



A MODEL CODE on Education and Dignity

CHAPTER 4: FREEDOM FROM DISCRIMINATION

4.3 Racial Disparities in School Discipline²⁹⁹

Human Rights Goal

Schools must ensure that students of every race and ethnicity receive equitable treatment when it comes to school climate and discipline. Students of color must not experience disproportionate use of harsh discipline policies and exclusionary discipline like suspensions, expulsions, arrests and referrals to law enforcement. To fully protect students' human right to education, schools must fully acknowledge the ways in which the education system has promoted racial injustice historically and currently, and proactively work to dismantle systemic racism inside and outside of the school. In order to address racial disparities in school discipline, schools must also actively address the impact of systemic racism on all of their policies and practices to ensure that students are not being denied equal opportunities to an education based on their race.

Definitions

- Four Dimensions of Racism** (definitions below from Race Forward/Colorlines³⁰⁰):
 - Internalized Racism** – The private racial beliefs held by an individual. Examples include: Prejudice, internalized oppression and internalized privilege.
 - Interpersonal Racism** – How we act upon our racial beliefs when we interact with others. Examples include: Bias, bigotry, hate speech and violence.
 - Institutional Racism** – Racial inequities within institutions and systems of power. Examples include: School systems that provide unequal opportunities for people of different races.
 - Structural Racism** – Racial bias across institutions and society. Examples include: The racial wealth gap which reflects the cumulative effects of racial inequities.
- Implicit Bias** – The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. They cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance. These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages. In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.³⁰¹
- Explicit Bias** – Conscious thoughts or beliefs about other people based on characteristics such as race, ethnicity, age and appearance that impact how we perceive or treat them. Individuals may choose to conceal these biases for the purposes of social and/or political correctness, but that is not the same as the unconscious implicit bias explained above.³⁰²

Recommended Language

A. States, districts and schools must implement the following key elements for ending racial disparities in school discipline:

1. Commit to upholding the human right to quality education for all students, and understand how exclusionary discipline is a barrier to that right.
 - a. Strictly limit exclusionary discipline, which takes students out of the classroom and robs them of critical learning time—without evidence that it leads to improvement in student behavior—and is correlated with students not completing school and later involvement in the juvenile justice system.
 - b. Resources:
 - i. Model Code Chapter 1 Education for the Full Potential of Children and Youth.
 - ii. Department of Education Office of Civil Rights and Department of Justice Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,³⁰³ which describes how schools can meet their legal obligations under federal civil rights law to administer student discipline without discriminating against students on the basis of race, color or national origin.
 - iii. Council of State Governments “Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’ Success and Juvenile Justice Involvement.”³⁰⁴
 - iv. ACLU and Center for Civil Rights Remedies “11 Million Days Lost: Race, Discipline and Safety in US Public Schools”³⁰⁵
2. Understand the history of racial injustice in education and how it impacts current experiences for students and their families in school.
 - a. Schools and districts must understand the connection between harsh school discipline practices, racial disparities in discipline rates and the historic and systemic failure of the education system to provide an equitable education for students of color, including other connected issues like extreme resource inequity, racial segregation and overt discrimination.
 - b. These topics should be part of the student curriculum, as well as onboarding and professional development for all school staff
 - c. Resources:
 - i. Alliance for Educational Justice and Advancement Project’s “We Came to Learn: A Call for Police-Free Schools.”³⁰⁶
 - ii. NAACP LDF’s “Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline.”³⁰⁷
3. Address the impacts of institutional and structural racism in schools beyond school discipline.
 - a. At the State and District level, address issues of resource equity and school segregation to ensure that all schools have the resources they need to provide a quality education, and students of color are not segregated into lower resourced schools.
 - b. Invest in creating a pipeline for teachers of color so that school staff are more representative of the communities they are teaching in.³⁰⁸
 - c. Ensure universal access to quality instruction, including gifted and talented programs where they exist, Advanced Placement courses, art, music, physical education and culturally relevant curriculum, and end the practice of putting students on “tracks” that limit their opportunities for success.
 - i. See Chapter 1.3 Culturally Relevant Curriculum and Teaching.
4. Adopt a school-wide preventative positive approach to discipline that creates a positive school climate for students and addresses misbehavior in ways that get to the root causes of the behavior and repairs the harm that was done.

- a. Resources:
 - i. See Section 3.1 Key Elements of School Climate and Positive Discipline and 3.7.a Model Policy on School-wide Positive Behavior Interventions and Supports and 3.7.b Model Policy on Restorative Justice Practices.
 - ii. See Section 4.2 Disproportionate Use of Discipline.
 - iii. See U.S. Department of Education “Directory of Federal School Discipline Resources.”³⁰⁹
5. Proactively engage all stakeholders in understanding why racial disparities in school discipline are happening, and to hear solutions for how to address the problem.
 - a. Use school climate surveys to gather this information, in addition to other outreach both formal and informal.
 - b. Resources:
 - i. Chapter 2 on Participation.
 - ii. The National Center on Safe Supportive Learning Environments (NCSSLE) School Climate Compendia.³¹⁰
6. Assess and update school discipline policies to end reliance on harsh exclusionary discipline, remove any vague policies that may lead to unequal treatment based on implicit or explicit biases, and ensure that all policies are clear to students, parents, school staff, and the larger community.
 - a. Eliminate all suspensions and other exclusionary discipline responses for vaguely defined behaviors such as “disruption,” “willful defiance” or “defying authority” that are highly subjective, leaving an opening for implicit and explicit biases to impact how a student’s typical adolescent behavior is perceived.
 - b. Resources:
 - i. Section 3.2 Guidelines for Suspensions, Expulsion and Removals.
 - ii. Section 4.2 Disproportionate Use of Discipline.
 - iii. See the National Compendium on School Laws and Regulations for examples of policies in place across the country.³¹¹
7. Use accurate data to understand how school discipline is being implemented across all student groups, and use that information to improve.
 - a. Data should be disaggregated by age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care, all consistent with privacy constraints established under federal and state laws and regulations.
 - b. Resources:
 - i. Chapter 5 Data, Monitoring and Accountability.
 - ii. Race Forward’s Racial Equity Impact Assessment.³¹²
8. Be responsive to student, parent, and community concerns that are brought to the school about inequitable treatment of students, and see them as an opportunity to improve.
 - a. This includes concerns brought through official roles that stakeholders may play in the school (for example participation on the School Climate and Culture Leadership Team), concerns raised by community organizations, or informally raised by any stakeholder in the school community.
 - b. Ensure there is a clear complaint process for stakeholders to formally share their concerns or complaints
 - i. This should include a process for when the person or people responsible for taking complaints are involved in the original concern.
 - ii. The process should be transparent about what will be triggered once a complaint is filed.
 - c. Resources:

- i. Chapter 2 Participation.
 - ii. Section 5.2 Monitoring and Community Analysis.
9. Provide training and support to school staff that allows for real and honest dialogue that lead to changes in practices. Trainings should include information on how both implicit and explicit bias may be contributing to school staff response to students.
- a. School staff trainings should be an integral part of a school or district strategy to end racial disparities, but it cannot be the only step that is taken. Without the other steps listed here, and ongoing follow up and support for staff, trainings are likely to be ineffective.
 - b. Resources:
 - i. Fix School Discipline "Toolkit for Educators."³¹³
 - ii. Kirwan Institute "Implicit Bias Module Series"³¹⁴
10. Use accountability measures that work when school staff are not following the policies or upholding the value of equity in your school community, for example, disproportionately targeting Black students for suspensions, referrals to law enforcement and for over-identification of certain disabilities such as "emotional disturbance."
- a. Resources:
 - i. Educators for Excellence "Ending Racial Discipline Disparities: An Educators Guide to School-based Change."³¹⁵
 - ii. Fix School Discipline "Toolkit for Educators", in particular the Implementation and Monitoring Section.
 - iii. Safe and Supportive School Discipline Initiative "Addressing the Root Causes of School Discipline Disparities: An Educators Action Planning Guide"³¹⁶
 - iv. Discipline Disparities Research to Practice Collaborative "How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions"³¹⁷

B. States, Districts and Schools Must Comply with Federal Civil Rights Law and Use the 2014 Federal School Discipline Guidance as a Resource in Ending Racial Disparities in School Discipline

1. Comply with legal obligations under existing federal civil rights law to administer student discipline without discriminating against students on the basis of race, color or national origin, as outlined in the Department of Education Office of Civil Rights and Department of Justice Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline.^{318 319}
2. Share the following provisions in the guidance with schools and districts that have racial disparities, which lay out the legal framework coming out of Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c *et seq.* and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulations, 34 C.F.R. Part 100:
 - a. "When schools respond to student misconduct, Titles IV and VI require that the school's response be undertaken in a racially nondiscriminatory manner."
 - b. "These statutes cover school officials and everyone school officials exercise some control over, whether through contract or other arrangement, including school resource officers. Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or law enforcement personnel."
 - c. "The administration of student discipline can result in unlawful discrimination based on race in two ways: first, if a student is subjected to *different treatment* based on the student's race, and second, if a policy is neutral on its face—meaning that the policy itself does not mention race—and is administered in an evenhanded manner but has a *disparate impact*, *i.e.*, a disproportionate and unjustified *effect* on students of a particular race." (emphasis in original).
 - d. "Intentional discrimination occurs when a school has a discipline policy that is neutral on its face (meaning the language of the policy does not explicitly differentiate between students based on their race), but the

- school administers the policy in a discriminatory manner or when a school permits the *ad hoc* and discriminatory discipline of students in areas that its policy does not fully address.”
- e. “Selective enforcement of a facially neutral policy against students of one race is also prohibited intentional discrimination.”
 - f. “If school officials believed that students of a particular race were likely to wear a particular style of clothing, and then, as a means of penalizing students of that race (as opposed to as a means of advancing a legitimate school objective), adopted a policy that made wearing that style of clothing a violation of the dress code, the policy would constitute unlawful intentional discrimination.”
 - g. “Schools also violate Federal law when they evenhandedly implement facially neutral policies and practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as “disparate impact.”
 - h. “In determining whether a facially neutral policy has an unlawful disparate impact on the basis of race, the Departments will engage in the following three-part inquiry:
 - i. (1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races? ... If there were no adverse impact, then, under this inquiry, the Departments would not find sufficient evidence to determine that the school had engaged in discrimination. If there were an adverse impact, then:
 - ii. (2) Is the discipline policy necessary to meet an important educational goal?³²⁰ In conducting the second step of this inquiry, the Departments will consider both the importance of the goal that the school articulates and the tightness of the fit between the stated goal and the means employed to achieve it...If the policy is necessary to meet an important educational goal, then the Departments would ask:
 - iii. (3) Are there comparably effective alternative policies or practices that would meet the school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group, or is the school’s proffered justification a pretext for discrimination? If the answer is yes to either question, then the Departments would find that the school had engaged in discrimination.”

²⁹⁹ Ending racial disparities in school discipline is central to the work of the Dignity in Schools Campaign, and The Model Code on Education and Dignity is a holistic set of policies that if implemented with fidelity, would greatly reduce or remove completely, disparate treatment of students. Therefore, in addition to the elements listed in this section on approaches that seek to end racial disparities in school discipline, the entire code represents our recommended framework in a systemic and transformational way, and there is much more detailed information on some of these approaches in other sections of the code.

³⁰⁰ Race Forward “Race Reporting Guide” (2015) Available at:

https://www.raceforward.org/sites/default/files/Race%20Reporting%20Guide%20by%20Race%20Forward_V1.1.pdf

³⁰¹ Kirwan Institute “Understanding Implicit Bias” Available at: <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>.

³⁰² Id.

³⁰³ While this guidance was rescinded in 2019, this letter outlines schools’ obligations under existing law, so the information is still useful as a resource in constructing school discipline policies that are not racially discriminatory.

³⁰⁴ Council of State Governments (2011) Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’ Success and Juvenile Justice Involvement. Available at: <https://csgjusticecenter.org/youth/breaking-schools-rules-report/>.

³⁰⁵ 11 Million Days Lost: Race, Discipline and Safety in US Public Schools. ACLU and Center for Civil Rights Remedies. Available at: https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf.

³⁰⁶ Alliance for Educational Justice and Advancement Project (2018) “We Came to Learn: A Call for Police-Free Schools. Available at: <https://advancementproject.org/wecametolearn/>.

³⁰⁷ NAACP LDF (2017) “Locked Out of the Classroom: How Implicit Bias Contributes to Racial Disparities in School Discipline” Available at: https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf.

³⁰⁸ IZA Institute of Labor and Economics. The Long-Run Impacts of Same-Race Teachers (2017). Available at: <https://www.iza.org/publications/dp/10630>.

³⁰⁹ U.S. Department of Education “Directory of Federal School Discipline Resources”. Available at: <https://www2.ed.gov/policy/gen/guid/school-discipline/appendix-1-directory.pdf>.

³¹⁰ Many examples of school climate surveys can be found here: <https://safesupportivelearning.ed.gov/topic-research/school-climate-measurement/school-climate-survey-compedium>.

- ³¹¹ National Compendium on School Laws and Regulations. Available at: <https://safesupportivelearning.ed.gov/school-discipline-compendium>
- ³¹² Race Forward “Racial Equity Impact Assessment” Available at: <https://act.colorlines.com/acton/attachment/1069/f-011e/1/-/-/-/ /Racial%20Equity%20Impact%20Assessment.pdf>.
- ³¹³ Public Counsel, Fix School Discipline Toolkit for Educators. Available at: http://www.fixschooldiscipline.org/wp-content/uploads/2017/02/FSD_EducatorToolkit_small.pdf.
- ³¹⁴ Available at: <http://kirwaninstitute.osu.edu/implicit-bias-training/>.
- ³¹⁵ Educators for Excellence “Ending Racial Discipline Disparities: An Educators Guide to School-based Change Available at: <https://e4e.org/what-we-do/policy-solutions/ending-racial-discipline-disparities>.
- ³¹⁶ Addressing the Root Causes of School Discipline Disparities: An Educators Action Planning Guide. Safe and Supportive School Discipline Initiative. Available at: <https://safesupportivelearning.ed.gov/sites/default/files/ActionPlanningGuide508.pdf>.
- ³¹⁷ How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions. Discipline Disparities Research to Practice Collaborative (2014) Available at: http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Disparity_Intervention_Full_121114.pdf.
- ³¹⁸ While this guidance was rescinded in 2019, this letter outlines schools’ obligations under existing law, so the information is still useful as a resource in constructing school discipline policies that are not racially discriminatory. It did not create any new laws or policies. Those legal obligations still stand.
- ³¹⁹ Dignity in Schools Campaign “Delayed and Denied: Rescinded Federal Guidance Threatens Students’ Rights Protections. Available at: <http://dignityinschools.org/delayed-and-denied-rescinded-federal-guidance-threatens-students-rights-protections/>.
- ³²⁰ See generally *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394 (11th Cir. 1993) at 1411-12 (explaining that courts have required schools to demonstrate an “educational necessity” for the challenged program, practice, or procedure); Title VI Manual at 51.