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# Developing Prevention-Oriented Discipline Codes of Conduct

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# Developing Prevention-Oriented Discipline Codes of Conduct

By Pamela A. Fenning, Ph.D., and Miranda B. Johnson, J.D., M.P.A. \*

## I. INTRODUCTION

For many years, significant concerns have been raised about the overuse of exclusionary discipline (e.g., suspensions and expulsions). Research has shown that out-of-school discipline is highly likely to be implemented for minor behaviors unrelated to school safety, such as tardies and truancy.<sup>1</sup> Even though exclusionary discipline practices are the most commonly cited discipline responses in written discipline codes of conduct, there is no evidence that exclusionary discipline either changes behavior or results in desired behaviors.<sup>2</sup> Ironically, there is strong evidence that suspension and expulsion may actually increase the very behaviors that they are intended to reduce, as suspension is associated with more, rather than less, future problem behaviors<sup>3</sup> and fails to teach students positive alternative behaviors.<sup>4</sup> Schools with higher rates of suspension have more negative indicators of school climate,<sup>5</sup> such as higher observed incidents of teachers yelling at students.<sup>6</sup> Moreover, reliance on coercive practices, including zero tolerance policies, which are rooted in adults with authority and power having social control over students, inadvertently results

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<sup>1</sup> DANIEL J. LOSEN & TIA ELENA MARTINEZ, CTR. FOR CIVIL RIGHTS REMEDIES, OUT OF SCHOOL AND OFF TRACK: THE OVERUSE OF SUSPENSIONS IN AMERICAN MIDDLE AND HIGH SCHOOLS 1 (2013).

<sup>2</sup> Conrad D. Farner, *Proactive Alternatives to School Suspension*, 5 RECLAIMING CHILD AND YOUTH: J. EMOTIONAL & BEHAV. PROBS. 47, 48 (1996); Pamela Fenning et al., *Call to Action: A Critical Need for Designing Alternatives to Suspension and Expulsion*, 11 J. SCH. VIOLENCE 105, 105-6 (2012).

<sup>3</sup> G.R. Mayer, *Preventing Antisocial Behavior in the Schools*, 28 J. APPLIED BEHAV. ANALYSIS 467, 472 (1995).

<sup>4</sup> Farner, *supra* note 2, at 48 (finding that a middle school's change in its discipline practices from a focus on punishment and suspensions to proactively teaching desired behaviors resulted in reductions in suspension and discipline problems across several years).

<sup>5</sup> *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOL. 852, 854 (2008), <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

<sup>6</sup> Christine Christle, et al., *School Characteristics Related to the Use of Suspension*, 27 EDUC. AND TREATMENT OF CHILD. 509, 522 (2004) (studying forty Kentucky middle schools).

in less safe educational environments marked by disrupted learning and mistrust.<sup>7</sup> Exclusionary discipline is also associated with school dropout and entry into the juvenile justice system<sup>8</sup> and is more likely to be applied to students with academic problems.<sup>9</sup> Removing already-at-risk students from their educational setting is counterproductive because they lose instructional time, become further behind academically, and become even more disconnected to school.<sup>10</sup>

The long-standing concerns about the inefficacy and overuse of exclusionary discipline practices are coupled with increased federal and national outcry about racial disproportionality in school discipline, specifically among African-American males and those in special education, consistently documented as early as 1975.<sup>11</sup> For example, a national longitudinal study showed that black boys were at a significantly higher risk of suspension than any other group, with two in three (67%) suspended at least once between kindergarten and twelfth grade, compared to approximately one in three (39%) white boys.<sup>12</sup> The study further showed that the racial gap in school suspensions is not explained by differences in serious misbehavior.<sup>13</sup> A national study of school discipline in elementary and middle schools found that black and Latino students were likely to be disciplined more severely than white students for the same infraction and that the disparities stemmed from discipline for less significant offenses such as tardiness, truancy, noncompliance, and general disruption.<sup>14</sup> In a qualitative study involving classroom observations at a Midwestern high school with a diverse student population, African-American and Latina students, who tended to be spokespersons for student concerns, were singled out for school exclusion due to the teacher's perception that classroom control was lost, rather than as a result of the offenses being more severe or violent than those engaged in by other students who were not

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<sup>7</sup> Pedro A. Noguera, *Preventing and Producing Violence: A Critical Analysis of Responses to School Violence*, 65 HARV. EDUC. REV. 189, 198 (1995).

<sup>8</sup> U.S. DEP'T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE ii (2014) [hereinafter U.S. DEP'T OF EDUC., GUIDING PRINCIPLES].

<sup>9</sup> Robert Balfanz et al., *High-Poverty Secondary Schools and the Juvenile Justice System: How Neither Helps the Other and How That Could Change*, NEW DIRECTIONS FOR YOUTH DEV.: DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE, Autumn 2003, at 9, 11.

<sup>10</sup> Fenning et al., *supra* note 2, at 106. See also Robert Balfanz et al., *Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the 9th Grade*, in CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION 17, 27-28 (Daniel Losen ed., 2015) (documenting the results from a statewide study in Florida that found that a single suspension in 9<sup>th</sup> grade was the triggering event for a certain group of students becoming more disengaged in school and eventually dropping out).

<sup>11</sup> LOSEN, *supra* note 1, at 27-28; Balfanz et al., *supra* note 9, at 26-28; CHILDREN'S DEFENSE FUND, SCHOOL SUSPENSIONS: ARE THEY HELPING CHILDREN? 3, 13 (1975); Russell J. Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 319 (2002) [hereinafter Skiba et al., *Color of Discipline*]; Russell J. Skiba, *Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85, 104 (2011) [hereinafter Skiba, *Race is Not Neutral*]; U.S. DEP'T OF EDUC., GUIDING PRINCIPLES, *supra* note 8, at i.

<sup>12</sup> Tracey Shollenberger, *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth*, in CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION 34 (Daniel Losen ed., 2015) [hereinafter Shollenberger, *Racial Disparities*].

<sup>13</sup> *Id.* at 40. See also TONY FABELO ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR. & PUB. POLICY RESEARCH INST., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 46 (2011) (finding, using a multivariate analysis, that black students in Texas were not more likely than white students to commit serious offenses).

<sup>14</sup> Skiba, *Race is Not Neutral*, *supra* note 11, at 102.

removed from class.<sup>15</sup> Because discipline tends to involve a subjective determination by school administrators, research suggests that implicit racial bias by teachers and administrators is a key contributing factor to disproportionality and that increased training in cultural competency for school staff is needed.<sup>16</sup>

Inextricably linked to the racial disparities in discipline, known as the “discipline gap,”<sup>17</sup> is the phenomenon of the “school-to-prison pipeline.”<sup>18</sup> The “school to prison pipeline” is a term used to describe the use of school practices that push youth, primarily students of color, out of school and into the juvenile justice and/or penal system.<sup>19</sup> Research has shown that there is a direct correlation between exclusionary discipline practices and an increased likelihood of subsequent arrest and incarceration.<sup>20</sup> In addition to the indirect impact of exclusionary discipline on arrest rates, schools are also making direct referrals of students to law enforcement, often by police officers stationed in the schools, referred to as “school resource officers.”<sup>21</sup> According to the most recent available data released by the U.S. Department of Education, approximately 260,000 students were referred to law enforcement and 92,000 students were subjected to school-related arrests in the 2011-12 school year; a disproportionate number of black students and students with disabilities were impacted by these practices.<sup>22</sup> Increased awareness of the scope and effect of these practices has sparked greater national, regional, and state interest in reforming exclusionary school discipline policies among researchers, educators, policymakers, legal and community advocates and organizers, juvenile justice professionals, families, community members, and students themselves.<sup>23</sup>

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<sup>15</sup> Frances Vavrus & Kim Marie Cole, *“I Didn’t Do Nothing”*: *The Discursive Construction of Suspension*, 34 URB. REV. 87, 109 (2002).

<sup>16</sup> CHERYL STAATS, KIRWIN INST., IMPLICIT RACIAL BIAS AND SCHOOL DISCIPLINE DISPARITIES: EXPLORING THE CONNECTION 7-10, 14 (2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf>.

<sup>17</sup> See DANIEL J. LOSEN ET AL., CTR. FOR CIVIL RIGHTS REMEDIES, ARE WE CLOSING THE SCHOOL DISCIPLINE GAP? (2015), [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap\\_FINAL221.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf) [hereinafter LOSEN ET AL.] (documenting racial and ethnic disparities in out-of-school school suspensions at the elementary and secondary levels).

<sup>18</sup> Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, NEW DIRECTIONS YOUTH DEV., Autumn 2003, at 9–15; ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 11 (2005).

<sup>19</sup> LOSEN ET AL., *supra* note 17, at 40; EMILY MORGAN ET AL., COUNCIL OF STATE GOV’TS JUSTICE CTR., THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM 11 (2014).

<sup>20</sup> Shollenberger, *supra* note 12, at 27–29 (“Students across the United States who are suspended from school are less likely than their nonsuspended peers to obtain a high school diploma and to obtain a bachelor’s degree by their late 20s, and are more likely to be arrested, arrested multiple times, and sentenced to confinement in a correctional facility.”).

<sup>21</sup> Erik Eckholm, *With Police in Schools, More Children in Court*, N.Y. TIMES (Apr. 12, 2013), [http://www.nytimes.com/2013/04/12/education/with-police-in-schools-more-children-in-court.html?\\_r=0](http://www.nytimes.com/2013/04/12/education/with-police-in-schools-more-children-in-court.html?_r=0); CATHERINE Y. KIM, DANIEL J. LOSEN & DAMON T. HEWITT, THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 113 (2010).

<sup>22</sup> U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, DATA SNAPSHOT: SCHOOL DISCIPLINE 1, 6-7 (Civil Rights Data Collection ed., Mar. 2014), <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

<sup>23</sup> See generally CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION (Daniel Losen ed., 2015) (compilation of research by various authors documenting the impact of exclusionary school discipline policies, offering evidence-based alternatives, and connecting the research to policy-level action steps); LOSEN ET AL.,

Recent federal guidance on school discipline reform<sup>24</sup> has helped to shift the focus from a decades-long documentation of discipline disparities and the overuse of exclusionary discipline to one of action steps and solutions to begin correcting the problems. In January 2014, the U.S. Department of Education (USDOE) and the Department of Justice (USDOJ) issued joint guidelines for addressing school discipline in a prevention-oriented way rather than by a traditional reliance on exclusionary discipline.<sup>25</sup> This first-ever federal guidance related to school discipline not only detailed the federal law prohibiting school districts from discriminating in the administration of school discipline,<sup>26</sup> but it also included a comprehensive package providing resources and information aimed at improving school climate and reducing the use of exclusionary school discipline.<sup>27</sup> Soon afterward, President Obama formed the “My Brother’s Keeper” Initiative, a task force whose mission and goals are to address disparities, including discipline disparities, and promote educational access and life opportunities among young men of color, the current results of which are chronicled in progress reports.<sup>28</sup>

Also in 2014, the Council of State Governments Justice Center, in collaboration with the USDOE and USDOJ, released a report featuring strategies for keeping students engaged in school and out of the juvenile justice system. The “School Discipline Consensus Report” was the culmination of an 18-month consensus-building initiative involving key stakeholders and experts in juvenile justice and education reform.<sup>29</sup> This report provides a comprehensive set of recommendations and practical guidance to reduce the use of exclusionary discipline and arrest in response to student behaviors at school.<sup>30</sup> One of the report’s recommendations is for school districts to incorporate prevention-oriented practices into their written school discipline policy, typically termed the “code of conduct,” with a focus on enhancing school climate and keeping students in school.<sup>31</sup> In addition, the report’s authors suggest that state laws be modified, if necessary, to provide a framework for school districts to develop effective prevention-driven codes of conduct.<sup>32</sup>

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*supra* note 17 (research report providing policy recommendations); MORGAN ET AL., *supra* note 19 (research report by the Council of State Governments Justice Center outlining alternatives to current school discipline practices based on consultations with numerous stakeholders, including educators and juvenile justice professionals); OFFICE OF THE PRESIDENT OF THE UNITED STATES, ECONOMIC COSTS OF YOUTH DISADVANTAGED AND HIGH-RETURN OPPORTUNITIES FOR CHANGE (2015) (federal report documenting barriers to success faced by disadvantaged youth and identifying key intervention points). *See also infra* note 33.

<sup>24</sup> U.S. Dep’t of Justice & U.S. Dep’t of Educ., Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014) [hereinafter U.S. Dep’t of Justice & U.S. Dep’t of Educ., Dear Colleague Letter]; U.S. DEP’T OF EDUC., GUIDING PRINCIPLES, *supra* note 8.

<sup>25</sup> Press Release, U.S. Dep’t of Educ. & U.S. Dep’t of Justice, U.S. Departments of Education and Justice Release School Discipline Guidance Package to Enhance School Climate and Improve School Discipline Policies/Practices (Jan. 8, 2014), <http://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package-enhance-school-climate-and-improve-school-discipline-policiespractices>.

<sup>26</sup> U.S. Dep’t of Justice & U.S. Dep’t of Educ., Dear Colleague Letter, *supra* note 24.

<sup>27</sup> U.S. DEP’T OF EDUC., GUIDING PRINCIPLES, *supra* note 8.

<sup>28</sup> *See MY BROTHER’S KEEPER’S TASK FORCE, ONE YEAR PROGRESS REPORT TO THE PRESIDENT* (Feb. 27, 2015) (documenting commitments by federal agencies, private sector institutions, and localities across the country to support the implementation of “cradle-to-career action plans” designed to improve the life outcomes for young people, especially boys and men of color).

<sup>29</sup> MORGAN ET AL., *supra* note 19, at 3, 5.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 71–72.

<sup>32</sup> *Id.* at 73–76.

As a result of and alongside these initiatives, states and school districts across the country have been grappling with how to operationalize federal guidance and respond to local community and grassroots pressure to reduce the use of exclusionary school discipline policies and practices.<sup>33</sup> For example, in the state of Illinois, there has been significant state and local advocacy for school district transparency regarding school discipline practices as well as for substantive changes to reduce the reliance on exclusionary discipline.<sup>34</sup> At the state level, the organization Voices of Youth in Chicago Education (VOYCE) spearheaded the formation of a collaboration called the Campaign for Common Sense Discipline.<sup>35</sup> This youth-led campaign resulted in two groundbreaking pieces of legislation recently signed into law in Illinois. In August 2014, Illinois enacted Public Act 98-1102, which requires the Illinois State Board of Education (ISBE)—the state education agency—to compile and publically release discipline data that includes out-of-school suspensions, expulsions and disciplinary removal to alternative settings in the aggregate and by specific subgroups, including race/ethnicity, gender, age, Limited English Proficiency, incident type and discipline duration.<sup>36</sup> Following this, in August 2015, Illinois enacted Public Act 99-0456, which is substantive school discipline reform legislation that takes effect on September

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<sup>33</sup> See, e.g., Rachel Anspach, *CPS Schools Move Away From Zero-Tolerance Discipline Policies*, GAPERS BLOCK, (Feb. 24, 2014), <http://gapersblock.com/mechanics/2014/02/24/on-tuesday-rahm-emanuel-and/> (describing discipline reforms in Chicago Public Schools); Evie Blad, *Discipline Debates Turn to Broad Terms Like 'Defiance,'* EDUC. WEEK (Sept. 23 2014) (documenting local and state initiatives in California to limit suspensions and expulsions for the infraction of willful defiance); Press Release, Maryland State Dep't of Educ., *Maryland State Board Of Education Accepts Guidelines For Student Code of Discipline* (July 23, 2014), [http://marylandpublicschools.org/press/07\\_23\\_2014.html](http://marylandpublicschools.org/press/07_23_2014.html); Anurima Bhargava et al., *The New Federal School Discipline Guidance: What It Means for State Boards of Education*, NAT'L ASS'N OF STATE BDS. OF EDUC. (May 24, 2014), <http://www.nasbe.org/webinar/the-new-federal-school-discipline-guidance-what-it-means-for-state-boards-of-education/> (describing initiatives to reform school discipline in Michigan and Georgia); Christina Wilkie, *Illinois Governor Signs Sweeping School Discipline Reform*, HUFFPOST POLITICS (Aug. 25, 2015), [http://www.huffingtonpost.com/entry/illinois-school-discipline-reform\\_55dcc9c0e4b0a40aa3ac8907](http://www.huffingtonpost.com/entry/illinois-school-discipline-reform_55dcc9c0e4b0a40aa3ac8907); Laura Moser, *School Discipline Is Racially Biased. That's Why Seattle Is Banning Some Suspensions*, SLATE (Sept. 28, 2015), [http://www.slate.com/blogs/schooled/2015/09/28/seattle\\_school\\_suspension\\_ban\\_cutting\\_down\\_on\\_racial\\_discrepancies\\_in\\_discipline.html](http://www.slate.com/blogs/schooled/2015/09/28/seattle_school_suspension_ban_cutting_down_on_racial_discrepancies_in_discipline.html); Beth Hawkins, *MPS' Suspension Ban for Youngest Students Part of Effort to Reduce Glaring Racial Disparities in Discipline*, MINNPOST (Sept. 5, 2014), <https://www.minnpost.com/learning-curve/2014/09/mps-suspension-ban-youngest-students-part-effort-reduce-glaring-racial-dispar> (describing the moratorium on suspensions of younger students in Minneapolis Public Schools for nonviolent offenses).

<sup>34</sup> Sarah Karp, *More Transparency on Suspensions and Expulsions but Racial Disparity Lingers*, CATALYST CHICAGO (Jan. 8, 2014), <http://catalyst-chicago.org/2014/01/more-transparency-suspensions-and-expulsions-racial-disparity-lingers/>; Chicago Student Safety Act, *About*, <http://chistudentsafetyact.com/> (last visited Nov. 17, 2015) (documenting community advocacy for Chicago Public Schools to publicly release data on school discipline and school-based arrests); Ted Cox, *CPS Discipline Racially Biased, Says Student Group*, DNAINFO (Mar. 24, 2014) <http://www.dnainfo.com/chicago/20140324/loop/cps-discipline-racially-biased-says-student-group>; *Bill to End the School-To-Prison Pipeline Passes IL General Assembly! Awaits Governor's Signature!*, COMMUNITIES UNITED, <http://communitiesunited.org/voyce-and-apnc-students-win-major-legislative-victory-address-exclusionary-discipline-schools> (last visited Nov. 17, 2015) (describing two-year campaign for discipline reform led by Voices for Youth in Chicago Education (VOYCE) and their allies).

<sup>35</sup> *Campaign for Common Sense Discipline*, VOICES FOR YOUTH IN CHICAGO EDUCATION (VOYCE), <http://voyceproject.org/campaigns/campaign-common-sense-discipline/> (last visited Mar. 8, 2016) [hereinafter VOYCE].

<sup>36</sup> Act effective Aug. 26, 2014, Pub. Act 98-1102 (codified at 105 ILL. COMP. STAT. ANN. 5/2-3.162 and as amended at 105 ILL. COMP. STAT. ANN. 5/27A-5(g)(10) (West 2015)).

15, 2016.<sup>37</sup> This legislation will require school districts to make significant changes to the content of their discipline policies to further align with prevention-oriented practices and to justify the use of suspension and expulsion.<sup>38</sup>

Discipline codes of conduct, as they currently stand, would need to undergo substantial revisions to align with the practices presented in the federal documents and with the new changes in Illinois law.<sup>39</sup> Content analysis of written codes of conduct reveal that written discipline policies primarily contain punitive disciplinary options that focus on suspension and expulsion, with few written references to more proactive measures, such as restorative practices, or to direct teaching of expected behaviors, even for minor behaviors unrelated to school safety such as tardiness and truancy.<sup>40</sup> This approach stands in stark contrast to the requirements of the new Illinois law, which mandates that school districts limit the use of suspension and expulsion “to the greatest extent practicable”<sup>41</sup> and that they exhaust “appropriate and available behavioral and disciplinary interventions” before imposing out-of-school suspensions of more than three days, expulsions, and disciplinary transfers to alternative schools.<sup>42</sup> These legislative limits on exclusionary discipline dovetail with the USDOE and USDOJ guidance letter on discipline that commends schools that utilize non-punitive strategies to address student behaviors, such as “conflict resolution, restorative practices, counseling, and structured systems of positive interventions.”<sup>43</sup> Within the state of Illinois and across the nation, there remains a significant need for more tools to enable districts to comply with recent legislative mandates and federal guidance, as well as to achieve the broader objective of engaging in effective discipline and educational practices to proactively prevent and respond to student misbehavior in schools. Further, tools that are effective to enable all students to be successful, including those traditionally marginalized and excluded through disciplinary practices, are paramount.

This Article will focus on describing a multi-agency collaborative and interdisciplinary effort within the state of Illinois involving attorneys, advocates, and school psychologists to develop a “Model Student Code of Conduct.” The intent of the model code project is to provide schools and school districts with a best practice document that can be used as a reference to align with the recent discipline legislation passed within the state.<sup>44</sup> The collaborative, known as the Transforming School Discipline Collaborative (TSDC), developed a training program for school administrators, which focuses on implementation of the model code and compliance with the state legislation. The aim of the model code and the training program is to support districts in implementing appropriate and research-based alternatives to exclusionary school discipline policies. This professional development project is guided by the current efforts of national groups

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<sup>37</sup> Act effective Sept. 15, 2016, Pub. Act 99-0456 (2015) (to be codified as amended in scattered sections of 105 ILL. COMP. STAT. ANN. 5/). For clarity, references to specific sections of this act will be to the amended version of the statute.

<sup>38</sup> See *id.*

<sup>39</sup> Compare Fenning et al., *supra* note 2, with U.S. DEP'T OF EDUC., GUIDING PRINCIPLES, *supra* note 8, and Pub. Act 99-0456 (complying with the limitations on the use of out-of-school discipline that are suggested by the federal guidelines and required by this new Illinois law will require a shift away from the punitive responses to student behaviors typically found in student codes of conduct toward a focus on available interventions and supports).

<sup>40</sup> Fenning et al., *supra* note 2, at 111–12.

<sup>41</sup> 105 ILL. COMP. STAT. ANN. 5/10-22.6(b-5) (West 2015).

<sup>42</sup> *Id.* at 5/10-22.6(b-20). There are limited exceptions to this provision for offenses involving weapons and internet threats. See *id.* 5/10-22.6(b-20), (d), & (d-5).

<sup>43</sup> U.S. Dep't of Justice & U.S. Dep't of Educ., Dear Colleague Letter, *supra* note 24, at 1.

<sup>44</sup> See 105 ILL. COMP. STAT. ANN. 5/2-3.162 (West 2015); Pub. Act 99-0456.

such as the Dignity in Schools Campaign,<sup>45</sup> the Council of State Governments Justice Center,<sup>46</sup> and other state and local groups engaged in discipline policy work, with adaptations to the local practices and context.

In this Article, we highlight the major components of the state-level model code of conduct under development. The code builds upon and integrates research-based and prevention-oriented strategies for addressing students' academic and behavioral needs in a manner intended to reduce the need for disciplinary referrals.<sup>47</sup> The code also highlights best practices with respect to due process protections for students, procedures following suspension and expulsion, and procedural protections for students with disabilities.<sup>48</sup> It is intended to serve as a reference for schools and districts in order to comply with the recently passed legislation.<sup>49</sup> The collaborative work described in this Article is highlighted as an example of the types of contributions that attorneys, professors, school administrators and school psychologists can bring to a state-level task of this nature. In the appendices we provide some examples of this work together with guiding questions that cross-disciplinary teams who are forming similar discipline reform initiatives can use to model their initial efforts and goal setting in the arduous task of modifying discipline practices at the state and local level.

## II. OVERVIEW OF CROSS-DISCIPLINARY COLLABORATION

During stakeholder dialogues convened by youth advocates and partner organizations in early 2014 to discuss statewide school discipline reform, part of the conversation centered on the lack of coherent school district policies related to discipline throughout the state of Illinois. There are over 800 school districts in Illinois,<sup>50</sup> and each has its own code of conduct. While some school districts, like Chicago Public Schools, have already revised their codes of conduct to become less punitive,<sup>51</sup> many school district and charter school codes contain remnants of the zero tolerance policies that have long been seen as contributing to the significant disparities in discipline and overuse of ineffective exclusionary practices.<sup>52</sup> A number of organizations and institutions discussed pooling their expertise and building upon the national-level efforts to develop a model code of conduct for Illinois, with the goals of seeking endorsement for the code from the state-level education agency and using the code as a training tool for districts to incorporate best practices.

A working group was convened that included attorneys, school psychologists, policy advocates and community organizers. After solidifying its goals and objectives, the group decided

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<sup>45</sup> DIGNITY IN SCHOOLS CAMPAIGN, A MODEL CODE ON EDUCATION AND DIGNITY: PRESENTING A HUMAN RIGHTS FRAMEWORK FOR SCHOOLS (2012), <http://www.dignityinschools.org/our-work/model-school-code> (proposing recommended policy language to implement alternatives to exclusionary school discipline).

<sup>46</sup> MORGAN ET AL., *supra* note 19.

<sup>47</sup> Transforming School Discipline Collaborative, *Model Student Code of Conduct* (forthcoming Spring 2016) (manuscript at 9–23) (on file with authors) [hereinafter *Model Code of Conduct*].

<sup>48</sup> *Id.* at 13–20.

<sup>49</sup> *Id.* at unnumbered cover letter.

<sup>50</sup> ILL. STATE BD. OF EDUC. ILL. REP. CARD 2014-2015, (2015), <http://illinoisreportcard.com/State.aspx>.

<sup>51</sup> Sarah Karp, *Student Code of Conduct Set to Change as District Aims to Curb Discipline*, CATALYST CHICAGO (June 13, 2014), <http://catalyst-chicago.org/2014/06/student-code-conduct-set-change-district-aims-curb-discipline/>.

<sup>52</sup> Am. Psychol. Ass'n Task Force on Zero Tolerance Policies, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOL., 852, 854, 856 (2008) [hereinafter APA Task Force]; Skiba et al., *The Color of Discipline*, *supra* note 11, at 318.



to formalize its structure and to call itself the Transforming School Discipline Collaborative (“TSDC”).<sup>53</sup> TSDC’s work is guided by a steering committee that includes individuals with expertise and backgrounds in school discipline; bullying; behavioral intervention and supports; racial justice; the rights and needs of lesbian, gay, bisexual, transgender and questioning students; and special education law. The steering committee members include representatives of non-profit organizations as well as university faculty, including law school and school of education faculty. Many of TSDC’s members had previously collaborated as part of a Chicago-based School Discipline Working Group, which was formed initially by attorneys and advocates who represent youth in school discipline proceedings and then expanded to include a broader cross-section of attorneys and other professionals with an interest in school discipline reform. Members of TSDC united around the following overarching principles: (1) transforming school disciplinary practices requires effectuating a positive school climate; (2) disciplinary responses should be prevention-oriented and should be based on academic and behavioral supports for students; (3) school discipline should be instructional and corrective; and (4) out-of-school discipline is counterproductive and should be limited to the extent possible.<sup>54</sup>

TSDC began the process of drafting a model code in 2014 and subsequently revised the document to align with the two pieces of discipline reform legislation that were subsequently adopted in Illinois. Draft versions of the document were circulated to relevant stakeholders for feedback, including youth, school administrators, school psychologists, attorneys, and other professionals in the field of education.<sup>55</sup> The draft document was also presented in seminars and conferences to a variety of audiences prior to finalization.<sup>56</sup> The model code was revised based on the comments and feedback received and, as of March 2016, it is in close to final form.<sup>57</sup> The goal of the group is to release the document in April 2016 so that it can be used as a training tool and resource for school districts as they revise their disciplinary policies and codes of conduct to align

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<sup>53</sup> Presentation, Miranda Johnson & Candace Moore, Illinois Discipline Reform and a Model Code of Conduct, Prevent School Violence Illinois Workshop: Beyond the Personnel Handbook: A Workshop on Key School Policies for School Climate Transformation (Jan. 13, 2016) (unpublished PowerPoint slides) (on file with author).

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Model Code of Conduct*, *supra* note 47.

<sup>56</sup> *See e.g.*, Pamela Fenning & Miranda Johnson, Developing Prevention-Oriented Discipline Codes of Conduct, 2015 Education Law Association Annual Conference (Nov. 5, 2015) (unpublished PowerPoint slides) (on file with author); Pamela Fenning & Miranda Johnson, Changing the Landscape of Discipline: Illinois’ New Discipline Reform Law and Prevention-Oriented Approaches to Student Misbehavior, DuPage County Bar Association School Law MCLE (Jan. 7, 2016) (unpublished PowerPoint slides) (on file with author); Johnson & Moore, *supra* note 53; Pamela Fenning et al., Illinois’ New Discipline Reform Laws: What School Psychologists MUST Know, Illinois School Psychologists Association Spring Convention (Jan. 28, 2016) (unpublished PowerPoint slides) (on file with author); Miranda Johnson, School Discipline From A-Z, Chicago Bar Association/Young Lawyers Section Education Law Committee Seminar (Mar. 2, 2016) (unpublished PowerPoint slides) (on file with author); Margie Wakelin & Candace Moore, Illinois Law on School Discipline and a Model Code of Conduct, North Cook Intermediate Service Center Administrators’ Academy, School Discipline Reform: Strategies for Systemic Change (Mar. 14, 2016) (unpublished PowerPoint slides) (on file with author).

<sup>57</sup> Transforming School Discipline Collaborative, TSDC Meeting (Mar. 29, 2016) (unpublished notes) (on file with author).

with the new Illinois discipline legislation.<sup>58</sup> Upon completion, the model code will be published on the Illinois State Board of Education's website as a resource for school districts.<sup>59</sup>

### III. STATE DISCIPLINE LEGISLATION

As described above, Illinois passed two new laws relating to discipline in the past year and a half.<sup>60</sup> Both were originally part of the same legislation, initially introduced in the spring 2014 legislative session as the Safety and Equity in Education Act,<sup>61</sup> but were ultimately passed as two separate pieces of legislation. The first legislation passed was Public Act 98-1102, which became effective in August 2014.<sup>62</sup> This legislation requires the Illinois State Board of Education to annually report, starting in October 2015, discipline data from all school districts in the state.<sup>63</sup> This report is to include data from all publicly funded schools within the district, including district-authorized charter schools.<sup>64</sup> The data must include: "issuance of out-of-school suspensions, expulsions, and removals to alternative settings in lieu of another disciplinary action, disaggregated by race and ethnicity, gender, age, grade level, limited English proficiency, incident type, and discipline duration."<sup>65</sup> Based on these data, ISBE is required to annually determine the top twenty percent of districts in each of the following areas: (1) issuance of out-of-school suspensions, as determined by the total number of out-of-school suspensions issued as a percentage of total district enrollment; (2) issuance of out-of-school expulsions, as determined by the total number of out-of-school expulsions issued as a percentage of total district enrollment; and (3) racial disproportionality, which is calculated using the same method as the USDOE's Office for Civil Rights.<sup>66</sup>

This legislation goes beyond many state and local laws requiring the release of discipline data because it also calls for the development of corrective action plans by those districts with high levels of reliance on exclusionary school discipline or racial disproportionality, or both.<sup>67</sup> Starting with the 2017-18 school year, school districts that are in the top twenty percent for any one of the three areas discussed above for the previous three consecutive years must develop a corrective action plan to remedy the identified deficiencies, obtain school board approval for the plan, and post the plan on the district's website.<sup>68</sup> Within a year after being identified, districts must also

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<sup>58</sup> *Id.*; Transforming School Discipline Collaborative, Update on Model Code Status and Distribution (unpublished notes from Feb. 17, 2016 meeting) (on file with author).

<sup>59</sup> Email from Rupa Ramadurai, Asst. Gen. Counsel, Illinois State Bd. of Educ. to Miranda Johnson, Assoc. Dir., Educ. Law & Policy Inst. at Loyola Univ. Chicago Sch. of Law (Mar. 30, 2016) (on file with author).

<sup>60</sup> Act effective Aug. 26, 2014, Pub. Act 98-1102 (codified at 105 ILL. COMP. STAT. ANN. 5/2-3.162 and as amended at 105 ILL. COMP. STAT. ANN. 5/27A-5(g)(10) (West 2015)); Act effective Sept. 15, 2016, Pub. Act 99-0456 (2015) (to be codified as amended in scattered sections of 105 ILL. COMP. STAT. ANN. 5/). For clarity, references to specific sections of this act will be to the amended version of the statute.

<sup>61</sup> VOYCE, *supra* note 35.

<sup>62</sup> Pub. Act 98-1102 (2014).

<sup>63</sup> 105 ILL. COMP. STAT. ANN. 5/2-3.162(a)(West 2015).

<sup>64</sup> *Id.* at 5/2-3.162(a) & 5/27A-5(g)(10).

<sup>65</sup> *Id.* at 5/2-3.162(a).

<sup>66</sup> *Id.* at 5/2-3.162(b).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

present a progress report to ISBE on their progress in implementing disciplinary reforms and the results obtained.<sup>69</sup>

In addition to the requirement to comply with these new provisions related to the release of school discipline data, all public schools and districts in Illinois, including charter schools, will need to comply with the new substantive discipline requirements in Public Act 99-0456.<sup>70</sup> Public Act 99-0456, the second of the two pieces of legislation, was passed in August 2015 and becomes effective on September 15, 2016,<sup>71</sup> giving school districts approximately one calendar year to become compliant. This legislation requires that school officials “limit the number and duration of expulsions and suspensions to the greatest extent practicable.”<sup>72</sup> In addition, the act places new requirements on the use of suspensions, mandating that districts can only issue out-of-school suspensions to students for three days or less if they “pose a threat to school safety or a disruption to other students' learning opportunities.”<sup>73</sup> In most circumstances, in order to impose suspensions of more than three days, expulsions, or transfers to alternative school settings, districts must show both that (1) “other appropriate and available behavioral and disciplinary interventions have been exhausted” and (2) “the student's continuing presence in school would either (a) pose a threat to the safety of other students, staff, or members of the school community or (b) substantially disrupt, impede, or interfere with the operation of the school.”<sup>74</sup> When a parent or guardian has requested that a school or district review an out-of-school suspension, the school board—if it chooses to uphold the suspension—must detail the specific act resulting in the decision to suspend and justify the length of the suspension.<sup>75</sup> For expulsions, schools and districts are required to justify both the specific length of the expulsion as well as the “specific reasons why removing the pupil from the learning environment is in the best interest of the school.”<sup>76</sup> In addition to these mandates, the act also recommends that school officials use suspensions and expulsions “only for legitimate educational purposes” and that they “consider forms of non-exclusionary discipline prior to using out-of-school suspensions or expulsions.”<sup>77</sup>

The statute also reforms Illinois law relating to school discipline in a number of other significant ways. The law expressly prohibits zero-tolerance policies (unless otherwise required by federal law or the school code),<sup>78</sup> the imposition of fines or fees as disciplinary consequences,<sup>79</sup> and counseling students to drop out for behavioral or academic reasons.<sup>80</sup> It requires that districts provide appropriate and available support services to students serving out-of-school suspensions of more than four days and that they facilitate a process to promote the reengagement of students returning from out-of-school suspensions, expulsions and alternative schools.<sup>81</sup> The act mandates that districts make “reasonable efforts” to provide ongoing professional development to their administrators, board members, teachers and school staff in a number of areas related to school

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<sup>69</sup> *Id.*

<sup>70</sup> Pub. Act 99-0456 (2015).

<sup>71</sup> *Id.*

<sup>72</sup> 105 ILL. COMP. STAT. ANN. 10-22.6(b-5)(West 2016).

<sup>73</sup> *Id.* at 5/10-22.6(b-15).

<sup>74</sup> *Id.* at 5/10-22.6(b-20).

<sup>75</sup> *Id.* at 5/10-22.6(b).

<sup>76</sup> *Id.* at 5/10-22.6(a).

<sup>77</sup> *Id.* at 5/10-22.6(b-5).

<sup>78</sup> *Id.* at 5/10-22.6(b-10).

<sup>79</sup> *Id.* at 5/10-22.6(i).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 5/10-22.6(b-25).

discipline, including culturally-responsive discipline and developmentally-appropriate disciplinary methods aimed at promoting a positive school climate.<sup>82</sup> It also recommends that school districts enter into memoranda of understanding with local law enforcement officials that define the role of law enforcement in the schools.<sup>83</sup> Read in totality, this law requires a sea change in a school district's approach to school discipline, and implementing these new requirements will require a fundamental shift, both in terms of school districts' policies and their practices.

#### IV. TSDC'S MODEL STUDENT CODE OF CONDUCT AND ACCOMPANYING RESOURCES

The current vision of the model student code of conduct includes the following major components: (A) a background statement to the guiding principles and background of the work; (B) a checklist for school district compliance with the new legislation in Illinois; (C) the model code; and (D) an administrators' toolkit to guide implementation of the model code. Each of these components will be addressed in turn below.

##### A. Background Statement to the Code

As TSDC worked on developing a model code, we decided that it would be helpful to draft a short prefatory statement contextualizing the model code's background, both to help explain to others the orientation behind the document as well as to help ensure that the members of the model code working group ourselves were in agreement as to the core values of the project. The background statement emphasizes the group's common concern about both the scope and effect of exclusionary discipline policies in Illinois, as well as the disproportionate impact of these policies on African-American students; lesbian, gay, bisexual and transgender (LGB/T) students; and students with disabilities.<sup>84</sup> The statement also summarizes the key provisions of the Illinois school discipline data and substantive school discipline reform legislation discussed above, and explains that the model code is intended to help school districts comply with both the legislation as well as best practice.<sup>85</sup>

##### B. Checklist for Compliance with School Discipline Mandates

TSDC also grappled with the question of whether the model code should be intended only to be a model policy for compliance with the new discipline laws in Illinois, or whether it should go further to encompass best practices that might be more protective than the new legislation.

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<sup>82</sup> *Id.* at 5/10-22.6(c-5).

<sup>83</sup> *Id.* at 5/10-20.14(b).

<sup>84</sup> *Model Code of Conduct*, *supra* note 47 (manuscript at unnumbered cover letter) (citing U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, DATA SNAPSHOT: SCHOOL DISCIPLINE (Mar. 2014) (documenting the disproportionate numbers of black students who are suspended and expelled, and the disproportionate numbers of students with disabilities who are arrested or referred to law enforcement for school-based incidents); V. Paul Poteat et al., *Sexual Orientation-Based Disparities in School and Juvenile Justice Discipline: A Multiple Group Comparison of Contributing Factors*, 108 J. EDUC. PSYCHOL. 229, 239 (2016) (finding disproportionate punishment of non-heterosexual adolescents by schools); Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49, 49-57 (2011) (finding disproportionate punishment of non-heterosexual adolescents by schools). Like in the model code, the acronym LGB/T is used in this Article to represent a wide range of non-norming sexual and gender identities and expressions. See *Model Code of Conduct*, *supra* note 47 (manuscript at unnumbered cover letter n.6).

<sup>85</sup> *Model Code of Conduct*, *supra* note 47 (manuscript at unnumbered cover letter).

Ultimately, we determined that the model code, as a “model,” should go beyond the new legislation and, when appropriate, take into consideration best practice to reduce the use of exclusionary discipline.<sup>86</sup> We also decided to draft a separate document in the form of a self-assessment checklist that would enable school districts to determine whether their policies were in compliance with the new law and to identify areas they needed to change, even if they did not ultimately decide to adopt the model code or adopted only portions of it.<sup>87</sup>

### C. Model Code

The following is a summary of the key components of TSDC's model code:

1. *Discipline Philosophy*: The district or school's discipline philosophy should be developed in coordination with all stakeholders, including students, parents, guardians, families, district and school staff, school board members, and community members.<sup>88</sup> Discipline in schools should not be used as punishment but instead be used as an opportunity for support, learning, growth and community building.<sup>89</sup> Schools and districts should utilize and harmonize evidence-based, school-wide preventive and positive discipline policies, which include an emphasis on creating a positive and inclusive school climate.
2. *Rights and Responsibilities*: The code of conduct should identify the rights and responsibilities of students; parents; teachers, principals and school staff; district administrators; and community-based/local organizations. The development and identification of the rights and responsibilities for each stakeholder should be a collaborative process that should involve parents and students, particularly those not typically in school meetings or whose voices have historically not been included in school processes.<sup>90</sup> The code provides a sample rights and responsibilities section drawn from, in large part, a document developed by AASA, the School Superintendent's Association, and the Children's Defense Fund.<sup>91</sup>
3. *Participation and Collaboration*: The district or school should develop and revise its code of conduct in a collaborative manner that encourages input and feedback from all community stakeholders. The collaborative stakeholder process described in the model code complies with legislative mandates for a parent-teacher advisory committee to work with the school board in developing policies on discipline, bullying, and student search.<sup>92</sup>
4. *Prevention, Intervention and Disciplinary Responses*: The district or school should take a positive approach to school discipline that provides early and differentiated

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<sup>86</sup> *Id.*

<sup>87</sup> Transforming School Discipline Collaborative, Public Act 99-0456 Self-Assessment Checklist (as of January 2016) (unpublished materials) (on file with authors).

<sup>88</sup> *Model Code of Conduct*, *supra* note 47, at 1.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 2–3.

<sup>91</sup> *Id.* at 2–3 & n.6 (citing SCH. SUPERINTENDENT'S ASS'N & CHILDREN'S DEF. FUND, FRAMEWORK FOR REVISING SCHOOL DISTRICT CODES OF STUDENT CONDUCT 1–2 (Sept. 2014), [http://www.aasa.org/uploadedFiles/Childrens\\_Programs/Code%20of%20Conduct\\_9.16.14.pdf](http://www.aasa.org/uploadedFiles/Childrens_Programs/Code%20of%20Conduct_9.16.14.pdf)).

<sup>92</sup> *Id.* at 4–6 (citing 105 ILL. COMP. STAT. ANN. 5/10-20.14 (West 2016)).

academic, behavioral and social-emotional interventions for students.<sup>93</sup> School staff should redirect students to correct inappropriate behavior and minimize the possibility of escalating behavior.<sup>94</sup> In recognition of the importance of a safe and civil school environment, the district or school should have a robust bullying prevention policy that focuses on teaching instead of punishment and provides means for students to repair and restore relationships.<sup>95</sup> This section provides a sample of the supports and services districts or schools may offer to address school discipline and/or bullying situations, such as referrals to school-based mental health professional or others in the community, classroom-based interventions, academic interventions, community service, intervention-related teams that assess student behavior and develop individualized solutions, and processes for resolution such as mediation or restorative practices.<sup>96</sup>

This section also provides a suggested approach to school discipline and the investigative process based on the premise that out-of-school suspensions and expulsions should be used only as a last resort and for legitimate educational purposes.<sup>97</sup> The code provides a proposed process for responding to behavioral incidents at school that emphasizes the investigation and intervention process that should be followed prior to any decision to impose exclusionary discipline (*see* Appendix A). This approach provides a roadmap for how school officials can consider non-exclusionary discipline prior to using out-of-school suspensions or expulsions.<sup>98</sup> The code also includes a checklist, which should be used to guide the determination of when exclusionary school discipline is not appropriate, and when other forms of intervention and support should be attempted first (*see* Appendix B). The purpose of the checklist is to support school officials to make equitable and consistent disciplinary decisions.<sup>99</sup>

5. *Due Process Procedures:* The district or school should implement fair, equitable, and transparent due process procedures designed to give the student and the parent/guardian a full and meaningful opportunity to be heard.<sup>100</sup> The district or school should follow clear and transparent procedures for notifying parents/guardians about a suspension or expulsion, including their right to a hearing.<sup>101</sup>
6. *Procedures Following Suspension and Expulsion:* The district or school should provide alternative educational options during suspension and expulsion.<sup>102</sup> A reengagement plan should be developed following suspensions greater than four days, cumulatively or consecutively.<sup>103</sup> The goal of the reengagement planning process should be to consider ways to prevent the behavior from reoccurring, forms of restorative action,

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<sup>93</sup> *Id.* at 2–3.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 10.

<sup>96</sup> *Id.* at 3.

<sup>97</sup> *Id.* at 9.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 13–14.

<sup>100</sup> *Id.* at 19.

<sup>101</sup> *Id.* at 19–23.

<sup>102</sup> *Id.* at 23–24.

<sup>103</sup> *Id.* at 25.

- and supportive interventions to enable the student to remain engaged and on track to graduate.<sup>104</sup>
7. *Procedural Guidelines for the Discipline of Students with Disabilities*: The district or school should provide protections for the rights of students with disabilities in discipline that are consistent with federal (e.g., Individuals with Disabilities Education Act<sup>105</sup> and Section 504 of the Rehabilitation Act<sup>106</sup>) and state mandates as well as best practices relating to Manifestation Determination Reviews (MDRs) and development of Functional Behavioral Assessments (FBAs) and Behavioral Intervention Plans (BIPs).<sup>107</sup>
  8. *Professional Development*: Districts and schools should create a professional development plan to ensure that all district and school staff have the tools, skills and support to effectively carry out the disciplinary responses proposed in the model code. In particular, districts and schools should ensure that teachers, classroom staff and other staff who may be involved in situations resulting in school discipline (including bus drivers, cafeteria staff and security officials) receive training in “youth development, the impact of trauma, implicit bias, positive behavior interventions, de-escalation techniques, and restorative practices.”<sup>108</sup> Districts and schools shall also make reasonable efforts to provide ongoing professional development to teachers, administrators, staff, school board members, and school resource officers in topics that include the adverse impact of school exclusion and involvement in the criminal and juvenile justice system, strategies for effective classroom management, and culturally responsive discipline.<sup>109</sup>
  9. *Data Collection and Monitoring*: The district or school should regularly collect, analyze and publish data on suspensions (e.g., in-school and out-of-school) and expulsions to inform school-based problem solving efforts. Data should be disaggregated by race/ethnicity, as well as by gender, age, limited English proficiency, free lunch eligibility, special education status, incident type, discipline duration and other characteristics viewed important for the particular school context. Data should be tracked to monitor discipline equity and use of exclusionary discipline and to inform discipline practices and code revisions.<sup>110</sup> Reliable and valid data complies with Illinois Public Act 98-1102 and also helps to facilitate systems that identify and understand existing disciplinary concerns, thereby informing and creating action steps for addressing the issues.

The code incorporates the use of graphics, illustrations, and charts to help guide administrator decision-making. In addition to providing suggested language that could be directly inserted in a

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<sup>104</sup> *Id.*

<sup>105</sup> 20 U.S.C. § 1400 (2012).

<sup>106</sup> 29 U.S.C. § 701 (2012).

<sup>107</sup> *Model Code of Conduct*, *supra* note 47, at 25–27.

<sup>108</sup> *Id.* at 27–28.

<sup>109</sup> *Id.* at 28 (citing 105 ILL. COMP. STAT. ANN. 5/10-22.6(c-5) (as amended) and quoting U.S. DEP'T OF EDUC., GUIDING PRINCIPLES, *supra* note 8, at 16–17 (“Where appropriate, schools may choose to explore using culture competence training to enhance staff awareness of their implicit or unconscious biases and the harms associated with using or failing to counter racial and ethnic stereotypes.”)).

<sup>110</sup> *Id.* at 29.

code of conduct and student handbook, the code also provides explanatory boxes at the beginning of each section.<sup>111</sup> Excerpts from the draft code are provided in Appendices A and B, which are drawn from the “Prevention, Intervention and Disciplinary Responses” section of the model code described above. Appendix A provides a suggested approach to the investigative process of a disciplinary matter that emphasizes the need to thoroughly consider intervention and referral options prior to referral for disciplinary action. Appendix B provides a disciplinary checklist intended to guide administrator decision-making following an incident that might involve disciplinary action, as well as the explanatory box that precedes the model language.

#### *D. Administrators’ Toolkit*

In addition to providing schools and districts with the policy-level tools to implement a prevention-oriented approach to school discipline, TSDC aims to equip administrators with tools and resources to be able to effectively implement these approaches. As part of the professional development training described below, TSDC intends to provide a “toolkit” for school administrators to take back to their schools in their problem solving and action planning efforts. The toolkit will contain contemporary articles and resources that will facilitate school administrators and their designees in their efforts to stay current and compliant with recommended and mandated discipline reforms at the local, state and national level. As part of the toolkit, the group is working on developing an overview document for each of the identified areas below that will provide: (1) background to the research on the topic at issue; (2) suggested strategies and approaches that represent research-based best practices; and (3) additional resources and tools. +

*Academic and Behavioral Needs Framework:* The district’s responses to discipline should be guided by Multi-Tiered Systems of Support (MTSS). MTSS is a systematic problem-solving process that schools use to determine how to support students’ academic, behavioral and social-emotional needs along a tiered continuum.<sup>112</sup> Tier 1 of the continuum is focused on evidence-based instruction and practices at the universal level, meaning that they are aimed at all students; tier 2 of the continuum is aimed at providing, as necessary, additional supplemental instruction and intervention at the secondary level, meaning for those students who need more support; and tier 3 describes interventions targeted toward the tertiary level, which refers to the limited subset of students with the most intensive needs.<sup>113</sup> Districts and schools use data on student outcomes to evaluate the results of the approach and students’ needs, and move students across tiers of support based on how they are doing and whether less or more support is needed.<sup>114</sup>

By aligning their disciplinary approach with MTSS, districts and schools should integrate their academic, behavioral and social-emotional services along a continuum to support students who may end up in the discipline office and those who are at risk for suspension and expulsion (see Appendix C for examples). This may include a threat assessment process,<sup>115</sup> and collaboration with school personnel who have behavioral, academic and mental health expertise (e.g., school social worker, school psychologist, or school counselor) as part of a schoolwide behavior support

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<sup>111</sup> *Id.* at Table of Contents.

<sup>112</sup> MATTHEW BURNS & KIMBERLY GIBBONS, IMPLEMENTING RESPONSE-TO-INTERVENTION IN ELEMENTARY AND SECONDARY SCHOOLS: PROCEDURES TO ASSURE SCIENTIFIC-BASED PRACTICE 138 (2d ed. 2012).

<sup>113</sup> *Id.*

<sup>114</sup> RACHEL BROWN ET AL., ACADEMIC ASSESSMENT AND INTERVENTION: RESPONSIVE ASSESSMENT AND INSTRUCTION PRACTICES 161-78 (Steven G. Little & Angeleque Akin-Little eds., 2014).

<sup>115</sup> See Dewey Cornell et al., *A Retrospective Study of School Safety Conditions in High Schools Using the Virginia Threat Assessment Guidelines Versus Alternative Approaches*, 24 SCH. PSYCHOL. QUARTERLY 119–29 (2009).



teaming process. The schoolwide team should be responsible for delivering, evaluating, and monitoring a prevention-oriented system-wide discipline system. The discipline system should be instructional rather than punitive in nature and focus on prevention of undesirable behaviors and addressing behaviors through instruction in a tiered fashion. The tiered fashion is organized by what is delivered to all students in the building (tier 1), followed by provision of additional behavioral supports and interventions for groups of students (tier 2) and individual students with the most intensive needs (tier 3) ascribed within models such as Schoolwide Positive Behavior Support (SWPBS),<sup>116</sup> with documented effects in reducing discipline referrals, unwanted suspensions and successfully teaching students desirable behaviors.

*Disproportionality and Implicit Bias:* The toolkit aims to bring together resources aimed at combatting the disproportionate impact of school discipline on the sub-groups previously identified: African-American students, students with disabilities and LGB/T students. This includes resources regarding implicit bias and how it can be understood and remedied in the school context.<sup>117</sup> Additionally, the toolkit suggests that school administrators and leaders should disseminate federal documents to their school that help facilitate conversations around using data to drive interventions that reduce exclusionary discipline and inequities. For example, the resource, "Addressing the Root Causes of Disparities in School Discipline: An Educator's Action Planning Guide,"<sup>118</sup> was recently released as a companion document to the USDOE's "Guiding Principles: A Resource Guide for Improving School Climate and Discipline."<sup>119</sup> Taken together, these federal resources provide access and instructions for using publicly-available tools, including an Excel spreadsheet where school districts can enter and analyze data disaggregated by race/ethnicity to evaluate the equity and effectiveness of school discipline practices, answer "big risk questions" using their data and create action plans for prioritizing school and district level prevention-oriented discipline practices with priorities for keeping students in school.<sup>120</sup>

*Restorative Approach:* Although not every school will have the capacity to implement restorative practices, they are identified in the toolkit as a key strategy for implementing an instructional and corrective approach to school discipline. The toolkit will provide background regarding the implementation and use of restorative practices in resolving student conflicts and addressing other behavioral incidents at schools.<sup>121</sup> Restorative practices are a model that is increasingly being advocated for use in schools as an alternative to traditional exclusionary practices.<sup>122</sup> Rather than addressing behaviors through punishment and exclusion, restorative practices focus on helping parties involved with discipline concerns restore impacted relationships and repair harm.<sup>123</sup> Restorative practices works best when a schoolwide approach is used in which

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<sup>116</sup> Robert H. Horner et al., *Examining the Evidence Base for School-Wide Positive Behavior Support*, 42 SCH. FOCUS ON EXCEPTIONALITY 8, 1–14 (2010).

<sup>117</sup> See, e.g., STAATS, *supra* note 16.

<sup>118</sup> AM. INSTS. FOR RESEARCH, ADDRESSING THE ROOT CAUSES OF DISPARITIES IN SCHOOL DISCIPLINE: AN EDUCATOR'S ACTION PLANNING GUIDE (July 22, 2015), <https://safesupportivelearning.ed.gov/addressing-root-causes-disparities-school-discipline>.

<sup>119</sup> U.S. DEP'T OF ED., GUIDING PRINCIPLES, *supra* note 8.

<sup>120</sup> *Id.*

<sup>121</sup> Transforming School Discipline Collaborative, *The Restorative Approach and Its Strategies* (Last updated Mar. 4, 2016) (unpublished materials) (on file with authors).

<sup>122</sup> Jessica Ashley Burke & Kimberly Burke, *Implementing Restorative Justice: A Guide for Schools*, ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY 5 (Oct. 2009), <http://www.icjia.state.il.us/assets/pdf/BARJ/SCHOOL%20BARJ%20GUIDEBOOK.pdf>.

<sup>123</sup> *Id.* at 7.

relationships are the main focus based on a foundation of mutual respect, trust and acceptance is created for all students in the building, and with the incorporation of peace circles and other mechanisms embedded within the broader system-wide framework built on trust.<sup>124</sup> Such practices can encompass a variety of strategies like restorative discussions, restorative meetings/peace circles, restorative group conferencing and impact panels.<sup>125</sup> The toolkit provides a definition and examples of these practices. Restorative practices are a key area of focus for the training and technical assistance to school districts envisioned by TSDC going forward.

#### V. ADMINISTRATORS' ACADEMY TRAINING

Given that each school district in Illinois will need to revise its code of conduct to align with the new substantive school discipline legislation by September 15, 2016, a central aim of this collaborative effort has been to develop and present a series of training programs throughout the state in spring, summer and fall of 2016. The goal is to provide professional development to facilitate school district efforts to comply with Illinois Public Act 99-0456 and Illinois Public Act 98-1102, and to promote research-based practices with respect to school discipline reform. This current professional development effort and content, targeted specifically for school administrators, was developed in collaboration and consultation with the Illinois State Board of Education (ISBE).

The vehicle for offering this professional development is through a series of Illinois Administrators' Academy courses<sup>126</sup> In Illinois, school administrators are required to attend one Administrators' Academy course annually to maintain or renew their licenses.<sup>127</sup> Administrators' Academies are offered at regional and local offices authorized by ISBE to provide training and professional development to administrators and to issue the credit required for the state licensing process. TSDC worked with one of these local offices to develop a new Administrators' Academy course entitled "Implementing School Discipline Reform: Strategies for Systemic Change," which was approved by ISBE in February 2016.<sup>128</sup> As of spring 2016, TSDC has arranged to offer this

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<sup>124</sup> Transforming School Discipline Collaborative, *The Restorative Approach and Its Strategies*, *supra* note 121, at 4–5.

<sup>125</sup> *Id.* at 11–12.

<sup>126</sup> Illinois Administrators' Academy Management System Course Proposal, Course No. 1717, *Implementing School Discipline Reform: Strategies for Systemic Change* [hereinafter *Administrators' Academy Course Proposal*] (approved eff. Feb. 9, 2016).

<sup>127</sup> ILLINOIS STATE BD. OF EDUC., EDUCATOR & SCH. DEV. DIV. ILLINOIS ADMINISTRATORS' ACADEMY POLICIES AND PRACTICES MANUAL, 4 (October 2008), [http://www.isbe.net/licensure/pdf/admin\\_policies\\_manual.pdf](http://www.isbe.net/licensure/pdf/admin_policies_manual.pdf). *See also* ILL. STATE BD. OF EDUC., LICENSE RENEWAL AND REGISTRATION BEGINNING WITH THE FIRST RENEWAL AFTER JULY 1, 2014 1 (Feb. 2016), <http://www.isbe.net/licensure/requirements/prof-dev-requirements140701.pdf> (indicating that administrators working more than half of their time in qualified administrator positions must complete one Illinois Administrators' Academy course each fiscal year).

<sup>128</sup> E-Mail from Diane Betts, Asst. Dir., North Cook Intermediate Serv. Ctr., to Miranda Johnson, Assoc. Dir., Educ. Law and Policy Inst. at Loyola Univ. Chicago Sch. of Law (Feb. 9, 2016) (on file with author). The agenda of the seminar is modeled after a school discipline training for school administrators that Loyola's School of Law and School of Education offered jointly with the Illinois State Board of Education in August 2014 as a pilot for the large-scale and state-wide training programs currently being contemplated. *School Discipline Workshop: Best Practices in Addressing Student Behaviors While Keeping Schools Safe*, Loyola University of Chicago School of Law and School of Education and the Illinois State Board of Education (Aug. 6, 2014), [http://www.luc.edu/law/centers/childlaw/institutes/child\\_education/schooldisciplineworkshopbestpracticesinaddressingstudentbehaviorswhilekeepingschoolssafe/](http://www.luc.edu/law/centers/childlaw/institutes/child_education/schooldisciplineworkshopbestpracticesinaddressingstudentbehaviorswhilekeepingschoolssafe/).

seminar at ten sites, starting with an initial training that took place in March 2016.<sup>129</sup> At these academies, TSDC members serve as an interdisciplinary training team comprised of, at a minimum, a school psychologist, an attorney, and a restorative justice practitioner.<sup>130</sup>

The aim of the effort is to support school administrators to implement meaningful discipline reform by increasing their ability to evaluate their district or school's data, policies and practices in light of the recently adopted state discipline legislation and the framework of multi-tiered systems of support.<sup>131</sup> The focus is on implementing a holistic prevention-oriented approach to school discipline and building participants' capacity to analyze how the principles of restorative practices can be applied to address the most prevalent discipline concerns in their schools or districts.<sup>132</sup> Participants are encouraged to bring teams from their district or school composed of administrators and other school staff directly charged with implementing disciplinary policies, including superintendents, assistant superintendents, principals, deans, school psychologists and other school-based mental health professionals.<sup>133</sup> Participants are asked to collect and review their district and/or school's data, policies and practices on school discipline prior to the seminar.<sup>134</sup> At the seminar, participants work individually and in groups to analyze their current data, policies and practices and develop a procedure that applies the prevention-oriented framework to one common misbehavior in their school or district.<sup>135</sup>

## VI. LESSONS LEARNED AND NEXT STEPS

TSDC's goal has been to build upon the national and state-level momentum around school discipline reform by supporting school districts to create equitable and just discipline practices that help students learn alternative behaviors while staying in school. To date, there have been many lessons learned in our cross-disciplinary state-level work. One of the primary lessons learned is the need for continued cross-disciplinary efforts in addressing complex discipline issues in schools. Multiple professional disciplines are represented within our collaborative, including attorneys, child advocates, school psychologists, policy advocates and restorative justice practitioners. Given that the issue of school discipline inherently involves the intersection of legal and educational issues, involving multiple perspectives of various stakeholders in the development of the draft document is essential. This ensures that the group's outcomes encompass issues related to legal compliance, as well as a solid grounding in research-based practices and on-the-ground school and district challenges in reforming school discipline policies.

A constraint faced by the group is that the task of designing a model code of conduct and an accompanying training, as well as the process of implementing the school discipline reform at the district level, is being done in a context where the state of Illinois is facing a severe budget crisis that is impacting critical programs and services for children, families and communities throughout the state.<sup>136</sup> School districts, including Chicago Public Schools—the third largest

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<sup>129</sup> Transforming School Discipline Collaborative, Shared Google Spreadsheet (last visited Mar. 8, 2016) (unpublished document) (on file with author).

<sup>130</sup> *See id.*

<sup>131</sup> *See generally* Administrators' Academy Course Proposal, *supra* note 126.

<sup>132</sup> *Id.* at 1.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 12.

<sup>135</sup> *Id.* at 9–13.

<sup>136</sup> LISA CHRISTENSEN GEE, FISCAL POLICY CTR. AT VOICES FOR ILLINOIS CHILD., LACK OF BUDGET IS DISMANTLING CRITICAL STATE SERVICES (Sept. 2015), <http://www.voices4kids.org/wp->

school district in the country<sup>137</sup>—are being impacted by these financial constraints in addition to facing their own local funding challenges.<sup>138</sup> Accordingly, the limited financial and human resources available to support the implementation of school discipline reforms has been a challenging contextual factor for our cross-disciplinary group in expediently moving forward. Funding and staffing constraints also impact the organizational capacity of TSDC to fully respond to school districts' growing demand for technical support in meeting the demands of the new legislation. None of the organizations involved has significant dedicated funding to provide the type of training being contemplated. As a result, funding the trainings is largely dependent on school district registration fees, limiting the scope and reach of the project. The ability of less-resourced school districts to attend these trainings will also be limited by the smaller professional development budgets in those districts. The group has started to seek external grant funding in order to broaden the scope and impact of this project.

A further constraint is addressing and resolving the tension between complying with the letter of the law and implementing meaningful reforms that further the spirit of the law to create sustainable system change. Given that the legal reform efforts in Illinois have primarily focused on limiting the use of out-of-school suspensions, expulsions, and transfers to alternative settings for disciplinary purposes, some of the questions and comments during initial presentations and discussions surrounding implementation of the law at the school and district levels have focused on alternative forms of punishment for disciplinary infractions. For example, comments have been made regarding the potential for schools and districts to increase use of in-school suspensions and restrict students' ability to participate in extra-curricular and school social activities. It is for this reason that TSDC has focused on increasing administrators' knowledge regarding interventions that are designed to support students to learn replacement behaviors and that address the root causes of students' misbehavior rather than replacing out-of-school suspension with other punitive responses. This approach is consistent with both the intent behind the Illinois law as well as the larger national focus on addressing the long-standing concerns about exclusionary discipline and creating a positive school climate for all students. The goal of the collaborative effort is to encourage districts and schools to adopt proactive solutions to common behaviors, particularly truancy, classroom disrespect and insubordination, that research shows form the majority of district and school referrals for exclusionary discipline. In our trainings and presentations, members of our collaborative have emphasized the decades-long national research and the guidance from federal agencies, the Council of State Governments and other sources that support positive and prevention-oriented reforms rather than solely focus on compliance with new Illinois discipline legislation.

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content/uploads/2015/09/Lack-of-Budget-Dismantling-Critical-State-Services-Final.pdf.

<sup>137</sup> *About CPS*, CHICAGO PUB. SCH., <http://cps.edu/Pages/AboutCPS.aspx> (last visited Mar. 8, 2016).

<sup>138</sup> See, e.g., Juan Perez, *Chicago Public Schools Slashes Budgets Midyear*, CHICAGO TRIBUNE (Feb. 9, 2016), <http://www.chicagotribune.com/news/ct-chicago-schools-budget-cuts-met-20160209-story.html>; *Warning Issued over 'Risky' Chicago Public Schools Budget*, REUTERS (Aug. 24, 2015),

<http://www.reuters.com/article/2015/08/25/usa-chicago-education-idUSL1N11028020150825>; Dave Clarke, *Henry-Stark Schools Suffer with No Illinois Budget*, GENOSEO REPUBLIC (Mar. 31, 2016), <http://www.geneseorepublic.com/article/20160331/NEWS/160339841>; Tre Ward, *Area Educators Voice Concerns Amid Budget Impasse in Illinois*, KWQC (Mar. 24, 2016), <http://kwqc.com/2016/03/24/area-educators-voice-concerns-amid-budget-impasse-in-illinois/>; Anna Giles, *Schools Prepare for No State Money, as Budget Impasse Continues*, WSIL (Mar. 22, 2016), <http://www.wsiltv.com/story/31541161/k-12-schools-prepare-for-no-state-money-as-budget-impasse-continues>.

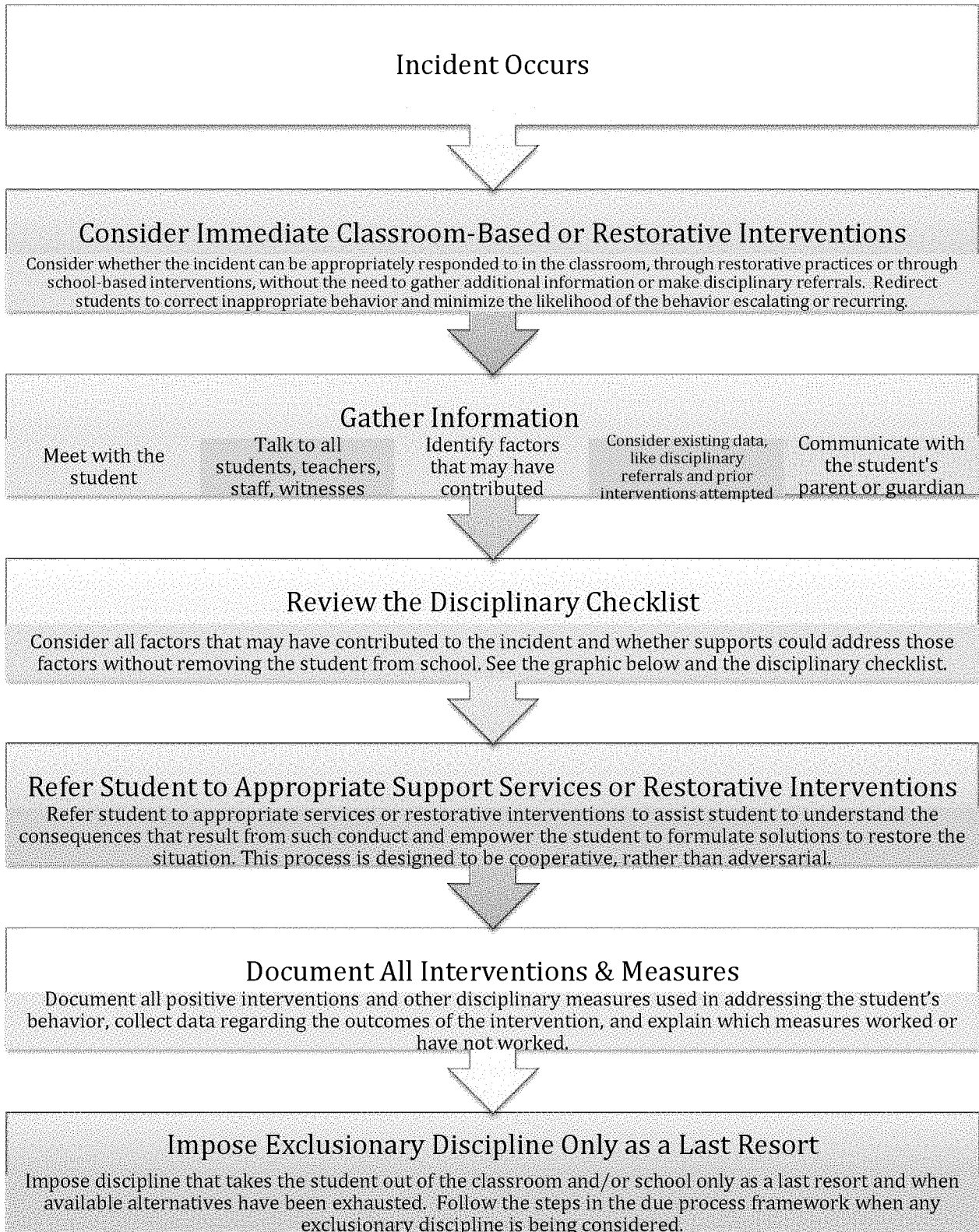
Despite the constraints faced by TSDC, we believe that our collective work will move the discipline conversation forward and assist schools in their work with students, not only in complying with recent Illinois discipline legislation but also in meeting the needs of students who end up in the web of discipline exclusion.<sup>139</sup> Our next steps are to continue our cross-disciplinary efforts in finalizing and disseminating TSDC's model student code of conduct and its supporting toolkit and to continue our professional development activities. Going forward, we would like to evaluate our work in terms of its impact on discipline reform applications in schools and to build upon the feedback we receive from participants in the Administrators' Academies to improve our training efforts and support the application of the model code in schools. Our ultimate goal is to improve school discipline and keep students in school rather than excluding them. We would also like to learn from similar efforts in other jurisdictions as well as contribute what we have learned to the on-going conversations related to the implementation of school district reforms in other states and local areas and as part of the national discipline conversation. In Appendix D, we have provided a potential set of questions to move forward the conversation about school discipline in individual districts and local areas as well as at other venues.

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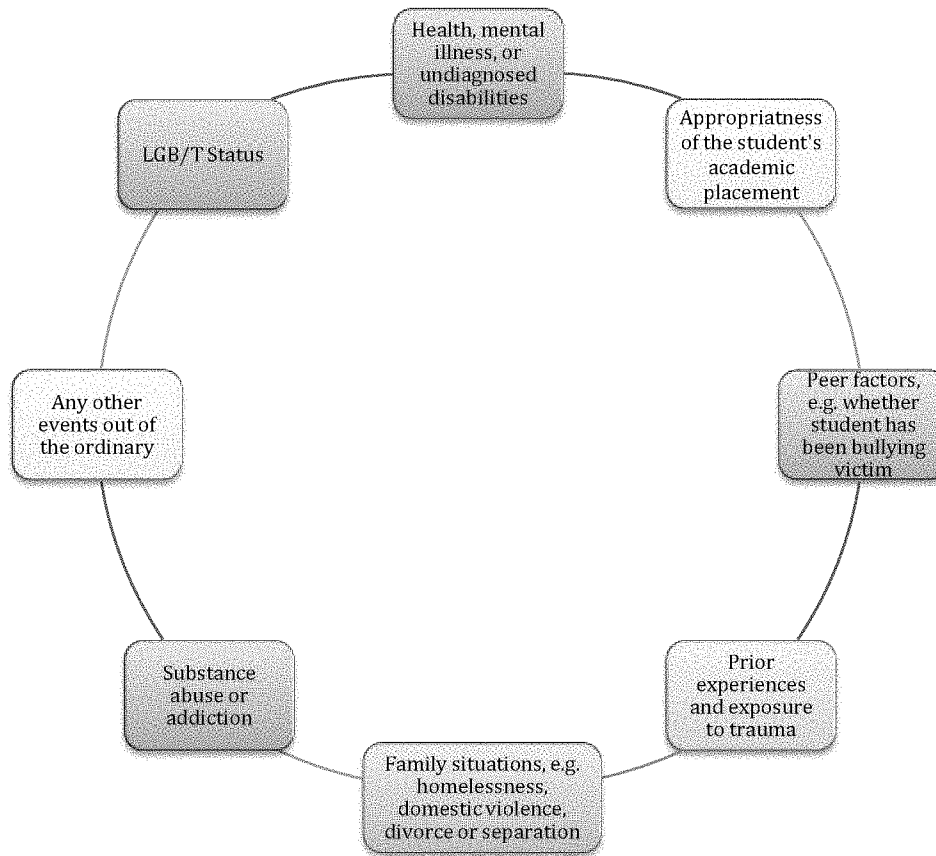
<sup>139</sup> See APA Task Force, *supra* note 52, at 13–14 (recommending, as an alternative to zero tolerance, that schools “develop a planned continuum of effective alternatives for those students whose behavior threatens the discipline or safety of the school”).

**Appendix A: Excerpt from Draft Model Code (Section on “Approach to School Discipline and the Investigative Process”)**

If there is an incident, our district or school takes the following steps:



After an incident, our district or school considers the following factors in analyzing the root causes of an incident and whether supports could address these factors without removing the student from school.



## Appendix B: Excerpt from Draft Model Code (Section on “Approach to School Discipline and the Investigative Process”)

Public Act 99-0456 differentiates between (a) out-of-school suspensions of three days or less (“short-term suspensions”), and (b) out-of-school suspensions longer than three days (“long-term suspensions”), expulsions and disciplinary removals to alternative schools. Suggested definitions of these terms are provided in Section 10. The following standards apply:

(a) A suspension of three days or less is only allowed “if the student’s continuing presence in school would pose a threat to school safety or a disruption to other students’ learning opportunities.”<sup>140</sup>

(b) A suspension longer than three days, expulsion, or disciplinary removal to an alternative school is only allowed if “other appropriate and available behavioral and disciplinary interventions have been exhausted” *and* the “student’s continuing presence in school would pose a threat” to safety or “substantially disrupt, impede, or interfere with the operation of the school.”<sup>141</sup>

The disciplinary checklist below incorporates these standards together with guidance intended to support district and school staff in considering whether these standards have been met in particular circumstances. The purpose of developing a checklist like the one proposed below is to support school staff to make consistent and equitable disciplinary decisions. Scholars on implicit bias in other settings suggest that developing and using checklists at key decision points can help reduce bias in the decision-making process.<sup>142</sup>

This checklist proposes default rules to guide the use of district and school discretion, while still allowing for exceptions to be made in serious and unusual circumstances. One such default rule is a suggested prohibition on suspensions or expulsions for first-time offenses. This is consistent with the requirement in Public Act 99-0456 that school officials “consider forms of non-exclusionary discipline prior to using out-of-school suspensions or expulsions.”<sup>143</sup> It is also consistent with the law’s requirement that school officials must (1) make reasonable efforts to resolve threats and address disruptions in schools while limiting suspensions to the greatest extent practicable<sup>144</sup> and (2) exhaust “other appropriate and available behavioral disciplinary interventions” prior to imposing a long-term suspension, expulsion, or disciplinary removal to an alternative school.<sup>145</sup> At the same time, because we recognize that there may be limited situations where a suspension or expulsion may be imposed for first-time offenses, the checklist provides for an exception in exigent or emergency circumstances involving school safety.

The model code also includes proposed grade level restrictions on suspensions and expulsions based on the U.S. Department of Education’s guidance suggesting that disciplinary consequences

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<sup>140</sup> 105 ILL. COMP. STAT. ANN. 5/10-22.6(b-15) (West 2016) (as amended).

<sup>141</sup> *Id.* at 5/10-22.6(b-20).

<sup>142</sup> Shawn C. Marsh, *The Lens of Implicit Bias*, JUVENILE AND FAMILY JUSTICE TODAY 19 (Summer 2009), <http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/Implicit%20Bias/IMPLICIT%20BIAS%20Marsh%20Summer%202009.ashx>.

<sup>143</sup> 105 ILL. COMP. STAT. ANN. 5/10-22.6(b-5).

<sup>144</sup> *Id.* at 5/10-22.6(b-15) & (b-20).

<sup>145</sup> *Id.* at 5/10-22.6 (b-20).



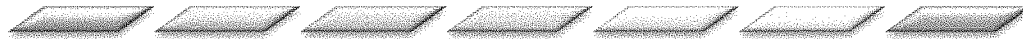
“take into account the developmental differences of students at various stages of childhood and adolescence, as well as the cognitive and emotional maturity of the students served.”<sup>146</sup>

Given national data that shows that expulsions and suspensions regularly occur in preschools,<sup>147</sup> this model code also includes strict restrictions on expulsion and suspension of preschool children. Districts that run preschool or pre-K programs should consult the specific federal guidance on discipline of children in early childhood settings<sup>148</sup> and the requirements of their program's funding stream (e.g. Head Start).

Our district or school limits the number of days the student is removed from school to as few as possible given our philosophy that students should be in school and learning. We provide all students, regardless of background or demographic characteristics, with adequate and meaningful due process prior to excluding a student from school for any length of time.

School staff should complete the checklist below before imposing a suspension or expulsion to determine whether other forms of intervention and support should be attempted first. Suspensions of more than three days are to be used only in certain situations as is defined further below.

### Disciplinary Checklist: To Be Used Prior to Imposing Suspensions or Expulsions



#### Is the offense eligible for suspension?

Suspension and expulsion are prohibited for:

- Being late to school or class or being absent or
- Violating school dress code, cell phone policies or uniform rules.

This behavior can be handled through in-school interventions and consequences.

#### Would the student's continuing presence in school cause a threat to school safety or a disruption to other students' learning opportunities?

Short-term suspensions are only allowed if the student's continuing presence in school would pose a **threat** to school safety or a **disruption** to other students' learning opportunities.

- School staff should be particularly mindful of this standard when imposing out of school discipline for offense categories that rely principally on the subjective interpretation of school staff (e.g., insubordinate behavior, defiance, disobedience, or disrespect).

<sup>146</sup> U.S. DEP'T OF EDUC., GUIDING PRINCIPLES, *supra* note 8, at 13–14.

<sup>147</sup> U.S. Dep't of Health and Human Serv. and U.S. Dep't of Educ., Dear Colleague Letter (Dec. 10, 2014), [https://www.acf.hhs.gov/sites/default/files/ece/hhs\\_and\\_ed\\_joint\\_letter.pdf](https://www.acf.hhs.gov/sites/default/files/ece/hhs_and_ed_joint_letter.pdf).

<sup>148</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV. & U.S. DEP'T OF EDUC., POLICY STATEMENT ON EXPULSION AND SUSPENSION POLICIES IN EARLY CHILDHOOD SETTINGS (Dec. 2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf>.

Long-term suspensions, expulsions and disciplinary removals to alternative schools are allowed only if the student's continuing presence in school would either:

- Pose a **threat** to the safety of other students, staff or members of the school community OR
- **Substantially disrupt, impede or interfere** with the operation of the school.

Our district or school maintains a protocol to determine whether a student poses a threat to school safety or would disrupt the operation of the school.<sup>149</sup> The determination of safety threats is based only on actual risks and objective evidence, and not on stereotypes or generalizations.<sup>150</sup> In making the determination as to whether suspension or expulsion is warranted, school staff should consider the following factors:

- The conduct at issue,
- The root cause of the conduct and whether it has been addressed,
- Age of the student and ability to understand consequences,
- Capability of the student to carry out the threat,
- Student's discipline history and the frequency of inappropriate behavior,
- Credibility of the student and willingness to acknowledge his or her behavior, and
- Effect of the conduct on the school environment.

This is an individualized determination. School staff must make all reasonable efforts to resolve threats and address disruptions without the use of out of school suspensions and expulsions.

School staff should **minimize** the length of suspensions and expulsions to the extent practicable.

### Have school staff exhausted alternatives to suspension and expulsion?

No out-of-school discipline should be employed unless available and appropriate behavioral and disciplinary interventions have been **exhausted**. Before imposing discipline, school staff must first consider whether a restorative practice or another available alternative to suspension or expulsion is an appropriate or available option. This determination should be made as early as possible following the incident.

Our district or school must also consider whether previous interventions have been attempted and must document and evaluate their success. For suspensions of four days or more cumulatively or consecutively, this determination is made by a school-based team composed of, at a minimum, a staff member familiar with the student's conduct, one of the student's teachers, and a staff member with mental health expertise. If a student has a disability, the team includes a special education teacher or another staff member who is responsible for implementing the student's IEP. The

<sup>149</sup> See Dewey Cornell et al., *supra* note 115.

<sup>150</sup> Head Start Performance Standards, 80 Fed. Reg. 35430 (proposed June 19, 2015) (to be codified at 45 C.F.R. pt. 8), <http://www.gpo.gov/fdsys/pkg/FR-2015-06-19/pdf/2015-14379.pdf>.

student and the student's parent(s) or guardian(s) should also be included in this process.

Our district or school refers students to the appropriate services where the behavior results from:

- Family situations, trauma, or grief,
- Addiction, mental illness, or substance abuse, and/or
- Bullying, abuse, or self-defense.

If prior interventions were NOT successful, school staff must consider whether other interventions are available and appropriate. School staff should also consider whether there are academic, behavioral or other grounds that suggest the student may have a disability, and, if so, refer the student for a special education screening or evaluation.

If prior interventions were attempted with moderate success, school staff should consider whether the interventions can be enhanced or applied with greater consistency.

If interventions to address the student's conduct have not been attempted, then the team should determine the appropriate interventions to be attempted and a process for documenting them.

#### **Has the student previously violated the school code?**

A suspension of more than three days or expulsion **cannot** be imposed for a first-time offense. The district and school **must** have first implemented other behavioral interventions and followed the district and school process for documenting when these interventions have been "exhausted."



Exceptions to these policies can be made in exigent or emergency circumstances involving school safety with justification and approval by the Superintendent or a designee, together with a showing that there were no appropriate and available interventions.

#### **Is suspension or expulsion appropriate given the student's grade?**



- Students in preschool and in kindergarten through third grade may not be suspended or expelled.
- Students in fourth and fifth grades cannot be suspended for more than three consecutive days.

- Students in sixth grade and above cannot be suspended for more than five consecutive days and no more than ten in a school year.

Exceptions to these policies can be made in exigent or emergency circumstances involving school safety with justification and approval by the Superintendent or a designee.

For children in preschool, long-term suspensions and expulsions are prohibited without exception. Suspensions of three days or less can be used only as a last resort in extraordinary circumstances where there is a determination of a serious safety threat that cannot otherwise be reduced or eliminated by the provision of reasonable modifications.<sup>151</sup> A mental health consultant or school-based mental health professional with early childhood experience must be engaged to advise on this determination and provide support when needed.

**Have school staff considered whether the student has a disability and provided all required procedural protections?**

- If a student has an Individualized Education Plan (IEP), Section 504 plan, or is currently being evaluated, follow the procedural protections for students with disabilities.
- If the student does not yet have an IEP or a Section 504 plan, school staff should discuss whether there are academic, behavioral or other grounds that reasonably give rise to a concern that a student may have a disability. This is required by the Child Find provisions of the Individuals with Disabilities Education Act (IDEA).
- School staff must invite the Department of Human Services to consult on suspensions or expulsions when mental illness might be a factor in the behavior.

*See Section 6 below on Procedural Guidelines for Discipline of Students with Disabilities.*

<sup>151</sup> *Id.*

## Appendix C: Multi-Tiered Systems of Support and Discipline

### Multi-Tiered Systems of Support (MTSS) model:<sup>152</sup>

**Tiered Supports in School District to Address Behavioral/Discipline Issues** (These are examples of how the MTSS model could be applied to proactively address behavior and discipline in schools; schools/districts could complete this based on what they are doing in the school)

Universal (Tier 1)	Secondary (Tier 2)	Tertiary (Tier 3)
<b>Academic Supports</b>	<b>Academic Supports</b>	<b>Academic Supports</b>
Universal Academic Screening in Reading	Supplemental Blocked Math Instruction	Individualized tutoring during study hall
Departmental Algebra Standards Tied to Common Core	Rewards Reading Curriculum	
	Executive Functioning Curriculum on Organization	
Universal (Tier 1)	Secondary (Tier 2)	Tertiary (Tier 3)
<b>Behavior Supports</b>	<b>Behavior Supports</b>	<b>Behavior Supports</b>
Description and Teaching of Behavioral Expectations as part of Schoolwide Positive Behavior Support (SWPBS)	Check-in Check out System Restorative Justice Based Peer Mediation Alternative to Suspension Counseling/Choice-Making-group focus	Functional Analysis of Behavior Teacher Consultation Wraparound Supports and Planning Alternative to Suspension Community Service

<sup>152</sup> For a graphical version of the MTSS model, see *Multi-Tiered System*, ILLINOIS STATE PERSONNEL DEVELOPMENT GRANT, <http://www.illinoisrti.org/i-rti-network/for-educators/understanding-rti-mtss/multi-tiered-system> (last visited Oct. 5, 2015).

<p>School Climate Survey and Action Plan</p>		<p>Alternative to Suspension Counseling/Choice-Making-Individual focus</p> <p>Referral for special education evaluation/alternative school</p>
<p>Universal (Tier 1)</p>	<p>Secondary (Tier 2)</p>	<p>Tertiary (Tier 3)</p>
<p><b>Social-Emotional Supports</b></p>	<p><b>Social-Emotional Supports</b></p>	<p><b>Social-Emotional Supports</b></p>
<p>Student Survey in Fall School Climate Survey and Action Plan</p>	<p>Drug and Alcohol Group Counseling Family Support Group</p>	<p>Individualized counseling Wraparound Supports and Planning Coordination with school-based health clinic and referrals to community</p>

## **Appendix D: Guiding Questions for Cross-Disciplinary School Discipline Reform Teams**

What follows are some potential guiding questions for teams to consider as they begin to review discipline data and establish priorities for creating proactive and equitable discipline policies and practices. These guiding questions could be a basis to get started, or to complete questions that are relevant for each local school context. The responses to the questions could be used to establish school priorities that could be aligned with other school-based system reform efforts.

### **Sample Guiding Questions:**

- 1) What are your schools/districts doing with respect to policy and practices surrounding discipline? How do you handle written procedures and communication with families and students? How is student exclusion (e.g., suspension and expulsion) handled and addressed? Are data reviewed and disaggregated in any way (e.g., by race/ethnicity)? What role, if any, do school psychologists play in the process? What role, if any, do legal advocates play with respect to discipline policies and practices within your school?
- 2) What role, if any, do state policies play in the development of your school/district's policies and procedures? What policy guidance, support and/or mandates has your school/district received from your state board of education?
- 3) In what way (if at all), have recent federal documents such as the "Guiding Principles" influenced decisions made with respect to discipline at your school/district?
- 4) What questions should we be asking with respect to school discipline as school psychologists? Legal advocates? How can legal advocates/attorneys partner with school psychologists to create effective discipline policies at the school/district, state or national level? How can we partner at the state/national level as school psychologists to advocate for effective discipline and behavior practices with students? What barriers might exist with these partnerships? What might facilitate such partnerships?
- 5) What are other issues that arise in creating equitable and prevention-oriented written discipline policies that align with practices such as multi-tiered systems of support and providing effective behavioral supports?