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Statement of the Education Law Center to the PA State Board of Education School & University Safety Committee

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On behalf of the Education Law Center (ELC) and the parents, students and community members with whom we work, we offer these comments to the Pennsylvania State Board of Education School and University Safety Committee to inform the required biennial review of the model Memorandum of Understanding (MOU) contained in 22 Pa. Code, Chapter 10. Our statement builds upon our work surrounding the initial adoption of the model MOU as mandated by the PA Safe Schools Act, as amended in 2010. It also draws from our more than 40 years of experience as a non-profit, legal advocacy organization dedicated to ensuring that all Pennsylvania children have access to a quality public education.

Our extensive experience as advocates and the lived experience of the children and families we serve inform our concern about the overuse and misuse of school police and school resource officers (SROs) across Pennsylvania. Even when deployed in school settings, law enforcement personnel are primarily trained to interact with adults, with limited, if any, exposure to child development, trauma, and developmentally-appropriate practices that are also race, gender, and disability-sensitive. It is therefore not surprising that data, research, and our experience show that police presence in schools leads to over-criminalizing of normal child and adolescent behavior and high rates of student suspensions, expulsions, arrests, and justice system involvement for children of color, children with disabilities, and LGBTQ youth.¹ Black students and students with disabilities have the greatest likelihood of being arrested in Pennsylvania. And arrest doubles the probability of dropout, even when controlling for grade retention, school suspension, middle school grade point average, and a number of demographic factors.²

The MOUs that school administrators and law enforcement agencies enter to clarify respective roles can establish necessary and appropriate limits on law enforcement involvement in student behavior, even for school districts that do not have officers in their schools. To avoid the over-criminalization of student behavior and the racial disproportionality in discipline and police-involved incidents, the model MOU should:

- **Clarify and limit the role of school resource officers (SROs) and other security personnel in schools.** Law enforcement should not be involved in routine school discipline; their involvement

¹ There is extensive evidence of disproportionate discipline of students of color and students with disabilities in Pennsylvania as well as across the country. Data show, for example, that Pennsylvania is one of 11 states (and D.C.) where the difference in suspension rates between Black and White students (i.e., suspension gap) is higher than the national average, for both male and female students. In addition, Pennsylvania has one of the highest Latino out-of-school suspension rates in the country – ranking 6th out of the 47 state projections conducted by the Civil Rights Project at UCLA. American Civil Liberties Union, Beyond Zero Tolerance: Discipline and Policing in Pennsylvania’s Public Schools (February 2015), available at https://www.aclupa.org/files/5714/2436/0535/2-162015_FINAL_64204_ACLU_ONLINE.pdf.

² Gary Sweeten, “Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement,” 23 Justice Quarterly 462, 473-477 (2006).

should be limited to criminal offenses that impact school safety. Unfortunately, this is not currently the reality in Pennsylvania, as SROs and school police tend to get involved in matters of school discipline that are not criminal in nature. Confusion about the discretionary notification requirements in the model MOU may be at least partially responsible for this phenomenon. The model MOU could clarify and limit the use of law enforcement by encouraging school officials to consider the context, intent, individual characteristics of the student, and the best interest of the student before contacting the police pursuant to Section II.B. School police should not be school disciplinarians.

- **Outline due process protections for parents and students.** The model MOU should specify that law enforcement personnel, regardless of the setting in which they work, have all the legal obligations of sworn law enforcement officers with respect to searches and interrogations. The rights afforded to students being questioned by police – including rights to a lawyer, rights to have a trusted adult present during interrogation, and Miranda rights – should be outlined in the model MOU. In addition, Section II.D. should clarify that, while it is important for police who interact with students with disabilities to be informed about the nature of the disability and the student’s need, school administrators are required to protect the rights of students with disabilities and cannot hand over complete student educational records without legal permission.
- **Describe training of SROs and school administrators on how best to deal with youth in schools.** The model MOU should include a provision that mandates training of all law enforcement personnel who interact with children on such topics as:
 - child and adolescent development psychology
 - disabilities and their impact on student cognition and conduct
 - peer interaction within a school setting
 - de-escalation techniques
 - appropriate responses to children with disabilities and special education issues, LGBTQ children, and those with limited English proficiency
 - federal and state civil rights law
 - trauma
 - cultural competency
 - implicit bias
 - conflict resolution
 - restorative practices
 - the impact and collateral consequences to a child of arrest, court, detention, and incarceration.

We can make schools safer and improve school climate without unnecessarily criminalizing our students. We appreciate your attention to this important matter and welcome the opportunity to discuss the model MOU with you further.

Respectfully submitted,

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