300.502 shall be amended to state that failure to file for due process within 10 calendar days of a parent or guardian's IEE request (or 5 calendar days if there is a manifestation determination, change in placement, or hearing request is pending) results in the parent's or guardian's right to a publicly funded IEE as a matter of law.<sup>337</sup>
4. The school shall have the burden of proof in a due process hearing where the parent or guardian or student challenges a change of placement of a child with a disability because of a school disciplinary violation.<sup>338</sup>
5. School districts must honor hearing officer decisions in a timely manner. Timeframes for implementation of decisions shall be written into all due process decisions and settlement agreements.

**C. Federal and state laws must strengthen the requirements for effective, evidence-based positive interventions as part of the Individualized Education Plan (IEP) process.<sup>339</sup>**

1. 20 U.S.C. Sec. 1401 (26) (Definition for Related Services) shall be amended to include Positive Behavior Supports, Functional Behavior Analysis (FBA), and Behavior Intervention Plans (BIP) as related and supplementary services.<sup>340</sup>
  - a. Require that the FBA and BIP be reviewed and updated annually.
  - b. Develop standards for a "properly conducted" FBA and BIP.
  - c. Develop clear guidelines for additional personnel necessary for support.
2. 20 U.S.C. Sec. 1414 (d)(3)(B)(i) (Consideration of Special Factors) shall be amended to the following: "in case of a child whose behavior impedes the child's learning or that of others, it is required that the IEP Team consider the use of School-wide Positive Behavior Interventions and Supports (SWPBIS supports and other strategies to address that behavior."

**D. State and Federal law must specify that exclusion from the student's current educational placement because of behavior that is a manifestation of the child's disability shall be presumed to be discriminatory.**

1. Disciplinary removal of a child with a disability shall be defined as any removal from the child's current educational placement for any length of time totaling more than one class period for violation of a school rule, including but not limited to formal suspension and expulsion as defined in Section 3.2 Guidelines for Suspensions, Expulsions and Removals as well as informal removals such as denial of access to recess or field trips or shortened days.<sup>341</sup> (34 C.F.R. Sec. 300.536 must define disciplinary removal to be consistent with this provision.)
2. Schools shall carefully consider all of the factors set forth in Section 3.2. Guidelines for Suspensions, Expulsions and Removals when considering disciplinary removal as an option for a child who has been or should have been identified as having a disability that affects the child's behavior.
  - a. All short-term removals of more than one hour or class period and less than one full school day shall be recorded in the child's educational file and shall be recorded in a central data base with key demographics, as defined in Section 5.2 Monitoring and Community Analysis.
  - b. Students suspected of having disabilities, but who have yet to be identified as having a disability, shall receive increased intervention services, including a special education assessment, when appropriate and consistent with the school's obligation to engage in Child Fund under the IDEA.
  - c. Students with disabilities who are disciplined with a series of short term removals or suspensions that total five or more days in a school year shall have an IEP Team meeting to review the student's entire program to determine what modifications and accommodations may be necessary to bring about a positive change

in student behavior. Environmental supports and other interventions, both successful and unsuccessful, must be documented so that the student's program continues to be built around the student's needs.

- d. Federal law triggering the manifestation determination requirement (34 CFR 300.536 (a)(2)(ii)) shall be amended to state "[b]ecause the child's behavior is substantially similar to the child's behavior in previous incidents and is caused by the child's disability or has a direct and substantial relationship to the disability..."
  - e. School personnel shall obtain the approval of a district level administrator responsible for overseeing the special education program prior to removing a child from school for disciplinary purposes, except when the emergency removal provision in Section 3.5 Alternative Schools applies.
3. When a removal of a child from school triggers a manifestation determination under 20 U.S.C. Sec.1415(k)(E):
    - a. The parent or guardian and their child have a right to legal counsel as a matter of right and at public expense in all due process or judicial review proceedings stemming from the manifestation hearing (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals, sub-section on Due Process);
    - b. If any member of the IEP Team raises concerns that an unidentified disability was the cause of the disciplinary incident, an evaluation shall be conducted after the manifestation determination, and considered by the IEP Team;
    - c. Parents or guardians shall have a right to a review of all relevant information in the child's file, including all of the child's education records and any new information provided to the IEP Team by parents, guardians or other individuals; and
    - d. If applicable, schools shall immediately remove any suspension or expulsion from the child's record if the behavior is determined to be a manifestation of the disability.
  4. The student shall have the right to "stay put" in the current educational placement pending a final decision on disciplinary removal. The only exception to this is under an "emergency situation" as defined by Section 3.2 Guidelines for Suspensions, Expulsions and Removal, sub-section P (Emergency Removal).
  5. A student with a disability must continue to receive FAPE during the period of removal from their current educational placement.<sup>342</sup>

**E. Students with disabilities shall be referred to law enforcement or the court system only in situations involving a real and immediate threat to physical safety (see emergency removal provisions in 3.2 Guidelines for Suspensions, Expulsions and Removal, sub-section P (Emergency Removal) and limits on the role of law enforcement in section 3.3 Law Enforcement and Criminalization in School Environments):**

1. An Intervention Support Team<sup>343</sup> shall be convened to determine the seriousness of the behavior and if it meets the criteria stated above and with the following process:
  - a. When a school initiates a report or referral to law enforcement or the court system of any student with a disability, the school shall conduct a manifestation determination within 10 school days of the report or referral.
    - i. The school shall provide the determination to the juvenile court.
    - ii. The school shall withdraw its referral or report if:
      - aa. The behavior is determined to be a manifestation of the student's disability; and
      - bb. The school failed to properly address the student's behavioral needs according to the school's obligations under the IDEA or Section 504 and district discipline policies.
2. Juvenile Court Responsibilities
  - a. School based reports or referrals that result in juvenile prosecutions shall be reviewed by the juvenile court.
  - b. The juvenile courts shall consider whether the school's action or inaction contributed to the behavior of the student.
  - c. The juvenile courts shall have the authority to:

- i. Subpoena all pertinent records with respect to the child's disability;
  - ii. Supervise the school's progress in meeting the child's needs, in addition to supervising the child's progress; and
  - iii. Enjoin school districts to withdraw their report or referral.
- d. Juvenile courts shall annually review all school-based reports and referrals for patterns. If a pattern of referral from a school or school district is indicated, the Juvenile Court shall initiate a work group of stakeholders (including parents or guardians, students and community leaders) and develop a Memorandum of Understanding to specify the roles and responsibilities of all stakeholders in reducing school-based referrals.<sup>344</sup>

<sup>333</sup> Convention on the Rights of Persons with Disabilities arts. XXIV, XV.

<sup>334</sup> U.S Commission on Civil Rights. *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* (2019). Available at: <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>.

<sup>335</sup> Because the 2004 amendments to IDEA make it easier for schools to remove children for non-dangerous, non-weapon, non-drug related behaviors, and place the burden on parents to prove the connection between behavior and disability, it is critical for parents to have access to opinions from outside professionals that the behaviors complained of are "caused by" or have a "direct or substantial relationship" to the disability.

<sup>336</sup> Children must have a right to participate in processes that directly impact their substantive right to a free appropriate public education under the IDEA. This right is in line with the American Bar Association's Resolution calling for a right to counsel at public expense for low-income persons in adversarial proceedings where basic human needs are at stake, including education. See generally Am. Bar Ass'n, Resolution 112A (2006), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_06A112A.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf).

<sup>337</sup> The regulations state that school districts must either pay for the IEE or file for due process if they disagree with parent's request. 34 C.F.R. § 300.502 (2012). But many school districts simply decline to pay for the IEE, and refuse to file for due process. This forces parents to file for due process and bear the burden of proof, which requires them to hire expert witnesses to testify to their need for an independent evaluation, and bear enormous costs. As a result, many parents go without an IEE.

<sup>338</sup> The decision in *Schaffer v. Weast*, 546 U.S. 49 (2005) places the burden of proof on parents who are the least equipped to bear it. Students with disabilities face a discriminatory impact in school removals. Also, appealing a no-manifestation determination is expensive and requires expert witnesses and counsel. Placing the burden of proof on the school district ensures equity and fairness in the process.

<sup>339</sup> The term Individualized Education Program or IEP is defined as a written program for a child with a disability that is developed, reviewed, and revised in a meeting that must include a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals, a description of how the child's progress toward meeting the annual goals will be measured, and a statement of the special education and related services that will be provided to the child. 34 C.F.R. § 300.320(a)(1-4) (2012).

<sup>340</sup> Currently, the only explicit recognition of an FBA in the IDEA is the right to one when a child is removed from his current placements under IDEA's discipline provisions. 20 U.S.C. § 1415(k)(1)(D)(ii) (2012).

<sup>341</sup> See generally Candis Watson Bowles Et Al., *Passive Aggressive Discipline: "Helping" Kids By Denying FAPE* (2009).

<sup>342</sup> Children who are removed for more than 10 days from their current placement must "continue to receive educational services, as provided in section 1412(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." 20 U.S.C. § 1415 (k)(1)(D) (emphasis added).

<sup>343</sup> A risk assessment team can be comprised of a school administrator, mental health professional based in the school and law enforcement officer connected to the school.

<sup>344</sup> See generally Juvenile Detention Alternatives Initiative, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx>.



# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.6 LGBTQ+ and Gender Non-Conforming Students

#### Human Rights Goal

Students of all sexual orientations, gender identities and expression have a right to attend schools that affirm their identity and create a supportive environment for them to thrive. Schools have a responsibility to foster an environment that proactively works against heterosexism, homophobia and transphobia in the curriculum and school climate. If students experience harassment, bullying or gender-based violence by other students or school staff, schools must respond seriously with the goal of addressing the root causes of the behavior.<sup>345</sup>

#### Definitions

1. **LGBTQ+** – An acronym that stands for Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and includes a + to indicate that an acronym will never be fully inclusive of everyone's identities. Other variations of the acronym exist in an effort to be more inclusive, for example LGBTQI2S+. This version adds Intersex, Asexual, and Two-Spirit people to the acronym.
  - a. **Sexual orientation** – Who you're attracted to and want to have relationships with. Sexual orientations include but are not limited to gay, lesbian, straight, bisexual, pansexual and asexual.
  - b. **Transgender person** – someone who identifies with a different gender from the gender they were assigned at birth. For example: your birth certificate says male, and you identify as a woman.<sup>346</sup>
  - c. **Cisgender person** – someone who identifies with the gender they were assigned at birth. For example: your birth certificate says female, and you identify as a woman.<sup>347</sup>
  - d. **Intersex** – is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male. For example, a person might be born appearing to be female on the outside, but having mostly male-typical anatomy on the inside. Or a person may be born with genitals that seem to be in-between the usual male and female types.<sup>348</sup>
2. **Gender Non-conforming** – refers to people who do not follow other people's ideas or stereotypes about how they should look or act based on the female or male sex they were assigned at birth.<sup>349</sup>
  - a. **Gender** – Socially constructed attributes and opportunities typically associated with being male and female. They are context/time-specific and changeable. Gender is not a binary, but instead is on a spectrum with an infinite variety of expressions, representing a more nuanced, and ultimately truly authentic model of gender that is self-identified.<sup>350</sup>
  - b. **Gender Expression** – How individuals communicate their gender to others, or the external manifestation of one's gender identity. It can be expressed through masculine, feminine or gender-variant behavior, clothing, haircut, voice or body characteristics.<sup>351</sup>
3. **Non-binary** – a person who does not fit into the strict gender binary of "male" or "female," and may be a combination of both, or neither.
  - a. **Gender Binary** – A system of viewing gender as consisting solely of two, opposite categories, termed "male and female," in which no other possibilities for gender or anatomy are believed to exist. This system is

oppressive to anyone who defies their sex assigned at birth, but particularly those who are gender-variant or do not fit neatly into one of the two standard categories.<sup>352</sup>

4. **Gender Pronouns** – This is the pronoun or set of pronouns that an individual uses, such as he/him/his, she/her/hers or they/them/theirs. Implementing the practice of saying everyone’s pronouns creates space for individuals who do not identify with he/she gender pronouns, and ensures that no one person’s gender is assumed. It acknowledges that many individuals identify across the gender spectrum as transgender, gender nonconforming, non-binary, or gender fluid.<sup>353</sup>
5. **Transition** – A person’s process of developing and assuming a gender expression to match their gender identity. Transition can include: coming out to one’s family, friends, and/or co-workers; changing one’s name; changing one’s name and/or sex on legal documents; changing one’s pronouns; changing one’s hair style and/or clothing; hormone therapy (though not always); and possibly (though not always) some form of surgery. It’s best not to assume how one transitions as it is different for everyone.<sup>354</sup>

## Recommended Language

### A. Districts and schools shall create safe spaces for all young people regardless of their sexual orientation, gender identity, and gender expression by:<sup>355</sup>

1. Implementing a district-wide training program for all school administrators, teachers, school staff, and disciplinary hearing officers on the topics listed below. In addition to in-person trainings, ongoing support should be available for schools after trainings occur, for example, technical assistance for school staff who may be encountering new situations that they are unsure how to handle in an affirming way. Training resources should also be available online for quick remote access as needed. These trainings and resources should address:
  - a. Creating an affirming and supportive environment for LGBTQ+ youth;
  - b. General terminology, including a space to ask questions—LGBTQ+ students should not be in the position to have to educate school staff on their identities or the basics of the LGBTQ+ community;
  - c. How to intervene when they hear slurs or negative comments based on sexual orientation, gender identity or expression, or gender non-conformity utilizing discipline methods that reflect a commitment to Restorative Justice Practices positive behaviors supports and without criminalizing student behavior.<sup>356</sup> (See Chapter 3 Model Policy on Bullying Behavior for more information about how to respond in ways that will get to the root of the problem by demonstrating the harm caused by bullying or harassment and seeking to repair that harm);
  - d. Data on the disproportionate use of harsh discipline on LGBTQ+ students, particularly LGBTQ+ students of color;<sup>357 358</sup>
  - e. Information on the intersection of LGBTQ+ students and housing insecurity, ensuring that the school is complying with the Runaway and Homeless Youth Act<sup>359</sup> and the McKinney-Vento Homeless Assistance Act<sup>360</sup> (See Chapter 1 for information on removing barriers for homeless students to register for school);
  - f. The physical and mental health issues specific to LGBTQ+ students and available resources;
  - g. Resources for culturally relevant curriculum examples for LGBTQ+ students; and
  - h. Concrete information on how to implement the additional policies listed below at the school level.
2. Establishing and publicizing an anti-harassment policy that specifically includes actual or perceived sexual orientation, gender identity, and gender expression;<sup>361 362</sup>
3. Supporting the establishment Gay-Straight Alliances,<sup>363</sup> Gender and Sexuality Alliances or similar clubs:
  - a. This includes funding and staffing wherever possible to ensure that these clubs can continue from year to year as students graduate; and

- b. These clubs or alliances should have the same recognition and/or benefits of other school clubs, including providing space to meet, recognition in the yearbook or eligibility for students to receive leadership awards for their participation;
4. Supporting the use of gender affirming pronouns as identified by students and school staff including through allowing students to choose their name and pronouns on their student IDs;
5. Adopting a dress code policy that ensures students have a right to express themselves fully in school through choosing clothing, hair styles, jewelry and accessories that appropriately represent and affirm their varied identities, without the threat of punishment, removal, criminalization or harassment (see Section 3.7.d Model Policy on Dress Codes);
6. Implementing curriculum that includes LGBTQ+ people and information about sexual orientation and gender identity (i.e. LGBTQ+ history, literature inclusive of LGBTQ+ individuals, lessons on tolerance and diversity of families and individuals) (see Section 1.3 Culturally Relevant Curriculum and Teaching);
7. Ensuring that students have their right to privacy respected, and do not have their parents, staff and/or faculty notified of the students' sexual orientation, gender identity or any of the examples below without the students' permission:<sup>364</sup>
  - a. Students may wear different clothes in school than at home;
  - b. Students may use a different name or pronouns than they can at home; and
  - c. Trans students may transition during the school year or from one year to the next, and their parent or guardian may or may not be aware of this;
8. Ensuring all school-based mental and physical health services are affirming and non-biased, including having students' privacy rights protected;
9. Ensuring that students know where to go for information and support outside of school related to sexual orientation, gender identity, and gender expression, such as healthcare, mental health or other services;
10. Access to locker rooms and bathrooms that match students' gender identity or expression, including gender queer, gender non-conforming and or transgender individuals;
11. Ensure that school events do not enforce strict gender roles in a way that could prevent all students from participating:<sup>365</sup>
  - a. Dances and other events where students bring a guest or date should not restrict or assume the gender of a student or their guest;
  - b. Where schools have titles like "Prom Queen" or "Homecoming King", students should not be restricted by their perceived or actual gender from running for or winning;
  - c. Similar to the general dress code policy, dress codes at events should not enforce strict gender roles, such as requiring girls to wear dresses and boys to wear ties; and
  - d. Events like "Daddy-Daughter Dances" or other events that specify what genders can participate may alienate students of other genders or whose families are not represented. If these types of events cannot be changed to be more inclusive (like a "Family Dance") then they should not restrict the participants who choose to attend the event, i.e. a student without a father should be allowed to attend the dance with their mother or other adult parent figure;
12. Avoid practices that segregate students based on the gender binary that can negatively impact transgender and gender nonconforming young people. Some examples include:
  - a. Having young people line up in separate boys and girls lines. Some alternatives are having just one line, have students line up by sneaker color or have two lines that are not gender specific; and
  - b. Limiting participation in activities by gender, such as only allowing girls to play jump rope or dance and only allowing boys to play basketball or baseball.

<sup>345</sup> Nollie Jenkins Family Center and ACLU of MS, Advocating for LGBTQ Student Rights in the Mississippi Delta Resource Guide.

<sup>346</sup> Id.

<sup>347</sup> Id.

<sup>348</sup> Intersex Society of North America.

<sup>349</sup> Ibid 31.

<sup>350</sup> Ibid 31

<sup>351</sup> Ibid 1.

<sup>352</sup> Trans Student Educational Resources (2017) Source: <http://www.transstudent.org/definitions>.

<sup>353</sup> Id.

<sup>354</sup> Trans Student Educational Resources. Available at: <http://www.transstudent.org/definitions/>.

<sup>355</sup> Advancement Project, Alliance For Educational Justice And GSA Network, Two Wrongs Don't Make A Right (2008) available at [http://www.gsanetwork.org/files/aboutus/APJ-005\\_D5-FINALsmall.pdf](http://www.gsanetwork.org/files/aboutus/APJ-005_D5-FINALsmall.pdf).

<sup>356</sup> IBID.

<sup>357</sup> Research to Practice Collaborative (2016), Documenting Disparities for LGBT Students: Expanding the Collection and Reporting of Data on Sexual Orientation and Gender Identity. Available at: <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

<sup>358</sup> GLSEN, Educational Exclusion (2016) [https://www.glsen.org/sites/default/files/Educational%20Exclusion Report 6-28-16 v4 WEB READY PDF.pdf](https://www.glsen.org/sites/default/files/Educational%20Exclusion%20Report%206-28-16%20v4%20WEB%20READY%20PDF.pdf).

<sup>359</sup> Runaway and Homeless Youth Act, Available at: <https://www.acf.hhs.gov/fysb/resource/rhy-act>.

<sup>360</sup> <https://nche.ed.gov/mckinney-vento/>.

<sup>361</sup> GLSEN, Model District Anti-Bullying Harassment Policy. Available at: <https://www.glsen.org/sites/default/files/Model%20District%20LGBTQ-Inclusive%20Anti-Bullying%20%26%20Harassment%20Policy.pdf>.

<sup>362</sup> GLSEN, Model School Anti-Bullying and Harassment Policy. Available at: [https://www.glsen.org/sites/default/files/Model%20Policy%20-%20School%204.12.13 0.pdf](https://www.glsen.org/sites/default/files/Model%20Policy%20-%20School%204.12.13%20.pdf).

<sup>363</sup> GAY-STRAIGHT ALLIANCE NETWORK, BUILDING YOUR GSA available at <http://www.gsanetwork.org/resources/building-your-gsa>.

<sup>364</sup> Nollie Jenkins Family Center and ACLU of MS, Advocating for LGBTQ Student Rights in the Mississippi Delta Resource Guide (pg 20).

<sup>365</sup> IBID pg 22.





# A MODEL CODE on Education and Dignity

## CHAPTER 5: DATA, MONITORING AND ACCOUNTABILITY

### CHAPTER 5: DATA, MONITORING AND ACCOUNTABILITY

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#### Background

Students, parents or guardians, educators and all stakeholders in the educational process have a right to know what is happening in the educational system in order to hold schools and governments accountable. Regular access to critical information and the ability to bring about systemic changes when necessary are essential elements of the human right to a quality education. Schools and districts must allow for relevant information to be reviewed in each of the areas described in the previous chapters of the Model Code. Substantive and detailed information must be collected for all critical indicators—from special education referrals and educational outcomes to disciplinary incidents and interactions with police officers in schools. In order for the data to be analyzed in an efficient but thorough manner, definitions of basic categories must be consistent across school districts and states, and data collection methods must be standardized. To be useful in assessing educational equity, the information collected needs to be disaggregated and broken down by disproportionately impacted groups. Reporting must be conducted with sufficient detail and accessibility to allow for in-depth review by all stakeholders.

Once data is collected, it must be put to work. It is critical for institutional actors at the federal, state, local and school levels to use data in making decisions to guide instructional practices, monitor disciplinary practices, provide data on student performance to determine the current level of learning, measure and report progress toward school goals, and conduct ongoing reevaluation to determine if additional support is needed after initial assessments and findings. This means establishing an infrastructure to analyze the data that is collected and draw true comparisons across states, districts and schools allowing parents or guardians and students to know what is expected and what is needed to improve school climate. Teachers must have organized records of student and school performance for schools to know what is working or not working with instruction and disciplinary practices, and school and district-level teams need to have comprehensive data on student performance for decision-making.

Achieving this goal requires more than simply making the data publicly available in a readable and consistent way; it means creating intentional structures that allow institutional actors and stakeholders to see where they stand and take steps to improve the educational circumstances of students. Thus, states, districts and schools must also put in place meaningful and comprehensive internal and external analysis structures.

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#### A Guide to Chapter 5

**Section 5.1 on the Right to Information and Data Collection** focuses on access for policymakers and stakeholders to all relevant information on educational programs and services, funding sources and budget allocations, policies and procedures, as well as data on educational outcomes disaggregated by demographic characteristics described in the chapter. It requires that information and data be easily accessible and understandable for all stakeholders. The policy requires that all data be collected and broken down by a list of demographic groups, including by age, race and ethnicity, gender, income level, disability, English Language Learners, court involved youth, homeless youth and youth in foster care. It also requires that common definitions be used for education indicators like graduation rate, attendance rate, dropout, voluntary transfer, involuntary transfer, expulsion, suspension, disparate impact and disparity. The recommendations include the types of information that states, districts and schools should collect and make available on education programs, policies and funding, and the categories of data that they should collect, including graduation rates, test scores, enrollment, attendance, dropouts, discharges, transfers to alternative schools, disciplinary

incidents and responses, interactions with police, reenrollment information and student, parent and teacher surveys on school climate.

**Section 5.2 on Monitoring and Community Analysis** focuses on processes for states, districts and schools to use data to frequently and effectively measure, monitor and analyze progress towards learning goals and improve educational programs and services. It requires meaningful participation of students and parents or guardians in those processes and training for teachers, administrators, staff, students and parents to use data collection and analysis as part of their school-level planning and decision-making. Finally, it provides guidelines for creating community monitoring structures that are independent of the school system to analyze data, work with the school system to make improvements, and hear and address concerns from students, parents and community members.



# A MODEL CODE on Education and Dignity

## CHAPTER 5: DATA, MONITORING AND ACCOUNTABILITY

### 5.1 Right to Information and Data Collection

#### Human Rights Goal

Community members and policymakers must have timely access to relevant information about public education issues of concern. Stakeholders need to be equipped with the necessary data to identify areas needing improvement, to assist in devising solutions to ongoing problems and to hold schools and governments accountable.

#### Recommended Language

- A. States, districts and schools shall make available to all policymakers and stakeholders, including educators, parents or guardians, students and community members, information and core data concerning the education provided to students including, but not limited to:**
1. Educational programs and services, assessments, school discipline policies and practices, funding sources, budget allocations and other policies and procedures; and
  2. Aggregate data on the educational indicators listed above as well as data disaggregated by age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care, all consistent with privacy constraints established under federal and state laws and regulations.
- B. States, districts and schools shall provide information and data that is easily accessible and easy to understand and that allows stakeholders to assess the impact of education policies and practices, including disproportionate impacts on certain groups.<sup>366</sup> Stakeholders shall have access to analysis of data conducted by states, districts and schools, as well raw data so that stakeholders can conduct their own independent analysis.<sup>367</sup>**
- C. Personal student records, including attendance records, test scores, grades, disciplinary records, counseling records, psychological records, applications for admissions, health and immunization records, teacher evaluations, counselor evaluations, behavior evaluations, suspensions, expulsions and discharges, shall be provided upon request to the parents or guardians of specific students and to the specific student.<sup>368</sup>**
- D. Standardized Data Collection. In order to accurately assess the effect of educational policies and practices on students and on groups of students that experience negative results at disproportionate rates, it is essential that all data described above be disaggregated by the following demographic groups:**
1. Age
  2. Race and Ethnicity – US Department of Education definitions shall be followed to allow for consistency across states and districts. Further disaggregation for collection and reporting at the state and district level shall be pursued (for example, in addition to a category for Asians, it may be appropriate for states with substantial Asian American populations to disaggregate data for Vietnamese, Chinese, Laotians and other Asian communities)
  3. Gender

4. Income level – The term “low income” means any student who is eligible for the federal free and reduced lunch program.
5. Disability and special education status – The term disability is defined by Section 504 of the Rehabilitation Act of 1973, and the term special education status is defined by the Individuals with Disabilities Education Act (IDEA).
6. English Language Learners (ELLs) – ELLs are students who are in the process of developing fluency in English.
7. Court-involved youth – The term court-involved youth means any young person who comes into contact with the justice system.
8. Homeless youth – The term homeless youth means any youth who lacks parental, foster, or institutional care and includes youth living in temporary housing.
9. Youth in foster care – The term youth in foster care means any young person who is under the care or supervision of the foster care system.

**E. To ensure consistency when comparing data between states, districts and schools, definitions of certain common terms used in data collection shall be standardized. This shall apply to the following terms, in addition to the demographic terms listed above:**

1. Graduation rate – The ratio of students who complete the course of study provided by the local school district to satisfy the requirements of gaining a diploma or certificate of completion to the number of students initially enrolled in the program of study over the traditional amount of time taken to complete the program’s coursework. States, districts, and schools should also report a cumulative graduation rate to capture students who take longer than the traditional amount of time to graduate.
2. Attendance rate – The percentage of total school days that students in a school or district are present in school.
3. Dropout – A student who has voluntarily or involuntarily ceased attendance at or participation in the school in which the student had been enrolled, but has not transferred to another school district, school or home school, with or without a formal notice from the student, parent or guardian that the student has left the school system.
4. Voluntary Transfer – Any transfer from one educational institution to another that is initiated by a student, parent or guardian and not mandated or initiated by a school or district.
5. Involuntary Transfer – Any transfer that is a school or district administrator-initiated transfer in which a student is removed from his or her school of attendance to another comprehensive school or continuation school site, usually for the remainder of the school term, that is mandated and against the will or interest of a student by a school or district. Involuntary transfers for academic reasons are prohibited in Section 3.5 Alternative Schools. Involuntary transfers for disciplinary reasons must adhere to the same due process protections as expulsions, outlined in Section 3.2 Guidelines for Suspensions, Expulsions, and Removals, including guaranteeing the right to a hearing and to appointed counsel at public expense.
6. Expulsion with educational services – Any long-term exclusion from school attendance and school privileges for disciplinary purposes for more than 5 consecutive days or more than 10 cumulative days up to the remainder of the school year (or longer), including any long term suspensions, expulsions or permanent exclusions from a student’s current school environment, where the local educational agency provides educational services to the student (e.g., school-provided at home instruction or tutoring; removal to an alternative school or other regular school).
7. Expulsion without educational services – This is prohibited in the Model Code. Where it is still practiced by school districts, data should be collected and defined as any long-term exclusion from school attendance and school privileges for disciplinary purposes for more than 5 consecutive days or more than 10 cumulative days

up to the remainder of the school year (or longer), including any long term suspensions, expulsions or permanent exclusions from a student's current school environment, where the local educational agency does not provide educational services to the student.

8. Out-of-school suspension – Any temporary removal of a student from their regular school for at least a half day and up to 5 days consecutively or 10 days cumulatively for disciplinary purposes to another setting (e.g., home, behavior center). Out-of-school suspensions include removals in which educational services are provided (e.g., school-provided at home instruction or tutoring or removal to an alternative school or other regular school). Removals in which no educational services are provided are prohibited in this Model Code. Where they are still practiced in school districts, they must be included data collections on out-of-school suspensions.
9. In-school suspension – Any temporary removal of a student from their regular classroom(s) or daily class schedule for disciplinary purposes to another setting (e.g., an alternate classroom in their school) where the student remains under the direct supervision of school personnel (direct supervision means school personnel are physically in the same location as students under their supervision).
10. OCR "disparate impact" standard<sup>369</sup> – Disparate impact means differences in outcomes that may result from the application of "neutral" policies notwithstanding the absence of intentional discrimination. A violation of law may occur if:
  - a. There is a significant disparity in the provision of a benefit or service that is based on race, national origin or sex; and
  - b. The practice at issue does not serve a substantial legitimate justification (i.e. is not educationally necessary); or
  - c. There is an alternative practice that is equally effective in meeting the institution's goals and results in lower disparities to trigger federal action.
11. "Significant Disparity" – States must show they have a plan to address disparity in discipline for IDEA funding.

**F. Required Categories for Data Collection. In order to ensure that at the local, state and national level consistent data is collected, analyzed, and then forms the basis for program and funding decisions, the following data shall be collected and made available to the public:**

1. State and district learning goals;<sup>370</sup>
2. State and district teaching standards;<sup>371</sup>
3. Educational programs and services including:<sup>372</sup>
  - a. Curricula;
  - b. Academic intervention programs;
  - c. Special education services, including access to research-based services, such as multisensory reading remediation programs;
  - d. Class sizes;
  - e. Access to technology;
  - f. Teacher-student ratios;
  - g. Teacher demographics;
  - h. Access to highly effective teachers with measures based in part on teacher salaries, so as to allow for more reliable comparison between low-poverty and high-poverty schools;
  - i. Guidance counselor to student ratios;
  - j. Social workers and psychologists available to youth and parents or guardians; and
  - k. Professional development provided to teachers and school administrators;

4. Assessment measures including:<sup>373</sup>
    - a. Promotion criteria;
    - b. Student assessment tools;
    - c. Student assessment results by district and school;
    - d. Teacher hiring standards and licensing criteria;
    - e. Teacher assessment tools; and
    - f. Teacher assessment results by district and school
  5. Policies and practices related to school climate and discipline, including:<sup>374</sup>
    - a. Discipline Codes or Student Codes of Conduct;
    - b. Programs and practices implemented as preventive and positive approaches to discipline;
    - c. Procedures and due process protections for exclusion; and
    - d. Training and professional development provided to school staff and safety personnel stationed in schools;
  6. Funding including:<sup>375</sup>
    - a. State, district and school funding sources for education;
    - b. State, district and school budgets for public education;
    - c. State, district and school budgets for school climate and discipline resources;
    - d. State, district and school budgets for education data tracking, collection and reporting;
    - e. Grievance procedures and processes for assistance with school-related concerns;<sup>376</sup>
    - f. Mechanisms for reviewing school-related data;<sup>377</sup> and
    - g. Methods for developing and implementing education reforms.<sup>378</sup>
- G. The following data shall be collected on educational outcomes at the local, state and national level, and made available to the public consistent with privacy constraints established under federal and state privacy laws and regulations. The data shall be aggregated and disaggregated by age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care, and where available must include cross-tabulation and longitudinal data to allow for in-depth review:**
1. Graduation rates;<sup>379</sup>
  2. Test scores and other assessments of students;<sup>380</sup>
  3. Enrollment rates;<sup>381</sup>
  4. Attendance rates for students and teachers;<sup>382</sup>
  5. Dropouts;<sup>383</sup>
  6. Discharges,<sup>384</sup> other than those that may be described as expulsion, which includes:
    - a. Types of discharges<sup>385</sup> (moved out of district, aged out of public-school eligibility, incarceration, etc.); and
    - b. Number of discharges, by type;<sup>386</sup>
  7. Transfers to alternative schools, remedial programs and GED programs, which includes:
    - a. Transfer policies;
    - b. Transfer rates/statistics, broken down by destination, disproportionately impacted groups, and whether transfer was voluntary or involuntary: If transfer was involuntary, whether administrative hearings were conducted and the outcomes of proceedings;
  8. Discipline policies, statistics and rates, including:<sup>387</sup>
    - a. Types of infractions;
    - b. Teacher/staff members reporting the infractions;

- c. Consequence of infraction, including but not limited to:
  - i. Positive interventions;
  - ii. In-school suspensions;
  - iii. Out-of-school suspensions;
  - iv. Number of students receiving repeated suspensions;
  - v. Length of suspensions;
  - vi. Expulsions;
  - vii. Corporal punishment; and
  - viii. Referrals to alternative schools.
- 9. Interactions with police and School Resource Officers, including:
  - a. Referrals to probation/law enforcement/courts, including types of incidents;
  - b. School-related arrests, including types of incidents;<sup>388</sup>
  - c. Number and type of student searches;
  - d. Number and type of student interrogations;
  - e. Police officers or school staff involved in incidents with students;
  - f. Trainings for police, security agents and school staff on discipline and cultural sensitivity, including:
    - i. Number and duration of trainings;
    - ii. Types of trainings; and
    - iii. Resources allocated to trainings;
  - g. Number of law enforcement personnel assigned to each school;
  - h. Numbers of schools with metal detectors or other scanning devices on the premises for any part of school year;
- 10. Reenrollment statistics of students returning from suspension sites and detention facilities, including:
  - a. Number of students reenrolling or dropping out after suspensions, expulsions, involuntary transfers, alternative school placements, juvenile detention, arrest, detention, adjudication, conviction and incarceration; and
  - b. Number of days between discharge from suspension, detention, or incarceration and registration at a school placement, including, when applicable the number of days between discharge and actually being given a school program, even if the student's name is placed on a register; and
- 11. Student, parent or guardian and teacher surveys on:<sup>389</sup>
  - a. Curriculum and instructional practices;
  - b. Student engagement in the learning process;
  - c. School climate and discipline; and
  - d. Mechanisms for student, parent or guardian and teacher participation in decision-making.

**H. Monitoring, Oversight and Accountability in Charter Schools. States, districts and charter schools shall:**

- 1. Require that charter schools comply with all state and federal laws regarding reporting (including school report card requirements) and transparency.
- 2. Make available to all policymakers and stakeholders, including educators, parents or guardians, students and community members, information and core data concerning the education provided to students.
- 3. Monitor charter school enrollment and retention practices through uniform and consistent data requirements to ensure that charter schools are enrolling a proportionate share of students who receive free and reduced lunch, are English Language Learners, have disabilities or special needs, are homeless or in temporary housing situations and are from the most vulnerable families.

4. Require public documentation and reporting of student attrition throughout the school year, including date, reason and disposition (where the student ends up being placed). This data should be disaggregated by race/ethnicity, gender, age, grade level, free/reduced meal status, homelessness, disability status and English proficiency status.
5. Report timely and accurate data in compliance with the Civil Rights Data Collection by the Department of Education. Charter schools, along with other public schools, should report data on exclusionary discipline (in-school and out-of-school suspensions and expulsions), transfers to alternative schools, referrals to law enforcement, arrests and any other removals disaggregated by race, gender, age, grade, disability status, homelessness and English language proficiency.
6. Require that, as publicly funded institutions, charter schools make financial documents available to the public on a regular basis. This includes detailed information about the use of both public and private funds by the school and its management entities.

<sup>366</sup> See generally Seattle Public Schools. Code of Prohibited Conduct (offered in twelve different languages for easy accessibility).

<sup>367</sup> See generally Minnesota Public Schools, Evaluation and Assessment available at [http://rea.mpls.k12.mn.us/evaluation\\_and\\_research](http://rea.mpls.k12.mn.us/evaluation_and_research). See also Reports and data on key MPS topics available at [http://www.mpls.k12.mn.us/Reports\\_and\\_data](http://www.mpls.k12.mn.us/Reports_and_data). See also Minnesota Department of Education available at <http://education.state.mn.us/MDEAnalytics/Reports.jsp>.

<sup>368</sup> See 20 U.S.C. § 1232g; 34 CFR Part 99.

<sup>369</sup> See 34 C.F.R. § 100.3(b)(2) (Dept. of Education). See also 42 U.S.C. § 2000d and Title VI of the Civil Rights Act (prohibiting race, ethnicity and national origin discrimination against e.g., applicants, students, employees) and Title IX (prohibiting sex discrimination).

<sup>370</sup> See generally Virginia Department of Education Procedures for Data Collection and Reporting, pg. 7-8.

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*; see also National Center for Education Statistics Standards for Education Data Collection and Reporting.

<sup>373</sup> *Id.*

<sup>374</sup> See Denver Public Schools Policy JK-R Section 7, at <http://ed.dpsk12.org:8080/policy/FMPro?-db=policy.fp3&-format=detail.html&-lay-html&-sortfield=File&-op=eq&Category=Students&-recid=32967&-find=>; see also San Francisco Unified School District Student and Parent/Guardian Handbook, pg. 58, at [http://portal.sfusd.edu/data/pupil/SFUSD\\_StudentHandbook\\_2008-2009\\_ENGLISH.pdf](http://portal.sfusd.edu/data/pupil/SFUSD_StudentHandbook_2008-2009_ENGLISH.pdf).

<sup>375</sup> See generally Virginia Department of Education Procedures for Data Collection and Reporting, pg. 7-8. See also National Center for Education Statistics Standards for Education Data Collection and Reporting.

<sup>376</sup> *Id.*

<sup>377</sup> See San Francisco Unified School District Student and Parent/Guardian Handbook, pg 58.

<sup>378</sup> *Id.*

<sup>379</sup> See ESEA Section 1111(h)(6).

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> See generally *id.*

<sup>383</sup> See Denver Public Schools Policy JK-R Section 7.

<sup>384</sup> *Id.*

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

<sup>387</sup> See Denver Public Schools Policy JK-R Section 7; see also San Francisco Unified School District Student and Parent/Guardian Handbook, pg 58.

<sup>388</sup> See generally Denver Public Schools Policy JK-R Section 7.

<sup>389</sup> See generally Denver Public Schools Policy JK-R Section 7.





# A MODEL CODE on Education and Dignity

## CHAPTER 5: DATA, MONITORING AND ACCOUNTABILITY

### 5.2 Monitoring and Community Analysis

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#### Human Rights Goal

Parents or guardians, students and other community members must have opportunities to meaningfully participate in shaping, monitoring, assessing and improving the education provided to children and youth.

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#### Recommended Language

**A. States, districts and schools shall use data to frequently and effectively measure, monitor and analyze progress towards learning goals, and use the results of those assessments to improve educational programs and services, instructional practice, disciplinary policies and to improve the school environment as a whole. States, districts and schools shall:**

1. Set measurable annual goals and outcomes for progress towards providing all children with a high-quality education in a positive and supportive school environment;
2. Identify consistent, clear and transparent measures and increments of student performance and growth;
3. Develop data systems, tools and processes to:
  - a. Identify and analyze disparities across age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care;
  - b. Compare data across schools and districts;
  - c. Identify and analyze correlations in the data, including across academic and disciplinary outcomes, funding decisions, graduation rates and other indicators to identify connections and root causes of educational impacts and disparities;
  - d. Conduct follow-up investigations that allow for more qualitative and in-depth understanding of the results of data analysis;
  - e. Employ independent experts to analyze data and investigate the conditions in schools, and to report, advise and recommend solutions; and
  - f. Produce written reports and assessments available to the public and education stakeholders; and
4. Create data driven solutions and alternatives to policies and practices that hinder student growth and achievement.

**B. States, districts and schools shall ensure that students, parents or guardians and communities have meaningful participation in monitoring data by creating structures that allow students, parents or guardians and community members to participate in:**

1. Defining measurable annual goals and objectives;
2. Making decisions on what data is needed and how that data is used;
3. Determining data collection tools, methods and a schedule for data collection;
4. Analyzing and evaluating data;
5. Making decisions on how best to present data to policy makers, stakeholders and the broader community;

6. Determining how data is used to improve the educational system; and
  7. Making decisions on how best to communicate progress resulting from the implementation of data-driven practices in improving the instructional and disciplinary practices of schools.
- C. States, districts and schools shall engage in on-going monitoring of data and ensure that a formal audit of data occurs at least once a month at the local school level and district level where applicable. Depending on the size of the district formal audits of data may occur more frequently.**
- D. States and districts shall provide training and support on data interpretation for school staff, administrators, parents or guardians, students, and communities in large and small groups, on-site visits and individual meetings, and other training opportunities.**
1. Subjects of trainings must include, but are not limited to:
    - a. Data collection methods;
    - b. Preparation of data for end-user usage;
    - c. The use of data to identify trends or inspect visually for inconsistencies and discrepancies; and
    - d. The use of data to set attainable, measurable goals and work toward progressive outcomes.
  2. Where available, schools shall work collaboratively with local community-based organizations to provide the necessary training and support to stakeholders.
- E. States, districts and schools shall establish independent Community Monitoring Committees to ensure that parents or guardians, students and the broader community of educational stakeholders are actively involved in the collection and use of data. The Committees are charged with the duty to ensure that the efficient and effective collection of data is used to help create schools where all students have access to a high-quality education in a supportive, positive environment.**
1. The Committees must engage in planning and setting long-term goals and objectives and shall develop a “comprehensive plan” for improving the educational system over 5-, 10-, 15- and 20-year periods.
  2. The Committees established must engage in annual assessments and offer recommendations on:
    - a. Key elements for review each year, including but not limited to:
      - i. Achievement and graduation rates;
      - ii. Access to quality teachers and teacher retention;
      - iii. School climate and discipline; and
      - iv. Funding sources and budgets.
    - b. Identifying particular areas of concern in the district for deeper investigation and review.
  3. The core values and practices of the Committees shall include:
    - a. Open meetings on dates, times and places accessible to the broad spectrum of education stakeholders and others in the community;
    - b. A governance structure that is democratic and seeks, to the extent possible, to build consensus to carry out the work of the entity;
    - c. Independence from the local school district and each of its schools;
    - d. A focus on building strong, healthy communities that is broader than the school system itself;
    - e. Capacity to create working committees that may include members of the community to assist members of the structure;
    - f. Responsibility for making accurate assessments of the strengths and limitations of the school district and its schools as a basis for recommending effective approaches to create quality, healthy schools;
    - g. Understanding of how to gather relevant data and how to utilize the data to monitor and evaluate the schools and school district; and

- h. Authority to request and obtain data from the school district and the individual schools, so long as the content of the data sought does not compromise any existing Federal or State privacy law.
  - 4. The Committees shall include representation from a broad spectrum of education stakeholders and the broader community, including but not limited to:
    - a. Students attending schools in the district, which may include representatives of school-based or district student councils and student government associations;
    - b. Parents or guardians of students attending schools in the district, which may include representatives of Parent Teacher Associations;
    - c. Members of local community-based organizations working on public education issues;
    - d. Community leaders, public officials and/or members of the business community within the local school district;
    - e. Community members at large interested in public education issues;
    - f. Representatives of the school district, which may be selected from among the school district Board of Trustees, administration, faculty, or staff; and
    - g. Representatives of school-level staff, including but not limited to school administrators, teachers, guidance counselors or other staff.
  - 5. A school district may elect to have a single district-wide Committee, neighborhood or sub-district level Committees, or individual school-based Committees depending on the size and structure of the district.
- F. States, districts and schools shall work together with the independent Community Monitoring Committees to ensure that data is used to make timely and effective changes to improve the educational system. Accountability mechanisms must be restorative and supportive, rather than punitive and shall:**
- 1. Be developed in a transparent and deliberative process that authentically engages students, parents or guardians and all community stakeholders;
  - 2. Use a comprehensive set of indicators and measurements (outlined in Section 5.1) to evaluate schools and districts and to trigger intervention when learning goals are not being met; and
  - 3. Develop tailored interventions and supports that:
    - a. Are based on and tailored to address the needs and concerns of school district staff, school administrators, teachers, students, parents or guardians and other stakeholders;
    - b. Eliminate policies and practices that are revealed to be damaging;
    - c. Seek to address structural inequities and disparities;
    - d. Learn from and replicate best practices and successes within and outside of the local district, while considering and adapting those strategies to local factors, including models like Restorative Justice Practices, social-emotional learning, positive behavior supports; and
    - e. Seek recommendations from experts in the areas of need to advise on best practices in the field and help design tailored and effective solutions.
- G. States, districts and schools shall empower the independent Community Monitoring Committees to enable individuals and communities to raise concerns and seek recourse which can be established through a variety of mechanisms, but at minimum must ensure that:**
- 1. Any stakeholder or community member who experiences or observes injustice based on the data and analysis conducted is empowered to raise concerns or complaints;
  - 2. An independent and impartial actor that is separate from the school district shall hear the complaint and supervise the process of deciding what steps to take in response (this independent and impartial actor could be an administrative judge, a court of law, restorative committee, an independent panel or some other arbiter);
  - 3. The independent and impartial actor has:
    - a. Power to compel the school, district or state level governing body to take action; and
    - b. Ability to provide both individual remedies and to compel systemic change and interventions.

## APPENDIX

### APPENDIX I: Summary of Committees and Teams in the Model Code

Below is a list of the various planning, monitoring and intervention committees and teams described in the Model Code. In some cases, states, districts or schools would create new committees to fulfill these roles and responsibilities, while in others they could use existing committees. Unless specifically noted, the committees below should include representation of all the key stakeholders in the school community—students, parents or guardians, teachers, school support staff and administrators.

Level	Committee or Team and Location in the Model Code	Composition, Roles and Responsibilities
State or District	<b>School Climate and Culture Committee</b> 3.7.a School-wide Positive Behavior Interventions and Supports (SWPBIS) 3.7.b Restorative Justice Practices	Representation of all school stakeholders with training in positive approaches to discipline, like SWPBIS and Restorative Justice Practices. <ul style="list-style-type: none"> <li>Develop guidelines for implementing positive school-wide approaches to discipline, including SWPBIS and Restorative Justice Practices at the state, district and individual school level.</li> <li>Ensure schools and communities receive training and technical assistance in implementing positive approaches.</li> <li>Create mechanisms to collect and evaluate data and intervene where there are high rates of exclusion and/or disparities.</li> </ul>
	<b>Transitional Team for System-Involved Youth</b> 3.6 Right to Education for System Involved Youth	Formerly incarcerated individuals, parents or guardians and representatives of the school system, juvenile court, social services, probation or parole, and other agencies or community organizations. <ul style="list-style-type: none"> <li>Assist with entry of youth into detention or incarceration, and re-entry back into the community.</li> <li>Assess every youth and develop individualized transition plans that include ongoing supervision and wrap-around services.</li> </ul>
	<b>Community Monitoring Committee</b> 5.2 Monitoring and Community Analysis	Representation of all school stakeholders and community leaders. <ul style="list-style-type: none"> <li>Set goals and create plans for improving the educational system.</li> <li>Monitor data through annual assessments and recommendations.</li> <li>Create mechanisms for broader community participation and for stakeholders to submit complaints and receive recourse.</li> </ul>

Level	Committee or Team and Location in the Model Code	Composition, Roles and Responsibilities
School-wide	<b>School Climate and Culture Leadership Team</b> 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports (SWPBIS) 3.7.b Model Policy on Restorative Justice Practices. 3.7.g Using an Intervention Support Team Model to Conduct Threat Assessments 4.1 Right to Freedom from Discrimination 4.2 Disproportionate Use of Discipline	Representation of all school stakeholders with training in positive approaches to discipline, like SWPBIS and Restorative Justice Practices. <ul style="list-style-type: none"> <li>• Create plans, share information and secure school-wide support for implementing SWPBIS and Restorative Justice Practices.</li> <li>• Develop school-wide norms or behavioral expectations.</li> <li>• Develop trainings, lesson plans and strategies for preventing and responding to misbehavior.</li> <li>• Develop strategies for preventing and eliminating discrimination.</li> <li>• Track and evaluate discipline data and monitor and evaluate implementation of positive discipline.</li> </ul>
	<b>Stakeholder Advisory Committee</b> 2.1 Stakeholder Participation	Representation of all school stakeholders. <ul style="list-style-type: none"> <li>• Design and monitor inclusive decision-making processes.</li> <li>• Disseminate information and develop mechanisms for stakeholders to give input, air grievances and receive remedies.</li> <li>• Monitor data and report back to the school and community.</li> </ul>
	<b>Student Councils</b> 2.2 Rights of Children and Youth to Participation	Representation of students with staff support. <ul style="list-style-type: none"> <li>• Ensure student input in the design and function of school policies.</li> <li>• Provide student representation on decision-making bodies.</li> <li>• Hold school-wide forums and other activities.</li> </ul>
	<b>Parent-Teacher Associations</b> 2.3 Rights of Parents and Guardians to Participation	Representation of parents or guardians and teachers. <ul style="list-style-type: none"> <li>• Provide services and information to parents or guardians to support their participation in school.</li> <li>• Conduct assessments of schools and run parent or guardian-led forums where school staff must listen and respond to concerns.</li> </ul>

Level	Committee or Team and Location in the Model Code	Composition, Roles and Responsibilities
<b>School-based for Individual Circumstances</b>	<b>Intervention Support Team</b> 3.7.a Model Policy on School-Wide Positive Behavior Interventions and Supports (SWPBIS)  3.2 Guidelines for Suspensions, Expulsions and Removals	People who know the student who engaged in misbehavior best, including family, classroom teacher, administrator, psychologist, counselor, social worker or mental health experts. <ul style="list-style-type: none"> <li>• Make decisions regarding intensive interventions for students.</li> <li>• Use a problem-solving approach to help students to be more successful in school, at home or in the community, and develop wraparound plans for students with complex and multiple needs.</li> <li>• Support transition for students returning from expulsion.</li> </ul>
	Restorative Fairness Committee 3.7.b Model Policy on Restorative Justice Practices	Students, teachers and others trained in Restorative Justice Practices. <ul style="list-style-type: none"> <li>• Take referrals of students or staff that have violated the shared values of the school to facilitate self-reflection on how their actions have affected others.</li> <li>• Determine how best to restore and mend the community and how to reintegrate the student or staff member back into the school.</li> </ul>
	Exclusion Hearing Panel or Peer Jury 3.2 Guidelines for Suspensions, Expulsions and Removals	School staff, parents or guardians and students. <ul style="list-style-type: none"> <li>• Preside over exclusion hearings as a neutral decision maker.</li> <li>• Understand the purposes of the school code and receive training in applying the code and conducting a fair and organized hearing.</li> <li>• Make a decision on the exclusion impartially and based exclusively on the evidence presented at the hearing.</li> </ul>
	Individualized Education Plan (IEP) Team 4.5 Students with Disabilities	The student's parent or guardian, special education and regular education teachers, other individuals who have specific skills or knowledge of the student, and the student (if age appropriate). <ul style="list-style-type: none"> <li>• When a student with disabilities has an IEP and exhibits behavior that impedes the student's learning or is disciplined with removals or suspensions, consider positive behavior interventions and review the student's program to determine modifications.</li> <li>• For students with disabilities returning from exclusion, consider available resources and develop a transition educational program.</li> </ul>

## APPENDIX

### APPENDIX II: Rationale for the Right to Counsel Provisions

The Model Code on Education and Dignity would guarantee a right to publicly funded counsel for students in certain discipline, truancy and manifestation proceedings.<sup>390</sup> Such a right represents one of the more significant costs triggered by the Model Code, but at the same time is essential to the effectuation of all the other rights provided in the Code. While the concept of a right to counsel in certain types of government-initiated civil cases is not new (most states, for example, provide such a right either by statute or court decision in abuse/neglect or termination of parental rights cases),<sup>391</sup> the issue has remained largely unaddressed in both courts and legislatures with respect to longer term suspension/expulsion/truancy proceedings.<sup>392</sup>

This Appendix briefly addresses some of the concerns mentioned about providing counsel in education cases. The easiest framework for addressing these concerns was provided by the U.S. Supreme Court for testing for due process: examine 1) the strength of the individual interest(s) at stake, 2) the state's interest, and 3) the risk of a wrong decision absent counsel.<sup>393</sup> As to the first prong, an expulsion or long-term suspension hearing in states or districts that offer no alternative education programs can effectively mean the end of a child's public education. So can a truancy case or a failure to recognize the connection between a disability and misconduct in a manifestation determination review. Given that the right to education is guaranteed by the constitutions of many states,<sup>394</sup> this is a serious deprivation indeed. Additionally, a suspension/expulsion hearing can lead to more serious consequences than those faced in a juvenile delinquency court proceeding for the same behavior, but without the protection of counsel. For example, a fistfight might lead to a disciplinary hearing where the child has no lawyer and where the hearing officer rules to expel the child due to a zero-tolerance policy.

In a juvenile delinquency court proceeding, the same child would likely have the right to counsel and might only face probation or even a diversion program, especially if it was the student's first contact with the juvenile justice system. With respect to truancy, a juvenile can be adjudicated as truant without counsel, even though such a finding can affect their educational placement, subject them to various restrictions (such as random drug screening), and put them under threat of jail if they later violate the truancy order.

As to the second prong, while providing counsel does require government funds, the amount may be significantly less than it seems at first blush. For one, if schools adopt the rest of the Model Code, there will be vastly fewer exclusion/truancy attempts overall and therefore fewer situations that require an attorney.<sup>395</sup> And some students will either decline or waive counsel, choose not to pursue a formal hearing, or be financially ineligible. Additionally, erroneously expelling students or finding them truant (a result an attorney can help avoid) can be much costlier to the schools and the community at large: for one, schools can lose state/federal funding when students are out on expulsion. And when one understands that many students that are subject to long-term suspension/expulsion or a finding of truancy may never return to school, the costs mount even higher. For instance, one study found that high school dropouts are twice as likely to commit crimes as high school graduates, and one group of 12th-grade dropouts will generate \$1.1 billion in economic losses from juvenile crime and \$10.5 billion in economic losses from adult crime over their lifetimes.<sup>396</sup> Communities must also pay for additional policing, jails, and criminal case prosecutions. In Massachusetts, a study found that high school dropouts earned \$456,000 less over their lifetime than those with a high school degree.<sup>397</sup>

Finally, as to the third prong, some might say that only juvenile court proceedings are complicated enough to require a lawyer, and while truancy proceedings are court proceedings, suspension/expulsion hearings and manifestation determination reviews are more informal. However, while the hearings may be less formal than a court process, the fact remains that the children whose vital interests are at stake could be so young as to be in elementary school. And the reality is that students and families often find these hearings (whether informal or formal) to be a confusing and

frustrating experience. Even if the school is not represented by a lawyer at the hearing, the school's representative is an official who is trained in school procedures and who has access to records, witnesses, and other resources that the student lacks. The student faces the allegations on their own,<sup>398</sup> and is forced to try to present evidence, cross-examine witnesses, make objections, and otherwise act like an attorney without any of the skills or training to do so. Without counsel, a student will almost always find it difficult to clearly present their side. Providing a right to counsel when a student is being excluded from school allows the student the opportunity to be heard and to investigate and challenge discriminatory practices, ensures a fair hearing, and protects against mistakes that could lead to a deprivation of the right to an education.

In addition, whether the hearings are especially complicated or not, there is a significant risk of the decision being incorrect if the child is not represented by a lawyer. This is not only because hearing officers may make the wrong decision about whether a particular school rule was violated, but also because they may uphold punishments that are unnecessarily harsh. In some cases, a school may be using disciplinary exclusion as a way of "pushing out" a student who is doing poorly in their classes<sup>399</sup> or who has a behavior-affecting disability, something only a lawyer could likely accurately figure out. While schools need discretion in making decisions about school safety and discipline, providing the child with a lawyer will not likely change the outcome where the school has valid reasons for trying to suspend or expel the child; it will simply prevent exclusions that should not be occurring.

In sum, providing the child with a lawyer is what is best for the student, the school, and the community, and while costs must certainly be addressed, such costs are, as the Supreme Court put it in a different context, "hardly significant enough to overcome private interests as important as those here..."<sup>400</sup>

<sup>390</sup> The right to appointed counsel at public expense is referenced in this Model Code in Section 3.1.d.D, Section 3.3.a.B.3, and Section 4.3.D.3.

<sup>391</sup> See Laura Abel and Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. J. OF POVERTY L. AND POL'Y 245 (2006), available at [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Civil%20Right%20to%20Counsel%20-%20Abel\\_2.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Civil%20Right%20to%20Counsel%20-%20Abel_2.pdf).

<sup>392</sup> *C.f. Bellevue School Dist. v. E.S.*, 257 P.3d 570, 579 (Wash. 2011) (finding no right to counsel in truancy proceedings, and reversing court of appeals); *Id.* at 580 (Madsen, C.J., concurring) (urging legislature to provide appointed counsel pursuant to ABA policy); *Goss v. Lopez*, 419 U.S. 565, 580, 584 (1975) (finding no right to counsel for discipline proceedings involving suspensions of 10 days or less, but commenting that "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.").

<sup>393</sup> See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

<sup>394</sup> See Randal Jeffrey, *Equal Protection in State Courts: The New Economic Equality Rights*, 17 LAW & INEQ. 239, 270 (1999); Allen W. Hubsch, *Education and Self-Government: The Right to Education Under State Constitutional Law*, 18 J.L. & EDUC. 93, 96-97 (1989); Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1342-47 (2004); Pauley v. Kelly, 255 S.E.2d 859 (W.Va. 1979) (listing state constitutional education clauses for 48 states).

<sup>395</sup> The Code encourages the use of alternatives to disciplinary exclusion: mediation, restorative justice programs, Positive Behavior Interventions and Supports, and other school-based interventions can eliminate the need for an expulsion hearing and therefore the need for a lawyer.

<sup>396</sup> C. Belfield and H. Levin, *High School Dropouts and The Economic Losses from Juvenile Crime In California*, California Dropout Research Project (2009).

<sup>397</sup> Boston Bar Association Task Force on Expanding the Civil Right to Counsel, *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts* (Sept. 2008), available at <http://www.bostonbar.org/prs/reports.htm>.

<sup>398</sup> While some children may be supported by their parents, others may actually be in conflict with their parents over the alleged conduct. Additionally, children in foster care or group homes may not have parents that can support them.

<sup>399</sup> Davin Rosborough, *Left Behind, and Then Pushed Out: Charting a Jurisprudential Framework to Remedy Illegal Student Exclusions*, 87 WASH. U.L. REV. 663, 667 (2010); The Advancement Project, *TEST, PUNISH, AND PUSH OUT: HOW "ZERO TOLERANCE" AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE* at 5 (March 2010) (noting that increase in number of disciplinary proceedings has increased with "the passage of [No Child Left Behind] and other test-driven policies").

<sup>400</sup> *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981) (involving termination of parental rights).



## APPENDIX

### APPENDIX III: Summary of Leadership Development Topics for School Staff

The following is a non-exhaustive list of topics for leadership development opportunities (including trainings, workshops, readings, etc.) that teachers and other school staff should engage in. States, districts and schools should make these types of leadership development opportunities available to school staff throughout the year.

- Effective teaching and pedagogy
  - Culturally responsive curriculum and teaching
    - Trainings should instruct teachers how to center and empower the students in their own cultures, and help teachers unlearn any ethnocentrist views they may have.
    - Training should be developed in consultation with youth and parents from the various identities and cultures reflected in the school community. When possible, youth and parents can also be involved in providing the trainings.
  - Training teachers to have diversified teaching methods in their classroom for students with different learning styles and at different readiness levels.
  - Culturally Responsive Classroom Management
- How to effectively participate in decision-making bodies and processes
- Culturally affirming social and emotional learning
- Positive approaches to school climate and discipline being used in the school or district
  - Restorative and Transformative Justice Practices
  - School-Wide Positive Behavioral Interventions and Supports (SWPBIS)
  - Any other positive approaches being used in the district
- Trauma-sensitive practice
  - Training administrators, teachers and support staff, including behavior specialists, to understand the sources of trauma, identify the signs of trauma, and be aware of the services and interventions most effective for responding to trauma.
  - Staff should understand that students who have experienced trauma may be particularly sensitive to changes in routines, general lack of structure, or other potentially overwhelming situations.
- Understanding and implementing the district and/or school Code of Conduct
- Child and adolescent development and psychology
- Comprehensive youth development practices and programming
- Conflict resolution and peer mediation
- De-escalation techniques
- Violence prevention and intervention
- Intergroup and interethnic conflict intervention and truce-building strategies
- Impacts of arrest, court, detention, incarceration and/or deportation on youth life chances
- Effective strategies for building safe schools without relying on suppression
- Bias-based and sexual harassment and violence
- Cultural competencies (including understanding and addressing racism, sexism, homophobia, transphobia, ableism, adultism/ageism, and other implicit and explicit biases)
- Impact of racism on education opportunities
  - Provide training and support to school staff that allows for real and honest dialogue that lead to changes in practices.

- Trainings should include information on how both implicit and explicit bias may be contributing to school staff responses to students.
  - School staff trainings should be an integral part of a school or district strategy to end racial disparities, but it cannot be the only step that is taken. Without ongoing follow up and support for staff, trainings are likely to be ineffective.
- Rights of immigrant and undocumented students
  - Counselors and advisers specifically need training on working with immigrant and undocumented students to assist them in applying for school lunch, joining school clubs and organizations, applying to college, preparing for the SAT and ACT, and applying for scholarships and financial aid.
- Working with youth with disabilities or physical, emotional, or mental health conditions
- Working with LGBTQ+ and gender non-conforming youth, including creating an affirming and supportive environment
  - General terminology, including a space to ask questions—LGBTQ+ students should not be in the position to have to educate school staff on their identities or the basics of the LGBTQ+ community.
  - Information on the intersection of LGBTQ+ students and housing insecurity, ensuring that the school is complying with the Runaway and Homeless Youth Act and the McKinney-Vento Homeless Assistance Act (See Chapter 1 for information on removing barriers for homeless students to register for school).
  - The physical and mental health issues specific to LGBTQ+ students and available resources.
- Data interpretation and use
  - Data collection methods.
  - Preparation of data for end-user usage.
  - The use of data to identify trends or inspect visually for inconsistencies and discrepancies.
  - The use of data to set attainable, measurable goals and work toward progressive outcomes.

## APPENDIX

### APPENDIX IV: Glossary of Terms

**Alternative Schools** – Alternative schools shall be defined as any educational setting designed to accommodate educational, behavioral, or medical needs of children and adolescents that cannot be adequately addressed in a traditional school environment and that is meant to be the primary source of education for those students. Alternative schools may include programs or schools commonly referred to by different jurisdictions as Continuation Schools, Second Opportunity Schools, Second Chance Schools, Career Academies and a variety of other classifications.

**Attendance rate** – The percentage of total school days that students in a school or district are present in school.

**Community Intervention Workers** – Community members trained as peacebuilders working in schools, around schools and/or in the larger community. Intervention workers can replace the traditional role of security officers or police on or around school campuses. In schools they may be paid staff or volunteers. In the community they often have a “license to operate” or agreement with local leaders to work in the community. Intervention workers have trusted and deep relationships with local communities and both recognized and underground leaders. These trusted relationships are at the root of their effectiveness in identifying, resolving and preventing conflict, violence and crime. Their work includes mentoring youth, preventing and addressing bullying, preventing and resolving conflicts and connecting people to needed services. The role of community intervention workers includes:<sup>401</sup>

- a. Mentoring youth, particularly youth who most often witness, are victims of and/or cause violence;
- b. Preventing and addressing bullying behavior and providing rumor control;
- c. Preventing and resolving conflicts between youth, groups of youth and/or neighborhoods (gangs); preventing retaliation; and coordinating mediation, conflict resolution and restorative/transformational justice;
- d. Helping youth to avoid and/or leave neighborhoods and providing safe passage to and from school; and
- e. Connecting people to needed services.

**Credible Threat** – A threat that is “real and immediate, not conjectural or hypothetical.”<sup>402</sup>

**Culturally Affirming Social and Emotional Learning (SEL)** – The processes of developing social and emotional skills or competencies in students is critical to supporting success in school and throughout life. SEL is based on the understanding that the most effective ways for students to learn is in the context of collaborative and supportive relationships with teachers, staff and their peers to make learning challenging, engaging, and meaningful and to prevent and reduce disruption and conflict. SEL strategies are found to be effective in reducing behavioral problems and increasing academic achievement and should be implemented at all grade levels.<sup>403</sup> These approaches are considered culturally affirming when they seek to build on the students’ strengths and culture, rather than applying a single view of what positive social and emotional skills look like to all students.

**Culturally Relevant Teaching** – A term created by Gloria Ladson-Billings (1994) to describe “a pedagogy that empowers students intellectually, socially, emotionally, and politically by using cultural referents to impart knowledge, skills, and attitudes.”<sup>404</sup> Culturally relevant teaching creates a bridge between students’ home and school lives, while meeting the expectations of academic requirements.<sup>405</sup>

**Culturally Responsive Classroom Management (CRCM)** – An approach to running classrooms in a culturally responsive way. More than a set of strategies or practices, CRCM is a pedagogical approach that guides the management decisions that teachers make. It is a natural extension of culturally responsive teaching which uses students’ backgrounds, rendering of social experiences, prior knowledge, and learning styles in daily lessons. Teachers, as culturally responsive classroom managers, recognize their biases and values and reflect on how these influence their expectations for behavior and their interactions with students as well as what learning looks like. They recognize that

the goal of classroom management is not to achieve compliance or control but to provide all students with equitable opportunities for learning.<sup>406</sup>

**Culture** – Customary beliefs, social forms, and material traits of a racial, religious, or social group; also the characteristic features of everyday existence (as diversions or a way of life shared by people in a place or time). There are seven elements of culture: Social Organization, Customs and Traditions, Religion, Language, Arts and Literature, Government and Economic Systems.<sup>407</sup>

**Curriculum** – Lessons and academic content taught in a school or in a specific course or program; the courses that are taught by a school or college.<sup>408</sup>

**Discipline** – To understand and address the causes of behavior, resolve conflicts, repair the harm done, restore relationships and reintegrate students into the school community. Also, to teach, model and instruct.

**Dropout** – A student who has voluntarily or involuntarily ceased attendance at or participation in the school in which the student had been enrolled, but has not transferred to another school district, school or home school, with or without a formal notice from the student, parent or guardian that the student has left the school system.

**Exclusion** – Any removal, suspension, expulsion or involuntary transfer for discipline reasons that removes a student from their regular classroom. Exclusion should only be used as a last resort and only for a school-based infraction (that takes place on school grounds and during the school's operating hours).

**Explicit Bias** – Conscious thoughts or beliefs about other people based on characteristics such as race, ethnicity, age and appearance that impact how we perceive or treat them. Individuals may choose to conceal these biases for the purposes of social and/or political correctness, but that is not the same as the unconscious implicit bias explained above.<sup>409</sup>

**Expulsion** – Any long-term exclusion from school attendance and school privileges for a period of more than 5 consecutive days of school or 10 cumulative days of school over the course of a school year, including long term suspensions and expulsions and permanent exclusions from school. Expulsion shall not be a complete cessation of educational services but the removal of the student from his or her current school environment, with alternative educational services provided. Those alternative educational services shall be of the quality defined in Chapter 1 on Education and Section 3.5 Alternative Schools.

**Expulsion without educational services** – This is prohibited in the Model Code. Where it is still practiced by school districts, data should be collected and defined as the removal of a student from their regular school for disciplinary purposes for more than 5 consecutive days or more than 10 cumulative days up to the remainder of the school year (or longer) where the local educational agency does not provide educational services to the student.

**Fighting** – Mutual, intentional participation in a physical altercation occurring between two or more persons with no one main offender. Fighting does not include verbal confrontation, unintentional contact that does not cause serious bodily harm, or self-defense.

**Gender Non-conforming** – refers to people who do not follow other people's ideas or stereotypes about how they should look or act based on the female or male sex they were assigned at birth.<sup>410</sup>

- a. Gender: Socially constructed attributes and opportunities typically associated with being male and female. They are context/time-specific and changeable. Gender is not a binary, but instead is on a spectrum with an infinite variety of expressions, representing a more nuanced, and ultimately truly authentic model of gender that is self-identified.<sup>411</sup>
- b. Gender Expression: How individuals communicate their gender to others, or the external manifestation of one's gender identity. It can be expressed through masculine, feminine or gender-variant behavior, clothing, haircut, voice or body characteristics.<sup>412</sup>

**Gender Identity** – One's innermost concept of self as male, female, a blend of both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.<sup>413</sup> A Transgender Person is someone who identifies with a different gender from the gender they

were assigned at birth. For example: your birth certificate says male, and you identify as a woman. Gender Nonconforming refers to people who do not follow other people's ideas or stereotypes about how they should look or act based on the female or male sex they were assigned at birth.<sup>414</sup>

**Gender Pronouns** – This is the pronoun or set of pronouns that an individual uses, such as he/him/his, she/her/hers or they/them/theirs. Implementing the practice of saying everyone's pronouns creates space for individuals who do not identify with he/she gender pronouns, and ensures that no one person's gender is assumed. It acknowledges that many individuals identify across the gender spectrum as transgender, gender nonconforming, non-binary, or gender fluid.<sup>415</sup>

**Graduation rate** – The ratio of students who complete the course of study provided by the local school district to satisfy the requirements of gaining a diploma or certificate of completion to the number of students initially enrolled in the program of study over the traditional amount of time taken to complete the program's coursework. States, districts, and schools should also report a cumulative graduation rate to capture students who take longer than the traditional amount of time to graduate.

**Healing Centered Engagement**<sup>416</sup> – Approaches that are similar to trauma-informed care in that they recognize that people who have experienced trauma require additional support, but seek to center the healing and resilience of the person, rather than the trauma. This approach also looks to address the root causes of the trauma in a way that trauma-sensitive approaches may not. For example, many young people may be experiencing trauma due to gun violence in their neighborhood. In healing-centered engagement, while supporting the young people who are impacted by this violence, the school would also be working to address the root causes of the gun violence itself.

**Implicit Bias** – The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. They cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance. These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages. In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.<sup>417</sup>

**In-school suspension** – Any temporary removal of a student from their regular classroom(s) or daily class schedule for disciplinary purposes to another setting (e.g., an alternate classroom in their school) where the student remains under the direct supervision of school personnel (direct supervision means school personnel are physically in the same location as students under their supervision).

**Intersectionality** – A theory that seeks to examine the ways in which various socially and culturally constructed categories interact on multiple levels to manifest themselves as inequality in society. Intersectionality holds that the classical models of oppression within society, such as those based on race/ ethnicity, gender, religion, nationality, sexual orientation, class, or disability, do not act independently of one another; instead, these forms of oppression interrelate creating a system of oppression that reflects the "intersection" of multiple forms of discrimination.<sup>418</sup> Kimberle Crenshaw developed this framework as a way to describe the particular ways Black women experience oppression.<sup>419</sup>

**Intervention Support Team** – The group that determines what kinds of consequences or interventions are required based on a student's behavior. They should consider the range of appropriate responses and provide continuous monitoring of student behavior. Schools should be responding to student behavior using a graduated approach that seeks to understand and begin to address the root causes of the behavior, from minor discipline issues to students requiring more intensive interventions (see Section 3.1 Key Elements of School Climate and Positive Discipline). Schools should have structures in place to respond proactively to students who require different kinds of interventions, including those where safety may be a concern.

**Involuntary Transfer** – Unlike voluntary transfers, involuntary transfers are a school administrator-initiated intervention in which the student is removed from his or her school of attendance to another comprehensive school or continuation school site, usually for the remainder of the school term. Involuntary transfers for academic reasons are prohibited in Section 3.5 on Alternative Schools, sub-section C. Policies for involuntary transfers for disciplinary reasons

must contain the same due process protections as expulsions, outlined in Section 3.2 Guidelines for Suspensions, Expulsions, and Removals, including guaranteeing the right to a hearing and to appointed counsel at public expense.

**Law Enforcement (prohibited from being stationed in schools)** – Includes sworn police officers (and unsworn if they are School Resource Officers), sheriff's deputies, parole and probation officers, tribal officers, truancy officers, ICE officers or other immigration officials, armed security guards and any other law enforcement personnel who fit any of the criteria below:

- a. Have the power to arrest, detain, interrogate, question, fine or ticket students on municipal code, juvenile, criminal or immigration related matters, and/or have the power to punish youth for violations of probation or parole;
- b. Carry any type of weapon, including but not limited to a firearm, baton, taser, rubber bullets, bean bags, and/or mace/pepper/OC spray, and/or carry handcuffs or other forms of restraint; and
- c. Report to, are certified by, or receive training from a police department, including personnel who can report students to a gang database or other police databases.

**LGBTQ+** – An acronym that stands for Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and includes a + to indicate that an acronym will never be fully inclusive of everyone's identities. Other variations of the acronym exist in an effort to be more inclusive, for example LGBTQI2S+. This version adds Intersex, Asexual, and Two-Spirit people to the acronym.

- a. Sexual orientation – Who you're attracted to and want to have relationships with. Sexual orientations include but are not limited to gay, lesbian, straight, bisexual, pansexual and asexual.
- b. Transgender person – someone who identifies with a different gender from the gender they were assigned at birth. For example: your birth certificate says male, and you identify as a woman.<sup>420</sup>
- c. Cisgender Person – someone who identifies with the gender they were assigned at birth. For example: your birth certificate says female, and you identify as a woman.<sup>421</sup>
- d. Intersex – is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male. For example, a person might be born appearing to be female on the outside, but having mostly male-typical anatomy on the inside. Or a person may be born with genitals that seem to be in-between the usual male and female types.<sup>422</sup>

**Lock-ups** – can include, but are not limited to: minimum, medium or maximum security placements; court-ordered or probation-run group homes; court-ordered drug treatment; juvenile halls or other youth detention facilities for youth pre-disposition (those in custody while traveling back and forth from court), or youth who have completed the court process and are awaiting transfer to placement or incarceration; adult jails (where youth under age 18 are required by federal law to be outside adult sight or sound); ICE (Immigration and Customs Enforcement) detention centers; and minimum, medium or maximum security youth prisons (including camps, ranches and youth authorities).

**Non-binary** – a person who does not fit into the strict gender binary of "male" or "female," and may be a combination of both, or neither.

- a. Gender Binary – A system of viewing gender as consisting solely of two, opposite categories, termed "male and female," in which no other possibilities for gender or anatomy are believed to exist. This system is oppressive to anyone who defies their sex assigned at birth, but particularly those who are gender-variant or do not fit neatly into one of the two standard categories.<sup>423</sup>

**OCR "disparate impact" standard**<sup>424</sup> – Disparate impact means differences in outcomes that may result from the application of "neutral" policies notwithstanding the absence of intentional discrimination. A violation of law may occur if:

- a. There is a significant disparity in the provision of a benefit or service that is based on race, national origin or sex; and
- b. The practice at issue does not serve a substantial legitimate justification (i.e. is not educationally necessary); or

- c. There is an alternative practice that is equally effective in meeting the institution's goals and results in lower disparities to trigger federal action.

A "Significant Disparity" requires that states show they have a plan to address disparities in discipline for IDEA funding.

**Out-of-school suspension** – Any temporary removal of a student from their regular school for at least a half day and up to 5 days consecutively or 10 days cumulatively for disciplinary purposes to another setting (e.g., home, behavior center). Out-of-school suspensions include removals in which educational services are provided (e.g., school-provided at home instruction or tutoring or removal to an alternative school or other regular school). Removals in which no educational services are provided are prohibited in this Model Code. Where they are still practiced in school districts, they must be included in data collection regarding out-of-school suspensions.

**Participation** – Any and all forms of involvement in decision-making that produce, impact or ensure educational outcomes.

**Pedagogy** – Science and art of education, specifically instructional theory; the art or science of teaching; instructional methods.<sup>425</sup>

**Police Officers** – Armed, sworn or certified law enforcement officers employed by city and/or school police departments. Police officers may be assigned to patrol schools, rotated in and out of schools as part of their regular duties, assigned to patrol the area around a school or nearby public transportation stops, or summoned in cases of emergency.<sup>426</sup>

**Preventive and Positive Discipline** – Preventive and positive approaches to discipline create safe, supportive and positive school climates and respond to misbehavior with interventions and consequences aimed at understanding and addressing the causes of misbehavior, resolving conflicts, meeting students' needs and keeping students in school. There are a variety of school-wide models for positive discipline and Section 3.1 describes key elements that any model should incorporate. Model Policies in Section 3.7 describe two models in particular that implement those key elements—School-wide Positive Behavior Interventions and Supports (SWPBIS) and Restorative Justice Practices.

**Procedural protections** – Procedures defined as fundamental and necessary by law and/or to protect human rights standards.

**Quality instruction provided during exclusion** – Defined as instruction by a certified teacher with grade and class appropriate material that allows the student to earn equal credits and receive parallel education as if they had been in their regular class and allows them to join their regular class after the term of the exclusion on pace with their classroom peers.

**Racism** – Four Dimensions of Racism (definitions below from Race Forward/Colorlines<sup>427</sup>):

- a. Internalized Racism – The private racial beliefs held by an individual. Examples include: Prejudice, internalized oppression and internalized privilege.
- b. Interpersonal Racism – How we act upon our racial beliefs when we interact with others. Examples include: Bias, bigotry, hate speech and violence.
- c. Institutional Racism – Racial inequities within institutions and systems of power. Examples include: School systems that provide unequal opportunities for people of different races.
- d. Structural Racism – Racial bias across institutions and society. Examples include: The racial wealth gap which reflects the cumulative effects of racial inequities.

**Restorative Justice** – A theory of justice that emphasizes seeking to repair rather than to punish when there is harm, using practices that:

- a. Bring understanding to how harm took place, its root causes and impacts;
- b. Include those involved and affected by the harm;
- c. Seek to support the needs of all involved;

- d. Center values of growth, safety, empathy, shared power, choice, and healing; and <sup>428</sup>
- e. Build mutual responsibility and constructive responses to conflict.

**Restorative Justice Practices** – A framework for a broad range of restorative justice approaches that proactively build school community based on cooperation, mutual understanding, trust and respect, and respond to conflict by including all people impacted by a conflict in finding solutions that restore relationships and repair the harm done. <sup>429</sup> These practices can be used to implement positive behavior in classrooms and on school campuses consistent with the framework in Section 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports (PBIS).

**School community** – Includes students, teachers, administrators, counselors, social workers and other school staff, families and the surrounding neighborhood/community.

**School norms or values** – A list of the ways students, teachers, administrators and all members of the school community should treat one another that are developed with participation of all stakeholder groups.

**School-wide Positive Behavior Intervention Supports (SWPBIS)** – SWPBIS is a research-based framework that can help schools design, implement and evaluate their approach to school discipline. Since every school is unique, SWPBIS does not prescribe a specific program or curriculum, rather sets out a process and key criteria for schools to follow. Under the SWPBIS framework, schools must:

- a. Use data to make decisions and solve problems;
- b. Focus on both prevention of problem behavior and positive interventions, such as counseling, mediation, Restorative Justice Practices and other interventions (listed under 3.1 Key Elements of School Climate and Positive Discipline, sub-section C.1);
- c. Model and teach behavior expectations and positive skills among students; and
- d. Continuously monitor implementation and adjust approaches as necessary.

SWPBIS uses a three-tiered approach to preventing and intervening in problem behavior. Tier 1 focuses on supports for all students in the classroom and school-wide to prevent problem behavior. Tier 2 focuses on “specialized” supports tailored to target groups of students who engage in misbehavior. Tier 3 provides highly individualized responses for those students who continue to face disciplinary problems despite the presence of Tier 1 and 2 supports. SWPBIS is meant to work collaboratively with specific practices, such as Restorative Justice Practices, to promote positive behavior in classrooms and on school campuses. <sup>430</sup>

**School Resource Officers (SROs)** – Any safety officers permanently assigned to work in a school or set of schools. Currently, in some localities, they are sworn or certified law enforcement officers employed by city police departments, whereas in other localities they make up an independent school police department and are employed directly by the school district. <sup>431</sup>

**School-based Infraction** – An action taken by a student on school grounds during the school's operating hours or at a school-sponsored function in violation of the school's discipline policies.

**Security officers or security guards** – Non-sworn personnel—either armed or unarmed—and hired or sub-contracted with individual schools or school districts to patrol in or around campuses.

**Self-Defense** – Right to use reasonable force to protect oneself or others from the fear of or infliction of bodily injury or violence.

**Serious Bodily Harm** – Bodily injury that will occur without significant delay which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**Stakeholder** – Any person/group with a vested interest in the educational outcomes at public schools, with such interests including but not limited to: the life success and potential of students and their families; the quality of working conditions for those who are employed at or rendering services to public schools; and the credibility and reputation of those who are charged with the responsibility of producing educational outcomes, paid or unpaid. This



includes students, parents or guardians, community members (including the religious community), teachers, school staff and administrators.

**Status offenses** – Offenses that target behaviors that are unlawful for children and youth under 18, but not unlawful for adults. It is the status of childhood that allows children to be the subject of a status offense.<sup>432</sup> Such policies include but are not limited to truancy, school absence, violation of daytime or night-time curfews, running away or homelessness, and use of alcohol or tobacco.

**Student Code of Conduct** – A Student Code of Conduct or Discipline Code is a policy adopted by a school or district to help create a safe and positive school environment for all students, staff and other members of the school community. The Code sets forth the expected behaviors for students and a process for how teachers, support staff and administrators should respond to behavior. Codes often include a description of school-wide preventive practices, students' and parents' rights and responsibilities, a list of behaviors that are prohibited and descriptions of the positive interventions (such as counseling, mediation and restorative circles) and exclusionary responses (such as suspension and expulsion) that staff can use to respond to those behaviors.

**Suspension** – Temporary exclusion from the student's daily class schedule, not to exceed 5 consecutive days or 10 total days per school year. Additional limits on the use of suspension are described in Section 3.2.D. The term of suspension shall be served in a classroom at the student's school or in a classroom at an off-site school district facility. In both cases, the student shall receive quality instruction as defined in Chapter 1 on Education. Suspension from a student's daily class schedule or from an individual classroom for more than 5 consecutive days or 10 cumulative days is prohibited in this Model Code.

**System-involved youth** – Youth with charges against them who are attending court or youth who have received disposition in juvenile court or a sentence in criminal court. International human rights definitions often use the term youth in conflict with the law.

- a. Common U.S. terms, including youth offenders, inmates, minors and wards as well as labels based on behaviors such as drug addict, pregnant teen, gang member, or drop out, stigmatize youth and infer that all system-involved youth are immoral, in need of correcting/fixing, and/or guilty of all they are charged with, and permanently label them based on their convictions, dramatically impacting how they view themselves and how their families, schools and communities view them as damaged or bad.
- b. Programs for system-involved youth often have high recidivism (failure rates) because they focus on strategies proven to be ineffective, such as abstinence/sobriety, zero-tolerance and boot camps. Adolescents respond instead to programs that focus on asset-based youth development, harm reduction, healthy choices and risk avoidance. Further, youth appreciate programming that enables them to critique and shape the world around them, including focusing on changes that need to occur in communities and systems rather than on changing youth and families.

**Threat Assessment** – The process of determining if a particular threat or concerning behavior is something that requires intervention may be called a "Threat Assessment" or it may be called something else depending on the school and their approach. The term "Threat Assessment" is a concern because it immediately labels the student as a threat rather than focusing on the supports that may be needed. Whether termed "Threat Assessments" or not, this process should not be set up as something distinct from the positive approaches to school climate and discipline that a school has in place.

**Transition** – A person's process of developing and assuming a gender expression to match their gender identity. Transition can include: coming out to one's family, friends, and/or co-workers; changing one's name; changing one's name and/or sex on legal documents; changing one's pronouns; changing one's hair style and/or clothing; hormone therapy (though not always); and possibly (though not always) some form of surgery. It's best not to assume how one transitions as it is different for everyone.<sup>433</sup>

**Trauma-Informed/Trauma-Sensitive** – Describes an environment (like a school) that is grounded in an understanding of and responsiveness to the impact of trauma, and that emphasizes physical, psychological, and emotional safety for survivors of trauma. Survivors have support and space to rebuild a sense of control and empowerment. These schools

anticipate and avoid policies and practices that are likely to re-traumatize people, and center student voice and participation in the development, delivery, and evaluation of services. Unlike trauma-specific services defined below, this is more of a universal framework that requires changes to the practices, policies, and culture of an entire school, so all staff have the awareness, knowledge, and skills needed to support trauma survivors.<sup>434</sup>

**Trauma-specific Services** – Clinical interventions that are designed to address trauma related symptoms and PTSD directly in individuals and groups.<sup>435</sup> These services may come from social workers, counselors, therapists or other service providers, whereas all school staff can use trauma-sensitive approaches in their day-to-day work with all students.

**Voluntary Transfer** – Any transfer from one educational institution to another that is initiated by a student, parent or guardian and is not mandated by a school or district.

**Wraparound Services** – Individualized community-based services that focus on the strengths and needs of the individual child. Wraparound services are developed through a team-planning process, where a team of individuals who are relevant to the well-being of the child (such as family members, service providers, teachers, and representatives from any other public health agency or community-based organization) collaboratively develop and implement an individualized “wraparound plan” that is culturally relevant.<sup>436</sup>

**Zero-tolerance** – Any school discipline policy or practice that results in an automatic disciplinary consequence such as suspension or expulsion for a student who commits a listed offense. A school discipline policy may be a zero-tolerance policy even if administrators have some discretion to modify the consequence on a case-by-case basis. Zero-tolerance policies should be eliminated.

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<sup>401</sup> Youth Justice Coalition, Welcome Home L.A. From The Cell Block To The Corner Block, <http://www.youth4justice.org/wp-content/uploads/2012/12/2012WelcomeHomeLA.pdf>. Use of the word neighborhoods refers to gangs, but is less criminalizing in that not all alleged gangs and the vast majority of people affiliated with them are not involved in crimes.

<sup>402</sup> *Kegler v. United States DOJ*, 436 F. Supp. 2d 1204, 1212 (D. Wyo. 2006).

<sup>403</sup> Collaborative For Academic, Social, And Emotional Learning (CASEL), WHAT IS SOCIAL AND EMOTIONAL LEARNING (SEL)?, available at <http://casel.org/why-it-matters/what-is-sel/>.

<sup>404</sup> Ladson-Billings, G. (1994). *The Dreamkeepers*. San Francisco: Jossey-Bass Publishing Co

<sup>405</sup> Coffey, Heather (2008) *Culturally Relevant Teaching*. Available at:

<http://k12blendedandonlinelearning.weebly.com/uploads/2/3/1/9/23193436/culturallyrelevantteaching.pdf>

<sup>406</sup> Metropolitan Center for Urban Education, *Culturally Responsive Classroom Management*, (2008).

<sup>407</sup> Adapted from Merriam-Webster Dictionary.

<sup>408</sup> The Glossary of Education Reform. Available at: <https://www.edglossary.org/curriculum/>.

<sup>409</sup> Id.

<sup>410</sup> Ibid 31.

<sup>411</sup> Ibid 31.

<sup>412</sup> Ibid 1.

<sup>413</sup> Definition from Human Rights Campaign. Available at: [www.hrc.org](http://www.hrc.org).

<sup>414</sup> Supra note 3.

<sup>415</sup> Id.

<sup>416</sup> Shawn Ginwright, “The Future of Healing: Shifting from Trauma Informed Care to Healing Centered Engagement” (2018). Available at: <https://medium.com/@ginwright/the-future-of-healing-shifting-from-trauma-informed-care-to-healing-centered-engagement-634f557ce69c>

<sup>417</sup> Kirwan Institute “Understanding Implicit Bias” Available at: <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>.

<sup>418</sup> Girls for Gender Equity, Schools Girls Deserve. Available at: <https://www.ggenyc.org/the-schools-girls-deserve/>.

<sup>419</sup> Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color* (1991). Available at: <https://www.racialequitytools.org/resourcefiles/mapping-margins.pdf>.

<sup>420</sup> Id.

<sup>421</sup> Id.

<sup>422</sup> Intersex Society of North America.

<sup>423</sup> Trans Student Educational Resources (2017) Source: <http://www.transstudent.org/definitions>.

<sup>424</sup> See 34 C.F.R. § 100.3(b)(2) (Dept. of Education). See also 42 U.S.C. § 2000d and Title VI of the Civil Rights Act (prohibiting race, ethnicity and national origin discrimination against e.g., applicants, students, employees) and Title IX (prohibiting sex discrimination).

<sup>425</sup> Adapted from Merriam-Webster Dictionary.

<sup>426</sup> Id.

<sup>427</sup> Race Forward “Race Reporting Guide” (2015) Available at:

[https://www.raceforward.org/sites/default/files/Race%20Reporting%20Guide%20by%20Race%20Forward\\_V1.1.pdf](https://www.raceforward.org/sites/default/files/Race%20Reporting%20Guide%20by%20Race%20Forward_V1.1.pdf).

<sup>428</sup> See generally Skiba et al., *supra* note 87.

<sup>429</sup> “What is Restorative Practice?” Safer Saner Schools, available at <http://www.saferanerschools.org/What-Is-Restorative-Practices.html>.

<sup>430</sup> What Is School-Wide PBS?, <http://www.pbismaryland.org/LeadershipForum2008/WhatisPBIS.pdf>.

<sup>431</sup> See generally Catherine Y. Kim & I. India Geronimo, Am. Civil Liberties Union, Policing In Schools: Developing A Governance Document For School Resource Officers In K-12 Schools (2009), available at [http://www.aclu.org/pdfs/racialjustice/whitepaper\\_policinginschools.pdf](http://www.aclu.org/pdfs/racialjustice/whitepaper_policinginschools.pdf); Jason Langberg Et Al., Advocates For Children’s Servs., Law Enforcement Officers In Wake County Public Schools: The Human, Educational, and Financial Costs (2011), available at [http://www.legalaidnc.org/public/ACS/IssueBrief\\_Feb-11\\_SROs\\_Rev.pdf](http://www.legalaidnc.org/public/ACS/IssueBrief_Feb-11_SROs_Rev.pdf).

<sup>432</sup> H. Ted Rubin, Juvenile Status Offenders – Historical Antecedents, The Breadth of Proscribed Behaviors, Separation of Non-Criminal Conduct from Delinquent Conduct, Constraints on Judicial Powers, <http://law.jrank.org/pages/1543/Juvenile-Status-Offenders.html>.

<sup>433</sup> Trans Student Educational Resources. Available at: <http://www.transstudent.org/definitions/>.

<sup>434</sup> American Institutes for Research (2014) Trauma-Informed Care and Trauma-Specific Services: A Comprehensive Approach to Trauma Intervention.

<sup>435</sup> IBID.

<sup>436</sup> Bazelon Center for Mental Health Law, Wraparound Services available at <http://www.bazelon.org/Where-We-Stand/Success-for-All-Children/Mental-Health-Services-for-Children/Wraparound-Services-.aspx>.



# DIGNITY IN SCHOOLS

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The Dignity in Schools Campaign (DSC) challenges the systemic problem of pushout in our nation's schools and works to dismantle the school-to-prison pipeline. As a national coalition, DSC builds power amongst parents, youth, organizers, advocates and educators to transform their own communities, support alternatives to a culture of zero-tolerance, punishment, criminalization and the dismantling of public schools, and fight racism and all forms of oppression. We bring together our members through direct action organizing, public policy advocacy and leadership development to fight for the human right of every young person to a quality education and to be treated with dignity.