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Guidance to School Districts:

Legal Standards and Enforcement of Civil Rights Laws Related to School Discipline in Illinois December 17, 2021

This document is intended to serve as non-regulatory guidance from the Office of the Illinois Attorney General (“OAG”) and the Illinois State Board of Education (“ISBE”) to assist public K-12 schools in Illinois in meeting their obligations under state and federal civil rights laws to administer student discipline policies without discriminating on the basis of race, color, national origin, gender, disability, sexual orientation, gender identity, and other protected characteristics.

The COVID-19 pandemic created unforeseen challenges for schools, students, and families. Many students and educators returned to in-person instruction in fall 2021 having faced personal traumas such as illness, deaths of family members, hunger, stress related to virtual learning, uncertainty about housing, and social isolation. Research shows these traumas can have lasting effects on behavior and well-being,¹ and that Black and Brown families and communities are likely to have experienced disproportionate harms during the COVID-19 pandemic.² ISBE has recommended that, in navigating the return to in-person instruction, schools take a trauma-informed approach and prioritize equity for all students.³

I. Applicable State and Federal Laws

Federal laws prohibit public elementary and secondary schools from discriminating against students based on factors including race, color, national origin, disability, religion, or sex.⁴ In 2014, the United States Department of Education’s Office of Civil Rights and the Department of Justice jointly issued a School Discipline Guidance package (“2014 Guidance”).⁵ The 2014 Guidance offered direction to K-12 schools on compliance with federal anti-discrimination statutes in the

¹ U.S. DEP’T OF HEALTH AND HUMAN SERVICES, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN., SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR TRAUMA-INFORMED APPROACH 8 (2014), https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf.

² See, e.g., Arica White, Leandris C. Liburd & Fátima Coronado, *Addressing Racial and Ethnic Disparities in COVID-19 Among School-Aged Children: Are We Doing Enough?*, 18 TOOLS PUB. HEALTH PRAC. 1 (2021), https://www.cdc.gov/pcd/issues/2021/pdf/21_0084.pdf; OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA’S STUDENTS 11-17 (2021), <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

³ ISBE, RETURN TO IN-PERSON: LESSONS LEARNED FROM THE PANDEMIC (2021), <https://www.isbe.net/Documents/Return-to-In-Person-Lessons-Learned.pdf>.

⁴ Federal anti-discrimination statutes that apply to public schools receiving federal funding include, among others, Titles IV and VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c *et seq.* (Title IV) and 42 U.S.C. §§ 2000e *et seq.* (Title VI), Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.* (Title IX), the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (IDEA), Title II of the Americans with Disability Act of 1990, 42 U.S.C. §§ 12133 *et seq.* (ADA), and Section 504 of the Rehabilitation Act of 1972, 29 U.S.C. § 794 (Section 504).

⁵ U.S. Dep’t of Educ. & U.S. Dep’t of Justice, *Dear Colleague Letter: Nondiscriminatory Administration of School Discipline* 3–4 (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> (hereinafter “2014 Dear Colleague Letter”).

administration of student discipline.⁶ The 2014 Guidance provided valuable tools and information to school administrators on how to achieve an equitable and safe classroom environment, without students enduring unfair and unnecessary harm through exclusionary discipline⁷ such as suspensions or expulsions. The 2014 Guidance also defined unlawful discrimination to include both (i) “if a student is subjected to *different treatment* based on the student’s race” and (ii) “if a policy is neutral on its face . . . and is administered in an evenhanded manner but has a *disparate impact*, i.e., a disproportionate and unjustified *effect* on students of a particular race.”⁸ Although the 2014 Guidance was rescinded in 2018, a number of states (including Illinois) have signaled their continued commitment to its principles.⁹

Illinois law also prohibits discrimination against students based on protected characteristics including race, sex, disability, sexual orientation, and gender identity.¹⁰ Under the Illinois Human Rights Act (“IHRA”), it is a civil rights violation for any public school to deny full and equal enjoyment of school facilities, privileges, or services to any student because of unlawful discrimination.¹¹ The IHRA also prohibits all non-sectarian schools from denying students access to facilities or services, or from failing to stop severe or pervasive harassment, because of unlawful discrimination.¹²

In addition to prohibiting intentional discrimination based on race, sex, disability, sexual orientation, or gender identity, Illinois law also prohibits policies and practices that, although not intended to discriminate, have a disparate impact or effect based on these protected characteristics. For example, the Illinois Civil Rights Act of 2003 (“ICRA”) prohibits any unit of local government from adopting policies whose criteria or methods of administration impose a disparate impact on individuals because of their race, color, national origin, or gender.¹³ ICRA applies to public school district policies and practices administered using criteria that have a discriminatory impact on students based on their race.¹⁴

⁶ Title IV of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, or national origin in public elementary, secondary, and university schools. Additionally, Title VI of the Civil Rights Act of 1964 also prohibits discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance. 42 U.S.C. § 2000d *et seq.*

⁷ “Exclusionary discipline” refers to disciplinary practices, such as suspensions or expulsions, that remove students from their usual educational setting.

⁸ 2014 Dear Colleague Letter, *supra* note 5, at 7.

⁹ In May 2021, the Illinois Attorney General was part of a coalition of 23 state Attorneys General to issue a joint letter to the Department of Education and the Department of Justice urging that the 2014 Guidance be re-issued and updated to include discrimination against students based on their sex, sexual orientation, gender identity, and disability, consistent with President Biden’s executive orders. Letter to Dr. Miguel A. Cardona, Sec. Educ., & Merrick B. Garland, Att’y Gen., *Discrimination in School Discipline* (May 24, 2021), https://www.michigan.gov/documents/ag/School_Discipline_Multi-State_letter_Final_5.24.21_726121_7.pdf;

¹⁰ Protected classes under the Illinois Human Rights Act include race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service. 775 ILCS 5/1-103(Q).

¹¹ 775 ILCS 5/5–102(C).

¹² 775 ILCS 5/5–102.2.

¹³ 740 ILCS 23/5.

¹⁴ *See, e.g., Swan v. Bd. of Educ. Of City of Chicago*, 2013 WL 4401439 (N.D Ill. 2013) stating “ICRA prohibits any unit of government from discriminating against a person due to their race.” Further, “[t]o prevail on a disparate impact claim under the ICRA, Plaintiffs are responsible for “isolating and identifying the specific ... practices that are allegedly responsible for any observed statistical disparities.” citing *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 717 (7th Cir. 2012). *See also Greer v. Bd. of Educ. of the City of Chicago*, No. 18-7647 (Ill. Ct. Cl. Dec. 3, 2018).

In schools across the country, punitive and exclusionary discipline policies are disproportionately likely to impact students of color, particularly Black students, students with disabilities, and other marginalized or vulnerable students. Illinois is no exception: In the 2019-20 school year, 45% of the students expelled from Illinois public schools were Black, despite comprising less than 17% of the Illinois student population.¹⁵ Nationally, during the 2017-18 school year, students with disabilities represented 13.2% of the total student enrollment, yet received 20.5% of one or more in-school suspensions and 24.5% of one or more out-of-school suspensions.¹⁶ The disparities are compounded when the data is disaggregated by race. Black students with disabilities accounted for 2.3% of total student enrollment, but received 6.2% of one or more in-school suspensions and 8.8% of one or more out-of-school suspensions.¹⁷ Emerging data also indicates that LGBTQ+ students face harsher discipline outcomes than heterosexual and cisgender students, in addition to facing significantly higher rates of bullying at school.¹⁸

These disparities cause real harms for vulnerable students; exclusionary discipline is correlated with decreased academic achievement, increased likelihood of students dropping out of school, and increased involvement with the juvenile justice system.¹⁹ The connection between punitive and exclusionary school discipline practices and increased rates of incarceration is often referred to as the “school-to-prison pipeline.”²⁰

Recognizing the harms and racially disparate impact that exclusionary discipline imposes on Illinois youth, the Illinois General Assembly has also amended the Illinois School Code (the “School Code”) to reduce overreliance on suspensions and expulsions. In 2016, Public Act 99-456 (commonly known as SB 100) laid a new foundation for public and charter school discipline in Illinois. The legislation eliminated “zero-tolerance” policies, meaning students would no longer

¹⁵ ISBE, END OF YEAR STUDENT DISCIPLINE REPORT SCHOOL YEAR 2019-20, <https://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx> (hereinafter “2019-20 Student Discipline Report”); RACIAL/ETHNIC DIVERSITY, ILL. REPORT CARD 2019-2020, <https://www.illinoisreportcard.com/state.aspx?stateid=IL&source=studentcharacteristics&source2=studentdemographics>.

¹⁶ For an overview of exclusionary discipline practices in public schools for the 2017-18 school year, see U.S. DEPT. EDUC. OFFICE OF CIVIL RIGHTS, 2017-18 STATE AND NATIONAL ESTIMATIONS, CIVIL RIGHTS DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2017-2018> (hereinafter “2017-18 CRDC Report”).

¹⁷ *Id.*

¹⁸ See, e.g., Mariella Arredondo, et al., *Documenting Disparities for LGBT Students: Expanding the Collection and Reporting of Data on Sexual Orientation and Gender Identity*, DISCIPLINE DISPARITIES: A RESEARCH-TO-PRACTICE COLLABORATIVE (March 2016), <https://vtechworks.lib.vt.edu/bitstream/handle/10919/86981/DisparitiesLGBTStudents.pdf?sequence=1&isAllowed=y>; Sandra Koepels & Megan S. Paceley, *Reducing Bullying Toward LGBTQ Youths in Schools*, 37 SCH. SOC. WORK J. 96 (2012); Neal A. Palmer, Emily A. Greytak & Joseph G. Kosciw, GLSEN, EDUCATIONAL EXCLUSION: DROP OUT, PUSH OUT, AND THE SCHOOL-TO-PRISON PIPELINE AMONG LGBTQ YOUTH (2016), https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf.

¹⁹ Dear Colleague Letter, *supra* note 5, at 4–5.

²⁰ See Kent McIntosh, et al., *Education not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline*, 5 J. APPLIED RSCH. ON CHILD.: INFO. POL’Y FOR CHILD. RISK 1, 2–3 (2014) (“[T]here is no published research demonstrating that students of color—and African American students in particular—have higher base rates of problem behavior.”); see also, e.g., Kate M. Wegmann & Brittanni Smith, *Examining Racial/Ethnic Disparities in School Discipline in the Context of Student-Reported Behavior Infractions*, 103 CHILD. & YOUTH SERV.’S. REV. 18 (2019); Paul L. Morgan, et al., *Are Students With Disabilities Suspended More Frequently Than Otherwise Similar Students Without Disabilities?*, 72 J. SCH. PSYCH. 1 (2019); Russell J. Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 335 (2002).

be automatically expelled or suspended for certain violations, with few exceptions.²¹ It also set clear standards for when schools may use out-of-school suspensions or expulsions as a disciplinary consequence. This includes requiring that schools exhaust all appropriate and available behavioral and disciplinary interventions before seeking an out-of-school suspension or expulsion of more than three days, and that such measures be reserved only for situations where a student’s continuing presence in school would pose threats 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.”²² School officials must make all reasonable efforts to minimize the length of school exclusions to the greatest extent practicable, and districts must make reasonable efforts to train teachers, administrators, school resource officers, and staff in culturally responsive and developmentally appropriate disciplinary methods that promote positive and healthy school climates.²³ These critical changes, along with others, have served as a foundational template for how schools approach discipline in Illinois.

II. School Discipline Practices and Disparate Impact

Despite significant progress statewide, there is still a lot of work to be done to ensure Illinois students have equal access to education under our civil rights laws. For instance, although expulsions and suspensions have fallen significantly since SB 100 went into effect, the racial disparities in discipline linger, particularly for Black students.²⁴

Illinois law requires school boards and the governing bodies of charter schools to undertake an annual review of their discipline policies and the implementation of those policies, working alongside a parent-teacher advisory committee.²⁵ As they undertake this required review, districts and charter school networks should review disparities in their discipline data and take care to eliminate policies and practices associated with a race-based disparate impact.

For example, school districts and networks whose discipline records show disparities should scrutinize policies or practices of disciplining students based on subjective or discretionary offenses (such as defiance, disrespect, or disruption). Such practices are particularly vulnerable to implicit bias, and remain prevalent despite the requirements of SB 100. Recent ISBE data shows that most expulsions and suspensions from Illinois public schools are not based on weapons or violence, and the most prevalent reason given is “other reason.”²⁶ When students are expelled or

²¹ 105 ILCS 5/10–22.6(b-10).

²² 105 ILCS 5/10-22.6(b-20).

²³ 105 ILCS 5/10-22.6 (b-20), (c-5).

²⁴ ISBE school discipline data for the 2014-15 school year reports 341,353 total instances of exclusionary discipline, while 2019-20 reports 173,785. See ISBE, END OF YEAR STUDENT DISCIPLINE REPORT SCHOOL YEAR 2014-15, <https://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx> (hereinafter “2014-15 School Discipline Report”); 2019-20 School Discipline Report, *supra* note 15.

²⁵ 105 ILCS 5/10-20.14.

²⁶ Analysis of ISBE data for 2018-19 and 2019-20 school years, available at <https://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx>. Possible reasons for discipline include: “alcohol,” “violence with physical injury,” “violence without physical injury,” “drug offenses,” “firearm,” “other dangerous weapon,” “tobacco,” and “other reason.”

suspended for subjective or discretionary offenses, Black students and students with disabilities are disproportionately likely to be the ones excluded from the classroom.²⁷

Disciplinary enforcement of hair and dress codes is also correlated with disparate impacts by race and gender. Black female students are disproportionately likely to be disciplined or suspended for dress code violations.²⁸ In August of 2021, Governor Pritzker signed Senate Bill 817 into law (which is now known as Public Act 102-0360 or the Jett Hawkins Law), prohibiting schools from creating policies on school uniforms and dress codes that restrict hairstyles that have been historically associated with race or ethnicity.²⁹ This legislation addresses injustices in dress code policies that disproportionately impact Black youth in Illinois and protects these youth from facing hair discrimination in schools.³⁰ Schools should take care to ensure that any enforcement of hair or dress codes does not impose a disparate impact on students based on protected characteristics.

The expanding role of police officers in school, often called school resource officers (“SROs”), also raises concerns about disparate impact on students of color, particularly Black students, as well as on students with disabilities. Schools with SROs have been shown to rely more heavily on exclusionary discipline – and schools with majority-Black populations are more likely to have SROs.³¹ Schools with a high-security presence (including SROs) not only have more suspensions, but also demonstrate a larger disparity between Black students and white students in their suspension rates.³² Research does not show that police in schools enhance student safety.³³ To the contrary, Black and Brown students have reported feeling less safe in schools with a police presence.³⁴ Students with disabilities may be disparately impacted when officers lack training and

²⁷ See, e.g., NAACP LEGAL DEF. & EDUC. FUND, LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE (2017), https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf; TONY FABELO ET AL., BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT (2011).

²⁸ See KIMBERLÉ WILLIAMS CRENSHAW ET AL., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED (2015); NATIONAL WOMEN’S LAW CENTER, DRESS CODED: BLACK GIRLS, BODIES, AND BIAS IN D.C. SCHOOLS (2018).

²⁹ 105 ILCS 5/2-3.25o; 105 ILCS 5/10–22.25b; 105 ILCS 5/34-2.3.

³⁰ See Simmons Bans Hairstyle Discrimination with Jeff Hawkins Act (2021), available at <https://senatormikesimmons.com/news/press-releases/39-simmons-bans-hairstyle-discrimination-with-jett-hawkins-act>.

³¹ F. Chris Curran, et al., *Why and When Do School Resource Officers Engage in School Discipline? The Role of Context in Shaping Disciplinary Involvement*, 126 AM. J. EDUC. 1, 37 (2019). Jeremy D. Finn & Timothy J. Servoss, *Misbehavior, Suspensions, and Security Measures in High School: Racial/Ethnic and Gender Differences*, 5 J. APPLIED RSCH. ON CHILD.: INFORMING POL’Y FOR CHILD RISK, (2014),

<https://digitalcommons.library.tmc.edu/childrenatrisk/vol5/iss2/11>; Kristen Harper & Deborah Temkin, *Compared to Majority White Schools, Majority Black Schools Are More Likely to Have Security Staff*, CHILD TRENDS (Apr. 26, 2018), <https://www.childtrends.org/compared-to-majority-white-schools-majority-black-schools-are-more-likely-to-have-security-staff>.

³² Finn & Servoss, *supra* note 29.

³³ See Micere Keels, *Bringing Evidence-Based Decision-Making to School Safety*, ED. RESEARCH FOR RECOVERY (2020), https://annenbergbrown.edu/sites/default/files/EdResearch_for_Recovery_Brief_11.pdf.

³⁴ Ronet Bachman, et al., *Predicting Perceptions of Fear at School and Going to and from School for African American and White Students: The Effects of School Security Measures*, 43 YOUTH & SOC’Y 705, 726 (2011); Suzanne E. Perumean-Chaney & Lindsay M. Sutton, *Students and Perceived School Safety: The Impact of School Security Measures*, 38 AM. J. CRIM. JUST. 570, 588 (2012).

knowledge regarding disability issues.³⁵ As a result, students with disabilities are disproportionately likely to be arrested or referred to law enforcement at school.³⁶

Instead of SROs or security officers, research suggests that schools should address student behavior concerns holistically through mental health professionals, counselors, social workers and an emphasis on creating a positive and safe school climate.³⁷

Students with disabilities are not only much more likely to receive out-of-school suspensions, they are disproportionately subjected to disciplinary seclusion and restraint tactics in school. Nationally, during the 2017-2018 school year, students with disabilities comprised 80% of students who were subjected to physical restraint, and 77% of students who were subjected to seclusion, despite only comprising 13% of the total enrolled population.³⁸ Seclusion and restraint practices also disproportionately impact students of color with disabilities.³⁹ One analysis concluded that Black students were almost 200% more likely and Hispanic students were 45% more likely to experience restraint or seclusion than their white counterparts in 2017-18.⁴⁰

In Illinois, the use of isolated time out, time out, or physical restraint is prohibited as a form of discipline or punishment.⁴¹ There is no evidence that using restraint and seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of these disciplinary techniques.⁴² To the contrary, some research has found that seclusion and restraint can escalate negative behaviors, deepen negative behavior patterns, and undermine children's trust and capacity for learning.⁴³

As a result of the COVID-19 pandemic, schools should prepare for higher numbers of students to exhibit social-emotional or behavioral concerns.⁴⁴ Researchers predict that the racially disproportionate effects of the pandemic may lead to disparities in behavioral health challenges, particularly for Black students who may have experienced other traumas as well.⁴⁵ Schools are

³⁵ See David C. May, et al., *An Examination of School Resource Officers' Attitudes Regarding Behavioral Issues Among Students Receiving Special Education Services*, 15 CURRENT ISSUES EDUC. 1, 7–8 (2012).

³⁶ For data on student referrals to law enforcement by disability, see 2017-18 CRDC Report, *supra* note 16.

³⁷ NATIONAL ASSOCIATION OF SCHOOL PSYCHIATRISTS (hereinafter NASP), *RETHINKING SCHOOL SAFETY: COMMUNITIES AND SCHOOLS WORKING TOGETHER* (2013); AMIR WHITAKER, ET AL., *ACLU, COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS* (2019).

³⁸ 2017-18 CRDC Report, *supra* note 16.

³⁹ *Id.* The 2017-2018 CRDC data shows that 26% of students with disabilities who were physically restrained were Black or African American, even though they comprised only 18% of students with disabilities.

⁴⁰ See Antonis Katsiyannis, et al., *Exploring the Disproportionate Use of Restraint and Seclusion Among Students with Disabilities, Boys, and Students of Color*, 4 ADV. NEURODEV. DISORD. 271 (2020).

⁴¹ See 23 Ill. Admin. Code 1.280(b), stating in part “Under no circumstance shall the [discipline] policy authorize the use of isolated time out, time out, or physical restraint as a form of discipline or punishment.” See also 23 Ill. Admin. Code 1.285, stating, in part, “Isolated time out, time out, or physical restraint shall not be used as discipline or punishment, convenience for staff, retaliation, a substitute for appropriate educational or behavioral support, a routine safety matter, or to prevent property damage in the absence of imminent danger of serious physical harm to the student or others.”

⁴² U.S. DEPT. OF EDUC., *RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 2* (2012), www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

⁴³ *Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students: Hearings Before the Senate Comm. on Health, Educ., Lab., and Pensions*, 112th Cong. (2012) (testimony of Daniel Crimmins, Dir., Ctr. Leadership Disability at Ga. State U.).

⁴⁴ NASP, *PROVIDING EFFECTIVE SOCIAL-EMOTIONAL AND BEHAVIORAL SUPPORTS AFTER COVID-19 CLOSURES: UNIVERSAL SCREENING AND TIER 1 INTERVENTIONS*, (2020).

⁴⁵ Keels, *supra* note 33.

responsible for identifying and providing supports to students whose exposure to trauma impedes their learning – failure to do so may violate state and federal disabilities laws.⁴⁶ Rather than taking a punitive disciplinary approach to behavioral challenges that stem from personal traumas, schools can meet students where they are through evidence-based restorative justice, trauma-responsive and culturally relevant practices and interventions.⁴⁷

Sample policies and other resources on evidence-based best practices are available to schools regarding student discipline, equal opportunity, and social-emotional learning to create safe and inclusive school environments. ISBE offers resources on its website, including a comprehensive model policy toolkit⁴⁸ and links to sample policies, national resources, and restorative justice tools.⁴⁹ ISBE has also entered into a partnership with the University of Illinois Springfield, Loyola University Chicago, and Mindset Science Solutions, LLC to launch the Illinois Partnership for Disciplinary Equity (the “Partnership”). The Partnership is aimed towards school districts with high rates of suspension and expulsion of students of color and is generally comprised of three (3) components. Those three (3) components are as follows: (1) Empathic Instruction (a research-based professional learning program aimed at helping teachers focus on building supportive relationships with their students, especially when conflict arises), created by Dr. Jason Okonofua of Mindset Science Solutions, LLC, and provided to district teachers, (2) the offering of Loyola University Chicago’s certificate in School Discipline Reform to selected district administrators, and (3) participation of district teachers in the University of Illinois Springfield’s “The Night Before” trauma-informed simulation training.

In addition, as part of the 2014 Guidance package, the Department of Education and the Department of Justice issued a national resource document called *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* that provided schools a path to creating safe and supportive conditions for learning.⁵⁰ This publication emphasizes the use of restorative justice practices and other problem-solving and constructive remedies instead of costly exclusionary discipline.⁵¹ In September 2021, the Office of Civil Rights of the Department of Education also released virtual “resource binders” to assist elementary schools, secondary schools, and postsecondary institutions in supporting educational environments that are free from discrimination, including a section on discipline.⁵²

⁴⁶ For an overview of some recent litigation on this topic, see Sarah D. Sparks, *Do Distressed Students Have a Right to Trauma-Sensitive Schooling?*, EDUC. WK. (Sept. 3, 2019), <https://www.edweek.org/teaching-learning/do-distressed-students-have-a-right-to-trauma-sensitive-schooling/2019/09>.

⁴⁷ See generally 105 ILCS 5/22-90; ISBE, *supra* note 3; NAT’L COUNCIL STATE EDUC. ASSOC. & NAT’L EDUC. ASSOC. CTR. GREAT PUB. SCH., ADDRESSING THE EPIDEMIC OF TRAUMA IN SCHOOLS (July 2019), <http://www.nea.org/assets/docs/NEA%20Student%20Trauma%20Report%207-31.pdf>.

⁴⁸ ISBE, STRATEGIC PLAN 2.1.2: INCLUSIVE PRACTICES MODEL POLICY, ADMINISTRATIVE PROCEDURES, AND HANDBOOK NOTICES TOOLKIT (June 2021), <https://www.isbe.net/Documents/Model-Policy-Toolkit.pdf>.

⁴⁹ ISBE, EXCLUSIONARY DISCIPLINE – DISTRICTS IN THE TOP 20% FOR THREE CONSECUTIVE YEARS, <https://www.isbe.net/discipline> (last visited July 7, 2021).

⁵⁰ U.S. DEP’T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE (2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

⁵¹ *Id.* at 12–15.

⁵² OFFICE OF CIVIL RIGHTS, U.S. DEP’T OF EDUC., NEW OCR RESOURCE: CIVIL RIGHTS “RESOURCE BINDERS” FOR BACK-TO-SCHOOL (Sept. 14, 2021), <https://www2.ed.gov/about/offices/list/ocr/blog/20210914.html> (last visited November 17, 2021).

Fair and appropriate discipline can and should balance both school safety with student support services. Illinois schools are responsible for monitoring students' progress not only in academic skills, but also with respect to social, emotional, and behavioral outcomes.⁵³ Implementing restorative justice approaches, classroom-based interventions, and referrals to appropriate service providers offer promising evidence-based approaches to limiting exclusionary discipline.

III. Investigations and Enforcement

The Illinois Attorney General's Office is committed to protecting the civil rights of all Illinois residents, including students' rights to full and equal access to school services and facilities. The Attorney General has authority under the Civil and Equal Rights Enforcement Act to investigate all violations of laws relating to civil rights and discrimination, as well as to undertake necessary enforcement measures.⁵⁴ The Attorney General also has specific authority to investigate and commence civil actions based on patterns and practices of discrimination under the Illinois Human Rights Act.⁵⁵

In addition to patterns of intentional discrimination, school discipline policies and practices can violate Illinois civil rights laws when they impose an unjustified disparate impact based on race or other protected characteristics. For example, a discipline policy may result in disproportionate rates of discipline against students of a particular race, compared to students of other races. If an investigation shows such an impact, the school would need to demonstrate both (1) that the policy in question is necessary to meet an important goal that is not a pretext for an underlying discriminatory purpose,⁵⁶ and (2) that no other comparably effective alternative policies would meet that goal with less of an adverse impact on the disproportionately affected group.⁵⁷ The Illinois Attorney General maintains discretion to investigate and bring civil actions against entities or individuals whose actions present a pattern or practice of discrimination against a protected class of persons, including school districts, charter school networks, and law enforcement agencies whose policies or practices impose a disparate impact on students based on race, disability, gender, or other protected classes.

ISBE is responsible for the educational policies and guidelines for all pre-K-12 public schools in Illinois.⁵⁸ In carrying out its roles, ISBE published its 2020-2023 Strategic Plan (the "Strategic Plan") in 2020.⁵⁹ Section 2.1.2 of the Strategic Plan sets forth a goal of achieving a 5 percentage point reduction in the suspension and expulsion of students of color by the end of both the 2021-22 and 2022-23 school years.⁶⁰ Section 2.1.2 of ISBE's Strategic Plan aligns with Section 2-3.162 of the School Code, which requires ISBE to publish an annual report consisting of discipline data

⁵³ Memorandum from Dr. Carmen I. Ayala, Ill. State Superintendent of Educ., to Illinois state legislators (Mar. 1, 2021), https://www.isbe.net/Documents_SELTaskForce/EISEL-Task-Force-Final-Report-2021.pdf.

⁵⁴ 15 ILCS 210/1.

⁵⁵ 775 ILCS 5/10-104. The Attorney General's authority also extends to investigating patterns and practices of unconstitutional policing in schools and elsewhere. 15 ILCS 205/10.

⁵⁶ "Pretext" in this sense is described as a false reason for disciplinary measures that hides the true intentions or motivations for the actions taken against the student.

⁵⁷ See 2014 Dear Colleague Letter, *supra* note 5, at 11–12.

⁵⁸ 105 ILCS 5/1A-4(C).

⁵⁹ ISBE, 2020-2023 Strategic Plan (2020), available at <https://www.isbe.net/Documents/ISBE-Strategic-Plan.pdf>

⁶⁰ *Id.* at §2.1.2.

for all Illinois public schools, including district-authorized charter schools.⁶¹ Such data consists 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, whether a student is an English learner, incident type, and discipline duration.”⁶² Each school district that is identified for 3 consecutive years as being in the top 20% of Illinois districts for out-of-school suspensions, out-of-school expulsions, or racial disproportionality with respect to either of the two aforementioned exclusionary practices must submit a plan to ISBE identifying the strategies it will implement to reduce the use of such exclusionary practices, racial disproportionality or both, as well as a progress report after the following school year.⁶³ Additionally, such plans must: (a) be approved at a public school board meeting, and (b) be posted on the school district’s internet website.⁶⁴ ISBE’s Student Care Department is responsible for implementation and oversight of the agency’s initiatives regarding exclusionary discipline and acts as the main point of contact for student or parent inquiries or complaints regarding such.

IV. Conclusion

As many students are readjusting to in-person learning following a massive societal disruption and associated trauma, it has never been more important to ensure that schools present a supportive and equitable environment. Indeed, the law requires it. The Illinois Attorney General’s Office will be monitoring school discipline policies and practices and encourages all schools to consider this guidance as they undertake their annual review of their discipline policies and the implementation of those policies. Any student, parent, or other interested party, including those with information regarding suspected practices in violation of state or federal law, is encouraged to contact the OAG’s Civil Rights Bureau or ISBE’s Student Care Department using the contact information below.

Illinois Attorney General’s Office
Civil Rights Bureau
Email: civilrights@ilag.gov

Illinois State Board of Education
Student Care Department
Email: studentcare@isbe.net

KWAME RAOUL
Attorney General
State of Illinois

DR. CARMEN I. AYALA
State Superintendent
Illinois State Board of Education

⁶¹ 105 ILCS 5/2-3.162(a) (Note: ISBE makes such data publicly available on its website at <https://www.isbe.net/discipline>)

⁶² *Id.*

⁶³ 105 ILCS 5/2-3.162(b).

⁶⁴ *Id.*