

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

# MODEL SCHOOL RESPONSE TO DRUGS AND DRUG-RELATED INCIDENTS ACT

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## SECTION I. SHORT TITLE.

This Act may be cited as the “Model School Response to Drugs and Drug-related Incidents Act (Act),” “Model Act,” or “the Act.”

## SECTION II. LEGISLATIVE FINDINGS AND PURPOSE.

(a) The Legislature finds that:

- (1) There are multiple negative impacts of any form of exclusionary discipline in the K-12 setting, especially those that criminalize behaviors;<sup>1</sup>
- (2) These impacts are found to be the strongest among Black youth;<sup>2</sup>
- (3) Exclusionary discipline does not change behaviors and has adverse effects on students;<sup>3</sup>
- (4) Discretion in disciplinary response leads to disparate outcomes among children of varying racial and ethnic backgrounds;<sup>4</sup>

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<sup>1</sup> Miles Davison et al., “School Discipline and Racial Disparities in Early Adulthood,” *Educational Researcher*, November 30, 2021, 0013189X211061732, <https://journals.sagepub.com/doi/10.3102/0013189X211061732>; Janet Rosenbaum, “Educational and Criminal Justice Outcomes 12 Years After School Suspension,” *Youth & Society* 52, no. 4 (May 2020): 515–47, <https://journals-sagepub-com.tsu.idm.oclc.org/doi/10.1177/0044118X17752208>; Novak A., “The School-To-Prison Pipeline: An Examination of the Association Between Suspension and Justice System Involvement,” *Criminal Justice and Behavior* 46, no. 8 (2019): 1165–80, <https://journals.sagepub.com/doi/10.1177/0093854819846917>; Fabelo et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* (United States, 2011).

<sup>2</sup> Davison et al., “School Discipline and Racial Disparities in Early Adulthood”; Nathan Barrett et al., “Disparities and Discrimination in Student Discipline by Race and Family Income,” *Journal of Human Resources* 56, no. 3 (July 1, 2021): 711–48, <http://jhr.uwpress.org/content/56/3/711>; Andrew Bacher-Hicks, Stephen B. Billings, and David J. Deming, “The School to Prison Pipeline: Long-Run Impacts of School Suspensions on Adult Crime,” *Working Paper Series* 26257 (2019).

<sup>3</sup> Julie Gerlinger, ““Exclusionary Discipline and School Crime: Do Suspensions Make Schools Safer?”” *Education and Urban Society*, 2021, <https://journals.sagepub.com/doi/10.1177/00131245211050346>; Matthew P. Steinberg, Elaine Allensworth, and David W. Johnson, “What Conditions Jeopardize and Support Safety in Urban Schools? The Influence of Community Characteristics, School Composition and School Organizational Practices on Student and Teacher Reports of Safety in Chicago,” April 6, 2013, <https://escholarship.org/uc/item/2mx8c60x>.

<sup>4</sup> Jing Liu, Michael S. Hayes, and Seth Gershenson, “JUE Insight: From Referrals to Suspensions: New Evidence on Racial Disparities in Exclusionary Discipline,” *Journal of Urban Economics*, April 3, 2022, 103453, <https://doi.org/10.1016/j.jue.2022.103453>; Mariam Ashtiani, “The Racially Disparate Effects of Drug Arrest on High School Dropout,” *Socius* 7 (January 1, 2021): 23780231211027096, <https://doi.org/10.1177/23780231211027097>; Fabelo et al., *Breaking Schools’ Rules*.



(5) Independent researchers<sup>5</sup> and several institutions, including The Leadership Conference on Civil and Human Rights, the American Bar Association, and the American Psychological Association,<sup>6</sup> call for inclusive solutions to disciplinary responses and more effective data collection.

(b) The Legislature further finds that:

- (1) Drugs in schools are a concern. A 2019 National Center for Education Statistics' report on school crime and safety used data from the Centers for Disease Control and Prevention's Youth Risk Behavior Survey and found that 22 percent of ninth (9<sup>th</sup>) through twelfth (12<sup>th</sup>) grade students had access to drugs on school property in the last year;<sup>7</sup>
- (2) On average, reported usage of illicit drugs among those 12-17 years of age did not change significantly in the past five years (from 3.4 percent in 2015 to 3.6 percent in 2019), while the portion of youth receiving treatment decreased slightly over this time frame (from 0.8 percent in 2015 to 0.7 percent in 2019);<sup>8</sup>
- (3) Currently, 57 percent of state statutes or regulations require that all drug offenses in school settings be reported to police, while 61 percent require that parents or

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<sup>5</sup> See, e.g., Losen, D. and Whitaker, A., "Eleven Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools." (ACLU, 2018); Jason Nance, "Dismantling the School-to-Prison Pipeline: Tools for Change," *UF Law Faculty Publications*, January 1, 2016, <https://scholarship.law.ufl.edu/facultypub/767>; Daniel J. Losen and Russell J. Skiba, "Suspended Education: Urban Middle Schools in Crisis," September 13, 2010, <https://escholarship.org/uc/item/8fh0s5dv>; Catherine Y. Kim, Daniel J. Losen, and Damon Hewitt, *The School-to-Prison Pipeline: Structuring Legal Reform*, 1 online resource (vii, 229 pages) vols. (New York: New York University Press, 2010), <https://www.degruyter.com/isbn/9780814749197>.

<sup>6</sup> The Leadership Conference on Civil and Human Rights, "Civil Rights Principles for Safe, Healthy, and Inclusive School Climates" (Washington, D.C: The Leadership Conference Education Fund, 2019), <http://civilrightsdocs.info/pdf/education/School-Climate-Principles.pdf>; American Bar Association, "ABA Task Force on Reversing the School to Prison Pipeline," Report, Recommendations, and Preliminary Report (American Bar Association, January 2018), <https://www.americanbar.org/content/dam/aba/administrative/corej/final-school-to-prisonpipeline.pdf>; American Psychological Association Zero Tolerance Task Force, "Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations," *American Psychologist* 63, no. 9 (2008): 852–62, <https://doi.org/10.1037/0003-066X.63.9.852>.

<sup>7</sup> K. Wang et al., "Indicators of School Crime and Safety: 2019" (National Center for Education Statistics, July 15, 2020), <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020063..>

<sup>8</sup> Substance Abuse and Mental Health Services Administration, "Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health" (U.S. Department of Health and Human Services, 2020), Retrieved from <https://www.samhsa.gov/data/>.

guardians be notified, while only twelve states (24 percent) have both of these requirements;<sup>9</sup>

- (4) Avenues to keep students in schools and out of the criminal justice system are necessary to ensure compliance with federal and state civil rights laws, under the due process clause and equal protection clause of the Fourteenth Amendment, the Civil Rights Act of 1871 and [relevant state civil rights laws].<sup>10, 11</sup>

(c) The purpose of this Act is to:

- (1) Establish a consistent and positive response for [State] public schools to best support students who have drug or drug-related incidents on school premises or at a school-related function;
- (2) Provide data collection and reporting requirements that distinguish incidents involving drugs from other incidents, such as disruption or violence;
- (3) Implement a detailed study to tailor the tiered response to the state’s needs and abilities;<sup>12</sup>
- (4) Provide funding for the Act.

## Commentary

This Act provides state legislators, policymakers, and those in the public education setting with the foundation for an evidence-based framework to better respond to K-12 students who have drug or drug-related incidents on school grounds. It addresses what has been termed the school-to-prison pipeline, a “pattern of continuing failures in the education system where certain groups of students—for example, students of color (African American, Hispanic, Asian, and Native American), with disabilities, or [who are] LGBTQ— are disproportionately over, or incorrectly, categorized in special education, are disciplined more harshly, including referral to law enforcement for minimal misbehavior, achieve at lower levels, and eventually drop or are pushed out of school, often into juvenile justice facilities and prisons,”<sup>13</sup> by decreasing the number of school-age youth who are funneled into the justice system for drug or drug-related incidents. This Act applies to public schools. To ensure that it addresses [State]’s specific needs, the purpose listed in (c)(3), which calls for a study to tailor the response according to the state’s needs and abilities, is a critical component. This component is in Section V below.

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<sup>9</sup> Jodi Saxton Moon et al., “Reinforcing the School-to-Prison Pipeline Via Code: How States Pre-Determine School Approach to Students and Drugs (Working Title),” *Unpublished Manuscript*, 2022.

<sup>10</sup> U.S. CONST. amend. XIV § 1. The Civil Rights Act of 1871, 42 U.S.C. § 1983 (1996).

<sup>11</sup> This Act contains certain bracketed words and phrases (e.g., “[insert state name]” or “[Oversight Agency]”). Brackets indicate instances where state lawmakers will need to insert state-specific terminology or facts.

<sup>12</sup> See e.g., Comprehensive School Threat Assessment Guidelines, Cornell, 2018; <https://www.schoolta.com/manual>.

<sup>13</sup> American Bar Association, “ABA Task Force on Reversing the School to Prison Pipeline,” 5.



Much of the research on this issue explores the unwanted outcomes associated with exclusionary discipline. Such discipline, the act of removing a student from the school without services (e.g., out-of-school suspensions and expulsions), remains a common practice, despite compelling evidence that it is both harmful and ineffective. A 2015 study by the American Civil Liberties Union entitled “Eleven Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools” found that students missed an inordinate amount of instruction time due to exclusionary discipline measures. It further found that whereas overall, the average student lost 23 days for every 100 students enrolled, a Black student specifically would have lost 66 days for every 100 students enrolled.<sup>14</sup> Removal from school results in lost instructional time, and research enumerates the harm caused by suspensions and expulsions. For example, students who have been expelled or suspended are: (1) more than twice as likely to be charged with a crime as an adult;<sup>15</sup> (2) 11 percent more likely to utilize Supplemental Nutrition Assistance Program benefits by age 22;<sup>16</sup> (3) less likely to graduate from high school or pursue a postsecondary degree;<sup>17</sup> and, (4) more likely to have contact with the juvenile justice and the criminal justice systems.<sup>18</sup>

Recent studies show that while suspension rates grew for all students, there are tremendous disparities when breaking the data down by race. Black students are excluded from learning and consistently disciplined more harshly than their similarly situated white peers. A 2011 longitudinal statewide study conducted in Texas found that Black students were 31 percent more likely to experience disciplinary action than white students.<sup>19</sup> Additionally, a 2022 study found that, “[s]pecifically, compared to white students involved in the same incident who had similar prior disciplinary histories, on average, Black students were almost twice as likely to be suspended.”<sup>20</sup> Similarly, a longitudinal study of Louisiana student level data found “black students consistently receive longer suspensions than white students...for the same recorded infractions.”<sup>21</sup>

It is difficult to isolate disciplinary responses to drugs from other offenses due to existing limitations in data collection and reporting. Therefore, the purpose identified in (c)(2), which calls for more detailed data collection, is critical. (Sections VI and VII of the Model Act address data collection and reporting.) Some studies do currently provide more nuanced information about discipline in response to drugs specifically. For example, despite reporting similar or higher rates of drug use and sales, white youth are less likely to be arrested and more likely to

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<sup>14</sup> Losen, D. and Whitaker, A., “Eleven Million Days Lost: Race, Discipline, and Safety at U.S Public Schools.” The study divided total days lost per student group by enrollment to get the number of days lost per student, which allows a better comparison between groups of students with differing enrollments. Looking at the data per 100 students (rather than per one student) also gives results that are not fractions of one (e.g., 23 days lost per 100 students enrolled is the same as 0.23 days lost per one student enrolled).

<sup>15</sup> Davison et al., “School Discipline and Racial Disparities in Early Adulthood.”

<sup>16</sup> Davison et al.

<sup>17</sup> Rosenbaum, “Educational and Criminal Justice Outcomes 12 Years After School Suspension.”

<sup>18</sup> Davison et al., “School Discipline and Racial Disparities in Early Adulthood”; Rosenbaum, “Educational and Criminal Justice Outcomes 12 Years After School Suspension”; Fabelo et al., *Breaking Schools’ Rules*.

<sup>19</sup> Fabelo et al., *Breaking Schools’ Rules*.

<sup>20</sup> Liu, Hayes, and Gershenson, “JUE Insight,” 8.

<sup>21</sup> Barrett et al., “Disparities and Discrimination in Student Discipline by Race and Family Income,” 27.

not get punished by the school administration than students of color.<sup>22</sup> Other research finds that the effects of drug arrests are more detrimental to the educational trajectories of Black youth.<sup>23</sup> The resulting damage from these disparities in both initial treatment (*e.g.*, monitoring or surveillance) and subsequent disciplinary action leads toward, at the very least, learning loss, and at its worst, a direct entry into the school-to-prison pipeline.

Some studies find that exclusionary discipline incidents due to drug offenses are rare compared to other school infractions (*e.g.*, violence). In a 2022 study of student behavior resulting in exclusionary discipline using data from a large and diverse school district in California, drug infractions account for one percent of the incidents studied (which occur predominantly in high school).<sup>24</sup> A 2010 study using the Civil Rights Data Collection found that five percent of suspensions were related to weapons or drugs.<sup>25</sup> While this low rate of disciplinary action due to drug offenses may be due to underreporting and/or a lack of nuance or comparability in discipline reporting codes between school districts, subject matter experts believe that this Act's reporting requirements will provide a better understanding of drug use and abuse in schools, which will in turn afford researchers and practitioners more opportunity to identify how to help students who struggle with drug use and abuse to succeed in school.

Finally, exposure to drugs is a reality in American schools. Data from the National Center for Education Statistics Youth Risk Behavior Surveillance System show that students' drug exploration in schools has remained relatively constant over the past decade; in 2019, 21.8 percent of students in ninth (9<sup>th</sup>) through twelfth (12<sup>th</sup>) grade reported that illegal drugs were made available to them on school property in the past year.<sup>26</sup> This research does not include students who possess, distribute, or use prescription drugs not prescribed to them. Not only are licit and illicit drugs available to adolescents, a report by the U.S. Department of Health and Human Services finds that among youth 12-17 years of age, the perceived risk associated with smoking marijuana once or twice a week declined substantially (from 40.6 percent in 2015 to 34.6 percent in 2019), while the perceived risk associated with the use of cocaine, albeit greater, declined slightly among this same age group.<sup>27</sup> The report notes the importance of educating youth about the potential risks associated with various substances; notably, among the 12-17 year old respondents, the 12 and 13 year olds had lower perceptions of risk than their older peers.<sup>28</sup>

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<sup>22</sup> Liu, Hayes, and Gershenson, "JUE Insight."

<sup>23</sup> Ashtiani, "The Racially Disparate Effects of Drug Arrest on High School Dropout."

<sup>24</sup> Liu, Hayes, and Gershenson, "JUE Insight."

<sup>25</sup> Losen and Skiba, "Suspended Education."

<sup>26</sup> Wang et al., "Indicators of School Crime and Safety." *Of note, there not a significant difference between the 2009 and 2019 findings. For the 2019 report, there was not a reporting difference between Black (21%) and white (20%) students, while more Hispanic (27%) and two or more races (28%) reported that drugs were available.*

<sup>27</sup> Substance Abuse and Mental Health Services Administration, "Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health." *Perceived risk is a factor that can influence the likelihood that someone will use a substance.*

<sup>28</sup> Substance Abuse and Mental Health Services Administration.

This Act requires public schools to establish and implement administrative processes and supportive protocols to carefully evaluate drug and drug-related incidents and take appropriate non-judicial action when addressing any that are non-violent. This Act also requires notification of parents or guardians, in writing, at the time of the evaluation. This Act uses a decision tree that evaluates the risk level of the incident and further requires that the protocols for supporting students include education, mentorship, and counseling commensurate with the level of the incident. The response protocols should also incorporate parental involvement and education, as relevant.

The scope of training, education, evaluation, and quality control referenced throughout this Act should be specified in state regulations consistent with best practices. The drafters, subject matter experts, and peer reviewers of this Model Act believe that each state or local government entity is in the best position to determine the specific parameters for training, education, evaluation, and quality control and that this level of detail is more appropriate for regulation or state policy. They also encourage state oversight agencies to include guidelines for accountability to monitor compliance.

The drafters found resources from the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) and the State of Washington's Office of the Superintendent of Public Instruction integral to the creation of this Model Act.

### SECTION III. DEFINITIONS.

***[States may already have definitions in place for some or all of the following listed terms.***

***In such case, states are free to use the existing definitions in place of those listed below.]***

For purposes of this Act, unless the context clearly indicates otherwise, the words and phrases listed below have the meanings given to them in this section:

- (a) Controlled substance.—“Controlled substance” is a drug that is illegal to possess or use without a doctor’s prescription, including narcotics, stimulants, and hallucinogens; any illicit drug.<sup>29</sup>
- (b) De-identified data.—“De-identified data” or “de-identification of data” refers to the process of removing or obscuring any personally identifiable information from student records in a way that minimizes the risk of unintended disclosure of the identity of individuals and information about them.<sup>30</sup>

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<sup>29</sup> *Black’s Law Dictionary*, 11th Edition, 2019.

<sup>30</sup> Privacy Technical Assistance Center (PTAC), “Data De-Identification: An Overview of Basic Terms” (U.S. Department of Education, May 2013), [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/data\\_deidentification\\_terms\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/data_deidentification_terms_0.pdf).

- (c) Drug.—“Drug” means a substance which produces a physiological effect when ingested or otherwise introduced into the body. A drug can be an illicit or legal substance.<sup>31</sup>
- (d) Drug-related incident.—A “drug-related incident” or “incident” means any non-violent incident that includes use or possession of drugs or controlled substances by a student or students and occurs on school property or at a school sanctioned event.
- (e) Evidence-based.—“Evidence-based” is a solution that is an accurate collection and analysis of data to improve oversight and accountability through effective monitoring of policies and practices.<sup>32</sup>
- (f) Exclusionary discipline.—“Exclusionary discipline” is the removal of a student from the school without services; out-of-school suspensions and expulsions; removing a student from his/her educational program through suspension or expulsion.<sup>33</sup>
- (g) Instructional time.—“Instructional time” is time enrolled and present in an institution of learning and education.<sup>34</sup>
- (h) Intervention.—“Intervention” is a preventative and supportive action that reconceptualizes discipline in a way that avoids exclusion.<sup>35</sup>
- (i) Law enforcement unit.—“Law enforcement unit” means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:
  - (1) Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or
  - (2) Maintain the physical security and safety of the agency or institution.<sup>36</sup>

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<sup>31</sup> *Model Overdose Fatality Review Teams Act*. Legis. Analysis and Pub. Pol’y Ass’n (February 2021), <http://legislativeanalysis.org/wp-content/uploads/2021/03/LAPPA-Model-Overdose-Fatality-Review-Teams-Act.pdf>

<sup>32</sup> American Bar Association, “ABA Task Force on Reversing the School to Prison Pipeline,” 15.

<sup>33</sup> See e.g. Gerlinger, “Exclusionary Discipline and School Crime”; American Bar Association, “ABA Task Force on Reversing the School to Prison Pipeline.”

<sup>34</sup> For our purposes, we use a simple definition and do not address the many dimensions of instructional time. For a deeper exploration see, e.g., David C. Berliner, “What’s All the Fuss about Instructional Time?,” in *The Nature of Time in Schools: Theoretical Concepts, Practitioner Perceptions* (New York, NY, US: Teachers College Press, 1990), 3–35.

<sup>35</sup> “ABA Resolution 118B,” Resolution (American Bar Association, 2009), [https://www.americanbar.org/content/dam/aba/directories/policy/annual-2009/2009\\_am\\_118b.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/annual-2009/2009_am_118b.pdf).

<sup>36</sup> FERPA, 34 C.F.R. 99.8(a).

- (j) Non-judicial.—“Non-judicial” is a process that does not involve judicial proceedings or the administration of justice; not a legal action or involving the law.<sup>37</sup>
- (k) Oversight agency.—“[Oversight agency]” means the government unit or entity at the state level responsible for regulating, monitoring, or otherwise overseeing of the administration of public education.
- (l) At school.—“At school” is when an individual is in the school building or on school property, including in a parking lot, on a playground, or on a school bus, going to or from school.<sup>38</sup>
- (m) School administration/personnel.—“School administration/personnel” includes teachers, support counselors, principals, administrative staff, mental and physical health personnel, and special educators.<sup>39</sup>
- (n) School sanctioned event.—“School sanctioned event” is an event that falls under the school’s authority and jurisdiction even if it is located off school grounds, such as sporting events, field trips, and graduation.
- (o) Substance use or misuse.—“Substance use or misuse” refers to the use of any controlled substance or misuse of a prescription drug.<sup>40</sup>
- (p) Substance use disorder or SUD.—“Substance use disorder” or “SUD” is characterized by impairment caused by the recurrent use of alcohol or other drugs (or both), including health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>41</sup>

## Commentary

The Model Act’s drafters are aware that individual states may have currently-in-force statutory or regulatory definitions for some of the terms contained in this section and that lawmakers may want to default to that language. Nevertheless, this Act contains definitions designed to articulate the intended scope of each term as it relates to students and drug-related incidents. The drafters recommend that the definitions set forth in the Model Act not be changed, as any changes may affect some of the provisions in the Act.

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<sup>37</sup> Black’s Law Dictionary.

<sup>38</sup> Wang et al., “Indicators of School Crime and Safety.”

<sup>39</sup> See e.g. Losen, D. and Whitaker, A., “Eleven Million Days Lost: Race, Discipline, and Safety at U.S Public Schools,” 2.

<sup>40</sup> Substance Abuse and Mental Health Services Administration, “Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health.”

<sup>41</sup> Substance Abuse and Mental Health Services Administration.

The “[Oversight Agency]” referenced in this provision means the entity at the state level responsible for promulgating regulations associated with the provision of education in [State]. The relevant oversight agency was intentionally left open as it may vary among states, but many use the title [State] Education Agency or [State] Department of Education.

#### SECTION IV. RESPONSE PLAN.

- (a) In general.—Every public school district located within [State] shall establish and follow a consistent and multi-level response plan for [State] public schools to support students who are involved in any non-violent incident that includes the use or possession of drugs or controlled substances on school premises or at a school-related function as provided in this Act.
- (b) Required elements.—A response plan must include at least the following elements:
  - (1) An internal fact-finding system to appropriately determine the level of an incident before a response is made, to include at a minimum:
    - (A) A determination of the following relevant factors:
      - (i) What drug(s) is/are involved;
      - (ii) Whether there are any immediate health concern (*e.g.*, overdose);
      - (iii) Where the student(s) obtained the drug(s);
      - (iv) If the student(s) has a history of past drug or drug-related incidents in the school; and
      - (v) In what stage is the student’s use of drugs;<sup>42</sup> and
    - (B) A determination of the possibility of other risk factors, including, but not limited to, mental health issues, attendance issues, and unfavorable living circumstances such as exposure to trauma;<sup>43</sup>

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<sup>42</sup> Dixie Grunenfelder et al., “WASHINGTON’S STUDENT ASSISTANCE PREVENTION-INTERVENTION SERVICES PROGRAM Manual” (Washington, 2012), <https://www.k12.wa.us/sites/default/files/public/preventionintervention/pubdocs/sapispmanual2012.pdf>. (p. 134-135) provides a useful description of the continuum of substance use: Never before used; used but not in the last three months; used in the last three months but no evidence of persistent use; used in the last three months with evidence of persistent use; and dependent.

<sup>43</sup> See, *e.g.* Division of Adolescent and School Health, “SUBSTANCE USE AND SEXUAL RISK BEHAVIORS AMONG YOUTH” (Centers for Disease Control and Prevention, 2018), <https://www.cdc.gov/healthyyouth/substance-use/pdf/dash-substance-use-fact-sheet.pdf>.



- (2) Guidelines for education, counseling, and mentorship regarding substance use and abuse commensurate with the gravity of the incident;<sup>44</sup>
  - (3) Notification to the parents or guardians of the student involved in the incident in writing, either email or written correspondence, and by phone, no later than 24 hours after learning of the incident in question and prior to any fact gathering;<sup>45</sup>
  - (4) Meeting with the student and his/her parents or guardian to clarify facts and identify next steps based on subsection (b)(2);
  - (5) Development and execution of a confidentiality agreement as further described in Section VIII.
- (c) Consultation.—The response plan established pursuant to this Act shall be established in consultation with mental health staff, social workers, and guidance counselors, and include parental and community partner input.

## Commentary

The goal of this Act is to keep students in school. Research suggests that few states currently use language that reinforces this goal when it comes to law or code. In fact, many states respond to drug-related incidents in the same way as dangerous weapon possessions.<sup>46</sup> This Act moves public schools from broad disciplinary responses that treat drug use and abuse on par with possession of weapons (and other more serious offenses), to responses that acknowledge that some youth in [State's] public schools need additional support to deal with the issue of substance use, misuse, and abuse.<sup>47</sup>

From 2015 to 2019, the percentage of youth ages 12 to 17 experiencing substance use disorder in the prior year increased slightly, from an estimated 3.4 percent in 2015 to 3.6 percent

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<sup>44</sup> See Section V (c).

<sup>45</sup> Federal laws and guidelines make it clear that this communication must be done in a language the parent or guardian can understand; *see e.g.* Title VI, Civil Rights Act of 1964 § 2000d; joint guidance from the U.S. Department of Justice and the U.S. Department of Education entitled “Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them,” <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>.

<sup>46</sup> *See e.g.*, Haw. Code R §8-19-6(c). Rhode Island is one of few exceptions in this regard; for example, their code specifically requires that the nature and circumstances of a violation are taken into consideration (R.I. Code R. § 16-21-21.1) and encourages community partnerships and education under the “The Rhode Island Substance Abuse Prevention Act” (§ 16-21.2-2). *See also* Moon et al., “Reinforcing the School-to-Prison Pipeline Via Code: How States Pre-Determine School Approach to Students and Drugs.”

<sup>47</sup> District mandated alternative schools are not mentioned as the drafters believe that it is counter to the goal of this Act.

in 2019.<sup>48</sup> The slight increase holds true for specific drugs; for example, reported prescription tranquilizer or sedative use disorders has hovered between 0.3 and 0.4 percent (approximately 96,000 youth), while cannabis use disorders in youth ages 12 to 17 have increased from 2.6 percent to 2.8 percent.<sup>49</sup> The number of youth receiving substance use disorder treatment in this same time span also remained constant, from 0.8 percent in 2015 to 0.7 percent in 2019. Experts found that for school-related drug incidents, state mandated requirements tend to focus equally on a response from the criminal justice system and internal student supports; 57 percent of states require that an incident be reported to the police while 59 percent of state statutes reference any form of counseling or student-focused response to a drug-related incident.<sup>50</sup>

Notably, Section IV of this Act does not require that an incident involving drugs be reported to the police but calls for an internal fact-finding system. Subject matter experts prefer that school districts not report any drug-related incidents to the police. SAMHSA notes that “schools are the ideal setting in which to prevent, identify, treat, and support substance use and mental illness concerns.”<sup>51</sup> Moreover, in 2018, the International Association of Chiefs of Police issued a report encouraging police agencies to lead the way in developing proactive responses to non-violent, drug and drug-related incidents that do not involve law enforcement in order to better support vulnerable populations (including those who have a substance use disorder).<sup>52</sup> Law enforcement and other first responder-led deflection initiatives are a by-product of this encouragement.<sup>53</sup> As such, public schools should clearly respond to students who are found to have used or possessed drugs in an educative and therapeutic manner.

The National Institute on Drug Abuse (NIDA) holds as a principle that “prevention programs should address all forms of drug abuse, alone or in combination, including the underage use of legal drugs (e.g., tobacco, alcohol, or in some cases, cannabis); the use of illegal drugs (e.g., heroin); and the inappropriate use of legally obtained substances (e.g., inhalants),

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<sup>48</sup> Substance Abuse and Mental Health Services Administration, “Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health.”

<sup>49</sup> Substance Abuse and Mental Health Services Administration.

<sup>50</sup> Moon et al., “Reinforcing the School-to-Prison Pipeline Via Code: How States Pre-Determine School Approach to Students and Drugs (Working Title).” Notably, our analysis shows that it is possible to reference referral to counselors but not require or even promote treatment solutions. Rhode Island specifically notes that “Nothing in this section is intended to mandate local school districts to employ counselors for treatment or rehabilitation.” R.I. Code § 1166(c).

<sup>51</sup> Substance Abuse and Mental Health Services Administration, “Student Assistance: A Guide for School Administrators” (Rockville, MD, 2019). *See also*, Division of Adolescent and School Health. “SUBSTANCE USE AND SEXUAL RISK BEHAVIORS AMONG YOUTH.” Centers for Disease Control and Prevention, 2018. <https://www.cdc.gov/healthyyouth/substance-use/pdf/dash-substance-use-fact-sheet.pdf>.

<sup>52</sup> International Association of Chiefs of Police. 2018., “Policing in Vulnerable Populations. Practices in Modern Policing” (Washington, D.C.: Office of Community Oriented Policing Services, 2018), [https://www.theiacp.org/sites/default/files/2018-11/IACP\\_PMP\\_VulnerablePops.pdf](https://www.theiacp.org/sites/default/files/2018-11/IACP_PMP_VulnerablePops.pdf).

<sup>53</sup> *See, e.g., Model Law Enforcement and Other First Responder Deflection Act*, LEGIS. ANALYSIS & PUB. POL. ASSOC. (Sept. 2021), <https://legislativeanalysis.org/model-law-enforcement-and-other-first-responder-deflection-act/>.

prescription medications, or over-the-counter drugs.”<sup>54</sup> This Act mandates one step further; prevention and treatment programs should address all forms of drug abuse and misuse, licit or illicit.

There are several existing education intervention frameworks that inform the requirements of this Act, relying on a combination of best practices in education and public health. Response to Intervention Positive Behavioral Interventions and Supports,<sup>55</sup> and Multi-tiered Systems of Support (MTSS)<sup>56</sup> are examples of evidence-based frameworks currently in place in school districts that support students by taking a proactive, early intervention approach.<sup>57</sup> These frameworks lack specificity to allow educators to interpret and respond to the learners’ needs. While these frameworks are often associated with addressing student learning outcomes, MTSS is more readily and more broadly applied to behavioral challenges that might impede student success. Substance use and abuse can be an indicator of mental health issues and are frequently discussed under the broader term of “behavioral health.”<sup>58</sup> As an example, recent research using the Youth Risk Behavior Surveillance System data shows a relationship between hallucinogenic drug use and suicidal ideation.<sup>59</sup> SAMHSA addresses these needs together under the heading “Mental Health and Substance Use Disorders” when it advocates for school-based response and prevention programs.<sup>60</sup>

Additionally, New York’s Evidence-based Program Guidance for Substance Use Prevention Education in Schools applies MTSS in a public health approach, wherein the Tier 1

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<sup>54</sup> National Institute on Drug Abuse, “Preventing Drug Use among Children and Adolescents (In Brief),” National Institute on Drug Abuse, <https://nida.nih.gov/publications/preventing-drug-use-among-children-adolescents/acknowledgments>.

<sup>55</sup> See <https://www.pbis.org/pbis/what-is-pbis>

<sup>56</sup> See <https://www.pbisrewards.com/blog/what-is-mtss/>; see also U.S. Department of Education, Office of Special Education and Rehabilitative Services. “Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs,” 2021. <https://www2.ed.gov/documents/students/supporting-child-student-social-emotional-behavioral-mental-health.pdf>

<sup>57</sup> “What Tools Have States Developed or Adapted to Assess Schools’ Implementation of a Multi-Tiered System of Supports/Response to Intervention Framework?” (National Center for Education Statistics, March 23, 2020), <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=REL2020017>. See also, <https://www.pbis.org/pbis/what-is-pbis>; <https://www.pbisrewards.com/blog/what-is-mtss/>. See also Welsh, Justine Wittenauer, John R. Knight, Sherry Shu-Yeu Hou, Monica Malowney, Patricia Schram, Lon Sherritt, and J. Wesley Boyd. “Association Between Substance Use Diagnoses and Psychiatric Disorders in an Adolescent and Young Adult Clinic-Based Population.” *The Journal of Adolescent Health: Official Publication of the Society for Adolescent Medicine* 60, no. 6 (June 2017): 648–52. <https://doi.org/10.1016/j.jadohealth.2016.12.018>.

<sup>58</sup> See, e.g., The New York State Education Department and The New York State Office of Addiction Services and Supports, “Evidence-Based Program Guidance for Substance Use Prevention Education in Schools,” 2020, <http://www.nysed.gov/common/nysed/files/programs/curriculum-instruction/evidence-based-program-guidance-substance-use-prevention-education-schools.pdf>.

<sup>59</sup> Saral Desai et al., “Hopelessness, Suicidality, and Co-Occurring Substance Use among Adolescent Hallucinogen Users-A National Survey Study.,” *Children (Basel, Switzerland)* 9, no. 12 (2022), <https://doi.org/10.3390/children9121906>. It should be noted that death by suicide was the second leading cause of death for youth 10-14 in 2020, according to the CDC (<https://www.cdc.gov/suicide/facts/index.html>).

<sup>60</sup> See, e.g., <https://www.samhsa.gov/find-help/disorders>.

system of support focuses on all students and emphasizes prevention-focused substance use and abuse education; Tier 2 targets students specifically at risk due to specific factors (e.g., mental health disorders); and Tier 3 focuses on high risk students.<sup>61</sup> The National Academies of Sciences, Engineering and Medicine model, designed for mental, emotional, and behavioral interventions, includes promotion (emphasizing skill-based positive attributes) in addition to prevention, treatment, and maintenance.<sup>62</sup> SAMHSA advocates for student assistance programs in which prevention specialists work in collaboration with teachers, administrators, other school staff, parents, and community service providers to offer a framework for activities “including (1) education; (2) prevention; (3) early identification; (4) evidence-based intervention; (5) referral processes; and (6) guided support services for students in kindergarten through grade 12 who are exhibiting a range of risk factors that interfere with their educational success.”<sup>63</sup> Notably, all of the frameworks mentioned here include interdisciplinary teams to help students succeed.

Subsection (b) includes the factors used to assess the level of incident that occurred, which informs the appropriate school response. Subject matter experts believe that the appropriate response should be based on the student’s needs and prioritize keeping students in their home school unless there is a risk to their health or safety or the safety of others. For instance, Washington uses the following categories to identify the stage of a student’s drug use: (1) never used; (2) abstained for last three months; (3) misused in the last three months, but no evidence of recurrent dangerous use; (4) abused; and (5) dependent.<sup>64</sup> School district plans formed pursuant to this Act may use these levels or adopt others found in evidenced-based literature.

It is imperative that parents and guardians are included in the process and seen as part of the solution. Parents and guardians are an integral part of the educational experience, and some states delineate as such in their codes.<sup>65</sup> Organizations including the American School Counselor Association and NIDA advocate for collaborative solutions that involve family and community in addressing harmful behaviors.<sup>66</sup> Evidence-based programs for school drug prevention such as

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<sup>61</sup> The New York State Education Department and The New York State Office of Addiction Services and Supports, “Evidence-Based Program Guidance for Substance Use Prevention Education in Schools.”

<sup>62</sup> Engineering National Academies of Sciences, *Fostering Healthy Mental, Emotional, and Behavioral Development in Children and Youth: A National Agenda*, 2019, <https://doi.org/10.17226/25201>.

<sup>63</sup> Substance Abuse and Mental Health Services Administration, “Student Assistance: A Guide for School Administrators,” 5.

<sup>64</sup> Grunenfelder et al., “WASHINGTON’S STUDENT ASSISTANCE PREVENTION-INTERVENTION SERVICES PROGRAM Manual,” 134.

<sup>65</sup> For instance, Texas code reads, “Parents are partners with educators, administrators, and school district boards of trustees in their children’s education.” Tex. Code Ann. Title 2 Subtitle E § 26.001 (a) (1995).

<sup>66</sup> American School Counselor Association, “The School Counselor and the Identification, Prevention and Intervention of Behaviors That Are Harmful and Place Students At-Risk” (American School Counselor Association, 2017), <https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-the-Identification,-Preve>; National Institute on Drug Abuse, “Preventing Drug Use among Children and Adolescents (In Brief).”

Project ALERT<sup>67</sup> include parental involvement as a key element for effective drug use prevention.<sup>68,69</sup> Given that Black students are disproportionately over disciplined in general<sup>70</sup> and more likely to be punished for similar offenses than their white peers,<sup>71</sup> it is equally important to acknowledge that research has found that Black students and their families feel marginalized by school disciplinary processes.<sup>72</sup> Additionally, Black parents describe feeling excluded from school involvement.<sup>73</sup> This Act seeks to decriminalize children’s behavior and instead respond with evidenced-based supports that improve their long-term outcomes and opportunities; parental involvement is one ideal component of that shift. A survey of state education laws and regulations indicates, however, that this is only sometimes the case. Sixty-one (61) percent of the state statutes reviewed requiring that parents or guardians are notified when there is a drug or drug-related incident involving their child,<sup>74</sup> which means that approximately one-third of states do not mandate parental contact. For instance, Rhode Island law requires immediate parent notification if a student is found with a weapon<sup>75</sup> but does not mention notification of parents for a drug or drug-related incident. In comparison, the District of Columbia “[r]equire[s] school personnel to seek and facilitate the involvement of parents in response to an incident resulting in a disciplinary action, particularly with regard to the plan for continuity of education, to the degree that a parent is able to participate.”<sup>76</sup>

The response plan components referenced in this section should serve as the proverbial floor rather than the ceiling. School districts may already have a student assistance program or similar framework in place that is easily adapted to reflect the requirements of this Act. Further, while the Act’s language addresses only the actions that a school must take when a student is

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<sup>67</sup> <https://www.projectalert.com/>.

<sup>68</sup> Jan Adair, “Tackling Teens’ No. 1 Problem - Sometimes the Phrase ‘Just Say No’ Just Doesn’t Work. What Are the Key Elements of a Successful Substance-Prevention Program?,” *Educational Leadership (USA)*, March 1, 2000, Access World News. See also Nation, Maury, Cindy Crusto, Abraham Wandersman, Karol L. Kumpfer, Diana Seybolt, Erin Morrissey-Kane, and Katrina Davino. “What Works in Prevention: Principles of Effective Prevention Programs.” *American Psychologist* 58, no. 6–7 (2003): 449; Botzet, Andria M., Christine Dittel, Robyn Birkeland, Susanne Lee, John Grabowski, and Ken C. Winters. “Parents as Interventionists: Addressing Adolescent Substance Use.” *Journal of Substance Abuse Treatment* 99 (2019): 124–33. <https://doi.org/10.1016/j.jsat.2019.01.015>.

<sup>69</sup> Michele L. Allen et al., “Effective Parenting Interventions to Reduce Youth Substance Use: A Systematic Review,” *Pediatrics* 138, no. 2 (2016). School districts should be encouraged to accommodate parent work schedules to facilitate their involvement.

<sup>70</sup> Fabelo et al., *Breaking Schools’ Rules*; Liu, Hayes, and Gershenson, “JUE Insight.”

<sup>71</sup> Liu, Hayes, and Gershenson, “JUE Insight.”

<sup>72</sup> Charles Bell, “‘Maybe If They Let Us Tell the Story I Wouldn’t Have Gotten Suspended’: Understanding Black Students’ and Parents’ Perceptions of School Discipline,” *Children and Youth Services Review* 110 (2020): 104757.

<sup>73</sup> Quaylan Allen and Kimberly White-Smith, “‘That’s Why I Say Stay in School’: Black Mothers’ Parental Involvement, Cultural Wealth, and Exclusion in Their Son’s Schooling,” *Urban Education* 53, no. 3 (March 1, 2018): 409–35, <https://doi.org/10.1177/0042085917714516>. The same parents report that they draw on their own strengths and community resources to help their children navigate through the challenges faced by the school experience itself and the racism that is often perpetuated upon their children.

<sup>74</sup> Moon et al., “Reinforcing the School-to-Prison Pipeline Via Code: How States Pre-Determine School Approach to Students and Drugs (Working Title).”

<sup>75</sup> R.I. Code § 11-47-60.2 § (1995).

<sup>76</sup> D.C. Code 5 § 38–236.03. (2018).

discovered with a drug or controlled substance, many of the frameworks and research referenced in this section emphasize the need for preventative and educative steps as part of a comprehensive student support plan.

## SECTION V. COMMISSION OF STUDY

- (a) In general.—The [Oversight Agency] shall implement a study to tailor the requirements of the Act’s multi-tiered response to the state’s needs and abilities.
- (b) New or updated study.—At the time of study commencement:
  - (1) The [State] may pursue a new study; or
  - (2) The [State] may request that the [Oversight Agency] conduct a review of an existing state guide that substantially complies with the Act and contains guidance at the state level on the school response to drug and drug-related incidents and then determine any revisions deemed necessary to the study to comply with the provisions of this Act.<sup>77</sup>
- (c) Guidelines.—The study shall identify the general guidelines for education, counseling, and mentorship regarding substance use and abuse commensurate with the level of incident<sup>78</sup> including defining training needs for all staff and proffer evidence-based resources for district use. School districts must incorporate these guidelines with fidelity.
- (d) Analysis.—The study or review set forth in this Section may include a landscape analysis of potential collaborators, including local juvenile justice departments and non-profit organizations.<sup>79</sup>
- (e) Guidance review.—The [Oversite Agency] must review the issued guidance every three (3) to five (5) years.

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<sup>77</sup> See, e.g., Grunenfelder et al., “WASHINGTON’S STUDENT ASSISTANCE PREVENTION-INTERVENTION SERVICES PROGRAM Program Manual”; The New York State Education Department and The New York State Office of Addiction Services and Supports, “Evidence-Based Program Guidance for Substance Use Prevention Education in Schools.”

<sup>78</sup> See, e.g., Grunenfelder et al., “WASHINGTON’S STUDENT ASSISTANCE PREVENTION-INTERVENTION SERVICES PROGRAM Program Manual,” 136.

<sup>79</sup> *Id.*, Community collaborators can promote and provide awareness education and prevention strategies.



## Commentary

The response plan outlined in Section IV provides a basic framework of required components, but this need not be considered a fully complete plan. [State]’s existing laws and regulations may indicate the need for adaptations or additions. The study provided in this section should determine desired additions to the requirements presented in Section IV, relying on evidence-based solutions and best practices.

Numerous examples of alternative approaches to exclusionary discipline demonstrate their effectiveness. For instance, a recent study of the Philadelphia Police School Diversion Program, which provides community-based services to eligible youth (the criteria include cannabis possession or disorderly conduct), found that the program led to reduced school-based arrests with no impact on school safety.<sup>80</sup> The study’s researchers encourage further exploration. Restorative practices “[offer] a means to divert people from official justice systems.... [I]n the school setting, it often serves as an alternative to traditional discipline, particularly exclusionary disciplinary actions such as suspension or expulsion.”<sup>81</sup> Although there remains a need for more rigorous evaluation of restorative practices,<sup>82</sup> there have been several programs across the country that report success.<sup>83</sup> SAMHSA provides *Student Assistance: A Guide for School Administrators*, a handbook that outlines nine components of an evidence-based student assistance program to provide student support for substance use and mental illness concerns. This handbook emphasizes prevention but includes guidelines for internal referrals and collaborating with community partners that can serve as a model for school response to a drug-related incident.<sup>84</sup> Experts indicate that a detailed plan of how to respond to a school-based, drug or drug-related incident is best made at the district level, presuming that the components of Section IV of this Act are substantively met.

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<sup>80</sup> Goldstein NES et al., “Preventing School-Based Arrest and Recidivism through Prearrest Diversion: Outcomes of the Philadelphia Police School Diversion Program,” *Law and Human Behavior* 45, no. 2 (2021): 165–78, <https://doi.org/10.1037/lhb0000440>.

<sup>81</sup> Trevor Fronius et al., “Restorative Justice in U.S. Schools: A Research Review” (WestEd Justice and Prevention Research Center, 2016), <https://www.wested.org/resources/restorative-justice-research-review/>.

<sup>82</sup> Joie D. Acosta et al., “A Cluster-Randomized Trial of Restorative Practices: An Illustration to Spur High-Quality Research and Evaluation,” *Journal of Educational and Psychological Consultation* 26, no. 4 (2016): 413–30; Brittany Zakszeski and Laura Rutherford, “Mind the Gap: A Systematic Review of Research on Restorative Practices in Schools,” *School Psychology Review* 50, no. 2–3 (July 3, 2021): 371–87, <https://doi.org/10.1080/2372966X.2020.1852056>.

<sup>83</sup> Thalia González, “Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline,” SSRN Scholarly Paper (Rochester, NY, April 1, 2012), <https://papers.ssrn.com/abstract=2658513>.

<sup>84</sup> Substance Abuse and Mental Health Services Administration, “Student Assistance: A Guide for School Administrators.”

## SECTION VI. DATA COLLECTION.

(a) In general—The [Oversight Agency] shall establish guidelines for data collection that distinguish drug and drug-related incidents from other incidents, as provided in this section.

(b) Required elements.—The guidelines for data collection include the following.

(1) From de-identified student level data:

- (A) Race/ethnicity;
- (B) Gender; and
- (C) Special education status.

(2) Other required elements include:

- (A) Agency overseeing collection;
- (B) Relevant due dates;
- (C) Annual public reporting of aggregated data;
- (D) Report to the Office for Civil Rights, U.S. Department of Health and Human Services; and
- (E) Review procedures on a(n) [e.g., annual, biennial] basis.

### Commentary

Numerous organizations and researchers called for more nuanced data collection on discipline issues in response to the growing body of research on the school-to-prison pipeline.<sup>85</sup> Collecting these data will allow states to monitor whether the public schools are adhering to the Act and will also allow for further study of best practices moving forward. The demographic data specified at the student level is needed for researchers and policy makers to allow more study of the disparities described in prior sections of this Act. The list of data elements was created by subject matter experts who participated in the development of this model law. These experts believe that data and metrics are critical to ensuring quality, accountability, and transparency in the implementation of this legislation; they also strongly encourage that states adopt data collection requirements that track the category of the substance(s) involved.

The process and any additional detail related to data collection referenced in this section should be specified in state regulations or in policies of the state education agency. Experts

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<sup>85</sup> Losen, D. and Whitaker, A., “Eleven Million Days Lost: Race, Discipline, and Safety at U.S Public Schools.”; The Leadership Conference on Civil and Human Rights, “Civil Rights Principles for Safe, Healthy, and Inclusive School Climates”; American Bar Association, “ABA Task Force on Reversing the School to Prison Pipeline”; American Psychological Association Zero Tolerance Task Force, “Are Zero Tolerance Policies Effective in the Schools?”

believe that each state or local government entity is in the best position to determine, develop, review, or approve the specific parameters and process for data and reporting and that this level of detail is more appropriate for regulation or agency policy.

## SECTION VII. REPORTING.

- (a) In general.—The [Oversight Agency] shall, within one (1) year of the effective date of this Act and annually thereafter, incorporate disaggregated data on incidents involving drugs at the school level into their established collection and reporting procedures according to [insert citations for State code];
- (b) Data retrieval process.—Each school district shall report the data elements provided in subsection (c) to [Oversight Agency] [quarterly, bi-annually, or annually as determined by Oversight Agency]. Each school district shall ensure that the data elements provided are de-identified;
- (c) Required elements.—The reporting shall include the following data elements and shall utilize de-identified student level data aggregated to the district level, with categorization by demographic descriptors, including, but not limited to, race, age, special education identification, and gender:
  - (1) Information about drug incidents in schools and at school-related functions:
    - (A) Students involved in a drug or drug-related incident;
    - (B) Number of drug or drug-related incidents;
    - (C) Number of incidents per student;
    - (D) School action(s) if any;<sup>86</sup> and
    - (E) Number of police referrals, if any; and
  - (2) Any other data elements required by [Oversight Agency] by rule;
- (d) Public availability, aggregated reports. — Aggregated reports shall be deemed public records within the meaning of the [state’s freedom of information act] and are open to public inspection, with the exception of any portion of the report that is privileged or

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<sup>86</sup> With the goal of comparability of data for research and evaluation purposes, the focus group suggests that the school action data that is collected and reported be limited by all states to: (1) no action taken; (2) student education; (3) parent education; (4) external referral; (5) police referral; and (6) other.

protected under [State] or federal law or pursuant to the privacy guidelines provided in Section VIII of this Act;

- (e) Public availability, student level data.—Student level data governed by this Section shall be accessible for research purposes, but it must be used with discretion, such that the level of data should be stored at a public repository<sup>87</sup> approved by [State] that requires a proposal review process.

## Commentary

Public schools' responses to drug or drug-related incidents must be monitored by the Oversight Agency to allow for further study that will eventually lead to better responses and best practice guidelines. However, any reporting done pursuant to a drug or drug-related incident must be done with both due diligence and respect for privacy for two reasons. First, federal law requires that a student's privacy is protected by the Family Educational Rights and Privacy Act;<sup>88</sup> generally speaking, parents must provide written permission to a school before any school records are released. In the absence of law enforcement records (which would be the case under this Act) all records are subject to this protection. Second, in specific cases, identification at the school level might be possible, which presents an ethical and legal concern; for example, the ability to identify a specific school might extend to the ability of a reporter to contact someone who can identify the student(s) involved. Aggregating at the district level addresses any risk of disclosure.<sup>89</sup>

State regulations or agency policies should specify the process and any additional detail related to data collection and reporting referenced in this Section. The subject matter experts believe that each state or local government entity is in the best position to determine, develop, review, or approve the specific parameters and process for data and reporting and that this level of detail is more appropriate for regulation or agency policy.

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<sup>87</sup> See, e.g., <https://www.uh.edu/education/research/institutes-centers/erc/>.

<sup>88</sup> The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

<sup>89</sup> Privacy Technical Assistance Center (PTAC), "Data De-Identification: An Overview of Basic Terms."

**SECTION VIII. PRIVACY AND CONFIDENTIALITY OF INFORMATION**

- (a) In general.—All information and statements gathered by school administration/personnel while applying a school response plan to a drug-related incident are:
- (1) Private and confidential;
  - (2) Not subject to state or local open records or freedom of information act laws; and
  - (3) Not discoverable in civil or criminal litigation, absent both a valid subpoena or other compulsory process and an order of a court of competent jurisdiction.
- (b) Confidentiality agreement.—As soon as practicable after the occurrence of a drug-related incident, school administration/personnel shall provide to the student and where necessary, the student's parent or guardian, one or more confidentiality agreements, for review and execution, containing:
- (1) Notice of the protections afforded by federal and state confidentiality laws;
  - (2) Notice of the circumstances under which federal and state confidentiality protections do not apply;
  - (3) Consent for the limited release or exchange of confidential information to certain school administration/personnel and others; and
  - (4) Notice of the right to revoke the consent at any time.
- (c) Law enforcement unit.—A school's law enforcement unit may not create a law enforcement unit record with respect to any drug-related incident.
- (d) Exception.—Nothing in this Act shall serve to limit any applicable privacy and confidentiality protections provided by the following laws and regulations:
- (1) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 C.F.R. Part 99;
  - (2) Confidentiality of substance use disorder patient records, 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2; and
  - (3) Any relevant state law or regulation related to privacy, confidentiality, or disclosure of educational records or substance use disorder treatment information.

## Commentary

Without the confidentiality requirements noted in this Act, subject matter experts believe school administrators are left to their own interpretation of when to report drug-related incidents to law enforcement, which is directly opposed to the intent of the Act. Subject matter experts also strongly contend that any student records related to student drug-related incidents remain confidential.

## SECTION IX. GRANT PROGRAM AND FUNDING.

- (a) Initial study.—The Legislature shall appropriate [\$ \_\_\_\_\_] to the [Oversight Agency] for the purpose of funding the initial study (Section IV of this Act). Funding may be appropriated every three (3) to five (5) years for the [Oversight Agency] to update the guidelines.
- (b) Grant program.—To support the implementation of the response plan, the [Oversight Agency] may:
  - (1) Establish a grant program for the purpose of funding, in whole or in part:
    - (A) To hold supplemental training deemed necessary by a school district; and
    - (B) To hire additional personnel or other resources deemed necessary by a school district.
  - (2) Share information on existing grant opportunities at the federal or state level that might support districts in meeting the requirements of the Act, in whole or in part.<sup>90</sup>
- (c) Budget allocation. —The Legislature may appropriate [\$ \_\_\_\_\_] for fiscal years [n] to the [Oversight Agency] for the purpose of funding, in whole or in part, the ongoing activities required as part of this Act, which may support in whole or in part:
  - (1) Supplemental training deemed necessary by a school district;
  - (2) Additional personnel or other resources deemed necessary by a school district.

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<sup>90</sup> See e.g., “Comprehensive Addiction and Recovery Act of 2016,” Pub. L. No. 114th Congress (2016), which offers in part funding for opioid misuse prevention programs for youth. The Drug-Free Communities (DFC) Support Program, created by the Drug-Free Communities Act of 1997, announced new grants in August 2022 to support community coalitions and the Office of Juvenile Justice and Delinquency Prevention has grants that would potentially support these endeavors, given a school district’s existing capacity.



- (d) Pursuit of funding. —The [Oversight Agency] may pursue all federal funding, matching funds, and foundation or other charitable funding for the initial start-up and ongoing activities required under this Act.<sup>91</sup>
- (e) Receipt of funding.—The [Oversight Agency] may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this Act and expend the same or any income derived from it according to the term of the gifts, grants, or endowments.

## Commentary

It is difficult to estimate the cost of this Act, given that school districts vary in their existing capacity to make this transition. However, the issue of unfunded mandates has been recognized at the federal and state levels. This section presents opportunities for [State] to consider potential funding support for the Act.<sup>92</sup> Research shows that 45 percent of states currently have funding in place that could potentially support fulfilling the requirements of the Act; the structure of these funding opportunities varies.<sup>93</sup>

Another consideration for funding opportunities involves shifting existing resources from School Resource Officers<sup>94</sup> to restorative justice coordinators.<sup>95</sup> The Madison, Wisconsin school district took this step in 2021.<sup>96</sup> Funding for any additional training could also come from city and county monies, as well as federal, state, and private grants. School districts should be

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<sup>91</sup> “Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs” (Washington, D.C: U.S. Department of Education, Office of Special Education and Rehabilitative Services, 2021), <https://www2.ed.gov/documents/students/supporting-child-student-social-emotional-behavioral-mental-health.pdf>. provides suggestions on several funds that can be leveraged to expand mental health options writ large and may provide additional opportunities for this Act.

<sup>92</sup> “Unfunded Mandates Reform Act of 1995,” Pub. L. No. 104- 4 (1995); “Report on School District Mandates: Cost Drivers in Public Education” (Texas Association of School Administrators and Texas Association of School Administrators, 2018), <https://tasanet.org/advocacy/toolkits-and-resources/report-on-school-mandates/>.

<sup>93</sup> For instance, the Rhode Island Substance Abuse Prevention Act is specifically funded through general revenues, assessing an additional penalty for speeding violations: “The Rhode Island Substance Abuse Prevention Act,” R.I. 16-21.2-5. § (2013). In Illinois, the Safe Schools and Healthy Learning Environments Grant Program awards competitive grants for a broad array of purposes, including drug and alcohol treatment. (Ill. Comp. Stat. Ann. 5/ § 2-3.181, West 2021).

<sup>94</sup> According to the U.S. Department of Justice, School Resource Officers (SROs) are sworn law enforcement officers responsible for safety and crime prevention in schools. SROs work in collaboration with schools and community-based organizations to provide a positive and visible law enforcement presence on school campuses.

<sup>95</sup> Section V commentary describes restorative practices in general.

<sup>96</sup> Sarah Schwartz, “These Districts Defunded Their School Police. What Happened Next?,” *Education Week (USA)*, June 16, 2021, [http://infoweb.newsbank.com/apps/news/openurl?ctx\\_ver=z39.88-2004&rft\\_id=info%3Aid/infoweb.newsbank.com&svc\\_dat=AWNB&req\\_dat=3CAD5763E46F43958FFDB4C4151422FC&rft\\_val\\_format=info%3Aofi/fmt%3Akev%3Amtx%3Actx&rft\\_dat=document\\_id%3Anews%252F183BA3D30F778C88](http://infoweb.newsbank.com/apps/news/openurl?ctx_ver=z39.88-2004&rft_id=info%3Aid/infoweb.newsbank.com&svc_dat=AWNB&req_dat=3CAD5763E46F43958FFDB4C4151422FC&rft_val_format=info%3Aofi/fmt%3Akev%3Amtx%3Actx&rft_dat=document_id%3Anews%252F183BA3D30F778C88).

empowered to consider all potential resources and community partners to ensure the sustainability and success of the Act.<sup>97</sup>

## SECTION X. TRAINING AND EDUCATION.

- (a) In general.—Each school district shall provide professional development training as determined by [Oversight Agency] and described in Section V (b) for all staff that should address:
  - (1) The impacts of substance use and abuse; and
  - (2) The correlation between mental health issues and substance use, and abuse;
- (b) Teachers.—Training for all classroom teachers should include:
  - (1) How to respond to general social, emotional, and behavioral needs in the classroom, including:
    - (A) Risk factors associated with substance use and abuse;
    - (B) Harmful effects of exclusionary discipline; and
    - (C) The school district response plan developed in accordance with this Act.
  - (2) Classroom behavioral management, to include, at a minimum, de-escalation.
- (c) Key personnel.—Training for designated key personnel (e.g., counselor, nurse, administrators) should specifically address:
  - (1) Delivering district mandated prevention services, including training on risk-factor assessment and protective measures,<sup>98</sup>
  - (2) Decision-making regarding student needs and intervention services based on Section IV (1) (A) and (B); and

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<sup>97</sup> Lynne A. Bond and Amy M. Carmola Hauf, “Taking Stock and Putting Stock in Primary Prevention: Characteristics of Effective Programs,” *Journal of Primary Prevention* 24, no. 3 (2004): 199–221, <https://doi.org/10.1023/B:JOPP.0000018051.90165.65>.

<sup>98</sup> Substance Abuse and Mental Health Services Administration, “Student Assistance: A Guide for School Administrators,” 28. Risk factors can “... include, but are not limited to, poverty, prevalence rates of substance use and misuse in a community, familial substance use, family conflict, traumatic experiences, a deviant peer group, and history of academic failure.” Protective factors can include “... strong family relationships and connections to other positive adults, involvement in extracurricular activities, spirituality, involvement in helping others, having pro-social peers, positive connections to school, and interest in and history of academic success.”

(3) Working with community partners to coordinate services for students presenting more intensive needs.<sup>99</sup>

(d) Review.—Any pertinent training materials should be reviewed annually to guarantee training is pursuant to Section IV(a).

## Commentary

The scope of the training and education associated with this Act should be specified in state regulations or agency policies, under the direction of [Oversight Agency]. The subject matter experts believe that each school district is in the best position to develop the specific parameters for training and education and that this level of detail is more appropriate for local control.

Many school districts already have relevant professional development programs in place as it pertains to social and emotional supports; one example is the CASEL framework which fosters skills and an environment that assist students' learning and development.<sup>100</sup> The COVID-19 pandemic has deepened the need for strong social, emotional, behavioral, and mental health supports for students.<sup>101</sup> Given that many of the frameworks and research referenced in this Act emphasize the need for preventative and educative steps as part of a comprehensive student support plan, school districts should consider ensuring that all-staff development includes: reducing risk and enhancing protective factors; improving school climate and student connectedness; identifying students who are contending with risk conditions; and presenting early and more advanced signs of difficulties.<sup>102</sup>

## SECTION XI. REGULATIONS.

[Oversight Agency] shall promulgate regulations implementing this Act within [number of days] of the effective date of this Act.

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<sup>99</sup> SAMHSA offers suggestions on how to foster cooperation and collaboration with community partners, see Substance Abuse and Mental Health Services Administration. "Student Assistance: A Guide for School Administrators." Rockville, MD, 2019, p. 15.

<sup>100</sup> The CASEL framework takes a systemic approach that emphasizes the importance of establishing equitable learning environments and coordinating practices across four key settings: classrooms, schools, homes, and communities. It emphasizes five competencies of social and emotional learning: self-awareness, self-management, social awareness, relationship skills, and responsible decision-making. <https://casel.org/fundamentals-of-sel/what-is-the-casel-framework/>. See also <https://www.pbisrewards.com/blog/sel-in-the-classroom/>

<sup>101</sup> "Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs."

<sup>102</sup> Substance Abuse and Mental Health Services Administration, "Student Assistance: A Guide for School Administrators."

## **SECTION XII. SEVERABILITY.**

If any provision of this Act or application thereof to any individual or circumstance is held invalid, the remaining provisions of this Act shall not be affected nor diminished.

## **SECTION XIII. EFFECTIVE DATE.**

This Act shall be effective on [specific date or reference to normal state method of determination of the effect].

## ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

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