



# A MODEL CODE on Education and Dignity

## CHAPTER 3: DIGNITY

### 3.7.c Model Policy on Fighting

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#### Human Rights Goal

School fighting policies shall address the root cause of the behavior and equip students with the tools to learn how to make better decisions. The policies regarding school fighting shall be fair, proportionate, reasonable, and lay out clear expectations for student conduct. The policy shall not criminalize student behavior that is developmentally appropriate and not likely to result in serious bodily harm, such as play or unintentional contact, nor shall it redefine non-physical behaviors such as verbal conduct, body language, or gestures as fighting. States, districts, and schools shall create a discipline system that is restorative not punitive and that is separate from the state's juvenile justice system.

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#### Definitions

1. **Fighting** – Mutual, intentional participation in a physical altercation occurring between two or more persons with no one main offender. Fighting does not include verbal confrontation, unintentional contact that does not cause serious bodily harm, or self-defense.
2. **Credible Threat** – A threat that is “real and immediate, not conjectural or hypothetical.”<sup>240</sup>
3. **Self-Defense** – Right to use reasonable force to protect oneself or others from the fear of or infliction of bodily injury or violence.
4. **Serious Bodily Harm** – Bodily injury that will occur without significant delay which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

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#### Recommended Language

- A. **States, districts, and schools shall create a positive school climate that responds to school fighting as an opportunity to correct behavior and contribute to students' personal growth, rather than excluding or criminalizing students involved. Fighting, as defined above, is an unacceptable response to conflict. Districts and schools shall collaborate to ensure that the school discipline response to fighting is administered in such a way as to keep students within their traditional learning environment, and avoid law enforcement involvement to the greatest extent practicable.**
  1. Out-of-school suspensions, expulsions, exclusions, and arrests shall be limited to fighting incidents that involve conduct which poses a serious and credible threat to the safety of the school environment.
  2. Schools shall use non-punitive interventions whenever possible in response to school infractions, including fighting that does not pose a serious and credible threat to safety of the school environment. Non-punitive options include but are not limited to: School-wide Positive Behavior Interventions and Supports (SWPBIS), counseling services, Restorative Justice Practices, and peer mediation.
- B. **Schools and districts shall make reasonable and fair distinctions in assessing student conduct to determine if a student has violated the school's rule against fighting. In order for discipline to be effective, the rules governing student conduct must be clear and consistent and discipline must be proportionate to the student conduct. The following factors must be considered when determining if a student has violated the school's policy against fighting:**
  1. Distinction between intentional and unintentional contact. Unintentional contact shall not be considered fighting; students shall only be disciplined for conduct in which the student intentionally participates. Unintentional contact includes, but is not limited to, bumping, brushing or tripping.
  2. Verbal misconduct, including gestures and profanity, are not fighting.

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<sup>240</sup> Kegler v. United States DOJ, 436 F. Supp. 2d 1204, 1212 (D. Wyo. 2006)

3. Distinction shall be made between minor contact and serious physical injury with severe discipline reserved only for intentional contact that results or could result in serious physical injury.
  4. Students have the same right to self-defense on school property and at school sponsored events as they have off-campus. It is unjust to subject students to adult punishment, such as arrest and detention, without providing students with the same rights that adults enjoy and that the students themselves enjoy off campus.
  5. Schools should consider the location where the incident occurred as they determine how to respond:
    - a. Students should not face suspension or expulsion for incidents that take place off school grounds unless they are directly school-sponsored or school supported.
    - b. Students should not face suspension or expulsion in cases where a student has been arrested or is otherwise facing criminal justice system consequences (including alternatives like deferred action or diversion) for actions off school grounds, as adding a second form of punishment is unnecessary and harmful.
    - c. Where one or more students in the school are involved in a fighting incident that does not occur on school grounds, but could escalate during school or otherwise negatively impact school climate, school staff should use the same kinds of non-exclusionary, restorative responses listed above to help students get to the root causes of their conflict and repair any harms that have occurred instead of responding by excluding students.
- C. Process of Responding to School Fighting Incident- School fights shall be handled utilizing the continuum of behavior supports referenced in Sections 3.7.a School-wide Positive Behavior Interventions and Supports and 3.7.b Restorative Justice Practices summarized below).**
1. Schools shall support non-punitive interventions by providing:
    - a. Ongoing training and support for teachers and staff to serve as effective de-escalation intervention practitioners;
    - b. Counseling services;
    - c. Restorative measures that allow all parties to be heard which include peer counseling, mediation, restorative circles and conferences;
    - d. Positive Behavior Interventions and Supports to address the root cause of the behavior of all students and staff with transparent, measurable goals and published results;
    - e. Training and information for all members of the school community that acknowledges that:
      - i. Overly harsh and exclusionary punishments not only miss the opportunity to teach the student positive communication and behavior skills but also detrimentally affect the student's life chances years after the incident; and
      - ii. Research shows that before adulthood the brain is not fully developed and children and young people are unable to fully rationalize decisions and consequences.
    - f. School policies and practices which reflect these facts (described above) and create an environment where students learn academics, positive behavior and receive trauma sensitive care
  2. **Schools shall use a continuum of strategies that are restorative rather than punitive**<sup>241</sup> except for the most serious and dangerous offenses when exclusion is absolutely necessary to protect the safety of the school community.
    - a. All individuals who are impacted by a behavior or conflict shall collectively identify the harm done, develop solutions for how the harm will be addressed, and identify the needs and obligations of all involved in order to heal and repair the situation as fully as possible.<sup>242</sup>
    - b. The continuum of strategies include but are not limited to: Restorative Chats,<sup>243</sup> Restorative Circles (including Discipline Circles to address what occurred and Proactive Behavior Management circles used to role-play and work with students to develop positive behavioral models), Fairness Committees,<sup>244</sup> Restorative Group Conferencing, Restorative Peer Juries, Impact Panels,<sup>245</sup> and Mediated Conferencing.<sup>246</sup>
  3. **Students requiring individualized interventions** who exhibit a pattern of problem behavior or exhibit behaviors that are dangerous, highly disruptive, and/or impede learning and result in social or educational exclusion<sup>247</sup> (for example students who have repeatedly engaged in fighting) require a more intensive level of intervention that is

<sup>241</sup> See generally International Institute for Restorative Practices, <http://www.iirp.edu/Index.php>; Restorative Solutions, <http://www.restorativesolutions.us/schools.html>; Safer and Saner Schools, <http://www.saferanerschools.org/>.

<sup>242</sup> Chi. Pub. Sch. Policy Manual, Student Code of Conduct for Chicago Public Schools for the 2009-2010 School Year 5 (2009), available at <http://policy.cps.k12.il.us/documents/705.5.pdf>.

<sup>243</sup> See generally, The Restorative Schools Vision Project, <http://www.restorativeschoolsproject.org/>.

<sup>244</sup> See generally, Teachers Unite for Restorative Justice and Dignity in Schools, <http://teachersunite.net/340>.

<sup>245</sup> Chi. Pub. Sch. Policy Manual, supra note 234 at pg 38.

<sup>246</sup> Id. at pg 52.

<sup>247</sup> See generally Frequently Asked Questions: What Is Tertiary Prevention?, [http://www.pbis.org/school/tertiary\\_level/faqs.aspx](http://www.pbis.org/school/tertiary_level/faqs.aspx).

individualized and includes a team approach that includes the student and people who know them best, including the student's family, the classroom teacher, administrator, school psychologist, counselor, social workers and mental health experts. An Intervention Support Team shall use a problem-solving approach in an effort to help the student to be more successful in school, at home or in the community.<sup>248</sup>

4. **Districts and schools shall provide wraparound services** for students with complex and multiple needs, for example a student who has repeatedly engaged in fighting, especially due to trauma or other serious issues they may be dealing with. Schools shall collaborate with public agencies, community-based organizations and families to develop individualized plans to provide a variety of services, such as healthcare, counseling, social work and mentoring, that are driven by the needs of students, not the services provided.<sup>249</sup> Wraparound efforts must be based in the community, individualized to meet the needs of students and families, culturally competent and build on the strengths of the students and families, and the outcomes must be measured.

**D. States, districts, and schools shall invest in training and other preventative measures to avoid disparate impacts to any particular student population including but not limited to: students of color, students with disabilities, students of low income and students who identify as LBGTQ+.**

*Note: The DSC Model Code calls for eliminating the presence of law enforcement stationed in schools, including School Resource Officers (see Section 3.3 Law Enforcement and Criminalization in School Environments). However, we are including the guidelines below to help schools and districts which have not yet eliminated law enforcement from their schools to mitigate the harm to students.*

**E. States, districts, and schools shall prohibit the involvement of police (including School Resource Officers/SROs) in fighting and other school-based infractions. They shall only involve law enforcement in serious incidents (detailed below) occurring on school property or at school sponsored events. When an SRO is involved, the SRO is bound by the same constitutional and legal restrictions as any other police officer. As such, law enforcement's non-custodial options may include: verbal warnings; conferences with the student, parents, teachers and/or others pertinent to the process in resolving the matter; and referrals to a community agency.**

1. Custodial police involvement in school-based infractions like fighting shall be limited to situations in which:
  - a. It is necessary to protect the school community from a credible threat of serious bodily harm or death;
  - b. It is appropriate to address persons exhibiting criminal violations who are not students;
  - c. Someone is engaged in the commission of a felonious act; or
  - d. There is the threat of an external predator.
2. The district and schools shall have a shared goal to reduce justice system involvement of all students. Therefore, school administration and the SRO must be equipped to adequately differentiate between school rule violations and crime, and thus respond appropriately. A typical fight does not require law enforcement intervention.

<sup>248</sup> See generally Positive Behavior Intervention and Supports Tutorial: Individual Systems, [http://cte.jhu.edu/courses/pbis/ses5\\_act2\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses5_act2_pag1.shtml).

<sup>249</sup> See generally What Is The Wraparound Process?, <http://cecp.air.org/wraparound/intro.html>.