

ALTERNATIVE EDUCATION AND THE
SCHOOL-TO-PRISON PIPELINE

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Introduction

For over three decades, the criminal justice policy in our country dismissed rehabilitation of convicts in favor of long and harsh terms of incarceration. An ever more litigious society, ungrounded in any sense of community has expanded state and federal criminal codes to encompass all kinds of misbehavior that in the past we might expect families, schools and communities to address. Expansive penal codes, an overreliance on incarceration and failure to examine the root causes of crime, have created the overarching removal of people from our communities and into the prison system.¹ A significant number of those swept up into what some call “the prison industrial complex” are minorities or *people of color*.² This trend towards removal and often permanent disbarment has extended into our schools. Today, many children are removed from their educational environments and placed onto a one-way path towards prison. Criminal, juvenile justice and school policies which push children out of the educational system and towards courts for prosecution are collectively known as the School-to-Prison Pipeline.

In recent years, the public perception in the United States has been that violence among youth, both inside and outside of school, is on the rise. Despite this perception, violence among youth has actually been decreasing across the country.³ However, schools have increasingly adopted harsh “zero-tolerance” policies towards discipline in response to the misguided perception that youth violence is out of control. School administrations which promote zero-tolerance policies contribute to the School-to-Prison Pipeline by removing students deemed to be “problem children” from their schools.⁴ This reliance on disciplinary measures by school administrators has led to over three million school children each year being suspended in the United States.⁵ Children who are suspended, and thus excluded from the traditional educational setting, are not being taught positive behavior. Instead, their education is disrupted for days and poor behavior increases because they are removed from their regular environment and a school’s

¹ Michelle Alexander

² Angela Davis

³ NAACP *Dismantling the School-to-Prison Pipeline* at 3,
http://www.naacpldf.org/files/publications/Dismantling_the_School_to_Prison_Pipeline.pdf.

⁴ *Id.*

⁵ *Id.*

inherent structure.⁶ In addition to being suspended or expelled, students are more frequently being arrested and prosecuted in juvenile court for misbehaving at school.⁷ Students may even be arrested for typical adolescent misbehavior, such as swearing, disobeying a teacher, or starting a food fight.⁸

This brief highlights the disparity between minority students enrolled in alternative education programs (“AEP”) and their White peers enrolled in traditional programs, and how these minority children are placed on the School-to-Prison Pipeline. In addition, this brief discusses the significant impact that Kentucky’s AEP’s have on disparity among minorities regarding the School-to-Prison Pipeline. Lastly, this brief will discuss solutions to the School-to-Prison Pipeline, including both legislative and familial/societal remedies.

Addressing the School-to-Prison Pipeline Problem

In order to reform and address the School-to-Prison Pipeline, one must focus on the root of the problem – a public education system that often fails our children. Schools with fewer resources available to students tend to yield poor educational and behavioral outcomes.⁹ The lack of resources and poor attention given to students in the public education system, especially in lower socio-economic areas, promulgates failure among these students and places them on the School-to-Prison Pipeline. Inadequacies in public schools range from a lack of qualified and experienced teachers, to poor extra-curricular activities and a lack of safe and modern facilities.¹⁰ Schools that are deprived of essential resources simply do not have the ability to create a safe and successful educational environment. These schools are labeled as “failing” and “unsafe” in the community, and the students then begin to feel disengaged from the school and believe they have no chance to succeed.¹¹ These communities lose the potential talent of these students and also have to deal with the problems that these students will likely pose when they grow older if they stay along the School-to-Prison Pipeline.¹²

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.* at 6.

The lack of resources in many public schools also creates incentives for school administrators to remove students from school for any type of misconduct. Many school administrators believe that removing “problem children” from their schools will allow them to better meet the needs of the students who have a real chance at success, and thus improve the educational deficiencies of the school, thereby receiving a higher approval rating by the state.¹³ No Child Left Behind incentivized this approach with its method of rewarding student test score achievement.¹⁴ The lack of sufficient resources in schools also means that suspending or expelling students, or even involving law enforcement, is the easiest way for administrators to deal with “problem students.”¹⁵ The schools often do not have enough guidance counselors or resources available to effectively discipline students within the school, so they remove the children to AEP’s.¹⁶ The increasing tendency of school districts’ to rely upon law enforcement and the juvenile criminal justice system to correct minor misbehaviors helps push children into the Pipeline and away from completing their education.¹⁷

Kentucky’s Approach to Education

The Supreme Court of the United States has stated that “education is perhaps the most important function of state and local governments[.]”¹⁸ However, the individual states are not obligated to maintain a public school system under the United States Constitution.¹⁹ “But when a state elects to provide free education to all youths ... the state is constrained to recognize a student’s legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause *and which may not be taken away for misconduct* without adherence to the minimum procedures required by that Clause.”²⁰ With this national attitude towards public education, the Kentucky Supreme Court has made clear in *Rose v. Council for Better Education* that education is a fundamental right in Kentucky. Accordingly, all students in Kentucky are

¹³ *Id.* at 5.

¹⁴ ADD NCLB original statutes and citation for authority for this point

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Goss v. Lopez*, 419 U.S. 565, 576 (1975) (citations omitted).

¹⁹ *Johnson v. Collins*, 233 F. Supp. 2d 241, 247 (D.N.H. 2002) (citations and quotations omitted).

²⁰ *Id.* (Emphasis added).

entitled to an education, and it is the responsibility of the General Assembly to provide for substantial uniformity of curriculum and opportunity throughout the state.²¹

In *Rose*, the Kentucky Supreme Court interpreted Section 183 of the Kentucky Constitution, which requires the General Assembly “by appropriate legislation, [to] provide for an efficient system of common schools throughout the State.”²² Noting that “no tax proceeds have a more important position or purpose than those for education in the grand scheme of our government,”²³ the *Rose* court determined that an “efficient system of common schools” consists of the following “essential and minimal characteristics”:²⁴

- 1) The establishment, maintenance, and funding of common schools is the sole responsibility of the General Assembly;
- 2) Common schools shall be free to all;
- 3) Common schools shall be available to all Kentucky children;
- 4) Common schools shall be **substantially uniform** throughout the state;
- 5) Common schools shall provide **equal educational opportunities** to all Kentucky children, regardless of place of residence or economic circumstances;
- 6) Common schools shall be **monitored** by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence;
- 7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an **adequate education**;
- 8) The General Assembly shall provide **funding which is sufficient** to provide each child in Kentucky with an adequate education; and
- 9) An adequate education is one which has as its goal the development of [seven particularized capacities].²⁵

²¹ Ky. Const. § 183; See generally *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989).

²² Ky. Const. § 183.

²³ *Rose* at 211.

²⁴ *Id.*; Although the *Rose* Court explicitly places this responsibility on the General Assembly, it also notes that “in no way does this constitutional requirement act as a limitation on the General Assembly’s power to create local school entities and to grant those entities the authority to supplement the state system” with regard to raising supplemental revenues. However, the local efforts are not to be used as a substitute for the General Assembly’s responsibility to provide an “adequate, equal and substantially uniform educational system.” *Id.* at 211-212.

²⁵ *Id.* (Emphasis added). These above mentioned seven capacities, which an efficient system of education must have as its minimum goal, are as follows:

- 1) Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- 2) Sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- 3) Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- 4) Sufficient self-knowledge and knowledge of his or her mental and physical wellness;

In response to *Rose*, the Kentucky Education Reform Act of 1990 (“KERA”) became the instrument used by the General Assembly to implement equality across Kentucky’s school districts.²⁶ Through this reform, the General Assembly delegated to a Kentucky Board of Education (“KBE”) the primary function of “develop[ing] and adopt[ing] policies and administrative regulations... by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education.”²⁷

KRS 156.160 further defines the role of the KBE to “promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance,” which also comply with the General Assembly’s enumerated goals for the Commonwealth’s schools,²⁸ as well as with the KBE’s model curriculum framework. Among several other academic goals, the enumerated goals for the Commonwealth’s schools include:

- 1) Expectations of a high level of achievement for all students;²⁹
- 2) Increasing students’ rates of school attendance;³⁰
- 3) Increasing students’ graduation rates while reducing students’ dropout and retention rates;³¹ and
- 4) Reducing physical and mental health barriers to learning.³²

Furthermore, schools are measured on the proportion of students who make a successful transition to work, post-secondary education, or the military.³³

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- 5) Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
 - 6) Sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
 - 7) Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. *Id.* at 211-212.

²⁶ KRS 156.016.

²⁷ KRS 156.029.

²⁸ See generally KRS 158.6451.

²⁹ KRS 158.6451 (1)(a).

³⁰ KRS 158.6451(1)(c).

³¹ KRS 158.6451(1)(d).

³² KRS 158.6451(1)(e).

³³ KRS 158.6451(1)(f).

Role of Alternative Education Programs

AEP's were operating in some Kentucky schools pre-KERA. However, in 1998, and through its efforts to improve school safety, the General Assembly acknowledged AEP's – specifically authorizing their use to provide “intervention services” to students at risk of school failure,³⁴ students who are at risk of participating in violent behavior and juvenile crime, or who have been expelled from the school district.³⁵ As a result, AEP's in Kentucky began to expand. These programs operate with several different functions in the state, but a primary function is to educate students who have disciplinary actions used against them in their regular school settings. Overall, in order for AEP's to comply with Section 183 of the Kentucky Constitution, and to ensure equality of education for students sent to those programs, there must be a clearly defined and efficient system of alternative education with goals that match the rest of Kentucky's system of common schooling.

Moreover, AEP's can play an important role in addressing the School-to-Prison Pipeline. Students who receive out-of-school suspensions and expulsions are often placed into an AEP to continue their education. If AEP's have the proper educational and disciplinary policies in place to help children succeed, then the outcomes for many children along the School-to-Prison Pipeline will improve. Yet, once students are placed in an AEP they receive little guidance on entry and exit procedures and many remain trapped within the program for the duration of their education. In addition, to not receiving equal educational opportunities, students in AEP's can negatively influence each other if positive disciplinary policies are not in place.³⁶ Often the students who are misbehaving, and who eventually end up in AEP's, are the same students that have special learning needs which went unmet in their traditional schools.

Racial Disparities in the School-to-Prison Pipeline

What has long been true in the criminal justice system across the United States has also been true in public education and the School-to-Prison Pipeline – minorities, especially young black males, have been disarmingly affected by the harsher disciplinary policies in schools.³⁷ The racial disparity that exists in the School-to-Prison Pipeline results in minorities being

³⁴ KRS 158.440.

³⁵ KRS 158.441.

³⁶ *NAACP Dismantling the School-to-Prison Pipeline, supra*, at 5.

³⁷ *Id.* at 6-7.

increasingly removed from education and placed on a path towards incarceration.³⁸ In recent years, African-American children made up 16% of the United States' juvenile population but accounted for over 45% of juvenile arrests.³⁹ African-American students are also far more likely to be suspended or expelled, and thus sent to an AEP, than many of their peers.⁴⁰ In schools nationally, African Americans are over-represented in special education courses and are under-represented in advanced placement courses.⁴¹

There are many factors that contribute to the disparity in the quality of education that minority youth receive in contrast with other students. The Pipeline begins for most children before they even enter the public education system. In Kentucky, one in four children is below the poverty line.⁴² For African-American children, the poverty rate rises to over 45%.⁴³ This rate is alarming because poverty is a major contributing factor for children who receive a poor quality education. Poverty affects the health, safety, family life, and quality of community facilities available for children.⁴⁴ The racial disparities in poverty lead African-American students to be increasingly more likely to enter the Pipeline before they even have a chance to receive a quality education.

Early childhood education also plays a significant role when examining the disparities between minorities and other students in the School-to-Prison Pipeline. Studies have shown that students who are enrolled in a quality education program during their early childhood are more likely to complete higher levels of education.⁴⁵ These children are also more likely to be in better health, have higher earning, and not end up incarcerated.⁴⁶ In the 2005-2006 school year, approximately 16,000 children were enrolled in Kentucky Head Start and Early Head Start programs.⁴⁷ Of these children, only 18.9% of them were black and over 71% were White.⁴⁸

³⁸ *Id.* at 7.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 8.

⁴² *Children's Defense Fund, Children in Kentucky, January 2012*, <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cits/2012/2012-kentucky-children-in-the-states.pdf>.

⁴³ *Children's Defense Fund, Cradle to Prison Pipeline Factsheet, Kentucky, March 2009*, pg. 1, <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cradle-to-prison-pipeline/cradle-prison-pipeline-kentucky-2009-fact-sheet.pdf>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

This disparity means that even at an early age, minority children are not receiving the same quality of education as their White peers. This discrepancy inadvertently pushes them into the School-to-Prison Pipeline and towards the associated negative outcomes.

Another contributing factor to the racial disparity of the School-to-Prison Pipeline is the achievement gap that exists between African-Americans and other students in Kentucky. The attainment of a high school diploma is the single most effective strategy in preventing adult poverty and the Pipeline to incarceration.⁴⁹ However, a disproportionate number of African-American students in Kentucky could not read or do math at their grade level.⁵⁰ For example, in 2007, 86% of African-American fourth graders cannot read at their required grade level.⁵¹

Data from 2009 reflects that for every 100 White students enrolled in public schools in Kentucky, there were approximately 5 suspensions.⁵² However, for every 100 African-American students enrolled in public schools there were approximately 13 suspensions.⁵³ This has led to a stark racial disparity in the School-to-Prison Pipeline and little progress has been made in addressing the achievement gap between African-Americans and their White peers. Strict disciplinary policies and increasing reliance on law enforcement to deal with “problem students” has led to African-American students being removed from school altogether and placed on a path towards incarceration. In effect, this racial disparity criminalizes minority youth by systematically removing them from school for subjective and minor misbehaviors. Accordingly, school systems are effectively ignoring the inherent problems of the education system by taking the “easy way out” and feeding students into the School-to-Prison Pipeline.

Solutions and Alternatives

While there are many problems involving the School-to-Prison Pipeline, there are also multiple solutions and alternatives to help dismantle the Pipeline for many students. AEP’s can play a critical role in implementing these solutions and alternatives by helping students before they are completely removed from the educational process. Additionally, AEP’s can catch

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 2.

⁵³ *Id.*

students before they move towards the prison end of the Pipeline and provide them with a path towards success.

The first step in dismantling the School-to-Prison Pipeline is to strictly examine school disciplinary policies and to dissuade the practice of having students arrested for minor misconduct that traditional schools should be able to handle.⁵⁴ Both traditional schools and AEP's should have positive behavior supports in place to effectively discipline misbehaving students, many of whom often also have special education needs. Students should not be arrested, made to appear in court, or face jail sentences for typical adolescent misbehavior. School districts with these harsh disciplinary policies only label children as criminals and cause them to lose hope in their education and their future.⁵⁵ These unreasonably harsh discipline policies should be completely eliminated in both traditional schools and AEP's in order to prevent students from being placed into the School-to-Prison Pipeline.

While schools do need to be safe for children, there are other alternatives to achieving this goal rather than having law enforcement officials intervene in a child's discipline. Law enforcement should only be used in a school setting if there is an immediate and direct threat to the safety of the children and the school. Kentucky school districts should instead use positive behavior supports to discipline students and encourage them to stay in the mainstream educational environment. All schools, whether traditional or AEP's, should have the resources available to offer extra-curricular activities and after-school programs, intervention programs, guidance counseling, and conflict resolution programs. These programs and activities have been shown to be successful and offer students an alternative to the outcomes of the School-to-Prison Pipeline.⁵⁶

AEP's can also address the disparity in the School-to-Prison Pipeline by providing a quality education that encourages and gives students the opportunity to successfully complete their education. AEP's are unique learning environments where innovative methodology is the key to student success. Therefore, to ensure an education equal to that of traditional schools, there needs to be legislative oversight of AEP's, which will lead to higher accountability regarding policy-making. In order for AEP's to achieve the constitutional requirements of efficiency, the following nine points must be addressed:

⁵⁴ *NAACP Dismantling the School-to-Prison Pipeline, supra*, at 10.

⁵⁵ *Id.*

⁵⁶ *Id.*

- 1) Definition of programs;
- 2) Oversight;
- 3) Accountability;
- 4) Instructor certification;
- 5) Tracking of per-pupil funding;
- 6) Transitioning to and from programs;
- 7) Denial of equal extracurricular opportunities;
- 8) Equality of curriculum and instruction; and
- 9) Parent involvement.

Definition of Programs

The Kentucky Revised Statutes define an AEP as “a program that exists to meet the needs of students that cannot be addressed in a traditional classroom setting but through the assignment of students to alternative classrooms... that are designed to remediate academic performance, improve behavior, or provide an enhanced learning experience.”⁵⁷ The Kentucky Administrative Regulations define an AEP as “a district-operated and district-controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies.”⁵⁸ Additionally, the student makeup of these programs is typically comprised of:

- 1) Actual dropouts returning to an alternate educational environment;
- 2) Potential or probable dropouts;
- 3) Drug abusers;
- 4) Physically abused students;
- 5) Discipline problem students;
- 6) Nontraditional students (e.g., students who have to work during the school day); or
- 7) Students needing treatment (e.g., emotional/psychological).⁵⁹

It is important to note that Kentucky does not recognize AEP’s as schools in the traditional sense. In Kentucky, a “school” is defined as “an elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school. *The term “school” does not include district-operated schools that are...*

⁵⁷ KRS 160.380 (1).

⁵⁸ 703 KAR 3:390 §1(1).

⁵⁹ *Id.* at § 1(1)(a)-(g).

*alternative schools designed to provide services to at-risk populations with unique needs.”*⁶⁰ No explanation is given as to why the AEP’s are not considered schools (other than the broadly termed “unique needs” of “at-risk populations”), as some of Kentucky’s children are being sent to these programs for their educational needs. Nor are any explanations given as to how AEP’s are measured (either against a traditional school or with a traditional school) when collecting a school district’s statistical data.

Furthermore, AEP’s are not even required to report attendance of their students.⁶¹ This regulation is in direct conflict with Kentucky’s compulsory attendance policy, which mandates that every parent or guardian is *required* to send their child to an approved school for each full school term.⁶² This nonchalance towards students enrolled in AEP’s further emphasizes the disparity between students in AEP’s and traditional schools.

The KBE already has the authority to “establish alternative education programs and services that are delivered in nontraditional hours and which may be jointly provided in cooperation with another school district or consortia of districts.”⁶³ Furthermore, the KBE already has the authority to establish “districts of innovation,” which are districts that have developed a plan whereby districts may create “a new or creative alternative to existing instructional and administrative practices intended to improve student learning and student performance of all students.”⁶⁴ It is of grave importance that the students enrolled in AEP’s receive the same education as those students enrolled in traditional programs. The fact that the KBE is legislatively entitled to establish AEP’s reinforces the idea that legislation has already recognized the importance of AEP’s and that these programs should have requisite standards in place to promulgate the education of at-risk youths in Kentucky.

Oversight

The importance of AEP’s has been addressed in Kentucky’s legislative process, yet the oversight of these programs is lacking. As has been discussed previously, students in these programs do not receive the same opportunities and educational experiences as their peers in

⁶⁰ KRS 160.345(1)(b)(3) (Emphasis added).

⁶¹ 703 KAR 3:390 §1(1) (“an alternative program... is a district-operated and district controlled facility with no definable attendance boundaries”).

⁶² KRS 159.010.

⁶³ KRS 160.107(5)(e).

⁶⁴ KRS 156.108(1)(b).

regular classrooms. In other words, AEP's, as currently operating in Kentucky, deny some students the equality ensured through an "efficient system of common schools."

Standards Kentucky needs to enforce include requiring AEP's to maintain a "school report card" (i.e. the compilation of school information). KRS 158.6453(20) states that the KBE "shall promulgate an administrative regulation to establish the components of a reporting structure" for schools, in order to track the success of traditional schools.⁶⁵ This reporting structure shall include a "school report card that clearly communicates with parents and the public about school performance."⁶⁶ In addition, the school report card shall include information regarding a school's academic achievement,⁶⁷ non-academic achievement, including the school's attendance, retention, graduation rates, and student transition to adult life,⁶⁸ and learning environment, including measures of parental involvement.⁶⁹ The school report card shall also include data about the student body's race, gender, and status of disability when appropriate.⁷⁰

Requiring school districts to report the statistics of students enrolled in *both* standard classes and AEP's establishes a system of standards for oversight and accountability. AEP's must be included on the report card to accurately reflect the districts performance. The KBE needs to promulgate an "efficient system of common schools" and therefore, must measure the performance of AEP's along with all other schools in the district. The Kentucky Department of Education recognizes the need to elevate Kentucky's AEP's, exemplified by the Department's effort to hold up exemplary programs.⁷¹ The accurate collecting and reporting of information will help school administrators in the future to track the achievements of students enrolled in AEP's, and with this knowledge, support and redirect students who might otherwise fall into the Pipeline.

Accountability

The complete exclusion of AEP's from the definition of "school" deprives school leadership of easily accessible accountability mechanisms to track all students and ensure equity in resources and achievement for traditional and school run AEP's. Districts should be required

⁶⁵ KRS 158.6453(20).

⁶⁶ KRS 158.6453(20)(a).

⁶⁷ KRS 158.6453(20)(a)(1).

⁶⁸ KRS 158.6453(20)(a)(3).

⁶⁹ KRS 158.6453(20)(a)(4).

⁷⁰ KRS 158.6453(20)(a).

⁷¹ <http://education.ky.gov/school/Documents/Criteria%20for%20A5%20and%20A6%20Model%20Programs.pdf>

to include AEP's report cards to ensure accountability for student achievement, policy-making, budgeting and allocations of funding, and parent and community involvement. Thus, it is important that this regulation provides a much clearer overall definition of "school" that includes AEP's.

Currently, the measure of a district's success does not accurately account for students sent to AEP's. Thus, districts may be unintentionally inflating the perception of their overall student achievement. The definitions of "school report card," "total enrollment," "spending per student," and "school safety data" should include AEP's to ensure that schools and districts are being held accountable for all students. Therefore, any school district which has an AEP within its district shall publish a school report card for the program which will become part of the district report card. AEP's should be included in this to ensure that the link between school, district, and state data and the school and district report cards, accurately reflects the environment of the educational institution. The exclusion of AEP's from this data skews the data on achievement and performance for the school districts and state.

Teacher Certification

AEP instructors must not only be certified in the fields they teach and for the grade levels taught, but should have special training with regards to the "alternative" methods used in these programs. AEP's are unique learning environments where innovative methodology is the key to student success. Therefore, to ensure equality with instruction in regular classrooms, AEP instructors must not only be certified in the fields they teach and for the grade levels taught, but should have special training with regards to the "alternative" methods used in these programs. Districts should be required to provide professional development in the area of alternative education for all instructors assigned to AEP's.

By statute, school districts in Kentucky are prohibited from assigning teachers or staff to AEP's as a result of disciplinary action or pending disciplinary action. ("No superintendent shall assign a certified or classified staff person to an alternative education program as part of any disciplinary action... or as part of a corrective action plan established pursuant to the local district evaluation plan.")⁷² Mandating appropriate certification for teachers assigned to AEP's

⁷² KRS 160.380 (3).

obviously supports the effort to provide at-risk students with an education equal to that of their peers, who remain enrolled in traditional schools.

Denial of Equal Extracurricular Opportunities

Extracurricular activities are undeniably an important part of a child's development. Extracurricular activities allow students to explore their interests and cultivate their talents, applying class room knowledge in "real world" circumstances.⁷³ However, AEP's frequently do not maintain extracurricular activities such as sports programs, academic clubs, or tutoring and mentoring programs. Without these social outlets, students enrolled in AEP's are deprived of critical, meaningful opportunities for personal growth. AEP's should therefore conduct extracurricular activities as well as provide counseling to both students and parents.

Equality of Curriculum and Instruction

AEP's should not offer a curriculum that is "watered down" from that of the statewide or district-wide standards for other students. One of the goals for Kentucky's efficient system of common schools is to achieve high expectations of achievement for every student, measured by that student's successful transition into work, post-secondary education, or the military.⁷⁴ One major concern about measuring a district's success in this manner is that school districts do not have to count students sent to AEP's in their drop-out rates, thus inflating the perception of the district's overall student achievement. AEP's should operate *within* the common system of schools, not outside of it. Students who do not achieve within these programs should be measured along with their peers who attend regular schools in the district. This would ensure that school districts are held accountable for all of their students and discourage removing children from their traditional school for minor misbehaviors.

Tracking of Per-Pupil Funding

AEP's should be required to report spending per student data on a school report card. There have been problems in the past with developing a system to track funding of students who transition from a sending school to an AEP. School districts should allocate a percentage of funding to AEP's equal to or greater than the percentage of students enrolled in AEP's. AEP's

⁷³ *Peoria Illinois Alternative School Quick Report*,

<http://www.schoolsk-12.com/Illinois/Peoria/PEORIAALTERNATIVESCHOOL-Activities.html>.

⁷⁴ KRS 158.6451(1)(f).

also require additional funding for special education; therefore, school districts should be required to spend a percentage of categorical funds for AEP's that equals or exceeds the percentage of students with special needs at AEP's. A report card detailing spending per student data would help to address any underfunding issues in AEP's.

AEP's often lack the resources to implement the same curriculum as other district schools. A major concern is that students at AEP's are not receiving exposure to the same richness or depth of knowledge and experience as their peers enrolled at the sending schools. A report card from AEP's detailing student to teacher ratios and computer ratios would help track expenditure of resources, and also highlight any additional resources the school may need to be on par with sending schools in the district.

Transitioning Into and Out of Programs

The criterion for entering into an AEP, and subsequently returning to a regular educational setting, is currently not delineated in Kentucky's legislation. Examples of reasons for a student to be enrolled in an AEP are:

- 1) Possession, distribution, or use of alcohol or drugs;
- 2) Physical attacks or fights;
- 3) Chronic truancy;
- 4) Possession or use of a weapon other than a firearm;
- 5) Continual academic failure;
- 6) Disruptive verbal behavior; and
- 7) Possession or use of a firearm.⁷⁵

Additionally, although a school district may desire or intend to return students to regular schools, some students never return and suffer the consequences of an unequal education. Examples of reasons for a student to return to a regular education program are:

- 1) Improved attitude or behavior
- 2) Student motivation to return
- 3) Approval of alternative program staff
- 4) Improved grades
- 5) Approval of the regular school staff
- 6) Student readiness by standardized assessment
- 7) Availability of space in regular school.⁷⁶

⁷⁵ *Public Alternative Schools and Programs for Students at Risk of Education Failure: 2000-01*, National Center for Education Statistics, U.S. Department of Education, at 17, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002004%20>.

However, as AEP's are not regulated, tracked or accounted for in Kentucky, a student's entrance into and return from these programs is completely subjective for each school district.

Parent Involvement

Parental involvement information should also be required for AEP's on report cards. It is important for parents to be involved in all educational decisions made regarding the child while he or she attends the AEP. Parent involvement is a necessary mandate because of past practices where parents have been discouraged or prohibited from participating in their children's alternative education. AEP's should also be required to report data on parental involvement to ensure additional programs can be developed to address any problematic areas in parent participation.

Conclusion

In order to address and dismantle the School-to-Prison Pipeline, Kentucky needs to ensure its commitment to providing an efficient system of common schools to all of its students. Beyond the scope of the legal duty to provide equality in education, there lies a duty to continuously improve educational practices, upgrading the quality of education for our students. Examination of the realities of AEP's in Kentucky has revealed that these programs, operating somewhat outside of the system of common schools, have denied some students both quality and equity in their education. The Kentucky Department of Education has the responsibility of remedying these current inadequacies to ensure that each student in Kentucky has equal access to the common system of schools. This will be the first major and important step that AEP's should take in dismantling the Pipeline and eradicating the racial disparities that exist in the Kentucky public education system.

⁷⁶ *Id.* at 23.