



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.4 Truancy Prevention and Dismantling Status Offense Laws

#### Human Rights Goal

In order to prevent the criminalization, institutionalization, detention, incarceration and/or deportation of young people and ensure their right to dignity, any conduct not considered an offense if committed by an adult, including truancy, shall not result in criminal penalties if committed by a young person.<sup>176</sup> Schools shall take measures to encourage regular attendance and reduce drop-out rates through specialized services and educational approaches to address the underlying causes of truancy and avoid the criminalization of youth.<sup>177</sup>

#### Definitions

1. **Status offenses** – Offenses that target behaviors that are unlawful for children and youth under 18, but not unlawful for adults. It is the status of childhood that allows children to be the subject of a status offense.<sup>178</sup> Such policies include but are not limited to truancy, school absence, violation of daytime or night-time curfews, running away or homelessness, and use of alcohol or tobacco.

#### Recommended Language

- A. **Juvenile and criminal justice authorities shall not impose criminal penalties (including ticketing, citations, fines, detention, probation violation, incarceration or deportation) on any student for any status offense and all such offenses shall be removed from local municipal and state penal codes.**
- B. **Such matters shall be treated as issues in need of prevention, intervention and student and family outreach and supports. Funds used for suppression, prosecution, collection, incarceration and/or deportation shall be redirected to provide for needed interventions and supports.**
- C. **Education Policy Regarding Truancy Prevention and Correction**
  1. Schools shall not punish students based on previously criminalized status offenses, such as truancy.
  2. Schools shall adopt a school-wide prevention policy that addresses social and emotional development, family support, and early intervention as a necessary foundation to a truancy policy.<sup>179</sup> (See 3.1 Key Elements of School Climate and Positive Discipline)
    - a. Efforts must include early assessment and intervention in elementary, middle, junior high and high school levels to both predict and prevent future school push-out and absence of students.
  3. Students shall not receive financial penalties, fines, criminal sanctions, loss of privileges (such as driver's licenses) or municipal code sanctions for truancy.
  4. All responses to and consequences for truancy shall be handled within the school setting using relevant interventions that identify and address the individual reasons for a student's lateness and/or absenteeism.
    - a. Upon 5 days of unexcused absences, the school system shall initiate meaningful communications with the student and family or guardian to determine the underlying cause(s) of the unexcused absences and to develop a plan to ensure school attendance.

<sup>176</sup> The Riyadh Guidelines, supra note 124 at ¶ 56.

<sup>177</sup> U.N. Convention on the Rights of the Child art. 38; The Riyadh Guidelines, 96 note 85 at ¶ 30.

<sup>178</sup> H. Ted Rubin, Juvenile Status Offenders – Historical Antecedents, The Breadth of Proscribed Behaviors, Separation of Non-Criminal Conduct from Delinquent Conduct, Constraints on Judicial Powers, <http://law.jrank.org/pages/1543/Juvenile-Status-Offenders.html>.

<sup>179</sup> Resolution 118B, supra note 26 at 2-3.

- b. Upon 10 days of unexcused absences, the school system shall meet in person with the student and family or guardian, conduct appropriate evaluations of the student, and provide necessary supports and services to ensure school attendance.
  - c. Schools shall not use exclusion as a response to truancy.<sup>180</sup>
  - d. Only when all school-based interventions have been exhausted and student and parent meetings have occurred shall schools consider voluntary transfer of students to another school setting. Involuntary transfers are not permitted for truancy. If voluntary transfer is considered, efforts must be made to refer youth to schools that better meet their individual educational, social and emotional needs, and which do not provide an inferior education setting. Voluntary school transfers must be made in order to facilitate and support rather than curtail a student's current or future efforts to prepare for college or career.
5. Schools shall screen all students who are truant for suspected disabilities and make referrals in compliance with federal and state special education laws with a particular emphasis on the Child Find provisions of the IDEA.
  6. Schools shall align their truancy prevention program with the McKinney-Vento Act by:<sup>181</sup>
    - a. Placing homeless students either in their original school or within a school in the district in which they currently reside;<sup>182</sup>
    - b. Prohibiting requirements that force homeless students to attend school exclusively with other homeless students;<sup>183</sup>
    - c. Providing "comparable services...including transportation services, educational services and meals through meals programs"; and<sup>184</sup>
    - d. Prohibiting any stigmatization of homeless students by school staff.<sup>185</sup>

#### D. Juvenile Policy Regarding Truancy Prevention and Correction

1. School and law enforcement authorities shall not institute court proceedings against a student for truancy, whether for a new case or for a probation violation.<sup>186</sup>
2. School and law enforcement authorities shall not arrest or institute court proceedings against parents or guardians for student truancy unless it is documented that this is part of an ongoing pattern of neglect or abuse. In such cases, school attendance can be used to bolster other allegations of neglect/abuse but cannot be the only indication. Where abuse or neglect of students has or is occurring, efforts shall be made whenever possible to implement family preservation and other supports and/or to allow for family healing and—if removal—family reunification. Where youth are removed from their home, special emphasis shall be given to reducing stigma and maintaining the student in their school, unless they request a transfer to another school or district.
3. Once any court proceeding is initiated, students must be provided with counsel at public expense to help them understand the legal process, to defend against the allegations made by the school, and to protect the wide variety of legal and educational interests at stake in a truancy proceeding.<sup>187</sup> (See Appendix II)
4. During the transition back into school for court involved youth, Valid Court Orders (VCO) shall not be employed in truancy cases to incarcerate students who have failed to comply with the school-related provisions of the VCO.

<sup>180</sup> The ABA report recommends prohibiting the use of exclusion as a response to truancy. *Id.* at 11.

<sup>181</sup> Under Title 7-B of the McKinney-Vento Homeless Assistance Act, the Education for Homeless Children and Youth Program is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this program, State educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth. Homeless children and youth should have access to the educational and other services that they need to enable them to meet the same challenging State student academic achievement standards to which all students are held. In addition, homeless students may not be separated from the mainstream school environment. States and districts are required to review and undertake steps to revise laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth. See generally, U.S. DEPT. OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM: TITLE VII-B OF THE MCKINNEY- VENTO HOMELESS ASSISTANCE ACT: NON-REGULATORY GUIDANCE (2004), available at <http://www2.ed.gov/programs/homeless/guidance.pdf>.

<sup>182</sup> 42 U.S.C. § 11432(e)(3)(C)(i)(III)(aa) (2002).

<sup>183</sup> *Id.* at (bb).

<sup>184</sup> *Id.* at (cc).

<sup>185</sup> *Id.* at (bb).

<sup>186</sup> The ABA resolution calls for the need to "reduce criminalization of truancy, disability-related behavior, and other school-related conduct." Resolution 118B, *supra* note 26 at 16-17.

<sup>187</sup> Bellevue Sch. Dist., 199 P.3d at 1010. The problems children, as young as five years old, can face when they are forced to defend themselves in court without counsel are easy to identify, and it is unrealistic to expect them to be able to understand the court proceedings or any defenses they might have. Students, or even their parents, are also unlikely to know about their rights under the McKinney Act, or special education law, even though those rights might be implicated in a truancy proceeding. In addition, programs that provide counsel to children in such proceedings have shown promising results. See [www.truancyproject.org](http://www.truancyproject.org). While there is case law from Washington State holding that a child is not constitutionally entitled to counsel at a truancy hearing when there is no risk of incarceration at the hearing, Bellevue Sch. Dist., 257 P.3d at 570 (divided court reverses Court of Appeals decision finding constitutional right to counsel), the Chief Judge's concurring opinion urged the legislature to create a statutory right to counsel in accordance with ABA policy.