



A MODEL CODE on Education and Dignity

CHAPTER 3: DIGNITY

3.2 Guidelines for Suspensions, Expulsions and Removals

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,¹²⁴ protecting students from harsh or degrading punishment,¹²⁵ and preventing and eliminating discrimination.¹²⁶ Schools shall avoid penalizing a student for behavior that does not cause serious damage to the development of that student or harm to others.¹²⁷ 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.¹²⁸ 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.¹²⁹

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.

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.¹³⁰

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.¹³¹

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.¹³²
2. No student under the age of 10 may be excluded from school for disciplinary reasons.^{133 134}
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.¹³⁵
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 below¹³⁶
 - 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 Processes¹³⁷

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)¹³⁸ 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.¹³⁹
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 Expulsion¹⁴⁰

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,¹⁴¹ 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.¹⁴² 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).¹⁴³ 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.¹⁴⁴
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.¹⁴⁵
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.¹⁴⁶

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.¹⁴⁷
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.¹⁴⁸
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.¹⁴⁹

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.

¹²⁴ 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.

¹²⁵ U.N. Convention on the Rights of the Child art. 37.

¹²⁶ *Id.* at art. II.

¹²⁷ THE RIYADH GUIDELINES, *supra* note 124 at ¶¶ 5, 31.

¹²⁸ U.N. Convention on the Rights of the Child art. 14.

¹²⁹ THE RIYADH GUIDELINES, *supra* note 124 at ¶ 30.

¹³⁰ 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 (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 (making out-of-school suspension an option only for Level E and F interventions, after other, non-exclusionary interventions have been tried).

¹³¹ 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.

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

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

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

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

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

¹³⁷ 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.

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

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

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- ¹⁴⁰ 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.
- ¹⁴¹ 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.
- ¹⁴² 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.
- ¹⁴³ See 34 C.F.R. 300.322 (rules implementing the parental participation provisions of the Individuals with Disabilities Education Act).
- ¹⁴⁴ 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”).
- ¹⁴⁵ See, e.g., *Bos. Pub. Schs.*, *supra* note 135 at 22.
- ¹⁴⁶ 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.
- ¹⁴⁷ 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).
- ¹⁴⁸ See, e.g., *Bos. Pub. Schs.*, *supra* note 135 at 21 (describing a limited emergency suspension procedure).
- ¹⁴⁹ See Resolution 118C, *supra* note 26.