Break-Out Session I-D: Disciplinary Alternative Schools

• Alternative Schools and Pushout: Research and Advocacy Guide
• *Atlantic Independent School System* Amended Complaint
• Missing the Mark
Alternative Schools and Pushout: Research and Advocacy Guide

Dignity in Schools Campaign
Working together to ensure that children are treated with dignity and fairness in schools

2007
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I. INTRODUCTION

Dignity in Schools Campaign
The Dignity in Schools Campaign (DSC) unites advocates, parent and student organizers, educators, and lawyers from across the country to reframe the debate around school discipline from one that favors the punishment and exclusion of children who have been failed by unsafe and underperforming schools, to a human rights perspective that respects the right to education, and advocates for child-centered, dignified reform to keep children in school.

Human Rights Framework
International human rights treaties, like the Convention on the Rights of the Child, recognize that all children have the right to an education aimed at their “full development.” Education must ensure “that essential life skills are learnt by every child…such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility” (United Nations Committee on the Rights of the Child). School discipline is an essential part of teaching these necessary behavioral and life skills. In order to do that, discipline must be carried out in a way that protects the dignity of the child, that is just and fair, and that keeps children in school. The problem of effectively disciplining youth and keeping them in school is multi-faceted – it is legal, social, political, and cultural. We hope to shift the discussion on school discipline from one about violence, rules, test scores and the criminalization of youth to one about equality, dignity, and human rights. We feel that this framework more accurately addresses the many factors that contribute to students being pushed out of school.

About the Research and Advocacy Guide
This research guide is a compilation of articles, websites, advocacy tips and strategies to aid those who are interested in following up on our recent teleconference call entitled, “Are alternative education programs being used to warehouse kids who have been pushed out?” This conference call was sponsored by the Education Subcommittee of the Children’s Rights Litigation Committee of the ABA Section of Litigation. The guide is a result of contributions from participants of the Dignity in Schools Campaign, including our expert presenters, and is not intended to be a comprehensive overview of all sources on the subject. It is however, a valuable beginning. Suggestions of additional sources are welcome. The research articles and reports are listed in chronological order beginning with the most recent.

This guide is part of a larger project to develop a website to share information about the pushout problem and build alliances among advocates, educators, activists and lawyers across the country. The website and search engine at www.dignityinschools.org will be launched in January 2008. We are coordinating two efforts to gather information for the website:

- **Research on Pushout and Effective Alternatives** – we are compiling summaries of research studies, news articles and advocacy reports to better understand how and why students are pushed out of school, and to understand effective models to prevent pushout.
- **Interviews of Groups on Advocacy Strategies** – we are gathering information at the local level from advocates, organizers, educators and lawyers about effective policy, legislative, legal and organizing strategies for combating pushout.

To get involved email liz@nesri.org.
II. ARTICLES AND STUDIES

A. Pushout to Alternative Schools

Using Transfers to Alternative Schools to Avoid Responsibility for Low-Performing Students

Full Report:

Summary:
The Legislative Analyst’s Office is a bipartisan organization in California that serves as the “eyes and ears” for the Legislature to ensure that the executive branch is implementing legislative policy in a cost efficient and effective manner. In this 35-page report, the LAO gives an overview of alternative schools in California, the statutory framework for the schools, an overview of the different roles alternative schools can play, and the indicators of quality programs. The report then analyzes the accountability programs for alternative schools and whether they are adequately tracking students’ progress. The LAO finds that the state’s current accountability system allows schools and districts to use referrals to alternative schools as a way to avoid responsibility for the progress of low-performing students. To solve this problem, the LAO recommends that the legislature improve accountability to focus on student achievement within the alternative schools.

The School-to-Prison Pipeline in Texas

Full Report:
http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf

This report -- the first in a multi-year project examining complex school to prison pipeline issues -- discusses the connection between disciplinary referrals and dropout rates, a dynamic that creates a pipeline into the juvenile and adult criminal justice systems. The report examines the failure of Disciplinary Alternative Education Programs (DAEPs) in Texas to provide quality education leading to high dropout and recidivism rates. The report further documents the over-representation of African American students and special education students in discretionary disciplinary referrals. The report also discusses proven methods of approaching school discipline issues so that schools remain safe and students stay in school and keep learning. Statistics clearly show that not only do DAEPs, as they are presently administrated, fail to make mainstream schools safer places for Texas youth to learn, but they also open gateways to even greater social issues at the state level. Texas Appleseed recommends increased parental involvement, improved Texas Education Agency monitoring and higher DAEP standards as possible keys to solving the behavior management issues faced within Texas schools.

Disciplinary Alternative Education Programs Feed Students into the School to Prison Pipeline

Full Article and Book:

Summary:
Reyes begins by describing the increasingly common practice of transferring students to alternative schools as a means of removing students that have discipline problems or are labeled as troublemakers from regular schools. She cites the Texas case *Nevares v. San Marcos C.I.S.D.*, 111 F3d 25 (5th Cir. 1997) as an example, in which the removal of a student to an alternative program was not categorized as a
removal but rather a transfer, and thus did not violate the student’s right to an adequate education. Yet these Disciplinary Alternative Education Programs (or DAEPs) are not alternatives to traditional schooling like charter or magnet schools, but rather “feeders into the school-to-prison pipeline.” Reyes discusses the convergence of interests between large corporations, schools facing accountability pressures, and educators wishing to remove difficult students from their classrooms which have led to overly harsh, state mandated zero tolerance policies that create disciplinary alternative education programs. Reyes notes that while historically alternative schools took many forms, including innovative choice models, the current mandatory discipline alternative schools “separate out at-risk, low-income, and minority students.” Further, while research on effective alternative schools of choice abounds, there is little research on disciplinary alternative education programs. The “Law and Order” theory behind disciplinary alternative education programs is about “conveying harsh punishments,” not “teaching appropriate behavior or behavioral expectations.” Reyes then offers an in-depth study of DAEPs in Texas, including placement, removal, exit from the DAEP, and disproportionate enrollment of minorities, low-income and at-risk students.

Successful Strategy to Combat Illegal School Discharges in New York City
Full Article:

Summary:
This article describes successful efforts undertaken by Advocates for Children and its allies to address the push-out problem in New York City through a combination of litigation, direct action, public education, community outreach, public policy, and media campaigns. Through the use of surveys, workshops, and hotlines Advocates for Children and other community based organizations documented cases of high school students that had been illegally discharged each year without receiving diplomas. These practices included transferring younger students and students with disabilities to GED programs and outright discharge of students who were told that they were too old to stay in high school, did not have enough credits, or were not on track to receive a high school diploma. Lawsuits were filed on behalf of students from three high schools that resulted in citywide policy changes on transfers and discharges including requiring a planning interview before discharge or transfer, requiring consent of the student and due process procedures. The policy also included review of each discharge or transfer to a non-diploma-granting program. Settlement agreements in the lawsuits required re-enrollment of students, support services, ad monitoring. See the cases and documents at www.advocatesforchildren.org/pushouts.php.

Other subsequent cases filed by Advocates for Children and co-counsel include EB v. Department of Education at http://www.advocatesforchildren.org/eb.php (on behalf of children with disabilities who have been excluded from school without proper notice and due process), and DS v. NYCDOE at http://www.advocatesforchildren.org/boysandgirls.php (on behalf of students who have been illegally excluded from Boys and Girls High School).

Data and Anecdotal Evidence Reveals Pushouts in New York City
Full Report:

Summary:
This report reviews New York City Department of Education discharge data and anecdotal evidence to expose an alarming rate of discharges of students in New York City schools. According to the report, over 160,000 students were discharged between the 1997 and 2001 school years. The report concludes that
children are possibly being moved to GED programs to mask dropout statistics and that many of the discharges may be forced push outs by schools of students who have a legal right to remain in high school. The report also provides an overview of education laws in New York and describes available alternatives to traditional high school.

B. Concerns with Alternative Schools

**Mission of Alternative Schools, Problems and Prospects**

*Full Article:*

*Summary:*
This overview includes a brief discussion of the history and purposes of alternative schools, the characteristics of alternative schools, and recommendations for improving alternative schools. Hadderman places the mission of alternative schools into one of three categories: (1) changing the student; (2) changing the school experience; (3) changing the entire educational system. Alternative schools that focus on changing the student are “last-chance” placements, and are either openly punitive, or therapeutic and remedial. Empirical studies of specific alternative schools are discussed that examine each model. Those that attempt to change the school experience for students include career academies, high-engagement schools, and others. Specific alternative programs fitting this model are listed and described. Alternative schools seeking to change the educational system fit the small school and school-within-a-school mold. The author describes in detail alternative schools that have adopted this goal. The research overview identifies “problems and prospects” for alternative schools. Problems include the segregation of struggling students, lack of resources, treatment of students as second-class citizens, and the use of alternative schools as warehouses or dumping grounds for struggling students and ineffective teachers and principals. Potential positives of alternative schools include the ability of well-funded alternative schools to counteract student alienation, the opportunity to establish small schools, and dropout prevention. Finally, Hadderman summarizes recommendations found in prior analyses, including greater control by the alternative school regarding who attends and for how long, recruiting appropriate teachers, focusing on serving a unique student body, and providing adequate facilities and alternative assessments, among others. Successful early college connections through alternative schools are also discussed.

**Populations That Attend Alternative Schools, Entrance and Exit Criteria, and Resources**

*Full Report:*

*Summary:*
This statistical analysis report describes the results of a 2001 District Survey of Alternative Schools and Programs conducted by the National Center for Education Statistics (NCES). The NCES District Survey was the first national study of public alternative schools and programs. The results were based on a questionnaire distributed to a representative sample of 1,534 public school districts. The analysis did not differentiate between alternative programs and alternatives schools, but rather between district characteristics. Some key findings regarding the availability of and enrollment in public alternative schools and programs for at-risk students include: (1) 39% of public schools administered alternative schools or programs; (2) urban districts, districts with 10,000 or more students, districts in the Southeast,
districts with high minority student enrollments, and districts with high poverty concentrations were more likely to have alternative schools or programs; (3) the percentage of students in alternative schools and programs (12%) who were special education students correlated with the percentage of students within the district qualifying as special education; and (4) 54% of districts reported that demand for enrollment exceeded capacity within the last 3 years. Some key findings regarding entrance and exit criteria in alternative schools and programs include: (1) over half of the school districts reported that school conduct violations (i.e., physical attacks or fights, chronic truancy, possession, distribution or use of alcohol or drugs) were a sufficient reason for transferring a student to an alternative setting; (2) 45% of districts indicated disruptive verbal behavior was sufficient reason for transfer; (3) for special education students, an Individual Education Plan (IEP) team decision was the means most commonly employed in students’ placement; (4) 25% of districts allowed some, but not all, students to return to their regular school; (5) the reasons most likely to be rated as “very important” in determining whether a student was able to return to a regular school were improved attitude or behavior (82%) and student motivation to return (81%); and (6) districts with 50% or more minority student populations were more likely than those with lower minority student populations to transfer a student for disruptive behavior alone. The study also found that districts in the Southeast were more likely than those in the Northeast, Central, and Western regions to transfer solely for alcohol or drugs, for physical attacks or fights, and for disruptive verbal behavior. Key findings regarding staffing, curriculum and services include: (1) 91% of districts had curricula leading to a regular high school diploma; (2) 87% offered academic counseling; (3) 85% required smaller class size than regular schools; (4) 79% offered career counseling; (5) 79% offered crisis/behavioral intervention; (6) 29% offered extended school day or school year; and (7) 25% offered evening or weekend classes.

More Research Needed to Measure Effectiveness of Alternative Schools for At-Risk Youth

Full Report:
http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/19/e4/5c.pdf

Summary:
This paper reviews the alternative education literature from the 1960’s to the present in three areas: dropout prevention, special education, and at-risk youth. The paper begins with the history of the alternative schools movement, beginning with the Freedom Schools and Free School Movement of the 1960’s and moving into a limited state-by-state survey of the variety and scope of alternative education options available today. The second section examines specific populations in alternative schools, specifically characteristics of students in alternative education programs that serve as drop-out prevention strategies, students with disabilities, and students with high risk health behaviors. The third section examines outcomes for students in alternative schools, concluding that there is a lack of research in this area. There is great diversity in the group of students labeled “at-risk,” which must be studied in order to understand their needs. The fourth section discusses implications for policy and practice. Although alternative schools have not been studied on a national basis, the author examines the current state of the knowledge base about alternative schools. More large-scale standardized assessments may be necessary to measure effectiveness. There is little empirical evidence that best practices translate into desired outcomes for students. There is also little research related to how alternative schools are able to meet the needs of special education students. The author concludes that the current research on alternative education does not adequately address the many questions that remain. Issues of program character, student description, special education services, and academic outcomes are all in need of research.
**History and Characteristics of Ineffective and Effective Alternative Schools**

*Full Article:*

http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/19/4b/80.pdf

**Summary:**
This discussion piece explores the history of alternative education, characteristics of ineffective alternative schools, and characteristics of effective alternative schools. While first grounded in the social justice movement of the 1950s and 1960s, in the 1970s alternative schools began to proliferate for students from low socioeconomic backgrounds and diverse ethnic backgrounds. The authors note an explosion in the number of alternative schools from 1973 to 1975, from 463 to 5,000. The Gun-Free Schools Act of 1994 and the Individuals with Disabilities Education Act of 1997 are cited by the author as “expanding the mission and numbers of students being served in alternative education programs.” Noting that students enrolled in alternative schools are disproportionately low-income, students with disabilities, and students from diverse ethnic and cultural groups, Fitzsimmons-Lovett discusses the social and political issues arising from alternative school proliferation. The author asks whether alternative schools are excluding certain groups from regular public schools, and whether these separate, alternative schools are “inherently…unequal.” Having set forth these overarching policy questions, the author goes on to identify characteristics of an ineffective alternative education program, including: large size; punitive focus; coercive approach; limited student and teacher choice; minimal caregiver involvement; inadequate or poorly trained staff; unclear, inconsistent operating policies; and little or no community involvement. Characteristics of effective alternative education are called the “Three Cs of Effective Programming,” or “Climate, Competency, Community.” An effective Climate is established with the following characteristics: clearly established mission; student and teacher choice; structured learning environment with high expectations; focus on the whole student; structured and clear discipline code; opportunities for caring relationships with adults; low student-teacher ratio; student involvement in personal goal setting; appropriate staffing and resources; multidisciplinary, collaborative committee with student representation; program monitoring and evaluation. To ensure Competency, an alternative program should include: use of functional assessment measures; flexible, self-paced curriculum; vocational and school-to-work courses; instruction in social skills, conflict resolution, anger management; teacher training in instructional strategies and discipline management strategies; hiring skilled, well-trained staff and providing them with support. To achieve Community, alternative schools should have: a transition component for entering and leaving the alternative school; access to necessary support services; service learning programs, student-operated business programs, peer tutoring initiatives, and mentoring programs; parent and caregiver support; collaboration between alternative schools and community.

**Legislated Alternative Schools for Students with Behavior Problems are Not Accomplishing Goals**

*Full Article:*

http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/15/4e/cc.pdf

**Summary:**
This policy brief discusses the recent safe-schools legislation and the resulting legislative efforts to create alternative schools for students with behavior problems. Identified problems with placing disruptive children in alternative schools include: (1) focusing on problem students may obscure or ignore real problems in the system, (2) programs that target individuals divert resources from everyone else, and (3) a focus on problem students may threaten system equity by segregating poor, disabled, and minority
students in alternative programs. The second section of the brief examines the focus of the three different types of alternative schools: educational, disciplinary, and therapeutic. Mixed signals about the purpose of alternative education in the language of state laws and policy may confuse implementation efforts and thwart evaluation and accountability efforts. Additionally, a punitive alternative education purpose may cause schools to adopt ineffective models for improving learning or behavior, as well as jeopardize system equity and excellence. A chart illustrating implementation issues by school type is included. Factors that contribute to successful learning environments are also discussed. Finally, the author poses questions that should be asked in order to clarify whether or not legislation is accomplishing goals and concludes that “fix the child” tactics and punishment do not produce the outcomes policy makers, educators, and the public seek.

Meta-Analysis Finds that Alternative Schools Have Small Impact on Student Success

Full Article:

Summary:
This quantitative meta-analysis summarizing prior empirical research on alternative schools finds a small overall effect on school performance, attitudes toward school, and self-esteem, and no effect for delinquency. Fifty-seven (57) evaluations of alternative programs were included in the meta-analysis. Overall, the 57 alternative programs studied offered: self-paced instruction, a less competitive environment, low student-teacher ratios, an informal classroom structure, a more positive learning environment, and individualized instruction. The meta-analysis found that programs targeting a specific population (i.e., “primarily low school achievers or delinquents”) had higher effects than those that did not target specific student populations. The analysis further found that the greater the length of the program (full day as opposed to just after school or half a school day), the better the pre-post study results. The meta-analysis concluded that the highest pre-post effect of attending an alternative program was a more positive attitude toward school. However, while pre-post study designs found this positive effect, control group study designs did not. The most notable negative finding was that alternative schools have not affected delinquent behavior. The meta-analysis also concludes that “methodological shortcomings continue to plague the alternative school literature,” and that “little is known about why some programs are more successful than are others.”

Continuation Schools Lead to Student Disengagement

Book:

Summary:
This book offers an in-depth study of two California alternative “continuation” schools opened in the 1960s. One, Beacon, is located in the suburbs, offers individualized instruction in a smaller environment, serves a mixed income student population, and is predominantly white (55%). The other, La Fuente, is located in the city, offers traditional instruction, has a student population that is predominantly minority and low income, and is almost three times the size of Beacon. Kelly finds that while La Fuente has been somewhat less successful than Beacon at retaining and graduating students, the two institutions are comparable in terms of academic preparation as measured by district-wide standardized test passage rates. In addition to studying the two models of continuation schools, the book examines gender differences and how they impact school engagement. The author concludes that alternative continuation schools conform to a hidden and stigmatizing hierarchy of difference that can contribute to, rather than remedy, student disengagement from school.
C. Students with Disabilities and Foster Youth

Research on Teacher Concerns in Private Alternative Special Education Schools

Full Article:
http://www.internationaljournalofspecialeducation.com/articles.cfm

Summary:
This study uses focus group research with teachers to examine the instructional experience in private special education schools, which segregate special education students from their non-special education counterparts, generally enrolling just those students with serious emotional disturbance, severe learning disabilities, multiple disabilities, and mental retardation. These schools tend to be criticized for lack of accountability/standards or monitoring by the state and lack of credentials by staff. The article focuses on the teacher concerns and the type of instructional support that teachers need to be effective as well as the type of resources needed for students to succeed, with some focus on the opinions of novice private special education teachers. It also provides recommendations for how the teacher preparation program can be more supportive of the private education teachers.

Further Study Needed to Determine Appropriateness of Alternative Schools for Students with Disabilities

Full Article:
http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1b/a2/2a.pdf

Summary:
This article examines the existing and needed data and reports regarding students with disabilities in alternative schools. There is a lack of information regarding this subject and a serious need for further inquiry. The article provides background on alternative schools and outlines the characteristics that most alternative schools share. It then examines the problems that students with disabilities face (the dropout rate is twice that of general education students), and how the “characteristics of some alternative schools…facilitate successful school completion for those at risk of dropping out.” These include counseling and extra support, the teaching of life and job skills, smaller size, goals, and constructive interactions with teachers and other students. The report compiles and summarizes interview responses from state directors of special education, including issues regarding limited data, concerns that students with disabilities may be “pushed out of traditional school in a subtle or overt manner” and “questions about the degree to which alternative schools are appropriate settings for students with disabilities” (p 3).

High Drop-Out Rate for Children in Group Homes

Full Report:
www.cde.ca.gov/fg/fr/se/documents/grouphomes.pdf

Summary:
This 242-page report provides a comprehensive account of education for foster children living in group homes. This group of children is especially prone to dropping out because of multiple placements and the inadequate educational services many receive. The report makes specific recommendations on improvements that should be made regarding educational services for children in group homes.
D. Recommendations for Alternative Education Practices

Study of Effective Alternative Schools Yields Key Themes for Students’ Success

Full Report:

Summary:
This study examines what strategies and themes are common to alternative schools regarded as effective in working with at-risk students. The study consists of three components: a comprehensive literature review, a quantitative measure of three exemplary alternative schools, and a qualitative analysis of the exemplary schools. The study’s review of literature discovered a lack of empirical research analyzing the particular program characteristics of effective programs. The study identifies, despite the lack of empirical analysis, certain characteristics as crucial to effective alternative programming. These characteristics include small classroom sizes, effective classroom management, special training for teachers, and a personalized learning environment, among others.

For the quantitative and qualitative portion, the study selected three alternative programs considered by an Expert Panel to be “exemplary”. The study measures quantitatively the programs using three instruments: the At-Risk Student Services Assessment (ARSSA), the Effective School Battery (ESB), and the School Archival Records Search (SARS). Qualitative analysis consisted of interviews with students, teachers, administrators, and parents. The quantitative and qualitative analysis yields several themes that each program had in common which the study concludes to be important characteristics of effective alternative programming. These themes include: a program philosophy of changing the educational approach instead of changing the at-risk student, a shared philosophy that all students have the ability to learn, program administrators who share the mission and values of the program, low teacher to student ratios, specialized training for teachers, a non-authoritarian approach to teacher-student interaction, and encouragement and respect for student and family participation in the program.

Finally, the study concludes that the themes exposed can help build a foundation for future research in the area of alternative education. Additionally, the themes can be used immediately by school administrators and program directors attempting to improve the effectiveness of their alternative programs.

Study Finds that Most Drop-outs Were at One Time Overage and Under-Credited Students, and Promotes Creating Educational Alternatives for These Students

Full Report:

Summary:
This paper is based on an intensive ten-month long analysis spearheaded by the Office of Multiple Pathways, conducted by the Parthenon Group, and funded by the Bill and Melinda Gates Foundation. It found that nearly all high school drop-outs in New York City were at one point in time in the overage and under-credited (OA/UC) category. It found that half of an entering freshman class will become overage and under-credited throughout high school, with a majority of this population being male and either African-American or Latino. A strategic solution was presented, focusing on the necessity to create a myriad of alternative program options for the OA/UC population. This is directly correlated to the noticeable differences in credit accumulation, proficiency skills, and the overall academic performance of the students. The paper argues that is necessary not only to create alternative options to typical schools
but to create a number of alternatives. The Young Adult Borough Centers (YABCs) represent one such alternative, which are housed in high schools and support students in receiving their diploma and creating post-secondary education plans. Another, the Transfer High School, is opened solely for OA/UC students and provides specialized help and attention to the students. Other programs were created to help students achieve their GED. Another program called “Learning to Work” is integrated throughout all the other programs and promotes the skills needed to be successful in post-secondary education.

Factors Leading to Dropouts and Alternative Schools

Full Report:

Summary:
Barton’s study provides an in-depth analysis of the factors leading to and implications of dropping out of high school, and a discussion of alternative schools. The paper first notes the difficulties of accurately measuring high school dropout or graduation rates and analyzes the trends and changes in high school enrollment over the past few decades. Next, Barton finds environmental factors are closely associated with dropping out of school. Specifically, he finds that socioeconomic characteristics, the number of parents living in the home, and the student’s history of changing schools frequently, although not always determinative, are factors that are associated with 58% variation in high school completion rates among states. School factors that contribute to dropout rates include the state of counseling and guidance in schools that are provided to at-risk students. Barton identifies several approaches to increasing school retention such as alternative schools and Communities in Schools (CIS) that have received positive evaluations. Finally, Barton describes the employment and earning prospects for young dropouts and identifies successful “second-chance” programs that provide opportunities for high school dropouts to return to education and training.

School Size and Level of Caring: the Most Important Variables Affecting Student Success

Full Article:

Summary:
This dissertation finds that small schools that create caring environments have more successful students. The thesis provides recommendations to the educational community of ways that schools could improve the chances for success in support of students. It focuses on the stories of students who have either dropped out of school or been expelled and analyzes what those stories reveal about their perceptions of the schooling process. It also includes perspectives of teachers and staff at the Youth Opportunity Center, an alternative education center where students study to obtain the skills necessary to obtain their GED. According to the author, the most important issue addressed in this study deals with the culture of schooling, citing the politics of size and an ethos of caring as two variables that particularly affected the success or failure of students.
**Describing Types of Alternative Education Will Encourage Development of Effective Programs**

*Full Report:*
http://www.urban.org/UploadedPDF/410829_alternative_education.pdf

*Summary:*
This paper surveys the alternative education literature in order to create a typology of the various kinds of alternative education programs based on certain common characteristics. An understanding of the different kinds of alternative education will help to identify what is and is not working. The author examines lists of characteristics shared by promising programs, as well as a number of legalistic and operational definitions present in the literature. Alternative education models are described along four dimensions: (1) what populations are targeted, (2) where they are located, (3) what types of services and programs are provided, and (4) how they are administered and funded. Little rigorous research exists documenting the effectiveness of alternative education programs, and the author suggests unique alternative education accountability and outcome measures. Lists of important characteristics or best practices are included, as they may be useful in creating formal evaluation strategies. The author concludes that developing a typology of programs that describes the full array of alternatives may be an important element in encouraging the development of the most effective programs.

**How Alternative Schools Can Meet the Needs of the Nation’s Vulnerable Youth**

*Full Report:*

*Summary:*
Youth who become disconnected from mainstream institutions and systems, particularly schools, experience life-long economic and social hardship. This paper examines the extent to which alternative schools and programs can meet the needs of the nation’s vulnerable youth. The first section summarizes the characteristics of youth facing disconnection from society. The second section examines the four areas in which youth disconnect: (1) school completion and dropping out, (2) teen pregnancy and parenting, (3) involvement in the Juvenile Justice system, and (4) leaving the foster care system by aging out. A list of factors that are barriers to school completion and a survey of studies estimating number of youth completing school and dropping out are included. The third section discusses the need for alternative education. There is no comprehensive inventory of who is being reached by alternative schools; however the 2001 NCES District Survey of Alternative Schools and Programs is an important, though limited source of data. Another source of data is the CDC biennial Youth Risk Behavior Surveillance Survey which assesses the extent to which youth take health related risks. The 1998 YRBS results for alternative schools are compared to the 1997 YRBS results for mainstream school settings, highlighting the vulnerability of youth who attend alternative schools. The extent to which alternative school settings represent barriers or opportunities to educational success needs to be studied. It is important to keep vulnerable youth in school, as the cost of such problems to society and to the youth themselves is high. Filling research gaps would help identify appropriate policies and strategies to meet this great societal need.
Alternative Schools for Dropout Prevention

Full Report:

Summary:
This best practices guide to dropout prevention includes alternative schooling as one of fifteen strategies a school division can employ in grades pre-K-12 in rural, urban, and suburban districts to achieve positive outcomes. The guide notes that alternative schools should be a requirement in every community, not an option, in that they “offer school and community leaders the opportunity to fulfill their legal responsibility to provide equal access to education for all students.” It lists the many alternative school types (the alternative classroom, the school-within-a-school, the separate alternative school, the continuation school, etc.) and delivery models (behavior intervention model, punitive model, academic intervention model, school community partnership model, etc.) identified by researchers. Needs and issues surrounding alternative schools include funding, accountability, community relations, good communication between alternative and regular schools, course offerings, etc. Several best practices are identified, including (1) a maximum student/teacher ratio of 1:10; (2) small student base not exceeding 250 students; (3) clearly stated mission and discipline code; (4) caring faculty with continual staff development; (5) school staff having high expectations for student achievement; (6) learning program specific to the student’s expectations and learning style; (7) flexible school schedule with community involvement and support; (8) total commitment to have each student be a success. A myriad of additional characteristics of successful alternative schools are provided. The guide proceeds to provide information regarding how to establish an alternative program and how to evaluate alternative schools.

Research Based Practices for Alternative Schools

Full Article:

Summary:
This bulletin outlines the characteristics of special and general education students in need of alternative education, and describes alternative program characteristics and research-based alternative education strategies. The authors cite the federal IDEA amendments of 1997 as creating an increased urgency for school divisions to utilize alternative education settings. When an IDEA-eligible student is suspended for more than 10 days, services must be provided, and alternative schools could provide an option for fulfilling this mandate. In addition to special education students, general education students who are unsuccessful in their regular school may find alternative schools an appropriate placement. In particular, alternative schools may benefit general education students at-risk of dropping out of school. Research-based alternative education strategies described by the authors include: (1) low ratio of students to teachers; (2) highly structured classrooms with behavioral classroom management; (3) positive rather than punitive emphasis in behavior management; (4) adult mentors in the school; (5) individualized behavioral interventions; (6) social skills instruction; (7) high-quality academic instruction; and (8) parent involvement. Guidance is provided for how to start an alternative education program.
III. WEBSITES AND ACTIVISM

**Advocates for Children**, Out of School Youth Project – [http://www.advocatesforchildren.org](http://www.advocatesforchildren.org)

*Summary:*
Established over 35 years ago, Advocates for Children of New York (AFC) is a non-profit organization that protects children (0-21 years) who are at the greatest risk for school-based discrimination and/or academic failure, including children with disabilities, ethnic minorities, immigrants, homeless children, foster care children, and children living in poverty.

Available resources on the website that are relevant to pushout / alternative schools include: publications on immigrant students and parents, education of youth in foster care, education of homeless youth and school access, NCLB student retention and testing, special education, lesbian, gay, bisexual & transgender youth & education, domestic violence & education, and environmental safety in schools. There are also brochures and guide books that help parents deal with issues regarding behavior problems and schooling, alternative options for high school students, educational rights of children in temporary housing in NYC, the legal rights of immigrant students & parents in the NYC public school system, and other information on special education. There is also a separate Links page for parents and other youth advocates, which includes websites for different educational and child advocacy organizations, government agencies, and legal resources.

**Texas Appleseed**, Breaking the School to Prison Pipeline – [http://www.texasappleseed.net](http://www.texasappleseed.net)

*Summary:*
Texas Appleseed, a non-profit public interest law organization, utilizes research, advocacy, legal representation and public awareness to address the root causes of important legal and social issues, including the problems associated with Disciplinary Alternative Education Programs (DAEP). The School-to-Prison Pipeline Project described on the website examines how school discipline policies, specifically zero tolerance policies, impact whether or not youth enter the juvenile justice system. In addition to the report described earlier in this guide – “Texas’ School to Prison Pipeline” – the website includes a short policy brief – “Keeping Schools Safe While Reducing Dropouts.” The policy brief describes that DAEPs have five times the dropout rate of mainstream programs. Problems with the DAEPs include overrepresentation of African-American, Latino, and Special Education students; poor quality of their programs; combining students who have committed serious offenses with students who have committed non-violent offenses, resulting in increased delinquency for both groups and potential victimization of vulnerable students; and failure to make mainstream schools safer places. The brief advocates making DAEPs better by increasing parental involvement, demanding the same standards as mainstream schools, and being aware of the risk for racial discrimination.

The website also includes manuals, guides, handbooks and brochures on issues such as mental illness, juvenile delinquency, and immigrant rights. Some of these resources are directed towards attorneys. Most of the materials are published in Spanish as well as English.


*Summary:*
Funded by the US Department of Education, the Alternative Schools Research Project (2001-2004) gathered and analyzed information on policies and procedures of alternative schools across the nation. The study was broken down into three main parts: the first part is an exploration of alternative schools nationwide. Its goal is to provide a comprehensive understanding of alternative schools and the extent to which they serve students with disabilities. The second part of the study is a focused state-level examination of alternative school policies and practices for students with disabilities. The third part, conducted by field researchers, analyzes anecdotal evidence obtained directly from students, parents,
educators, and administrators who are currently involved with alternative schools and/or programs. Publications on all three parts of the study can be found on the website.

There is also a related website page which includes brief summaries of and links to organizations which include: the Center for Research on the Education of Students Placed at Risk, Education Commission of the States, International Association of Learning Alternatives, National Dropout Prevention Center, National Institute on the Education of At-Risk Students, Office of Special Education Programs, and the Center for Positive Behavioral Interventions and Supports.

**Alternative Schools Network** – http://www.asnchicago.org

*Summary:*
The Alternative Schools Network (ASN) is a Chicago-based network whose members consist of nonprofit, independent, and self-governing schools as well as youth and adult education programs. ASN works to enhance the services provided to children, youth and adults in alternative education settings. They accomplish this through resource development, technical assistance and training, and advocacy. The ASN website has all the relevant contact information for alternative schools in the Chicago area and ways to contact each school. Also, ASN publishes a monthly newsletter with information ranging from current activities and programs taking place in alternative school settings in Chicago to helpful links for further information about alternative schools.

ASN conducts a number of programs throughout the year to educate families about alternative education and to enhance academic equality throughout the alternative schools network. Examples of current ASN projects and programs are the “Youth Enhancement for Success (YES)” program which provides academic and mentoring services to out-of-school youth, and the “Praxis Program” which brings together high school administrators and teachers to discuss and share ideas on how to create a positive learning environment. On the website one can find links to various reports on issues such as the lifetime fiscal benefits to tax payers of having youth and adult high school dropouts return to school, and how to reconnect “disconnected” youth to mainstream education. This second report defines disconnected youth as those between the age of 16 and 24 who are unemployed and out of school. The report gives statistics and demographics about these youth in Illinois, the financial cost they place on society, and some possible ways to reconnect them, including continuing education, returning to traditional high schools, and achieving a degree.


*Summary:*
Jobs For the Future (JFF) is a nonprofit research, consulting, and advocacy organization that believes all young people should have a quality high school and postsecondary educational experience. JFF has a number of projects underway that promote opportunities for people to advance in their education and careers, such as the “Achieve the Dream Campaign” which promotes institutional and policy change for participating community colleges to augment the ability of students to attain degrees and acquire placement into the workforce.

JFF has a resource center of publications that contains numerous articles on the field of alternative education, achieving postsecondary education, and preparing for the workforce. For example, “From the Prison Track to the College Track: Pathways to Postsecondary Opportunities for Out-of-School Youth” by Lili Allen, Cheryl A. Almeida, and Adria Steinberg discusses different educational options for students who have been unsuccessful in regular public schools or have dropped out of school for other reasons. The website also has research on reducing dropouts and encouraging school retention and completion. An article entitled “Addressing America’s Dropout Challenge: State Efforts to Boost Graduation Rates Require Federal Support” by Adria Steinberg, Cassius O. Johnson, and Hilary Pennington analyzes what steps need to be taken to improve statewide and national high school graduation rates.
Other Web Resources on Pushout:

Advancement Project - http://www.advancementproject.org/

American Civil Liberties Union

Charles Hamilton Houston Institute for Race and Justice, Harvard University
Redirecting the School to Prison Pipeline Project - http://www.charleshamiltonhouston.org/Projects.aspx

Civil Rights Project, UCLA - http://www.civilrightsproject.ucla.edu/

Education Not Incarceration, Four Point Plan to Stop Pushouts – http://www.ednotinc.org


Juvenile Law Center, End Zero Tolerance - http://www.jlc.org/EZT/

NAACP Legal Defense and Education Fund

National Economic and Social Rights Initiative (NESRI)
Dignity in Schools Project - http://www.nesri.org/programs/education.html

Southern Poverty Law Center
School to Prison Reform Project - http://www.splcenter.org/legal/schoolhouse.jsp
IV. ADVOCACY CHECKLIST

What You Can Do if A Child is Going to be Transferred to an Alternative School

**Identify the reason for and appropriateness of the transfer**

**Reason for Transfer**
- What is the official reason given by the school or district for the transfer?
- Does the official reason match the actual actions or performance of the student that resulted in the transfer?
- Is the transfer due to disciplinary, academic or other reasons (special needs, at-risk, foster care)?

**Limits on Transfer**
- Is the transfer mandatory (mandated by law), discretionary (school official has a choice), or voluntary (student must agree)?
- Is the transfer temporary or permanent?
- If the transfer is temporary, for how long, and what steps are in place to ensure that the student returns to regular school?
- Does the student have an Individual Education Plan (IEP) or a 504 Plan? If so, see next page.

**Student Wishes**
- Has the student been involved in the decision to transfer?
- Does the student want to go to an alternative school?
- Does the student want to change schools because of a problem at his/her current school?
- Does the student feel safe at his/her current school?

**Student Needs**
- Can the issues that the student is facing be resolved at the current school?
- Has the student been observed, assessed, or identified as needing special services, if necessary, prior to transfer?
- Does the student have special needs that cannot be addressed at the current school?
- What is the student’s language level and does he/she need bilingual education?
- What are the student’s strengths and interests and how can these be enhanced?

**If the transfer is due to academic reasons:**

Ensure the Student’s Rights:
- Determine whether the student has a right to remain in a regular school and until what age.
- Is the student being pressured to leave regular school without appropriate counseling?

Were their Improper Reasons for Transfer?
- Is the school refusing to assist the student who is academically struggling or behind in credits?
- Is the school concerned about how the student’s test scores will reflect on the schools’ performance?
- Does the school have an inappropriate policy of counseling out students who do not complete high school within four years?

Consider the Impact on the Student:
- Is the quality of education at the alternative school comparable to the regular school?
- Will the student be able to earn a high school diploma?
ADVOCACY CHECKLIST

If the transfer is a disciplinary transfer:

Ensure Compliance with Due Process Rights:
*Check state law and district policy for the due process rights of students.*

- Has the current school taken appropriate steps to resolve any previous disciplinary issue, and the behavior that led to the transfer?
- Has the student been provided with notice, and an opportunity to explain his/her side of the story?
- Identify possible forms of recourse such as meeting with school officials, an appeal to the school board, or obtaining legal representation. These may vary by state.
- Request a Special Education Due Process Hearing if the school knew or should have known that the student is a child with a disability prior to the misbehavior. If so, see below.

Review Zero Tolerance Policies:

- Is the school improperly using zero tolerance policies to justify the transfer by failing to consider alternatives to removal?
- Is the student being removed for a minor, non-violent offense?

Consider the Impact on the Student:

- What are the future educational and developmental consequences of the transfer?
- Will the student be able return to regular school?
- Could the transfer lead to the student becoming involved in the delinquency system?

If the student has special education needs:

Determine Eligibility

- Is the student eligible or currently receiving services under an IEP or Section 504 Plan?
- If so, ensure that the reason for the transfer is to meet the special needs of the student.
- Ensure that student and parent rights are protected through the IEP process.

Least Restrictive Environment

- Ensure that a transfer to a more restrictive environment is due to the nature or severity of the disability and pursuant to an appropriate decision by the child’s IEP or Section 504 team.

Meeting Students’ Needs and Providing a Free Appropriate Public Education (FAPE)

- Make sure the alternative school is able to meet the student’s needs based on the IEP or Section 504 plan.

If the Transfer is to an Interim Alternative Education Placement (IAEP) Pending Expulsion Hearing:

- Request an expedited due process hearing to appeal an IEP decision to proceed with expulsion (manifestation determination).
- Request an expedited due process hearing to appeal whether the student has committed specific conduct (i.e., drugs, weapons, or serious bodily injury) that allows the school district to transfer the student to IAEP.
- Requests for expedited hearings in both cases noted above will not legally prevent a school district from making an initial transfer to an IAEP, but may prevent an expulsion or shorten the stay in the IAEP.
ADVOCACY CHECKLIST

Assess the quality of the alternative school

Talk to teachers and administrators about questions and concerns. Your own impression of the school will give you a sense of whether the student will have a safe and productive learning environment. Consider the following:

Quality
- Has the school been evaluated?
- Is the school exempted from participating in or publishing its’ results on standardized tests?
- Is the school certified or accredited?
- Are the teachers certified?
- Are the teachers qualified to meet the individual or special student’s needs?
- What is the student to teacher ratio?
- Will the student be with age-appropriate peers?

Curriculum
- Is the school geared towards earning a high school diploma, GED, or vocational certificate?
- What classes are offered?
- Does the school offer advanced placement classes?
- What materials are used (i.e. textbooks, computer programs, mail courses)?
- Does the school offer extracurricular activities?
- Are there any transition programs to prepare the student to return to a regular school?
- Will the credits earned at the alternative school count towards graduation?

Climate
- Does the school have a positive and safe school climate?
- What role do other agencies such as child protective services, the probation department, or the police play in the school?
- What is the school’s discipline policy?
- Do students have the same due process rights in the alternative school as they do in the regular school?
- Will the student’s behavior challenges be addressed positively?
- Is contact maintained with the home school on behavior and academic progress?

Transportation
- How far away is the school?
- Does the student require assistance with transportation?
ADVOCACY CHECKLIST

Advocacy tips

- Request a **translator** for the parent and/or student if necessary.

- **Meet** with relevant teachers and administrators to gather information and discuss the transfer.

- Request a copy of all the student’s relevant **school records**.
  - Review the records to understand the student’s history.
  - Ensure that the records are transferred to the alternative school.

- Request a copy of the **school district’s policy** on transfers.

- Maintain a **written log** of all communications with school personnel and other persons you come into contact with regarding the student.

- Put your **concerns and requests in writing**. Include the following information if appropriate:
  - The rights of the student and parent
  - Concerns about due process violations
  - The student’s version of events
  - Circumstances surrounding the incident or events that should be taken into account
  - The student’s individual or special needs
  - Available alternative solutions to transfer
  - A request to reconsider the decision to transfer
  - Other special requests

- **Appeal decisions** to the school principal, superintendent, and school board if appropriate, in writing.

- Contact your local legal aid office for assistance or a referral to an **attorney or advocate** who may be able to assist you free of charge.

- Keep lines of **communication** open.

- Always work toward **solutions** when there is a problem.

- Be **persistent**, but remain calm.

If you have any questions, please contact Monica Llorente at the Children & Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law, m-llorente@law.northwestern.edu.
V. LEGAL STRATEGIES FOR CHALLENGING ALTERNATIVE SCHOOLS

Because there is no federal right to an education, getting a legal handle on challenging wrongful Alternative Education School (AES) placement or inadequate AES educational practices is difficult. There are several legal strategies that can, however, be pursued.

**Federal Special Education Law:** In many school districts, a disproportionate number of students in AES placements are eligible for special education services under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. Many were either not receiving those services in their regular school (which may have led to their referral to AES placement in the first place), or are not receiving sufficient help in the AES placement. IDEA is a powerful federal statute that mandates academic and behavioral support services for children with educational disabilities and provides legal protections against harsh disciplinary measures that often push these students into alternative schools. In fact, one of the main reasons that Congress enacted IDEA was to force public schools to properly educate children whose disabilities cause their challenging behavior.

Students who are sent to an AES must continue to receive special education supports and services, and school districts may also be required to provide services to address the behavior for which the student was transferred in the first place. Supports and services required by IDEA may include social work, psychological and counseling services, and tutoring to improve a child’s academic progress. By utilizing the legal protections provided under federal IDEA law, you may be able to get a student transferred out of AES or, at least get the student educational supports and services that will allow him or her to make progress while in the AES placement. For more information on the IDEA and how to use it to advocate for students with disabilities who are facing suspensions, expulsions, and alternative school placement, see [http://www.wrightslaw.com/info/discipl.suspend.crabtree.htm](http://www.wrightslaw.com/info/discipl.suspend.crabtree.htm).

**Federal and State Due Process Challenge to AES Placement:** In *Goss v. Lopez*, the United States Supreme Court held that federal constitutional due process requires, in connection with a [suspension of 10 days or less](http://www.wrightslaw.com/info/discipl.suspend.crabtree.htm), that the 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. Although some courts have held that these due process requirements do not apply to the transfer of a student to alternative school, courts have also recognized that there may be due process rights when the alternative school to which the child was transferred is so inferior to the regular school that transfer is tantamount to an expulsion.

**State Constitutional Right to an Adequate Education:** Every state has some education provision in its state constitution. Some state constitutions merely mandate a system of free public schools with no requirement as to quality, some impose a minimal standard of quality, some have specific mandates, and a few make education a very important duty of the state and impose the highest mandate of quality. For a description of the right to an education under each state’s constitution, see Mills and McLendon, *Setting a New Standard for Public Education: Revision 6 Increases Duty of the State to Make “Adequate Provision” for Florida Schools*, 52 Fla. L. Rev. 329, 330 (2000). Although “education adequacy” cases which seek to enforce the guarantee that all students receive an adequate education have met with mixed results, it is certainly a legal avenue worth exploring where an AES is failing to provide its students with a minimally adequate education.
State Laws Directly Concerning Alternative Schools: Many states have enacted statutes that directly set forth the requirements for alternative schools and these statutes may be enforced when violated. Some states even require that students placed in an AES be given an individualized instruction plan and counseling for both the student and his or her parents. Some states have established specific criteria that teachers must meet in order to teach in alternative schools. Very little litigation has been filed challenging violations of alternative school statutes. A recent case that sought to enforce Tennessee’s alternative school statute met with mixed results. See http://www.tba2.org/tba_files/TCA/2006/csc_121906.pdf.

State Accreditation Administrative Complaints: Most if not all states have regulatory procedures for filing a complaint with the state department of education when a school district fails to meet accreditation or accountability requirements that are mandated under state law. When an AES is providing shorter school days than regular schools, employing unqualified teachers, or failing to provide the required credits needed to graduate, students fall further and further behind. The failure of these AES’s to meet state accreditation requirements should be challenged under the administrative accreditation or accountability complaint process.
Dignity in Schools Campaign Participants

The Dignity in Schools Campaign (DSC) has a managing group that oversees the project, a working group that helps shape the work and direction of the DSC, and a group of collaborating members that support the campaign. The DSC continues to reach out to organizations and individuals across the nation to join its campaign.

Managing Members
Rosa Hirji, Chair of Education Subcommittee, Children’s Rights Litigation Committee, ABA
Monica Llorente, Children & Family Justice Center, Northwestern School of Law
Elizabeth Sullivan, National Economic and Social Rights Initiative
Wallace C. Winter, Legal Assistance Foundation of Metropolitan Chicago

Working Members
Christine Agaiby, J.D., Alternatives, Inc.
Zenaida Alonzo, Law Project of the Chicago Coalition for the Homeless
Sarah Biehl, Legal Assistance Foundation of Metropolitan Chicago
Angela A. Ciolfi, JustChildren
Jim Freeman and Monique Dixon, Advancement Project
Daniel Losen, Civil Rights Project
Ellen Raider, Independent Commission on Public Education
Susan Sandler, Justice Matters!
Lori Turner, Equal Justice Works Fellow
Jenny Weisz, Tufts University
Jonah Zern, Education Not Incarceration

Collaborating Members
Children’s Law Center of Massachusetts
Children’s Law Center of Minnesota
Community Asset Development Re-Defining Education (CADRE)
Just Children, Virginia
National Children’s Law Network
Oklahoma Lawyers for Children
Rocky Mountain Children’s Law Center, Colorado
Support Center for Child Advocates, Pennsylvania
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

M.H., a minor, by and through
CHRISTOPHER HARRIS and DEBBIE
HILL, his parents; Q.G., a minor, by and
through COKETHIA GOODMAN, his
mother; J.R., a minor, by and through
ANTOINETTE RUFF, her mother; R.W., a
minor, by and through ALGERNON
WEEMS, his legal guardian; T.P.W., a minor,
by and through PATTI WELCH, his mother;
and all others similarly situated,

Plaintiffs,

v.

ATLANTA INDEPENDENT SCHOOL
SYSTEM; and COMMUNITY EDUCATION
PARTNERS, INC.,

Defendants.

CIVIL ACTION
FILE NO.
1:08-cv-1435-BBM

VERIFIED AMENDED COMPLAINT-CLASS ACTION

The Plaintiffs and each of them, for their claims against Defendants, and
each of them, state and allege as follows:
NATURE OF THIS ACTION

1. The Atlanta Independent School System (“AISS”) has retained Community Education Partners (“CEP”) to run an alternative school (“the AISS-CEP School” or “the School”) with public funds. It is the policy and practice of Defendants (a) to deprive children of their right to an adequate public education by removing them from regular public school and transferring them — with inadequate or no notice or opportunity to be heard — to the AISS-CEP School, where they are provided with fundamentally inferior academics in an environment so violent and intimidating that learning is all but impossible; (b) to subject children at the School to daily invasive, humiliating and dehumanizing searches that serve no justifiable purpose; and (c) to subject them to discipline without prior notice and opportunity to be heard.

2. This is a civil rights class action brought pursuant to the Fourth and Fourteenth Amendments to the United States Constitution on behalf of all students currently enrolled or who will be enrolled in the AISS-CEP School. Plaintiffs seek a declaration that: (a) Referral to the AISS-CEP School is tantamount to expulsion from the public school system; (b) Defendants’ policy and practice of referring Plaintiffs to the School without first affording them notice and opportunity to be
heard violates their rights under the Due Process Clause of the Fourteenth Amendment; (c) the searches to which Defendants routinely subject Plaintiffs at the School are an invasion of privacy that violates their right to be free from unreasonable searches under the Fourth Amendment; and (d) Defendants’ policy and practice of subjecting Plaintiffs to discipline without prior notice and opportunity to be heard violates their right to due process under the Fourteenth Amendment.

3. Plaintiffs also seek specific injunctive relief against Defendants AISS and CEP to prevent future violations of Plaintiffs’ constitutional rights enumerated herein.

INTRODUCTION

4. Georgia law gives every child in the state the right to an adequate public education. All children in the state therefore have a property right to an adequate public education. Georgia law also requires that AISS provide alternative educational services to all children who require them. AISS has made the AISS-CEP School the only disciplinary alternative school in that public school system.

5. AISS delegated to CEP the essential government function of providing an adequate public education to the children at the School. Defendants
operate the School jointly and are both accountable to Plaintiffs as state actors. CEP would not have the authority to refer, discipline or search students in the Atlanta public school system but for its contract with AISS.

6. Being referred to the AISS-CEP School is tantamount to expulsion from the public school system. Violence is rampant at the School; there were 69 reported instances of battery in 2007-2008, which do not include the multiple instances of staff members physically assaulting the students in their care. Students are subjected to invasive and unreasonable daily searches, which are ineffective at making the School safe, but contribute to the atmosphere of violence and intimidation. The School is far too large for its intended purpose and yet CEP has an economic incentive to maximize the number of students enrolled. Student-to-teacher ratios are unreasonably high, while teacher qualifications are too low. There is no library at the School. Ninety-three percent of students did not meet competency in mathematics in 2007-2008 and 95% of students did not meet competency in science. Teachers provide playing cards and change cash for students to gamble in class, while students’ urgent needs and parental requests for services such as anger management and counseling are ignored. Children referred to the School are deprived of their property right to an adequate public education.
7. When Defendants refer children to the School without affording them prior notice and opportunity to be heard, Defendants violate the right of children so referred to due process under the Fourteenth Amendment.

8. Defendants further violate the Fourteenth Amendment rights of students at the School by subjecting them to discipline without the prior notice and opportunity to be heard to which they are entitled. Defendants routinely mete out suspensions, expulsions, and *de facto* suspensions in which students are not permitted to enroll at the School, with no notice or opportunity to be heard.

9. Defendants violate the Fourth Amendment rights of every student at the AISS-CEP School every day, by subjecting each of them to invasive personal searches in the absence of individualized suspicion. Defendants’ articulated purpose for conducting such searches is not merely to keep weapons and drugs out of the school, but also to enforce the School’s prohibition on items such as money (in excess of five dollars), jewelry, combs, lip balm, house keys, and even sanitary napkins and other personal hygiene products. The humiliating searches fail to create a safe environment at the School, but contribute to the pervasive atmosphere of intimidation and violence at the School that makes learning all but impossible.

10. Defendants’ policy and practice of not providing appropriate training,
supervision or monitoring for their employees has resulted in a chaotic and unsafe environment in which many students — such as Named Plaintiffs — have suffered from Fourth and Fourteenth Amendment violations, and all students are at imminent risk of suffering additional such violations.

11. Thousands of children in the Atlanta public school system are at imminent risk of being deprived of an adequate education by being summarily transferred from their regular public school into this unconstitutional and unconscionable program.

12. The relief Plaintiffs seek is supported by satisfactory proofs, including the public records, facts and other documentation referenced throughout the Complaint.

**PARTIES**

13. Plaintiff M.H. is 15 years old and enrolled in the 7th grade at the AISS-CEP School.

   a. M.H. was a good student in a regular Atlanta public school before he was referred to the AISS-CEP School in 2006. Although he was given notice of a tribunal hearing for the referral, neither he nor his parents were given any opportunity to speak on his behalf at the hearing itself.
b. M.H. was released from the School in 2007, but Defendants subsequently referred him a second time without due process. When his father inquired about the referral at M.H.’s regular school, he was informed by the school principal that the decision to refer M.H. had already been made.

c. Defendants have since forced M.H. to repeat the sixth grade twice. On at least two occasions, M.H. has been the victim of violence at the School at the hands of teachers employed by the School who punched him in the chest. Because of the chaotic and dangerous environment and lack of opportunity to obtain an adequate education at the School, M.H.’s referral to the School has been tantamount to expulsion from the public school system.

d. M.H. has also been deprived of his right to notice and opportunity to be heard upon being disciplined by the School. In November 2007, Defendants imposed on him a three day out-of-school suspension, for allegedly taking the Assistant Principal’s keys, without affording him any opportunity to be heard.

e. Later that month, Defendants imposed on M.H. a nine day out-of-school suspension for alleged bullying, again without giving him any
opportunity to be heard. When he returned to the School with his parents after the nine days, he was denied re-admission and told to return the following day. His parents attempted to schedule a meeting with School officials, who rescheduled the meeting several times. Defendants functionally imposed a ten day out-of-school suspension on M.H. without the constitutionally required formal notice and opportunity to be heard for a suspension of that length.

f. In August 2008, Defendants imposed on M.H. a semester-long bus suspension but provided his parents with no notice of the suspension until days after it had been imposed.

g. After returning from a three day suspension in December 2008, M.H. walked out of a meeting with his mother and a School Assistant Principal. The Assistant Principal immediately and summarily suspended him for six additional days without any opportunity to be heard, much less the informal hearing required for a suspension of that length.

h. As a result of Defendants’ policies and practices, M.H. is in constant imminent danger of being disciplined again with no notice or opportunity to be heard.
i. M.H. has been and continues to be subjected to the School’s unreasonable daily search process. School employees regularly compel him — in the absence of individualized suspicion — to lift his shirt above his waistband, grab his pants pockets, rub the bottoms of his feet, and shake his pants. Each day he attends the School, he is in continued imminent danger of being subjected to additional such unreasonable searches. Despite those searches, he is also at constant imminent risk of violence inflicted by other students and School personnel.

j. M.H. has standing to appear in this action because, as a result of Defendants’ policies and practices, he was referred to the School without meaningful notice and opportunity to be heard; he has been and continues to be at imminent risk of being disciplined without notice or opportunity to be heard; and he has been and continues to be at imminent risk of being subjected to unreasonable daily searches. M.H. appears in this action by and through his parents, Christopher Harris and Debbie Hill.

14. Plaintiff Q.G. is a 17 year old who was enrolled in the 8th grade at the AISS-CEP School at the time of filing of the Original Complaint in this action.

a. Q.G. was referred to the AISS-CEP School in April 2005. He
was referred at least once more over a period of three years and was ultimately pushed out of the School by its chaotic, dangerous and otherwise inadequate educational environment. He is currently in the Coweta County detention facility. Although he received good grades in his regular Atlanta public school, Defendants forced him to repeat the 8th grade three times. His referral to the School was tantamount to expulsion from the public school system.

b. Q.G. received no notice from Defendants about the tribunal hearing that resulted in his initial referral to the School; he found out about the hearing from the Assistant Principal at his regular school. In January 2007, Q.G. was transferred to the Crim Open Campus School. In September 2007, Defendants referred him again to the AISS-CEP School for an alleged “student contract” violation, but gave him no opportunity to be heard.

c. While he was at the School, Defendants subjected Q.G. to unreasonable daily searches. Defendants regularly required Q.G. — in the absence of individualized suspicion — to put his hands up on a wall, with his arms and legs spread, while he was frisked by School personnel. Every day he was there, he was in constant imminent danger of additional such
daily searches. Despite those searches, he remained in constant imminent danger of violence at the hands of other students and School personnel.

d. Q.G. finally stopped attending the School in September 2007 because of its chaotic and dangerous environment and lack of opportunity to obtain an adequate education. If conditions at the School were fixed, he would return.

e. Q.G. has standing to appear in this action because at the time of the filing of the Original Complaint he was enrolled at the AISS-CEP School, had no option to attend any other Atlanta public school, and his claims are capable of repetition but evading review; as a result of Defendants’ policies and procedures, he was referred twice to the School without notice or opportunity to be heard; and, while he was at the School, he was subjected by Defendants to daily unreasonable searches and was in constant danger of being subjected to additional such searches. Q.G. appears in this action by and through his mother, Cokethia Goodman.

15. Plaintiff J.R. is a 16 year old who was enrolled in the 8th grade at the AISS-CEP School when the Original Complaint in this action was filed. She is currently enrolled at the Crim Open Campus School.
a. J.R. was first referred to the School on March 28, 2006. After a brief stay in juvenile detention following an argument with her mother, J.R. was informed by her regular school that she was criminally trespassing by coming to school and that she would have to enroll at the AISS-CEP School. She was not afforded any notice or opportunity to be heard prior to her referral.

b. J.R. left the School to give birth and was referred to the School a second time on May 21, 2007, again without any opportunity to be heard. This second time, she was referred to the School for a full year with no explanation or tribunal hearing.

c. As a result of Defendants’ policy and practice of referring students to the School without prior notice and opportunity to be heard, J.R. is at constant imminent risk of being referred to the School again without due process. The principal of the Atlanta public school at which J.R. is currently enrolled has told her that she is at imminent risk of being referred back to the AISS-CEP School.

d. In August 2007, J.R. was placed in a classroom at the AISS-CEP School with several girls who had previously physically assaulted her.
Defendants ignored her requests to be moved to a different classroom.

Fearful for her safety and unable to defend herself because she was pregnant, J.R. stopped attending the School in September 2007. At the time of the filing of the Original Complaint in this action, she had not completed the term of her referral to the AISS-CEP School and therefore was prohibited by Defendants from attending any other Atlanta public school. Because of the chaotic and dangerous environment and lack of opportunity to obtain an adequate education at the School, her referral was tantamount to expulsion from the public school system.

e. Defendants suspended J.R. for three days without prior notice and opportunity to be heard after she had a disagreement with one of her teachers. When she tried to tell her side of the story to the Assistant Principal in charge of discipline, she was directed to “close [her] mouth” and summarily sent home. J.R. was never told what evidence supported the suspension.

f. Defendants subjected J.R. to unreasonable daily searches, including searches that required her to be frisked underneath her shirt around her bra, in the absence of individualized suspicion. Each day she was there,
she was in constant imminent danger of additional daily searches in violation of the Fourth Amendment. Despite these searches, J.R. was also in constant danger of being subjected to violence inflicted by other students and School personnel.

g. J.R. has standing to appear in this action because at the time of the filing of the Original Complaint she was still enrolled at the AISS-CEP School, would not have had the option to attend any other Atlanta public school, and her claims are capable of repetition but evading review; because she has been and is at continued imminent risk of being referred back to the School without notice or opportunity to be heard; because as a result of Defendants’ policies and practices she was disciplined and at continued risk of being disciplined without notice or opportunity to be heard while she attended the School, and subjected to and at continued imminent risk of being subjected to unreasonable daily searches. J.R. appears in this action by and through her mother, Antoinette Ruff.

16. Plaintiff R.W. is 16 years old and enrolled in the 8th grade at the AISS-CEP School.

a. Defendants referred R.W. to the School without any notice or
opportunity to be heard. He was on the football team at his regular school and received average grades. When he moved with his family from Decatur to Atlanta in March 2007, Defendants summarily referred him to the AISS-CEP School along with two of his siblings without prior notice or opportunity to be heard. R.W. had been unable to attend regular school the previous month because of a series of deaths in his family and lack of money for transportation. Defendants did not make any finding that the School would be a more appropriate educational environment for him than a regular school. The lack of due process resulted in R.W.’s erroneous placement in the AISS-CEP School.

b. Although the term of his referral to the School was for ten months, Defendants prevented R.W. from enrolling at the School for three months after his referral, because, Defendants said, the School was full. Defendants thereby imposed a de facto three month suspension on R.W. without giving him an opportunity to be heard, much less the formal hearing to which he was entitled. In the winter of 2007, R.W. was arrested and held for a month in juvenile detention. Although the charges were dismissed, Defendants told his grandmother he could not return to the School until after
the holidays. In the beginning of January 2008, they told her he could not enroll until January 22, again because the school was full. On January 22, R.W. was not picked up by the school bus and his grandmother was told he would have to wait until January 29. R.W. missed at least two additional months of school and was wholly deprived of his right to an education during that time. He was not given any opportunity to be heard for this *de facto* two month suspension either.

c. Because of the chaotic and dangerous environment at the School and lack of opportunity to obtain an adequate education, R.W.’s referral was tantamount to expulsion from the public school system.

d. From April 1, 2008, until May 14, 2008, R.W. was suspended multiple times for the same underlying incident without notice and opportunity to be heard. Another student passed an item to R.W., who passed it back. Marijuana fell out of the other student’s shirt, and Defendants summarily suspended R.W. from April 2, 2008 until April 14, without the informal hearing to which he was entitled for a suspension of that length. They suspended him again from April 14 until April 22 for the same incident, again with no opportunity to be heard. R.W. did not receive a
formal hearing, as required by law, until May 14, 2008, at which time a third suspension was imposed on him, from May 19 until May 23. Defendants thus suspended R.W. from school for at least 21 days without any formal hearing or process whatsoever.

e. R.W. has been and continues to be subjected to the School’s unreasonable daily search process. Each day he attends the School, he is in continued imminent danger of being subjected to invasive searches without individualized suspicion. Despite these searches, R.W. is also in constant danger of being subjected to violence inflicted by other students and School personnel.

f. R.W. has standing to appear in this action because as a result of Defendants’ policies and practices, he was referred to the School without an opportunity to be heard; he has been and is at continued risk of being disciplined at the School without notice or opportunity to be heard; and he has been and is at continued risk of being subjected to daily unreasonable searches at the School. R.W. appears in this action by and through his grandmother and legal guardian, Algernon Weems.

17. Plaintiff T.P.W. is 16 years old and was a 10th grader at the AISS-
CEP School at the time of the filing of the Original Complaint in this action. His mother withdrew him from the School in the fall of 2008 because of the chaotic environment and lack of opportunity to obtain an adequate education. He is currently enrolled in a non-traditional private program.

a. Defendants referred T.P.W. to the School without notice or opportunity to be heard. He had been referred to an alternative school in Douglasville for fighting in September 2007, and his mother was induced to waive his right to a hearing by school authorities who told her that her son would be expelled if found guilty. After moving to Atlanta, his mother attempted to enroll T.P.W. in a regular school but was told by Defendants that he was required to attend the AISS-CEP School because he had previously attended an alternative school. He received no notice or opportunity to be heard upon his referral.

b. Because of the chaotic environment and lack of opportunity to obtain an adequate education at the School, his referral was tantamount to expulsion from the public school system.

c. Defendants imposed a three day out-of-school suspension on T.P.W. without notifying his mother until after the suspension had already
been served.

d. At the time of the filing of the Original Complaint and throughout the time he was enrolled at the School, T.P.W. was subjected to unreasonable daily searches conducted by School personnel without individualized suspicion. Each day he was there, he was in constant imminent danger of additional such searches. Despite these searches, T.P.W. remained in constant danger of being subjected to violence inflicted by other students and School personnel.

e. T.P.W. has standing to appear in this action because he was enrolled at the School at the time of the filing of the Original Complaint in this action and his claims are capable of repetition but evading review; because, as a result of Defendants’ policies and practices, he was referred to the School without an opportunity to be heard, and while he was enrolled at the School, he was subjected to and at imminent risk of being subjected to daily unreasonable searches. T.P.W. appears in this action by and through his mother, Patti Welch.

18. The defendants are as follows:

a. Defendant ATLANTA INDEPENDENT SCHOOL SYSTEM
(previously defined as “AISS”) is charged by Article VIII, Section I of the Georgia Constitution with establishing and maintaining the public schools of Atlanta. It is also charged with ensuring that students in those schools are provided with an adequate education, including a safe environment conducive to learning, see O.C.G.A. §§ 20-2-131; 2-2-140-148; 2-2-735(c); & 2-2-737-738; see also Georgia Board of Education (“GBOE”) Rule 160-4-8-.12. The AISS-CEP School is one of the schools under the control and supervision of AISS.

b. Defendant COMMUNITY EDUCATION PARTNERS, INC. (previously defined as “CEP”) is a for-profit corporation formed under Delaware law, whose principal office is at 2636 Elm Hill Pike, Nashville, TN 37214. CEP conducts business in the State of Georgia at 2930 Forrest Hills Drive SW, Atlanta, GA 30315. Its registered agent in Georgia is the CT Corporation System, at 1201 Peachtree Street, NE, Atlanta, GA 30361. CEP has contracted with AISS to provide alternative educational services for children in Atlanta in exchange for $6.975 million a year. The contract requires CEP to operate the AISS-CEP School in compliance with all applicable federal and state constitutional requirements and federal, state and local laws, statutes, ordinances, rules, and regulations, and AISS policies and
procedures.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs allege that Defendants have violated and will continue to violate Plaintiffs’ rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

20. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391 because Defendants removed the action filed under the Original Complaint to this Court and this Court accepted jurisdiction.

21. Plaintiffs have no adequate remedy at law or access to any administrative scheme that would adequately redress the grievances they bring in this complaint.

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2).

23. The proposed class to be maintained in this action consists of all children currently enrolled or who will be enrolled in the future at the AISS-CEP School. The representatives of this class are Q.G., M.H., J.R., R.W., and T.P.W.

24. The Plaintiff Class is so numerous that joinder of all members is
impractical. At any point in time, hundreds of students are enrolled at the AISS-CEP School and the AISS-CEP Contract contemplates an enrollment of 750 students. The average enrollment at the School is 450 students.

25. There are questions of law and fact common to the members of the Plaintiff Class, including, but not limited to:

   a. Whether, as a result of Defendants’ policies and practices, referral to the AISS-CEP School is tantamount to expulsion from the public school system;

   b. Whether Defendants’ policies and practices have resulted and are likely to continue to result in the referral of members of the Plaintiff Class to the AISS-CEP School without due process;

   c. Whether Defendants’ policies and practices have resulted and are likely to continue to result in members of the Plaintiff Class being disciplined without due process;

   d. Whether Defendants’ policies and practices of subjecting all students to intrusive searches without individualized suspicion are unreasonable.

26. The claims of the Plaintiff Class representatives are typical of claims of the putative class members and, by pursuing their own interests, the class
representatives will advance the interests of the class members.

27. The fact that the individual Named Plaintiffs may have experienced different types of searches, or that some of the Named Plaintiffs may have received some amount of process upon being referred to the School or being disciplined at the School, is irrelevant. Just as in a prison conditions case, where the fact that some plaintiffs will not be in need of medical care and others may have received adequate care does not defeat class certification, Plaintiffs here are subject to a common regime of risk created by Defendants: all Plaintiffs have suffered harm and are at continued risk of suffering additional imminent harm because of Defendants’ policies and practices and their failure properly to administer the School.

28. The Plaintiff Class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the class representatives will vigorously prosecute the suit on behalf of the class; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys employed by the American Civil Liberties Union (“ACLU”), the ACLU of Georgia, and the ACLU Southern Regional Office, nonprofit legal organizations whose attorneys have substantial experience
and expertise in civil rights and education reform matters. Plaintiffs are also represented by Covington & Burling LLP, a law firm with offices in New York, the District of Columbia and elsewhere, which has lawyers with substantial experience and expertise in constitutional, civil rights and class action litigation.

29. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory and injunctive relief for the Class. This is a classic class action in which Defendants have administered a system — the School and the system by which students are referred to the School — in such a way as to place all Plaintiffs at imminent danger of deprivation of their constitutional rights, and further such deprivation in the future.

STATEMENT OF FACTS

I. AISS-CEP School Background

30. The AISS-CEP School is located at 2930 Forrest Hills Drive SW, Atlanta, GA 30315. Defendants sometimes refer to the School as the “Forrest Hills Academy.” Approximately 450 students are currently enrolled at the School. Over the course of 2006-07, approximately 844 students were enrolled. At any given time during the school year, roughly 400 children are enrolled, but students come and go, accounting for the annual enrollment number. Both middle and high school students are sent there.
31. Other alternative schools in the Atlanta metropolitan area with similar student populations include the McClarin Alternative School in Fulton County, and the DeKalb Alternative School in DeKalb County, neither of which is operated by AISS or CEP.

32. The contract pursuant to which CEP operates the School provides for its compensation to be based on the number of students enrolled. It provides that CEP is entitled to an annual fee of $6,975,000 per school year on the basis of enrollment of 750 students; that AISS is to use reasonable efforts to enroll 750 students at the School at all times; that if more than 750 students are enrolled, CEP is entitled to an additional $51.97 per day for each “excess” student; and that if average daily enrollment is less than 750, CEP’s fee may be reduced. The contract also provides CEP with power to affect the number of students enrolled by, for example, requiring that enrollment procedures be based on standards proposed by CEP, and by vesting CEP with discretion as to how long a student must remain at its school before being released to return to a regular public school.

33. Prior to contracting with CEP, AISS operated several alternative programs at different locations for students with behavioral and disciplinary problems. In 2002, AISS consolidated these programs into one school and granted CEP Defendants the contract to run that school, which is the only disciplinary
alternative school in the Atlanta school district.

34. AISS entered into a First Amended and Restated Agreement with CEP on August 29, 2003; a Second Amended and Restated Agreement on September 3, 2004; and a Third Amended and Restated Agreement on July 1, 2006 (“the AISS-CEP Contract”). These contracts cost Atlanta taxpayers a total of $36,570,941 between November 2002 and June 2007. The current contract will expire on June 30, 2009, but may be renewed in five-year terms.

II. Defendants Subject Plaintiffs to Unreasonable Daily Searches in Violation of Their Fourth Amendment Rights.

35. The Fourth Amendment to the United States Constitution protects children in school from unreasonable searches. School children have a constitutionally protected right to privacy in their persons — including an expectation that they should be able to avoid the unwanted exposure of their body, especially their “private parts” — that they do not relinquish while attending school.

36. A search of school children without individualized suspicion is reasonable only if the privacy interest invaded is minimal and the government interest would be jeopardized by a requirement of individualized suspicion. The injury or harm that students suffer upon being subjected to an unreasonable search is being subjected to the search itself and the attendant violation of their right to
privacy. To have standing to bring a Fourth Amendment claim, a plaintiff need
allege no other injury.

37. The searches described by a current Assistant Principal at the School,
as set forth in the CEP Operations Manual, and as attested to by Named Plaintiffs,
are unreasonable.

A. Defendants Conduct the Invasive Searches at the School in the
Absence of Individualized Suspicion.

38. All students at the School, including Named Plaintiffs, are searched
each and every school day prior to entering the School without individualized
suspicion that they have weapons, drugs or other banned items.

39. All students at the School are subjected to these invasive search
procedures, including students who were referred to the School for reasons other
than disciplinary or behavioral problems. For example, Plaintiff R.W., who was
referred to the School because his family was new to Atlanta, has been and will
continue to be subjected to the same intrusive search process with no
individualized suspicion as students referred to the School for disciplinary reasons.

B. The Searches to which Defendants Subject Plaintiffs are a Gross
Invasion of Plaintiffs’ Privacy Interests.

40. The Named Plaintiffs and all children at the AISS-CEP School have a
reasonable expectation of privacy in their persons and, in particular, around their
waistbands and bras, in their mouths, on their scalps and the soles of their feet, and in their “private parts.”

41. As described by the Assistant Principal in charge of supervising the daily search process, all students are required to take off their belts and shoes and untuck their shirts. All students are then required to pass through a metal detector. Regardless of whether the machine detects anything, all students must extend their hands out, palms straight down and spread their legs. Staff members then make a circle with their hands around the students’ collars, a circle around the cuffs of their shirts, a T across their backs, straight down their backs, check the waistband of their pants, pat down along the back of each leg, and pat the bottoms of their feet. Staff members require students to open their mouths and lift their heads back so the insides of their mouths can be inspected. Staff members reach underneath students’ shirts with their hands to search inside students’ waistbands, next to the skin, roughly an inch deep into the waistband.

42. Staff members require female students to grab the sides of their bras, extend them out, shake them, and snap them back in. Female students may be required to perform these humiliating acts in front of at least one male faculty member, a staff member who circulates through the search areas for both girls and boys.
43. The School staff member currently responsible for supervising the search process was previously an instructional assistant at the School with responsibilities relating to the orientation process. He is one of the staff members who punched Plaintiff M.H. in the chest. He is supervised by the Assistant Principal of Student Services, but the CEP Operations Manual mandates that he is to be supervised by the Assistant Principal of Operations. The supervising Assistant Principal did not receive any training on how to supervise the search coordinator.

44. In addition to the process described by the Assistant Principal, the CEP Operations Manual provides that search team members must collect “contraband” prior to the search, instruct students to turn their pockets out and remove their shoes, search the shoes, and ask students to open their mouths and move their tongues. The Manual explicitly states that students should not be touched in the “do not touch” areas — including the area below the waistline inside the pelvic genital region or buttocks region, and the breast area for females — and prohibits staff members from asking students to “lean against the wall.”

45. Items deemed “contraband” by the Student Handbook include book bags, combs, brushes, house keys, watches, jewelry, lip balm, rubber bands, and purses. Students are allowed to bring money to school, but not more than five
dollars. Female students are even prohibited from possessing feminine hygiene products. Menstruating girls must ask their teachers for sanitary pads. Defendants search students for all such items each day.

46. The procedures described by the Assistant Principal and the CEP Operations Manual are routinely exceeded. Defendants forced one student to pull down her pants and underwear in front of an Assistant Principal, a teacher, and a “Learning Community Instructional Leader Monitor” — not because she was suspected of having drugs or weapons — but because she was suspected of having jewelry. She pulled down her pants and underwear only after they attempted to do so themselves and she objected. Defendants routinely frisked Plaintiff J.R. underneath her shirt around her bra, with staff members touching her breast area. Defendants routinely required Plaintiffs M.H., T.P.W., and R.W. to lift their shirts up to expose their belly buttons. Defendants routinely forced Plaintiff Q.G. to stand up against a wall to be searched.

47. Despite the School’s practices, the Assistant Principal responsible for supervising the searches concedes that the privacy interests implicated by the searches are serious, that students should not be asked to lift their shirts because it causes embarrassment, that students should not be asked to lean against a wall while being searched, that students should not be treated as if they were in jail, that
female students should not have their chest areas searched, and that it is
“inhumane” to allow searches underneath students’ shirts.

C. Defendants’ Government Interests Would Not be Jeopardized by
   a Requirement of Individualized Suspicion.

48. Requiring Defendants to have individualized suspicion prior to
   subjecting students at the School to a search more intrusive than walking through a
   metal detector would not jeopardize any legitimate government interest.

49. School personnel search Plaintiffs for the purpose of finding and
   confiscating items the School deems prohibited other than drugs or weapons, and
   have a practice of conducting strip searches in their efforts to do so. For example,
   Defendants strip searched one female student in an effort to find jewelry. Their
   interest in finding a student’s jewelry does not justify such a gross invasion of
   privacy, and no jewelry was found. Another female student was searched on
   multiple occasions by a male staff member; those searches included pat downs of
   her buttocks area. School personnel forced another student to drop his pants and
   searched inside his underwear to see if he had a cell phone on his person. Their
   interest in finding a cell phone does not justify such a gross invasion of privacy,
   and no phone was found. Neither does Defendants’ interest in finding contraband
   chewing gum justify the practice of School personnel to inspect inside students’
   mouths.
50. Nor does Defendants’ interest in keeping drugs or weapons out of the School justify the intrusive and suspicionless search process to which students are routinely subjected.

51. In 2008, there have been approximately 200 school days, and on each school day, an average of 450 students was enrolled at the School. Thus, the AISS-CEP School conducted at least 90,000 searches of students. Yet, according to statistics reported to the Georgia Department of Education in 2008, drugs were found at the School on only 26 occasions and only once was a weapon found (a knife). These figures are comparable to other Atlanta Public Schools that do not subject students to such daily intrusive searches. For example, in 2008, Mays High School students were caught with drugs on thirty-one occasions and weapons once (a handgun), while Grady High School students were caught with drugs on fifteen occasions and weapons on two occasions (a handgun and a knife).

52. Other alternative schools designed for students with disciplinary and behavioral problems do not utilize such an intrusive search process. The McClarin School in Fulton County, for example, does not employ either a metal detector or a pat-down process.

53. The search process at the AISS-CEP School is ineffective at keeping drugs and weapons out of the school building. Students are able to circumvent the
process by sneaking items in or manufacturing weapons at the School. Students who are friendly with staff members are permitted to bring in contraband.

54. Despite the unreasonable search process to which students are subject, the School remains unsafe and chaotic. Although the AISS-CEP School is exempt from the Unsafe School Choice Option provided by Georgia, it meets the State’s statutory definition of a persistently dangerous school, reporting 22 qualifying offenses in 2005, 24 in 2006, and 12 in 2007. None of the other alternative schools in the area serving similarly situated students would so qualify.

55. In 2008, the AISS-CEP School reported 4 incidents of arson, 69 of battery, 22 of fighting, 32 of threat/intimidation, 1 of knife possession, and 136 other discipline incidents. The numbers for preceding years are similar or worse.

56. In 2006, the AISS-CEP School made 274 delinquency referrals to the Fulton County Juvenile Court, or about two referrals for every three students. In contrast, the McClarin School made 64 such referrals, or about two referrals per eight students.

57. Moreover, these figures do not include violence inflicted upon students by teachers and administrators. Teachers (and at least one administrator) routinely hit students, throw books at them, and throw students against walls or to the floor. Nor do these reports reflect the violence inflicted by school resource
officers and police officers, who are often physically aggressive, and have a practice of using chokeholds on the students. The search procedures cannot and do not protect students at the School from violence at the hands of the adults who are supposedly there to educate and protect them.

D. Plaintiffs Have Standing to Bring This Claim to Vindicate Their Fourth Amendment Rights.

58. As a result of Defendants’ policies and practices, each and every Named Plaintiff has been subjected, at a minimum, to the official search process described by the Assistant Principal of the School and has suffered the harm of being subjected to a constitutionally unreasonable search each day he or she was searched.

59. As a result of Defendants’ policies and practices, each Named Plaintiff currently attending the School is in constant imminent danger of being subjected to additional unreasonable searches and of suffering the harm of being subjected to a constitutionally unreasonable search each day he or she continues to be enrolled in the School because such searches are conducted every day.

60. Although some students may have been subjected to more invasive and humiliating searches than others, all students are at equal risk of being subjected to the unreasonable official search process described by the Assistant Principal. They are all, moreover, at equal risk of being subjected to additional
unreasonable search practices that are expressly prohibited by the official CEP Operations Manual, such as female students being searched in the breast area.

61. Individual variations in the search process do not change the fact that all students at the School are subject to the common regime created by Defendants, who have acted and will continue to act on grounds generally applicable to all students at the School. Defendants have subjected all such students, including the Named Plaintiffs, to the harm of unreasonable searches and placed all of them at continued risk of additional searches each day they attend the School.

IV. Defendants Refer Plaintiffs to the AISS-CEP School Without Appropriate Notice or Opportunity to be heard.

A. Referral to the AISS-CEP School deprives students of their property right to an adequate public education.

62. Because the Georgia Constitution guarantees Plaintiffs a free and adequate public education, Plaintiffs have a property interest in such an education that Defendants may not deprive them of absent fundamentally fair procedures. The education available to students at the AISS-CEP School is vastly inferior to that available at other Atlanta schools, and falls far below the minimum requirements of state law. Assignment to the AISS-CEP School is tantamount to expulsion from the public school system. Any referral of a student to the School in the absence of due process violates that student’s rights under the Fourteenth
Amendment.

1. **The School is so unsafe that it cannot provide an adequate education.**

   63. The School is patently unsafe for the children attending, as evidenced by the officially reported levels of violence, *see, e.g., supra* at ¶¶ 55-56, and by the unreported experiences of Named Plaintiffs. Two teachers at the School punched Plaintiff M.H. on two separate occasions, and M.H. has witnessed numerous other incidents of teachers assaulting students. Police officers posted to the School and under Defendants’ supervision have hit at least one child on the leg with a police baton and threw another against a wall. Another student was struck on the back of the neck and dragged across the floor by a teacher. Upon information and belief, none of the staff involved in these incidents was investigated, disciplined, subjected to future monitoring, or given training on how to avoid physical confrontations with students.

2. **The School does not have a sufficient number of qualified teachers or staff to provide an adequate education.**

   64. Defendants have failed to staff the AISS-CEP School with an adequate number of sufficiently qualified teachers to provide its students with an adequate education. Federal law requires that all teachers of core academic subjects be “highly qualified.” 20 U.S.C. § 6319. Only three of the nineteen
teachers currently employed by the School satisfy this standard. According to the Georgia Department of Education, 55% of core classes at the School were not taught by Highly Qualified Teachers in the 2006-2007 school year; and 80% of core classes were not taught by Highly Qualified Teachers in 2005-2006 school year. In contrast, there were no classes at the McClarin Alternative School in Fulton County not taught by Highly Qualified Teachers in 2006-07 and only 3% in 2005-06.

65. Defendants have also failed to staff the School with a sufficient number of teachers or paraprofessionals for the provision of an adequate public education. The Georgia Department of Education (“DOE”) recommends a maximum student-to-teacher ratio of 10:1 for alternative education programs. According to the personnel information in the 2006-07 State of Georgia K-12 Report Card for the AISS-CEP School, the most recent available, the overall ratio of students to teachers was roughly 20:1 that year, with only one full-time support person on staff. The AISS-CEP Contract provides: “Classroom staffing will meet the Georgia teacher-student staff ratios for alternative education programs in effect during the term of this Agreement.”

66. Defendants are either unaware of these requirements, do not enforce them, or do not believe they should apply. The AISS official in charge of
supervising the School until May 2008 acknowledged that the student-to-teacher ratio at the School should be low because students at alternative education programs need additional services and attention. She was unaware that the School did not meet the recommended ratio. The current principal of the School believes that the student-to-teacher ratio for alternative schools and regular schools should be the same.

67. Teachers at the AISS-CEP School are very inexperienced, averaging just 0.94 years of experience as of 2006-07. Teachers at the McClarin Alternative School averaged 19.07 years of experience, and teachers at the DeKalb Alternative School averaged 10.58 years.

68. There are no tutors on staff, and AISS provides the School with the services of only five tutors (at no cost to CEP), which is grossly inadequate for the approximately 450 students enrolled at any given time, many of whom are behind in their schoolwork. The Assistant Principal of Student Services testified that any tutoring that takes place at the student’s home or at an outside agency “has nothing to do with us.”

69. The teacher-to-support person ratio at the School is 11:1, which is also inadequate. Support personnel are defined to include special education personnel, student services personnel, paraprofessional/teacher aides, librarians,
teacher support specialists, and lunchroom monitors. While these figures indicate a distressingly low number of teachers per student and an insufficient number of support staff, there is an abundance of administrators at the School; there is one administrator for every three teachers.

70. Other alternative schools in the area have more teachers per student, and more support personnel per teacher, and fewer administrators per teacher. At the DeKalb Alternative School, the student-to-teacher ratio in 2006-07 was 7:1, the teacher-to-support person ratio was 7:1, and the teacher-to-administrator ratio was 9:1. At the McClarin Alternative School in Fulton County that year, the student-to-teacher ratio was 12:1, the teacher-to-support person ratio was 5:1, and the teacher-to-administrator ratio was 8:1. Support personnel represent only 6.3% of staff at the AISS-CEP School, but 16% at McClarin, and 11.5% at DeKalb.

71. Those other alternative schools also spend far more money than CEP does at the AISS-CEP School on teacher salaries, and allocate less money in their budgets to administrator salaries. For example, in 2006-07, the McClarin School spent nearly twice as much as the AISS-CEP School on teacher salaries and nearly $95,000 less than the AISS-CEP School on administrator salaries for a smaller student enrollment.

72. Defendants have also failed to limit class sizes at the AISS-CEP
School, which exceed those permitted by State Board of Education rules limiting class sizes, as of the 2007-08 school year, to 18 students at an alternative program without a paraprofessional.

3. **The AISS-CEP School provides little or no classroom instruction or resources necessary for teaching and learning.**

73. Georgia law requires that alternative education programs include objectives of the Quality Core Curriculum (a set of standards for Georgia educators) and provide instruction that enables students to return to regular education as soon as possible. O.C.G.A. § 20-2-154.1. Georgia BOE Rule 160-4-8-.12 additionally requires that course credit at alternative schools be earned in the same manner as in other education programs. The Georgia DOE’s alternative education program guidelines further require that the instructional materials provided be the same as those supplied in the regular school program.

74. Defendants blatantly violate these requirements at the AISS-CEP School, where students spend the majority of their time in class filling out worksheets without receiving teaching. Most teachers do not return completed worksheets or provide other feedback. Many teachers simply sit in their classrooms, sometimes on a cell phone or computer, while students fill out worksheets. It is the rare teacher who provides actual lessons, in which
information is conveyed by teachers to students.

75. Defendants have failed to provide appropriate training to staff members on how to provide instruction, and have not supervised or monitored staff to ensure that instruction is actually provided. Some students at the School are permitted to spend their class time gambling — while teachers not only fail to stop them, but actually supply them with playing cards.

76. Students from as many as three different grades are often combined in the same room, all working on the same worksheets. Sometimes School personnel hand out crossword puzzles instead of worksheets.

77. It is the School’s policy not to require that homework be completed. Until this lawsuit was commenced, it was the School’s policy and practice not to assign homework at all. Students are not permitted to take books home, or to bring school supplies to and from school.

78. AISS-CEP School personnel conduct no individualized review of student records to address students’ specific needs or develop individualized academic plans. Students who struggle academically receive no guidance. Students who are not struggling become bored.

79. To the extent tests are administered at the School, preparation is nearly impossible because students cannot take their textbooks home. The ban on
taking school materials home deprives students of the opportunity to develop good study habits.

80. The AISS-CEP School has failed to ensure that students have the materials necessary for learning. There is no library. Many textbooks at the school are missing pages or otherwise damaged. Some teachers never hand out textbooks. There are no supplementary materials or teaching aids.

81. Students at the AISS-CEP School have no art, music, or regular physical education classes. Nor are they provided with the opportunity to participate in consistent and regular extracurricular activities.

4. The AISS-CEP School relies inappropriately on the Programmed Logic for Automated Teaching Operation (“PLATO”) Program.

82. Rather than providing classroom instruction and measuring student academic progress with standardized tests, Defendants rely heavily on computer programs marketed by a company called PLATO for assessment and instruction.

83. PLATO’s own manuals recommend active guidance of students using the programs. Studies have shown these programs to be of limited value without adequate staff training and supervision.

84. Defendants fail to provide the supervision necessary for PLATO to be effective or for its test results to be accurate indicators of academic progress.
Students at the School work on PLATO with minimal supervision and often ask each other for the correct answers to reach the next level of questions. Many students do not work on the programs at all, but rather play computer games.

5. The AISS-CEP School fails to provide students with the support services to which they are entitled.

85. The provision of an adequate public education requires that certain support services be available. Georgia law requires alternative education programs to provide appropriate supervision and counseling. O.C.G.A. § 20-2-154.1; GBOE Rule 160-4-8-.12. Georgia DOE guidelines also note that such programs should customize intervention programs and support services to meet the needs of individual students.

86. Defendants have failed to ensure that the AISS-CEP School provides the services students need. Students lack adequate access to guidance counselors, psychologists, social workers, and career counselors. There are no behavioral specialists, anger management counselors, or any educational or psychological counselors on staff. There is no student service coordinator.

87. Although CEP contracts with outside counseling service providers to provide services covered by Medicare and Medicaid at no cost to CEP, Defendants do not supervise, monitor or otherwise oversee the services provided. School personnel responsible for ensuring that services are provided at the School cannot
even name all eight of the outside service providers. CEP does not send AISS reports about the length of time for which students received services, or any counseling services provided in-house at the School. Defendants do not require service providers to provide a log of student contacts.

88. CEP personnel do not involve themselves with the provision of psychological or psychiatric services and do not even keep track of which students are receiving such services. Defendants make no efforts to inform personnel at the School when a student is receiving psychological or psychiatric services. No School personnel with daily contact with the students are informed whether a student is in substance abuse counseling, or if misbehavior in a classroom is caused by a family issue, such as a recent death in the household.

89. Students with personal, home, school, or community adjustment issues — *i.e.* the population the School is intended to serve — lack access to social workers. Defendants fail to offer appropriate social skills instruction or a behavioral management program to students. Per AISS policy, students who struggle academically or have behavioral issues, *i.e.*, the majority of those enrolled at the School, are to receive support from student support teams (“SST”). Of 127 AISS-CEP students represented by the Fulton County Juvenile Court Educational Advocate between August 2004 and August 2007, 60 had never had an SST
intervention.

90. Defendants disregard repeated requests by parents for special assistance for their children, such as for anger management counseling. Students with lengthy disciplinary histories do not receive evaluations for special needs or other intervention services.

6. **Record-keeping at the AISS-CEP School is so lax that the school cannot provide an adequate public education.**

91. Basic record-keeping is essential to the provision of adequate educational services. GBOE Rule 160-4-8-.12 requires school systems to maintain records on enrollment, disciplinary referrals, grades, pass rates, and entry/exit dates.

92. Defendants have failed to maintain these records accurately. Attendance records often fail to reflect the extent to which students are truant. The course list does not accurately reflect the courses actually available or taught. Grades are given out haphazardly. Disciplinary records are poorly maintained and sometimes inaccurate.

7. **Defendants’ policies and practices operate to push Plaintiffs out of the school system altogether.**

93. Defendants’ policies and practices operate to push Plaintiffs out of the public school system altogether, by failing to enforce attendance policies, by
suspending and expelling students repeatedly, by inappropriately referring students to the juvenile justice system, and by otherwise encouraging students to drop out.

94. Defendants have failed to improve the abysmal attendance rates at the School since its inception. In 2007-08, 45.3% of students were absent for 15 days or more. By comparison, in the Atlanta school system as a whole, the percentage of students who were absent for 15 days or more was 4.6% in 2007 and 5.4% in 2008. Defendants’ failure to keep proper records suggests that even these attendance rates may be artificially inflated.

95. Defendants subject students who attend the School to an extraordinarily high rate of suspensions. Over the course of the 2006-07 school year, there were 165 out-of-school suspensions, 93 of which were for ten days or more. If each of these 165 suspensions were given to a different child, one out of every five of the 844 total enrolled students was suspended. Twenty students were suspended for disruption, 3 for disrespectful behavior, and 9 for unauthorized items. One was suspended for 10 or more days for “chronic problem studying.”

96. Those students who continue to attend the School are subject to Defendants’ policy and practice of inappropriately referring them to the juvenile justice system. In 2006-07, the school referred 165 students to juvenile court, with an average of 4.17 charges per child. With a total enrollment that year of 844, the
school referred nearly one out of every five students. Eighty-four students were referred once, and 81 students at least twice. Twenty-nine students faced 8 or more charges. More than a fifth of all charges brought were dismissed.

97. In contrast, the McClarin School made 31 referrals to juvenile court in 2006-07.

98. Defendants refer students to the juvenile justice system for offenses that other schools deal with in the principal’s office. Roughly 30% of the students referred to juvenile court by Defendants in 2006-07 were referred for public order offenses, like disrupting school or disorderly conduct, compared to only 18% of juveniles charged statewide in 2006. While far more likely than juveniles statewide to be charged with public order offenses, AISS-CEP students are far less likely to be charged with status offenses (14.1% of referrals compared to 27.1% statewide), property offenses (9.3% of referrals compared to 26.2%), traffic offenses (3.2% compared to 10.3%), and sex offenses (0.3% compared to 3.6%). They are equally (10%) as likely to be charged with drug offenses and slightly less likely to be charged with violent offenses (17.3% compared to 18.6%).

99. As a result of Defendants’ policies and practices to push students out, dropout rates in 2007-08 were five times higher than in AISS generally, with roughly 17% of students dropping out. In the 2006-07 year, more than 38% of the
students enrolled “left early.” Nearly 95% of those “leaving early” were male.

100. Students who are not expelled, referred to the juvenile justice system, or pressured into dropping out rarely make it back to regular schools. Defendants’ policies and practices routinely keep children at the School for longer than the 90 to 180 days of attendance contemplated by the AISS-CEP Contract, for longer than their referrals require, or for longer than is educationally appropriate. Some children are retained at the school for no pedagogical reason whatsoever but only because of inaccurate record-keeping. Many fall too far behind academically while at the AISS-CEP School to be able to catch up at regular school. The longer a child is at the AISS-CEP School, the less likely it is that he or she will ever return to a regular public school.

8. Although Defendants have long been on notice about the failure of the AISS-CEP School to provide an adequate public education, they have done nothing to improve the quality of the education provided.

101. AISS has long been aware that the AISS-CEP School is nothing more than a dumping ground for the school district’s unwanted children. Long before AISS consolidated its alternative schools and retained CEP in 2002, education experts had made it clear that one of the keys to providing adequate education in the alternative school context was having small classrooms and very low student-to-teacher ratios. Between 2004 and 2006, when AISS most recently renewed
CEP’s contract, AISS was aware of or recklessly disregarded, in derogation of its statutory and constitutional responsibilities, the School’s failure to provide an adequate education. For example, a series of articles in the Atlanta Voice in September-November 2004 highlighted problems at the school, and included an acknowledgement by the then-principal that students did not receive homework or books to take home as a matter of school policy.

102. On July 1, 2006, AISS renewed CEP’s contract to run the School for another three years, until June 30, 2009, with terms that provide for subsequent renewals five years at a time.

103. The AISS-CEP School moved to a new building in the fall of 2007, but the educational services provided remain grossly inadequate. Defendants have failed to take any actions to improve the School, instead allowing it to become a “State-Directed” school in its fifth year of “needs improvement” status under No Child Left Behind (“NCLB”). “Needs improvement” schools are underperforming schools that have not met Adequate Yearly Progress (“AYP”), which is an annual measure of student achievement, as defined by NCLB.

104. NCLB requires schools in “needs improvement” status to undertake specific actions for each year the school remains in “needs improvement.” Over the last five years, Defendants have consistently failed to take any of the actions
mandated by law. For example, Defendants failed to develop a school plan incorporating strategies based in scientific research; failed to provide students with the option of transferring to a non-failing school; failed to provide students at the School with supplemental services, like tutoring; failed to inform parents about the reasons for the School’s identification as “needs improvement” or about their right to transfer their children to a better school; and failed to replace staff relevant to the failure, implement a new curriculum, appoint an outside expert, or restructure the school.

105. The AISS official tasked with monitoring the AISS-CEP School until May 2008 was wholly unaware of any steps Defendants should have taken as required by federal and state law. She did not know what was in the school corrective action plan mandated by law, what types of instructional extension services are offered to students at the School, or how many students at the School received such services. She did not know whether a school restructuring plan was in effect, whether Defendants ever considered reopening the School as a charter school, whether Defendants ever considered replacing all or most of the School’s staff, or whether Defendants ever considered major restructurings at the School.

106. In 2007-08, 93% of the AISS-CEP students evaluated did not meet standards in math, not a single student met standards in science, and only one
student met standards in social studies. These numbers are a decline even from the previous school year.

107. By contrast, 55% of students at the DeKalb Alternative School met or exceeded standards in 2006-07, a gain of roughly 19% over the prior year. Even at the McClarin Alternative School, where percentages declined by nearly 20%, close to 54% of students still met or exceeded expectations in 2006-07.

108. Defendants failed even to meet the meager performance improvements they sought between the 2004-05 and 2005-06 school years. AISS called for a decrease by two percentage points in the proportion of students not meeting the standard on the Reading test, but the Governor’s Office of Student Achievement (“GAOSA”) figures indicate that the failure rate among 6th graders actually rose from 71% to 73%, and that the rate among 7th graders rose from 56% to 78%. Likewise, AISS called for a three percentage point increase in the proportion of students scoring 70 or above on the End of Course Test (“EOCT”) in 9th grade literature, but whereas 25% passed that test in 2004-05, only 2% did the following year.

109. Only six students sat for the Georgia High School Graduation Test (“GHSGT”) in the 2007-2008 school year. Seven students sat for it the previous year, compared to seventeen in the 2004-05 school year. Even when children are
retained at the AISS-CEP School for years at a time, Defendants fail to educate them sufficiently even to sit for the GHSGT.

110. At the DeKalb Alternative School, there were 20 eleventh graders in the spring of 2007 and 15 twelfth graders — 14 of whom completed high school. More than 100 students completed high school at the McClarin Alternative School in Fulton County in 2006-07.

B. Defendants Deny Plaintiffs Notice and Opportunity to be Heard Prior to Referring Them to the School.

111. The AISS-CEP Contract specifically requires CEP to develop with AISS the enrollment procedures to be used in enrolling students in the School based upon standards proposed by CEP and as approved and established by AISS.

112. As a result of Defendants’ policies and practices, students referred to the AISS-CEP School are regularly denied due process prior to their referral. Students are routinely referred to the school without any process at all, such as an opportunity to be heard at a tribunal hearing. Plaintiff J.R., for example, was summarily referred to the School without any informal or formal hearing and no formal notice whatsoever.

113. Some students are inappropriately referred for disciplinary reasons without a tribunal hearing because they or their parents were forced or induced to sign student contracts purporting to waive their right to contest a referral. Such
students receive no notice or opportunity to be heard even with respect to whether they committed the act by which they allegedly violated the contract.

114. Other students, such as Plaintiff T.P.W., are referred without any process at all because they attended an alternative school in another county, with no notice or opportunity to be heard to determine whether an alternative school placement would be appropriate in Atlanta.

115. Some students, like Plaintiffs Q.G. and M.H., receive a tribunal hearing but are not given constitutionally adequate notice and opportunity to be heard. Notice is sometimes not provided until only days prior to the hearing, or not provided at all, as in Plaintiff Q.G.’s case. Plaintiff M.H. attended his tribunal with his parents, but neither he nor his parents were given an opportunity to speak at the hearing.

116. Students referred to the school for administrative reasons fare no better. Many, like Plaintiff R.W., are summarily transferred to the School, despite not even having been accused of violating any code of conduct, simply because they are new to the school district. During the 2005-06 school year, 30% of the students assigned to the School were sent there for non-disciplinary reasons.

117. No students who are referred receive a review of the strategies and interventions used by the referring school to address instructional and behavioral
issues as required by the GBOE. Defendants do not assess students to determine their specific needs, or whether they have academic, medical, emotional, behavioral, physical or other concerns that may interfere with their ability to benefit from appropriate educational interventions, much less whether the School will address their needs.

118. None of the Named Plaintiffs received an evaluation to determine whether the School would be appropriate to meet his or her needs, or a finding that he or she would be more likely to succeed in a nontraditional setting.

C. Plaintiffs Have Standing to Bring this Claim to Vindicate Their Right to Due Process Upon Referral to the School.

119. The injury suffered by Plaintiffs who are referred to the School without due process is the violation of their federal constitutional right to due process. That injury occurs and is redressable irrespective of whether referral to the School was the “correct” outcome, just as a person sentenced to prison without due process suffers a redressable injury — a violation of his constitutional right to due process — even if it is certain he committed the crime.

120. All Named Plaintiffs referred to the School without proper notice and opportunity to be heard, including M.H., Q.G., J.R., R.W., T.P.W., have suffered the injury of being deprived of their constitutional right to due process.

121. As a result of Defendants’ policies and practices, these Plaintiffs’
claims are all capable of repetition but evading review. Plaintiffs remain residents of Atlanta and have a property right to an adequate public education. As students in the Atlanta public school system, they are in the involuntary custody of Defendants and cannot avoid exposure to Defendants’ failure properly to afford them notice and opportunity to be heard prior to being referred to the School. Plaintiffs’ past injuries — their referral to the School without due process — constitute evidence that Defendants have a custom and practice of administering the referral process to the School in a way that denies children notice and opportunity to be heard. There is a substantial likelihood that Named Plaintiffs and other members of the proposed class will suffer additional such injuries in the future.

122. Moreover, as a result of Defendants’ policies and practices, students at the School are often referred to the School multiple times over the course of their educational careers. For example, Named Plaintiffs M.H., Q.G., and J.R. have each been referred to the School twice. Plaintiffs who are no longer at the School, such as J.R., are at continued risk of being referred again to the School without due process.

123. Although some Named Plaintiffs may have received more notice or opportunity to be heard than others, all Plaintiffs are subject to Defendants’
practice of administering the referral process in such a way as to place all students referred to the School at risk of being denied their due process rights. Defendants have acted or refused to act on grounds generally applicable to all Plaintiffs.

IV. Defendants Discipline Plaintiffs at the AISS-CEP School Without Affording Them Notice or Opportunity to be Heard.

124. Defendants discipline Plaintiffs without providing them with prior notice and opportunity to be heard. The injury Plaintiffs suffer as a result is the deprivation of the process that is constitutionally due to them, regardless of whether the discipline was warranted.

125. For suspensions of ten days or less, students are constitutionally entitled to an informal hearing that includes formal notice of the charges against them with an explanation of the accusation and its basis, an explanation of the evidence against them, and an opportunity to present their side of the story. Where appropriate, school officials should summon witnesses, permit students to cross-examine them, and allow the student to present witnesses.

126. For suspensions of more than ten days, students are constitutionally entitled to a formal hearing presided over by an impartial decision-maker; written notice of the charges against them explaining the accusation and its basis; reasonable notice of when the formal hearing will occur; an explanation of the evidence against them; an opportunity to present their side of the story at the
formal hearing; an opportunity to present witnesses and cross-examine witnesses presented against them; the opportunity to obtain counsel; the right to appeal the decision; and details about the applicable procedures, including the right to appeal.

A. **Defendants Have a Policy and Practice of Denying Plaintiffs Notice and an Opportunity to be Heard Prior to Imposing Discipline.**

127. Defendants routinely suspend students for more than ten days at a time without the formal notice or hearing to which they are entitled. For example, Plaintiff M.H. was suspended for nine days but not permitted to return to the School until the eleventh day. Another student was expelled from the School for half a semester for allegedly breaking a window. She was provided with no prior notice of the tribunal hearing, which expelled her *in absentia*. When her mother called the tribunal officer, she was informed that there was no possibility of convening another tribunal. This student was removed from school for two months. Another student received three suspensions for the same alleged offense and denied an opportunity to be heard each time.

128. Defendants have a policy and practice of imposing *de facto* suspensions on students by refusing to permit them to attend the school after they have been referred. Plaintiff R.W., for example, was suspended for more than three months upon being referred to the School, before he was even allowed to
enroll, and again for two months for various reasons such as needing to wait until after the holidays and school bus route adjustments. Parents are also sometimes told they cannot register their children with the school because an orientation session or the School is full — even when fewer than the 750 students contemplated by the AISS-CEP Contract are enrolled. One student missed a week of school because orientation only takes place on Mondays and he was removed from his regular school on a Tuesday.

129. No alternatives are provided to these children, who receive no educational services at all and therefore whose stay in the wholly inadequate educational facilities of the School is prolonging, delaying and making less likely their return to regular school. Defendants have a policy and practice of denying these children any opportunity to be heard whatsoever.

130. When Defendants discipline students at the AISS-CEP School, they fail even to maintain records that would indicate whether discipline at the school is meted out properly. Discipline is routinely imposed without any record-keeping to document the precipitating incident, the procedures followed, or the discipline meted out.

131. An Assistant Principal at the School acknowledges that discipline procedures at the School do not comply with the CEP Operations Manual and that
she must “stay on top of” some teachers who mete out suspensions before consulting her.

132. To the extent that records are maintained at the school, they are often inaccurate. For example, Plaintiff M.H. received a notice for a bus suspension when he was brand new to the School on the ground that he had received three prior verbal warnings. Defendants have failed to track crimes occurring at the school. For example, the School referred 358 students to the juvenile justice system in 2004-05, but reported no crimes for that period.

133. Defendants have failed to ensure that parents are notified when their children are victimized by other students, or when disciplinary citations are issued. Students are routinely suspended and sent home without any advance notice to their parents or written explanation. Such students are left to go home unsupervised. For example, Plaintiff J.R. was sent home from the School with only a bus token and no notice was provided to her mother. When Plaintiff T.P.W. was suspended, no one from the School left any messages for his mother to inform her of the suspension and she was not notified until after the suspension had already been served.

134. The Assistant Principal at the School responsible for discipline has stated that the School has a policy and practice of keeping children in “In School
Support,” which is functionally in-school suspension, for up to three days after
their official out-of-school suspension has ended if their parents are unavailable for
a conference or if a teacher or witness is unavailable for the conference. It is the
School’s policy not to provide any notice or opportunity to be heard for those days
children are kept in “In School Support.”

135. The effect of all of these suspensions and expulsions imposed upon
students at the School is to extend the length of time they must remain at the
School and thereby extend the length of time for which they are deprived of their
right to an adequate public education.

136. Students are routinely subjected to corporal punishment in violation of
the Atlanta Public School prohibition on such punishment. Plaintiff M.H., for
example, was punched by two teachers at the School to punish or discipline him
for failing to obey their orders to take his seat. A police officer under the
supervision of the School hit another student on the leg with a police baton to
punish him for leaving a classroom without the teacher’s permission.

137. Defendants have a policy and practice of failing to train staff at the
School on how properly to mete out discipline to students in compliance with the
Constitution, and of failing to monitor and supervise staff to ensure that students’
rights are protected. The Assistant Principal in charge of discipline at the School
has never received any such training and is wholly unfamiliar with what due process requires. Learning Community Instructional Leaders are permitted to discipline students without approval from a more senior staff member, even though the CEP Operations Manual prohibits this practice.

B. Plaintiffs Have Standing to Bring this Claim to Vindicate Their Right to Due Process Upon Being Disciplined at the School.

138. As a direct result of Defendants’ failure to provide training and supervision, Plaintiffs have suffered the injury of being deprived of their due process rights and are at imminent risk of suffering additional such injuries every day they are at the School.

139. Plaintiffs who were enrolled in the School at the time of the filing of the Original Complaint in this action, including T.P.W., J.R., and Q.G., were at imminent risk of being disciplined again without notice or opportunity to be heard at the time of that filing. Their claims relate back to the time of the filing of the Original Complaint.

140. All Plaintiffs currently enrolled at the School — including M.H. and R.W. — are at continued imminent risk of being disciplined again without notice or opportunity to be heard. They remain in the involuntary custody of Defendants and cannot avoid exposure to Defendants’ policy and practice of disciplining students without due process. Plaintiffs’ past injuries of being deprived of due
process upon being disciplined constitute evidence that Defendants have a policy and practice of administering the discipline process at the School in a way that denies children notice and opportunity to be heard. All of the Named Plaintiffs remaining at the School are likely to be disciplined again. There is a substantial likelihood that Named Plaintiffs and other children will suffer additional future injury.

141. Although some Named Plaintiffs may have received more notice or opportunity to be heard than others, all Plaintiffs are subject to Defendants’ policy and practice of administering the discipline process in such a way as to place all students at the School at risk of being denied their due process rights. Defendants have acted or refused to act on grounds generally applicable to all Plaintiffs.

V. Plaintiffs have Suffered Harm as a Result of Defendants’ Policies and Practices.

142. Plaintiffs have suffered irreparable harm and are at imminent and serious risk of suffering additional such harm because of Defendants’ pattern and practice of failing to provide training to staff members and to supervise and administer the AISS-CEP School. Defendants’ policies, practices and procedures create an imminent risk that students will be referred to a school that is tantamount to expulsion without notice or opportunity to be heard, deprived of due process upon being disciplined, and deprived of their right to be free from unreasonable
searches.

143. Plaintiff M.H. was deprived of his right to due process upon being referred to the School, has been deprived of his right to due process upon being disciplined at the School, and has had his legitimate expectation of privacy violated by unreasonable searches while at the School. He is at imminent risk of being so disciplined again without due process and of being subjected to additional unreasonable daily searches.

144. Plaintiff R.W. was deprived of his right to due process upon being referred to the School, has been deprived of his right to due process upon being disciplined at the School, and has had his legitimate expectation of privacy violated by unreasonable searches while at the School. He is at imminent risk of being so disciplined again without due process and of being subjected to additional unreasonable daily searches.

145. Plaintiff J.R. was deprived of her right to due process upon being referred to the School, was deprived of her right to due process upon being disciplined at the School, and had her legitimate expectation of privacy violated by unreasonable searches while at the School. She is at imminent risk of being referred again to the School without due process.

146. Plaintiff T.P.W. was deprived of his right to due process upon being
referred to the School and had his legitimate expectation of privacy violated by unreasonable searches while at the School. At the time of the filing of the Original Complaint, he was at imminent risk of being subjected to additional unreasonable searches and of being disciplined without due process.

147. Plaintiff Q.G. has had his legitimate expectation of privacy violated by unreasonable searches while at the School.

148. Failure to grant Plaintiffs the relief requested herein will result in continued and irreparable harm.

REQUEST FOR RELIEF

COUNT I

DENIAL OF RIGHT TO BE FREE FROM UNREASONABLE SEARCHES
U.S. CONST. AMEND. IV; 42 U.S.C. § 1983

149. Paragraphs 1 through 150 are hereby incorporated by reference.

150. Defendants’ search policies and practices at the AISS-CEP School are both unnecessary and unreasonable. These policies and practices violate Plaintiffs’ right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution. The Fourth Amendment violation in turn provides Plaintiffs with the right to obtain declaratory and injunctive relief and attorney fees, pursuant to 42 U.S.C. § 1983.
COUNT II

DENIAL OF DUE PROCESS RIGHTS
UPON REFERRAL TO THE SCHOOL
U.S. CONST. AMEND. XIV; 42 U.S.C. § 1983

151. Paragraphs 1 through 150 are hereby incorporated by reference.

152. Defendants’ practices and policies of referring Plaintiffs to the AISS-CEP School without notice and opportunity to be heard violate Plaintiffs’ due process rights under the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment violation also entitles Plaintiffs to obtain declaratory and injunctive relief and attorneys’ fees, pursuant to 42 U.S.C. § 1983.

COUNT III

DENIAL OF DUE PROCESS RIGHTS
UPON DISCIPLINE AT THE SCHOOL
U.S. CONST. AMEND. XIV; 42 U.S.C. § 1983

153. Paragraphs 1 through 150 are hereby incorporated by reference.

154. Defendants’ practices and policies of imposing discipline on Plaintiffs without notice and opportunity to be heard violate Plaintiffs’ due process rights under the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment violation also entitles Plaintiffs to obtain declaratory and injunctive relief and attorneys’ fees, pursuant to 42 U.S.C. § 1983.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

155. Assume jurisdiction of this case.

156. Certify a class of all students who currently are or who in the future will be enrolled in the AISS-CEP School.

157. Issue a declaratory judgment that:

   a. CEP is a state actor.

   b. The following search policies and practices employed by Defendants or as a result of Defendants’ policies and practices at the AISS-CEP School violate Plaintiffs’ Fourth Amendment rights to be free from unreasonable searches:

      (1) any search of any students other than a metal detector search, in the absence of individualized suspicion that such student has a concealed weapon;

      (2) searching the inside of any student’s mouth in the absence of individualized suspicion that such student has a concealed weapon in his or her mouth;

      (3) any manual searches inside any student’s pants waistband in the absence of individualized suspicion that such student has a
concealed weapon;

(4) any search requiring any student to grab the sides of her bra and shake in the absence of individualized suspicion that such student has a concealed weapon in her bra;

(5) any strip search of any student in the absence of suspicion such student is in possession of a weapon;

(6) any search of any female student underneath her shirt in the area of her breasts in the absence of individualized suspicion that such student has a concealed weapon in that area of her body;

(7) any search of any student requiring such student to lift his or her shirt to expose his or her navel in the absence of individualized suspicion that such student has a concealed weapon in that area of his or her body;

(8) any search of any student requiring him or her to stand up against a wall while being frisked, in the absence of individualized suspicion that such student has a concealed weapon and that he or she poses a threat to the safety of the person conducting the search that can be ameliorated by requiring such student to assume such pose during the search;
(9) any search of any student in the pelvic and buttocks area in the absence of individualized suspicion that such student has a concealed weapon in that area of his or her body; and

(10) any search of any student conducted by opposite sex staff members.

c. Referral of a Plaintiff to the AISS-CEP School is tantamount to expulsion from the public school system and a deprivation of his or her property right to an adequate education in light of the violence at the School; the atmosphere of violence and intimidation; insufficient number of qualified teachers and staff; lack of classroom instruction and resources; reliance upon a computer learning system with inadequate adult supervision; lack of support services; lax record-keeping; policies that push students out of school; and continued failure to take steps to address the educational failings of the School.

d. The following referral policies and practices employed by Defendants to refer Plaintiffs to the AISS-CEP School deny Plaintiffs their Fourteenth Amendment right to notice and opportunity to be heard:

(1) referring students without any process at all;

(2) failing to provide each student being referred and their
parents or legal guardian prior notice of the referral that sets forth
Defendants’ reasons for seeking to refer the student to the AISS-CEP
School; the time and place of a formal hearing convened in advance of
the proposed referral date to determine on the basis of evidence
presented on behalf of Defendants and the student the propriety of the
referral; and all evidence Defendants will present at such hearing in
support of the referral;

(3) failing to provide to each student being referred and such
student’s parents or legal guardian a formal hearing prior to the
referral, as set forth in such prior notice, before an impartial decision-
maker to determine the propriety of the referral, at which such student
and his or her parents or legal guardian is afforded the opportunity to
challenge Defendants’ evidence through cross-examination and
otherwise, and to present evidence on behalf of the student in
opposition to the referral;

(4) referring students to the AISS-CEP School for any alleged
violations of any “student contract” without prior notice and
opportunity to be heard before an impartial decision-maker on the
basis of such evidence; any administrative reasons; or because such
student is new to the school district or attended an alternative school previously.

e. Defendants’ policy and practice of preventing students from enrolling in the AISS-CEP School immediately upon being referred to it without affording them prior notice or opportunity to be heard with respect to such delay violates their Fourteenth Amendment right to due process.

f. The following policies and practices of and by Defendants in connection with disciplining Plaintiffs at the AISS-CEP School deny Plaintiffs’ Fourteenth Amendment right to notice and opportunity to be heard:

   (1) denying them an informal hearing for suspensions of 10 days or less, with formal notice of the charges, an explanation of the accusation and basis for the accusation, an explanation of the evidence against them, and an opportunity to present their story;

   (2) denying them a formal hearing for suspensions of more than 10 days, with an impartial decision-maker, written notice of the charges against them that explain what they are accused of doing and what the basis of the accusation is, reasonable prior notice of the hearing, an explanation of the evidence against them, an opportunity
to present their side of the story, an opportunity to present and cross-examine witnesses, an opportunity to obtain counsel, and an explanation of the proceedings as well as the right to appeal the decision; and

(3) adding days of in-school-suspension onto suspensions that have already been imposed without any additional notice or opportunity to be heard.

158. Issue injunctive relief requiring Defendants to undertake the following steps within a period of time to be determined by the Court:

a. Develop and implement a search protocol prohibiting searches beyond a metal detector search in the absence of reasonable individualized suspicion that a student is in possession of a weapon. The basis for any such suspicion must be presented in writing to an Assistant Principal or Principal of the School, who must certify the basis for such suspicion in writing before any search more intrusive than a metal detector or metal detector hand wand is conducted. Defendants must maintain a log of any searches beyond these metal detector searches, with the names of the students searched, the dates the searches were conducted, the names of the staff members conducting the searches, the basis for the searches, and any items recovered during the
searches.

b. Develop and implement a procedure to be followed in connection with referring students to the School that includes:

(1) a requirement that a formal hearing be convened with an impartial decision-maker who has received training on the constitutional due process rights of children being referred to the School and of the requirements imposed by this Court’s Order Granting Injunctive Relief;

(2) a requirement that at least X days prior to such formal hearing, the student and his or her parents or legal guardian be provided with formal written notice setting forth:

(A) an explanation of the nature of the AISS-CEP School and a description of the School consistent with that description required by the School’s status as a school in its fifth year of “needs improvement” under NCLB;

(B) the time and place of the formal hearing and the identity of the member(s) of the tribunal before whom the hearing will be convened;

(C) all of Defendants’ reasons for the referral, including
a detailed description of each act on the part of the student that forms any part of Defendants’ reasons for the referral, the identity of the individuals who have accused the student of committing such acts, all evidence that Defendants will present in favor of referral at the formal hearing, and the identity of all witnesses whose testimony Defendants will present at the hearing and an accurate summary of the testimony of each such witness;

(D) formal written notice of the student’s right to have to counsel at the hearing, to bring witnesses to testify at the hearing, and otherwise to present evidence on his or her behalf at the hearing, and to appeal the decision of the impartial decision-maker;

(3) permission for the student whose referral is sought to attend his or her regular school prior to and up until the date of the hearing unless there is reason to believe such student poses an immediate danger to others, in which case an informal hearing to establish that finding shall be convened no later than 2 days after the precipitating incident with the finding made in writing and immediately appealable
to the school district;

(4) provision ensuring at the formal hearing that:

(A) the student whose referral is sought by Defendants shall be provided with a full explanation of the evidence against him or her;

(B) the student receives an explanation of the nature of the AISS-CEP School and a description of the School consistent with that description required by the School’s status as a school in its fifth year of “needs improvement” under NCLB;

(C) the student receives an explanation of the student’s right to counsel at the hearing, to bring witnesses to testify at the hearing, and otherwise to present evidence on his or her behalf at the hearing, and to appeal the decision of the impartial decision-maker;

(D) the impartial decision-maker undertakes all reasonable efforts to ensure that the charges and the student’s rights are understood by the student and his or her parents or legal guardian,
(E) a transcript is created of the formal hearing and made available to students and their parents or guardians upon request at a reasonable charge, or free of cost if the student qualifies for a free lunch;

(5) a requirement that the impartial decision-maker shall issue a decision in writing no later than 5 business days after the formal hearing and that such written decision will be sent to the student and his or her parents or legal guardians via Certified Mail;

(6) a requirement that unless the impartial decision-maker has found the student to pose an immediate and serious danger to others, the student shall be permitted to remain enrolled in his/her regular school if an appeal is taken.

c. Develop and implement a discipline protocol for providing due process to students a the School in connection with detentions and suspensions (including in-school-support, in-school-suspensions, and out-of-school suspensions) of nine days or less that includes:

(1) informal notice to the student and student’s parents or guardians as soon as practicable;

(2) formal written notice to the student and student’s parents or
guardians within 1 business day of the discipline imposed that provides the reason the discipline was imposed, an explanation of the student’s due process rights, and provides an opportunity for a parent conference with an Assistant Principal or Principal of the School;

(3) a provision that if the suspension is a bus suspension, notice must be given to the student and student’s parents or guardians prior to the date the suspension takes effect;

(4) a provision that discipline may not be imposed without the prior written approval of an Assistant Principal or the Principal of the School;

(5) an opportunity to be heard by the student prior to the discipline being imposed before an Assistant Principal or the Principal of the School;

(6) a provision that records of all such discipline, including the names of the students disciplined, the date of the discipline, and the staff member at whose request the discipline was made, must be maintained by the School; and

(7) a provision that discipline may not be imposed more than one time for any given underlying disciplinary incident without
additional notice and opportunity to be heard.

d. Implement a discipline protocol for suspensions (including in-school-support, in-school-suspensions and out-of-school suspensions) and expulsions of ten days or more that includes:

   (1) all of the components of the formal hearing process described above in ¶ 159(e) for the referral process to the School; and

   (2) a provision that records of all such discipline, including the names of the students disciplined, the date of the discipline, and the staff member at whose request the discipline was made, must be maintained by the School.

e. Provide regular and periodic training to all staff employed by or posted to the AISS-CEP School on the provision of instruction, the avoidance of physical confrontation with students, the needs of children in an alternative educational setting, the needs of children with disciplinary and behavioral issues, the constitutional rights of children to be free from unreasonable searches and to due process upon being disciplined at the School, and the requirements of this Court’s Order Granting Injunctive Relief.

f. Provide regular and periodic training to all staff involved with
the referral of students to the School regarding the constitutional due process
rights of children referred to the School and the requirements of this Court’s
Order Granting Injunctive Relief.

g. Provide regular and periodic training to all staff involved with
the supervision, monitoring or oversight of the School regarding the state
and federal laws applicable to the School and to children enrolled at the
School, and the requirements of this Court’s Order Granting Injunctive
Relief.

159. Appoint a special master or independent monitor to oversee, and to
report to the Court and Plaintiffs’ Counsel, as to Defendants’ implementation of
and compliance with this Court’s requirements, and directing Defendants to:

a. Grant such special master or independent monitor access to any
and all records of Defendants and such access to the School and students
enrolled in the School as he or she may request, until such time as such
master or monitor advises the Court and Plaintiffs counsel in writing that
Defendants have abandoned the policies and ceased and desisted from the
practices declared unconstitutional hereby and are in full compliance with
the judgment issued by the Court in this matter;

b. submit to such special master or independent monitor and to
Plaintiffs’ counsel a written plan to implement and comply with the Court’s requirements and injunctions, including without limitation the plans set forth in this Request for Relief with respect to searches, referrals and imposition of discipline;

c. submit to such special master or independent monitor and to Plaintiffs’ counsel, on such periodic basis and for so long as he or she may instruct, reports as to their implementation of and compliance with the requirements of this Request for Relief; and

d. bear all fees and costs of such special master or independent monitor incurred in connection with such matters.

160. Award to Plaintiffs, pursuant to 42 U.S.C. § 1988, the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys’ fees.

161. Retain jurisdiction to enforce all relief granted by the Court in this matter.

162. Such other and further relief as the Court deems necessary or proper.
Respectfully submitted this 22nd day of December, 2008.

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I HEREBY CERTIFY that on December 22, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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Missing the Mark

Alternative Schools in the State of Mississippi

A REPORT OF
THE AMERICAN CIVIL LIBERTIES UNION
AND THE ACLU OF MISSISSIPPI

FEBRUARY 2009
Missing the Mark

*Alternative Schools in the State of Mississippi*
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EXECUTIVE SUMMARY

In Mississippi, as in other states, disciplinary alternative schools serve some of our most vulnerable young people. Such schools perform a punitive function, deterring misconduct and temporarily isolating students who misbehave. But they also serve an important remedial purpose: helping struggling students to succeed, rather than drifting toward dropout and failure.

Unfortunately, where alternative schools neglect their remedial role and overemphasize punishment, they may contribute to a nationwide trend, known as the school-to-prison pipeline, toward pushing out and criminalizing students who misbehave. Alternative schools ought to work against the school-to-prison pipeline, by helping to rescue students who otherwise might fall through the cracks. In theory, as Mississippi’s statewide dropout prevention plan observes, alternative schooling “provides potential dropouts a variety of options that can lead to graduation, with programs paying special attention to the student’s individual social needs and academic requirements for a high school diploma.” But some Mississippi alternative schools are failing at this task.

In preparing this report, the American Civil Liberties Union and the ACLU of Mississippi seek to shine a light on Mississippi’s alternative school system, illuminating those areas in which the state has succeeded, and those in which it must do better. Drawing on a yearlong research effort, including more than five dozen interviews with students, parents, educators, and advocates, as well as numerous public records requests, this report identifies urgent problems with Mississippi’s alternative schools, including a lack of transparency, disparate impact on students of color and students with disabilities, the absence of essential program elements, and poor overall performance.

This report also offers several recommendations, which together aim at a single, overarching goal: redefining the term “alternative school” as it is used in Mississippi. Rather than conceiving of alternative schools as primarily punitive institutions, Mississippi should provide alternative school students with intensive services delivered by a well-qualified staff in a highly structured but positive environment. It should identify alternative schools’ most important goal as helping at-risk students re-enter mainstream Schools and succeed, rather than dropping out.
schools and succeed, rather than dropping out. Preventing misbehavior through isolation will continue to be an objective – but preventing failure through remediation should be the clear priority.

Too often, Mississippi’s alternative schools hurt the very students they are meant to help. But by fostering accountability, guaranteeing fairness, and providing adequate remedial programming, the state and local school districts could bring about a paradigm shift. Instead of serving as way stations on the school-to-prison pipeline, the state’s alternative schools could become a true safety net, a positive, structured environment where young Mississippians who otherwise might fail or drop out could get back on track to becoming productive citizens.

Findings

Finding One: Mississippi’s Alternative School System Is Essentially Punitive

- In balancing the remedial and punitive purposes described above, Mississippi alternative schools have overemphasized punishment at the expense of remediation.

Finding Two: Mississippi’s Alternative Schools Are Not Transparent or Accountable

- Mississippi’s alternative schools are neither transparent nor accountable to the communities they serve. Obtaining reliable information about student populations, programming, or outcomes is nearly impossible.
- At the state level and in many districts, no reliable measure of alternative school performance exists that would permit communities or policymakers to determine whether alternative schools are accomplishing their goals.

Finding Three: Mississippi’s Alternative School System Is Small, but Growing

- Statwide, the number of alternative school referrals grew from 4,333 during the 2004-05 school year to 5,348 in 2007-08, an increase of 23 percent.
- The number of alternative school referrals in 2007-08 equaled only about 1 percent of the statewide student population. But this was a fourfold increase from 1996-97, when 0.25 percent of the state’s students were enrolled in alternative programs.

Finding Four: Mississippi’s Alternative Schools Disparately Impact African American Students

- Statewide, during the school years 2004-05 through 2007-08, the per capita rate of alternative school referral among African American students was approximately twice that among white students. In 2007-08, for example, for every 1000 African American students in the population, approximately 14 alternative school referrals were
imposed on African American students; the corresponding rate for white students was only about 7 referrals per 1000 students.

- Similar disparities exist in individual school districts, including urban, rural, majority white, and majority African American districts. For example, in Picayune, the average annual per capita rate of alternative school referral among African American students (18.0 referrals per 1000 students per year) was more than double the corresponding rate among white students (7.6). Likewise, over the same period, the referral rate was four times higher for African American students in Vicksburg, six times higher in Jackson, and _seven times_ higher in Madison County.

- In some districts, African American students are more often referred to alternative school for subjectively defined offenses, while white students are more often referred for objectively defined offenses. For example, in Madison County, in 2005-06, the subjectively defined “multiple [disciplinary] referrals” accounted for 80 percent of referrals imposed on African American girls, but only 44 percent of all referrals among white girls. Conversely, during the same year, offenses involving drugs, alcohol, or tobacco accounted for 56 percent of all referrals among white girls, but only 5 percent of referrals among African American girls.

**Finding Five: Mississippi’s Alternative Schools Disparately Impact Students with Special Needs**

- In some districts, students receiving special education are referred to alternative school at vastly disproportionate rates. For example, from 2004-05 through 2006-07, those students made up about 2 percent of the student population in the Picayune school district, but approximately 30 percent of the alternative school population.

- Some Mississippi alternative schools are serving special education students poorly, with inadequate staffing, a shortened school day, and/or failure to properly implement each student’s individualized education program.

Statewide, the per capita rate of alternative school referral among African American students is approximately twice that among white students.
Finding Six: Mississippi’s Alternative Schools Disproportionately Impact Boys

- During the 2007-08 school year, boys made up 72 percent of all alternative school referrals statewide. The referral rate is increasing more rapidly among boys than among girls; it was up by 25 percent between the 2004-05 and 2007-08 school years.

Finding Seven: Mississippi’s Alternative Schools Are Deficient in Key Program Areas

- Academic programming at many Mississippi alternative schools is seriously deficient. Schools commonly fail to abide by the state law requirement to prepare an individualized instructional plan for each student. Students in several districts reported never receiving homework, having a shortened school day, and/or being permitted to sleep at school. Moreover, some districts do little to support alternative school students as they transition back into mainstream settings.

- There is cause for concern about whether alternative schools are providing adequate social services. Several interviewees reported concerns about the quality of counseling provided to students, and some parents described school officials insisting that their children be heavily medicated before attending school.

- Alternative school staffing is another concern. Where data were available, staff ratios and level of experience seemed appropriate. However, advocates, parents, and students all described encounters with inadequately trained staff. Further, there are indications that some staff are assigned to teach at alternative school as a punishment for misconduct.

- Although a positive school climate is a key element of alternative school success, many Mississippi alternative schools take an overwhelmingly punitive approach. In DeSoto County, for example, alternative school students are prohibited from making friends with each other, and are subjected to invasive searches on a daily basis.

Finding Eight: Mississippi’s Alternative Schools Are Not Achieving Desired Outcomes

- In some districts, a substantial number of alternative school students recidivate. For example, in Picayune, from 2004-05 through 2006-07, about 12 percent of students referred to alternative school were referred there at least twice.

- Some students are being “warehoused” at alternative school for long periods. In Vicksburg, Picayune, and DeSoto County, students reported spending as many as 3 or 4 years at alternative school.
A significant number of students are dropping out directly from alternative school. For example, in Madison County, of the students referred to alternative school in 2005-06, 36 percent withdrew from school that year.

**Recommendations**

**Recommendation One: Redefine “Alternative School”**

- **Refocus on Remediation.** Instead of overemphasizing punishment, Mississippi should expressly identify alternative schools’ primary goal as helping students to re-enter mainstream schools and succeed, rather than dropping out.

**Recommendation Two: Make Alternative Schools Accountable**

- **Make Data Available Online.** The Mississippi Department of Education (MDE) should make information about alternative schools publicly available on its website. It can accomplish this at minimal cost, using data it already collects, and without compromising students’ privacy.

- **Mandate Annual Reporting for Alternative Schools.** Instead of merely requiring school districts to prepare guidelines for annual alternative school review, Mississippi should require districts to perform such reviews. State law should enumerate essential review elements and should require that reviews be provided to MDE and made available to the public.

- **Implement Alternative School Monitoring.** MDE should convene alternative school monitoring teams, including educators, policymakers, practitioners in other relevant disciplines, and community members. Teams should conduct site visits to schools identified as in need of improvement based on, e.g., excessive dropouts, omission of required program elements, or racially disparate rates of referral. Where systemic problems exist, teams should identify corrective measures. State law should empower MDE to sanction districts failing to correct problems in a timely fashion.

**Recommendation Three: Ensure That Alternative School Referrals Are Rational and Bias-Free**

- **Correct Disparities.** The state should identify districts where alternative school referrals exhibit race- or disability-based disparities, investigate to determine the causes of these disparities, direct local officials to implement concrete remedies, and sanction noncompliant districts.

- **Observe Required Procedural Protections.** School districts should comply with all relevant federal and state requirements for procedural protections prior to alternative school referral, including providing meaningful due process hearings.
Recommendation Four: Provide Appropriate Services at Alternative Schools

- **Comply with Existing Programmatic Requirements.** Every school district must comply with existing legal and policy requirements for, e.g., individualized instructional plans; curricula addressing cultural and learning style differences; a rigorous workload; minimal noninstructional time; counseling for parents and students; clean, safe, and functional facilities; and staff with adequate credentials.

- **Supplement Existing Programmatic Requirements.** State law should be amended to require additional research-based program elements that are essential for alternative school success, including rational intake procedures, adequate transitional services, and positive behavioral interventions and supports.

- **Implement Additional Research-Based Best Practices.** School districts should seek out and implement additional research-based alternative school best practices. MDE should compile its own list of best practices and provide technical support.

- **Correct Noncompliance.** The legislature should create a private right of action for alternative school students who are denied services guaranteed by state law. MDE also should create a simple, accessible process by which parents could file complaints regarding such denials, and should follow up aggressively and in a timely fashion.
I. INTRODUCTION

Forty years ago, most alternative schools were progressive institutions providing experimental learning for students whose needs could not be met in mainstream public schools. Today, a new variety of alternative school has emerged: the disciplinary alternative school, created to serve as a temporary placement for students who misbehave. These new alternative schools present unique opportunities to reach and assist struggling students – but they also present unique risks.

Most disciplinary alternative schools aim at any or all of three goals. The first and most important is to deliver intensive services to students exhibiting chronic disciplinary issues, so that those students can reenter the mainstream environment and succeed, rather than dropping out of school. The second goal is to correct misconduct: By reassigning students who misbehave to a stricter environment, school districts seek to discourage future misbehavior. The final goal is to protect the learning environment in mainstream schools, by removing students who otherwise might disrupt it.

Unfortunately, when their punitive goals receive too much emphasis, alternative schools may exacerbate a nationwide trend toward pushing out and criminalizing students who misbehave at school. Other tactics contributing to this trend, known as the school-to-prison pipeline, include zero tolerance regimes that require heavy punishments even for minor offenses; overreliance on out-of-school suspension and expulsion as a means of excluding students who misbehave; and excessive imposition of school-based arrests. Ideally, alternative schools should work against this trend, by rescuing students who otherwise might fall through the cracks. But many fail at this function, or simply neglect it.

This report examines Mississippi’s alternative schools, and finds that they are not performing as well as they should. Rather, charged with educating some of the state’s most vulnerable youth, they are failing those students in numerous respects. The alternative schools should provide struggling students with intensive services in a highly structured environment, with the goal of helping those students succeed. But many overemphasize their punitive goals, instead, pushing students who misbehave out of school and into the school-to-prison pipeline. Rather than putting students back on track, in other words, some of Mississippi’s alternative schools are derailing them.

In preparing this report, we had frank conversations about alternative schools with a diverse group of parents, students, advocates, and educators across the state of Mississippi. Two themes recurred. First, alternative schools present an important and difficult set of challenges, which many of Mississippi’s
school districts are struggling to meet. Second, although there is no shortage of strong feelings about alternative schools, there is a shortage of reliable information. This report aims to address both issues. Its goal is to shine a light on Mississippi's alternative school system, illuminating those areas in which it has succeeded, and those in which it can – and must – do better. To that end, it seeks to answer five basic questions:

1. **What is an alternative school?** What meaning has the term assumed, nationally and in Mississippi?
2. **Are alternative schools accountable?** Do community members and policymakers have the information they need to evaluate Mississippi's alternative schools, and to hold school districts and the state accountable for their performance?
3. **Who goes to alternative school?** How many students does the alternative school system serve, and which ones? Are students of color, or students with disabilities, especially likely to be sent to alternative school?
4. **What happens at alternative school?** What are the key elements of an effective alternative school, and how successful have Mississippi's alternative schools been at assembling these elements?
5. **Does alternative school work?** In particular, does alternative school help students to advance academically, resolve behavioral issues, and reenter the mainstream, instead of dropping out?
II. METHODOLOGY

This report draws on four forms of evidence: 1) anecdotal evidence gathered through more than sixty interviews conducted between December 2007 and December 2008 with Mississippi educators, policymakers, advocates, parents, and students; 2) information about alternative school policy, programming, and outcomes gathered through formal requests pursuant to the Mississippi Public Records Act; 3) publicly available information regarding Mississippi law, policy, and practice (e.g., data and policy statements available online from the Mississippi Department of Education (MDE), the Mississippi Attorney General, and individual school districts); and 4) the legal and policy research literature relating to alternative schools.

The report focuses especially on five school districts: DeSoto County, Jackson, Madison County, Picayune, and Vicksburg-Warren. The decision to focus on these districts was based on two factors: 1) anecdotal reports that alternative schools in those districts exhibited special problems; and 2) the capacity of those districts to serve as a cross-section of Mississippi school districts, due to their geographic and demographic diversity. Together with an analysis of statewide data, our examination of these districts provides an assessment of alternative school programs in Mississippi’s urban, suburban, and rural districts, as well as in many regions of the state.

While we gathered substantial data on Mississippi’s alternative schools during more than a year of research, we were unable to obtain all of the data we sought in preparing this report. For example, we asked MDE to provide basic demographic data: total populations for each alternative school, broken down by gender, race, disability, and eligibility for free or reduced lunch (as a measure of income). MDE at first would not provide any of this information. During several months of dialogue, it argued alternately that providing any of the information we sought would violate students’ privacy – a doubtful proposition – and that it did not maintain any documents containing the information we sought – a plausible but worrisome response.

In the end, MDE produced population totals for alternative schools enrolling at least 20 students, as well as race and gender breakdowns where no subcategory of students (e.g., white males) contained fewer than 20 students. Thus we received complete race and gender data for only 3 of the state’s 152 districts, and no information at all about disability or income. Our experiences with the districts, meanwhile, were on the whole more positive, but again, in most cases, complete information was unavailable. Nevertheless, the evidence presented here is sufficient to permit a sketch of the most urgent challenges facing Mississippi’s alternative schools, as well as recommendations about how these challenges may best be addressed.
III. FIVE QUESTIONS ABOUT MISSISSIPPI’S ALTERNATIVE SCHOOLS

QUESTION ONE: What Is an Alternative School?

a. Alternative Schools Nationally

Though lacking a universally accepted definition, the term “alternative school” is commonly used to refer to separate institutions created to serve students who present challenges mainstream schools are unable, or unwilling, to meet. Programming may be behavioral or academic; placement may be voluntary or mandatory; a typical stay may be long or short. Further, any of the three goals described in Section I above may be paramount: rescuing struggling students, punishing students who misbehave, or simply isolating offenders from the mainstream.

Nationwide, the number of schools bearing the name “alternative” has increased sharply over the last fifteen years. A 1994 survey by the National Center for Education Statistics (NCES) gauged the number of alternative schools at 2,606. In 2001, just seven years later, another NCES study put the number at 10,900, and estimated that 39 percent of all school districts maintained alternative schools. It further estimated the total number of students attending alternative school at 612,900, or 1.3 percent of all public school students.

The significance of alternative schools varies from one district to the next. A 2007 examination of Texas’s alternative school program found that state’s school districts enrolled an average of two percent of their students in alternative school, but noted that in some districts, the figure was up to six times higher. A study of California alternative schools, employing a broader definition of the term “alternative school,” estimated that that state’s alternative schools enrolled up to fifteen percent of all students at some point during the 2004-05 school year. Districts in the southeastern states are especially likely to have alternative schools, as are urban districts, districts with high concentrations of minority students, and high-poverty districts.

Any examination of alternative schools and their role in public education is complicated by the existence of disagreement about what constitutes an alternative school. To impose order on the welter of programs falling under the alternative school rubric, commentators have proposed numerous taxonomies, classifying alternative schools according to the types of students they serve.
the manner of their organization,\textsuperscript{10} or the setting in which they are located.\textsuperscript{11} One commonly cited\textsuperscript{12} framework, devised by educational theorist Mary Anne Raywid, sorts alternative schools into three categories: 1) innovative multiyear programs students choose to attend; 2) disciplinary alternative schools, where assignment is mandatory and short-term; and 3) short-term, therapeutic settings for students with special needs.\textsuperscript{13}

But even the most widely accepted approaches to understanding alternative schools are compromised by the absence of a well-developed body of relevant research: “The research and literature that does attempt to define alternative schools (e.g., Raywid’s three alternative types) may provide a valuable framework for understanding alternatives. However, this is essentially only guesswork until a definitive survey is conducted of alternatives as they currently exist and operate across the nation.”\textsuperscript{14} Even as to basic enrollment data, estimates vary. In 2001, the same year the NCES study mentioned above put the number of alternative schools at just over 10,000, another study offered an estimate twice as large.\textsuperscript{15}

Nevertheless, researchers have ventured several lists of best practices for alternative schools. These lists overlap to a considerable degree. Recurring items include: Small program size/low student-teacher ratio;\textsuperscript{16} clearly identified goals;\textsuperscript{17} committed, highly trained staff;\textsuperscript{18} individualized programming;\textsuperscript{19} high expectations;\textsuperscript{20} positive learning environment;\textsuperscript{21} family and community involvement;\textsuperscript{22} provision of social services;\textsuperscript{23} and data collection and evaluation.\textsuperscript{24}

b. Alternative Schools in Mississippi

Mississippi’s alternative school system originated in 1993 with a state law requiring each school district to maintain an alternative school either on its own or in consortium with neighboring districts.\textsuperscript{25} Amendments in 1994 and 1995 addressed the reasons why students could be assigned to or removed from alternative school, and directed the Mississippi Department of Education (MDE) to promulgate alternative school guidelines, among other changes.\textsuperscript{26}
The statute offers a nonexclusive list of students who can be sent to alternative school: those who have been suspended for more than 10 days or expelled, other than for possession of a weapon or other felony; those who are referred by a parent, chancellor, or youth court judge; and those whose presence administrators deem “a disruption to the educational environment of the school or a detriment to the best interest and welfare of the students and teacher of such class as a whole.”

Because the statute makes clear that students who bring weapons to school or commit felonies can be denied alternative school admission, it has been interpreted to circumscribe schools’ authority to deny admission to other students. However, the Mississippi Attorney General has opined that any student may be refused admission to alternative school whom school officials find to be “a threat to the safety of himself or others or disruptive to the educational process.”

According to MDE, the mission of Mississippi’s alternative schools is “to promote the[se] areas: academic performance, behavior modification, functional skills, career education, character education, and employability skills in a learning environment that offers high expectations and high support.” And further: “Through . . . individualized instruction and education plans . . . students, parents, and school faculty collaborate to address those . . . key areas. A commitment is made to provide a safe, structured, environment that is conducive to helping students to function in today’s ever-changing society.”

The mission statements of individual alternative schools likewise reflect an intent to provide remedial services. Jackson’s Capital City School aims “to change [] disruptive behavior and improve students’ academic performance so they will be successful when they return to their home school.” The purpose of the DeSoto County Alternative Center is “to provide educational services for students who have received long term suspensions from their home schools . . . to provide a safe and orderly environment that focuses on academics and behavioral skills that students need to be successful in their home schools and later in the workplace.” And the mission of Vicksburg’s Grove Street School is “[t]o teach and inspire all students to continually pursue knowledge, achieve their aspirations and make positive contributions in a changing world.”

Notwithstanding the benevolent intent implied in such statements, the alternative schools were created at a time when the state was “faced with rising pressure to see that troubled kids are removed from the classroom and unwilling to send them to the streets.” Those imperatives remain in place today. Thus, in practice, Mississippi’s alternative schools also serve two other purposes: punishing misbehavior and isolating students who might disrupt the home school learning environment. Naturally, these objectives are not always consonant with the alternative schools’ stated purpose of offering remediation and rescue.
From their earliest days, Mississippi’s alternative schools have struggled to meet their three sometimes conflicting goals. In 1995, after conducting a survey of the state’s brand-new alternative schools, MDE cited fully half for deficiencies.36 The next year, an independent study identified several concerns: over-assignment of African American male students to alternative school; inconsistency in the districts’ use of alternative school programs; over-utilization of alternative school for short-term suspensions; failure to help students successfully re-enter mainstream schools; involuntary assignment of poorly qualified teachers to alternative school; pushout of “unwanted” students to alternative school; and the absence of alternative school PTAs.37

In 2001, the U.S. Civil Rights Commission cited similar concerns about Mississippi’s alternative schools. Pointing to overassignment of African American male students, it suggested that these students were more likely to be referred to alternative school on a discretionary basis than were their white classmates. The study also criticized the educational services offered at many alternative schools as leaving “much to be desired.”38 A year later, another independent study warned that in many Mississippi school districts, alternative schools were “seen as a dumping ground for students who are not successful in the regular setting,” and described Mississippi’s alternative school system as “far behind alternative education in the rest of the nation.”39

The most recent statewide tally of alternative school referrals, at just over 5000 during the 2007-08 school year, still represents only about one percent of the statewide student population. But this figure is on the rise, and as Mississippi’s alternative school system expands, its struggles with performance and accountability affect an increasingly significant share of the state’s young people. With each uptick in the size of the system, the urgency of resolving those issues increases.

**QUESTION TWO: Are Alternative Schools Accountable?**

Data collection and monitoring are critical elements of any public program, including alternative schools. One study of alternative schools recommends: “In order to properly evaluate at-risk programs in the context for which they are designed, it is imperative that school leaders and program managers collect longitudinal data to document the positive impact of the school over time.”40 Otherwise, disaster looms: “Failing to spend the time, energy, and money to properly evaluate is to doom your program to mediocrity or failure.”41
Because students often do not remain enrolled at alternative school for a whole year, or even a whole semester, annual statewide standardized testing, such as is performed to determine whether schools have achieved Adequate Yearly Progress (AYP) as required by the No Child Left Behind Act, ordinarily does not constitute an adequate or fair measurement of alternative school performance. Thus, policymakers must develop longitudinal, outcome-based measures tailored for alternative schools. These may include statewide tests, but should also integrate “additional measures of student achievement and learning, such as teacher-designed, classroom-based assessments or projects, student attendance, and possibly job performance or demonstrations of job-related learning.”42 They also should include recidivism rates, as well as the rate at which alternative school students drop out.

Another critical element of a successful alternative school program is transparency. It is not enough merely to know how well the school is performing: school officials also must share their knowledge with the communities they serve. Families whose children attend or might someday attend an alternative school, as well as other citizens whose tax dollars support it, have a right to know whether it is accomplishing its purposes.

Transparency, and the accountability it permits, are particularly important given that Mississippi school districts, and the state itself, are spending significant amounts on alternative school programs. Leaving aside the important question of whether current spending on the alternative schools is adequate, it certainly is not trivial. In Vicksburg, for example, during 2005-06, the school district spent more than $1.4 million operating its alternative school program, of which nearly a third was state funding. This figure represents only about 2.8 percent of Vicksburg-Warren’s total operating budget – but if 2.8 percent seems insignificant, it may be helpful to consider that if every school district spent that much on its alternative schools, statewide alternative school spending in 2005-06 would have totaled nearly $110 million.

Despite the substantial public investment Mississippi’s alternative schools represent, little reliable information is available about their performance.43 Even gathering basic data is nearly impossible. How many children attend alternative school statewide? How many are boys, and how many are girls? How many are African American, how many are white, and how many are Hispanic? How many have special needs? The state has not made the answers to these questions publicly available.

Mississippi’s secrecy on the topic of alternative schools stands in stark contrast to its laudable openness about mainstream schools. On the MDE website, via Mississippi’s excellent public database, the Mississippi Assessment and Accountability Reporting System (MAARS), members of the public have
easy access to essential facts about each of Mississippi’s schools: populations, demographics, and test scores. Those data are at the fingertips of every parent, child, advocate, or concerned citizen – as they should be. It is as simple as pulling down a menu and selecting the name of the school your child attends. But the same is not true if your child attends alternative school. In fact, the MAARS database, which is searchable by the name of any of the state’s hundreds of public schools, simply leaves out the names of Mississippi’s alternative schools, as if they did not exist.

It is true that demographic data collection is more difficult when it comes to alternative schools, because of their transient student populations. But the problem is not data collection. MDE has access to data; its Mississippi Student Information System (MSIS) already requires school districts to upload detailed information about students referred to alternative schools – including the sex and race of the student, as well as the reason for the referral. No one would suggest that such information simply be posted online. Special privacy concerns apply to alternative schools, where, in most cases, the fact of enrollment constitutes a disciplinary sanction. However, it would not be difficult for MDE to use the data it receives to provide basic information about alternative schools in each district and statewide.

Furthermore, state law requires that each school district have procedures in place for “annual alternative school program review and evaluation”44 – though it does not actually require that such annual reviews be performed. Again, it would be easy for MDE to make such reporting available on its website. But it does not appear that MDE even seeks to obtain individual school districts’ annual reports. When we asked it to release any such reports in its possession, it replied that it had none. For all we know, no such reports even exist.

Fortunately, the Mississippi legislature has the power to repair this situation. It appears that Mississippi’s alternative schools are absent from its statewide database for this reason: When a student is sent to alternative school, her scores on the state’s annual tests are reported as though she had remained at her home school. Indeed, this is a wise approach. If it were otherwise, the home school would have an incentive to transfer low-performing students to the alternative school as a means of boosting its overall performance on the state test. But nothing prevents the state from reporting the test scores achieved by alternative school students twice – once for the home school, for AYP purposes, and once for the alternative school, as a means of measuring alternative school performance.

Here it may be argued that the students who attend alternative school are low performers, and the alternative school cannot be expected to bring them up to speed. But this is an obvious fallacy. An alternative school is a school, not a jail. Helping students build the academic skills they need to become productive citizens is a critical mission, with respect to which alternative schools may not simply blame the students and concede defeat. Instead they should report test scores every year, supplementing that
reporting, as described above, with other measures designed to capture short-term gains – and then be judged on their performance like every other school in the state.

A second relatively easy repair the legislature could accomplish would be to mandate not only that each school district have annual reporting guidelines, but also that each district actually prepare an annual report and program assessment for its alternative school program, that those reports be transmitted to MDE, and that MDE make those reports publicly available. The legislature might require, as well, that each district’s annual report contain elements essential to gauging a school’s quality, e.g., test scores, teacher qualifications, and disciplinary statistics. It would not be necessary to reinvent the wheel; existing guidance on evaluating alternative schools might prove useful in this respect, as would the roster of program elements already contained in the statute. Indeed, the legislature might simply require that school districts comment on their efforts to satisfy each of the elements it has already identified as essential.

One reason for the persistence of problems with Mississippi’s alternative schools is that so little information is available about them: Which students do they serve? What services do they provide? What outcomes do they produce? No one seems to know. As explained above, a principal goal of this report is to suggest ways of correcting that deficiency, while also providing basic data about Mississippi’s alternative school system, thus empowering educators and policymakers to identify and solve long-standing problems.

**QUESTION THREE: Who Goes to Alternative School?**

Mississippi’s alternative schools are an increasingly important part of its educational landscape. Their enrollment has grown significantly over the past several years, as has the percentage of students statewide whom they serve. Further, the impact of Mississippi’s alternative schools is not distributed evenly. Certain students are disproportionately likely to be referred to alternative school: male students, African American students, and students receiving special education.

**a. The Data**

This section of the report draws on data provided by MDE and school officials in the target districts (Jackson, Madison County, Picayune, and Vicksburg) pursuant to public records requests. (DeSoto County is not included in this section because we have been unable to obtain data from that district.) We regard these agencies as having the best available information on the subject of alternative schools,
and therefore we have relied on their accounting. However, two apparent inconsistencies merit mention.

First, with regard to Picayune and Jackson, disparities exist between MDE’s reporting and that provided by the districts. The data we received from MDE were for the 2007-08 school year, while those we received from the districts were for 2004-07. Nevertheless, we expected that alternative school enrollment across this four-year period, as reported by state and local agencies, would be roughly consistent. Indeed, with regard to Vicksburg and Madison County, this was the case. But when it came to Picayune and Jackson, striking differences emerged. During 2004-07, average enrollment at Picayune’s alternative school, according to the district, was 181 students. But in 2007-08, according to MDE, the school enrolled fewer than 20 students. Likewise, from 2004 to 2007, according to Jackson school officials, referrals to Capital City Alternative School averaged 552 students, yet MDE reported that referrals to the school in 2007-08 totaled only 120. Barring dramatic changes at the schools in question – and we have no evidence that such changes occurred – such disparities suggest reporting errors on one side or the other.

Further inconsistencies arose when we compared MDE’s reporting with data gathered under the federal E-Rate program, which offers schools discounted telecommunications services based on the number of low-income students they serve. To participate in E-Rate, Mississippi annually reports the number of students housed in each school building. For this purpose, it uses a snapshot – a head count performed on one day. While E-Rate reporting cannot tell us how many students were referred to a particular district’s alternative program, it does provide a baseline for the number of annual referrals, since the number of students present in a given school on a single day cannot be greater than the number of students referred to that school all year. We compared the state’s 2007-08 E-Rate reporting for alternative schools to the 2007-08 figures provided by MDE – and again, disparities emerged. In some cases, the E-Rate total, which describes the number of students present at an alternative school on a given day, exceeds the number of students referred to that school during that entire year, according to MDE. For example, this is the case with regard to Cleveland (MDE reports 35 referrals in 2007-08, but the E-Rate head count indicates 80 students present on a single day); Columbus (MDE 21 vs. E-Rate 70); Hinds County (MDE <20 vs. E-Rate 37); Moss Point (MDE <20 vs. E-Rate 42); and Picayune (MDE <20 vs. E-Rate 88).

We cannot speculate about why disparities exist between the enrollment data we received from MDE, the data the districts provided, and the state’s E-Rate reporting. Nor are we aware of any reason to

Certain students are disproportionately likely to be referred to alternative school: male students, African American students, and students receiving special education.
suspect MDE’s data of wholesale inaccuracy – and for this reason, the remainder of this section relies on MDE’s data, supplemented by data from the individual school districts, without further caveat. But these inconsistencies do suggest a need for caution, while once again highlighting the urgent need for better data collection and monitoring.

b. Enrollment

Over the past four years, the number of alternative school referrals has risen steadily, increasing more than 23 percent from 4,333 referrals in the 2004-05 school year to 5,348 referrals in 2007-08.

This increase does not result solely from a larger statewide student population. To provide a sense of the rising per capita impact of alternative school referrals, the following table displays the number of referrals per 1000 students statewide:
Students referred to alternative school comprise only about 1 percent of the statewide student population. But that figure actually represents a fourfold increase over the past decade; as of the 1996–97 school year, only about one fourth of one percent of the state’s students were enrolled in alternative programs.48

The size of alternative programs, and their per capita impact, vary from one district to the next. In 2007–08, according to MDE, the largest programs, measured by referrals, were those in Rankin County (280 referrals); Tupelo (279 referrals); and Pascagoula (263 referrals).
Meanwhile, according to MDE, the districts with the most alternative school referrals per capita were Franklin County, Clarksdale, and Stone County:
We cannot say which alternative program is the smallest, or enrolls the fewest students per capita, because MDE declined to release population totals, or any other data, for any alternative program with fewer than 20 referrals, on the dubious ground that doing so might have permitted identification of individual students. Nevertheless, its data point to the existence of a significant number of very small alternative programs. They indicate that of Mississippi’s 152 school districts, 91 have no alternative programs of their own, or have programs with fewer than 20 students, while an additional 23 districts have programs enrolling between 20 and 35 students.

c. Gender

Boys account for a much larger share of the alternative school population than girls do. The following table depicts gender breakdowns, according to MDE, for alternative schools statewide over the past four years:

Similar disparities exist in the individual districts we studied, and are sharpest in Jackson, where, over three years, more than 80 percent of the students attending alternative school were boys:
Across the state, alternative school referrals have increased more sharply over the last four years for boys (from 3,100 to 3,872, or an increase of about 25 percent) than for girls (from 1,215 to 1,455, or an increase of just under 20 percent).

d. Race

Too often, the harsh disciplinary measures comprising the school-to-prison pipeline disproportionately impact students of color. For example, research has shown that African American and Hispanic youths are more likely than their white peers to be arrested even when committing the very same offenses.\textsuperscript{49} Unfortunately, some states’ alternative schools follow this pattern. By enrolling a disproportionate number of students of color, they overpunish those students in comparison to their white classmates, while also enacting a form of racial segregation. In Texas, for example, African American students not only are more likely to receive discretionary referrals to alternative school, but once enrolled at alternative school are required to stay there longer than are white students.\textsuperscript{50}

Similar problems exist in Mississippi. In individual districts and statewide, African American students are substantially overrepresented among the alternative school population. Again, this is not new. As early as 1996, observers warned that “the observed population in Alternative Schools during our site visits was overwhelmingly black and male. . . . Without clear and rigorous placement policies and practices, this program becomes a dumping ground for unwanted students (typically over-age black male middle school students).”\textsuperscript{51} And the 2001 Civil Rights Commission report mentioned above
noted one advocate’s concern that the overrepresentation of African American students in Mississippi alternative school resulted from the unfair application of zero tolerance discipline policies.\textsuperscript{52}

Statewide, over the past four years, African American students have been referred to alternative school at a rate two to three times greater than among white students. In 2007-08, for example, a total of 3,601 African American students were sent to alternative school across the state of Mississippi; the corresponding figure for white students was 1,667.

Per capita alternative school referral rates exhibit disparities, as well. In three of the four years for which we obtained data, the per capita rate at which African American students were sent to alternative school statewide was approximately double the corresponding rate for their white classmates. In 2007-08, for example, for every 1000 African American students in the population, there were 14.4 alternative school referrals; during the same year, for every 1000 white students, the total number of referrals was just 7.3. In 2005-06, the disparity was especially great: The per capita rate of alternative school referral among African American students that year (14.2 per 1000) was 2.7 times the rate among white students (5.2 per 1000).

Research has shown that African American and Hispanic youths are more likely than their white peers to be disciplined or arrested even when committing the very same offenses. Unfortunately, some alternative schools follow this pattern.
Similar disparities exist in the individual school districts for which we obtained data. In all four districts, African American students were referred to alternative school in greater absolute numbers than were white students. This was true not only in Jackson, where the student population is overwhelmingly African American, and in Vicksburg, where African American students constitute a majority, but also in Madison County and Picayune, where a majority of the student population is white.

A comparison of per capita rates of alternative school referral among African American and white students likewise reveals disparities in all four districts. The following table, which displays the average annual rate of alternative school referral, per capita, among African American and white students,
demonstrates that racial disparities exist in all sorts of Mississippi school districts: urban, suburban, rural, majority African American, and majority white.

Nor are the disparities trivial. Picayune’s average annual per capita referral rate among African American students (18.0 referrals per 1000 students) was more than double the corresponding rate among white students (7.6 per 1000). In Vicksburg, the referral rate for African American students (10.1 per 1000) was over four times the rate among white students (2.2 per 1000). In Jackson, the referral rate among African American students (5.9 per 1000) was nearly six times that among white students (1.1 per 1000). And in Madison County, the rate of referral among African American students (7.6 per 1000) was seven times that among white students (1.0 per 1000).

It would be a mistake simply to assume that higher rates of referral among students of color reflect higher rates of misconduct. Some of the offenses for which students are sent to alternative school are subjectively defined and permit a high degree of discretion about whether and how to discipline a student – “disrupting class,” for example. In some jurisdictions, African American students are more likely to be punished at least in part because school officials are more likely to find that they have engaged in such misconduct.53

The data suggest the existence of this phenomenon in at least one of the jurisdictions we studied. We obtained data from Madison County showing the race of each student referred to alternative school, together with the offense that prompted the referral, for one full school year: 2005–06. During that

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In Madison County, the rate of alternative school referral among African American students was seven times that among white students.
year, the data show, the reasons students were referred to Madison County’s alternative school varied by race. African American students, and particularly African American girls, were more likely to be referred to alternative school based on offenses that appear to have a subjective basis, such as “multiple [discipline] referrals.”

Specifically, “multiple referrals” accounted for 44 percent of all alternative school referrals imposed on white girls (4 referrals of 9 total were for this reason); 50 percent of referrals among white boys (14 of 28); 78 percent of referrals among African American boys (69 of 89); and 80 percent of referrals among African American girls (32 of 40).

Meanwhile, white students, and particularly white girls, were much more likely to be referred for objectively defined offenses, like those involving drugs, alcohol, or tobacco. Such offenses accounted for 56 percent of all alternative school referrals imposed on white girls (5 of 9); 36 percent of referrals among white boys (10 of 28); 12 percent of referrals among African American boys (11 of 89); and only 5 percent of referrals among African American girls (2 of 40).
We do not know why racial disparities exist in both the number and the nature of alternative school referrals in Madison County. Plainly, however, school officials should investigate to be sure that they are not the product of conscious or unconscious race-based decisionmaking among those responsible for referring students to alternative school – a concern noted even in the earliest days of Mississippi’s alternative school program.

Our interviews with students and parents gave further cause for concern about the impact of alternative schools on students of color. Interestingly, several students told us that once they arrived at alternative school, African American and white students were treated more or less the same way – that is, they were all treated badly.\(^{54}\) But on the subject of which students were sent to alternative school in the first place, our informants indicated that in some school districts, African American and white students do not receive equal treatment. We heard about several incidents in which African American students were sent to alternative school, while white students committing the same offenses were not.

Racial disparities in the rate of alternative school referral exist in all sorts of Mississippi school districts: urban, suburban, rural, majority African American, and majority white.
Notable among these was a 2006 case, also in Madison County. In April of that year, seven Madison County students, all African American, were caught drinking from a soda bottle that one of the students had spiked with alcohol. By coincidence, two months earlier, seven white students, also in Madison County, had also been caught drinking from an alcohol-spiked bottle. Of the African American students, all seven were assigned to the Madison County alternative school for a period of 22 weeks. But among the white students, who had committed exactly the same offense, only two were sent to alternative school, and for a shorter period – about 13 weeks. The other five white students received lighter punishments: Three received three-day suspensions, and two received only a warning.

The parents of the African American students contacted the U.S. Department of Justice Office of Civil Rights (OCR), which investigates allegations of racially biased decisionmaking in public schools. OCR sent a small team of investigators, who reported their findings in a letter to the parents, one of whom provided the letter to the ACLU. The OCR report reaches the troubling conclusion that indeed, “the African American students were treated differently on the basis of their race.” Even so, OCR accepted the school district’s explanation for why it treated the two groups of students differently. The explanation? Some of the white students claimed not to have known that the bottle from which they were all drinking contained alcohol. Others admitted having been told that the bottle contained alcohol, but claimed they did not believe it. Thus, the school district argued – and OCR agreed – that the white students deserved substantially lighter punishments.

OCR’s judgment in this case is hard to fathom. Meanwhile, the case suggests that conscious or unconscious bias, not differential rates of offense, may underlie the disparities illustrated above, even though making alternative school referrals on the basis of race would contravene fundamental antidiscrimination principles. In the end, the data we gathered do not permit strong claims about the reasons underlying racially disparate alternative school referrals in individual school districts or statewide. Nevertheless, those disparities, viewed against a backdrop of unfair overpunishment meted out to students of color in other states, and in conjunction with anecdotal evidence of similar occurrences in Mississippi, point to the need for a careful, good faith examination of the racial impact of the alternative school assignment process in the target districts and across the state.
e. Special Education

Compared to their general education classmates, students receiving special education are at much greater risk for negative educational outcomes. Their dropout rate is almost twice that among general education students.58 Students receiving special education also may be disproportionately impacted by disciplinary sanctions. In some states, the rate of suspension among these students is double the rate for the student population as a whole.59 Too often, the heightened legal protections available to special education students fail to shield them from these harms.60

It is encouraging that the nationwide rate of alternative school referral seems not to be elevated for special education students; the 2001 NCES study mentioned above found that about 12 percent of all students both inside and outside the nation’s alternative schools were special education students for whom school officials had prepared Individualized Education Programs (IEPs), as required by federal law.61 Nevertheless, in some states, such students do constitute a disproportionate share of the alternative school population. In Texas, for example, students with disabilities are 11 percent of all students, but 22 percent of those referred to alternative school.

Besides being over-referred to alternative school, special education students also may be deprived of adequate services when they get there. In some cases, this occurs because under-resourced alternative schools lack adequate staffing and resources to serve special needs students properly. Or alternative schools may serve as “dumping grounds” for students whose needs are difficult to meet, and whom school officials therefore intentionally neglect.

Historically, some Mississippi alternative schools have struggled to meet their obligation to special education students. Under a consent decree in the Mattie T. litigation, originally filed in 1975 by special needs students against the state of Mississippi, MDE staff identify school districts that are over- or under-referring students as exhibiting certain disabilities, and then coordinate monitoring visits to those districts. The reports generated by these monitoring visits, which are publicly available on MDE’s website,62 describe a litany of problems.

For example, visits to Mound Bayou in August 2004 and to Drew in January 2005 found special education students placed at alternative school without the procedural protections required under federal law. During a March 2005 visit to Greenville’s alternative school, investigators discovered a seventh grader who had failed five times, as well as an 18-year-old student in eighth grade. In July 2005, a visit to Perry County revealed that all the special education students assigned to the alternative school had IEPs, but also that none of their teachers were providing the services those IEPs described. The report on a May 2006 visit to Petal concluded simply that special education students were not
receiving a “free appropriate public education,” as federal law requires. And in December 2006, a visit to Picayune indicated that its alternative school provided “consistent and respectful” positive behavioral support, as well as “instruction that reflected academic priorities,” but also noted that of 149 high school students district-wide who were identified as having disabilities, 28 students, or approximately 20 percent, were assigned to alternative school. Moreover, the instructional day at the alternative school ended at 1:50 p.m. – significantly earlier than at the district’s mainstream schools.

We were able to obtain data on the assignment of special education students to alternative schools only from Picayune and Vicksburg. But these data suggest that in some Mississippi districts, special education students are referred to alternative school at vastly disproportionate rates. For the school years 2004-07, the following table compares the percentage of students receiving special education in each district as a whole with the percentage of such students in its alternative program. As it indicates, although only about 3 percent of students in the Vicksburg-Warren school district received special education during that period, nearly 15 percent of the students at Vicksburg’s alternative school did. And in Picayune, although slightly less than 3 percent of students received special education districtwide, the corresponding figure for the alternative school was just under 30 percent – about 10 times greater.
Anecdotal evidence on the impact of alternative programs on Mississippi’s special education students was discouraging. In several districts, parents of special education students assigned to alternative school complained about poor staffing.63 One Vicksburg parent observed that because parents of special education students lacked information about their children’s rights, school officials simply “pass[ed] them around like a bad penny.”64 A parent of a special needs student in Picayune explained that his son had spent four years at alternative school, and that during most of that time his school day had been shorter than the school day at the district’s mainstream schools.65

Advocates expressed similar concerns. One described an incident in which a teacher in Vicksburg, lacking an IEP for one special education student, made the student read out loud in front of his classmates in order to gauge his reading level.66 Another observed that at Jackson’s Capital City Alternative School, teachers of identified students often are not aware of the contents of their students’ IEPs, or even that the IEPs exist.67 Still another argued that in general, Mississippi’s alternative schools were not an appropriate setting for students with special needs; she cited numerous specific concerns, including failure to perform proper evaluations, poor staffing, limited access to services, and exposure to other students known to have engaged in delinquent or dangerous behavior.68

QUESTION FOUR: What Happens at Alternative School?

An alternative school has a duty to provide students with an education, just like any other school.69 Indeed, this duty is particularly urgent for alternative schools, which serve some of Mississippi’s most vulnerable young people. Writes one researcher: “Students in alternative learning programs are twice as likely to have parents who have less than a high school education; are more likely to live in single parent families; are more economically disadvantaged; and have repeated a grade, been suspended, or dropped out.”70 The students who attend Mississippi’s alternative schools need high quality educational and social services, delivered by a caring, committed, and well-trained staff, in an environment that is highly structured, yet positive and supportive in character. Unfortunately, available evidence indicates that some Mississippi alternative schools are falling short of the mark.

a. Intake

Before students even enter alternative school, a formalized referral and screening process should occur.71 This process may include testing to detect emotional and behavioral problems.72 For students who have been formally identified as having disabilities, the procedures of the federal Individuals with Disabilities Education Act (IDEA) may suffice, provided that those procedures are observed,
since the IDEA requires that a new Individualized Education Program be prepared for an identified student upon a change in placement. But a rational process must exist that includes all students, and that permits school officials to judge whether each child belongs at alternative school, and if so, what supports and services that child will need.

An educator helping to implement screening and admission processes at a Mississippi alternative program explains: “The admission process is designed to ensure that this is the best place for the student . . . Because we know that we could do damage to this entire setting by having someone here who’s not an appropriate placement here.”73 Obviously, alternative school leaders cannot always choose their students; nor should there be many whom they would wish to exclude. But a formal, rational intake process will help ensure that students do not enroll whom the alternative school is unequipped to serve, while also informing school leaders about the strengths and weaknesses of incoming students.

b. Academic Programming

For an alternative school, as for any other school, high quality academic programming is essential to success. In recommending best practices for alternative schools, researchers emphasize the importance of rigorous academics, personalized learning plans, and high expectations for all students.74 Mississippi law likewise mandates “curricula addressing cultural and learning style differences” and “a rigorous workload,” as well as requiring that for each student who is referred to alternative school, school officials prepare an “individualized instructional plan,” or “IIP.”75

Unfortunately, some Mississippi alternative schools fail to provide students with academic services that meet their needs. In its 2001 report, citing evidence that some alternative school teachers simply directed students to fill out worksheets, rather than providing active instruction, the Civil Rights Commission observed: “[T]here is no evidence that students will benefit from the structure or substance of alternative school programs.”76 More recent evidence conveys a similar impression.

One common problem is failure to comply with the IIP requirement. As noted above, the development of a learning plan tailored to the needs of the individual student has been recognized as an important element of successful alternative programs. And the virtue of this approach has been amply demonstrated in the special

“When I went in there, the teacher was doing her fingernails, painting her fingernails, the other girls were in the back braiding hair, and some of the kids were just playing, sitting down, you had one child that was just asleep.”

—A.C., Vicksburg parent
education context. But despite the wisdom of the IIP requirement, and the unqualified mandate of state law, it appears some school districts simply ignore it. In DeSoto County, Jackson, Picayune, and Madison County, educators, parents, and students reported failures to prepare IIPs.77

Of equal concern is some districts’ failure to provide alternative school students with meaningful, challenging schoolwork. One student who had attended Vicksburg’s Grove Street alternative school reported that his work had consisted of simple worksheets: “They had me doing real easy stuff, kid stuff, like two times two . . . . Kindergarten work.”78 He also reported that his teachers had simply allowed him to sleep: “I’d sleep at school last year. Almost every day, all day.”79 The mother of another Grove Street student, describing a visit to her child’s classroom, offered a similar account: “When I went in there, the teacher was doing her fingernails, painting her fingernails, the other girls were in the back braiding hair, and some of the kids were just playing, sitting down, you had one child that was just asleep.”80 Students who had attended alternative school in Madison and DeSoto Counties reported receiving work that was well behind the work they had been doing at their home schools, or simply too easy.81

MDE recommends that home schools provide alternative school students with appropriate coursework; state guidelines indicate that each student’s IIP should “describe procedures for the transmittal of regular education class work to alternative program instructors.”82 Some alternative schools, like the Mary Bethune School in Hattiesburg, proceed in this fashion.83 But others have rejected this system in favor of having alternative school instructors develop course materials for their students. Jackson’s Capital City School has adopted an intermediate strategy: Home school teachers transmit objectives, but not lesson plans, to their alternative school colleagues.84 For students whose home school curricula are inappropriate, developing a new one makes sense. But this approach risks exacerbating the disruptive effect of alternative school, by ensuring that students who are referred miss out on the work their classmates at the home school are doing. In one case, a DeSoto County student returning from alternative school near the end of a marking period was told that none of the work she had done at DCAC had counted.85

Other indicators that alternative schools are providing students with a “rigorous workload” are absent. Alternative school students and their parents in Picayune, Jackson, Madison County, and DeSoto County reported that homework was never assigned.86 Others reported that students at alternative school were never given any schoolbooks to bring home.87 Even some of those students who did report receiving homework at alternative school told us that this had occurred infrequently, and that

“I’d sleep at school last year. Almost every day, all day.”
—E.W., Vicksburg student
the work was so easy that they were usually able to finish it by the end of the day.88

Alternative school students also may receive fewer minutes of instruction than their classmates at mainstream schools. This appears to contravene the command of state law that alternative schools require “full-day attendance.”89 In Picayune and Vicksburg, for example, we spoke with alternative school students who reported being dismissed up to an hour earlier than students at other schools.90 And two Jackson parents reported that alternative school administrators had sometimes called them before lunchtime and asked them to pick up their children and take them home.91

Even where students remain physically present at school, some alternative schools neglect the state requirement for “minimal noninstructional time.”92 For example, a student at Vicksburg’s Grove Street school described being given “free time” at the end of each day, beginning around 1:30 p.m., even though dismissal was not until 1:55. When asked how he and his classmates used the extra twenty-five minutes, he replied: “Sit there and wait for our buses and talk.”93 Similarly, a student who attended alternative school in Madison County reported: “When they didn’t have anything for us to do, they would just tell us to sit there quiet and stuff.” This happened, he said, “almost every day”: “We would have like twenty-five minutes of class time and the rest of the time we would just sit there.”94

A final concern is that the instruction students receive at alternative school is often overwhelmingly behavioral in focus, rather than academic. Reported one alternative school educator: “Instruction is the last thought on their mind; it’s all about behavioral modification.”95 Clearly, it is imperative to address behavior with students who have engaged in misconduct sufficient to warrant a transfer to alternative school. But this important task must not crowd out academic instruction, particularly given that frustration rooted in academic failure may contribute significantly to misconduct. Otherwise students make little headway academically while they are at alternative school, so that when they return to their home schools, the cycle of failure, frustration and misbehavior simply resumes.

We spoke with several students who reported falling far behind in their schoolwork while at alternative school. One, who spent several months at Madison County’s alternative school, reported that it took him a full marking period to recover after he returned, even though his father arranged tutoring to help

“We would have like twenty-five minutes of class time and the rest of the time we would just sit there.”
—A.F., Madison County student

“When he did go back to regular school, he was so far behind. He caught hell, I mean, he just couldn’t catch up.”
—V.R., Madison County parent

One, who spent several months at Madison County’s alternative school, reported that it took him a full marking period to recover after he returned, even though his father arranged tutoring to help
him catch up. Explained his father: “When he did go back to regular school, he was so far behind. He caught hell, I mean, he just couldn’t catch up.” A parent advocate reported that at Jones County’s alternative school, students at widely varying grade levels are placed in the same classroom, preventing them from receiving appropriate instruction and causing them to fall behind. And the mother of a student who attended Vicksburg’s alternative school described his struggles upon returning to his home school: “When they were . . . trying to give him the actual . . . work, that’s when he just crumbled. . . . He really had a breakdown.”

Many students who are referred to alternative school are already struggling academically. Often there is a direct link between these students’ academic difficulties and their misbehavior. Ideally, a stint at alternative school would help students get their feet under them academically. Instead, too often, it just knocks them further out of balance. Said one educator: “My real belief is if they would put more resources into the academic side of it you could reach some of these kids.”

**“My real belief is if they would put more resources into the academic side of it you could reach some of these kids.”**

—G.G., alternative school teacher

c. Social Services

One of the best rationales for alternative school is that it provides an opportunity to deliver intensive services to at-risk students. Alternative school students are likelier than other students to engage in a variety of high-risk behaviors, including drinking alcohol, smoking cigarettes, using drugs, driving drunk, carrying weapons, having sex, getting in fights, and even attempting suicide. Educational experts argue that alternative schools should offer such students not only a behavioral curriculum, as noted above, but a variety of social services, e.g., counseling, mentoring, social skills training, school-based mental health services, and substance abuse prevention.

There is cause for concern about whether Mississippi alternative schools are providing such services. Fewer than half of the schools responding to a 2000 survey reported that they provided students with counseling, and fewer than a quarter had social workers available to work with students and their families. And recent anecdotal evidence points to potential problems in the individual districts we examined.

In Vicksburg, for example, the alternative school staff roster includes a social worker, and students and parents reported receiving counseling at the Grove Street School, but an advocate who works with Vicksburg parents warned that the school provides little in the way of meaningful mental health services.
services. More troubling: Two Vicksburg parents reported that counselors or other staff had asked – or even insisted – that they increase their children’s doses of psychoactive medication (e.g., for attention deficit disorder), so that the school would be able to handle them more easily.

In DeSoto County, the school district contracts with a private, for-profit healthcare firm, Lakeside Behavioral Health, to provide a “coordinator” and five “program assistants” whose role is to assist with behavior management and run a support group. But it does not appear that these individuals are required to possess advanced degrees, since Lakeside’s contract stipulates that it will provide consultations with staff possessing such degrees for an additional fee (master’s level consultations are $50/hour, and consultations at the Ph.D. level are $100/hour). Nevertheless, Lakeside’s services are costly; in the 2008-09 school year, the total value of the contract to Lakeside was $239,278.

Meanwhile, one parent of a student who attended Picayune’s Center for Alternative Education reported that he had received “no kind of counseling” while there. And a social service provider familiar with Jackson’s Capital City Alternative School reported that although the school is well-staffed, with a case manager, a school psychologist, and two social workers, many students who are in need of mental health services nevertheless do not receive them.

d. Staffing

A highly qualified staff is essential to the success of any alternative school. Alternative school teachers must be prepared to face myriad challenges: students exhibiting chronic misbehavior, mental health issues, or learning disabilities; students who come and go frequently, offering little opportunity for assessment; classes in which each student requires his or her own personal lesson plan. Thus researchers describing alternative school best practices emphasize the importance of specialized, ongoing professional development.

Nor is it sufficient that alternative school teachers be capable of handling myriad challenges; they also must do so willingly, and they must care about and be committed to their students. Assigning teachers to teach in alternative schools involuntarily is a mistake, since teachers who do not wish to be present will perform less well. Nevertheless, school districts in some states have been found to assign poor teachers to alternative schools as a “punishment,” with predictably unfortunate results.

Equally important for alternative school success is the presence of a dedicated, talented school leader. An effective school leader must care about her students and support her staff; must be a competent manager of resources and personnel; and must articulate a coherent vision for the school to students,
parents, staff, and the community at large. Because of the special challenges alternative schools present, as well as the danger that an alternative school may be a “second class citizen” among the district’s community of schools, strong leadership may be even more important for alternative schools than for mainstream institutions.

Our findings with regard to staffing at Mississippi’s alternative schools were mixed. Several students reported having had at least one teacher at alternative school whom they respected and admired. News accounts occasionally describe alternative school teachers as winning awards for excellence in teaching. And in the districts we studied, where we were able to obtain data on staffing, those data indicated that staffing ratios are within the state maximum of 15:1 (Picayune’s average during 2004-07 was 14.7 students per teacher, and Madison’s was 9.2); that alternative school staff are for the most part experienced (the average number of years of experience for alternative school teachers in Madison County was 8, in Jackson was 12, and in Picayune was 13); and that a significant number of alternative school staff possess advanced degrees (in Picayune, an average 51 percent of teachers at least possessed master’s degrees; in Jackson, the figure was 46 percent).

However, several advocates identified poorly trained staff as a problem for Mississippi’s alternative schools. News accounts occasionally describe alternative school staffers and volunteers engaging in behavior that is inappropriate or even criminal, as when, in 2003, a volunteer at the Long Beach alternative school was arrested for sexual battery and molestation. And several of the students and parents we spoke with complained that the teachers they encountered at alternative school were unqualified and performed poorly.

Also troubling were reports of staff being assigned to Mississippi alternative schools involuntarily. A parent advocate reported that at least one staff member had been transferred to Madison County’s alternative school as punishment for perceived misconduct. In Jackson, principals are permitted to declare low-performing teachers “building excess”; for teachers with this designation, no placement may be available other than at the alternative school. These are not new issues; the 1996 report mentioned above warned that “[t]eachers in some [Mississippi] districts are ‘sentenced’ to work in the Alternative School.” Clearly, such practices are unlikely to yield success, and indeed may guarantee failure.

The temptation must be resisted to make alternative schools into little jails; a far better approach is to use research-based strategies to offer students a learning environment that is both highly structured and positive in character.
e. School Climate

Another key ingredient of a successful alternative school is a positive school climate. Research forecasts failure for alternative schools whose approach is essentially punitive. Schools that seek merely to “segregate, contain, and reform” misbehaving students “reap no positive long-term gains and may even increase negative outcomes.” This is only logical, since adopting a punitive stance “may put educators in the awkward – if not unconscionable – position of creating schools undesirable enough to deter bad behavior.”

Fortunately, there is an alternative. Positive behavioral approaches have been shown to achieve favorable results with challenging students. A recent study of Texas alternative schools recommended implementation of “positive behavioral expectations and supports school-wide,” and cautioned against punitive measures, including arresting juveniles, “boot camps,” and “scared straight” approaches, that research has shown to be ineffective. Another recent study, offering an in-depth look at three effective alternative schools, explained that “students identified as troubled or troubling tend to flourish in alternative learning environments where they believe that their teachers, staff, and administrators care about and respect them, value their opinion, establish fair rules that they support, are flexible in trying to solve problems, and take a nonauthoritarian approach to teaching.”

None of this is to suggest that alternative schools should fail to provide students with a highly structured learning environment. This, too, is an element of successful alternative programs. Especially for students whose misconduct has demonstrated limited ability to manage their own behavior, a structured environment is essential. But it is a mistake to assume that the only way to achieve structure is with an iron fist. Indeed, draconian discipline may do little more than keep the lid on; students and parents reported both strict discipline and disorderly classrooms in both Picayune and Vicksburg. The temptation must be resisted to make alternative schools into little jails; a far better approach is to use research-based strategies to offer students a learning environment that is both highly structured and positive in character.

In Mississippi, unfortunately, some alternative schools have taken the punitive route. Some schools’ disciplinary policies are absurdly punitive, like the DeSoto County rule that bars alternative school students from making friends: “Students may not exchange personal information (addresses, phone numbers, etc.) with other students or solicit friendships with other students.” Equally problematic is the same district’s degrading search policy, under which all students must shed extra layers of clothing.

“I don’t like it up in there. I don’t like getting searched and stuff. It makes me feel like I’m a criminal.”
—E.W., Vicksburg student
and remove their shoes and socks, and girls are required to “shake out” their bras and “pop” their bra straps every morning before entering school. And several advocates cited Jackson’s Capital City Alternative School as having an especially punitive atmosphere, one reporting that the school uses its zero tolerance policy “to the utmost degree,” and another expressing the view that the school’s zero tolerance policy is used to deliberately push out challenging and “undesirable” students.

In interviews, numerous students across the state likened their experiences at alternative school to jail. A student who had attended Picayune’s alternative school attributed this feeling to daily searches and the presence of surveillance cameras in the classroom. Said a DeSoto County student: “It’s jail – you just get to go home.” A student who had attended Vicksburg’s alternative school recalled: “Everybody thinks we’re dangerous … I don’t like it up in there. I don’t like getting searched and stuff. It makes me feel like I’m a criminal.” In such an environment, lasting improvements in the behavior of a struggling young person, let alone academic gains or positive changes in a child’s mental health, are as unlikely to occur as they are in a real jail.

f. Funding and Facilities

Stable, adequate funding is critical to alternative school success. In 1997, in a nationwide survey of alternative school leaders, a majority reported that maintaining stable funding was “the greatest need in initiating/maintaining effective alternative schools.” But achieving this goal can be difficult, since the alternative school student population ordinarily includes a high percentage of at-risk students whose needs may be expensive to meet.

Mississippi supplements local alternative school funding with a statewide block grant program pursuant to state law. Under this program, each district receives an alternative school grant equivalent to 0.75 percent of its average daily attendance, or 12 pupils, whichever is greater, multiplied by the statewide average per pupil expenditure. This is a sensible approach. The grant program not only provides local school districts with a reliable source of alternative school funding, but also creates opportunities for MDE to engage in oversight of local programs. Further, not tying grant amounts to actual enrollment avoids creating an incentive for districts to boost alternative school enrollment as a means of obtaining larger grants.
We were able to obtain budgetary data for three districts: Madison County, Picayune, and Vicksburg. In those districts, alternative school spending appears to account for a relatively small share of the total operating budget. In 2006-07, this share ranged from a low of 0.9 percent in Madison County to a high of 2.8 percent in Vicksburg-Warren. In the same year, the extent of local districts’ reliance on state funds to maintain their alternative schools varied widely; in Madison County, state funding accounted for 86 percent of the alternative school budget, while in Vicksburg, it accounted for only about 30 percent. Puzzlingly, Picayune’s fiscal year 2007 budget indicates that no state funds were used to operate the alternative school.

Unfortunately, we were unable to calculate each school district’s average annual expenditure per alternative school pupil. To do so, it would be necessary to know not only the total number of referrals, but also how long each student remained at alternative school. Because we could not obtain this information for most students at most of the alternative schools we examined, we cannot offer comparisons of per pupil spending at alternative schools in various districts, or between per pupil spending at alternative and mainstream schools.

However, anecdotal evidence suggests that even though alternative school students are likely to require more resources, not less, in order to succeed, some alternative schools are, in the words of one alternative school teacher, “resource-poor environments.” The same teacher offered specific illustrations of her school’s status as a “poor stepchild” – for example, alternative school teachers having to borrow classroom sets of out-of-date textbooks from teachers at mainstream schools, because they had no textbooks of their own.

A related issue is that of facilities. It is common sense that in order to be effective, alternative schools should occupy well-maintained facilities where students and staff are safe and feel comfortable. Moreover, state guidelines require that alternative school facilities be “clean, safe and functional, and commensurate with facilities provided to other students.” But securing adequate facilities has been problematic for Mississippi’s alternative schools. An educator familiar with the origins of the state’s alternative school program noted that this has been an issue from the start – when the statewide program began in 1993, he recalled, one district was forced to house its alternative school in the press box at the baseball field. In some districts, problems persist: The alternative school teacher quoted above said of her school: “It’s the oldest building in the county that is still used for instruction. It’s been raining through the roof on one side of the building.”
g. Family and Community Relationships

Any school enhances its likelihood of success by reaching out to the families of its students and involving them in the life of the school. Alternative school leaders and teachers should solicit active parental input, and parents should know that their opinions are respected and valued. Nearly as important as outreach to families is outreach to the wider community. Like partnerships with parents, community partnerships can enhance efforts to provide behavioral supports. Local businesses and voluntary organizations can assist with vocational training, job shadowing, and mentoring; health care or mental health services; cultural programming or other recreational opportunities; and donations of goods or cash. Recognizing the potential of such arrangements, as well as the fact that “[i]n many students who are assigned to an alternative school program have unique needs that cannot be totally addressed by resources in the local district,” MDE advises alternative schools to “collaborate with other agencies in their community.”

An alternative school’s efforts to build parental and community relationships may be complicated by negative opinions about alternative schools and their students. Parents may view the school with suspicion, frustrating school officials’ efforts to win their participation. Negative views may exist even among district personnel, who may regard the alternative school as a “second-class citizen.” The results are often damaging: Research points to the existence of a stigma attaching to alternative school students that may interfere with their success even after they leave. Thus it is important for school leaders to cultivate positive views of the school among families and beyond.

In Mississippi, as elsewhere, image is a problem for alternative programs. Negative perceptions of alternative school students are common. One parent, when she learned that her child would be sent to alternative school, said she and her son were frightened of what he might encounter “over there with those hoodlum kids.” Some alternative school leaders confront such views through outreach to home school teachers and administrators. One explained: “They shouldn’t be punished for life. People should receive them. Once they go back, they have just as much right. And when they don’t get a fair shake, I’m the first one to stop what I’m doing and go to that campus and say hey.”

—Principal Cassundra Brown, Mary Bethune School, Hattiesburg
disqualified any child assigned to alternative school from receiving aid under the federal Temporary Assistance for Needy Families (TANF) program.\textsuperscript{158}

Moreover, when it comes to family outreach, Mississippi’s alternative schools could do better. Again, this is nothing new: The 1996 report cited above noted that “while almost every school in the state has a PTA, we found no PTAs for Alternative Schools. ‘Parent involvement’ often was being called to the school because the student acted badly.”\textsuperscript{159} In interviews, parents in Vicksburg, Picayune, Madison County, and DeSoto County all reported that alternative school administrators either had been unresponsive or simply had treated them rudely.\textsuperscript{160} A Madison County parent explained: “If the principal likes a parent, they work with you, but if you give them lip, they will snub you in a heartbeat.”\textsuperscript{161} It can be difficult for parents of alternative school students to seek redress when their children are mistreated or denied essential services. Even where parent advocates intervene, school officials may still fail to treat parents with respect, e.g., by speaking only to the advocate, while ignoring the parent.\textsuperscript{162}

To be sure, in building relationships with parents, alternative school administrators face special challenges. Parents of students referred to alternative school are unlikely to be pleased about joining a new school community, and likelier to be frightened or angry. But discourtesy and highhandedness are exactly the wrong approach. Far better would be the strategy described in the study of successful programs mentioned above: “The opinions and participation of family members in the education of their children [are] valued, and students’ families are treated with respect.”\textsuperscript{163} Parents, for their part, must respond constructively, accepting invitations to participate and actively supporting the school’s academic and behavioral programs.

h. Re-entry

Finally, alternative schools must make sure that when students leave alternative school and return to their home schools, they don’t re-offend, experience low expectations and hostility at the home school based on the “alternative school stigma,” or simply fall through the cracks. To work with a struggling student for weeks or months using research-based behavioral supports, and then suddenly remove those supports, at a time when the student is most apt to need them, is to invite failure. Instead, alternative schools should support students during the transition, monitor their progress at the home school, and provide home school administrators and teachers with information about each returning student: What are her strengths? Her weaknesses? To what behavioral techniques is she most likely to respond?\textsuperscript{164}
Some Mississippi school districts have taken affirmative steps to help alternative school students re-enter the mainstream— but some could do more. One Vicksburg parent noted that the district had prepared a new IEP for her son when he returned to his home school, but offered no other assistance. In DeSoto County, parents reported, returning students must memorize an “attitude speech,” and make a formal apology to school administrators, but the district does not provide them with any support to ensure a successful transition. And in Jackson, according to one advocate, some home schools, far from working with alternative schools to support reentering students, actively seek to prevent them from reentering.

One reason for the unevenness of transition efforts may be that Mississippi’s alternative school statute, despite fairly robust discussions of other program elements, says nothing at all about re-entry. For a program whose goal is to help students re-enter their home schools and achieve success, such an omission is puzzling.

**QUESTION FIVE: Do Alternative Schools Work?**

In one or two interviews, we heard limited satisfaction with Mississippi alternative schools. One parent, while unhappy with the quality of the education her son had received at alternative school, said that “the experience did him some good.” But more parents expressed the view that alternative schools were likelier to hurt students than help them. Said a Picayune parent: “To me it makes them worse. . . . They don’t learn nothing over there.” And a parent in Vicksburg: “When those kids come there, I don’t care what nobody says, they get worse.”

In the end, like any other school, Mississippi’s alternative schools must be judged by the results they achieve. Are they helping students achieve academic success, resolving behavioral issues, and making home schools safer and more orderly? Or are they acting as dumping grounds for less “desirable” students? Are they helping solve Mississippi’s dropout problem, or are they making it worse? The short answer is, we don’t know, and that’s part of the problem. What we do know is that with regard to each of the issues just mentioned—academic progress, behavioral improvement, safety and order, the danger of “dumping grounds,” and the dropout problem—there is reason for concern.
a. Academic Performance

A key goal of Mississippi's alternative schools is to help improve students’ academic performance. But there simply are insufficient data to say whether they are achieving this goal. We are not aware of any effort by the state or by any of the five districts we studied to conduct a systematic examination of the academic gains students are achieving at alternative school. In the absence of outcome-based measures, the only way to gauge the quality of the educational services offered at alternative school is by examining inputs — and, as we have seen, the evidence on that front is not encouraging. Over the long haul, longitudinal, outcome-based measures of students’ academic gains are essential. As discussed above, creating such measures will not be easy, since not all students stay at alternative school for the same length of time, and some students stay only briefly. But the difficulty of the task is no excuse for not trying.

b. Safety and Order

There is reason to question the assumption that referring students to alternative school improves order at the home school. A 2006 study by the American Psychological Association found “no support for the assumption that zero tolerance, by removing more disruptive students, creates a school climate more conducive to learning for the remaining students.” Rather, policies based on this assumption were associated with negative achievement outcomes. If removing students via suspension is associated with negative outcomes in the mainstream environment, the same may be true of removing students via referrals to alternative school.

Furthermore, removing students to alternative school will contribute to good order and school safety only if the students who are removed were engaging in substantially disorderly or unsafe behavior. In fact, some of the alternative school students we spoke with had been referred for offenses that arguably merited a stint at alternative school. But we are also aware of students referred to alternative school for minor offenses. In Jackson, for example, district records show that students were referred to alternative school for such offenses as “verbal assault of a teacher,” “abusive lang[uage] to district personnel,” and “P[ossession] O[f] W[apon] (brush).” It is difficult to understand how alternative schools are making school districts safer by permitting students who commit such offenses to be isolated from the general student population for weeks at a time.

Meanwhile, some districts appear to neglect or circumvent one potential bulwark against unfair or groundless alternative school referrals: the requirement that students be afforded procedural due process before being referred. In Vicksburg and Madison County, parents told us they had been urged to
waive their children’s right to a hearing prior to being transferred; in at least one case, a parent was told that if she refused to consent, the school would seek to expel her child, instead of transferring him to alternative school. In Jackson, an advocate warned that many parents are not advised of their children’s right to due process hearings before being transferred to alternative school and do not participate. And in DeSoto County, parents expressed concerns about the fairness of their children’s due process hearings, citing, e.g., school officials’ refusal to hear contrary evidence. One explained: “Once you start talking and you say one little thing that they don’t like or they don’t want to hear, the hearing is over. . . . They turn the tape off and tell you to leave.”

c. Behavioral Improvement

Where a student who is sent to alternative school has engaged in unsafe or substantially disorderly conduct, we must ask: Does going to alternative school make that student less likely to misbehave in the future? Troublingly, research shows that aggregating students who misbehave, as alternative schools do, may result in higher rates of misconduct – even where students are aggregated for the purpose of resolving disciplinary issues. Furthermore, the APA study cited above found that removal from school via suspension predicted higher rates of future misconduct, as well as a higher likelihood of dropping out; again, the same may be true of students removed to alternative school. Indeed, in some states, like Texas, recidivism rates among alternative school students approach 30 percent.

Unfortunately, available data do not even permit a rough estimate for the rate of recidivism among Mississippi alternative school students statewide. But data from Picayune indicate that of 486 students referred to that district’s alternative school over three years, at least 60 students recidivated after returning to their home schools, for a recidivism rate of 12.3 percent. Moreover, eight of those students recidivated twice. The fact that about one in eight students recidivates raises doubts about whether Picayune’s alternative school is effectively resolving behavioral issues. As for the other districts? For all we know, they are experiencing equal or higher rates of recidivism – but in the absence of data, there is no way to be sure.
d. “Dumping Grounds”

A familiar concern about alternative schools is that rather than achieving the objectives described above, they will serve as dumping grounds for students the mainstream schools cannot or will not serve.183 This is a special concern in districts where students spend long periods at alternative school. In some districts, the standard “sentence” is 45 days, or a single 9-week marking period, and many students stay about that long. But in other districts, like Vicksburg and Picayune, the average length of stay is longer. In Picayune, we obtained data permitting us to calculate the average length of stay among 86 percent of the students attending alternative school during the period 2004-07; the average was just over 17 weeks. In Vicksburg, we were able to determine the length of stay for slightly fewer than half of all students; there, the figure was about 23 weeks. Moreover, in both Vicksburg and Picayune, and in DeSoto County as well, we heard in interviews about students who had spent as many as three or four years at alternative school.184 The same kind of “warehousing” occurs elsewhere; anecdotal evidence indicates that other districts imposing multi-year alternative school assignments include Warren County, Pearl River County, and Neshoba County.185 For these students, the idea that alternative school may become a dumping ground, rather than a temporary placement designed to help students re-enter the mainstream, is not just an idea. It is a reality.

“To me it makes them worse. . . . They don’t learn nothing over there.”
—L.C., Picayune parent

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e. The Dropout Problem

Dropouts are a serious concern for Mississippi school districts. MDE has mounted a well-publicized campaign, “On the Bus,” to bring the dropout rate under control, and with good reason: Students who drop out of school experience a host of negative consequences, from dramatically lower earning potential186 to a higher risk of imprisonment.187 Further, a high dropout rate takes an economic toll not just on individuals, but on the community as a whole. According to a recent analysis, if the state of Mississippi could convert just one year’s dropouts to high school graduates, the economic benefit to the state over the life of those students would be nearly $4 billion.188

In theory, effective alternative schools can help prevent students from dropping out189 — indeed, alternative schooling is one of the fifteen strategies identified in the state dropout prevention plan as an effective means of reducing dropouts.190 As the plan explains, “[a]lternative schooling provides potential dropouts a variety of options that can lead to graduation, with programs paying special attention to the
student’s individual social needs and academic requirements for a high school diploma.”191 However, many alternative schools fail to provide students with such options.192 Moreover, a poorly designed or implemented alternative program may actually increase dropouts.193

In fact, Mississippi’s alternative schools may be undermining the state’s dropout prevention efforts. Once again, available data are inadequate to permit statewide generalizations. We simply do not know how many students drop out while at alternative school – or drop out in order to avoid going there. But some of the data we received raise red flags. For example, among the 171 students sent to Madison County’s alternative school during the 2005-06 school year, a total of 63, or almost 37 percent, are listed as having withdrawn from school that year. Another 5 were expelled, and 1 went to training school, raising the attrition rate to 40 percent. Even assuming that some of the students who withdrew did so for reasons other than dropping out – e.g., to be homeschooled – it is troubling that such a large percentage of the students assigned to Madison County’s alternative school end up exiting the school system from there.

Meanwhile, in interviews about their experiences with Mississippi’s alternative schools, some advocates expressed concern that the alternative schools were pushing students out.194 And one student said he planned to withdraw rather than be referred to alternative school.195 In the words of his grandmother: “You need to let them go on and try to get an education. Then you get frustrated and you get tired. You think, if they kick him out, at least you’ll get some peace. As grownups, you get frustrated – so you know the children get frustrated too.”196

Of 171 students sent to Madison County’s alternative school during the 2005-06 school year, a total of 63, or almost 37 percent, as listed as having withdrawn from school that year.
IV. RECOMMENDATIONS

The goal of this report is to examine Mississippi’s alternative schools and provide guidance about how to raise the level of their performance. In that spirit, we offer the following recommendations aimed at helping make Mississippi’s alternative schools more accountable to the communities they serve, improving the outcomes they achieve, and ensuring that they do not trap, push out, or otherwise harm the young people committed to their care.

RECOMMENDATION ONE: Redefine “Alternative School”

The first question this report examined was: What is an alternative school? More than 15 years from the inception of its statewide alternative school program, Mississippi should revise its answer. It should begin with the idea that alternative schools provide a temporary placement for students exhibiting serious or chronic disciplinary problems. But it should take into account as well that alternative school students often struggle with difficult academic, behavioral, or other issues; should require that such students be provided with intensive services appropriate to their needs and delivered by a well-qualified staff in a highly structured but positive environment; and should explicitly identify alternative schools’ most important goal as helping students re-enter mainstream schools and succeed, rather than dropping out. Preventing misbehavior through temporary isolation will continue to be an objective – but preventing failure through remediation should be the clear priority.

RECOMMENDATION TWO: Make Alternative Schools Accountable

The second question discussed above was: Are Mississippi’s alternative schools accountable? The answer to this question should be “yes.” Mississippi’s alternative schools should be transparent, not opaque or secretive. Community members should have access to the information they need to determine whether their alternative schools are succeeding. Further, they should have means of holding educators and policymakers accountable for the results the alternative schools achieve. The following measures would help achieve this objective:
a. Make Data Available Online

MDE should make information about alternative schools publicly available via its MAARS database. It could accomplish this task at minimal cost, using data it already collects via the MSIS reporting system. It can and should do so in a way that protects the privacy of individual students. Its public reporting should include, but need not be limited to:

- the number of students referred to each alternative school;
- information about the gender, race, and disability status of the students referred;
- information about the offenses for which students were referred; and
- information about each alternative school’s performance, including not only students’ average scores on annual statewide testing, but also other measures capable of measuring alternative school performance more accurately and fairly, e.g., measures of short-term academic gains, recidivism rates, and dropout rates.

b. Mandate Annual Reporting for Alternative Schools

Instead of merely requiring school districts to prepare guidelines for annual alternative school program review and evaluation, the state should expressly require each school district to perform such a review and evaluation. State law should clearly enumerate the essential elements of the annual review. It also should mandate that annual reviews be transmitted to MDE and made available to the public. To ensure that school districts have the expertise required for a meaningful review process, MDE should provide research-based technical support.

c. Implement Alternative School Monitoring

MDE should convene alternative school monitoring teams, perhaps using the model created under the Mattie T. consent decree. These teams should include educators, policymakers, practitioners in other relevant disciplines (e.g., child psychologists, social workers, and attorneys), as well as community members. Teams should conduct site visits to schools identified as in need of improvement for any of several reasons, including, but not limited to:

- poor performance, e.g., excessive rates of recidivism or dropout, as indicated by the measures described (a) above;
- omission of required program elements, e.g., IIPs, as evidenced by the reporting
described in (b) above, or by complaints received from community members; or

• substantially disparate rates of referral among students of color or among students with disabilities, as revealed by the reporting described in (a) above.

Where a site visit reveals systemic problems, the monitoring team should identify appropriate corrective measures and define a schedule for their implementation. State law should empower MDE to sanction school districts failing to correct problems in a timely fashion, e.g., by withholding funding.

**RECOMMENDATION THREE:**
Ensure That Alternative School Referrals are Rational and Bias-Free

The third question this report addressed was: Who goes to alternative school? Mississippi’s answer to this question should be, simply: students whose conduct or performance indicates that they would benefit from a temporary placement at alternative school. Neither gender nor race nor disability nor any other immaterial factor should enter the equation. Specific measures that would help ensure that this occurs:

a. **Correct Disparities**

Using the monitoring and intervention process described above, the state of Mississippi should identify districts where alternative school referrals exhibit race- or disability-based disparities, investigate to determine the causes of these disparities, direct local officials to implement concrete remedies, and sanction noncompliant districts.

b. **Observe Required Procedural Protections**

School districts should comply with all relevant state and federal requirements that students be provided with procedural protections prior to alternative school referral. For a mainstream student referred to alternative school, this means, at a minimum, a due process hearing at which she and her family may receive notice of the reasons for the proposed referral, as well as an opportunity to defend herself. For students receiving special education, additional protections will be required, including the development of a new IEP.
RECOMMENDATION FOUR: Provide Appropriate Services at Alternative Schools

The fourth question discussed above is: What happens at alternative school? Mississippi’s answer should be: Students who otherwise might behave disruptively, fail academically, and quit school receive services aimed at helping them get back on track. To this end, each school district should implement research-based best practices proven to be effective with at-risk populations. More specifically:

a. Comply with Existing Programmatic Requirements

Every school district must comply with existing programmatic requirements contained in state law and MDE policy, including, but not limited to the requirements for:

- individualized instructional plans;
- curricula addressing cultural and learning style differences;
- a rigorous workload;
- minimal noninstructional time;
- counseling for parents and students;
- clean, safe, and functional facilities; and
- staff with adequate credentials to achieve the school’s mission.

b. Supplement Existing Programmatic Requirements

Existing law and policy omit several important research-based program elements essential for alternative school success. State law should be amended to require these elements, including, but not limited to the following:

- formal, rational intake procedures capable of identifying each student’s most urgent areas of need, while also determining whether alternative school is an appropriate placement for that student;
- transitional services sufficient to prepare students for re-entry into mainstream schools, together with careful monitoring following re-entry; and
- positive behavioral interventions and supports designed to foster a highly structured school environment that nevertheless is positive in character.
c. Implement Additional Research-Based Best Practices

School districts should seek out and implement additional research-based best practices for alternative schools. Districts should consider seeking accreditation for their alternative schools through the Southern Association of Colleges and Schools (SACS), since the accreditation process itself may serve as a roadmap of applicable best practices. MDE should conduct a survey of the research literature, compile its own list of best practices, and provide technical support to local districts seeking to improve their practice.

d. Correct Noncompliance

Currently, alternative school students who are denied the services promised to them under state law have no means of redress. The legislature should amend the alternative school statute to create a private right of action for such students. In addition, MDE should create a simple, accessible process by which students and parents could file complaints regarding such denials, and then should follow up aggressively and in a timely fashion using the monitoring scheme outlined above.

The Goal: Improve Outcomes

The fifth and final question was: Do alternative schools work? Too often, they do not. But resolving existing issues of accountability and programming, in the manner described above, would improve outcomes. Ideally, comprehensive reform would bring about a paradigm shift: a change in the way Mississippi conceives of alternative school. Instead of serving as “little jails,” way stations on the school-to-prison pipeline, Mississippi’s alternative schools could be a true safety net, an environment where at-risk students, who otherwise might fail or drop out, would receive intensive academic programming, social services, and positive behavioral supports, and get back on track to becoming productive citizens.
1 Some students, parents, and educators interviewed for this report expressed concern about speaking publicly about their local alternative schools. Therefore, in many cases, anonymity of sources has been preserved.
4 Id. at 10.
7 Kleiner, *supra*, at 5-6.
8 See Cheryl M. Lange & Sandra J. Sletten, *Alternative Education: A Brief History and Research Synthesis* (National Association of State Directors of Special Education), February 2002, at 8 (“One reason for the widely varying estimates in the number of alternative schools is that there is not agreement across the educational community as to what constitutes an alternative school or program.”); Catherine Paglin & Jennifer Fager, *Alternative Schools: Approaches for Students At Risk* (Northwest Regional Educational Laboratory), September 1997, at 1 (“Alternative school is a term with many definitions in today’s education literature.”); Laudan Y. Aron, *An Overview of Alternative Education* (Urban Institute), January 2006, at 3 (“[T]here is no commonly-accepted, or commonly-understood, definition of what constitutes ‘alternative education.’”).
9 See Aron, *supra*, at 5.
14 Lange & Sletten, *supra*, at 20. See also Kleiner, *supra*, at 2 (“Little is known about the overall current state of public alternative education across the nation.”); Hill, *supra*, at 14 (“Research on effective alternative programs … is almost nonexistent.”); Mary Magee Quinn & Jeffrey M. Poirier, *Study of Effective Alternative Programs: Final Grant Report* (American Institutes for Research), September 2006, at 16 (citing “a dearth of rigorous empirical evidence supporting the relevance of particular program characteristics in terms of program effectiveness”); Thomas MacLellan & Bridget Curran, *Issue Brief: Setting High Academic Standards in Alternative Education* (National Governors’ Association Center for Best Practices), December 2001, at 4 (“Despite the importance of alternative education, there is a remarkable lack of comprehensive information about the number and quality of alternative
educational programs and the numbers, demographics, and type of students served.”).
15 See Quinn & Poirer, supra, at 1.
17 See, e.g., Lange & Sletten, supra, at 9; Aron, supra, at 13; Paglin, supra, at 4; Reimer & Cash, supra, at 15; Fitzsimmons-Lovett, supra, at 39.
18 See, e.g., Lange & Sletten, supra, at 9; Paglin, supra, at 4; Aron, supra, at 12; Reimer & Cash, supra, at 16; Quinn & Poirier, supra, at 47.
19 See, e.g., Aron, supra, at 12-13; Tobin & Sprague, supra, at 10; Reimer & Cash, supra, at 15; Fitzsimmons-Lovett, supra, at 40.
20 See, e.g., Paglin, supra, at 4; Aron, supra, at 12; Reimer & Cash, supra, at 15; Quinn & Poirier, supra, at 47; Fitzsimmons-Lovett, supra, at 39.
21 See, e.g., Aron, supra, at 12; Tobin & Sprague, supra, at 8; Quinn & Poirier, supra, at 47.
22 See, e.g., Aron, supra, at 13; Reimer & Cash, supra, at 15; Quinn & Poirier, supra, at 47; Tobin & Sprague, supra, at 11-12.
23 See, e.g., Tobin & Sprague, supra, at 11; Reimer & Cash, supra, at 15; Fitzsimmons-Lovett, supra, at 39.
24 See, e.g., MacLellan & Curran, supra, at 8; Fitzsimmons-Lovett, supra, at 40.
26 Alternative Education Handbook (Mississippi Department of Education), n.d., at 3.
28 See Miss. AG Op. April 24, 1998 (Chaney) (“QUESTION 2: Does the Board of Trustees or the Superintendent of Education have the authority to decide on a case-by-case basis which students who have been suspended or expelled for offenses other than possession of a weapon or other felonious conduct may attend the alternative school and which students’ suspensions or expulsions require they be excluded from all school programs? ANSWER: No.”).
31 Id. at 2.
33 DeSoto County Alternative Center & Magnolia (DeSoto County Schools), available at http://www.desotocountyschools.org/dca/.
36 Armstrong & Barber, *supra*, at 1.
37 *Id.* at 4.
40 Reimer & Cash, *supra*, at 35.
41 *Id.* See also MacLellan, *supra*, at 8 (recommending “data-driven accountability measures for alternative education programs”); Fitzsimmons-Lovett, *supra*, at 40 (recommending “ongoing program monitoring and evaluation with continuous improvement as a goal”).
42 MacLellan, *supra*, at 8.
43 See Burnett, *supra*, at 47 (“There is a need for awareness of what is going on in alternative programs around the state.”).
47 Appearing here, “<20” indicates that MDE informed us that the district’s alternative school population was smaller than 20, without providing an exact figure.
48 Civil Rights Commission, *supra*.
49 *See No More Children Left Behind Bars: A Briefing on Youth Gang Violence and Juvenile Crime Prevention* (Charles Hamilton Houston Institute for Race and Justice), March 6, 2008, at 14, available at http://chhi.podconsulting.com/assets/documents/publications/NO%20MORE%20CHILDREN%20LEFT%20BEHIND.pdf (explaining that African American youth without criminal records were six times more likely to be arrested, and Hispanic youth were three times more likely to be arrested, than white youth committing the same offenses); Jamie Dycus, *Hard Lessons: School Resource Officer Programs and School-Based Arrests in Three Connecticut Towns* (American Civil Liberties Union), November 2008, at 35–43 (describing disparate rates of school-based arrest among African American, Hispanic, and white students, even where offenses were equivalent).
50 See Fowler, *supra*, at 36–38.
51 Armstrong & Barber, *supra*, at 4.
52 Civil Rights Commission, *supra*.
54 Interviews with R.T. and G.J.

Id.


Camilla Lehr & Cheryl Lange, Alternative Schools and the Students They Serve: Perceptions of State Directors of Special Education (University of Minnesota Institute on Community Integration, 2003, at 2.

See, e.g., Examining Connecticut’s Disciplinary Data (Connecticut State Department of Education), 2006.


Kleiner et al., supra, at 34.

See http://www.mde.k12.ms.us/SPECIAL_EDUCATION/monitoring.htm.

Interviews with H.K., P.T., V.R., and H.G.

Interview with P.T.

Interview with H.K.

Interview with W. Taylor.

Interview with Brian Fry.

Interview with Becky Floyd.

In Mississippi, every school-age child has a right to a minimally adequate public education, as explained by the Mississippi Supreme Court in Clinton Municipal Separate School District v. Byrd, 477 So.2d 237 (Miss. 1985). In addition, customary international law protects a young person’s right to be educated, see Universal Declaration of Human Rights, art. 26, Dec. 10, 1948, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810. Further, students with disabilities have a right to a “free appropriate public education” that is protected by federal law, see 20 U.S.C. § 1400 et seq.

Reimer & Cash, supra, at 5.

Quinn & Poirier, supra, at 47. See also Reimer & Cash, supra, at 20 (“A structured entrance procedure should be developed that includes a comprehensive testing and orientation process.”).

Tobin & Sprague, supra, at 12.

Interview with Joe Olmi.

See, e.g., Aron, supra, at 12.
76 U.S. Civil Rights Commission, supra.
77 Interviews with O.L., W.J., V.Y., and Tressa Eide.
78 Interview with E.W.
79 Id.
80 Interview with A.C.
81 Interviews with R.T., A.F., and G.J.
82 Alternative Education Handbook, supra.
83 Email from Dr. Joe Olmi, University of Southern Mississippi, to Jamie Dycus, Feb. 2, 2009.
84 Interview with Cynthia Moore-Hardy.
85 Interview with P.N.
87 Interviews with Z.F., O.L., J.H., and H.G.
88 Interviews with O.L. and R.T.
90 Interviews with O.L. (Picayune, reporting that his school day ended at 2:00 p.m.) and E.W. (Vicksburg, reporting that his school day ended at 1:30 p.m.).
91 Interviews with I.B. and H.G.
92 State Board Policy IDDI-1, Guidelines for Alternative Programs ¶ 17.
93 Interview with E.W.
94 Interview with A.F.
95 Interview with G.G.
96 Interview with V.R.
97 Interview with Barbara Deyamport.
98 Interview with P.T.
99 Interview with G.G.
101 Reimer & Cash, supra, at 28.
102 Tobin & Sprague, supra, at 10.
103 Id. at 11.
104 Fowler, supra, at 6.
106 Interviews with A.C. and E.W.
107 Interview with W. Taylor.
108 Interviews with A.C. and P.T.
109 Interview with L.C.
110 Interview with Cynthia Moore-Hardy.
111 See Aron, supra, at 12; Reimer & Cash, supra, at 15; Fowler, supra, at 7.
112 See Quinn & Poirier, supra, at ii, Reimer & Cash, supra, at 27.
113 See Aron, supra, at 12 (“Instructors in successful alternative programs choose to be part of the program…”).
114 See Reimer & Cash, supra, at 19 (“Students can overcome bad teaching but they may never recover from a bad teacher who fails to project a true sense of caring and concern.”).
115 See Kleiner, supra, at 25 (“[T]eachers who are involuntarily assigned are less likely to serve students well than those who choose to teach in alternative schools and programs.”); Burnett, supra, at 23 (“If they are there against their will, they will not be effective.”).
116 See, e.g., Hill, supra (California); Gregg, supra, at 6 (North Carolina).
117 See Reimer & Cash, supra, at 28 (explaining that an effective school leader is “a good manager of personnel and resources,” and “an effective and knowledgeable instructional leader,” and “must be able to articulate a vision for the school and have the capacity to move the agenda forward through a myriad of obstacles.”); Quinn & Poirier, supra, at ii (explaining that an effective school leader must “support the vision and mission of [her] program; effectively support staff; listen to teachers, students, and parents; and genuinely care about [her] students.”).
118 Interviews with A.F., W.J., and Z.F.
120 Mississippi State Board Policy IDDI-1, Guidelines for Alternative Programs ¶ 4.
121 Interviews with W. Taylor, Sue Cannimore, and Helen Johnson.
122 See, e.g., Sex Suspect Worked in Schools, SUN HERALD (Biloxi), Mar. 21, 2003.
123 Interviews with H.G., A.F., and H.K.
124 Interview with Mandy Rogers.
125 Interview with Warren Yoder.
126 Armstrong & Barber, supra, at 4.
128 Gregg, supra, at 5.
129 Tobin & Sprague, supra, at 8.
130 Fowler, supra, at 79, 81.
131 Quinn & Poirier, supra, at 47.
132 See, e.g., Tobin & Sprague, supra, at 8 (recommending the “level system” approach to behavior management that is in use in some alternative schools, including those in Hattiesburg, DeSoto County, and Vicksburg).
133 Interviews with A.C. and K.B.
134 DeSoto County Alternative Center Student/Family Handbook (DeSoto County Schools), June 2007 (on file with authors).

135 Interview with G.J.
136 Interview with Sue Cannimore.
137 Interview with Terrence Spann.
138 Interview with O.L.
139 Interview with G.J.
140 Interview with E.W.
141 Reimer & Cash, supra, at 29 (citing P.C. Duttweiler & J. Smink, Report on Alternative Schooling in South Carolina and Across the Nation (National Dropout Prevention Center), November 1997). See also Lehr & Lange, supra (noting that in a 2002 survey, when state directors of special education were asked to identify major issues for alternative schools in their states, they most often cited funding).

142 Miss. Code Ann. § 37-151-83(1).

143 Interview with G.G.

144 See Aron, supra, at 12 (recommending that alternative schools be housed in “clean and well-maintained buildings . . . that are attractive and inviting and that foster emotional well-being, a sense of pride, and safety.”).

145 Mississippi State Board Policy IDDI-1, Guidelines for Alternative Programs ¶ 11.

146 Interview with Ben Burnett.
147 Interview with G.G.
148 See Quinn & Poirier, supra, at 47 (recommending that parent participation be solicited and valued); Fowler, supra, at 83 (describing parental involvement as “instrumental in reducing school violence,” and offering a sample list of parental responsibilities); Paglin, supra, at 11 (recommending that alternative schools “involve parents and family, particularly at the middle school level, through letters home, parenting classes, student-led parent conferences, and other parent involvement strategies”).

149 Fowler, supra, at 82. See also Fitzsimmons-Lovett, supra, at 40 (recommending “[c]reating and maintaining collaborative working relationships . . . with outside community-based social service agencies and local businesses”).

150 See Paglin, supra, at 11; Aron, supra, at 12-13; Reimer & Cash, supra, at 20.
152 See Students and Parents Protest, The Item (Picayune), Nov. 11, 2006 (describing a parent as refusing to enroll her child at Picayune’s alternative school “because she says that school has a bad reputation.”).


155 See Reimer & Cash, supra, at 20.
156 Interview with H.Y.
157 Interview with Cassundra Brown.
159 Armstrong & Barber, supra, at 4.
160 Interviews with P.T., H.K., V.R., and J.H.
161 Interview with V.R.
162 Interview with Sue Cannimore.
163 Quinn & Poirier, supra, at 47.
164 See Reimer & Cash, supra, at 21 (“Once students have left the program, it is highly advisable to continue monitoring and supporting them as they adjust into the mainstream.”); Fowler, supra, at 7 (recommending that alternative schools “[s]trengthen transition planning, monitoring, and support of students upon their return to school from . . . alternative school placement”); MacLellan, supra, at 7 (recommending that policymakers explore “ways that personalized educational approaches developed by alternative education programs can be adopted in traditional education settings”).
165 See, e.g., Problem Students Get Re-Entry Help, Sun Herald (Biloxi), Feb. 2, 2004 (“The re-entry program provides individual counseling sessions that teach students anger management and coping skills. Students learn how to communicate effectively to resolve conflicts. They learn study skills and develop a four-part career plan. They are encouraged to participate in a club, school or community activity. Group sessions are held once a month and may include motivational speakers. ‘After the student has completed the skills sessions, he will be paired with a teacher or community volunteer to continue the mentoring process . . . .’”).
166 Interview with P.T.
167 Interviews with B.K. and V.Y.
168 Interview with Terrence Spann.
170 Interview with W.J.
171 Interview with L.C.
172 Interview with A.C.
174 Skiba, supra, at 47.
175 See Miss. Code Ann. § 37-13-92(7)(a); Mississippi State Board Policy IDDI-1, Guidelines for Alternative Programs ¶ 2.
176 Interviews with P.T. and T.R.
177 Interview with Brian Fry.
178 Interview with B.K.
179 Fowler, supra, at 30.
180  Skiba, supra, at 48-50.
181  Fowler, supra, at 29.
182  Curiously, it was also in Picayune that one student told us he knew other students who had re-offended on purpose because they wanted to be sent back to alternative school – he suggested this was because the work at alternative school is easier and because students there receive fewer disciplinary “write-ups.” Interview with O.L.
183  See Armstrong & Barber, supra, 4 (“Without clear and rigorous placement policies and practices, this program becomes a dumping ground for unwanted students (typically over-age black male middle school students”).
184  Interviews with A.C., H.K., and J.H.
185  Email from Vanessa Carroll, Mississippi Youth Justice Project, to Jamie Dycus, Sept. 8, 2008.
189  See Lange & Sletten, supra, at 11-13 (highlighting “[k]ey areas where alternative school settings are strongly associated with addressing the needs of students at risk of dropping out”).
191  Id.
192  See also Lange & Sletten, supra, at 18 (noting the finding of a study of high school students in alternative settings that such settings “did not have a great deal of success reducing dropout rates”) (citing M. Dynarski & P. Gleason, How Can We Help? What We Have Learned From Evaluations of Federal Dropout-Prevention Programs (Mathematica), 1998); Hill, supra, at 11 (noting that the dropout rate at California’s alternative schools is 25 percent and observing that “despite their attempts to keep students in school, alternative schools represent a place where many students exit the education system.”).
193  See Fowler, supra, at 33-35 (describing relationship between Texas alternative school system and dropout problem).
194  Interviews with Brian Fry and W.Taylor.
195  Interview with N.L.
196  Interview with J.H.