



## **Presenting a Human Rights Framework for Schools:**

## **A Model Code on Education and Dignity**

**Prepared by the Dignity in School Campaign**

**[www.dignityinschools.org](http://www.dignityinschools.org)**

## **Table of Contents**

*Introduction*

*Executive Summary*

*Chapter 1: Education*

### **1.1 Right to an Education**

- 1.1.a. Standard of a Right to an Education
- 1.1.b. Components of a Right to High Quality Education
- 1.1.c. Equity
- 1.1.d. Alternative Programs

*Chapter 2: Participation*

### **2.1 Stakeholder Participation**

### **2.2 The Right of the Child to Participation**

*Chapter 3: Dignity*

### **3.1 School Climate and Discipline**

- 3.1.a. Adoption of School-Wide Preventive and Positive Approaches to Discipline
- 3.1.a. Guidelines for Exclusion and Due Process

### **3.2 Avoiding Criminalization in School Discipline**

- 3.2.a. Law Enforcement
- 3.2.b. Drug Policy
- 3.2.c. Reforming Status Offense Laws

### **3.3 Right to Remain in School**

- 3.3.a. Truancy Prevention and Correction
- 3.3.b. Right to Resume Education

*Chapter 4: Freedom From Discrimination*

### **4.1 Freedom from Discrimination**

### **4.2 Eliminating Disproportionate Use of Discipline**

### **4.3 Students with Disabilities**

*Chapter 5: Data Collection, Accountability and Monitoring*

*Appendix A: Right to Counsel*

## **Acknowledgments**

### Project Director

Rosa K. Hirji

### Editors

Sarah Biehl

Ruth Cusick

Rosa K. Hirji

Liz Sullivan

### Contributors

Sarah Biehl

Maisie Chin

Hillary Coustan

Ruth Cusick

Karla Estrada

Nancy Franklin

Christina Gilbert

Chris Gowen

Dean Hill Rivkin

Rosa K. Hirji

Denise Marshall

Theshia Naidoo

Udi Ofer

Brent Pattison

Marlene Sallo

Julie Waterstone

Paul Weckstein

Laura Faer

The Center for Law and Education

### Reviewed at:

American Bar Association Section of Litigation  
Children's Rights Litigation Committee Summit

### **Raising our Hands: Creating a National Strategy for Children's Right to Education and Counsel**

October 23, 2009

Northwestern University School of Law  
Chicago, IL

The Children's Rights Litigation Committee of the Section of Litigation of the American Bar Association provided financial support for this project.

© 2009 Dignity in Schools Campaign

## **Executive Summary: A Human Rights Framework for Education and Discipline**

All people have a basic human right to a quality education. While the right to education is deeply rooted in the fabric of U.S. society, our laws and policies fail to reflect this. Human rights treaties and declarations recognize the right to education and provide us with a framework for institutionalizing principles that we hold fundamental:

- Universal Declaration of Human Rights
- Convention on the Rights of the Child
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination

This Model Code offers a framework based on four fundamental principles that can shift our approach to education and school discipline: the Right to an Education, Right to Participation, Right to Dignity and Freedom from Discrimination.

[Upcoming]

### **A Collective and Progressive Effort**

In 2004, at the height of the zero tolerance frenzy in schools, a group of mostly children’s rights attorneys spearheaded an effort to come up with a “model school discipline code” to provide alternatives to reactive discipline practices. Had we finished what we started at that time, we would have done a disservice to students, educators, and the advocacy community.

Our vision was limited by a focus on access over rights, on reaction rather than prevention, and process over substance. We have come a long way. This time around, the model code recognizes that zero tolerance discipline is only one aspect of what we now know as a systemic problem of “pushout” in our schools<sup>1</sup>; and that pushout is a symptom of the failure of our society to recognize fundamental human rights of students and communities.

Our progression was the result of a collective effort by attorneys, educators, community organizers and advocates who engaged in a systematic process of building group knowledge, framing the problem, and strategizing solutions. We grew into the Dignity in Schools Campaign, a multi-stakeholder national coalition. We held national teleconferences with youth and parent organizers, researchers, educators, attorneys, politicians and human rights activists to explore the pushout problem in all of its manifestations.<sup>2</sup> The programs were free<sup>3</sup>, unique, immensely popular, and formed the basis of a huge contact list of thousands of people across the country that were coming together for the first time. We compiled summaries of research and data on the pushout problem.<sup>4</sup> We started cross country “working groups” that met by phone to discuss solutions, engaging hundreds of people. We came together at a conference to draft a National

---

<sup>1</sup> Our definition of “pushout” is adapted from the Dignity in Schools Campaign’s (DSC) National Resolution Against School Pushout. *See* <http://www.dignityinschools.org/national-resolution>.

<sup>2</sup> For a listing of DSC teleconferences with access to listen to past teleconferences, visit <http://www.dignityinschools.org/tele-conference-series>.

<sup>3</sup> The teleconferences were financially supported by the ABA Children’s Right Litigation Committee of the Section of Litigation.

<sup>4</sup> “Resources on Pushout,” available at <http://www.dignityinschools.org/resources-on-pushout>.

Resolution on Ending School Pushout.<sup>5</sup> Most of this work was based on the volunteer efforts of many individuals, and managed by a core group of six who met twice monthly by phone.<sup>6</sup>

Collectively, we defined pushout as numerous and systemic factors that prevent or discourage young people from remaining on track to complete their education, having severe and lasting consequences for students, parents, schools, and communities. Those factors include, among others, the failure to provide essential components of a high quality education, lack of stakeholder participation in decision-making, over-reliance on zero-tolerance practices and punitive measures such as suspensions and expulsions, over-reliance on law enforcement tactics and ceding of disciplinary authority to law enforcement personnel, and a history of systemic racism and inequality. These factors impact all students, but have a disproportionate impact on historically disenfranchised youth.<sup>7</sup>

Six years later, we recognized that our task must be to develop a model school code that applies international human rights standards to promote every child's right to a high quality education that helps her reach her full potential, to be treated with dignity and fairness in school, and to fully participate in the process and the decisions that will profoundly impact that child's education.<sup>8</sup> This report articulates our vision of such a world that includes all children, regardless of race, ethnicity, sex, gender identity or orientation, language, national origin, religion, disability, economic or other status. A world in which talking about a child's "right to an education" means something concrete and substantive to each and every adult who has an opportunity to impact that child's life. A world in which all of the stakeholders in a community communicate with each other effectively and respectfully and work together to ensure that all children have access to a high quality education in a respectful, positive environment.

The model code included in this report is a product of an inclusive process that sought to engage all of the people and professionals who play a part in ensuring that children receive a high quality education and strives to include all perspectives, including those of students, parents, teachers, school administrators, and policymakers.

We began by identifying "foundational documents" for the research.<sup>9</sup> Individuals were assigned topics that reflected their experience. They drafted recommended language that was discussed, revised and edited in committees and working groups. The draft was presented to stakeholders for input using different forums designed to solicit frank and thorough discussion including multiple teleconference calls, webinars, working group meetings, and a public dialogue. Some of these meetings can be found online at [www.dignityinschools.org](http://www.dignityinschools.org).

---

<sup>5</sup> For further information on the DSC National Conference visit <http://www.dignityinschools.org/national-conference>.

<sup>6</sup> For a list of DSC members visit <http://www.dignityinschools.org/members>.

<sup>7</sup> This definition is a summary of DSC's National Resolution "pushout" definition as contained in the resolution.

<sup>8</sup> Foundational human rights provisions include: 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>9</sup> Foundational documents: American Bar Association Resolutions 118A: Right to a High Quality Educational Program, 118B: Right to Remain in School, Resolutions 118C: Right to Resume Education; "Key Components of a Model Discipline Policy", Advancement Project; National Education Associations 12-Point Plan for Reducing the School Dropout Rate; A Human Rights Framework, Dignity in Schools Campaign and the Educational Quality Bill of Rights from the Center for Law and Education.

We presented the draft model code at a national summit in Chicago: Raising our Hands: Creating a National Strategy for Children’s Right to Education and Counsel.<sup>10</sup> Seven breakout groups, each with a different focus and facilitated by a leading expert<sup>11</sup>, reviewed the model code in its entirety in three hour long sessions. They debated controversial provisions of the code, and drafted recommendations to the working group.<sup>12</sup> The editors then met for six months to incorporate the feedback and continue to make revisions. Additional teleconference calls were held with targeted national experts for further discussion, and a group of reviewers went through the document with a critical eye.

## Introduction

Access to public education is a principle deeply rooted in U.S. society, yet the lack of equitable access has resulted in disproportionate outcomes for children of color, second language learners, and poor children. By neglecting to guarantee a right to a quality education and the provision of equitable resources, school reform efforts have resulted in entrenching schools that serve low income communities of color into a cycle of failure and punishment. By pushing out the voices of youth, parents, and educators in important decisions related to the provision of education and school governance, schools have instituted a top-down system resulting in policies and practices that fail to address the needs of school communities. The failure to address basic rights combined with mandated zero tolerance policies and an overreliance on accountability, high stakes testing, and school choice has created incentives for schools to get rid of undesirable students. This has resulted in draconian discipline policies whose aim is to remove from the public school system children with special needs, children of color, second language learners, and poor children.

It is imperative that the U.S. shift toward a focus on the *common good* – that is, a vision for schools that demands a high quality public education, sufficient resources, and opportunity for students, parents, teachers, and other community stakeholders be intimately involved in setting policies and creating an environment that respects and serves students of all backgrounds. The model school policies in this document prioritize the rights and needs of all students to reach their full potentials, to be evaluated and treated as human beings who have human rights, to participate in decisions affecting them and their educations, and to attend school free from discrimination of any kind. These model policies are based on the principle that treating children with respect and recognizing and honoring their worth as individuals builds and sustains community and ensures that every child has access to quality education regardless of his or her status or membership in a vulnerable group. In respecting each child’s human right to an education, moreover, these model policies ensure that parents, teachers, and other community members have a vital role to play in educating children. Our thesis is simple: that by respecting the rights and needs of the individuals who study in, work in, and support our schools, we create a mutually reinforceable, deeply intertwined focus on a common collective good and ensure that we truly have left no child behind.

---

<sup>10</sup> “Raising Our Hands” was sponsored by the following organizations: American Bar Association Section of Litigation, American Bar Association Section of Criminal Justice, American Bar Association Young Lawyers Division, Children & Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law, Dignity in Schools Campaign, Linebarger Goggan Blair & Sampson, LLP, McDermott, Will and Emery, Navigant Consulting, ABA Standing Committee on Pro Bono and Public Service.

<sup>11</sup> Citation forthcoming on breakout focus & facilitators

The model code presents to school districts, states and other policy making bodies, language for policies that are alternatives to zero tolerance discipline and pushout practices; and preserve the right to a high quality education. 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 educators, governing bodies, students and parents. We also include checklists to guide implementation of the policies set herein.

Included in the model code are areas of law and policy that establish 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, and right to participation of all stakeholders on equal footing, are set forth as recommended language that captures the code's overall focus on respecting children's human right to education. The sections of the code are designed so that communities and policymakers can separate individual topics and implement the recommended language contained within them at different times and taking into account the diverse needs and characteristics of individual communities. Because, however, all of the topics included in the model code are components of a larger overall focus on children's human right to an education that helps them reach their fullest potential and in which their unique interests, needs, and situations are given utmost consideration, 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 how it chooses to educate – and not educate – its children. 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 culture change.

## CHAPTER 1: EDUCATION

### 1.1 Right to an Education

#### 1.1a. Standard of a Right to an Education

##### I. Recommended Language:

*Human Rights Goal: Schools should ensure that every child receives a high quality education aimed at the development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>13</sup> Schools must ensure equal access to and implementation of high quality educational services without discrimination.*

- A. All children between the ages of 4<sup>14</sup> and 21<sup>15</sup> shall have a fundamental right to education that will develop the full educational potential of each person<sup>16</sup> and that guarantees equal educational opportunity to all<sup>17</sup>.

---

<sup>13</sup> Convention on the Rights of the Child (CRC), Article 29, *entry into force* September 2, 1990. The Convention has been ratified by 193 countries. The U.S. has signed but not ratified the CRC. The U.S. and Somalia remain the only two countries in the world who have not ratified the CRC.

<sup>14</sup> Florida State Constitution Article IX, Sec. 1

<sup>15</sup> Colorado State Constitution, Article IX, Sec. 2

<sup>16</sup> Montana State Constitution, Article X, Sec. 1 (1)

<sup>17</sup> Montana State Constitution, Article X, Sec. 1 (1)

- B. The aims of the fundamental right to an education shall be the development of the child's mental and physical abilities, personality, and talents her or his fullest potential that:<sup>18</sup>
1. Provides a high quality education, (see Section 1.1.b. Components of a Right to High Quality Education),
  2. Prepares youth for responsible life which includes understanding, peace and tolerance among all people,
  3. Addresses the mental, physical, social and emotional needs of children and youth,
  4. Adapts to different learning needs and styles of individual students,
  5. Is relevant to the changing social, cultural, environmental and economic context of different young people, and
  6. Involves youth as active and effective participants in the educational process.

### **1.1.b. Components of a Right to High Quality Education**

#### **I. Recommended Language**

*Human Rights Goal: To guarantee the human right to education, schools should provide all children 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>19</sup>

Governing bodies shall:

- A. **Specify a set of core program elements of a high-quality education to which every child is entitled in areas that include learning goals and standards, curriculum, instruction, individual attention, student assessment, high-stakes decisions, and participatory decision-making.**<sup>20</sup>
1. **Every child has a right to**<sup>21</sup>:
    - a. A school that has a school-wide commitment to a clear, specific set of challenging learning goals for all students, consistent with state and

---

<sup>18</sup> These criteria are based on human rights standards identified in General Comment 1, UN Committee on the Rights of the Child, CRC/GC/2001/1. General Comment 1 addresses implementation of Article 29 of the Convention on the Rights of the Child.

<sup>19</sup> General Comment 13, UN Committee on Economic, Social and Cultural Rights, E/C.12/1999/10. General Comment 13 addresses implementation of Article 13 on the right to education of the International Covenant on Economic, Social and Cultural Rights (ICESCR), *entered into force* January 3, 1976. The United States has signed but not ratified the ICESCR. World Declaration on Education for All, Article 1, adopted by 155 countries in Jomtien, Thailand in 1990.

<sup>20</sup> American Bar Association (ABA) Resolution 118A: Right to a High Quality Education. (exact citation forthcoming). The resolution calls on local, state and national legislative bodies and educational agencies to pass and implement policies that set out and implement the core program elements of the right to high quality education.

<sup>21</sup> The complete Educational Quality Bill of Rights, including more detailed provisions, is available from the Center for Law and Education, available at <http://www.cleweb.org/latest/EQBR.FullVersion.pdf>

district academic standards for all children, 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.

- b. An enriched and accelerated curriculum that is aligned with the school's learning goals.
- c. Effective instructional methods that enable all children to achieve the learning goals, provided by instructional staff who are highly qualified to enable all their students to achieve those goals, and who in turn regularly participate in ongoing, intensive professional development that improve their capacity to do so.
- d. The individual attention needed to fully achieve the learning goals, including effective methods for addressing the child's particular learning needs and timely and effective intervention whenever the child is experiencing difficulty in mastering any of the learning goals.
- e. Regular, ongoing, accurate assessment of the extent of the child's 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/her parents, and appropriate school staff; and is used to improve the instruction and achievement of the child.
- f. 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 learning any skills and knowledge being assessed.
- g. The resources and materials needed to fully avail himself/herself of the rights set forth in this section, provided in a safe and healthy school learning environment conducive to achievement of the learning goals.

### 1.1.c. Equity

#### I. Recommended Language

***Human Rights Goal:*** *In order to assure equitable access to the right to education, schools shall set high goals and expectations for all children and ensure that resources, services, and instruction are allocated and aligned so that children with the greatest needs have the same opportunity to reach the goals and meet the expectations as their peers.*

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

1. To level the playing field, states shall implement a universal pre-k program that is geared toward school readiness preparation.

2. In all pre-k classes funded with state or federal dollars, Early Intervention Assessments with funding from Part B and C of the IDEA shall be conducted to identify and remedy learning disabilities using proven research based interventions.

## **B. 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 with notice, a reason for the change in curriculum and obtain written parent approval for the change.

## **C. Equitable Funding and Alignment of Resources to Standards**

1. States shall conduct a needs assessment in each and every district and each and every school to establish the amount of educational resources needed in order to align resources with student learning goals so that every child has a meaningful opportunity to learn.
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 governments shall deliver funding to the school-site using a formula based on: 1) the number of students attending school on a daily basis; 2) the counts of economically disadvantaged students and English learners at a given school site; and 3) the count of students with disabilities at a given school site. The funding shall be delivered in block grants addressing each of these targeted categories.<sup>22</sup>
4. States shall maximize federal funding sources that have not been fully utilized, including English Language Learner, Migrant Education Program, Title I, and Special Education, to establish a set-aside, targeted supplemental funding source for schools with significant numbers of these students.

## **D. Provide Local Schools With Control Over Critical Decisions and Maximize Funding at the Classroom Level**

1. Principals, teachers, parents, and students shall have ownership over critical decisions at their schools related to budgeting, classroom size, hiring and curriculum customization so that instruction can be individualized and tailored to meet the students' needs.<sup>23</sup>

---

<sup>22</sup> See, e.g., funding formula proposed by the Legislative Analyst's Office, 2009-10, California Budget Series; see also Bersin, Kirst, & Liu article "Getting Beyond the Facts: Reforming California School Finance" (April 2008); Cal. Educ. Code section 54023.

<sup>23</sup> See also strategies employed by successful Boston Pilot Schools Program (<http://www.ccebos.org/pilotschools/bostonpilotschools.html>) ("The people closest to students should be the policy makers and the decision makers, including teachers, administrators, parents, and students themselves.")

2. In exchange for the additional funding and flexibility provided by the State, Districts are centered on getting more money into the classroom to enable principals and teachers to effectively serve kids.
3. Each school shall receive a “school-linked” budget, allowing school leaders, teachers, parents, and students to determine how to use the funding provided to craft the programs, interventions, and training models needed to provide high quality instruction for the unique mix of students at their schools.
4. School administrator performance and retention shall be linked to the ability to use the funding efficiently and effectively to improve performance on established uniform, and rigorous outcome measures.

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

1. To eliminate teacher shortages and ensure a consistent supply of high quality teachers, 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 as detailed above to low-achieving districts and schools).<sup>24</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.
4. Specialists in research-based services for special needs students and in high quality instruction delivery will be available on a regular basis to all school sites with significant numbers of students from socioeconomically disadvantage backgrounds in order to attract and retain highly skilled teachers.
5. 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.

---

<sup>24</sup> This recommendation is taken from Darling-Hammond, *THE COLOR LINE IN AMERICAN EDUCATION: RACE, RESOURCES, AND STUDENT ACHIEVEMENT*, WEB DuBois Review: Social Science Research on Race, Vol. 1, No. 2 (2004), pp. 213-246. 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% have stayed in teaching and large share have gone on to leadership in the public education system.” Darling-Hammond (citing Berry, 1995).

6. States and districts shall review and revise all policies and procedures that may cause or result in disproportionate teacher disruption or teacher turnover.

#### **F. Create a Continuous Improvement Model and Provide Individualized Interventions**

1. Teachers, principals, and superintendents must be 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>25</sup>
2. Each and every student's progress must be tracked and interventions with targeted supports quickly provided so that all students have the opportunity to master challenging curricula.<sup>26</sup>

#### **G. Actively Integrate Parents Into All Aspects of the Students' Education**

1. Because resources are often allocated to the children of the most vocal or politically active and effective parents and studies show a correlation between parent education levels and student outcomes, education programs shall be provided to all parents to help them learn the best ways to support their children's educations and college and vocational preparation and requirements shall be regularly discussed with parents.
2. Parents shall be given regular and consistent access to their children's classrooms so that they can monitor classroom instruction and ensure equitable resource distribution.

#### **1.1.d. Alternative Programs & Voluntary Transfers**

##### **I. Recommended Language**

*Human Rights Goal:* Schools should have the primary goal of educating all students in a comprehensive academic environment. Any decision to transfer a child should 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 that children 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.

- A. Voluntary Transfers: Voluntary transfers will only be allowed where initiated by the student and their family for the following reasons (safety, need to include other list)**Schools should have policies to respond to school administrators, teachers, parents or student requests for transferring academically at risk students out of a comprehensive school environment. To insure that the student's individualized educational needs are met and the right to a quality education are maintained, schools should:

---

<sup>25</sup> *Funding Student Learning: How to align Education Resources with Student Learning Goals*, National Working Group on Funding Student Learning, Report from School Finance Redesign Project, October 2008, p. 11-12.

<sup>26</sup> Carol Ascher and Cindy Maquire, *Beating the Odds, How Thirteen New York City Schools Bring Low-Performing Ninth-Graders to Timely Graduation and College Enrollment*, Annenberg Institute for School Reform at Brown University, December 2007, p. 5.

1. Develop an alternative learning strategy for students within the comprehensive environment. Thereby allowing students who are *down credits* to successfully catch-up through and individualized alternative educational program without disengaging the student from a normal school setting. This alternative setting should include:
  1. Low pupil-teacher ratio.
  2. Individualized instruction and assessment.
  3. Maximum collaboration with school district support service resources, including, but not limited to, school psychologists, academic counselors and school counselors.
2. Prohibit the transfer of a student, for academically at risk purposes only, to an alternative education environment that is primarily attended by students with moderate and severe disciplinary issues.
3. Prohibit the *involuntary transfer* of any student for academically at risk purposes only.

## CHAPTER 2: PARTICIPATION

### 2.1. Stakeholder Participation

#### I. Recommended Language

*Human Rights Goal: Schools and communities must together create the methods, procedures and support 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 their right to education.<sup>27</sup>*

#### A. Definitions

1. “Stakeholder”—any person/group with a vested interest in the educational outcomes produced at public schools, with such interests including but not limited to: the life success and potential of students and their families; the labor quality of those who are compensated as a result of employment 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, community members, 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 human rights standards.

---

<sup>27</sup> The right to participation is a cross-cutting human rights principle found in many human rights documents, including Article 25 of the International Covenant on Civil and Political Rights and General Comment 25 (adopted 7/12/96, 1510th meeting, 57th session) by the UN Human Rights Committee. The Dakar Framework for Action on Education for All, adopted by 155 countries at the World Education Forum in Dakar, Senegal in April, 2000, and General Comment 13 to the ICESCR, describe the importance of stakeholders’ participation in education.

- B. Schools shall ensure high quality stakeholder participation and shall document participation efforts using concrete, measurable evidence of documentation, implementation, clear oversight, grievance procedures, and remedies.**
- 1. All school and community stakeholders shall have a right to be included in school decision-making processes.**
    - a. Stakeholders shall be informed of their right to participate.
      - i. Schools shall utilize multiple methods of notification, as appropriate, to ensure all stakeholders are aware of existing processes, decision-making bodies/persons, and the decisions made.
    - b. Schools and stakeholders shall develop clear procedures for shaping, evaluating, and revising the process and nature of stakeholder participation.
      - i. An advisory committee comprised of a representative of each key stakeholder group – at a minimum, school administration, teachers, parents, and students – shall be formed to oversee the development and enforcement of inclusive decision-making processes and bodies and to disseminate information to stakeholders.
      - ii. 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.
    - c. All stakeholders must have access to opportunities to acquire the information and training needed to effectively participate in processes, decision-making bodies, and decisions.
      - i. The advisory committee shall oversee and distribute information about such opportunities.
    - d. All methods and procedures for participation shall be available to all stakeholders without discrimination.
      - i. Resources for information and training shall be targeted to ensure the equitable representation of all stakeholders.
      - ii. Schools and the stakeholder advisory committee shall establish clear lines of responsibility and 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.

- 2. All stakeholders shall be regarded as integral to student success and shall be accountable to students and to other stakeholders to ensure that each child in the school community has access to a high quality education.**
  - a. The stakeholder advisory committee shall develop transparent, structured opportunities for multiple levels and areas of influence within the educational process and school environment, including:
    - i. Needs assessment.
    - ii. Program planning.
    - iii. Prevention and intervention strategies.
    - iv. Training.
    - v. Monitoring.
    - vi. Accountability for the fundamental components of a high quality, highly functioning educational system.
  - b. Results of stakeholder participation shall be documented, archived, and made available to the public, including but not limited to multiple perspectives, areas of agreement/disagreement, decision-making process/persons that led to decisions made, decisions made, concerns raised as a result of decisions made, and how concerns will be addressed.
  - c. 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.
  - d. All stakeholders shall have a clear understanding of all legally-binding procedural protections and shall be offered the opportunity to develop a clear understanding of restorative justice-based principles and procedures for input gathering, decision-making, and addressing post-decision concerns.
  - e. All stakeholders shall have equal responsibility for adhering to, and rectifying any breaches of, the principles and procedures guiding decision-making processes.
- 3. All stakeholder groups shall be represented in all decision-making processes and shall play a role in developing, implementing, and maintaining school systems, practices, and standards.**
  - a. The stakeholder advisory committee will develop a system to ensure clear communication and understanding among all stakeholders of the rights and standards defining a high quality public education system and public schools.
  - b. 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 such standards, *before* their consequences are exacerbated.

- c. 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.
- d. Schools shall create, promote, and foster opportunities for all stakeholders to participate in training on leadership strategies and to take leadership roles in creating and amending the processes designed to identify systemic conditions and practices, develop rights and standards, and create problem-solving and intervention strategies.<sup>28</sup>

## 2.2.a. The Right of the Child to Participation

### I. Recommended Language

*Human Rights Goal: Schools should 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 should inform students of their rights and about school policies and practices.*<sup>29</sup>

- A. Schools shall implement structures that allow students a right to be heard on issues affecting their education and school policies and procedures, including, but not limited to:
  1. Age-appropriate student councils;
  2. Advisory bodies providing for student input into the design and function of policies and procedures affecting students;
  3. Student representation on school committees and boards of education;
  4. 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;
  5. Creating and implementing 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 representation on schoolwide bodies (school leadership teams);
  7. Student participation in schoolwide forums – for example, town hall meetings – that offer students an opportunity to voice their opinions about school decisions and policies; and

---

<sup>28</sup> For an example of how teachers can successfully participate more fully in schoolwide decision-making, see Paul Abowd, Tired of Teacher-Bashing, Union Educators Grow Their Own Schools, Labor Notes, Nov. 26, 2009, <http://www.labornotes.org/2009/12/tired-teacher-bashing-union-educators-grow-their-own-schools> (describing models for several teacher-run schools in Boston, Denver, and Los Angeles). 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>29</sup> General Comment 1 on Article 29 of the Convention on the Rights of the Child.

8. Student participation in hiring, granting tenure to, and/or developing training programs for school staff.
  
- 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 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.
  
- D. School policies and practices must ensure full educational participation for students who are wards or dependents of the state by implementing the following notification strategies:
  1. 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 will be provided to:
    - a. the minor's counsel or guardian ad litem, and
    - b. the student's child welfare social worker or caseworker and, if the student has one, Probation Officer.
  2. School Districts will work with the above mentioned parties to ensure notification to the student's holder of education rights.
  3. 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: DECRIMINALIZING DISCIPLINE**

### **3.1 School Climate and Discipline**

#### **3.1.a. Adoption of School-Wide Preventive and Positive Discipline Policies**

##### **I. Recommended Language:**

*Human Rights Goals: Policies aimed at creating positive school climates and preventing disciplinary problems must be consistent with the goals of the right to a high quality education, developing the personalities and abilities of students, and teaching non-violence and respect for all members of the school community.<sup>30</sup> By viewing social development as a critical aspect of discipline, schools will respond to problem behavior in a manner that is consistent with the child's sense of dignity and self-worth. The aims of discipline should be to rehabilitate the child, restore the victim, resolve conflicts, and reintegrate the child into the school community.<sup>31</sup> In*

---

<sup>30</sup> This is framed to be consistent with educational goals in Article 29 of the Convention on the Rights of the Child which include teaching human rights and fundamental freedom (equality, peace and tolerance), developing personality and abilities, and respect for parents.

<sup>31</sup> Convention on the Rights of the Child, (Governments must 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 [article 28]; school discipline be are protected from all forms of cruel, inhuman and degrading treatment and punishment

*addition, particular attention and intervention support should be provided to vulnerable families and at-risk youth.*<sup>32</sup>

**A. Governing bodies at the school and district levels shall adopt an evidence-based, school-wide prevention and positive discipline policy<sup>33</sup> that**

1. Is developed through a democratic process with stakeholder participation [see chapter 2.1 Stakeholder Participation], by establishing a school Implementation Team,
2. Integrates the social development of students in classroom and school-wide practices,
3. Provides early intervention for at-risk students,
4. Implements positive approaches to discipline aimed at:
  1. Rehabilitating the child;
  2. Restoring the victim;
  3. Resolving conflicts; and
  4. Reintegrating the child into the school community.
5. Ensures fidelity of implementation through monitoring structures that are based on stakeholder participation, and
6. Promotes a positive school culture.<sup>34</sup>
7. Requires that school staff be trained in classroom management and positive approaches to discipline.<sup>35</sup>
8. Mandates schools and communities should 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.

**B. Legislators shall abolish zero tolerance laws.**

1. Federal, state, and local legislators shall limit their legislating on school discipline to infractions that endanger members of the school or larger community and shall not require schools, school administrators, or educators to automatically punish

---

[article 37]; children accused of breaking the law must also be treated with dignity, and any punishment should be administered with the goal of reintegration into society [article 40])

<sup>32</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>33</sup> The ABA report calls for the need to implement “evidence-based preventive school-wide practices for improving student behavior and creating a safe school climate more conducive to learning,” ABA Resolution 118B: Right to Remain in School, 9.

<sup>34</sup> National School Climate Center, “The School Climate Challenge: Narrowing the gap between school climate research and school climate policy, practice guidelines and teacher education policy,” <http://nsc.csee.net/research/> (exact citation on website forthcoming)

<sup>35</sup> Elizabeth Sullivan et al., *Teachers Talk: Human Rights, Discipline and Helping Kids Learn*, National Economic and Social Rights Initiative and Teachers Unite, Fall 2008. (exact citation forthcoming).

students in certain ways for committing certain offenses or engaging in certain behaviors.<sup>36</sup>

**C. Schools and school districts shall cease zero tolerance practices.**

1. In states and local communities where zero tolerance laws or policies are already in force, policymakers and schools shall work together to abolish zero tolerance policies.
2. Multi-stakeholder governing bodies shall participate in developing school rules and behavioral expectations. [See School-wide Preventive Policies, 3.1.a and Stakeholder Participation, 2.1]

**D. No child may be excluded from school until and unless non-exclusionary discipline alternatives have been carefully considered and tried 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 3.1b Guidelines for Exclusion.**

**II. Recommended Language for a Preventive and Positive Discipline Policy Based on School-Wide Positive Behavior Supports (SWPBS)**

An example of a policy that meets this recommendation is the School-wide Positive Behavior Support (SWPBS) framework which facilitates academic achievement, fosters a positive school culture, and supports the development of social-emotional skills. This evidence based approach has been found to reduce disciplinary issues in schools and support positive school culture.<sup>37</sup>

**A. Definition**

School-wide Positive Behavior Supports (SWPBS) is a research-based, school-wide systems approach to improve school climate and create safer and more effective schools. SWPBS 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. It provides systems for schools to design, implement, and evaluate effective school-wide, classroom, non-classroom, and student-specific discipline plans. SWPBS is a team-based process for data review, data-based problem solving and intervention, ongoing planning, and monitoring of interventions. Implementation includes school-wide procedures and processes intended for all students, all staff and in all settings, including individual classrooms and teachers, non-classroom settings and related staff.<sup>38</sup> Integral to SWPBS is a three tiered prevention and intervention problem solving process that includes primary (school-wide), secondary (classroom), and

---

<sup>36</sup> See American Bar Association Juvenile Justice Committee, ABA Zero Tolerance Policy Report, <http://www.abanet.org/crimjust/juvjus/zerotolreport.html>.

<sup>37</sup> BEST Behavior, for example, is an evidence based program based on SWPBS that supports schools in establishing proactive school discipline methods at the school-wide, classroom, and individual student level.

<sup>38</sup> "What is Positive Behavioral Interventions and Supports?", PBIS Maryland; <http://www.pbismaryland.org/LeadershipForum2008/WhatisPBIS.pdf>

tertiary (individual) systems of support that improve lifestyle results for all children.<sup>39</sup>

**B. Establish a Leadership Team: Every three years, each school shall establish a leadership team that represents all stakeholders that will be responsible in developing school wide policies and procedures.<sup>40</sup>**

1. School administrators shall use a democratic approach to soliciting stakeholder involvement in the leadership team.
2. The leadership team shall include all representative stakeholders including an administrator, a general education and a special education teacher, support staff, students, parents, and other relevant community members; have regular meetings, have a clear purpose, efficient internal process, and a culture of care.<sup>41</sup>
3. 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.
4. The team shall undergo a training of at least two to three days provided by skilled trainers on SWPBS.
5. The leadership team is responsible for securing school wide agreements and support for the implementation of the SWPBS<sup>42</sup>: The team will secure agreement from the entire school community on:
  - a. The nature and priority of staff development efforts and needs
  - b. Long term (3-4 year) commitment and investment in the effort
  - c. Importance of taking a preventative and instructional approach to behavior management and school-wide discipline
6. The Leadership team shall develop an action plan to implement SWPBS, using a process considers available data and that solicits input from the entire school community.
7. The Leadership team shall develop a procedure for responding to problem behavior that provides both clear consequences that have an instructional component and school responses to misconduct, e.g. Coordination of Services team approach, Student Success Team, professional development decisions and choices, guidance and support for staff, additional instruction for students:

---

<sup>39</sup> “What is School-wide PBS?”, OSEP: Technical Assistance Center of Positive Behavior Interventions & Supports, <http://www.pbis.org/school/default.aspx>

<sup>40</sup> *Id.*

<sup>41</sup> “Positive Behavior Intervention and Supports Tutorial: Establish a Leadership Team,” PBIS Maryland; [http://cte.jhu.edu/courses/pbis/ses2\\_act2\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses2_act2_pag1.shtml)

<sup>42</sup> “Positive Behavior Intervention and Supports Tutorial: Securing School-wide Agreements and Support,” PBIS Maryland; [http://cte.jhu.edu/courses/pbis/ses2\\_act3\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses2_act3_pag1.shtml)

- a. A continuum of behavior supports to identify what should be in place to prevent problem 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.
- c. A referral procedure for individualized intervention.

**C. Define Expectations:** Every three years, a leadership team must re-define expectations for all members of the school community.<sup>43</sup> Using a democratic process that solicits input from the school community, including students, the leadership team will [final report will reference examples]:

1. Develop three to five behavioral expectations that are positively stated and easy to remember;
2. Create a matrix of how the behavioral expectations look, sound, and feel in all the classroom and non-classroom areas; and
3. Develop lesson plans and strategies, including frequency and duration, on how the behavioral expectations will be taught in and around school.
4. Document 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 school and community on discipline.
5. Ensure that all teachers and staff have training in culturally relevant instruction so that behavioral expectations are taught in ways that fully engage the learner.

**D. Reinforce Appropriate Behavior:** All members of the school community are responsible for teaching and reinforcing appropriate school behavior.

#### **1. School-Wide Teaching of Social-Emotional Skills**

- a. Schools must implement lesson plans and strategies developed by the leadership team to teach behavioral expectation. Schools must implement school based social-emotional learning programs that are found to be effective in reducing behavioral problems and increasing academic achievement.<sup>44</sup> Students should 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>45</sup>

---

<sup>43</sup> “SWPBS for Beginners,” OSEP: Technical Assistance Center of Positive Behavior Interventions & Supports, [http://www.pbis.org/school/swpbs\\_for\\_beginners.aspx](http://www.pbis.org/school/swpbs_for_beginners.aspx)

<sup>44</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>45</sup> Sprague, J., & Golly, A. (2005). *Best Behavior: Building positive behavior support in schools* (p. 4). Longmont, CO: Sopris West.; Center for Effective Collaboration and Practice.

- b. The classroom management practices of teachers must reflect a constructivist approach to student discipline, stressing prevention and the teaching of desirable behaviors rather than focusing on consequences.<sup>46</sup>
  - c. Teachers must engage in culturally responsive activities that develop relationships with their words and their deeds, help analyze their understanding of the role of culture in student behavior, 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>47</sup> Teachers must actively reflect on their judgments about appropriate behavior and cultural differences.
  - d. Data is shared at faculty and grade level meetings in regard to achievement (disaggregated by ethnicity, gender and special education eligibility), Office Discipline Referrals and suspensions. Reflection is systematically utilized so that teaching teams can give and get feedback on ways to achieve high levels of academic engagement and low levels of classroom misconduct.
  - e. Schools must provide staff with differentiated classroom management training beginning at the pre-service level. Schools must use a problem-solving team and a lesson-study approach that supports on-going classroom management.<sup>48</sup> Schools must regularly review data to determine the amount of classroom management training. School must also provide professional development in the area of cultural competence to ensure teachers and staff meet the requirements of paragraph c above.
- 2. Positive approaches to behavior:** A positive approach to behavior includes the use of systematic recognition for appropriate behavior that leads to an increase in the desired behavior; as well as consequences for inappropriate behavior.<sup>49</sup>
- a. All consequences must be consistent with the requirements in Positive Approaches to Discipline, Section 2.2b.

---

<http://cecp.air.org/resources/success/second%5Fstep.asp>. Search Second Step: A Violence Prevention Program.; Walker, H.M., Ramsey, E., & Gresham, F.M. (2004). *Antisocial Behavior in School* (p. 32). Belmont, CA: Wadsworth/Thomson Learning.

<sup>46</sup> Mayer, G.R. (1999). Constructive discipline for school personnel. *Education and Treatment of Children*, 22(1), 36-54.

<sup>47</sup> Bondy, E., Ross, D.D., Galligane, C., & Hambacher, E. (2007). Creating environments of success and resilience: Culturally responsive classroom management and more. *Urban Education*, 42(4), 326-348.

<sup>48</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 and building on conceptual knowledge brought from home and community and utilizing advanced graphic organizers for active learning. LAUSD BUL-4827.1 Multi-Tiered Framework for Instruction, Intervention and Support (citation forthcoming)

<sup>49</sup> Los Angeles Unified School District (LAUSD), Discipline Foundation Policy: School Wide Positive Behavior Support, 2007, <http://www.lausd-oehs.org/docs/Bulletins/BUL-3638.pdf>

- b. Consequences must be administered by a Support 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 appropriate consequence. For in-classroom consequences, the Support Team can include the teacher and the child.
- c. The support team must consider the range of appropriate responses developed by the School Leadership Team.<sup>50</sup>
- d. Consequences must be individualized, consistent, reasonable, fair, age appropriate, and should match the severity of the student’s misbehavior.<sup>51</sup> The consequence is a natural and logical match to the inappropriate behavior.<sup>52</sup>
- e. 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.
- f. The use of consequences should be carefully planned with well-defined outcomes in order to provide the greatest benefit.
- g. The support team must provide continuous monitoring of student behavior and responses to the consequences.

**E. Students Requiring Individualized Interventions:** 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>53</sup> require a more intensive level of intervention that is individualized and includes a team approach:

1. **Resources:** School-site staff must have training, information and resources available in order to provide effective interventions.
2. **Positive Systems:** In order to provide effective interventions, schools and schools districts must have in place positive, school-wide and classroom based systems in place. These systems must be supported financially, in printed material accessible to families, in training programs for new staff, and in orientations for new students
3. **Individualized:** All interventions must be tailored to the students’ specific needs and circumstances.

---

<sup>50</sup> These can include: loss of privileges, restitution, Saturday school, mentoring programs, and behavioral contracts that include earning privileges.

<sup>51</sup> LAUSD, Discipline Foundation Policy: School Wide Positive Behavior Support, 2007, <http://www.lausd-oehs.org/docs/Bulletins/BUL-3638.pdf>

<sup>52</sup> Sugai, G., & Horner, R.H. (2002) Introduction to eth special series on positive behavior support in schools. *Journal of Emotional and Behavioral Disorders*, 10, 130-135.; Johns, B.H., & Carr, V.G. (2007). *Reduction of school violence: Alternatives to suspension* (4ed.). Horsham, Pennsylvania: LRP Publications. , Sprague, J., & Golly, A. (2005). *Best Behavior: Building positive behavior support in schools* (p. 4). Longmont, CO: Sopris West.;

<sup>53</sup> “Frequently Asked Questions: What is Tertiary Prevention?” OSEP: Technical Assistance Center of Positive Behavior Interventions & Supports, [http://www.pbis.org/school/tertiary\\_level/faqs.aspx](http://www.pbis.org/school/tertiary_level/faqs.aspx)

4. **Support Team:** All decisions related to 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. In addition, the Support Team may include the classroom teacher, administrator, school psychologist, counselor, social workers, and mental health experts.
  
5. **Process for Effective Interventions:**
  - a. 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.
  - b. 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 the Support Team.
  - c. The Student Success Team is a group of people at the school who 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.
  - d. The School Leadership team provides support in developing the process for teachers and other school staff to make a referral the Support Team. An example may include office discipline referrals, low academic achievement, poor attendance.
  - e. The Student Success Team is made up of people who know the student well, such as the classroom teacher and counselor, support staff at the school including Attendance counselors or Psychiatric Social Workers, an administrator. Unlike other support structures like an instructional team meeting or a Coordination of Services Team meeting, the parent is always included.
  - f. The Support Team will <sup>54</sup>
    - 1) Receive referrals.
    - 2) Identify and assess problems.
    - 3) Collect data for use in decision making.
    - 4) Communicate with family members and provide opportunities for training on behavior support and positive parenting strategies.
    - 5) 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).
    - 6) Make a referral for special education if appropriate.<sup>55</sup>
    - 7) Monitor behavior and modify the action steps appropriately.

---

<sup>54</sup> “Positive Behavior Intervention and Supports Tutorial: Individual Systems” PBIS Maryland;  
[http://cte.jhu.edu/courses/pbis/ses5\\_act2\\_pag1.shtml](http://cte.jhu.edu/courses/pbis/ses5_act2_pag1.shtml)

<sup>55</sup> Martinez, S. (2009). A system gone berserk: How are zero tolerance policies really affecting schools?. *Preventing School Failure*, 53(3), 153-157. Ryan, J.B., Katsiyannis, A., Peterson, R., & Chmelar, R. (2007). IDEA 2004 and disciplining students with disabilities. *NASSP Bulletin*, 91(2), 130-140.

- g. Some students require a more intensive level of intervention. For these students, the Support Team will
- 1) Include one person qualified to conduct a functional behavior assessment (FBA), and will conduct a FBA if the student is not responding to Tier I and Tier II interventions.
  - 2) Integrate community based resources in action planning and service delivery when necessary
  - 3) 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>56</sup>
6. **Wraparound Services:** Wraparound is 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 needs-driven, not service driven.<sup>57</sup>
- a. The Support Team may make a referral for wraparound services.
  - b. Once a referral is made, the school shall initiate a Wraparound Team that must include the parent and child. The wraparound team includes four to ten people who know the child the best. Not more than half should be professionals.
  - c. The wraparound process must include components of the following best practices:<sup>58</sup>
    - 1) Wraparound efforts must be based in the community;
    - 2) The plan must be individualized to meet the needs of the children and families;
    - 3) The process must be culturally competent and build on the strengths of the children and family;
    - 4) Parents must be included at every level;
    - 5) Agencies must have access to flexible, non-categorized funding;
    - 6) The process must be implemented on an inter-agency basis and be owned by the larger community;
    - 7) Services must be unconditional. If the needs of the child and family change, the child and family are not to be rejected from the service. Instead, the service must be changed; and
    - 8) Outcomes must be measured.
7. **Establishment of an Evaluation Team:** Every school must have an Evaluation Team that consists of stakeholders in the school community to evaluate the effectiveness of the SWPBS plan.
- a. The team must meet weekly

---

<sup>56</sup> “Frequently Asked Questions: What is Tertiary Prevention?” OSEP: Technical Assistance Center of Positive Behavior Interventions & Supports. *Supra* note 28.

<sup>57</sup> “What is the Wraparound Process?” Center for Effective Collaboration and Practice,  
<http://cecp.air.org/wraparound/intro.html>

<sup>58</sup> *Id.*

b. Responsibilities of the team include:

- 1) Review all referrals to Support Team's and Wraparound teams,
- 2) Monitor data, and implementation,
- 3) Make recommendations for on-going training, implementation, modification of the SWPBS plan and the allocation of resources.

**8. Data Collection and Monitoring<sup>59</sup>:** Schools must use an integrated evaluation process for making data based decisions at all levels and by all teams.

a. The evaluation tools must answer the following essential questions:

- 1) Are members of the school community trained in implementing SWPBS?
- 2) Is SWPBS implemented with fidelity?
- 3) Is the school able to sustain implementation?
- 4) Does implementation benefit students?
- 5) Does implementation benefit students with complex needs?

b. Schools and evaluation teams must use a wide array of data systems to determine effective, efficient use of behavior practices, including universal screening for Tier I, as well as office discipline referrals, suspension, expulsion and student transfers for disciplinary reasons data.

**III. Recommended Language for a Preventive and Positive Approach that Uses Restorative Practices**

**A. Definitions:**

1. School community - includes students, teachers, administrators, staff, families, and the surrounding neighborhood/ community.
2. Restorative practice – A framework for a broad range of restorative justice approaches that proactively build a school community based on cooperation, mutual understanding, and respect.<sup>60</sup>
3. Restorative justice – A theory of social justice that emphasizes repairing the harm caused or revealed by misconduct by
  - a. Identifying the misconduct and attempting to repair the damage.
  - b. Including all stakeholders to respond to conflict and acts of violence.
  - c. Changing the traditional relationship between offenders and victims.<sup>61</sup>

**B. Schools shall actively create a positive school climate for all members of the**

---

<sup>59</sup>, PBIS Evaluation Tools and Recommended Timeline, Illinois PBIS Network, <http://www.pbisillinois.org/> (follow "Evaluation Tools" hyperlink, follow "FY10 PBIS Evaluation Tools and Recommended Timeline" hyperlink).

<sup>60</sup> "What is Restorative Practice?" Safer Saner Schools, <http://www.saferanerschools.org/What-Is-Restorative-Practices.html>

<sup>61</sup> Russell Skiba et al., "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," American Psychological Association (APA) Zero Tolerance Task Force, 2006.

**school community through the regular and ongoing use of classroom and school wide restorative practice that builds community, strengthens relationships, promotes inclusiveness, and enhances communication and problem solving skills.**

1. Teachers should 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.
2. Teachers should use restorative classroom management techniques that increase communication and provoke student reflection on how their actions impact others.

**C. In responding to disciplinary infractions or conflict, schools shall use a continuum of strategies that are restorative rather than punishing.<sup>62</sup>**

1. All individuals who have a stake in an act of misconduct (stakeholders) shall collectively identify the harm done, how the harm will be addressed, and the needs and obligations of all involved in order to heal and correct the situation as fully as possible.<sup>63</sup>
2. If appropriate, the student who committed the misconduct may appear before a peer jury that will hear all stakeholders and determine actions that meet restorative practice principles.
3. The continuum of strategies includes but are not limited to Circles, Peer Juries, Restorative Group Conferencing, Victim Impact Panels, Victim Offender Conferencing.<sup>64</sup>

**D. Student's Rights:**

1. The student who has committed the misconduct (offender) shall have the right to participate in restorative practice activities in lieu of more traditional forms of discipline such as suspension and expulsion.
2. The student who has committed the misconduct has the right to participation in all decisions made on his or her behalf.
3. The student victim of an offense shall have the right to confront the offender and to have the harm repaired in a manner determined by all members of the stakeholder team.

**E. Family Rights:**

---

<sup>62</sup> See, eg., Safer and Saner Schools, <http://www.safersanerschools.org/>; Restorative Solutions, <http://www.restorativesolutions.us/schools.html>; International Institute for Restorative Practices, <http://www.iirp.org/index.php>.

<sup>63</sup> "Student Code of Conduct for Chicago Public Schools for the 2009-2010 School Year," Chicago Public Schools Policy Manual, adopted July 22, 2009, at 5, <http://policy.cps.k12.il.us/documents/705.5.pdf>

<sup>64</sup> *Id.* at pgs. 30-33.

1. Families and friends of the victim and the student who committed the offense have the right to participate in a restorative activity.

**F. School Districts shall provide schools with adequate resources to train and implement restorative practices in all schools.**

1. All teachers shall receive training in incorporating restorative practice principles into lessons and day to day classroom activities.
2. All administrators shall receive training on using restorative practice in interacting with staff, parents, students and the community.
3. All staff, families and members of the community shall receive adequate training in restorative practice principles through regular workshops and community building activities.
4. All students shall receive instruction on restorative practice in the classroom through appropriate activities and shall receive school credit for attending classes on restorative practice, and participating in restorative justice groups or boards.

**3.1.b Guidelines for Exclusion**

**I. Recommended Language**

*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>65</sup> protecting children from harsh or degrading punishment,<sup>66</sup> and preventing and eliminating discrimination.<sup>67</sup> Schools should avoid penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others<sup>68</sup>.*

**A. Schools must adopt a school wide prevention and positive discipline policy as a necessary foundation to a school discipline policy.** (See Adopting School-wide Preventive and Positive Discipline Policies, 2.1a.)

**B. Guidelines for Exclusion: Exclusion from school must be reserved only for the most dangerous offenses.<sup>69</sup>**

1. Exclusion from school may be considered only when a student commits the most

---

<sup>65</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990, para 21(h). United Nations Committee on Economic, Social and Cultural Rights, General Comment 13, para 41.

<sup>66</sup> Article 37, Convention on the Rights of the Child (CRC).

<sup>67</sup> Article 2, CRC.

<sup>68</sup> The Riyadh Guidelines, para 5, 31.

<sup>69</sup> See, e.g., Denver Public Schools Discipline Matrix, Attachment B, at [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) and Denver Public Schools Discipline Ladder, Attachment C, at [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).

serious and dangerous offenses.<sup>70</sup>

2. Definitions:

- a. Exclusion: a suspension, expulsion, or involuntary transfer from school.
- b. Suspension: temporary exclusion from the student's daily class schedule, not to exceed five consecutive days and ten total days per school year. The term of suspension is served in a suspension classroom at the student's school or in classroom at an off-site School District facility, at both of which, the student shall receive quality instruction as defined in section 1.1e.
- c. Expulsion: any long term exclusion from school attendance and school privileges for a period of more than 5 consecutive days of school, 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 child from his or her current school environment, with alternative educational services provided during the removal.
- d. Involuntary Transfer: Unlike voluntary transfers defined in Section 1.1e, involuntary transfers are a school administrator initiated disciplinary 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.

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

1. No child may be excluded from school until and unless non-exclusionary discipline alternatives have been carefully considered and tried 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. Such decision shall be made only after considering the full impact of the decision to exclude a student on the student him/herself and the school community. In particular, school administrators must consider whether other factors outside of the child's control contributed to the problem behavior and whether such behavior could be alleviated by helping the child 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 child's placement or setting;
  - c. Whether the child is or has been a victim of a bullying or harassing classroom environment;
  - d. Family situations such as involvement in foster care, domestic violence, homelessness, poverty, recent death of a loved one, or immigration status; and

---

<sup>70</sup> ABA Resolution 118B. The report calls for "restricting exclusion offenses to those that are the most serious or dangerous and cannot be handled without such exclusion," page 9-11.

- 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 justice, 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; and
  - n. Any other relevant circumstances, including whether the child 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 child has not previously been evaluated for a disability but has engaged in a pattern of behavior that suggests he/she should have been, the school shall immediately begin the procedure to conduct an evaluation as set forth in 20 U.S.C. § 1414.
2. If such factors exist, the school administrator must refer the child to appropriate services or interventions as outlined in Section \_\_\_\_ 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 child's parent, guardian, or another trusted adult in the child's life before pursuing school exclusion.
  3. The school administration must document all other disciplinary measures it has tried and considered 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 child 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>71</sup>
2. No child under the age of 10 or in fifth grade or lower may be excluded from school for disciplinary reasons.
3. No child under the age of 15 or in tenth grade or lower may receive a suspension of more than 3 days.<sup>72</sup>

---

<sup>71</sup> Citation forthcoming for Washington state law.

<sup>72</sup> See Boston Public Schools Code of Discipline, Section 9, at 22  
<http://www.bostonpublicschools.org/files/BPS%20Code%20of%20Discipline.pdf>.

4. No child shall be issued a suspension for more than 5 consecutive days or 10 cumulative days total during an academic year.
5. No child shall be issued an involuntary transfer for more than one school term. At the end of the term, the student will have a right to reenroll in their home school or previous school of attendance.

#### **E. Procedural Protections for Students with Disabilities**

1. School personnel must obtain the approval of a District Level Administrator prior to excluding a child from school for disciplinary purposes.
  - a. District Level Administrator will only grant approval where the School-site personnel provides documentation that positive interventions (see 2.2.a.) are in place or if it is an emergency removal (see 2.3.a.)

#### **F. Right to remain in school and continue an education**

1. If a 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 his/her academic work from their regular classes 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.
  - a. The school shall ensure the student gets his or her assignments for the time he/she will not be in his/her regular classes or to send the student to an alternative school.
  - b. 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 assist the student in making up the work after they return from suspension.
  - c. The suspension shall not affect the student's ability to earn credit towards graduation nor affect the student's grades.
3. If a student is expelled from school, that student shall have a right to attend a high quality alternative school, where the student will receive a complementary education that allows him/her to continue to progress toward graduation and will help the student develop a plan to reintegrate into his/her home school at the end of the exclusion period.

### **3.1.c. Due Process**

#### **I. Recommended Language**

*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>73</sup> In any hearing regarding the denial of educational rights, the school system must guarantee that child adequate representation, including through the appointment of public counsel.*

#### **A. Rights of Students with Disabilities**

Students with disabilities who are recommended for school exclusions shall follow the recommendations in Section 4.3F and the federal law.

#### **B. Right to a hearing<sup>74</sup>**

If non-exclusionary discipline alternatives have been tried or carefully considered, and if, after that consideration, the school recommends an expulsion of 10 or more days, either consecutively or in total, the student has a right to a hearing prior to such exclusion, with the exception of emergency removal situations, which are defined and for which hearing requirements are set forth in Section 3I.

1. If a school recommends a **suspension that is less than 5 days** the student has a right to:
  - a. Quality instruction and an opportunity to complete all assignments and earn credit while on in-school suspension. Quality instruction will be defined as instruction by a certified teacher with grade and class appropriate material that allows the student to earn equal credits and receive parallel as if they had been in class and allows them to join the class after the term of the suspension on pace with their classroom peers.
  - b. Written notice to the student and to the student's parent or guardian within 24 hours of the suspension, describing the infraction, the length of the suspension, and the student's rights as described in this section.
    1. The written notice must be in the primary language spoken by the parent or guardian.
    2. The notice must include an invitation to the parent to attend an exclusion conference to discuss the suspension at the parent or guardian's earliest possible availability.
  - c. 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

---

<sup>73</sup> Article 14, CRC.

<sup>74</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” ABA Resolution 118B, recommendation 2, *see also Id.* at 11-12.

whether or not the recommendation to exclude the student is consistent with 3.1.b Guidelines for Exclusion.<sup>75</sup>

- 1) The school is not required to present live testimony or physical evidence and may rely on written statements about the incident.
  - 2) The school must allow a reasonable opportunity for the student's parent or guardian to attend the exclusion conference.
- d. A neutral decision maker as described in Section F who makes the decision to exclude after conducting an exclusion conference.
  - e. An appeal the decision as described in Section I if he or she does not agree with the outcome of the exclusion conference.
2. If a school recommends a **suspension that is 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 B1; and
    - b. A formal review of attempted interventions as outlined in Section \_\_\_\_\_ and initiation of interventions not yet attempted.
  3. If a school recommends an **exclusion that is 10 or more days**, either consecutively or cumulatively, or if the student faces an involuntary transfer to another school site, the student has a right to a full hearing as described by Sections D, E, F,G, and H, and a right to counsel as described by Section C.

### C. Right to Counsel

Any student who is facing the denial of an education for ten days or more, whether consecutively or cumulatively during a school year,<sup>76</sup> shall be provided with legal counsel in any administrative and/or judicial proceeding (including appeal)<sup>77</sup> as a matter of right and at public expense.<sup>78</sup> Counsel shall be appointed immediately upon written notice of the proposed discipline. Please see Section 3.2(C) for Rationale regarding Right to Counsel.

### D. Right to Notice

---

<sup>75</sup> See, e.g., District of Columbia Public Schools Student Discipline, 5 D.C.M.R. § B2505.4 (describing a disciplinary conference).

<sup>76</sup> This section focuses on proposed disciplinary exclusion 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>77</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...” ABA Resolution 118B, recommendation 2.

<sup>78</sup> *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 School District v. E.S.*, 148 Wn. App. 205 (2009)(children entitled to appointed counsel in truancy proceedings)

Prior to the exclusion hearing, the school must take steps to ensure that the student and the parents or guardians are aware of the charges the student is facing and that they are present or are afforded an opportunity to participate in the hearing, including notifying parents/guardians of the hearing early enough to ensure that they will have an opportunity to attend; scheduling the hearing at a mutually agreed-upon time and place; and documenting the means (letter, telephone call, email), date, and time of each attempt to notify both the student and the parent/guardian(s).<sup>79</sup> All such notices must be provided in the parent or guardians' home language to ensure meaningful participation by parents and guardians who have limited English proficiency.

1. 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, 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 services if the parent or guardian's home language is other than English; and
  - e. A list of all people that will be present at the hearing, at least 2 days in advance of the hearing.
2. If the student and/or the parent are unable to attend the hearing during the date and time proposed by the school, the student and parent must be given the opportunity to suggest at least three alternate times that will work with their schedules.

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

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>80</sup>

3. 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 (3) person panel made up of a school staff member, a parent, and a student, each with equal voting rights.

---

<sup>79</sup> See 34 C.F.R. 300.322 (rules implementing the parental participation provisions of the Individuals with Disabilities Education Act).

<sup>80</sup> The neutral arbiter should not be involved with the facts of the situation in any way. Citation forthcoming for California and Washington State laws.

- 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.
4. A scheduled neutral hearing officer should recuse him or herself if s/he has any conflict of interest, including personal involvement with the facts or a relationship with any of the parties or witnesses.
  5. 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.
  6. The neutral hearing officer shall make a decision on the exclusion impartially and based exclusively on the evidence presented at the hearing.

#### **F. Evidence**

7. 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.
8. The student shall have a right to have an attorney or other advocate represent him/her at the hearing and to direct that representation.
9. 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.
10. All witnesses shall be required to appear and testify in person, unless one of the following exceptions applies:
  - a. A student witness/victim may submit written or recorded testimony if his/her presence would endanger his/her safety.
  - b. If a criminal or juvenile delinquency case is pending regarding the incident, the prosecutor's office may request that the victim 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.
11. 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.

12. The student shall have a right to refuse to testify and to keep his or her parent or guardian from testifying.
13. The student and his/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).
14. 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/her parent, or his/her attorney upon request.

#### **G. Notice of hearing decision**

15. The student and his/her parent or guardian has a right to a notice in his/her home language of the decision, including a written explanation detailing the reasons for the decision, within five school days of the hearing.
16. 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.

#### **H. Right to Appeal**

17. 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>81</sup>
18. When hearing the appeal, the hearing officer shall 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 choosing to pursue to exclude the student from school;
  - h. Whether the school tried non-exclusionary alternatives to address the child's behavior before pursuing exclusion and how well those alternatives were implemented;
  - i. Whether other factors outside the student's control caused the behavior, including whether the child has or might have a disability or need treatment for mental health concerns;
  - j. Whether new facts have been uncovered that are exculpatory;

---

<sup>81</sup> See, e.g., Boston Public Schools Code of Discipline, Exhibit 2, The Appeal Process, Step by Step, at 28 <http://www.bostonpublicschools.org/files/BPS%20Code%20of%20Discipline.pdf>.

- 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.
19. If any of the above factors are established on appeal, a re-hearing may be granted and/or the decision to exclude overturned.
  20. If a student appeals to the Board of Education and loses, he/she must have the option of appealing the Board's decision in civil court, in accordance with state law. Such appeals should be considered emergency appeals and treated as such so that they can be heard and decided within, at most, 30 days.<sup>82</sup>

## **I. Emergency Removal**

21. "Emergency" means only those situations in which the child 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 child from the school environment.
22. If the student is removed pursuant to an emergency, the school must send notice home to the parent/guardian immediately following the removal.<sup>83</sup>
23. 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 will apply.<sup>84</sup>
24. 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**

---

<sup>82</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>83</sup> See, e.g. N.Y. Educ. Law Section 3214(3)(b) (2008); 8 NYCRR Section 100.2(1)(4) (2009).

<sup>84</sup> See, e.g., Boston Public Schools Code of Discipline, Section 8, at 21, last revised September 2006; <http://www.bostonpublicschools.org/files/BPS%20Code%20of%20Discipline.pdf> (describing a limited emergency suspension procedure).

## I. Recommended Language

*Human Rights Goal: In order to guarantee students' rights to education and to dignity, schools must avoid any disciplinary policies or practices that criminalize a child for behavior that does not cause serious damage to the development of the child or harm to others.<sup>85</sup> The involvement of law enforcement in schools should be avoided whenever possible and the arrest or detention of a child shall be used only as a measure of last resort.<sup>86</sup> Any law enforcement personnel should be trained to respond to the special needs of young persons and should use, to the maximum extent possible, programs for the diversion of young persons from the justice system.<sup>87</sup>*

**A. Schools must adopt a school wide prevention policy as a necessary foundation to a policy on use of law enforcement in schools.** (See Adopting School-wide Preventive Policies, 2.1a.)

**B. Schools must adopt clear rules of governance that recognize the principal as the primary authority responsible for school safety, and the responsibilities of the police must be limited to serious violations of the penal law.<sup>88</sup>**

1. School Resource Officers (“SROs”) shall be responsible for responding to serious criminal law matters. They shall not be responsible for school discipline issues.
2. Absent a “real and immediate”<sup>89</sup> 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 SROs:
  - a. disorderly conduct
  - b. trespass
  - c. loitering
  - d. profanity
  - e. insubordination
  - f. verbal abuse and/or harassment
  - g. vandalism and/or graffiti
  - h. possession of a prohibited item that does not violate the penal law (i.e. cell phones)
  - i. fighting that does not involve a weapon
3. School Resource Officers 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.

---

<sup>85</sup> Riyadh Guidelines, para 5.

<sup>86</sup> Convention on the Rights of the Child, Article 37.

<sup>87</sup> Riyadh Guidelines, para 58.

<sup>88</sup> The ABA resolution calls for the need to “reduce criminalization of truancy, disability-related behavior, and other school-related conduct” ABA Resolution 118B, recommendation 4; *see also* 12-14.

<sup>89</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)

4. School Resource Officers shall obtain the permission of the school principal prior to conducting a search of the student, including the student's possessions. There shall be an exception for searches in emergency situations. In such cases, the SRO shall notify the school principal immediately following the search.
5. Wherever possible, the officer conducting the search shall be of the same sex as the student, and a school official shall be present at the time of the search.
6. 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 serious threat to the physical safety of a member of the school community
7. School Resource Officers shall comply with the probable cause requirement even where school officials ordered or requested the search.
8. 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 crime—not a school discipline matter as defined above—that is supported by a real and immediate serious threat to the physical safety of a member of the school community, or when a warrant directs that an arrest be carried out at school.
9. A School Resource Officer shall not conduct an arrest without first obtaining the permission of 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 before the removal of the student from the school. School officials shall immediately contact the students' parents/guardians when a student is arrested.
10. 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.

**C. Schools should refrain from utilizing metal detectors.**

1. No school shall install metal detectors without first reviewing alternative safety mechanisms and determining that less intrusive means are unavailable to protect student safety in the face of a credible danger. Moreover, students, parents, 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.
2. Following installation of metal detectors, schools shall maintain the following data to determine the metal detectors' impact on the school environment:
  - 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
3. 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 an analysis of the data collected by the school about the scanner implementation, as well as an analysis of student attendance, retention, and drop-out rates, and loss of student class time. Special consideration shall be made to whether certain student populations have been disproportionately impacted by the metal detectors.

**D. In school districts with a significant police presence, there must be transparency and accountability mechanisms in place.<sup>90</sup>**

1. The school district and the police department shall develop a system for individuals to file complaints or report abuses by School Resource Officers. In jurisdictions with independent civilian police review boards, such boards shall also accept complaints against SROs.
2. The system must provide a simple and straightforward means for students, parents, teachers, administrators, and principals to submit complaints about conduct by SROs.
3. The complaint system must be confidential and protect against retaliation.
4. Any student, parent, teacher, administrator, or principal shall have the opportunity to submit a complaint in writing or orally; the system shall incorporate a mechanism for receiving online complaints.
5. Parents and students may submit the complaint in their native language.
6. The system shall provide for a meaningful investigation into the allegations in the complaint. The investigation shall involve supervisors from the police department as well as school administrators.
7. The complainant shall be entitled to a written response to his or her complaint within 30 days.
8. The SROs' due process rights should 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.
9. Complainants shall have the right to representation before the system.

---

<sup>90</sup> Elora Mukherjee, *Criminalizing the Class room: the Over-Policing of New York City Schools*, Report by New York Civil Liberties Union and American Civil Liberties Union (Mar. 2007), available at <http://www.nyclu.org/node/1044>.); Udi Ofer et al., *Safety with Dignity: Alternatives to the Over-Policing of Schools*, a report by the New York Civil Liberties Union, Annenberg Institute for School Reform at Brown University, and Make the Road New York (July 2009). (exact citation forthcoming)

10. Where serious allegations of wrongdoing are raised, SROs shall be removed from having contact with students until the investigation is completed.
11. Where allegations of abuse or misconduct are substantiated, School Resource Officers shall be removed from any school assignments. These SROs may be reassigned or receive additional training, etc., where appropriate.
12. Every student, parent, and guardian in the school system shall be informed of the complaint procedure.

#### **E. Training of SRO**

1. Prior to deployment, every School Resource Officer shall receive at least 60 hours of training on the following topics: bias-based and sexual harassment; child and adolescent development and psychology; conflict resolution and/or peer mediation; children with disabilities; and cultural competence. Moreover, all School Resource Officers shall be familiar with and trained in restorative justice, positive behavioral interventions and supports programs available in the school district.
2. Every school resource officer shall receive at least 10 hours of annual professional development in the topics listed above.
3. If a school implements a specific program, such as PBIS, bias-based harassment training, or restorative justice, the School Resource Officer assigned to that school shall participate in all training required of teachers and other school officials related to that program.

#### **3.3.b. Drug Policy**

##### **I. Recommended Language:**

*Human Rights Goal: Schools should provide comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems in effective and appropriate ways that emphasize care, counseling, assistance and therapy-oriented interventions.<sup>91</sup>*

- A. Schools must adopt a school wide prevention policy as a necessary foundation to a drug prevention policy.** (See Adopting School-wide Preventive Policies, 2.1a.)
- B. Drug Education:** The school district shall provide age-appropriate, school-tested drug education to help prevent or reduce the use of alcohol, tobacco and other substances by students. Such programs shall assist with the development of students' life skills and protective behaviors and ensure that students are connected

---

<sup>91</sup> Riyadh Guidelines, para 35.

to their schooling. Further, the school district shall cease any DARE<sup>92</sup> programming.

### C. Elements of Effective Drug Education Curriculum

1. The drug education process shall be honest, balanced, interactive and respectful of students' intelligence and experience, and shall be delivered in a way that ensures the full participation of students.
2. Such instruction shall go beyond abstinence-only messages and emphasize safety as the bottom line.<sup>93</sup> The drug education curriculum shall be incorporated into the students' general curriculum and conducted by school-based education personnel.
3. The drug education process shall 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>94</sup> By educating students in an interactive setting, these prevention and education programs will target students' influences and misconceptions regarding peers social attitudes surrounding drug use.<sup>95</sup> These interactions aid students by helping them develop refusal skills; they provide true data on drug use as opposed to the anecdotal "everybody is doing it", which reinforces the unhealthy behavior as students view the behavior as normal, when in fact it is not.<sup>96</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. The school's health education department shall provide assistance with the implementation of the drug education program and shall coordinate student assistance programs with its drug education program.

**D. Searches:** The school 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 Student Resource Officer-conducted or law-enforcement-conducted random drug raids, nor the use of drug-sniffing dogs to investigate the prevalence of drugs on campus.

---

<sup>92</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% of school districts reported using DARE programs, *see D Hallfors, Will the 'Principles of Effectiveness' Improve Prevention Practice? Early Findings from a Diffusion Study*, Health Education Research vol.17 no.4, Oxford University Press 2002.

<sup>93</sup> Rodney Skager, Ph.D., *Beyond Zero Tolerance: A Reality-Based Approach to Drug Education and Student Assistance*. Drug Policy Alliance; [www.beyondzerotolerance.org](http://www.beyondzerotolerance.org)

<sup>94</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>95</sup> Alice Evans and Kris Bosworth, *Building Effective Drug Education Programs*, Phi Delta Kappa Center for Evaluation, Development, and Research December 1997, No. 19.

<sup>96</sup>Rodney Skager, Ph.D., *Beyond Zero Tolerance: A Reality-Based Approach to Drug Education and Student Assistance*. *Supra note 72*

- E. Random Drug Testing:** The school district shall prohibit the use of random drug testing of students.<sup>97</sup>
- F. Resources:** School districts shall develop a list of programs and services related to drug, alcohol, and tobacco abuse that are available within the District and in the community.
- G. Intervention:** The school district recognizes that student drug abuse is a health issue and not a school discipline issue. Therefore, students suspected of using or abusing drugs shall be referred to student assistance programs and shall be provided with counseling and/or treatment by staff trained in issues about substance abuse.
1. If necessary, the student shall also be referred to the 504 Coordinator, who shall prepare a 504 Plan for the student. The district's response to student drug use shall assist students in changing the risky behaviors that lead to substance use or abuse.
  2. Every effort shall be made to retain students within the educational setting and the school shall assist recovering students to avoid re-involvement with substances by providing school and/or community services activities designed to increase students' sense of community and connectedness with school.<sup>98</sup>
  3. Suspension and expulsion are not considered intervention.<sup>99</sup> The school shall coordinate student assistance programs and intervention services with its drug education program.

---

<sup>97</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. See Ryoko Yamaguchi, Lloyd D. Johnston, and Patrick M. O'Malley, "Relationship Between Student Illicit Drug Use and School Drug-Testing Policies," *Journal of School Health* 73, no. 4 (2003): pp. 159-164; <http://www.monitoringthefuture.org/pubs/text/ryldjpom03.pdf> 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 pm. "Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers. See N. Zill, et al., *Adolescent Time Use, Risky Behaviors and Outcomes* (U.S. Pub. Health Serv. 1995) ("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." Available at: [http://www.aclu.org/images/asset\\_upload\\_file598\\_23514.pdf](http://www.aclu.org/images/asset_upload_file598_23514.pdf)

<sup>98</sup> Adapted from the Cotati-Rohnert Park Unified School District's Governing Board Policy on Alcohol and Other Drugs. See BP 5131.6. (exact citation forthcoming)

<sup>99</sup> See for e.g. Los Angeles Unified School District (LAUSD) Policy Bulletin: *Preventive Measures and Mandatory Procedures for Students Who Violate Laws Regarding Drugs, Alcohol, and Tobacco*; 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)

- H. Confidentiality** – The school district shall create an environment in which students are encouraged to seek help from teachers and administrators. Student records are confidential and will not be disclosed unless required by federal or state laws. 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>100</sup>

### **3.3.c Reforming Status Offense Laws**

#### **I. Recommended Language**

*Human Rights Goal: In order to prevent the criminalization of young people and ensure their right to dignity, any conduct not considered an offence if committed by an adult should not result in criminal penalties if committed by a young person.*<sup>101</sup>

#### **Juvenile Policy**

- A. Definition:** Status offenses are offenses that target behaviors that are unlawful for children, but not unlawful for adults. It is the status of childhood that allows children to be the subject of a status offense.<sup>102</sup>
- B. Criminal penalties shall not be imposed on any student for any status offense and all such offenses shall be removed from local municipal and state penal codes.**

#### **Education Policy**

- A.** Schools will not track or punish students based on previously criminalized status offenses.

## **3.4. Right to Remain in School**

### **3.4.a. Truancy Prevention and Correction**

#### **I. Recommended Language:**

*Human Rights Goal: Schools should 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>103</sup>

---

<sup>100</sup> Adapted from LA Unified School District Policy Bulletin: Preventive Measures and Mandatory Procedures for Students Who Violate Laws Regarding Drugs, Alcohol, and Tobacco, found 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>101</sup> Riyadh Guidelines, para 56.

<sup>102</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*. Available at: <http://law.jrank.org/pages/1543/Juvenile-Status-Offenders.html>.

## Education Policy:

- A. **Schools shall adopt a school wide prevention policy that addresses social emotional development, family support, and early intervention as a necessary foundation to a truancy policy.**<sup>104</sup> (See Adopting School-wide Preventive Policies, 2.1.a.)
- B. **Students shall not receive financial penalties, criminal sanctions, or municipal code sanctions for truancy. All responses to and consequences for truancy will be handled within the school setting.**
- C. 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.
- D. 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.
- E. Schools shall not use exclusion as a response to truancy.<sup>105</sup>
- F. 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.
- G. Schools should align their truancy prevention program with the McKinney-Vento Act by:<sup>106</sup>
1. Placing homeless children either in their original school or within a school in the district in which they currently reside.<sup>107</sup>
  2. Prohibiting requirements that force homeless children to attend school exclusively with other homeless children.<sup>108</sup>
  3. Providing “comparable services . . . including transportation services, educational services, and meals through meals programs.”<sup>109</sup>
  4. Prohibiting any stigmatization of homeless children by school staff.<sup>110</sup>

## Juvenile Policy

---

<sup>103</sup> Convention on the Rights of the Child Article 28. Riyadh Guidelines, para 30.

<sup>104</sup> ABA Resolution 118B. The ABA report discusses the connection between truancy and dropouts and presents the need for truancy prevention and intervention programs, pages 2-3.

<sup>105</sup> ABA Resolution 118B. The report recommends prohibiting the use of exclusion as a response to truancy, page 11.

<sup>106</sup> *Id.*

<sup>107</sup> 42 U.S.C. § 11432(e)(3)(C)(i)(III)(aa)-(dd) (2002). (“to integrate homeless children into the classroom by removing barriers in terms of access to schooling”)

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

- A. Authorities shall not institute court proceedings against a student for truancy until it has documented the underlying cause(s) of the unexcused absences, exhausted all avenues of supports and services to resolve the underlying unexcused absences, and demonstrated a compelling reason for involving the court system.<sup>111</sup>
- B. Students must be guaranteed the right to counsel in truancy proceedings to guard their constitutionally protected interests.<sup>112</sup>
- C. During the transition back into school for court involved youth, Valid Court Orders (VCO) should not be employed in truancy cases to incarcerate students who have failed to comply with the school-related provisions of the VCO.

### **3.4.b. Right to Resume Education**

#### **I. Recommended Language**

*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. Schools should 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>113</sup>

- A. All youth who have been incarcerated shall have the right, full opportunity, and support to re-integrate into public school and receive a high quality education.**<sup>114</sup>

#### **Return to School after Period of Incarceration**

- 1. The school system 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. Delineate communication procedures and requirements, and
  - c. Specify accountability standards required of all of the parties involved with the youth while in the detention facility and upon release.
- 2. The school system shall work with State Juvenile Justice Agencies to develop transitional teams in every county to assist incarcerated youth to re-enter the

---

<sup>111</sup> ABA Resolution 118B, recommendation 4. The resolution calls for the need to “reduce criminalization of truancy, disability-related behavior, and other school-related conduct” and the report (also see pages 12-14).

<sup>112</sup> *Bellevue Sch. Dist. v. E.S.*, 199 P.3d 1010 (Wash. Ct. App. Jan. 12, 2009). 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>113</sup> Riyadh Guidelines, para 30.

<sup>114</sup> See e.g. ABA Resolution 118C: Right to Resume Education

community. The transitional team shall be a multi-disciplinary panel consisting of 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 should be lead by a transition coordinator or specialist.

- a. Upon entry into the facility a representative from the school system shall
    - 1) Work with the juvenile justice facility transitional team to ensure the commencement of the transition process from detention to community,
    - 2) Immediately transfer relevant records to the record custodian at the juvenile detention facility. The school representative and the facility record custodian will be responsible in expediting the delivery and receipt of school records and the transfer of school records to the receiving school upon release from the juvenile detention facility.
  - b. The school district shall identify a liaison to work with the transitional coordinator from the juvenile justice facility to ensure
    - 1) A smooth transition for the juvenile upon his/her release,
    - 2) Information is documented regarding mental health, physical health, special education status, reading and math achievement levels, coursework completed, credits earned, vocational skills, and student grades.
  - c. The transitional team shall assess every youth prior to release to develop an individualized transition plan (ITP) that will 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 should participate in the creation of the ITP. The plan should address the appropriate delivery of training in the areas of: social skills, independent living skills and employment training.
3. The student shall be returned to an appropriate educational placement in the least restrictive environment. 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.
  4. Upon release, the school system in collaboration with the transitional team should
    - a. Provide on-going supervision in conjunction with the youth's probation or parole supervisor and re-assess, periodically, to determine if the plan should 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.

5. The school system liaison, along with the transitional team, should ensure that the parent(s) are engaged throughout the entire process, from the time the youth enters the facility until his/her release. Parental participation and involvement should be encouraged via continuous communication that is respectful and culturally competent and parental training.

**B. All youth 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>115</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 2.1.a. and 2.1.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 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 should consider available resources and then make them available to the student in order to assist him/her in accomplishing his/her re-entry goals. All stakeholders shall develop an agreement that assign roles and responsibilities, delineate communication procedures and requirements and specify 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
    - 1) 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,
    - 2) Addressing special education needs, and
    - 3) Providing support in gaining obtaining a high school diploma.
4. The school district shall maintain continuous contact with the parent(s) and shall encourage parental involvement during every stage of the re-entry process.

## **CHAPTER 4: FREEDOM FROM DISCRIMINATION**

### **4.1 Freedom from Discrimination**

#### **I. Recommended Language - Standard for Determining Discrimination has Occurred**

*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*

---

<sup>115</sup> See e.g. ABA Resolution 118C: Right to Resume Education

*discrimination based on race, ethnicity, sex, gender identity or orientation, language, national origin, religion, disability, economic or other status which limit educational opportunities or services or lead to discriminatory outcomes in education.*<sup>116</sup> *Discrimination includes both purposeful acts of discrimination, and actions that disproportionately affect particular groups of students.*

- A. Discrimination consists of any distinction, exclusion, limitation or preference<sup>117</sup> based on race, national origin, ethnicity, language, sex, gender identity or 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. School systems must make eliminate discriminatory policies, as well as embedded effects of past discrimination.

## **4.2 Eliminating Disproportionate Use of Discipline**

### **I. Recommended Language**

*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 or orientation, language, national origin, religion, disability, economic, or other status.*<sup>118</sup> *School discipline must be administered in a fair and non-biased way.*

- A. Schools shall actively create a positive school climate for all members of the school community through the regular and ongoing use of classroom, school-wide, and community-wide preventive practices that build community, strengthens relationships, promotes inclusiveness, and enhances communication and problem solving skills. (See Adopting School-wide Preventive Policies, 2.1.)
- B. 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.
- C. Schools shall 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

---

<sup>116</sup> Convention on the Rights of the Child, Article 2. International Covenant on Civil and Political Rights, Article 2.

<sup>117</sup> See International Convention on the Elimination of Racial Discrimination art. 1(a).

<sup>118</sup> Convention on the Rights of the Child, Article 2.

students based on race, gender, language, national origin, disability, socio-economic or other status.

- D. 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 create a stakeholder team, including educators, parents, 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 infraction, teacher or staff member reporting the infraction, 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). Disaggregate this data by age, grade, gender, ethnicity, zip code, disability, family status (i.e. in foster care/homeless).
  - 2. In reviewing data on disciplinary referrals, if schools identify a staff member that has a large number of referrals or whose referrals are disproportionate to the student body, the school should observe the teacher's classroom management and provide targeted professional development and feedback for that staff member.
  - 3. Require regular analysis of school discipline data (as described above) by an appropriately trained staff member or consultant and as needed revisions to discipline policy or proactive approaches to address disproportionality of discipline techniques.
- F. Schools shall create student grievance procedures regarding inappropriate disciplinary tactics.
- G. 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" should be avoided as these may be understood differently by different staff members and may allow for more bias in the administration of the policy.

### **4.3. Students with Disabilities**

#### **I. Recommended Language**

*Human Rights Goals: Children with disabilities are members of their communities and have the right to attend their neighborhood schools. Children 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 children shall be treated with respect and dignity, free from cruel, inhuman, or degrading treatment or punishment.*<sup>119</sup>

**A. As fully outlined in Sections 3.1(a) and (b), schools shall establish proactive systems that have the capacity to identify, adopt, and sustain effective practices and routines that prevent problem behavior, reinforce appropriate behavior and have organized responses to misconduct. The focus of school wide behavioral policies and classroom management is preventive and positive strategies for change** (See Sections 3.1.a. and 3.1.b.). In order to address the particular needs for students, including those students who are English Language Learners as well as students with disabilities, a school-wide prevention policy shall create an environment where:

1. Behavioral expectations are taught, modeled, reinforced, and corrected fluently.
2. A multi-tiered approach outlines the skills necessary to meet Individual needs.
3. Cultural and individual differences are valued rather than criticized.
4. Data is used to determine the effective and efficient delivery of instruction in all areas, including behavior.
5. Families and caregivers are provided with multiple opportunities to learn how to support the educational program in preparing the student to be career and college ready.
6. Families and caregivers are provided with accessible information in which the behavioral expectations and the response to misconduct are clearly communicated.
7. Staff, families, and students are provided with the necessary professional development and training in order to ensure that all aspects of the behavior plan are understood.

**B. 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.**

**C. Federal and state laws shall strengthen procedural protections in the following ways to ensure that students and parents are meaningful partners in the provision of special education services, particularly when addressing the needs of a child with behavior problems:**<sup>120</sup>

1. Amend laws, regulations, and policies to clarify that students themselves, along with their parents, guardians, or surrogate parents, have the right to

---

<sup>119</sup> Convention on the Rights of Persons with Disabilities, Articles 24 and 15

<sup>120</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.

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>121</sup>

2. Amend procedural safeguards to allow parents and professionals brought by parents 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/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'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 right to a publicly funded IEE as a matter of law.<sup>122</sup>
4. The school shall have the burden of proof in a due process hearing where the parent or student challenges a change of placement of a child with a disability because of a school disciplinary violation.<sup>123</sup>
5. The school district must honor hearing officer decisions in a timely manner; timeframes for implementation should be part of the due process decision or settlement agreement.

**D. Federal and state laws shall strengthen the requirements for effective, evidence-based positive interventions as part of the IEP process.**

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>124</sup>

---

<sup>121</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 American Bar Ass'n, Report and Recommendation to the House of Delegates, August 7, 2006, at <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf>.

<sup>122</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. 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>123</sup> The decision in *Schaffer v. Weast* (citation forthcoming), 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>124</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).

- 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.”

**E. The requirements for Reports or Referrals to Law Enforcement or Judicial Authorities shall be clarified to restrict such referrals only to situations involving a real and immediate threat to physical safety as outlined in the emergency removal provisions in section XX<sup>125</sup>:**

1. Students with disabilities are often disproportionately excluded from school through referrals to law enforcement or judicial authorities as compared to students without disabilities.<sup>126</sup>
  - a. Schools and school districts are obligated under the IDEA to provide FAPE to students with disabilities who exhibit behavioral problems.<sup>127</sup>
  - b. Often, schools shift the responsibility of developing an appropriate plan of rehabilitative services for the student with a disability by reporting the student to law enforcement or judicial authorities.<sup>128</sup>
2. As outlined in Section 3.3a, Schools shall not report or refer a student with a disability to law enforcement or judicial authorities for behavior that does not pose a “real and immediate” serious threat to the physical safety of a student, teacher, or other members of the school community. A school based risk assessment team<sup>129</sup> should 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 of any student with a disability, the school shall conduct a manifestation determination within 10 school days of the report or referral.
    - 1) The school will provide the determination to the juvenile court.

---

<sup>125</sup> *Decriminalizing Students with Disabilities*, Dean Hill Rivkin, 2009. (citation forthcoming).

<sup>126</sup> Russell Skiba et al., “Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations,” American Psychological Association (APA) Zero Tolerance Task Force, 2006; *Decriminalizing Students with Disabilities*, Dean Hill Rivkin, New York Law School Law Review, Vol. 54, 2010

<sup>127</sup> 20 U.S.C. Sec. 1415 (k)(1)(D).

<sup>128</sup> Russell Skiba et al., “Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations,” American Psychological Association (APA) Zero Tolerance Task Force, 2006; *Decriminalizing Students with Disabilities*, Dean Hill Rivkin, New York Law School Law Review, Vol. 54, 2010

<sup>129</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.

- 2) The school shall withdraw its referral or report if:
  - i. the behavior is determined to be a manifestation of the student's disability; and
  - ii. the school failed to properly address the student's behavioral needs according to the School's obligations under the IDEA and District discipline policies.

### 3. 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:
  - 1) Subpoena all pertinent records with respect to the child's disability,
  - 2) Supervise the school's progress in meeting the child's needs, in addition to supervising the child's progress, and
  - 3) Enjoin school districts to withdraw their report or referral.
- d. Juvenile courts should 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 taskforce of various stakeholders (including parents, students and community leaders) and develop a Memorandum of Understanding to specify the roles and responsibilities of all stakeholders.<sup>130</sup>

### F. State and Federal law shall be changed to include that exclusion from the current educational placement because of behavior that is a manifestation of the child's disability shall be presumed to be discriminatory.

1. Definition: An exclusion of a child with a disability shall be defined as any removal from the child's current educational placement for any length of time for violation of a school rule, including but not limited to formal suspension and expulsion as defined in Section XX, as well as informal removals such as denial of access to recess or field trips or shortened days.<sup>131</sup>
  - a. 34 C.F.R. Sec. 300.536 shall define "disciplinary removal" to be consistent with this provision.

---

<sup>130</sup> Cite to Judge Teske

<sup>131</sup> Powerpoint presentation, Watson Bowles, C., and Williams, J. Passive Aggressive Discipline: "Helping" Kids by Denying FAPE, 2009 Annual COPAA Conference Compendium, The Council of Parent Attorneys and Advocates, Inc., [www.copaa.org](http://www.copaa.org) (exact citation forthcoming).

2. Schools shall carefully consider all of the factors set forth in Section XX when considering exclusion from school as a discipline 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 shall be recorded in the child's educational file and shall be recorded in a central data base with key demographics, as defined in Data Section XX.
  - b. As referenced in Section 3.1a, students suspected of disabilities, but who have yet to be identified as having a disability, will receive increased intervention services, including a special education assessment.
  - c. Students with disabilities who are disciplined with a series of short term removals/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 in order to bring about a positive change in student behavior. Environmental supports, successful and unsuccessful, must be documented so that the student's program continues to be built around student needs.
  - d. A pattern of disciplinary removals totaling ten days in the same academic year constitutes a change of placement and triggers the manifestation determination requirement under 20 U.S.C. Sec. 1415 (k)(E):
    - 1) 34 CFR 300.536 (2) shall be amended to state "[t]he child has been subjected to a series of removals that constitute a pattern.. (ii) [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 excluding a child from school for disciplinary purposes.
3. When an exclusion triggers a manifestation determination under 20 U.S.C. Sec. 1415(k)(E), the parent and his or her child have a right to:
  - a. Legal counsel as a matter of right and at public expense (see Section 3.2.c.);
  - b. If any member of the IEP team raises concerns that an unidentified disability was the cause of the disciplinary removal, an Independent Educational Evaluation consistent with the requirements of 20 U.S.C. Sec. 1415 (b)(1), will be conducted after the manifestation determination, and considered by the IEP team at the student's new placement;

- c. A right to a review of all relevant information in the child's file including all of the child's education records, as well as new information provided to the IEP team by parents or other individuals;
  - d. Removal of the 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 school exclusion. The only exception to this is under an "emergency situation" as defined by section 3.1.b.H. (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>132</sup>

---

<sup>132</sup> 20 U.S.C. Sec. 1415 (k)(1)(D) states that 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" (emphasis added).

## CHAPTER 5: DATA COLLECTION, MONITORING & ACCOUNTABILITY

### Outline (full chapter forthcoming)

*The organizational idea for this outline is to build on the “rights based” analysis of the model code by framing the collection of data and accountability as part of a general right to know about the educational process – and a right to hold the schools and the government accountable with that knowledge.*

- 1) Background
  - a. Describes the critical need for robust and rigorous data collection, monitoring, accountability, in order for the recommendations in the previous chapters to be meaningful and long-lasting.
- 2) Right to Information
- 3) A List of Things
  - a. Lists public data that Parents, Youth, Communities, and Stakeholders have a right to know in order to take real ownership over their schools.
- 4) Specific Instructions to Federal/State/District Authorities for Collecting and Sharing that Data Effectively
  - a. Specifics of collecting the data that we claim a right to above
    - i. Included in this section would be points such as: standardizing definitions of “suspension” across district and state lines, ensuring common definitions of racial and ethnic identity, etc.
    - ii. This would also be the place where we try to lay out a wishlist for every piece of data that we can think of
  - b. Describe the details of a reporting mechanism/public database that would share this information in a consistent, comprehensive, and comprehensible way
    1. This includes laying out the need for tools to compare apples to apples across districts and states.
- 5) Monitoring
  - a. Discusses the institutional and political means to be established to analyze the data once it is collected and published.
    - i. Metrics and benchmarks for comparing schools
      1. Including parent and youth input
    - ii. Developing means for community analysis (oversight committees, citizen review boards, etc.)
    - iii. The use of inspectorates
- 6) Accountability
  - a. Discusses the institutional and political tools needed to translate the monitoring into action to correct and change the way youth are treated in school.
    - i. Creating private rights of action for parents and students.
    - ii. Empowering community oversight committees to recommend/demand changes from school administrators
    - iii. Linking personnel and school evaluation to the measurements of the treatment of youth in school
    - iv. Discussing Federal or State intervention where necessary.
      - a. Explore potential “collaborative approach.”