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LONG-TERM SUSPENSIONS AND THE RIGHT TO AN EDUCATION: AN ALTERNATIVE APPROACH

INTRODUCTION

On January 18, 2008, a fight broke out at Southside High School in Beaufort County, North Carolina, between several groups of students. During the melee, Viktoria King, a tenth grade student, engaged in a minor fistfight with another female student. The fight did not involve weapons and did not result in any serious injuries. Yet, both girls were suspended for the rest of the school year and were denied access to the county’s alternative school.

In North Carolina, every child has a fundamental right to the opportunity to a sound basic education. Despite this guarantee, nearly ten percent of North Carolina students were suspended from school during the 2009-2010 school year. At least 3,368 of those who have not been successful in the traditional classroom setting” and “are geared toward children who are at risk for truancy, academic failure, behavior problems and dropping out of school.” Id. They provide resources to help address behavioral or emotional needs that have hindered learning in traditional schools. Id. at 2.

5. Leandro v. State, 346 N.C. 336, 347-48, 488 S.E.2d 249, 255 (1997); see also N.C. CONST. art. IX, § 2, cl. 2 (“The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.”).

suspensions were long-term suspensions, defined as lasting eleven or more school days, with the average long-term suspension lasting 62.6 school days.\textsuperscript{7} Children who received alternative school placements in lieu of suspensions were not included in these numbers,\textsuperscript{8} meaning there were more than 3,368 students who were removed from their traditional classrooms for at least eleven days, but often for much longer.\textsuperscript{9} Significantly, "[o]nce a student is suspended or expelled, the impetus to return to school is diminished. Long-term suspensions often lead to the practical termination of a student's educational career," and may lead to increased chances of involvement with the criminal justice system.\textsuperscript{10}

Currently, the North Carolina General Assembly requires each school board to "establish at least one alternative learning program and ... [to] adopt guidelines for assigning students to alternative learning programs."\textsuperscript{11} However, the definition of an alternative learning program is so broad that it does not require school boards to provide an actual school or class,\textsuperscript{12} but includes at-home computer-based programs\textsuperscript{13} and programs at a local Boys and Girls Club or YMCA.\textsuperscript{14} The State provides limited guidelines for placing students in alternative education settings. It allows administrators to deny students alternative education options for a myriad of reasons, as long

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\textsuperscript{7} N.C. DEP’T OF PUB. INSTRUCTION, \textit{supra} note 6, at 3, 25.
\textsuperscript{8} \textit{Id.} at 23.
\textsuperscript{9} \textit{Id.} at 25.
\textsuperscript{11} N.C. GEN. STAT. § 115C-47(32a) (2009).
\textsuperscript{13} \textit{See} Act of June 23, 2011, ch. 282, § 2, 2011-4 N.C. Adv. Legis. Serv. 396, 396 (LexisNexis) (to be codified at N.C. GEN. STAT. § 115C-390.1(b)(1)) ("Alternative education services" are defined as "[p]art or full-time programs, wherever situated, providing direct or computer-based instruction that allow a student to progress in one or more core academic courses.").
\textsuperscript{14} \textit{See} YEARWOOD ET AL., \textit{supra} note 4, at 2.
as they can provide "a significant or important reason for declining to offer such services."\(^{15}\)

Furthermore, the North Carolina General Assembly does not provide clear guidelines as to what conduct is sufficient to qualify for a long-term suspension.\(^{16}\) Instead, a principal may recommend that the superintendent issue a long-term suspension to any student who "willfully engages in conduct that violates a provision of the Code of Student Conduct that authorizes long-term suspension."\(^{17}\) Although the General Assembly recently made clear that school administrators should "minimize the use of long-term suspension[s]" and use them primarily for "serious violations," administrators still retain a vast amount of discretion.\(^{18}\) Administrators may still issue a long-term suspension for "minor violation[s]" if the principal determines the existence of "aggravating circumstances" to justify the heightened punishment.\(^{19}\) This will continue to result in the unequal treatment of students and will fail to effectively eliminate school exclusion for seemingly minor misconduct.\(^{20}\)

The current disciplinary policy has led to a disproportionate number of racial minorities receiving long-term suspensions

\(^{15}\) § 2, 2011-4 N.C. Adv. Legis. Serv. at 402 (to be codified at N.C. GEN. STAT. § 115C-390.9(a)). A "significant or important reason" may include situations where the student: "exhibits violent behavior," "substantially disrupts the learning process," "engage[s] in serious misconduct that makes the provision of alternative education services not feasible," "fail[s] to comply with reasonable conditions for admittance into an alternative education program," or "[e]ducationally appropriate alternative education services are not available in the local school administrative unit due to limited resources." Id.

\(^{16}\) See id. at 397-98, 400 (to be codified at N.C. GEN. STAT. §§ 115C-390.2(f), -390.7(a)).

\(^{17}\) Id. at 400 (to be codified at N.C. GEN. STAT. § 115C-390.7(a)).

\(^{18}\) See id. at 397-98 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)).

\(^{19}\) Id. Prior to the passage of this Act, school administrators were facing a wave of criticism for issuing long-term suspensions for seemingly minor violations of school rules, such as dress-code violations and other non-threatening, minimally disruptive conduct. See Iacono v. Croom, No. 5:10-CV-416-H, 2010 U.S. Dist. LEXIS 108153, at *2-3, *5 (E.D.N.C. Oct. 8, 2010) (issuing a temporary restraining order against administrators in a Johnston County school, preventing them from enforcing a long-term suspension issued to a student who wore a nose stud because of her religious beliefs); Lynn Bonner, Parents Sue After Suspended Students Sit Idle, NEWS & OBSERVER (Raleigh, N.C.), Feb. 15, 2010, at 1A (noting that, in Viktoria King's case, she was suspended for the remainder of the school year while other students involved in the same fight received short-term suspensions or were placed in alternative schools).

\(^{20}\) See § 2, 2011-4 N.C. Adv. Legis. Serv. at 397-98 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)) (granting the principal the discretion to "determine that aggravating circumstances justify treating a minor violation as a serious violation").
compared to their Caucasian counterparts. Although many factors may contribute to this disparity, studies have demonstrated that African American students are punished more harshly than Caucasian students for the same behavior. Experts have attributed this phenomenon to a variety of factors, including "lack of teacher preparation in classroom management," lack of cultural sensitivity, and stereotypes.

In *King ex rel. Harvey-Barrow v. Beaufort County Board of Education*, the Supreme Court of North Carolina reaffirmed the State's policy of deferring to local school board discretion in the punishment of students with disciplinary problems, even when the punishment excludes students from receiving an education. The court held that although every student has a fundamental right to the "opportunity to receive a sound basic education," there is no fundamental right to attend an alternative learning program since schools are given discretion in maintaining discipline. In holding that the right to receive an alternative education is not "fundamental," the court was forced to distinguish *King* from *Leandro v. State*, the leading North Carolina case establishing a fundamental right to an education. The *King* court reasoned that *Leandro* was limited to school funding cases and, therefore, was not applicable to the denial of an education because of disciplinary issues. As a result, the *King* court refused to apply strict scrutiny to the denial of an education due to disciplinary issues, since this does not implicate a fundamental right, and instead applied intermediate scrutiny.

21. See Rivkin, *supra* note 10, at 270; Skiba et al., *supra* note 10, at 1087–88 (noting that although socioeconomic status is a predictor of suspensions, minority students are still suspended at a higher rate after accounting for socioeconomic status).


29. *Id.* at 357, 488 S.E.2d at 261.


31. *Id.*

32. *Id.* at 377, 704 S.E.2d at 265.
The *King* court did take an important step by highlighting that administrators are required to articulate a reason for denying students the opportunity to receive an alternative education.\(^{33}\) However, it did not go far enough to protect the rights of children to receive a sound, basic education. Today, school administrators may still refuse to provide adequate alternative services simply by claiming that there is no suitable educational program for the suspended student due to a lack of adequate programs.\(^{34}\) School officials will also have little difficulty explaining that there are no suitable education programs for those students who exhibit violent behavior or otherwise engage in serious misconduct.\(^{35}\)

This Recent Development argues that access to education is a fundamental right of North Carolina students and should be reviewed using strict scrutiny whenever a student is denied the opportunity to receive an education. The decision not to provide an alternative education to a suspended student implicates the reasoning in *Leandro* because it is a school funding decision—not a distinct disciplinary issue.\(^{36}\) School discipline and exclusion decisions disproportionately affect minority student populations,\(^{37}\) who are being denied access to a sound basic education as a result.\(^{38}\) The failure to provide adequate alternative education programs is a school funding issue because administrators who choose not to allocate the necessary resources to implement such programs exclude a significant student population.\(^{39}\) Because the decision not to provide or fund adequate alternative educational opportunities to students should be viewed as a school funding decision, *Leandro* should apply. Since this exclusion from an education infringes upon a fundamental right, strict scrutiny is the appropriate standard of review. In the context of long-term suspensions, school administrators should be required to demonstrate that "a long-term suspension or expulsion *without some alternative educational option* is necessary to achieve safety and order."\(^{40}\)

\(^{33}\) *See id.* at 371, 704 S.E.2d at 261.

\(^{34}\) *See id.* at 378, 704 S.E.2d at 265 (noting that each school district is only required to implement one alternative learning program and that students can lose their statutory right to an alternative education through misbehavior).

\(^{35}\) *Id.*

\(^{36}\) *See discussion infra Part II.*


\(^{38}\) *See discussion infra Part II.A.*

\(^{39}\) This is especially troubling because minority students are suspended at a disproportionately greater rate than their Caucasian peers. Am. Psychological Ass'n Zero Tolerance Task Force, *supra* note 22, at 854.

\(^{40}\) *King*, 364 N.C. at 382, 704 S.E.2d at 268 (Timmons-Goodson, J., dissenting). This Recent Development does not address the adequacy of alternative learning programs,
Part I of this Recent Development discusses the Supreme Court of North Carolina's decision in *King*. Part II discusses the discriminatory application of school disciplinary policies as well as policy considerations regarding school funding and its connection to end of grade testing and performance under the No Child Left Behind Act ("NCLB"). Within Part II, this Recent Development argues that strict scrutiny should apply to alternative education decisions because all decisions that deny students the right to an education infringe on a fundamental right. Moreover, alternative education decisions are inextricably linked to school funding decisions, which the *King* majority concedes require strict scrutiny under *Leandro*. Finally, Part III provides a legislative solution to the problem of access to an alternative education. The current law, which merely requires each district to implement some type of program, is insufficient to meet the needs of a significant portion of students. The legislature should require school districts to provide an alternative education to students whenever there is a way to do so safely. Failing to implement adequate programs is an insufficient reason to deny a student the opportunity to an education.

I. *King* v. Beaufort and *Leandro* v. State: The Right to an Education

In January 2008, a fight broke out at Southside High School that involved numerous students, including sophomore Viktoria King. As a consequence of her involvement in the fight, she was suspended for the remainder of the school year without the opportunity to attend an alternative learning program. Following her suspension, Viktoria King filed suit alleging that the Beaufort County Board of Education "violated her state constitutional right to a sound basic education by failing to provide her access to alternative education."
In *King*, the Supreme Court of North Carolina observed that it does not "recognize a state constitutional right to alternative education."\(^{47}\) Although the court acknowledged that the North Carolina Constitution provides a fundamental right to "an opportunity to receive a sound basic education"\(^{48}\) and "[e]qual access to participation in our public school system,"\(^{49}\) the majority stressed that the right to receive an alternative education is not a fundamental right, but a statutory right provided by the General Assembly.\(^{50}\) Therefore, courts should review decisions to deny access to an alternative education using intermediate scrutiny.\(^{51}\) The test for intermediate scrutiny requires school administrators to "articulate an important or significant reason for denying students access to alternative education; however, the reasons supporting their decisions do not need to be compelling."\(^{52}\)

In the end, the *King* court reasoned that the denial of the opportunity to attend an alternative education program did not infringe on a fundamental right and, thus, did not merit strict scrutiny.\(^{53}\) To accomplish this result, the *King* court had to distinguish *Leandro v. State*.\(^{54}\) In *Leandro*, the court considered whether North Carolina failed to provide adequate resources to low-income school districts and, as a result, did not provide "a sufficient education to meet the minimal standard for a constitutionally adequate education."\(^{55}\) Because school financing decisions can infringe on the fundamental right to the opportunity to a sound basic education, the

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\(^{47}\) *Id.* at 372, 704 S.E.2d at 262.


\(^{49}\) *Id.* at 372, 704 S.E.2d at 261–62 (quoting *Sneed v. Greensboro City Bd. of Educ.*, 299 N.C. 609, 618, 264 S.E.2d 106, 113 (1980)) (internal quotation marks omitted).

\(^{50}\) *Id.* at 372, 704 S.E.2d at 261.

\(^{51}\) *Id.* at 377, 704 S.E.2d at 265.

\(^{52}\) *Id.* The court explained that "[b]ecause exclusion from alternative education potentially infringes on a student’s state constitutional right to equal educational access, school administrators must articulate a reason when they exclude a long-term suspended student from alternative education." *Id.* at 372, 704 S.E.2d at 262.

\(^{53}\) *Id.* at 372, 704 S.E.2d at 261.

\(^{54}\) *Id.* at 372–75, 704 S.E.2d at 261–64.

\(^{55}\) *Leandro v. State*, 346 N.C. 336, 342, 488 S.E.2d 249, 252 (1997). *Leandro* involved a complaint by students in low-income school districts that they were "not receiving a sufficient education to meet the minimal standard for a constitutionally adequate education," and that they were "denied an equal education because there is a great disparity between the educational opportunities available to children in their districts and those offered in more wealthy districts." *Id.*
King court acknowledged that strict scrutiny is required in reviewing school finance decisions.\(^{56}\)

The King court argued, however, that school discipline issues are distinguishable from school financing cases, stating that “[a] critical distinction exists between the state uniformly denying students in low-income districts access to a sound basic education and the state offering all students a sound basic education but temporarily removing students who engage in misconduct that disrupts the sound basic education of their peers.”\(^{57}\) The King court relied on the long history of providing deference to schools in making disciplinary decisions, noting that “[t]he right to attend school and claim the benefits afforded by the public school system is the right to attend subject to all lawful rules and regulations prescribed for the government thereof.”\(^{58}\) Students, through their own conduct and misbehavior, “may be constitutionally suspended or expelled for misconduct whenever the conduct is of a type the school may legitimately prohibit.”\(^{59}\) The court viewed the decision to deny a student the opportunity to participate in an alternative program as one in the same with the decision to remove a student from the traditional classroom—merely a disciplinary decision and not a denial of access to the opportunity to a sound basic education.\(^{60}\) Furthermore, the court resisted creating a bright-line rule that required a review of each school suspension case as a denial of a fundamental right to an education.\(^{61}\) Accordingly, the court concluded that strict scrutiny was too high of a standard.\(^{62}\)

While the court did not fully protect the fundamental right to an education, it did not fully abandon the protection of this right either. The King court stated quite clearly that rational basis review would

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\(^{56}\) King, 364 N.C. at 374, 704 S.E.2d at 263 (citing Leandro, 346 N.C. at 342, 488 S.E.2d at 252). Leandro requires that when a school board denies a student the fundamental right to a sound basic education that it proves that its actions are “necessary to promote a compelling governmental interest.” 346 N.C. at 357, 488 S.E.2d at 261 (quoting Town of Beech Mountain v. Cnty. of Watauga, 324 N.C. 409, 412, 378 S.E.2d 780, 782 (1989)) (internal quotation marks omitted).

\(^{57}\) King, 364 N.C at 374, 704 S.E.2d at 263.

\(^{58}\) Id. at 374–75, 704 S.E.2d at 263 (quoting Coggins v. Bd. of Educ., 223 N.C. 763, 767, 28 S.E.2d 527, 530 (1944)) (internal quotation marks omitted); see also Goss v. Lopez, 419 U.S. 565, 580–81 (1975) (requiring procedural due process for suspensions, but noting that suspensions serve a purpose in maintaining discipline).

\(^{59}\) King, 364 N.C. at 373, 704 S.E.2d at 252 (quoting In re Jackson, 84 N.C. App. 167, 176, 352 S.E.2d 449, 455 (1987)) (internal quotation marks omitted).

\(^{60}\) See id.

\(^{61}\) See id. at 374–75, 704 S.E.2d at 263–64.

\(^{62}\) Id.
be inappropriate in this context, as it would require the court to uphold disciplinary decisions so long as there was "any conceivable legitimate purpose" for the decision even if it was not "the actual goal or purpose of the government action at issue." The court determined that rational basis review "does not adequately guard against arbitrary decisions or inadvertent errors by school officials." Because there is a state constitutional right to "equal educational access and a sound basic education," a higher standard of review is required.

The King court determined that intermediate scrutiny was the appropriate level of review. The court reasoned that requiring school administrators to "articulate an important or significant reason for denying students access to alternative education," even if not "compelling," struck a "practical balance between protecting student access to educational opportunities and empowering school officials to maintain safe and orderly schools." Unfortunately, intermediate scrutiny does not provide an adequate safeguard to ensure that all children have the opportunity to a sound basic education. The King court noted that school administrators would have few obstacles in articulating "an important or significant reason" for excluding "students who exhibit violent behavior, threaten staff or other students, substantially disrupt the learning process, or otherwise engage in serious misconduct." Under this standard of review, the same behavior leading to the long-term suspension will often be sufficient to justify exclusion from an alternative education.

63. Id. at 377, 704 S.E.2d at 264 (quoting In re R.L.C., 361 N.C. 287, 295, 643 S.E.2d 920, 924 (2007)) (internal quotation marks omitted).
64. Id. (quoting In re R.L.C., 361 N.C. 287, 295, 643 S.E.2d 920, 924 (2007)) (internal quotation marks omitted).
65. Id.
66. Id. at 377, 704 S.E.2d at 265.
67. Id. "Under the state intermediate scrutiny standard, school administrators must articulate an important or significant reason for denying students access to alternative education; however, the reasons supporting their decisions do not need to be compelling."
68. Id.
69. Id. at 377–78, 704 S.E.2d at 265.
70. Id. at 377, 704 S.E.2d at 265.
71. Id. at 378, 704 S.E.2d at 265.
72. See id. at 377–78, 704 S.E.2d at 265.
II. STRICT SCRUTINY SHOULD BE APPLIED TO ALL CASES INVOLVING ACCESS TO EDUCATION

The North Carolina Constitution provides every child with a "fundamental right to a sound basic education which would prepare the child to participate fully in society as it existed in his or her lifetime."\(^\text{73}\) The North Carolina Constitution does not limit this right to those children who thrive in a traditional learning environment or those who excel at standardized tests.\(^\text{74}\) Instead, the fundamental right to an education is provided to all children in North Carolina and requires schools to provide a qualitatively sufficient education that allows students to constructively participate in society.\(^\text{75}\) Nonetheless, a significant number of children are denied the opportunity to any education for extended periods of time.\(^\text{6}\)

Current disciplinary policies have led to the exclusion of too many children, with minorities receiving a disproportionate number of suspensions.\(^\text{77}\) African American students receive harsher punishments than their Caucasian counterparts who commit the same misconduct, and more often receive long-term suspensions for conduct that is arguably not dangerous or serious enough to warrant long-term exclusion from an education.\(^\text{78}\) For example, a study of Wake County suspensions revealed that 74% of African American students whose first offense involved a minor assault received a long-term suspension, while only 21% of Caucasians received a long-term suspension.\(^\text{73}\) Leandro v. State, 346 N.C. 336, 348, 488 S.E.2d 249, 255 (1997).

[A] "sound basic education" is one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

\[^{74}\] See id. at 345–47, 488 S.E.2d at 254–55 (noting that the North Carolina Constitution requires a qualitative minimum level of education that allows all children to meaningfully participate in society).
\[^{75}\] See id.
\[^{76}\] N.C. DEP’T OF PUB. INSTRUCTION, supra note 6, at 3, 25.
\[^{77}\] Id. at 25.
\[^{78}\] Skiba et al., supra note 10, at 1088–89.
suspension for similar conduct on their first offense. Further, African Americans are often disciplined for subjective conduct such as being disrespectful or loitering, while Caucasians are more often disciplined for more objective conduct such as "smoking or vandalism." Although the exact cause of the disproportionate use of suspensions between minority students and Caucasian students is unclear, teacher stereotypes and high-stakes testing may motivate school administrators to exclude certain groups of students, rather than devoting the resources to provide an adequate education.

A. The No Child Left Behind Act and the Push-Out Theory as an Incentive to Refuse the Opportunity to an Education

Although there is not one clear cause of the unequal application of school discipline and suspensions, commentators fear that NCLB and other test-based performance standards have created incentives for schools to attempt to "push-out" certain groups of underperforming students in an effort to raise test scores and appear


Children who are suspended are often from a population that is the least likely to have supervision at home.... [C]hildren most likely to be suspended or expelled are those most in need of adult supervision and professional help.... For students with major homelife stresses, academic suspension in turn provides yet another life stress that, when compounded with what is already occurring in their lives, may predispose them to even higher risks of behavioral problems.


80. Carroll, supra note 22, at 1935. In Wake County, a significant number of long-term suspensions were given out for minor offenses that constituted fairly subjective conduct. See ADVOCATES FOR CHILDREN'S SERVS., supra note 79, at 8. According to one report, "191 long-term suspensions were handed down for the primary violation of 'minor assault' (e.g., pushing); 36 for 'aggressive behavior'; 31 for 'disruptive behavior'; and 29 for 'inappropriate language.'" Id. (citing statistics from the 2008–2009 school year in Wake County).

81. See Carroll, supra note 22, at 1935-36. Although schools may not intentionally discriminate against African American students, teacher stereotypes may influence how teachers perceive student behavior. For example, one study showed that "teachers in middle-class, predominately white schools viewed student inattention as an indication that the teacher needed to do more to gain the student's interest. On the other hand, this same behavior in predominately black, lower-class schools was interpreted as resulting from the students' putative low attention spans." Id. (quoting Roni R. Reed, Note, Education and the State Constitutions: Alternatives for Suspended and Expelled Students, 81 CORNELL L. REV. 582, 608 (1996)) (internal quotation marks omitted).

82. See Rivkin, supra note 10, at 277; Carroll, supra note 22, at 1930–33, 1935–36.
to have higher performing students.\textsuperscript{83} Students may be pushed-out through school discipline, such as by suspensions and expulsions, or by encouraging students who are behind to obtain a General Education Development ("GED") diploma instead of completing their coursework.\textsuperscript{84} NCLB requires each state to set minimum standards that each student is expected to reach, and schools must make Adequate Yearly Progress ("AYP") each year until the standards are achieved.\textsuperscript{85} Schools that fail to meet the required benchmarks or rates of progress face dire consequences. These include transfer of students to other district schools, termination or replacement of school staff, and, in extreme cases, takeover by the state.\textsuperscript{86}

Although NCLB was intended to provide incentives to encourage schools to improve the performance of underperforming students,\textsuperscript{87} it has the effect of disenfranchising minority groups who tend to have lower test scores and who are suspended and expelled at higher rates than Caucasians.\textsuperscript{88} In part, this is because NCLB specifically requires States to measure the achievements of "economically disadvantaged students; . . . students from major racial and ethnic groups; . . . students with disabilities; and . . . students with limited English proficiency."\textsuperscript{89} If a specified subgroup does not reach the required proficiency, the school can still meet its AYP if that particular subgroup improves its test scores by ten percent from the previous year and the school meets the graduation requirement.\textsuperscript{90}

\begin{itemize}
\item \textsuperscript{83} See Rivkin, \textit{supra} note 10, at 277; Carroll, \textit{supra} note 22, at 1930–33; Davin Rosborough, \textit{Note, Left Behind, and Then Pushed Out: Charting a Jurisprudential Framework to Remedy Illegal Student Exclusions}, \textit{87 Wash. U. L. Rev.} 663, 672–78 (2010).
\item \textsuperscript{84} See Rivkin, \textit{supra} note 10, at 277; see also Rosborough, \textit{supra} note 83, at 672–78 (detailing documented instances of "push-outs" in New York, Alabama, Texas, South Dakota, and California). This Recent Development focuses on exclusions due to official suspensions and not other forms of pressure to encourage students to leave school.
\item \textsuperscript{86} Carroll, \textit{supra} note 22, at 1928.
\item \textsuperscript{87} See Rivkin, \textit{supra} note 10, at 278.
\item \textsuperscript{88} See Rosborough, \textit{supra} note 83, at 672. In Wake County, North Carolina, "African American students made up 26.1% of students . . . yet they received 62.3% of short-term suspensions and 67.5% of long-term suspensions. Over the past five school years, 94.4% (34 of the 36) of the expelled . . . students in Wake County were African American." \textit{Advocates for Children's Servs.}, \textit{supra} note 79, at 8.
\item \textsuperscript{90} See Carroll, \textit{supra} note 22, at 1928 (citing 20 U.S.C. § 6311(b)(2)(I) (2000)).
\end{itemize}
Although test scores are broken down into specific subgroups for determining AYP, including race and income levels, graduation rates are not evaluated by subgroups but are based on the graduation rate of the entire student body.\textsuperscript{91} Test results for students who do not attend a school for an entire academic year are not counted under NCLB,\textsuperscript{92} so if a student receives a long-term suspension for the remainder of the year, or drops out mid-academic year, that student's scores will not be calculated in determining AYP for his subgroup.\textsuperscript{93} Because dropout rates are not calculated by subgroups, the rest of the student body can dilute a disproportionate dropout rate of a particular subgroup, allowing the school to make AYP and mask the problem.\textsuperscript{94}

Therefore, if an under performing student who is considered a member of a racial minority engages in conduct that is sufficient to qualify for a long-term suspension, conduct which in North Carolina is undefined,\textsuperscript{95} the school administrators may believe it is in the school's best interest to "push him out."\textsuperscript{96} The decision may be motivated, at least in part, by the school's interest in achieving AYP, rather than an inability to educate or discipline the student.\textsuperscript{97}

Additionally, NCLB may serve as a disincentive for creating alternative learning programs that provide help to children who do not excel in the traditional, measurable way.\textsuperscript{98} The same standards apply to all schools in a state, regardless of whether the school serves an affluent or low-income student body, has a high rate of students

\begin{itemize}
  \item \textsuperscript{91} Id. at 1927–28. This policy is in the process of changing. The graduation rates for the 2011–2012 school year will be disaggregated by subgroup and included in AYP determinations. 34 C.F.R. § 200.19(b)(5)(i) (2011).
  \item \textsuperscript{92} 34 C.F.R. § 200.20(e)(2) (2011) ("In determining the AYP of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State."); see Rosborough, supra note 83, at 672.
  \item \textsuperscript{93} See Rosborough, supra note 83, at 672.
  \item \textsuperscript{94} See id. at 671–72.
  \item \textsuperscript{95} See Act of June 23, 2011, ch. 282, § 2, 2011-4 N.C. Adv. Legis. Serv. 396, 400 (LexisNexis) (to be codified at N.C. GEN. STAT. § 115C-390.7(a)) (permitting a "long-term suspension of any student who willfully engages in conduct that violates a provision of the Code of Student Conduct that authorizes long-term suspension"). This Act also permits long-term suspensions for minor violations if aggravating circumstances exist. Id. at 397–98 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)).
  \item \textsuperscript{96} See Rosborough, supra note 83, at 672.
  \item \textsuperscript{97} See id.
  \item \textsuperscript{98} See Carroll, supra note 22, at 1933 (noting that because expelled students tend to perform poorly on standardized tests, and alternative schools are held to the same standards as traditional schools, school districts may choose to close alternative schools rather than allocate more resources to help achieve AYP).
\end{itemize}
with learning disabilities, or serves as an alternative school. Therefore, achieving scores comparable to traditional schools is likely a difficult, if not impossible, task for alternative schools. Administrators may decide it is easier and more cost-effective to disassociate "problem students" who are underperforming, rather than provide them with the educational resources that they need and risk that the school will fail to meet AYP.

Because both the decision to exclude students from school and the decision to refuse to provide alternative resources may be grounded in financial considerations—mainly the allocation of resources—the decision to issue a long-term suspension, coupled with a denial of access to an alternative learning program, should implicate the standard in Leandro. Unlike the view of the King majority, the denial of the opportunity to attend an alternative learning program is not discretely limited to the context of school discipline. It is an economic decision by the state and local school boards involving the allocation of financial resources and the decision of what types of alternative programs to fund. Thus, strict scrutiny should apply because excluding a child from an education under such circumstances infringes on his fundamental right to an education.

B. Application of Strict Scrutiny to the Denial of the Opportunity for an Alternative Education

Prior to Leandro, in In re Jackson, the North Carolina Court of Appeals held that "public schools have no affirmative duty to provide an alternate educational program for suspended students in the absence of a legislative mandate." The court further noted that courts may not order a school district to provide an alternative education to a student where a suitable program is not already in existence. To do so would interfere with the school district's allocation of resources by requiring the district to provide a program

99. See id.
100. See Rivkin, supra note 10, at 277; Carroll, supra note 22, at 1931–32. Conversely, some argue that alternative schools may be used as "accountability safe-houses" if student placement is to last less than one academic year. Carroll, supra note 22, at 1932. In such cases, the student's test results are not included with her original school's scores, or her new alternative placement. Id.
101. See supra notes 83–100 and accompanying text.
102. See discussion infra Part II.B.
103. See discussion infra Part II.B.
105. Id. at 176, 352 S.E.2d at 455.
106. Id. at 173, 352 S.E.2d at 454.
not already in existence.\textsuperscript{107} This reasoning is based on the school's interest in maintaining safety and order and is consistent with the typical level of deference given to school discipline decisions.\textsuperscript{108} The \textit{Jackson} court also relied on a separation of powers argument, believing that the General Assembly—instead of the court—should implement alternative education programs.\textsuperscript{109}

\textit{Leandro}, however, gave a new set of tools to those arguing for the fundamental right to an education through its declaration that the right “guarantee[s] every child . . . an opportunity to receive a sound basic education” and its demand for qualitative standards.\textsuperscript{110} Denial of this right compels strict scrutiny review.\textsuperscript{111} Strict scrutiny requires the State to demonstrate “that . . . [its] actions denying this fundamental right are necessary to promote a compelling government interest.”\textsuperscript{112}

It is undisputed that schools need to exercise discretion to maintain order and discipline and that a requirement for school administrators to show a compelling government interest for every disciplinary action would be unduly burdensome.\textsuperscript{113} Articulating school exclusions on the basis of discipline, however, should not be used to camouflage improper motivations for excluding students, failing to provide adequate resources, or avoiding the heightened review that accompanies school finance decisions.\textsuperscript{114} Schools have made the financial decision that, in some cases, it is easier to exclude underperforming students or students with behavioral challenges, rather than find a way to teach them.\textsuperscript{115} This is done under the

\begin{itemize}
\item \textsuperscript{107} Id. at 173, 352 S.E.2d at 453–54.
\item \textsuperscript{108} See id. at 176, 352 S.E.2d at 455; see also \textit{King ex rel. Harvey-Barrow v. Beaufort Cnty. Bd. of Educ.}, 364 N.C. 368, 373–74, 704 S.E.2d 259, 262–63 (2010) (documenting instances when the court afforded “great deference” to school administrators in their exercise of authority to maintain safe and orderly schools).
\item \textsuperscript{109} \textit{Jackson}, 84 N.C. App. at 178, 352 S.E.2d at 456.
\item \textsuperscript{111} \textit{Leandro}, 346 N.C. at 357, 488 S.E.2d at 261.
\item \textsuperscript{112} Id. at 357, 488 S.E.2d at 261 (quoting \textit{Town of Beech Mountain v. Cnty. of Watauga}, 324 N.C. 409, 412, 378 S.E.2d 780, 782 (1989)) (internal quotation marks omitted).
\item \textsuperscript{113} \textit{King}, 364 N.C. at 375–77, 704 S.E.2d at 263–64.
\item \textsuperscript{114} Cf. \textit{Carroll}, supra note 22, at 1928–29 (“By excluding low-scoring students, a school can improve its test scores without expending any additional resources.”); \textit{Rosborough}, supra note 83, at 671–72 (discussing the incentives NCLB provides to schools to “push-out” students who need additional support rather than dedicating the needed resources).
\item \textsuperscript{115} See discussion supra Part II.A.
\end{itemize}
pretense of disciplinary actions or, in cases where some discipline is warranted, the use of unnecessarily and harmfully long suspensions.\textsuperscript{116}

Although \textit{King} is not about the unequal funding of school districts, as was the case in \textit{Leandro}, it involves a very similar issue. \textit{King} concerns the exclusion of minority children from receiving an education while resources are allocated to teach more “successful” and perhaps more affluent students.\textsuperscript{117} The decision to issue long-term suspensions to students, coupled with a complete denial of alternative learning opportunities during the suspension, is a denial of a fundamental right to a sound basic education and is based on economic considerations. Therefore, the standard of review from \textit{Leandro} should apply.

\textbf{C. Defining Strict Scrutiny in the Context of School Discipline}

School administrators should maintain discretion in administering discipline within the school and even be allowed to temporarily remove problem students without requiring a heightened standard of review. If a student receives a long-term suspension and is denied placement in a suitable alternative learning program, however, the student has been denied her fundamental right to the opportunity for a sound basic education. Accordingly, this Recent Development advocates for the test outlined in Justice Timmons-Goodson’s dissent in \textit{King} that requires the State to demonstrate that “a long-term suspension or expulsion \textit{without some alternative educational option} is necessary to achieve safety and order,” which is a compelling government interest.\textsuperscript{118}

A similar test is required in West Virginia.\textsuperscript{119} In addressing a suspension as a result of violating West Virginia’s Productive and Safe Schools Act,\textsuperscript{120} the Supreme Court of Appeals of West Virginia

\footnotesize{\textsuperscript{116} See Rosborough, supra note 83, at 667.  
\textsuperscript{117} See King, 364 N.C. at 378, 704 S.E.2d at 265 (noting that “[s]chool administrators are not required to provide alternative education to every suspended student”); see also Am. Psychological Ass'n Zero Tolerance Task Force, supra note 22, at 854 (noting the disproportionate number of minority students who receive long-term suspensions); Rosborough, supra note 83, at 670–71 (explaining that school administrators may “push-out” low-performing students to meet NCLB requirements).  
\textsuperscript{118} King, 364 N.C. at 382, 704 S.E.2d at 268 (Timmons-Goodson, J., dissenting).  
held that although the State may suspend a student for violating the Act, the State must show a compelling interest to warrant the refusal to provide an alternative education to a child during suspension.\textsuperscript{121} Although a violation of the Productive and Safe Schools Act may warrant exclusion from the traditional classroom, it is an insufficient reason to relieve the State of its obligation to educate its children.\textsuperscript{122} The State must address the particular circumstances of that student to determine whether he may be safely educated in another manner.\textsuperscript{123} Under the West Virginia approach, schools will not be able to justify excluding students from an alternative education except in the most extreme cases.\textsuperscript{124}

Strict scrutiny still affords local principals the discretion to maintain order in schools, while providing ample protection for the fundamental right to receive an education. Under this standard of review, the State is permitted to remove problem students from the traditional classroom but must provide some sort of education to them unless there is a compelling interest such that the State cannot do this safely.\textsuperscript{125} Simply choosing not to provide reasonable alternative programs, however, is not a sufficiently compelling state interest. Strict scrutiny would ensure that students who were removed from educational opportunities were excluded because they were truly a danger or unreasonably disruptive, not because of economic reasons, compliance with NCLB, or other unjustified causes.

Strict scrutiny would not overburden school administrators or tie their hands in the ability to maintain discipline. School administrators would retain discretion in determining the appropriate in-school discipline. Administrators would be able to remove disruptive or violent students from the traditional classroom as well as place disruptive students in alternative learning programs.\textsuperscript{126} As long as the student is still offered the opportunity to receive an education, these

\begin{itemize}
\item \textsuperscript{121} Cathe A., 490 S.E.2d at 348.
\item \textsuperscript{122} Id. at 350.
\item \textsuperscript{123} Id.
\item \textsuperscript{124} Id.
\item \textsuperscript{125} See id. at 350–51. It is conceivable that most children who are truly too dangerous to teach in any form would be in a correctional facility. Furthermore, in New Jersey, school administrators were required to provide an alternative educational opportunity to a juvenile who was deemed “delinquent,” expelled for violating the state Zero Tolerance for Guns Act, and placed on probation. State \textit{ex rel.} G.S., 749 A.2d 902, 907 (N.J. Super. Ct. Ch. Div. 2000). Possible programs ranged from classroom instruction to at-home schooling. \textit{Id}.
\item \textsuperscript{126} See King \textit{ex rel.} Harvey-Barrow v. Beaufort Cnty. Bd. of Educ., 364 N.C. 368, 386-87, 704 S.E.2d 259, 270 (2010) (Timmons-Goodson, J., dissenting) (noting that alternative education can take many forms, including online and computer-based programs).
\end{itemize}
decisions would receive the traditional deference given to school discipline cases. Heightened scrutiny would be triggered at the moment the student is excluded from all meaningful educational opportunities. As a result, school administrators would be required to show that "a long-term suspension or expulsion without some alternative educational option is necessary to achieve safety and order." Effectively, the State must show that it cannot educate the student without disrupting or jeopardizing the learning and safety of others.

III. POLICY CONSIDERATIONS

Although this Recent Development argues that strict scrutiny applies when a student is denied access to an alternative education during a long-term suspension, meaningful changes and successful alternative education programs must also be implemented through legislation. It would be prudent for the State to implement comprehensive alternative education programs for those students not in school as a result of long-term suspension. The programs should provide tools to meaningfully address behavioral and learning issues to ensure that struggling children will no longer be tossed aside as being unable to be educated or too unruly.

In June 2011, the North Carolina General Assembly enacted numerous changes to laws involving school discipline, suspension, and alternative education in an attempt to clarify its school discipline policy. The new legislation provides much-needed improvements, including a requirement that each school board develop a "Code of Student Conduct that notifies students of the standards of behavior expected of them, conduct that may subject them to discipline, and the range of disciplinary measures that may be used by school officials." The legislation also cautions superintendents to limit long-term suspensions "to those violations deemed to be serious violations of the board's Code of Student Conduct that either threaten the safety of students, staff, or school visitors or threaten to substantially disrupt the educational environment."

127. See id. at 373, 704 S.E.2d at 262 (majority opinion).
128. Id. at 382, 704 S.E.2d at 268 (Timmons-Goodson, J., dissenting).
129. Id. at 382–83, 704 S.E.2d at 268.
131. Id. at 397 (to be codified at N.C. GEN. STAT. § 115C-390.2(b)).
132. Id. at 397–98 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)) (emphasis added) (noting that serious violations do not include "the use of inappropriate or disrespectful language, noncompliance with a staff directive, dress code violations, and
However, this legislation still falls short because it imparts too much discretion to local officials and does not eliminate the risk of long-term suspensions for minor violations of school policy. For example, although long-term suspensions should be limited to "serious violations," principals still have the discretion to "determine that aggravating circumstances justify treating a minor violation as a serious violation." Additionally, the General Assembly missed an opportunity to make a positive change when it failed to adequately address access to alternative education programs during long-term suspensions. Although the new legislation instructs that students who receive a long-term suspension "shall be offered alternative education services," this is not required upon a showing of a "significant or important reason for declining to offer such services." School administrators will likely have little difficulty articulating a "significant or important reason" for denying a student an alternative placement, because there is no requirement that these reasons be limited or even related to the student's behavior. Rather, a superintendent may deny an alternative placement if "[e]ducationally appropriate alternative education services are not available in the local school administrative unit due to limited resources."

In order to remedy the problematic aspects of long-term suspensions and lack of access to alternative learning programs, the General Assembly should take a three step approach. First, the General Assembly should clearly define what conduct is sufficient to warrant a long-term suspension. The General Assembly could accomplish this with legislation that explicitly permits long-term suspensions for some conduct while disallowing long-term suspensions for other conduct. For example, the General Assembly

minor physical altercations that do not involve weapons or injury"). The new legislation also prohibits the use of long-term suspensions "solely for truancy or tardiness offenses." Id. at 397 (to be codified at N.C. GEN. STAT. § 115C-390.2(d)). 133. Id. at 397 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)). 134. Id. at 398 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)). 135. Id. at 402 (to be codified at N.C. GEN. STAT. § 115C-390.9(a)). 136. Id. Examples of "significant or important" reasons that justify denying a student an alternative education placement include violent behavior, posing a threat, conduct that "substantially disrupts the learning process," and lack of appropriate programs "due to limited resources." Id. 137. See id. 138. Id. at 402 (to be codified at N.C. GEN. STAT. § 115C-390.9(a)(5)). 139. Currently, in accordance with federal law, a long-term suspension is required for possession of a weapon or destructive device at school or at a school-sponsored activity
should continue permitting long-term suspensions for conduct that threatens the safety of others, such as assaults resulting in injury to either students or staff. However, the General Assembly should further limit the ability of administrators to suspend students for minor altercations that do not result in serious injury. Although the General Assembly recently noted that “minor physical altercations that do not involve weapons or injury” should not be considered a serious violation resulting in long-term suspension, this protection is undermined by allowing principals to consider “aggravating circumstances” in determining whether a long-term suspension is warranted.

To add further clarification and uniformity, North Carolina should consider implementing an approach similar to that enacted by Washington’s Superintendent of Public Instruction. In Washington, “[a]s a general rule, no student shall be suspended for a long term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.” In fact, absent exceptions for “exceptional misconduct,” a long-term suspension for a first offense is impermissible.

that takes place off-campus. Id. at 402 (to be codified at N.C. GEN. STAT. § 115C-390.10(a)).

140. See id. at 397 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)). Furthermore, this Recent Development takes the position, in line with the new legislation, that the superintendent should not be required to issue a long-term suspension for conduct that results in serious injury, but should retain the discretion to issue a long-term suspension. See id. at 397 (to be codified at N.C. GEN. STAT. § 115C-390.2(e)) (“Board policies shall not impose mandatory long-term suspensions or expulsions for specific violations unless otherwise provided in State or federal law.”).

141. Id. at 398 (to be codified at N.C. GEN. STAT. § 115C-390.2(f)).

142. Id.


144. § 392-400-260(2).

145. Section 392-400-260(2) defines “exceptional misconduct” as:

misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws).

Id.

146. Id.
This approach would benefit North Carolina students because it would limit the ability of school officials to suspend students for minor infractions and encourage administrators to work with students to use more effective disciplinary techniques, rather than immediate suspension. At the same time, school administrators would not be forced to allow regularly disruptive students to interfere with the learning environment. After the administrators use reasonable means to address misbehavior, suspension would be an available option if the pattern of behavior continues.\textsuperscript{147}

Second, the General Assembly should require that all long-term suspended students, absent a very narrow exception, have the opportunity to participate in an alternative learning program during their suspension.\textsuperscript{148} Connecticut implemented a similar policy, where all students under the age of sixteen who receive long-term suspensions must “be offered an alternative educational opportunity.”\textsuperscript{149} Students between sixteen and eighteen facing their first long-term suspension must also be offered the opportunity to receive an alternative education as long as they desire to continue their education and comply with certain conditions provided by a local or regional board of education.\textsuperscript{150} In North Carolina, other factors specific to the student, such as disabilities or mitigating circumstances, should also be taken into account, as school administrators should be required to place students in the least restrictive alternative program that best suits their needs.\textsuperscript{151}

\textsuperscript{147} See id.

\textsuperscript{148} North Carolina recently enacted legislation requiring a long-term suspended student “be offered alternative education services unless the superintendent provides a significant or important reason for declining to offer such services.” Act of June 23, 2011, ch. 282, § 2, 2011-4 N.C. Adv. Legis. Serv. 396, 402 (LexisNexis) (to be codified at N.C. GEN. STAT. § 115C-390.9(a)). However, this provision is undermined by the numerous exceptions that accompany it. See id.

Numerous states already require school districts to provide varying levels of alternative education to suspended or expelled students, including California, Colorado, Delaware, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, New Jersey, New York, Rhode Island, and Tennessee. See Kim et al., supra note 40, at 101.


\textsuperscript{150} Id. However, if a student who is sixteen or older is suspended for certain enumerated conduct, the school board is not required to offer him the opportunity to participate in an alternative education program. § 10-233d(e). The enumerated conduct includes “conduct which endangers persons,” because it involved possession of a firearm or dangerous weapon at school or a school-sponsored function, or dealing drugs at school or a school-sponsored function. Id.

\textsuperscript{151} If a student is disruptive because she is frustrated as a result of not performing at grade level, the program should provide support and remedial help. If a student tends to get into fights, she should be placed in a program that helps address that behavioral issue. School administrators should also make an effort to ensure that students are properly
Third, the General Assembly should require school districts to implement and fund more comprehensive alternative learning programs that are better able to reach at-risk youth and provide the educational resources they need to succeed. This would help schools reach a highly vulnerable segment of the student body—those who need remedial help, behavior modification, or counseling. These programs should be required to meet a variety of student needs, including adequate space in day programs for students who can interact safely with others (even if it requires more supervision than in a traditional classroom), as well as correspondence or online programs to reach students who are deemed to be a threat to others. It is important to ensure these alternative programs provide quality educational opportunities. These programs should provide classes that count toward obtaining a high school degree with the additional
diagnosed with disabilities, when applicable, and that they receive the appropriate level of care. See Rivkin, supra note 10, at 272–73. Many of the students who face long-term suspensions may have learning difficulties and other issues. However, they either fall short of an official diagnosis, or their official diagnosis does not qualify for protection or additional services under the Individuals with Disabilities Education Act, or they have never been evaluated. Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1414 (2006). Proper diagnosis and treatment could substantially improve their success in school and better prepare them to participate in society as adults. See Rivkin, supra note 10, at 272–73.

152. Lost Educational Opportunities in Alternative Settings: Joint Hearing Before the Subcomm. on Healthy Families and Cmtys., Comm. on Educ. and Labor, and the Subcomm. on Crime Terrorism and Homeland Sec., Comm. on the Judiciary, 111th Cong. 31–32 (2009) [hereinafter Lost Educational Opportunities] (statement of Robert C. Whitmore, Dep’t Educ., CEO, Manito, Inc.); Advocates for Children’s Servs., supra note 79, at 16. It is unrealistic to expect that the State could or should be obligated to provide unlimited resources to help each student reach a certain educational level since each student has his or her own unique challenges and capabilities. However, school administrators should be required to use alternative teaching methods and environments to reach students who do not excel in the traditional school environment, have moderate behavioral issues that can be addressed with reasonable assistance and work, and who are not a danger to others.

153. See Advocates for Children’s Servs., supra note 79, at 17 (citing Am. Acad. of Pediatrics, supra note 79) (noting that the students who receive long-term suspensions are most in need of supervision and professional help). A majority of students who are enrolled in North Carolina’s Juvenile Structured Day Program, which primarily serves long-term suspended youth involved in the juvenile justice system, “are not at grade level and have problems with reading comprehension…. Students that are academically deficient are sometimes more susceptible to suspension.” Yearwood et al., supra note 4, at 17. This is in part because “students who are failing find no enjoyment in school, therefore, being suspended is a way to relieve pressure and embarrassment.” Id.

154. See Kim et al., supra note 40, at 106 (noting that many alternative schools do not provide adequate education, lack basic resources such as textbooks and teachers, and sometimes the education received there does not even count toward a high school diploma).
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goal of successfully transitioning students back into traditional schools at grade level.\footnote{155}{See id.}

Although the General Assembly may be reluctant to implement additional programs during the current budget crisis,\footnote{156}{Alan M. Wolf, \textit{State Cuts, Layoffs Foretold}, \textit{NEWS & OBSERVER} (Raleigh, N.C.), Jan. 4, 2011, at 5B.} an investment in the education of at-risk youth will pay off in the long-term.\footnote{157}{Estimates from the U.S. Department of Justice and other sources found that it costs on average $8,000 per year to educate a student, but $23,000 per year to incarcerate a person. \textit{Lost Educational Opportunities}, supra note 152, at 5 (statement of Rep. Robert C. Scott, Chairman, H. Subcomm. on Crime, Terrorism, and Homeland Sec.). If the graduation rate and college attendance rate of males increased by only five percent, it would result in a combined savings and revenue of almost eight billion dollars a year nationally. \textit{Id.} at 6.}

For example, North Carolina operates a program called the Juvenile Structured Day Program ("JSDP"), which primarily accepts referrals from juvenile courts of students who are facing long-term suspensions because of conduct that led to charges in juvenile court.\footnote{158}{YEARWOOD \textit{ET AL.}, supra note 4, at 13. The most common in-school infractions that led to placement in the Juvenile Structured Day Program ("JSDP") include "fighting or assault against government officials, truancy, weapons possession, drug possession, and disruptive behavior. . . . [O]utside of the school environment the infractions were running away from home, violation of home curfew, and breaking and entering." \textit{Id.} at 13–14.} Because the students tend to need behavior modification and remedial academic help, the program is geared toward teaching behavior modification, remedial academic assistance, and life skills to help students become more productive members of the community.\footnote{159}{\textit{Id.} at 16–17.} Small class sizes and extra teacher involvement are also important factors that have led to the success of the program.\footnote{160}{\textit{Id.} JSDP has been successful in helping participants improve their self-esteem and relationship with authority figures as well as reducing delinquent behavior, truancy, and other behavioral problems. \textit{Id.} at 20. It has also shown some success in improving graduation rates. \textit{Id.} However, some of the progress has been lost following students' return to the traditional classroom environment, and this is attributed to a variety of factors, including the "loss of individualized attention" and stereotypes based on past behavior. \textit{Id.} at 21.}

However, this alone does not necessarily make the program more expensive than educating a child in a traditional learning environment. In fact, in 2001, the JSDP reported an average per student cost of slightly less than the average per student cost in a traditional school.\footnote{161}{\textit{Id.} at 22 (noting that the average per student expenditure for JSDP students was $5,599, while the average per student expenditure in a regular public school was $6,280). In Wake County, existing alternative schools do not have funding for athletic programs, field trips, or additional extracurricular activities. See \textit{ANISA RHEA, AN EVALUATION OF}}
“keep[ing] suspended/expelled students on track academically” so they do not “fall even further behind in their studies during the period of absence from the” traditional classroom.162 The Governor’s Commission found that 59.2% of program participants were able to return to traditional schools.163 Assuming that three-fourths of those who returned graduated and worked for a full thirty years, “for every dollar expended on JSDP activities a long-term benefit of $40.90 is gained in terms of future potential income earnings for those JSDP participants who graduated from high school.”164 This will result in higher tax revenues for the State, allowing the State to recoup the money it invested in these children as a result of their higher productivity.165 Thus, spending money on the front end to ensure a quality education for suspended students will not only help them to perform better academically, but may also help to increase their earning potential and save the State money on the back end.

CONCLUSION

As the Supreme Court of North Carolina stated in Leandro, “An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.”166 The astounding number of long-term suspensions in North Carolina requires a reassessment of how one measures educational participation, as well as what student conduct merits exclusion from receiving educational opportunities. Because long-term suspensions may have a permanent effect on the future educational success of young students, it is necessary to implement a strong framework to protect the rights of students. These protections will not only benefit the students, but will also benefit their communities by increasing graduation rates and helping students cope with unique learning and behavioral challenges.

Nonetheless, it is important that school administrators retain the ability to maintain school discipline and safety by removing disruptive and violent students from the traditional learning environment.

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162. YEARWOOD ET AL., supra note 4, at 23. Those who receive a high school diploma earn on average $8,129 more per year than those who do not. Id.
163. Id.
164. Id. at 24.
165. Id.
However, because long-term suspended students who are denied placement in an alternative program are denied their right to an education, courts should review such decisions using strict scrutiny. Additionally, the General Assembly should enact a comprehensive reform of alternative education programs and more precisely define what conduct qualifies for a long-term suspension in order to ensure that rules designed to help students achieve their potential are applied fairly.

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