



# Model Policies to Fight Criminalization

A Collection of Updated  
Resources From Our Model  
Code on Education & Dignity

*October 2018*

# Why Counselors, Not Cops?

The presence of police in schools has escalated dramatically in the last several decades, and the figures on arrests and referrals to law enforcement show disproportionate targeting of Black and Latino students. This is just one aspect of the school-to-prison pipeline, where some students are denied an opportunity to succeed, and instead are pushed out of school and into the juvenile or criminal justice system.

While the complete emotional, social and financial impact of daily police presence in schools is not fully understood, it is clear that students and their families are criminalized, and that school-based arrests and referrals to law enforcement go up when police have a regular presence in schools.

The Dignity in Schools Campaign has developed an updated set of Model Policies to Fight Criminalization that build on recommendations from our Model Code on Education & Dignity, last released in 2013.

These resources provide recommendations for schools, districts, states and federal policy-makers to end the regular presence of law enforcement in schools and end the criminalization of students.

The Model Policies are based on best practices, research and experiences of students, parents, intervention workers, peace-builders and educators from around the country, and on

a human rights framework for schools. They are designed so that communities and policy-makers can identify specific areas of concern and implement the recommended language, including changing laws and policies, while taking into account the diverse needs and characteristics of individual communities.

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**States are investing in the criminal and juvenile justice system instead of schools and supports for students**

**In every state in the US, spending on corrections grew at a much higher rate than education spending over the past three decades.**

**On average, per student spending on education at the state and local level decreased by 28% while spending on corrections increased by 44%.**

**During the 2015–16 school year, Black students represented 15 percent of the total student enrollment, and 31% of students who were referred to law enforcement or arrested, and these racial disparities are on the rise.**

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DSC will continue updating recommendations from our Model Code on Education & Dignity over the next few months and release a new version in 2019.

# Funneling money into more school police and other practices that criminalize students is not the answer to promoting safety in schools. Here is why.

## It Causes Harm: More police lead to more students being arrested for school discipline

- When police are in schools they tend to get involved in school discipline, escalating incidents that might have been resolved by a trip to the principal's office.
- Having police in schools and punitive school cultures makes it less likely that students will trust adults in the building to come forward with concerns they may have about other students.
- For immigrant and undocumented students, bringing police into the school building can lead to deportation for themselves or their families.

## It Won't Solve the Problem: Armed personnel pose a safety threat to students and other school staff, and there is no evidence they make schools safer

- Students are already facing violence from armed and unarmed law enforcement in their schools, including fatal and life-threatening injuries.
- Students of color, especially Black students, face the greatest risks. School-based arrest rates and corporal punishment are much higher for Black and Latino students, and studies have shown that subjects are more likely to shoot Black individuals in split-second situations, and we already see the tragic consequences. There has also been an increase in anti-immigrant and anti-Muslim sentiment in schools, and students are already feeling fearful.
- There is no evidence that armed personnel make schools safer during a school shooting. Armed police were present at Virginia Tech, Columbine and Parkland. The majority of mass shootings end when the shooter decides to end them, not by intervention by law enforcement, according to a FBI study.

## We Need Real Safety: Preventing violence requires long-term and short-term solutions

- Social and emotional learning and Restorative Justice teach young people how to manage their emotions and respond to conflicts in healthy ways.
- Counselors, wrap-around services and strong relationships with caring adults give struggling students support, and keep students who may need interventions from falling through the cracks.

We need to invest in  
counselors, social workers,  
Restorative Justice  
Coordinators, Community  
Intervention Workers and  
other supportive school  
staff that actually create  
safer schools.

- Having entrances and halls monitored by staff like Community Intervention Workers who know the student body well can preemptively address issues, intervene as conflicts arise, and quickly identify when something is wrong that requires an emergency response.
- School Resource Officers are police, not counselors or social workers. Students deserve trained mental health professionals. Telling students they can go to an SRO for counseling (when the SRO can report their conversations as part of a criminal investigation) is ineffective and can lead to negative consequences. ■

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# 01

# Avoiding Criminalization in School Discipline: Law Enforcement

## 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>1</sup>

No law enforcement personnel should be stationed in schools, and local police should not be assigned to patrol schools. Law enforcement entering schools shall be avoided whenever possible and shall be prohibited for incidents that shall be considered school discipline matters. The arrest or detention of a student shall be used only as a measure of last resort<sup>2</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>3</sup>

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1 THE RIYADH GUIDELINES, *supra* note 96 at ¶ 5.

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

3 THE RIYADH GUIDELINES, *supra* note 96 at ¶ 58.

# Recommended Language

## A.

### 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;
  - 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>4</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>5</sup>
5. Community Intervention Workers – Community members trained as peace-builders working in schools, around schools and/or in the larger community.

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<sup>4</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>5</sup> *Id.*

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>6</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.

## **B.**

**Districts and schools must End 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<sup>7</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>8</sup> that meet the criteria listed above.

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<sup>6</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>7</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>8</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.



**States, districts and schools shall adopt safety and discipline policies that emphasize ways of maintaining safety that minimize the involvement of law enforcement to the greatest extent possible, and identify steps for ending the need for 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.a. of the DSC Model Code), 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>9</sup> including:
  - a. Employing staff<sup>10</sup> trained to ensure safe and positive school climates, such as community intervention workers, peace-builders, transformative or restorative justice coordinators, behavior interventionists, school aides, counselors and other support staff<sup>11</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. 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;

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<sup>9</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>10</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>11</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.



- 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 sexual 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 and support staff trained in the positive approaches above to ensure that school staff reflect the communities in which they are working.

**D.**

**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.<sup>12</sup>**

1. Absent a “real and immediate”<sup>13</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>14</sup>

**E.**

**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 section B above).
2. Identifying incidents for which the school shall not call the police, and if called, the police will not respond,<sup>15</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;

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<sup>12</sup> Police in Schools Are Not the Answer to School Shootings (2018). Available at: <http://dignityinschools.org/resources/police-in-schools-are-not-the-answer-to-school-shootings/>.

<sup>13</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>14</sup> RESOLUTION 118B, supra note 52 at 16-17.

<sup>15</sup> See sample policies in Philadelphia and Los Angeles available at: [https://docs.wixstatic.com/ugd/10497b\\_f7d-8280b96464077a7fb1da49c4f85f0.pdf](https://docs.wixstatic.com/ugd/10497b_f7d-8280b96464077a7fb1da49c4f85f0.pdf); and <http://www.fixschooldiscipline.org/wp-content/uploads/2014/10/LASPD-Arrest-and-Citation-Reform-Policy-8-15-14.pdf>

- 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 immediate threat 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>16</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>17</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

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<sup>16</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>17</sup> YOUTH JUSTICE COALITION, WELCOME HOME L.A. FROM THE CELL BLOCK TO THE CORNER BLOCK, <http://www.youth-justice.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.

only for responding to serious criminal law matters where there is a real and immediate threat<sup>18</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 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 3.1 for a 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.

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<sup>18</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).

- 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 working in or around 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 sexual 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.

**F.**

**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>19</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 DSC Model Code model policy on Drugs and Alcohol).**

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<sup>19</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>.

**G.**

**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 3.2 in DSC Model Code on Dismantling Status Offense Laws).**

**H.**

**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.

**I.**

**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 peace-builders – 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 (as outlined in Section 3.1.c of the DSC Model Code);
  - 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 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 Model Policy 2 on Dress Codes in the DSC Model Code), 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 be either 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. SROs, 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>20</sup>, and the lack of due process protections in place<sup>21</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 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>22</sup>.

## J.

### 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>23</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

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20 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>

21 CalGang Criminal Intelligence System (2015) available at: <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>

22 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).

23 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).

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 his or her 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 personnels' 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 him- or herself.
  - 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 creating schools without law enforcement.

## **K.**

### **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 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. ■

# 02

# Avoid Criminalization in the Physical School Environment & Infrastructure

## Human Rights Goal

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.

## Recommended Language

**A. 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.

**B.**

**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.

**C.**

**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>1</sup> and employ more effective, less costly and less intrusive means of promoting school safety<sup>2</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>3</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;

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1 ACLU of Southern California, Here to Learn (2018). Available at: [https://www.aclusocal.org/sites/default/files/aclu\\_social\\_report\\_here\\_to\\_learn.pdf](https://www.aclusocal.org/sites/default/files/aclu_social_report_here_to_learn.pdf)

2 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)

3 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>.

- vi. A description of all items seized because of a metal detector scan;
  - vii. An analysis of loss of student class time associated with metal detector scans;
  - viii. An analysis of whether certain student populations have been disproportionately impacted by the metal detectors; and
  - ix. An analysis of student attendance, retention and drop-out rates;
  - 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 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. ■

# 03

# Protecting Immigrant Students from Criminalization

## 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>1</sup>**

**B. Districts and schools shall not collect or share any information related to the immigration status of students or their families.<sup>2</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>3</sup>

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1 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>

2 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>

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



- 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:
    - i. They can prove residency and age via other forms of documentation
    - ii. Sharing a social security number or birth certificate is voluntary, and
    - iii. 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>4</sup> block or revoke enrollment due to a lack of specific documents,<sup>5</sup> or place undue burdens on students and their families such as “re-registration”<sup>6</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 3.1.d of the DSC Model Code 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>7</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>8</sup> and other state and federal student privacy laws and policies.

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4 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).

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

6 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>.

7 “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.

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

- 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>9</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>10</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>11</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 Chapter 4 of the DSC Model Code).

**E. Districts and schools shall provide training to:<sup>12</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. ■

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<sup>9</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>10</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>11</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>12</sup> *Supra* Note 9

# 04

## Model Policy 1: Fighting

### 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 layout 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.

### Recommended Language

#### A.

#### Definitions

1. Fighting: Mutual, intentional participation in a physical altercation occurring between two or more persons with no one main offender and no major injury. 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>1</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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<sup>1</sup> Kegler v. United States DOJ, 436 F. Supp. 2d 1204, 1212 (D. Wyo. 2006)

**B.**

**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 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, counseling services, restorative justice, and peer mediation.

**C.**

**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 for intentional contact that results or could result in serious physical injury.
4. Right to Self-Defense. 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 facing criminal justice system consequences (including alternatives like deferred action or diversion) for actions off school ground, as adding a second form of discipline 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.

**D.**

**Process of Responding to School Fighting Incident- School fights shall be handled utilizing the continuum of behavior supports referenced in Section 3.1.b of the Model Code (in particular in Model 1 sections F and G and Model 2 section E, 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 minors 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>2</sup> except for the most serious and dangerous offenses when exclusion from school 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>3</sup>
  - b. The continuum of strategies include but are not limited to: Restorative Chats<sup>4</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>5</sup>, Restorative Group Conferencing, Restorative Peer Juries, Impact Panels<sup>6</sup>, and Mediated Conferencing<sup>7</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>8</sup> require a more intensive level of intervention that is individualized and includes a team approach that includes the student and people who know him or her best, including the student's family, the classroom teacher, administrator, school psychologist, counselor, social workers and mental health experts. The 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>9</sup>
  4. 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>10</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.

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2 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/>.

3 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>.

4 See generally, THE RESTORATIVE SCHOOLS VISION PROJECT, <http://www.restorativeschoolsproject.org/>.

5 See generally, TEACHERS UNITE FOR RESTORATIVE JUSTICE AND DIGNITY IN SCHOOLS, <http://teachersunite.net/340>.

6 CHI. PUB. SCH. POLICY MANUAL, supra note 91 at pg 38.

7 *Id.* at pg 52.

8 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).

9 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).

10 See generally WHAT IS THE WRAPAROUND PROCESS?, <http://cecp.air.org/wraparound/intro.html>.

**E.**

**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 lesbian, bisexual, gay, transgender or queer (LGBTQ).**

Note: The DSC Model Code calls for eliminating the presence of law enforcement stationed in schools, including School Resource Officers (see Section 3.2). However, we are including the guidelines below to help schools and districts which have not yet eliminated law enforcement from their schools, to try to mitigate harm to students.

**F.**

**States, districts, and schools shall limit the involvement of police (including School Resource Officers/SROs) in fighting and other school based infractions. They shall provide law enforcement support for serious incidents (detailed below) occurring on school property or at school sponsored events. When the SRO is providing law enforcement support, 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 shall be limited to situations in which:
  - a. It is necessary to protect the school community from a credible threat, serious bodily harm or death;
  - b. It is appropriate to address persons exhibiting criminal violations who are not students;
  - c. Someone is in the commission of a felonious act; or
  - d. There is the threat of an external predator.
2. The district and the schools 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. ■

# 05

## Model Policy 2: Dress Code

### 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>1</sup>

### Recommended Language

#### **A.** 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>2</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>3</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>4</sup>

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1 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)

2 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>

3 Definition from Human Rights Campaign. Available at: [www.hrc.org](http://www.hrc.org)

4 *Supra note 1*



**B.**

**Schools, districts and states 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>5</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 the student is 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.

**C.**

**Schools, districts and states 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>6</sup>. Some examples of items or dress that should be never be prohibited are:**

1. Hair styles such as braids, locs, beads, afros, afro-puffs, particular hair colors, combs, extensions, weave, 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.
4. See Section 3.2 of the DSC Model Code on Gang Profiling for model policies around items prohibited due to associations with gangs, crews or neighborhoods.

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<sup>5</sup> OR National Organization for Women, Model Dress Code (2015) available at: <https://noworegon.org/issues/model-student-dress-code/>

<sup>6</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)

**D.**

**Schools, districts and states 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 LGBTQI (Lesbian, Gay, Bisexual, Trans, Queer or Questioning, and Intersex) and TGNC (Trans and Gender Non-Conforming) students by enforcing strict gender roles that do not allow them to express their full identities. 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."

**E.**

**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.**

**F.**

**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>7</sup>**

1. Clothing may not depict, advertise or advocate the use of alcohol, tobacco, marijuana or other controlled substances.

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<sup>7</sup> Language adopted from Portland Public Schools Dress Code. Available at: <https://www.pps.net/Page/5888>

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.



**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>8</sup>**

1. Avoid Loss of Learning Time<sup>9</sup> (see also Section 3.1.c on Guidelines for Exclusion and 3.2 on Law Enforcement in the DSC Model Code)<sup>10</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 in the DSC Model Code).
  - 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

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<sup>8</sup> *Supra* note 4

<sup>9</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>10</sup> *id*

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 4. 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). ■

# 06

## Model Policy 3: Bullying Behavior

### Human Rights Goal

No student should have to experience bullying 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.

### 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>1</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.

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<sup>1</sup> See, e.g., THE OLWEUS BULLYING PREVENTION PROGRAM, <http://www.violencepreventionworks.org/public/index.page>.



**State, district and school policy shall prevent bullying behavior through:<sup>2</sup>**

1. Implementation of school-wide and classroom-based social and emotional learning strategies and positive approaches to discipline (described in section 3.1.a.C-E) including relationship building circles and other restorative practices as preventative measures;
2. Age-appropriate instruction on bullying prevention 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); and
4. Encouragement of parent participation in bullying behavior prevention initiatives.



**Schools and districts shall intervene to put an end to bullying behavior, utilizing discipline methods that reflect a commitment to restorative 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>3</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 Guidelines for Exclusion in Section 3.1.c of the DSC Model Code on Education and Dignity.

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<sup>2</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>3</sup> Circle of Friends Anti-Bullying Intervention. Available at: <http://www.antibullyingworks.co.uk/resources/intervention-strategies/circle-of-friends/>

**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>4</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 in the school environment;
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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4 MASS. ADV. LEGIS. SERV. CH. NO. 92-2010 (LEXIS NEXIS 2010)

# Model Policy 4: Drugs & Alcohol

## 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 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>1</sup>

## 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. (See Section 3.1.a of the DSC Model Code)
- 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>2</sup> programming or similarly modeled programs as they have been overwhelmingly proven to be both costly and

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<sup>1</sup> THE RIYADH GUIDELINES, supra note 96 at ¶ 35.

<sup>2</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>.



grossly ineffective in reducing either current or later onset of alcohol or drug use or abuse.



## 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>3</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>4</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>5</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>6</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

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3 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>.

4 "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.

5 See generally Alice Evans & Kris Bosworth, Building Effective Drug Education Programs, 19 PHI DELTA KAPPA CTR. FOR EVALUATION, DEV., AND RESEARCH (1997).

6 See generally Skager, *supra* note 129.

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>7</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

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<sup>7</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 AT 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).

(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>8</sup>

2. Suspension and expulsion are not considered intervention.<sup>9</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 practices, which are particularly suited to addressing issues of drug use or abuse.<sup>10</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>11</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.
  - 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>12</sup>

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8 See generally COTATI-ROHNERT PARK UNIFIED SCH. DIST. GOVERNING BD., POLICY ON ALCOHOL AND OTHER DRUGS, <http://www.crpUSD.org/stuserv/5131%206%20BP%20Alcohol%20and%20Other%20Drugs%206%2006.pdf>.

9 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/SSPVVolume1/SSP%20V1\\_ResourceDocuments/Bul-3277.pdf](http://www.lausd.oehs.org/docs/SSPVVolume1/SSP%20V1_ResourceDocuments/Bul-3277.pdf).

10 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%20Vitae\\_files/Restorative%20Justice%20in%20School%20Communities.pdf](http://www.skidmore.edu/~dkarp/Karp%20Vitae_files/Restorative%20Justice%20in%20School%20Communities.pdf).

11 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>.

12 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).

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 or 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>13</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>14</sup> ■**

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<sup>13</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>14</sup> See *generally* Preventive Measures and Mandatory Procedures, *supra* note 135.

