



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

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

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#### Human Rights Goal

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

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#### Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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