Our Children, Ourselves: Ensuring the Education of America's At-Risk Youth

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INTRODUCTION

“He who opens a school door closes a prison.” – Victor Hugo

Education is essential not only to each individual child, but to the nation as a whole. It is vitally important that as a country we appreciate the importance of the equal opportunity for education of all children. When we allow the creation of policies and institutional structures which foreclose educational opportunities for certain youth populations, we eliminate the chances for those children to have successful futures and increase the social and economic costs to our society. By closing the door to an education, we open the door to career criminality and delinquency.

Youth who have been removed from the regular public school classroom - suspended, expelled, or arrested and subsequently adjudicated delinquent - face innumerable barriers when trying to re-enter the mainstream public school system. In some circumstances the student is entirely prevented from re-entry. In addition, instead of ensuring re-enrollment into public school, many current state policies divert youth into Alternative Education Placements which provide inadequate learning environments and sub-par educational instruction, further hindering their ability to re-enter the regular classroom and increasing the likelihood that these students will drop out.

This Article uses the state of Connecticut as a model for reformation and restructuring of state policies and legislation to ensure the education of at-risk youth. Positively, it is suggested that Connecticut’s recent progressive re-enrollment legislation be utilized by other states in formulating policies to smooth the re-entry of adjudicated youth from out-of-home placements back to the classroom. However, existing gaps in Connecticut’s statutory structure fail students by (1) allowing mandatory

1 “At-Risk Youth” hereinafter refers to youth who have been removed from the mainstream public school system – suspended, expelled, or arrested and subsequently adjudicated delinquent – and placed in an alternative education setting, committed to an out of home placement, or entirely foreclosed from an educational opportunity.
exclusion of certain students from alternative education opportunities during their period of expulsion, and (2) not providing minimum educational standards for alternative placements. This article uses these short-comings to outline litigation frameworks that ensure the adequate education of the at-risk population.

Part I of this article provides an overview of the at-risk youth population and the substantive law which protects their right to an education. Part II discusses the School-to-Prison Pipeline and its destructive effects on the education of at-risk youth. Part III of the article examines Connecticut’s current policies regarding school discipline, school re-entry, and alternative education placements. In addition, Connecticut is used as an example to illustrate the possibilities for progressive legislative reform of re-enrollment policies and provides litigation frameworks to challenge inequities in the education of the at-risk population. Part IV explains the role played by federal legislation on education and re-entry. Part V identifies positive state models for successful school re-entry to be utilized by other states when attempting reform. Lastly, Part VI suggests the appropriate education placement options for these youth when re-entering the public education system, primarily advocating for reformation of the mission and adequacy of education at current Alternative Education Placements.

I. BACKGROUND

A. The At-Risk Youth Population

National studies show that approximately 100,000 youth are in some form of “out-of-home placement” each year as a result of being adjudicated delinquent and sentenced to a period of commitment. Adjudicated youth who are released from these out-of-home placements have a recidivism rate ranging from 55-75 percent. The average commitment period for an adjudicated youth is 4 to 6 months. Despite this typical short length of commitment, the child may incur repeated placements that collectively add up to one or more years, aggregating to a total period of incarceration of approximately one-third of their formative adolescent years. For these

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2 “Out-of-home placement” encompasses the dispositions of adjudicated youth, which vary state by state, including residential centers, training schools and state juvenile correctional facilities.
5 Daniel P. Mears and Jeremy Travis, The Dimensions, Pathways and Consequences of Youth Reentry (Urban Institute Justice Policy Center, January 2004).
children, returning to school and reengaging with the educational system is an important step in restoring their lives, and correlates strongly with reduced recidivism. However, there are innumerable obstacles which these youth face when seeking to return to public school, decreasing the likelihood that they will finish high school and increasing the “likelihood that [they] will find themselves returning to the justice system they just exited.” These barriers include reluctance by schools to accept the adjudicated youth returning from periods of commitment, lack of aftercare service and system coordination among multiple agencies, and inadequate pre-release transition planning, and problems with the retrieval and transfer of educational records and credits. These youth also face a multitude of personal challenges, including dysfunctional families and living accommodations; mental illness; learning disabilities; and substance abuse. Research indicates a significant amount of drug abuse among this population of youth and, if left untreated, it can “diminish the chances of successful reentry.” The majority of youths who have been involved in the juvenile justice system have a “diagnosable substance abuse disorder, mental health disorder, or both. Treating their addiction and related problems is not only humane, it is critical to keeping juvenile offenders from reoffending and potentially entering the adult system.” The multidisciplinary nature of the problems these youth encounter illustrates the difficulties associated with school reentry policy.

At-risk youth, many of whom have histories of overwhelming poverty and most of whom are children of color, are pushed out of public schools due to criminalization of minor school misconduct, unfair suspensions and expulsions, or well-intentioned educational reform attempts, and are “funneled into alternative schools that do not provide

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6 Jennifer Matvya, Nancy A. Lever, and Rick Boyle, School Reentry of Juvenile Offenders (Center for School Mental Health Analysis and Action at University of Maryland, Baltimore, August 2008).
7 Jessica Feierman, Marsha Levick, and Ami Mody, The School-to-Prison Pipeline . . . and Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth, 54 N.Y.L.Sch.L.Rev.1115, 1116 (2009/10). “More than 66% of youth in juvenile justice placement nationally drop out of school after they are released.”
9 See Mears and Travis, supra note 5, at 10; see Arthur, supra note 8.
10 See Arthur, supra note 8.
11 See Mears and Travis, supra note 5, at 10.
12 United States Department of Justice, Department of Justice Manual, National Drug Control Strategy (Volume 6, Title 9, 2010)
adequate educational services.”¹³ When these youth are removed from their public school classroom setting, they end up in inferior alternative schools, including juvenile detention centers, where “meaningful educational services are practically nonexistent and students with histories of behavioral problems can negatively influence one another.”¹⁴ This phenomenon, known as the “school-to-prison pipeline,” is manifested through “systemic policies that prioritize incarceration, rather than the education of children, especially children of color.”¹⁵ The lack of quality education available to youth of color, and the policies that lead to the School-to-Prison Pipeline, “serve to further isolate African-American students and deprive them of the opportunity to learn.”¹⁶

The disproportionate impact that the policies of the School-to-Prison Pipeline and the juvenile justice system have on youth of color should not be ignored. Nationally, youth of color make up 60% of the adjudicated youth population who have been committed to out-of-home placements.¹⁷ In addition, youth of color are more likely than white youth to be expelled, suspended or arrested for the same conduct in school. Only 50% of 9th graders of color in the United States will graduate high school.¹⁸ Youth of color are “disciplined more severely even for lesser offenses, such as ‘disrespect, excessive noise, threat and loitering’” than white youth.¹⁹ In Hartford County, Connecticut, youth of color who got into fights on school grounds were “twice as likely to be arrested” as white youth; and youth of color who were “accused of offenses involving drugs, alcohol or tobacco were ten times more likely to be arrested” than white youth.²⁰ National studies show that schools with a large minority population have a higher arrest rate, leading more youth of color into the juvenile justice system.²¹ “In the 2007-2008 school year, schools with a minority population of fifty percent or more had an arrest rate for non-violent and non-theft offenses of

¹⁵ See Race & Ethnicity in America, supra note 13.
¹⁶ See Dismantling the School-to-Prison Pipeline, supra note 14.
¹⁷ See Nellis and Wayman, supra note 4.
¹⁸ See Dismantling the School-to-Prison Pipeline, supra note 14.
²⁰ See Cobb, supra note 14, at 587.
seventy percent, while schools with less than five percent minority populations had an arrest rate of thirty-nine percent.”\textsuperscript{22} This overwhelming disparity in treatment has been described as “institutional racism,”\textsuperscript{23} stemming from the stereotype that youth of color are unruly and do not have the same capacity to succeed as their fellow white classmates.\textsuperscript{24} This deprivation of a meaningful opportunity to learn for youth of color, due to disparity of treatment based on race, has been viewed as a “violation of the United States’ obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.”\textsuperscript{25}

\textbf{B. The Law Protecting At-Risk Youth and Their Education}

At-risk youth face negative stigmatization when returning to a mainstream public school and their community. This stigma can be devastating to the young persons’ faith in themselves to achieve, creating a self-fulfilling prophecy of delinquency and failure.\textsuperscript{26} Many of these youth are students from neglected and under-resourced educational environments, which are also negatively labeled as “failing.”\textsuperscript{27} Almost 60 years ago, the effect of negative labeling on students, particularly students of color, was recognized in \textit{Brown v. Board of Education} where the Supreme Court noted that “[a] sense of inferiority affects the motivation of a child to learn.”\textsuperscript{28} In \textit{Goss v. Lopez}, the Supreme Court expanded on its earlier findings regarding stigma in \textit{Brown}, acknowledging the effect of suspension and expulsion on the student. The Court opined that even relatively brief suspensions of up to 10 days “could seriously damage the students’ standing with their fellow pupils and their teachers, as well as interfere with later opportunities for higher education and employment.”\textsuperscript{29} Although a short suspension is lesser punishment than expulsion, the effect of even that relatively minor penalty can be devastating since “the total exclusion from the education process for more than a trivial period . . . is a serious event in the life of the suspended child. Neither the property interest in the educational benefits temporarily

\textsuperscript{22} See Hall, supra note 21, at 82.
\textsuperscript{23} See Cobb, supra note 19, at 588.
\textsuperscript{24} Kristin Henning, \textit{Criminalizing Normal Adolescent Behavior in Communities of Color} (The “contemporary narratives portraying youth of color as dangerous and irredeemable fuel pervasive fear of these youth,” explaining the racial disparities in the juvenile justice system. In addition, no evidence exists which supports the notion that youth of color “disproportionately engage in more risky delinquent conduct than white youth.”)
\textsuperscript{25} See Hall, supra note 21, at 82.
\textsuperscript{26} See Dismantling the School-to-Prison Pipeline, supra note 14.
\textsuperscript{27} See Dismantling the School-to-Prison Pipeline, supra note 14.
denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses.\textsuperscript{30}

The court in \textit{Goss} made it clear that even though a state is not constitutionally mandated to maintain a public school system, once it does so and requires attendance, the state must recognize a student’s entitlement to a public education as a property interest protected by the Due Process Clause of the 14\textsuperscript{th} Amendment.\textsuperscript{31} The Due Process Clause is intended to protect individuals against abusive actions by the state government, including actions which impinge on a student’s public education. In addition, \textit{Goss} elaborated on the liberty interest that students have in their reputation, noting that the Due Process clause requires minimum procedures when the entitlement to a public education is taken away and a student’s reputation is affected by the state’s action.\textsuperscript{32} Reaffirming the importance of the liberty interest identified in \textit{Goss}, the Connecticut Superior Court in \textit{Danso v. University of Connecticut} stated that “[d]isciplinary actions which seriously damage a student's reputation among fellow students and teachers and which may impair future educational and employment opportunities affect a liberty interest and such actions must satisfy procedural due process.”\textsuperscript{33} The court in \textit{Goss} noted that Due Process requires that “a student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story . . . . [and] as a general rule notice and hearing should precede removal of the student from school.”\textsuperscript{34}

Studies suggest that education and school performance, including receiving a high school diploma, are key indicators of either success or of future criminality.\textsuperscript{35} In \textit{Brown}, the Supreme Court recognized the importance of education to our society “as a principal instrument in awakening [a] child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment . . . . [i]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”\textsuperscript{36} Although there is no fundamental right to an education under federal law, there “is a basic public expectation that all children have the right to attend public school and be treated with dignity and social equality.”\textsuperscript{37}

\textsuperscript{30} See id. at 576.
\textsuperscript{31} See id. at 574.
\textsuperscript{32} Id.
\textsuperscript{34} \textit{Goss v. Lopez}, supra, 419 U.S. at 581-82.
\textsuperscript{35} See \textit{Maryland Best Practices}, supra note 8.
\textsuperscript{36} \textit{Brown v. Board of Education}, supra, 347 U.S. at 493.
\textsuperscript{37} See \textit{Race & Ethnicity in America}, supra note 13.
inception, public education has been more than just a commodity parents provide their children. Rather, public education has an important social function . . . . public schools give their students an opportunity to escape from the limitations of the social group in which [they were] born, and to come into living contact with a broader environment . . . different races, differing religions, and unlike customs.”

Public education has been termed as the “key civil rights issue of the 21st century. Our nation’s knowledge-based economy demands that we provide young people from all backgrounds and circumstances with the education and skills necessary to become knowledge workers. If we don’t, we run the risk of creating an even larger gap between the middle class and the poor. This gap threatens our democracy, our society, and the economic future of America.”

As scholars have suggested, the importance of an education is multi-faceted, affecting the social, economic, and psychological well-being of a child, and playing a “fundamental role in maintaining the fabric of our society.”

This acknowledgement of the positive correlation between education and a successful future and career magnifies “the importance of developing clear procedures and strategies to help smooth the transitional period” from out-of-home placement back into the public school classroom. In addition, development of new state legislative policies which smooth the re-enrollment process and provide for appropriate alternative education placements for all students are crucial to ensuring the education of at-risk youth. The creation of a strong comprehensive national policy supporting juvenile re-entry, and utilization of the Due Process Clause and the Equal Protection Clause of the 14th Amendment to protect the educational rights of delinquent youth, are essential to the dismantling of the school-to-prison pipeline and to ensuring the educational success of this population.

II. THE SCHOOL TO PRISON PIPELINE

Before the issue of adjudicated youth re-entry back into the

41 Id. at 221.
42 See Matyva, Lever and Bole, supra note 6.
44 Reentry Task Force of the Juvenile Justice and Prevention Coalition (Washington, D.C., Fall 2009). “We must establish a national policy agency which supports reentry services to connect youth with meaningful opportunities for self-sufficiency and community integration to prevent recidivism.”
classroom can be discussed, it is important to understand the destructive policies in place which lead to the incarceration, rather than the education and rehabilitation, of our youth. These policies are what produce the “school-to-prison pipeline,”45 identified as “one of the most urgent civil rights challenges we face.”46 The school-to-prison pipeline “is the collection of education and public safety policies and practices that push our nation’s schoolchildren out of the classroom and into the streets, the juvenile justice system, or the criminal justice system.”47 The pipeline is “responsible for funnelling vast numbers of minority children into the juvenile and criminal justice systems rather than graduating them from high school.”48 “Minority students are disproportionately impacted by the pipeline and are among those most severely disciplined in school.”49

There are indirect and direct paths through the pipeline.50 The direct path is manifested by unnecessary and overwhelming police involvement in enforcing school discipline policies, known as “zero-tolerance” policies. Due to under resourcing, some schools function with an inadequate number of guidance counselors,51 and “poor teacher training,”52 which push schools into using “law enforcement agencies and juvenile courts as their disciplinary arm.”53 This type of structure produces more arrests and thus directly delivers youths into the juvenile justice system.54 As schools “across the nation increasingly rely on law enforcement and the criminal justice system to enforce disciplinary rules, more and more children of color are ending up arrested and in detention facilities.”55 The indirect path is manifested by increased levels of expulsions, suspensions and other push-out mechanisms, resulting from “zero-tolerance” policies, which place children in alternative education settings and on an indirect path toward incarceration. 56 The exclusion of students from the classroom through suspensions and expulsions has risen dramatically. Nationally in the year 2000, there were about 3 million school suspensions 57 compared to the 1.7

45 See Race & Ethnicity in America, supra note 13.
47 See Archer, supra note 46, at 868.
48 See Race & Ethnicity in America, supra note 13.
49 See Archer, supra note 46, at 869.
50 See Archer, supra note 46, at 868.
51 See Dismantling the School-to-Prison Pipeline, supra note 14.
52 See Hall, supra note 20, at 81.
53 See Dismantling the School-to-Prison Pipeline, supra note 14.
54 See Archer, supra note 46, at 868.
55 See Race & Ethnicity in America, supra note 12.
56 See Archer, supra note 46, at 869.
57 See Dismantling the School-to-Prison Pipeline, supra note 13.
million suspensions in 1974.\textsuperscript{58} In 2004-2005, there were approximately 106,000 expelled students.\textsuperscript{59} However, these high suspension rates “do not improve school climates and . . . students who are excluded from school without adequate alternative education are more likely to drop out or get arrested.”\textsuperscript{60} Schools with higher rates of suspension and expulsions tend to “perform worse on standardized tests, regardless of student demographics or socioeconomic status.”\textsuperscript{61} Thus, not only do these zero-tolerance policies have negative effects on the disciplined students, they also “fail to improve the learning environment even for students who remain in school.”\textsuperscript{62}

“Zero-tolerance” policies adopted by schools impose inappropriate school disciplinary sanctions upon students which in turn push the students out of school and into prison, effectuating the pipeline.\textsuperscript{63} Zero tolerance policies were put into practice by states in response to the 1994 Gun-Free Schools Act (GFSA), requiring states which receive federal funding to adopt policies which impose one-year expulsions for students found in possession of a firearm at school.\textsuperscript{64} States adopted the required policies under the GFSA guidelines, but also “went further, implementing zero tolerance regulations that mandated expulsion for a far greater range of behavior,”\textsuperscript{65} including drug possession and school violence.\textsuperscript{66} These policies do not require proof of a student’s intent for determination of guilt or innocence, thus punishing students without a case-by-case analysis or taking into account mitigating circumstances.\textsuperscript{67} Studies suggest that these zero-tolerance policies foreclose students from the educational system even when they can be rehabilitated and can benefit from education in the classroom.\textsuperscript{68} Zero-tolerance policies have “led to school deprivation, referrals to inadequate alternative education program, school dropouts . . . the commission of delinquent acts . . . . [and] an increase in inappropriate

\textsuperscript{58} See Race & Ethnicity in America, supra note 13.
\textsuperscript{59} Maureen Carroll, Educating Expelled Students After No Child Left Behind: Mending an Incentive Structure that Discourages Alternative Education and Reinstatement, 55 UCLA L. Rev. 1909, 1938.
\textsuperscript{60} Amy P. Meek, School Discipline “As Part of the Teaching Process”: Alternative and Compensatory Education Required By The State’s Interest in Keeping Children in School”, 28:1 YLPR 156, 158 (Fall 2009).
\textsuperscript{61} See Meek, supra note 60, at 160-61.
\textsuperscript{62} See Meek, supra note 60, at 160-61.
\textsuperscript{63} See Dismantling the School-to-Prison Pipeline, supra note 14.
\textsuperscript{64} See Carroll, supra note 59, at 1938.
\textsuperscript{65} See Carroll, supra note 59.
\textsuperscript{67} See Klehr, supra note 66.
\textsuperscript{68} See Carroll, supra note 59.
referrals to law enforcement and the juvenile justice system.”

The increased reliance on these harsh disciplinary methods, which exclude students from the classroom, coupled with a referral to police or juvenile court, creates a “double dose of punishment for students who misbehave.” Schools “rely on law enforcement and the court system to address trivial school-related offenses among even the youngest students.” The referral of zero-tolerance offenders to the criminal justice system has devastating consequences to the lives of these youth and their families. “Children are criminalized – handcuffed, arrested, and sometimes prosecuted – for the commission of minor acts in school which could be handled by the school instead of the police.” These disciplinary policies, which are implemented to remove “problem children” from the classroom, “not only label children as criminals, but they also encourage children to lose hope, making it more likely that they will wind up behind bars.” As these destructive policies are perpetuated, students are removed from schools, placed in out-of-home placements, alternative education settings, or are foreclosed entirely from the classroom. Therefore, in order to dismantle the pipeline and its systemic effects, it is essential that “schools, parents, communities, and police officers . . . all work together to preserve safety in our schools while still supporting educational opportunity.” A shift away from the current punitive mindset of the individuals and institutions which rear our children is necessary for “the academic and social development of our youth.”

III. CONNECTICUT LEGISLATION AND POLICY

Connecticut’s recent revision of its statutory reenrollment provisions has created a policy structure which allows for seamless school reentry for students returning from out-of-home placements. This progressive legislation should serve as a model for other states to minimize the period of time students are foreclosed from re-entering the mainstream public school system. However, Connecticut is struggling with providing adequate alternative education placement programs. This article will address Connecticut’s policies in order to facilitate a discussion of the possible litigation frameworks to be used as methods to challenge current statutory

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69 See Klehr, supra note 66.
70 See Dismantling the School-to-Prison Pipeline, supra note 14.
71 See Race & Ethnicity in America, supra note 13.
72 See Klehr, supra note 66.
73 See Dismantling the School-to-Prison Pipeline, supra note 14.
74 See Archer, supra note 46, at 871.
75 See Archer, supra note 46, at 872.
76 Connecticut Public Act 11-115
schemes which foreclose students from education placements or fail to provide standards for the alternative settings.

A. Connecticut School Disciplinary Policies

A 2007 Connecticut study showed that “eighty-nine percent of sixteen and seventeen-year olds involved in the juvenile justice system had been suspended or expelled from school.”\(^77\) Thus, a discussion of the disciplinary policies employed in Connecticut’s schools, and which remove students from the classroom in the first place, is in order.\(^78\) Under Connecticut law, a student can be suspended or expelled from school only if the student violated Board of Education policy or acted in a way which was “seriously disruptive of the educational process or endanger[ed] persons or property or whose conduct off school grounds is violative of such policy and is seriously disruptive of the educational process.”\(^79\) In determining whether the student’s conduct is “seriously disruptive of the educational process,” the Board of Education or hearing board can take into consideration: “(A) Whether the incident occurred within close proximity of a school; (B) whether other students from the school were involved or whether there was any gang involvement; (C) whether the conduct involved violence, threats of violence or the unlawful use of a weapon . . . and whether any injuries occurred; and (D) whether the conduct involved the use of alcohol.”\(^80\) Expulsion is mandatory when a student is shown to have possessed a firearm or deadly weapon on or off school grounds, or sold a controlled substance on or off of school grounds.\(^81\) If a student is expelled for possession of a firearm or deadly weapon, the Board of Education is required to report the violation to the police.\(^82\) When any student between

\(^{77}\) See Meek, supra note 60, at 160.


(Statistical data shows that in Stamford, CT, youth of color are pushed out of the public school classroom for disciplinary reasons (suspended and expelled) “twice as often as white students.” Additionally, “[m]ore than one of every five black students enrolled at Stamford High School was suspended or expelled during the 2010-11 academic year.” The President of the Stamford NAACP, Jack Bryant, expressed the concern that these high suspension and expulsion rates among youth of color in Stamford public schools is a large contributing factor to the perpetuation of the school-to-prison pipeline. Bryant stated that once these students are suspended or expelled they are no longer being educated causing the achievement gap our schools are currently facing.)


\(^{82}\) Conn. Gen. Stat. Ann. §10-233d(e) (2011); see Part III of this article, infra,
the ages of seven and twenty-one is arrested off school grounds for a Class A misdemeanor, felony, or for the sale or possession of a firearm. Connecticut statute requires the police to report the arrest to the student’s school district superintendent. The superintendent is then allowed to release that information to the student’s principal to assess “the risk of danger posed by such person to himself, other students, school employees or school property and effectuating an appropriate modification of such person’s educational plan or placement, and for disciplinary purposes.”

B. Connecticut Juvenile Justice System Procedure

In Connecticut, if a youth is arrested and charged with a Serious Juvenile Offense (SJO), a category including 50 offenses outlined by statute, and the police believe that the juvenile should be confined after arrest while awaiting initial court hearing, the youth may immediately be placed in a juvenile detention center, located in Bridgeport, Hartford or New Haven, and operated by the Judicial Branch. Only youth “accused of delinquent acts can be admitted to a detention center.” Approximately 2,500 juveniles are admitted to these detention facilities each year. The population of these facilities are disproportionately youth of color - 73% of the admitted youth are either Black or Hispanic. The average stay is about two weeks. Only about 400 convicted delinquent youth, 72% of whom are either Black or Hispanic, are actually committed to the Department of Children and Families for out-of-home placements as part of their case disposition in juvenile court. The rampant over-representation of minorities in the Connecticut Juvenile Justice system is combined with unequal and poor treatment of adjudicated minority youth. A survey of juvenile offenders concluded that “Black and Hispanic juveniles were treated more harshly by the police (e.g., more likely to be arrested and to be placed in detention), the court (e.g., more restrictive placements) and discussing mandatory exclusions.

86 Id.
87 Id.
88 Id.
89 In Connecticut, the Department of Children and Families is the agency responsible for the residential placement of juvenile offenders who are adjudicated delinquent and sentenced to out-of-home placement.
90 See Facts & Figures, supra note 85.
corrections (e.g., less privileges, more severe punishments, treated with less respect, and later discharges).”

Pursuant to Conn. Gen. Stat. §17a-15(a), the DCF commissioner “is required to prepare and maintain a written treatment plan for every child under the commissioner’s supervision.” The right of the adjudicated youth to a hearing regarding the established treatment plan is provided under Section 17a-15(c). The requirements for these hearings are established in DCF Regulation Sections 17a-15-6 through 17a-15-10 and include the following: written notice must be given at least five business days before hearing date providing date, time, place and purpose of the hearing; child and parent must be informed of their right to representation by counsel or other advocate of their choice at their own expense; and the hearing must be held in an “informal, impartial, and orderly manner” with all parties given the chance to present evidence.

Connecticut statute provides for commitments to DCF facilities for up to 18 months for non-SJO convictions and up to 4 years for SJO convictions. There are two types of DCF facilities: the Connecticut Juvenile Training School (CJTS), located in Middletown, CT, which is the only secure juvenile correctional facility in the state and serves only males; and direct placement, which includes all other remaining residential placements. The alternative placement options available to DCF for placement of a child committed to its custody after having been convicted delinquent were outlined in Earl B. v. Commissioner of Children and Families. In Earl, the Connecticut Supreme Court analyzed the statutory provision under §46b-140(j)(2) which provides for three alternative placement options available to DCF: “The Department may place a child or youth in any of the following ways: (A) with respect to the juvenile offenders determined by the department to be highest risk, in the training school, if the juvenile offender is a male, or in another state facility, if the juvenile offender is a male, or in another state facility,

93 Section 17a-15(c) states:
   “[a]ny child or youth or the parent or guardian of such child or youth aggrieved by any provision of a plan prepared under subsection (a) of this section . . . or any child or youth or other parent or guardian of such child or youth aggrieved by a refusal of any other service from the commissioner to which he is entitled, shall be provided a hearing within thirty days following a written request . . . .”
96 See Facts & Figures, supra note 85.
97 Earl v. Commissioner of Children and Families, supra note 92.
presumptively for a minimum period of twelve months or (B) in a private residential or day treatment facility within or outside this state, or (C) on parole.” 98 Both SJO and non-SJO commitments can be extended by DCF if, after a hearing, it is deemed appropriate. 99 If DCF has a good faith belief that a youth in its custody, adjudicated for an SJO, poses a serious risk of injury to others, the department is required to notify the superintendent of the school district to which the student will be returning preceding the student’s return to the classroom. 100 The superintendent of schools must then notify the student’s principal of the potential danger “for the purpose of assessing the risk of danger posed by such child to himself, other students, school employees or school property and effectuating an appropriate modification of such child’s educational plan or placement and for disciplinary reasons.” 101

A parole officer is always assigned to each youth and begins working with the child and the child’s family once he is committed to an out-of-home placement and throughout the child’s commitment time. 102 Juveniles who are discharged from placement and returned to their homes remain committed to DCF and remain under the supervision of DCF Parole Services until the term of the commitment imposed by the court expires. 103

C. Connecticut Legislation

The Connecticut General Assembly has recently enacted legislation which revises the re-enrollment procedures for youth expelled from school, subsequently adjudicated delinquent and committed to an out-of-home placement. This new state policy structures a smooth path for a student’s reentry back into the classroom. Connecticut Public Act 11-115 104, An Act

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98 Earl v. Commissioner of Children and Families, supra note 92 at 163.
102 See Juvenile Justice System, supra note 99.
103 Id.
104 Connecticut P.A. 11-115 states in relevant part:
“Subsection (l) of section 10–233d of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2011); (l) (1) Any student who commits an expellable offense and is subsequently committed to a juvenile detention center, the Connecticut Juvenile Training School or any other residential placement for such offense may be expelled . . . . [and] [t]he period of expulsion shall run concurrently with the period of commitment to a juvenile detention center, the Connecticut Juvenile Training School or any other residential
Concerning Juvenile Reentry and Education, amends C.G.S. §10-233d(l) to mandate that periods of expulsion run concurrently with the period of commitment to out-of-home placements. The revised statutory language requires that if a student is committed to an out-of-home placement, but not expelled for the offense, the school must allow the student to return immediately upon discharge from commitment and can’t expel the student for additional time for that offense. Advocates of the bill, including Attorney Melanie Starks of Connecticut Legal Services, Inc, testified before the state Education Committee that “when students face multiple barriers to school re-entry after an out of district placement, they are likely to become discouraged and drop out of school entirely.” Attorney Starks went on to explain that in order to encourage these students to finish high school and eliminate barriers to re-entry, “this bill would prevent youth from serving time in DCF only to return home to an expulsion hearing which kept him/her out of school for another year.” The statute now prohibits schools from beginning expulsion periods after a youth’s release from out-of-home placement. Thus, the state facilitates re-enrollment by increasing the likelihood that the student will leave the out-of-home placement and return as quickly as possible back into an educational setting.

However, Connecticut policy on “alternative educational opportunities” fails Connecticut’s youth either (1) by not providing sufficient alternative educational placements, or (2) by completely failing to provide an alternative placement at all. Statute requires that an expelled student under the age of sixteen must be offered an “alternative educational opportunity” during the period of expulsion. A student expelled for the first time between the ages of sixteen and eighteen also must be offered an alternative educational opportunity, which may include being placed in an adult education program. Despite the general rule mandating alternative placement. (2) If a student who committed an expellable offense seeks to return to a school district after having been in a juvenile detention center, the Connecticut Juvenile Training School or any other residential placement for one year or more, and such student has not been expelled by the local or regional board of education for such offense under subdivision (1) of this subsection, the local or regional board of education for the school district to which the student is returning shall allow such student to return and may not expel the student for additional time for such offense.”

In addition, pursuant to C.G.S. §10-233(k)(b), a school’s receipt of a student’s educational records from DCF or the Judicial Department must not delay a student from school enrollment.

Melanie Starks, Testimony of Connecticut Legal Services, Inc. in support of House Bill No. 6325, An Act Concerning Juvenile Re-Entry and Education.


education placement, Connecticut’s judiciary has “not yet considered the question of whether the state must guarantee an adequate alternative education to students expelled from school.” Thus, the level of education provided at these alternative education programs does not necessarily have to be equivalent to the education provided in the mainstream public school classroom from which the student was removed. “Many of these programs are ineffective, are underfunded and provide a suboptimal learning experience. Alternative education programs for expelled students in Connecticut may offer only a few hours of tutoring per day . . .”

1. Due Process Violations

There are circumstances under which the Connecticut statute does not provide alternative education opportunities to students. The statutory structure effectively creates a mandatory exclusion of students from the public education system without providing an Alternative Education Placement. This scheme is a violation of the student’s procedural due process rights. Students who are suspended for less than 10 days and students between the ages of 16 and 18 who are expelled because of possession of a firearm or deadly weapon, or for the sale or distribution of a controlled substance, are not entitled to an alternative education placement. This type of “zero-tolerance” policy, which completely denies an alternative education opportunity for these students, “requires justifying total exclusion from education opportunity based on a single mistake.” Even though the right to an education is not protected by the federal constitution, the Connecticut constitution provides for the right of all students to a free public elementary and secondary education. This right “is so basic and fundamental that any infringement of . . . [it] must be strictly scrutinized.” Since it has been recognized that students have a property interest in their right to an education, this interest cannot be taken away without due process, including notice and hearing. The United States Supreme Court in Goss v. Lopez opined that in cases of longer term suspensions and expulsions, “more formal procedures” may be required.

109 See Meek, supra note 60, at 183.
110 See Meek, supra note 60, at 183-184.
111 C.G.S. §10-233d(e)
112 See Carroll, supra note 59; see also part II of this Article for a discussion of “zero-tolerance” policies.
116 Id., at 584; see also Meek, supra note 60, at 165.
Courts have applied the *Matthews v. Eldridge*\textsuperscript{117} three part test when determining what procedural process requirements are necessary in cases of long term suspensions and expulsions.\textsuperscript{118} That test requires consideration of:

“(1) the private interest affected by the official action; (2) the probable value of any additional or substitute procedural safeguards; and (3) the government’s interest, including the fiscal and administrative burdens of meeting additional procedural requirements.”\textsuperscript{119}

In applying this three part test in circumstances dealing with disciplinary proceedings, courts tend to combine the state’s interest in educating all students, as highlighted in *Goss v. Lopez*, with the “school’s interest in maintaining order.”\textsuperscript{120} By doing so, courts assume that the state’s interest and the student’s interest must conflict. However, “[i]nstead of just weighing the school’s interest in excluding a student against the student’s interest in an education, courts should consider the state’s interest in keeping children in school . . . [as] aligned with . . . the individual’s interest in an education.”\textsuperscript{121} Under this refocused constitutional framework, it seems appalling that the state would allow children to go without schooling for as long as a full academic year, due to one mistake made either on or off school grounds. This type of punitive policy not only deters students from ever returning to school, but can also lead them into a life of career criminality and delinquency. Therefore, in order to increase the likelihood for successful challenges to these policies, advocates should employ the refocused constitutional due process framework explained in *Goss* to structure litigation.

2. Equal Protection Violations

In *Connecticut Coalition for Justice in Edu. Funding, Inc. v. Rell*, students of various Connecticut public schools claimed that “the fundamental right to education under article eighth, § 1, of the state constitution encompasses a minimum qualitative standard that guarantees students the right to “suitable educational opportunities.”\textsuperscript{122} The plaintiffs further argued that the state’s failure to provide “substantially equal educational opportunities [had] caused them irreparable harm by rendering

\begin{itemize}
\item \textsuperscript{117} *Matthews v. Eldridge*, 424 U.S. 319 (1976)
\item \textsuperscript{118} See Meek, supra note 60, at 165-166.
\item \textsuperscript{119} *Matthews v. Eldridge*, 424 U.S. at 347-49.
\item \textsuperscript{120} See Meek, supra note 60, at 167.
\item \textsuperscript{121} See Meek, supra note 60 at 185.
\item \textsuperscript{122} *Connecticut Coalition for Justice in Edu. Funding, Inc. v. Rell*, 295 Conn. 240 (2010)
\end{itemize}
them unable to take full advantage of the country's democratic processes and institutions, risking political and social marginalization.”

The Connecticut Supreme Court ruled that article eighth, § 1 of the Connecticut Constitution encompasses “a minimum qualitative standard” requiring that the education provided in state public schools must meet some threshold level of adequacy. The case did not address the education provided in Alternative Education Placements. The court outlined the “components requisite to this constitutionally adequate education, namely: (1) minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn; (2) minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks; (3) minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies; and (4) sufficient personnel adequately trained to teach those subject areas.”

Acknowledging the broadness of these requirements, the court explained the necessity for allowing “specific educational inputs or instrumentalities suitable to achieve this minimum level of education.”

The court opined that a “constitutionally adequate education . . . will leave Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy.” The holding of this case, that the Connecticut constitution mandates students in public schools must receive a minimally adequate education, should logically extend to those students who are placed in the state in alternative education programs.

Connecticut should require the curriculum of alternative education placements to be on par with that of the mainstream public school system. In addition, the state should amend the current statutory scheme which allows for the total exclusion of certain groups of children from any form of schooling for as long as a full academic year. All children in the state should be entitled to an alternative education placement if suspended or expelled. It is a violation of the equal protection clause of the United States Constitution to provide some students, but not others, with alternative education placements and to fail to provide all students with the same level of education, regardless of where they are receiving it. Denying certain groups of children an education “poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.”

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123 Id., at 250.
124 Id., at 270.
125 Id., at 315 (internal quotations omitted).
126 Id., at 318
The United States Constitution does not provide for a fundamental right to an education.\textsuperscript{128} Thus, “the right to education [does] not warrant a higher level of scrutiny under the equal protection clause.”\textsuperscript{129} However, the United States Supreme Court has emphasized “the importance of the state’s interest in educating all children.”\textsuperscript{130} The opportunity for an education, once given to children by the state, is a right that “must be provided on equal terms.”\textsuperscript{131} The Supreme Court has also emphasized the cost to both the student individually and our society as a whole when a state deprives certain groups of children access to education: “[E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all . . . . We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”\textsuperscript{132} The punishment for a student’s criminal offense should not be the withholding of an education. This policy allows the state to make certain children incapable of future success by foreclosing their opportunity to acquire an education - the most important foundational aspect of their lives. By continuing with this policy, the state is funneling these children out of school, into the juvenile justice system, perpetuating the aforementioned school-to-prison pipeline. Therefore, Connecticut’s current policy, allowing for some students to be foreclosed from education entirely, or placed in schools where they are not receiving an education comparable to those in mainstream educational environments, violates the Equal Protection Clause of the United States Constitution.

IV. FEDERAL LEGISLATION AND POLICY

Both education and criminal law are primarily matters of state policy and under state control. States maintain plenary power over education legislation and policy\textsuperscript{133} as part of their sovereign powers under the 10th Amendment to the United States Constitution. The federal government may interfere with a state’s educational policies only “when necessary to protect freedoms and privileges guaranteed by the United States Constitution.”\textsuperscript{134} Also, criminal legislation and policy are primarily

\textsuperscript{129} See Meek, supra note 60 at 170.
\textsuperscript{130} See Meek, supra note 60 at 169.
\textsuperscript{131} Plyer v. Doe, supra, 457 U.S at 223.
\textsuperscript{132} Id., at 221.
\textsuperscript{133} Debra P. v. Turlington, 644 F.2d 397, 402-03 (5th Cir.,1981).
\textsuperscript{134} Id., at 403; see also Petrey v. Flaughter, 505 F. Supp 1087, (E.D. Ky. 1981).
matters of state police power.\textsuperscript{135} However, the federal government has enacted education legislation, most notably the No Child Left Behind Act, and legislation supportive of re-entry services for both adults and juveniles who have been incarcerated. Despite these federal legislative efforts, Congress has never focused on formulating policy to address the plight of adjudicated youth and the barriers to their successful school re-entry. Without comprehensive federal legislation regarding education and re-entry of adjudicated youth, states have the ability to structure policies which violate students’ right to receive an education.

\textit{A. Federal School Re-Entry Legislation}

There have been some federal programs throughout the years designed to assist in youth reentry, but most of these programs are no longer funded.\textsuperscript{136} Examples of previously enacted federal legislation regarding youth re-entry include: the Serious and Violent Offender Reentry Initiative (SVORI); the Intensive Aftercare Program (IAP); and Youth Opportunity Grants. Funding is no longer available for these policy initiatives.\textsuperscript{137} In 2003 and 2004, through the Department of Justice, SVORI provided $110 million in funding to 69 state agencies enabling them to create juvenile justice reentry programs. SVORI funded 89 reentry programs “aimed at providing quality of life improvements and promoting self-sufficiency among juveniles and adults through reentry grants to the community, better supervision and monitoring and improved interagency collaborations.”\textsuperscript{138} The funding under this initiative was authorized for a period of only 3 years, and by 2006 most of the programs had lost funding and ended.\textsuperscript{139}

IAP was funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the 1990’s. The program was focused on high-risk young offenders and recidivism prevention, and was implemented in Colorado, Nevada and Virginia.\textsuperscript{140} IAP emphasized pre-release planning and services, short-term transitional programming and structured, longer-term reintegrative activities that balanced supervision, treatment and services.”\textsuperscript{141} Even though the program garnered broad support, inconclusive results regarding recidivism in control group studies raised questions about the program’s effectiveness, and the program lost funding. Lastly, Youth

\textsuperscript{135} United States v. Bass, 404 U.S. 336, 349-50 (1971); see also O’Rourke v. City of Norman, 875 F.2d 1465, 1469-71 (10th Cir., 1989).
\textsuperscript{136} See Nellis & Wayman, supra note 4.
\textsuperscript{137} See Nellis & Wayman, supra note 4.
\textsuperscript{138} See Nellis & Wayman, supra note 4, at 31.
\textsuperscript{139} See Nellis & Wayman, supra note 4, at 31.
\textsuperscript{140} See Nellis & Wayman, supra note 4, at 32.
\textsuperscript{141} See Nellis & Wayman, supra note 4, at 32.
Opportunity Grants, were funded by the U.S. Department of Labor in 2005 to create Youth Opportunity Centers in 36 poverty stricken, high-crime areas. These Centers provided “safe havens” for youth, and were designed to connect youth to education support, youth development activities, and case management to aid them in transitioning into employment or higher education.\textsuperscript{142} Despite positive evaluations of these Centers, funding ended for this initiative in 2005.

The Second Chance Act of 2007\textsuperscript{143} (“Second Chance Act”) is the only current federal legislation providing federal funding for re-entry services. The Second Chance Act was enacted “to reduce recidivism, increase public safety, and help State and local governments better address the growing population of ex-offenders returning to their communities. The bill focuses on four areas: development and support of programs that provide alternatives to incarceration, expansion of the availability of substance abuse treatment, strengthening families of ex-offenders, and the expansion of comprehensive re-entry services.”\textsuperscript{144} In addition, the Second Chance Act reauthorizes demonstration projects for adult and juvenile offender reentry into the community initially established under the Omnibus Crime Control and Safe Streets Act of 1968. One of the stated purposes of the Second Chance Act is to provide offenders in prisons, jails or juvenile facilities with “educational, literacy, vocational, and job placement services to facilitate re-entry to the community.”\textsuperscript{145} The Second Chance Act provides $165 million in federal funds to reentry programs\textsuperscript{146}, $25 million of which is provided for programs serving children under the age of 18.\textsuperscript{147} The National Reentry Resource Center was opened under the authorization of the Second Chance Act in October 2009, with its focus on complex youth reentry issues and providing “education and technical assistance to communities across the country with . . . myriad forms of support that can help reduce recidivism and strengthen neighborhoods and families.” For the year of 2010, President Obama has requested an additional $100 million in funding for Second Chance Act programs.\textsuperscript{148}

The defunding of most federal programs demonstrates that there is neither “federal policy on school reentry” nor a “national policy agenda which supports reentry services to connect youth with meaningful

\textsuperscript{142} See Nellis & Wayman, supra note 4, at 33.
\textsuperscript{143} Public Law 110-199: “An Act to reauthorize the grant program for reentry of offenders into the community in the Omnibus Crime Control and Safe Streets Act of 1968, to improve reentry planning and implementation, and for other purposes.
\textsuperscript{144} House Committee Report on Second Chance Act, 20 Fed. Sent. R. 141 (2007)
\textsuperscript{145} Public Law 110-199 Sec. 3(a)(6).
\textsuperscript{146} See Nellis & Wayman, supra note 4, at 33.
\textsuperscript{147} See Nellis & Wayman, supra note 4, at 34
\textsuperscript{148} See Nellis & Wayman, supra note 4, at 34.
opportunities for self-sufficiency and community integration.” The establishment of a federal policy regarding school re-entry is a necessity, because in its absence, “some states have enacted laws which create clear obstacles for youth attempting to re-enroll in high school upon reentry.”

In *D.C., K.C., and K.J v. School District of Philadelphia*, the Pennsylvania statute at issue provided for an inflexible prohibition against a return to the regular classroom for students adjudicated delinquent or convicted of specified underlying offenses. The court held that the statute violated procedural due process. The plaintiffs were three youths, aged sixteen through eighteen, who were adjudicated delinquent and committed to out-of-home placements. Their offenses included possession of controlled substances, unauthorized use of an automobile, and truancy. All three plaintiffs behaved well in their placements, and were able to work well with others in the programs. However, despite good behavior and good academic achievements in their placements, none of these adjudicated youth was allowed to return to school. Upon release from commitment, the youth were transferred to statutory transition centers to set up transition plans. After a short period of a week or two at the transition centers, two of the plaintiffs were assigned to alternative education programs for disruptive youth; and one was supposed to be assigned to a similar program, but placement was so delayed that he went independently for his GED, never getting the chance to return to high school.

The plaintiffs asserted that 24 P.S. § 21-2134 was unconstitutional as violative of the Equal Protection Clause of the Pennsylvania Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Due Process Clause of the Pennsylvania Constitution. Section 21-2134 provided that “any student returning from placement or who was on probation as a result of being adjudicated delinquent . . . or who had been adjudged to have committed a crime in an adult criminal proceeding, should not be returned directly to the regular classroom.” First, Section 21-2134 mandates that the youth be transferred to a transition center to establish a transition plan. From there, the student can “return to a regular classroom, unless his or her offense triggers the automatic exclusion under Section 2134(c).” If the automatic exclusion applies, the school district is “required to place the student in one of four alternative education settings. They include: an ‗alternative education program‘ as defined in Article XIX-C of the School Code, headed “

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149 See Nellis & Wayman, *supra* note 4, at 33.
150 See Nellis & Wayman, *supra* note 4, at 33.
152 *Id.* at 409-410.
153 *Id.* at 417-418.
Disruptive Student Programs,” . . . a “private alternative education institution” as defined in Article XIX-E, headed “Private Alternative Education Institutions for Disruptive Students.” . . . a general educational development (GED) program; or a school program operating after the traditional school day (twilight program).”154 The Pennsylvania Supreme Court held this statute unconstitutional, as it created an unconstitutional irrefutable presumption that students returning from juvenile placement, or at least those whose offense triggers the automatic exclusion rule under the statute, would be dangerous and disruptive in a regular classroom rendering them unfit for the regular classroom, “regardless of whether the student performed in an exemplary manner during juvenile placement or otherwise does not pose a threat to the regular classroom setting.”155 “The placement of returning students in an alternative setting is based upon a determination that the student is not currently fit for the regular classroom, and that determination is not guided by any ascertainable standard other than that the student was previously adjudicated delinquent.”156 The court held that Section 2134 violated due process for two reasons: first, the absence of an “opportunity for returning students to challenge their transfer to an alternative education setting violates due process,”157 and second, the statute’s irrefutable presumption made by the statute “precludes consideration in an informal hearing, if one is requested, of the central issue of whether a student is currently fit to return to the regular classroom after completing the transition center assignment.”158

The court did not review the plaintiffs’ equal protection claims, as it ruled in their favor regarding the required procedural protections due under the circumstances.159 However, the court affirmed that the state could reasonably and constitutionally require a formal transition program to assess the status of the returning students and to establish transition plans to attempt to enhance their chances of success upon return. Statutory provisions like this Pennsylvania scheme, which create barriers to youth re-entry into the public school system, will continue in existence if the federal government does not disallow them.
B. Federal Education Policy: No Child Left Behind Act

Neither the Federal No Child Left Behind Act of 2001 (“NCLB”)\(^{160}\), nor any other federal legislation addresses the problems faced by youth when attempting to return to the classroom. In fact, it has “failed to meaningfully address the dropout crisis in the U.S., nor has it adequately addressed the significant racial disparities in graduation rates . . . .” “NLCB also contributes to the reluctance of public schools to re-enroll adjudicated youth returning from out-of-home placements.”\(^{161}\) The NLCB has been called “the most important federal education law in our nation’s history,”\(^{162}\) and was enacted to close achievement gaps between students of different races and ethnicities, hold schools accountable for the students’ results on standardized tests given annually, and “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”\(^{163}\) Yet, NCLB fails to advance the goals it was enacted to achieve, and instead creates perverse incentives for schools to remove struggling students from the classroom.

Under NLCB, schools must meet certain student performance or accountability requirements. School performance data is based on students’ achievement on standardized tests, which are established by each state individually. “Students’ scores are aggregated by school, and each school is measured to determine whether it is making “Adequately Yearly Progress” (“AYP”).”\(^{164}\) The AYP is composed of standardized test scores, student achievement, graduation rates and school attendance.\(^{165}\) Each state is free to establish the exact goals of each category of AYP.\(^{166}\) NLCB imposes harsh sanctions on schools which do not meet these AYP established standards. “The stages of a school’s failure to make AYP are: Year One: Warning; Year Two: School Improvement I; Year Three: School Improvement II; Year Four: Corrective Action I; Year Five: Corrective Action II; and Year Six: Restructuring.”\(^{167}\) If a school does not achieve AYP goals for two

161 See Feierman, Levick, & Mody, supra note 7.
163 See Race & Ethnicity in America, supra note 13, at 139; see also 20 U.S.C. §6301.
165 See Klehr, supra note 164, at 586.
166 See Klehr, supra note 164, at 586.
167 See Klehr, supra note 164, at 587.
consecutive years, it is identified for ‘school improvement,’ and the students at the identified school must be allowed to transfer to a different school within district. If after one school year of Corrective Action the school still fails to meet AYP, the Restructuring phase begins and can include turning the school into a charter school or turning control over to the State.

NCLB’s focus on the percentage of students who achieve proficiency on standardized test scores creates perverse incentives for schools to push out low scoring students because of the schools’ fear of NCLB sanctions. “Focusing on absolute achievement levels rather than achievement gains . . . will generate incentives for parents, teachers, and administrators to shun disadvantaged children and the schools that educate them . . . . Disadvantaged students tend to do worse on standardized tests.” Due to the fact that adjudicated youth who return from out-of-home placements will face challenging academic issues and are likely to attain low scores on standardized tests, “many schools fear that if they enroll these youth the percentage of their students who achieve proficiency will decrease.” The risk of these NCLB sanctions has caused schools and districts to get rid of low-scoring and low-performing students with academic difficulties, who are most often low-income and minority, through suspensions, expulsions, referrals to law enforcement or the juvenile justice system, sending them to alternative schools or holding them back a grade. Through exclusionary practices, schools can improve their test scores and ensure against the risk of NCLB sanctions without additional expenses or resources.

V. STATE POLICIES FOR SCHOOL RE-ENTRY AFTER RELEASE FROM OUT-OF-HOME PLACEMENTS

Some states struggle not only with resistance to re-enrollment of released adjudicated youth into their public schools, but with additional obstacles which make failure for the youth inevitable. New Jersey has approximately 18,000 adjudicated delinquent youth each year. Youth of

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168 See Klehr, supra note 164, at 587.
169 20 U.S.C.A. §6136(b)(8)(B)
170 See Ryan, supra note 160, at 934.
171 See Feierman, Levick, & Mody, supra note 7.
172 See Race & Ethnicity in America, supra note 13, at 139.
174 David R. Giles, School Related Problems Confronting New Jersey Youth Returning to Local Communities and Schools From Juvenile Detention Facilities and Juvenile Justice
Our Children, Ourselves

color make up 40% of the adjudicated delinquent population in the state, although minorities comprised only 13% of New Jersey’s population in 2000. In 2000, approximately 2,000 juveniles were committed to out-of-home placements; 60% of the committed population was minority youth. There are numerous school reentry obstacles which New Jersey’s adjudicated youth face including: lack of attention from state education officials; resistance to readmission of returning youth in local programs; inconsistency in out-of-home placement education programs and public school education programs; and timing of release mid-semester which stalls students’ re-enrollment until the beginning of the next academic year. Pursuant to New Jersey statute, students are required to re-enroll when they are absent for longer than 45 days. Schools do not expedite the process for re-entering adjudicated youth. Students may be excluded from the classroom entirely while awaiting placement in alternative education programs.

In Los Angeles County, California, home to the largest juvenile justice system of any county in the United States, adjudicated youth who are released from out-of-home placements are burdened by, among other things, substance abuse issues, “gang involvement, and low educational attainment.” California incarcerates 351 per 100,000 youth under the age of 21, giving California the “ninth highest juvenile incarceration rate in the country.” Adjudicated youth in LA County experience barriers to school re-enrollment, issues with pre-release planning and transition services, interagency collaboration, and record keeping. The obstacles that LA County adjudicated youth face regarding school re-entry are illuminated by the statistic that only “between 10 and 20 percent of juvenile probationers acquire a high school diploma or GED.”

Despite the barriers and disincentives that schools and federal education policy have put in place, there are strategies and approaches to school re-entry of adjudicated youth that states can implement to promote a successful education for this population. Four characteristics have been identified as essential to the best practices for school reenrollment of adjudicated youth returning from out-of-home placements: (1) a clear


175 See Giles, supra note 174, at 2.
176 See Giles, supra note 174, at 2.
177 See Giles, supra note 174, at 5.
178 See Giles, supra note 174 at 5.
179 Michelle Newell and Angelica Salazar, Juvenile Reentry in Los Angeles County: An Exploration of Strengths, Barriers and Policy Options (2010).
180 See Newell & Salazar, supra note 179.
181 See Newell & Salazar, supra note 179.
delineation of the roles and responsibilities of interacting agencies; interagency and community cooperation; (2) youth and family involvement; (3) speedy placement to insure adjudicated youth can reenroll quickly after their release; and (4) return to an appropriate education placement. Other characteristics identified as aiding in facilitating school reentry include pre-release training and pre-release transition planning. Another “best practice” may be the appointment of an interagency board, with state and local representatives involved in coordinating the re-enrollment of recently committed youth, along with the assignment of a case manager at the public school where the youth attended prior to commitment as the contact for the out-of-home placement facility ensuring smooth re-entry for the child.

All of these characteristics taken together can create a successful reentry procedure for adjudicated youth.

Some states have taken the initiative in overcoming the obstacles to successful school re-entry of adjudicated youth committed to out of home placements by implementing strategies and procedures which encompass one or more of the aforementioned characteristics. Maine provides for reentry planning in advance of release, inter-agency cooperation, family involvement and structured deadline of records to be transferred back to the student’s public school. Under Maine state law, every school district is mandated to have a reintegration team, which is convened within 10 days of receiving information from the Department of Corrections regarding a student seeking re-enrollment. These teams come together to plan for the student’s reintegration and consists of: “the administrator of the school, and at least one of each of the following: the student’s classroom teachers, the student’s parent/guardian, and a guidance counselor.” In Kentucky, the state legislature has created the position of “Bridge Coordinator” in each school district. The “Bridge Coordinator” is responsible for screening each adjudicated youth who is seeking reentry back into the community, and creates an “Education Passport” which includes information collected from transition interviews, appropriate data and other records. This “Education Passport” is sent with the adjudicated youth to his school placement, enhancing interagency communication and information sharing. New York City in 2004 revised its enrollment procedures, making it easier for

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183 See Matvya, Lever, & Boyle, supra note 5.
184 See Best Practices, supra note 182; see also Peterson, supra note 41.
185 See Best Practices, supra note 182.
186 See Best Practices, supra note 182.
187 See Best Practices, supra note 182.
188 See Best Practices, supra note 182.
students to re-enroll after out-of-home placement. Instead of removing adjudicated students who are committed to out-of-home placements from the school’s roll, they are kept on a parallel list, a policy called “dual enrollment.” \(^{189}\) This policy also provides for an investigation if the student does not appear at the school post-release, and upon return to school the student has to be placed in a regular class and be issued a specified program.\(^{190}\) The Center for Alternative Sentencing and Employment Services (CASES) worked with the New York City schools and agencies to help create a “model reenrollment project” and establish a partnership with correctional and educational services.\(^{191}\) CASES formulated three programs: the Committee on Court Involved Students, the School Connection Center, and the Community Prep High School. The Community Prep High School is an alternative placement where adjudicated youth attend for 10-15 months, which provides services assisting the adjudicated youth with the transition and re-entry into mainstream public school.

These programs facilitate the improvement of school reentry and reenrollment for youth returning from out-of-home placements. In addition, these programs can be “cost-effective and can promote the health and well-being of children and adolescents.”\(^{192}\) As a reflection of the best practices in school reenrollment, these strategies can serve as a positive model for other states and agencies seeking to develop procedures that create a smooth reentry process.

VI. ALTERNATIVE EDUCATION PLACEMENTS

Disciplinary alternative schools and programs, most commonly known as Alternative Education Placements (AEPs), were created in the 1960’s as voluntary programs, giving students the option of whether or not to attend, to “provid[e] alienated and disengaged students with individualized instruction.”\(^{193}\) In the 1980’s, states, policymakers and education leaders nationally shifted away from the voluntary nature of these programs out of concern for the high drop-out rate, student behavior generally and fear of school violence.\(^{194}\) Most recently, federal policies, including the No Child Left Behind Act, encourage the involuntary

\(^{189}\) See Best Practices, supra note 182.

\(^{190}\) See Best Practices, supra note 182.

\(^{191}\) See Best Practices, supra note 182; See also See Matvya, Lever, & Boyle, supra note 6.

\(^{192}\) See Matvya, Lever, & Boyle, supra note 6.

\(^{193}\) Emily Barbour, Separate and Invisible: Alternative Education Programs and our Educational Rights, 50 B.C.L.Rev. 197, 200 (2009), available at http://lawdigitalcommons.bc.edu/bclr/vol50/iss1/5.

\(^{194}\) See Barbour, supra note 191 at 201.
assignment to, and expansion of AEPs, authorizing “fund[ing] for school districts to create AEPs, which NCLB touts as innovative programs to prevent violence and drug use to reduce disruptive behavior.”

Alternative Education Placements have a strong connection with the juvenile justice systems of each state and, with variations from state to state, serve as “behavior remediation centers.” Students can be placed in an AEP upon release from an out-of-home placement or by order of the court after being charged with a crime, although not adjudicated delinquent. AEP placement disproportionately involves youth of color. “Minority students are more likely to be referred to alternative education programs than white students for similar conduct.” When determining what exactly an “appropriate education placement” is for the returning student, there are both proponents and critics of assigning youth to Alternative Education Placements. Some scholars suggest that these students not be placed in “special segregated schools for disruptive students,” which can have negative effects on the students’ self-esteem, and add to the stigma of inferiority the student faces when released. Instead of facilitating graduation and successful futures, AEPs seem to prevent students from progressing in grade levels and acquiring a diploma.

A. Critics and Proponents

The critics emphasize that “[t]ransferring a child to an alternative disciplinary school can have serious consequences. Alternative schools may provide students with fewer hours of instruction per week than regular schools and the school year may be shorter in alternative education than in regular schools.” Further examples of the inadequate educational environment provided by AEPs include: failure to provide textbooks for students to take home for studying; no homework assigned; lack of qualified and experienced teachers; and “prison-like” body searches and pat downs. Nationally, a majority of the AEPs surveyed “had not fully integrated the state standards and curriculum into their program.” In addition, transportation to these alternative schools is not necessarily provided. Statistics taken from an AEP in Springfield, MA in 2004 are

195 See Barbour, supra note 191, at 201.
196 See Barbour, supra note 193, at 202.
197 See Barbour, supra note 193, at 202.
198 See Geronimo, supra note 39, at 434.
199 See Best Practices, supra note 49.
200 See Barbour, supra note 193, at 236.
201 See Klehr, supra note 162, at 595.
202 See Geronimo, supra note 39, at 437-38.
203 See Best Practices, supra note 49.
reflective of the national issue with AEPs: “[O]ne hundred percent of the third graders were not proficient in reading, one hundred percent of the sixth graders were not proficient in math, and one hundred percent of the tenth graders were not proficient English.”204 These statistics are frightening, reflecting the fact that AEPs are not simply failing to provide providing an education on par with regular public schools, but are “shockingly substandard.”205

Proponents of AEPs usually include politicians, school teachers and administrators. Politicians tend to support AEPs as solutions to the “tough on crime” policies taken by schools, in response to school violence concerns, which foreclose students convicted of certain crimes from school entirely.206 Thus, AEPs “save disruptive minority students from being condemned to a life without education by total exclusion.”207 In addition, teachers and school administrators contend that a large portion of their time is spent on a small number of students who are “conduct-disordered.”208 Thus, teachers argue that the use of AEPs as ways to remove these “disruptive students” from the classroom will “allow them to adequately teach the remainder of students in their classrooms who are willing to learn and cooperate.”209 School administrators support AEPs for financial reasons: “If the school district offer[s] an AEP, the amount of funding an excluded student generate[s] at the transferor school may still be available to that school even after the student is transferred to the AEP.”210 Removing the disruptive students, who may be “potentially low-performing,” allows the schools to increase their school performance ratings which sometimes will lead to increased funding rewards.211 Additionally, proponents in general contend that “unruly students will perform better in alternative schools because they offer individualized curricula and because the students are given the opportunity to be among similarly-situated youth. . . .”212 Lastly, the economic arguments for the development of AEPs are that “AEPs serve students who are considered “at risk” of dropping out of school . . . .”213

204 See Barbour, supra note 193, at 224.
205 See Barbour, supra note 193, at 224.
207 See D’Agata, supra note 206, at 640.
208 See D’Agata, supra note 206, at 639.
209 See D’Agata, supra note 206, at 639.
210 See D’Agata, supra note 206, at 640.
211 See D’Agata, supra note 206, at 640.
212 See D’Agata, supra note 206, at 640.
213 See D’Agata, supra note 206, at 639.
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Therefore, the proponents argue, it follows that AEPs can save states money by increasing the number of high school graduates who will not need state assistance or unemployment.

B. The Two-Part Problem and The Solution

Despite the reasonable theories in support of AEPs, it seems that AEPs currently suffer from two overarching problems: (1) AEPs provide statistically substandard learning environments and educations to students in comparison to regular classroom placements; and (2) AEPs tend to marginalize the adjudicated youth who attend, “permanently tracking them out of the mainstream school system into an underclass of the education community.”

As discussed at length earlier in this section of the article, research suggests that AEPs do not provide comparable educational instruction comparable to that of a regular school. “Many have no grades and no homework requirements.”

Regarding AEPs’ creation of an “underclass of the education community,” it is important to understand the term “underclass.” An “underclass” is “an identifiable group facing powerful barriers to upward mobility. . . . marginalized and isolated from mainstream society and thereby contain[ing] elements of perpetual decline.” Other scholars depict the “underclass” as including individuals “who lack training and skills and either experience unemployment or are not members of the labor force.”

The funneling of students into this “underclass” perpetuates the devastating obstacles which adjudicated youth face when returning to their communities after periods of commitment in out-of-home placements. These youth are foreclosed from re-entering the mainstream public school system, and are instead placed in inferior, substandard programs which do not provide them with the educational tools which they will need for a successful future. “Alternative education students’ status in the underclass is canalized as they are processed through the school-to-prison pipeline, stopping by the disciplinary alternative education program in transit to the juvenile justice system.”

“Poorly administered disciplinary alternative education programs consequently serve as gateway programs that support the mass incarceration of poor, black youth.”

214 See D’Agata, supra note 206, at 639.
215 See Geronimo, supra note 39, at 430.
216 See D’Agata, supra note 206, at 643.
217 See Geronimo supra note 39, at 448.
218 See Geronimo supra note 39, at 448.
220 See Geronimo, supra note 39, at 452.
and isolation of unruly minority students through placement into AEPs” based on their misconduct is violative of the basic principles and standards established in Brown v. Board of Education.221 “[U]nderprivileged black students are disproportionately represented in AEPs across the country. In Texas, for example . . . while 28% of its student enrollment was black, 43% of those diverted into AEPs were black.”222 In Georgia, one of the state’s AEPs had a population comprised of 100% black students in the year 2007-2008, and was identified as “a warehouse for poor, urban black” youth.223 The Brown opinion has been understood to express that “schools do more than just teach academic skills; they also develop the social skills necessary to achieve in an adult life.”224 One scholar suggests that “the social characteristics of a school’s student body [are] the single most important school-related factor in predicting minority student achievement.”225 The placement of the minority youth in AEPs creates a situation in which these students are in an environment “of isolation rather than integration,”226 thereby establishing institutions which “create a segregated system that can stigmatize students and damage their self esteem.”

This article proposes that the solution to the inadequacies of the education provided at AEPs should be addressed with aggressive policy change initiatives. It is not suggested that states should stop the use of AEPs, but only that AEPs should be required to provide educational instruction equivalent to that which is provided in mainstream public schools. Many of the AEPs lack a clear “educational plan” for their students.227 “AEPs have not generally integrated . . . state standards into their curricula, nor are they held accountable for doing so.”228 Without accountability, “parents and students cannot know whether their school does or does not provide a minimally adequate education.”229 Courts have expressed hesitancy in determining what constitutes a “minimally adequate education” in reference to AEPs, and have noted that the determination of these standards should be left to local legislatures.230 The United States

221 See D’Agata, supra note 206, at 660
222 See D’Agata, supra note 206, at 642
223 See Geronimo, supra note 39, at 437.
224 See D’Agata, supra note 206, at 661
225 See D’Agata, supra note 206, at 661
226 See D’Agata, supra note 206, at 661
228 See Barbour, supra note 191, at 223; See also Geronimo, supra note 39, at 454 (noting that “the quality of education at many alternative schools is seriously lacking.”)
229 See Barbour, supra note 193, at 223
230 See Barbour, supra note 193, at 223-24.
Supreme Court has not directly addressed whether “a minimally adequate education is a fundamental right,” but has not foreclosed the possibility “that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either the right to speak or the right to vote.”

Policymakers should therefore ensure that AEPs “comply with state constitutional and statutory obligations” and focus on changing state education policies, requiring that AEPs follow generally the same substantive education requirements mandated for regular public schools, with “the particular needs of the student body . . . considered.” In addition, implementation of policies which establish “accountability, transparency and legitimacy” would also help remedy the “alternative education student marginalization.”

“Alternative education programs should provide small class sizes, personalized attention, [and] support services [to] create environments in which . . . youth may be more comfortable and may mean that youth pursue their education further as a result.” In addition, there must be a shift away from a punitive-based policy model, as research shows that “positive behavior supports are an effective method for disciplining student misbehavior.” The mission of current AEPs “is philosophically contrary to the original mission of the traditional alternative school movement. . . .”

The “traditional” mission was one of “flexibility and freedom in the classroom.” However, the current mission of AEPs is one based on control of “designated disruptive . . . or violent” students which essentially creates a “soft jail.” Thus, AEPs should establish a positive mission which promotes the education of the students. In addition, in an effort to effect change in the goals and missions of AEPs, policymakers should adopt a positive approach “that promotes long-term efficiency and that prevents the re-entrenchment of a permanent underclass in American society and the violation of student rights.”

It should be stressed that “poor classroom behavior has no correlation to students’ ability to succeed academically,” and thus the at-

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232 Id. at 284 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973))
233 See Geronimo supra note 39, at 455.
234 See Geronimo supra note 39, at 455.
235 See Geronimo supra note 39, at 461.
236 See Geronimo supra note 39, at 455.
237 See Geronimo supra note 39, at 455.
238 See Wren, supra note 227, at 353.
239 See Wren, supra note 227, at 353.
240 See Wren, supra note 227, at 353.
241 See Geronimo, supra note 39, at 461.
242 See Barbour, supra note 193, at 232.
risk students who are placed in AEPs should not be regarded as incapable of functioning in an academic environment similar to that in a mainstream school. An AEP should “respect the individual as a student and as a learner.”\(^{243}\) Research shows that AEPs can be effective in education this population of students, and that the successful programs “provide intensive instruction in credit-earning coursework . . . use research-based instructional techniques that engage the students . . . . and set high expectations for their students’ achievements.”\(^{244}\) In addition, the effective AEPs “avoid mingling students at risk for academic failure and other nondisruptive at risk students with students who demonstrate emotional and behavioral problems.”\(^{245}\) In order to establish AEPs that follow these best practices and implement the same educational requirements as regular public schools, “[l]ocal support for the provision of quality alternative education is critical.”\(^{246}\) “Advocacy by community groups, formation of parent coalitions, [and] launching of administrative complaints with the school board” are all ways of developing and improving the education environments of AEPs. If communities believe that all students should be entitled to a quality education, then despite socio-economic or racial biases, the mission of AEPs can be re-shaped and these placements can be effective in providing at-risk students with an education which prepares them for a successful future.

**CONCLUSION**

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As this article explains, the methods through which legal advocates can challenge the current federal and state policies and structures regarding the education of adjudicated youth include litigation based on federal and state constitutional challenges. Scholars have developed numerous reasons to use litigation “to confront educational inequities like school exclusion.”\(^{247}\) These rationales include: (1) to compel additional resources and accountability to fill gaps education to vulnerable groups, (2) to correct market failures in the distribution of educational resources, (3) to correct bureaucratic failures, (4) to challenge political power, and (5) to give parents a “voice in educational decision-making.”\(^{248}\) However, litigation

\(^{243}\) See Wren, *supra* note 227, at 353.

\(^{244}\) See Barbour, *supra* note 193, at 234.

\(^{245}\) See Barbour, *supra* note 193, at 234.


\(^{248}\) See Rivkin, *supra* note 247, at 281.
should not be seen as the only route to successful reform. Often, litigation in these areas will be difficult and unsuccessful. Litigation, as a “court-focused, rights-based approach may set back reform efforts if the conditions are not ripe for change.”\textsuperscript{249} Additionally, establishing a new rule through litigation “that will benefit an individual client or even a class of persons is not always enough to fix the underlying policy or practice,”\textsuperscript{250} and enforcement of court-granted relief is often difficult to ensure.\textsuperscript{251} Lastly, litigation concerning the exclusion of children from school “inevitably drift[s] into litigation that challenges the adequacy of education . . . [and] such challenges are rarely successful.”\textsuperscript{252}

Scholars advise that “[a] blend of strategies is the hallmark of modern public interest advocacy.”\textsuperscript{253} Therefore, it is suggested that advocates combine both litigation efforts with legislative and policy reform to ensure that adjudicated youth, once suspended or expelled, are able to re-enter a regular public school classroom, or an adequate alternative placement, with minimal to no waiting time between release from out-of-home placements and re-entry.

\textsuperscript{249} See Rivkin, supra note 247, at 281.
\textsuperscript{250} See Rivkin, supra note 247, at 282.
\textsuperscript{251} See Rivkin, supra note 247, at 283.
\textsuperscript{252} See Rivkin, supra note 247, at 284.
\textsuperscript{253} See Rivkin, supra note 247, at 282.