



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.5 Alternative Schools

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#### Human Rights Goal

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

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

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

##### A. Standards for Alternative Schools

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

##### B. Voluntary Placement

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

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

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

### **C. Involuntary Placement**

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

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

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

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

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

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

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

**G. Staff Qualifications**

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

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

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

**I. Parent and Guardian Participation**

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

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

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

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

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

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

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

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

<sup>193</sup> Under Nevada law, an alternative program may operate shortened days, but must also provide a total "number of minutes of instruction that is equal to or greater than that which would be provided under a program consisting of 180 school days." NEV. REV. STAT. § 388.537(5)(a) (2012).

Virginia's grant program allows for "extended day" services, but not shortened day services. VA. CODE ANN. § 22.1-209.1:2(B)(7) (2011).

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

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

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

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

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

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

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