

# **DIGNITY IN SCHOOLS CAMPAIGN**

## **MODEL CODE WEBINAR II: SCHOOL EXCLUSION AND DUE PROCESS**



November 28, 2012

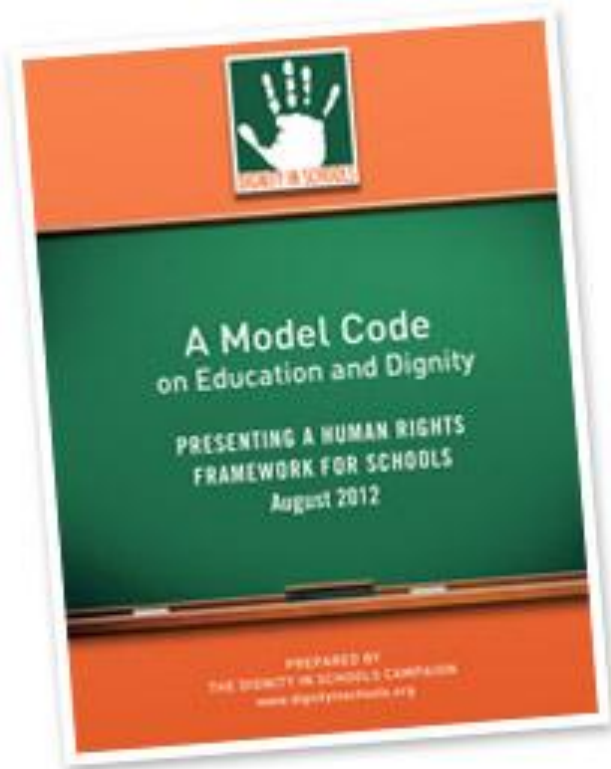
# DIGNITY IN SCHOOLS CAMPAIGN (DSC)

- Challenges the systemic problem of pushout and advocates for the human right of every young person to education and dignity
- More than 55 organizations from 19 states
  - Youth and parent base-building
  - Legal and advocacy
  - Teachers and educators
  - Researchers



# DSC MODEL CODE

- Model policies for schools, districts and legislators to address school pushout and create safe and positive climates for learning
- Based on research, best practices and on the ground experiences of students, parents and educators
- Rooted in fundamental human rights principle that the goal of education is to develop each young person to their full potential

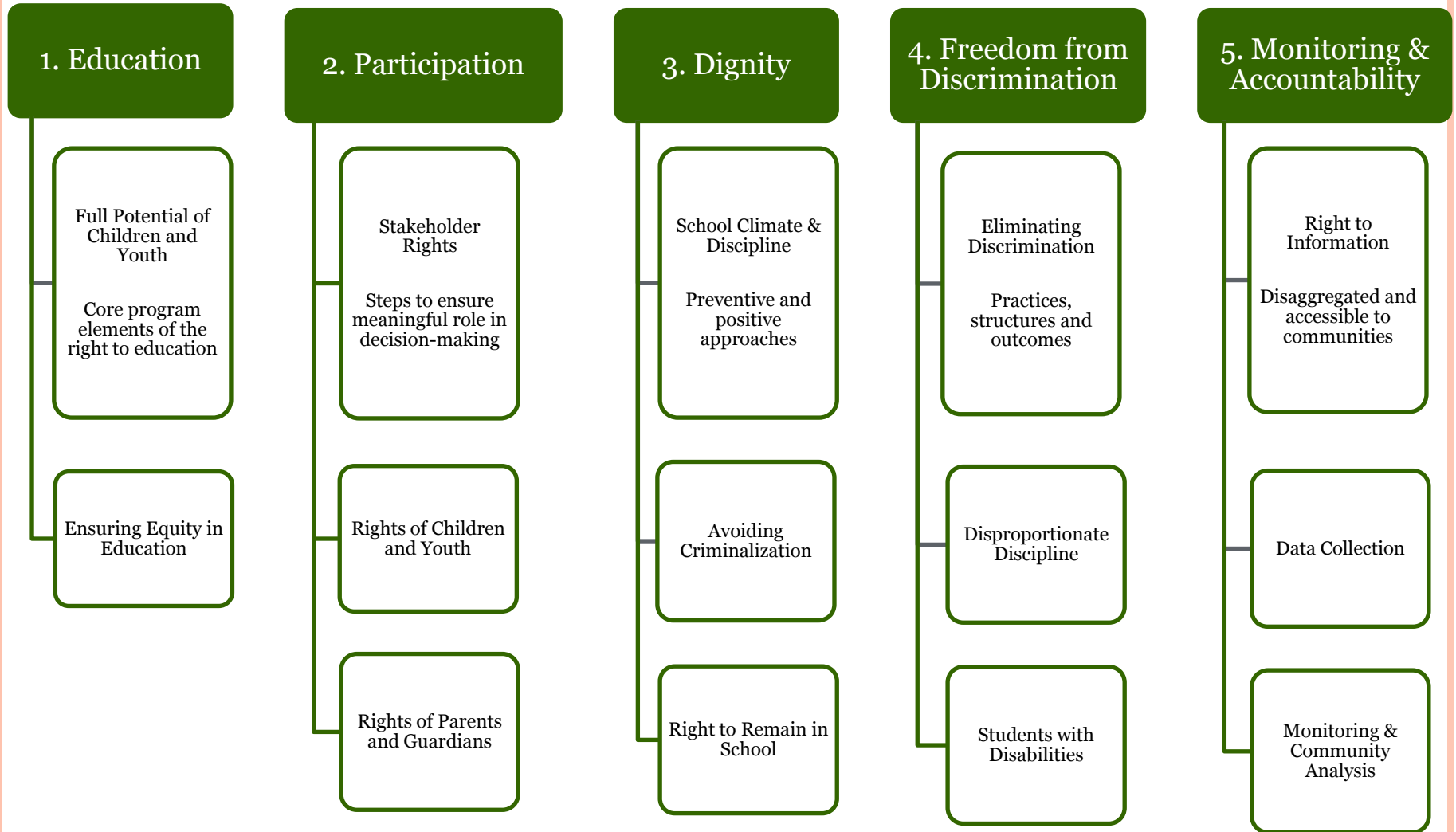


# HOW WAS THE MODEL CODE DEVELOPED?

- Drafted and reviewed by members of the Model Code Working Group
- Reviewed at two American Bar Association summits
- Reviewed and edited at community engagement sessions with students, parents and teachers in 8 different states (CA, FL, GA, IL, LA, MS, NY, PA)



# OVERVIEW OF THE MODEL CODE



# OVERVIEW OF SECTION 3.1

## **3.1 School Climate and Discipline**

3.1.a Key Elements of School-Wide Preventive and Positive Discipline

3.1.b Two Models for Preventive and Positive Discipline

- Model 1: School-Wide Positive Behavior Interventions and Supports
- Model 2: Restorative Practices

3.1.c Guidelines for Exclusion

- Exclusion for only the most serious offenses
- Limitations based on age, type of infractions and other factors
- Right to educational services during exclusion

3.1.d Due Process

- Rights to notice and hearing
- Right to counsel

# 3.1.C GUIDELINES FOR EXCLUSION

## A. Definition of Exclusion

- Suspension
  - Exclusion from daily class schedule up to 5 consecutive or 10 total days
  - Served in a classroom at the student's school or off-site district facility
  
- Expulsion
  - Exclusion from school more than 5 consecutive or 10 total days
  - Removal from current school environment with alternative education
  
- Involuntary Transfer
  - School administrator-initiated transfer
  - For disciplinary reasons, must adhere to the same due process protections as expulsions (prohibited for academic reasons)

## 3.1.C GUIDELINES FOR EXCLUSION

### **B. Exclusion may be considered only when a student commits the most serious and dangerous offenses**

- No student may be excluded from school:
  - a. Until and unless non-exclusionary discipline alternatives have been carefully considered, tried and documented to the extent reasonable and feasible,
  - b. Only if exclusion is absolutely necessary to protect safety, and
  - c. Only after considering the full impact of the decision on both the student and the school community.



# 3.1.C GUIDELINES FOR EXCLUSION

## C. Factors to consider in deciding whether to exclude

- Consider factors that contributed to the behavior and whether that behavior could be alleviated by helping the student deal with those factors

Examples:

- Mental illness or undiagnosed disabilities
  - Appropriateness of the student's placement or setting
  - Family situations (foster care, domestic violence, recent death)
  - Age and ability to understand consequences
  - Expression of remorse
  - Whether the student was acting in self-defense
- If such factors exist, refer the student to appropriate services or interventions before the student may be referred for exclusion

# 3.1.C GUIDELINES FOR EXCLUSION

## D. Limitations on exclusion

- No exclusion for children under 10
- No suspension of more than 3 days for students under 15
- No suspension of more than 5 consecutive or 10 total days
- No expulsion/involuntary transfer for more than one school term
  
- Suspension prohibited for :
  - Being late to school or class or being absent
  - Violating school dress code or uniform rules
  - Minor behavior infractions, including but not limited to insubordinate behavior, defiance, etc.
  - Behavior that happens off of school grounds and not as part of a school-sponsored activity

## 3.1.D DUE PROCESS: RIGHT TO NOTICE

For any type of exclusion in the code, written notice to the parent and student is required.

### **For suspensions of 5 days or less:**

- Written notice to the student and to the student's parent or guardian within 24 hours of the incident leading to the proposed suspension, describing the infraction, the length of the proposed suspension and the student's rights as described in this section
- Must be in parent/guardian's primary language

## 3.1.D DUE PROCESS: RIGHT TO NOTICE

### **For expulsions of 10 days or more requiring a full hearing:**

- Purpose of notice provisions: parent or guardian and student have meaningful opportunity to participate
- Notice to parent/guardian are more stringent and must include:
  - The purpose, time and location of the hearing;
  - The charge the student is facing and any supporting evidence that will be introduced at the hearing, including copies of witness statements, investigative reports and video or photographic surveillance;
  - Notice of the student's right to have an attorney, to call witnesses and present evidence, to view the student's records, including discipline files and to challenge the school's evidence;
  - Notice of the right to translation and interpretation in the language that the parent or guardian understands best; and
  - A list of all people that will be present at the hearing, at least 2 days in advance of the hearing.

## 3.1.D DUE PROCESS: RIGHT TO HEARING

### **For suspension of 5 days or less**

- Exclusion conference to discuss school's version of facts and student's version of facts and/or explanation
- Reasonable opportunity for parent/guardian to attend, right to a neutral decision-maker, and right to appeal

### **For expulsions of 10 days or more (total or cumulative)**

- Full hearing, with right to counsel, right to neutral decision maker, evidence rules, and right to appeal
- School has burden of proof: clear and convincing evidence
- Student has right to refuse to testify, and to keep parent or guardian from testifying

# RIGHT TO COUNSEL

## **Main provision is 3.1.d (D)** **(within School Discipline-Due Process)**

“Any low-income student who is facing exclusion for ten days or more, whether consecutively or cumulatively during a school year, shall be provided upon request with legal counsel in any administrative or judicial proceeding (including appeal) as a matter of right and at public expense. All students are presumed low-income, and the income of the student’s family shall not be considered in determining whether a student is low-income. Immediately upon written notice of the proposed disciplinary response, the school shall notify the student that he or she is entitled to counsel upon request and ask the student whether he or she wishes to have counsel appointed.”

# RIGHT TO COUNSEL

- Provision of counsel key to rest of Code (enforcement)
- Appendix explains further info on rationale for counsel provision
- Other right to counsel provisions are 3.3.a(B)(3) (truancy) and 4.3(D)(3) (special education manifestation due process/judicial review proceedings)

# COMMUNITY EFFORTS TO REFORM SCHOOL CODES

– HAPPENING ON LOCAL, STATE, AND FEDERAL LEVELS

- Philadelphia – Major/Modest changes came about as a result of a four-year effort.
- In August, new Code of Student Conduct was adopted.
- Old Code: offenses were divided between Level One and Level 2 (more serious), combined with a table of maximum punishments for certain offenses.
- New Code:
  - Five Levels of Intervention: from in-school intervention (which may include ISS) to disciplinary school assignment w/expulsion referral.
  - Clarity that certain behaviors that may be considered disrespectful, but not violent, should not result in OSS
  - “Use out-of-school suspensions as a last resort and only when in school interventions and consequences are insufficient to address a student’s inappropriate behavior”



# COMMUNITY EFFORTS TO REFORM SCHOOL CODES

But the changes have shortcomings:

- ISS language is inconsistent, for example in the case of truancy
- Lack of clarity about how some more minor incidents of fighting should be handled
- Lack of clarity as to when police should be called.
- Discussions about school security and policing were separated from the deliberations about the code.
- There is a rhetorical commitment to alternative approaches to discipline, but where are the resources/supports?

# COMMUNITY EFFORTS TO REFORM SCHOOL CODES

## Statewide Reforms: The Case of Maryland

Proposed state regulations would:

- 1) Require the reporting and collecting of student arrest data,
- 2) Require districts experiencing high disproportionate impacts of students of color getting suspended to develop remediation plans to eliminate those disparities, and
- 3) Require that suspended students receive homework while on suspension, among other changes.

# **Question & Answer**

# UPCOMING WEBINARS IN 2013

- January - School Policing
- March - Data and Monitoring
- May - Restorative Practices
- July - Positive Behavior Interventions and Supports
- Sept - Alternative Schools

# LEARN MORE ABOUT DSC

- Read the Model Code and share with others  
<http://www.dignityinschools.org/our-work/model-school-code>
- Hold a Model Code training in your community  
Contact Fernando, DSC Field Organizer  
[fernando@dignityinschools.org](mailto:fernando@dignityinschools.org), 205-960-3498
- See highlights from the DSC National Week of Action 9/29-10/6  
<http://www.dignityinschools.org/our-work/week-of-action>
- Learn about Solutions Not Suspensions:  
A Call for a Moratorium on Out-of-School  
Suspensions, DSC and OTL  
<http://www.stopsuspensions.org/>



**SOLUTIONS**  
**NOT SUSPENSIONS**  
a call for a moratorium on out of school suspensions

# CONTACT INFORMATION

[www.dignityinschools.org](http://www.dignityinschools.org)

Liz Sullivan, National Economic and Social Rights Initiative  
liz@nesri.org, 646-342-0541

Sarah Biehl, Ohio Poverty Law Center  
sbiehl@ohiopovertylaw.org, 614-824-2504

John Pollock, Public Justice Center  
jpollock@publicjustice.org, 334-956-8308

Harold Jordan, ACLU of Pennsylvania  
hjordan@aclupa.org, 215.592.1513 x123