



# A Model Code on Education and Dignity

PRESENTING A HUMAN RIGHTS  
FRAMEWORK FOR SCHOOLS  
August 2012

PREPARED BY  
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<sup>1</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association

# INTRODUCTION

All children and youth have a human right to quality public education in safe and supportive environments, providing a foundation for access to higher education, meaningful employment and full participation in society. Although a commitment to public education is a principle deeply rooted in U.S. history and society, our current educational policies and practices fail to reflect that commitment and result in millions of young people being pushed out of school every year.

We currently face a “pushout” crisis fueled by many factors including unwelcoming school environments, low expectations for students, zero-tolerance discipline policies and practices, school policing and other punitive disciplinary measures, lack of adequate resources and support for teachers, high stakes testing and narrow curricula. School systems also push out the voices of youth, parents and educators from important educational decisions, instituting a top-down approach that results in policies and practices that fail to address the needs of school communities. Furthermore, children of color, English language learners, children with special needs, children from low-income families and children in other marginalized communities are disproportionately impacted by these policies and practices, resulting in increasing numbers of these youth being pushed out of school and into poverty, unemployment and often prison.

Punitive and ineffective approaches to school safety and discipline have dramatically increased over the last two decades as schools rely more and more on suspensions, expulsions and police interventions and arrest. Each year, over 3 million students across the country are suspended and over 100,000 are expelled.<sup>1</sup> Perversely, these punitive practices do not improve student behavior, but rather increase the likelihood that students will fall behind academically and drop out, contributing to an unhealthy atmosphere affecting the entire school community. With suspension and expulsion rates at all-time highs, a failure to address and improve current disciplinary practices stymies national efforts to reduce the dropout rate, close the achievement gap and improve teacher effectiveness.

Fortunately, best practices for improving school climate and discipline have been developed, and a diverse array of community, civil rights, research, policy and education organizations are working towards their implementation. Across the country, communities are advocating for school-wide discipline models such as Restorative Practices and School-Wide Positive Behavior Interventions and Supports (PBIS), which give teachers and students the tools to build positive school environments and to prevent and respond to conflict in ways that address students’ social, emotional and academic needs. When implemented, these interventions can reduce suspensions by up to 50%, improve school climate, increase teacher effectiveness and support better educational outcomes for all students.<sup>2</sup>

This Model Code articulates a vision for all stakeholders based on the best practices, research and experiences of students, parents and educators from around the country, and on a human rights framework for schools that recognizes that the goal of education must be to support all children and young people in reaching their full potential.<sup>3</sup> Human rights principles and values envision an educational system where schools adapt to meet the academic, social and emotional needs of every student, where students, parents, teachers and other members of the school community participate in decisions affecting education, where all students are treated with dignity and attend school free from discrimination of any kind, and where communities play a central role in monitoring education policies and practices to continuously improve educational outcomes for students. In adopting a human rights approach to education we aim to respect the rights and needs of the individuals who study in, work in and support our schools.

The Model Code also presents policy-makers with recommended language for alternatives to pushout and zero-tolerance practices. We present our recommendations in concrete, prescriptive language that is in the form of procedures, criteria and standards, and that is practical and meaningful to states, districts, schools, educators, students and parents. The sections of the Model Code are designed so that communities and policy-makers can identify individual topic areas and choose to implement the recommended language while taking into account the diverse needs and characteristics of individual communities. The centerpiece of the Model Code is Chapter 3 providing a detailed and comprehensive framework for school climate and discipline policies and practices. However, because all of the policies in this model code are part of a broader focus on children’s human right to an education, it should be noted that implementing any

part of this code requires communities to engage in a broader conversation about how to shift the community’s collective approach to education. Therefore, we recommend that advocates, schools and communities view this document not only as a prescription for policy change, but also as a catalyst for transforming school culture.

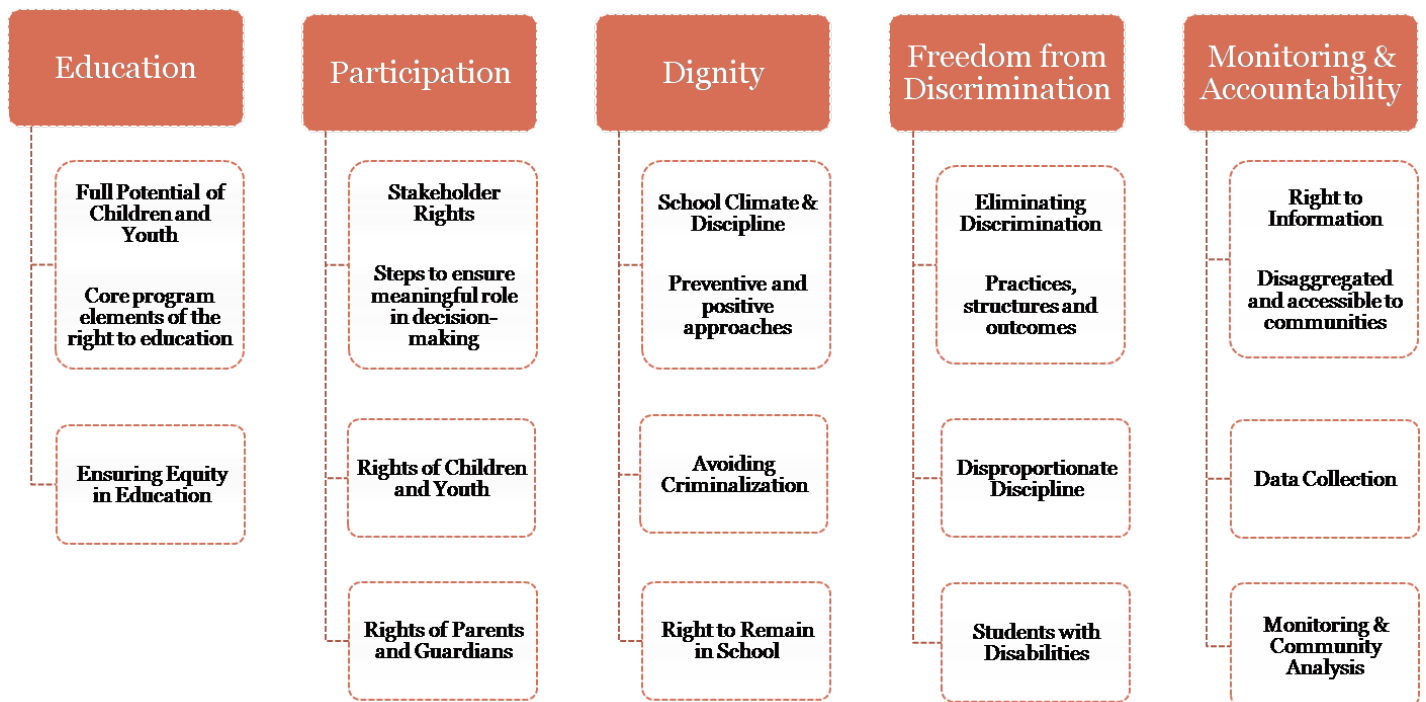
Included in the model code are areas of law and policy that break new ground. These innovative recommendations—such as in the areas of right to counsel, right to specific procedures and protections in school suspension and expulsion hearings, clear guidelines on the role of law enforcement, substance abuse prevention in schools, and the right to participation of all stakeholders—are set forth as recommended language to advance the code’s overall goal of protecting children’s human right to education.

## STRUCTURE OF THE MODEL CODE

The Model Code is organized into five chapters: 1) Education, 2) Participation, 3) Dignity, 4) Freedom from Discrimination and 5) Monitoring and Accountability. Each of these chapters addresses a different key component of providing a quality education and reflects core human rights principles and values. Each chapter includes recommended policies for states, districts and schools.

Chapter 3 on Dignity focuses on the issue of positive school climates and approaches to discipline. It provides detailed language that can be adopted by schools, districts and states in education codes and policies. Earlier chapters on Education and Participation outline broader principles and standards for high quality education and community participation that lay the groundwork for positive school climates and discipline. The later chapters on Discrimination and Monitoring and Accountability describe recommended policies and practices for addressing the disproportionate impact of punitive discipline, ensuring quality data collection and monitoring implementation.

## 5 CHAPTERS OF THE MODEL CODE



## CONTENT OF MODEL CODE CHAPTERS

**Background:** The background section introduces current educational policies and practices that contribute to school pushout, as well as the research and best practices to support the positive solutions presented in the Model Code.

**Chapter Sections:** Each chapter is divided up into sections that address particular areas of concern. In Chapter 3 on Dignity for example, there are three main sections: 3.1 School Climate and Discipline, 3.2 Avoiding Criminalization in School Discipline and 3.3 Right to Remain in School.

**Sub-Sections:** Some sections are further divided into more specific sub-sections. For example, within section 3.1 School Climate and Discipline, there are sub-sections on 3.1.a Key Elements of School-wide Preventive and Positive Discipline, 3.1.b Two Models for Preventive and Positive Discipline, 3.1.c Guidelines for Exclusion and 3.1.d Due Process.

**Human Rights Goal:** Each individual sub-section identifies a Human Rights Goal reflecting the shift in values necessary to achieve not only a change in policy and practice but also to create a culture that ensures the rights and meets the needs of students and other stakeholders.

**Recommended Language:** Each sub-section then includes the actual recommended language for policy makers at the school, district or state level to adopt as law or regulation. The Recommended Language in most sub-sections includes the following components:

- Definitions
- General standards or principles that apply to the state, district and school level
- State, district and/or school-level planning teams and policies
- Trainings and other support necessary to implement those policies
- Evaluation and monitoring
- Additional state or federal actions required to fully implement those policies

## THE HUMAN RIGHTS FRAMEWORK IN THE MODEL CODE

In this Model Code, we take the research and best practices for effective education policy identified by students, parents, educators and advocates across the country, and place them within a human rights framework that identifies the full development of the child, dignity and participation as key principles necessary for ensuring a quality education. This human rights framework for education is a vision that has been developed through both the struggles of communities to claim their rights and through recognition by governments of those rights.

In the United States, human rights are a fundamental part of our society and social justice movements. Throughout our history, struggles to end slavery and to achieve civil rights, women's rights, workers' rights and the rights of individuals with disabilities have all contributed to the development of our domestic as well as international human rights framework. The United States, through the leadership of Eleanor Roosevelt, was one of the main authors of the Universal Declaration of Human Rights in 1948, and U.S. civil rights leaders recognized their work to end segregation as part of a broader human rights movement.<sup>4</sup>

Human rights documents such as the Universal Declaration and the Convention on the Rights of the Child set out standards for education and were developed with participation of the United States and other peoples and governments around the world. The Model Code is grounded in these human rights principles because they provide a framework that can help transform our schools by:

- Setting forth a vision for learning environments that support every young person in reaching their full potential and being treated with dignity and respect;
- Shaping a positive message for combating school pushout that shifts practices away from punishing and excluding children, to creating policies that protect human rights and meet students' needs;
- Calling for school systems to guarantee the right of students, parents and all members of the school to community to participate in school decision-making; and
- Uniting people together through the common message that human rights are universal and apply to all people.

# CHAPTER 1

## EDUCATION

### Background

Children and youth have a fundamental right to a public education that develops each individual’s full potential and guarantees equal educational opportunities for all. Guaranteeing a comprehensive human right to education is a necessary prerequisite to increasing achievement, ensuring college readiness and ending school pushout. While state constitutions afford protections for specific aspects of the right to education, and with a few exceptions attempt to establish some minimum standards,<sup>5</sup> there is no fundamental right to education in the U.S. Constitution.<sup>6</sup> Our current legal and policy framework falls significantly short of ensuring equal access to high quality education for all our children and young people. Consequently, our schools systems are failing entire communities.

Despite a high level of wealth, the U.S. sends millions of children and youth to schools with insufficient textbooks, high rates of teacher turnover, disproportionately high numbers of teachers without appropriate credentials or training, a low-quality curriculum and crumbling facilities.<sup>7</sup> Schools serving low-income students, students of color and English Language Learners, in particular, have the lowest percentages of highly qualified and experienced teachers.<sup>8</sup> In addition, students of color are disproportionately deprived of high-level courses and challenging curriculum, factors which are strongly related to achievement and educational opportunity.<sup>9</sup> These students are tracked early on towards a lesser education, and afforded “[d]ramatically different learning opportunities—especially disparities in access to well-qualified teachers, high quality curriculum and small schools and classes—[which] are strongly related to differences in student achievement.”<sup>10</sup>

### A GUIDE TO CHAPTER 1

This chapter of the Model Code describes a human rights vision for education aimed at the full academic, social and emotional development of all children and youth. This chapter does not attempt to provide a comprehensive set of recommended policies or implementation guidelines, but rather to identify key principles and standards for federal, state and local governments to adopt, with the aim of ensuring a high quality education for all young people and an equitable system of education. This chapter lays the groundwork for the rest of the Code. It is divided into two sections.

#### **Section 1.1 on Fulfilling the Full Potential of Children and Youth**

lays out the core program elements of a right to education, including challenging learning goals for all students, an enriched and culturally relevant curriculum, effective instruction tailored to students’ needs, individual attention for students experiencing difficulty, ongoing and accurate assessment of student progress, fair decisions about student promotion and graduation, and the necessary resources and materials to fulfill the right to education. It also calls on school systems to continuously evaluate and adjust educational policies and practices to improve teaching methods and educational outcomes.

**Section 1.2 on Ensuring Equity in Education** identifies areas of policy and practice where inequities exist that school systems must address in order to level the playing field and ensure that each student reaches their full potential. These include providing access to early education, high quality instruction and curriculum, allocation and distribution of funding to target resources to those students who need additional supports, and equitable teacher distribution and training.



## 1.1 Fulfilling the Full Potential of Children and Youth

**Human Rights Goal:** *To guarantee the human right to education, schools shall provide all children and youth with the learning tools and content necessary to reach their full potential, to participate fully and effectively in a free society, to live and work in dignity, to improve the quality of their lives, to make informed decisions and to continue learning throughout life.*<sup>11</sup>

### Recommended Language:

- A. **All children and youth from birth to age 21<sup>12</sup> shall have a fundamental right to education** that shall develop each child's mental and physical abilities, personality and talents to his or her fullest potential<sup>13</sup> and that guarantees equal educational opportunity to all.<sup>14</sup>
- B. The aims of the fundamental right to an education shall be to:
1. Prepare young people for a responsible life, which includes participating actively in society, attaining employment for a living wage to support themselves and their families, and developing understanding, peace and respect among all people.
  2. Provide a high quality education that:
    - a. Addresses the mental, physical, social and emotional needs of children and youth, including adequate access to nutrition and exercise;
    - b. Adapts to different learning needs and styles of individual students;
    - c. Provides appropriate instruction, experiences and discipline for each age and grade level;
    - d. Is relevant to the changing social, cultural, environmental and economic context of different young people; and
    - e. Involves youth as active and effective participants in the educational process.
- C. **States, districts and schools shall specify a set of core program elements of a high quality education to which every student is entitled** in areas that include learning goals and standards, curriculum, instruction, individual attention, student assessment, rights and responsibilities, placement and promotion decisions, and participatory decision-making<sup>15</sup> to ensure that every student has a right to:<sup>16</sup>
1. **A school-wide commitment to a clear, specific set of challenging learning goals for all students**, consistent with state and district academic standards, and designed to prepare all children to use their minds well—so as to be able to participate in activities characteristic of authentic adult achievement.
  2. **An enriched and culturally relevant curriculum** that is aligned with the school's learning goals includes:
    - a. Core subject areas in English language arts, history, social studies, math and science;
    - b. Students' rights as individuals and the skills to be agents of change in their communities;
    - c. Critical thinking, problem solving, respect for oneself and others, and effective communication skills;
    - d. History and culture of the students attending that school and broader political education about the history and culture of the broader community;
    - e. Knowledge and skills to be able to succeed in entry-level, credit-bearing academic college courses and in workforce training programs;
    - f. Art, music and other creative and engaging subjects that foster academic achievement, school engagement, mental and physical health and creative thinking; and
    - g. Access to recess and physical education, and for elementary and middle school students, access to free play activities.

3. **Effective instructional methods** that enable all students to achieve the learning goals, provided by staff who are highly qualified and who in turn regularly participate in ongoing, high quality, intensive professional development. These methods must include:
    - a. Training teachers to have diversified teaching methods in their classroom for students with different learning styles and at different readiness levels;
    - b. Engaging students in the learning process to mentor one another and engage in group and peer-to-peer learning;
    - c. Empowering students to develop independent learning skills through taking individual responsibility for learning and completing necessary tasks; and
    - d. Incorporating youth culture into teaching and learning through art, music, dancing, physical education and the written and spoken word.
  4. **The individual attention needed** to fully achieve the learning goals, including effective methods for addressing the student's particular learning needs and timely and effective intervention whenever the student is experiencing difficulty in mastering any of the learning goals, including:
    - a. An individualized educational assessment and academic intervention plan that is flexible to meet the needs of each individual student;
    - b. Social and emotional supports and interventions; and
    - c. Access to mentoring, support and counseling to ensure that each student has a relationship with at least one adult in the school.
  5. **Regular, ongoing, accurate assessment** of the extent of the student's progress and mastery of the learning goals, that uses multiple methods for allowing students to fully demonstrate what they know and can do; is an integral part of the classroom instruction; is shared with the student, his or her parents or guardians and appropriate school staff; and is used to improve the instruction and achievement of the student.
  6. **Valid, reliable and fair decisions** concerning program placement, promotion, graduation and other actions that may affect the child's access to post-school options, including valid use of assessment information, and full and adequate opportunity to learn any skills and knowledge being assessed.
  7. **The resources and materials needed** for students to fully avail themselves of the rights set forth in this section, provided in a safe and healthy learning environment conducive to achievement of the learning goals.
- D. **States, districts and schools shall create a continuous improvement model for education whereby:**
1. Teachers, principals and superintendents are in a position to consistently improve teaching and student outcomes through a cycle of goal setting and resource alignment, instruction, assessment, analysis and adaptation;<sup>17</sup> and
  2. Each and every student's progress is tracked and interventions with targeted supports quickly provided so that all students have the opportunity to master challenging curricula.<sup>18</sup>
- E. **Youth placed in juvenile or adult correctional settings and youth placed in alternative settings**, as described in Section 3.3, are entitled to the same standard and quality of education as every student in a traditional education setting.<sup>19</sup>

## 1.2 Ensuring Equity in Education

**Human Rights Goal:** Schools must ensure equal access to and implementation of high quality educational services without discrimination. In order to assure equitable access to the right to education, schools shall set high goals and expectations for all children and youth, and ensure that resources, services and instruction are allocated and aligned so that children and youth with the greatest needs have the same opportunity to reach the goals and meet the expectations as their peers.<sup>20</sup>

### Recommended Language:

#### A. States, districts and schools shall provide the resources, services and supports necessary to ensure equitable access to education and to achieve equitable outcomes in education for all students.

1. States, districts and schools shall identify and address particular areas of policy and practice where inequities exist, including but not limited to access to early education, high quality instruction and curriculum, funding and alignment of resources, and teacher distribution and training.

#### B. High Quality Early Education and Assessment

1. All students shall have access to a universal pre-k program that is geared toward age-appropriate development, creative thinking, identity development and school readiness preparation that goes beyond preparation for testing.
2. In all pre-k classes, Early Intervention Assessments must be conducted to identify and address learning disabilities using proven research-based interventions.

#### C. High Quality Instruction and Curriculum

1. All students shall have access to high quality instruction and curriculum, including advanced placement and college preparatory classes.
2. In order to place students in a less rigorous or non-college preparatory curriculum, schools must provide parents or guardians with notice including a reason for the change in curriculum, and must obtain written approval for the change from the parent or guardian.

#### D. Equitable Funding and Alignment of Resources to Standards

1. States shall conduct a needs assessment of every district and school to establish the amount of educational resources needed for every student to meet the prescribed learning goals. Resources should be aligned with goals so that all students have a meaningful opportunity to learn.
  - a. At the district level, districts, openly and with community input, shall investigate whether adequate funds are available to schools to:
    - i. Support instructional goals;
    - ii. Provide guidance on practices that best support staff, such as prioritizing resources towards professional development, realigning staffing structures to accommodate strengths and weaknesses of existing staff, and finding ways to recruit and retain quality staff through compensation and support systems; and
    - iii. Collect timely, detailed fiscal and performance data and train local decision makers in the use of this data for tracking spending and analyzing effectiveness of spending (data on resources shall be tied directly to specific educational programs, staffing configurations and other improvement strategies so that cost-benefit and other analyses can be conducted).

- b. School and student needs shall be established using input and collaboration from parents or guardians, teachers and administrators who have access to achievement data. Once clear goals and objectives for student success are identified, they must be clearly communicated so that appropriate district resources can be allocated to support them at the classroom, school and district levels.
2. A secure and reliable funding source shall be provided to meet identified costs per student, tied to the actual resources a student needs to master the State's prescribed education program.
3. State and local governments shall deliver funding to schools using a formula based on a range of factors that includes but is not limited to: 1) the number of students attending school on a daily basis; and 2) the counts of economically disadvantaged students, students with disabilities and English Language Learners at a given school site.

#### **E. Ensure Equitable Distribution of High Quality Teachers**

1. To eliminate teacher shortages and ensure a consistent supply of high quality teachers, states shall raise standards for teacher education and licensing, initiate scholarships and forgivable loans to recruit high-need teachers into the profession (including teachers in shortage fields, those who would teach in high-need locations, and teachers of color), create a mentoring and assessment program for all beginning teachers, and invest money in high quality professional development (with special aid to low-achieving districts and schools).<sup>21</sup>
2. States shall provide targeted incentives for highly skilled and specially trained teachers to work in historically underperforming districts and schools.
3. Schools shall invest significant time and money in quality professional development, using the best practices in professional development, including ongoing mentor teacher programs, overstaffing of teaching staff to allow for planning and professional development meetings, and additional paid days for professional development and evaluation. Professional development shall be provided in:
  - a. Subject area knowledge and pedagogy;
  - b. Skills to provide social-emotional support and mentoring to students;
  - c. Building democratic classrooms and participatory approaches to teaching, classroom management and discipline;
  - d. Positive approaches to discipline, including restorative practices and positive behavior interventions and supports; and
  - e. Understanding structural racism and other economic and social factors in society that impact the educational system, including inequality and the criminalization of youth.
4. Specialists in high quality instruction and research-based services for special needs students shall be available on a regular basis to all school sites with significant numbers of students from socioeconomically disadvantaged backgrounds and students with disabilities in order to attract and retain highly skilled teachers.
5. States and districts shall actively recruit and retain teachers from the communities where schools are located and who reflect the demographics of the student population.
6. States and districts shall review and revise all policies and procedures to eliminate any policies, practices, or systems that discourage or create disincentives for quality teachers to teach at historically underperforming schools or at schools with high percentages of socioeconomically disadvantaged students or students of color and:
  - a. Establish mechanisms that include participation of students and parents or guardians in ensuring equitable distribution of teachers within districts; and
  - b. Review and revise all policies and procedures that may cause or result in disproportionate teacher disruption or teacher turnover, including processes for school closure or turnaround that arbitrarily dismiss all staff and/or force all staff to reapply for their jobs.

# CHAPTER 2

## PARTICIPATION

### Background

Stakeholder participation is a comprehensive approach to principled, democratic practice that sets out to achieve the highest levels of shared responsibility, leadership and accountability. Public education systems must be built on and bound by high quality stakeholder participation, evidenced by authentic buy-in, trust and mutual accountability among all of the people who comprise the school community.

Stakeholder participation models in high functioning public schools seize the opportunities and face the challenges of achieving and sustaining principled, democratic practices within public institutions that serve diverse, vested interests. More than a system of “checks and balances,” effective stakeholder participation creates quality public school environments that are student, community and success-oriented, build the social and political capital of all stakeholders to collectively self-govern, create high level educational processes and fulfill all human rights standards.

Ensuring that students, parents and other stakeholders have a voice in the vast range of school decisions enhances preparation for citizenship, improves schools and leads to a well supported educational system.<sup>22</sup> It also builds relationships across generations while creating community investment in quality schools for all students. Finally, creating democratic institutions in schools gives teachers and non-administrative school staff a voice in decisions that affect their employment, builds teacher investment and involvement in the school community, and helps establish supportive systems to improve teacher retention.

It is essential that stakeholder participation be re-characterized as both an active, inclusionary practice in and out of the school environment, as well as a means of preventing discrimination in the provision of high quality education to all children. To invoke a process in the name of stakeholder participation is to invoke the fundamental challenge of our democracy—effective and inclusive self-governance ‘by the people for the people’. While this challenge has not always been met in practice, our efforts towards democratically based schooling must go unabated—the health of our public education system depends on it. Schools must develop the infrastructure for supporting and sustaining themselves, and the shared commitment, vision and focus required to educate all students.

# A GUIDE TO CHAPTER 2

Chapter 2 focuses on policies and practices for ensuring the participation of all stakeholders in designing, implementing and monitoring all aspects of the educational system. The processes for stakeholder participation described should be used in implementing the other chapters of the code, especially where stakeholder committees and implementation teams are described. The chapter is divided into three sections.

**Section 2.1 on Stakeholder Participation** identifies students, parents or guardians, community members, teachers, school staff, administrators and all other members of the school community as stakeholders with a right to participate in education at the school, district and state level. It describes procedures for establishing an advisory committee to design effective processes for stakeholder participation, informing stakeholders of their rights, identifying areas of decision-making requiring stakeholder participation, building the capacity of stakeholders to be informed decision-makers, and monitoring the process of stakeholder participation.

**Section 2.2 on the Rights of Children and Youth to Participation** describes the processes schools must create to ensure student participation in decisions affecting their right to education, including student councils and advisory bodies, representation on any decision-making bodies, school-wide forums, peer-led disciplinary processes and grievance procedures. It also requires that students be engaged as active participants in the learning process through participatory instructional methods.

**Section 2.3 on the Rights of Parents and Guardians to Participation** calls on schools to create welcoming environments for parents and guardians and to ensure their participation in decision-making affecting school policies and practices. It also describes their right to observe, monitor and evaluate school policies and practices, to be informed and participate in decisions affecting their individual child, and grievance procedures. Finally, it includes a provision calling on states to guarantee parents or guardians the right to take reasonable leave from employment to attend meetings or events related to their child's education.

## 2.1 Stakeholder Participation

***Human Rights Goal:** Schools and communities must work together to create the methods, procedures and structures to guarantee the rights of students, parents and families, educators, communities and other stakeholders to meaningfully participate in decisions that affect their schools and the right to education.<sup>23</sup>*

### Recommended Language

#### A. Definitions

1. **Stakeholder** – Any person/group with a vested interest in the educational outcomes at public schools, with such interests including but not limited to: the life success and potential of students and their families; the quality of working conditions for those who are employed at or rendering services to public schools; and the credibility and reputation of those who are charged with the responsibility of producing educational outcomes, paid or unpaid (e.g., students, parents or guardians, community members (including the religious community), teachers, school staff, administrators).
2. **Participation** – Any and all forms of involvement in decision-making that produces, impacts or ensures educational outcomes.
3. **Procedural protections** – Procedures defined as fundamental and necessary by law and/or to protect human rights standards.

**B. Schools shall ensure effective participation of all stakeholders in the school community in developing, implementing and maintaining school systems, educational policies and practices** (See Sections 3.1.a and b and Section 5.3 for stakeholder decision-making teams related to discipline).

**C. All school and community stakeholders shall have a right to be included in state, district and school-level decision-making processes.**

1. Schools and stakeholders shall develop clear procedures for shaping, evaluating and revising the process and nature of stakeholder participation.
  - a. An advisory committee comprised of a representative of each key stakeholder group—at a minimum, school administration, teachers, parents or guardians and students—shall be formed to oversee the development and enforcement of inclusive decision-making processes and bodies and to disseminate information to stakeholders.
  - b. The Advisory Committee and other bodies for stakeholder participation shall have representation of the demographic groups served by the school system (including race and ethnicity, socio-economic background, nationality, language, ability and other demographic categories).
2. All methods and procedures for participation shall be available to all stakeholders without discrimination.
  - a. Schools and the stakeholder advisory committee shall establish clear lines of responsibility and a consistent process for airing and remedying grievances of intentional or unintentional exclusion of any stakeholder, with particular communication tactics for ensuring that historically underrepresented stakeholders such as low-income families, communities of color, immigrants and non-English speakers are aware of and understand how to redress any such grievances.
3. Procedures that are designed to ensure stakeholder participation must allow for the ability to go beyond minimum procedures required by federal, state or local laws and statutes.
4. Stakeholders shall be informed of their right to participate. Schools shall utilize multiple methods of notification, as appropriate, to ensure all stakeholders are aware of existing processes, decision-making bodies or persons and the decisions made.

5. All stakeholders shall have equal responsibility for adhering to, and rectifying any breaches of, the principles and procedures guiding decision-making processes.
- D. Representatives of all stakeholders shall participate in decisions affecting all relevant aspects of education** and be accountable to ensure that every student has access to a high quality education.
1. The stakeholder advisory committee shall develop transparent, structured opportunities for multiple levels and areas of influence within the educational process and school environment, including but not limited to:
    - a. Needs assessment;
    - b. Program planning;
    - c. Prevention and intervention strategies;
    - d. Training;
    - e. Monitoring; and
    - f. Accountability for the fundamental components of a high quality, highly functioning educational system.
  2. The advisory committee shall develop and implement a process in which all stakeholders are involved in the early identification of systemic and/or school conditions and practices that impede the fulfillment of a right to quality education, before their consequences are exacerbated.
  3. Stakeholders shall be consulted and involved in developing problem-solving and intervention strategies that are designed to involve all stakeholders in protecting and fulfilling students' rights to remain in and/or return to school in the event high quality standards are not met, or circumstances lead to some form of disengagement and re-entry.
- E. States and districts shall provide local schools with control over critical decisions** ensuring that principals, teachers, parents or guardians, students and other stakeholders have ownership over critical decisions—paired with adequate monitoring and oversight—related to budgeting, classroom size, hiring and curriculum customization so that instruction can be individualized and tailored to meet the students' needs.<sup>24</sup>
- F. Schools shall build the capacity of all stakeholders to participate in decision-making bodies and processes.**
1. Schools shall create and promote opportunities for all stakeholders to acquire the information and training needed to effectively participate in decision-making bodies and processes, including information and training on:
    - a. All legally-binding procedural protections;
    - b. All rights and standards defining a high quality public education system;
    - c. Skills needed for effective leadership and problem-solving to prepare stakeholders to develop, amend and monitor educational policies and practices;<sup>25</sup> and
    - d. Restorative practices-based principles and procedures for input gathering, decision-making and addressing post-decision concerns.
  2. The stakeholder advisory committee shall develop and oversee distribution of information about such opportunities.
  3. Resources for information and training shall be targeted to ensure the equitable representation of all stakeholders.
- G. Processes for stakeholder participation shall be clearly documented and evaluated.**
1. Results of stakeholder participation shall be documented, archived and made available to the public wherever possible, including, but not limited to, multiple perspectives, areas of agreement/disagreement, decision-making processes/persons that led to decisions made, decisions made, concerns raised as a result of decisions made and how concerns are addressed.



2. Clear roles and responsibilities shall be developed for all stakeholders and stakeholder groups, with frequent opportunities for stakeholder groups to engage their representatives and/or submit feedback, input and/or grievances, and for representatives to respond to their stakeholder groups.

## 2.2 Rights of Children and Youth to Participation

***Human Rights Goal:** Schools shall enable students to be active and effective participants in the learning process, to express their views and to give input into decisions that affect their lives and education. Schools shall inform students about school policies and practices and their rights connected to them.<sup>26</sup>*

### Recommended Language:

- A. **Schools shall develop structures that allow students to be heard on issues affecting their education** and school policies and procedures, including, but not limited to:
  1. Age-appropriate student councils and advisory bodies providing for student input into the design and function of policies and procedures affecting students;
  2. Student representation on school-wide decision-making bodies (i.e. school leadership teams) and on district and state-level boards of education;
  3. Age appropriate student participation in hiring, granting tenure to and developing training programs for school staff;
  4. School-wide forums—for example, town hall meetings—that offer students an opportunity to voice their opinions about school decisions and policies;
  5. Processes to repair harm, restore trust and identify solutions to school conflict and disciplinary incidents through methods such as peer counseling and mediation, restorative circles, or conferences;
  6. Student participation on school discipline committees, such as fairness committees (see Section 3.1.b on Restorative Practices in this Code); and
  7. Grievance procedures and a process for appealing decisions that affect students directly, including on issues of curricula, school policy, discipline, and school climate and culture.
- B. Schools shall ensure that all students and school staff are made aware of and have access to detailed information about school rules, policies, and procedures and state and local laws guaranteeing or affecting students' right to participation.
- C. Schools, in partnership with students and other members of the school community, shall create a Students' Bill of Rights.
- D. **Schools shall ensure that students are active participants in the educational process** by working with educators and staff to adopt instructional techniques and classroom management systems that encourage student participation in decision-making, takes into account student views, teaches students effective leadership and participation skills, and provides explanations to students when decisions go against their views.

## 2.3 Rights of Parents and Guardians to Participation<sup>27</sup>

**Human Rights Goal:** Schools shall enable parents or guardians to be active and effective participants in their child's learning process, to express their views and to give input into decisions that affect their child's education. Schools shall inform parents or guardians about school policies and practices and their rights connected to them.

### Recommended Language:

- A. **Schools shall create welcoming environments for parents or guardians.**
- B. **Schools shall ensure that parents or guardians have a right to participate in decision-making affecting school policies and procedures**, including, but not limited to:
1. Informing parents or guardians in a timely and clear manner as to when and how they can participate, and ensuring that all parents or guardians have equal access to information on opportunities for participation.<sup>28</sup>
  2. Ensuring that parents or guardians have concrete opportunities to make recommendations to schools about effective methods for participation.<sup>29</sup>
  3. Structured opportunities for parents or guardians to give input, get information and help make decisions (see Sections 2.1 and 5.3), including but not limited to:<sup>30</sup>
    - a. Parent or guardian representation on school-level committees and district and state boards of education; and
    - b. Parent Associations and/or Parent-Teachers Associations that are representative of the parent community of a school (ensuring diversity in grade levels and demographic backgrounds of students), and that provide services and information to parents or guardians to support their participation in the school.
  4. Trainings for parents or guardians on how to effectively hold schools accountable.<sup>31</sup>
- C. **Schools shall ensure that parents or guardians have a right to monitor and evaluate implementation of school policies and practices**, including, but not limited to:<sup>32</sup>
1. Regular, parent or guardian-led school forums at which school staff must listen and respond to parent and guardian assessments;<sup>33</sup>
  2. Open and clear communication to parents or guardians about their right to visit schools and classrooms;<sup>34</sup>
  3. Parent or guardian-led assessments of schools to identify areas that need more accountability; and<sup>35</sup>
  4. Policies that protect parents' and guardians' right to monitor schools' implementation of programs without retaliation.<sup>36</sup>
- D. **Schools shall ensure parents or guardians have a right to participate in decisions affecting their individual child's education** including, but not limited to:<sup>37</sup>
1. Adherence by teachers, administrators and other school staff to an "early warning" system that identifies academic or behavioral challenges as soon as possible and works with parents or guardians to identify solutions;<sup>38</sup>
  2. Participation in restorative discipline solutions (see Section 3.1.b of this Code); and
  3. Protection of due process rights, including as related to school discipline (see Section 3.1.d of this Code).

- E. **Schools shall establish mechanisms for parents or guardians to participate directly in the educational process in schools**, including, but not limited to mentoring and supports for students.
- F. **Districts and schools shall establish policies that outline clear grievance procedures parents or guardians** can use to file complaints, with due process, and establish a clear process of recourse if parents' and guardians' grievances are not resolved with due process.<sup>39</sup>
- G. **Schools shall create tools to evaluate parent or guardian participation**, including surveys to identify barriers to parental participation and seek recommendations for how to improve participation.
- H. **States shall enact legislation allowing parents or guardians of students the right to take reasonable leave from employment** to attend meetings, events or activities that are related to their child's educational achievement, which includes matters of school discipline.<sup>40</sup>
1. An eligible employee shall be entitled to a minimum of 24 hours of leave during any 12-month period, in addition to leave available under federal law,<sup>41</sup> to:
    - a. Participate in school activities directly related to the educational advancement of a child of the employee, such as parent-teacher conferences, disciplinary meetings, or interviewing for a new school; and
    - b. Accompany the child of the employee to any hearing, meeting, or proceeding, whether under the school's jurisdiction or otherwise, that could result in the suspension, expulsion or transfer of a student;
  2. If the necessity for leave under this section is foreseeable, the employee shall provide the employer with not less than seven days' notice before the date the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as is practicable.
- I. Where a student is a ward or dependent of the state, identified through processes outlined in federal or state law, notification regarding educational or disciplinary decisions made by the student's school shall be provided to the education rights holder, foster parent or legal guardian, student's counsel or guardian ad litem, and the student's child welfare social worker or caseworker and, if the student has one, Probation Officer.
1. Additionally, where school districts do not have information regarding the education rights holder for a student they shall work with the above mentioned parties to ensure notification to the student's holder of education rights.
  2. Under no circumstances, however, shall a student who is a ward or dependent of the state be denied full access to his or her education rights due to an adult caretaker or rights-holder's inability or refusal to act on behalf of the child.

# CHAPTER 3

## DIGNITY

### Background

In order to ensure that every child receives a high quality education, schools must create healthy, respectful climates for learning where the fundamental dignity of students and all members of the school community are protected and nurtured. A school climate that protects human dignity exists when students feel socially, emotionally and physically safe, when there is mutual respect between teachers, students, parents or guardians, and when students' self-expression and self-esteem are supported.

Yet in our schools across the country, degrading school environments and exclusionary discipline practices are undermining teaching and learning and pushing young people out of school. Each year, over 3 million students across the country are suspended and over 100,000 are expelled. Rather than improve student behavior, these punitive practices increase the likelihood that students will fall behind academically and drop out, and contribute to an unhealthy school atmosphere affecting students and teachers alike.

Part of creating positive school climates is preventing schools from too hastily removing students from school without considering the full effect of such action. Exclusionary discipline practices like suspension and expulsion result in a loss of valuable learning time and do not typically change the behavior or deter it from occurring again. In rare cases when exclusion must be an option, schools need to ensure that students and their parents or guardians have a right to fully participate in a fair process for determining appropriate consequences.

To achieve this, states, districts and schools must adopt preventive and positive approaches to discipline that support students in building social and behavioral skills, resolving conflicts in a non-violent manner, and creating productive learning environments. Research has shown that positive approaches to discipline can improve student engagement, academic performance and teacher satisfaction, while also reducing violence and disciplinary incidents in schools.<sup>42</sup> Across the country, educators and communities are advocating for school-wide models for discipline such as Restorative Practices and Positive Behavior Interventions and Supports (PBIS), which give teachers and students the tools to build a positive school community and to prevent and respond to conflict in ways that address students' social, emotional and academic needs. When implemented, these interventions can reduce suspensions by up to 50%, improve school climate, increase teacher effectiveness and support better educational outcomes for all students.

In order for positive approaches like restorative practices and PBIS to be successful, states, districts and schools must also minimize and work towards eliminating the need for police personnel in schools, the use of metal detectors and other criminalizing tactics.<sup>43</sup> The presence of police or other law enforcement personnel (including probation officers) increases anxiety and contributes greatly to the criminalization of low-income youth,<sup>44</sup> youth of color, youth with disabilities and LGBTQ youth, including disproportionate rates of arrest and referrals to the juvenile courts and detention halls system<sup>45</sup> that in turn lead to push out/drop out and incarceration later in life.<sup>46</sup>

Change is also needed in the juvenile and criminal justice systems to ensure students' human right to education. Criminal penalties for status offenses, including truancy, should be eliminated and juvenile detention, jails and all "lock-ups" must provide educational services that meet the same standards as regular schools. Juvenile and criminal justice facilities, as well as school systems, must also ensure smooth transitions for students from lock-ups back to schools.

# A GUIDE TO CHAPTER 3

Chapter 3 on Dignity is the most comprehensive and detailed chapter of the Model Code. It is focused on transforming our school system's approach to discipline in order to end the exclusion and criminalization of youth and create safe and supportive learning environments. The chapter is divided into three different sections.

## Section 3.1 School Climate and Discipline

### **Sub-Section 3.1.a on Key Elements of School-Wide Preventive and Positive Discipline Policies**

outlines the key elements necessary for any discipline policy to be effective and supportive, including creating a positive school climate and an approach to discipline that responds to misbehavior in constructive ways. It also calls for the elimination of zero-tolerance policies, strict limits on the use of exclusion in the form of suspension or expulsion, and for a preventive and restorative approach to bullying.

After outlining the key elements described above, **Sub-Section 3.1.b on Two Models for Preventive and Positive Discipline** provides detailed guidelines for implementing two proven models—School-wide Positive Behavior Interventions and Supports (SWPBIS) and Restorative Practices.

**Sub-Section 3.1.c on Guidelines for Exclusion** provides additional detailed policies for when and how to use suspensions and expulsions as a last resort, placing limits on the number of days students can be suspended or expelled, describing the factors schools must consider before excluding a student, prohibiting exclusion for specific behaviors, and providing for quality educational services during the period of exclusion.

**Sub-Section 3.1.d on Due Process** outlines standards for guaranteeing full due process rights for students facing suspension or expulsion, including the right to an exclusion conference for students facing suspension and the right to a full hearing with appointed counsel at public expense for expulsions.

## Section 3.2 on Avoiding Criminalization in School Discipline

**Sub-section 3.2.a on Law Enforcement** calls on states, districts and schools to minimize the role of law enforcement in schools, including School Resources Officers, police, security guards and other personnel, and to work towards eliminating their role in the future. It prohibits involvement of law enforcement in school disciplinary matters as defined in the section, and outlines guidelines for the training and oversight of any law enforcement personnel that come into contact with schools.

**Sub-section 3.2.b on Drug Policy** focuses on prevention and intervention for drugs and alcohol rather than punishment and criminalization. It calls for a health-based approach to student drug use and abuse, using referrals to counseling and services rather than punishment. In cases where students are suspected of selling or distributing drugs, it encourages schools and law enforcement to work together to use school-based disciplinary interventions whenever possible, to minimize arrests, and where arrests occur, to refer students to alternatives to incarceration.

**Sub-section 3.2.c on Immigration Policy and Protection of Vulnerable Students** provides guidelines for protecting the rights and preventing criminalization of undocumented and other vulnerable students.

**Sub-section 3.2.d on Reforming Status Offense Laws** calls on school systems and juvenile and criminal justice systems to end the criminalization of students for status offenses, including for truancy.

## Section 3.3 on the Right to Remain in School

**Sub-Section 3.3.a on Truancy Prevention and Correction** directs schools to respond to truancy and improve attendance rates through prevention and intervention strategies, not through criminal penalties, tickets or fines.

**Sub-Section 3.3.b on Alternative Schools** sets out guidelines for voluntary transfer or placement in Alternative Schools for students who would benefit from an alternate learning environment. It prohibits involuntary placement for academic reasons, and places limits on placement for disciplinary reasons. It requires that Alternative Schools meet the same standards as regular educational environments and creates guidelines for working with students to conduct progress reviews and ensure that students have the right to return to their original school or new school placement as meets their best interests.

**Sub-Section 3.3.c on Right to Education for System-Involved Youth** describes students' right to attend school during periods of detention or incarceration and their right to return immediately to regular school with the necessary transition plans, critical supports in place and transfer of school credits after the period of detention or incarceration.

**Sub-Section 3.3.d on Right to Resume Education after Expulsion** describes the steps schools must take to ensure a smooth transition for students back to their original school or a new school placement following the period of expulsion.

## 3.1 School Climate and Discipline

### 3.1.a Key Elements of School-Wide Preventive and Positive Discipline Policies

**Human Rights Goals:** *School discipline policies shall be aimed at creating a positive school climate, supporting the social and emotional development of students, and teaching non-violence and respect for all members of the school community.<sup>47</sup> By viewing social development as a critical aspect of discipline, states, districts and schools shall anticipate and respond to school disciplinary matters in a manner that is consistent with students' sense of dignity and self-worth. The purpose of discipline must be to understand and address the causes of behavior, resolve conflicts, repair the harm done, restore relationships and reintegrate students into the school community.<sup>48</sup> In addition, particular attention and intervention support shall be provided to vulnerable families and youth at risk of being pushed out.<sup>49</sup>*

#### Recommended Language:

##### A. Definitions

1. **Preventive and Positive Discipline** – Preventive and positive approaches to discipline create safe, supportive and positive school climates and respond to misbehavior with interventions and consequences aimed at understanding and addressing the causes of misbehavior, resolving conflicts, meeting students' needs and keeping students in school and learning. There are a variety of different school wide-models for positive discipline and this section describes the key elements that any model should incorporate. The next section 3.1.b describes two particular models for how to implement those key elements—School-wide Positive Behavior Interventions and Supports (SWPBIS) and Restorative Practices.
2. **Exclusion** – Any suspension, expulsion or involuntary transfer that removes a student from his or her regular classroom. More detailed definitions and guidelines for exclusion are provided in Section 3.1.c.
3. **Zero-tolerance** – A zero-tolerance discipline policy is any school discipline policy or practice that results in an automatic disciplinary consequence such as suspension or expulsion for any student who commits one or more listed offenses. A school discipline policy may be a zero-tolerance policy even if administrators have some discretion to modify the consequence on a case-by-case basis.

B. **States, districts and schools shall adopt evidence-based, school-wide, preventive and positive discipline policies<sup>50</sup>** that are developed through with participation of students, parents or guardians, educators and other stakeholders. Such policies must: establish positive school climates; adopt positive approaches to discipline; limit the use of exclusion; eliminate zero-tolerance policies and practices; adopt preventive and restorative responses to bullying; and provide training and support to teachers and other school staff to implement those policies.

C. **States, districts and schools shall establish positive school climates as an essential component of preventing disciplinary problems in schools**, including:

1. **Creating a positive physical environment** to foster healthy, respectful climates for learning:
  - a. Displaying positive messages and visuals that convey shared community norms and values and celebrate students' learning and accomplishments;
  - b. Avoiding bars on windows, gates in hallways or fences with barbed wire that create degrading or criminalized environments;
  - c. Keeping schools clean and healthy for all members of the school community, including ensuring that student bathrooms are kept clean and unlocked for students' use; and
  - d. Designating positive physical spaces in the school where students can go to meet with counselors, support staff and peers, as well as to de-escalate and resolve conflicts.

2. **Promoting a participatory and supportive school community**<sup>51</sup> to build strong connections between students and staff:
  - a. Holding school-wide conversations through town halls, advisory classes or other mechanisms about developing positive relationships in schools;
  - b. Creating opportunities for students to engage in art, music, cultural celebrations, sports, free play and other activities to express themselves;
  - c. Making it clear for students who they can go to for help and support; and
  - d. When crisis situations or traumatic incidents occur in the school or community, creating a time and space to discuss what happened and its impact on the school community and to identify supports for students.
  
3. **Integrating the social and emotional development of students into classroom and school-wide practices.**
  
4. **Providing early intervention for students at risk of being pushed out of school**, including students with disabilities, students with behavior issues, students with unstable family and home lives, homeless students, students who have been the target of bullying behavior and students who have a history of discipline problems. Early intervention services may include:
  - a. Ensuring that teachers and other adults listen to students needs and concerns;
  - b. Recognizing and accommodating the responsibilities that some students have with family and work obligations, including having children of their own;
  - c. Conducting surveys asking students what they need and what their concerns are and creating mechanisms to work with students to provide the necessary support;
  - d. Creating a clear process for students, parents or guardians to ask for help or counseling with a quick turnaround time to respond to crisis situations; and
  - e. Developing and supporting student leaders to provide mentoring, intervention and mediation to other students.
  
- D. **States, districts and schools shall adopt a positive approach to discipline aimed at:** Understanding and addressing the causes of behavior; resolving conflicts and repairing the harm done; restoring the relationships in the school community; and reintegrating students into the school community. This approach includes:
  1. **Creating clear expectations and graduated levels of support and intervention for all students with consequences for misbehavior that are individualized, consistent, reasonable, fair, age appropriate and match the severity of the student's behavior.**<sup>52</sup> In determining interventions and consequences, schools shall take into account the range of factors described in Section 3.1.c that can affect a student's behavior in order to determine appropriate consequences on a case-by-case basis.
  2. **Ensuring that students, parents or guardians, and teachers know and understand all of the school norms, expectations, rules and disciplinary processes.**
  3. **Utilizing non-exclusionary discipline responses and alternatives to suspension** with support by qualified staff who have the necessary training to carry them out effectively, including but not limited to:
    - a. Mediation and conflict resolution;
    - b. Restorative circles, conversations and family group conferences;
    - c. Transformative justice approaches;
    - d. Counseling;
    - e. Tiered support team interventions;
    - f. Community Service; and
    - g. Written and verbal apologies.



4. **Prohibiting the use of corporal punishment, restraints, seclusion or physical abuse against students.**
- E. **States, districts and schools shall limit the use of exclusion in the form of suspension or expulsion to only the most serious offenses. Exclusion shall only be used after non-exclusionary discipline alternatives have been carefully considered, tried and documented** to the extent reasonable and feasible and only if, after that consideration, it is determined that exclusion from school is absolutely necessary to protect the safety of the school community (See 3.1.c for Guidelines for Exclusion).
- F. **States, districts and schools shall eliminate zero-tolerance laws and policies.** Federal and state legislators shall repeal zero-tolerance laws<sup>53</sup> and districts and schools shall revise Discipline Codes, Codes of Conduct and discipline policies to eliminate zero-tolerance policies which mandate suspension or expulsion for one or more listed offenses.
- G. **States, districts and schools shall adopt a policy for prevention of and response to bullying behavior by students and adults.**<sup>54</sup>
1. Schools shall take action to put an end to bullying behavior when they are made aware of it, utilizing discipline methods that reflect a commitment to restorative practices and without criminalizing student behavior.
  2. “Bullying behavior” means behavior that harms or threatens to harm any student’s physical, social, or emotional well-being in a pattern that is repeated over time. Bullying behavior may be connected to a negative and biased view of a targeted student due to an actual or perceived characteristic, such as race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity and expression, mental or physical disability, or by any other distinguishing characteristic. Bullying behavior may adversely affect the student’s ability to participate in school activities or even to attend school at all, and may involve an imbalance of power or strength.
- H. **States, districts and schools shall provide training, resources and monitoring to ensure implementation of restorative practices and policies,** including:
1. Ensuring that staff at the district level responsible for overseeing design and implementation of the positive discipline policy are trained in positive discipline models, culturally responsive approaches to education and discipline, youth development and other relevant methods.
  2. Requiring that school staff be trained in classroom management and positive approaches to discipline.<sup>55</sup>
  3. Creating a Code of Conduct or Code of Ethics for teachers and other staff to promote positive interactions between teachers, students, parents, staff and administrators.
  4. Providing technical assistance for schools to implement and monitor positive approaches (for more details see Section 5.3 on monitoring and accountability).<sup>56</sup>
  5. Working together to provide families and youth training on integrating positive approaches to discipline in school with positive discipline approaches at home and in community institutions.

## 3.1.b Two Models for Preventive and Positive Discipline

*School districts all over the country are currently implementing a variety of school-wide preventive and positive approaches to discipline. This section of the Code describes model policies for implementing two of the most successful and widely used approaches, School-Wide Positive Behavior Interventions and Supports (SWPBIS) and Restorative Practices. Both approaches could be adopted together, either one could be adopted on its own, or another preventive, positive approach or combination of approaches could be used. These model policies, however, provide guidance for achieving a positive school climate that meets all of the characteristics described in 3.1.a. Where possible, we have included references to examples of the policies described that are already in place in school districts throughout the United States.*

### Model 1: School-Wide Positive Behavior Interventions and Supports (SWPBIS)

#### Recommended Language

##### A. Definitions

1. **School-wide Positive Behavior Intervention Supports (SWPBIS)** – SWPBIS is a research-based, school-wide, systems approach to improving school climate and creating safer and more effective schools. SWPBIS is a process, not a program or a curriculum. The process focuses on improving a school's ability to teach expectations and support positive behavior for all students by providing tools to design, implement and evaluate effective school-wide, classroom, and student-specific discipline plans. SWPBIS is a team-based process for data review, data-based problem solving and intervention, ongoing planning and monitoring of interventions.<sup>57</sup> Integral to SWPBIS is a three-tiered prevention and intervention problem solving process that includes primary (school-wide), secondary (targeted to classrooms, groups or individuals) and tertiary (intense individual intervention) systems of support that improve results for all students.<sup>58</sup>

##### B. Leadership Teams

1. **States and districts shall establish Leadership Teams** that include representation from all stakeholders to develop guidelines for implementing SWPBIS policies and procedures at the state, district and individual school level.<sup>59</sup>
2. **Schools shall establish Leadership Teams** (or utilize an existing school-level team or decision-making body) to implement SWPBIS, using a process that considers available data and that solicits input from the entire school community.
  - a. School administrators shall use a democratic approach to solicit stakeholder involvement in the leadership team, which shall include representatives of all stakeholder groups, including an administrator, a general education and a special education teacher, support staff, students, parents or guardians and other relevant community members.
  - b. The leadership team shall have regular meetings, a clear purpose, efficient internal processes and build caring relationships.
  - c. The school district and school administrators shall actively support the leadership team by providing adequate resources for fulfilling its responsibilities, implementation material and ongoing training. The Leadership Team shall undergo a training of at least two to three days provided by skilled trainers on PBIS.
  - d. The Leadership Team is responsible for securing school-wide agreements and support from the entire school community for the implementation of school-wide PBIS<sup>60</sup> on the:
    - i. Nature and priority of staff development efforts and needs;
    - ii. Long term (3-4 year) commitment and investment in the effort; and
    - iii. Importance of taking a preventative and instructional approach to behavior management and school-wide discipline.

### C. Defining Expectations

1. Schools shall define behavioral expectations for all members of the school community to serve as the foundation of school-wide prevention and intervention.<sup>61</sup>
2. Every three years, the Leadership Team shall use a participatory process to solicit input from the school community, including students, to:
  - a. Develop three to five behavioral expectations that are positively stated and easy to remember;
  - b. Create a matrix of how the behavioral expectations look, sound and feel in all the classroom and non-classroom areas;
  - c. Develop lesson plans and strategies, including frequency and duration, on how the behavioral expectations will be taught in and around school; and
  - d. Ensure that all teachers and staff have training in culturally relevant instruction so that behavioral expectations are taught in ways that fully engage the student.

### D. School-Wide Teaching and Classroom Management Practices

1. States, districts and schools must implement social-emotional learning programs that are found to be effective in reducing behavioral problems and increasing academic achievement.<sup>62</sup> Students shall be taught at a school-wide level how to resolve conflicts, manage their emotions and learn empathy skills. This must include classroom instruction that explicitly teaches these skills multiple times each school year as well as curricula that embed social-emotional learning in content instruction.<sup>63</sup>
2. The classroom management practices of teachers must engage students as partners and leaders in the classroom, stressing prevention and the teaching of desirable behaviors rather than focusing on consequences.<sup>64</sup> Schools must:
  - a. Provide staff with classroom management training that includes strategies for adapting to the specific contexts of each classroom and each individual student beginning at the pre-service level;
  - b. Use a problem-solving team and a lesson-study approach that supports on-going classroom management; and<sup>65</sup>
  - c. Regularly review data to determine the amount of classroom management training.
3. Teachers shall engage in culturally responsive activities to help analyze their understanding of the role of culture in student behavior, reflect on their judgments about appropriate behavior and cultural differences and support the use of culture in classroom contexts. It is also especially important for teachers to be knowledgeable about the different cultures of their students.<sup>66</sup>
4. Schools shall engage in continuous reflection and evaluation so that teaching teams can give and receive feedback on ways to achieve high levels of academic engagement and low levels of classroom misconduct. Data must be shared at faculty and grade level meetings in regard to achievement and disciplinary responses (see more details on data collection in section 5.2).

### E. Positive Approaches to Behavior<sup>67</sup>

1. All members of the school community are responsible for teaching and reinforcing appropriate school behavior.
  - a. Administrators, teachers and other staff shall model appropriate and respectful behavior and must commit to teaching students how to behave respectfully and appropriately toward each other and toward adults.
  - b. Students and staff must be given the tools to prevent behavior problems and, if they occur, to keep them from escalating.

2. School Leadership Teams shall develop a procedure for responding to problem behavior that provides clear consequences that have both instructional components and constructive responses to student behavior, and that is facilitated through coordination of services, professional development decisions and choices, guidance and support for staff, and additional instruction for students, including:
  - a. A continuum of behavior supports to identify what should be in place to prevent behavior and includes a range of responses that could be utilized when misconduct occurs;
  - b. A clear delineation of responsibilities for all members of the school community, including a distinction between behaviors that are managed by staff/ classroom teacher and by office/ administrative staff; and
  - c. A referral procedure for individualized intervention.
  
3. All consequences for inappropriate behavior must be consistent with the requirements in Section 3.1.a of this Code.
  - a. Consequences must be individualized, consistent, reasonable, fair, age appropriate and should match the severity of the student's behavior.<sup>68</sup> The consequence must be a natural and logical match to the inappropriate behavior.<sup>69</sup>
  - b. Consequences must be paired with meaningful instruction and guidance (corrective feedback and re-teaching), and offer students an opportunity to connect their misconduct with new learning and participate in contributing back to the school community.
  - c. The use of consequences must be carefully planned with well-defined outcomes in order to provide the greatest benefit.
  
4. Consequences must be administered by a team that includes people who know the student best and have a vested interest in a positive outcome. The student must be part of the team and have a role in determining the consequence. For in-classroom consequences, the team can include the teacher and the student. The team must:
  - a. Consider the range of appropriate responses;<sup>70</sup> and
  - b. Provide continuous monitoring of student behavior and responses to the consequences.

#### **F. Students Requiring Individualized Interventions**

1. Students 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>71</sup> require a more intensive level of intervention that is individualized and includes a team approach. In order to provide effective interventions:
  - a. School-site staff must have training, information and resources available in order to provide effective interventions;
  - b. All interventions must be tailored to the students' specific needs and circumstances;
  - c. Schools and classrooms must have in place universal screening methods that provide data for the provision of interventions to students with social and academic deficits, who require differentiated support;
  - d. The Leadership Team must develop the process for teachers and other staff to make a referral for intervention for patterns which may include office discipline referrals, low academic achievement, poor attendance or other challenges; and
  - e. There must be progress monitoring, a scientifically based practice that is used to assess students' academic performance and evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class. Utilizing this process enables teachers or other school staff to make a referral for intervention.
  
2. All decisions related to intensive interventions must be made by a "support team" that includes the student and people who know him or her best, including the student's family, all working together to promote positive change. The team may include the classroom teacher, administrator, school psychologist, counselor, social workers and mental health experts.
  - a. The support team shall work with the family in using a problem-solving approach in an effort to help the student to be more successful in school, at home or in the community.<sup>72</sup> The support team shall:

- i. Receive referrals;
  - ii. Identify and assess problems;
  - iii. Collect data for use in decision-making;
  - iv. Communicate with family members and provide opportunities for training on behavior support and positive parenting strategies;
  - v. Identify action steps and develop strategies for coordination and implementation of programs and resources (e.g., conflict-resolution, opportunities to develop social and emotional skills, mentoring);
  - vi. Make a referral for special education if appropriate;<sup>73</sup> and
  - vii. Monitor behavior and modify the action steps appropriately.
- b. For some students who require a more intensive level of intervention, the support team shall:
- i. Include one person qualified to conduct a functional behavior assessment (FBA), and shall conduct a FBA if the student is not responding to Tier I and Tier II interventions;
  - ii. Integrate community based resources in action planning and service delivery when necessary; and
  - iii. Develop a support plan comprised of individualized goals, data collection and analysis, assessment-based intervention strategies and monitoring systems to address the needs of the student.<sup>74</sup>

## G. Wraparound Services

1. Wraparound services shall be provided for students with complex and multiple needs and risks being served by multiple agencies. The process is used to help communities develop individualized plans of care that are driven by the needs of students, not the services provided.<sup>75</sup>
2. Wraparound plans for individual students shall be developed by the support team of people who know the students best and must include the following best practices:<sup>76</sup>
  - a. Wraparound efforts must be based in the community;
  - b. The plan must be individualized to meet the needs of children and families;
  - c. The process must be culturally competent and build on the strengths of the children and family;
  - d. Parents or guardians must be included at every level;
  - e. Agencies must have access to flexible, non-categorized funding;
  - f. The process must be implemented on an inter-agency basis and be owned by the larger community;
  - g. Services must be unconditional. If the needs of the student and family change, the student and family are not to be rejected from the service. Instead, the service must be changed; and
  - h. Outcomes must be measured.

## H. Evaluation

1. Every state, district, or school must have an evaluation process carried out by the Leadership Team that occurs on a regular and consistent basis to:
  - a. Monitor implementation of SWPBIS and disciplinary data showing trends in disciplinary actions (office disciplinary referrals, suspensions, expulsions, referrals to law enforcement and referrals to alternative school—disaggregated by race, gender and special educational status), and report back to the school and community;
  - b. Review all referrals for Individualized Interventions and Wraparound Services; and
  - c. Make recommendations for on-going training, implementation and modification of the SWPBIS plan and the allocation of resources.

## Model 2: Restorative Practices

### Recommended Language

#### A. Definitions

1. **School community** – Includes students, teachers, administrators, counselors, social workers and other school staff, families and the surrounding neighborhood/ community.
2. **Restorative justice** – A theory of justice that emphasizes repairing the harm caused or revealed by misconduct rather than punishment by:
  - a. Identifying the misconduct and attempting to repair the damage;
  - b. Including all people impacted by a conflict in the process of responding to conflict; and
  - c. Creating a process that promotes healing, reconciliation and the rebuilding of relationships to build mutual responsibility and constructive responses to wrongdoing within our schools.<sup>77</sup>
3. **Restorative practices** – A framework for a broad range of restorative justice approaches that proactively build a school community based on cooperation, mutual understanding, trust and respect, and respond to conflict by including all people impacted by a conflict in finding solutions that restore relationships and repair the harm done to the school community.<sup>78</sup>

#### B. School districts shall provide the resources, training and technical assistance for schools to implement restorative practices district-wide.

1. School districts shall incorporate restorative practices into their Discipline Codes or Student Codes of Conduct as the primary process by which schools shall respond to behavior and conflict.
2. School districts shall create a Restorative Support Team at the central district level that includes individuals who have engaged in restorative practices in school settings. The Support Team shall provide ongoing training, evaluation and technical assistance for schools in implementing restorative practices. The Support Team shall create the mechanisms to collect and evaluate data on school climate, discipline and safety and to intervene to ensure that schools with higher suspension, expulsion and arrest rates receive the resources and technical assistance they need to implement restorative practices.
3. School districts shall fund, designate and train a Restorative Coordinator position in each school that shall receive training, oversee development and implementation of a school-wide plan, and provide ongoing support and coordination for teachers and students. The Restorative Coordinator should be someone with whom students can build positive relationships.

#### C. Schools shall establish a Restorative Planning Team that is responsible for developing and implementing a plan to integrate restorative practices into the school policies, practices and culture.

1. The Restorative Planning Team shall include representatives of all stakeholders in the school community, including administrators, teachers, counselors and other support staff, students, parents or guardians, and other relevant community members who receive training in restorative practices. The Team shall periodically recruit new members from the school community so that the knowledge and leadership on restorative practices is shared by different members of the community.
2. The Restorative Planning Team is responsible for disseminating information about restorative practices and engaging all members of the school community in supporting its implementation on campus. The Team is responsible for gathering input from the broader school community and developing a plan for what restorative practices trainings shall be provided to staff, students and parents or guardians and what structures, policies and practices shall be created.

3. The Restorative Planning Team is responsible for presenting monthly reports on school climate, discipline, safety and implementation of restorative practices.
  4. The Restorative Planning Team shall also reach out to community-based organizations and other actors in the community to build support for and opportunities to engage in restorative practices inside and outside of the school.
- D. Schools shall actively create a positive school climate for all members of the school community through the regular and ongoing use of classroom and school-wide restorative practices that build community, strengthen relationships, promote inclusiveness, and enhance communication and problem solving skills.
1. School-wide restorative practices include:
    - a. Discussions in the classroom and school-wide forums about how members of the school community should treat one another;
    - b. Time to share the highs and lows of the day in advisory classes or forums;
    - c. Creating a welcoming environment where parents or guardians and community members are invited to volunteer and participate in the school community, including creating a parent room on campus; and
    - d. Creating mechanisms for students to check-in when they enter school each day to share concerns and/or request a meeting with a counselor to discuss problems they are facing.
  2. Teachers shall use restorative circles as a classroom teaching method to work collaboratively with students to set academic goals, explore the curriculum and set classroom norms for behavior, including:
    - a. Morning “Check-in” Circles for teachers and students to tell what is going on in their lives, center themselves and focus on the day ahead; and
    - b. Discussion Circles to talk about a topic they are currently studying and delve into more depth on the subject.
  3. Teachers, administrators, counselors, support staff and students themselves shall use restorative problem solving techniques that increase communication and provoke student reflection on how their actions impact others.
- E. **In response to disciplinary infractions or conflict, schools shall use a continuum of strategies that are restorative rather than punitive.**<sup>79</sup> Schools shall use restorative and other positive responses except for the most serious and dangerous offenses when exclusion from school is absolutely necessary to protect the safety of the school community (see 3.1.b).
1. All individuals who are impacted by a behavior 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>80</sup>
  2. If appropriate, the students or staff who committed the behavior or were involved in the conflict may participate in a restorative process to hear from all stakeholders and determine actions that meet restorative practice principles. Restorative processes should be conducted in a student-friendly space with both students and staff trained to mediate the discussion.
  3. The continuum of strategies include but are not limited to:
    - a. Restorative Chat – One-on-one informal conversations that are held as an immediate response or follow up to an action that has somehow caused harm to help the student correct the behavior in the present and future.<sup>81</sup>
    - b. Restorative Circles – Spaces in which participants take turns speaking to a topic, guided by at least one circle keeper, using a talking piece and going around to ensure that everyone has an equal opportunity to speak. There are many different types of circles that can be used to promote a positive learning environment and deal with issues as they arise (for circles used in classroom teaching see D.2 above). Some of the main circles that schools can utilize for discipline include:
      - i. Discipline Circles to address what occurred, repair the harm and develop solutions to prevent reoccurrence, involving relevant parties and support people if helpful; and

- ii. Proactive Behavior Management circles used to role-play and work with students to develop positive behavioral models.
- c. Fairness Committees – A Fairness Committee is made up of students, teachers and other school staff who have been trained in restorative practices to work with students or staff who have violated core community norms and values to create appropriate consequences through dialogue and by consensus. The committee takes referrals from staff or students to 1) inspire empathic and critical self-reflections by confronting a member of the community with his or her actions and how they have affected others; 2) collectively determine how best to restore and mend the community in the wake of actions inconsistent with its values, and 3) how to reintegrate the member of the community who has violated the shared values back into the fabric and culture of the school.<sup>82</sup>
- d. Restorative Group Conferencing – A facilitator leads those who were involved in an incident, whether they were harmed or did the harm, as well as their supporters in a face-to-face process. This process aims to address the harm, make things right and prevent reoccurrence, and is based on the ideas of restorative practices and mutual accountability.
- e. Restorative Peer Juries – The peer jury is about creating a space where students can be respected and heard and can engage in a corrective process for behaviors. Juries shall be convened for restorative purposes as an alternative to other interventions or consequences, and shall not be conducted in an adversarial manner (restorative Peer Juries are different from student courts). The Peer Juries may be held in the school that is attended by the student who caused harm or in a school within the area of the student’s school. In order to appear before a school Peer Jury, the student who caused the harm must admit to committing the misconduct, and the student and parent or guardian must agree to abide by the decisions of the school Peer Jury and complete the corrective actions it recommends.
- f. Impact Panels – A forum for students or adults who were harmed by an incident to tell other students who have caused harm about the impact of the incident on their lives and on the lives of their families, friends and neighbors. Panels typically involve three or four speakers who have experienced harm, each of whom spends about 15 minutes telling their story in a non-judgmental, non-blaming manner. These forums are used to educate other students about the impacts of harm in the school community. While some time is usually dedicated to questions and answers, the purpose of the panel is for those impacted by the harm to speak, rather than for those who have caused harm to engage in a dialogue.<sup>83</sup>
- g. Mediated Conferencing – A process that provides those harmed by an incident an opportunity to meet the person who caused the harm, in a safe and structured setting, and engage in a mediated discussion of the offense. With the assistance of a trained mediator, those who were harmed are able to tell the person who caused the harm about the incident’s physical, emotional and other impacts; to receive answers to lingering questions about the incident; and to be directly involved in developing a plan for the harm to be repaired.<sup>84</sup>

## F. Student and Family Rights

1. Information about the use of restorative practices at schools shall be provided to all students and parents or guardians.
2. The student who has committed the behavior shall have the right to participate in restorative responses instead of more traditional forms of discipline such as suspension and expulsion.
3. The student who has committed the behavior has the right to participate actively in identifying the solutions and responses to repair the harm done.
4. The student(s) who were impacted by the behavior shall have the option, but are not required to participate in restorative practices and identifying the solution to repair the harm done.
5. Families and friends of the student who committed the behavior and the students impacted by the behavior have the right to participate in the restorative process.



G. **School districts shall require and provide restorative practices training** by experienced practitioners for all members of the school community, including by engaging teachers, students and parents or guardians to help design and lead the trainings.

1. All administrators and support staff shall receive training on using restorative practices in interacting with staff, parents or guardians, students and the community and in responding to conflict.
2. All teachers, counselors, social workers and other support staff shall receive training in incorporating restorative practices into lessons and day-to-day classroom activities and as a technique for classroom management and conflict resolution.
3. All students shall receive instruction on restorative practice in the classroom through appropriate activities and shall receive academic and/or community service credit for attending classes on restorative practice and/or participating in restorative committees, groups or boards.
4. All families and members of the community shall have access to training in restorative practices through regular workshops and community building activities.

### 3.1.c Guidelines for Exclusion

***Human Rights Goals:** Schools must take appropriate measures to ensure that school discipline respects a child's rights to education and dignity, minimizing disruption to the learning process,<sup>85</sup> protecting children from harsh or degrading punishment,<sup>86</sup> and preventing and eliminating discrimination.<sup>87</sup> Schools shall avoid penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others.<sup>88</sup>*

#### Recommended Language:

##### A. Definitions

1. **Exclusion** – A suspension, expulsion, or involuntary transfer for discipline reasons from school.
2. **Suspension** – Temporary exclusion from the student's daily class schedule, not to exceed 5 consecutive days or 10 total days per school year. Additional limits on the use of suspension are described in Section D. The term of suspension is served in a classroom at the student's school or in a classroom at an off-site School District facility, at both of which, the student shall receive quality instruction as defined in Chapter 1 on Education.
3. **Expulsion** – Any long-term exclusion from school attendance and school privileges for a period of more than 5 consecutive days of school or 10 cumulative days of school over the course of a school year, including long term suspensions and expulsions and permanent exclusions from school. Expulsion shall not be a complete cessation of educational services but the removal of the student from his or her current school environment, with alternative educational services provided during the removal during which time the student shall receive quality instruction as defined in Chapter 1 on Education and Section 3.3.b on Alternative Schools.
4. **Involuntary Transfer** – Unlike voluntary transfers, involuntary transfers are a school administrator-initiated intervention in which the student is removed from their school of attendance to another comprehensive school or continuation school site, usually for the remainder of the school term. Involuntary transfers for academic reasons are prohibited in Section 3.3.b. Involuntary transfers for disciplinary reasons must adhere to the same due process protections as expulsions, outlined in section 3.1.c of this Model Code, including guaranteeing the right to a hearing and to appointed counsel at public expense.

**B. States, districts and schools shall require that exclusion from school only be considered when a student commits the most serious offenses.<sup>89</sup>**

1. No student may be excluded from school:
  - a. Until and unless non-exclusionary discipline alternatives have been carefully considered, tried and documented to the extent reasonable and feasible;
  - b. Only if, after that consideration, it is determined that exclusion from school is absolutely necessary to protect the safety of the school community; and
  - c. Only after considering the full impact of the decision to exclude a student on both the student and the school community.
2. Schools shall adopt a school-wide preventive and positive discipline policy as a necessary foundation to addressing safety and discipline in schools (See Section 3.1.a).

**C. Factors to consider in deciding whether to exclude a student from school**

1. School administrators must consider whether other factors outside of the student's control contributed to the problem behavior and whether such behavior could be alleviated by helping the student deal with the factors causing the behavior. Examples of such factors include, but are not limited to:
  - a. Mental illness or undiagnosed disabilities;
  - b. Appropriateness of the student's placement or setting;
  - c. Whether the student is or has been a victim of bullying behaviors or classroom environments;
  - d. Family situations such as involvement in foster care, domestic violence; homelessness, poverty, recent death of a loved one, or immigration status;
  - e. Substance abuse or addiction;
  - f. The student's disciplinary history;
  - g. The student's age and ability to understand consequences;
  - h. The student's expression of remorse;
  - i. Whether the student was acting in self-defense;
  - j. Whether the school district made any effort to address the student's behavior using positive, preventive methods prior to the incident at issue;
  - k. If the misconduct involved possession of a "weapon," as defined under school policy, whether the "weapon" in question was brandished or employed as a weapon or in an otherwise threatening fashion;
  - l. The egregiousness of the student's conduct and whether it placed students or staff at serious risk of emotional or physical harm;
  - m. Whether other interventions, such as positive behavior supports and restorative practices, can adequately address the behavior at issue while enabling the student to remain in school, and whether such interventions have been tried before with this particular student;
  - n. Whether the student is being disciplined for engaging in bullying behavior and, if so, whether restorative practices have been in place and whether the student was exposed to them previously;
  - o. Whether, if the student is being disciplined for bullying behavior, there is a restorative practices approach to disciplining the student that would be more effective than exclusionary discipline at addressing the problem; and
  - p. Any other relevant circumstances, including whether the student should have been identified as a student with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. If the student has not previously been evaluated for a disability but has engaged in a pattern of behavior that suggests the student should have been, the school shall immediately begin the procedure to conduct an evaluation as set forth in Section 1414 of U.S. Code Title 20 on evaluation of students with disabilities.<sup>90</sup>

2. If such factors exist, the school administrator must refer the student to appropriate services or interventions as outlined in Section 3.1.a before the child may be referred for exclusion from school. If no such services exist in the community, the school administrator must consult with the student's parent, guardian, or another trusted adult in the student's life before pursuing school exclusion.
3. The school administration must document all positive interventions and other disciplinary measures it has tried in addressing the student's behavior and explain why those measures have not worked before choosing to pursue exclusion from school to address the behavior.

#### **D. Limitations on use of school exclusion**

1. No student shall be excluded from school for a first-time offense unless otherwise required by federal or state law, except in the case of an emergency removal.<sup>91</sup>
2. No student under the age of 10 may be excluded from school for disciplinary reasons.
3. No student under the age of 15 may receive a suspension of more than 3 days.<sup>92</sup>
4. No student shall be issued a suspension for more than 5 consecutive days or 10 cumulative days total during an academic year.
5. No student shall be issued an involuntary transfer for disciplinary reasons for more than one school term. In order to issue an involuntary transfer, schools shall guarantee the same due process protections as required for expulsions as outlined in Section 3.1.c of this code. At the end of the term, the student shall have a right to reenroll in their home school or previous school of attendance.
6. Suspension shall be prohibited for:
  - a. Being late to school or class or being absent;
  - b. Violating school dress code or uniform rules;
  - c. Minor behavior infractions, including but not limited to insubordinate behavior, defiance, disobedience, disrespect, or disruptive or rowdy behavior, classroom disruption or other disruption of school activity; and
  - d. Behavior that happens off of school grounds and not as part of a school-sponsored activity.
7. Schools shall not withhold recess as a punishment.
8. Students may exercise the rights of speech, assembly, press and association, in accordance with the First Amendment of the United States Constitution and any applicable state laws. Except in the most serious circumstances, schools shall use non-exclusionary responses when students violate school rules in the process of exercising their First Amendment rights.

#### **E. Right to remain in school and continue education during exclusion**

1. If a district or school proposes to exclude a student, regardless of whether that exclusion is a suspension or an expulsion, that student shall remain in school pending the outcome of that student's exclusion conference or expulsion hearing as outlined in section 3.1.c.
2. If a student is suspended from school, that student has a right to continue to access and complete regular academic work during the suspension. No school policy shall prohibit a student who has been suspended from school from completing assigned work during that time and earning credit towards promotion or graduation.
  - a. Schools shall provide quality instruction in an alternative classroom or place students in an alternative school that provides the same quality instruction (see Section 3.3.b. for more details on Alternative Schools).

- i. Quality instruction is defined as instruction by a certified teacher with grade and class appropriate material that allows the student to earn equal credits and receive parallel education as if they had been in their regular class and allows them to join their regular class after the term of the exclusion on pace with their classroom peers.
  - b. The school shall ensure the student gets all the assignments for the time the student is not in class.
    - i. If the school cannot get assignments to the student, it shall document those reasons and provide them to the student, the student's parent or guardian, the student's representative or counsel and the Board of Education, and shall assist the student in making up the work after they return from suspension.
3. If a student is expelled from school, that student shall have a right to attend a high quality alternative school where the student shall receive a complementary education that allows him or her to continue to progress toward graduation and will help the student develop a plan to reintegrate into the student's home school at the end of the exclusion period (see Section 3.3.b on Alternative Schools).

### 3.1.d Due Process

**Human Rights Goal:** *Schools must guarantee that children have a right to full due process before they can be removed from school and to an opportunity to be heard in any judicial and administrative proceeding affecting them.<sup>93</sup> In any hearing regarding the denial of educational rights, the school system must guarantee that child adequate representation, including the appointment of public counsel.*

#### Recommended Language:

- A. All students have a right to adequate and meaningful due process prior to being excluded from school for any length of time.**
1. Prior to the beginning of such process, non-exclusionary disciplinary alternatives must be considered, tried and documented to the extent reasonable and feasible.
  2. Prior to and during such process, schools shall provide quality instruction and an opportunity to complete all assignments and earn credit as described in section 3.1.c.F.
  3. Due process protections for any exclusion of students with disabilities shall follow the recommendations in Section 4.3 of this Code and federal law.
- B. Due Process for Suspension**
1. If the school recommends a suspension of less than five days, the student has a right to:
    - a. Written notice to the student and to the student's parent or guardian within 24 hours of the incident leading to the proposed suspension, describing the infraction, the length of the proposed suspension and the student's rights as described in this section
      - i. The written notice must be in the primary language spoken by the parent or guardian.
      - ii. The notice must include an invitation to the parent or guardian to attend an exclusion conference to discuss the proposed suspension at the parent or guardian's earliest possible availability.
    - b. An exclusion conference to discuss the explanation of the evidence and version of facts that the school is relying on, the student's version the facts and/or explanations for the alleged behavior, student's defense and whether or not the recommendation to exclude the student must be consistent with section 3.1.c of this Code.<sup>94</sup>
      - i. The school is not required to present live testimony or physical evidence and may rely on written statements about the incident.
      - ii. The school must allow a reasonable opportunity for the student's parent or guardian to attend the exclusion conference.
    - c. A neutral decision-maker as described in Section E below who makes the decision whether to suspend the student.

- d. Appeal the decision as described in Section H below if he or she does not agree with the outcome of the exclusion conference.
2. If the school recommends a suspension of 5 or more days consecutively or cumulatively, but fewer than 10 days consecutively or cumulatively, the student has a right to:
    - a. All of the procedures set forth above in Section B.1; and
    - b. A formal review of attempted interventions as outlined in Section 3.1.a and initiation of interventions not yet attempted.

### **C. Due Process and Right to a Hearing for Expulsion<sup>95</sup>**

1. If the school recommends an expulsion of 10 or more days, either consecutively or cumulatively, or if the student faces an involuntary transfer for disciplinary reasons to another school site, the student has a right to a full hearing as described by Sections D-H below.

### **D. Right to Counsel**

1. Any low-income student who is facing exclusion for ten days or more, whether consecutively or cumulatively during a school year,<sup>96</sup> shall be provided upon request with legal counsel in any administrative or judicial proceeding (including appeal) as a matter of right and at public expense.<sup>97</sup> All students are presumed low-income, and the income of the student's family shall not be considered in determining whether a student is low-income. Immediately upon written notice of the proposed discipline, the school shall notify the student that he or she is entitled to counsel upon request and ask the student whether he or she wishes to have counsel appointed.

### **E. Right to Notice**

1. Prior to the full hearing for an exclusion of more than 10 days, the school must take steps to ensure that the student and his or her parents or guardians are aware of the charges the student is facing and have a meaningful opportunity to attend the hearing. To this end, the school must provide notice to the student and his or her parents or guardians of the hearing early enough to ensure that they will have an opportunity to attend, schedule the hearing at a mutually agreed-upon time and place, and document the means (letter, telephone call, email), date and time of each attempt to notify both the student and the parent or guardian(s).<sup>98</sup> All such notices must be provided in the language the parent or guardian understands best.
2. Notice to the parent or guardian about the recommended exclusion must include:
  - a. The purpose, time and location of the hearing;
  - b. The charge the student is facing and any supporting evidence that will be introduced at the hearing, including copies of witness statements, investigative reports and video or photographic surveillance;
  - c. Notice of the student's right to have an attorney, to call witnesses and present evidence, to view the student's records, including discipline files and to challenge the school's evidence;
  - d. Notice of the right to translation and interpretation in the language that the parent or guardian understands best; and
  - e. A list of all people that will be present at the hearing, at least 2 days in advance of the hearing.
3. If the student and/or the parent or guardian are unable to attend the hearing during the date and time proposed by the school, the student and parent or guardian must be given the opportunity to suggest at least three alternate times that will work with their schedules.

## **F. Right to a Neutral Decision Maker**

1. The hearing shall be conducted by a neutral hearing officer or panel who was neither directly involved with nor a witness to the alleged incident.<sup>99</sup>
2. Recommendations for acceptable hearing officers include:
  - a. A neutral school district employee who is not an employee of the school recommending the student for suspension or expulsion.
  - b. A three person panel made up of a school staff member, a parent or guardian and a student, each with equal voting rights.
  - c. A peer jury or other student-run panel organized through a program that trains and monitors student involvement in discipline decisions.
  - d. The elected Board of Education for the school district or any individual member thereof.
3. A scheduled neutral hearing officer shall recuse him- or herself if she or he has any conflict of interest, including personal involvement with the facts or a relationship with any of the parties or witnesses.
4. Hearing officers and members of panels that serve as hearing officers must understand the purposes of the school code and receive training in applying the human rights principles underlying the code as well as how to conduct a fair and organized hearing as outlined in the code.
5. The neutral hearing officer shall make a decision on the exclusion impartially and based exclusively on the evidence presented at the hearing.

## **G. Evidence**

1. The school bears the burden of proving, by clear and convincing evidence, that the student committed the charged infractions and that exclusion is the only acceptable option.
2. The student shall have the right to call all persons with direct knowledge as witnesses at the hearing and they shall be subject to cross-examination by the student or the student's representative or counsel.
3. All witnesses shall be required to appear and testify in person, unless one of the following exceptions applies:
  - a. A student witness/person who was harmed may submit written or recorded testimony if his or her presence would endanger his or her safety.
  - b. If a criminal or juvenile delinquency case is pending regarding the incident, the prosecutor's office may request that the person harmed not testify.
  - c. In situations where a witness cannot attend the hearing (e.g., cannot get time off from work, does not live in the area), the witness may submit written or recorded testimony, or may testify by telephone, if the parties consent.
4. The student shall have the right to confront anyone whose statement is introduced to the court if such a statement would be considered testimonial in a court of law.
5. The student shall have a right to refuse to testify and to keep his or her parent or guardian from testifying.
6. The student and his or her parent or guardian shall have a right to access all tangible evidence the school possesses regarding the alleged incident, including, but not limited to, documents, reports, video surveillance footage, photos and other physical evidence. Physical evidence may be redacted if its disclosure would violate the Family Educational Rights Privacy Act (FERPA).

7. The hearing shall be recorded or transcribed and a copy of the recording transcription shall be made available as soon as possible to the student, his or her parent or guardian, or his or her attorney upon request.
8. If a juvenile delinquency or criminal case is pending against the student based on the incident giving rise to the proposed exclusion, the hearing shall be postponed at the request of the student, parent or guardian, or student's attorney until the conclusion of the delinquency or criminal case. In no circumstances shall the student be required to testify about the incident if he or she has a currently pending delinquency or criminal case.

#### **H. Notice of hearing decision**

1. The student and his or her parent or guardian has a right to a notice in his or her home language of the decision, including a written explanation detailing the reasons for the decision, within 48 hours of the hearing.
2. This notice must also include notice of the student's right to appeal the decision and an explanation of the steps to take to pursue an appeal.

#### **I. Right to Appeal**

1. A student who has been excluded from school has the right to appeal his or her exclusion. Appeals shall be heard by a neutral hearing officer designated by the district Board of Education or equivalent entity.<sup>100</sup>
2. When hearing the appeal, the hearing officer shall consider whether the student's rights were violated during the hearing process, including:
  - a. Whether all proscribed timelines were met;
  - b. Whether all notifications were proper;
  - c. Whether the student was afforded the right to counsel;
  - d. Whether the student was represented at the hearing;
  - e. Whether the facts indicate that the arbiter was not neutral;
  - f. Whether the facts as presented at the hearing were fairly and fully considered;
  - g. Whether the school considered all possible alternatives before proposing to exclude the student from school;
  - h. Whether the school tried non-exclusionary alternatives to address the student's behavior before proposing exclusion and how well those alternatives were implemented;
  - i. Whether other factors outside the student's control caused the behavior, including whether the student has or might have a disability or need treatment for mental health concerns;
  - j. Whether new facts have been uncovered that are exculpatory; and
  - k. Whether the factors leading to the reasons set forth by the school describing why alternative, non-exclusionary forms of discipline were not appropriate have changed in a positive way for the student.
3. If any of the above factors are established on appeal, a re-hearing may be granted and/or the decision to exclude overturned.
4. If a student appeals to the Board of Education and loses, he or she must have the option of appealing the Board's decision in civil court, in accordance with state law. Such appeals shall be considered emergency appeals and treated as such so that they can be heard and decided within, at most, 30 days.<sup>101</sup>

#### **J. Emergency Removal**

1. "Emergency" means only those situations in which the student in question is a direct and immediate threat to the safety of him- or herself or another person in the school and the only way to avert the threat is to temporarily remove the student from the school environment.

2. If the student is removed pursuant to an emergency, the school must send notice home to the parent or guardian immediately following the removal.<sup>102</sup>
3. If the student is removed pursuant to an emergency, a full hearing, as outlined in this section, must be scheduled within 5 school days of that removal or the student must be returned from school and the non-emergency due process protections shall apply.<sup>103</sup>
4. A student may only be removed without a hearing after the emergency situation is documented and the school communicates with the student and, if possible, the student's parent or guardian. Examples of emergency situations include, but are not limited to:
  - a. A direct, serious threat to cause serious bodily injury or death.
  - b. Conspiring with others to cause serious bodily injury or death.
  - c. Threatening the entire school environment with immediate harm.
  - d. Committing or having committed a violent criminal offense against another member of the school community.

## 3.2 Avoiding Criminalization in School Discipline

### 3.2.a Law Enforcement

**Human Rights Goal:** *In order to best meet the developmental needs of young people, schools shall be safe and supportive places to learn where teachers and students have training and support to prevent and resolve conflicts in positive ways. In order to guarantee students' rights to education and dignity, schools must avoid any disciplinary policies or practices that criminalize young people.<sup>104</sup> The involvement of law enforcement in schools shall be avoided whenever possible and shall be prohibited for incidents that shall be considered school discipline matters [see Section 3.2.d.B.2]. The arrest or detention of a student shall be used only as a measure of last resort.<sup>105</sup> Any law enforcement personnel that come into contact with schools shall be trained in youth development and to respond to the special needs of young persons and shall use, to the maximum extent possible, techniques to de-escalate conflict, minimize the involvement of law enforcement and refer matters to be dealt with by school personnel.<sup>106</sup>*

#### Recommended Language:

##### A. Definitions

1. **School Resource Officers (SROs)** – Any safety officers permanently assigned to work in a school or set of schools. Currently, in some localities, they are sworn or certified law enforcement officers employed by city police departments, whereas in other localities they make up an independent school police department and are employed directly by the school district.<sup>107</sup>
2. **Security officers or security guards** – Non-sworn personnel—either armed or unarmed—and hired or sub-contracted with individual schools or school districts to patrol in or around campuses.
3. **Police Officers** – Armed, sworn or certified law enforcement officers employed by city and/or school police departments. Police officers may be assigned to patrol schools, rotated in and out of schools as part of their regular duties, assigned to patrol the area around a school or nearby public transportation stops, or summoned in cases of emergency.<sup>108</sup>
4. **Community Intervention Workers** – Community members trained as peace-builders working in schools, around schools and/or in the larger community. Intervention workers are increasingly replacing the traditional role of security officers or police on or around school campuses. In schools they may be paid staff or volunteers. In the community they often have a “license to operate” or agreement with local leaders to work in the community. Intervention workers have trusted and deep relationships with local communities and both recognized and underground leaders. These trusted relationships are at the root of their effectiveness in identifying, resolving and preventing conflict, violence



and crime. Their work includes mentoring youth, preventing and addressing bullying, preventing and resolving conflicts and connecting people to needed services. The role of community intervention workers includes:

- a. Mentoring youth, particularly those youth who most often witness, are victims of and/or cause violence;
- b. Preventing and addressing bullying and providing rumor control;
- c. Preventing and resolving conflicts between youth, groups of youth and/or neighborhoods (gangs);<sup>109</sup> preventing retaliation; coordinating mediation, conflict resolution and restorative/transformational justice;
- d. Helping youth to avoid and/or leave neighborhoods and providing safe passage to and from school; and
- e. Connecting people to needed services.

**B. States, districts and schools shall adopt safety and discipline policies that emphasize ways of maintaining safety that minimize the involvement of law enforcement** to the greatest extent possible, and identify steps for ending the need for law enforcement in schools. Such policies must be preventive and positive, not reactive and punitive, and they must rely on proven approaches for creating positive school climates (See 3.1.a.).

**C. Districts and schools shall take steps to reduce their reliance on SROs, police and security officers** by implementing the following:

1. Replacing SROs, police, security officers and other law enforcement personnel with community intervention workers, school aides, counselors, social workers and other support staff to facilitate implementation of positive school wide safety and discipline policies.
2. SROs shall not be employed, trained or supervised by city, town or state police departments. Instead, all SROs shall be employed and supervised by the district Department of Education and/or school board.
3. The services of SROs must not be used when other interventions and programs, such as School-wide Positive Behavior Interventions and Supports (PBIS), trauma-sensitive training and Restorative Practices are available that aim to address root causes of student behaviors and provided needed services.
4. Police officers shall not be permanently assigned to schools or any set of schools.
5. Police presence on school grounds shall be limited to responding to emergency calls by school personnel or others on school grounds. Principals and other school staff shall have the lead role in maintaining, addressing and implementing school safety and discipline, including maintaining discretion to determine when police are called, if and when searches occur, and when arrests are made.
6. Any SROs, police, security officers or other law enforcement personnel that operate within and around schools must be subject to clear and transparent civilian complaint processes that include real methods of accountability and correction. Students and parents or guardians must have easy access to the complaint process, and must be notified of any investigation and outcome in a timely matter. Noting the complex nature of personnel complaints and individual employee privacy rights, local unions should work collaboratively to address these issues and meet the community right to information.

**D. Districts and schools must adopt clear and consistent rules of governance that recognize the principal as the primary authority responsible for school safety, and limit the role of law enforcement.**<sup>110</sup>

1. SROs shall not be responsible for school discipline issues. They shall be responsible only for responding to serious criminal law matters where it is mandated by law that such offenses be referred to the criminal justice system.
2. Absent a “real, immediate”<sup>111</sup> and serious threat to the physical safety of a student, teacher, or other member of the school community, the following types of incidents shall be considered school discipline issues to be handled by school personnel and not by SROs:

- a. Disorderly conduct;
  - b. Trespassing;
  - c. Loitering;
  - d. Profanity;
  - e. Insubordination/defiance;
  - f. Verbal abuse and/or harassment;
  - g. Vandalism and/or graffiti;
  - h. Failure to wear or correctly wear school uniform or follow policies regarding clothing;
  - i. Possession of a prohibited item that does not violate the penal law (i.e. cell phones);
  - j. Being late, cutting class, absenteeism or truancy;
  - k. Fighting that does not involve a weapon;
  - l. Perceived drunkenness or intoxication;
  - m. Possession of a tool that could be taken to be, but is not intended as a weapon—such as a nail clipper or file, small pen knife, butter knife, toy gun, pepper spray, etc.—unless that item is being brandished as a weapon; and
  - n. Alleged or witnessed promoting or claiming of a neighborhood<sup>112</sup> or crew (including verbally, through graffiti, through clothing or hand signs).
3. Districts and schools shall make every effort to avoid involvement of SROs, police or other law enforcement personnel in responding to drug or alcohol use and shall refer students to harm reduction programs, counseling and/or treatment by trained professionals. In cases where students are suspected of distributing or selling drugs, every effort shall be made to respond through positive disciplinary measures<sup>113</sup> and to partner with the justice system to avoid arrests, and if arrests occur, to refer students to alternatives to court, detention, incarceration, probation violation and/or deportation (see Section 3.2.b for more details).
  4. SROs, police, security guards, probation officers and other law enforcement personnel who witness school discipline issues as described above in D.2 and D.3 shall locate school personnel (including when available intervention workers) to respond to the situation. In the case of fighting, they may de-escalate the situation using conflict resolution techniques that are age appropriate and leverage existing positive relationships with those involved, and must then refer the incident to school personnel.
  5. An explanatory guide and presentation on how school administrators and SROs will respond to particular behaviors and the consequences that students face must be developed.

#### **E. Clear Limits on Arrest of Students**

1. Students shall be arrested at school only when there is a finding of probable cause that a student has committed or is attempting to commit a serious crime—not a school discipline matter as defined above in Section D—that is supported by a real and immediate serious threat to the physical safety of a member of the school community, when a search warrant directs that a search of a student be conducted, or when an arrest warrant directs that an arrest be carried out at school.
2. An SRO or Police Officer shall not conduct an arrest without first consulting the school principal. There shall be an exception for arrests in emergency circumstances. In such situations, the SRO shall notify the principal immediately following the arrest and whenever safety permits before the removal of the student from the school. School officials shall immediately contact the students' parents or guardians when a student is arrested.
3. Where an SRO, police officer or probation officer is going to detain or arrest a young person, the officer shall make all reasonable attempts to do so outside of school, and if such detention or arrest does take place at the school it should take place outside the view of other youth and school staff.

4. If arrested, students who are also parents or guardians must have an immediate opportunity to ensure that their children are in the custody of a trusted caregiver and have the opportunity to arrange for their child's/children's care for the duration of their time in custody.

#### **F. Clear Limits on Searches of Students**

1. SROs, police and all other law enforcement must have probable cause to suspect that the student has committed or is attempting to commit a criminal offense in order to search the student, including the student's outer clothing, possessions, or locker.
  2. SROs, police and all other law enforcement shall obtain the permission of the school principal prior to conducting a search of the student.
  3. The individual conducting the search shall be of the same gender as the student, and a school official and community intervention worker shall be present at the time of the search.
  4. School officials shall not ask law enforcement to be present or participate in a search of a student about a suspected discipline issue, absent a real and immediate threat to the physical safety of a member of the school community.
  5. SROs, police and all other law enforcement shall comply with the probable cause requirement even where school officials ordered or requested the search.
  6. Probation officers shall not use schools as a place to conduct searches, questioning or pat downs of students unless there is a safety emergency to prevent harm or injury.
  7. All searches and pat downs that do take place at school should happen (unless emergency situations make it impossible) outside the view of other youth and school staff in order to maintain privacy and decrease public embarrassment, humiliation and any future stigmatization and discrimination against the student(s) involved.
- G. Absent a real and immediate serious threat to the physical safety of a member of the school community, and absent the situations described above in which law enforcement intervention is deemed appropriate, school administrators shall have final responsibility and jurisdiction over the building, the grounds and all members of the school community.

#### **H. Districts and schools shall refrain from utilizing metal detectors—either standing or wands.**

1. Districts and schools shall take steps to eliminate the use of metal detectors and employ more effective, less costly and less intrusive means of promoting school safety.
2. No school or district shall install metal detectors without first considering evidence-based preventive and positive alternatives and restorative practices to promoting safety and determining that those positive, less intrusive means alone are unable to protect student safety in the face of a credible danger. Where it occurs, metal detector use shall always coincide with the simultaneous use of less intrusive, evidence-based preventive and positive alternatives. In general, metal detectors do not prevent weapons from entering school grounds and can lead to and/or escalate conflicts between students and staff/SROs.
  - a. Students, parents or guardians, other community members and school staff shall be consulted prior to the installation of metal detectors, and shall hold at least one public hearing on the matter. Finally, the local school board shall approve the installation of the metal detectors.
3. Where metal detectors are employed, steps shall be taken to ensure quick access to school and minimize disruption to the school schedule.<sup>114</sup>

4. Following installation of metal detectors, schools shall maintain the following data to determine the metal detectors' impact on the school environment disaggregated by race and other demographic characteristics:
  - a. The number of metal detector scans conducted each day;
  - b. The wait-time for metal detector scans;
  - c. The number of students subjected to a secondary scan;
  - d. The number of students subjected to a body search;
  - e. The number of altercations between students and staff/SRO's that arose due to a metal detector scan;
  - f. A description of all items seized because of a metal detector scan;
  - g. An analysis of loss of student class time associated with metal detector scans;
  - h. An analysis of whether certain student populations have been disproportionately impacted by the metal detectors;  
and
  - i. An analysis student attendance, retention and drop-out rates.
5. At the end of each school year, schools with metal detectors shall conduct an evaluation to assess whether the metal detectors should be retained. Such evaluations shall include: publicly available analysis of the data collected by the school about the scanner implementation; analysis of student attendance, retention and drop-out rates and loss of student class time due to waiting at metal detectors; and a clear explanation or rationale as to the decision to either retain or remove the metal detectors. Special consideration shall be made to whether certain student populations have been disproportionately impacted by the metal detectors.

**I. Schools shall create welcoming and positive environments and avoid physical features and practices that create a criminalizing environment.** Schools shall:

1. Avoid surrounding buildings or campuses with razor wire, spiked fences and security gates. Lower gates or chain link fences are a better alternative if a gate is mandated.
2. Avoid covering windows with bars, security gates or mesh.
3. Avoid locking bathrooms or various sections of the school off from one another, and avoid surrounding different sections with internal gates and fences.
4. If a school or district requires uniforms, involve students and parents or guardians in their design and/or selection, and avoid colors and styles that are used in juvenile halls, jails and prisons.

**J. There must be transparency and accountability mechanisms in place for the role of law enforcement in schools (where applicable), with the goal of ending the need for police presence in schools.**<sup>115</sup>

1. SROs, police or other law enforcement that operate within and around schools must be subject to a clear, transparent and independent civilian complaint process that includes real methods of accountability and correction. In jurisdictions with independent civilian police review boards, such boards shall also accept complaints against SROs.
2. Students, parents or guardians, teachers, administrators and principals must have easy access to a simple and straightforward complaint process which is clearly outlined, and must be notified of any investigation and outcome in a timely matter.
  - a. Every student, parent and guardian in the school system shall be adequately informed of the complaint procedure. The information on the complaint process as well as complaint forms shall be distributed to every student household in print form at the start of each semester and at parent/teacher nights, posted in the school's front office, in parent resources rooms, in the school library or other common spaces and on the school's website.
  - b. Any student, parent or guardian, teacher, administrator, or principal shall have the opportunity to submit a complaint in writing, verbally or on-line; the system shall incorporate a mechanism for receiving online complaints.

- c. Every version of the procedure—printed, posted and online—shall be available in all languages represented in the student and parent body, and parents or guardians and students may submit the complaint in their preferred language.
  - d. All school staff shall be trained in the complaint process and shall have access to complaint forms in order to answer student and parent or guardian inquiries as needed.
  - e. The complaint system must be confidential and protect students, parents or guardians, school staff and community members against retaliation.
3. The complaint system shall provide for a fair, thorough and transparent investigation into the allegations in the complaint. The investigation must involve supervisors from the police department as well as school administrators and/or Department of Education staff.
  4. The complainant shall be entitled to a written response to his or her complaint within 30 days in their preferred language. Translators shall be made available to help with this reporting as needed.
    - a. The system shall report to the complainant, school administration and the district on both the findings and any discipline or re-training of officers that occurs as a result. Noting the complex nature of personnel complaints and individual employee privacy rights, local unions should work collaboratively to address these issues and meet the community right to information.
  5. The SROs', police officers' or other law enforcement personnel's due process rights shall be honored throughout the process, including providing the SRO with a copy of the complaint, and providing an opportunity for the officer to defend him- or herself.
    - a. Complainants and officers shall have the right to representation before the system in a process that is fair, safe and whenever possible promotes restorative and transformative justice principles and practices.
  6. Where serious allegations of wrongdoing are raised, SROs, police or other law enforcement personnel shall be removed from having contact with students until the investigation is completed. Such matters would include allegations of physical assault, verbal threats of violence, sexual advances or assaults and/or discriminatory language or practice based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability, economic or other status.
  7. Where allegations of abuse or misconduct are substantiated, SROs, police or other law enforcement officers shall be removed from any school assignments, and their personnel file must indicate the incident in order to inform other potential sites where youth are present. These SROs may be reassigned or receive additional training, where appropriate.
  8. A community board that includes parents or guardians, youth advocates, students and social service providers shall regularly review all school-based incidents leading to law enforcement intervention to ensure that no abuse, racial profiling, or other targeting of certain students or groups of students is taking place.
  9. Schools where more than 3% of students have been arrested or summonsed by SROs shall trigger an immediate audit by the state Department of Education or other body governing the school and the Attorney General's office to investigate the number of charges, the kinds of behavior being charged, the types of students who are being charged, whether charges are being overused in certain schools and by certain school officials, and the use of alternative sanctions that shall not result in criminal records.

#### **K. Training of SROs and Other Law Enforcement**

1. Decisions on the training requirements and specific training curriculum of SROs, police and other law enforcement personnel working in or around schools shall be developed in consultation with students, parents or guardians, teachers, school administrators and other stakeholders [as outlined in Section 2.1].

2. As a requirement of employment, every SRO, police officer, law enforcement personnel or community intervention worker shall receive at least 60 hours of training before being assigned to schools covering the following topics: bias-based and sexual harassment; child and adolescent development and psychology; conflict resolution and peer mediation; working with youth with disabilities; cultural competencies; the impacts of arrest, court, detention, incarceration and/or deportation on youth life chances; and effective strategies for building safe schools without relying on suppression. All SROs shall be familiar with and trained in restorative and transformative justice practices, Positive Behavioral Interventions and Supports, and/or other programs being used in the district.
3. Every SRO, police officer, law enforcement personnel or community intervention worker shall receive at least 10 hours of annual professional development in the topics listed above.
4. If a school implements a specific program, such as SWPBIS, bias-based harassment training, restorative practices or transformative justice, the SRO, police officer, law enforcement personnel or community intervention worker assigned to that school shall participate in all training required of teachers and other school officials related to that program.

### 3.2.b. Drug Policy

***Human Rights Goal:** Schools shall provide comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons, as well as harm reduction strategies for youth who are already users of drugs, alcohol or other substances. Teachers and other professionals shall be equipped and trained to prevent and deal with these problems in effective and appropriate ways that emphasize harm reduction, healing, counseling, assistance and therapy-oriented interventions.<sup>116</sup>*

#### Recommended Language:

**A. Schools must adopt a school wide prevention and harm reduction policy as a necessary foundation to a drug and alcohol prevention and intervention policy.** (See Adopting School-wide Preventive Policies, 3.1.a.)

#### B. Drug Education

1. The school district shall provide age-appropriate, school-tested, evidence-based drug education to help prevent or reduce the use of alcohol, tobacco and other substances by students. Such programs must assist with the development of students' life skills and protective behaviors and ensure that students are connected to their schooling.
2. The school district shall cease any DARE<sup>117</sup> programming or similarly modeled programs as they have been overwhelmingly proven to be both costly and grossly ineffective in reducing either current or later onset of alcohol or drug use or abuse.

#### C. Elements of Effective Drug Education Curriculum

1. The drug education process must be honest, balanced, interactive and respectful of students' intelligence and experience, and delivered in a way that ensures the full participation of students.
2. Such instruction must go beyond abstinence-only messages and emphasize safety and harm reduction.<sup>118</sup> The drug education curriculum shall be incorporated into the students' general curriculum and conducted by school-based education, health and /or mental health personnel.
3. The drug education process must consist of a continuum of practices. Rather than rely on lectures by teachers or experts, films, posters and brochures, the school district shall implement interactive drug education programs involving role-plays, small group discussions, skills-based training, interactive games and exercises, debates and

student-led presentations and discussions.<sup>119</sup> By educating students in an interactive setting, these prevention and education programs shall target students' influences and misconceptions regarding peers social attitudes surrounding drug use.<sup>120</sup> These interactions aid students by helping them develop refusal skills and by providing true data on drug use. This counters the anecdotal "everybody is doing it" mentality, which reinforces the unhealthy behavior as normal, when in fact it is not.<sup>121</sup> The programs shall be tailored to the age of the students, and shall respond to and reflect students' changing perceptions of drug use.

4. Schools are encouraged to train and integrate peer health educators and promoters into all aspects of the school environment in order to model harm reduction and prevention strategies and transform the culture of the school and the larger community. Peer educators and promoters shall be encouraged to integrate fully into student life both during and outside of school and shall reflect the full diversity of the student population with a special emphasis on involving trusted youth leaders from the sub-groups most impacted by addiction.
  5. Where available, the school's health education department and/or staff shall provide assistance with the design and implementation of the drug education program and shall coordinate student assistance programs with its drug education program.
- D. **Searches:** The school or district shall not conduct unreasonable searches and seizures of students. Strip-searches of students to detect the presence of alcohol or other drugs shall be prohibited, and the district shall not permit School Resource Officers, police or other law enforcement to conduct random drug raids, nor the use of drug-sniffing dogs to investigate the prevalence of drugs on campus.
- E. **Random Drug Testing:** The school or district shall prohibit the use of random drug testing of students.<sup>122</sup> Where students are on probation or parole and required to test, such testing shall take place outside of school in order to protect youth from ridicule or discrimination by peers, school staff or the larger community.
- F. **Resources:** Schools or districts shall develop a list of programs and services related to drug, alcohol and tobacco use and abuse that are available to the school population, students' families and the larger community.
- G. **Intervention:** The school or district recognizes that student drug and alcohol abuse is a public health issue and not a school discipline, juvenile justice or criminal justice issue. Therefore, students suspected of using or abusing drugs shall be referred to student assistance programs and shall be provided with harm reduction, counseling and/or treatment by trained professionals.
1. Every effort shall be made to retain students within the educational setting and keep students out of the juvenile or criminal court setting. All school staff and law enforcement working in or around school campuses shall understand the lasting and often irreversible impact that drug allegations or convictions (whether for intoxication (DUI), possession, distribution or sales) have on a young person's life chances, including opportunities for employment, higher education, financial aid, public housing and other public benefits. The school shall assist recovering students to avoid re-involvement with substances by providing school and/or community-based services and activities designed to increase students' sense of community and connectedness with school.<sup>123</sup>
  2. Suspension and expulsion are not considered intervention.<sup>124</sup> The school shall coordinate student assistance programs and intervention services with its drug education program, and use preventive and positive discipline measures, especially restorative practices, which are particularly suited to addressing issues of drug use or abuse.<sup>125</sup>
  3. In cases where students are suspected of distributing or selling drugs, every effort shall be made to keep the student in an educational setting and to respond through positive disciplinary measures as well as positive interventions, such as:<sup>126</sup>

- a. Partnering with the justice system to avoid arrests and if arrests occur, to refer students to positive programs that serve as alternatives to court, detention, incarceration, probation violation and/or deportation;
  - b. Job training and placement to help students find positive sources of income outside of the underground economy;
  - c. Connecting youth to trained intervention workers that can coach them on the negative impacts of distributing and selling drugs on communities, families and individual sellers.
  - d. Transformative justice processes which focus on connecting youth to people most impacted by the underground economy and providing youth with real opportunities to repair harm that they have caused their peers, their peers' families and the larger community. Such programs can include visits with hospital neo-natal wards, emergency rooms, lock-ups and morgues, but should focus on healing, harm reduction and accountability as more effective interventions than "scared straight" models which have been proven ineffective.<sup>127</sup>
4. For a student with a qualifying disability and an existing IEP or 504 plan under the Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, the student's IEP or 504 team shall re-evaluate the student's plan to make sure that her accommodation plan is meeting her needs.<sup>128</sup> Changes to the plan should assist the student in addressing the risky behaviors, reducing harm, and healing from any trauma and/or other root causes of substance use or abuse.
- H. **Confidentiality:** The school or district shall create an environment in which students are encouraged to seek help from teachers and administrators. Student records are confidential and shall not be disclosed unless required by federal, state or local laws as ordered by a search warrant or similar court order. Documents generated, obtained, or maintained during the course of an investigation pertaining to a student's violation of school policy concerning the use of alcohol, tobacco or other drugs, are deemed student records, and all school personnel must exercise great care to protect the confidentiality of this information.<sup>129</sup>

### 3.2.c Immigration Policy and Protection of Vulnerable Students

#### Recommended Language:

- A. **Districts and schools shall maintain the rights and freedoms of all students, including preventing the discrimination, isolation, surveillance, criminalization, detention or deportation of all students including undocumented students or students with expired documents.**
- B. Districts and schools shall not participate in any local, state or federal initiatives or mandates (including Secure Communities) that require the reporting of undocumented students, exposing of documentation status to law enforcement or media, or the barring of students from any protections, diversions, programs or opportunities available to other students.

### 3.2.d 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 shall not result in criminal penalties if committed by a young person.<sup>130</sup>*

#### Recommended Language:

- A. 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>131</sup> Such policies include but are not limited to truancy, school absence, violation of daytime or night-time curfews, running away or homelessness, use of alcohol or tobacco.



- B. **Schools shall not track or punish students based on previously criminalized status offenses, such as truancy** (see section 3.3.a).
- C. **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.
- D. **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.

## 3.3 Right to Remain in School

### 3.3.a. Truancy Prevention and Correction

***Human Rights Goal:** Schools shall take measures to encourage regular attendance at schools and the reduction of drop-out rates through specialized services and educational approaches to address the underlying causes of truancy and avoid the criminalization of youth.<sup>132</sup>*

#### Recommended Language:

##### A. Education Policy:

1. **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>133</sup> (See Adopting School-wide Preventive Policies, 3.1.a.)
  - 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.
2. **Students shall not receive financial penalties, fines, criminal sanctions, loss of privileges (such as driver's licenses) or municipal code sanctions for truancy.**
3. **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 five (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.
  - b. Upon ten (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>134</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.
4. **Schools shall screen all students who are truant for suspected disabilities** and make referral in compliance with federal and state special education laws with a particular emphasis on the Child Find provisions of the IDEA.

5. **Schools shall align their truancy prevention program with the McKinney-Vento Act** by:<sup>135</sup>
  - a. Placing homeless students either in their original school or within a school in the district in which they currently reside;<sup>136</sup>
  - b. Prohibiting requirements that force homeless students to attend school exclusively with other homeless students;<sup>137</sup>
  - c. Providing “comparable services...including transportation services, educational services and meals through meals programs”;and”<sup>138</sup>
  - d. Prohibiting any stigmatization of homeless students by school staff.<sup>139</sup>

## B. Juvenile Policy

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>140</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 give to reducing stigma and maintaining the student in their school, unless they request a transfer to another school or district.
3. **Students must be guaranteed the right to appointed counsel at public expense and presence of a community or family advocate in truancy proceedings** to guard their constitutionally protected interests.<sup>141</sup> (See Section 3.1.c.D for more information).
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.

## 3.3.b. Alternative Schools

**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>142</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 his or her 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>143</sup>*

### Recommended Language:

#### A. Definitions<sup>144</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.

#### B. Standards for Alternative Schools

1. Alternative schools, as defined above, must meet the same requirements and standards as any traditional public school regardless of whether they are described as a school or program by the jurisdiction.

2. Alternative school and programs shall operate for a full school day<sup>145</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>146</sup>

### **C. 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 policies to respond to requests by school administrators, teachers, parents or guardians or students for transferring students out of a comprehensive school environment to ensure that the student's individualized educational needs are met and the right to a quality education are 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 school district 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.

### **D. 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 has been conducted and the students' due process rights have been fulfilled equivalent to those guaranteed for expulsion hearings (see Section 3.1.b and c. of this Code).

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

1. Alternative schools shall use approaches of proven effectiveness in both academic and behavioral areas (see Sections 1.1 and 3.1.a of this Code), such as:
  - a. Individualized academic plans, instruction and assessment;<sup>147</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 of this Code).

## **F. Services to students with disabilities<sup>148</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 school programs reveal deficiencies in programming for students with disabilities, prompt correction must follow. Alternatively, if a monitoring of an alternative school's programming for students with disabilities is not possible, students with disabilities shall be prohibited from placement in alternative schools.

## **G. Services to English language learners (ELLs)**

1. Alternative schools and programs shall provide quality services to ELLs and shall be required to report concerning the number of ELLs served by each program and the services offered.<sup>149</sup>

## **H. 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.

## **I. Progress Reviews and Length of Stay<sup>150</sup>**

1. States, districts and schools shall monitor alternative schools frequently to ensure that adequate procedures are in place for reviewing student progress; that the student, his or her parents or guardians and representatives of the student's home school participate in the review process; and that reviews occur at least every semester.
2. States, districts and schools shall adopt a performance target relative to students' lengths of stay in alternative schools and programs.
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.

## **J. 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>151</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 of this Code).
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.

#### K. Public Reporting and Accountability<sup>152</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>153</sup>

### 3.3.c. Right to Education for System-Involved Youth

**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>154</sup>

#### Recommended Language:

##### A. 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, boot camps and treatment. 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).

**B. 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>155</sup> and the right, full opportunity, and support to re-integrate into public school.**

**C. 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,
  - 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 of 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 transitional teams 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 lead 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 a representative 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. School officials and staff shall 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. Schools and juvenile/criminal court system officials shall 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. The school representative and the facility record custodian shall also be responsible for the transfer of school records to the receiving school upon release from the juvenile detention facility.

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

1. Lock-ups must provide all youth in custody a quality, full-day education program:<sup>156</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.) 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.

- i. 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.

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

1. 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 is 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 Positive Intervention Behavior Supports and 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 disempowers 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. Not use 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, schools and institutions shall facilitate parenting education and face-to-face visits between youth and their children;
  - e. Schools inside lock-ups and locked facilities shall 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. Systems shall not bill families for the time their child is in custody, garnish wages, withhold tax refunds or confiscate 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>157</sup>
  - 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.

## **F. 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 C.3. above) to ensure:
  - a. A smooth transition for the juvenile upon his or her 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 also receive information on the benefits and process for citizenship, college access (dream act advancements) 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.
    - a. 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.

- d. School districts and staff must recognize that LGBTQ youth, disabled youth, 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. (See section E.4.c. and d.)
  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 are engaged throughout the entire process, from the time the youth enters the facility until his or her release. Parental participation and involvement shall be encouraged via continuous communication that is respectful and culturally competent, and parental training.

### 3.3.d Right to Resume Education after Expulsion

**Human Rights Goal:** Schools shall provide specialized programs, educational curricula and approaches, and wrap-around services to meet the varying needs of young people who were out of school and are at risk of dropping out.<sup>158</sup>

#### Recommended Language:

- A. **All students who have been expelled shall have the right, full opportunity, and support to re-integrate into public school and receive a high quality education.**<sup>159</sup>
  1. Schools shall adopt a school wide prevention policy, use positive approaches to discipline, and maintain strict limits to the use of school expulsions as required by Sections 3.1.a. and 3.1.b. of this Code.
  2. All expelled students shall have the right to immediately return to public school upon the conclusion of their expulsion period.
  3. The school or district shall initiate a transition team to assist with the return to school environment. The team shall:
    - a. Consist of a multi-disciplinary panel of stakeholders. The transitional team shall consider available resources and then make them available to the student in order to assist him or her in accomplishing his or her re-entry goals. All stakeholders shall develop an agreement that assigns roles and responsibilities, delineates communication procedures and requirements and specifies accountability standards required of all of the parties involved with the youth seeking re-entry into the school system.
    - b. Develop a transition educational program, including
      - i. Non-academic and academic goals, taking into account each individual student's cultural, emotional and behavioral needs and the availability of community support and resources to address these needs,
      - ii. Addressing special education needs, and
      - iii. Providing support in gaining obtaining a high school diploma.
  4. The school district shall maintain continuous contact with the parent(s) or guardian(s) and shall encourage parental involvement during every stage of the re-entry process.

# CHAPTER 4

## FREEDOM FROM DISCRIMINATION

### Background

In the United States, disparities in both access to educational opportunities and in educational outcomes are denying millions of students their right to quality education based on race, poverty, sexual orientation, gender and other factors. There is extensive research showing that students of color, particularly Black and Latino male students, students with disabilities, LGBTQ students and other vulnerable populations, such as students in foster care, court-involved youth and students who are homeless, face disproportionately harsh and exclusionary discipline.<sup>160</sup> Black students are 3.5 times more likely to be expelled and Latino students are 2 times more likely to be expelled, than white students.<sup>161</sup> Students with disabilities are 2 times more likely to be suspended and expelled than general education students.<sup>162</sup> These children and young people suffer significant disparities in access to educational programs and services and in the disproportionate impact of school pushout and punitive disciplinary action.

Such discrimination may take the form of either policies that intentionally discriminate or policies that have a disparate and negative impact on groups that have faced, or continue to face, discrimination. It is crucial that the standard of discrimination employed by our educational system include discrimination that results in disparate impact. This ensures our school systems are attuned to factors that create unequal and unnecessary obstacles to student development which are powerful and pervasive yet often undetected because they are entrenched in systemic discrimination. That sensitivity, in turn, points to the need to address such underlying conditions. Furthermore, discrimination based on disparate impact can be regularly and effectively identified and monitored through statistics, empirical studies and anecdotal data.<sup>163</sup>

This chapter sets out a standard of discrimination that includes accountability for disparate impact and outlines policies and practices that states, districts and schools can implement to identify and addresses discrimination, with a particular focus on disproportionate use of punitive discipline and the rights of students with disabilities.

## A GUIDE TO CHAPTER 4

Chapter 4 lays out the policies and practices necessary to address discrimination in education, with a particular focus on discrimination related to disciplinary policies and practices based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability, economic or other status. It is divided into three sections.

**Section 4.1 on the Right to Freedom from Discrimination** defines discrimination to include policies that are intentionally discriminatory, as well as policies that are not intentionally or consciously discriminatory but have a disparate impact on educational access, services or outcomes. It requires school systems to eliminate discriminatory policies, practices and structures, including through equitable distribution of resources, addressing language and other barriers, eliminating segregation and tracking of students, and providing teacher training. It also provides guidelines for engaging all stakeholders in developing strategies to eliminate discrimination and harassment in the school environment,

**Section 4.2 on Eliminating Disproportionate Use of Discipline** describes guidelines for districts and schools to eliminate any disparities in the use of disciplinary referrals and exclusion, the severity of disciplinary consequences, or the impact of disciplinary actions on students. This includes culturally responsive classroom and school-wide discipline practices, community dialogues with staff, students and parents, professional development for teachers and staff, eliminate minor and subjective offenses from discipline codes, stakeholder teams to monitor disparities in discipline and grievance procedures for students.

**Section 4.3 on Students with Disabilities** describes guidelines for preventive and positive discipline policies tailored to meet the particular needs of students with disabilities, procedural protections to ensure students and parents are meaningful partners in addressing behavioral problems, requirements for positive discipline, restrictions on removal of students from their current educational placement and referrals to law enforcement.

## 4.1 Right to Freedom from Discrimination

**Human Rights Goal:** *In order to protect all students' human right to an educational system that encourages their full development, school systems must take steps to eliminate all forms of discrimination based on race, ethnicity, sex, gender identity, sexual orientation, language, national origin, religion, disability, economic or other status, which limit educational opportunities or services or lead to discriminatory outcomes in education.<sup>164</sup> Discrimination includes both purposeful acts of discrimination and actions that disproportionately affect particular groups of students.*

### Recommended Language:

- A. Discrimination consists of any distinction, exclusion, limitation or preference<sup>165</sup> based on race, national origin, ethnicity, language, sex, gender identity, sexual orientation, religion, disability, or economic or other status which has the purpose or effect of limiting access to educational opportunities or services or which leads to discriminatory outcomes in education.** Accordingly, discrimination may consist of either:
1. Intentional policies based on such invidious distinctions; or
  2. Policies that are not intentionally or consciously discriminatory but nevertheless have a disparate, adverse impact on disadvantaged or stigmatized groups.
- B. States, districts and schools must eliminate discriminatory policies, practices and structures, as well as embedded effects of past discrimination, including by:**
1. Ensuring equitable distribution of resources to direct the necessary funding, staff and other support to address the educational disparities impacting traditionally marginalized groups;
  2. Ensuring representation of communities served by a school system in their governance structures;
  3. Addressing language and other barriers to effective communication and learning;
  4. Partnering with social services and other public agencies and community based organizations to support student, family and community needs;
  5. Eliminating the segregation and tracking of students based on distinctions such as gifted or non-gifted, levels of exposure to education, learning patterns or modes, disability, or other status;
  6. Ensuring that faculty and staff, who are identified as demonstrating discriminatory behavior, are trained and held accountable following those trainings with appropriate disciplinary measures; and
  7. Educating and informing those impacted by discriminatory policies and practices of the resources, tools, and processes that are available to protect and support them.
- C. Schools shall create a stakeholder team, including educators, parents or guardians, students and administrative staff, to identify, design and implement strategies for preventing and eliminating discrimination and harassment in the school environment, including:**
1. Provide training and facilitating conversations among school staff about race, class, sexuality and other identities to examine our biases and how they impact the school community including disproportionate application of discipline;
  2. Work with teachers to recognize and end stereotyping, name-calling, labeling and separation of students within the classroom, and to better understand and respond to students' personalities and learning styles to create positive classroom environments; and
  3. Holding ongoing dialogues throughout the school year with students on cultural understanding and teaching differences.

4. Engaging the support of parent or guardian, teacher and student organizations as well as third party organizations to monitor classrooms and provide feedback and offer best practices and advice

## 4.2 Eliminating Disproportionate Use of Discipline

*Human Rights Goal: Schools must take steps to eliminate any disparities in the use of disciplinary referrals, in the severity of punishments or in the impact of disciplinary action on students based on race, ethnicity, sex, gender identity, sexual orientation, language, national origin, religion, disability, economic, or other status.<sup>166</sup> School discipline must be administered in a fair and non-biased way.*

### Recommended Language:

- A. States, districts and schools shall take steps to eliminate any disparities in the use of disciplinary referrals and exclusion**, in the severity of punishments or in the impact of disciplinary action on students.
- B. Schools shall actively create a positive school climate for all members of the school community through the regular and ongoing use of culturally responsive classroom practices** and school-wide preventive and positive discipline practices that build community, strengthen relationships, promote inclusiveness, and enhance communication and problem solving skills. (See Section 3.1.a School-wide Preventive Policies in this Code)
- C. Schools shall create small community dialogue sessions at the beginning of each year** to explain the school expectations and to orient the family to the school and the school to the family in order to facilitate a more comprehensive understanding between family and school and combat bias that contributes to disproportionality in discipline.
- D. Districts and schools shall provide professional development for teachers and staff** on cross-cultural understanding, positive behavior support, classroom management and the disciplinary policy.
- E. Schools shall ensure that all stakeholders have a shared understanding of the behaviors being addressed in the district's discipline code.** Subjective definitions such as “disrespect” or “classroom disruption” must be avoided as these may be understood differently by different staff members and may allow for more bias in the administration of the policy.
- F. Schools shall create a stakeholder team, including educators, parents or guardians, students and administrative staff, to monitor implementation of the district's discipline policy**, including quarterly reviews of compiled discipline data. The stakeholder team must:
  1. Track data regarding all disciplinary incidents including the type of behavior, teacher or staff member reporting the behavior and the consequence, including office referrals, exclusionary or punitive consequences (in school suspensions, suspensions, expulsions, police referrals, etc), and proactive approaches (referrals to counseling, community service, peer counseling etc).
  2. Disaggregate this data by age, grade, gender, ethnicity, zip code, disability and family status (i.e. in foster care/homeless).
  3. In reviewing data on disciplinary referrals, if schools identify a staff member that has engaged in a pattern of referrals that are disproportionate with regard to any groups, the school shall observe the teacher's classroom management and provide targeted professional development and feedback for that staff member.
- G. Schools shall create student grievance procedures regarding inappropriate, biased or disproportionate disciplinary tactics.**

## 4.3. Students with Disabilities

*Unlike other areas of the Model Code where existing laws vary state by state, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 provide a strong federal law to protect the rights of students with disabilities by ensuring that everyone receives a free appropriate public education, regardless of ability. The IDEA in particular strives to grant equal access to students with disabilities and also provides additional special educational services and procedural safeguards. This section of the Model Code refers to the implementation of the IDEA and calls for some specific changes to the provisions of the IDEA.*

**Human Rights Goals:** *Students with disabilities are members of their communities and have the right to attend their neighborhood schools. Students with disabilities shall be provided with effective support measures in environments that maximize academic and social development, consistent with the goal of full participation in their least restrictive environment. To foster the full development of the child, corrective consequences for misconduct must be part of an instructional framework. All students shall be treated with respect and dignity, free from cruel, inhuman, or degrading treatment or punishment.<sup>167</sup>*

### Recommended Language:

- A. **States, districts and schools shall establish school-wide preventive and positive discipline policies that support all members of the school community (See section 3.1.a) and that address the particular needs of students with disabilities, including:**
1. Proactive systems to identify, adopt and sustain effective practices and routines that prevent problem behavior, reinforce appropriate behavior and have organized responses to misconduct.
  2. A multi-tiered approach that outlines the skills necessary to meet individual needs and ensure that cultural and individual differences are valued rather than criticized.
  3. Providing staff, families and students with the necessary information and training to ensure that behavioral expectations are clearly communicated, that behavior plans are developed collaboratively and understood by all, and that those plans are aligned with supporting the educational programs of students.
  4. Ensuring that no behavioral intervention shall cause physical or psychological injury, harm and/or deprive a student of basic human necessities or rights (including food, hydration and bathroom visits) or demean the student in any way.
- B. **Federal and state laws must strengthen procedural protections to ensure that students and parents or guardians are meaningful partners in the provision of special education services, particularly when addressing the needs of a child with behavior problems:<sup>168</sup>**
1. Amend laws, regulations and policies to clarify that students themselves, along with their parents, guardians, or surrogate parents, have the right to participate fully in proceedings to determine the education and related services they shall receive. This includes a student's right to direct his or her own procedural rights under the IDEA in situations where the child's parent, guardian, or surrogate parent cannot or will not assert the child's rights him- or herself.<sup>169</sup>
  2. Amend procedural safeguards to allow parents or guardians and professionals brought by parents or guardians the right to meaningful observation of the child in his or her classroom and provide clear guidelines and support in conducting observations.
  3. When parents or guardians/students exercise their right to an independent educational evaluation (IEE), school districts shall either pay for independent educational evaluations or file for due process.



- a. 34 C.F.R. § 300.502 shall be amended to state that failure to file for due process within 10 calendar days of parent or guardian’s IEE request (or 5 calendar days if there a manifestation determination, change in placement, or hearing request is pending) results in the parent’s or guardian’s right to a publicly funded IEE as a matter of law.<sup>170</sup>
  - 4. The school shall have the burden of proof in a due process hearing where the parent or guardian or student challenges a change of placement of a child with a disability because of a school disciplinary violation.<sup>171</sup>
  - 5. School districts must honor hearing officer decisions in a timely manner. Timeframes for implementation of decisions shall be written into all due process decisions and settlement agreements.
- C. Federal and state laws must strengthen the requirements for effective, evidence-based positive interventions as part of the Individualized Education Plan (IEP) process.**<sup>172</sup>
- 1. 20 U.S.C. Sec. 1401 (26) (Definition for Related Services) shall be amended to include Positive Behavior Supports, Functional Behavior Analysis (FBA), and Behavior Intervention Plans (BIP) as **related and supplementary services**.<sup>173</sup>
    - a. Require that the FBA and BIP be reviewed and updated annually.
    - b. Develop standards for a “properly conducted” FBA and BIP.
    - c. Develop clear guidelines for additional personnel necessary for support.
  - 2. 20 U.S.C. Sec. 1414 (d)(3)(B)(i) (Consideration of Special Factors) shall be amended to the following: “in case of a child whose behavior impedes the child’s learning or that of others, it is required that the IEP team consider the use of positive behavior interventions and supports and other strategies to address that behavior.”
- D. State and Federal law must specify that exclusion from the student’s current educational placement because of behavior that is a manifestation of the child’s disability shall be presumed to be discriminatory.**
- 1. Disciplinary removal of a child with a disability shall be defined as any removal from the child’s current educational placement for any length of time totaling more than one class period for violation of a school rule, including but not limited to formal suspension and expulsion as defined in Section 3.1.b, as well as informal removals such as denial of access to recess or field trips or shortened days.<sup>174</sup> (34 C.F.R. Sec. 300.536 must define disciplinary removal to be consistent with this provision.)
  - 2. Schools shall carefully consider all of the factors set forth in Section 3.1.b.C when considering disciplinary removal as an option for a child who has been or should have been identified as having a disability that affects the child’s behavior.
    - a. All short-term removals of more than one hour or class period and less than one full school day shall be recorded in the child’s educational file and shall be recorded in a central data base with key demographics, as defined in Chapter 5.
    - b. As referenced in Section 3.1.a, students suspected of disabilities, but who have yet to be identified as having a disability, shall receive increased intervention services, including a special education assessment, when appropriate and consistent with the school’s obligation to engage in Child Fund under the IDEA.
    - c. Students with disabilities who are disciplined with a series of short term removals or suspensions that total five or more days in a school year shall have an IEP team meeting to review the student’s entire program to determine what modifications and accommodations may be necessary to bring about a positive change in student behavior. Environmental supports and other interventions, both successful and unsuccessful, must be documented so that the student’s program continues to be built around the student’s needs.
    - d. Federal law triggering the manifestation determination requirement (34 CFR 300.536 (a)(2)(ii)) shall be amended to state “[b]ecause the child’s behavior is substantially similar to the child’s behavior in previous incidents and is caused by the child’s disability or has a direct and substantial relationship to the disability...”
    - e. School personnel shall obtain the approval of a district level administrator responsible for overseeing the special

education program prior to removing a child from school for disciplinary purposes, except when the emergency removal provision in 3.1.c applies.

3. When a removal of a child from school triggers a manifestation determination under 20 U.S.C. Sec.1415(k)(E):
  - a. The parent or guardian and his or her child have a right to legal counsel as a matter of right and at public expense in all due process or judicial review proceedings stemming from the manifestation hearing (see Section 3.1.c.D);
  - b. If any member of the IEP team raises concerns that an unidentified disability was the cause of the disciplinary incident, an evaluation shall be conducted after the manifestation determination, and considered by the IEP team;
  - c. Parents or guardians shall have a right to a review of all relevant information in the child's file, including all of the child's education records and any new information provided to the IEP team by parents, guardians or other individuals; and
  - d. If applicable, schools shall immediately remove any suspension or expulsion from the child's record if the behavior is determined to be a manifestation of the disability.
4. The student shall have the right to "stay put" in his or her current educational placement pending a final decision on disciplinary removal. The only exception to this is under an "emergency situation" as defined by section 3.1.c.J (Emergency Removal).
5. A student with a disability must continue to receive FAPE during the period of removal from his or her current educational placement.<sup>175</sup>

**E. Students with disabilities shall be referred to law enforcement or the court system only in situations involving a real and immediate threat to physical safety (see emergency removal provisions in 3.1.c and limits on the role of law enforcement in section 3.2.a):**

1. A school based risk assessment team<sup>176</sup> shall be convened to determine the seriousness of the behavior and if it meets the criteria stated above and in Section 3.3.a.
  - a. When a school initiates a report or referral to law enforcement or the court system of any student with a disability, the school shall conduct a manifestation determination within 10 school days of the report or referral.
    - i. The school shall provide the determination to the juvenile court.
    - ii. The school shall withdraw its referral or report if:
      1. The behavior is determined to be a manifestation of the student's disability; and
      2. The school failed to properly address the student's behavioral needs according to the school's obligations under the IDEA or Section 504 and district discipline policies.
2. Juvenile Court Responsibilities
  - a. School based reports or referrals that result in juvenile prosecutions shall be reviewed by the juvenile court.
  - b. The juvenile courts shall consider whether the school's action or inaction contributed to the behavior of the student.
  - c. The juvenile courts shall have the authority to:
    - i. Subpoena all pertinent records with respect to the child's disability;
    - ii. Supervise the school's progress in meeting the child's needs, in addition to supervising the child's progress; and
    - iii. Enjoin school districts to withdraw their report or referral.
  - d. Juvenile courts shall annually review all school based reports and referrals for patterns. If a pattern of referral from a school or school district is indicated, the Juvenile Court shall initiate a work group of stakeholders (including parents or guardians, students and community leaders) and develop a Memorandum of Understanding to specify the roles and responsibilities of all stakeholders in reducing school-based referrals.<sup>177</sup>

# CHAPTER 5

## DATA, MONITORING AND ACCOUNTABILITY

### Background

Students, parents or guardians, educators and all stakeholders in the educational process have a right to know what is happening in the educational system in order to hold schools and governments accountable. Regular access to critical information and the ability to bring about systemic changes when necessary are essential elements of the human right to a quality education. Schools and districts must allow for relevant information to be reviewed in each of the areas described in the previous chapters of the Model Code. Substantive and detailed information must be collected for all critical indicators—from special education referrals and educational outcomes to disciplinary incidents and interactions with police officers in schools. In order for the data to be analyzed in an efficient but thorough manner, definitions of basic categories must be consistent across school districts and states, and data collection methods must be standardized. To be useful in assessing educational equity, the information collected needs to be disaggregated and broken down by disproportionately impacted groups. Reporting must be conducted with sufficient detail and accessibility to allow for in-depth review by all stakeholders.

Once data is collected, it must be put to work. It is critical for institutional actors at the federal, state, local and school levels to use data in making decisions to guide instructional practices, monitor disciplinary practices, provide data on student performance to determine the current level of learning, measure and report progress toward school goals, and for ongoing reevaluation to determine if additional support is needed after initial assessments and findings. This means establishing an infrastructure to analyze the data that is collected and draw true comparisons across schools, districts and states allowing parents or guardians and students to know what is expected and what is needed to improve school climate. Teachers must have organized records of student and school performance for schools to know what is working or not working with instruction and disciplinary practices, and school and district-level teams need to have comprehensive data on student performance for decision making.

Achieving this goal requires more than simply making the data publicly available in a readable and consistent way; it means creating intentional structures that allow institutional actors and stakeholders to see where they stand and take steps to improve the educational circumstances of students. Thus, states, districts and schools must also put in place meaningful and comprehensive internal analysis structures.

# A GUIDE TO CHAPTER 5

**Section 5.1 on the Right to Information** focuses on access for policy-makers and stakeholders to all relevant information on educational programs and services, funding sources and budget allocations, policies and procedures, as well as data on educational outcomes disaggregated by demographic characteristics described in the chapter. It requires that information and data be easily accessible and understandable for all stakeholders.

## Section 5.2 on Data Collection

**Sub-Section 5.2.a on Standardized Data Collection** requires that all data be collected and broken down by a list of demographic groups, including by age, race and ethnicity, gender, income level, disability, English Language Learners, court involved youth, homeless youth and youth in foster care. It also requires that common definitions be used for education indicators like graduation rate, attendance rate, dropout, voluntary transfer, involuntary transfer, expulsion, suspension, disparate impact and disparity.

**Sub-Section 5.2.b on Required Categories for Data Collection** lists the types of information that states, districts and schools should collect and make available on education programs, policies and funding, and the categories of data that they should collect, including graduation rates, test scores, enrollment, attendance, dropouts, discharges, transfers to alternative schools, disciplinary incidents and responses, interactions with police, reenrollment information and student, parent and teacher surveys on school climate.

**Section 5.3 on Monitoring and Community Analysis** focuses on processes for states, districts and schools to use data to frequently and effectively measure, monitor and analyze progress towards learning goals and improve educational programs and services. It requires meaningful participation of students and parents or guardians in those processes and for training for teachers, administrators, staff, students and parents to use data collection and analysis as part of their school-level planning and decision-making. Finally, it provides guidelines for creating community monitoring structures that are independent of the school system to analyze data, work with the school system to make improvements, and to hear and address concerns from students, parents and community members.

## 5.1 Right to Information

**Human Rights Goal:** *Community members and policymakers must have timely access to relevant information about public education issues of concern. Stakeholders need to be equipped with the necessary data to identify areas needing improvement, to assist in devising solutions to ongoing problems and to hold schools and governments accountable. Parents or guardians, youth and other community members must have opportunities to meaningfully participate in shaping, monitoring, assessing and improving the education provided to youth.*

### Recommended Language:

- A. **States, districts and schools shall make available to all policy-makers and stakeholders, including educators, parents or guardians, students and community members, information and core data concerning the education provided to students** including, but not limited to:
1. Educational programs and services, assessments, school discipline policies and practices, funding sources, budget allocations and other policies and procedures; and
  2. Aggregate data on educational outcomes and data 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. **States, districts and schools shall provide information and data that is easily accessible and easy to understand** and that allows stakeholders to assess the impact of education policies and practices, including disproportionate impacts on certain groups.<sup>178</sup> Stakeholders shall have access to analysis of data conducted by states, districts and schools, as well raw data so that stakeholders can conduct their own independent analysis.<sup>179</sup>
- C. **Personal student records**, including attendance records, test scores, grades, disciplinary records, counseling records, psychological records, applications for admissions, health and immunization records, teacher evaluations, counselor evaluations, behavior evaluations, suspensions, expulsions and discharges, shall be provided upon request to the parents or guardians or guardians of specific students and to the specific student.<sup>180</sup>

## 5.2 Data Collection

### 5.2.a. Standardized Data Collection

#### Recommended Language

- A. In order to accurately assess the effect of educational policies and practices on students and on groups of students that experience negative results at disproportionate rates, it is essential that all data described in 5.2.b be disaggregated by the following demographic groups:
1. Age
  2. Race and Ethnicity – US Department of Education definitions shall be followed to allow for consistency across states and districts. Further disaggregation for collection and reporting at the state and district level shall be pursued (for example, in addition to a category for Asians, it may be appropriate for states with substantial Asian American populations to disaggregate data for Vietnamese, Chinese, Laotians and other Asian communities)
  3. Gender
  4. Income level – The term “low income” means any student who is eligible for the federal free and reduced lunch program.

5. Disability and special education status – The term disability is defined by Section 504 of the Rehabilitation Act of 1973, and the term special education status is defined by the Individuals with Disabilities Education Act (IDEA).
  6. English Language Learners (ELLs) – ELLs are students who are in the process of developing fluency in English.
  7. Court-involved youth – The term court-involved youth means any young person who comes into contact with the justice system for committing a status offense or a delinquent act.
  8. Homeless youth – The term homeless youth means any youth who lacks parental, foster, or institutional care and includes youth living in temporary housing.
  9. Youth in foster care – The term youth in foster care means any young person who is under the care or supervision of the foster care system.
- B. To ensure consistency when comparing data between schools, districts and states, **definitions of certain common terms used in data collection shall be standardized.** This shall apply to the following terms, in addition to the demographic terms listed above:
1. **Graduation rate** – The ratio of students who complete the course of study provided by the local school district to satisfy the requirements of gaining a diploma or certificate of completion to the number of students initially enrolled in the program of study over the traditional amount of time taken to complete the program’s coursework.
  2. **Attendance rate** – The percentage of total school days that students in a school or district are present in school.
  3. **Dropout** – A student who has voluntarily or involuntarily ceased attendance at or participation in the school in which the student had been enrolled, but which student has not transferred to another school district, school or home school, with or without a formal notice from the student, parent or guardian that the student has left the school system.
  4. **Voluntary Transfer** – Any transfer from one educational institution to another that is not mandated by a school or district.
  5. **Involuntary Transfer** – Any transfer from one educational institution to another that is mandated and against the will or interest of a student by a school or district. Involuntary transfers for academic reasons are prohibited in Section 3.3.b. Involuntary transfers for disciplinary reasons must adhere to the same due process protections as expulsions, outlined in section 3.1.c of this Model Code, including guaranteeing the right to a hearing and to appointed counsel at public expense.
  6. **Expulsion** – The long term exclusion of a student from school attendance and school privileges for a period of more than 10 days over the course of a school year.
  7. **Suspension** – Any temporary cessation or separation from the mainstream education process for no more than 5 consecutive days and less 10 cumulative days over the course of the school year.
  8. **OCR “disparate impact” standard<sup>181</sup>** – Disparate impact means differences in outcomes that may result from the application of “neutral” policies notwithstanding the absence of intentional discrimination. A violation of law may occur if:
    - a. There is a significant disparity in the provision of a benefit or service that is based on race, national origin or sex; and
    - b. The practice at issue does not serve a substantial legitimate justification (i.e. is not educationally necessary); or

c. There is an alternative practice that is equally effective in meeting the institution's goals and results in lower disparities to trigger federal action.

9. "Significant Disparity" – States must show they have a plan to address disparity in discipline for IDEA funding.

## 5.2.b Required Categories for Data Collection

A. In order to ensure that at the local, state and national level consistent data is collected, analyzed, and then forms the basis for program and funding decisions, **the following data shall be collected and made available to the public:**

1. State and district learning goals;<sup>182</sup>
2. State and district teaching standards;<sup>183</sup>
3. Educational programs and services including:<sup>184</sup>
  - a. Curricula;
  - b. Academic intervention programs;
  - c. Special education services, including access to research-based services, such as multisensory reading remediation programs;
  - d. Class sizes;
  - e. Access to technology;
  - f. Teacher-student ratios;
  - g. Teacher demographics;
  - h. Access to highly effective teachers with measures based in part on teacher salaries, so as to allow for more reliable comparison between low-poverty and high-poverty schools;
  - i. Guidance counselor-student ratios;
  - j. Social workers and psychologists available to youth and parents or guardians; and
  - k. Professional development provided to teachers and school administrators;
4. Assessment measures including:<sup>185</sup>
  - a. Promotion criteria;
  - b. Student assessment tools;
  - c. Student assessment results by district and school;
  - d. Teacher hiring standards and licensing criteria;
  - e. Teacher assessment tools; and
  - f. Teacher assessment results by district and school;
5. Policies and practices related to school climate and discipline, including:<sup>186</sup>
  - a. Discipline Codes or Student Codes of Conduct;
  - b. Programs and practices implemented as preventive and positive approaches to discipline;
  - c. Procedures and due process protections for exclusion; and
  - d. Training and professional development provided to school staff and safety personnel stationed in schools;
6. Funding including:<sup>187</sup>
  - a. State, district and school funding sources for education;
  - b. State, district and school budgets for public education;
  - c. State, district and school budgets for school climate and discipline resources; and
  - d. State, district and school budgets for education data tracking, collection and reporting;
  - e. Grievance procedures and processes for assistance with school-related concerns;<sup>188</sup>
  - f. Mechanisms for reviewing school-related data;<sup>189</sup> and
  - g. Methods for developing and implementing education reforms.<sup>190</sup>

- B. The following data shall be collected on educational outcomes at the local, state and national level, and made available to the public** consistent with privacy constraints established under federal and state privacy laws and regulations. The data shall be aggregated and disaggregated by age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care, and where available must include cross-tabulation and longitudinal data to allow for in-depth review:
1. Graduation rates;<sup>191</sup>
  2. Test scores and other assessments of students;<sup>192</sup>
  3. Enrollment rates;<sup>193</sup>
  4. Attendance rates for students and teachers;<sup>194</sup>
  5. Dropouts;<sup>195</sup>
  6. Discharges,<sup>196</sup> other than those that may be described as expulsion, which includes:
    - a. Types of discharges<sup>197</sup> (moved out of district, aged out of public school eligibility, incarceration, etc.); and
    - b. Number of discharges, by type;<sup>198</sup>
  7. Transfers to alternative schools, remedial programs and GED programs, which includes:
    - a. Transfer policies;
    - b. Transfer rates/statistics, broken down by destination, disproportionately impacted groups, and whether transfer was voluntary or involuntary:
      - i. If transfer was involuntary, whether administrative hearings were conducted and the outcomes of proceedings;
  8. Discipline policies, statistics and rates, including:<sup>199</sup>
    - a. Types of infractions;
    - b. Teacher/staff member reporting the infractions;
    - c. Consequence of infraction, including but not limited to:
      - i. Positive interventions;
      - ii. In-school suspensions;
      - iii. Out-of-school suspensions;
      - iv. Number of suspensions;
      - v. Length of suspensions;
      - vi. Expulsions;
      - vii. Corporal punishment;
      - viii. Referrals to disciplinary schools; and
  9. Interactions with police and school security agents, including:
    - a. Referrals to probation/law enforcement/courts, including types of incidents;
    - b. School-related arrests, including types of incidents;<sup>200</sup>
    - c. Number and type of student searches;
    - d. Number and type of student interrogations;
    - e. Police officers or school staff involved in incidents with students;
    - f. Trainings for police, security agents and school staff on discipline and cultural sensitivity, including:
      - i. Number and duration of trainings
      - ii. Types of trainings
      - iii. Resources allocated to trainings.



10. Reenrollment statistics of students' return from suspension sites and detention facilities, including:
  - a. Number of students reenrolling or dropping out after suspensions, expulsions, involuntary transfers, alternative school placements, juvenile detention, arrest, detention, adjudication, conviction and incarceration; and
  - b. Number of days between discharge from suspension, detention, or incarceration and registration at a school placement, including, when applicable the number of days between discharge and actually being given a school program, even if the student's name is placed on a register; and
  
11. Student, parent or guardian and teacher surveys on:<sup>201</sup>
  - a. Curriculum and instructional practices;
  - b. Student engagement in the learning process;
  - c. School climate and discipline; and
  - d. Mechanisms for student, parent or guardian and teacher participation in decision-making.

## 5.3 Monitoring and Community Analysis

### Recommended Language

- A. **States, districts and schools shall use data to frequently and effectively measure, monitor and analyze progress towards learning goals**, and use the results of those assessments to improve educational programs and services, instructional practice, disciplinary policies and to improve the school environment as a whole. States, districts and schools shall:
  1. Set measurable annual goals and outcomes for progress towards providing all children with a high quality education in a positive and supportive school environment;
  2. Identify consistent, clear and transparent measures and increments of student performance and growth;
  3. Develop data systems, tools and processes to:
    - a. Identify and analyze disparities across age, race and ethnicity, gender, income level, disability, English Language Learners, court-involved youth, homeless students and students in foster care;
    - b. Compare data across schools and districts;
    - c. Identify and analyze correlations in the data, including across academic and disciplinary outcomes, funding decisions, graduation rates and other indicators to identify connections and root causes of educational impacts and disparities;
    - d. Conduct follow-up investigations that allow for more qualitative and in-depth understanding of the results of data analysis;
    - e. Employ independent experts to analyze data and investigate the conditions in schools, and to report, advise and recommend solutions; and
    - f. Produce written reports and assessments available to the public and education stakeholders; and
  4. Create data driven solutions and alternatives to policies and practices that hinder student growth and achievement.
  
- B. States, districts and schools shall ensure that students, parents or guardians and communities have meaningful participation in monitoring data by creating structures that allow students, parents or guardians and community members to participate in:
  1. Defining measurable annual goals and objectives;
  2. Making decisions on what data is needed and how that data is used;
  3. Determining data collection tools, methods and a schedule for data collection;

4. Analyzing and evaluating data;
  5. Making decisions on how best to present data to policy makers, stakeholders and the broader community;
  6. Determining how data is used to improve the educational system; and
  7. Making decisions on how best to communicate progress resulting from the implementation of data-driven practices in improving the instructional and disciplinary practices of schools.
- C. States, districts and schools shall engage in on-going monitoring of data and ensure that a formal audit of data occurs at least once a month at the local school level and district level where applicable. Depending on the size of the district formal audits of data may occur more frequently.
- D. **States and districts shall provide training and support on data interpretation** for school staff, administrators, parents or guardians, students, and communities in large and small groups, on-site visits and individual meetings, and other training opportunities.
1. Subjects of trainings must include, but are not limited to:
    - a. Data collection methods;
    - b. Preparation of data for end-user usage;
    - c. The use of data to identify trends or inspect visually for inconsistencies and discrepancies; and
    - d. The use of data to set attainable, measurable goals and work toward progressive outcomes.
  2. Where available, schools shall work collaboratively with local community-based organizations to provide the necessary training and support to stakeholders.
- E. **States, districts and schools shall establish community-based, independent structures to ensure that parents or guardians, students and the broader community of educational stakeholders are actively involved in the collection and use of data.** The structures are charged with the duty to ensure that the efficient and effective collection of data is used to help create schools where all students have access to a high quality education in a supportive, positive environment.
1. The structures must engage in planning and setting long-term goals and objectives and shall develop a “comprehensive plan” for improving the educational system over 5, 10, 15 and 20 year periods.
  2. The structures established must engage in annual assessments and offer recommendations on:
    - a. Key elements for review each year, including but not limited to:
      - i. Achievement and graduation rates;
      - ii. Access to quality teachers and teacher retention;
      - iii. School climate and discipline; and
      - iv. Funding sources and budgets; and
    - b. Identifying particular areas of concern in the district for deeper investigation and review.
  3. The core values and practices of the structures shall include:
    - a. Open meetings on dates, times and places accessible to the broad spectrum of education stakeholders and others in the community;
    - b. A governance structure that is democratic and seeks, to the extent possible, to build consensus to carry out the work of the entity;
    - c. Independence from the local school district and each of its schools;
    - d. A focus on building strong, healthy communities that is broader than the school system itself;
    - e. Capacity to create working committees that may include members of the community to assist members of the structure;

- f. Responsibility for making accurate assessments of the strengths and limitations of the school district and its schools as a basis for recommending effective approaches to create quality, healthy schools;
  - g. Understanding of how to gather relevant data and how to utilize the data to monitor and evaluate the schools and school district; and
  - h. Authority to request and obtain data from the school district and the individual schools, so long as the content of the data sought does not compromise any existing Federal or State privacy law.
4. The structures shall include representation from a broad spectrum of education stakeholders and the broader community, including but not limited to:
- a. Students attending schools in the district, which may include representatives of school-based or district student councils and student government associations;
  - b. Parents or guardians of students attending schools in the district, which may include representatives of Parent Teacher Associations;
  - c. Members of local community-based organizations working on public education issues;
  - d. Community leaders, public officials and/or members of the business community within the local school district;
  - e. Community members at large interested in public education issues;
  - f. Representatives of the school district, which may be selected from among the school district Board of Trustees, administration, faculty, or staff; and
  - g. Representatives of school-level staff, including but not limited school administrators, teachers, guidance counselors or other staff.
5. A school district may elect to have a single district-wide structure, neighborhood or sub-district level structures, or individual school-based structures depending on the size and structure of the district.
- F. States, districts and schools shall work together with the independent community-based monitoring structures to ensure that data is used to make timely and effective changes to improve the educational system.** Accountability mechanisms must be restorative and supportive, rather than punitive and shall:
- 1. Be developed in a transparent and deliberative process that authentically engages students, parents or guardians and all community stakeholders;
  - 2. Use a comprehensive set of indicators and measurements (outlined in Section 5.2 and 5.3) to evaluate schools and districts and to trigger intervention when learning goals are not being met; and
  - 3. Develop tailored interventions and supports that:
    - a. Are based on and tailored to address the needs and concerns of school district staff, school administrators, teachers, students, parents or guardians and other stakeholders;
    - b. Eliminates policies and practices that are revealed to be damaging;
    - c. Seeks to address structural inequities and disparities;
    - d. Learns from and replicates best practices and successes within and outside of the local district, while considering and adapting those strategies to local factors, including models like restorative practices, social-emotional learning, positive behavior supports; and
    - e. Seeks recommendations from experts in the areas of need to advise on best practices in the field and help design tailored and effective solutions.
- G. States, districts and schools shall establish independent structures for individuals and communities to raise concerns and seek recourse which can be established through a variety of mechanisms,** but at minimum must ensure that:
- 1. Any stakeholder or community member who experiences or observes injustice based on the data and analysis conducted is empowered to raise concerns or complaints;

2. An independent and impartial actor that is separate from the school district shall hear the complaint and supervise the process of deciding what steps to take in response (this independent and impartial actor could be an administrative judge, a court of law, restorative committee, an independent panel or some other arbiter);
3. The independent and impartial actor have:
  - a. Power to compel the school, district or state level governing body to take action; and
  - b. Ability to provide both individual remedies and to compel systemic change and interventions.

# APPENDIX

## Rationale for the Right to Counsel Provisions in the Model Code

The Model Code on Education and Dignity would guarantee a right to publicly funded counsel for students in certain discipline, truancy and manifestation proceedings.<sup>202</sup> Such a right represents one of the more significant costs triggered by the Model Code, but at the same time is essential to the effectuation of all the other rights provided in the Code. While the concept of a right to counsel in certain types of government-initiated civil cases is not new (most states, for example, provide such a right either by statute or court decision in abuse/neglect or termination of parental rights cases),<sup>203</sup> the issue has remain largely unaddressed in both courts and legislatures with respect to longer term suspension/expulsion/truancy proceedings.<sup>204</sup>

This Appendix briefly addresses some of the concerns mentioned about providing counsel in education cases. The easiest framework for addressing these concerns was provided by the U.S. Supreme Court for testing for due process: examine 1) the strength of the individual interest(s) at stake, 2) the state's interest, and 3) the risk of a wrong decision absent counsel.<sup>205</sup> As to the first prong, an expulsion or long-term suspension hearing in states or districts that offer no alternative education programs can effectively mean the end of a child's public education. So can a truancy case or a failure to recognize the connection between a disability and misconduct in a manifestation determination review. Given that the right to education is guaranteed by the constitutions of many states,<sup>206</sup> this is a serious deprivation indeed. Additionally, a suspension/expulsion hearing can lead to more serious consequences than those faced in a juvenile delinquency court proceeding for the same behavior, but without the protection of counsel. For example, a fistfight might lead to a disciplinary hearing where the child has no lawyer and where the hearing officer rules to expel the child due to a zero tolerance policy. In a juvenile delinquency court proceeding, the same child would likely have the right to counsel and might only face probation or even a diversion program, especially if it was the student's first contact with the juvenile justice system. With respect to truancy, a juvenile can be adjudicated as truant without counsel, even though such a finding can affect their educational placement, subject them to various restrictions (such as random drug screening), and put them under threat of jail if they later violate the truancy order.

As to the second prong, while providing counsel does require government funds, the amount may be significantly less than it seems at first blush. For one, if schools adopt the rest of the Model Code, there will be vastly fewer exclusion/truancy attempts overall and therefore fewer situations that require an attorney.<sup>207</sup> And some students will either decline or waive counsel, choose not to pursue a formal hearing, or be financially ineligible. Additionally, erroneously expelling students or finding them truant (a result an attorney can help avoid) can be much costlier to the schools and the community at large: for one, schools can lose state/federal funding when students are out on expulsion. And when one understands that many subject to long-term suspension/expulsion or a finding of truancy may never return to school, the costs mount even higher. For instance, one study found that high school dropouts are twice as likely to commit crimes as high school graduates, and one group of 12th-grade dropouts will generate \$1.1 billion in economic losses from juvenile crime and \$10.5 billion in economic losses from adult crime over their lifetimes.<sup>208</sup> Communities must also pay for additional policing, jails, and criminal case prosecutions. In Massachusetts, a study found that high school dropouts earned \$456,000 less over their lifetime than those with a high school degree.<sup>209</sup>

Finally, as to the third prong, some might say that only juvenile court proceedings are complicated enough to require a lawyer, and while truancy proceedings are court proceedings, suspension/expulsion hearings and manifestation determination reviews are more informal. However, while the hearings may be less formal than a court process, the fact remains that the children whose vital interests are at stake could be so young as to be in elementary school. And the reality is that students and families often find these hearings (whether informal or formal) to be a confusing and frustrating experience. Even if the school is not represented by a lawyer at the hearing, the school's representative is an official who is trained in school procedures and who has access to records, witnesses, and other resources that the student lacks. The student faces the allegations on her own,<sup>210</sup> and is forced to try to present evidence, cross-examine witnesses, make

objections, and otherwise act like an attorney without any of the skills or training to do so. Without counsel, a student will almost always find it difficult to clearly present her side. Providing a right to counsel when a student is being excluded from school allows the student the opportunity to be heard and to investigate and challenge discriminatory practices, ensures a fair hearing, and protects against mistakes that could lead to a deprivation of the right to an education.

In addition, whether the hearings are especially complicated or not, there is a significant risk of the decision being incorrect if the child is not represented by a lawyer. This is not only because hearing officers may make the wrong decision about whether a particular school rule was violated, but also because they may uphold punishments that are unnecessarily harsh. In some cases, a school may be using disciplinary exclusion as a way of “pushing out” a student who is doing poorly in her classes<sup>211</sup> or who has a behavior-affecting disability, something only a lawyer could likely accurately figure out. While schools need discretion in making decisions about school safety and discipline, providing the child with a lawyer will not likely change the outcome where the school has valid reasons for trying to suspend or expel the child; it will simply prevent exclusions that should **not** be occurring.

In sum, providing the child with a lawyer is what is best for the student, the school, and the community, and while costs must certainly be addressed, such costs are, as the Supreme Court put it in a different context, “hardly significant enough to overcome private interests as important as those here...”<sup>212</sup>

# ENDNOTES

- <sup>1</sup> OFFICE FOR CIVIL RIGHTS, DEPT. OF EDUC., CIVIL RIGHTS DATA COLLECTION 2006, [ocrdata.ed.gov/ocr2006rv30](http://ocrdata.ed.gov/ocr2006rv30).
- <sup>2</sup> SOUTHERN POVERTY LAW CENTER, EFFECTIVE DISCIPLINE FOR STUDENT SUCCESS: REDUCING STUDENT AND TEACHER DROPOUT RATES IN ALABAMA 11 (2008), *available at* [http://cdna.splcenter.org/sites/default/files/downloads/Effective\\_Discipline\\_ALA.pdf](http://cdna.splcenter.org/sites/default/files/downloads/Effective_Discipline_ALA.pdf).
- <sup>3</sup> Foundational human rights provisions for the right to education can be found in: Universal Declaration of Human Rights (UDHR), Article 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 13; Convention on the Rights of the Child (CRC), Articles 28 and 29.
- <sup>4</sup> *See generally*, A BRIEF HISTORY OF HUMAN RIGHTS: THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948), <http://www.humanrights.com/what-are-human-rights/brief-history/the-united-nations.html>.
- <sup>5</sup> GLOBAL RIGHTS, THE JUSTICIABILITY OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN THE U.S.: DOMESTIC IMPLEMENTATION OF THE RIGHT TO EQUAL EDUCATION: A PLAN FOR ACTION 13-15 (2004), *available at* [http://www.globalrights.org/site/DocServer/Final\\_Right\\_to\\_Education\\_\\_11.12.pdf?docID=1363](http://www.globalrights.org/site/DocServer/Final_Right_to_Education__11.12.pdf?docID=1363); Roni R. Reed, Note, *Education and the State Constitutions: Alternatives for Suspended and Expelled Students*, 81 CORNELL L. REV. 582, 94 (1996).
- <sup>6</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 4-5 (1973).
- <sup>7</sup> For example, in California, “five out of every six schools serving 90-100% Latino, African American, and American Indian students are high poverty schools. By contrast, almost two in three schools serving 0-49% Latino, African American, and American Indian students are low-poverty schools.” JOHN ROGERS ET AL., CALIFORNIA EDUCATIONAL OPPORTUNITY REPORT 2010: EDUCATIONAL OPPORTUNITIES IN HARD TIMES: THE IMPACT OF THE ECONOMIC CRISIS ON PUBLIC SCHOOLS AND WORKING FAMILIES 10 (2010), *available at* <http://idea.gseis.ucla.edu/publications/eor-10/files-and-documents/EOR-2010-CA-Report.pdf>.
- <sup>8</sup> *See generally* JOHN ROGERS ET AL., CALIFORNIA EDUCATIONAL OPPORTUNITY REPORT 2006: ROADBLOCKS TO COLLEGE (2006), *available at* <http://idea.gseis.ucla.edu/publications/eor-06/EOR-2006.pdf>; JENNIFER IMAZEKI & LAURA GOE, THE DISTRIBUTION OF HIGHLY QUALIFIED, EXPERIENCED TEACHERS: CHALLENGES AND OPPORTUNITIES (2009), *available at* <http://www.tqsource.org/publications/August2009Brief.pdf>; Linda Darling-Hammond, *The Color Line in American Education: Race, Resources, and Student Achievement*, 1 W.E.B. DUBOIS REV. (2004), *available at* [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEIQFjAA&url=http%3A%2F%2Fwww.stanford.edu%2F~ldh%2Fpublications%2FLDH%2520-The-Color-Line.doc&ei=BO\\_MT4PJFq6E0QGb5LB5&usg=AFQjCNGIn4sovo90Dn4bnbj8SvfAfLz6Ww&sig2=b-P4b0Lq7I5nu23x4rn-jg](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEIQFjAA&url=http%3A%2F%2Fwww.stanford.edu%2F~ldh%2Fpublications%2FLDH%2520-The-Color-Line.doc&ei=BO_MT4PJFq6E0QGb5LB5&usg=AFQjCNGIn4sovo90Dn4bnbj8SvfAfLz6Ww&sig2=b-P4b0Lq7I5nu23x4rn-jg).
- <sup>9</sup> Darling-Hammond, *supra* note 8.
- <sup>10</sup> In this regard, several studies have shown that class size, at the critical point of a 1 to 18 teacher/student ratio, was a statistically significant determinant of student outcomes, as was small school size. Darling-Hammond, *supra* note 8. Researchers have found that 31% of the predicted difference in mathematics achievement between districts in the top and bottom quartiles was explained by teacher qualifications and class sizes, while 29.5% was explained by poverty, race, and parent education. *Id.*
- <sup>11</sup> U.N. Convention on the Rights of the Child art. 29 cmt. 1.
- <sup>12</sup> COLO. CONST., art.IX, § 2.
- <sup>13</sup> MONT. CONST., art X § 1, cl. 1.
- <sup>14</sup> *Id.*
- <sup>15</sup> AM. BAR ASS’N COMM’N ON YOUTH AT RISK & AM. BAR ASS’N COMM’N ON HOMELESSNESS AND POVERTY, RESOLUTION 118A, *available at* <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/118A.pdf> [hereinafter RESOLUTION 118A] (calling on local, state, and national legislative bodies and educational agencies to implement policies the set out the core program elements of the right to high quality education).
- <sup>16</sup> *See generally* CTR. FOR LAW & EDUC., EDUCATIONAL QUALITY BILL OF RIGHTS (2009), *available at* [http://www.cleweb.org/sites/default/files/EQBR\\_FullVersion.pdf](http://www.cleweb.org/sites/default/files/EQBR_FullVersion.pdf).
- <sup>17</sup> *See generally* NAT’L WORKING GRP. ON FUNDING STUDENT LEARNING, FUNDING STUDENT LEARNING: HOW TO ALIGN EDUCATION RESOURCES WITH STUDENT LEARNING GOALS 11-12 (2008), *available at* [http://www.crpe.org/cs/crpe/download/csr\\_files/pub\\_sfrp\\_wrkgrp\\_oct08.pdf](http://www.crpe.org/cs/crpe/download/csr_files/pub_sfrp_wrkgrp_oct08.pdf).
- <sup>18</sup> *See generally* CAROL ASCHER & CINDY MAQUIRE, BEATING THE ODDS: HOW THIRTEEN NEW YORK CITY SCHOOLS BRING LOW-PERFORMING NINTH-GRADERS TO TIMELY GRADUATION AND COLLEGE ENROLLMENT (2007), *available at* <http://annenberginstitute.org/publication/college-pathways-tool-series>.
- <sup>19</sup> *See* Deborah Gordon Klehr, *Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students*, 16 GEO. J. ON POVERTY L. & POL’Y 585, 589 (2010).
- <sup>20</sup> U.N. COMM. ON ECON., SOC., & CULTURAL RIGHTS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS art. XIII (1976), *available at* <http://www2.ohchr.org/english/law/cescr.htm>.
- <sup>21</sup> *See generally* Darling-Hammond, *supra* note 8. Darling-Hammond also cites research that such programs are highly effective. In North Carolina, for example, “the Teaching Fellows Program has encouraged thousands of high-ability college students—a disproportionate number of them male and minority—to enter teaching by underwriting their entire teacher preparation program in state universities. More than 75 percent have stayed in teaching and a large share has gone on to leadership in the public education system.” *Id.*
- <sup>22</sup> Neville Harris, *Playing Catch-Up in the Schoolyard? Children and Young People’s ‘Voice’ and Education Rights in the U.K.*, 23 INT’L J. L. POL’Y &

FAM. 331, 338 (2009).

- <sup>23</sup> The right to participation is a cross-cutting human rights principle found in many human rights documents, including the International Covenant on Civil and Political Rights (art. XXV), the Dakar Framework for Action on Education for All, and the International Covenant on Economic, Social, and Cultural Rights (art. XIII).
- <sup>24</sup> See THE BOSTON PILOT SCHOOLS NETWORK PRINCIPLES, <http://www.ccebos.org/pilotschools/principles.html> (last visited June 4, 2012).
- <sup>25</sup> See Paul Abowd, *Tired of Teacher-Bashing, Union Educators Grow Their Own Schools*, LABOR NOTES, Nov. 26, 2009, available at <http://labornotes.org/2009/12/tired-teacher-bashing-union-educators-grow-their-own-schools>. Examples of community-run and other alternative models for school governance, both in traditional public schools and in charter and privatized schools, are plentiful.
- <sup>26</sup> U.N. Convention on the Rights of the Child art. 29 cmt. 1.
- <sup>27</sup> This section is guided by the “CADRE Standards of Dignity and Respect for Parents” developed by Community Asset Development Re-defining Education (CADRE), a community-based, membership parent organization in South Los Angeles.
- <sup>28</sup> CMTY. ASSET DEV. REDEFINING EDUC., CADRE STANDARDS OF DIGNITY AND RESPECT FOR PARENTS Standard 3 [hereinafter CADRE]; see also No Child Left Behind Act of 2001, 20 U.S.C.A. § 1118 (West 2003).
- <sup>29</sup> CADRE, *supra* note 28 at Standard 5; see also No Child Left Behind Act of 2001, 20 U.S.C.A. § 1114(b)(2) (West 2003).
- <sup>30</sup> CADRE, *supra* note 28 at Standard 2; see also No Child Left Behind Act of 2001, 20 U.S.C.A. § 1112 (West 2003).
- <sup>31</sup> CADRE, *supra* note 28 at Standard 8.
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.* at Standard 6.
- <sup>34</sup> *Id.* at Standard 1.
- <sup>35</sup> *Id.* at Standard 9.
- <sup>36</sup> *Id.* at Standard 7.
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.* at Standard 4.
- <sup>39</sup> *Id.* at Standard 10.
- <sup>40</sup> See, e.g., The Small Necessities Leave Act, MASS. ANN. LAWS ch. 149, § 52D(b) (LexisNexis 2012). The Massachusetts law itself incorporates the federal Family and Medical Leave Act (FMLA), which provides a ready-made framework for the leave provisions. It is worth noting that the FMLA, and any law incorporating its definitions of eligibility, would not apply to smaller employers with less than fifty (50) employees. States may want to consider lowering that threshold for the school leave provisions, to accommodate parents who work for smaller employers.
- <sup>41</sup> Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2611-2615 (2012).
- <sup>42</sup> See generally RUSSELL SKIBA ET AL., ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.
- <sup>43</sup> See generally DIGNITY IN SCHS. CAMPAIGN-N.Y., PLATFORM FOR POSITIVE SCHOOL DISCIPLINE IN NEW YORK CITY SCHOOLS (2011), available at [http://www.nesri.org/sites/default/files/DSC-NY\\_Discipline\\_Platform.pdf](http://www.nesri.org/sites/default/files/DSC-NY_Discipline_Platform.pdf).
- <sup>44</sup> See generally JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS (2011), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf); DIGNITY IN SCHS. CAMPAIGN-L.A., YOUTH JUSTICE COAL & CMTY. RIGHTS CAMPAIGN, SOLUTIONS FOR LOS ANGELES SCHOOL POLICE DEPARTMENT: A BLUEPRINT FOR SCHOOL POLICE REFORM (2010), available at <http://www.thestrategycenter.org/sites/www.thestrategycenter.org/files/Solutions%20for%20LASPD%20-%2006%20-%20cover.pdf>.
- <sup>45</sup> See generally JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS (2011), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf); DIGNITY IN SCHS. CAMPAIGN-L.A., YOUTH JUSTICE COAL & CMTY. RIGHTS CAMPAIGN, SOLUTIONS FOR LOS ANGELES SCHOOL POLICE DEPARTMENT: A BLUEPRINT FOR SCHOOL POLICE REFORM (2010), available at <http://www.thestrategycenter.org/sites/www.thestrategycenter.org/files/Solutions%20for%20LASPD%20-%2006%20-%20cover.pdf>.
- <sup>46</sup> See generally EDUCATION UNDER ARREST, *supra* note 44.
- <sup>47</sup> See U.N. Convention on the Rights of the Child art. 29 (1989) (including the teaching of human rights and fundamental freedoms and the development of personality, abilities, and respect for parents among educational goals).
- <sup>48</sup> See *id.* at art. 28 (requiring that governments take “appropriate measures” to ensure that school discipline safeguards the child’s human dignity, and that discipline is consistent with the treaty as a whole); *id.* at art. 38 (protecting children from all forms of cruel, inhuman, and degrading treatment and punishment); *id.* at art. 40 (requiring that children accused of breaking the law must also be treated with dignity, and that any punishment be administered with the goal of reintegration into society).
- <sup>49</sup> Prevention efforts include support for particularly vulnerable families, involvement of schools in teaching basic values, and extending special care and attention to young persons at risk.
- <sup>50</sup> See AM. BAR ASS’N COMM’N ON YOUTH AT RISK & AM. BAR ASS’N COMM’N ON HOMELESSNESS & POVERTY, RESOLUTION 118B, available at <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/118B.pdf> [hereinafter RESOLUTION 118B] (calling for implementation of “evidence-based preventive school-wide practices for improving student behavior and creating a safe school climate more conducive to learning”).
- <sup>51</sup> See generally CTR. FOR SOC. & EMOTIONAL EDUC. & NAT’L CTR. FOR LEARNING & CITIZENSHIP, THE SCHOOL CLIMATE CHALLENGE:



- NARROWING THE GAP BETWEEN SCHOOL CLIMATE RESEARCH AND SCHOOL CLIMATE POLICY, PRACTICE GUIDELINES AND TEACHER EDUCATION POLICY (2007), *available at* <http://www.schoolclimate.org/climate/documents/school-climate-challenge.pdf>.
- <sup>52</sup> See generally L.A. UNIFIED SCH. DIST., DISCIPLINE FOUNDATION POLICY: SCHOOL WIDE POSITIVE BEHAVIOR SUPPORT (2007), *available at* [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/FLDR\\_ORGANIZATIONS/STUDENT\\_HEALTH\\_HUMAN\\_SERVICES/SHHS/DISCIPLINE\\_POLICY/DISCIPLINE\\_POLICY\\_PRESENTATIONS/DISCIPLINE\\_POLICY\\_PRESENTATIONS\\_INTRODUCTION/BASIC%20POLICY%201.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/STUDENT_HEALTH_HUMAN_SERVICES/SHHS/DISCIPLINE_POLICY/DISCIPLINE_POLICY_PRESENTATIONS/DISCIPLINE_POLICY_PRESENTATIONS_INTRODUCTION/BASIC%20POLICY%201.PDF).
- <sup>53</sup> See generally AM. BAR. ASS'N JUVENILE JUSTICE COMM., ABA ZERO TOLERANCE POLICY REPORT (2010), *available at* <http://www.maine.gov/education/speced/tools/b4se/reports/discipline/policyaba.pdf>.
- <sup>54</sup> See, e.g., THE OLWEUS BULLYING PREVENTION PROGRAM, <http://www.violencepreventionworks.org/public/index.page>.
- <sup>55</sup> See generally ELIZABETH SULLIVAN & ELIZABETH KEENEY, NAT'L ECON. & SOC. RIGHTS INITIATIVE & TEACHERS UNITE, TEACHERS TALK: SCHOOL CULTURE, SAFETY, AND HUMAN RIGHTS (2008), *available at* [http://www.nesri.org/sites/default/files/Teachers\\_Talk.pdf](http://www.nesri.org/sites/default/files/Teachers_Talk.pdf).
- <sup>56</sup> See generally NAT'L UNIV. OF IRELAND, GALWAY, PILOT IMPLEMENTATION OF RESTORATIVE PRACTICES IN POST-PRIMARY SCHOOLS IN THE NORTHWEST REGION (2006), *available at* <https://www.google.com/search?q=successful+training+for+restorative+practices+teacher&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>.
- <sup>57</sup> WHAT IS POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS?, <http://www.pbismaryland.org/LeadershipForum2008/WhatisPBIS.pdf>.
- <sup>58</sup> WHAT IS SCHOOL-WIDE PBS?, <http://www.pbismaryland.org/LeadershipForum2008/WhatisPBIS.pdf>.
- <sup>59</sup> *Id.*
- <sup>60</sup> See POSITIVE BEHAVIOR INTERVENTION AND SUPPORTS TUTORIAL: SECURING SCHOOL WIDE AGREEMENTS AND SUPPORTS, [http://cte.jhu.edu/courses/pbis/ses2\\_act3\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses2_act3_pag1.shtml).
- <sup>61</sup> "SWPBS for Beginners," OSEP: Technical Assistance Center of Positive Behavior Interventions & Supports, *available at* [http://www.pbis.org/school/swpbs\\_for\\_beginners.aspx](http://www.pbis.org/school/swpbs_for_beginners.aspx).
- <sup>62</sup> Evidence based programs such as Positive Action and Second Step: A Violence Prevention Curriculum have been found to positively support the social-emotional development of students.
- <sup>63</sup> See generally JEFFREY R. SPRAGUE & ANNEMIEKE GOLLY, BEST BEHAVIOR: BUILDING POSITIVE BEHAVIOR SUPPORT IN SCHOOLS 4 (2005); HILL M. WALKER ET AL., ANTISOCIAL BEHAVIOR IN SCHOOL 32 (2004); CTR. FOR EFFECTIVE COLLABORATION AND PRACTICE, SECOND STEP: A VIOLENCE PREVENTION CURRICULUM, [http://cecp.air.org/resources/success/second\\_step.asp](http://cecp.air.org/resources/success/second_step.asp).
- <sup>64</sup> See generally G. Roy Mayer, *Constructive Discipline for School Personnel*, 22 EDUC. AND TREATMENT OF CHILDREN 36-54 (1999).
- <sup>65</sup> The use of a problem-solving team and a lesson-study approach supports such reflection. Infusing classroom management discussions into discussion about instruction supports both instruction and behavior. Teachers are able to do this by using key access methodologies including building cooperative and communal learning environments, holding instructional conversations so that students arrive at a deeper understanding of academic content, focusing on academic language development in teaching specialized language, building on conceptual knowledge brought from home and community, and utilizing advanced graphic organizers for active learning. See generally L.A. UNIFIED SCH. DIST., MULTI-TIERED FRAMEWORK FOR INSTRUCTION, INTERVENTION, AND SUPPORT (2009), *available at* [http://www.lausd.net/math/Memos&Bulletins/BUL-4827\\_RTI\\_Policy.pdf](http://www.lausd.net/math/Memos&Bulletins/BUL-4827_RTI_Policy.pdf).
- <sup>66</sup> See generally Elizabeth Bondy et al., *Creating Environments of Success and Resilience: Culturally Responsive Classroom Management and More*, 42 URBAN EDUC. 326-348 (2007).
- <sup>67</sup> See generally L.A. UNIFIED SCH. DIST., DISCIPLINE FOUNDATION POLICY: SCHOOL WIDE POSITIVE BEHAVIOR SUPPORT (2007), *available at* [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/FLDR\\_ORGANIZATIONS/STUDENT\\_HEALTH\\_HUMAN\\_SERVICES/SHHS/DISCIPLINE\\_POLICY/BUL-3638.0.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/STUDENT_HEALTH_HUMAN_SERVICES/SHHS/DISCIPLINE_POLICY/BUL-3638.0.PDF).
- <sup>68</sup> See generally L.A. Unified Sch. Dist., *supra* note 67.
- <sup>69</sup> See generally BEVERLY H. JOHNS ET AL., REDUCTION OF SCHOOL VIOLENCE: ALTERNATIVES TO SUSPENSION (4th ed. 2007); Sprague, *supra* note 63; George Sugai & Robert H. Horner, *Introduction to the Special Series on Positive Behavior Support in Schools*, 10 JOURNAL OF EMOTIONAL AND BEHAVIORAL DISORDERS 130-135 (2002).
- <sup>70</sup> These can include: loss of privileges, restitution, Saturday school, mentoring programs, and behavioral contracts that include earning privileges.
- <sup>71</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).
- <sup>72</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>73</sup> See generally Stephanie Martinez, *A System Gone Berserk: How Are Zero Tolerance Policies Really Affecting Schools?*, 53 PREVENTING SCH. FAILURE 153-157 (2009); Joseph B. Ryan et al., *IDEA 2004 and Disciplining Students with Disabilities*, 91 NASSP BULLETIN 130-140 (2007).
- <sup>74</sup> See generally TERTIARY PREVENTION, *supra* note 71.
- <sup>75</sup> See generally WHAT IS THE WRAPAROUND PROCESS?, <http://cecp.air.org/wraparound/intro.html>.
- <sup>76</sup> *Id.*
- <sup>77</sup> See generally Skiba et al., *supra* note 42.
- <sup>78</sup> "What is Restorative Practice?" Safer Saner Schools, *available at* <http://www.saferanerschools.org/What-Is-Restorative-Practices.html>.
- <sup>79</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>80</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>81</sup> See generally, THE RESTORATIVE SCHOOLS VISION PROJECT, <http://www.restorativeschoolsproject.org/>.

<sup>82</sup> See generally, TEACHERS UNITE FOR RESTORATIVE JUSTICE AND DIGNITY IN SCHOOLS, <http://teachersunite.net/340>.

<sup>83</sup> CHI. PUB. SCH. POLICY MANUAL, *supra* note 80 at pg 38.

<sup>84</sup> *Id.* at pg 52.

<sup>85</sup> U.N. GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY ¶ 21(h) (1990) [hereinafter THE RIYADH GUIDELINES]; U.N. COMM. ON ECON., SOC., & CULTURAL RIGHTS, *supra* note 20 at cmt. 13, ¶ 41.

<sup>86</sup> U.N. Convention on the Rights of the Child art. 37.

<sup>87</sup> *Id.* at art. II.

<sup>88</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶¶ 5, 31.

<sup>89</sup> See Resolution 118B, *supra* note 50 at 9-11; see also DENVER PUBLIC SCHOOLS DISCIPLINE MATRIX, [http://webdata.dpsk12.org/policy/pdf/Policy\\_JK-R\\_Attachment\\_B.pdf](http://webdata.dpsk12.org/policy/pdf/Policy_JK-R_Attachment_B.pdf) (restricting expulsion from school only to Type 4 and 5 offenses, with an expulsion recommendation optional for Type 4 offenses and mandatory for Type 5 offenses); DENVER PUBLIC SCHOOLS DISCIPLINE LADDER, [http://webdata.dpsk12.org/policy/pdf/Policy\\_JK-R\\_Attachment\\_C.pdf](http://webdata.dpsk12.org/policy/pdf/Policy_JK-R_Attachment_C.pdf) (making out-of-school suspension an option only for Level E and F interventions, after other, non-exclusionary interventions have been tried).

<sup>90</sup> 20 U.S.C. § 1414 requires a State educational agency, other State agency, or local educational agency to conduct a full and individual evaluation to determine if a child is a child with a disability.

<sup>91</sup> See, e.g., WASH. ADMIN. CODE § 393-400-245 (2012).

<sup>92</sup> See BOS. PUB. SCHS., BOSTON PUBLIC SCHOOLS CODE OF DISCIPLINE 22 (2006), available at <http://www.bostonpublicschools.org/code-discipline>.

<sup>93</sup> U.N. Convention on the Rights of the Child art. 14.

<sup>94</sup> See, e.g., D.C. CODE MUN. REGS. tit. 5 § B2505.4 (LexisNexis 2012) (describing a disciplinary conference).

<sup>95</sup> The ABA resolution calls for the need to “provide full procedural protections, including the opportunity to have representation by counsel in proceedings to exclude students from their regular education program, appropriate provisions of due process in other school disciplinary processes, and implementing disciplinary procedures in a fair, non-discriminatory and culturally-responsive manner” RESOLUTION 118B, *supra* note 50 at 8-12.

<sup>96</sup> This section focuses on proposed disciplinary exclusions of more than ten days. There are many other kinds of disciplinary exclusion, including short term suspension (10 days or less), in-school suspension, or even disciplinary transfers to new or alternative schools. There are also informal ways children are excluded from school; for example being removed from a particular class or sent home early from school.

<sup>97</sup> The ABA resolution calls for the need to “provide full procedural protections, including the opportunity to have representation by counsel in proceedings to exclude students from their regular education program.” RESOLUTION 118B, *supra* note 50 at 8-9. See generally *In re Gault*, 387 U.S. 1 (1967) (children entitled to appointed counsel in delinquency proceedings); *Kenny A. ex rel Winn v. Perdue*, 454 F. Supp. 2d 1260 (N.D. Ga. 2006) (children entitled to appointed counsel in child welfare proceedings); *Bellevue Sch. Dist. v. E.S.*, 199 P.3d 1010 (2009) (children entitled to appointed counsel in truancy proceedings), *rev'd*, 257 P.3d 570 (2011). In *Bellevue*, the Washington State Supreme Court reversed the Court of Appeals and held that neither federal nor state due process compels the appointment of counsel for a truancy proceeding. The court first applied a 3-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), namely 1) “the private interest that will be affected by the official action” (here, the student’s private interest in liberty, privacy and education); 2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and 3) “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.” The court then concluded that a *Mathews* analysis did not support that counsel must be appointed in an initial truancy hearing pursuant to the federal constitution. The court then applied a second analysis (citing *State v. Gunwall*, 106 Wash. 2d 54 (1986)) to determine if it should analyze the Washington Constitution’s due process clause independently of the federal constitution, but ultimately determined that independent inquiry into the state due process clause was not warranted in this instance. The Chief Justice wrote the concurring opinion and agreed that there is no due process right to counsel at the truancy hearing, but agreed with the Court of Appeals that having an attorney present would facilitate a better outcome for children, families and the district. She urged the Washington State Legislature to consider passing a statute to provide counsel at such hearings, similar to ABA Resolution 109A. The two dissenting judges believed that *Gunwall* justified an independent inquiry into the due process clause of the Washington Constitution, especially when it came to a child’s right to education, given that such a right is specifically located in the Washington Constitution at article IX, section 1. The dissent then applied the same *Mathews* factors and came to the conclusion that article I, section 3 of the Washington Constitution guaranteed the right to counsel.

<sup>98</sup> See 34 C.F.R. 300.322 (rules implementing the parental participation provisions of the Individuals with Disabilities Education Act).

<sup>99</sup> The neutral arbiter should not be involved with the facts of the situation in any way. See, e.g., WASH. ADMIN CODE § 392-400-270(4) (2012) (“The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing”).

<sup>100</sup> See, e.g., Bos. Pub. Schs., *supra* note 92 at 22.

<sup>101</sup> Appeals of school exclusion decisions must happen quickly so as to avoid making the statutory appeals process moot. Many states provide appeals through their administrative appeals statute, which typically means that by the time the appeal is heard in court, the student’s period of exclusion is over and/or the harm resulting from an extended removal from school is already significant.

<sup>102</sup> See, e.g., N.Y. EDUC. LAW § 3214(3)(b) (Consol. 2012); N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(1)(4) (2009).

- <sup>103</sup> See, e.g., Bos. Pub. Schs., *supra* note 92 at 21 (describing a limited emergency suspension procedure).
- <sup>104</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶ 5.
- <sup>105</sup> U.N. Convention on the Rights of the Child art. 37.
- <sup>106</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶ 58.
- <sup>107</sup> See generally CATHERINE Y. KIM & I. INDIA GERONIMO, AM. CIVIL LIBERTIES UNION, POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K-12 SCHOOLS (2009), available at [http://www.aclu.org/pdfs/racialjustice/whitepaper\\_policinginschools.pdf](http://www.aclu.org/pdfs/racialjustice/whitepaper_policinginschools.pdf); JASON LANGBERG ET AL., ADVOCATES FOR CHILDREN'S SERVS., LAW ENFORCEMENT OFFICERS IN WAKE COUNTY PUBLIC SCHOOLS: THE HUMAN, EDUCATIONAL, AND FINANCIAL COSTS (2011), available at [http://www.legalaidnc.org/public/ACS/IssueBrief\\_Feb-11\\_SROs\\_Rev.pdf](http://www.legalaidnc.org/public/ACS/IssueBrief_Feb-11_SROs_Rev.pdf).
- <sup>108</sup> *Id.*
- <sup>109</sup> Neighborhoods refers to gangs, but is less criminalizing in that not all alleged gangs and the vast majority of people affiliated with them are not involved in crimes.
- <sup>110</sup> RESOLUTION 118B, *supra* note 50 at 16-17.
- <sup>111</sup> A "real and immediate" threat occurs when an individual "'has sustained or is immediately in danger of sustaining some direct injury' as the result of the...conduct and the injury or threat of injury must...not [be] 'conjectural' or 'hypothetical.'" City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983).
- <sup>112</sup> See *supra* note 109.
- <sup>113</sup> See generally Cristiana Pereira Baptista, *Therapeutic Justice and Peace Circles: A Restorative Opportunity for Youth Drug Users in Conflict with the Law*, available at <http://www.iirp.edu/pdf/Nova-Scotia-2011-Presentations/Nova-Scotia-2011-Pereira-Baptista.pdf>.
- <sup>114</sup> See generally, JENNIFER MEDINA, THE NEW YORK TIMES, METAL DETECTORS MAKING STUDENTS LATE, IF NOT SAFER, available at <http://www.nytimes.com/2002/11/06/nyregion/metal-detectors-making-students-late-if-not-safer.html>.
- <sup>115</sup> See generally ELORA MUKHERJEE, N.Y. CIVIL LIBERTIES UNION & AM. CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS (2007), available at [http://www.nyclu.org/files/publications/nyclu\\_pub\\_criminalizing\\_the\\_classroom.pdf](http://www.nyclu.org/files/publications/nyclu_pub_criminalizing_the_classroom.pdf); UDIFER ET AL., N.Y. CIVIL LIBERTIES UNION, ANNENBERG INST. FOR SCH. REFORM AT BROWN UNIV. & MAKE THE ROAD N.Y., SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS (2009), available at [http://www.nyclu.org/files/publications/nyclu\\_pub\\_safety\\_with\\_dignity.pdf](http://www.nyclu.org/files/publications/nyclu_pub_safety_with_dignity.pdf).
- <sup>116</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶ 35.
- <sup>117</sup> Project DARE, the Drug Abuse Resistance Education program, was developed in 1983 as a joint project of the Los Angeles Unified School District and the Los Angeles Police Department. It is the most visible and widely-used drug abuse prevention program in the United States. 86 percent of school districts reported using DARE programs. See generally Dion Hallfors, *Will the 'Principles of Effectiveness' Improve Prevention Practice? Early Findings from a Diffusion Study*, 17 HEALTH EDUC. RESEARCH 461-470 (2002), available at <http://her.oxfordjournals.org/content/17/4/461.full>.
- <sup>118</sup> See generally RODNEY SKAGER, DRUG POLICY ALLIANCE, BEYOND ZERO TOLERANCE: A REALITY BASED APPROACH TO DRUG EDUCATION AND STUDENT ASSISTANCE (2007), available at <http://www.drugpolicy.org/sites/default/files/beyondzerotolerance.pdf>.
- <sup>119</sup> "Interactive programs which foster interpersonal skills and active engagement between students and teachers... are more effective at reducing, preventing, or delaying adolescent drug use for all substances..." *Id.*
- <sup>120</sup> See generally Alice Evans & Kris Bosworth, *Building Effective Drug Education Programs*, 19 PHI DELTA KAPPA CTR. FOR EVALUATION, DEV., AND RESEARCH (1997).
- <sup>121</sup> See generally Skager, *supra* note 118.
- <sup>122</sup> The first large-scale national study on student drug testing found virtually no difference in rates of drug use between schools that have drug testing programs and those that do not. Based on data collected between 1998 and 2001 from 76,000 students nationwide in 8th, 10th and 12th grades, the study found that drug testing did not have an impact on illicit drug use among students, including athletes. Drug-testing is counter-productive by erecting barriers to participation in the very activities likely to increase students' connection to caring adults at school, and provide structure and supervision during the peak hours of adolescent drug use, 3-6 P.M. Ryoko Yamaguchi et al., *Relationship Between Student Illicit Drug Use and School Drug-Testing Policies*, 73 JOURNAL OF SCH. HEALTH 159-164 (2003), available at <http://www.monitoringthefuture.org/pubs/text/ryldjpm03.pdf>. "Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers. See NICHOLAS ZILL ET AL., U.S. DEPT. OF HEALTH & HUMAN SERVS., ADOLESCENT TIME USE, RISKY BEHAVIOR AND OUTCOMES: AN ANALYSIS OF NATIONAL DATA (1995), available at <http://aspe.hhs.gov/hsp/cyp/xstimuse.htm> ("students who reported spending no time in school-sponsored activities were 49 percent more likely to have used drugs"). Additionally, studies have shown that drug-testing is not sufficiently reliable, is cost-prohibitive, and wastes scarce dollars that could be better spent on other, more effective programs that keep young people away from drugs. "Drug testing costs schools an average of \$42 per student tested, which amounts to \$21,000 for a high school testing 500 students. This figure is for the initial test alone and does not include the costs of other routine components of drug testing, such as additional tests throughout the year or follow-up testing. The cost of drug testing often exceeds the total a school district spends on existing drug education, prevention and counseling programs combined." JENNIFER KERN AT AL., MAKING SENSE OF STUDENT DRUG TESTING: WHY EDUCATORS ARE SAYING NO (2006), available at [http://www.aclu.org/images/asset\\_upload\\_file598\\_23514.pdf](http://www.aclu.org/images/asset_upload_file598_23514.pdf).
- <sup>123</sup> See generally COTATI-ROHNERT PARK UNIFIED SCH. DIST. GOVERNING BD., POLICY ON ALCOHOL AND OTHER DRUGS, <http://www.crpUSD.org/stuserV5131%206%20BP%20Alcohol%20and%20Other%20Drugs%206%2006.pdf>.
- <sup>124</sup> See generally L.A. UNIFIED SCH. DIST., PREVENTIVE MEASURES AND MANDATORY PROCEDURES FOR STUDENTS WHO VIOLATE LAWS REGARDING DRUGS, ALCOHOL, AND TOBACCO (2006), available at [http://www.lausd-oehs.org/docs/SSPVolume1/SSP%20V1\\_ResourceDocuments/Bul-3277.pdf](http://www.lausd-oehs.org/docs/SSPVolume1/SSP%20V1_ResourceDocuments/Bul-3277.pdf).

- <sup>125</sup> See generally David Karp & Beau Breslin, *Restorative Justice in School Communities*, 33 YOUTH & SOC'Y 249-272 (2001), available at [http://www.skidmore.edu/~dkarp/Karp%20Vitae\\_files/Restorative%20Justice%20in%20School%20Communities.pdf](http://www.skidmore.edu/~dkarp/Karp%20Vitae_files/Restorative%20Justice%20in%20School%20Communities.pdf).
- <sup>126</sup> See generally Cristiana Pereira Baptista, *Therapeutic Justice and Peace Circles: A Restorative Opportunity for Youth Drug Users in Conflict with the Law*, available at <http://www.iirp.edu/pdf/Nova-Scotia-2011-Presentations/Nova-Scotia-2011-Pereira-Baptista.pdf>.
- <sup>127</sup> See generally Tara Andrews & Idit Knaan, *Scared Straight: Don't Believe the Hype (Facts from CJJ)*, <http://www.reclaimingfutures.org/blog/juvenile-justice-reform-Scared-Straight-Facts-vs-Hype> (Aug. 8, 2012).
- <sup>128</sup> OFFICE FOR CIVIL RIGHTS, DEPT. OF EDUC., PROTECTING STUDENTS WITH DISABILITIES: FREQUENTLY ASKED QUESTIONS ABOUT SECTION 504 AND THE EDUCATION OF CHILDREN WITH DISABILITIES, <http://www2.ed.gov/about/offices/list/ocr/504faq.html>.
- <sup>129</sup> See generally Preventive Measures and Mandatory Procedures, *supra* note 124.
- <sup>130</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶ 56.
- <sup>131</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>132</sup> U.N. Convention on the Rights of the Child art. 38; THE RIYADH GUIDELINES, *supra* note 85 at ¶ 30.
- <sup>133</sup> RESOLUTION 118B, *supra* note 50 at 2-3.
- <sup>134</sup> The ABA report recommends prohibiting the use of exclusion as a response to truancy. *Id.* at 11.
- <sup>135</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>136</sup> 42 U.S.C. § 11432(e)(3)(C)(i)(III)(aa) (2002).
- <sup>137</sup> *Id.* at (bb).
- <sup>138</sup> *Id.* at (cc).
- <sup>139</sup> *Id.* at (bb).
- <sup>140</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 50 at 16-17.
- <sup>141</sup> Bellevue Sch. Dist., 199 P.3d at 1017. The school district filed a truancy petition against E.S. The court ordered E.S., who was unrepresented by counsel, to attend school or face contempt charges. E.S. disobeyed the court order. A contempt motion was filed at which point E.S. was assigned counsel. E.S. filed a motion to dismiss the initial truancy order citing the absence of counsel; the trial court denied the motion. The Court of Appeals reversed holding that due process required the presence of counsel at truancy proceedings.
- <sup>142</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>143</sup> See generally RON MILLER, THE ALMANAC OF EDUCATION CHOICES: PRIVATE AND PUBLIC LEARNING ALTERNATIVES AND HOME SCHOOLING (1995).
- <sup>144</sup> See generally Mary Ann Raywid, *History and Issues of Alternative Schools*, 64 THE EDUC. DIGEST 47-51 (1999).
- <sup>145</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>146</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>147</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>148</sup> See generally Robert B. Rutherford & M. Magee Quinn, *Special Education Alternative Programs*, 73 SPECIAL EDUC. 79-81 (1999).
- <sup>149</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>150</sup> See generally Mary Ann Raywid, *Alternative Schools: The State of the Art*, 52 EDUC. LEADERSHIP 26-31 (1994).
- <sup>151</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>152</sup> Qualitative Solutions and Research Pty Ltd, (1996). QSR NUD-IST. Thousand Oaks, CA. Sage Publications Inc.

- <sup>153</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).
- <sup>154</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶ 30.
- <sup>155</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>156</sup> See, e.g., *Green v. Johnson*, 3 EHLR 550, 552 (D.M.A. 1981).
- <sup>157</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.
- <sup>158</sup> THE RIYADH GUIDELINES, *supra* note 85 at ¶ 30.
- <sup>159</sup> See Resolution 118C, *supra* note 155.
- <sup>160</sup> See, e.g., RUSSELL SKIBA, CHANGING THE DATA, CHANGING OUR MINDS: DISPROPORTIONALITY AND IMPROVING SCHOOLS (2008), *available at* <http://www.indiana.edu/~equity/docs/SkibaChangingDataMinds.pdf>; Joseph B. Ryan et al., *IDEA 2004 and Disciplining Students with Disabilities*, 91 NASSP BULLETIN 130-140 (2007); Dalun Zhang et al., *Disciplinary Exclusions in Special Education, a 4-Year Analysis*, 29, BEHAVIORAL DISORDERS 337-347 (2004); K. Himmelstein et al. *Criminal-justice and school sanctions against non-heterosexual youth: a national longitudinal study*, 127(1), PEDIATRICS, 53 (2011); Heather Cobb, Note, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV. C.R.-C.L. L. REV. 581-596 (2010); ADVANCEMENT PROJECT & THE CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES (2000), *available at* <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf>.
- <sup>161</sup> OFFICE FOR CIVIL RIGHTS, DEPT. OF EDUC., CIVIL RIGHTS DATA COLLECTION 2006, [ocrdata.ed.gov/ocr2006rv30](http://ocrdata.ed.gov/ocr2006rv30).
- <sup>162</sup> See Skiba et al., *supra* note 42 at 63.
- <sup>163</sup> *Guardians Assoc. v. Civil Serv. Comm'n of N.Y.*, 463 U.S. 582, 622 (1983) (Marshall, J., dissenting).
- <sup>164</sup> U.N. Convention on the Rights of the Child art. 2; International Covenant on Civil and Political Rights art. II, ¶ 1.
- <sup>165</sup> International Convention on the Elimination of Racial Discrimination art. I, ¶ 1.
- <sup>166</sup> U.N. Convention on the Rights of the Child art. 2.
- <sup>167</sup> Convention on the Rights of Persons with Disabilities arts. XXIV, XV.
- <sup>168</sup> Because the 2004 amendments to IDEA make it easier for schools to remove children for non-dangerous, non-weapon, non-drug related behaviors, and place the burden on parents to prove the connection between behavior and disability, it is critical for parents to have access to opinions from outside professionals that the behaviors complained of are “caused by” or have a “direct or substantial relationship” to the disability.
- <sup>169</sup> Children must have a right to participate in processes that directly impact their substantive right to a free appropriate public education under the IDEA. This right is in line with the American Bar Association's Resolution calling for a right to counsel at public expense for low-income persons in adversarial proceedings where basic human needs are at stake, including education. See *generally* AM. BAR ASS'N, RESOLUTION 112A (2006), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis\\_sclaid\\_06A112A.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_06A112A.authcheckdam.pdf).
- <sup>170</sup> The regulations state that school districts must either pay for the IEE or file for due process if they disagree with parent's request. 34 C.F.R. § 300.502 (2012). But many school districts simply decline to pay for the IEE, and refuse to file for due process. This forces parents to file for due process and bear the burden of proof, which requires them to hire expert witnesses to testify to their need for an independent evaluation, and bear enormous costs. As a result, many parents go without an IEE.
- <sup>171</sup> The decision in *Schaffer v. Weast*, 546 U.S. 49 (2005) places the burden of proof on parents who are the least equipped to bear it. Students with disabilities face a discriminatory impact in school removals. Also, appealing a no-manifestation determination is expensive and requires expert witnesses and counsel. Placing the burden of proof on the school district ensures equity and fairness in the process.
- <sup>172</sup> The term Individualized Education Program or IEP is defined as a written program for a child with a disability that is developed, reviewed, and revised in a meeting that must include a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals, a description of how the child's progress toward meeting the annual goals will be measured, and a statement of the special education and related services that will be provided to the child. 34. C.F.R. § 300.320(a)(1-4) (2012).
- <sup>173</sup> Currently, the only explicit recognition of an FBA in the IDEA is the right to one when a child is removed from his current placements under IDEA's discipline provisions. 20 U.S.C. § 1415(k)(1)(D)(ii) (2012).
- <sup>174</sup> See *generally* CANDIS WATSON BOWLES ET AL., PASSIVE AGGRESSIVE DISCIPLINE: “HELPING” KIDS BY DENYING FAPE (2009).
- <sup>175</sup> Children who are removed for more than 10 days from their current placement must “continue to receive educational services, as provided in section 1412(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.” 20 U.S.C. § 1415 (k)(1)(D) (emphasis added).
- <sup>176</sup> A risk assessment team can be comprised of a school administrator, mental health professional based in the school and law enforcement officer connected to the school.
- <sup>177</sup> See *generally* JUVENILE DETENTION ALTERNATIVES INITIATIVE, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx>.
- <sup>178</sup> See *generally* Seattle Public Schools. Code of Prohibited Conduct (offered in twelve different languages for easy accessibility).
- <sup>179</sup> See *generally* Minnesota Public Schools, Evaluation and Assessment available at [http://rea.mpls.k12.mn.us/evaluation\\_and\\_research](http://rea.mpls.k12.mn.us/evaluation_and_research). See also Reports and data on key MPS topics *available at* [http://www.mpls.k12.mn.us/Reports\\_and\\_data](http://www.mpls.k12.mn.us/Reports_and_data). See also Minnesota Department of Education available at <http://education.state.mn.us/MDEAnalytics/Reports.jsp>.

- <sup>180</sup> See 20 U.S.C. § 1232g; 34 CFR Part 99.
- <sup>181</sup> See 34 C.F.R. § 100.3(b)(2) (Dept. of Education). See also 42 U.S.C. § 2000d and Title VI of the Civil Rights Act (prohibiting race, ethnicity and national origin discrimination against e.g., applicants, students, employees) and Title IX (prohibiting sex discrimination).
- <sup>182</sup> See generally Virginia Department of Education Procedures for Data Collection and Reporting, pg. 7-8.
- <sup>183</sup> *Id.*
- <sup>184</sup> *Id.*; see also National Center for Education Statistics Standards for Education Data Collection and Reporting.
- <sup>185</sup> *Id.*
- <sup>186</sup> See Denver Public Schools Policy JK-R Section 7, at <http://ed.dpsk12.org:8080/policy/FMPro?-db=policy.fp3&-format=detail.html&-lay-html&-sortfield=File&-op=eq&Category=Students&-recid=32967&-find=>; see also San Francisco Unified School District Student and Parent/Guardian Handbook, pg. 58, at [http://portal.sfusd.edu/data/pupil/SFUSD\\_StudentHandbook\\_2008-2009\\_ENGLISH.pdf](http://portal.sfusd.edu/data/pupil/SFUSD_StudentHandbook_2008-2009_ENGLISH.pdf).
- <sup>187</sup> See generally Virginia Department of Education Procedures for Data Collection and Reporting, pg. 7-8. See also National Center for Education Statistics Standards for Education Data Collection and Reporting.
- <sup>188</sup> *Id.*
- <sup>189</sup> See San Francisco Unified School District Student and Parent/Guardian Handbook, pg 58.
- <sup>190</sup> *Id.*
- <sup>191</sup> See ESEA Section 1111(h)(6).
- <sup>192</sup> *Id.*
- <sup>193</sup> *Id.*
- <sup>194</sup> See generally *id.*
- <sup>195</sup> See Denver Public Schools Policy JK-R Section 7.
- <sup>196</sup> *Id.*
- <sup>197</sup> *Id.*
- <sup>198</sup> *Id.*
- <sup>199</sup> See Denver Public Schools Policy JK-R Section 7; see also San Francisco Unified School District Student and Parent/Guardian Handbook, pg 58.
- <sup>200</sup> See generally Denver Public Schools Policy JK-R Section 7.
- <sup>201</sup> See generally Denver Public Schools Policy JK-R Section 7.
- <sup>202</sup> The right to appointed counsel at public expense is reference in this Model Code in Section 3.1.d.D, Section 3.3.a.B.3, and Section 4.3.D.3.
- <sup>203</sup> See Laura Abel and Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. J. OF POVERTY L. AND POL'Y 245 (2006), available at [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Civil%20Right%20to%20Counsel%20-%20Abel\\_2.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Civil%20Right%20to%20Counsel%20-%20Abel_2.pdf).
- <sup>204</sup> C.f. *Bellevue School Dist. v. E.S.*, 257 P.3d 570, 579 (Wash. 2011) (finding no right to counsel in truancy proceedings, and reversing court of appeals); *Id.* at 580 (Madsen, C.J., concurring) (urging legislature to provide appointed counsel pursuant to ABA policy); *Goss v. Lopez*, 419 U.S. 565, 580, 584 (1975) (finding no right to counsel for discipline proceedings involving suspensions of 10 days or less, but commenting that “[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.”)
- <sup>205</sup> See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
- <sup>206</sup> See Randal Jeffrey, *Equal Protection in State Courts: The New Economic Equality Rights*, 17 LAW & INEQ. 239, 270 (1999); Allen W. Hubsch, *Education and Self-Government: The Right to Education Under State Constitutional Law*, 18 J.L. & EDUC. 93, 96-97 (1989); Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1342-47 (2004); Pauley v. Kelly, 255 S.E.2d 859 (W.Va. 1979) (listing state constitutional education clauses for 48 states).
- <sup>207</sup> The Code encourages the use of alternatives to disciplinary exclusion: mediation, restorative justice programs, Positive Behavior Interventions and Supports, and other school based interventions can eliminate the need for an expulsion hearing and therefore the need for a lawyer.
- <sup>208</sup> C. Belfield and H. Levin, HIGH SCHOOL DROPOUTS AND THE ECONOMIC LOSSES FROM JUVENILE CRIME IN CALIFORNIA, California Dropout Research Project (2009).
- <sup>209</sup> Boston Bar Association Task Force on Expanding the Civil Right to Counsel, GIDEON'S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS (Sept. 2008), available at <http://www.bostonbar.org/prs/reports.htm>.
- <sup>210</sup> While some children may be supported by their parents, others may actually be in conflict with their parents over the alleged conduct. Additionally, children in foster care or group homes may not have parents that can support them.
- <sup>211</sup> Davin Rosborough, *Left Behind, and Then Pushed Out: Charting a Jurisprudential Framework to Remedy Illegal Student Exclusions*, 87 WASH. U.L. REV. 663, 667 (2010); The Advancement Project, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE at 5 (March 2010) (noting that increase in number of disciplinary proceedings has increased with “the passage of [No Child Left Behind] and other test-driven policies”).
- <sup>212</sup> *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981) (involving termination of parental rights).





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The Dignity in Schools Campaign (DSC) challenges the systemic problem of pushout in our nation's schools and advocates for the human right of every child to a quality education and to be treated with dignity. The DSC unites parents, youth, educators and advocates to promote local and national alternatives to a culture of zero-tolerance, punishment and removal.