DANGEROUS & DISRUPTIVE OR SIMPLY CUTTING CLASS; WHEN SHOULD SCHOOLS KICK KIDS TO THE CURB?: AN EMPIRICAL STUDY OF SCHOOL SUSPENSION AND DUE PROCESS RIGHTS

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I. INTRODUCTION

Violence in our schools, a national epidemic or a symptom of society at large? What should be the role and responsibility of the educational system in dealing with school discipline? With the implementation of zero tolerance policies for student violence and misbehavior, have school officials gone too far in suspending school children for talking back to teachers? For those students who habitually refuse to attend school, is out-of-school suspension the answer when giving them a vacation is just what they wanted? Are some school districts reluctant to remove violent students from school for fear of receiving the embarrassing label of “persistently dangerous”1 from the state department of education?1

This Article will explore the trends in school violence and the response by various school systems to addressing the challenge. Teachers are becoming the victims of student violence, drugs and weapons are becoming commonplace in our educational settings, and tardiness and absenteeism are constant challenges for an over-burdened school system. The adverse effects of suspending a student from school have far-reaching implications for that student’s future employment prospects and higher education aspirations.2 The duty of the school system to provide alternative education environments for the suspended will also be examined. Finally, the responsibility of parents, through state imposed criminal sanctions, for the violent and delinquent actions of their children will be analyzed to determine if such consequences are effective at reducing this behavior.

The U.S. Supreme Court in 1975 addressed the requisite fundamental due process protections of notice and hearing implicated when schools remove dangerous and disruptive students from school.3 Thirty-five years after the U.S. Supreme Court announced the procedural due process protections to which school children are entitled in a disciplinary proceeding, how have schools and students

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1 Sara Neufeld, Pushing Hard, With No Excuses, BALTIMORE SUN, FEB. 9, 2009, at 8.
3 See id.
fared? Are schools safer? Do school children retain constitutional rights in the process?

This Article will analyze various school divisions’ responses to addressing school violence and rule violations. Recommendations for a model school disciplinary proceeding regarding the hearing, grounds for disciplinary actions, alternative educational programs, and uniformity in terms of length of removal will be offered. Thirty-five years after the U.S. Supreme Court initially addressed the issue, what is the current state of affairs and where do we go from here?

II. COURT DECISIONS: PROCEDURAL DUE PROCESS PROTECTIONS FOR STUDENTS

A. Laying the Framework: Due Process for Short-Term Suspension

The landmark U.S. Supreme Court case, Goss v. Lopez, set forth the basic framework for school suspensions. Ohio public high school students, who were suspended from school as a result of misconduct for up to ten days without a hearing, claimed a denial of due process in violation of the Fourteenth Amendment. The Court recognized, on the basis of Ohio state law, a legitimate claim of entitlement to a public education. The Court emphasized that although Ohio may not be constitutionally obligated to establish and maintain a public school system, it had nonetheless chosen to do so and had required its children to attend. Those children, reminds the Court, do not “shed their constitutional rights” at the schoolhouse door. In particular, the State’s authority to prescribe and enforce standards of conduct in its schools must be exercised consistently with constitutional safeguards.

The Goss Court addressed and identified the harms caused by school suspensions. For school suspensions for periods of up to ten days, the charges could seriously damage the students’ standing with their fellow pupils and their teachers as well as interfere with future higher education and employment opportunities.

Although the Supreme Court acknowledged that short-term suspensions are a far milder deprivation than expulsion, it nonetheless declared, referencing the

5 Id. at 567.
6 Id. at 573.
7 Id. at 574.
8 Id. (quoting Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969)).
9 Id.
10 Id.
11 Id. at 574–75.
landmark case of *Brown v. Board of Education*,\(^\text{12}\) that “education is perhaps the most important function of state and local governments.”\(^\text{13}\) The Court delineated the dividing line between short-term suspensions of up to ten days from long-term suspensions of greater than ten days as the key determination of what due process protections are due.\(^\text{14}\)

Students facing temporary suspensions are entitled to the due process protections of receiving oral or written notice of the charges against him or her and, if the student denies them, an explanation of the evidence the school authorities have and an opportunity to present his or her side of the story.\(^\text{15}\) For these short-term suspensions, a student shall be given an opportunity to explain his version of the facts after first being informed of the accusations against him and the basis for such accusations.\(^\text{16}\) Although the hearing may occur almost immediately following the misconduct, as a general rule the Court asserted that notice and hearing should precede removal of the student from school.\(^\text{17}\)

The U.S. Supreme Court explained that the Due Process Clause does not require, for short-term suspensions of up to ten days, the student’s opportunity to secure counsel, confront and cross examine witnesses or call his or her own witnesses.\(^\text{18}\) Instead, the requirements of effective notice and an informal hearing permitting the student to give his or her version of the events provide a meaningful hedge against erroneous action.\(^\text{19}\)

The Court explained that the school disciplinarian, usually the school principal, is in a position to be alerted to the existence of any disputes about the facts during the informal hearing, which may result in the disciplinarian choosing to summon the accuser, permit cross-examination and allow the student to call his or her own witnesses, and in more difficult cases, permit counsel.\(^\text{20}\)

### B. Expanding the Framework: Due Process Protection for Long-Term Suspension

In addressing these due process protections for short term suspensions of up to ten days, the *Goss* Court acknowledged without great specificity that for suspensions of greater than ten days, expulsions for the remainder of the school

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\(^{13}\) *Goss*, 419 U.S. at 576.

\(^{14}\) See *id.* at 581.


\(^{16}\) *Goss*, 419 U.S. at 582.

\(^{17}\) *Id.* at 582–83 (acknowledging, however, that prior notice and hearing cannot be insisted upon where the student poses a continuing danger to persons or property; in such cases notice and hearing should follow the removal as soon as practicable).

\(^{18}\) *Id.* at 583.

\(^{19}\) *Id.*

\(^{20}\) *Id.* at 583–84.
term, or permanent removal from school, “may require more formal procedures.” The details of the due process requirements in such situations are found in the subsequent words of future court decisions. The more grave consequences of long-term suspensions and expulsions mandate the need for greater due process protections.

In Gonzalez v. McEuen, eleven students claimed they were improperly expelled from school. Relying on Goss v. Lopez, the students claimed their expulsion proceedings were constitutionally inadequate and denied them due process of law. In particular, the letter sent to the parents of the expelled students contained no notice of the students’ right to be present at the hearing, to be represented by counsel, nor to present evidence, in clear violation of California law. The Gonzalez court relied on the Goss determination that if the penalties are mild, such as for short-term suspensions, informal procedures are sufficient; however, where the penalties are more severe, such as for expulsions from school, more formal proceedings are required. The Gonzalez court specifically recognized that expulsions from school for the remainder of the school year result in a more severe penalty, necessitating more formal procedures. Relying on Goss’s principles, the court held that where a student is faced with the severe penalty of expulsion, he shall have the right to be represented by counsel, present evidence, and confront and cross-examine adverse witnesses.

In addition, the court announced that adequate notice must communicate the nature of the proceedings to the recipient. In the expulsion hearing, the notice must include a statement of the specific charges as well as the basic rights to be afforded to the student, including the right to: (1) to be represented by counsel; (2) to present evidence; and (3) to confront and cross-examine adverse witnesses.

1. The Right to Confront and Cross-Examine Witnesses

Several other courts have addressed the right to confront and cross-examine witnesses, with varying results. In Colquitt v. Rich Township High School District No. 227, the expelled student claimed he was denied an opportunity to cross-examine his accusers, as the three witnesses to the alleged verbal altercation that formed the basis of the three semester expulsion were not present at the hearing.

21 Id. at 584.
23 Id. at 463.
24 Id. at 466.
25 Id.
26 Id. at 467.
27 Id.
28 Id.
29 Id. at 471 (finding a violation of the Fifth Amendment for the school attorney’s comment on a student’s refusal to testify by arguing the student’s guilt could be inferred from such refusal).
The court recognized that the outcome of the hearing was directly dependent on the credibility of the witnesses whose conflicting statements were received by the hearing officer, making the opportunity for cross-examination by the student imperative.\footnote{Id. at 1116. See also Tibbs v. Bd. of Educ. of the Twp. of Franklin, 276 A.2d 165, 166 (N.J. Super. Ct. App. Div. 1971) (reversing expulsion for school’s failure to produce accusing witnesses for testimony and cross-examination).} Although the school claimed the need to protect student witnesses’ anonymity from risks of retaliation, without a showing of significant risk of harm, denial of the right to cross-examine adverse student witnesses should not be the common practice at expulsion hearings.\footnote{Colquitt, 699 N.E.2d at 1113-14 (declining to find a denial of due process or denial of equal protection due to an absence of a court reporter for verbatim transcription).}

However, other courts have declined to find the rights to know the identity of the accuser and to cross-examine witnesses at the expulsion hearing. In \textit{Newsome v. Batavia Local School District},\footnote{842 F.2d 920 (6th Cir. 1988).} the court held that expelled students did not have due process rights to cross-examine school administrators regarding their investigation of drug-trafficking nor did the expelled students have the right to cross-examine or even learn the identity of student accusers.\footnote{Id. at 925.} The court assessed the value of cross-examining student witnesses in school disciplinary cases, determining that it was somewhat muted by the fact that the veracity of student accounts of misconduct by another student is initially assessed by a school administrator.\footnote{Id. at 924 (noting the school principal had knowledge of the accusing student’s trustworthiness).} Therefore, the court noted that the process of cross-examining witnesses may often be “duplicative of the evaluation process” the school administrator undertakes.\footnote{Id.}

The court placed decisional significance on the critical importance of protecting the anonymity of students who ‘blow the whistle’ on their classmates.\footnote{Id. at 925.} The court thus concluded that protecting student witnesses from ostracism and potential reprisals outweighed the value to the truth-determining process of allowing the accused student to cross-examine his accusers.\footnote{Id. See also Brewer v. Austin Indep. Sch. Dist., 779 F.2d 260, 263 (5th Cir. 1985) (reasoning that all procedures afforded a criminal proceedings need not be afforded in school disciplinary proceedings and concluding that the student accuser’s identity would not be revealed).}

Similarly, in \textit{Wagner v. Fort Wayne Community Schools},\footnote{255 F. Supp. 2d 915, 920 (N.D. Ind. 2003).} the court found no due process violation where a seventh grader expelled for selling caffeine pills to other students was denied the right to cross-examine witnesses or learn of their identities.\footnote{Id. at 920, 927.} The court acknowledged that \textit{Goss v. Lopez}\footnote{419 U.S. 565 (1975).} “establish[ed] the
minimum requirements for long-term expulsion,” including notice of the charges, explanation of the evidence the authorities have, and an opportunity to present the student’s side of the story.\textsuperscript{42} However, the Wagner court refused to expand Goss’s framework and extend due process protections to confront and cross-examine witnesses believing this would be overly burdensome on schools and an unrealistic aspiration.\textsuperscript{43}

2. The Right To Be Represented by Counsel

The right of a student to be represented by counsel at a suspension or expulsion hearing is essential to leveling the playing field at the administrative hearing to determine a student’s ability to remain in school. Several courts have addressed this issue, including the case of \textit{Trujillo v. Taos Municipal Schools}.\textsuperscript{44} In \textit{Trujillo}, the seventh grade student was expelled for having a gun at school.\textsuperscript{45} Relying on \textit{Goss v. Lopez}, the court proclaimed that short-term suspensions do not invoke the right to counsel, but acknowledged that “longer suspensions . . . may require more formal procedures.”\textsuperscript{46} The court, however, was unwilling to require the right to counsel at such expulsion hearings nor the right to appeal from an adverse expulsion hearing decision.\textsuperscript{47}

The case of \textit{Draper v. Columbus Public Schools} involved an eighth grader expelled from school for threatening several students with a knife.\textsuperscript{48} The court recognized that a “student’s reputation and his uninterrupted education must be balanced against the state’s interest in maintaining safe, orderly, and effective public schools.”\textsuperscript{49} Repeating the common theme of \textit{Goss v. Lopez},\textsuperscript{50} the court noted that the requisite due process “to assure rudimentary precautions against unfair or mistaken findings for a [ten] day suspension . . . is merely notification of the

\textsuperscript{42} \textit{Wagner}, 255 F. Supp. 2d at 925 (citing Newsome v. Batavia Local Sch. Dist., 842 F.2d 920, 927 (6th Cir. 1988)).
\textsuperscript{43} \textit{Id.} at 928 (The court highlighted the importance of maintaining order and discipline and concluded that the challenges posed by permitting students to confront witnesses or even disclose their identity would be overly burdensome and unrealistic); \textit{See also} Coplin v. Conejo Valley Unified Sch. Dist., 903 F. Supp. 1377, 1383 (C.D. Cal. 1995) (holding that the expelled student has no due process right to know the identity of student accusers either at the time of initial removal from school or ten days later when his parents waived the right to a hearing).
\textsuperscript{44} No. CIV-94-1350, 1995 WL 868603, at *2 (D.N.M. Aug. 10, 1995).
\textsuperscript{45} \textit{Id.} at *2.
\textsuperscript{46} \textit{Id.} at *6 (quoting Goss v. Lopez, 419 U.S. 565, 584 (1975)).
\textsuperscript{47} \textit{Id.} at *7. \textit{See also} Brewer v. Austin Indep. Sch. Dist., 779 F.2d 260, 264 (5th Cir. 1985) (noting that due process, once provided, is “not undone by appellate procedures that do not independently provide all of the elements of due process” and the reviewing body on appeal need not make an independent determination of appropriate punishment).
\textsuperscript{49} \textit{Id.} at 133.
\textsuperscript{50} 419 U.S. 565.
charges and a meaningful opportunity to contest them in an informal hearing.\textsuperscript{51} The \textit{Draper} court, in evaluating whether to extend and enhance the protections for short-term suspensions in \textit{Goss} to expulsions, pointed out that the student’s suspension was “greatly mitigated” by the student’s reinstatement after “only” twenty-seven days.\textsuperscript{52} Unfortunately, this loss of education and the resultant harm to the student’s reputation is significant and long-term. Ten days or twenty-seven days may not appear much different at first look, however, the ability of the student to return to school, catch up on lost work, and advance to the next grade is significantly compromised by the longer absence from school.

In one case, the issue of whether a school was required to provide a list of low-cost legal services was litigated.\textsuperscript{53} The school’s failure to furnish the high school student involved in a cafeteria fight with low-cost legal resources was not actionable because it did not result in a prejudice as the student was able to obtain pro bono counsel on her own.\textsuperscript{54} Although this court recognized the importance of a school district’s obligation to provide students with a list of low-cost legal counsel, no prejudice was found.\textsuperscript{55}

Another important issue for schools is the obligation to provide an alternative education for students who are suspended or expelled from school. Courts and educational officials have struggled with how to address the problem of students who are removed from school from simply roaming the streets during their absence from school.

\section*{III. Trends in School Violence, Disruptive Behavior, and Disciplinary Actions}

Thirty-five years after the Supreme Court announced the procedural due process protections afforded to suspended or expelled students, what is the current state of affairs? What are the trends nationwide in school violence and school suspensions? How do policies of zero tolerance impact the type and frequency of school suspensions? What are the demographics of the suspended student? Is there a connection between school absenteeism and criminal delinquency? How do states vary in the process of conducting school suspension hearings? Are school suspensions effective in curtailing school violence and violation of school rules? The trends, policies, and practices will be discussed and evaluated for the purpose of recommending changes in school disciplinary proceedings which lead to suspension and expulsion of school children.

\textsuperscript{51} \textit{Draper}, 760 F. Supp. at 134.
\textsuperscript{52} \textit{Id}.
\textsuperscript{53} \textit{In re Expulsion of N.Y.B.}, 750 N.W.2d 318 (Minn. Ct. App. 2008).
\textsuperscript{54} \textit{Id}. at 327. \textit{See also} Doe v. Superintendent of Sch. of Worcester, 653 N.E.2d 1088 (Mass. 1995) (noting that MASS. GEN. LAWS ch. 71, § 37H (2009) provides the student with the right to counsel at an expulsion hearing).
\textsuperscript{55} \textit{In Re Expulsion of N.Y.B.}, 750 N.W.2d at 327. \textit{See also In Re Expulsion of Z.K.}, 695 N.W.2d 656, 663 (Minn. Ct. App. 2005).
A. Trends of Crime in Schools

Ensuring safer schools requires establishing good indicators of the current state of school crime and safety across the nation and regularly updating and monitoring these indicators. This is the goal of “Indicators of School Crime and Safety,” a report produced by the Bureau of Justice Statistics which presents the most recent data available on school crime and student safety.\(^56\) This report encompasses topics including victimization, fighting, bullying, classroom disorder, weapons, student perception of school safety, teacher injury, and student use of drugs and alcohol.\(^57\) These indicators of crime and safety are compared laterally across different population subgroups and chronologically over time.

Between July 1, 1992 and June 30, 1999, no consistent pattern of increase or decrease in the number of yearly homicides occurring at school was illustrated; rather, the number fluctuated between 28 and 34 reported homicides of school-age youth on school grounds per year.\(^58\) The number of homicides of school-age youth at school was markedly lower during the 1999–2000 school year at 13 homicides, than during the 1998–99 school year at 33 homicides.\(^59\) However, the number of such homicides increased from 14 to 22 between the 2000–01 and 2003–04 school years, and then declined to 19 by the 2005–06 school year.\(^60\) In 2006–07, the number of homicides of school-age youth increased to 27.\(^61\)

The report noted the prevalence of victimization at school in 2007; four percent of students ages twelve to eighteen reported being victimized at school during the previous six months.\(^62\) Overall, the percentage of students ages twelve to eighteen who were victimized at school decreased between 1995 and 2005 from 10% to 4%.\(^63\)

The percentage of students who were threatened or injured with a weapon on school property has fluctuated between 7% and 9% between 1993 and 2007.\(^64\) In the Youth Risk Behavior Survey,\(^65\) students in grades nine through twelve were

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\(^{57}\) See id. at iii.

\(^{58}\) Id. at 6, 7 (Figure 1.2), 74 (Table 1.1).

\(^{59}\) Id.

\(^{60}\) Id.

\(^{61}\) Id.

\(^{62}\) Id. at 12, 13 (Figure 3.1) (Three percent of students reported theft and two percent of students reported violent victimization).

\(^{63}\) Id.

\(^{64}\) Id. at 14.

\(^{65}\) The Youth Risk Behavior Survey is conducted by the Youth Risk Behavior Surveillance System, a product of the National Center for Chronic Disease Prevention and Health Promotion, Division of Adolescent and School Health, which monitors priority health-risk behaviors among youth and young adults. See http://www.cdc.gov/HealthyYouth/yrbs/index.htm. A copy of the survey questionnaire is available at http://www.cdc.gov/HealthyYouth/yrbs/pdf/questionnaire/2009HighSchool.pdf.
questioned about whether they had been threatened or injured with a weapon on school property during the previous year. In 2007, the survey showed that 8% of students reported being threatened or injured with a weapon on school property.

The likelihood of being threatened or injured with a weapon on school property varied by student characteristics, including gender and grade level, with males being threatened or injured with a weapon on school property twice as frequently as females. Another factor which varied the percentage of students who reported being threatened or injured with a weapon on school property is race and ethnicity. In 2007, higher percentages of multi-racial students (13%), African American students (10%), and Hispanic students (9%) reported threats or injury with a weapon on school property than Caucasian students (7%) and American Indian/Alaska Native students (6%). Nationwide, in 2007, student reports of threats or injury with a weapon on school property within the past twelve months varied, ranging from 5% in Massachusetts and North Dakota to 11% in Arizona, Utah, and the District of Columbia.

The “Indicators of School Crime and Safety” report (the “ISCS report”) also includes data about the percentage of teachers who feel they have been subjected to threats or physical attacks by students. The indicator revealed that the percentage of teachers being threatened with injury or physical attack by students during the 2003–04 school year was higher for public school teachers in city schools than their peers in suburban, town, or rural schools. Overall, the trend in student threats or attacks on teachers appears to decline over time based on the data taken during the 1993–94, 1999–2000, and 2003–04 school years.

Reports of discipline problems by public schools reveal some interesting trends. For example, the ISCS report states that between the 1999–2000 and 2005–06 school years, “the percentage of principals reporting student bullying as a frequently occurring discipline problem declined from 29% to 24% and student verbal abuse of teachers declined as well from [13% to 9%].”

As another indicator of school violence and crime, school principals were surveyed regarding various topics including racial tensions, bullying, sexual harassment of other students, verbal abuse of teachers, widespread classroom

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66 INDICATORS OF SCHOOL CRIME AND SAFETY, supra note 56, at 14.
67 Id. For the purposes of the survey, a weapon included a gun, knife, or club. Id. The percentage of students threatened or injured with a weapon ranged from 7% to 9%. Id.
68 Id. at 14, 15 (Figure 4.1), 82 (Table 4.1). In 2007, 10% of males, as compared with 5% of females, were threatened or injured with a weapon on school property. Id. at 14. In terms of grade level, ninth and tenth graders are threatened or injured more frequently than eleventh and twelfth graders. Id.
69 Id.
70 Id.
71 Id. at 83 (Table 4.2) (Note that data for eleven states was not reported for 2007).
72 See INDICATORS OF SCHOOL CRIME AND SAFETY, supra note 56, at 16.
73 Id.
74 Id. at 17 (Figure 5.1).
75 Id. at 26.
disorder, and acts of disrespect for teachers. 76 During the 2005–06 school year, 24% of public schools reported that student bullying occurred on a daily or weekly basis and 18% reported that student acts of disrespect for teachers took place on a daily or weekly basis. 77

In terms of school size as it relates to discipline problems, large schools experienced more discipline problems than smaller schools. 78 For example, 35% of principals at schools with 1,000 or more students reported student acts of disrespect for teachers occurred at least once a week, whereas only approximately 12% at schools with less than 300 students reported this discipline problem. 79

The availability of illegal drugs on school property was also reported. In 2007, 22% of students reported that illegal drugs were available, down slightly from 25% in 2005. 80 The availability of drugs to students on school property has a “disruptive and corrupting influence on the school environment.” 81 The Youth Risk Behavior Survey revealed that a higher percentage of males than females reported that illegal drugs were offered, sold, or given to them for each survey year from 1993 through 2007. 82 For example, in 2007, 26% percent of males reported illegal drugs were available as compared with 19% of females. 83 The perception of drug availability also varied with respect to race and ethnicity. 84 In 2007, higher percentages of Pacific Islander/Native Hawaiian (38%) and Hispanic (29%) students than Asian (21%), Caucasian (21%), and African American (19%) students reported that drugs were available to them. 85

Teacher reports on school conditions, including student misbehavior, class cutting, and tardiness, which interfere with teaching varied with respect to public or private school setting, revealing greater numbers among public school settings. 86

76 Id.
77 Id. at 26, 27 (Figure 7.1), 98 (Table 7.1). During the 2005–06 school year, 9% of principals reported student verbal abuse of teachers, 3% reported student sexual harassment of other students, 3% reported racial or ethnic tensions, and 2% reported widespread disorder in the classroom; principals reported that each of these incidences occurred at least weekly. Id. Additionally, 17% of public schools reported that “undesirable gang activity” occurred at least once during the school year. Id.
78 See INDICATORS OF SCHOOL CRIME AND SAFETY, supra note 56, at 99 (Table 7.2).
79 Id. (Discipline problems, in 2005–06, were significantly greater in middle schools than primary schools).
80 Id. at 101 (Table 9.1).
81 Id. at 30 (quoting M.J. NOLIN ET AL., NAT’L CENTER FOR EDUC. STATISTICS, INST. OF EDUC. SCIENCES, U.S. DEP’T OF EDUC., STUDENT REPORTS OF AVAILABILITY, PEER APPROVAL, AND USE OF ALCOHOL, MARIJUANA, AND OTHER DRUGS AT SCHOOL: 1993 (1997)).
82 Id. at 30, 31 (Figure 9.1), 101 (Table 9.1).
83 Id. at 101 (Table 9.1).
84 See INDICATORS OF SCHOOL CRIME AND SAFETY, supra note 56.
85 Id. State variation also occurred with Iowa at 10% and Arizona at 37%. Id. at 102 (Table 9.2).
86 Id. at 41 (Figure 12.2) (revealing public school rates of 40% and private school rates of approximately 20%).
However, the numbers also show a slight decline overall from 1993–2004. Physical fights between students also showed an overall decline from 16% in 1993 to 12% in 2007. It is recognized that physical violence in schools has a detrimental effect on success in schools. The Youth Risk Behavior Survey revealed males in ninth grade were involved in fights at the greatest levels, with 17% of ninth graders as compared with 9% of twelfth graders who reported being in a fight on school property in 2007. Also, with respect to race and ethnicity, African American, Hispanic, American Indian, and multi-racial students reported being in a fight at school at rates of 15% to 20% as compared to Caucasian students at a rate of 8% to 10%.

The presence of weapons on school property creates an intimidating and threatening environment and interferes with student learning. Students carrying weapons on school property has declined from 12% to 6% between 1993 and 2007, but males were reported carrying a gun to school at a rate of three times that of female students. Perhaps correspondingly, student perception of personal safety at school has increased over the years. Between 1995 and 2007, the percentage of students who feared attack or harm while at school decreased from 12% to 5%.

B. Trends and Data Regarding Disciplinary Action

1. National Data

Disciplinary action taken by public schools reveals some interesting numbers. Forty-eight percent of public schools took “serious disciplinary action” against a student for specific offenses during the 2005–06 school year. The serious disciplinary action included suspensions lasting five days or more (74%),
expulsions (5%), and transfers to specialized schools (20%). The largest percentage of schools that reported taking a disciplinary action in 2005–06 did so in response to a physical attack or fight (32%), possession or distribution of drugs (21%), use or possession of a weapon other than a firearm (19%), distribution, possession, or use of alcohol (10%), and use or possession of a firearm (5%). The trends in schools taking serious disciplinary action of suspensions greater than five days decreased overall while schools taking serious disciplinary action for insubordination has increased, an alarming trend.

2. Selected State Data

Relative to national statistics, Maryland is representative of the alarming trend of increasing disciplinary action for non-violent offenses such as disrespect, insubordination, and absenteeism. Out-of-school suspensions in the 2006–07 given for non-serious, non-violent offenses accounted for 37.2% of suspensions in Maryland, whereby only 6.7% of suspensions were issued for dangerous substances, weapons, arsons and sex offenses combined. Similar data was reported for the 2007–08 school year as disrespect, insubordination, and disruption accounted for 37.4% of out-of-school suspensions, while suspensions for dangerous substances, weapons, arson, and sex offenses represented only 7.1% of total suspensions. Similarly, in Baltimore City, disrespect, insubordination, and disruption were the primary reasons for suspension, accounting for 32.9% of out-of-school suspensions.

Maryland trends in suspensions overall are on the rise over the past decade. During the 1996–97 school year, Maryland public schools suspended 8.1% of the student population and by 2006–07, the rate increased to 9%. Hopeful signs,
however, are on the horizon as the state of Maryland is beginning to see a decline, with 131,721 out of school suspensions in 2006–07 as compared to 118,963 in 2007–08, reflecting a 9.7% decrease in the number of suspensions. However, New York City public schools have seen an upward trend with a 76% increase in school suspensions between 2000 and 2005, jumping from 8,567 to 15,090 per year.

Moreover, the rates of suspension are much higher for African Americans, special education students, and males, a concern that should not be ignored.

C. The Impact of “Zero Tolerance” Policies on Suspensions

As the data shows, although school violence appears to be decreasing over the past decade, out-of-school suspensions have increased during that time. One possible explanation is more students are being suspended for non-violent offenses such as truancy, attendance, lateness, insubordination, and disrespect. Zero tolerance policies implemented by school officials may be at the heart of this alarming trend.

The public policy towards children has moved towards treating them more as adults, mimicking the criminal justice system. Unfortunately, zero tolerance policies in schools authorize theories of punishment that were once directed to adult criminals now being applied to first graders. “Zero tolerance” is the phrase that describes the response to student misbehavior by schools across America. It means that a school will automatically and severely punish a student for a variety of predefined infractions, becoming a one size fits all solution to all problems a school confronts ranging from student possession of guns, distributing aspirin to a classmate, and cutting class.

104 MARYLAND SUSPENSION DATA 2006–07, supra note 101, at 1; MARYLAND SUSPENSION DATA 2007-08, supra note 102, at 1.
107 Mary Graham Tebo, Zero Tolerance, Zero Sense, 86 A.B.A. J. 40, 40 (2000) (“Nationwide, statistics gathered by the Justice Policy Institute and the U.S. Department of Education show that crime of all sorts is down at public schools since 1990 - some studies say by as much as 30%. Less than 1% of all violent incidents involving adolescents occur on school grounds.”).
108 Id. (“So-called zero tolerance policies being implemented across the country are snaring large numbers of regular kids in broad nets designed to fish for troublemakers.”).
110 Id.
111 Id.
112 Id.
Although zero-tolerance is theoretically directed at students who misbehave intentionally, because of its automatic application, it also applies to those who misbehave as a result of mental disorders, learning disabilities, or who merely forget what is in their pocket after legitimate non-school activities.\footnote{113} It is blind to the differences between first graders and twelfth graders, treating them all alike.\footnote{114} Zero tolerance results in expulsion or suspension regardless of a legitimate explanation, even possibly resulting in the student being arrested.\footnote{115}

The zero tolerance approach to school discipline has received severe criticism from professional associations. The American Bar Association (ABA) asserts that “fueled by media hype, fear of the unthinkable and perhaps even a bit of guilt, more parents are demanding that school boards implement strict policies to deal with kids who step out of line.”\footnote{116} According to the ABA, these zero tolerance policies being implemented across the country are resulting in large numbers of suspensions for “regular kids” who get caught in the broad net designed to catch the real “troublemakers.”\footnote{117} Moreover, motivated by the No Child Left Behind Act, some school officials fear that suspensions of the truly disruptive and violent students may be limited to avoid having the school be listed as “persistently dangerous.”\footnote{118} This results in the perverse situation where more serious infractions go undetected and non-violent offenses are strictly punished.

The American Psychological Association (APA) also lodged criticism on school zero tolerance policies.\footnote{119} An APA report found that zero tolerance policies are not effective in reducing violence or promoting learning in school.\footnote{120} With regards to academic performance, the report saw a “negative relationship between the use of school suspension and expulsion and school-wide academic achievement.”\footnote{121} The APA report asserts that zero tolerance policies do not improve behavior or academic performance.\footnote{122} In fact, by shifting the focus of discipline from schools to the juvenile justice system, zero tolerance policies cause a plethora of adverse consequences for students, families, and communities.\footnote{123} The

\begin{footnotes}
\item[113] Id.
\item[114] Id.
\item[115] Id.
\item[116] Id., supra note 107.
\item[117] Id.
\item[120] Report.pdf.
\item[121] Id. at 1.
\item[122] Id. The report further found zero tolerance policies have not been shown to reduce violence or promote learning in school. Id.
\item[123] Id. (‘‘School suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended.’’). Moreover,
\end{footnotes}
report also raises concern over the disproportionate discipline of students of color and students with disabilities.124

Furthermore, these zero tolerance policies increase referrals to the juvenile justice system for infractions that were once handled by schools, resulting in the creation of a “school to prison pipeline.”125 Subjecting students to automatic punishments that do not take into account mitigating factors, zero tolerance policies represent a lost moment to teach children the valuable lesson of respect and a missed chance to inspire their trust of authority figures.126

D. Adverse Consequences and Social Costs of Suspension

School officials have also spoken out about the social cost of excessive suspensions. National research has shown that students suspended multiple times are more apt to drop out and commit crimes.127

Another challenge facing public schools is how to address truancy. Because research shows that suspended students are more likely to drop out and commit crimes, the consequence of suspending students is contrary to the purposes behind suspension.128 Rather than changing students’ actions to more appropriate behavior, suspension often leads to the opposite result: students are more likely to drop out.129 Taking a closer look at the purpose of school suspension and how to better achieve it is imperative.

When students are away from school, they often fall behind academically, leading to permanent drop out.130 The earlier a student begins to have attendance problems, the greater the risks he or she will eventually drop out of school.131

school suspension and expulsion are correlated with higher school dropout rates and failure to graduate on time. Id.

124 Id.
125 Id. at 2. Costs are another cause for concern; the costs related to referrals to the juvenile justice system dramatically increase the cost of treatment. Id.
126 Id. The report recommends alternatives to zero tolerance policies, including restorative practices of collaboration and communication between schools, parents, police, courts, and the mental health profession. Id.
127 Liz Bowie, School, Paused, BALT. SUN, May 11, 2008, at 9A (victims of crime are likely to have been suspended at least twice and have a history of truancy).
128 Id. at 1.
130 See JANE SUNDIUS & MOLLY FARNETH, OPEN SOC’Y INST-BALTIMORE, PUTTING KIDS OUT OF SCHOOL: WHAT’S CAUSING HIGH SUSPENSION RATES AND WHY THEY ARE DETRIMENTAL TO STUDENTS, SCHOOLS, AND COMMUNITIES 2 (2008), available at http://www.soros.org/initiatives/baltimore/articles_publications/articles/suspension_20080123/whitepaper2_20080919.pdf (“Youth who are suspended or expelled are at far greater risk of academic failure, school drop-out, and incarceration . . . .”).
The “Student Attendance Fact Sheet” created by the Open Society Institute of Baltimore reveals some interesting data. Students are absent from school for a variety of reasons including “illness, work responsibilities, caring for children or sick relatives, fear of bullying, school disengagement or push-out, involvement in drug or criminal activity, lack of stable housing, or lack of transportation.” About half of truant ninth graders attribute “discretionary reasons” for their truancy such as oversleeping or a desire to spend time with friends, while a quarter cite bullying and another quarter report “external pull of factors such as work or family obligations.”

Gender is not a factor in truancy rates as male and female students are equally likely to be truant. However, children are at higher risk for chronic absence when they “live in poverty, face multiple family risks (e.g., their mother is a single parent, has limited education, is in poor health, depends upon welfare, and has three or more children), and experience domestic and/or community violence.”

Factors that mitigate against truancy include participation in religious services, enrollment in college preparatory courses, strong academic achievement, and avoidance of drug use.

When students are absent from school, their academics suffer and they begin to fall behind; research reveals “that students who attended school less than 70% of the time in the 9th grade had at least a 75% chance of dropping out.” In addition, “Truant youth are more likely to become involved in the juvenile criminal justice system.” In fact, a Colorado study found over “90 percent of youth in juvenile detention facilities have a history of truancy.”

A comparison of statewide truancy rates in Maryland with the rates in urban, high poverty areas reveal some startling numbers. For the 2006–07 academic year, “2.21% of Maryland public school students [(18,000) statewide] were

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132 See id. (A student is considered habitually truant if the student is 5-20 years old, “enrolled in school for 91 days or more, and unlawfully absent for 20% or more of the days enrolled.”).
133 Id.
134 Id. (citing Center for Social Organization of Schools (2000). Survey of reasons ninth graders report for not attending school in an urban, high poverty city.).
135 Id. (noting that the reasons for truancy often differ between male and female students).
136 Student Attendance Fact Sheet, supra note 131.
137 Id.
138 Id. (citing Ruth Neild et al., An Early Warning System, 65 (3) EDUC. LEADERSHIP 28 (2007)).
139 Id.
140 Id. (citing Colorado Foundation for Families & Children (2002)).
141 See id.
habitually truant,” while “9.17% of Baltimore City public school students [(7,550))] were habitually truant,” more than four times the statewide rate.142

Another contributing factor and warning sign of truancy is students with disabilities.143 “Both state-wide and in Baltimore, and at all grade levels, special education students were more likely to be chronically absent than their peers.”

“Truant youth are more likely to become involved with the juvenile justice system.”145 Such students are more likely to face negative consequences in their adult lives including “marital instability, job instability, criminal activity, and incarceration.”146 “Considerable evidence suggests that a history of [school suspension] accelerates [a student’s progress] along a pathway to delinquency and life-long failure.”147 Suspended students are three times more likely to drop out, which carries negative consequences: over 80% of incarcerated adults have been suspended and dropped out of school.148 Furthermore, school suspension has been linked to “school failure, dropout, delinquency, and criminal behavior.”149

IV. STATISTICAL REVIEW AND ANALYSIS OF SCHOOL DISCIPLINE AND SUSPENSION

The empirical data provided in this Article is submitted to demonstrate the extent and variety of school discipline provided to disruptive, dangerous, or disobedient high school students.

Forty high schools representing a student body of 78,696 responded from across the country in the survey.150 The empirical data contained in this Article is submitted to serve as a backdrop for purposes of elaboration and comparison in understanding how public schools deal with dangerous and disruptive students, as well as students who are tardy and absent from school. As the survey illustrates, during the 2009–2010 academic year, school administrators responded to school discipline a variety of ways.

142 Student Attendance Fact Sheet, supra note 131 (Baltimore City truancy rate was more than double the truancy rate of the next highest county).
143 See id.
145 Id. (explaining that a Colorado study found that “over 90% of youth in juvenile detention facilities have a history of truancy.”).
146 Id.
148 Id. (COALITION FOR JUVENILE JUSTICE, A BANDONED IN THE BACK ROW: NEW LESSONS IN EDUCATION AND DELINQUENCY PREVENTION (2001)).
149 Id.
150 DONALD STONE, SCHOOL SUSPENSION SURVEY (2010) [hereinafter STONE SURVEY] (reproduced at Appendix A). Although 40 schools responded to the survey, only 38 of 40 responded to the question of how many students were enrolled in the school. Therefore, the 78,696 reflects enrollment at 38 of the 40 surveyed schools.
A. Purpose of Suspension

School divisions’ primary goal for suspending students from school was to change student behavior, followed by adhering to school policy mandates, student safety, and teacher safety. Interestingly, punishment was the least cited goal of suspension. Further explanations provided by school officials included the purpose of sending a message to both the student and family about the seriousness of the violation and that a change in student behavior must take place. Other comments included the need for safety of the teachers and students to be ensured for any educational benefit to be gained. A stated desire of removing a student from school is to allow for student reflection and subsequent change of student behavior.

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151 See Stone, Survey, supra note 150, at Question 2.
152 Id. (finding that 71.8% of those responding chose this reason, followed by other purposes including mandated by school policy (66.7%), student safety (69.2%), and teacher safety (56.4%).)
However, the notion that removal from school through suspension will cause a positive behavior change, without offering counseling, alternative programming to teach proper behavior, or alternative educational programs aimed at changing behavior is pie in the sky optimism. To expect a disruptive student to change behavior by simply being removed from the school environment is short sighted and unrealistic.

B. Effectiveness of Suspension

Graph 2 – Effectiveness of Out-Of-School Suspension

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156 Id.

157 See STONE, SURVEY, supra note 150, at Question 3.
Parent involvement is a crucial first step in changing student behavior. According to the American Academy of Pediatrics, a proposed side benefit of out-of-school suspension is the involvement of parents in the lives of their misbehaving children and that their involvement will help remedy the behavioral issues.\(^\text{158}\) However, it has been noted “that students at highest risk of being suspended are those least likely to have supervision at home.”\(^\text{159}\) We therefore need to find programs that will be effective with the population of parents who have not been extremely successful with managing their children’s behavior. There does not appear to be a body of research which discusses the positive aspects of in-school suspension, which is often proposed as an attractive alternative to out-of-school suspension. There are obviously a number of problems with these programs, ranging from being totally ineffectual to actually having the outcome of students returning to the classroom behaving in more negative ways than they did before being sent to in-school suspension. One potential solution to this would be stop using in-school suspension as “holding tanks” and use this setting to work with school counselors to institute mediation and conflict resolution approaches for decreasing negative behaviors.\(^\text{160}\)

When questioned about the effectiveness of out-of-school suspension in positively altering student behavior, the type of offense made a difference in the success seen by school officials.\(^\text{161}\) When examining school responses to addressing four different categories of offenses—violent offenses, drug related offenses, disrespect, and absenteeism—opinions on the effectiveness of out-of-school suspension varied considerably for each category.\(^\text{162}\) For absenteeism, tardiness, and truancy offenses, 79.5% of schools acknowledged that out-of-school suspension was not effective in altering student behavior.\(^\text{163}\) Additionally, in cases involving offenses of disrespect and disobedience, over half of the schools responded that out-of-school suspension was only somewhat effective.\(^\text{164}\) Only for the violent offenses, including physical harm or threats against students and teachers, was out-of-school suspension considered effective, at a rate of 43.6%, very effective at 17.9% of those responding, but still considered not effective by 15.4% of school administrators and only somewhat effective in 23.1% of responses.\(^\text{165}\) In drug offenses, schools were split on assessing the effectiveness of


\(^{160}\) Id. at 10.

\(^{161}\) See STONE, SURVEY, supra note 150, at Question 3.

\(^{162}\) Id.

\(^{163}\) Id.

\(^{164}\) Id.

\(^{165}\) Id.
out-of-school suspensions in changing behavior. In 38.5% of responses, schools believed out-of-school suspension was either very effective or effective in addressing drug-related offenses, while 61.6% considered this out-of-school suspension to be not effective or only somewhat effective.\textsuperscript{166}

C. Alternatives and Solutions

Graph 3 – Use Frequency of Various Disciplinary Methods in Response to Attendance Related Offenses\textsuperscript{167}

The data indicates a clear dichotomy between violent and drug related offenses on the one hand and absenteeism, truancy, and disrespectful behavior on the other. In light of this division, schools need to take separate approaches when dealing with these separate and distinct violations. Recognizing that teacher and student safety should be one of the highest priorities, effectively changing student behavior is a complex and challenging task. To remove students from school for their failure to attend school on a regular basis is counter-productive and counter-intuitive. Schools should not reward a tardy or truant student by removing them from school. The consequence of the discipline is the same as the offense itself: the student is absent from school. The better approach is to determine the cause of the student’s absence from school and address this behavior through educational and counseling programs.

Often, the cause originates with the child’s parents. Parents are involved at all stages of the children’s educational life. Throughout the research, it is noted that there is a direct link between parenting abilities, skills and practice and a child’s

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{166}] Id.
\item[\textsuperscript{167}] See Stone, Survey, supra note 150, at Question 4.
\end{enumerate}
\end{footnotesize}
behavioral issues both in and out of the school setting. Ineffective parenting abilities have been shown to be strong predictors of early conduct issues in young children. Perhaps one place to begin would be with parent training programs which address teaching parenting practices before possible behavioral problems arise either in the home or school setting. If parents had a better understanding of the role they play in child’s educational success, they could establish a sound beginning for the school experience that could continue through their high school years.

Some schools are addressing attendance related offenses in a variety of thoughtful and progressive ways. For instance, schools are utilizing in-school suspension, after school detention and Saturday detention rather than out-of-school suspension. Examples of addressing truancy include community service, lunch time detention and various in-school suspension alternatives.

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169 *Id.*

170 STONE, SURVEY, *supra* note 150, at Question 4. Comments include: What message are we sending about the importance of attending school by sending them home on the day they actually decide to begin attending school? *Id.*

171 *Id.* Comments include that it would not make sense to take them out of class, it would be counter-productive, and it is not effective at changing behavior.
Graph 4 – Effectiveness of Alternatives to Out-Of-School Suspension for Non-Violent Offenses

Schools recognize that attendance related offenses also involve parental responsibility as a component to changing student behavior. Some schools seek monetary fines from parents for their child’s chronic or habitual attendance related problems. In 90% of the responses, schools favor fines assessed against parents, believing the parent is a major factor in the student’s failure to attend school. Although some schools are concerned about enforceability, a significant number recognize the role parents play in getting students to attend school. When attendance becomes a significant issue, intervention at home as well as in school may be necessary to bring the parent into the discussion to work with school officials in getting students to attend school on a regular basis.

Indeed, “[p]arent and family involvement in schools supports achievement and school completion and has taken an increasing importance as we learn more about the consequences of school failure.” Recently there has been an increase in research which views the impact of parent involvement on positive outcomes for their children in the school setting. Parental involvement is linked to positive

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172 STONE, SURVEY, supra note 150, at Question 8.
173 Id. at Question 4. Comments include it starts at home, some parental pressure is effective, it brings a level of accountability to the parents, parents play a huge role in the success of their students.
175 See id.
academic performance, and research suggests that it “enhances student self-esteem, improves child–parent relationships, and helps parents develop positive attitudes toward schools.” The question is how to get and keep parents involved in the schools realizing that the majority of parents are facing obstacles and time constraints with most parents being involved in the workforce and having other children who need attention who may be at other schools. One way to overcome this hurdle is through the use of technology. With the majority of parents having computer access at home, work, or the public library, this is another way to reach out to parents to increase their involvement in their child’s academic life and also increase their awareness of what is happening on a daily basis with their child. Teachers and administrators are beginning to set up websites and email accounts to keep parents abreast of what is happening in the school. This is also a potential delivery system for parent education and training programs. There will, of course, still be time constraints for busy parents, but if they have a computer in their home they will be able to access information as their time is available.

For an extreme view of parental responsibility, there are several school districts that would resort to seeking jail time against parents for chronic attendance related problems. Surprisingly, 37.5% of schools would favor jail time for parents who fail to ensure regular school attendance. Although seen as a more drastic option when parents show no attempt to have their students attend school and are seen as a cause of the student’s truancy problems, this alarmingly high number may reflect schools’ frustration in their inability to reach and convince students to attend school on a regular and consistent basis. Perhaps the student is failing in school, perhaps the student is inappropriately placed in a particular class, or perhaps the student is an individual with a disability in need of adjustment or modifications to their educational program.

School officials are required to follow different and well developed rules when it comes to suspending students with disabilities. In Honig v. Doe, the Supreme Court mandated the process for removing disabled students from school resulting from a disciplinary action. The Court restricted an emotionally disturbed student’s expulsion from public school, recognizing that even dangerous or disruptive students who experience a permanent change in the educational placement are entitled to a completion of review proceedings. School officials are permitted to temporarily suspend disabled students for up to ten days at which time the due process proceedings must come in to play. However, suspension is


177 STONE, SURVEY, supra note 150, at Question 5.


179 Id.

180 Id. at 327 (quoting Burlington School Committee v. Massachusetts Dept. of Education, 471 U.S. 359, 373 (1985)).

181 Id. at 325-26.
only authorized in circumstances whereby a student causes an immediate threat to
the safety of others. School officials are required to maintain the student in the
current educational placement during the pending of the proceedings.

The fair and equitable procedures for disabled students who are disruptive in
school should serve as a model for school divisions to consider implementing for
all of its students. These established due process protections for both parent and
child, whereby both parent and school division work together on providing an
appropriate education to meet the needs of the student. Such rights afforded to
disabled students in the disciplinary proceeding should be examined closely for
implementation for all students facing removal from school. A thoughtful
examination of placement alternatives, balancing school safety and individual
student learning goals, will result in less permanent removal and more students
remaining in school.

For violent offenses, school officials make a variety of suggestions for
effective alternatives to out-of-school suspension. Examples include the use of
counseling programs to redirect student behavior as the most effective, referral to
criminal justice system, and placement in alternative schools for “at risk” students
as effective alternatives to suspension. To simply transfer the student to another
school is not seen as effective.

Recognizing that counseling programs for violent offenses committed in
schools is seen as the most effective approach gives one pause for optimism.
Instead of kicking them out and forgetting about them, providing counseling
programs recognizes the belief that school age children can change their behavior.
There is also recognition that redirecting student behavior and providing family
therapy is preferable to referral to the criminal justice system.

For the students suspended from school, schools vary on recognition of an
obligation on their part to provide an alternative education for the suspended
student. Options include separate classroom setting within the current school
(17.5%), special education program in an alternative separate school (7.5%), and a
home school alternative (5%). In over 45% of responses, no alternative

183 Id. at 325. The state of Delaware reports that a disproportional number of students
with disabilities are punished by school officials. Nichole Dobo, Delaware Schools:
Discipline Numbers Flag Need to Address Disabilities, NEWS J., June 11, 2010, available
at http://www.delawareonline.com/fdcp/?1276526143953. For the 2008–09 school year, a
Delaware News Journal analysis “found [disabled] students accounted for about 20 percent
of the students suspended but [less than] 14 percent of the student population.” Id.

184 See Honig, 484 U.S. at 312 (as mandated by the Individuals with Disabilities
Education Act).

185 STONE, SURVEY, supra note 150, at Question 7.

186 Id.

187 Id. (revealing that counseling is viewed as most effective by 40% of the responses,
referral to the criminal justice system by 33.3%, and alternative school placement by
23.1%).

188 Id. at Question 9.
education was offered during the period of suspension.\textsuperscript{189} However, 60\% of the responses indicated that some form of alternative education was offered for expulsion or long term suspension, but not for short term suspension (less than ten days).\textsuperscript{190} Schools are clearly split over their obligation to their suspended students.

There should always be alternative programs offered to all suspended students, believing that the purpose of removing dangerous students from school should be focusing on changing behavior so upon return to school, repeating the violent behavior will cease to occur. This is most likely to occur when schools provide a structured alternative education and counseling program to all suspended students.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{alternative_education_policies.png}
\caption{Alternative Education Policies\textsuperscript{191}}
\end{figure}

\begin{flushleft}
\textsuperscript{189} Id.
\textsuperscript{190} Id.
\textsuperscript{191} STONE, SURVEY, supra note 150, at Question 9.
\end{flushleft}
Schools, community organizations, parents, and occasionally the criminal justice system should partner together in addressing school violence in our public schools. The larger community should be fully invested and take responsibility toward preventing school violence, addressing its root cause to save our vulnerable children. The need to strengthen the school environment through cooperative approaches across the community is our best hope to stop the violence and to bring our violent and disruptive students back to the classroom. The provision of alternative education for the suspended student is vital. Although 27.5% of schools oppose alternative education during suspension, two out of three schools believe in alternative education programs, a hopeful sign.192

Graph 6 – Opinions Regarding Alternative Education 193

V. RECOMMENDATIONS

A. Out-of-School Suspension Is Ineffective for Non-Violent Offenses

The use of suspension for minor, non-violent offenses such as truancy, disobedience, disrespect, and classroom disruption is not effective in reducing the behavioral problems it is intended to address.194 Moreover, suspension is used disproportionately with students who are male, of a lower socioeconomic status, of a minority ethnic background, and those who have a disability or low academic

192 STONE, SURVEY, supra note 150, at Question 10. Settings include separate classroom, separate program in a separate school and home school.
193 Id.
194 See id. at Question 2.
competence. In a study of suspension rates in 161 Kentucky middle schools, the following characteristics were significantly associated with high rates of suspensions: low socioeconomic status, high number of reported law violations on school grounds, lower student grade retention rates, and high dropout rates. On the other hand, the high average daily student attendance rate, academic achievement scores, and majority ethnic status were associated with lower suspension rates. The report recommends family involvement to help reduce suspension rates.

A variety of parent training and conflict resolution programs have been promulgated by researchers to help reduce suspension rates. The Centers for Disease Control and Prevention (CDC) has conducted a large scale research project relating to Parent Training Programs which are already in existence throughout the country. Many of these are utilized with parents who are involved in the child welfare system due to concerns of child maltreatment of a child between 0 and 7 years of age. Two positive outcomes that were discussed in this Article were that they improved their parenting skills, which in most cases were the intended goal; but they also saw a marked decrease in the child’s externalizing behavior. This means that the child displayed less aggression and noncompliance. Even though these programs were aimed at parents who were referred for concerns of child maltreatment, the information gained in this research can be related to parent education or training programs which can be implemented with parents in other settings, such as for those whose children have school disciplinary problems.

Because many of the parent training programs are aimed at the parents of children who are 0-7 years of age, this may seem to have little bearing on behavioral issues of high school students. However, research shows that aggressive behaviors are generally set in a child’s personality traits by the time they reach the age of eight particularly if there have not been consistent interventions from parents. This research emphasizes the importance of teaching parents

195 Id.
196 Id. at Question 3 (the purpose of the research was to identify characteristics of the suspended student and the schools attended).
197 Id. (school size and gender breakdown were not significant factors related to suspension rate).
198 Id. at Question 8.
200 Id. at 1–2.
201 Id. at 1.
202 Id. at 4–7.
203 Id. at 6.
204 See id. at 1.
205 Liseth Rojas-Flores, Charmaine Lowe & Sofia Herrara, Using Empirically Supported Parenting Programs to Guide Interventions with Disadvantaged and
consistency and appropriate discipline styles from as early an age as possible.\textsuperscript{206} There is evidence, however which shows that we should not assume that all is lost if you do not reach parents and their children during these early years. Some of this research addresses the fact that there can be improvements in negative behaviors and school disturbances for at-risk children and adolescents through working with parents.\textsuperscript{207}

Father involvement has also been shown to have a large number of positive benefits for the child’s development which can be carried into the school setting.\textsuperscript{208} Some examples, but not limited to, are earning higher grades in school, having a stronger moral center and conscience, maintaining a stronger work ethic, improved self-concept, and reaching higher levels of education.\textsuperscript{209} All of these are indicators of positive school behavior due to the fact that if the student is performing better academically it is unlikely that the child is engaged in negative behaviors at school.\textsuperscript{210} It should be noted that father involvement does not mean that the child has to be living in a two-parent home, but rather that the father has regular, positive, mother-supported contact with his child.\textsuperscript{211} Therefore fathers need to be encouraged to maintain positive contact with their children.

In addition to programs which focus on parenting, there are positive programs aimed at working directly with children within the school setting.\textsuperscript{212} One such program is the Roots of Empathy (ROE) program which started in Canada which brings parents and their infants to elementary schools to teach children empathy and caring for other individuals.\textsuperscript{213} This type of program becomes part of the school’s curriculum and can be seen as an example of an early intervention program which has thus far shown success in reducing negative behaviors in the classroom.\textsuperscript{214}

Other alternatives to suspending students, especially in cases of minor, non-violent infractions such as smoking, disrespect, or cutting class include mediation and conflict resolution. Removing the student from school for such offenses is simply not effective. In fact, a California report notes that many expulsions have


\textsuperscript{206} Id.

\textsuperscript{207} See Oullette & Wilkerson, supra note 174.

\textsuperscript{208} See \textsc{David Knox & Caroline Schacht}, \textsc{Choices in Relationships: An Introduction to Marriage and the Family} 360 (10th ed. 2010).

\textsuperscript{209} Id.

\textsuperscript{210} Id.

\textsuperscript{211} Id.

\textsuperscript{212} Mary Gordon, \textit{Roots of Empathy Program}, \textsc{Can. Tchr. Mag.}, Fall 2005, at 4.

\textsuperscript{213} Id.

\textsuperscript{214} Id.
nothing to do with school safety, rather disruptions of school activities or defying
the authority of school personnel are the leading offenses resulting in expulsion.215

Schools suspend students for talking back, truancy, and other non-violent
offenses, essentially giving them a vacation without meaningful consequences.216
At the same time, some schools were not removing the violent students for fear of
receiving the embarrassing “persistently dangerous” label from the state.217
Addressing this school discipline challenge in creative and unique ways is
necessary. Schools should explore alternatives to removal from school for behavior
which does not put school safety at risk.

Addressing the truancy issue is essential to influencing student success in
school. In Baltimore’s high schools, the most common reason for suspension was
cutting class, in fact, more than half of all suspensions and expulsions were
imposed for truancy, class cutting, and non-violent opposition to authority.218
Students who are suspended from school are at far greater risk of academic failure,
school dropout, and incarceration and there is growing evidence that suspension
has negative effects on student mental-health and physical well-being.219

Additionally, suspension is used inconsistently as a disciplinary consequence
across school districts within each district and classrooms within schools.220 For
example, in Maryland, the Open Society Institute reports that out of school
suspension rates range from 4.0% in Howard County Public Schools to a high of
17.2% in Somerset County Public Schools.221 Variation in suspension rates among
individual schools within a district is high, in the 2006–07 school year, two large
Baltimore City high schools with similar demographics, Frederick Douglass High
School and Patterson High School, administered short term out-of-school
suspensions at the divergent rates of 7.2% and 27.5%, respectively.222

The reason for suspension is noteworthy when used for non-dangerous, non-
violet student behavior. Many suspensions were given for “inappropriate or
immature behavior that used to be labeled naughty, mischievous, or prankish and
which resulted in detention, school clean-up, or other similar consequences.”223

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215 EDUC. OPTIONS OFFICE, CAL. DEP’T. EDUC., STATEWIDE EXPULSION
quest/.

216 Sara Neufeld, Jane Sundius & Aurie Hall, Locked Out of Learning, BALT. SUN,
/articles/locked_20040907.

217 Id.

218 Id.

219 See SUNDIUS & FARNETH, supra note 130, at 1 (males, African Americans, and
students with disabilities are suspended at higher rates than other students).

220 Id. at 4–6.

221 Id. at 4 (also noting that suspension rates for Baltimore City Public Schools were
12.5%).

222 Id. at 8 (citing MARYLAND STATE DEP’T OF EDUC., DIV. OF ACCOUNTABILITY AND
ASSESSMENT (Dec. 2007)) (“Schools with a higher percentage of students living in poverty
tend to have higher suspension rates.”).

223 Id. at 5.
However, “more suspensions [in Maryland] were issued for truancy or tardiness than for dangerous substances, weapons, arson . . . , and sex offenses combined.”224 The report raises concerns that such misplaced use of suspension might reflect the judgment of the teacher or administrator which makes suspension particularly susceptible to discriminatory application.225

The consequences to the suspended student excluded from school are grave. Although intended to improve student behavior problems, suspensions often serve as an incentive for students who wish to avoid school and suspensions can increase student misbehavior.226 Open Society reports that suspension often contributes to a gradual process of academic and social disengagement that increases the probability of academic failure and drop-out.227

“In Maryland . . . more than three-quarters of suspended students were not provided with alternative educational services, even though students are legally entitled to such services.”228 It is reported that suspension increases the students’ likelihood of juvenile justice involvement, described as the school-to-prison pipeline.229

Additionally, “the American Academy of Pediatrics (AAP) expressed grave concerns about the mental health impacts of suspension and expulsion on students.”230 “[T]he American Psychological Association (APA) in its Zero Tolerance Task Force Report, found little evidence that suspension and expulsion benefitted students or their communities . . . exacerbating the negative mental health outcomes for young people.”231 In fact, the APA expressed concern that suspension and expulsion policies may increase “‘student shame, alienation, rejection and breaking of healthy adult bonds.’”232

224 Id.
225 Id. at 6 (explaining that African American students are disproportionately punished for reasons that require the judgment of the teachers such as disrespect, loud noise, and loitering).
226 Id. at 7 (finding that repeat suspensions do not serve as a deterrent).
227 Id. at 6. (citing V. Costenbader & S. Markson, School suspension: A Study with Secondary School Students, 36 J. SCH. PSYCHOL., 59–82 (1998)).
229 Id. at 7.
230 Id. (citing American Academy of Pediatrics (AAP), Policy Statement: Out-of-school Suspension and Expulsion, 112 PEDIATRICS, 1206–1210 (2003)).
231 Id. at 7–8.
232 Id. (citing American Psychological Association Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations (August 2006)).
B. Alternatives to Out-of-School Suspension or Expulsion for Non-Violent, Absence Related Offenses

The use of suspensions for non-violent and non-dangerous behavior must cease and be replaced with alternative approaches to educating students and guiding their behavior. Involving parents, providing alternative dispute vehicles, and offering alternative educational settings are examples of steps for school systems to take to address the excessive, ineffective, and often discriminatory suspension practices found in our nation’s schools.

Interestingly, Maryland recently enacted a statute prohibiting suspension or expulsion from school solely for attendance related offenses. The Maryland legislature should be applauded for recognizing that suspending a student from school for failure to attend school will not result in a positive change in student behavior.

The legislative decision in Maryland to no longer suspend students solely for being chronically late or absent is long overdue. The statute implicitly recognizes that suspending a child who is already absent from school is counterproductive and a futile disciplinary tool. The legislators were no doubt influenced by data that demonstrated suspensions lead to disengagement from the education process that increases the likelihood of dropping out. Furthermore, the American Academy of Pediatrics reports that “high rates of suspension are often associated with high rates of depression, drug problems, and home life stress.”

The Task Force, which studied multiple suspensions, recommends the provision of alternative interventions other than school suspensions to remedy the behavior of students, including professional development and financial resources to ensure students reach their maximum educational potential.

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233 *See* MD. CODE ANN., EDUC. § 7-305 (LexisNexis 2009) (enacted and effective July 1, 2009) (“[A] student may not be suspended or expelled from school solely for attendance related offenses.”). However, a student may be disciplined with an in-school suspension. *Id.*

234 *Id.*

235 *Id.* Other disciplinary tools such as in-school suspensions and after school detention are still permitted for truancy.

236 *See* Sundius, *supra* note 219, at 6–7.


238 *Id.* at 12–13 (reporting that “74,594 students accounted for 131,629 out-of-school suspensions in Maryland” during the 2006–07 school year and “38 percent received multiple suspensions”). *Id.* at 3.
1. Holding Parents Accountable

To encourage higher attendance rates and combat truant behavior, some states have enacted statutes allowing for parents to be held accountable for their children’s habitual absenteeism in certain situations via fines or possibly jail time. In California, parents may be civilly liable for failure to comply with compulsory school attendance with fines of $100, $250, or $500 imposed for first, second, and subsequent convictions. Maryland has a similar attendance policy pertaining to parents’ legal obligation to see that their child (5 to 15 years old) attends school by imposing fines and a potential 30 day jail sentence.

California’s approach to truancy whereby parents are punished for their children’s failure to attend school is but one approach to this complex issue. There is no doubt that student drop-out is the gateway to a life of poverty, unemployment, and prison for many students. California punishes parents who knew or reasonably should know that their child is at risk of delinquency and a court challenge to this approach was upheld by holding parents responsible for criminal acts of their children. Believing that parents have the ability to control their children, California’s approach provides viable options for prosecutions and signifies a public willing to take truancy seriously to halt the school-to-prison pipeline.

2. Counseling and Training for Students and Families

Another approach to truancy is seen in Baltimore’s truancy court. Operated by the University of Baltimore School of Law’s Center for Families, Children, and the Courts (CFCC), the program is designed to help schools and the courts address what has become a crisis, where 52.1% of Baltimore high school students have engaged in truant behavior. CFCC’s approach to court reform through a holistic

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239 CAL. EDUC. CODE § 48200, 48260, 48293 (West 2009). (A child is considered truant if absent from school without a valid excuse 3 full days in one school year or tardy by 30 minutes or more on 3 occasions. Id. at § 48260.).
240 MD. CODE ANN., EDUC. § 7-301 (LexisNexis 2009) (First time offenses result of a fine of up to $50 per day of unlawful absence or up to 10 days of imprisonment; second time or subsequent offenses result in a fine of up to $100 per day and up to 30 days imprisonment.).
242 Id. at 511–12, 514.
244 See University of Baltimore School of Law, The Center for Children, Families, and the Courts, available at http://law.ubalt.edu/template.cfm?page=602. (last visited Nov. 10, 2010) The program (CFCC) recruits students, faculty, administrators and staff to serve as tutors or mentors. Studies reveal two-thirds of male juveniles arrested while truant tested positive for drug use.
look at the many systems affecting the lives of families and children has shown promise. The early intervention addressing problems underlying truancy are aimed at reducing delinquency.\textsuperscript{245} Initial data of students participating in the Truancy Court Program report an overall 75\% decrease in absences from school.\textsuperscript{246} The program, which involves the student, parent, judge, mentor, and CFCC staff includes parenting classes, tutoring, basic skills training, counseling, and anger management.\textsuperscript{247} This creative and therapeutic approach to addressing the underlying causes of truancy are laudable.

3. Other Recommendations to Encourage Attendance

The Open Society Institute Policy paper series recognizes the importance of regular school attendance, “the bellwether for a city’s future.”\textsuperscript{248} The recommendations for improving school attendance include: (1) Making schools safe, engaging, and attractive to students; (2) Policies that make attendance everyone’s responsibility; and (3) Policies that eliminate push-out practices.\textsuperscript{249}

Included in Open Society Institute’s recommendations is improved safety and reliability of transportation to and from schools, two current impediments to regular school attendance.\textsuperscript{250} In particular, the high rate of foster care placement in Baltimore requires due diligence by school officials in identifying the appropriate school, arranging for transportation, and providing supportive services for those at risk children.\textsuperscript{251} Additionally, creating a change of focus from school policies that push children out of school with policies and incentives to keep children in school are key recommendations.\textsuperscript{252} Examples include school funding which rewards schools that retain enrollment and have high attendance as well as rewarding school for getting students to school every day and for keeping them enrolled.\textsuperscript{253} Finally, and most importantly, student discipline codes should be “revise[d] . . . to ensure equitable, appropriate, and limited use of suspension and expulsion, expand the set of meaningful consequences for misbehavior . . . and ensure that

\textsuperscript{245} University of Baltimore School of Law, The Center for Families, Children, and the Courts, Truancy Court Program, http://law.ubalt.edu/template.cfm?page=1274 (last visited Nov. 10, 2010). The Truancy Court links families to social services and community support programs.

\textsuperscript{246} Id.

\textsuperscript{247} Id.

\textsuperscript{248} JANE SUNDIUS & MOLLY FARNETH, OPEN SOC’Y INST.-BALTIMORE, ON THE PATH TO SUCCESS: POLICIES AND PRACTICES FOR GETTING EVERY CHILD TO SCHOOL EVERY DAY, POLICY PAPER #3 2 (2008), available at http://www.soros.org/initiatives/baltimore/articles_publications/articles/practices_20080919/whitepaper3_20080919.pdf.

\textsuperscript{249} Id. at 4.

\textsuperscript{250} Id. at 6.

\textsuperscript{251} Id. at 7 (noting that in 2006–07, six thousand Baltimore city youth were in foster or kinship care, putting them at risk for academic failure due to greater frequency of school placement changes.).

\textsuperscript{252} Id. at 8.

\textsuperscript{253} Id. at 9.
misbehaving students continue in school. Instead of resorting to out-of-school suspension for non-violent behavior, schools should utilize in-school suspensions, detention, counseling, conflict resolution programs, and alternative schools.

C. Recommendations for Disciplinary Action for Violent Offenses

For those students who commit violent acts in school and for those who place the safety of others at risk, the challenge is to provide a fair and just disciplinary system which conforms with due process and respects the learning system. The school’s need to provide its students with a safe and effective learning environment must be balanced against the offending student’s need for access to education, in conformity with the student’s due process rights.

The Goss case urges a formal procedure, but does not supply the specific details of the process. The following are recommendations for school districts to follow in developing and implementing a suspension policy regarding procedures for the student facing removal from school:

1. Written notice of the hearing sent to both the child and parent or guardian.
2. Notification of the availability of low cost or free legal representation.
3. An impartial hearing examiner who is not employed by the school district.
4. Right to the list of witnesses the school intends to call at suspension hearing.
5. Burden of proof to be the clear and convincing evidence standard.
6. Unless ordered by a court, the maximum length of suspension should be limited to forty-five school days.
7. Alternative educational programs should be provided to all suspended students.
8. Right to be accompanied and represented by counsel at the disciplinary hearing.
9. Uniformity in maximum length of time for school suspension, as established by the state department of education.
10. Uniformity in procedural protections and safeguards at disciplinary hearing, as established by the state department of education.
11. Prohibit out-of-school suspension for non-violent school offenses, including absenteeism, tardiness, truancy and other attendance related issues.
12. Uniformity in criteria for suspension (grounds for suspension), as established by the state department of education.

254 Id.
255 Id.
13. For non-violent attendance related offenses, consider alternatives including counseling programs, after-school detention and Saturday programs.
14. For violent and drug related offenses, require counseling programs and alternative schools prior to school suspension.
15. For all students suspended from school for greater than ten days, require the provision of alternative educational programming for students.
16. Prohibit the use of jail time against parents for child related offenses.
17. Monitor, on a state wide level and local school division level, data of suspension of disabled students, as to length and specific disability.
18. Require parents of suspended students to participate in parent training classes.
19. Encourage schools to establish a curriculum for young children to teach empathy, problem solving, and communication skills.
20. Require suspended students to successfully complete a conflict resolution program.
   
   In addition, to promote the academic success of the violent offender, he or she should be “referred to appropriate services or treatment [during the suspension period in order to] return to school with new skills, tools, or support to help them make better choices in the future.”

VI. CONCLUSION

No doubt, zero tolerance and subsequent suspension for all school infractions helps no one. The willingness of schools to not give up on children and to offer positive and constructive alternatives to violence and misbehavior will lead to more children remaining in school and receiving a meaningful education leading to a future with greater potential for success.

“Stripping a child access to educational opportunities is a life sentence to a second rate citizenship.”

“There is no question that a high school student who is punished by expulsion might well suffer more injury than one convicted of a criminal offense.”

Pushing students out the schoolhouse door sends them out into the world without the necessary skills to become contributing members of society. To recognize the long term implications of school suspension and expulsion will hopefully lead to schools acknowledging their important role in educating all its students and preparing them for a successful future.

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257 See Sundius, supra note 219, at 9.
258 Boykins v. Fairfield Bd. of Educ., 492 F.2d 697, 705 (5th Cir. 1974).
APPENDIX A: SCHOOL SUSPENSION SURVEY

**Question 1.** Please provide the following demographic information

Job Title:  _______________ ___________________________

School Type:  __________________________________________
(Public/Private)

Grade Level:  __________________________________________

School Enrollment: __________________________________________

Location:  __________________________________________
(City, State)

Community Type: __________________________________________
(Urban, Suburban, Rural)

**Question 2.** Purpose

What is the school division’s goal or purpose for suspending students from school? Please check all that apply.

___ Student Safety

___ Teacher Safety

___ Punishment

___ Changing Student Behavior

___ Mandated by School Policy

___ Used as a Last Resort (All other less restrictive options have been exhausted)

In your opinion, what should the goal(s) of out-of-school suspension be?

________________________________________________________________

________________________________________________________________
**Question 3. Effectiveness**

In your opinion and based on your experience, how effective is out-of-school suspension in positively altering student behavior for the following offenses?

<table>
<thead>
<tr>
<th>Violent Offenses</th>
<th>Drug-Related Offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>![Very Effective]</td>
<td>![Very Effective]</td>
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<tr>
<td>![Effective]</td>
<td>![Effective]</td>
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<tr>
<td>![Somewhat Effective]</td>
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<tr>
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<td>![No Opinion]</td>
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<table>
<thead>
<tr>
<th>Disrespect &amp; Disobedience</th>
<th>Absenteeism &amp; Tardiness</th>
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<td>![Very Effective]</td>
<td>![Very Effective]</td>
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<td>![No Opinion]</td>
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</tbody>
</table>
**Question 4.** Attendance Related Offenses

Please rank the following methods, in order of frequency, used to discipline students for serious or chronic attendance related infractions such as absenteeism, tardiness, and class cutting with 1 being the most frequent and 5 being the least frequent.

- [ ] In School Suspension
- [ ] After School Detention
- [ ] Saturday Detention
- [ ] Out-of-School Suspension
- [ ] Expulsion

**Question 5.** Attendance Related Offenses

**Part A**

Do you think that out-of-school suspension should be used to discipline students for attendance related infractions (absenteeism, class cutting, tardiness)? Please state yes or no and briefly explain.

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

**Part B**

Do you think parents should be held responsible via fines for their child’s chronic or habitual attendance related problems? Please state yes or no and briefly explain.

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
Part C

Do you think parents should be held responsible via jail time for their child’s chronic or habitual attendance related problems? Please state yes or no and briefly explain.

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

Question 6. Administrative

In your school district, which of the following professionals are able to recommend students for suspension? Check all that apply.

___ Principal
___ Vice Principal
___ Other Administrators
___ Guidance Counselor
___ Teachers
___ Other (Please list) _________________
Question 7. Alternatives to Suspension – Violent Offenses

Based on your opinion and experience, please rank the effectiveness of the following alternatives to out-of-school suspension for violent and drug-related offenses with 1 being the most effective and 4 being the least effective.

___ Referral to Criminal Justice System (Adult or Juvenile Court)

___ Placement in Alternative School for “At Risk” Students

___ Transfer to Another School

___ Use of Counseling Programs to Redirect Student Behavior and Provide Family Therapy

___ Other Alternatives (Please list) ____________________

Question 8. Alternatives to Suspension – Non-Violent Offenses

Based on your opinion and experience, please rank the effectiveness of the following alternatives to out-of-school suspension for non-violent offenses such as attendance-related offenses and disrespect or disobedience with 1 being the most effective and 4 being the least effective.

___ Saturday School

___ After School Detention

___ In-School Suspension

___ School Counseling
**Question 9.** Alternative Education

If a student is suspended from school, what is the current school policy with regards to providing an alternative education for these suspended students. Please check all that apply.

- [ ] Separate classroom setting within the current school
- [ ] Special education program in an alternative separate school
- [ ] Home school
- [ ] No alternative education offered during the period of suspension
- [ ] Alternative education is available only for expelled students, but not suspended students
- [ ] Alternative education is available only for expulsion and long term suspension (10 days or more), but not short term suspension
- [ ] Other (Please Specify) ______________________________

**Question 10.** Alternative Education

In your opinion and based on your experience, do you believe that suspended students should be provided with an alternative education? If so, in what setting? Please check all that apply.

- [ ] No
- [ ] Yes, separate classroom setting
- [ ] Yes, separate education program in a separate school
- [ ] Yes, home school
- [ ] Other (Please specify) ______________________________