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To: US Department of Justice, Civil Rights Division, Educational Opportunities Section
From: Education Law Center
Date: August 31, 2015
Re: Updated Data on Alternative Education for Disruptive Youth in Pennsylvania

Thank you for your continued work and attention on Pennsylvania as you investigate the adverse disparate impact on students with disabilities and African American students who are sent to Alternative Education for Disruptive Youth programs.

In furtherance of this important work, ELC submitted a formal records request to the Pennsylvania Department of Education earlier this year. The request was for the most recent data on AEDY Programs for the 2012-2013 and 2013-2014 school years. We share this data with you in the hopes that it will inform your on-going investigation. We have included a brief analysis of the data below, at times with older data to include context. The raw data is attached separately for your convenience.

Background

As you know, ELC has worked to improve Pennsylvania's use of alternative education for many years. In 2010, we published a report entitled, [Improving "Alternative Education for Disruptive Youth Programs" in Pennsylvania](#), which described the legal requirements of AEDY and documented Pennsylvania's long history of (1) high numbers of students in AEDY, (2) highly disproportionate placement of students receiving special education and students of color, and (3) the substandard education within many AEDY programs. In our [2013 complaint to DOJ](#), we analyzed AEDY demographic data for the 2008-09 to 2011-12 school years. Our analysis confirmed that the problems described in our 2010 report persisted. We also noted that, while the data indicated a decline in the number of students sent to AEDY programs, the use of unauthorized AEDY programs increased during that same time period which may mask the actual number of students in alternative disciplinary programs.

Current Statewide Data

Our analysis of the most recent 2012-2013 and 2013-2014 data shows that, statewide, the adverse disparate impact of AEDY on African American students and students with disabilities in Pennsylvania remains high. The disparities are consistent with the data that informed the 2013 complaint. Meanwhile, the overall number of students reported to be placed in AEDY has continued to drop.

Table 1: Statewide AEDY Placement by Race and IEP Status

		2011-2012	2012-2013	2013-2014
Percent Black Enrollment in grades 6-12	Overall ¹	15.3%	15.1%	15.1%
	AEDY	33.08%	33.66%	33.87%
Percent of students with an IEP	Overall ²	15.1%	15.3%	15.4%
	Identified upon entering AEDY	5.29%	4.57%	5.39%
	Total IEP in AEDY	43.66%	40.95%	38.15%
Total Number of Students in AEDY		14470	11870	9667

Perhaps the most troubling statistic from our data request is the revelation that, over the last three years, less than one-third of students placed in AEDY are ever returned to regular school.

Table 2: Statewide AEDY Return Rate

Percent of Students Returned to Regular Classroom or Home School	2011-2012	2012-2013	2013-2014
	26.8%	28.0%	31.7%

Meanwhile, ELC is encouraged by the significant decline (approximately 33% in two years) in the overall number of students placed in AEDY and we hope it is attributable to both improved in-school interventions and a wider recognition of the general failure of AEDY to improve behavior, improve academic outcomes, or make schools safer. However, we have also grown increasingly concerned by the proliferation of what we have casually referred to as “non-AEDY” alternative disciplinary programs.

ELC documented the existence of many non-AEDY programs in our original complaint, mostly in Philadelphia and in various charter schools. We continue to encounter anecdotes of other districts and charter schools utilizing non-AEDY programs across the state. Recently, we forwarded [an article](#) to DOJ describing how students are placed and remain for years at a time in “Rankin Promise,” a disciplinary program that serves over 200 students in the Woodland Hill School District. These unofficial programs operate in essentially the same way as official AEDY programs, only without PDE approval. As with Rankin Promise, many of these programs are used for students in K-5th grades, which is prohibited for approved AEDY programs. A statewide growth of these unauthorized “non-AEDY” programs may be *the primary reason for the continuing decline of students placed in official AEDY programs.*

Unfortunately, no records are collected by PDE and, as more and more districts and charter schools utilize these unofficial programs, there is zero accountability for either the quality or the

¹Bureau of Special Education, PDE, School District Data at a Glance, <http://penndata.hbg.psu.edu/BSEReports/DataPreview.aspx#> (click “Data at a Glance State Report” and select the corresponding years). These figures represent racial demographics for all grades.

² Bureau of Special Education, PDE, School District Data at a Glance, <http://penndata.hbg.psu.edu/BSEReports/DataPreview.aspx#> (click “Data at a Glance State Report” and select the corresponding years). These figures represent special education rates for all grades.

likely adverse disparate impact on students of color and students with disabilities. We would consider it a significant missed opportunity if the result of DOJ’s investigation was to push the problems found in official AEDY programs (which are at least subject to public reporting and PDE oversight) and into the hidden unofficial disciplinary programs that operate the same way – only without any public reporting or oversight. At minimum, it would be helpful for DOJ to ask PDE and/or individual school districts across the state for an accounting of all students in out-of-school placements that were triggered by a disciplinary incident, both in AEDY and non-AEDY.

Disparities for Students with Disabilities in Individual LEA and IUs

ELC’s initial complaint was filed against the state and highlighted a number of individual school districts that had high numbers of students in AEDY (over 40 students) and also high disparities regarding disability and/or race. Some of the data for those districts remains consistent, but in others there have been dramatic changes. In addition, some districts that did not appear as outliers when we filed the initial complaint, now stand out in the new data.

Table 3 shows that Altoona, Bristol, Chambersburg, East Allegheny, Norristown, North Penn, Pennridge, State College, and York City School Districts continue to have high numbers of students in AEDY and also high disability disparities.

Table 3: Districts that Continue to have High Disparities for Students with Disabilities

		2010-2011	2011-2012	2012-2013	2013-2014
Altoona Area	% of students w/ IEP Districtwide ³	19.1%	18.5%	18.6%	19.2%
	AEDY	53.2%	59.0%	61.3%	54.5%
	Total Students in AEDY	94	100	80	77
Bristol Township	% of students w/ IEP Districtwide	18.4%	18.4%	18.6%	18.1%
	AEDY	68.0%	43.4%	57.3%	44.4%
	Total Students in AEDY	122	113	82	63
Chambersburg Area	% of students w/ IEP Districtwide	14.0%	13.0%	11.3%	11.3%
	AEDY	50.4%	54.2%	59.8%	30.4%
	Total Students in AEDY	113	120	122	112
East Allegheny	% of students w/ IEP Districtwide	16.2%	18.3%	18.4%	19.4%
	AEDY	61.2%	47.2%	39.0%	36.1%
	Total Students in AEDY	49	36	41	36
Norristown Area	% of students w/ IEP Districtwide	19.4%	18.9%	16.9%	16.7%
	AEDY	80.6%	90.0%	52.0%	51.1%
	Total Students in AEDY	74	90	98	90

³ Districtwide IEP data for 2011-2012 to 2013-14 retrieved from Pennsylvania Department of Education, Special Education Data Report, http://penndata.hbg.psu.edu/BSEReports/DP_AlphaList.aspx.

North Penn	% of students w/ IEP				
	Districtwide	16.4%	16.4%	16.4%	15.9%
	AEDY	47.2%	66.9%	69.3%	96.9%
	Total Students in AEDY	131	130	114	32
Pennridge	% of student w/ IEP				
	Districtwide	15.7%	15.4%	15.1%	15.2%
	AEDY	68.1%	42.6%	51.0%	51.1%
	Total Students in AEDY	62	68	49	47
State College Area	% of students w/ IEP				
	Districtwide	12.1%	11.5%	11.2%	11.0%
	AEDY	51.0%	40.0%	56.4%	53.3%
	Total Students in AEDY	51	45	39	30
York City	% of students w/ IEP				
	Districtwide	22.8%	21.0%	20.5%	21.4%
	AEDY	49.8%	52.3%	32.8%	42.0%
	Total Students in AEDY	149	151	67	81

Table 4 shows Erie City, Lancaster, Northeastern York, Pennsbury, Woodland Hills, and Wyoming Valley West school districts, which were not highlighted in our complaint. In the new data each had over 40 students in AEDY and very high disparities based on special education.

Table 4: New Districts with High Disparities for Students with Disabilities

School District		2011-2012	2012-2013	2013-2014
Erie City SD	% of student w/ IEP			
	Districtwide	17.7%	18.2%	17.1%
	AEDY	48.0%	47.2%	91.4% ⁴
	Total Students in AEDY	100	72	70
Lancaster SD	% of student w/ IEP			
	Districtwide	18.1%	18.3%	18.5%
	AEDY	58.8%	62.8%	70.6%
	Total Students in AEDY	187	172	136
Northeastern York SD	% of student w/ IEP			
	Districtwide	15.3%	15.9%	17.1%
	AEDY	31.3%	45.7%	58.5%
	Total Students in AEDY	45	35	41
Pennsbury SD	% of student w/ IEP			
	Districtwide	16.5%	18.2%	18.9%
	AEDY	59.1%	64.2%	73.2%
	Total Students in AEDY	115	81	71

⁴ The IEP data for Erie SD and Woodland Hills SD appear suspect. For Woodland Hills, in 2012-2013 and 2013-2014 indicate the same exact number of students identified as having a disability *prior* to entering AEDY (labeled “Prior Special Ed”), as the number identified *upon entering* AEDY (labeled “Program Special Ed”). The fact that the “Program Special Ed” figure is very high (41.9% of all AEDY students) and identical to the “Prior Special Ed” figure suggests a likely error in the data. The same problems appears in the 2013-2014 data for Erie City SD (32 for both “Prior” and “Program”). Even assuming the accurate number is only half what is reported, the disparities in these districts are still high.

School District		2011-2012	2012-2013	2013-2014
Woodland Hills SD	% of student w/ IEP			
	Districtwide	19.9%	20.1%	20.9%
	AEDY	43.9%	83.8%	83.1%
	Total Students in AEDY	173	148	142
Wyoming Valley West SD	% of student w/ IEP			
	Districtwide	18.9%	18.2%	19.7%
	AEDY	47.0%	45.1%	58.7%
	Total Students in AEDY	66	51	46

Finally, as documented in our complaint, Intermediate Units that provide AEDY to multiple districts have continued to report highly disparate rates for students with disabilities. Many of these programs have also seen steep declines in enrollment. Table 5 includes all the IU data for all students receiving special education.

Table 5: All Intermediate Unit AEDY Programs by Students with Disabilities

Intermediate Unit		2011-2012	2012-2013	2013-2014
Allegheny IU 3	Percent IEP	55.38%	36.71%	39.19%
	Total Students	325	286	222
Appalachia IU 8	Percent IEP	0%	0	0
	Total Students	10	0	0
ARIN IU 28	Percent IEP	34.21%	57.14%	31.58%
	Total Students	76	42	57
Berks County IU 14 ⁵	Percent IEP	48.87%	30.28%	58.62%
	Total Students	133	317	29
BLaST IU 17	Percent IEP	43.90%	51.28%	64.52%
	Total Students	41	39	31
Carbon Lehigh IU 21	Percent IEP	119.13%	119.23%	75.86%
	Total Students	115	130	29
Chester County IU 24	Percent IEP	72.27%	73.44%	74.00%
	Total Students	119	64	50
Colonial IU 20	Percent IEP	81.21%	80.45%	50.00%
	Total Students	495	440	170
Delaware County IU 25	Percent IEP	91.18%	92.41%	87.88%
	Total Students	102	79	33
Lancaster Lebanon IU 13	Percent IEP	0%	0%	54.87%
	Total Students	81	35	113

⁵ It appears that the rise and drop in the number of students at the Berks IU reflects a reverse drop then rise in the Reading Area SD's own AEDY program (see raw data), which is located in the Berks IU.

Intermediate Unit		2011-2012	2012-2013	2013-2014
Lincoln IU 12	Percent IEP	70.75%	94.21%	54.87%
	Total Students	147	121	113
Luzerne IU 18	Percent IEP	46.40%	50.00%	36.73%
	Total Students	250	210	49
Midwestern IU 4	Percent IEP	50.00%	33.33%	54.29%
	Total Students	52	48	70
Montgomery County IU 23	Percent IEP	95.35%	0%	0%
	Total Students	43	0	0
Seneca Highlands IU 9	Percent IEP	72.22%	0%	0%
	Total Students	18	0	0
Total for all IUs	Percent IEP	65.12%	61.24%	49.81%
	Total Students	2007	1811	1050

Disparities for African American Students in Individual LEAs

Similar trends are found when analyzing the 2012-2013 and 2013-2014 data based on disparities for African American students. In 2013-2014, the statewide percentage of black students in all Pennsylvania school districts was 15.1%. The percentage of black students enrolled in AEDY during that school year was 33.9%. In **35 school districts**, the share of AEDY students who were African American exceeded the districtwide share by 25 percentage points. This figure is up from 28 districts in 2010-2011. Eight of these districts placed 40 or more students in AEDY, down from twelve school districts in 2010-2011. Five of the eight districts in Table 6 met these criteria in both 2010-2011 and 2013-2014: Erie City, McKeesport Area, Norristown Area, Penn Hills, and Pittsburgh.

Table 6: High Disparities and High Numbers of African American Students in AEDY

School District		2011-2012	2012-2013	2013-2014
Erie City	% Black students Districtwide	32.7%	32.8%	33.7%
	AEDY	62.0%	69.4%	62.9%
	Total Students in AEDY	100	72	70
McKeesport Area	% Black students Districtwide	42.6%	42.2%	42.3%
	AEDY	75.7%	73.1%	71.9%
	Total Students in AEDY	70	52	64
Norristown Area	% Black students Districtwide	42.2%	40.9%	39.5%
	AEDY	72.2%	73.5%	71.1%
	Total Students in AEDY	90	98	90
Penn Hills	% Black students Districtwide	58.7%	59.9%	59.6%
	AEDY	70.7%	83.1%	92.8%
	Total Students in AEDY	75	77	83
Philadelphia City	% Black students Districtwide	56.3%	55.0%	53.4%
	AEDY	84.9%	82.0%	80.3%
	Total Students in AEDY	1203	790	656
Pittsburgh	% Black students Districtwide	55.6%	54.9%	54.2%
	AEDY	85.0%	82.7%	82.9%
	Total Students in AEDY	512	514	462
Pocono Mountain	% Black students Districtwide	24.4%	24.1%	25.1%
	AEDY	25.5%	49.2%	50.7%
	Total Students in AEDY	102	65	67
Woodland Hills	% Black students Districtwide	64.4%	65.3%	65.0%
	AEDY	86.7%	92.6%	90.8%
	Total Students in AEDY	173	148	142

While not reflected in the table, twelve additional districts report a proportion of Black students enrolled in AEDY in 2013-2014 that exceeded the proportion of Black students enrolled in the district by 20 to 25 percentage points (down from 17 districts in 2010-2011). Those districts were Central York, East Stroudsburg, Area, Easton Area, Elk Lake, Gateway, Harrisburg City, Midland Borough, Pottsgrove, Pottstown South Park, Williamsport Area, and Wissahickon.

Intersection of Race and IEP Status in AEDY Placement

In 2013-2014, 10 school districts had disparities of 20 percentage points or higher in AEDY placement for both Black students *and* students with disabilities, down from 24 in 2010-2011. Of those 10 districts, five placed 40 or more students in AEDY (down from 13 in 2010-2011). Two of the five districts (Norristown Area and Woodland Hills) met the criteria in both 2010-2011 and 2013-2014.

Table 7: Districts with the Highest Combined Disparities

School District		2011-2012	2012-2013	2013-2014
Central York	% Black students			
	Districtwide ⁶	8.2%	8.4%	8.6%
	AEDY	32.6%	36.4%	31.3%
	Disparity	24.3%	28.0%	22.5%
	% IEP Students			
	Districtwide ⁷	9.7%	10.2%	10.1%
	AEDY	48.8%	27.3%	46.7%
Disparity	39.1%	17.1%	36.5%	
	Total Students in AEDY	43	44	45
Erie City	% Black students			
	Districtwide	32.7%	32.8%	33.7%
	AEDY	62.0%	69.4%	62.9%
	Disparity	29.3%	36.6%	29.2%
	% IEP Students			
	Districtwide	17.7%	18.3%	16.4%
	AEDY	48.0%	47.2%	91.4% ⁸
Disparity	30.3%	28.9%	75.0%	
	Total Students in AEDY	100	72	70

⁶ PDE, Enrollment Reports. Figures reached by dividing the total number of Black students enrolled in each district by the total enrollment in each district.

⁷ 2011-2012 Districtwide IEP data retrieved from PDE, Special Education Data Report. 2012-2013 and 2013-2014 Districtwide IEP data retrieved from Pennsylvania Department of Education, Pennsylvania School Performance Profile Data Files, <http://paschoolperformance.org/Downloads>.

⁸ See comment above about potential errors in the Erie and Woodland Hills data.

School District		2011-2012	2012-2013	2013-2014
Norristown Area	% Black students			
	Districtwide	42.2%	40.9%	39.5%
	AEDY	72.2%	73.5%	71.1%
	Disparity	30.0%	32.6%	31.6%
	% IEP Students			
	Districtwide	15.1%	17.0%	15.8%
	AEDY	90.0%	52.0%	51.1%
	Disparity	74.9%	35.0%	35.4%
	Total Students in AEDY	90	98	90
Pocono Mountain	% Black students			
	Districtwide	24.4%	24.1%	25.1%
	AEDY	25.5%	49.2%	50.7%
	Disparity	1.1%	25.1%	25.7%
	% IEP Students			
	Districtwide	18.8%	20.6%	19.6%
	AEDY	34.3%	27.7%	40.3%
	Disparity	15.5%	7.1%	20.7%
	Total Students in AEDY	102	65	67
Woodland Hills	% Black students			
	Districtwide	64.4%	65.3%	65.0%
	AEDY	86.7%	92.6%	90.8%
	Disparity	22.3%	27.2%	25.8%
	% IEP Students			
	Districtwide	19.9%	20.4%	18.5%
	AEDY	43.9%	83.8%	83.1%
	Disparity	24.0%	63.3%	64.6%
	Total Students in AEDY	173	148	142

Declining AEDY Enrollment in Individual LEAs and IUs

Mirroring overall state data, a number of districts and IUs have undergone conspicuous declines in the overall numbers of students in AEDY. Below in Table 8 are all the LEAs or IUs that had over 40 students in AEDY in 2011-2012 and experienced at least a 45% drop in enrollment in only two years. A number of these school districts have also experienced historical or current disparities regarding race and disability. Again, these declines raise questions about whether these districts are using other alternative discipline placements (i.e. Non-AEDY alternative placements) and if those new programs are similarly discriminatory. We also wish to explore what the other exclusionary discipline numbers (i.e. suspensions and expulsions) look like in these districts. Of course, if the decline in AEDY enrollment is attributable to using new, positive, prevention techniques, this information would also be helpful to know.

Table 8: LEAs or IUs with Steep Declines in AEDY Enrollment

	2011-2012	2012-2013	2013-2014	percent decline
Lancaster Lebanon IU 13	81	35	0	100%
Souderton Area SD	57	0	0	100%
Wilkinsburg Borough SD	49	5	0	100%
Montgomery County IU 23	43	0	0	100%
A W Beattie AVTS	40	0	0	100%
Hempfield Area SD	67	62	0	99%
Coatesville Area SD	121	87	4	97%
Colonial SD	51	42	2	96%
Muncy SD	41	2	3	93%
Freedom Area SD	77	67	7	91%
West York Area SD	111	50	14	87%
New Kensington Arnold SD	66	50	9	86%
Manheim Township SD	56	47	9	84%
West Chester Area SD	45	23	9	80%
South Western SD	49	39	10	80%
Berks County IU 14	133	317	29	78%
Perseus House CS of Excellence	53	10	12	77%
Cumberland Valley SD	53	21	13	75%
North Penn SD	130	114	32	75%
Carbon Lehigh IU 21	115	130	29	75%
Armstrong SD	101	37	26	74%
Upper Merion Area SD	46	10	12	74%
Steelton Highspire SD	42	22	13	69%
Delaware County IU 25	102	79	33	68%
Colonial IU 20	495	440	170	66%
Central Dauphin SD	101	46	35	65%
East Stroudsburg Area SD	49	40	17	65%
Neshaminy SD	55	33	20	64%
Farrell Area SD	79	44	30	62%
Keystone Central SD	42	13	16	62%
Wallenpaupack Area SD	85	55	33	61%
Chester County IU 24	119	64	50	58%
Upper Darby SD	125	116	53	58%
Eastern York SD	43	26	21	51%
Cheltenham Township SD	65	46	33	49%
Dover Area SD	57	44	29	49%
Millcreek Township SD	94	59	48	49%
York City SD	151	67	81	46%
Philadelphia City SD	1203	790	656	45%

Next Steps

We note, as we did in our complaint, that despite the statutory requirement in 24 P.S. § 19-1903-C(2), PDE has not produced a state wide annual report on AEDY since the 2006-2007 school year. There may be a wealth of additional data and documents to review from the individual annual reports required of each individual AEDY program. As we understand, this data is collected by PDE each year, yet it is unknown whether the reports are ever reviewed.

In addition, deeper analysis and investigation into gender disparities and the intersection of race, disability, and gender is needed. We know anecdotally that disparate racial impact is experienced by both black boys and black girls. However PDE does not require reporting of the placement of students disaggregated by race and gender. Additional exclusionary discipline data should be monitored to ensure that changes in AEDY or other alternative placements are not the result of a “whack-a-mole” phenomenon, with reductions in alternative education merely reflecting the use of other exclusionary discipline practices, such as expulsions, school-based arrests, or suspensions.

We welcome the opportunity to discuss these and other potential remedies with you. We look forward to providing any assistance and continuing to be a resource as DOJ concludes its investigation and issues findings.

Please forward any questions or requests for additional clarification to any member of our team. Thank you again for your attention to these important issues.