



# KEPT OUT

BARRIERS TO MEANINGFUL EDUCATION IN THE SCHOOL-TO-PRISON PIPELINE

A PROJECT OF THE  
GEORGETOWN LAW HUMAN RIGHTS INSTITUTE FACT-FINDING MISSION

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## EXECUTIVE SUMMARY

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In the United States today, a large subset of our student population is denied the right to an education. Most of these youth, low-income and at-risk, are already particularly vulnerable, yet rather than being provided support services and a meaningful education, they are labeled “undesirable” or “bad kids.” Denying access to education can produce life-altering results for any student, and for these vulnerable youth the effects are often especially dire.

“Keep Out” is a phenomenon that occurs when students try to reenter a setting where they can access meaningful education and are denied by the policies and practices of the education and juvenile justice systems. Keep Out is a part of the larger School-To-Prison Pipeline. The Pipeline includes disciplinary and discretionary policies that push youth out of school and into the criminal justice system. Students of color, low-income students, and students with disabilities are disproportionately affected.

This project was funded by the Georgetown Law Human Rights Institute, and was developed by the Human Rights Institute in cooperation with the student group Georgetown Human Rights Action-Amnesty International. The authors of this report are twelve law students, two professors, and a human rights fellow. Human rights law, which guarantees the right to an accessible, available, acceptable, and adaptable education, provides the framework for this report.

This report is the product of interviews with over 100 stakeholders — including students, teachers, administrators, probation officers, education advocates, and many others — in Los Angeles, California, all of whom were interviewed in January of 2012. These interviews tell the stories of students who were unable to access education after being removed from school, often for disciplinary reasons. The report is organized around three main findings:

*“You Can’t Come Back”* deals with direct Keep Out and tells the stories of students who, when trying to reenter their schools, were denied access or transferred away. Schools use a variety of excuses and evade general school-access requirements in order to keep these students out.

- School safety concerns are often cited to justify student exclusion, which affects particularly vulnerable groups of students including youth on probation, girls who are pregnant, students with perceived and actual disciplinary problems, or those who are or are thought to be academically low performing.
- Some students are kept out based on the rationale that they are too old, have too few credits, or some combination of the two.
- Schools deny students access to education by transferring them away to schools that are physically inaccessible or unsafe for that student.

*“Slipping Through the Cracks”* discusses indirect Keep Out and addresses what happens to students who are unable to reenter school because of administrative and logistical barriers.

- Inadequate crediting and record keeping in alternative and juvenile justice schools impede students’ return to traditional schools by making enrollment and completion of sufficient credits for graduation nearly impossible.
- Lack of coordination and planning among alternative schools, juvenile justice schools, and traditional schools prevents students from transitioning back to traditional schools.
- Traditional schools are able to keep students out because students and families do not know the extent of their educational rights or how to enforce them.

*“School Is Not for Me”* explains constructive Keep Out and highlights the stories of students whose school experiences have been so discouraging and inadequate that they have given up on pursuing a traditional education.

- A lack of wrap-around services in traditional schools means that students’ most basic needs are often unmet, leaving little room for students and families to focus on education.
- Students are not always given the support they need to succeed and are often harshly stigmatized when they are suspended, expelled, or associated with the criminal justice system.
- Even if students are able to get back into a classroom, alternative and juvenile justice system schools often lack a consistent education that meets students’ needs.

All of these issues are compounded and enabled by a lack of accountability for institutions, especially schools, that work with youth. Without a particular individual or entity responsible for these students, and without coordination between the various systems responsible for education, many students fall through the cracks. Even when the accountability issues are dealt with, schools still face pressure to remove students they view as “undesirable” because of safety concerns, limited resources, and funding schemes that are pegged to testing results.

Based on these findings, we have developed broad recommendations for local, state, and federal entities. All students should be guaranteed access to meaningful education, and local and federal policies should provide resources and incentives for schools, along with appropriate accountability measures. Schools, probation departments, and juvenile halls should coordinate to prioritize the school reentry and reintegration process, including the provision of educational records. Federal and state governments should give schools the resources to partner with community-based organizations and provide wrap-around services to youth.

Every student is entitled to an education as a fundamental human right. All levels of government should prioritize access to education for youth, regardless of their criminal or disciplinary history.

## INTRODUCTION

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“The kids are told, ‘No, you can’t come in.’ They will say, ‘My school doesn’t want to take me back,’ or, ‘I went to enroll in a school and they told me to come [to this charter school].’ Or, ‘Come back at the end of the semester.’ They just end up here and parents will say, ‘They won’t take them. Will you take them?’”<sup>1</sup>

**Teacher, Charter School for In-Crisis Youth**

“[Getting kicked out over and over] made me feel like, ‘Why try?’ It made me mad. It would be like, I would work so hard to get one school to actually accept me. It would take me months to get into a school.”<sup>2</sup>

**Student, Alternative High School**

“[My brother]’s a senior now. He’s not going to get his diploma on time or at all. And now, he’s so far behind, he can’t even do his schoolwork because he doesn’t understand it. They’re not accepting him now because he has low credits . . . . He feels bad because he’s not going to be able to get his high school diploma.”<sup>3</sup>

**Student, Public High School**

I just gave up for a minute; if I can’t go to a regular high school, I don’t wanna go . . . . It just shattered me . . . . It made me feel like, f\*\*\* school — they didn’t care, why should I care? . . . . I see why you don’t try to go back to school, because you’re judged — like you’re a criminal.”<sup>4</sup>

**Student, Alternative High School**

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1 Interview with Anonymous, Charter School Teacher, in L.A., Cal. (Jan. 11, 2012).

2 Interview with Anonymous, Alternative School Student, in L.A., Cal. (Jan. 10, 2012).

3 Interview with “Maria,” Student, in L.A., Cal. (Jan. 10 & 12, 2012).

4 Interview with Anonymous, Alternative School Student, in L.A., Cal. (Jan. 9, 2012).

“Education is the road to prosperity, and if we don’t give these kids the opportunity to come back and get an appropriate education that suits their needs, we’re giving them a lifetime of hard times.”<sup>5</sup>

**Probation Officer**, Los Angeles County Probation Department

“[It w]ould’ve been helpful if they knew how to forgive.”<sup>6</sup>

**Student**, Youth Poetry Collective

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The School-To-Prison Pipeline encompasses the policies and practices that lead young people down the path to incarceration rather than to a quality education. The proliferation of zero-tolerance policies, other harsh disciplinary measures in schools, and criminal justice provisions targeting youth have contributed to this phenomenon.<sup>7</sup>

Research on the School-To-Prison Pipeline has devoted significant attention to how and why students are “pushed out” of school. Studies have focused on the role in-school officers<sup>8</sup> and zero tolerance policies<sup>9</sup> play in the removal of students from traditional schools and their placement in detention or probation. For example, reports have chronicled how students are increasingly suspended, transferred to alternative schools, expelled, or sent to court for committing nonviolent, minor infractions.<sup>10</sup> Research thus far has also focused significant attention on the fact that harsh disciplinary policies disproportionately target students of color<sup>11</sup> and students with disabilities.<sup>12</sup>

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5 Interview with Anonymous, L.A. County Probation Officer, in L.A., Cal. (Jan. 9, 2012).

6 Interview with “David”, Affected Adult, in L.A., Cal. (Jan 13, 2012).

7 School to Prison Pipeline Fact Sheet, New York Civil Liberties Union, <http://www.nyclu.org/schoolto-prison>.

8 *See, e.g.*, ELORA MUKHERJEE & MARVIN K. KARPATKIN, NEW YORK CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS (2007), *available at* [http://www.nyclu.org/pdfs/criminalizing\\_the\\_classroom\\_report.pdf](http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf); ELIZABETH SULLIVAN & DAMEDIA MORGAN, FAMILIES AND FRIENDS OF LOUISIANA’S INCARCERATED CHILDREN, PUSHED OUT: HARSH DISCIPLINE IN LOUISIANA SCHOOLS DENIES THE RIGHT TO EDUCATION — A FOCUS ON THE RECOVERY SCHOOL DISTRICT IN NEW ORLEANS (2010), *available at* [http://www.njcn.org/uploads/digital\\_library/resource\\_1587.pdf](http://www.njcn.org/uploads/digital_library/resource_1587.pdf).

9 *See, e.g.*, DEBORAH FITZGERALD FOWLER ET AL., TEXAS APPLESEED, TEXAS’ SCHOOL-TO-PRISON PIPELINE: DROPOUT TO INCARCERATION—THE IMPACT OF SCHOOL DISCIPLINE AND ZERO TOLERANCE (2007), *available at* <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf>.

10 *See, e.g., id.*

11 *See, e.g.*, ADVANCEMENT PROJECT, OPPORTUNITY SUSPENDED 6 (2002), *available at* <http://www.advancementproject.org/sites/default/files/publications/opsusp.pdf>.

12 *See e.g.*, DANIEL J. LOSEN, NATIONAL EDUCATION POLICY CENTER, DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE 5 (2011), *available at* <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>. The Children’s Defense Fund first detailed the racial inequality in school discipline in 1975. Their seminal study found

While much attention has been focused on the front end of the School-To-Prison Pipeline — Push Out — little research has addressed the barriers that prevent students from continuing their education after they have been pushed out or incarcerated.<sup>13</sup> This phenomenon, which we call “Keep Out,” refers to the policies and practices that keep students who have been suspended or expelled, or who have attended an alternative or juvenile justice school, from attaining meaningful education once their term of exclusion is complete. This report aims to fill that research gap.

Keep Out takes many forms: direct, indirect, and constructive. Direct Keep Out occurs when schools explicitly tell “undesirable” students they cannot return. Students are also kept out when schools carry out disciplinary transfers that assign youth to schools far from their homes or in unsafe neighborhoods. Students experience indirect Keep Out when they are prohibited from returning to school because they are left without any assistance in navigating the complex reentry process. For example, some students are unable to access their transcripts or credits earned while away, and are kept from reenrolling in a traditional school as a result. It also occurs when students and their families are unaware of their rights regarding reentry or do not know how to assert these rights. Finally, constructive Keep Out takes place when schools fail to give youth the support services they need to succeed or students’ education is interrupted so frequently that it becomes practically impossible to continue.

The Los Angeles students who participated in this research project, like many of those affected by the School-To-Prison Pipeline, are primarily low-income youth of color. In addition to the barriers they face in enjoying the right to education, many also struggle with mental health issues, physical safety concerns related to gang violence in their neighborhoods, unmet or threatened basic needs, and unstable home and family environments.

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that twenty-nine states suspended more than five percent of black students whereas only four states suspended that percentage of white students. See RUSSELL J. SKIBA ET. AL, *THE COLOR OF DISCIPLINE: SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT*, IND. EDUC. POL’Y CENTER, Policy Research Report #SRS1.2 (2000), available at <http://www.unl.edu/srs/pdfs/coldisIND.pdf>. This disproportionate trend continues to this day. Studies have shown that black students are disproportionately likely to be removed from classrooms for disciplinary reasons, see TONY FABELO, ET. AL., *BREAKING SCHOOL RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT* (2011), more likely to receive out-of-school suspensions, see ADVANCEMENT PROJECT, *TEST, PUNISH AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 6* (2010), and less likely to receive lenient punishments, see Skiba, *supra*, at 12.

<sup>13</sup> See Jessica Feierman, Marshal Levick, and Amy Mody, et al., *The School-to-Prison Pipeline ... and Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*, 54 N.Y.L. Sch. L. Rev. 1115, 1126 (2009/2010) (explaining “relatively little has been written about successful programs for school reentry following incarceration”).

Keep Out has profound consequences for students and their communities. It limits students' chances at educational success<sup>14</sup> and increases the likelihood that they will ultimately drop out of school.<sup>15</sup> Students who are prevented from reenrolling in traditional schools often remain unsupervised,<sup>16</sup> leading in some instances to involvement in the criminal justice system.<sup>17</sup> Society bears the resulting cost of incarceration and mass unemployment in impacted communities. Indeed, recent estimates of the average annual costs to educate a child (\$10,826) and the average annual cost of juvenile incarceration (\$88,000) highlight the financial disparity.<sup>18</sup>

Through our research, we examined the conditions and practices that create and perpetuate Keep Out in order to better understand the phenomenon and to inform recommendations for viable national solutions. Consistent with our human rights framework, we aimed to give a voice to students who had been unable to enjoy their right to an education as a result of Keep Out.

Human rights law articulates the rights that all persons are due, simply by virtue of their humanity. This body of law provides normative standards against which policies and practices can be assessed. Human rights law requires that States respect rights even in the face of resource constraints based on the concept of “progressive realization.”

The right to an education is guaranteed in many different international human rights instruments including the Universal Declaration of Human Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Elimination of Racial Discrimination.<sup>19</sup> There is also a United Nations Special Rapporteur on the right to education who is

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14 *See id.* at 1116-18.

15 *See What is the School-to-Prison Pipeline?*, ACLU, (Dec. 20, 2011, 6:00 P.M.) <http://www.aclu.org/racial-justice/what-school-prison-pipeline>.

16 DANIEL J. LOSEN, NATIONAL EDUCATION POLICY CENTER, DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE 11 (2011), *available at* <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf> (“Without the services of trained professionals . . . and without a parent home during the day, students with out-of-school suspensions and expulsions are far more likely to commit crimes . . . [W]hen youth are not in school, they are more likely to become involved in a physical fight and to carry a weapon . . . The lack of professional assistance at the time of exclusion from school, a time when a student most needs it, increases the risk of permanent school drop-out.”).

17 *Id.*

18 *Compare Nat'l Education Ass'n., Rankings of the States 2010 and Estimates of School Statistics 2011*, [http://www.nea.org/assets/docs/HE/NEA\\_Rankings\\_and\\_Estimates010711.pdf](http://www.nea.org/assets/docs/HE/NEA_Rankings_and_Estimates010711.pdf). *with The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, Justice Policy Institute, May 2009 [http://www.justicepolicy.org/images/upload/09\\_05\\_REP\\_CostsOfConfinement\\_JJ\\_PS.pdf](http://www.justicepolicy.org/images/upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf), citing American Correctional Association, 2008.

19 Universal Declaration of Human Rights art. 26, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR]; International Covenant on Economic, Social and Cultural Rights art. 2(2), Dec. 16, 1966, 1966 U.S.T. 521, 993 U.N.T.S. 3. 6 I.L.M. 360 [hereinafter ICESCR], at art.

tasked with monitoring this right around the world. Treaty bodies interpreting this right and the Special Rapporteur have made it clear that education is essential because it “is both a human right in itself and an indispensable means of realizing other human rights.”<sup>20</sup>

Under human rights law, States must ensure that education in all its forms and at all levels shall exhibit the following four “interrelated and essential” features: availability, accessibility, acceptability, and adaptability.<sup>21</sup> Among other things, this means that education must be “accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.” It also means that education must be “within safe physical reach.”<sup>22</sup> In addition, “the form and substance of education, including curricula and teaching methods,” must be “acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents . . . .” Education must also be “flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.”<sup>23</sup>

Moreover, governments have the obligation to: (1) respect the right to education by requiring States to avoid measures that hinder or prevent the enjoyment of the right to education; (2) protect the right to education by requiring States to take measures that prevent third parties from interfering with the enjoyment of the right to education; and (3) fulfill the right to education when an individual or group is unable to realize the right themselves by the means at their disposal.<sup>24</sup>

Finally, the right to education cannot be violated simply because of resource constraints. While States are allowed to progressively realize the achievement of economic, social, and cultural rights, they must immediately meet certain minimum core obligations to ensure the satisfaction of the minimum essential levels of each right.<sup>25</sup> The prohibition against discrimination is explicit-

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13; Convention on the Rights of the Child art. 28–29, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. The United States has signed but not ratified the ICESCR and the CRC.

20 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 13 ¶ 1, U.N. Doc. E/C.12/1999/10 (1999) [hereinafter CESCR General Comment No. 13]. The comment continues:

“As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.” *Id.*

21 *Id.* at ¶ 6.

22 *Id.* at ¶ 6.

23 *Id.* at ¶ 6.

24 *Id.* at ¶ 47.

25 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 3 ¶ 10, U.N. Doc. E/1991/23 (Dec. 14, 1990).

ly excluded from progressive realization and is not subject to the availability of resources.<sup>26</sup> There is also a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education.<sup>27</sup> Further, the adoption of temporary special measures intended to bring about de facto equality for disadvantaged groups is not a violation of the right to non-discrimination with regard to education.<sup>28</sup> States must closely monitor education so as to “identify and take measures to redress any de facto discrimination.”<sup>29</sup>

## METHODOLOGY

The majority of our research was carried out in Los Angeles, California, from January 9 to 13, 2012.<sup>30</sup> We chose to study Keep Out in Los Angeles because of the city’s large school population,<sup>31</sup> diversity,<sup>32</sup> criminal justice challenges, and broad network of individuals, institutions, and advocates involved with the School-To-Prison Pipeline. Los Angeles is the second-largest city and school district in the United States<sup>33</sup> and has one of the largest juvenile halls, probation camps, and jail systems in the country.<sup>34</sup>

Our group was composed of twelve Georgetown University law students, a human rights scholar, and two professors (one is an expert in the field of juvenile justice, the other focuses on human rights more generally); together the group participated in a Human Rights Fact-Finding Seminar at Georgetown Law throughout academic year 2011-2012.<sup>35</sup> During our week in Los Angeles, our group conducted interviews with 118 students, teachers, administrators, advocates, probation officers, juvenile justice employees, community-based organizations, and other stakeholders.

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26 CESCR General Comment No. 13, *supra* note 20, at ¶ 31.

27 *Id.* at ¶ 45.

28 *Id.* at ¶ 32.

29 *Id.* at ¶ 37.

30 We also conducted interviews in Washington, D.C. before and after this trip.

31 Los Angeles has a K-12 enrollment of 671,484 students and total enrollment (including adult education) of 1,067,898 students. The district includes 1,092 K-12 schools and 241 other schools (adult and preschools) and centers. Los Angeles Unified School District, Fingertip Facts 2011-2012, [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/LAUSDNET/OFFICES/COMMUNICATIONS/10-11FINGERTIPFACTS\\_REVISIED228.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/COMMUNICATIONS/10-11FINGERTIPFACTS_REVISIED228.PDF) (last visited Nov. 14, 2011).

32 “Diverse” means various things, not only socioeconomic and racial diversity, but diverse perspectives, experiences, and interactions with the School-To-Prison Pipeline. Diversity is important to understanding the School-To-Prison Pipeline because racial and economic biases contribute to the perpetuation of the phenomenon.

33 Los Angeles Unified School District, Fingertip Facts 2011-2012, *supra* note 31 (last visited Nov. 14, 2011) (with a K-12 enrollment of 671,484 students and 1,092 K-12 schools).

34 *California Department of Justice, Statistics*, <http://ag.ca.gov/cjsc/statisticsdatatabs/ArrestCoMisd.php#adultlist>. In 2011, more than 22,000 youth and 215,000 adults were arrested for misdemeanors alone. *Id.*

35 The topic and foundation of each year’s fact-finding class is proposed and selected by members of the Georgetown Human Rights Action-Amnesty International (GHRA-Amnesty) Fact-Finding Committee, which is a student group. The topic is selected through a comprehensive writing and voting process the academic year prior to the beginning of the class.



Throughout all of our interviews, confidentiality was critical; all interviewees had the option to remain anonymous if they so chose. Minors and affected adults<sup>36</sup> within our report have been given pseudonyms and identifying information has been removed where necessary. Those who work within the education and juvenile justice systems, the institutions that are the focus of this report, were kept anonymous for their protection (unless they wished to be identified). Advocates and other professionals are generally named and presented with their titles where consent to do so was given. All interviewees provided informed consent before being interviewed.

In most instances, practitioners within the community introduced us to our interviewees. There were therefore pre-established elements of trust before beginning each interview. We also conducted interviews in the safest, most comfortable places possible for our interviewees, including on site at trusted organizations, in alternative schools, and within their homes. In our interviews with youth, there always was a well-known, trusted adult readily available to them, and we made sure it was understood that they could stop the interview at any time, for any reason.

The bulk of this report details our three findings related to Keep Out. Finding I: “You Can’t Come Back” tells the stories of students denied access to education by schools that explicitly prevent “undesirable” students from reentering. Finding II: “Slipping Through the Cracks” tells how schools and the juvenile justice system are not held accountable for failing to provide guidance and support to students navigating disjointed, confusing, and complex policies and systems. Finding III: “School is Not for Me” explains how the education system fails to provide services that meet students’ needs, precluding many youth from succeeding in traditional schools. After the findings, we present our conclusions and then offer policy recommendations for addressing Keep Out at the local, state, and federal levels. Finally, the report concludes with four appendices; the first contains stories of some of the students we interviewed, the second provides an analysis of human rights law relating to Keep Out, the third describes relevant U.S. law, and the last offers an overview of some key Los Angeles-specific policies.

It is our hope that the stories reflected in this report will offer in-depth insight into Keep Out, as well as ideas about what we can and should do to ensure educational opportunities for all youth.

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36 “Affected adults” refers to persons who are now eighteen years of age or older who have been excluded from traditional schools due to school disciplinary policies and procedures and/or involvement with the juvenile justice system, or impacted by the exclusion of a friend or relative.

## DEFINITIONS

### **Continuation Schools**

Continuation schools are alternative placements for students who might learn best in a non-traditional setting.

### **Counseled Out**

The practice, employed by school administrators, of informally encouraging students to leave school.

### **Elementary and Secondary Education Act (ESEA)**

The primary federal statute funding and regulating public elementary and secondary education in the United States.

### **Individual Education Program (IEP)**

A plan, mandated by the Individuals with Disabilities Education Act (IDEA), formulated collaboratively among schools, parents, and other professionals, designed to meet the individualized needs of students designated as in need of special education services.

### **Juvenile Justice System (JJ System)**

The division of the criminal justice system specifically dedicated to dealing with youth and intended to focus on rehabilitation.

### **Juvenile Hall**

Temporary detention center where juveniles are confined until their cases are adjudicated.

### **Keep Out**

The policies and practices that keep students who have been suspended or expelled, or who have attended an alternative school or a juvenile justice facility, from returning to a traditional school and attaining meaningful education once their term of exclusion is complete.

### **Los Angeles County Office of Education (LACOE)**

The local education agency responsible for administration and oversight of schools in juvenile justice facilities throughout Los Angeles County.

### **Los Angeles Unified School District (LAUSD)**

The local education agency responsible for administration and oversight of public schools in the city of Los Angeles as well as parts of several adjoining cities. LAUSD is the second-largest school district in the United States.

**Multidisciplinary Team Meeting (MDT)**

A meeting of the group of professionals from one or more disciplines, including the court, probation, and school, who together make recommendations regarding treatment of individual reentering students.

**No Child Left Behind Act (NCLB)**

The 2002 Bush Administration reauthorization of the ESEA, which implemented “standards-based education reform.”

**Opportunity Transfers**

Transfers between LAUSD schools intended to provide intervention and result in improved behavior for students.

**Overage**

Students over age eighteen who have not yet completed their high school education.

**Probation Camp**

Detention facility where juveniles are confined following adjudication. Confinement in a camp is typically more long-term than confinement in a juvenile hall.

**Probation Officer**

Officer of the probation department tasked with monitoring and helping transition students from the juvenile justice system.

**Push Out**

The phenomenon of students being removed from schools via suspension or expulsion as a result of a disciplinary infraction, rather than addressing students’ social and emotional needs.

**School-To-Prison Pipeline (STPP)**

The educational and criminal justice policies and practices that make young people more likely to be incarcerated than to obtain a quality education.

**System-Involved Youth**

Those youth who have ongoing or previous involvement with the juvenile justice system.

**Traditional School**

The public school in a student’s neighborhood; also sometimes called a neighborhood school, comprehensive school, or mainstream school.

**Under-Credited**

Students who lack the requisite number of credits to advance to the next grade level or graduation, based on either when the student began high school or the student’s age.



## FINDINGS

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### I. “YOU CAN’T COME BACK”: FORMAL AND INFORMAL POLICIES AND PRACTICES LEAD TO KEEP OUT

Under human rights law, States have an obligation to ensure that education is “accessible to all, especially the most vulnerable groups, in law and fact, without discrimination.”<sup>37</sup> Our research shows, however, that some schools deny students access to education by explicitly preventing them from reentering school.

Schools attempt to keep these vulnerable students out of school through a variety of formal and informal policies and practices. Although Los Angeles generally guarantees that each student has the right to attend his or her neighborhood school,<sup>38</sup> some schools directly tell students they cannot return without further explanation. Schools also prevent overage and under-credited students from reenrolling. Some schools even use disciplinary transfers to assign students to schools that are practically inaccessible due to distance from home or because of safety concerns. In each of these cases, vulnerable students are kept out of school and denied access to education.

#### 1. Traditional Schools Rely on Informal Excuses to Keep Out Students

“I’ve been to eight or nine high schools . . . I’ve been in and out of lock up since I was twelve . . . It’s hard [to get back into school]. They look at you and like think, ‘Nah, I don’t want you.’ Most people look that look like you gangbang. Most of the schools I would go to I would walk in and I wouldn’t get past orientation. The [probation officer] would recommend schools but they would turn me away . . . With most of them, you could just see it in their face. And [they would] say stuff like, ‘Our students feel threatened.’ They would let you in to take a test and then after you took the test, even if you passed, you couldn’t go . . . [Being rejected] made me feel like, ‘Why try?’ It made me mad.”<sup>39</sup>

**Darryl, Student in Los Angeles**

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37 CESCR General Comment No. 13, *supra* note 20, at ¶ 6(b).

38 Students’ right to attend their neighborhood school is subject to a few formal exceptions, including age, disciplinary expulsions, and opportunity transfers. *See infra* Finding I.2-3 for more information regarding overage policies and opportunity transfers.

39 Interview with “Darryl,” Student, in L.A., Cal. (Jan. 11, 2012).

Some schools explicitly prevent vulnerable students — including those coming from probation, those gang-involved or thought to be gang-involved, those with perceived or actual disciplinary problems, those who are pregnant, and those who are academically low performing or perceived to be academically low performing — from reenrolling. While schools have legitimate interests in ensuring safety for all students and preventing disruptions in the classroom, these interests sometimes improperly supersede the school’s legal obligations to ensure that all students have access to education.<sup>40</sup> By excluding youth without a legal basis, schools are furthering Keep Out and pushing excluded youth down the path of the School-To-Prison Pipeline.

Students seeking to return to school while on probation often face significant challenges in reentering. Generally, juvenile justice system-involved youth<sup>41</sup> have the right to reenroll in traditional schools. Ariel Wander, an education attorney at Public Counsel, a major public interest law firm, explained: “Probation itself is not [a] sufficient [reason] to deny enrollment. If the kid is under a current expulsion order, the school can deny enrollment and legally send the kid to alternative school. [However, a] kid who got into trouble outside of school has every right to go back to the traditional school.”<sup>42</sup> Yet schools sometimes bar students on probation from reenrolling without giving a particular reason.

Several professionals shared stories about schools preventing students on probation from reenrolling.<sup>43</sup> One individual working at a Los Angeles juvenile hall explained that schools “won’t verbally tell me [that they won’t take the kid back]. They say, ‘You can go,’ but when you get there, they recognize the kid and say, ‘No, they can’t go.’” Similarly, an individual working in the L.A. County juvenile justice system said: “The transitional counselor for the on-site [juvenile justice] school calls and asks if the minor is welcome back [to the traditional school]. They’ll often say, ‘No’ or ‘We’re full’ . . . They’re not allowed to do that, but that’s what happens. So you find a continuing school, alternative education, vocational training, job placement, a less-than-comprehensive school.”<sup>44</sup> Interviewees ranging from legal advocates to affected youth provided further examples of schools barring enrollment of system-involved youth. For example, one student, upon

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40 Cal. Code Regs. Tit. 5. §§ 4700-4703 (dealing with open enrollment law in California).

41 Youth are defined as persons between the ages of fourteen to twenty-four for the purposes of this project. Hereinafter, system-involved youth refers to youth who have been involved in the juvenile justice system (either currently or previously).

42 Interview with Ariel Wander, Attorney, Public Counsel, in L.A., Cal. (Jan. 9, 2012).

43 Interview with Ariel Wander, *supra* note 42 (explaining how she has “seen school staff try and prevent enrollment of kids on probation”); *see also* interview with “Darryl,” *supra* note 39; interview with “Benjamin,” Affected Adult, in L.A., Cal. (Jan. 13, 2012) (“My P.O. said I was going to that school because no other school would accept me because of my record.”).

44 Interview with “Emery,” L.A. County Juvenile Justice System Professional, in L.A., Cal. (Jan. 12, 2012).

release from the juvenile justice system, tried to reenroll in her local traditional school.<sup>45</sup> The school told her, “No, you can’t reenroll here.”<sup>46</sup>

Schools have an incentive to deny reentry to students on probation because of the mechanisms used to measure school performance. The Los Angeles County Office of Education (LACOE), not the Los Angeles Unified School District (LAUSD), operates the school system for incarcerated youth. Consequently, the academic performance of system-involved youth counts towards LACOE’s accountability numbers, rather than those of LAUSD. As long as traditional schools do not reenroll system-involved youth, their performance or lack of performance is not counted against the traditional schools’ accountability numbers. One teacher explained, “There’s no incentive to take [probation youth]. They’re not the school’s dropout; they come from L.A. County because they are on probation. I think [getting around the numbers] is even explicitly talked about.”<sup>47</sup> Ultimately, schools have little incentive to reenroll probation youth because doing so could adversely affect their performance ratings.

High-stakes testing also inadvertently encourages some schools to keep out students who are academically behind. Matt Orduña is a teacher at Unusual Suspects, a theater organization that serves at-risk youth. He explained, “If your job security [is] resting on how well your class takes those tests, how willing are you going to be to take the kid at a seventh-grade reading level?”<sup>48</sup> Similarly, according to another teacher:

There is tremendous pressure in large urban schools from No Child Left Behind. What motivation is there to work with this population of kids if I know that I will be evaluated . . . on my test scores and I need to nurture this kid for three or four years, and I might never reap the benefits of all that hard work? It’s a huge disincentive.<sup>49</sup>

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45 Interview with “Jasmine,” Student, in L.A., Cal. (Jan. 11, 2012).

46 *Id.*

47 Interview with Anonymous, Charter School Teacher, in L.A., Cal. (Jan. 11, 2012).

48 Interview with Matt Orduña, Teacher, Unusual Suspects, in L.A. Cal. (Jan. 10, 2012).

49 Interview with Anonymous, Charter School Teacher, in L.A., Cal. (Jan. 11, 2012).

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## **FOCUS** No Child Left Behind and Keep Out

No Child Left Behind (NCLB) aims to make schools more accountable for students' success. Yet this law inadvertently encourages some schools to deny reentry to under-performing students. Specifically, schools may be more likely to keep out vulnerable youth because of the assumption that at-risk populations are more likely to fail high-stakes examinations.<sup>50</sup> According to some scholars, school districts' reluctance to reenroll system-involved youth may be "out of fear that they will perform poorly on standardized tests . . . . Schools may encourage youth to drop out or enroll in alternative education programs."<sup>51</sup> Ultimately, some schools have an incentive to push out<sup>52</sup> and keep out system-involved youth when students' performance will affect the school's overall rankings.

No Child Left Behind measures school performance in ways that incentivize the denial of reentry to low-performing students.<sup>53</sup> High-stakes testing pressures schools to make a difficult choice: Schools can either risk low ratings by readmitting students that they expect to perform poorly or promote higher ratings by barring students from reentering.<sup>54</sup>

Even though No Child Left Behind aims to close the achievement gap, the law does not fully address the challenges facing society's most at-risk populations. Many states, including California, measure school performance partially based upon whether or not students pass end-of-year examinations.<sup>55</sup> These calculations overlook individual students who have significantly improved

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50 See Jessica Feierman, Mashal Levick, and Ami Mody, *supra* note 13 at 1122 ("NCLB fuels the reluctance of schools to reenroll youth returning from juvenile placements for a number of reasons. Under NCLB, schools are held accountable for the percentage of their students who attain proficient scores on state standardized tests.").

51 Jessica Feierman, Mashal Levick, and Ami Mody, *supra* note 13, at 1116-17.

52 See Interview with Chris Corley, Soledad Enrichment Academy, in L.A., Cal. (Jan. 13, 2012) ("The time of year is important – if testing is coming up – with accountability and NCLB [No Child Left Behind], and federal funding. The students causing trouble get transferred because the kids on their roster get counted."); see also David J. Losen, *supra* note 12 ("Federal policy currently provides an incentive for school leaders to remove low-achieving students from the cohort of students used to evaluate school performance . . . No Child Left Behind has imposed accountability measures on schools based primarily on student test results, but only for the test scores of students who attend a school for a full academic year. Students who are frequently suspended or expelled are less likely to meet that threshold. There is, in fact, research supporting the possibility that frequent suspensions are used to avoid accountability for the test scores of lower achievers . . .").

53 Jessica Feierman, Mashal Levick, and Ami Mody, *supra* note 13, at 1122 (discussing the research of education scholars Linda Darling-Hamond and James Ryan).

54 *Id.* ("[P]erformance measures and sanctions inspired by NCLB create strong incentives for schools to exclude low-performing students.").

55 See California Department of Education, 2011 Adequate Yearly Progress Report: Information Guide (2011), available at <http://www.cde.ca.gov/ayp/> (detailing information on how California administers academic accountability systems in accordance with federal law).



their academic performance, though not enough to pass the state examinations. Thus, schools might still be labeled failing even if they ensure that all students significantly improved over the course of the school year. Consequently, these accountability measures create disincentives for enrolling students who are academically the furthest behind. Instead, No Child Left Behind should encourage all states to adopt value-added models, which assess school performance based upon individual students' growth.<sup>56</sup> Measuring performance based upon value-added improvement, rather than passing rates, would encourage all schools to keep in rather than keep out students who are academically behind.<sup>57</sup>

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Some schools also deny reenrollment to students who are perceived to pose a safety threat because of actual or alleged gang involvement.<sup>58</sup> As an eighteen-year-old barred from reentering school explained, "I think they don't accept someone from [my neighborhood] because of violence; they think you're in a gang if you're from [there]."<sup>59</sup> Similarly, a grandmother explained that her grandson was denied reentry to his local high school for six months because of perceived gang involvement. She said, "When we went to [the school], they wouldn't enroll him. They came up with excuses. Said he was in a gang. He wasn't in a gang."<sup>60</sup>

Similarly, many students with perceived or actual behavioral challenges are kept out of traditional schools. As one student explained, "I tried to enroll . . . and they were like no, too much of a

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56 See S. Eric Larsen, Stephen Lipscomb, & Karina Jaquet, *Public Policy Institute of California, Improving School Accountability in California 2* (2011), available at [http://www.ppic.org/content/pubs/report/R\\_411ELR.pdf](http://www.ppic.org/content/pubs/report/R_411ELR.pdf) ("A value-added model, which would measure the school's contribution to student learning, would diminish the impact the composition of a particular student body has on a school's accountability rating. Using a value-added approach would therefore be a more accurate and fair means of assessing school effectiveness.")

57 See Jessica Feerman, Mashal Levick, and Ami Mody, *supra* note 13, at 1124-25 ("Two strategies that have been used to counteract the [NCLB] Act's exclusionary impact on minority and low-income students involve shifting to a value-added system of accountability and strengthening NCLB's graduation requirement. [U]nder a value-added system, schools would be held accountable for the achievement gains of the same group of students from year to year . . . Holding schools accountable for their graduation rates would help counteract the incentive that test score accountability creates to exclude low-scoring students. For each low-scoring student that a school counsels to leave or drop out, the school's graduation rate would decrease. Similarly, the school's graduation rate would decrease for each student returning from detention that the school refuses to re-enroll. Thus, if schools were held accountable for their graduation rates to the same extent they are held accountable for test scores, they would be reluctant to exclude students perceived to be low achievers — including youth returning from placement — in order to raise their test scores.")

58 Interview with "Jamie," Probation Department Professional, in L.A., Cal. (Jan. 13, 2012).

59 Interview with "Juan," Affected Adult, in L.A., Cal. (Jan. 10, 2012).

60 Interview with "Pamela," Education Rights Holder, in L.A., Cal. (Jan. 10, 2012).

discipline problem . . . .”<sup>61</sup> Similarly, Tracey Jones, Evidence Based Program Manager at Shields for Families, a nonprofit community-based organization that delivers comprehensive services to at-risk families, explained, “The schools don’t want them back. Our public schools are really crowded . . . . The rationale you hear is ‘these kids disrupt.’”<sup>62</sup>

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## **FOCUS** Keep Out and Pregnant Students

Some schools also informally attempt to keep pregnant students from returning to school. Even though it is illegal for public schools to discriminate against pregnant or parenting students under Title IX, researchers have documented how pregnant girls across the country have been pushed out of high schools or forced to transfer to alternative schools.<sup>63</sup> In Los Angeles, interviewees confirmed that schools used subtle pressure and explicit excuses to keep out pregnant youth. Kruti Parekh, Program Coordinator at the Youth Justice Coalition, an organization that challenges inequalities in Los Angeles’s juvenile justice system, explained that some students were not returning to their home schools “because they were pregnant and having a baby and thought it would be impossible to do both [go to school and have a kid]. It was clearly communicated by the school that this was not OK; there were no facilities to take care of babies. Even where a service exists, there’s a gap between one, knowing about it, and two, accessing it.”<sup>64</sup> One student explained, “I tried to get into school, but I was pregnant. They said they didn’t accept pregnant girls at that school.”<sup>65</sup>

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61 Interview with “Jason,” Affected Adult, in L.A., Cal. (Jan. 13, 2012).

62 Interview with Tracey Jones, Evidence Based Program Manager, Shields for Families, in L.A., Cal. (Jan. 12, 2012).

63 The “dropout” rates of pregnant and parenting youth are well documented. *See, e.g.*, Diana Tate, *Schools for All Campaign: The School Bias and Pushout Problem*, ACLU OF NORTHERN CALIFORNIA (Nov. 2008), [http://www.aclunc.org/s4a/full\\_report.pdf](http://www.aclunc.org/s4a/full_report.pdf) (“The leading reason for teen girls to drop out of high school is parenthood . . . . Various studies report that up to 70% of teen mothers drop out of high school.”); Linda Mangel, *Pregnant and Parenting Students Are Still Being Pushed Out of School*, AMERICAN CIVIL LIBERTIES UNION BLOG (Mar. 31, 2011), *available at* <http://www.aclu.org/blog/womens-rights/pregnant-and-parenting-students-are-still-being-pushed-out-school> (“Girls from around the country tell the same stories: When they got pregnant or had a child, a principal, counselor, or teacher told them they’d have to leave school. In many cases, pregnant and parenting students are told outright that they can’t stay in school or must go to an alternative school. Sometimes, the discrimination is subtler. Schools refuse to give excused absences for doctor’s appointments, teachers refuse to allow make-up work, counselors coerce students into substandard alternative schools or staff excludes them from school activities based on ‘morality’ codes or makes disparaging, discouraging and disapproving comments.”).

64 Interview with Kruti Parekh, Program Coordinator, Youth Justice Coalition, in L.A., Cal. (Jan. 11, 2012).

65 Interview with “Ashley,” Student, in L.A., Cal. (Jan. 11, 2012).

## 2. Traditional Schools Use Age-Based and Credit-Based Policies to Keep Out Students

“[My brother is] a senior now. He’s not going to get his diploma on time or at all. And now, he’s so far behind, he can’t even do his schoolwork because he doesn’t understand it. [The neighborhood school is] not accepting him now because he has low credits.”<sup>66</sup>

**Maria, Student**

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By law, Los Angeles guarantees compulsory education for students between the ages of six and eighteen years old.<sup>67</sup> This right extends to age twenty-two for students who are receiving special education services.<sup>68</sup> Traditional schools are generally obligated to enroll resident students. Yet some schools bar reentry to students who they say are “overage” and who lack adequate credits. Some schools deny reentry to overage students because of concerns about school safety and the dangers posed by integrating older students into the same learning community as younger students.<sup>69</sup> In addition, education funding is largely determined by attendance, and schools can generally only collect attendance monies for students up to a certain age.<sup>70</sup> Ultimately, many traditional high schools bar enrollment to students who are over the age of eighteen.<sup>71</sup> Marlene, an affected adult, explained: “Right now, my age, I’m already twenty. [The high school] told me

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66 Interview with “Maria,” *supra* note 3.

67 Cal. Educ. Code § 48200 (West 2006) (“Each person between the ages of 6 and 18 years not exempted . . . is subject to compulsory full time education.”).

68 California Department of Education, *Exemptions for Eligible Students with Disabilities*, <http://www.cde.ca.gov/ta/tg/hs/cahseefaexempt.asp> (last reviewed Feb. 17, 2012) (“Under the Individuals with Disabilities Education Act (IDEA), students are entitled to special education services until age twenty-two or until they receive a diploma.”).

69 Melissa K. Barnhart, *Outcomes for Students with Disabilities and Their Non-Disabled Peers in the LAUSD Class of 2007*, 41-42 (2009), [http://notebook.lausd.net/pls/ptl/docs/PAGE/CA\\_LAUSD/FLDR\\_ORGANIZATIONS/FLDR\\_PLCY\\_RES\\_DEV/PAR\\_DIVISION\\_MAIN/RESEARCH\\_UNIT/PUBLICATIONS/REPORTS/GRAD%20STUDY%20FINAL%20REPORT.PDF](http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_PLCY_RES_DEV/PAR_DIVISION_MAIN/RESEARCH_UNIT/PUBLICATIONS/REPORTS/GRAD%20STUDY%20FINAL%20REPORT.PDF) (“[O]ne school reported to us they were uncomfortable with the idea of students age 20 and over being on the same campus with students who were 14 years of age, which is the age at which many students begin ninth grade.”); Interview with “Lizzy Dean,” Professional, in L.A., Cal. (Jan. 10, 2012) (explaining “and some [of the schools] probably don’t want an old guy in school with young girls”).

70 Interview with Teacher, in L.A., Cal. (Jan. 11, 2012) (“We can only collect attendance money for kids up to the age of twenty but twenty-one if they have an IEP.”).

71 California is not unique in this regard; *see e.g.*, Melissa K. Barnhart, *supra* note 69, at 41-42 (“a major structural impediment within the current K-12 system is that many general education students ‘age out’ at the age of 19.”)

you can't be there if you're older than eighteen."<sup>72</sup> Similarly, Ariel Wander, the education attorney with Public Counsel, noted, "It's blatantly against the law for the school to deny enrollment based on age. Despite this fact, I have seen schools use this argument against special education students while knowing the student's special education status."<sup>73</sup>

Credit-based policies affect underage students as well. For example, a professional at an educational and technical training school for students age sixteen and older, explained, "Most high schools are trying to get rid of kids who are low in credits."<sup>74</sup> An educator working at Juvenile Hall noted, "I can't send a kid [from Juvenile Hall] to a comprehensive high school if he is more than five credits under what he should have [for his age and grade level]."<sup>75</sup> Jose Barragan, a teacher at YouthBuild Charter School, further confirmed how Keep Out is affecting underage students: "We usually serve eighteen- to twenty-four-[year-olds] but we are seeing more and more fifteen- to sixteen-year-olds who can't go back to school and are being told they can't recover the credits."<sup>76</sup> Barragan further explained that these credit-based policies are poorly communicated to students, saying, "Students are given a letter saying you can't reregister for school because you are so behind in credits, so their first contact with a counselor is when the counselor is recommending continuation school."<sup>77</sup>

Another interviewee explained that schools often communicate false promises aimed at pushing out and keeping out specific students. A Program Coordinator at the Adult Occupational Center said many students are told to make up credits in an alternative setting. He explained, "[Students will enter our alternative school because] their high school will tell them, just get two credits here and they'll let them back. But [the traditional schools] don't [re-admit these students]."<sup>78</sup> Once these students are counseled to go to nontraditional schools, policies regarding age and credits are used to bar reentry into traditional schools.<sup>79</sup>

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72 Interview with "Marlene," Affected Adult, in L.A., Cal. (Jan. 11, 2012).

73 E-mail from Ariel Wander, Public Counsel, to Marnie Kaplan, Georgetown University Law Center J.D. Candidate (Mar. 16, 2012, 18:10 EST) (on file with author); *see also* Melissa K. Barnhart, *supra* note 69 at 41-42. ("In addition, one school reported to us they were uncomfortable with the idea of students age 20 and over being on the same campus with students who were 14 years of age, which is the age at which many students begin ninth grade. If this is a perception shared by other schools, then it presents another barrier to continuation: schools may discourage even students who can stay past the age of 19, e.g., SWD [students with disabilities] and students who have recently moved to the U.S., from continuing at the comprehensive high school or enrolling in the adult education center on the same campus.")

74 Interview with "Janet Jones," Professional, in L.A., Cal. (Jan. 10, 2012).

75 Interview with Anonymous, Professional, in L.A., Cal. (Jan. 13, 2012).

76 Interview with Jose Barragan, Teacher, YouthBuild Charter School, in L.A., Cal. (Jan. 10, 2012).

77 *Id.*

78 Interview with "Scott G.," Program Coordinator, Adult Occupational Center, in L.A., Cal. (Jan. 10, 2012).

79 *Id.* ("Lots [of our alternative education students] tell us their high school will let them back in, and we look and say, 'no they won't.'")

Age-based and credit-based policies also prevent students from catching up on missed credits, increasing the likelihood that those students will never graduate. In recent years, Los Angeles has downsized its summer school program,<sup>80</sup> making catching up all the more difficult. One student, Darryl, explained how his school refused to help him: “They said I was behind in credits and I had to come [to a continuation school] . . . . If you can be sent to an alternative school to gain credits, you should be able to do that in a regular school.”<sup>81</sup> Another student, Kira, aged twenty-one, explained, “I wanted to try to reenroll in [traditional school] for the activities, prom, to prove my family wrong.” But after attempting to reenroll, her counselor told her it would not be possible for her to catch up. She chose to go to a continuation school instead, stating, “Since they basically gave up on me, I was frustrated. If they would have given me an opportunity to catch up, everything could be different. I am an adult in high school. I feel like a failure.”<sup>82</sup>

When students are forced to attend alternative schools because of credit deficiencies, the educational opportunities that are available to them are not always of the same quality as are provided through traditional schools.<sup>83</sup> Darryl, like many of the interviewees,<sup>84</sup> felt like he had been denied opportunities presented to youth who graduated from traditional high schools: “Alternative schools kill a lot of chances for your success and talents . . . You can’t leave here and go to USC [University of Southern California] . . . . You can’t get a scholarship from here . . . .”<sup>85</sup>

Not only do overage and under-credited policies deny access to equal educational opportunities, these policies further jeopardize students’ prospects of graduating. An L.A. Corps student explained that he was only four classes short of graduation, yet he was not allowed to complete his

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80 See *LAUSD to Offer Limited Summer School Classes*, OUR WEEKLY, Apr. 17, 2011, <http://ourweekly.com/los-angeles/lausd-offer-limited-summer-school-classes> (“Due to the ongoing budget crisis, the Los Angeles Unified School District . . . will offer limited summer classes and support services, including reduced online courses . . . Starting July 6, summer school will be offered at select high schools for 11th graders who received a grade of ‘D’ or ‘F,’ and 10th graders who received an ‘F’ in required classes for graduation. Students in 12th grade who do not graduate will be referred to Adult School. According to the district, there will be no credit recovery classes offered to ninth graders.”); see also, Seema Mehta & Jason Song, *L.A. Unified School District Cancels Bulk of Summer School Programs*, LOS ANGELES TIMES, May 29, 2009, available at <http://articles.latimes.com/print/2009/may/29/local/me-summer-school29>.

81 Interview with “Darryl,” *supra* note 39.

82 Interview with “Kira,” Student, in L.A., Cal. (Jan. 11, 2012).

83 See *infra* Finding III.3.

84 See Interview with “Darryl,” *supra* note 39; see also interview with “Jasmine,” *supra* note 45 (“I’m a softball player and that can open my career to get a scholarship . . . so to hear that you can’t do that at the charter school got me real bummed. A lot of girls get opportunities through sports.”); interview with “Gia,” Anonymous Student, in L.A., Cal. (Jan. 11, 2012) (“We don’t get a prom, Sadie’s dances, student council. They shouldn’t take it out on your education when we do bad things. When I was filling out my college application, I couldn’t find my school anywhere.”).

85 Interview with “Darryl,” *supra* note 39.

education at his traditional school because he had turned eighteen.<sup>86</sup> A fifteen-year-old student explained how graduation might never be a reality for her brother: “My mom tried to enroll him but they said that he is a senior, and because he has low credits, he has to take extra credits [at a different school] . . . . He isn’t a troublemaker; he just has low grades.”<sup>87</sup>

In the end, most youth interviewed who were facing obstacles because they were overage or under-credited felt that it was impossible for them to graduate from their traditional school because they were either too old or insurmountably behind in credits and learning. Without adequate avenues for catching up, these students are kept out of traditional schools and denied access to education.

### 3. Traditional Schools Use Forced Transfers to Keep Out Students

“I’ve [been] opportunity transferred fifteen times, been sent to . . . individual study schools. No one has helped me find other schools.”<sup>88</sup>

**Ashley, Student**

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Many students are kept out of school because of involuntary school transfers. Some school districts force students with behavioral challenges to relocate from their traditional schools to alternative schools.<sup>89</sup> Even when districts, such as Los Angeles Unified School District (LAUSD), transfer students to traditional schools, these policies disrupt students’ educational paths and correlate with higher dropout rates.<sup>90</sup> Ultimately, the use of disciplinary transfers perpetuates Keep Out and bars students from obtaining meaningful educational opportunities.<sup>91</sup>

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86 Interview with “Mario,” Student, in L.A., Cal. (Jan. 11, 2012).

87 Interview with “Maria,” *supra* note 3.

88 Interview with “Ashley,” *supra* note 65.

89 In cities such as Philadelphia, students with disciplinary records can be transferred to “disruptive student programs” or “private alternative education institutions for disruptive students.” These alternative schools fall within the meaning of 24 P.S. §§ 19-1901-C and 19-1901-E respectively. See Youth United for Change & Advancement Project, *Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison*, 19-21 (2011), <http://www.advancementproject.org/sites/default/files/publications/YUC%20Report%20Final%20-%20Lo-Res.pdf>.

90 CADRE, *More Education. Less Suspensions. A Call to Action to Stop the Pushout Crisis in South Los Angeles* 8 (2006). (“Students who change schools are more likely to drop out of school. According to our preliminary survey results, 15% of [Los Angeles] youth that left high school had an OT [opportunity transfer] in their educational history.”)

91 Districts often use these transfer policies with alarming frequency. For example, Philadelphia executed 2,022 disciplinary transfers over the course of one school year. See Youth United for Change & Advancement Project, *supra* note 89, at 19.

In Los Angeles, LAUSD's disciplinary transfers, called "opportunity transfers," allow administrators to remove students and relocate them to different schools.<sup>92</sup> Opportunity transfers make it more difficult for students to obtain quality, safe, and easily accessible educational opportunities.<sup>93</sup> On paper, the policies are supposed to be used as a last resort,<sup>94</sup> intended to give at-risk students an "opportunity" to succeed in another school environment. In reality, these involuntary transfers interrupt education and learning, allowing administrators to get rid of "bad" children. These "swap[s]" of "bad apples"<sup>95</sup> between administrators keep children on a merry-go-round of placements, often without consulting the students or their parents before the transfer.<sup>96</sup> CADRE, a community-based organization committed to ending Push Out in Los Angeles, reported, "Schools routinely violate the requirements of the opportunity transfer policy including: failing to inform parents of their rights, using opportunity transfers as a first resort and for unacceptable reasons under the policy, and failing to evaluate students [sic] progress in the receiving school."<sup>97</sup> Rather than providing students with educational opportunities, opportunity transfers negatively affect students' academic performance and may correlate with higher dropout rates.<sup>98</sup>

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92 Cities such as Philadelphia also "segregate" students with behavioral challenges into separate schools, arguably keeping students out of *equal* educational opportunities. See Youth United for Change & Advancement Project, *supra* note 89, at 19 ("Superintendent Ackerman has said disciplinary transfers should only be used as a 'last resort.' The education offered at those alternative settings must be of sufficiently high quality that placement in one of those schools does not function as an academic penalty. However, in Philadelphia, it appears that neither of these conditions has been met, leading to: (a) an over-reliance on alternative schools; and (b) subpar education offered in some of these settings.").

93 See CADRE, *supra* note 90, at 8.

94 See *id.* at 7. ("LAUSD's opportunity transfer policy is touted as a progressive, carefully planned discipline policy that uses OT's [opportunity transfers] as a last resort, takes into account the child's educational continuity, and respects parents rights. However, the careful planning ends with the writing of the policy, as abuses of the OT policy were uncovered by LAUSD's response to a March 2, 2006 public records act request . . . Furthermore, despite the stated plan to use OT's as a last resort, Local District 7 recorded 927 opportunity transfers, representing 3% of the total student population of that local district in 2004-2005. The same year, LAUSD as a whole, recorded 5,868 OT's representing 1% of the student population. African Americans accounted for an astounding 48% of OT's in Local District 7 even though they account for 24% of the student population.")

95 Interview with Anonymous, Charter School Teacher, in L.A., Cal. (Jan. 11, 2012).

96 Interview with Dawn Brown, Executive Director, Girls & Gangs, in L.A., Cal. (Jan. 12, 2012) ("Often, they [traditional schools] will just enroll a child in a different school and tell them one day when they come to school, without consulting the parent or the child. You can't just enroll a child in a different school like that."). See also CADRE, *supra* note 90, at 8.

97 *Id.* (explaining "[o]ur documentation shows that OT's were utilized as the next step in an escalating series of removals for minor infractions that could have been resolved through other interventions, or were used inappropriately as a first resort.").

98 *Id.* ("Youth who underwent OT's fell behind in school . . . [Also], [s]tudents who change schools are more likely to dropout of school. According to our preliminary survey results, 15% of the youth that left regular high school had an OT in their educational history.") CADRE's report documented students' experiences with opportunity transfers: "One parent reported that her eighth-grade child was shuffled between four different middle schools

Los Angeles’s opportunity transfers keep out students in several ways. First, opportunity transfers often relocate students to more distant schools, making it difficult for students to actually attend school. Second, opportunity transfers may move students — particularly gang-affiliated youth or youth who are believed to be gang-involved — to schools that the students cannot safely attend. Third, opportunity transfers explicitly and implicitly communicate to students that they are not wanted, encouraging students to permanently exit school.

While opportunity transfers are purportedly executed in the youth’s best interests, students are often relocated to schools in neighborhoods that are far from their homes. These transfers make it more likely that children will struggle to find, and be able to afford, transportation to school. Transfers to out-of-neighborhood schools make it more likely that students will be tardy to school and less likely that they will actually attend. One affected adult explained how opportunity transfers affected her attendance and educational achievement: “At the new school they had tardy sweeps. Police would wait outside for the late students . . . The school I was sent to was somewhat far . . . When I went to the new school, I was always late and I failed first period.”<sup>99</sup> The parent-organizing group CADRE reported how one student “was suspended twice and then [transferred] to a school out of the area. [She] dropped out of regular high school because the school was too far away.”<sup>100</sup>

In addition, opportunity transfers often lead students to be relocated to schools in rival gang neighborhoods. These students are forced to travel to and attend schools in rival neighborhoods, leaving them vulnerable to serious threats and attacks by rival gangs. One affected adult spoke of leaving one school for safety concerns, only to be reassigned to a school that was only several blocks away and in the same neighborhood. After being attacked at his new school, he decided to stop attending.<sup>101</sup> Another student who was transferred in middle school to a more dangerous school explained, “I was there for about four months. I got kicked out of my home school, but I couldn’t be around [the new school] because it was a rival school, so I started to get in trouble on purpose, so I could get away from that area where the school was located.”<sup>102</sup> Another student told of receiving an opportunity transfer to a school where he felt unsafe. When he and his family expressed their safety concerns, they were told, “If I didn’t want to go to the new school then it was up to [me] to find a school or just don’t go to school at all.”<sup>103</sup> These students, like many others in Los Angeles, were put in a position where they were forced to choose between obtaining an education and protecting their safety.

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resulting in less than one month of attendance in school during the academic year. The reason for her most recent OT was for using a cell phone to call her mother. In another situation, a victim of a physical attack who was also an honors student was forced to opportunity transfer and it took her three weeks to reenroll into honors classes.” *Id.*

99 Interview with Anonymous Youth Organizer and Affected Adult, in L.A., Cal. (Jan. 12, 2012).

100 CADRE, *supra* note 90, at 8.

101 Interview with “Benjamin,” *supra* note 43.

102 Interview with “Jadyn,” Affected Adult, in L.A., Cal. (Jan. 12, 2012).

103 Interview with “Sam,” Student, in L.A., Cal. (Jan. 12, 2012).



Schools sometimes execute opportunity transfers without first ensuring that the student can actually enroll in the new school. Despite the fact that schools are only permitted to transfer a student when the receiving school agrees to enroll the student, this requirement is not always observed. In addition, traditional schools sometimes send students to alternative schools without first checking whether space is available elsewhere or calling to ensure that the receiving school will allow the student to enroll. Traditional schools “are checking them out into not being in school at all,” explained an alternative school teacher who frequently has students knocking on her door, holding a document saying that they have been transferred to her school.<sup>104</sup> “It says, ‘checked out to [ -- ] school.’ It’s not even the right name of our school.”<sup>105</sup> “Sometimes we are full and have a waitlist,” she explained.<sup>106</sup>

Finally, forced transfers communicate to students that they are not wanted in school. Not only do schools communicate their indifference through lack of follow-up, the actual practice of informal “swapping” of “bad apples”<sup>107</sup> leaves students knowing that they are unwanted. Seventeen-year-old Sam explained that he was opportunity transferred a total of six times between sixth and ninth grade, a practice that made him “feel worthless” and like his school was “just trying to fit [him] wherever they could.” After his fifth opportunity transfer at age fourteen, Sam stopped going to school. “Why try to start fresh at a new place when I already knew I was gonna get in trouble? Going to [traditional] school, I would think, I might get locked up today,” he said.<sup>108</sup> Within a year on the streets, Sam was incarcerated. Ultimately, these practices keep out students, and further perpetuate the School-To-Prison Pipeline.

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104 Interview with Anonymous, Teacher, in L.A., Cal. (Jan. 11, 2012).

105 *Id.*

106 *Id.*

107 *Id.*

108 Interview with Sam, *supra* note 103.

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## **FOCUS** Disproportionate Barriers to Reentry for Immigrant Children

Undocumented immigrant children have a right to a free public education.<sup>109</sup> Human rights law is clear that “education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination.”<sup>110</sup> In particular, “the principle of non-discrimination extends to all persons of school age residing in the territory of a State Party, including non-nationals, and irrespective of their legal status.”<sup>111</sup> U.S. law also recognizes that undocumented children have a right to public education. In fact, in *Plyler v. Doe*, the Supreme Court held that the exclusion of undocumented children from free public education is an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment.<sup>112</sup>

Interviewees revealed onerous administrative requirements that made education inaccessible to undocumented students. “[Administrators] say that [undocumented children seeking to reenter] don’t have a social security number or a birth certificate,” stated Dawn Brown, the Executive Director of Girls & Gangs, an advocacy and support organization for system-involved girls. “But that is just ridiculous,” she continued, “because the girl has been in school for years and she never needed a social security number or birth certificate.”<sup>113</sup> Interviewees explained that documentation requirements often prevented undocumented students from successfully reentering school. For example, Karla, a teenager living at a group home for girls, noted, “Undocumented people don’t go to school because they’re scared that they will be sent home.”<sup>114</sup> Karla continued, “Two friends of mine tried to get in school, but didn’t because they didn’t have papers.”<sup>115</sup>

In addition to erecting administrative barriers to reentry, documentation requirements cause undocumented parents and students to fear that reenrolling a child in school will alert authorities to their immigration status. The increasing police presence in schools contributes to this anxiety. Kruti Parekh, Program Coordinator at Youth Justice Coalition, explained, “For undocumented students, with so many police in schools, there is a lot of fear.”<sup>116</sup> This fear is not unreasonable; the integration of immigration and local law enforcement creates the possibility that a student may be apprehended and placed in removal proceedings as a consequence of his or her involvement with the juvenile delinquency or adult criminal justice system.<sup>117</sup> Jessica Gholson, Clinical Service Co-

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109 *Plyler v. Doe*, 457 U.S. 202 (1982).

110 CESCR General Comment No. 13, *supra* note 20, at ¶ 6(b).

111 *Id.* at ¶ 34.

112 *Plyler v. Doe*, 457 U.S. 202 (1982).

113 Interview with Dawn Brown, *supra* note 96.

114 Interview with “Karla,” Affected Youth, in L.A., Cal. (Jan. 10, 2012).

115 *Id.*

116 Interview with Kruti Prakesh, *supra* note 64.

117 See, e.g., Elizabeth Frankel, *Detention and Deportation Without Adequate Due Process: The Devastating Consequences of Juvenile Involvement with Law Enforcement for Immigrant Youth*, 3 DUKE FORUM FOR

ordinator at Girls & Gangs, explained that this fear makes undocumented parents less likely to be involved in the reenrollment process. She explained, “Often times children’s parents are uneducated or their immigration status is questionable, so they don’t want to cause a rift.”<sup>118</sup> Furthermore, it is more challenging for parents with undocumented immigration status and a language barrier to assert the rights of their children.

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LAW AND SOCIAL CHANGE 63, 65 (2011) (“Although the Obama administration has made clear that ICE should focus its efforts on violent offenders, in reality ICE targets any non-citizen who enters the state juvenile or criminal justice systems, including juveniles charged with non-violent civil delinquencies such as underage drinking or truancy.”).

118 Interview with Jessica Gholson, Clinical Service Coordinator, Girls & Gangs, in L.A., Cal. (Jan. 9, 2012).

## II. “SLIPPING THROUGH THE CRACKS”: LACK OF COORDINATION AND ASSISTANCE LEADS TO KEEP OUT

“Right now, the responsibility is with no one.”<sup>119</sup>

**Dr. Mikala Rahn**, Founder and CEO, Learning Works!

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Under human rights law, States are required to fulfill students’ right to access education when students and their families are unable to realize this right themselves. Often, however, systematic barriers prevent students from reenrolling in traditional schools after a period of exclusion is complete, and no single actor is responsible for providing guidance and support to students navigating disjointed, confusing, and complex policies and systems.

In many instances, the absence of adequate crediting and recordkeeping impedes students’ ability to reenter their traditional schools after a period of exclusion. Some school enrollment and orientation processes are confusing and bureaucratic, and force students trying to reenroll to rely on informal relationships and sometimes even luck. For students exiting the juvenile justice system and trying to return to a traditional school, the lack of coordination between the school system and the juvenile justice system creates additional obstacles to reenrollment. Students’ likelihood of being kept out is exacerbated when they and their families are not well versed in their legal rights. Ultimately, many youth “fall through the cracks” and are being kept out of school.

### **1. The Failure of Multiple Educational Actors, Including Traditional Schools and the Juvenile Justice System, to Maintain Adequate Records and Issue Credits Facilitates Keep Out**

“The way that they pull up your criminal history, they should be able to pull up your school record.”<sup>120</sup>

**Vivian**, Incarcerated Youth

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119 Interview with Dr. Mikala Rahn, Founder and CEO, Learning Works!, in L.A., Cal. (Jan. 13, 2012).

120 Interview with “Vivian,” Youth, in Fullerton, Cal. (Jan. 12, 2012).

Students are kept out of traditional schools when credits from alternative or juvenile justice placements are not properly awarded or transferred, as well as when they are unable to access their transcripts or records from those placements. While the challenges are different for students trying to return from alternative schools and those trying to return from juvenile justice placements, these problems keep students from both groups from reenrolling in traditional schools, being put in proper classes, graduating on time, and getting the special education services to which they are entitled. Ultimately, without effective systems to ensure proper crediting and recordkeeping, students are kept out by not receiving credit for work completed<sup>121</sup> or because they become discouraged after being forced to repeat classes.

For many students trying to reenter traditional schools, the process for accessing transcripts and records is confusing. Shantel Vachiani, an education attorney, estimated that she spends fifty percent of her client work getting partial credits and accessing records.<sup>122</sup> Jose Barragan, an instructor at YouthBuild, an organization for at-risk youth, reports part of the problem is that students and parents do not know how to access transcripts.<sup>123</sup> Even students transferring from one traditional LAUSD high school to another because of opportunity transfers or being counseled out<sup>124</sup> may still have trouble getting their credits transferred to their new school, keeping them from timely enrollment. Kira, a former LAUSD student, described the difficulty she faced getting credits properly transferred when she tried to attend a new school, or understanding what credits she had when she left: “It was December I think that I left . . . I never got the credits. When I left [School A], I had to get the records to bring to [School B]. No one at [School A] had a conversation with me about my credits.”<sup>125</sup>

Students trying to return to traditional schools from juvenile justice placements face additional problems accessing credits and records.<sup>126</sup> There are three key reasons for this: (1) credits earned while incarcerated may not align with traditional school curricula; (2) students may not consistently receive credits while incarcerated; and (3) credits earned in probation camps<sup>127</sup> or juvenile justice placements may not be effectively transferred to new schools.

Credits and curricula in juvenile halls and camps do not always align with those in traditional schools. In California, credits in juvenile justice placements are earned based on duration of stay rather than academic work completed. Interviewees reported that students earn credits every

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121 See *infra* Finding I.

122 Interview with Shantel Vachiani, Attorney, Public Counsel, in L.A. Cal. (Jan. 9, 2012).

123 Counselor to student ratios of up to 500:1 contribute to this problem.

124 “Counseled out” refers to the practice of informally encouraging students to leave school.

125 Interview with “Kira,” *supra* note 82.

126 Education for incarcerated youth is provided by the Los Angeles County Office of Education (LACOE), which is a separate entity from LAUSD.

127 Youth incarcerated for medium-to-long-term periods are housed in probation “camps” during their incarceration.

sixteen days that they are incarcerated.<sup>128</sup> If youth are not placed for a sixteen-day interval, they will not receive any credits for the work they have completed.<sup>129</sup> Even if a student earns credits, if he or she does not finish an entire course at the camp, the new school may only count the credits toward an elective rather than toward a core course, regardless of the subject matter the student actually studied.<sup>130</sup> These problems can destroy much of the incentive that students have to pursue their education while in camps.<sup>131</sup> Additionally, at least one transition counselor indicated that the differences in the crediting systems can lead to confusion and make a student appear more behind than he or she actually is.<sup>132</sup>

Many students reported not consistently receiving credits for work completed while incarcerated. One young woman lamented, “If we have to do the work of homework, all that paperwork, then you have to do the work of filing it and giving us credits.”<sup>133</sup> Another organizer reported, “I worked with one kid who did two years of placement and got two credits. They could only give her an elective: art.”<sup>134</sup>

Finally, students reported difficulties in getting their transcripts from camps sent to traditional schools. This is problematic because whether a student is able to obtain a copy of his or her transcript upon release from custody can be the determining factor in whether he or she is able to successfully enroll in school and continue progress toward earning a high school diploma. One organizer explained that students would be released from probation camp, handed an open transcript and a sealed transcript, and instructed to enroll in the school of their choice.<sup>135</sup> Some entering schools are able to successfully rely on dedicated individuals in the probation department to locate student records.<sup>136</sup> However, not all students are provided with a transcript or an active and dedicated probation officer, and many are unable to successfully reenroll in school.

Failure to share transcripts and records across systems leads to youth being kept out. One youth advocate commented, “If records are lost, the kids end up having to [repeat] their credits. Sometimes they have to take [the same classes] over. Instead of one more year of school, they have two.”<sup>137</sup> This same advocate recalled a story about a student who was supposed to graduate but

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128 Interview with “Vivian,” *supra* note 120.

129 *Id.*

130 Interview with Greg Anapol, Transition Counselor, Gonzalez Probation Camp, in L.A. Cal. (Jan. 13, 2012).

131 Interview with “Vivian,” *supra* note 120.

132 Interview with Greg Anapol, *supra* note 130.

133 Interview with “Vivian,” *supra* note 120.

134 Interview with Claudia Gomez, Organizer, Youth Justice Coalition, in L.A. Cal. (Jan. 9, 2012).

135 Interview with Rolando Cruz, Homeboy Industries, in L.A. Cal. (Jan. 10, 2012).

136 Interview with Stephanie Marron, Community School Coordinator, L. A. Education Partnership, in San Fernando, Cal. (Jan. 13, 2012).

137 Interview with Jessica Gholson, *supra* note 118.

no one knew what classes she had taken. She was forced to retake a class she believed she had already taken, leaving her frustrated.<sup>138</sup> One young man recounted his experience transferring from camp to a continuation school:<sup>139</sup> “They didn’t keep track of the transcript. It took a long time to get me into one class. The first couple of weeks weren’t in class. [I sat in the main office and] would just come out [of the main office] to eat.”<sup>140</sup> Dawn Brown of Girls & Gangs told a similar story. She recalled one student who sat in the principal’s office every day for two months before getting her records. The student was never given any classwork.<sup>141</sup>

Many professionals recommended electronic transfers of educational records, a practice not currently utilized in Los Angeles.<sup>142</sup> One transition counselor suggested, “We need a statewide database, where I can search for every kid in the school district and see a list of all the schools he’s been to and his credits. If I can do it for testing data, why not for transcripts?”<sup>143</sup> Electronic educational records would ensure that transferring students, especially those who have been previously pushed out of school, could more easily reenter and resume their education.<sup>144</sup>

The Los Angeles Unified School District (LAUSD) and the juvenile justice system have taken steps to improve this process over the last five to seven years. The Los Angeles County Office of Education (LACOE), which is charged with providing education in probation camps and juvenile halls, is now supposed to provide the transcripts, and the staff in the juvenile justice facilities try to facilitate the transition to school.<sup>145</sup> One probation officer explained, “It has actually improved . . . [T]hey have to start somewhere . . . L.A. Unified now has policies in place, they have a process, and it’s moving in a positive direction.”<sup>146</sup> Many of the policies have recently been written for the first time, “within probably the last six months,” so “some schools are really, really good, and some schools you have to have them contact the district office to tell them about the policy.”<sup>147</sup> However, revision of official policies is merely a first step. LACOE and administrators within juvenile justice education facilities must ensure that these policies are properly implemented and enforced.

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138 *Id.*

139 Continuation schools are alternative placements for students who might learn best in a non-traditional setting.

140 Interview with “Benjamin,” *supra* note 43.

141 Interview with Dawn Brown, *supra* note 96.

142 Interview with Greg Anapol, *supra* note 130.

143 *Id.*

144 This also applies to the transmission of the “MDT” plan, which is a reentry plan for students coming out of incarceration. *See infra* Finding II.2 (discussing the need for the MDT plan to be transmitted to new schools).

145 Interview with Anonymous, Probation Officer, phone interview (Jan. 9, 2012).

146 *Id.*

147 *Id.*

## 2. The Failure of Multiple Educational Actors, Including Traditional Schools and the Juvenile Justice System, to Facilitate Students' Educational Transitions Facilitates Keep Out

“It has to be a process; you can’t just dump kids somewhere and say, ‘Here is your class schedule.’ Without a process, they are forced to rely on individual superstars who don’t have the support or resources they need.”<sup>148</sup>

**Castle Redmond**, Program Manager, Schools Team, California Endowment

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All too often, students are kept out of traditional schools because of bureaucratic hurdles and because the system does not designate responsibility to any individual to serve as that student’s educational advocate. Indeed, without adequate reentry policies and procedures, informal, ad hoc relationships and individual actors play a disproportionate and unsustainable role in the re-entry process. Because this approach is sporadic rather than systemic, many students are falling through the cracks. The challenges are different for students returning from alternative schools and from juvenile justice placements, but a lack of adequate coordination and planning ultimately prevents both groups from being able to reenter their traditional schools.

Once students end up in an alternative setting, there is often no defined path to transition back to traditional schools. Though many students end up being successful in alternative programs and choose not to transition back, those who do desire a return to traditional school have no prescribed route to follow. The transfer process is affected by a variety of factors, including which alternative school a student attends, whether individual adults or probation officers are invested in the student’s educational success, and the end result the student seeks. According to Chris Corley, a teacher at Soledad Enrichment Academy, an alternative program serving at-risk students, there are no set criteria establishing a student’s eligibility to transition to traditional school. It “depends on the student. If the student’s goal is to get back to the home school, then that’s the goal.”<sup>149</sup> Corley also stated that the students’ probation officers often play a major role in determining eligibility. He stated, “Some probation officers, I call them, they respond. Other probation officers I don’t see . . . kind of depends on the probation officer.”<sup>150</sup> Ultimately, the students who are successful in navigating this complex process of transitioning back to traditional school succeed largely due to informal relationships.

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148 Interview with Castle Redmond, Program Manager, Schools Team, The California Endowment, in L.A. Cal. (Jan. 11, 2012).

149 Interview with Chris Corley, Teacher, *supra* note 52.

150 *Id.*



Interviewees reported that traditional schools sometimes promise students that they will be permitted to return once they have earned a certain number of credits in the alternative setting, but also said that this often does not happen in practice.<sup>151</sup> Teacher Scott G. reported, “[Students will enter our alternative school because] their high school will tell them, just get two credits here and they’ll let them back. But [the traditional schools] don’t [re-admit these students] . . . . [When students] tell us their high school will let them back in, we look and say, ‘No they won’t.’”<sup>152</sup> Another professional at the same school reported that traditional schools sometimes mislead students. She reported, “We tell them about the high school runaround. Make sure you have everything in writing, bring your parents.”<sup>153</sup> Though many students arrive at alternative schools expecting to eventually transition out, teachers and administrators stated this was rare, explaining that many traditional schools only accept “a few” returning students.<sup>154</sup>

Students who are successful in this chaotic process typically benefit from the intervention of an adult who chooses to advocate for them. Tony Zapeda of Soledad Enrichment Academy highlighted the importance of individual relationships, explaining, “The reality is, [the schools] don’t want them back, but because of the relationships we have, we are able to advocate for this kid and prepare them for what’s coming. We have to have individual relationships with deans and assistant principals.”<sup>155</sup>

Even when students do reenter a traditional school, there is often no single system or set of procedures to properly orient them to that school. Castle Redmond, the Program Manager on the Schools team at The California Endowment spoke to this point: “It has to be a process; you can’t just dump kids somewhere and say, ‘Here is your class schedule.’ Without a process, [kids] are forced to rely on individual superstars who don’t have the support or resources they need. Best practices don’t get spread. Good systems should be at least district-wide.”<sup>156</sup> He also stressed the unsustainability of this “system,” saying “Effective reentry requires, first, a process – not just the reliance on superstars – and second, a collaborative effort.”<sup>157</sup>

The professionals interviewed overwhelmingly agreed that students need a point person for reentry within traditional schools. Joe Zeccola and Melissa Naponelli, educators at and founders of a new LAUSD high school, emphasized that “students and schools need a reentry counselor.”<sup>158</sup> Currently, the schools and individual teachers that are making strides in successful reentry are

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151 Interview with “Scott G.,” *supra* note 78.

152 Interview with “Janet Jones,” *supra* note 74.

153 *Id.*

154 Interviews with “Janet Jones” and “Scott G.,” *supra* notes 74 and 78.

155 Interview with Tony Zapeda, Soledad Enrichment Academy, in L.A., Cal. (Jan. 13, 2012).

156 Interview with Castle Redmond, *supra* note 148.

157 *Id.*

158 Interview with Joe Zeccola and Melissa Naponelli, Teachers, L.A. Unified Sch. Dist., in L.A., Cal. (Jan. 12, 2012).

doing so independently of a district policy. At San Fernando Valley High School, for example, where a number of students have successfully reentered, one person coordinates the various programs and services for incoming students.<sup>159</sup>

Since the transition process is so unclear and uncertain, students may become disheartened and abandon efforts to get back into traditional school, an indirect form of Keep Out. Some students may even drop out of school altogether. The disjointed process may also set the student up to be less successful at his or her new school due to lack of stability surrounding the transition.

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**FOCUS** “How I Got to School”

Students who are pushed out of traditional school need an accessible path back. Yet for some students, placement in an alternative educational setting might best meet their needs. Indeed, alternative programs can be a last opportunity for youth who would otherwise drop out of school entirely. But even enrolling in an alternative school can be dependent on luck.

There is no organized placement process readily available to youth who want to enroll in appropriate alternative programs. Many students explained that they located alternative opportunities through word of mouth, or sometimes happenstance. Claudia, a youth organizer at an alternative school, explained, “When we ask who referred them, they’ll say one of the students.”<sup>160</sup> Another alternative school teacher said, “They hear about our program through word of mouth: from friends, relatives, outreach consultants from their schools.”<sup>161</sup> According to teacher Scott G., it is usually friends who refer the students to his school. He explained further: “Counselors do know us, but they change all of the time.”<sup>162</sup> Greg Anapol, a transition counselor at the Gonzalez probation camp, recalled a student who “said he was going to a community day school and when I asked him how he ended up there, he said his neighbor told him about it. Now that’s a bad situation when the kid’s relying on his neighbor to find a school. That’s a problem because we don’t have a system where we’re tracking them.”<sup>163</sup>

Many students we spoke to who were thriving in alternative programs reported finding these programs on their own, through sheer luck, or with the help of an adult who took an interest in them. Few students reported receiving assistance from the school district or placement through official channels. Ryan, a young man attending L.A. Corps, reported finding the program through a cousin

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159 Interview with Stephanie Marron, *supra* note 136.

160 Interview with Claudia Gomez, *supra* note 134.

161 Interview with Jackie Morales, Teacher, L.A. Unified Sch. Dist., in L.A., Cal. (Jan. 10, 2012).

162 Interview with “Scott G.,” *supra* note 78.

163 Interview with Greg Anapol, *supra* note 130.

who worked there.<sup>164</sup> Shaun, a student at the L.A. Free School, which is associated with the Youth Justice Coalition, was referred by a neighbor.<sup>165</sup> Kira, another student at the L.A. Free School, discovered the school only after a friend told her about it.<sup>166</sup> Benjamin, a young man attending school at Homeboy Industries, an organization dedicated to supporting and educating at-risk and formerly gang-involved youth, discovered the school because he happened to ride the train past every day.<sup>167</sup> Javier, a student at the L.A. Free School, found the school because he stopped in after getting caught in the rain.<sup>168</sup> Darryl only discovered the L.A. Free School because his aunt happened to drive by on her way to work every day.<sup>169</sup>

Despite the State’s obligation to ensure access to education for all young people, none of these youth received appropriate support from the school system to enroll in an alternative school. These young people were able to access education solely because they had the good fortune of knowing the right person or being in the right place at the right time, rather than because of a policy or procedure that helped them find an appropriate educational placement. Whether youth receive the education to which they are entitled should not be left to luck. Schools and school districts have an affirmative duty to fulfill students’ right to access education.

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“When he got out of camp no one had a plan for him.”<sup>170</sup>

**Pamela, Family Member of Affected Student**

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There is a formalized process for youth reentering school after exiting the juvenile justice system, but this process is flawed and contributes to the Keep Out phenomenon. There are a variety of problems with the way youth are transitioned back to school in Los Angeles: problems with handoff from the camp probation officer to the field probation officer, lack of involvement by the receiving school in the transition plan, students arriving at schools that are not prepared for them, and variations in how the probation officers get involved in securing students’ educational placements.

Officially, in Los Angeles, before youth exit camps, the probation department leads a multidisciplinary team meeting (MDT) comprised of various stakeholders. MDTs are intended to be a mechanism for the probation department to ensure that youth with complex needs receive the

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164 Interview with “Ryan,” Alternative School Student, in L.A., Cal. (Jan. 11, 2012).  
 165 Interview with “Shaun,” Alternative School Student, in L.A., Cal. (Jan. 11, 2012).  
 166 Interview with “Kira,” *supra* note 82.  
 167 Interview with “Benjamin,” *supra* note 43.  
 168 Interview with “Javier,” Student, in L.A., Cal. (Jan. 9, 2012).  
 169 Interview with “Darryl,” *supra* note 39.  
 170 Interview with “Pamela,” *supra* note 60.

cross-agency and community services that can support their successful rehabilitation and return to the community. This plan involves a series of actions related to education. Jamie, an individual who works in the L.A. probation department, explained, “Part of the MDT is that while the minor is in camp, you gather the credits, update the IEP [Individualized Education Program] if necessary.”<sup>171</sup> Another component of this plan is finding an appropriate school placement for the student.

While an MDT is an essential support for system-involved youth, the current process is encumbered with bureaucratic challenges. In practice these MDT meetings often fail to adequately plan for the youth’s successful reentry in an appropriate school placement. One problem is that the probation officer involved in creating the MDT plan is not the probation officer responsible for carrying it out. Judge Donna Groman of the L.A. County Delinquency Court discussed the problematic handoff between different probation officers in Los Angeles:

The participation of the new [probation officers] is improving but still not good enough . . . . [Probation officers] are supposed to be following this plan, but it doesn’t happen that often . . . . Field [Deputy Probation] Officers know the community better and have a better sense of the schools, [but] they aren’t assigned to the kid until [the kid] leave[s]. It’s what we see time and time again with this population, too many changes of adults working with them.<sup>172</sup>

Judge Groman also emphasized that the handoff is encumbered because the MDT plan cannot be edited and updated by different actors. She explained, “If there was better data on the kid, the handoff would be easier . . . . [Probation officers] can’t pull [the MDT] up. They don’t get papers for a while . . . . I want the MDT to be a living document.” This handoff is further complicated by the fact that it is not always clear which probation officer, if any, is responsible for assisting the student in finding an appropriate educational placement. One probation officer reported, “If the home school doesn’t want to take him, we have to find a different school . . . . We’ll call the district on the map where they live. A lot of times we’ll recommend a school, but a lot of times the field [probation officer] will take care of that.”<sup>173</sup> Another professional at a probation camp described confusion regarding responsibility to accompany students to enroll: “If it’s a new school, then I accompany them to enroll. There’s confusion within people who run the program whether I’m supposed to, whether that’s part of my duties.”<sup>174</sup>

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171 Interview with “Jamie,” Probation Department Official, in L.A., Cal. (Jan. 13, 2012).

172 Interview with Donna Groman, Judge, L.A. County Superior Court, in L.A. Cal. (Jan. 13, 2012).

173 Interview with “Jason,” Probation Officer, in L.A. Cal. (Jan. 12, 2012).

174 Interview with Greg Anapol, *supra* note 130.

Receiving schools are rarely engaged in the MDT process, hindering the MDT plan from being carried out. Judge Groman explained, “You might make this plan in camp, but as soon as the kid tries to enroll the school may say no. The receiving school needs to be involved.”<sup>175</sup> Greg Anapol, a transition counselor at Los Angeles’s Gonzales Probation Camp, reported, “There’s very rarely a home school representative . . . . Everyone’s had to cut [budgets].”<sup>176</sup>

In practice, receiving schools often do not receive proper notice of reentering students. According to Anapol, a school should receive notice ninety days before a reentering student arrives, yet in practice many schools do not receive notice of students who are coming or when they are scheduled to arrive.<sup>177</sup> A professional familiar with reentry at San Fernando Valley High School discussed receiving notification of incoming students: “Some of [the students slated for us] would end up in our neighboring schools who had no idea they were coming, or a kid would be slated to go to a neighboring school and show up here. I would say that is more common than us getting the notification and them showing up.”<sup>178</sup> She also explained that youth coming from short-term juvenile justice placements pose even greater challenges. “There is no notification about kids from juvenile hall. The kids from camp are so immersed in the probation system. They are trackable. The kids from juvie might have just got locked up for a week and then get out.”<sup>179</sup> When students show up to enroll in a school unprepared for their arrival, the school cannot make arrangements for any type of services prior to the student showing up.<sup>180</sup>

Inconsistency in the level of probation officers’ involvement in education hinders students’ ability to reenroll in school when returning from the juvenile justice system. This inconsistency leaves some students without adequate support to enroll in school. While some probation officers articulated that school placement is an important component of their job, other professionals criticized the way the probation department handled this responsibility. One probation officer we spoke with emphasized, “[g]etting a kid into school is the responsibility of probation . . . it’s just a part of the job.”<sup>181</sup> Some probation professionals, like Paul Vinetz, who is responsible for a number of probation officers in schools, train their staff to treat education as a priority goal, placing it in the top tier of student needs.<sup>182</sup> Yet Judge Groman indicated a wide variance in probation officer quality, and reported that many do not view securing and monitoring education as part of their job. She explained: “Probation officers do not think it is their responsibility to get a kid in school. They have never historically had to work on these collateral issues they view as social work. A lot of [probation officers] do not think it’s their job. They expect the kid to bring their enrollment and grades to them.”<sup>183</sup>

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175 Interview with Donna Groman, *supra* note 172.

176 Interview with Greg Anapol, *supra* note 130.

177 *Id.*

178 *See* interview with Stephanie Marron, *supra* note 136.

179 *Id.*

180 *Id.*

181 Interview with Jason, *supra* note 173.

182 Interview with Paul Vinetz, Director, L.A. County Probation, Cluster III, in L.A., Cal., (Jan. 13, 2012).

183 Interview with Donna Groman, *supra* note 172.

Some probation officers seek to help students enrolling in school but lack the knowledge to assist effectively. Ariel Wander, an education attorney who works closely with probation officers, reported that some probation officers seek to overcome obstacles encountered while trying to enroll students in school.<sup>184</sup> She explained that some probation officers will seek out information on students' rights.<sup>185</sup> Others will direct youth struggling to enroll toward the proper resources.<sup>186</sup> Yet not all probation officers advocate for students' education.

Students reported drastically different relationships with probation officers. Shaun, a student in Los Angeles, recalled interactions with two different probation officers. "One [probation officer] did work with my mom about which school I would go to and they figured out I'd go [to L.A. Free]."<sup>187</sup> He also said of a different probation officer, "In jail I did meet with the [probation officer] and she asked me if I wanted to go to school. I said yes and that was it. That was the whole conversation we had."<sup>188</sup> Another student, Abraham, described his experience: "There were some [probation officers] who tried to ask me about school. One time one tried to ask me and I said school wasn't my thing and she dropped it. They just never talked about school, they didn't care . . . . If someone would have been on me to go to school, I probably would have tried again."<sup>189</sup>

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184 Youth who are system-involved either through the dependency or delinquency system can access an educational advocate through the court's 317e Education Attorney Panel. The youth's defense attorney can request an education attorney, then the request is reviewed and sent to a panel of available education attorneys, who can take the case. The number of education advocates assigned in this way has been growing: from sixty-nine dependency cases in 2005, to 185 dependency and sixty-one delinquency cases in 2009. This has served as a valuable tool linking youth to educational advocates, but is only accessible to system-involved students, primarily those in dependency proceedings. Non-system-involved youth and those in delinquency proceedings still struggle to access education advocates. Interview with Ariel Wander, *supra* note 42.

185 Interview with Ariel Wander, *supra* note 42.

186 *Id.*

187 Interview with "Shaun," *supra* note 165.

188 *Id.*

189 Interview with "Abraham," Student, in L.A., Cal. (Jan. 13, 2012).

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## **FOCUS** Enroll or Incarcerate: The Enrollment Conundrum

Students coming out of probation camps and juvenile hall may violate probation if they do not reenroll in school.<sup>190</sup> Despite the barriers to reenrolling, the probation system is often unsympathetic. One organizer told of a student who arrived at the alternative L.A. Free School by sheer luck: “A kid came in saying, ‘I need to be in school by Friday.’ They gave him four days to enroll in school.”<sup>191</sup> Ashley, an incarcerated young woman, spoke about the struggle to get the documents needed to reenroll, and its effect on probation:

They’re supposed to give you your transcript within twenty-four hours after you leave . . . If you call and ask [the administrative office] to send them, they won’t send them. You can’t just get them at your school. If you’re just waiting, you go to court, you’re not in school yet, *you violate probation, and probably you’ll go to jail* [emphasis added].<sup>192</sup>

Education attorney Ariel Wander stated that when youth violate their probation by failing to enroll in school, judges take it “very seriously and will detain them for not being enrolled.”<sup>193</sup> Ms. Wander, whose clients include students trying to enroll in school, said that she is often able to explain to judges the steps the student has taken in order to reenroll, and the barriers that the schools have erected.<sup>194</sup> Yet every student on probation does not have an education advocate, and students without them are less equipped to communicate the extent of the barriers they have faced to judges.<sup>195</sup> Youth on probation often face the loss of their liberty, not through any wrongdoing of their own, but instead as a result of system failures that prevent their reenrollment.

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190 Interview with Ariel Wander, *supra* note 42.

191 Interview with Claudia Gomez, *supra* note 134.

192 Interview with “Ashley,” *supra* note 65.

193 Interview with Ariel Wander, *supra* note 42.

194 *Id.*

195 *Id.*

### 3. The Failure of Multiple Educational Actors, Including Traditional Schools and the Juvenile Justice System, to Educate Students and Families about Their Rights Facilitates Keep Out

“If the schools don’t want that student, it is pretty easy to blow off an un-empowered person. They keep them waiting; the parents already took off work and can’t afford to take off another day . . . That’s when students really fall through the cracks.”<sup>196</sup>

**Pamela, Teacher**

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Schools are often able to keep students out when young people and parents do not know the extent of their educational rights or how to effectively exercise those rights. Interviewees pointed out that all students, with limited exceptions, have the right to enroll in their traditional school.<sup>197</sup> Students who have been properly expelled from their traditional school still have the right to a meaningful education in an alternative setting. When students and their families are unaware of the extent of those rights, or the obligation of the State to fulfill those rights, they are unable to demand that students receive an appropriate education.

Many parents are unaware of the legal recourses available to them under LAUSD policies. For example, few parents are aware that LAUSD has a dispute resolution process for youth reenrolling after placement in juvenile justice facilities. Education attorney Ariel Wander explained, “From speaking with probation officers, families, and school staff, the families are not being informed about this dispute resolution process. As a result, school staff are getting away with [denying enrollment] not because it is permissible, but because no one is informed enough to challenge it.”<sup>198</sup>

Respecting and trusting schools’ authority, many families erroneously believe that the administrative directives keeping their children out of school are *formal, legal* policies. When an administrator says a student cannot enroll, and speaks with authority, parents often believe them.<sup>199</sup> Refusing to enroll a youth is illegal, noted Melissa Denton, Program Director at Unusual Suspects, a theater company that works with at-risk youth, but “kids don’t know it.”<sup>200</sup> Parents are similarly

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196 Interview with “Pamela,” Teacher, in L.A. Cal. (Jan. 11, 2012).

197 Interview with Ariel Wander, *supra* note 42.

198 *Id.*

199 Interview with Darin Gray, Instructor, L.A. Unified Sch. Dist., in L.A., Cal., (Jan. 10, 2012).

200 Interview with Melissa Denton, Program Director, Unusual Suspects, in L.A., Cal. (Jan. 11, 2012).



uninformed of their rights, explained education attorney Ariel Wander: “Parents and education rights holders trust the school, they don’t know their rights, and they are overwhelmed by the process. Parents need to be empowered to advocate for themselves.”<sup>201</sup>

Immigrant students and parents face additional hurdles in this regard. Families whose native language is not English often do not know where to turn with questions or for resources. And cultural values may lead parents to believe it is disrespectful to challenge the school authority’s decisions. As Melissa Denton of Unusual Suspects explained:

Another challenge is that [many of] these youth come from immigrant families. They don’t know who to talk to in school. They are frightened. They don’t speak English. They don’t have parents that feel like they have a voice at these schools . . . For immigrant kids, there is a language barrier. I don’t think the barrier is what the school is saying; it’s just they are afraid of asking questions, getting involved. If their kid is getting in trouble, there’s shame. They don’t know the procedures. They’ll stay away.<sup>202</sup>

Students without active or engaged parents face additional challenges to knowing and asserting their educational rights. One young man recalled trying to reenroll in school with his mother, a woman struggling with addiction: “My mom would come but she didn’t know how to talk like a parent. [She] would talk to the counselors but she didn’t know how to talk to them.”<sup>203</sup> Many students kept out of the school system do not have parents willing and able to advocate for them; as Carlos Cruz of Homeboy Industries explained, “a lot of kids are their own parents.”<sup>204</sup> He continued, “[i]t’s basically, ‘You’re out, you’re on your own.’ If a kid doesn’t have their parents pushing them to reenroll, no one is helping them.”<sup>205</sup> Rolando Cruz of Homeboy Industries observed, “Unless a kid has active parents or knows this place, it become extremely difficult for them to get in schools.”<sup>206</sup>

Some organizations seek to foster a greater awareness of these rights through their programming. Jessica Gholson, a Clinical Services Coordinator with Girls & Gangs, an advocacy and support organization for system-involved girls, explained, “Because of programs like ours, we tell [parents and students] that they have rights. If a child is told by a principal, ‘No, you can’t go here,’ unless the child is connected with an outside agency, the child doesn’t know that they have options.”<sup>207</sup> Dawn Brown, Executive Director of Girls & Gangs, noted, “We teach them what the law states and we give them a list of people to call if their principal doesn’t let them back into school.”

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201 Interview with Ariel Wander, *supra* note 42.

202 Interview with Melissa Denton, *supra* note 200.

203 Interview with “Benjamin,” *supra* note 43.

204 Interview with Carlos Cruz, Chaser, Homeboy Industries, in L.A. Cal. (Jan. 11, 2012).

205 *Id.*

206 Interview with Rolando Cruz, *supra* note 135.

207 Interview with Jessica Gholson, *supra* note 118.

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**FOCUS** Empowering Parents

Community Asset Development Re-defining Education (CADRE) works to empower parents and families in South Los Angeles to educate them about the rights of their children. Through the work of CADRE, many parents and families become not only informed, but active advocates for youth both in their own family and in the community at large. As parents become more informed through the efforts of CADRE, many then become parental advocates and educators themselves. While CADRE is not able to reach every single parent in the community, its ideas and model of parent engagement and empowerment are an effective means of creating change that can be replicated in other communities where Push Out and Keep Out are prevalent.

### III. “SCHOOL IS NOT FOR ME”: FAILURE TO EDUCATE AND SUPPORT THE WHOLE CHILD LEADS TO KEEP OUT

Under human rights law, States are required to guarantee that education is adaptable, meaning that it responds “to the needs of students within their diverse social and cultural settings.”<sup>208</sup> It must also ensure that education is acceptable, or of good quality.<sup>209</sup> Finally, education must be accessible to all, in law and in fact, without discrimination.<sup>210</sup> Our research revealed, however, that many students do not enjoy adaptable, acceptable, and accessible educational opportunities, and that this often leads to constructive Keep Out.

Many students seeking to reenter school face a host of social-emotional challenges — including lacking adequate housing or a supportive family structure, surviving violence and trauma, lacking adequate mental health services, or bearing the effects of incarceration — that, if left unaddressed, can lead to Keep Out. Many students felt unwelcome, unwanted, and stigmatized when seeking reentry to traditional schools. Many pushed out youth experienced poor learning environments in temporary alternative and juvenile justice system school placements. These forms of Keep Out — “constructive Keep Out” — can prevent students from successfully reentering and cause students to leave school altogether.

#### 1. Traditional Schools’ Lack of Wrap-Around Services Contributes to Keep Out

“School is the only place for community for kids. School should be the center of the universe, and all services should go through school . . . . If children were really that important to society, then wherever they are would be the most important place.”<sup>211</sup>

**Eric Spears, Principal**

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208 CESCR General Comment No. 13, *supra* note 20, at ¶ 6.

209 *Id.*

210 *Id.*

211 Interview with Eric Spears, Principal, Community Day School, in L.A., Cal (Jan. 10, 2012).

Many students who are pushed out of school for disciplinary reasons are later constructively kept out because their traditional school does not provide the wrap-around services they need upon return. Many of the students interviewed were affected by gang-involvement or gang-affiliated neighborhoods,<sup>212</sup> pregnancy or parenthood,<sup>213</sup> learning disabilities,<sup>214</sup> mental health needs<sup>215</sup> (including post-traumatic stress disorder<sup>216</sup> and addiction or drug abuse<sup>217</sup>), lack of adequate housing and adult supervision,<sup>218</sup> difficulties in foster care,<sup>219</sup> and sexual exploitation.<sup>220</sup> Many also lacked access to mental health services.<sup>221</sup> Some were deeply affected by their incarceration.<sup>222</sup> Chris Corley, an educator at Soledad Enrichment Academy, an alternative program serving at-risk students, explained, “These kids have different needs. They have very unique life experiences. In some ways, they are very advanced and have been through and seen things that [many of us] never will.”<sup>223</sup> But, he continued, in other ways the students are still children. If the traditional school cannot address some of these social-emotional needs upon a student’s return through the provision of wrap-around services, many students will again leave school, leading to longer-term Keep Out.

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212 See, e.g., interview with Brandy, LOBOS Organizer, Youth Justice Coalition, in L.A., Cal. (Jan. 9, 2012); interview with Dawn Brown, *supra* note 96; interview with Raul Alaniz, Affected Adult, in L.A. Cal. (Jan. 13, 2012).

213 See, e.g., interview with Brandy, *supra* note 212; interview with Dawn Brown, *supra* note 96; interview with Swanzi Sanders, Adult Education and Works Centers Program (AEWC) Coordinator, L.A. Unified Sch. Dist., in L.A., Cal. (Jan. 10, 2012).

214 See, e.g., interview with Brandy, *supra* note 212; interview with Eric Spears, *supra* note 211.

215 See, e.g., interview with Tracy Jones, *supra* note 62; interview with Shawna Parks, Legal Director, Disability Rights Law Center, in L.A., Cal. (Jan. 11, 2012).

216 See, e.g., interview with Cherylynn Sara Hoff, Senior Intergroup Relations Specialist, L.A. Cnty. Comm’n. on Human Relations, Cmty. Senior Servs., in L.A., Cal. (Jan. 13, 2012); interview with Kruti Prakesh, *supra* note 64; interview with Sally Fairman, Executive Director, Unusual Suspects, in L.A., Cal. (Jan. 11, 2012); interview with Tracy Jones, *supra* note 62; interview with Shawna Parks, *supra* note 215.

217 See, e.g., interview with Tony Zapeda, *supra* note 155; interview with “Jasmine,” *supra* note 45; interview with Stephanie Marron, *supra* note 136.

218 See, e.g., interview with Brandy, *supra* note 212; interview with “Benjamin,” *supra* note 43; interview with “Alex,” Youth, in L.A., Cal., (Jan.11, 2012).

219 See, e.g., interview with Dawn Brown, *supra* note 96; interview with Tony Zapeda, *supra* note 155; interview with Julio Jimenez, Youth Justice Coalition Volunteer, in L.A., Cal (Jan. 10, 2012).

220 See, e.g., interview with Brandy, *supra* note 212, interview with Jessica Gholson, *supra* note 118.

221 See, e.g., interview with Tracy Jones *supra* note 62; interview with Shawna Parks, *supra* note 215; interview with Cherylynn Sara Hoff, *supra* note 216; interview with Kruti Prakesh, *supra* note 64; interview with Sally Fairman, *supra* note 216; interview with Tony Zapeda, *supra* note 155; interview with “Christine,” Anonymous Student, in L.A., Cal. (Jan. 10, 12, 2012); interview with Stephanie Marron, *supra* note 136.

222 See, e.g. interview with “Avee,” Student, in L.A., Cal (Jan. 10, 2012); interview with David, *supra* note 6.

223 Interview with Chris Corley, *supra* note 52.

Many schools do not effectively meet the holistic needs of their students. Providing wrap-around services at the school site could begin to address this problem. Wrap-around services might include on-site healthcare, mental health counseling, gang intervention services, case management, services for parents of students, child care, and tutoring. Schools are particularly well positioned to meet the holistic needs of students for a variety of reasons: They are often the first point of system contact for at-risk students, they have the opportunity to connect students with resources, and they are one of the few places outside of their homes where students are regularly expected to be.

Although wrap-around services may require resources beyond the funding that schools now receive, some argue that bolstering spending on students' social, emotional, and educational needs is ultimately financially beneficial. As one individual working in the Los Angeles county juvenile justice system explained: "We have to make a choice as a society. Do we want to spend money on schools, or on crime fighting and crime resolution?"<sup>224</sup>

Delivering a meaningful education, especially to an at-risk student, depends on educating and developing the whole child. Often, students' behavioral struggles inside and outside of school are manifestations of deeper issues. Because at-risk and in-crisis students are facing a host of burdens, to truly educate and address Keep Out, youth need educational institutions that support their holistic needs, including mental health counseling, mentoring, and academic interventions.<sup>225</sup> "We need to do our best to address our students' needs in the school," explained Cherylynn Sara Hoff of the Los Angeles County Commission on Human Relations, Community and Senior Services.<sup>226</sup> She elaborated, "This is why schools' collaboration with community-based supports is so important. The more coordinated community supports we can get into the school setting, the more we will be able to address the needs of our high-risk youth and families, and this is what will stem the growing tide of incarceration of poor youth of color in Los Angeles."<sup>227</sup>

Students who are burdened by homelessness and unstable family lives are likely to be constructively kept out when schools do not adequately meet their needs. Brandy, a young adult affected by Keep Out, explained the challenges that she and her peers brought to the classroom: "[Many students need schools to] check on [them], make sure kids have food, clothes, that they're safe at night. I've been at school when friends were leaving to go sleep on a park bench. If they can know students have a safe place, they should do that."<sup>228</sup> When schools fail to recognize that students are preoccupied by problems such as where they will sleep at night or who will take care of

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224 Interview with "Emery," *supra* note 44.

225 Interview with Eric Spears, *supra* note 211; interview with Jessica Gholson, *supra* note 118; interview with Kruti Prakesh, *supra* note 64; interview with Stephanie Marron, *supra* note 136.

226 Interview with Cherylynn Sara Hoff, *supra* note 216.

227 *Id.*

228 Interview with Brandy, *supra* note 212.

them, schools fail to ensure that students can access meaningful education. Benjamin, a twenty-year-old affected adult, recounted, “I slept on the streets . . . with my mom, who’s an alcoholic. I slept in shelters; I slept in parks; I slept on Skid Row.”<sup>229</sup> Others reported little adult supervision. Alex, an eighteen-year-old affected adult, explained, “I lived by myself a lot of the time . . . . My parents were hardly around. They were doing their own thing, working and on the streets . . . . I would stay with my homies, friends from my neighborhood.”<sup>230</sup> When students are provided with stability and their basic human needs are fulfilled, many are able to thrive. For example, Jadyn, a nineteen-year-old affected adult, explained, “[W]hen I got out [of juvenile hall], I went to placement because I had no family. School started to be more fun. I had a house, a roof over my head. I was like a normal kid; I could go to school clean.”<sup>231</sup>

Students who experience violence in their communities are also likely to be constructively kept out when schools do not meet their needs. Violence was a major concern among the students interviewed. Shawna Parks, Legal Director of the Disability Rights Legal Center, explained, “They all know someone who has been killed, or seen someone been killed, have family involved in criminal activity [such as] selling drugs [or] gangs.”<sup>232</sup> Some of these students suffer from the effects of trauma, while others struggle with undiagnosed and untreated mental illnesses,<sup>233</sup> including post-traumatic stress disorder.<sup>234</sup> Despite the prevalence of trauma in the lives of these young people, a trauma-based approach is not the norm in disciplinary and service-provision models.<sup>235</sup> Cherylynn Sara Hoff of the Los Angeles County Commission on Human Relations, Community and Senior Services explained:

What we are just beginning to acknowledge and understand is the high level of trauma young people grow up with in their homes and communities, and the resultant high levels of PTSD [post-traumatic stress disorder] with which these young people live. Trauma-informed approaches are being increasingly used with folks from the many violence-impacted communities in Los Angeles. Educators, as well, need to be better informed about high levels of PTSD their students live with and how trauma behaviors manifest in the classroom as behavioral issues and an inability to focus and concentrate. Presently, these

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229 Interview with “Benjamin,” *supra* note 43.

230 Interview with “Alex,” *supra* note 218.

231 Interview with “Jadyn,” *supra* note 102.

232 Interview with Shawna Parks, *supra* note 215.

233 See interview with Anonymous, Juvenile Hall Employee, in L.A., Cal. (Jan. 13, 2012). (“We are at the tail end of the crack epidemic. There are a lot of children of crack addicts. You have a lot of mental health issues. Now, mix in a lot of mental health with a lot of gang affiliation.”).

234 Interview with Shawna Parks, *supra* note 215; interview with Kruti Prakesh, *supra* note 64; interview with Tracy Jones *supra* note 62; interview with Sally Fairman, *supra* note 216.

235 Interview with Kruti Prakesh, *supra* note 64 (“There are large barriers that explain why students are not succeeding. The assumption is that every kid is normal but their behavior is bad. But the assumption should be that something is going on. Why isn’t the fact that kids have PTSD being taken into account in teacher training?”).

behaviors are often met with punishment, rather than by dealing with traumas from which they stem. Teachers need to be given the tools to understand these behaviors through the trauma lens, and to address them constructively rather than punitively.<sup>236</sup>

Because most school environments are not designed to address the fact that trauma and violence are major concerns in students' lives, many students are discouraged from attending school and are constructively kept out. One young person, Brandy, explained how her education was affected when her brother was murdered:

When I was in eleventh grade . . . my brother was walking to the store and they asked him a question and he said he didn't gangbang but they shot him anyway, eleven times. He died that year. I stopped going to school. Nobody made any calls, nothing, to find out where I was or what happened. [After that,] I was scared to get on the bus. I told my mom I didn't need school.<sup>237</sup>

Other young people interviewed said that concerns for their own safety inhibited their ability to see a future for themselves.<sup>238</sup> Benjamin, age seventeen and gang-affiliated, explained, "Tomorrow I might get shot, so why go to school?"<sup>239</sup>

Students reentering schools from the juvenile justice system are also likely to be constructively kept out when they are not provided with mental health services. The system is currently structured such that it only responds to the mental health needs of youth while they are incarcerated.<sup>240</sup> Melissa Denton from Unusual Suspects explained, "They are getting counseling [in probation camps]. We need more services on the outside."<sup>241</sup> Jessica Gholson of Girls & Gangs reinforced this sentiment, stating, "There are no school programs for at-risk, gang-involved, or sex work-involved girls. We don't get referrals from schools."<sup>242</sup> Indeed, Girls & Gangs only works with girls while they are in probation camps, not upon release.<sup>243</sup> Additionally, students' experiences during incarceration often increase the likelihood that they will be constructively kept out if they do not receive counseling services. Dr. Mikala Rahn from Homeboy Industries, an organization aimed at providing young people job opportunity alternatives to gangs, explained, "A

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236 Interview with Cherylynn Sara Hoff, *supra* note 216.

237 Interview with Brandy, *supra* note 212.

238 *See e.g.*, interview with Brandy, *supra* note 212; interview with Julio Jimenez, *supra* note 131; interview with "Benjamin," *supra* note 43; interview with Tony Zapeda, *supra* note 155; interview with "Tyrone," *Affected Adult*, in L.A., Cal., (Jan. 11 2012).

239 Interview with "Benjamin," *supra* note 43.

240 *See, e.g.*, interview with Jessica Gholson, *supra* note 118.

241 Interview with Melissa Denton, *supra* note 200.

242 Interview with Jessica Gholson, *supra* note 118.

243 *Id.*

student coming out of camp . . . is a different kind of kid, a different kind of challenge.”<sup>244</sup> For example, one sixteen-year-old student said of her time incarcerated, “They had me with the big people, not even with the juveniles – men and women too. A man was trying to talk to me and he kept trying to talk to me, and I was there for like nine hours and I felt sad and mad because I wasn’t supposed to be there. You feel like killing yourself, oh my god, when you’re locked up.”<sup>245</sup> Moreover, the underlying challenges and issues that led to a youth’s incarceration often remain unresolved when he or she is released, further increasing the likelihood that they will be constructively kept out if they do not receive counseling services.

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### **FOCUS** Providing Wrap-Around Services: the Los Angeles Education Partnership Model

Los Angeles Education Partnership (LAEP), the first education non-profit in Los Angeles, has created nine community schools in Los Angeles that provide wrap-around services and operate as a hub for their communities. These programs are funded through federal community school grants.

At these schools, both parents and students receive services, including health and wellness services, parenting classes, and meaningful referrals to outside social service agencies. At some of the school sites there is full health care for the students and families as well as adult schools.

One LAEP school, San Fernando High School, has used the community school approach to successfully handle reentry issues. In 2010, the school was slated to receive over 100 students from probation camps and there were a series of concerns about how to handle this inflow of students. The Community School Coordinator set up meetings with probation staff, a number of community organizations, probation camp staff, students, and their parents. These stakeholders came together and realized that a number of students coming out of the camps needed a wealth of social services. But they were also concerned about the anonymity of the students. So they developed tools to ask, “Do you need services?” without asking, “Are you on probation?” They created a series of brochures about the services they provide so that everyone would know what kinds of help were available, without reentering students being singled out. They also created a check-in process for all new students that entails orienting them to the school, explaining the services offered, and ensuring that they connect with an adult on staff. All new students also meet with the bilingual coordinator and the math resource coordinator who evaluate the students’ academic skills.

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244 Interview with Dr. Mikala Rahn, *supra* note 119; *see also* interview with Sally Fairman, *supra* note 216 (“The percentage of kids with mental health difficulties in these camps is very high. They have PTSD, learning disorders. The level of individual attention these kids need is overwhelming.”)

245 Interview with “Avee,” *supra* note 222.



## 2. Traditional Schools' Lack of Support and Stigmatization of Students Contributes to Keep Out

“Once you get in trouble, they consider you a criminal for the rest of your life.”<sup>246</sup>

**Ms. Marty, Parent**

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Students who have been pushed out of school often feel unwelcome and unsupported when trying to return, which can have the effect of keeping them out of school permanently. Additionally, system-involved youth frequently expressed feeling stigmatized by their traditional schools when seeking reentry from the juvenile justice system. Many of these students felt discouraged and eventually left school altogether in yet another form of constructive Keep Out.

Many traditional schools fail to make returning students feel welcome and wanted, and this leads to constructive Keep Out. Young people repeatedly told researchers that they did not feel like schools wanted them, and as a result, they believed they were not “school material.”<sup>247</sup> Jadyn, a nineteen-year-old who grew up in foster care, explained, “Teachers isolate students like me. They treat you different, they see you different than other students.”<sup>248</sup> Students explained that, in some instances, this feeling came from the manner in which they were received by their schools. “I was [enrolled] for like one week at each school. At each one, they had me in the back of the classroom doing work by myself,” explained Shaun, now eighteen, of when he reentered traditional high school at sixteen with no high schools credits. He continued, “[After that,] I felt like school wasn’t for me.”<sup>249</sup> While many students wanted to reenroll in school, the way they were received by schools often led them to give up on enrolling in traditional school or education altogether. “I tried to enroll in [traditional] school, but they said no, go to a community day school. It made me feel like . . . they [didn’t] care. Why should I care?” recounted Mark, now an eleventh grader, about his experience trying to reenroll in school after he spent three months in juvenile hall. “But then I thought, if I don’t go to school, I have to go to jail.”<sup>250</sup> While Mark did succeed in enrolling in an alternative program, many others who are constructively kept out do not.

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246 Interview with Ms. Marty, Parent Organizer, CADRE, in L.A., Cal. (Jan. 11, 2012).

247 See e.g., interview with “Jadyn,” *supra* note 102; interview with Ariel Wander, *supra* note 42; interview with “Shaun,” *supra* note 165.

248 Interview with “Jadyn,” *supra* note 102.

249 Interview with “Shaun,” *supra* note 165.

250 Interview with “Mark,” Affected Adult, in L.A., Cal. (Jan. 11, 2012). (Mark is now in eleventh grade at an alternative school for at-risk youth. He wants to be a pharmacist or a small business owner).

The stigmatization of system-involved youth was cited by many students, parents, and professionals as a leading cause of constructive Keep Out. Shawna Parks of the Disability Rights Legal Center explained, “There is a huge stigma surrounding these kids; they are not easy kids. A lot had huge educational issues and behavioral problems, and there exists a huge disinclination to work with them.”<sup>251</sup> Many interviewees explained that students were treated differently due to their system involvement and were rarely provided with second chances. “Forgiveness is not systemic,” explained Eric Spears, a principal at a LAUSD community day school. The attitude of most traditional schools is, “if a kid is trouble before, they will be trouble again,” he said, noting that, “the high school doesn’t forget what the kid did. Once marked, always marked.”<sup>252</sup> Students expressed that this stigma affected the way they experienced school and eroded the support they received from schools. Alex, an eighteen-year-old who spent many of her teenage years in and out of the criminal justice system, described her experience of reentry:

They treated me weird because I was incarcerated. The teacher would ask, “Where are you coming from?” They wouldn’t expect me to come back. I was the one looking all banged out coming from jail with tattoos. The other students were saying stupid stuff like “Are you going to be here tomorrow?”<sup>253</sup>

Other students expressed how receiving the message that they were unwanted affected their school experience. Avee, a sixteen-year-old tenth grader in a LAUSD public school, spoke of her experience upon return to school after she was arrested and suspended: “The principal looks at me all serious [now]; he used to smile at me, but not anymore.”<sup>254</sup> Jasmine, a young woman living in a group home, recounted how she felt trying to reenroll in school after spending time in juvenile hall:

I love learning . . . . [When I got out of juvenile hall] I felt motivated to do good, but I felt like, “You guys don’t want to give me a chance.” Why can’t you take a chance on me if you’re taking a chance on other people? I felt stereotyped.<sup>255</sup>

Parents too are affected by the stigmatization of their children. One parent asked, “Why would I want my child at a school that doesn’t want him?”<sup>256</sup>

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251 Interview with Shawna Parks, *supra* note 215.

252 Interview with Eric Spears, *supra* note 211.

253 Interview with “Alex,” *supra* note 218.

254 Interview with “Avee,” *supra* note 223.

255 Interview with “Jasmine,” *supra* note 45.

256 Interview with Ms. Marty, *supra* note 246.

### 3. Placement in Alternative and Juvenile Justice System Schools Removes Students' Choice and Contributes to Keep Out

“The bottom line is that it should be a family’s choice where a child attends school; it should not be left up to the school just because the kid has been in the system. A child needs to be looked at as an individual, not as ‘one of those kids.’”<sup>257</sup>

**Dawn Brown**, Executive Director, Girls & Gangs

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In some instances, student placement in alternative and juvenile justice system schools effectively removes students’ ability to choose to return to traditional schools, resulting in constructive Keep Out. Some alternative schools do not meet the same academic standards as traditional schools and may fail to meet the individualized needs of students. Similarly, as noted above, placement in juvenile justice system schools often results in students falling further behind because crediting is based simply on attendance, and because many students are frequently moved from one placement to another.

Although alternative schools provide a means for students to receive a high school diploma, some do not meet the requirements necessary for a student to enroll in a California state university, according to one interviewee.<sup>258</sup> Students and professionals reported that many alternative schools offer only one pathway to earn a high school diploma, the majority of which is “packet work.” Packet work consists of photocopied worksheets and textbook lessons that students complete independently. Additionally, many students stated that teachers in continuation and alternative schools lacked credentials and assigned packet work rather than providing teacher-guided instruction. Kim McGill, Executive Director of Youth Justice Coalition, explained, “Continuation and alternative schools are the lowest funded and they have the most amount of un-credentialed teachers. It’s packet work, which is debilitating and it doesn’t prepare you for the work force. You are really in an inferior position.”<sup>259</sup> Ultimately, when these students seek to reenroll in traditional schools, many arrive academically behind and are thus vulnerable to constructive Keep Out.

Students varied in their assessments of alternative schools. Some students reported that they benefited from the structure of alternative school and appreciated the speed with which they

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257 Interview with Dawn Brown, *supra* note 96.

258 Interview with “Ernesto,” Professional, in L.A., Cal. (Jan. 11, 2012).

259 Interview with Kim McGill, Executive Director, Youth Justice Coalition, in L.A., Cal. (Jan. 11, 2012).

could acquire credits to complete their education.<sup>260</sup> Speaking about her experience with alternative school, Marlene, a twenty-year-old student, explained:

“[H]ere, the faster I do work, the faster I graduate. To me, it was good because I’m trying to graduate as soon as possible. It’s up to you – if you want to graduate, you do your work. It’s better than just going to school, doing work, and you don’t know whether or not you’re going to get any credits at the end. At most, it’ll take me one year to graduate here.”<sup>261</sup>

But others said that the structure of alternative school hindered their progress.<sup>262</sup> For example, one student in community day school explained, “[In community day school t]hey gave me a book and credits are based on the book and they said, ‘just do it.’ I feel like I didn’t learn anything.”<sup>263</sup> “I actually need a teacher to teach me things,” explained Lasandra, a young woman in a group home assigned to attend a community day school.<sup>264</sup> “I wasn’t learning anything from the packet. It was the worst.”<sup>265</sup> As Ariel Wander of Public Counsel explained, it is not surprising that some students with a history of struggling academically lack the self-direction to do independent work.<sup>266</sup>

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**FOCUS Positive Aspects of Non-Traditional Education**

Our report stresses the need to respect the autonomy of the individual and emphasizes that students must be empowered to choose whether to complete their education in traditional or alternative environments. However, it is important to acknowledge that for many students, the traditional education system has failed to meet their needs so completely that they have no desire to return. As one affected adult explained, “Often they don’t want to go back to the comprehensive school. The dynamics in the classroom they came from are important; they set the tone and precedent for the experience.”<sup>267</sup> Many alternative schools have strengths not present in traditional schools, and as a result many students report successes in alternative schools that they did not feel would have been possible for them in a traditional school environment.

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260 See, e.g., interview with “April,” Student, in L.A., Cal. (Jan. 11, 2012) (stating “at a community day school there’s more learning than at regular high school; you get credits faster too. They do it by hours.”)

261 Interview with Marlene, *supra* note 72.

262 See, e.g., interview with “Lasandra,” Student, in L.A., Cal. (Jan. 10, 2012); interview with “Gia,” *supra* note 84; interview with Kim McGill, *supra* note 259.

263 Interview with “Gia,” *supra* note 84.

264 Interview with “Lasandra,” *supra* note 262.

265 *Id.*

266 Interview with Ariel Wander, *supra* note 42.

267 Interview with “Emery,” *supra* note 44.

Some students interviewed for this study reported that their alternative education was as good and in some cases better than the education they received at traditional schools. At least one student reported using the same books and curriculum at an alternative school as at their traditional school.<sup>268</sup> At the alternative L.A. Free High School, students reported receiving personalized academic attention that made them feel that they were learning in a real way for the first time in their lives.<sup>269</sup> L.A. Free High School was also able to address many of the emotional needs that were interfering with students' education in a way that traditional schools were not able to, and provided students with an education that addressed their whole person.<sup>270</sup> One student explained:

“I saw that they were teaching us real stuff, about our rights . . . and they never told us that in them ugly schools. They care what happens to us here. I can really go to them and tell them stuff. If I never found this school, I'd be gangbanging, I'd be dead or something.”<sup>271</sup>

Students at L.A. Free High School were empowered by participating in their own educational advocacy at the state level, and took trips that gave them new perspective on their life and experiences.<sup>272</sup> Crucially, L.A. Free High School created a sense of community and belonging in which students felt supported by staff and other students.<sup>273</sup>

Even at adult schools where the education might be viewed as substandard, students appreciated being able to work at their own pace, without the difficulties of conforming to the rigors and distractions of the traditional classroom and relationships with teachers that were strained by the stigma of being a disciplinary problem. Some students found that they were able to complete more work in this environment.<sup>274</sup> Students also appreciated the flexibility of being able to combine school with work that they view as necessary to their family's economic survival.<sup>275</sup>

Some students reported that they had reached a point where they no longer felt that earning a high school diploma was possible for them in a traditional school environment. In those cases, an alternative school may provide the best chance of preventing drop out and may provide a crucial second chance. As one student explained, “I thought, ‘I don't know about going back to school. That ship has sailed.’ . . . When I came to check out [this alternative school], I learned that some students could graduate in one to two semesters.”<sup>276</sup>

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268 Interview with “Kira,” *supra* note 82.

269 *Id.*

270 Interview with Brandy, *supra* note 212.

271 *Id.*

272 *Id.*

273 *Id.*; *see also* interview with “Kira,” *supra* note 82.

274 Interview with “Kira,” *supra* note 82.

275 *Id.*

276 *Id.*

Some students in juvenile justice schools fall further behind while incarcerated, and as a result are likely to be constructively kept out when they return to traditional school. Many students expressed that they viewed their time in juvenile justice schools as lost time. They reported that the lessons were basic and repetitive.<sup>277</sup> For example, one student explained that in juvenile hall, “they had school inside of there but it was like middle school – basic stuff, basic math, basic science, stuff I did before.”<sup>278</sup> Another student reported, “You learn the same thing over and over again.”<sup>279</sup>

Moreover, credits in juvenile justice system schools are often awarded based on attendance rather than performance, and do not reflect whether the student has learned or progressed. “Here, it’s based on attendance,” stated an official from a juvenile hall, continuing, “There is no assessment of knowledge. In regular schools they are tested on [the material]; here, they do a homework, if they complete the assignment, they get the credit.”<sup>280</sup> Students and professionals told stories of students receiving credits for taking walks, watching movies, and completing Sudoku puzzles.<sup>281</sup> When students in juvenile justice system schools do not receive instruction that advances their education, they are particularly vulnerable to falling behind academically when they return to traditional schools.

Finally, students in the juvenile justice system are frequently moved and their education is frequently interrupted, which can result in constructive Keep Out. Many students in the juvenile justice system are cycled through a series of placements. First students may be placed in juvenile hall, where they attend school for the duration of the adjudication of their juvenile delinquency matter, a span that typically lasts a few weeks to a few months. One professional explained, “The difference between the schools in here is that everyone is going through the court process; the kids are very transient. The school is constantly having to start again . . . . The average stay here is twenty-three days.”<sup>282</sup> Once their case is adjudicated, the students are moved to a more permanent placement until their term of confinement is complete. Once they are released, they are sent to yet another educational setting. The temporary nature of these placements leaves little time to achieve progress. All of these disruptions may contribute to students falling behind both in acquired knowledge and accumulated credits, resulting in constructive Keep Out.

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277 See e.g. interview with “Mark,” *supra* note 250 (stating “I was in juvenile hall for three months. When I came out, I felt dumb, like I didn’t know [any]thing.”); see also, interview with Liza Bray, Director of Alumni Programs, Inside Out Writers, in L.A., Cal. (Jan. 12, 2012).

278 Interview with “Brittney,” *Affected Adult*, in L.A., Cal. (Jan. 9, 2012).

279 Interview with “Miguel,” *Youth*, in L.A., Cal. (Jan. 10, 2012) (“You learn the same thing over and over.”); see also interview with “April,” *supra* note 260. (“They teach you the same thing every couple of weeks.”)

280 Interview with Anonymous, *Juvenile Justice Professional*, in L.A., Cal. (Jan. 13, 2012).

281 See e.g., Interview with “Ashley,” *supra* note 65; interview with Kim McGill, *supra* note 259 (discussing students getting credits for Sudoku and calling these credits “junk food credits”); interview with “Mark,” *supra* note 250.

282 Interview with Anonymous, *Juvenile Justice Professional*, in L.A., Cal. (Jan. 13, 2012).

## CONCLUSION

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Students wishing to return to traditional school after having completed a suspension, expulsion, or period of attendance at an alternative school or juvenile justice facility are often kept out and prevented from continuing to enjoy a meaningful education. Schools and other actors fail to provide children with an education that meets human rights standards because of both individual actions and inactions and multi-systemic breakdowns characterized by failed coordination. These actors reduce student access in a variety of ways, sometimes through individual action, other times through collective inaction.

For a variety of reasons, many students are labeled as “undesirable,” and these students often end up ignored at best and actively kept out of traditional schools at worst. Schools explicitly turn students away from their doors. Probation departments frequently fail to effectively work alongside juvenile detention centers and schools to ensure that students’ education is prioritized during times of transition to a traditional or alternative school. And all too often, relevant institutions fail to ensure that students receive the social, psychological, and emotional services they need when they return to traditional and alternative schools.

Yet our research showed that students hoping to continue their education want to learn, and, when put in a supportive environment, can be successful not only academically, but also socially.

All children are guaranteed a right to an education by virtue of their humanity; numerous international charters and treaties make clear that education is a fundamental human right. But education is not only a right in itself; it is also instrumental in helping individuals realize many other rights and is a core part of the human experience. As long as children are denied the right to an education, their chance of successfully pursuing a subjectively fulfilling and productive lifestyle is limited.

The violations of students’ right to education documented in this report occurred because of a lack of accountability for those charged with educating, serving, and even incarcerating youth. With no individual actor or institution responsible for students’ return to school, many students are ultimately kept out and become more likely to continue along the School-To-Prison Pipeline.

Without changes to laws, policies, and practices at the local, state, and federal level, many of our country’s most vulnerable students will continue to be denied their right to education. Ending Keep Out and reversing the School-To-Prison Pipeline must be treated as a priority for the sake of both individual students’ human rights and our nation’s future. The recommendations that follow describe some of the changes necessary to address this issue.

## RECOMMENDATIONS

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The aims of these recommendations are to encourage multi-systemic partnership between agencies responsible for students’ educational needs; increase engagement between systems, students, and families about the individual needs of each student; and foster creative methods to meet the holistic needs of each student.

### FINDING I: “YOU CAN’T COME BACK”

#### **1. Federal policies should be adopted to incentivize rather than de-incentivize enrolling at-risk populations in traditional schools.**

- Congress should adjust federal standards in order to remove any incentive for Keep Out. To this end, the reauthorization of the Elementary and Secondary Education Act (ESEA) should shift federal accountability measures away from focusing on the number of students who reach a benchmark of proficiency and toward an emphasis on individual students’ progress over time.
- The federal government should require states to collect and analyze data on the difference between school attendance and enrollment at the beginning of the year and during testing.
- Congress should reform the way graduation and dropout rates are measured. One way to do this is to pass the Every Student Counts Act (ESCA), which creates a consistent high school graduation rate calculation, requires reporting of graduation rates for different categories of students, and removes incentives for pushing out or keeping out at-risk students.
- The federal government should provide financial incentives to schools that enroll and educate the most at-risk populations through a competitive federal grant or ESEA.

#### **2. Meaningful educational opportunities should be guaranteed to overage and under-credited students.**

- The Department of Education should examine and publicize best practices for serving the unique needs of overage and under-credited students, including meaningful credit-recovery options.
- Local school admission policies and practices should never bar students based upon credits.



### **3. School employees should be educated about formal enrollment policies, and accountability and oversight measures should be created to ensure schools' compliance.**

- The Department of Education and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) should partner with states, community-based advocates, and school districts to provide quality training for employees within education and juvenile justice systems on district policies related to reenrollment, discipline, and transfer of students. The trainings should emphasize students' educational rights and the impact these policies can have on Keep Out.
- Policy makers should create enforcement mechanisms that families can utilize when schools do not follow stated policies.

### **4. Transfers should be used only when they serve the best interests of the child, and only with the input of the student, family, and educational advocate.**

- Schools should convene a mandatory meeting including the principal, educational advocate, student, and parent/guardian to discuss reasons for transfer.
- Transfer schools must be accessible and meet the needs of the student.
- The following factors should be prioritized in determining whether a transfer is necessary and what placement would be best:
  - ✧ The student's individual educational needs (including IEPs).
  - ✧ Obstacles the students may face getting to school, e.g., neighborhood conflict-related issues, family responsibilities, and the student's actual ability to get to school on time considering proximity, safety, and transportation challenges.
  - ✧ Where the school staff, student, family, and educational advocate believe the student could be most successful.
- When transfers are used for disciplinary purposes, due process must be guaranteed.

## **FINDING II: "FALLING THROUGH THE CRACKS"**

### **1. Transcripts should be shared and no child should be denied enrollment because records are not available.**

- The onus should be on the school, not the student, to access a student's transcript.
- Districts should implement a formal, automated system to share educational information that is accessible to relevant actors (probation officers, parents, students, and guidance counselors).
- Record-sharing policies should keep in mind confidentiality concerns. Record sharing between schools and the juvenile delinquency system should be done in a cautious way so

that the students are not harmed or put at risk of further involvement with the delinquency system. Record sharing should be limited to information about education and should not include information that would further stigmatize the student.

## **2. Probation departments should prioritize and be accountable for the educational needs of the students that they serve.**

- Probation departments should be more effectively organized to best serve the needs of youthful offenders. They should utilize vertical representation so that youth continue to interact with the same caseworkers, probation officers, and judges to facilitate accountability, continuity, and trusting relationships.
- All students leaving the juvenile justice system should be provided with a needs assessment, robust transition plan, and meaningful discharge placement. Schools, probation officers, and mental health professionals should meet together with each individual student to assess his or her needs and create a meaningful education plan.
- OJJDP should share best practices, create policy guidance, and conduct formal trainings that prioritize education as a goal of probation equivalent to public safety and rehabilitation.
- OJJDP should create funding streams that encourage and reward system integration between schools, the juvenile justice system, and community-based organizations.
- OJJDP should allocate funding to train probation officers to become educational advocates.
- The Juvenile Justice and Delinquency Prevention Act of 2009 (JJDP A) should be reauthorized. The reauthorized JJDP A should include language mandating that juvenile justice systems develop programs that specifically address the educational needs of youth and requiring juvenile justice systems to report data related to Keep Out.

## **3. Schools and districts should have reentry counselors for returning students.**

- The Department of Education and OJJDP should provide grants that would enable schools to employ community-based liaisons to support student reentry.
- Youth involved with the delinquency system should be provided the same legal protections with regard to enrollment as foster youth.

## **4. More quantitative data should be collected on Keep Out.**

- State and federal government officials should collect and analyze data regarding Keep Out, including the number of students attempting to reenroll in school, how many students transfer during the school year, why students are transferring out of schools, where students are being transferred to, and whether or not they are continuing to receive a meaningful education.
- Correctional facilities and probation departments should report to state educational agencies the number of children and youth released who did not return to school, the number of youth obtaining a secondary school diploma or its recognized equivalent, and the number of youth obtaining employment once released.

### FINDING III: “SCHOOL IS NOT FOR ME”

#### **1. Wrap-around services should be provided to reentering students.**

- Congress and federal agencies should provide financial resources to school districts and incentivize schools, community-based organizations, and universities to partner to provide on-site comprehensive services to students and families.

#### **2. Schools, juvenile justice facilities, and community-based agencies should prioritize the training of service providers on the specific mental health and emotional needs of students who have been kept out.**

- The Department of Education and OJJDP should expand existing training on trauma-based approaches to service provision.
- The Department of Education and OJJDP should assist local agencies to provide cultural competence training and information about the ways that systems and individuals stigmatize at-risk and in-crisis youth, and the effect this stigma can have on preventing students from attaining their educational goals.

#### **3. Multi-systemic partnerships should be developed to ensure that students’ holistic needs are met.**

- Federal agencies should create grant programs and funding incentives that encourage multi-systemic partnerships between school systems, the juvenile justice system, mental health providers, the child welfare system, and other relevant institutions involved in students’ lives. Local districts should use best practice models to develop multi-systemic partnerships that meet the unique needs of their students and communities.

## APPENDIX I: STUDENT VOICES

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These are real stories, paraphrased from the interviews conducted in Los Angeles. Please note that certain facts are omitted to maintain the anonymity of the students interviewed.

### MARIA

Prior to 2010, Maria was an honors student. Then she decided to stay home with her mother who was battling breast cancer. She talked with a school counselor who told her it was okay for her to stay at home with her mother. The counselor also told Maria that he would talk with the principal about this matter. Maria was later contacted by the school and informed that she had been suspended. When Maria returned to school the following semester, she was placed in classes that were far less academically challenging than her previous classes and that had many students with behavior problems. Maria felt she was stigmatized for being the daughter of undocumented parents and that she was labeled a “troublemaker.” She said, “When kids are expelled, suspended, or in juvenile hall, some people don’t know that people do change. They don’t give them a second chance because they already messed up. All they think about is your record. They don’t see you anymore, they see your record.”<sup>283</sup>

Maria’s mom transferred her, using another family member’s address, to another school with less gang violence and better accessibility via public transit. The school placed her in honors classes. “Here the counselor gave me a shot at honors English and the school has given me a second chance and an opportunity. I think everybody deserves a second chance, and this school gave me a second chance to improve myself.”<sup>284</sup> Maria reported that if her mom hadn’t transferred her to another school, she would have dropped out.<sup>285</sup>

### MOHAMMED

Mohammed was pushed out of school during the second semester of eighth grade. During the two years that followed, when he was fourteen and fifteen, he worked as a gardner with his stepdad. At sixteen, he went to a continuation school, but was promptly kicked out. Mohammed still does not know the reason he was kicked out. He was out of school for another year before he decided he wanted to return to school.

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283 Interview with “Maria,” *supra* note 3.

284 *Id.*

285 *Id.*

A counselor at one school told him, “You’re a drug addict who will ‘contaminate’ the other students, so stay out.”<sup>286</sup> Two other schools flat out told him no. One school told him to come for a week, and that they would find another school for him. Another school briefly let him in. They put him in the back of the classroom because he was very far behind. Mohammed stopped attending school because he’d “had enough.”<sup>287</sup> Currently, he is eighteen-years-old, and said schools simply “don’t want to take him.”<sup>288</sup>

## BRITTENY

When Britteny entered the eighth grade, her school began enforcing a zero-tolerance policy. On her first day of school, Britteny’s classmate was kicked out of school for possession of a pocket-knife. During the same year, Britteny got into a fight with another female student and the school kicked both of them out. According to Britteny, there were no questions asked by school administrators about what caused the fight. Britteny and her family were not provided with any choices and she was simply transferred to another middle school. She remained “on watch” during her second semester of eighth grade.

In high school, she walked a long distance to school every day because the school classified her as “within the neighborhood,” and would not provide her with a bus pass. Her family had financial problems and she could not afford to take public transit. As a result, she was often late, was often picked up in tardy sweeps, and received a significant number of truancy tickets. Because of the financial problems at home, she did not tell her mom about the tickets. She also did not go to court as required by her tickets. After a year or two, there was a warrant issued for her arrest, and she was sent to juvenile hall.

When Britteny got out of juvenile hall, she decided to go to an alternative school that had various support systems. The school also had a strict policy preventing the stigmatization of formerly incarcerated youth. It was in this environment that Britteny was able to graduate high school. She has held down a job since graduating, and aspires to be a peacekeeper working in juvenile halls.<sup>289</sup>

## KIARA

Kiara’s mother told her that when she finished middle school she wanted her to attend a safe high school. Kiara was talented at playing cello, and it was recommended that she go to a gifted school downtown. Her mother failed to turn in the enrollment papers for this school on time and therefore Kiara was unable to enroll. Enraged with her mom, Kiara decided to leave home

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286 Interview with “Mohammed,” Affected Adult, in L.A., Cal. (Jan. 13, 2012).

287 *Id.*

288 *Id.*

289 Interview with “Britteny,” *supra* note 278.

and move in with her brother. Right before she was about to move out, her parents were in a car accident, and Kiara and her brother were forced to stay with their mom. Kiara attended one semester of high school, then left for six months because it was “pretty horrible.”<sup>290</sup> She felt that her mother and brothers were verbally abusive, and that they all expected her to fail. When she decided she wanted to go back to school, she needed her mother’s signature to enroll, but her mother refused to assist her.

Kiara then took it upon herself to enroll somewhere, anywhere. She went to various schools to try to enroll. She did not know which school she was supposed to attend, and the various schools she visited kept telling her she had the wrong address. When she tried to enroll in her current school, administrators also told her she had the wrong address, despite the fact that she only lived seven blocks away. A woman overheard Kiara trying to enroll and offered Kiara the use of her address on all of the required forms. A month after summer break ended, Kiara was still scrambling to get all of the forms required by the school, including all of her old transcripts. She succeeded in getting the forms submitted just in time, and is still attending the traditional school close to her home.

## DAVID

David was deeply gang-involved by the time he was fourteen years old. After about a year in high school, he was kicked out for a gang-related fight. He went to another school, and was kicked out after two weeks for the same reason. Then he “went to the streets.”<sup>291</sup> Other than these two LAUSD schools and his eventual education out of state, all of David’s high school education took place within detention centers. Regarding the schools in the camps, David says, “The teachers don’t really care; they let you fight . . . . When the role model doesn’t care, the soldiers don’t either.”<sup>292</sup> David said he experienced the most fights he has ever had in his life while in probation camps, that teachers did not try to stop the fights, and that they told the youth to “handle their business.”<sup>293</sup>

David encountered a young man in the camps named Chris who “formed his support system” and “made him a better person.” This young man, the founder and Executive Director of Street Poets, Inc., enrolled David in a private school in Colorado and paid for his travel there and back. David graduated from high school with a \$15,000 scholarship. Unfortunately, none of David’s friends, brothers, former fellow gang members, or family graduated from high school.

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290 Interview with “Kiara,” Student, in L.A., Cal. (Jan. 10, 2012).

291 Interview with David, *supra* note 6.

292 *Id.*

293 *Id.*

## ASHLEY

Ashley was fifteen years old when she was kicked out of traditional school. She was not yet old enough to attend a nearby continuation school,<sup>294</sup> as they only accepted sixteen-year-olds. She had six months to wait for her birthday, and during that time she was arrested and sent to juvenile hall. She never went to the continuation school.

When she got out of juvenile hall, her probation officer did not provide her with the transcripts needed to reenroll in a traditional school, and told her to “just get in school.”<sup>295</sup> Her mother handled the reenrollment process, and struggled to get her into various schools.

Currently, Ashley is in the eleventh grade, but has the credits of a ninth-grade student. She has attended fifteen schools, all of them through opportunity transfers, and in the process her transcripts were lost.

## CLAUDIA

After Claudia was pushed out of a magnet school, she tried to enroll in her traditional high school. Claudia had anger management issues at the time, and upon trying to enroll, the school administrators told her “we don’t have the resources.”<sup>296</sup> Her mother did not have enough money for her to take public transit to travel to another school. Claudia did not know what to do. Luckily, her sister met someone through a university program with a sibling in an LAUSD independent study program. Claudia found out she was qualified to enroll in the program, and signed up. She attended the independent study program, did the required work, and graduated. She is currently a youth organizer and part-time outreach coordinator for an alternative school that caters to marginalized youth.

## SAM

Sam came to the United States with his mother when he was ten years old. At the time he did not speak any English. When he first arrived, the other children laughed, and he could not understand if they were laughing with him or at him. He thought that “they were not laughing with me because I did not say anything funny.”<sup>297</sup> He went home from school and read the dictionary daily, and after one or two years, he learned English.

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294 See *infra* Appendix IV.

295 Interview with “Ashley,” *supra* note 65.

296 Interview with Claudia Gomez, *supra* note 134.

297 Interview with “Sam,” *supra* note 103.

Sam was first opportunity transferred when he was in the sixth grade. He was first kicked out of school when he was fourteen and in the eighth grade. By the time Sam completed middle school, he had been opportunity transferred four times. When he was transferred in the eighth grade at age fourteen, he was told that if he did not want to go to the new school (which was chosen for him without consulting Sam or his family) then “it was up to him to find a school or just don’t go to school at all.”<sup>298</sup> Sam knew the school chosen for him, and knew he “couldn’t be around that area,” because there were rival gangs. He reasoned, “Tomorrow I might get shot, so why go to school?” The last time he was enrolled in public high school was the winter of his ninth grade year.

The transfers made Sam feel like he was worthless, and that the schools “would just try to fit [him] in wherever they could.” Sam thinks that public schools operate under the standard of “one strike, you’re out. They don’t care about the good things you [can] do.”

Sam had zero high school credits when he began at an alternative school. He is now close to graduating.

## SHAUN

When Shaun was suspended from school, his Individualized Education Program (IEP) counselor held a meeting with him and his mother. During the meeting, the counselor informed Shaun and his mother that Shaun had tested at a college level in reading, and at a high school senior level in math on a standardized test. He was fifteen years old, and was surprised to hear this news. “I thought I was a dummy.”<sup>299</sup>

Shaun was later expelled from high school for being caught in the bathroom with a girl. After a couple of months out of school, he got into trouble and was arrested. On his court date, “no one showed up,”<sup>300</sup> and he was transferred to juvenile hall. In juvenile hall, the “school was terrible.”<sup>301</sup> School at juvenile hall was from seven to ten in the morning, and then from twelve to three in the afternoon. Shaun explained that if a student did “anything [wrong], [they had] to go to the box” which is a room “where they put you for five days, and you can’t go out, they bring you breakfast, lunch, and dinner and there’s a bathroom in there. It’s like the hole basically.”<sup>302</sup>

While Shaun was locked up, he had one conversation about going back to school with his probation officer. His probation officer asked him if he wanted to return to school, and he replied yes.

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298 *Id.*

299 Interview with “Shaun,” *supra* note 165.

300 *Id.*

301 *Id.*

302 *Id.*



“That was the whole conversation we had . . . I did not get any suggestions or information about my options.”<sup>303</sup>

Shaun is currently in the eleventh grade. He did not receive any credits for his time in juvenile hall. In juvenile hall, they issued ‘points’ for the work done, but there was no explanation provided for what the points meant. Shaun has an IEP, but he never received any services related to it while in juvenile hall or school. He hopes to one day graduate high school and study at a university.

## JASMINE

After she was released from juvenile hall, Jasmine’s parents took her to her old neighborhood school to reenroll her. The school administrators noticed that Jasmine was on house arrest, and told Jasmine and her parents that they could not enroll Jasmine in the school. A school counselor recommended that Jasmine should attend a charter school, but Jasmine did not want to attend that school. When Jasmine talked to her probation officer about the matter, he told her that she would be sent back to juvenile hall if she did not sign the papers to attend the recommended charter school. She felt she had no choice but to attend.

“The only reason I did good was because my judge would threaten me . . . He knew I was smart and I did good at my other school, which was a real good school.”<sup>304</sup> At the charter school, students were searched regularly and there was a metal detector at the entrance. But according to Jasmine, students were allowed to keep any drugs found on them, as “most teachers didn’t want to deal with the paperwork.” Jasmine reported that when she finished her work, the teachers would tell her to surf the web and Facebook. She believed that the teachers instructed her to do this because she was diagnosed with ADD.

Before her incarceration, Jasmine loved to play softball, but after she got out of juvenile hall the coach would not let her back on the team. There is no softball team at her charter school. Jasmine hopes to eventually go back to a “regular” high school, where she can play softball and potentially get a college scholarship. Jasmine is incredibly motivated to do well in school, but does not feel as if the traditional school will grant her a second chance because of her involvement with the juvenile justice system.

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303 *Id.*

304 Interview with “Jasmine,” *supra* note 45.

## APPENDIX II: HUMAN RIGHTS LEGAL FRAMEWORK FOR KEEP OUT

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### INTERNATIONAL HUMAN RIGHTS LAW OVERVIEW

All people, including children, have fundamental human rights by virtue of their humanity. One of the rights that international human rights law recognizes is a right to education.<sup>305</sup> In addition, the principle of non-discrimination requires all people to be treated without discrimination on the basis of race, ethnicity, disability, social origin, or other status.<sup>306</sup> U.S. states and localities, as well as the U.S. government, bear the responsibility for respecting, protecting, and fulfilling the right to education in the United States.

The rights described below are articulated in the Universal Declaration of Human Rights (UDHR), the International Covenant of Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of Racial Discrimination (ICERD). Although the UDHR is not legally binding on States, many international law scholars believe that several of its provisions have attained the status of customary international law. The other instruments are legally binding on States Parties, and moreover, reflect internationally recognized standards that all States, even States that are not States Parties to the instruments, should view as such.<sup>307</sup>

The United States is a signatory but not a party to the ICESCR, the CRC, CEDAW, and the CRPD. As a signatory, the United States agrees to act in good faith, “not to defeat the object and purpose” of the Conventions.<sup>308</sup>

States have an obligation under international law to (A) respect, (B) protect, and (C) fulfill human rights.<sup>309</sup> With respect to the right to education:

- A) The obligation to respect requires States Parties to avoid measures that hinder or prevent the enjoyment of the right to education.

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305 UDHR, *supra* note 20; ICESCR, *supra* note 20, at art. 13; CRC, *supra* note 19.

306 ICESCR, *supra* note 20.

307 See, e.g., Oona A. Hathaway, Do Human Rights Treaties Make a Difference?, 111 Yale L.J. 1935, 1960–62 (2002).

308 Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

309 CESCR General Comment No. 13, *supra* note 20, at ¶ 45.

- B) The obligation to protect requires States Parties to take measures that prevent third parties from interfering with the enjoyment of the right to education.
- C) The obligation to fulfill the right to education incorporates both an obligation to facilitate and an obligation to provide. States are obliged to fulfill the right to education when an individual or group is unable to realize the right themselves by the means at their disposal.<sup>310</sup>

While States are allowed to progressively realize the achievement of economic, social, and cultural rights, they must immediately meet certain minimum core obligations to ensure the satisfaction of the minimum essential levels of each right.<sup>311</sup>

## THE RIGHT TO EDUCATION

The right to education is guaranteed in Article 26 of the Universal Declaration of Human Rights, Article 13 of the International Covenant on Economic, Social, and Cultural Rights, Article 28 and 29 of the Convention on the Rights of the Child, and Article 24 of the Convention on the Rights of Persons with Disabilities.

The Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the ICESCR, has stated that to respect, protect, and fulfill the right to an education, States must ensure that education in all its forms and at all levels shall exhibit the following four “interrelated and essential” features: availability, accessibility, acceptability, and adaptability.<sup>312</sup>

1. Availability requires that functioning educational institutions and programs are available in sufficient quantity; school buildings provide protection from the elements; schools have sanitation facilities for both sexes and safe drinking water; educational institutions have trained teachers receiving domestically competitive salaries, teaching materials, and so on; and schools have facilities such as a library, computer facilities, and information technology.
2. Accessibility requires that educational institutions and programs be “accessible to everyone, without discrimination.” Accessibility has three overlapping dimensions:
  - (a) Non-discrimination requires that education be “accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.”

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310 CESCR General Comment No. 13, *supra* note 20, at ¶ 47.

311 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 3 ¶ 10, U.N. Doc. E/1991/23 (Dec. 14, 1990).

312 CESCR General Comment No. 13, *supra* note 20, at ¶ 6.

(b) Physical accessibility requires that education be “within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a ‘distance learning’ programme).”

(c) Economic accessibility requires that education be “affordable to all.”

3. Acceptability requires that “the form and substance of education, including curricula and teaching methods,” be “acceptable (e.g. relevant, culturally appropriate, and of good quality) to students and, in appropriate cases, parents[.]”
4. Adaptability requires that education be “flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.”<sup>313</sup>

Further, the CESCR has explained that Article 13(1) requires that the State ensure that education conforms to the aims and objectives identified: (1) education shall be directed to the human personality’s “sense of dignity”;<sup>314</sup> (2) it shall “enable all persons to participate effectively in a free society”; and (3) it shall promote understanding among all “ethnic” groups, as well as nations and racial and religious groups.<sup>315</sup> States Parties are required to ensure that curricula, for all levels of the educational system, are directed to these aims and objectives.<sup>316</sup> A child’s capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values of Article 13(1).<sup>317</sup>

The right to be free from (State-sanctioned) discrimination in education is guaranteed in Article 2(2) of the ICESCR, Article 2 of the CRC, Article 24 of the CRPD, Article 10 of CEDAW and Article 5(e)(v) of the ICERD. Discrimination is prohibited on the grounds of race, ethnicity, disability, social status, or other status, including immigration status.<sup>318</sup>

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313 *Id.*

314 Relatedly, ICCPR art. 10(1) provides that, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The right to dignity when deprived of liberty seems to overlap with the aims of education in secured educational settings, and could provide further legal authority for arguments based on conditions in alternative education. International Covenant on Civil and Political Rights art. 10(1), Mar. 23, 1976, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171.

315 CESCR General Comment No. 13, *supra* note 20, at ¶ 5. *See also* UDHR, *supra* note 20, at art. 26(2); CRC, *supra* note 19, at art. 29.

316 CESCR General Comment No. 13, *supra* note 20, at ¶ 49.

317 Office of the High Comm’r for Human Rights, Comm. on the Rights of the Child, General Comment No. 1 ¶ 14, U.N. Doc. CRC/GC/2001/1 (2001).

318 CRC, *supra* note 19, at art. 2.

The prohibition against discrimination enshrined in Article 2(2) of the ICESCR is explicitly excluded from progressive realization and is not subject to the availability of resources.<sup>319</sup> There is also a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education.<sup>320</sup>

Further, the adoption of temporary special measures intended to bring about de facto equality for disadvantaged groups is not a violation of the right to non-discrimination with regard to education.<sup>321</sup> States Parties must closely monitor education so as to “identify and take measures to redress any de facto discrimination.”<sup>322</sup> Further, educational data should be “disaggregated by the prohibited grounds of discrimination.”<sup>323</sup>

Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination.<sup>324</sup> Disability-based discrimination is defined as any distinction, exclusion, restriction, or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment, or exercise of economic, social, or cultural rights.<sup>325</sup> States shall ensure that children with disabilities are not excluded from the general education system on the basis of disability, and can access education on an equal basis with others in the community in which they live.<sup>326</sup>

States are obligated with regards to children with disabilities to “take positive action to reduce structural disadvantages” and to “give appropriate preferential treatment” to children with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities.<sup>327</sup> Further, because services for children with disabilities are often fragmented and uncoordinated, the establishment of an appropriate coordinating mechanism is “essential” to preventing “overlapping in functions and gaps in [service] provision.”<sup>328</sup>

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319 CESCR General Comment No. 13, *supra* note 20, at ¶ 31.

320 *Id.* at ¶ 45.

321 *Id.* at ¶ 32.

322 *Id.* at ¶ 37.

323 *Id.*

324 Office of the High Comm’r for Human Rights, Comm. on the Rights of the Child, General Comment No. 9 ¶ 62, U.N. Doc. CRC/C/GC/9 (2007) [hereinafter CRC General Comment No. 9]

325 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 5 ¶ 15, U.N. Doc. E/1995/22 (Dec. 9, 1994) [hereinafter CESCR General Comment No. 5].

326 CRC, *supra* note 19, at art. 24(2)(a-b).

327 CESCR General Comment No. 5, *supra* note 326, at ¶ 9.

328 CRC General Comment No. 9, *supra* note 325, at ¶ 21.

## APPENDIX III: U.S. DOMESTIC LEGAL FRAMEWORK FOR KEEP OUT

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The importance of education is clearly acknowledged in the U.S. legal system. In *Brown v. Board of Education*, the Supreme Court stated: “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>329</sup> Subsequent Supreme Court decisions have reaffirmed *Brown’s* sentiment that education creates opportunities.<sup>330</sup> In *Plyer v. Doe*, the Supreme Court explained that “education has a fundamental role in maintaining the fabric of our society” — including preparing peoples for democratic citizenship, preventing against the “enduring disability” of illiteracy, promoting general welfare, deterring crime, and creating economic opportunities.<sup>331</sup>

While notable Supreme Court cases have stressed that education plays a vital function in our society,<sup>332</sup> the Supreme Court has not recognized education as a fundamental right.<sup>333</sup> Since there is no constitutional right to education, education remains the purview of the states. Therefore, any guarantees of a right to education depend upon individual state constitutions. Every state constitution contains a clause requiring the legislature to establish and maintain a free system of public education open to all children living in the state.<sup>334</sup> Stronger education clauses use adjectives such as “efficient,”<sup>335</sup> “high quality,”<sup>336</sup> “uniform,”<sup>337</sup> and “thorough”<sup>338</sup> to describe the system of free public schools that the state must establish. The majority of state constitutions assert that

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329 347 U.S. 483, 493 (1954).

330 See *Plyer v. Doe*, 457 U.S. 202 (1982) (holding that Texas’s practice of denying undocumented immigrant children free public education violated the Fourteenth Amendment’s Equal Protection Clause).

331 *Id.* at 221.

332 See *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (stating that “education is perhaps the most important function of state and local governments”); see also *Plyer*, 457 U.S. at 221 (1982) (explaining that “education has a fundamental role in maintaining the fabric of our society”).

333 *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1973).

334 Katherine Twomey, Note, *The Right to Education in Juvenile Detention Under State Constitutions*, 94 Va. L. Rev. 765, 788 (2008) (citing Eric Blumenson & Eva S. Nilsen, *One Strike and You’re Out? Constitutional Constraints on Zero Tolerance in Public Education*, 81 WASH. U. L.Q. 65, 103 n.161 (2003)) (listing state constitutional provisions); see also Education Commission of the States, *State Constitutions and Public Education Governance* (October 2000), <http://www.ecs.org/clearinghouse/17/03/1703.htm>.

335 Ark. Const. art. XIV, §1; Del. Const. art. X, §1; Ill. Const. art. X, §1; Ky. Const. §183; Md. Const. art. VIII, §1; Pa. Const. art. III, §14; Tex. Const. art. VII, §1; W. Va. Const. art. XII, §1.

336 Ill. Const. art. X, §1; Va. Const. art. VIII, §1.

337 Ariz. Const. art. XI, §1; Colo. Const. art. IX, §2; Ind. Const. art. VIII, §1; Minn. Const. art. XIII, §1; Nev. Const. art. XI, §2; N.C. Const. art. IX, §2; Or. Const. art. VIII, §3; Wis. Const. art. X, §3; Wyo. Const. art. VII, §1.

338 Idaho Const. art. IX, §1; Md. Const. art. VIII, §1; Pa. Const. art. III, §14; W. Va. Const. art. XII, §1.

it is the duty of the state to provide an “adequate” or “thorough and efficient” public education.<sup>339</sup> Some advocates have asserted that juveniles exiting detention have a right to an adequate education based on state constitutional guarantees of education.<sup>340</sup>

While U.S. constitutional law does not provide a framework for arguing that students must be provided with a quality education, the Due Process Clause of the Fourteenth Amendment provides some protection for students exiting the juvenile justice system and trying to reenroll in school. The Supreme Court has recognized that state constitutional provisions requiring the establishment of statewide systems of public education create a property interest.<sup>341</sup> Under this framework, residents of any school district have a property interest in their education and a liberty interest in their reputation and future opportunities.<sup>342</sup> Therefore, the government cannot deprive students of their schooling without due process, including adequate notice, an opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.<sup>343</sup> It is worth noting that successful due process arguments have been made to promote school reintegration for youth in the juvenile justice system.<sup>344</sup>

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339 Education Commission of the States, *State Constitutions and Public Education Governance* (October 2000), <http://www.ecs.org/clearinghouse/17/03/1703.htm>.

340 See e.g., Twomey, *supra* note 335, at 767.

341 *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

342 See *Goss* 419 U.S. at 574 (noting the property and liberty interests indicated by school discipline decisions).

343 See generally *Defeo v. Rose Tree Media Sch. Dist.*, No. 06-744, 2007 WL 57617 (E.D. Pa. Feb. 20, 2007) (discussing Plaintiff’s argument that the right to education is a property right hereby entitling Plaintiff to protection under due process).

344 See e.g., *J.G. ex rel. F.B. v. Mills*, 2010 WL 5621274 (E.D.N.Y. Dec. 28, 2010), report and recommendation adopted, 2011 WL 239821 (E.D.N.Y. Jan. 24, 2011).

## APPENDIX IV: LOS ANGELES UNIFIED SCHOOL DISTRICT POLICIES

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### OPEN ENROLLMENT

Currently the term “Open Enrollment” in LAUSD refers to the process in late May where parents can sign their child up for any school with openings. The district’s state-mandated open enrollment policy enables students anywhere in the LAUSD to apply to any regular, grade-appropriate Los Angeles public school with designated open enrollment seats. The application process typically occurs during May for the following school year. A list of the schools with open enrollment seats is usually available in the main office of any school, beginning in late April or early May. There is no limit on the number of schools to which a parent/guardian may apply for open enrollment. If the number of applications received at a school is less than the number of available seats, all the students who applied are invited to enroll. If the applications are greater than the number of seats, a drawing is held to determine which students are given seats. Schools that still have space available after the deadline usually will be able to register open enrollment students up to the second Friday of the school calendar for that campus.<sup>345</sup>

### OPPORTUNITY TRANSFERS

Formal LAUSD policy identifies two reasons opportunity transfers may be warranted; these are: (1) single serious acts or (2) progressive discipline.<sup>346</sup> Single Serious Act opportunity transfers serve as alternatives to expulsion and may only be issued for violations of the Education Code. Progressive discipline opportunity transfers may only be issued when the disciplinary review team has determined that interventions by school staff have failed to bring about positive student conduct.<sup>347</sup> This means that an opportunity transfer for progressive discipline shall not be considered unless the school can clearly demonstrate and document that comprehensive intervention strategies have been fully utilized and have not been successful. Opportunity transfers may not be used to address problems of truancy, tardiness, or other attendance-related issues; to preclude the provision of special education or Section 504, nor replace the IEP or Section 504 review process; or as a remedy for low academic achievement or for being a victim of a fight.<sup>348</sup> Opportunity transfers are not supposed to be issued more than twice during a student’s high school career.<sup>349</sup>

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345      See What is Open Enrollment and How Do I Apply (July 27, 2005) [http://notebook.lausd.net/pls/ptl/ptl\\_apps.renderfaq.viewquestion?p\\_question\\_id=54293](http://notebook.lausd.net/pls/ptl/ptl_apps.renderfaq.viewquestion?p_question_id=54293).

346      See LAUSD POLICY BULLETIN, OPPORTUNITY TRANSFERS (OTs) POLICY (December 15, 2008).

347      *Id.*

348      *Id.*

349      *Id.*



## CONTINUATION SCHOOLS

Continuation high schools are “small campuses with low student-to-teacher ratios offering instruction to students between the ages of sixteen and eighteen who are deemed as risk of not completing their education.”<sup>350</sup> According to LAUSD policy, continuation high schools are not to be viewed as a placement for students with behavioral problems. Instead they should be viewed as a positive educational alternative for students with specific needs that can best be met at a continuation high school. This includes students eighteen years of age who have been continuously enrolled in a district school and are lacking a limited number of courses to qualify for graduation. Students must be at least sixteen years old to attend a continuation high school. A student, in agreement with the parent and principal, may transfer voluntarily to a continuation high school. A student who has voluntarily transferred shall have the right to return to his or her traditional high school at the beginning of the following semester or, with the consent of the traditional high school, at any time.<sup>351</sup> Students may also be involuntarily transferred to a continuation school if they have been habitually truant from school.<sup>352</sup>

## ENROLLMENT OF STUDENTS RETURNING FROM JUVENILE JUSTICE FACILITIES

Upon release from a court placement, school records are supposed to be made available to students and parents/guardians. Students and parents/guardians are required to bring these records at the time of enrollment or reenrollment in an LAUSD school. However, official policy makes clear that school enrollment shall not be delayed or denied when release records are not available.<sup>353</sup> Returnees who are eighteen years of age or older shall not be denied enrollment in a school program solely on the basis of age. Additionally, policy dictates that students should not automatically be assigned to alternative education programs.<sup>354</sup>

## OVERAGE STUDENTS

LAUSD policy dictates that school personnel should not arbitrarily check out of school any student simply because he or she has reached the age of eighteen.<sup>355</sup> Schools are required to make every reasonable effort to provide high school students with four full years of study. In California, there are additional protections for foster youth, which includes a fair number of probation youth. These protections stem from AB 167 (California Education Code Section 51225.3), which allows a foster youth who moves placements in his/her junior or senior year to graduate with the state minimum credits rather than the district requirement.

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350 Los Angeles Unified School District, Schools, [http://notebook.lausd.net/portal/page?\\_pageid=33,255549&\\_dad=ptl&\\_schema=PTL\\_EP](http://notebook.lausd.net/portal/page?_pageid=33,255549&_dad=ptl&_schema=PTL_EP) (last visited Nov. 25, 2011).

351 LAUSD POLICY BULLETIN, ENROLLMENT IN CONTINUATION HIGH SCHOOLS (May 9, 2006).

352 *Id.*

353 LAUSD POLICY BULLETIN, ENROLLMENT OF STUDENTS RETURNING FROM JUVENILE JUSTICE FACILITIES AND OTHER PLACEMENTS (Sept. 6, 2011).

354 *Id.*

355 LAUSD POLICY BULLETIN, STUDENT ATTENDANCE POLICY (Feb. 1, 2005).





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