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ENSURING EDUCATION EQUITY IN THE PUBLIC EDUCATION SYSTEM

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RE: March 12, 2009 "Lost Educational Opportunities in Alternative Settings"
written testimony.

I. Janeen Steel, Executive Director of Learning Rights Law Center

Committee Chairman Miller, Subcommittee Chairwoman McCarthy, Subcommittee Chairman Scott and members of the sub committees: I want to thank you for this hearing on "Lost Educational Opportunities in Alternative Settings." Students who are involved in, or are at-risk of involvement in, the juvenile justice or foster care system are entitled to an education that is meaningful, challenging and integrated with youth not involved in the court system. But this is not occurring.

Today I sit in front of you as a graduate of UCLA Law School and Executive Director of Learning Rights Law Center in Los Angeles, California. Learning Rights Law Center's sole mission is to ensure education equity and I have represented hundreds of youth who have been denied the public education to which they are entitled.

When I was in middle and high school in Hollywood, California, the street, drugs and friends were much more interesting than school. An education was the last thing I was interested in because I could not seem to be able to do the work. I knew I was bright, but it appeared by brain would not work. I ultimately quit high school and went to adult school. I was able to get meaningless credits to get my diploma. After high school I spent years struggling with addiction, homelessness (living with friends) and depression. It was not until I attempted community college that my learning disability was finally diagnosed and I realized that something wasn't wrong with me, but that I had a learning disability. My story is not different from many of the youth we work with; in fact, they face far more segregation and isolation than I did. If I were placed in one of the alternative schools for my truancy and school failures I would not be here today. I was lucky.

II. Alternative Education Settings

My discussions will focus on foster youth and at-risk youth who are placed in the following alternative school settings:

1. Continuation schools for youth who are behind in credits;
2. Community day schools for youth who have disciplinary or behavior issues that could include expulsions;
3. Independent study programs; and
4. Non-public special education schools.

The alternative school settings I described are plagued with a variety of problems including:

1. Lack of oversight by the local school boards and state education agencies;
2. Lack of special education services and qualified special education teachers for youth with disabilities;
3. High turnover of teachers and absenteeism; and
4. Punitive behavior management rather than counseling and interventions.

When we talk about students who are attending alternative school, we need understand that the majority are students of color. In California, 71% of student in alternative settings are students of color and in Los Angeles these rates are higher (“Alternative Education Options in California: A view from counties and districts,” McLaughlin, Stanford University, March 2008).

The students who are placed in these school settings are often involved in, or at-risk of involvement in, the juvenile justice system, and who have not been properly serviced by the public school system. We know that 11% of the school population is eligible for special education, yet 35% of the youth in juvenile halls is eligible for special education. Research states that “as many as 70% of incarcerated youth suffer from some sort of a disability while approximately 90% of youth in corrections meet the diagnostic criteria for one or more disabling mental health disorders” (http://www.edjj.org/Publications/NCSETIssueBrief_4.1.pdf).

Since a high percentage of youth in these settings may have disabilities, schools should ensure that:

1. To the maximum extent appropriate, individuals with exceptional needs, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. 20 U.S.C. §1412(5) (A); Cal. Educ. Code §56040.1(a).
2. Be provided with special classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. §1412(5) (A); Cal. Educ. Code §56040.1(b).

When working with youth placed in any alternative setting, urgency drives us to get them out as soon as possible. Priority one: These "alternative" schools are really just warehouses for youth that society has not cared enough to invest in educating. "Warehouse" is too neutral, too generous for the criminal effect on the individual youth. We have witnessed time after time, youth taking life-changing hits as their already challenging life is set back to impossible odds with this much greater risk to ending up incarcerated and/or homeless. This has grave implications for society and severe a financial impact on our government.

III. Educational Equity for Foster Youth

Foster youth are a vulnerable population. Not only have their parents abused or neglected them, they also face a system that cares little for their educational well being. As a society we are mandated to take care of youth who do not have families to take care of them. We need to ensure that their experience is equal to youth who go home to a family.

In California the law requires that all youth in foster care shall have the following rights: "... [t]o attend school and participate in extracurricular, cultural and personal enrichment activities, consistent with the child's age and developmental level." Cal. Welf. & Inst. §16001.9(a)(13). Unfortunately this is not occurring; instead, foster youth living in group homes are systematically placed into alternative education settings without regard to their right to be in the least restrictive placement in their local community school.

In 2008, an investigation was conducted about the effects of group home placements and whether they are associated with a significantly higher risk of delinquency as compared with community foster home placements. The investigation found: "The potential for problems associated with group home placements seems to increase as ties are severed between group home youth and other more positive role models. Group homes often cut juveniles off from their non delinquent and pro social peers and keep youth with others that are often delinquent and/or have emotional and behavioral problems including conduct disorders and ADHD" (Osgood & Briddle, 2006, as quoted in Ryan, J. P., et al., "Juvenile delinquency in child welfare: Investigating group home effects, Children and Youth Services Review" (2008), doi:10.1016/j.chilyouth.2008.02.004).

In 2001, a study by the American Institute for Research (AIR) found 46 percent of foster youth living in group homes eligible for special education are warehoused in non-public schools (NPS), which are special education schools separate from the public school. This is an obvious segregation since only 4 percent of special education students who are not in foster care or group homes have NPS placements [see Thomas Parrish, *Education of Foster Group Home Children, Whose Responsibility Is It?* (2001)].

Another important fact is that foster youth transfer schools an average of 9 times and the loss of credits results in frustration and increased risk of school drop-out. The system must address this by allowing students to receive partial credit for courses they completed and provide transportation to continue their education in their home school. Laws are in place to ensure this but are not enforced. Foster youth are removed from their families because of abuse and neglect, not because of any

educational disability. Foster youth should have a traditional education experience, not ad-hoc “credit recovery” programs that provide little educational benefit.

1. Mary’s Story

I met Mary in 2002 when she was a 15 year-old foster youth with a learning disability living in a group home that used to be an orphanage. Mary wanted to be a singer and to be in the choir, but she could not be in the school choir. She was attending a special education, non-public school that was located on the grounds of her group home. She attended classes with the same girls she lived with. Mary was physically restrained over twenty times for fighting with other residents during school. One fight was over a hair brush, and resulted in a restraint in which she was pushed to the ground by three adults who held her arms and legs. Mary was not allowed to attend the local community school, because all the youth living at the group home were required to attend the group home school. She lost one year of dances, football games, field trips and socializing with non-disabled, non-foster youth. After our involvement, Mary started attending a community high school where she graduated with honors in 2005. Mary never should have attended the segregated school.

2. Jocelyn B., Amanda B., Andrew B. and Christopher B.

In 2004 I began representing four foster youth, all siblings, who were all illegally placed in a non-public special education school located on the grounds of their group home. The siblings did not have a parent to assist in their education, and they depended on the school to appoint a surrogate to help them. The district failed to do so and as a result each of the siblings spent years in the illegal educational placement. Jocelyn, the poet, was the oldest. Amanda was a bright young woman who eloquently described the loss of attending the public school as disgraceful. The two brothers, Andrew and Christopher, had learning disabilities which were ignored even when they were in a special education school.

In 2004 I filed a compliance complaint with the California Department of Education and in 2006 Learning Rights Law Center along with others filed a civil rights lawsuit on behalf of the four youth that was settled in 2008 in a confidential settlement.

When foster youth are placed in group homes with non-public schools located on the grounds it simulates a restrictive, almost locked, setting.

IV. Alternative Education Settings for At-Risk Youth

Now I am going to focus on at-risk and youth in the juvenile justice system. Each day throughout Los Angeles youth are not admitted into their neighborhood/community public school or are told not to return. The excuses provided to force students out of the community schools typically include:

- We do not have the services to help you;
- You lost your chance to attend this school;
- You have been suspended to many times;
- This school is not safe for you;
- You were in juvenile hall and you must attend a probation program.

In the past year Learning Rights Law Center has worked with numerous parents who have come into our education clinics who have been denied enrollment in their neighborhood schools. I have also spoken with over a hundred probation officers about education rights. Over and over again I hear that they try, but cannot get students to attend school. As a result of the frustration among probation officers, the families, and youth, the student is placed in an alternative school to expedite enrollment.

1. What are the underlying reasons we are investing in the alternative schools rather than in the public schools?

I suggest that each of you go visit an alternative school attended by expelled youth or in the juvenile justice system. If we are hoping to assist students in rehabilitation and returning to the comprehensive public school, these schools are not the answer.

a. Fear

Youth on probation face discrimination and misperception. Some youth are placed by the juvenile court system into a group home when a court determines that they cannot go home to their parents. The reasons for this placement may or may not be because of their delinquency.

For example, a community program in California providing services and small family style group homes to probation youth faced obstacles when they tried to enroll their clients in the public school. The enrollment process was taking up to four months. The public school was refusing to enroll the youth and was requiring all their clients to attend alternative or non-public special education schools. On behalf of the community program, we filed a complaint and asked the California Department of Education (CDE) to investigate. What they found was quite troubling: the district had an actual written policy regarding all youth living in group homes in their district, requiring youth with disabilities living in group homes to attend either a non-public special education school or a county alternative program. This constituted a violation of the federal statutes for providing students with disabilities an education in the least restrictive environment; as such, the CDE ordered a change of policy.

b. Kerry's story

Kerry is an eighteen year-old young man who experienced a very traumatic event at his community high school. At sixteen, Kerry, who has an auditory process disorder and behavior management issues, was attending a community school. As outlined in Kerry's IEP, he was to walk away when he was frustrated rather than get into a fight. Also, staff were not to put their

hands on him and must let him walk away. Kerry had suffered years of restraints and abuse. One day at school he decided to walk off campus to remove himself from a confrontation, but a security guard grabbed him. Kerry was tazed, handcuffed and arrested. As a result of the incident he was placed in an “Interim Alternative Placement,” even though the IEP team determined that the behavior was a manifestation of his disability. He was still removed to a school that did not have the services to address his learning disability and had little supervision. Kerry was eventually moved to a group home in another city, and while he struggled to make up the credits lost, he did finally graduate from high school. He struggles today with self-esteem issues and trusting people.

c. Ruth’s Story

Ruth is a fifteen year-old girl with a learning disability and severe depression, who was placed in a non-public special education school because of her behavior issues and fighting in the community school. Ruth wants to be able to be treated and respected for who she is. She struggles with acceptance with her family because of her sexual orientation and has been hospitalized for suicide on one occasion. Ruth worked this past year and received all A’s at the non public school hoping to return to the community school. But the principal said no. Ruth frustrated with the answer threw a book at a car and broke its windshield. If Ruth were here she would tell you that all she wants to do is attend a public school and be with regular kids in a regular school.

What do you think Ruth needs? A segregated school to further isolate her? But, that is exactly what happened? Who really failed her? We are working with her now to get her what she is entitled.

V. What Can Be Done?

1. Mandate educational interventions instead of suspensions and removals.

Education should not merely be an option for students, but rather a fundamental right. School districts should provide mandatory, quality educational programs in the least restrictive environment rather than suspending or removing students for behavior that can be through an educational intervention. The use of suspensions and removals is not an adequate remedy to address student behavioral difficulties.

2. Implement and enforce school-wide behavior management structures.

There must be researched based structures in schools to address behavior and that address the individual youth. A student who is struggling academically, socially and emotionally may display behavior that could be addressed. Each student should have a behavior management plan if needed to address their social and emotional needs, address their academic needs, and assist them with actually being successful students. There is nothing in the law that supports this. We currently have laws that are punitive in nature, and there is no guidance for schools to be supportive of students’ needs. Currently, for students with special needs, there are legally mandated requirements to address behavior **BUT** these requirements are currently not enforced.

3. **Support teachers to prevent turnover and absences to ensure consistency in educational programs.**

There must be some accountability structure in place to address the incredible turnover and absenteeism in high poverty schools. We must find out how to keep teachers and support them.

4. **Expand school counseling and social work services in comprehensive campuses.**

Currently, school counselors are overwhelmed with their responsibilities. The national average for high schools is 229 students per counselor, while in the K-8 system has an alarming 882:1 ratio. We should increase the capacity of school counselors at school sites to not only address students' ability to function in the school setting, but also to provide the safety net for students. Students turn to counselors to engage in confidential conversations with them to discuss issues that they may have no where else to turn.

Moreover, the increased presence of social workers on school campuses can benefit students. Social workers can work on the development of community resources to help the family. They can also bring community resources to the schools.

5. **Increase partnerships with community-based organizations.**

Schools should work more closely with community-based organizations serving youth. Structurally, states should provide more funding opportunities for community based organizations to work with schools.

Every school should know the community-based organizations in their community. There are resources in the community, but they're under-utilized and they're working in silos.

6. **Implement evidence-based education therapies for students with learning disabilities.**

Students with learning disabilities must be provided with research-based services, accommodations, and technology support.

7. **Assess educational services prior to transfer or removal.**

There should be a written plan for every student prior to any transfer or removal. Currently, this is not happening. We need to strengthen the laws regarding preventive measures that need to be taken before transfer or removal.

8. **Institute performance-based educational programs with regular evaluations and reviews.**

Implement review processes for accountability to supplement current legal standards. Evaluate what has occurred prior the placement at the alternative school. All youth currently in alternative schools should have their prior educational records reviewed and evaluated to understand their individual educational needs.

9. Improve interagency communication and collaboration among educational, delinquency, and dependency systems.

Increase partnerships with universities, which can provide research, best practices, expertise, and data analysis support. Coordinate with hospitals, mental health programs, and other service agencies.

10. Embrace deliberate plans to address racial disparities.

We know that the harmful effects of school exclusion policies are not evenly distributed among the student population; students of color are more likely to be suspended or removed. Schools must work on deliberate plans to go beyond data analysis of racial disparities to take actual steps to decrease the number of minority youth at risk of being placed in alternative educational settings.

If schools implement a school wide behavior management system and structure that educates based on individual needs, they can likely prevent both individual exclusion and the overrepresentation of youth of color who are systematically diagnosed as emotionally disturbed.

Improving partnerships with organizations rooted in the communities of youth can also help to decrease racial disparities.

VI. Conclusion

While there certainly must be more oversight to alternative education settings, our priority should be to prevent the placement of students in harmful alternative school settings.

We should not use public money to warehouse foster or at-risk youth with disabilities in non-public school settings.

In a depressed economy, we should reconsider the high costs of not educating our youth. For example, in California, incarcerating a youth over a one-year period costs over \$70,000, as compared to \$8,000 to educate the same youth.

Typical “Pipeline” Route

