

Texas' School-to-Prison Pipeline

School Expulsion

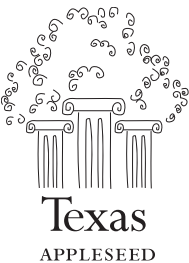
The Path from Lockout to Dropout



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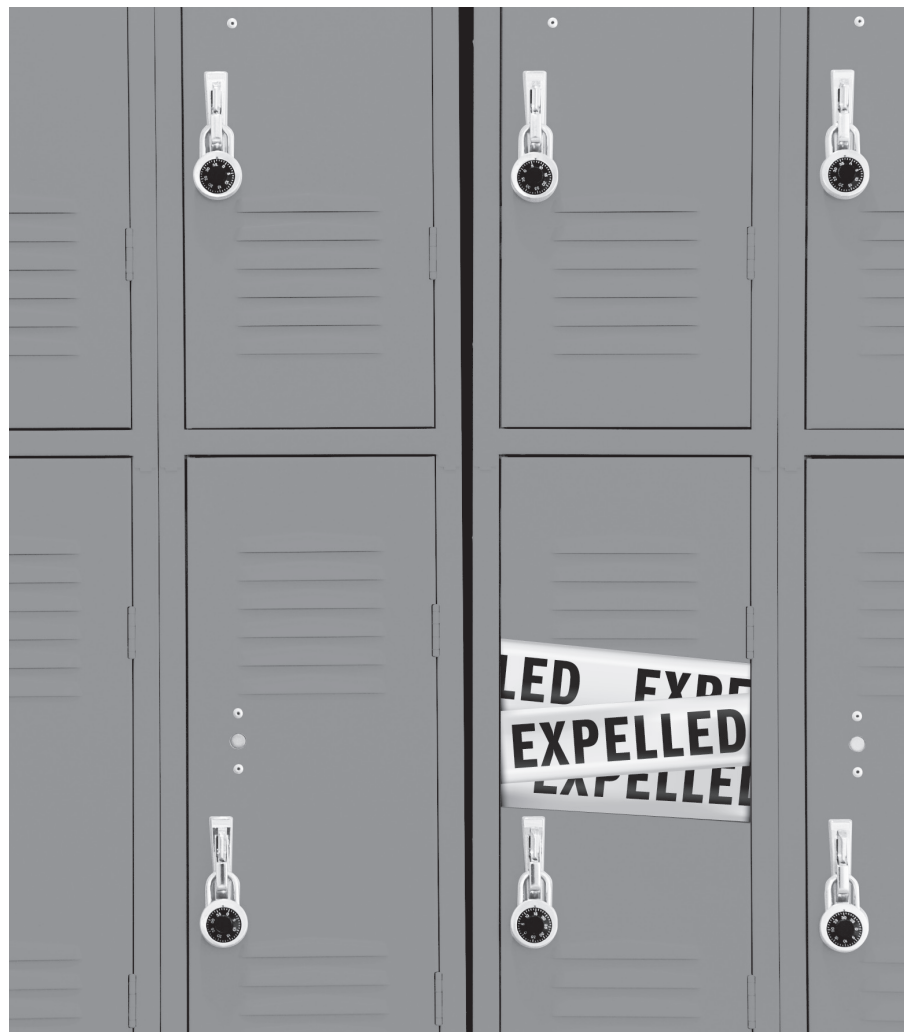
School Expulsion

The Path from Lockout to Dropout



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Texas Appleseed Mission

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to find practical solutions to broad-based problems. *Texas' School-to-Prison Pipeline: School Expulsion—The Path from Lockout to Dropout*, is the second in a series of reports examining the intersection of school discipline and gateways to the juvenile justice system. Texas Appleseed's first School-to-Prison Pipeline report (published in 2007) documented the overrepresentation of minorities and special education students in discretionary school suspensions and referrals to Disciplinary Alternative Education Programs (DAEPs). This report documents the same pattern in student expulsions from school. The number of expelled students is much smaller, however the consequences of expulsion are much more serious. Not only are expelled students locked out of their home school, they often find themselves enmeshed in the juvenile justice system even when they've committed no crime. In addition, this latest research examines how low-level student misbehavior in a DAEP can result in a student's being expelled from the school system to an even more restrictive educational setting operated by the juvenile justice system. Included in this report are policy recommendations to reverse these disturbing trends.

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Visit the Texas Appleseed website at www.texasappleseed.net to review this report along with the following data tables used to create this analysis:

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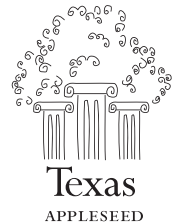
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Texas’ School-to-Prison Pipeline: School Expulsion

The Path from Lockout to Dropout

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EXECUTIVE SUMMARY

Expelling students from school is the most serious disciplinary option available to school districts—and when removal from school coincides with court involvement, the impact on young lives can be far-reaching. Student expulsion for criminal or serious misconduct that threatens school safety is an option that must be available to school administrators—however, discretionary expulsion of students for non-violent, non-criminal misbehavior is deserving of careful review at the local school district and state policymaking levels. Because discretionary expulsion results in many students coming into contact with the justice system when they have not broken any laws, it is important to examine ways to modify disciplinary policy and approaches to effectively address behavior problems earlier so that students can successfully remain on their home campus.

This report, *Texas' School-to-Prison Pipeline: School Expulsion—The Path from Lockout to Dropout*, is the second in Texas Appleseed's multi-year study of Texas' "school-to-prison pipeline," a phenomenon documented in numerous national research publications. The "pipeline" refers to a disturbing pattern of school disciplinary problems escalating from suspension to removal from school, juvenile justice system involvement, and school dropout. Numerous studies by national experts in the fields of education, criminal justice, and mental health have established a link between school discipline, school dropout rates and incarceration. This link holds true in Texas. *More than 80 percent of Texas adult prison inmates are school dropouts.*

Texas educates about nine percent of all school-aged children in the U.S., but is responsible for approximately 12 percent of the students expelled from the nation's public schools.

– 2006 Civil Rights Data Collection
U.S. Department of Education,
Office of Civil Rights

A study published by Texas A&M University’s Public Policy Research Institute in 2005 concluded that, among the “risk factors” associated with future involvement in the juvenile justice system, *the single most important predictor is a history of disciplinary referrals at school.*

The First Phase of the Pipeline

Texas Appleseed began working in 2006 with pro bono attorneys and a team of interdisciplinary experts to document the impact of the school-to-prison pipeline in Texas. Working with the Population Research Center at The University of Texas, Texas Appleseed examined the disciplinary data self-reported by school districts to the Texas Education Agency. In 2005-06 alone, Texas school districts sent about 100,000 students to Disciplinary Alternative Education Programs (DAEPs), 613,549 students to Out-of-School Suspension (OSS), and 1.7 million to In-School Suspension (ISS). A large majority of these disciplinary referrals are *not mandated by law*, but authorized at the discretion of school districts. Texas Appleseed’s data analysis—coupled with extensive field interviews with superintendents, school board members, principals, teachers, counselors and focus groups with parents and students—documented a number of disturbing trends resulting from the link between discretionary application of “zero tolerance” school disciplinary policies and referrals to ISS, OSS and DAEPs. In 2007, Texas Appleseed published its findings in a groundbreaking report, *Texas’ School-to-Prison Pipeline: Dropout to Incarceration*. Specifically, the research showed that:

- Where a child attends school—and not the nature of the offense—is the greater predictor of the likelihood of a student’s receiving a discretionary ISS, OSS or DAEP referral.
- African American students—and to a lesser extent Hispanic students—are significantly overrepresented in schools’ discretionary referrals to ISS, OSS or DAEPs compared to their overall percentage in the student population. For one or more years between 2001 and 2006, 211 school districts disproportionately referred African American students to DAEPs and 40 districts overrepresented Hispanic students in DAEP referrals.
- Special education students are significantly overrepresented in discretionary disciplinary referrals to ISS and OSS—with almost a third of Texas school districts (412) referring them to DAEPs at rates exceeding their representation in the student population for one or more years between 2001 and 2006.

Unfortunately, these trends hold true for the next segment of the school-to-prison pipeline: expulsion of students.

Where School Discipline Intersects the Justice System

Students can be expelled from Texas public schools for a range of offenses, from serious criminal behavior where school expulsion is *mandatory*, to more minor Student Code of Conduct violations committed while in the school district’s Disciplinary Alternative Education Program (DAEP). The majority of students are expelled at the *discretion* of school districts—either to Juvenile Justice Alternative Education Programs, “to the street,” or in a small minority of cases, to a DAEP.

Compared to the nearly 100,000 Texas students sent to DAEPs in a year, a much smaller number of students move into the “expulsion” segment of the school-to-prison pipeline. In 2008-09, for example, 8,202 students were expelled statewide—and within that number, 5,806 students were expelled at the discretion of school districts, with the remaining third expelled for mandatory reasons. However, the ramifications of expulsion are much more serious than those associated with suspension or even referral to a DAEP.

For some students, expulsion leads to school dropout. For others, expulsion to a Juvenile Justice Alternative Education Program (JJAEP) is their introduction to the juvenile justice system. While local school districts operate DAEPs, the JJAEPs are operated by juvenile boards and overseen by the Texas Juvenile Probation Commission.

Of particular concern is the triggering behavior cited in an overwhelming number of all expulsions statewide. That trigger is students engaging in “serious or persistent misbehavior” while in a DAEP. “Serious or persistent misbehavior” is not defined in the Texas Education Code, and instead is left to local school districts’ interpretation. “Serious or persistent misbehavior” is not an expellable offense in any other educational setting—nor is it a “crime.” Still, in some Texas counties, “serious or persistent misbehavior” in a DAEP is being prosecuted as a CINS offense (Conduct in Need of Supervision). Such prosecution brings juveniles under court or probation oversight even though they have not broken the law—and is the most obvious example of the criminalization of low-level student behavior problems.

This report focuses on expulsion of students from Texas public schools, the disproportionate impact on minority and special education students, and what can be done at the local and state levels to prevent more students from reaching this critical juncture in the school-to-prison pipeline. Our findings underscore the importance of Texas school districts utilizing more effective, evidence-based strategies to improve student behavior, reduce school dropouts, and help stem the growth of Texas’ prison system—the largest in the nation. Our research also confirms the need for state lawmakers, the Texas Education Agency, and local school districts to adopt many of the same reforms identified in Texas Appleseed’s initial School-to-Prison Pipeline report (2007)—along with additional measures to ensure that problem behaviors are addressed early and that the need for student expulsion is eliminated in all but the most serious cases.

Major Findings: Expulsion of Students from Texas Public Schools

After a 12-year escalation in the numbers of students expelled from Texas public schools, the numbers began to decline in 2007. The most recent national data shows that Texas educates about nine percent of all school-aged children in the U.S., but is responsible for about 12 percent of the students expelled from the nation’s public schools. Chapter 37 of the Texas Education Code outlines both *mandatory expulsion offenses* and those infractions for which school districts have *discretionary* authority to expel students. ***In 2008-09, discretionary expulsions outnumbered mandatory expulsions by two-to-one.***

The following is a summary of major findings based on both quantitative and qualitative data collected in 2009:

- ❖ **Where a child attends school and not the nature of the offense is the greater determining factor in whether a student is expelled for discretionary reasons.**
 - ♦ A review of the data found that *the number of student expulsions does not correlate with the size of the district*. Some smaller districts (Aldine, North East, Waco, Klein, Brownsville and Killeen ISDs) top the list of Texas’ highest expelling school districts, while some of the largest districts (Austin ISD) strictly limit the capacity of JJAEP programs and, correspondingly, the numbers of students it will discretionarily expel. In any given year, many Texas school districts do not expel any students.
 - ♦ Differences in the capacity and the per student cost (ranging from about \$70 to more than \$200 per day) to school districts to expel students to a JJAEP may contribute to varying rates of discretionary expulsions and average length of stay in a JJAEP among school districts statewide.

- ❖ **African American students—and in some districts Hispanic students—are significantly overrepresented in discretionary expulsions from a DAEP for “serious or persistent misbehavior” or more minor, non-criminal Student Code of Conduct violations.**
 - ♦ African American students are overrepresented in all categories of discretionary expulsions—but *the greatest disparity (more than double their representation in the total student population) exists in their expulsions for discretionary, non-violent offenses that tend to be more subjective in nature*, such as “serious or persistent misbehavior” in a DAEP.
 - ♦ African American students in several districts are anywhere from two to 54 times more likely than a student of another race or ethnicity to be expelled from a DAEP for “serious or persistent misbehavior.”
 - ♦ Nearly half of Texas’ student population is Hispanic, and more Hispanic students are expelled than any other racial or ethnic group.

- ❖ **Special education students are overrepresented in all categories of expulsions, reflecting systemic problems with school districts’ assessment, programming and accountability for implementation of special education students’ Individualized Education Plans (IEPs) and Behavioral Improvement Plans (BIPs). These problems are particularly acute in DAEPs.**
 - ♦ Special education students made up only 10 percent of the student body statewide in 2008-09, but *accounted for 21 percent of all expulsions in Texas*.
 - ♦ Research shows that the consequences of expulsion are more significant for special education students: removing them from their regular classroom can increase negative behaviors and interrupt academic gains.

- ♦ African American special education students are over three times more likely to be expelled than other students, and Hispanic special education students are two-and-a-half times more likely to be expelled.

❖ **In Texas, the majority of students are expelled at the discretion of school districts, and not for offenses so serious as to mandate their expulsion from school.**

- ♦ During 2008-09, *discretionary expulsions* made up 71 percent of all expulsions statewide, and 62 percent of all expulsions to a Juvenile Justice Alternative Education Program (JJAEP).
- ♦ During the same school year, expulsions for *“serious or persistent misbehavior” while in a Disciplinary Alternative Education Program (DAEP)* made up 50 percent of all discretionary expulsions, and more than 34 percent of all expulsions statewide. This behavior would not be an expellable offense in any other educational setting.
- ♦ Students in districts with a JJAEP are far more likely to be expelled from a DAEP for “serious or persistent misbehavior” than students in districts without a JJAEP. During 2008-09, “serious or persistent” expulsions accounted for 22 percent of discretionary expulsions “to the street,” but triggered 55 percent of discretionary expulsions to a JJAEP.
- ♦ *Surveyed JJAEP administrators recommended eliminating discretionary student expulsions to JJAEPs—particularly for “serious or persistent misbehavior”—* citing the difficulty of addressing the needs of these students alongside those who have been expelled for committing serious criminal offenses. Data shows that JJAEPs are less successful with students expelled for “serious or persistent misbehavior,” suggesting expelling these students may make their behavior worse.

❖ **Prosecution of “serious or persistent misbehavior” in a Disciplinary Alternative Education Program (DAEP) as a CINS offense (Conduct in Need of Supervision) is not consistent across counties—yet such prosecution uniformly brings young people into the juvenile justice system for non-criminal behavior.**

- ♦ Of the 27 counties that are required to have a JJAEP, 20 appear to prosecute “serious or persistent misbehavior” in a DAEP as a CINS offense.
- ♦ In 2007, close to 1,800 youth were prosecuted for the CINS offense of being expelled from a DAEP for “serious or persistent misbehavior.” While this represents a fraction of the youth that local juvenile probation departments supervise, this type of CINS prosecution is an obvious and easily avoided example of the criminalization of low-level student misbehavior.
- ♦ The lack of a statutory definition for “serious or persistent misbehavior” means that youth are being charged with an offense that does not have a recognized meaning within the Family Code.

❖ **Programmatic failures in Disciplinary Alternative Education Programs (DAEPs)—and the state’s failure to require the Texas Education Agency (TEA) to monitor and enforce meaningful standards—likely contribute to the large number of students expelled from DAEPs for “serious or persistent misbehavior.”**

- ◆ Responding to concerns about the quality of DAEP curriculum and accountability, the Texas Legislature mandated the TEA in 2007 to adopt the first standards for DAEPs—but did not require the agency to monitor or enforce them.
- ◆ Though DAEPs are required to include programming meant to address students’ behavioral issues, some DAEPs only address behavior through dress code requirements and other rules, while others require students to attend drug and alcohol counseling (even when those behaviors are not the reason for their referral to the DAEP). DAEPs have *twice the dropout rate* of mainstream schools—and in 2008-09 alone, the *recidivism rate approached 30 percent*.

❖ **Many JJAEP programs use models that are not considered “best practices,” though the Texas Juvenile Probation Commission makes information regarding effective JJAEP program models widely available.**

- ◆ Although the “therapeutic” JJAEP model has proven most effective in improving both academics and behavior of students expelled to these facilities, only 15 percent of JJAEPs employ this model.
- ◆ The majority of JJAEPs in Texas model their programming after traditional schools or “boot camps”—though research shows these models are not as successful as the “therapeutic” approach in achieving more lasting academic and behavioral gains.

❖ **Despite repeated studies identifying the need for more school-based mental health and counseling services, Texas has failed to meaningfully address this issue.**

- ◆ In 2008, only 18 percent of Texas children eligible to receive public mental health services actually received them.
- ◆ According to a Texas Education Agency study, only about a fourth of Texas public schools employ a licensed mental health professional. TEA reported that most schools rely on school counselors to identify and address students’ mental health and substance abuse problems, yet the majority of counselors’ work time is spent on other tasks.
- ◆ In Texas, 33 percent of youth referred to juvenile probation have a diagnosed mental illness, and 60 percent of young people incarcerated in the Texas Youth Commission need mental health treatment.
- ◆ Nationally, 50 percent of students with a mental illness age 14 and older drop out of high school—and 73 percent of those who drop out are arrested within five years.

Major Policy Recommendations

Based on its analysis of statewide expulsion data and interviews and surveys in school districts across the state, Texas Appleseed has developed the following policy recommendations. Many of these recommendations reflect those of our first report.

At the state level:

- **Encourage school districts to develop school-wide Positive Behavioral Support (PBS) programs.** School-wide PBS is an evidence-based program that has been proven to reduce disciplinary referrals and improve academics.
- **Amend the Texas Education Code so that school districts do not have the discretion to expel a student for “serious or persistent misbehavior” in a DAEP.** Juvenile Justice Alternative Education Programs (JJAEPs) were created to serve students who committed criminal offenses at school—and are not an appropriate setting for students with low-level behavioral problems.
- **Amend the Texas Family Code to eliminate “serious or persistent misbehavior” while in a DAEP as a CINS (Conduct in Need of Supervision) offense.** This CINS offense is the most obvious example of the criminalization of low-level student misbehavior.
- **Provide state oversight of DAEPs.** Because the majority of all discretionary expulsions to JJAEPs or “to the street” are for students’ “serious and persistent misbehavior” in a DAEP, it becomes all the more critical that the Texas Education Code be amended to mandate that the Texas Education Agency (TEA) monitor and enforce *meaningful* standards for DAEPs. Otherwise, the DAEP standards—which the TEA was required to adopt after the 2009 legislative session—will only amount to mere “suggestions” or “guidelines.”
- **Require TEA to notify districts when they disproportionately discipline minority and special education students—in suspensions, in referrals to DAEPs, and in expulsions.** TEA collects a great deal of data from school districts—and Texas does a far better job than many states of collecting data related to disciplinary incidents. Unfortunately, TEA does not share this data with school districts so they can take action to reduce a disproportionately large number of disciplinary referrals of minority and special education students.
- **Require districts with disproportionate disciplinary referrals of minority and special education students to develop a plan to address overrepresentation.** This plan should include implementation of school-wide positive behavioral supports.
- **Provide technical assistance to schools looking to expand school-based mental health services, and increase funding for services if needed.** School-based mental health services are critical to resolving behavior problems early and ensuring academic success for many students.
- **Create a discretionary grant program for DAEPs interested in developing evidence-based behavioral programming.** School districts state that they were given an “unfunded mandate” when they were required to create DAEP programs in

1995. Putting money into the creation of quality programs will reduce costs to districts and communities in the long-term by addressing serious behavioral problems early.

- **Create a discretionary grant program for JJAEPs interested in developing evidence-based programming.** While therapeutic JJAEP programs have been proven most effective at addressing students’ behavioral and academic needs, they are the most expensive programs to run. Creating a discretionary grant program would allow districts to modify existing JJAEP programs and recognize longer-term savings by reducing the number of students who re-offend. This will not only reduce the number of students who cycle back through the JJAEP, but could also keep many students from reaching the next tier of the juvenile justice system.

At the local and school district level:

- **Implement a school-wide positive behavior support (PBS) model in mainstream schools, to reduce the number of students with disciplinary referrals.** Putting school-wide PBS programs into place is proven to reduce disciplinary referrals by reducing school disruption. Preventing problems before they occur will help keep costs low by allowing districts to downsize disciplinary programs. School districts should prioritize implementing PBS on campuses with the highest disciplinary referral rates and those with the greatest overrepresentation of minority or special education students in discretionary disciplinary referrals.
- **Create a school-based mental health program.** Ensure that the services of a mental health professional are available on public school campuses, that school counselors are available to address students’ mental health needs, and develop ties with local mental health service providers willing to prioritize schools’ referrals of students with mental health needs.
- **Require teacher training in evidence-based classroom management techniques,** which are essential to reducing the numbers of disciplinary referrals, including expulsions.
- **Opt out of expelling students for “serious or persistent misbehavior” while in a DAEP.** Expelling students for low-level Code of Conduct violations is not only detrimental to students, but it also fails to make schools safer. “Peer contagion” can result when students with lower-level behavioral problems are housed in JJAEPs with students expelled for serious criminal offenses. As a result, research shows, behavior can worsen for students originally expelled for more minor behaviors.
- **Incorporate goals based on disciplinary referral data, including data relating to discretionary referral of minority and special education students, into annual campus master plans.** School districts and individual school campuses should be proactive in addressing issues of overrepresentation of minority and special education students in discretionary disciplinary referrals, including expulsions.

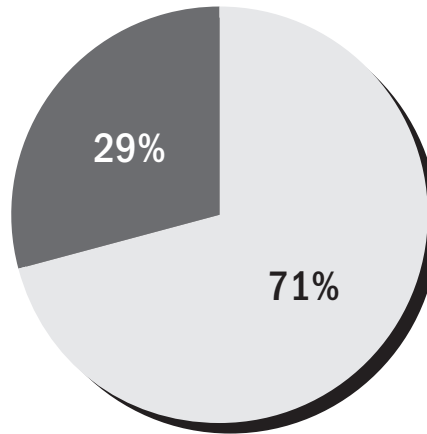
- **Implement evidence-based programs for DAEPs and JJAEPs.** Prioritizing evidence-based programming will benefit all students in the long run, by ensuring behavioral needs are addressed so that students are successful upon return to their home campus.
- **Limit JJAEP capacity.** JJAEP capacity does not always correlate to district size or demographics. In fact, some large districts have opted to restrict JJAEP capacity. This ensures that expulsion numbers remain low, and that only those students who most need a more restrictive educational setting are referred to a JJAEP.
- **Ensure good transition planning when students return to their home campus from a JJAEP.** While most JJAEPs report having a transition planning process, JJAEPs cannot assure a successful reintegration of a student into the regular classroom without a strong partnership and commitment from the home campus.
- **Ensure a continuum of support for students who return to their home campus after being expelled.** Some students begin receiving the services they need only *after being expelled* to a JJAEP. Ensuring that a previously expelled student progresses academically and avoids future behavior problems at the home campus depends on the school's maintaining a continuum of support and services for these students.

Texas Appleseed is deeply grateful to its pro bono partners, **Vinson & Elkins, LLP** (Houston) with assistance from **Gibson Dunn & Crutcher LLP** (Dallas), and to these foundations for making this work possible: **Houston Endowment; The Meadows Foundation; Harold Simmons Foundation; Rockwell Fund, Inc.;** and **The Charles Stewart Mott Foundation.**

The following charts illustrate some of the key findings in *Texas School-to-Prison Pipeline: School Expulsion, The Path from Lockout to Dropout*.

Discretionary v. Mandatory Expulsions from Texas Schools

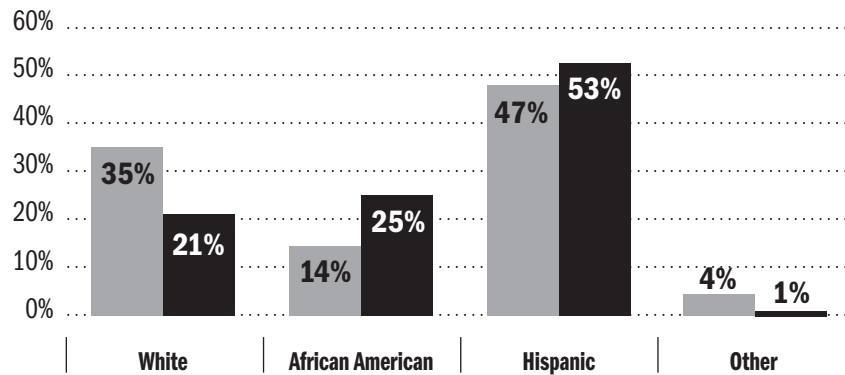
2008 – 2009



■ Discretionary ■ Mandatory

Race/Ethnicity of Texas Public School Students v. Race/Ethnicity of Students Expelled

2008 – 2009



■ Texas Public School Students ■ Expulsions

20 Texas School Districts Expelling the Most Students, 2007-08*

School District (enrollment)	Total Number of Expulsions	Expulsion Rate	Mandatory Expulsions	Discretionary Expulsions
Aldine ISD (66,168)	762	12 for every 1,000 students	41	721
Dallas ISD (171,629)	408	2 for every 1,000 students	254	154
Fort Worth ISD (86,656)	356	4 for every 1,000 students	51	305
North East ISD (67,756)	291	4 for every 1,000 students	50	241
Houston ISD (215,713)	260	1 for every 1,000 students	72	188
Northside ISD (93,697)	207	2 for every 1,000 students	56	151
Waco ISD (16,507)	210	13 for every 1,000 students	6	204
Klein ISD (46,203)	195	4 for every 1,000 students	19	176
Brownsville ISD (51,833)	167	3 for every 1,000 students	109	58
Killeen ISD (43,660)	165	4 for every 1,000 students	11	154
United ISD (41,207)	162	4 for every 1,000 students	62	100
Conroe ISD (49,746)	154	3 for every 1,000 students	74	80
Midland ISD (22,589)	150	6 for every 1,000 students	7	143
Lewisville ISD (52,080)	140	3 for every 1,000 students	10	130
Spring ISD (37,047)	133	4 for every 1,000 students	13	120
Cypress-Fairbanks ISD (103,017)	135	1 for every 1,000 students	56	79
Arlington ISD (69,042)	122	2 for every 1,000 students	40	82
Ector ISD (28,456)	115	4 for every 1,000 students	35	80
Laredo ISD (27,189)	112	4 for every 1,000 students	40	72
Fort Bend ISD (71,987)	116	2 for every 1,000 students	62	54

*Based on data obtained by Texas Appleseed through open records requests to TEA. See also TEX. EDUC. AGENCY, *supra* note 7.

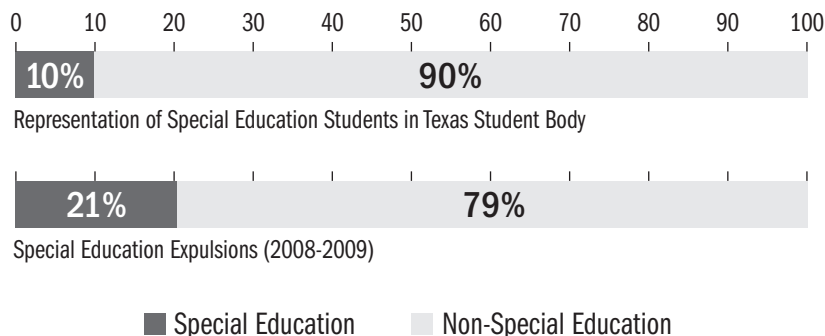
**15 Texas School Districts with Highest Number of
“Serious or Persistent Misbehavior” Expulsions, 2007-08**

District	Expulsions for “Serious or Persistent Misbehavior”
Waco ISD	187
Killeen ISD	154
North East ISD	88
Dallas ISD	87
United ISD	82
Aldine ISD	74
San Angelo ISD	60
Temple ISD	57
Southwest ISD	52
Conroe ISD	48
Irving ISD	48
Laredo ISD	48
Northside ISD	44
Arlington ISD	40
Victoria ISD	39

**Likelihood of Expulsion of African American Students for
“Serious or Persistent Misbehavior” Compared to Other
Students, 2007-08**

Temple ISD	54 times more likely
Galveston ISD	20 times more likely
Plano ISD	17 times more likely
Round Rock ISD	9 times more likely
Houston ISD	7 times more likely
Dallas ISD	4 times more likely
Klein ISD	4 times more likely
Killeen ISD	3 times more likely
Waco ISD	2 times more likely

**Representation of Special Education Students
in Expulsions from Texas Schools
2008 – 2009**



**Top 20 Texas School Districts Expelling the Largest
Number of Students to JJAEPs, 2007-08***

School District	County	Number of Students Sent to JJAEP
Dallas ISD	Dallas	408
North East ISD	Bexar	290
Houston ISD	Harris	260
Waco ISD	McLennon	210
Klein ISD	Harris	189
Northside ISD	Bexar	173
Killeen ISD	Bell	163
United ISD	Webb	162
Conroe ISD	Montgomery	160
Lewisville	Denton	138
Cypress-Fairbanks ISD	Harris	132
Brownsville ISD	Cameron	122
Arlington ISD	Tarrant	118
Laredo ISD	Webb	111
Fort Bend ISD	Fort Bend	109
Carrollton-Farmers Branch	Dallas	76
Irving ISD	Dallas	76
Lamar CISD	Fort Bend	76
La Joya ISD	Hidalgo	75
Fort Worth ISD	Tarrant	72

* Based on data provided to Texas Appleseed by TEA.

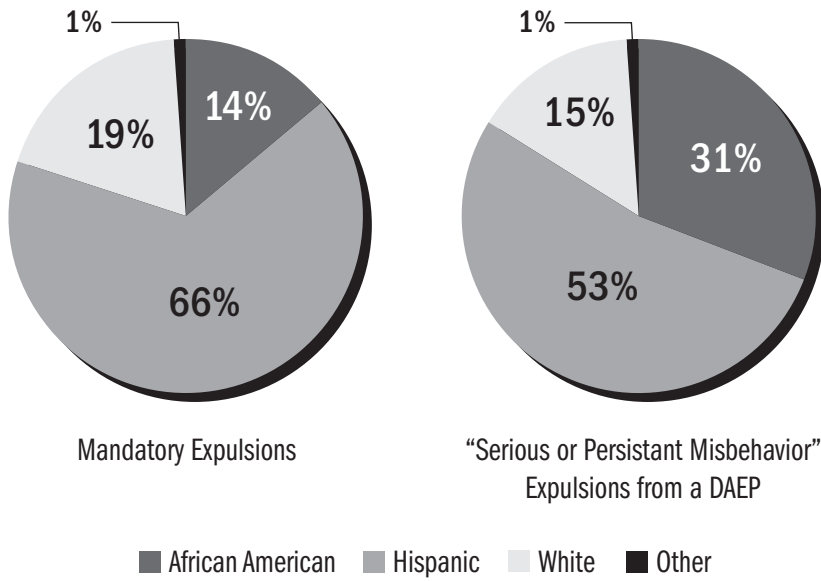
**Likelihood of Expulsion of Special Education Students for
“Serious or Persistent Misbehavior” Compared to
Non-Special Education Students, 2007-08**

Cedar Hill ISD	15 times more likely
Klein ISD	8 times more likely
New Caney ISD	7 times more likely
New Caney ISD	7 times more likely
North East ISD	7 times more likely
Temple ISD	7 times more likely
Abilene ISD	6 times more likely
Harlandale ISD	5 times more likely
Southwest ISD	5 times more likely
Laredo ISD	4 times more likely
Killeen ISD	3 times more likely
Waco ISD	3 times more likely

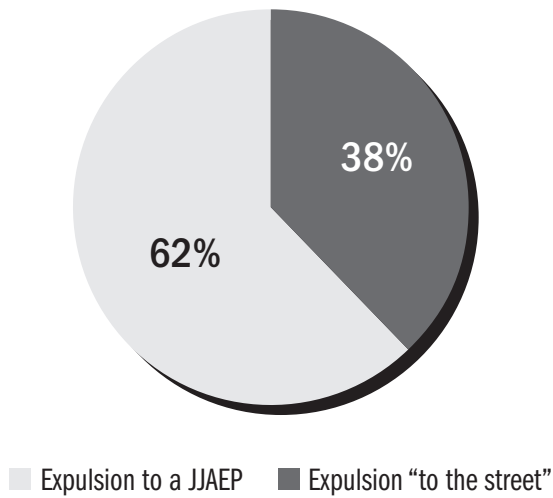
**Districts in which All Students Expelled for
“Serious or Persistent Misbehavior” were
Special Education Students, 2007-08**

District	Number of Students Expelled
Aldine ISD	73
Eagle Pass ISD	35
Ennis ISD	15
Lamesa ISD	18
Paris ISD	26
San Angelo ISD	31
San Felipe-Del Rio CISD	27
Victoria ISD	32

Race/Ethnicity of Student Expulsions in Texas
2007 – 2008



Expulsion to a JJAEP v. Expulsion "to the street"
2008 – 2009



Texas' School-to-Prison Pipeline: School Expulsion

The Path from Lockout to Dropout

INTRODUCTION

In Texas and nationally, school discipline policies result in the expulsion of thousands of students from mainstream schools.¹ Even when the state does not mandate expulsion of a student, it gives school districts the discretion to expel students for a range of offenses outlined in the Texas Education Code.

Yet, much research suggests that rather than making schools safer places, harsher forms of discipline tend to have the opposite effect.² Over-use of disciplinary practices that remove students from their regular classroom or the school has been shown to have a negative impact on academic achievement, and has also been linked to poor school climate and increased probability for dropout.³ Often, these disciplinary practices become a gateway to the juvenile justice system—resulting in a “school-to-prison pipeline.”

This is particularly true of expulsion from school. In Texas, expulsion can bring students into direct contact with the local juvenile system, either through referral to the Juvenile Justice Alternative Education Program (JJAEP) run by local juvenile boards or by simultaneously charging the student with an offense.

The most recent national data shows that while Texas educates about nine percent of all school-aged children in the U.S., the state is responsible for approximately 12 percent of the students expelled from the nation's public schools.⁴ Minority students comprise the majority of students expelled from school nationally and in Texas—with minorities representing almost 63 percent of the nation's expelled students and more than 78 percent

1 See OFFICE FOR CIVIL RIGHTS, DEP'T OF EDUC., 2006 CIVIL RIGHTS DATA COLLECTION PROJECTED VALUES FOR THE NATION, *available at* <http://ocrdata.ed.gov/> (102,000 students expelled from a public school in the United States).

2 TEXAS APPLESEED, TEXAS' SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION 27 (2007), *available at* www.texasappleseed.net.

3 *Id.* at 27-28.

4 OFFICE FOR CIVIL RIGHTS, DEP'T OF EDUC., *supra* note 1; OFFICE FOR CIVIL RIGHTS, DEP'T OF EDUC., 2006 CIVIL RIGHTS DATA COLLECTION PROJECTED VALUES FOR THE STATE OF TEXAS, *available at* <http://ocrdata.ed.gov/>

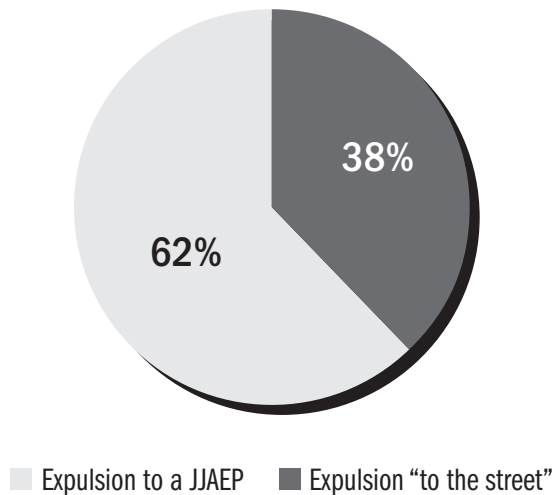
of Texas' student expulsions.⁵ Given the role that school discipline plays in the school to prison pipeline—and the overrepresentation of minority youth in the juvenile system nationwide—these numbers are of grave concern.

Expulsion of Students from Texas Schools

Students can be expelled from Texas public schools for a range of offenses, from serious criminal behavior at or within 300 feet of a school, to more minor Student Code of Conduct violations committed while in the school district's Disciplinary Alternative Education Program.

The majority of expelled students are sent to Juvenile Justice Alternative Education Programs operated by local juvenile boards and overseen by the Texas Juvenile Probation Commission, but many students are expelled “to the street” each year. During the 2008-09 school year, there were 5,103 expulsions to a JJAEP and 3,099 expulsions “to the street.”⁶

Expulsion to a JJAEP v. Expulsion “to the street”
2008 – 2009



5 *Id.* In 2006, minority students comprised about 44 percent of the student population in the nation's schools—compared to 64 percent in Texas schools.

6 TEX. EDUC. AGENCY (TEA), STATE LEVEL ANNUAL DISCIPLINARY SUMMARY, PEIMS DISCIPLINE DATA FOR 2008-2009, available at www.tea.state.tx.us. Data included in this report was compiled from what is publicly available on the TEA website, or from data provided to Texas Appleseed by TEA and the Texas Juvenile Probation Commission (TJPC) in response to open records requests. The data that is publicly available on the TEA website is updated through the 2008-09 school year. However, the data provided to Texas Appleseed was current only through the 2007-08 school year. Wherever the charts in this report refer to the 2008-09 school year, the data used to compile the chart was available online. The charts referring to the 2007-08 school year were compiled from data provided to Texas Appleseed in response to open records requests. See Appendix for more information about the methodology used in analyzing data included in this report.

Expulsion of students from Texas public schools steadily escalated for a 12-year period beginning in 1995—the year that state lawmakers passed “zero tolerance” school discipline measures embodied in Chapter 37 of the Texas Education Code,⁷ only beginning to drop in the last two years. Like their counterparts in many other states, Texas lawmakers passed these measures in response to fears surrounding school crime and a rise in juvenile delinquency. In Texas, these revisions to the Education Code were passed the same year that the legislature passed sweeping “get tough” reforms for the juvenile justice system.⁸ Many see these measures as reflecting a trend toward criminalization of school discipline.⁹

Chapter 37 of the Texas Education Code includes a list of offenses for which students *must* be expelled. These are referred to as “mandatory” school expulsions and include offenses involving weapons and criminal behavior such as sexual assault, aggravated robbery, indecency with a child, and felony drug offenses.¹⁰

Schools also have the discretion to expel students for a variety of behaviors listed in Chapter 37—ranging from serious criminal offenses occurring within 300 feet of campus, assault on a teacher or employee, terroristic threat, and inhalants to “serious or persistent misbehavior” while attending a Disciplinary Alternative Education Program (DAEP).¹¹

By law, students younger than 10 years old can only be expelled for one reason—bringing a firearm to school.¹² Once expelled from school, students younger than 10 must be sent to a DAEP, rather than expelled “to the street” or sent to a Juvenile Justice Alternative Education Program (JJAEP).¹³

7 See Marc Levin, *Schooling a New Class of Criminals?*, TEX. PUB. POLICY FOUNDATION POLICY BRIEF (2006); TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINARY SUMMARY, PEIMS DISCIPLINE DATA FOR 2002-2003; TEX. EDUC. AGENCY, STATE LEVEL DISCIPLINARY SUMMARY, PEIMS DISCIPLINE DATA FOR 2003-2004; TEX. EDUC. AGENCY, STATE LEVEL DISCIPLINARY SUMMARY, PEIMS DISCIPLINE DATA FOR 2004-2005; TEX. EDUC. AGENCY, STATE LEVEL DISCIPLINE DATA FOR 2005-2006; TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINARY STUDY, PEIMS DATA FOR 2006-2007; TEX. EDUC. AGENCY (TEA), STATE LEVEL ANNUAL DISCIPLINARY SUMMARY, PEIMS DISCIPLINE DATA FOR 2008-2009, available at www.tea.state.tx.us.

8 TEX. CRIMINAL JUSTICE COAL., PROTECTING TEXAS’ MOST PRECIOUS RESOURCE: A HISTORY OF JUVENILE JUSTICE POLICY IN TEXAS 44 (2009).

9 Paul J. Hirschfeld, *Preparing for prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 82 (2008)(zero tolerance disciplinary policies resemble determinate sentencing schemes adopted for juvenile sentencing at around the same time).

10 TEX. EDUC. CODE §37.007(a)(d)&(e).

11 TEX. EDUC. CODE §37.007(b)(c)&(f).

12 TEX. EDUC. CODE §37.007(h).

13 *Id.*

Pre-School Expulsions in Texas

Texas Appleseed's data shows that there are relatively few expulsions of elementary school students, with fewer than 160 students in 1st through 5th grade expelled in 2007-08. This is consistent with the state's mandate limiting expulsion of students younger than 10, discussed above.

However, Texas Appleseed did not request data for public pre-school programs. A study released in 2005 revealed that these programs have an alarmingly high expulsion rate, particularly in Texas.¹⁴ According to this study, pre-kindergarten students in the Texas public pre-K programs are expelled at twice the rate of older students, with approximately 662 pre-school students expelled during the 2003-04 school year.¹⁵ Ten percent of pre-K teachers in Texas expel at least one preschooler in any given year.¹⁶

This is of great concern, given the role that quality pre-school programs have been proven to play in preparing students for academic success. However, the solutions offered are very similar to those in reports discussing best practices for older children and are based on similar findings. The likelihood of expulsion has been shown to decrease significantly when teachers have access to specialists who can assist them in finding solutions for problem behaviors occurring in the classroom.¹⁷ When teachers are given the tools they need to address and prevent behavioral problems, students are able to successfully remain in school settings.

Total expulsions—whether to a JJAEP or “to the street”—increased approximately 38 percent during the five-year period between 2002 and 2007.¹⁸ Discretionary expulsions increased about 33 percent and mandatory expulsions increased by more than 50 percent.¹⁹ Some of this may be explained by better reporting of data by school districts.

However, the last two school years have seen a significant decrease in the total number of expulsions.²⁰ From a high of 11,135 total expulsions in 2006-07, expulsions dropped to 9,899 in 2007-08 and to 8,202 in 2008-09.²¹ This represents about a 26 percent decrease in expulsions from Texas schools between 2007 and 2009.

14 Dr. Walter S. Gilliam, *Prekindergartners Left Behind: Expulsion Rates in State Prekindergarten Systems*, FOUNDATION FOR CHILD DEVELOPMENT POLICY BRIEF No. 3 (2005), available at http://www.challengingbehavior.org/explore/policy_docs/prek_expulsion.pdf.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

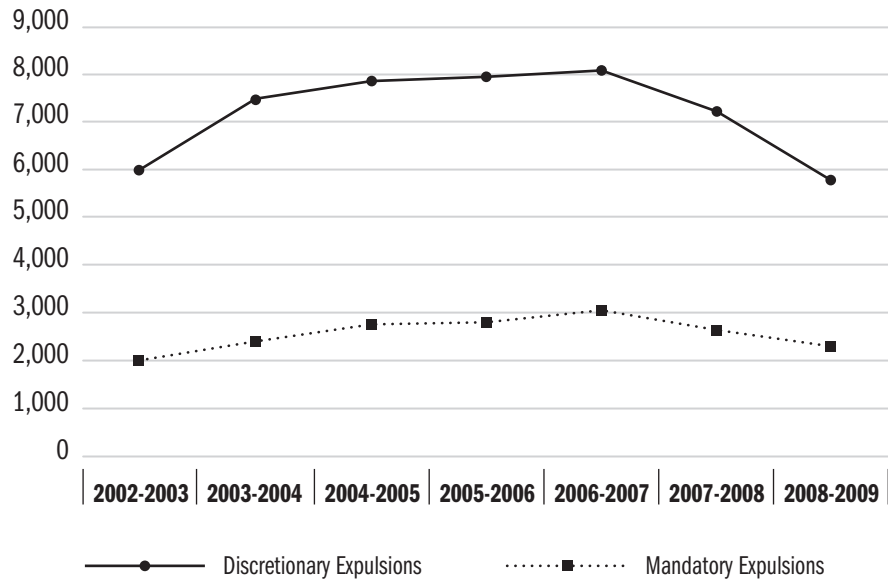
20 *Id.*

21 TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINE SUMMARY, PEIMS DISCIPLINE DATA FOR 2006-2007; TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINE SUMMARY, PEIMS DATA FOR 2007-2008; TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINE SUMMARY, PEIMS DATA FOR 2008-2009, all available at www.tea.state.tx.us.

While both mandatory and discretionary expulsions have dropped over the last two school years, the largest drop is in discretionary expulsions. During 2006-07, there were 8,056 discretionary expulsions compared to 5,806 in 2008-09. This represents almost a 28 percent decrease in discretionary expulsions between the 2006-07 and 2008-09 school years. By contrast, mandatory expulsions dropped from 3,079 to 2,396, or about 22 percent during that same period.

Trends in Mandatory and Discretionary Expulsion Numbers

Number of students (2002 – 2009)



A number of factors addressed in this report *may* account for the decrease in expulsions, although no research exists that definitively identifies the cause. Juvenile crime rates declined in this same period, however not as sharply as the overall decrease in student expulsions from school.²² Per diem costs to house a student in a JJAEP and/or lack of capacity in some JJAEPs may contribute, in part, to the reduction in discretionary expulsions in some school districts. However, schools also referred fewer students to their district’s Disciplinary Alternative Education Programs during this two-year period (2007-09).²³ It is not clear whether this indicates a decrease in use of punitive disciplinary measures, or if there is some other dynamic that is responsible for the decrease in disciplinary referrals.

In this report, Texas Appleseed examines a number of disturbing trends in expulsion—including the overrepresentation of minority and special education students in discretionary expulsions to Juvenile Justice Alternative Education Programs for low-level, non-criminal behavior problems. By recommending alternative ways to address these issues, Texas

22 TYC-TJPC COORDINATED STRATEGIC PLAN, FISCAL YEAR 2010 (2009), *available at* http://www.tyc.state.tx.us/about/TJPC_TYC_Coordinated_Strategic_Plan_FY2010.pdf.

23 TEX. EDUC. AGENCY, *supra* note 21. Referrals to Disciplinary Alternative Education Programs (DAEPs) have decreased about 14 percent during the same two-year period. In-school suspension (ISS) has decreased more modestly, by six percent and out-of-school suspension decreased about nine percent.

Appleseed hopes to provide information that will help policymakers, educators, students and their families interrupt a pattern of behavior that can lead to escalating disciplinary problems, dropout and, all too often, involvement in the juvenile or adult criminal justice system.

A Note on Best Practices

Texas Appleseed’s commitment to offering solutions to identified problems led us to include a chapter on best practice models in our first report.²⁴ The same model outlined in that report also represents the best practice for reducing student expulsions. The goal is the same—preventing behavioral problems before they occur, thereby reducing the number of disciplinary referrals that have to be made.

As discussed in our first report, successful programs for reducing disciplinary referrals:

- Target all students.
- Use well-coordinated methods and approaches that are “research-based” and deemed effective.
- Implement positive behavioral expectations and supports school-wide.
- Provide adequate training and ongoing support to ensure effective implementation.
- Involve school administrators, teachers, students, parents, mental health professionals, and community resources.
- Incorporate regular, rigorous evaluation to determine if the programs to improve behavior are continuing to work.²⁵

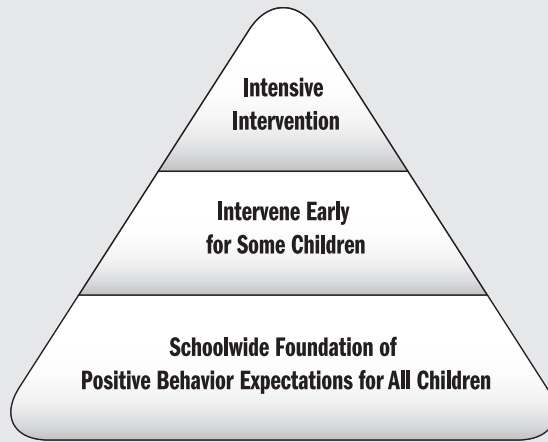
School-wide Positive Behavior Supports (PBS) is one model that incorporates each of these elements. PBS is an evidence-based, data-driven framework proven to reduce disciplinary incidents, increase a school’s sense of safety, and support improved academic outcomes.²⁶

School-wide PBS uses the same three-tiered model recognized by the U.S. Department of Education in its *Guide to Safe Schools*, which is rooted in the understanding that students often have different needs, requiring individualized levels of intervention:

²⁴ TEXAS APPLESEED, *supra* note 2, at 79-97.

²⁵ *Id.*

²⁶ Robert Horner et al, A Randomized, *Wait-List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools*, 11 J. POSITIVE BEHAVIOR INTERVENTIONS 133; Jeffrey R. Sprague & Robert H. Horner, *School Wide Positive Behavioral Supports*, in THE HANDBOOK OF SCHOOL VIOLENCE AND SCHOOL SAFETY: FROM RESEARCH TO PRACTICE (Shane R. Jimerson & Michael J. Furlong, eds., 2007). For additional research on PBS, please visit www.pbis.org.



Several Texas school districts have adopted PBS to address behavioral issues on their campuses. Some of the results that Texas PBS campuses report are:

- Improved academic performance.
- Reduction in disciplinary referrals and class disruptions.
- Strengthened communication between home and school.
- Provision of least restrictive environment for all students.²⁷

Schools in other parts of the nation show similar results after implementing PBS.²⁸ Many of these schools also find that implementation of school-wide PBS significantly reduces overrepresentation of minority students in disciplinary referrals.²⁹

The federal government encouraged schools to spend stimulus funds on PBS programs, due to their effectiveness in combating behavioral issues and improving academic achievement.³⁰ The federal government also included language in the “Race to the Top” guidelines meant to encourage states to implement PBS programs.³¹

For more discussion of PBS and best practices to reduce disciplinary referrals, see the Best Practices chapter in our first report, *Texas’ School to Prison Pipeline: Dropout to Incarceration*.³²

27 AUSTIN INDEPENDENT SCHOOL DISTRICT, POSITIVE BEHAVIOR SUPPORT FAQ’S, available at <http://www.austinisd.org/academics/sss/pbs/faq.phtml>.

28 See Sprague & Homer, *supra* note 26; see also NATIONAL ALLIANCE ON MENTAL ILLNESS (NAMI), SUPPORTING SCHOOLS AND COMMUNITIES IN BREAKING THE PRISON PIPELINE: A GUIDE TO EMERGING AND PROMISING CRISIS INTERVENTION PROGRAMS FOR YOUTH (2009).

29 See Illinois PBIS Network, *Illinois Schools Address Inequitable Discipline Practices*, ILLINOIS PBIS NETWORK NEWSLETTER, Vol. 14, Issue 1 (2009).

30 See DIGNITY IN SCHOOLS, STIMULUS FUNDS AND ALTERNATIVES TO ZERO TOLERANCE, available at <http://www.dignityinschools.org/alternatives>.

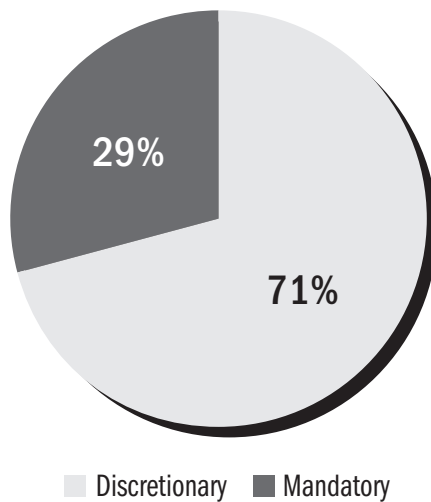
31 *Id.*

32 TEXAS APPLESEED, *supra* note 2.

DISCRETIONARY EXPULSIONS FROM PUBLIC SCHOOLS

As shown in the expulsion trends chart on page 21, discretionary expulsions far outnumber mandatory expulsions in Texas school districts. *In 2008-09, discretionary expulsions out-numbered mandatory expulsions more than 2:1.* Of the 8,202 expulsions that year, 5,806 were made at the discretion of school districts and 2,396 expulsions were mandated by state law.³³ For the last seven school years, discretionary expulsions have out-numbered mandatory expulsions.³⁴

Discretionary v. Mandatory Expulsions from Texas Schools 2008 – 2009



³³ *Id.*

³⁴ *See* TEX. EDUC. AGENCY, *supra* note 6.

In all but a few cases, discretionary expulsions outnumber mandatory expulsions in districts expelling the largest numbers of students. In some of these districts, discretionary expulsions outnumber mandatory expulsions by wide margins: Killeen ISD, 13:1; Aldine ISD, 17:1; and Waco ISD, 34:1.

The size of the school district does not correlate with the number of discretionary student expulsions (*see chart below*). For example, Aldine ISD (outside of Houston) expelled 354 more students than Dallas in 2007-08, though Dallas ISD has a student enrollment almost three times larger. Several of the largest school districts in the state—including El Paso ISD and Austin ISD—are not on the list of top expelling districts. Yet, Waco, with an enrollment of about 16,500 students in 2007-08, was one of the 10 highest expelling districts that year. ***Of the more than 1,000 school districts in Texas, about half did not expel any students in 2007-08.***³⁵ This suggests a wide variation in school districts' policies governing discretionary expulsion of students.

20 Texas School Districts Expelling the Most Students, 2007-08³⁶

School District (enrollment)	Total Number of Expulsions	Expulsion Rate	Mandatory Expulsions	Discretionary Expulsions
Aldine ISD (66,168)	762	12 for every 1,000 students	41	721
Dallas ISD (171,629)	408	2 for every 1,000 students	254	154
Fort Worth ISD (86,656)	356	4 for every 1,000 students	51	305
North East ISD (67,756)	291	4 for every 1,000 students	50	241
Houston ISD (215,713)	260	1 for every 1,000 students	72	188
Northside ISD (93,697)	207	2 for every 1,000 students	56	151
Waco ISD (16,507)	210	13 for every 1,000 students	6	204
Klein ISD (46,203)	195	4 for every 1,000 students	19	176
Brownsville ISD (51,833)	167	3 for every 1,000 students	109	58
Killeen ISD (43,660)	165	4 for every 1,000 students	11	154
United ISD (41,207)	162	4 for every 1,000 students	62	100

35 Based on data obtained by Texas Appleseed through open records request to TEA.

36 Based on data obtained by Texas Appleseed through open records requests to TEA. *See also* TEX. EDUC. AGENCY, *supra* note 7.

School District (enrollment)	Total Number of Expulsions	Expulsion Rate	Mandatory Expulsions	Discretionary Expulsions
Conroe ISD (49,746)	154	3 for every 1,000 students	74	80
Midland ISD (22,589)	150	6 for every 1,000 students	7	143
Lewisville ISD (52,080)	140	3 for every 1,000 students	10	130
Spring ISD (37,047)	133	4 for every 1,000 students	13	120
Cypress-Fairbanks ISD (103,017)	135	1 for every 1,000 students	56	79
Arlington ISD (69,042)	122	2 for every 1,000 students	40	82
Ector ISD (28,456)	115	4 for every 1,000 students	35	80
Laredo ISD (27,189)	112	4 for every 1,000 students	40	72
Fort Bend ISD (71,987)	116	2 for every 1,000 students	62	54

The statewide average expulsion rate is about two expulsions for every 1,000 students. From this chart, it is easy to see that in some large districts, though they have a high number of expulsions, their expulsion rate is either in keeping with the state average—or, in Houston and Cypress Fairbanks ISDs—below the state average. *However, many of the districts above have expulsion rates ranging from double to more than six times the state average.*

Some school districts that do not make the “Top 20” list because they expelled a smaller number of students still have a high expulsion rate. For example, Rio Grande City ISD had an expulsion rate of eight for every 1,000 students, and Temple ISD had an expulsion rate of six for every 1,000 students. Southwest ISD and San Felipe Del Rio CISD had expulsion rates of five for every 1,000 students. This again indicates the tremendous variability between districts of all sizes.

Discretionary Expulsions for Serious or Persistent Misbehavior

More students are expelled for “serious or persistent misbehavior” while attending a Disciplinary Alternative Education Program (DAEP) than for any other discretionary expulsion reason.³⁷ *Such misbehavior would not trigger expulsion in any other educational setting.*³⁸ During 2008-09, expulsions for “serious or persistent misbehavior” made up 50 percent of all discretionary expulsions—and more than 34 percent of all expulsions statewide.³⁹

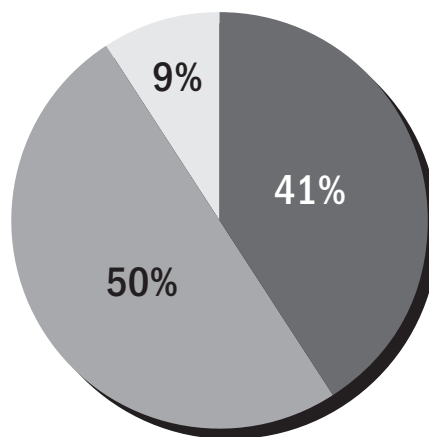
37 TEX. EDUC. CODE §37.007(c).

38 *Id.*

39 TEX. EDUC. AGENCY, *supra* note 6.

Discretionary Expulsions from Texas Public Schools

2008 – 2009



- Criminal Offense (including possession of drugs or alcohol)
- Serious or Persistent Misconduct
- Local Code of Conduct Violations

Students in districts that have a JJAEP are far more likely to be expelled from a DAEP for “serious or persistent misbehavior” than students in districts without a JJAEP

During the 2008-09 school year, “serious or persistent misbehavior” expulsions made up only 22 percent of discretionary expulsions “to the street,” but accounted for 55 percent of discretionary expulsions in districts with a JJAEP.⁴⁰ This statistic suggests that, where the district knows the student will be served in a JJAEP, there may be more willingness to expel the student rather than to seek alternative ways to address the behavior in the DAEP.

However, in districts that do not have a JJAEP, “serious or persistent misbehavior” also may serve as a reason to keep a student in a DAEP longer. A policy report published by the Texas Education Agency (TEA) on DAEP practices listed “misconduct while placed in a DAEP” as the fifth most common reason for placement in a DAEP during 2005-06.⁴¹ During that year, almost 2,800 students were in a DAEP for that reason.⁴² This may mean that relatively few of the students who are charged with this offense are actually being expelled “to the street,” but this is impossible to determine from the data that TEA provided to Texas Appleseed.

⁴⁰ TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINE SUMMARY, PEIMS DISCIPLINE DATA FOR 2008-2009; TEX. EDUC. AGENCY, COUNTS OF STUDENTS AND INCIDENTS BY DISCIPLINE ACTION GROUPS AND DISCIPLINE ACTION REASONS, PEIMS 2008-2009 Data, available at www.tea.state.tx.us.

⁴¹ TEXAS EDUCATION AGENCY, DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PRACTICES 6 (2007).

⁴² *Id.*

Quality of Disciplinary Alternative Education Programs (DAEPs)

As discussed in our first report, quality of programming in DAEPs varies.⁴³ Some programs do not have teacher-led courses, relying instead on self-paced computer curricula, or on packets of work given to students to complete.⁴⁴ While DAEPs are required to address students' behavioral needs, there is no real guidance from TEA or from the legislature regarding how best to do this.⁴⁵ Some DAEPs have adopted a strict, punitive approach, while others provide drug or alcohol counseling that students are required to complete even if they were not referred for a drug- or alcohol-related Code of Conduct violation.⁴⁶

Poor programming has led to concerns that many DAEPs are simply “warehousing” students,⁴⁷ with teachers joining in complaints about their poor educational quality.⁴⁸ In 2005, in response to concerns expressed by the Texas Senate Finance Committee, the Legislative Budget Board studied the effectiveness of DAEP programs and called for improvements.⁴⁹ The LBB report cited, among other things, inadequate curriculum and failure to evaluate DAEP effectiveness.⁵⁰ In 2007, TEA published a report on DAEPs that acknowledged that 20 percent of students sent to a DAEP return to those programs at least once, with some students returning more than three times.⁵¹

During the 2007 legislative session, the Texas legislature passed a bill requiring TEA to create standards for DAEP programs.⁵² TEA adopted standards at the end of 2008, but they were woefully inadequate.⁵³ Perhaps even more importantly, school districts are not held accountable for failing to comply with these standards, since TEA is not required to monitor or enforce them.⁵⁴ Some point out that when the legislature required Texas school districts to create DAEP programs, the legislature did not allocate sufficient funding for quality programming.⁵⁵ Nonetheless, districts continue to rely on these programs at an alarmingly high rate—and for low-level discretionary, rather than mandatory, disciplinary placements.⁵⁶

During the same legislative session, a bill was passed requiring DAEPs to give students intake and exit tests to track academic progress if the student is sent for 90 days or more.⁵⁷

43 TEXAS APPLESEED, *supra* note 2, at 31-33.

44 *Id.*; see also CAROL MCCREIGHT, BEST PRACTICES FOR DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS IN TEXAS (1999).

45 See TEX. EDUC. CODE §37.008(a).

46 Texas Appleseed, *supra* note 2, at 32.

47 INTERCULTURAL DEV. RESEARCH ASSOC. (IDRA), DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS IN TEXAS (2009).

48 ASS'N OF TEX. PROF'L EDUCATORS, REPORT ON THE 2006 ATPE DISCIPLINE SURVEY (2006).

49 LEGISLATIVE BUDGET BOARD, IMPROVE DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS, *in* TEXAS SCHOOL PERFORMANCE REVIEW (2005).

50 *Id.*

51 TEX. EDUC. AGENCY, DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PRACTICES 5 (2007).

52 TEXAS APPLESEED, *supra* note 2, at 32.

53 See TEXAS APPLESEED & ADVOCACY, INC., WRITTEN COMMENTS ON PROPOSED 19 TEX. ADMIN. CODE §103.1201, *available at* www.texasappleseed.net.

54 *Id.*

55 TEXAS SCHOOL SAFETY CENTER, BEST PRACTICES IN TEXAS DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS (2007).

56 TEXAS APPLESEED, *supra* note 2; see also IDRA, *supra* note 47.

57 See TEX. EDUC. CODE §37.0082.

The bill called on TEA to determine the appropriate assessment tool and to draft any administrative rules necessary for implementing the legislation.⁵⁸ More than two years later, TEA still has not offered schools any formal guidance for implementing this statute. During conversations with Texas Appleseed, DAEP administrators have complained about the lack of school district accountability for DAEP programs, noting that the lack of accountability makes it very difficult for DAEP administrators to get access to resources they need to provide effective programs for their students. ***If school districts continue to rely on DAEPs as a primary method of disciplining disruptive students, the quality of these programs must be monitored and improved.***

DAEP programming may have a direct impact on expulsion for “serious or persistent misbehavior.” Some DAEP programs have a very restrictive, corrective or “boot camp” atmosphere, despite little evidence suggesting that such approaches work to curb problem behavior. One JJAEP administrator told Texas Appleseed that some districts require students expelled from their DAEP to return to the DAEP to “finish their time” after completing the JJAEP program. This administrator noted that a student could do exceedingly well in a JJAEP program, but return to a more restrictive DAEP that “places students in a box,” with the student becoming trapped in a cycle between the DAEP and JJAEP, getting expelled from the DAEP repeatedly for “serious or persistent misbehavior.” This administrator reported that many of these students simply drop out of school.

Despite problems with DAEPs, there is information available regarding promising or best practices for disciplinary programs.⁵⁹ Many of these best practices comport with those identified for disciplinary programs in mainstream schools.⁶⁰ For example, a study by the Texas School Safety Center identified several components of successful programs:⁶¹

- A classroom climate that is safe and positive, with rules and policies that are clearly understood by students and parents.
- Teaching methods and curriculum that promote academic skills building and test preparation, as well as transition and re-entry skills.
- A program that promotes parent involvement through parent training and family support.
- A supportive and optimistic setting.

This study concluded that “[t]ruly effective Disciplinary Alternative Education Programs ideally should maximize students’ achievement and improve students’ behavior, attitudes, and self-esteem. These programs should not become dumping grounds for those children who have been less than successful in the traditional education environment or who have disabilities requiring specialized services.”⁶²

58 *Id.*

59 CAROL MCCREIGHT, *supra* note 44; TEXAS SCHOOL SAFETY CENTER, *supra* note 55.

60 See TEXAS APPLESEED, *supra* note 2, at 79-96 (discussing best practices for discipline on mainstream campuses).

61 TEXAS SCHOOL SAFETY CENTER, *supra* note 55, at 14.

62 *Id.* at vii.

Another factor that may affect the number of students expelled for “serious or persistent misbehavior” is lack of consistency in the way that school districts define this expulsion reason. There *is no statutory definition of “serious or persistent misbehavior.”* Instead, school districts are required to define “serious or persistent misbehavior” in their Code of Conduct and their Memorandum of Understanding (MOU) with the JJAEP that serves their district.⁶³ Some MOUs include detailed definitions of misbehavior considered “serious,” as well as narrower requirements for behavior deemed “persistent.” Others include very broad definitions that are open to any number of interpretations.

Examples of broad definitions include:

- *The definition of serious and/or persistent misbehavior occurring at an AEP (Alternative Education Program) is that a student has established a pattern of defiance of authority, including chronic truancy and disruptive behaviors while at the AEP. This must be demonstrated through attendance records and behavior reports.*⁶⁴
- *Discretionary placements for expulsions for “serious or persistent misbehavior” committed while placed in the home district’s DAEP, per TEC 37.007(c), may be made for any “serious” offenses (defined as those which violate the district’s Student Code of Conduct) or “persistent” offenses (defined as two or more violations of the district’s SCC or repeated occurrences of the same offense).*⁶⁵
- *Students expelled for conduct as provided for in TEC Sec. 37.007(c) are those students expelled for two or more violations of the District’s Student Code of Conduct while enrolled in an alternative school education program for disciplinary reasons or those students who engage in conduct that violates the District’s Student Code of Conduct and subjects the student to the possibility of proceedings in the juvenile court.*⁶⁶

Some school districts include a laundry list of behaviors that may be considered “serious or persistent misbehavior.” Though on first glance this may appear to narrow the definition, the list is so inclusive that almost any behavior could fall into one of the listed categories. For example:

2.8 “Serious misbehavior” shall include, but not be limited to, the following offenses that occur on school premises:

- A. Vandalism;*
- B. Robbery or theft;*
- C. Extortion, coercion, or blackmail;*
- D. Aggressive, disruptive action or group demonstration that substantially disrupts or materially interferes with school activities;*
- E. Hazing;*

63 *Id.*

64 Nueces County Juvenile Board and Independent School Districts, Juvenile Justice Alternative Education Program Memorandum of Understanding, 2007-2008 School Year (on file with author).

65 Interlocal Cooperation Agreement and Memorandum of Understanding for Brazoria County Juvenile Justice Alternative Education Program, Restructured for 2007-08 (on file with author).

66 Bell County Memorandum of Understanding (2007) (on file with author).

- F. Insubordination;
- G. Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees;
- H. Fighting, committing physical abuse, or threatening physical abuse;
- I. Possession or distribution of pornographic materials;
- J. Leaving school grounds without permission;
- K. Making or assisting in making threats, including threats against individuals and bomb threats;
- L. Sexual harassment of a student or District employee;
- M. Falsification of records, passes or other school related documents;
- N. Refusal to accept discipline management techniques proposed by the teacher or principal;
- O. Assault of a teacher or other individual;

“Persistent misbehavior” shall include, but not be limited to:

- A. Two or more violations of the Student Code of Conduct in general;
- B. Repeated (i.e. 2 or more) occurrences of the same violation; or
- C. Repeated (i.e. 2 or more) disruption of the classroom/educational environment.⁶⁷

Narrow definitions generally outline a smaller set of offenses that may be considered “serious” or “persistent,” capturing behavior that truly poses a problem and might be more effectively addressed in a JJAEP.⁶⁸

In the absence of a common definition of “serious or persistent misbehavior” sufficient to refer a student to a JJAEP, school districts set their own standard. As a result, whether a student is expelled from a DAEP for “serious or persistent misbehavior” depends almost entirely on where the student attends school.

⁶⁷ Collin County Juvenile Justice Alternative Education Program, 2007-2008 Memorandum of Understanding (on file with author).

⁶⁸ An example of a narrower definition of “serious misbehavior” is found in the Memorandum of Understanding Regarding Dallas County Juvenile Justice Alternative Education Program, however the same MOU’s definition of “persistent misbehavior” includes “three or more violations of an ISD’s Student Code of Conduct.”

Districts with Highest Number of Expulsions for “Serious or Persistent Misbehavior”

The number of students expelled for “serious or persistent misbehavior” varies widely between districts.

15 Texas School Districts with Highest Number of “Serious or Persistent Misbehavior” Expulsions, 2007-08

District	Expulsions for “Serious or Persistent Misbehavior”
Waco ISD	187
Killeen ISD	154
North East ISD	88
Dallas ISD	87
United ISD	82
Aldine ISD	74
San Angelo ISD	60
Temple ISD	57
Southwest ISD	52
Conroe ISD	48
Irving ISD	48
Laredo ISD	48
Northside ISD	44
Arlington ISD	40
Victoria ISD	39

Excluding Aldine (which sends all discretionarily expelled students to a program run by the Harris County Department of Education) and San Angelo and Victoria ISDs (which are not required to have a JJAEP), the remaining 12 districts listed above are responsible for close to half of all the “serious or persistent misbehavior” expulsions to a JJAEP in the state. They represent eight counties and, while the list includes several large districts, the size of the district does not appear to predict the number of students expelled. For example, Waco ISD, with a cumulative enrollment of about 16,500 students in 2007-08, expelled far more students for “serious or persistent misbehavior” than did Dallas ISD, a school district where the student population is 10 times larger.

Waco ISD’s large number of “serious or persistent misbehavior” expulsions drives its overall expulsion numbers, with 187 expulsions made for “serious or persistent misbehavior” out of 210 total expulsions. A comparison between the 15 school districts expelling the most students for “serious or persistent misbehavior” with the chart of the highest expelling districts on page 11 shows that Waco ISD is not alone—many school districts’ high expulsion numbers appear to be driven by their expulsion of students from a DAEP for “serious or persistent misbehavior.”

In five of the districts listed above—Waco, Killeen, North East, Southwest, and Northside ISDs—their MOU with the JJAEP defines “serious or persistent misbehavior” as two or more violations of the district’s Student Code of Conduct. The Dallas County MOU, which includes Dallas and Irving ISDs, defines “persistent misbehavior” as three violations of the district’s Student Code of Conduct. The MOUs for two of the above districts—Temple and Arlington ISDs—define “serious or persistent misbehavior” as *any* violation of the Student Code of Conduct, and three others—Laredo, United and Conroe ISDs—*do not include any definition* of “serious or persistent misbehavior” in their MOU with the JJAEP.⁶⁹ Broad definitions—or the complete absence of a definition—clearly contribute to a higher number of discretionary expulsions from a DAEP for “serious or persistent misbehavior.”

CINS Offenses—Conduct Indicating a Need for Supervision

In addition to being an expulsion reason, “serious or persistent misbehavior” while in a Disciplinary Alternative Education Program (DAEP) is identified as a CINS offense (Conduct Indicating a Need for Supervision) in the Texas Family Code.⁷⁰ A CINS offense brings the young person under the jurisdiction of the juvenile court. Other examples of CINS offenses are truancy and running away from home.⁷¹ Again, “serious or persistent misbehavior” is not defined in the Education Code, or the Family Code, and the definitions vary from county to county.⁷²

This means that a student may not only be expelled from a DAEP for non-violent, non-criminal violations of the Student Code of Conduct, but may also be subject to prosecution for a CINS offense. This brings the student into direct contact with the court and the juvenile justice system when no crime has been committed. This behavior is often the same behavior that brought them to the DAEP, which the DAEP—for whatever reason—has not addressed. ***If the student continues to misbehave in the DAEP, this should trigger a re-evaluation of the behavioral programming that is intended to address that student’s needs; it should not result in expulsion and potential prosecution for a CINS offense.***

Many counties are prosecuting students for “serious or persistent misbehavior” as a CINS offense, according to Texas Juvenile Probation Commission data. In fact, of the 27 counties

69 However, Conroe and Laredo ISDs define “serious or persistent misbehavior” while in a DAEP in their Code of Conduct; United ISD defines “serious” misbehavior in its Code of Conduct, but does not define “persistent.” See the Appendix for definitions of “serious or persistent misbehavior” found in Student Codes of Conduct for the 15 school districts expelling the largest numbers of students from DAEPs for such behavior.

70 TEX. FAM. CODE §51.03.

71 *Id.*

72 The inclusion of “serious or persistent misbehavior” as a CINS offense in the Family Code, though that term is not defined anywhere in the Family or Education Codes, may make the “serious or persistent” statutes unconstitutionally vague. The “void for vagueness” doctrine requires that a statute define prohibited conduct with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Failure to define the term anywhere in the Family Code or the Education Code leaves the statute including expulsion from a DAEP for “serious or persistent misbehavior” as a CINS offense subject to attack. See *Connally v. Gen. Constr. Co.*, 269 U.S. 385 (1926); *A.B. Small Co. v. Am Sugar Ref. Co.*, 267 U.S. 233, 239 (1925); *Commission for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998).

that are required to have a JJAEP, only seven counties—Brazos, Cameron, Collin, El Paso, Harris, Webb, and Wichita—do not appear to be prosecuting “serious or persistent misbehavior” as a CINS offense.⁷³ Three of these counties—Brazos, El Paso, and Wichita—do not accept discretionary expulsions in their JJAEPs.

Texas Counties Prosecuting “Serious or Persistent Misbehavior” in 2007⁷⁴

County	Number of Students Prosecuted
Bell	151
Bexar	537
Brazoria	89
Dallas	319
Denton	50
Fort Bend	30
Galveston	101
Hays	24
Hidalgo	24
Jefferson	66
Johnson	11
Lubbock	40
McLennon	156
Montgomery	15
Nueces	7
Smith	20
Tarrant	87
Taylor	28
Williamson	36
Total	1,791

While these prosecutions clearly represent only a very small number of the thousands of offenses referred to the juvenile justice system each year, they represent the most obvious example of a school-to-prison pipeline linking low-level student misconduct and the juvenile justice system. These prosecutions also have a serious impact on the lives of the almost 1,800 youth who were not only expelled, but referred to juvenile probation for behavior that would not constitute a criminal offense in any other setting.

⁷³ Based on TJPC data obtained by Texas Appleseed pursuant to an open records request.

⁷⁴ Data obtained by Texas Appleseed through open records request to TJPC; while several counties did not prosecute students for “serious or persistent misbehavior” in 2007, they did in previous years. It is not clear that they have discontinued prosecution of this CINS offense. For example, while Travis County did not prosecute any students in 2007, they prosecuted 15 in 2006.

Poor Outcomes for Students Expelled to JJAEPs for “Serious or Persistent Misbehavior”

JJAEP administrators complain of the large number of “serious or persistent misbehavior” expulsions from DAEPs. The number of students placed in JJAEPs for “serious or persistent misbehavior” has been named as an external challenge to JJAEPs in surveys of JJAEP administrators, according to the last two Performance Assessment Reports published by the Texas Juvenile Probation Commission (TJPC).⁷⁵

In response to a question about changes they would recommend state officials make, JJAEP administrators suggested “legislation eliminating discretionary student expulsions, especially for serious and persistent misbehavior.”⁷⁶ Supervision and management of these students was named as a “key policy issue” after TJPC analyzed the information gathered in its administrator survey.⁷⁷ During the interviews completed as part of the research for this report, one JJAEP administrator remarked, “Rather than flooding the JJAEP program with serious or persistent misbehaviors, the JJAEP should be reserved for mandatory referrals. [Including “serious or persistent misbehavior” referrals] leads to a strange mix of students enrolled in a JJAEP, some for very serious criminal offenses and some just for acting up in class repeatedly...The referral to a JJAEP can lead to a disruption in a student’s educational attainment, because [the student] can be surrounded by students with significantly different behavioral or emotional problems.”

Data collected by the TJPC underscores this point. **It shows that students who are expelled for “serious or persistent misbehavior” tend to cycle back to the juvenile justice system at a higher rate than youth who are expelled for more serious offenses.** These statistics speak to the extensively documented “peer contagion” phenomenon, whereby youth with low-level behavioral problems, when grouped with higher risk offenders, leave those settings with a higher likelihood of committing new offenses.⁷⁸

This phenomenon is widely understood to be a very real risk in corrections planning. For example, studies of adult offenders considered at “low-risk” of re-offending show that when they are placed in the same intensive programs with “high risk” offenders, their recidivism rates increase. This is because they learn anti-social behavior from the higher risk offenders, and the more “pro-social” network of the “low risk” offender is disrupted.⁷⁹ Studies of programs that place “deviant youth with deviant peers” show that these programs “are more likely to have adverse effects—the conduct of adolescents in these programs often worsens.”⁸⁰ These results have led researchers to conclude that programs that aggregate misbehaving youth make for bad public policy:

75 TEX. JUVENILE PROB. COMM’N, JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS, PERFORMANCE ASSESSMENT REPORT SCHOOL YEAR 2006-2007, at 70; TEX. JUVENILE PROB. COMM’N, JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM PERFORMANCE ASSESSMENT REPORT SCHOOL YEAR 2004-05 72 (2006).

76 *Id.*

77 *Id.* at 71.

78 TEXAS APPLESEED, *supra* note 2, at 29-30.

79 Dr. Edward J. Latessa, *What Works and What Doesn’t in Reducing Recidivism*, PowerPoint presentation given at the Texas Department of Criminal Justice 2009 Sentencing Conference, available at http://www.tdcj.state.tx.us/cjad/Reducing_Recidivism_Ed_Latessa2_opt.pdf.

80 Joel Rosch, *Deviant Peer Contagion: Findings from the Duke Executive Sessions on Deviant Peer Contagion*, THE LINK, Fall 2006, available at <http://www.cwla.org/programs/juvenilejustice/thelink2006fall.pdf>.

*Placing vulnerable youth in deviant groups is the most common and most costly of all public policy responses to deviant behavior in education, mental health, and juvenile justice settings... The reasons for these placements are financial (the assumption it is cheaper to work with children in groups) and political (the public prefers these youth to be segregated to prevent disruption or danger to community classrooms), but the long-term consequences of these programs show greater costs and less total safety.*⁸¹

“Peer contagion” is obvious from recidivism rates for students expelled for “serious or persistent misbehavior.” Among students expelled to a JJAEP during 2004-05, only 32 percent of mandatory expulsions re-offended within one year of exiting the JJAEP, compared to 59 percent of students expelled for “serious or persistent misbehavior.”⁸² At two years, the comparison is even more dramatic, with **43 percent of mandatory expulsion students having re-offended within two years, compared to 71 percent of students initially referred to a JJAEP for “serious or persistent misbehavior.”**

Even more significant—***within two years of having exited a JJAEP, eight percent of those whose expulsion was mandated for offenses listed in the Texas Education Code were committed to the Texas Youth Commission (TYC), compared to 11 percent previously expelled to the JJAEP for “serious or persistent misbehavior.”***

This data speaks to the need for meaningful, research-based interventions for students who are exhibiting behavioral problems to avoid their progression into the juvenile justice system. Sending these students to JJAEPs not only fails to correct their behavior and make schools safer, it instead has the opposite effect—placing students at high risk for escalating misbehavior and future juvenile justice involvement.

Conclusion

The large number of expulsions for “serious or persistent misbehavior” to JJAEPs is of grave concern—since these expulsions, particularly when prosecuted as a CINS offense (Conduct in Need of Supervision), are introducing students to the juvenile justice system. Such misbehavior would not trigger a student’s expulsion in any other educational setting but a Disciplinary Alternative Education Program (DAEP). Students’ failures in DAEP settings are more appropriately addressed by evaluating and changing DAEP programming to implement research-based approaches that have been shown to make lasting improvements in behavior and academic performance.

The large number of students in JJAEPs as a result of a “serious or persistent misbehavior” expulsion contradicts legislative intent that JJAEPs “be reserved for the most serious of student behaviors.”⁸³ Even more alarming is the dramatic overrepresentation of African American and special education students in subjective expulsions for “serious or persistent misbehavior”—which is examined in the next two chapters.

81 *Id.* at 3.

82 Data produced to Texas Applesseed by TJPC pursuant to an open records request; here, “recidivism” refers to any subsequent contact with the juvenile probation system, not a subsequent referral to a JJAEP for “serious or persistent misbehavior.”

83 Bill Analysis, CSHB 2657, 81st Leg. Reg. Session (2009).

What is a “Persistently Dangerous” Campus?

The No Child Left Behind Act of 2001 includes an “Unsafe School Choice Option” which requires identification of campuses deemed “persistently dangerous.”⁸⁴ States are given some latitude in determining how they identify persistently dangerous schools, but once schools are identified, those schools are required to notify parents and give them the option of transferring their children to another school.⁸⁵ The federal law also requires schools to give victims of violent crimes the option of transferring to another school.⁸⁶

In Texas, schools are deemed persistently dangerous if they:⁸⁷

- Have fewer than 200 students enrolled and two or more mandatory expellable incidents per year for the three most recent consecutive years; or
- Have more than 200 students enrolled and a number of mandatory expellable incidents per year equal to 1 percent or more of the total student body for the three most recent consecutive years.

If a school comes close to meeting these criteria, it may be placed on a “watch list.”⁸⁸ If a school is placed on a “watch list,” it may be required to submit its most recent School Security Audit Report to the Texas Education Agency (TEA), along with other statutorily required plans that address issues of school safety.⁸⁹

TEA takes the position that it is not required to report the names of schools identified as persistently dangerous to the U.S. Department of Education.⁹⁰ Instead, it only reports the number of schools.⁹¹ Schools that are identified as “persistently dangerous” are required to notify parents at least 14 days prior to the start of the school year, offer students the opportunity to transfer to a safe school, and complete any transfers prior to the start of the school year.⁹²

Often, schools included on the “persistently dangerous” list are removed after a second review. For example, in 2003 and 2004, media reports indicate Texas identified 11 schools as “persistently dangerous.”⁹³ However, all of these schools were later removed from the 2003 list, with TEA claiming that their inclusion was based on flawed data.⁹⁴ The list that TEA posts on its website for all schools identified or placed on a watch list for 2003-2010 only includes six schools identified in 2003-04, but notes that all six were identified and “later removed on appeal.”⁹⁵

84 20 USC 7912.

85 *Id.*

86 TEX. EDUC. AGENCY, 2009-2010 GUIDANCE SCHOOL SAFETY CHOICE OPTION 3 (2009), *available at* www.tea.state.tx.us.

87 TEX. EDUC. AGENCY, METHODOLOGY FOR DESIGNATING PERSISTENTLY DANGEROUS SCHOOL FOR 2009-2010 SCHOOL YEAR, *available at* www.tea.state.tx.us.

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.*

92 *Id.* at 6.

93 Erik W. Robelen, *Persistent Analysis*, EDUC. WK., October 22, 2003; Joshua Benton, *‘Dangerous’ Not Always Unsafe*, DALLAS MORNING NEWS, August 14, 2006.

94 *Id.*

95 TEX. EDUC. AGENCY, LIST OF PERSISTENTLY DANGEROUS SCHOOLS, *available at* www.tea.state.tx.us.

No schools were identified as persistently dangerous in 2004-05. Since then, only five schools have been identified as “persistently dangerous,” with one school being identified two years in a row.⁹⁶ Though a number of schools have been placed on watch lists since 2006-07, none have been labeled “persistently dangerous.”⁹⁷

Critics complain that few school districts are accurately reporting mandatory expulsions that would qualify them for inclusion as a “persistently dangerous” school.⁹⁸ These critics argue that the penalties associated with being labeled “persistently dangerous” discourage accurate reporting. Others claim that incidents that are not truly dangerous, like drug offenses, qualify schools for inclusion.⁹⁹ Still others criticize the qualifications as being so lax as to be meaningless, with even the federal government questioning whether Texas’ rules are meaningful.¹⁰⁰ “School choice” options have also come under fire as ineffective— with few parents opting to transfer students when given the option to do so.¹⁰¹

Whether the qualifying offenses are over-inclusive or under-inclusive, the reality is that the serious crimes that the “persistently dangerous” designation was meant to target are exceedingly rare on school campuses.¹⁰² This is not only confirmed by the paucity of mandatory expulsions in Texas disciplinary data, but is also confirmed by studies of school crime in Texas and the nation.¹⁰³

96 *Id.* In 2005-06, W.A. Todd 9th Grade Campus in Donna ISD, and United South High School in United ISD were identified as “persistently dangerous.” In 2006-07, Donna High School and W.A. Todd 9th Grade Campus in Donna ISD were identified, along with Jimmy Carter High School in La Joya ISD and Antonio Gonzalez Middle School in United ISD.

97 *Id.* In 2007-08, the following schools were placed on a watch list: Morton High School (Morton ISD), Odessa High School (Ector County ISD), Three Rivers High School (Three Rivers ISD), West Hardin High School (West Hardin County ISD), Groesbeck High School (Groesbeck ISD), Northside School (Northside ISD), Myra Green Middle School (Raymondville ISD), and Slidell Junior High/High School (Slidell ISD). For 2008-09: E.H. Cary Middle School (Dallas ISD), North Dallas High School (Dallas ISD), Thomas C. Marsh Middle School (Dallas ISD), Thomas Jefferson High School (Dallas ISD), Canyon Hills Middle School (El Paso ISD), Lyndon B. Johnson Middle School (Johnson City ISD), Lefors School (Lefors ISD), Milano High School (Milano ISD), Munday High School (Munday CISD). The following schools are on the one-year watch list for 2009-10: George West High School (George West ISD), Quanah High School (Quanah ISD), Cross Plains High School (Cross Plains ISD), McCarney Middle School (McCarney ISD), Nixon-Smilely Middle School (Nixon-Smilely ISD), Valley Mills High School (Valley Mills ISD), and Littlefield Junior High (Littlefield ISD). In addition, the following schools are on the two-year watch list for 2009-10: Munday High School (Munday CISD) and Oglesby School (Oglesby ISD).

98 Noel C. Paul, “*Persistently Dangerous*”—*School-safety ranking—or just black marks?*, CHRISTIAN SCI. MONITOR, August 20, 2003.

99 Associated Press, “*Dangerous*’ school list irks some officials”, CNN.com, September 25, 2003; Joshua Benton, *supra* note 93; Sam Dillon, *School Violence Data Under a Cloud in Houston*, NY TIMES, November 7, 2003.

100 Erik W. Robelon, *States Report Few Schools as Dangerous*, EDUC. WEEK, September 24, 2003; OFFICE OF INSPECTOR GENERAL, DEP’T OF EDUC., AN OIG PERSPECTIVE ON THE UNSAFE SCHOOL CHOICE OPTION 7 (2007) (Texas’ requirement that a school meet the benchmarks three years in a row may render it ineffective).

101 See THE CIVIL RIGHTS PROJECT, WHY HIGH STAKES ACCOUNTABILITY SOUNDS GOOD BUT DOESN’T WORK—AND WHY WE KEEP ON DOING IT ANYWAY (2009) (parents, for the most part, ignore the option to transfer students out of schools deemed “academically unacceptable” under NCLB); APPLESEED, IT TAKES A PARENT: TRANSFORMING EDUCATION IN THE WAKE OF THE NO CHILD LEFT BEHIND ACT 22 (2006) (parents often have no meaningful option for transferring a child out of a low-performing school).

102 DEWEY G. CORNELL, SCHOOL VIOLENCE FEARS VERSUS FACTS (2006); NATIONAL YOUTH VIOLENCE PREVENTION RESOURCE CENTER, SCHOOL VIOLENCE FACT SHEET, *available at* <http://www.safeyouth.org/scripts/facts/school.asp>; TEX. EDUC. AGENCY, TEXAS INDEPENDENT SCHOOL DISTRICT CRIME REPORT (1995).

103 *Id.*

DISPROPORTIONATE EXPULSION OF MINORITY STUDENTS

Education then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery.

—Horace Mann

Texas educates a significant percentage of the nation’s minority students. According to the most recent national data available, more than 21 million of the nation’s 48 million students are members of a minority racial or ethnic group.¹⁰⁴ Close to three million of those 21 million minority students—or about 13 percent—are Texas students.¹⁰⁵ Texas educates more than two million—about 21 percent—of the nation’s almost 10 million Hispanic youth.¹⁰⁶

Texas Appleseed’s first School-to-Prison Pipeline report documented that African American students and, to a lesser extent, Hispanic students, are overrepresented in total statewide referrals to In-School Suspension (ISS) and Out-of-School Suspension (OSS) and to Disciplinary Alternative Education Programs (DAEPs).¹⁰⁷ The disparity was most evident when the data was analyzed at the school district level.¹⁰⁸ Unfortunately, disparity in school discipline is not a new problem—in fact, it was first identified as early as 1973, and linked to resistance to desegregating schools.¹⁰⁹

The disparity in disciplinary referrals of minority students—particularly in low-level, discretionary Code of Conduct offenses—is of grave concern given the role that school discipline has been proven to play in both academic failure and entry into the juvenile

104 OFFICE FOR CIVIL RIGHTS, DEP’T OF EDUC., *supra* note 1.

105 *Id.*; OFFICE FOR CIVIL RIGHTS, DEP’T OF EDUC., *supra* note 4.

106 *Id.*

107 TEXAS APPLESEED, *supra* note 2, at 36-47.

108 *Id.*

109 SOUTHERN REGIONAL COUNCIL & ROBERT F. KENNEDY MEMORIAL, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION (1973).

justice system. School discipline has an impact both on academic achievement and the decision to drop out of school.¹¹⁰ This is particularly true for minority students, with one study showing African American students are more likely to drop out of school for disciplinary reasons than members of any other racial or ethnic group.¹¹¹ Some studies have linked school discipline to “pushout,” the term used to describe methods used by schools to encourage low-achieving students or high-need students to leave school voluntarily.¹¹²

It is easy to imagine that expulsion “to the street” could significantly affect a student’s academic success and decision to stay in school, given the significant amount of academic time lost during the expulsion period. It is also possible that even expulsion to a JJAEP could play a significant role in academic failure and dropping out, particularly for students who may first fall behind in a DAEP program, only to get expelled from the DAEP and transferred to the JJAEP. Jumping from setting-to-setting—from the student’s regular campus, to a DAEP, then to a JJAEP—and in some instances, back to the DAEP before return to the student’s regular campus, is likely to have an impact on a student’s academic success and motivation to stay in school.¹¹³

The Achievement Gap and School Drop Out Rates

In the United States, African American and Hispanic students are roughly two to three years of learning behind white students of the same age.¹¹⁴ This achievement gap exists regardless of whether it is measured through achievement (as indicated by test scores) or attainment (graduation rates).¹¹⁵

Scores on the National Assessment of Educational Progress (NAEP) show that gaps exist between African American and white students at both the 4th grade and 8th grade assessments in math and reading levels.¹¹⁶ Achievement gaps persist even when socioeconomic level is

110 AMERICAN PSYCHOLOGICAL ASS’N, ZERO TOLERANCE TASK FORCE, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 47 (2006); Linda M. Raffaella Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, in DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE 17, 25-26 (New Directions for Youth Development 2003).

111 Elizabeth Stearns and Elizabeth J. Glennie, *When and Why Dropouts Leave High School*, 38 YOUTH & SOCIETY 29, 45 (2006).

112 AMERICAN PSYCHOLOGICAL ASS’N, *supra* note 110, at 51.

113 Student mobility has been shown to have a negative impact on academic success. See Russell W. Rumberger, *Student Mobility and Academic Achievement* (Clearinghouse on Elementary and Early Childhood Education 2002).

114 MCKINSEY & COMPANY, THE ECONOMIC IMPACT OF THE ACHIEVEMENT GAP IN AMERICA’S SCHOOLS (2009), available at http://www.mckinsey.com/App_Media/Images/Page_Images/Offices/SocialSector/PDF/achievement_gap_report.pdf

115 *Id.*

116 NATIONAL CENTER FOR EDUCATION STATISTICS, ACHIEVEMENT GAPS, HOW BLACK AND WHITE STUDENTS IN PUBLIC SCHOOLS PERFORM IN MATHEMATICS AND READING ON THE NATIONAL ASSESSMENT OF EDUCATION PROGRESS (2009).

taken into account.¹¹⁷ In fact, the achievement gap was largest for students who were not eligible for reduced-price or free lunches, indicating that the achievement gap between African American and white students is not driven solely by socioeconomic level.¹¹⁸ Though Texas' achievement gaps (as measured by the NAEP) are—in most cases—slightly lower than the national average, they are still significant.¹¹⁹

The latest study of school attrition rates (i.e. the number of students who leave before graduating from high school) for Texas students also shows a significant gap between African American and white students.¹²⁰ In fact, gaps in attrition rates between white students and Hispanic or African American students are higher today than they were 24 years ago.¹²¹ **Hispanic students account for close to 64 percent of Texas students lost to school attrition.**¹²²

The achievement gap and attrition rates have serious economic consequences. According to a study released in 2009, “the persistence of...educational achievement gaps imposes on the United States the economic equivalent of a permanent national recession.”¹²³ In 2008, if the gap between African American and Hispanic students had been closed, GDP for the United States would have been between \$310 billion to \$525 billion higher.¹²⁴ If the United States does not address the achievement gap, the economic consequences will increase as minority students become a larger share of the population.¹²⁵

117 *Id.* at 11.

118 *Id.*

119 *Id.*

120 INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION (IDRA), OVERALL ATTRITION RATES DECLINE, BUT GAPS PERSIST AMONG RACIAL AND ETHNIC GROUPS (2009), *available at* http://www.idra.org/IDRA_Newsletter/October_2009_School_Holding_Power/Texas_Public_School_Attrition_Study_2008_09/

121 *Id.*

122 *Id.*

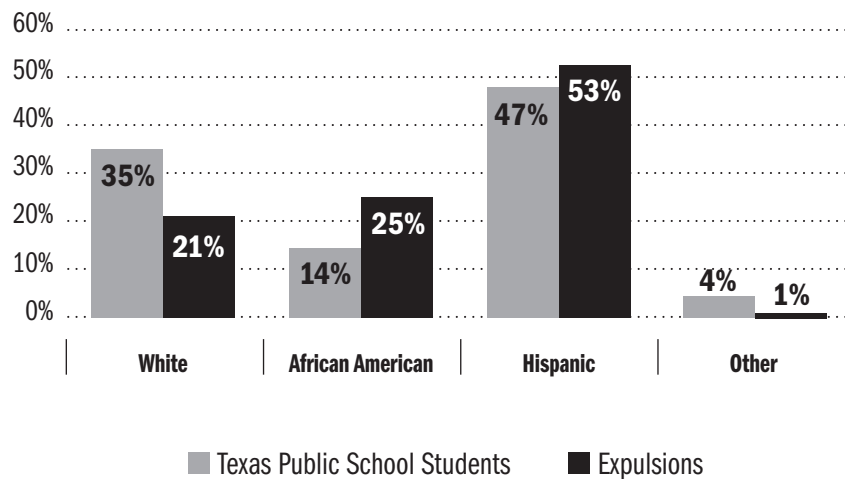
123 MCKINSEY & COMPANY, *supra* note 114, at 6.

124 *Id.* at 5.

125 *Id.* at 6.

According to the data obtained from the Texas Education Agency for this report, minority students are overrepresented in discretionary expulsions from school, particularly expulsions for “serious or persistent misbehavior” while in a DAEP. *African American students in Texas are almost twice as likely to be expelled as other students, and Hispanic students are almost one-and-a-half times more likely than other students to be expelled.*¹²⁶

Race/Ethnicity of Texas Public School Students v. Race/Ethnicity of Students Expelled 2008 – 2009



An analysis of expulsion data shows an even greater disparity in expulsions of African American students at the local school district level. While Hispanic students are not as highly overrepresented, it is important to remember that Hispanic students make up close to half of the Texas student body—consequently, more Hispanic students are expelled than students of any other racial or ethnic group.¹²⁷ During the 2008-09 school year, 4,340 Hispanic students were expelled, compared to 2,021 African American students, 1,755 white students, and 86 Native American or Asian American students.¹²⁸

126 Texas Appleseed calculated an odds ratio for expulsions of minority students. See Appendix for methodology.

127 TEX. EDUC. AGENCY, *supra* note 7.

128 *Id.*

What is “Disproportionate?”

Though a number of different measures have been used to determine whether minority students are disciplined at a disproportionate rate,¹²⁹ perhaps the most common—and the one used here—compares the percentage of minority students in a school district’s general student population with their representation in disciplinary referrals.¹³⁰ Where this is the case, researchers have used a “10 percent of the population” standard to determine over- or underrepresentation.¹³¹ Under this rule, minority students may be considered overrepresented if their proportion in disciplinary referrals exceeds their representation in the population by 10 percent.¹³² For example, if a school district’s student population is 20 percent African American, African American students would be overrepresented if they made up more than 22 percent of disciplinary referrals.¹³³ Texas Appleseed has identified school districts falling within this “10 percent rule.” Where possible, Texas Appleseed also used additional analysis to ensure that the disproportionality is statistically significant.¹³⁴

15 Texas School Districts with Highest Overrepresentation of African American Students in Expulsions, 2007-08¹³⁵

District	Representation in Student Body	Representation in Expulsions
Arlington ISD	24%	50%
Austin ISD	12%	27%
Brazosport ISD	10%	20%
Fort Bend ISD	32%	58%
Fort Worth ISD	26%	48%
Galveston ISD	30%	77%
Irving ISD	12%	24%

129 RUSSELL SKIBA, *THE COLOR OF DISCIPLINE 2* (2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>.

130 *Id.*

131 *Id.*

132 *Id.*

133 *Id.*

134 See methodology section in the Appendix for more complete discussion of Texas Appleseed’s data analysis. In some cases, the expulsion numbers were not high enough to run the more sensitive “statistically significant” test.

135 Based on data provided to Texas Appleseed in response to an open records request to TEA. The districts included on this chart are districts that expelled at least 25 students. Of these districts, some of them did not have high enough numbers for a meaningful statistical significance test. Those with higher numbers proved to have a statistically significant overrepresentation. These districts are: Fort Worth ISD, Temple ISD, Killeen ISD, Arlington ISD, Waco ISD, Klein ISD, Fort Bend ISD, Galveston ISD, Round Rock ISD, and Austin ISD. In addition, Aldine ISD—which expels a high number of students—also has a “statistically significant” overrepresentation of African American students in expulsions, even though the percentage of overrepresentation is not as great as many of the districts included on the chart.

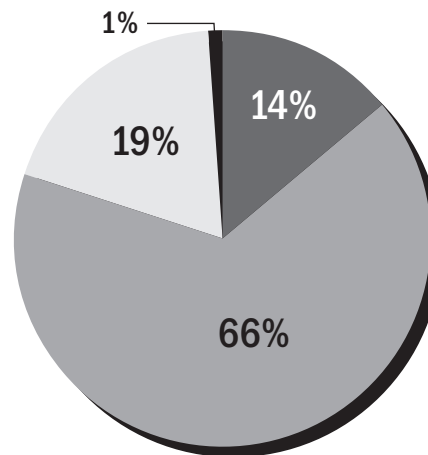
District	Representation in Student Body	Representation in Expulsions
Killeen ISD	38%	64%
Klein ISD	16%	31%
Plano ISD	11%	26%
Round Rock ISD	10%	38%
Temple ISD	29%	87%
Texas City ISD	20%	39%
Victoria ISD	9%	25%
Waco ISD	35%	56%

Minority Representation in Mandatory Expulsions from School

While these numbers are startling enough, it is even more revealing to examine the race and ethnicity of students within each category of offenses for which students are expelled.

Race/Ethnicity of Mandatory Expulsions

2007 – 2008



African American
 White
 Hispanic
 Other

*While Hispanic students are overrepresented in mandatory expulsions, African American students are represented at a level consistent with their percentage representation among all Texas students.*¹³⁶ Arguably, these expulsion reasons are more objective in nature. They include offenses like bringing weapons to school and serious criminal activity, including aggravated assault, sexual assault and felony controlled substance violations. Of these expulsion

¹³⁶ These charts are based on data provided to Texas Appleseed by TEA pursuant to open records requests. For a detailed explanation of the methodology and data used for each chart, see Appendix.

offenses, the most common was a felony controlled substance violation, accounting for close to half of all mandatory expulsions in 2007-08.¹³⁷

Still, discretion is involved in determining whether to charge a student with a criminal, expellable offense. Anecdotally, parents whose children have been disciplined or charged with an offense at school have reported in interviews with Texas Appleseed's pro bono partners that other students exhibit the same behavior at school but are not charged. Similarly, field interviews with JJAEP administrators and juvenile probation officers revealed complaints about inconsistencies between the way students are disciplined or charged with lower-level crimes occurring at school. During one interview, a probation officer noted, "All that I would ask for is consistency from the ISD. I mean...if you're going to charge Little Johnnie with an assault, then you need to charge Little Freddie, too. I think where we have frustration is where we see inconsistency within an ISD. This kid gets charged with theft, but this kid wasn't...even though they both stole cell phones."

It must also be remembered that until September 2009, school districts were not required to consider intent, self-defense, a student's disability, or other mitigating factors when considering disciplinary action. The following example, given by an attorney interviewed for this report, is indicative of some of the disciplinary decisions that would technically fall within a "mandatory" expulsion, but with little indication that the student posed a real risk to school safety:

A 15-year-old special education student with significant mental illness who had been making great progress at school began to receive significant threats that a gang at his school was going to hurt him because they perceived that he was interested in a leader's girlfriend. He became worried about the threats and approached the office, where a school administrator agreed that they were real and approved for him to go home early for protection. The next day, the young man returned to school, still fearful, and continued to hear threats. Another student approached him in class and offered him brass knuckles, telling him he would need them between classes. The student tried to resist but the other student insisted, leaving the knuckles on the desk near the student who was being threatened. To avoid being seen with a weapon, he moved the brass knuckles to his backpack. The teacher witnessed the interaction and asked him if he had a weapon, and he immediately offered the weapon to her. The school moved for expulsion.

This occurred in a district in which the Code of Conduct indicated that a student's intent would be taken into consideration before reaching disciplinary decisions. When the student appealed the disciplinary action, the district upheld the expulsion as "mandatory," but reduced the amount of time the student would have to spend in the JJAEP. While mandating that mitigating factors be considered before schools impose discipline is obviously not going to eradicate every absurd result, the change in law is a positive step toward eliminating the "zero tolerance" atmosphere that still pervades many of Texas' schools.

137 See TEX. EDUC. AGENCY, STATE LEVEL ANNUAL DISCIPLINE SUMMARY, PEIMS DISCIPLINE DATA 2007-2008 & TEX. EDUC. AGENCY, COUNTS OF STUDENTS AND INCIDENTS BY DISCIPLINE ACTION GROUPS AND DISCIPLINE ACTION REASONS, PEIMS 2007-2008 DATA, available at www.tea.state.tx.us.

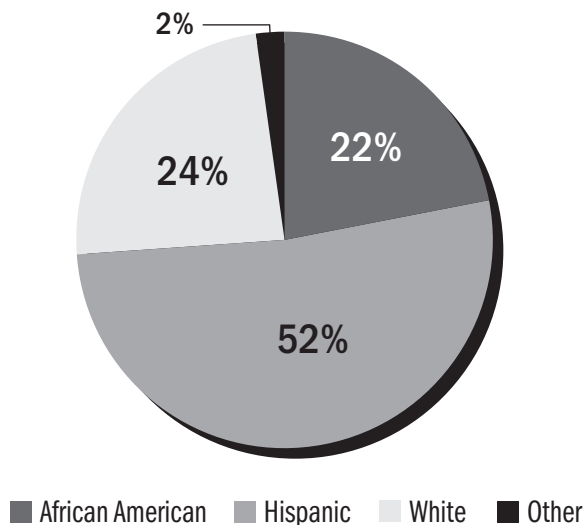
Overrepresentation of African American Students in Discretionary Expulsions

While African American students are overrepresented in all categories of discretionary expulsions, *the greatest disparity exists in their representation in expulsions for discretionary, non-violent offenses that tend to be more “subjective” in nature, such as “serious or persistent misbehavior” in a Disciplinary Alternative Education Program.*

For its analysis, Texas Appleseed divided discretionary expulsion data into two groups—criminal conduct not named as a mandatory expulsion or occurring off-campus, which we refer to as “mid-level discretionary expulsions,”¹³⁸ and non-criminal expulsion offenses like “serious or persistent misbehavior” while in a DAEP and local Student Code of Conduct violations. A look at the racial and ethnic representation within these two groups of expulsion offenses is revealing.

Race/Ethnicity of Mid-Level Discretionary Expulsions

2007 – 2008



Note: See examples in footnote 138.

Compared to their representation in mandatory expulsions (see chart on page 46), Hispanic students represent a smaller percentage of mid-level discretionary expulsions. African American students are represented in higher percentages in mid-level discretionary expulsions. For all students, the largest number of mid-level discretionary expulsions involved controlled substance violations, rather than discretionary expulsions for behavior that posed a direct threat to school safety.¹³⁹

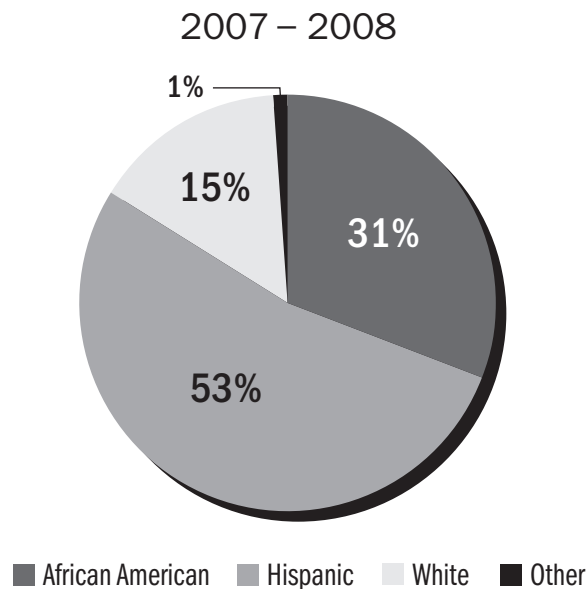
¹³⁸ Examples of the discretionary expulsion offenses that Texas Appleseed included in the “mid-level discretionary expulsions” group include possession of a controlled substance or alcohol, indecent exposure, retaliation against a school employee, Title 5 felonies that occurred off-campus, terrorist threat, false alarm or false report, and assault. See Appendix for methodology.

¹³⁹ TEX. EDUC. AGENCY, COUNTS OF STUDENTS AND INCIDENTS BY DISCIPLINE ACTION GROUPS AND DISCIPLINE ACTION REASONS, PEIMS 2007-2008 DATA, available at www.tea.state.tx.us

Expulsion of African American Students for “Serious or Persistent Misbehavior”

“Serious or persistent misbehavior” while in a DAEP and local Student Code of Conduct violations are the discretionary school expulsion categories with the highest rate of overrepresentation of African American students in Texas. *African American students are overrepresented in these expulsions at more than twice their representation in the student population.*

Race/Ethnicity of Students Expelled for “Serious or Persistent Misbehavior” and Student Code of Conduct Violations



Expulsion for “serious or persistent misbehavior” is arguably the most “subjective” reason for which students can be expelled. *When local Student Code of Conduct violations are excluded and expulsions for “serious or persistent misbehavior” are isolated, the state average for African American students is even higher at 35 percent, more than twice their representation in the student body.* This tends to support research that shows that African American students are disciplined for offenses that are both less serious and more subjective in interpretation than other students.¹⁴⁰

To give readers another way of understanding this phenomenon, Texas Appleseed calculated an odds ratio for school districts that had a statistically significant overrepresentation of African American students in “serious or persistent misbehavior” expulsions from a DAEP. *According to these odds ratios, African American students in several districts are anywhere from two to 54 times more likely than a student of another race or ethnicity to be expelled from a DAEP for “serious or persistent misbehavior.”*

¹⁴⁰ See TEXAS APPLESEED, *supra* note 2, at 41-45 (discussion of research surrounding overrepresentation of African American students in disciplinary referrals); Anne Gregory & Rhona S. Weinstein, *The discipline gap and African Americans: Defiance or cooperation in the high school classroom*, J. SCH. PSYCHOL., Vol. 46, Issue 4, pp. 455-75 (2008).

Likelihood of Expulsion of African American Students for “Serious or Persistent Misbehavior” Compared to Other Students, 2007-08

Temple ISD	54 times more likely
Galveston ISD	20 times more likely
Plano ISD	17 times more likely
Round Rock ISD	9 times more likely
Houston ISD	7 times more likely
Dallas ISD	4 times more likely
Klein ISD	4 times more likely
Killeen ISD	3 times more likely
Waco ISD	2 times more likely

A closer look at some of the largest school districts in the state, along with districts with a high number of expulsions or a high overrepresentation of minority students in expulsions, shows large disparities in expulsion of minority students for the least serious, more subjective discretionary offenses. It also reveals that the same pattern may exist for Hispanic students in some districts.

Aldine ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	30%	8%	32%	46%
Hispanic	64%	89%	64%	50%
White	4%	3%	2%	3%
Other	2%	0%	2%	0%

Arlington ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	24%	50%	56%	45%
Hispanic	37%	25%	22%	45%
White	31%	22%	16%	6%
Other	8%	3%	6%	3%

Conroe ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	7%	1%	13%	14%
Hispanic	26%	33%	13%	28%
White	63%	63%	70%	56%
Other	4%	3%	4%	2%

Dallas ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	29%	20%	69%	59%
Hispanic	65%	77%	31%	39%
White	5%	3%	0%	1%
Other	1%	0%	0%	0%

Fort Worth ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion ¹⁴¹	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	26%	31%	N/A	51%
Hispanic	58%	62%	N/A	44%
White	14%	5%	N/A	5%
Other	2%	2%	N/A	0%

Galveston ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	30%	33%	100% (but only one expulsion)	90%
Hispanic	43%	33%	0%	5%
White	24%	16.7%	0%	5%
Other	3%	16.7%	0%	0%

*Disproportionate
Expulsion of
Minority Students*

51

141 Fort Worth ISD had so few serious discretionary expulsions that an analysis would not be meaningful.

Houston ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	29%	39%	29%	76%
Hispanic	60%	59%	68%	19%
White	8%	3%	2%	5%
Other	3%	0%	1%	0%

Klein ISD Expulsion Groups by Race/Ethnicity 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	16%	20%	29%	45%
Hispanic	31%	40%	35%	8%
White	45%	40%	35%	8%
Other	9%	0%	1%	5%

North East ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	9%	2%	8%	19%
Hispanic	47%	71%	63%	58%
White	39%	27%	29%	20%
Other	4%	0%	0%	3%

Northside ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	8%	6%	3%	4%
Hispanic	63%	75%	74%	90%
White	25%	17%	20%	6%
Other	4%	2%	3%	0%

Round Rock ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	11%	10%	17%	69%
Hispanic	25%	30%	33%	23%
White	53%	60%	33%	8%
Other	11%	0%	17%	0%

Waco ISD Expulsion Groups by Race/Ethnicity, 2007-08

Race/ Ethnicity	Representation in Student Body	Mandatory Expulsion	Mid-Level Discretionary Expulsion	“Serious or Persistent”/ Local Code of Conduct Expulsion
African American	35%	40%	60%	56%
Hispanic	51%	20%	20%	39%
White	14%	40%	20%	5%
Other	Less than 1%	0%	0%	0%

Conclusion

Disproportionate representation of minority students in disciplinary referrals has plagued schools since desegregation. Texas Appleseed’s research supports earlier findings that show that African American students are most often disciplined for low-level, “subjective” offenses like “serious or persistent misbehavior.” The impact of disproportionate expulsion is of grave concern given both the achievement gap for minority students and their elevated dropout rates. If Texas is serious about addressing the achievement gap and high dropout rates for minority students, it must take a close look at the role that disproportionate disciplinary referrals play.

Disproportionate Representation of Minority Students in School Discipline—A Problem Dating Back to Desegregation

Disproportionate discipline of minority students is not a new problem. A report published in 1973 linked disproportionate suspension and expulsion of minority students to resistance to desegregation.¹⁴² Though the report had a national focus, it included expulsion data for Dallas schools; in 1972, Dallas reported having expelled 5,449 African American students, 1,027 Hispanic students, and 3,869 white students.¹⁴³ Many of the concerns raised by that report sound familiar to those who raise questions about similar problems today:

*Post-desegregation discrimination results in the continuing denial of equal educational opportunity and in the frustration of both the Civil Rights Act of 1964 and the Fourteenth Amendment to the Constitution. In human terms, pushouts caused by discrimination result in large numbers of young people who lose hope and are marked by despair and bitterness. Often, they “graduate” into the worlds of drugs, delinquency, unemployment, and welfare. Systems which produce large numbers of such persons are indefensible. As well, they produce great social costs, for they frustrate national educational goals, cause a huge waste in tax dollars, and produce a steady flow of persons marked for economic and social dependency.*¹⁴⁴

The disparate discipline of African American students in Dallas ISD was the subject of a lawsuit in 1974.¹⁴⁵ That suit alleged that the discriminatory disciplinary system violated equal protection and substantive due process rights of African American students in Dallas ISD.¹⁴⁶ Plaintiffs presented statistical evidence which showed that African American students comprised 38.7 percent of the student body in 1982-73, but 60.5 percent of all suspensions.¹⁴⁷ Similarly, during the 1973-74 school year, African American students comprised 40.9 percent of the student body, compared to 59.4 percent of all suspensions.¹⁴⁸ The court ruled in favor of the plaintiffs, finding:

It is apparent that the program thus far in effect in the DISD has not worked to materially change the existing racism which, in the opinion of this Court, is the chief cause of the disproportionate number of Blacks being suspended and given corporal punishment. An improvement in the situation demands an affirmative program... While not attempting to dictate the

142 SOUTHERN REGIONAL COUNCIL & ROBERT F. KENNEDY MEMORIAL, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION (1973).

143 *Id.* at 4.

144 *Id.* at vi.

145 *Hawkins v. Coleman*, 376 F. Supp. 1330 (N.D. Tx. 1974).

146 *Id.*

147 *Id.* at 1333.

148 *Id.*

*details of an affirmative program this Court does direct the DISD to review its present program and put into effect an affirmative program aimed at materially lessening “white institutional racism” in the DISD.*¹⁴⁹

A 1975 report published by the Children’s Defense Fund included Dallas and Houston as two of the 20 districts with the highest number of student suspensions.¹⁵⁰ Dallas and Houston were also included in the report’s list of the 20 worst districts nationally for disproportionate suspension of African American students.¹⁵¹ This study found that African American students were suspended more than any other group of children: African American elementary school students were suspended three times as often as white students, and were twice as likely to be suspended in secondary schools.¹⁵² The authors note that many who were interviewed argued that this simply reflected a higher rate of misbehavior among African American students, but the study concludes:

*If characteristics of black children were truly responsible for high black suspension rates, we would not find such districts where blacks are not suspended disproportionately. Whether administrators consciously enforce different forms of segregation, whether they merely reflect community values and attitudes, or whether they fail to deal flexibly and creatively with curricula, teacher training, and modes of maintaining a good learning environment, it is the behavior of school administrators, rather than the behavior of children, which is in question.*¹⁵³

Studies published in the 1980s and 1990s continued to document disproportionate disciplinary referrals of minority students.¹⁵⁴ Indeed, in Dallas ISD, the numbers today are not much different than they were just after desegregation of Dallas’s schools. In 2008-09, while African American students comprised about 28 percent of the student body, they made up 42 percent of all expulsions, 52 percent of all referrals to a DAEP, 51 percent of all referrals to out-of-school suspension, and 46 percent of all referrals to in-school suspension.¹⁵⁵ Overrepresentation in expulsions is documented in the preceding chapter. This problem, linked to the legacy of segregation of our schools, is not diminishing with time.

149 *Id.* at 1337-38. However, a short seven years later, the 5th Circuit rejected a similar argument in *Tasby v. Estes*, 643 F.2d 1103, 1107-08 (5th Circuit 1981)(statistical evidence found insufficient to establish prima facie case of racial discrimination because “too many legitimate, non-racial factors are involved to permit an inference of discriminatory purpose from a showing of disproportionate impact, even when it occurs in the context of on-going desegregation efforts”).

150 CHILDREN’S DEFENSE FUND, SCHOOL SUSPENSIONS: ARE THEY HELPING CHILDREN? A REPORT 58 (1975).

151 *Id.* at 68.

152 *Id.* at 61.

153 *Id.* at 70.

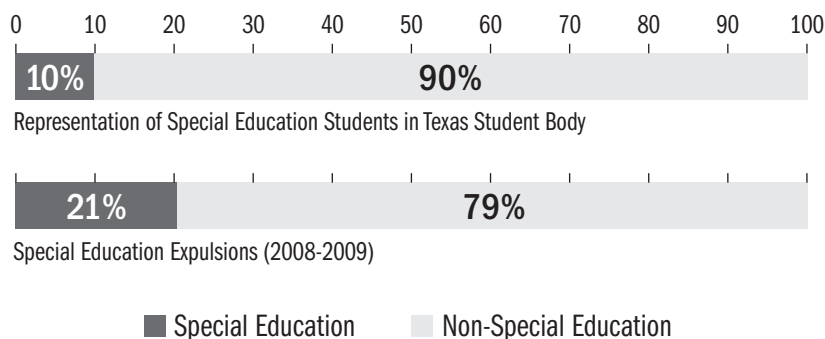
154 SKIBA, *supra* note 129, at 1.

155 TEX. EDUC. AGENCY, *supra* note 7.

DISPROPORTIONATE EXPULSION OF SPECIAL EDUCATION STUDENTS

Special education students are vastly overrepresented in expulsions. For example, though special education students made up only 10 percent of the student body statewide in 2008-09,¹⁵⁶ they represented 21 percent of all expulsions in Texas.¹⁵⁷ That school year, there were 8,202 expulsions, and 1,724 involved special education students.¹⁵⁸

Representation of Special Education Students in Expulsions from Texas Schools 2008 – 2009



156 TEX. EDUC. AGENCY, 2008 SNAPSHOT, *available at* www.tea.state.tx.us.

157 See TEX. EDUC. AGENCY, DISCIPLINARY ACTION STATEWIDE ANNUAL SUMMARY REPORT, PEIMS DISCIPLINE DATA FOR 2008-2009, *available at* www.tea.state.tx.us

158 *Id.*

Impact of Expulsion on Special Education Students

Though special education students are being expelled in much smaller numbers compared to the number of special education students who are suspended or sent to Disciplinary Alternative Education Programs (DAEPs), *the consequences of expulsion—particularly for special education students—are much more significant.*

“Exclusion of students with disabilities reduces their exposure to instruction, makes academic tasks more aversive, results in further negative behaviors, and increases the risk for further exclusions.”¹⁵⁹ The Individuals with Disabilities Education Act (IDEA) presumes that changes in placement are particularly problematic for special education students, triggering procedural protections any time a disciplinary action will result in a change in placement of 10 days or more.

In addition to the implications this has on special education students’ ability to succeed at school, in counties where expulsion results in a referral to a Juvenile Justice Alternative Education Program (JJAEP), these students are coming into direct contact with the juvenile justice system. JJAEPs are run by the local juvenile board. Students’ introduction to the juvenile justice system is even more direct if they are expelled from a DAEP for “serious or persistent misbehavior” in a county that prosecutes this as a CINS offense, or Conduct in Need of Supervision by the court. If expulsion of special education students is the result of poor programming that is not effectively meeting their needs, the result is—in effect—the criminalization of behavior that may be directly related to their disability. Though procedural due process protections under IDEA are supposed to guard against this, there are serious questions raised about possible IDEA violations in districts where special education students are overrepresented in expulsions by as much as three times their representation in the student body.

Compounding Effect of Race/Ethnicity and Special Education

While minority students are also overrepresented within special education, Texas Appleseed was able to break out data for special education expulsions by race and ethnicity. Our findings indicate that each of these plays a distinct role in expulsion.

Our data analysis shows that, as discussed above, African American students are almost twice as likely to be expelled as other students, and Hispanic students are almost one-and-a-half times as likely to be expelled. *Within special education, African American special education students are more than twice as likely to be expelled as other special education students, as are Hispanic students, showing that race plays an independent role in expulsion.* When these two factors are considered together, a compounding effect is recognized, with *African American special education students over three times more likely to be expelled* than other students, and *Hispanic special*

159 Michael P. Krezmien et al, *Suspension, Race, and Disability: Analysis of Statewide Practices and Reporting*, 14 J. EMOTIONAL & BEHAVIORAL DISORDERS 4, pp 217-226, 223 (2006).

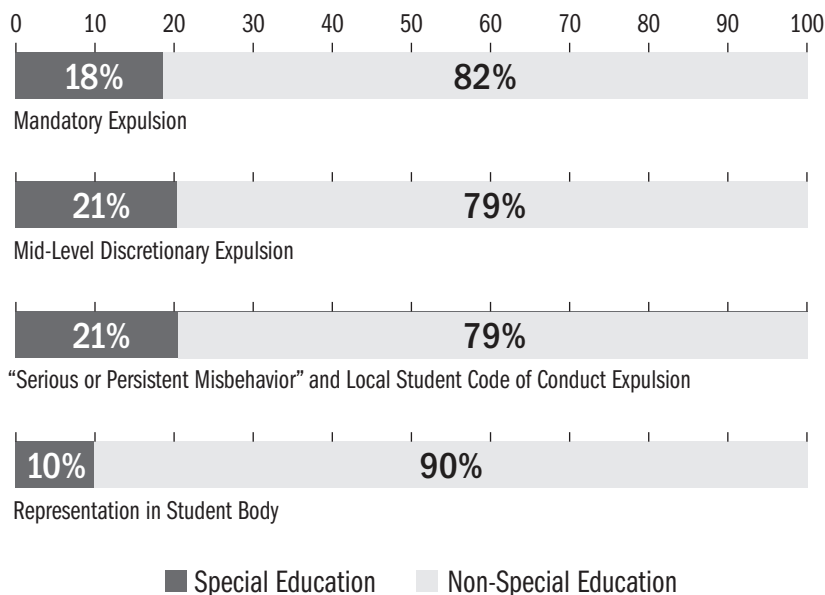
education students two-and-a-half times more likely to be expelled than other students. This is consistent with academic studies of student discipline for special education students carried out in other states, with one study concluding, “the combined factors of race and disability put African American students identified with a disability at the greatest risk for [disciplinary action].”¹⁶⁰

Special Education Students are Overrepresented in Every Type of Expulsion

It is also worth noting that—unlike minority overrepresentation—special education students are *overrepresented in every category of expulsion*: mandatory, discretionary (more serious mid-level offenses) and non-criminal discretionary (“serious or persistent misbehavior” or Student Code of Conduct violations while in a Disciplinary Alternative Education Program).

Representation of Special Education Students by Type of Expulsion

2007 – 2008



When “serious or persistent misbehavior” expulsions from a DAEP are broken out and considered alone, the representation of special education students is slightly higher. *More than 24 percent of expulsions from a DAEP for “serious or persistent misbehavior”*

160 *Id.* at 222.

involve special education students, a rate that is more than double their representation in the overall student population.

A closer look at school-district level data reveals a pattern of overrepresentation in all categories of expulsion, but also shows that in some districts, special education students are particularly overrepresented in low-level discretionary expulsions.

Disproportionate Expulsions of Special Education Students in Districts Expelling at Least 30 Students, 2007-08

District	Representation in Student Body	Mandatory Expulsions	Mid-Level Discretionary Expulsions	“Serious or Persistent”/ Local Code of Conduct Expulsions
Abilene ISD	17%	24%	0%	50%
Aldine ISD	8%	6%	13%	14%
Austin ISD	10%	13%	43%	0%
Belton ISD	12%	50%	33%	12%
Brazosport ISD	13%	50%	33%	15%
Brownsville ISD	11%	26%	33%	24%
Carrollton-Farmers Branch ISD	10%	19%	25%	23%
Channelview ISD	11%	12%	0%	17%
Conroe ISD	9%	18%	17%	19%
Corpus Christi ISD	12%	40%	50%	0%
Cypress-Fairbanks ISD	8%	20%	12%	0%
Dallas ISD	8%	10%	11%	14%
Dickinson ISD	11%	17%	0%	11%
Eagle Pass ISD	8%	22%	0%	24%
Edinburg ISD	9%	13%	0%	50%
El Paso ISD	9%	9%	13%	0%
Fort Bend	8%	18%	21%	0%
Fort Worth ISD	8%	12%	0%	23%
Harlandale ISD	11%	30%	100% (but only one expulsion)	36%
Houston ISD	9%	23%	42%	10%
Irving ISD	8%	17%	0%	7%
Katy ISD	9%	6%	0%	14%
Killeen ISD	13%	67%	20%	24%
Klein ISD	8%	7%	18%	32%
La Joya ISD	7%	20%	14%	33%

District	Representation in Student Body	Mandatory Expulsions	Mid-Level Discretionary Expulsions	“Serious or Persistent”/ Local Code of Conduct Expulsions
Laredo ISD	10%	32%	43%	35%
Leander ISD	10%	20%	33%	75%
Lewisville ISD	11%	50%	21%	15%
Lubbock ISD	14%	19%	33%	18%
Mesquite ISD	14%	14%	17%	44%
Midland ISD	8%	14%	26%	19%
New Caney ISD	11%	8%	50%	46%
North East ISD	12%	7%	26%	46%
Northside ISD	7%	9%	26%	33%
Paris ISD	12%	100% (but only 1 expulsion)	33%	15%
Pasadena ISD	7%	11%	6%	0%
Pharr-San Juan Alamo ISD	8%	11%	0%	22%
Plano ISD	12%	20%	33%	50%
Rio Grande City ISD	12%	32%	8%	32%
San Angelo ISD	12%	10%	25%	7%
San Antonio ISD	12%	6%	30%	8%
San Felipe-Del Rio CISD	11%	0%	25%	31%
Southwest ISD	12%	0%	33%	39%
Spring ISD	10%	29%	13%	50%
Temple ISD	12%	67%	25%	43%
Texas City ISD	10%	50%	20%	4%
United ISD	10%	26%	40%	21%
Victoria ISD	12%	25%	50%	35%
Waco ISD	12%	40%	20%	23%

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The consistent overrepresentation of special education students in all categories of expulsions may indicate a systematic failure of programming for these students.

Students with disabilities often need sustained and intensive interventions.¹⁶¹ Functional Behavioral Assessments, coupled with Behavior Intervention Plans that include use of positive behavior interventions and supports, have been shown to reduce the need for traditional school discipline for children with emotional and behavioral problems.¹⁶²

¹⁶¹ See Krezmien et al, *supra* note 159, at 222.

¹⁶² BAZELON CENTER FOR MENTAL HEALTH LAW, SUSPENDING DISBELIEF MOVING BEYOND PUNISHMENT TO PROMOTE EFFECTIVE INTERVENTIONS FOR CHILDREN WITH MENTAL OR EMOTIONAL DISORDERS (2003).

Yet, many Texas districts struggle to provide the special education programming required under federal law (Individuals with Disabilities Education Act or IDEA) to help meet the educational and behavioral needs of special education students in mainstream settings. Unfortunately, this is not unusual; nationwide, schools are “more concerned about the illusion of compliance than about effective use of the tools to prevent and address behavior problems.”¹⁶³ Far too often, failure to comply with a student’s Individual Education Plan (IEP) or Behavioral Improvement Plan (BIP) aggravates behavioral problems and leads to school-imposed discipline. Research shows that, particularly for students with disabilities, “policies designed to meet troubling behavior with harsh punishments may be ineffective for reducing or eliminating the behaviors and may exacerbate the problems they are designed to punish.”¹⁶⁴

During our interviews, Texas Appleseed also heard from attorneys representing students who should have qualified for IDEA protections, but who were disciplined even when a qualifying disability or mental health issue had been reported by a parent or teacher. Several parents have contacted Texas Appleseed out of frustration at not being able to get their child’s school to conduct an evaluation for special education, even when the child’s doctor diagnosed a significant emotional problem or learning disability. One attorney relayed the following example:

In one rural area, a 15-year-old girl’s parents went to the school to discuss their daughter’s recent suicide attempt and hospitalization for serious mental illness. The girl had never been identified in the school as having a disability. The parents hoped for advice and help from the school. Later the same day, the student was involved in a fight with a bully and the school moved to expel the girl “to the street” without advising the parents of the daughter’s right to an evaluation for special education, which would also have qualified her for continuing educational services during the expulsion period.

During Texas Appleseed’s interviews for this report, one JJAEP director noted that they found that students expelled to their program often had undiagnosed behavioral or mental health issues. The same JJAEP director also believed that, even when a student’s disability had been identified by the mainstream school and the student was receiving special education services, the school often failed to take the disability into account when the student was disciplined.

Disproportionate Expulsion of Special Education Students for “Serious or Persistent Misbehavior”

Special education students are overrepresented in mandatory and discretionary expulsions alike, but some Texas districts are expelling these students for “serious or persistent misbehavior” at statistically significant rates. For these districts, a ratio was calculated to determine the odds that a special education student in that district would get expelled for “serious or

¹⁶³ *Id.* at 5.

¹⁶⁴ Krezmien, *supra* note 159, at 222.

persistent misbehavior” compared to other students. *In 12 Texas school districts, the odds of a special education student being expelled for such non-criminal conduct ranged from double to seven times more likely than a non-special education student.*

Likelihood of Expulsion of Special Education Students for “Serious or Persistent Misbehavior” Compared to Non-Special Education Students, 2007-08

Cedar Hill ISD	15 times more likely
Klein ISD	8 times more likely
Fort Worth ISD	7 times more likely
New Caney ISD	7 times more likely
North East ISD	7 times more likely
Temple ISD	7 times more likely
Abilene ISD	6 times more likely
Harlandale ISD	5 times more likely
Southwest ISD	5 times more likely
Laredo ISD	4 times more likely
Killeen ISD	3 times more likely
Waco ISD	3 times more likely

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Students*

In addition, there were several districts in which *every student expelled from a DAEP for “serious or persistent misbehavior” was a special education student.*

Districts in which All Students Expelled for “Serious or Persistent Misbehavior” were Special Education Students, 2007-08

District	Number of Students Expelled
Aldine ISD	73
Eagle Pass ISD	35
Ennis ISD	15
Lamesa ISD	18
Paris ISD	26
San Angelo ISD	31
San Felipe-Del Rio CISD	27
Victoria ISD	32

This data should raise serious questions about special education programming in these districts’ DAEPs and their commitment to addressing special education students’ behavioral issues in the least restrictive environment.

Data provided to Texas Applesseed by the Texas Juvenile Probation Commission shows that special education students categorized as “emotionally disturbed” (ED) or learning disabled (LD) were particularly likely to be expelled from a DAEP for “serious or persistent

misbehavior.” According to this data, almost 15 percent of the special education students expelled for “serious or persistent misbehavior” to a JJAEP in 2006-07 were categorized as “emotionally disturbed.” This is more than twice their representation in the special education student body. Almost 66 percent had a learning disability.

This likely speaks to the poor quality of special education services in DAEPs. A review of suspension data conducted in Maryland showed an identical trend, with the authors concluding:

The risk of being suspended among students with ED was high across all racial groups, even among the Asian population that typically had lower odds ratios than all other groups, including White students without disabilities. It is not surprising that students with ED exhibit numerous problem behaviors in school considering the nature of their disabilities. However, it appears that the behaviors’ association with the disability is not considered when determining disciplinary consequences. The high suspension rates of students with ED are problematic because these students require intensive behavioral interventions implemented consistently over time. Interruption of these interventions because of referrals to the office, suspensions, or expulsions negatively impacts the effectiveness of special education behavioral interventions and supports.

Furthermore, we found that students with...LD also had higher risks of being suspended than their same-race peers without disabilities. Students with these disabilities often find academic tasks aversive and may respond to difficult academic tasks with disruptive behaviors that result in disciplinary referrals and exclusions. Removal does not, however, promote pro-social behaviors or allow students access to the behavioral or academic supports that may decrease future problem behaviors.¹⁶⁵

Conclusion

Special education students are vastly overrepresented in expulsions—accounting for 21 percent of all expulsions in Texas in 2008-09, or double their representation (10 percent) in the student body statewide. African American and Hispanic special education students are more likely to be expelled than other special education students. Because the consequences of expulsion and removal from the regular classroom are more significant for special education students, procedural protections under federal law are triggered any time a disciplinary action will result in a change in placement of 10 days or more. Research has shown that exclusion of students with disabilities reduces their exposure to instruction and results in additional negative behaviors. The overrepresentation of special education students in student expulsions underscores the need for school-based mental health services. In 2008, only 18 percent of Texas children eligible to receive public mental health services actually received them. The Texas Education Agency identified this problem back in 2005, noting that only 28 percent of Texas schools employed a licensed mental health professional, while the majority of schools rely on guidance counselors to assist students experiencing mental health issues. In 2009, school guidance counselor publications reported that huge caseloads and test administration responsibilities leave little time for Texas school counselors to provide mental health counseling.

¹⁶⁵ Krezmien, *supra* note 159, at 223.

Shortfalls in School-Based Mental Health Programs

“If capacity problems in community-based programs could be addressed and proactive systems of early identification and treatment implemented, youth might receive the treatment and support they need to prevent involvement in the juvenile justice system.”

– Texas Juvenile Probation Commission &
Texas Youth Commission, Coordinated
Strategic Plan FY 2010.

There is no doubt that a serious overrepresentation of special education students in school disciplinary referrals exists—even the Texas Education Agency (TEA) has identified this trend.¹⁶⁶ While Texas Applesseed does not have the ability to break out disciplinary referrals by special education diagnostic category, in other states, special education students who are categorized as “emotionally disturbed” are disproportionately represented.¹⁶⁷ What little data Texas Applesseed received broken down by diagnostic category supports this finding, as discussed above.

Even students who do not qualify for special education services may need mental health services at some point during their educational career. As many as 22 percent of all youth under the age of 18 are in need of services for mental health problems, with one in five children and adolescents experiencing the signs and symptoms of a mental illness during the course of a year.¹⁶⁸ Eleven percent of these children will experience significant impairment.¹⁶⁹ Up to 50 percent of the students in large urban schools may be struggling with psychosocial problems which are often rooted in the difficult living conditions associated with poverty.¹⁷⁰ ***This affects educational attainment, yet in 2008, only 18 percent of Texas children eligible to receive public mental health services actually received them.***¹⁷¹

The link between untreated mental health problems and the “school-to-prison-pipeline” is clear:

- Nationally, 50 percent of students with a mental illness age 14 and older drop out of high school—the highest dropout rate of any disability group. 73 percent of those who drop out are arrested within five years.¹⁷²

166 TEX. EDUC. AGENCY, 2008 COMPREHENSIVE ANNUAL REPORT ON TEXAS PUBLIC SCHOOLS 54 (2008), available at http://ritter.tea.state.tx.us/research/pdfs/2008_comp_annual.pdf.

167 See SOUTHERN POVERTY LAW CENTER, STOPPING THE SCHOOL TO PRISON PIPELINE BY ENFORCING SPECIAL EDUCATION LAW, available at <http://www.splcenter.org/legal/schoolhouse.jsp>; Krezmien, *supra* note 159.

168 UCLA CENTER FOR MENTAL HEALTH IN SCHOOLS, CURRENT STATUS OF MENTAL HEALTH IN SCHOOLS: A POLICY AND PRACTICE ANALYSIS 6 (2006).

169 *Id.*

170 *Id.*

171 Texans Care for Children, *Increase Funding for Children’s Mental Health Services*, available at <http://www.texanscareforchildren.org/files/MHFunding.pdf>.

172 NAMI, *supra* note 28, at Table 2; see also TEX. EDUC. AGENCY, ASSESSEMENT OF EXISTING SCHOOL-BASED MENTAL HEALTH AND SUBSTANCE ABUSE PROGRAMS 4 (2005).

- Foster children are almost twice as likely as other students to receive disciplinary referrals at school.¹⁷³ Foster children often suffer the effects of the abuse and neglect that brought them into the foster care system, and are disproportionately represented in the group of students classified as “emotionally disturbed” for special education purposes.¹⁷⁴
- Children who have a mental illness are more than three times as likely to be arrested before leaving school as other students.¹⁷⁵
- In Texas, 33 percent of youth who are referred to juvenile probation have a diagnosed mental illness; the percentage in the Texas Youth Commission is considerably higher, with 60 percent of the youth in TYC identified as having a mental health treatment need.¹⁷⁶ TYC has nearly 18 times as many students with an emotional disturbance as a typical public school.¹⁷⁷

Schools are an obvious intervention point for mental health services if only because they provide a point of contact with students and their families. But school-based mental health programs also provide a direct educational benefit by addressing psychosocial and mental health concerns that are essential to effective school performance.¹⁷⁸ Providing school-based mental health services could also improve school climate, a factor associated with academic success and dropout reduction. Mental health services are essential student supports that enable all students to learn.¹⁷⁹

One attorney interviewed by Texas Appleseed vividly described the educational consequences suffered by a client, resulting from systemic failures—within the school and juvenile justice agencies—to address the student’s identified mental health issues:

[I had a client] with serious mental illness who was discharged from the Texas Youth Commission because the severity of his mental health issues made him unable to complete their program. However, he was not given medication to continue taking upon his release from TYC. When he enrolled in school, it was determined that his educational evaluations were out of date. School staff, knowing he was released from a TYC facility, were being hyper vigilant, focusing on even the most minor infraction of the Student Code of Conduct. He was sent out of class on his second day at school for

173 CENTER FOR PUBLIC POLICY PRIORITIES, THE TEXAS SCHOOL DISCIPLINARY SYSTEM AND FOSTER CARE CHILDREN (2009).

174 *Id.* at 2, 5.

175 NAMI, *supra* note 28.

176 TEXAS YOUTH COMMISSION & TEXAS JUVENILE PROBATION COMMISSION, TYC-TJPC COORDINATED STRATEGIC PLAN FY 2010 8 -9 (2009).

177 DR. MICHAEL P. KREZMIEN, A REVIEW OF EDUCATION PROGRAMS FOR STUDENTS IN THE TEXAS YOUTH COMMISSION STATE SCHOOLS : A SPECIAL REPORT OF THE OFFICE OF THE INDEPENDENT OMBUDSMAN 15 (2008).

178 See UCLA CENTER FOR MENTAL HEALTH IN SCHOOLS, THE CURRENT STATUS OF MENTAL HEALTH IN SCHOOLS: A POLICY AND PRACTICE ANALYSIS 1 (2006).

179 *Id.*

having facial hair. When he was on his way to the school office to shave, another administrator approached him and offered harsh words about his facial hair. Without the benefit of medications, updated evaluations, a behavior intervention plan, or a little patience from school officials during a time of transition, the youth predictably responded with an outburst and threw a candy dish against the wall. The school moved for expulsion.

Unfortunately, few Texas schools are able to link students with school-based mental health services. Even school counselors find little time for services for students with behavioral problems. In January 2005, TEA published a report assessing the availability of school-based mental health and substance abuse programs.¹⁸⁰ TEA found that though schools cited counseling as their most successful approach to identifying and addressing students' mental health and substance abuse problems, school counselors spent most of their work time on tasks other than mental health and/or substance abuse counseling, especially in high school.¹⁸¹ TEA also found that few schools employed a licensed mental health professional. Though 78 percent of schools had a guidance counselor, only 28 percent of schools employed a licensed mental health professional.¹⁸²

This was not the first study of this kind to be carried out in Texas. Just a few years earlier, the 77th Texas Legislature asked the Texas Comptroller's office to determine student-to-counselor ratios in Texas schools, conduct a statewide survey of how school counselors spend their time, and make recommendations for future improvements.¹⁸³ A review of this 2002 report shows that little changed between its publication and that of the 2005 TEA report discussed above.

For example, about the same percentage of school districts (approximately 23 percent) did not employ any guidance counselor.¹⁸⁴ During the 2001-02 school year, the statewide ratio of students to counselor was 423:1.¹⁸⁵ This was not significantly better than a 1994 TEA study, which found the 1993-94 student-to-counselor ratio to be 476:1.¹⁸⁶ Similar to the 2005 TEA report, the 2002 Comptroller study found that a "good portion of [counselors'] time is spent on...administrative tasks."¹⁸⁷ Ironically, the 1994 TEA report also concluded that "the increased responsibilities associated with standardized testing and numerous non-guidance duties have left counselors feeling overburdened and ill-equipped to meet the rising demand for developmental counseling."¹⁸⁸

180 TEX. EDUC. AGENCY, ASSESSMENT OF EXISTING SCHOOL-BASED MENTAL HEALTH AND SUBSTANCE ABUSE PROGRAMS (2005).

181 *Id.* at 1.

182 *Id.* at 6.

183 TEX. COMPTROLLER, GUIDING OUR CHILDREN TOWARD SUCCESS: HOW TEXAS SCHOOL COUNSELORS SPEND THEIR TIME (2002).

184 *Id.* at 3.

185 *Id.* at 4.

186 TEX. EDUC. AGENCY, POLICY RESEARCH REPORT #5: COUNSELORS IN TEXAS PUBLIC SCHOOLS 12 (1994).

187 *Id.* at 1.

188 TEX. EDUC. AGENCY, *supra* note 186, at 16.

Today, school counselors remain frustrated by the lack of time they have to spend on duties they feel should be more commonly associated with their role. In February 2009, the Texas School Counselor Association included an article in their newsletter that described the “ethical tug-a-war” that “[pulls] school counselors away from providing preventative counseling services that all students need to succeed academically, socially, and in careers.”¹⁸⁹

This article notes that when districts restrict counselors’ time with administrative duties like coordinating standardized test-taking, “the need for crisis intervention grows to the point counselors cannot meet the need.”¹⁹⁰ More recently, Dallas school counselors reported being “overwhelmed by huge caseloads.”¹⁹¹ These counselors report caseloads of up to 570 students per counselor.¹⁹²

These reports are echoed by Texas Appleseed’s surveys and interviews with school counselors—many of whom report no responsibility or involvement in school discipline or the process of transitioning youth back from JJAEPs or DAEPs to the regular classroom. Of those surveyed, the only counselors who reported having contact with the JJAEP were those who had a student in the JJAEP during TAKS (Texas Assessment of Knowledge and Skills) testing and were asked to coordinate testing with the JJAEP. Many of the counselors surveyed had advanced degrees and experience that might be directly relevant to counseling youth with behavior problems or substance abuse issues. Reported experience included trauma and loss counseling certification, certification for substance abuse counseling, and peer mediation training. It is apparent that the wealth of experience offered by these counselors is not being put to its highest use.

Beyond simply increasing the number of counselors in Texas’ public schools, a more comprehensive school-based mental health program would provide referrals and services as a component of a school-wide Positive Behavior Support model.¹⁹³ School-based mental health services have been recognized as an important component in keeping schools safe.¹⁹⁴ Implementing programs that better support students’ mental health needs will not only address issues that may stand in the way of their academic success, it will also serve to keep youth out of the school to prison pipeline.

189 Lynn Smith, *School Counseling: An Ethical Tug-A-War!*, VOICE OF THE SCHOOL COUNSELOR, Vol. 19, Issue 2, February 2009.

190 *Id.*

191 Diane Rado, *Dallas School Counselors Overwhelmed by Huge Caseloads*, DALLAS MORNING NEWS, September 29, 2009.

192 *Id.*

193 See UCLA CENTER FOR MENTAL HEALTH IN SCHOOLS, *supra* note 178, at 24.

194 Dr. David Osher & Sandra Keenan, *Instituting School-Based Links with Mental Health and Social Service Agencies*, in SAFE AND SECURE: GUIDES TO CREATING SAFER SCHOOLS (2002)

JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

Legislative intent in creating JJAEPs in 1995 was to provide continuing educational opportunities for students expelled from school for *the most serious offenses*. Only Texas counties with a population greater than 125,000 are required to provide a JJAEP that must accept students who are expelled for mandatory reasons outlined in Chapter 37 of the Texas Education Code.¹⁹⁵

Twenty-seven counties in Texas are currently required to operate a JJAEP.¹⁹⁶ When the next U.S. Census is released in 2010, several counties are expected to meet the state population threshold that requires them to provide a JJAEP. Ten smaller Texas counties are currently operating a JJAEP, although not required to do so based on population numbers.¹⁹⁷

School districts without a JJAEP may opt to send expelled students to their Disciplinary Alternative Education Programs (DAEPs)¹⁹⁸ or to have them serve the length of their expulsion outside a school setting. This latter option is often referred to as expelling students “to the street.”

JJAEPs generally fall under the monitoring and oversight responsibilities of the Texas Juvenile Probation Commission at the state level, and the local juvenile boards at the county level.¹⁹⁹ JJAEPs may be run by the school district, by the local probation department, a private vendor, or a combination of these;²⁰⁰ however, most JJAEPs are operated jointly by the school district and local juvenile probation department.²⁰¹

195 TEX. EDUC. CODE §37.011.

196 For a complete list of the JJAEPs in Texas and the districts they serve, see Appendix.

197 They are Atascosa, Bowie, Calhoun, Hale, Hardin, Hays, Hill, Hopkins, and Karnes/Wilson counties.

198 If a student is discretionarily expelled for a Title 5 felony, the Education Code requires the school district to place the student in either a JJAEP or a DAEP. TEX. EDUC. CODE §37.0081.

199 TEX. JUVENILE PROB. COMM’N, JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS PERFORMANCE ASSESSMENT REPORT 3 (2008).

200 *Id* at 26.

201 *Id* at 27.

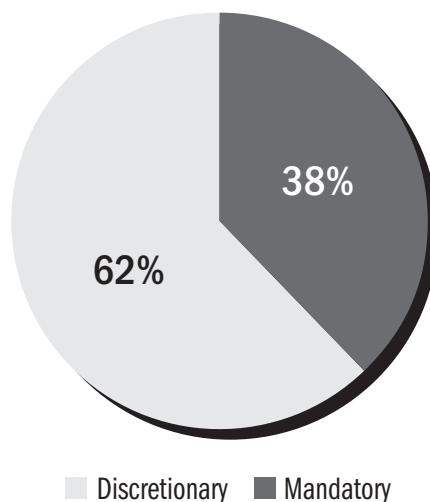
Statewide Trends in JJAEP Expulsion Numbers

As is true of expulsions in general, *the number of expulsions to JJAEPs increased significantly between 2002 and 2007, but dropped over the last two years.* JJAEP referrals increased from 5,318 in 2002-03 to 7,158 in 2006-07.²⁰² This represents about a 35 percent increase in referrals over that five-year period.

However, by 2008-09, with an overall drop in expulsions statewide, only 5,103 were expelled to a JJAEP. Expulsions to JJAEPs dropped about 29 percent between 2007 and 2009. Mandatory expulsions to a JJAEP numbered 2,536 in 2006-07, but only 1,928 in 2008-09, for almost a 24 percent decrease. There were 4,622 discretionary expulsions to a JJAEP in 2006-07, but only 3,175 in 2008-09. *This represents more than a 31 percent drop in discretionary expulsions to JJAEPs over the last two school years.*

As shown in the chart on page 25, 71 percent of all expulsions during the 2008-09 school year were discretionary. While the majority of those students were sent to a JJAEP, others were expelled “to the street,” and some remained at a DAEP. As the chart below indicates, discretionary expulsions to JJAEPs in 2008-09 outnumbered mandatory expulsions by 2:1.

Discretionary v. Mandatory Expulsions to a JJAEP
2008 – 2009



202 TEX. EDUC. AGENCY, *supra* note 7.

The trends related to discretionary expulsions to JJAEPs may be due, in part, to the way JJAEPs are funded, as discussed below. Though the state pays for all mandatory expulsions to a JJAEP, school districts are required to pay for discretionary expulsions to a JJAEP. In some cases, the cost to send a student, expelled for discretionary reasons to a JJAEP may exceed the Average Daily Attendance (ADA) funding the school district receives for that student. Funding concerns also may drive the lower percentage of discretionary expulsions to JJAEPs, in general.

It is not surprising that the 20 school districts referring the largest number of students to JJAEPs would include some of Texas' largest districts. However, small districts also make the list while several of Texas' 10 largest districts (including San Antonio and Austin ISDs) do not.²⁰³

Top 20 Texas School Districts Expelling the Largest Number of Students to JJAEPs, 2007-08²⁰⁴

School District	County	Number of Students Sent to JJAEP
Dallas ISD	Dallas	408
North East ISD	Bexar	290
Houston ISD	Harris	260
Waco ISD	McLennon	210
Klein ISD	Harris	189
Northside ISD	Bexar	173
Killeen ISD	Bell	163
United ISD	Webb	162
Conroe ISD	Montgomery	160
Lewisville	Denton	138
Cypress-Fairbanks ISD	Harris	132
Brownsville ISD	Cameron	122
Arlington ISD	Tarrant	118
Laredo ISD	Webb	111
Fort Bend ISD	Fort Bend	109
Carrollton-Farmers Branch	Dallas	76
Irving ISD	Dallas	76
Lamar CISD	Fort Bend	76
La Joya ISD	Hidalgo	75
Fort Worth ISD	Tarrant	72

²⁰³ The 10 largest school districts in Texas are: Houston ISD, Dallas ISD, Fort Worth ISD, Austin ISD, Northside ISD, Cypress-Fairbanks ISD, El Paso ISD, Arlington ISD, San Antonio ISD, and Fort Bend ISD. See ALLIANCE FOR EXCELLENT EDUCATION, TEXAS' TEN LARGEST SCHOOL DISTRICTS' GRADUATION RATES, *available at* http://www.all4ed.org/about_the_crisis/schools/state_and_local_info/Texas/10_largest_districts.

²⁰⁴ Based on data provided to Texas Applesseed by TEA.

This data indicates that the likelihood of a student being expelled depends in large part on the local district's philosophy and policy toward student discipline. Comparing the numbers in the preceding chart (see page 73) and the total number of students expelled in these districts (see page 26) reveals that some students are expelled but not sent to the JJAEP. It is not clear from our data where these students are being served. Some districts may use a tiered DAEP system, or may simply keep students in a DAEP for an extended period of time rather than send them to the JJAEP. However, it is not clear from our data or our interviews what accounts for these discrepancies.

Variations in JJAEP Capacity & Average Length of Stay

The capacity of JJAEPs varies from county to county—with some having the capacity to serve over 400 students and others fewer than 30 students.²⁰⁵ The capacity of the JJAEP to accept expelled students does not always correlate to the population of the county in which the JJAEP is located. In fact, some larger counties—like El Paso and Travis—operate JJAEPs with a significantly smaller capacity than counties of similar population size.²⁰⁶ For example, data for the 2006-07 school year documents wide variations in JJAEP capacity and in average length of stay in a JJAEP (ranging from 57 days to 120 days).²⁰⁷

JJAEP Student Capacity and Average Length of Stay, 2006-07²⁰⁸

County	Student Capacity	Average Length of Stay (Days)
Bell	120	62
Bexar	350	58
Brazoria	125	84
Brazos	30	91
Cameron	120	120
Collin	250	70
Dallas	442	99
Denton	150	67
El Paso	60	110
Fort Bend	120	101
Galveston	72	71
Harris	400	86
Hays	27	88
Hidalgo	175	57
Jefferson	95	107
Johnson	36	80
Lubbock	55	66
McLennan	100	57
Montgomery	135	75

²⁰⁵ TJPC, *supra* note 199, at 26.

²⁰⁶ *Id.* at 73-75.

²⁰⁷ *Id.* at 23.

²⁰⁸ *Id.* at 23, 26; since TJPC compiles its data for its report every other year, it is not as current as the data provided to Texas Appleseed by TEA.

County	Capacity	Average Length of Stay (Days)
Nueces	48	99
Smith	54	72
Tarrant	120	89
Taylor	44	72
Travis	50	84
Webb	100	88
Wichita	40	75
Williamson	250	77

There is also a wide variation in length of stay for expelled students referred to the same JJAEP at the discretion of different school districts located within the same county.

The school districts listed in the chart below are not necessarily the districts that send the highest number of students to JJAEPs. In fact, many of these districts sent fewer than five students to their county's JJAEP in 2007-08. However, of the students expelled to a JJAEP in Texas, students from these districts stayed in these alternative settings the longest.

20 Texas School Districts with the Highest Average Length of Stay in a JJAEP, 2007-08²⁰⁹

School District	County	Number of Students in JJAEP	Average Length of Stay (Days)
Wylie ISD	Taylor	1	157
Clint ISD	El Paso	5	136
Bruceville-Eddy ISD	McLennon	3	125
Santa Rosa ISD	Cameron	1	113
Eanes ISD	Travis	3	112
Beaumont ISD	Jefferson	34	111
Los Fresnos CISD	Cameron	21	109
Prosper ISD	Collin	3	107
Allen ISD	Collin	3	104
Angleton ISD	Brazoria	22	104
Sheldon ISD	Harris	1	104
Plainview ISD	Hale	6	100
Charlotte ISD	Atascosa	1	97
Hamshire-Fannett ISD	Jefferson	5	95
Brownsville ISD	Cameron	122	92
Taylor ISD	Williamson	11	92
Calhoun County ISD	Calhoun	1	90
Kennedale ISD	Tarrant	2	90
Anna ISD	Collin	4	87
Robstown ISD	Nueces	1	86

209 This chart is based on data provided to Texas Applesseed by TEA.

Many of the students in these districts were sent to the JJAEP for a mandatory expulsion offense—the seriousness of which could explain the higher length of stay. However, in eight of these districts—Wylie, Bruceville-Eddy, Prosper, Charlotte, Hamshire-Fannett, Calhoun County, Anna, and Robstown ISDs—none of the students were in the JJAEP for a mandatory expulsion. *In two of the districts—Bruceville-Eddy and Charlotte ISDs—the expulsions were for either “serious or persistent misbehavior” in a DAEP or a local Student Code of Conduct violation, and in Beaumont and Taylor ISDs, half or more of the expulsions were made for this reason.*

Variations in Contractual Agreements with JJAEPs & Cost to School Districts

Just as the number of overall expulsions of Texas students has decreased over the last two school years, so has the number of students sent to a JJAEP.²¹⁰ While both mandatory and discretionary expulsions have decreased, *the most dramatic decrease over the last two years has been the 31 percent reduction in discretionary expulsions to JJAEPs.*

The drastic reduction in discretionary expulsions could be explained, in part, by the way that JJAEPs are funded. Though the state funds the Texas Juvenile Probation Commission to oversee students in JJAEPs if their expulsion from school is mandated by state law, school districts must pay for any students who are expelled to a JJAEP for discretionary reasons.²¹¹ The local juvenile board and school districts also must negotiate funding for “non-expelled” students. These are students who are placed in a JJAEP by court order—and they make up a very small percentage of students in JJAEPs.²¹² The school district gets to keep the ADA funds they receive for students who are discretionarily expelled, but if the per diem cost of the JJAEP exceeds the funding they receive for the student, the district loses money.²¹³ The Juvenile Probation Commission provides approximately 24 percent of total JJAEP expenditures, with the remaining 76 percent paid through local juvenile boards and school districts.²¹⁴

Chapter 37 of the Texas Education Code requires school districts located in a county with a population greater than 125,000 to enter into a memorandum of understanding (MOU) with the local juvenile board outlining, among other things:²¹⁵

- The amount and condition of payments from the school district to the juvenile board for students whose placement was not made on the basis of a mandatory expulsion.
- The categories of conduct that the school district has defined in its Student Code of Conduct as constituting “serious or persistent misbehavior” for which a student may be placed in the JJAEP.

210 Data for students referred to a JJAEP duplicate expulsion data, because students are sent to JJAEPs after being expelled. Thus, the statewide numbers cited for expulsions, above, include students expelled to JJAEPs.

211 TEX. JUVENILE PROB. COMM’N, *supra* note 199, at 3.

212 *Id.* at 61.

213 TJPC, *supra* note 199, at 61.

214 TJPC, *supra* note 199, at 66.

215 TEX. EDUC. CODE §37.011(k).

- Transition services for students.
- A plan for transportation of students to the JJAEP.

The terms of these MOUs vary widely.²¹⁶ Funding for and placement of students who are discretionarily expelled to JJAEPs is provided for in a number of different ways. Examples include:

- Requiring school districts to project the number of seats they wish to reserve annually in the JJAEP for discretionary expulsions.
- Allowing school districts to place as many discretionary expulsions as they wish in the JJAEP, but including a provision that if the JJAEP has no seats left and room must be made for a mandatory expulsion, the JJAEP will release discretionary expulsions early.
- Including a hierarchy for discretionary expulsions, with entry into the JJAEP being determined according to the seriousness of the reason for expulsion.
- Including different levels of payment for students who are discretionarily expelled—with some expulsion reasons coming with a higher cost to the district than others.
- Setting different minimum lengths of stay, depending on the expulsion reason.
- Agreeing that the JJAEP will not serve students who are subject to discretionary expulsion.
- Requiring DAEP placement to have been tried and failed prior to placement in the JJAEP for discretionary reasons.
- Including a per diem rate for discretionary expulsions.
- Including a flat rate for the funding of each seat the school district has reserved for discretionary expulsions.

These significant variations in contracts between local school districts and JJAEPs obviously result in wide variations in expulsion practices between school districts, including those utilizing the same JJAEP. In the face of increasing costs, some districts may choose not to reserve seats in the JJAEP for students expelled for any reason other than one mandated by state law.²¹⁷ In some cases, districts have opted not to send any discretionarily expelled students to the JJAEP. Examples include the 2007-08 MOUs between school districts and JJAEPs serving Brazos, Wichita and El Paso counties.²¹⁸ Other counties have restricted discretionary expulsions to a JJAEP based on the student's age.²¹⁹

216 Texas Applesseed reviewed MOUs for each of the counties required to have JJAEPs for the 2007-08 school year, after receiving the MOUs in response to an open records request to the Texas Juvenile Probation Commission.

217 See Megan Middleton, *County School Officials Propose Changes to Juvenile Justice Agreement*, TYLER MORNING TELEGRAPH, July 27, 2008.

218 Memorandum of Understanding Regarding the Brazos County Juvenile Justice Alternative Education Program for the 2007-08 School Year (on file with author); Wichita County Memorandum of Understanding (on file with author); Interlocal Agreement for the Establishment and Operation of El Paso County Juvenile Justice Alternative Education Programs Pursuant to Chapter 37 of the Texas Education Code (on file with author); see also TJPC, *supra* note 199, at 31.

219 TJPC, *supra* note 199, at 31.

As noted earlier, in some instances, the data shows a significant discrepancy between the number of students expelled and the number sent to the JJAEP. Perhaps the starkest example of this is Aldine ISD—which expelled 721 students for discretionary reasons during 2007-08, the largest number of students expelled by any district in the state. However, Aldine sent only 45 students to the Harris County JJAEP in 2007-08.²²⁰ Aldine ISD sends all discretionary expulsions to a program run by the Harris County Department of Education.²²¹

MOUs between school districts and JJAEPs also vary according to whether students are provided transportation to the JJAEP and, if they are, whether the district or the JJAEP is responsible for transport. Almost half of the JJAEPs require parents to provide transportation.²²² This is an important consideration: since JJAEPs are county-run entities that often serve several school districts, the JJAEP could be some distance from where some of the students live.²²³ Accessibility to the JJAEP varies from district to district and from county to county. Some JJAEPs try to address this by operating under expanded hours—opening early and closing late—so that working parents are able to drop their children off and pick them up before and after work.²²⁴

Another variable differentiating JJAEP programs is the cost that a school district must pay to send one student to a JJAEP per day. This per diem cost can range from a low of about \$70 dollars to a high of more than \$200.

JJAEP Per Diem Cost, 2006-07²²⁵

County	Cost Per Day
Bell	\$155.26
Bexar	\$105.34
Brazoria	\$106.64
Brazos	\$131.94
Cameron	\$69.94
Collin	\$124.45
Dallas	\$129.78
Denton	\$85.44
El Paso	\$79.51
Fort Bend	\$108.39
Galveston	\$134.89
Harris	\$99.01
Hays	\$119.22

220 Based on data produced by TEA in response to open records requests.

221 See ALDINE ISD, STUDENT/PARENT HANDBOOK 2009-2010 (identifies Highpoint as a program where expelled students may be sent—Highpoint is run by the Harris County Department of Education).

222 TJPC, *supra* note 199, at 33.

223 *Id.*

224 TJPC, *supra* note 199, at 33.

225 TJPC, *supra* note 199, at 62.

County	Cost Per Day
Hidalgo	\$81.98
Jefferson	\$157.96
Johnson	\$116.08
Lubbock	\$94.00
McLennan	\$112.02
Montgomery	\$104.98
Nueces	\$159.74
Smith	\$222.81
Tarrant	\$151.72
Taylor	\$127.09
Travis	\$139.52
Webb	\$75.80
Wichita	\$192.79
Williamson	\$224.56

Though the cost to house a student for one day in a JJAEP has increased over the last five school years by more than 30 percent in some counties, other counties have seen their JJAEP costs drop significantly in the same period. For example, in 2000-01, school districts in Cameron County spent \$105.77 per day to send a student to a JJAEP but, by 2006-07, were paying only \$69.94 per day.

Some of the variation in per diem cost is most likely related to differences in JJAEP programming, including whether transportation is provided.²²⁶ Therapeutic programs are the most expensive, and boot camps the least expensive.²²⁷ Counties with larger JJAEP programs realize cost efficiencies, with higher capacity driving down the cost per day.²²⁸

JJAEP Program Models in Texas

While state law mandates JJAEPs for counties with populations of 125,000 or more and the Texas Juvenile Probation Commission provides state oversight—many programmatic details are left to local control. For example, several different types of JJAEPs exist in Texas. They can generally be divided into three categories: military or “boot camp” programs, therapeutic programs, and programs modeled on a traditional school.²²⁹ More than half of JJAEPs operate a traditional school model.²³⁰ Almost 30 percent of JJAEPs are “boot camp”-type programs, and the remaining 15 percent are therapeutic models.²³¹

226 TJPC, *supra* note 199, at 62.

227 *Id.* at 64.

228 *Id.* at 62.

229 *Id.* at 27.

230 *Id.* at 28.

231 *Id.*

Though all JJAEPs are required to focus on “self discipline”²³² as part of their program, the boot camp model and therapeutic model are the most obvious examples of programs that focus on the behavior that brought the student into the JJAEP. In traditional school models, the “self discipline” component does not have to include a behavior management curriculum, but instead may be met by dress code and strict behavioral requirements.²³³ However, most JJAEPs offer services addressing behavior in addition to educational programming, services such as individual or group counseling, substance abuse counseling, and anger management programs.²³⁴

While there is no state oversight of Disciplinary Alternative Education Programs run by school districts, the state does monitor and oversee JJAEPs. The Texas Juvenile Probation Commission (TJPC) has a published list of standards for JJAEPs.²³⁵ These standards include:

- Staff-to-student ratios for caseworkers and instructional and operational staff.²³⁶
- Requiring JJAEPs to provide new employee orientation that includes training in the JJAEP’s Student Code of Conduct, behavior management, and crisis intervention.²³⁷
- Requiring JJAEPs to provide counseling services by caseworkers.
- Requiring JJAEPs to coordinate with the school district on written entrance and exit transition plans.
- Requiring JJAEPs to coordinate with the local probation department on provision of needed social services.
- Requiring JJAEPs to “provide an instructional program that results in a level of student academic progress in the areas of reading and math.”

Perhaps even more importantly, the TJPC monitors and enforces these standards, evaluating JJAEPs on an annual basis.²³⁸ The Juvenile Probation Commission publishes a statewide assessment of JJAEP programs every two years, but also sends an annual evaluation of the programs to the juvenile board, board of trustees of the school districts, and the regional education service center.²³⁹ While TJPC’s evaluations show that there is clearly room for improvement in JJAEPs, most decisions regarding programmatic elements are made at the local level.

232 TEX. EDUC. CODE §37.011(d).

233 See Marc Levin, *Schooling a New Class of Criminals?*, TEXAS PUBLIC POLICY FOUNDATION POLICY BRIEF (2006).

234 TJPC, *supra* note 199, at 29.

235 37 TEX. ADMIN. CODE § 348.1 et seq.

236 37 TEX. ADMIN. CODE § 348.3(c).

237 37 TEX. ADMIN. CODE § 348.4

238 37 TEX. ADMIN. CODE §348.31

239 TJPC, *supra* note 199, at 1; 37 TEX. ADMIN. CODE §348.33.

Which Programs are Most Effective?

The dual nature of a JJAEP's responsibility to educate and improve the behavior of expelled students means that the effectiveness of the program is measured by two indicators: *educational gains and recidivism rates*. The Texas Juvenile Probation Commission (TJPC) requires JJAEPs to give students pre- and post-assessment tests if they are in a JJAEP for 90 days or more, as a method of measuring program academic effectiveness.²⁴⁰ TJPC also tracks individual student data to determine recidivism, or whether a youth is recycling back into the juvenile justice system.²⁴¹

While the most recent report analyzing Texas' JJAEPs finds that boot camp programs may produce educational gains, particularly in math, these programs have the highest recidivism rates.²⁴² This is consistent with research studies that show that, while boot camp programs may have a short-term positive academic impact, it is not clear that these gains are sustained, and that youth who complete these programs often have a high recidivism rate.²⁴³ Therapeutic programs are shown to have the smallest recidivism rates, along with producing good educational gains among students in JJAEPs.²⁴⁴

Recidivism Rates²⁴⁵ & Educational Gains²⁴⁶

Programmatic Model	Recidivism	Reading Gains	Math Gains
Boot Camp	50%	.78	.90
Therapeutic	35%	1.33	.86
Traditional School	46%	.22	.13

240 TJPC, *supra* note 199, at 44. JJAEPs administer the Iowa Test of Basic Skills (ITBS) or the Iowa Test of Educational Development (ITED) at entry and exit to youth expelled for 90 days or more, depending on their grade level. These tests measure academic growth by measuring grade equivalency at the time of entry and comparing this to grade equivalency at the time of exit. The numbers in the chart reflect progress toward gaining grade equivalency.

241 *Id.* at 54-60; recidivism rates are tracked by re-contact after six months, and re-contact after one year.

242 *Id.*

243 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, *BOOT CAMPS FOR JUVENILE OFFENDERS* (1997); Jean Bottcher & Michael E. Ezell, *Examining the Effectiveness of Boot Camps: A Randomized Experiment with a Long-Term Follow Up*, J. RES. IN CRIME & DELINQ., Vol. 42, No. 3, at 309-32 (2005).

244 TJPC, *supra* note 199, at 35-60.

245 TJPC, *supra* note 199, at 60 (the recidivism rate reported in this table is the one-year re-contact rate).

246 *Id.* at 48 (educational gains are based on standardized tests given to students upon entry and exit for students who stayed at least 90 days).

Despite the information TJPC provides to counties regarding the efficacy of different program models, about 88 percent of the students expelled to a JJAEP are served by boot camp or traditional school models.²⁴⁷ Though it is the most effective, the therapeutic model is the model least implemented in JJAEPs in Texas.²⁴⁸ During Texas Appleseed's interviews, one JJAEP administrator noted that they would like to change their model to a more therapeutic program, but that the style of the JJAEP was a "political" decision and they lacked the political support within the county to effect the change in programming.

However, others believed that the military-model programs achieved good results. A teacher interviewed for this report said that it was important for JJAEPs to have "better trained drill instructors that know how to work with these types of kids to discipline not counsel." This teacher noted that when he arrived at the JJAEP, "the drill instructors were able to work the students harder, had more ways of disciplining the students...The JJAEP needs to be harder on the discipline and a lot less counseling." Similarly, another JJAEP reported that a police officer remained in every classroom to ensure order is maintained and that—as a consequence—"it is probably the quietest campus in [the county] and so when you have an officer in the room, the teacher doesn't have to deal with discipline at all. We actually forbid them to discipline."

Statewide expulsion data indicates some students may be expelled more than once during a school year. For example, during 2007-08, 9,306 students were expelled in Texas, compared to 9,899 expulsions reported to the Texas Education Agency. The data suggests that as many as 593 students were expelled more than once that year. This pattern is consistent from year-to-year. In 2008-09, 7,846 students were expelled compared to 8,202 reported expulsions.

While it is difficult to tell how many students were expelled two or more times during those school years, student recidivism explains the discrepancy between reported numbers of expelled students and numbers of expulsions. As might be expected, the data suggests that students expelled to a JJAEP are less likely to be expelled more than once over the course of a single school year than those expelled "to the street."²⁴⁹

²⁴⁷ TJPC, *supra* note 199, at 28.

²⁴⁸ *Id.*

²⁴⁹ During 2007-08, there were 3,395 students expelled "to the street" but 3,722 expulsions "to the street"—for a repeat rate of 9 percent, while there were 5,911 students expelled to a JJAEP 6,177 times—for a repeat rate of about 3 percent. During the 2008-09 school year, there were 2,908 students expelled "to the street" 3,099 times—for a repeat of about 6 percent, while 4,938 students were expelled to a JJAEP 5,103 times, for a repeat of about 3 percent.

Conclusion

JJAEPs are serving more children who are expelled for discretionary reasons than for mandatory offenses. This is at odds with the 1995 Legislature’s intent in creating JJAEPs as a haven of last resort “reserved for the most serious of student misbehaviors.”

Funding constraints seem to work in some counties to keep JJAEPs from being over used for discretionary expulsions. Variations in per diem cost for school districts to send a student to a JJAEP, along with differences in JJAEP capacity, may contribute to the vastly differing rates of expulsion from county to county and even among school districts within the same county.

Furthermore, the majority of counties with a JJAEP use a boot camp or typical school model of instruction that, research has shown, produced few long-term educational or behavior gains for students. Despite having access to good information about research-based therapeutic JJAEP programs that succeed in improving academic performance and reducing recidivism, few Texas counties have implemented this more effective approach.

CONCLUSIONS AND POLICY RECOMMENDATIONS

This report expands on trends identified in our first report by analyzing school discipline data for students expelled to a JJAEP or “to the street.” Overall, expulsion data reveals:

- Discretionary expulsions outnumber mandatory expulsions, with discretionary expulsions from a DAEP for “serious or persistent misbehavior” representing the largest percentage of discretionary expulsions.
- DAEP programmatic problems—and the state’s failure to monitor and enforce TEA’s standards for these programs—likely contribute to the large number of students expelled for “serious or persistent misbehavior” while in a DAEP.
- The lack of a statutory definition for “serious or persistent misbehavior” while in a DAEP contributes to widely varying rates of expulsion between school districts.
- After being expelled from a DAEP for “serious or persistent misbehavior,” many students (almost 1,800 in 2007) are prosecuted for such behavior as Conduct in Need of Supervision by the court (a CINS offense)—an example of how low-level student misbehavior is being criminalized.
- Placing students in JJAEPs for “serious or persistent misbehavior” not only fails to correct behavioral problems, but leads to increased risk for future involvement in the juvenile justice system.
- African American students—and in some districts Hispanic students—are seriously overrepresented in discretionary expulsions from a DAEP for “serious or persistent misbehavior.”
- Because nearly half of Texas’ population is Hispanic, they comprise the largest number of expelled students.

- Special education students are overrepresented in all expulsions, reflecting systemic problems in assessment, programming and accountability for implementation of Individual Education Plans (IEPs) and Behavioral Improvement Plans (BIPs). These problems are most acute in DAEPs.
- Despite repeated studies identifying the shortage and need for more school-based mental health and counseling services, Texas has failed to meaningfully increase students' access to these services.
- Differences between cost and capacity of JJAEP programs likely contribute to varying rates of expulsion between school districts statewide.
- JJAEP programs use models that are not considered “best practices,” though they are provided with a substantial amount of information regarding the type of programs that are most effective.

Based on our analysis of statewide expulsion data and interviews and surveys in school districts across the state, Texas Appleseed has developed the following policy recommendations. Many of these recommendations reflect those of our first report.

At the state level:

- **Encourage school districts to develop school-wide Positive Behavioral Support programs.** School-wide PBS is an evidence-based program that has been proven to reduce disciplinary referrals and improve academics.
- **Improve access to teacher training in evidence-based classroom management techniques.** Many teachers complain that they are not given adequate access to information and training about effective classroom management practices. The state should make this a standard part of training for educators.
- **Eliminate “serious or persistent misbehavior” in a DAEP as a discretionary expulsion reason.** Allowing DAEPs to expel students for this reason gives them the opportunity to “pass the buck,” rather than address programmatic failures. JJAEPs—which were created to serve students who committed criminal offenses at school—are not a good setting for students with low-level behavioral problems.
- **Eliminate “serious or persistent misbehavior” while in a DAEP as a CINS offense.** This CINS offense is the most obvious example of the criminalization of low-level student misbehavior. It should be eliminated as a CINS offense, particularly in the absence of a statutory definition ensuring that “serious” misbehavior is truly serious.
- **Provide state oversight of DAEPs.** These programs were created to address problem student behavior, and they are required to include programming meant to address behavioral issues. However, the poor quality of many of these programs no doubt contributes to the large number of students expelled from DAEPs for “serious or persistent misbehavior.” TEA needs to monitor and enforce the standards it created for these programs. Without monitoring and enforcement, “standards” will remain mere suggestions or guidelines, and districts will not commit the resources needed to create quality programs.

- **Notify districts with disproportionate disciplinary actions, including expulsions.** TEA collects a great deal of data from school districts—Texas does a far better job than many states of collecting data related to disciplinary incidents. Unfortunately, TEA does not make any of the disciplinary data available to school districts in a manner that would allow them to compare their statistics with those of similar districts.
- **Notify the 20 school districts with the highest rate of expulsions.** Simply notifying districts when they have a particularly high number of expulsions might spur solutions at the district level.
- **Require districts with disproportionate referrals of minority and special education students to develop a plan to address overrepresentation.** This plan should include implementation of school-wide positive behavioral supports.
- **Provide technical assistance to schools wishing to expand school-based mental health services, and increase funding for services if needed.** School-based mental health services are critical to ensuring school success for many students.
- **Create a discretionary grant program for DAEPs interested in developing evidence-based behavioral programming.** School districts complain that they were given an “unfunded mandate” when they were required to create DAEP programs in 1995. Certainly, it is not realistic to expect districts to serve students who have heightened needs for programming addressing behavioral problems without some additional funding to assist them in creating quality programs. Putting money into the creation of quality programs will reduce costs to districts and communities in the long-term by addressing serious behavioral problems early.
- **Create a discretionary grant program for JJAEPs interested in developing evidence-based programming.** While therapeutic JJAEP programs have been proven most effective at addressing students’ behavioral and academic needs, they are the most expensive programs to run. Creating a discretionary grant program would allow counties to modify existing JJAEP programs and recognize longer-term savings by reducing the number of students who re-offend. This will not only reduce the number of students who cycle back through the JJAEP, but could also keep many students from reaching the next tier of the juvenile system.

At the local and school district level:

- **Implement a school-wide positive behavior support model in mainstream schools, to reduce the number of students with disciplinary referrals.** Putting school-wide PBS programs into place is proven to reduce disciplinary referrals by reducing school disruption. Preventing problems before they occur will help keep costs low by allowing districts to downsize disciplinary programs. School districts should prioritize campuses with the highest disciplinary referral rates and campuses with high overrepresentation of minority or special education students when implementing a PBS program.
- **Create a school-based mental health program.** Where lack of resources makes this difficult, ensure strong ties with local service providers and seek to have them prioritize school referrals when possible.

- **Require teacher training in evidence-based classroom management techniques.** Teachers often complain of inadequate access to training in classroom management—the failure to adequately prepare teachers to address behavior issues plays a role in high disciplinary referral rates. Improving training is essential to addressing these problems.
- **Opt out of sending “serious or persistent misbehavior” expulsions to the JJAEP.** Expelling students who engage in low-level Student Code of Conduct violations at a DAEP is not only detrimental to students, it fails to make schools safer. These students are prone to “peer contagion” when grouped with students with more serious behavioral problems. They therefore have a higher recidivism rate, costing the county and district more when they cycle back through the juvenile system. Districts should simply opt not to expel students to JJAEPs for this reason.
- **Examine disciplinary referral data, particularly data relating to minority and special education students.** School districts should be proactive in addressing problems in overrepresentation as they arise. Examining data, particularly at the campus level, with an eye toward understanding the root of these problems is the first step in addressing these issues.
- **Implement evidence-based programs for DAEPs and JJAEPs.** Prioritizing evidence-based programming will benefit all students in the long run, by ensuring behavioral needs are addressed so that students are successful in mainstream schools upon their return. It will also reduce the costs associated with “recidivism” and further involvement in the juvenile justice system.
- **Limit JJAEP capacity.** JJAEP capacity does not always appear to correlate to district size or demographics. In fact, some large districts have opted to restrict JJAEP capacity. This ensures that expulsion numbers remain low, and that only those students who most need an intensive setting are referred to a JJAEP.
- **Ensure good transition planning when students return to mainstream schools from JJAEPs.** While most JJAEPs report having a transition planning process, JJAEPs cannot be responsible for the successful transition without strong partners in the mainstream schools. Mainstream schools should become partners in ensuring the success of students once they return from the JJAEP.
- **Ensure strong after-care for students who return to the mainstream school after expulsion.** Many students finally begin to receive critical services they need to ensure academic success only after being expelled to a JJAEP. Continuing success depends on maintaining adequate programming and services to these students upon their return.

The majority of students who are expelled are coming into direct contact with the juvenile justice system, even in cases that do not involve criminal behavior. Reducing the number of students expelled for low-level non-violent misbehavior must become a priority if Texas is going to stem the flow of students into the “school-to-prison-pipeline.”

APPENDIX

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METHODOLOGY FOR EXPULSION CALCULATIONS

Data used in this report was obtained from three sources: the Texas Education Agency’s (TEA) Public Education Information Management System (PEIMS), the Texas Juvenile Probation Commission (TJPC), and the Department of Education’s National Center for Education Statistics (NCES).

Generally, data sources for the charts or statistics used in the report are indicated in footnotes. The purpose of this section is to provide an overview of the types of data received from these sources and elaborate on how various charts were created and how calculations referenced in the report were performed.

TEA DATA

Texas Appleseed requested data from TEA for the 2007-2008 school year. The following data was obtained at both at the school district level and the state level:

- Expulsions (to any setting) by race/ethnicity, special education status, grade and offense group.
- Expulsions to a Juvenile Justice Alternative Education Program (JJAEP) by race/ethnicity, special education status, grade and offense group.
- Expulsions from a District Alternative Education Program (DAEP) to a JJAEP for “Reason 20” (i.e., “serious or persistent misbehavior”) by race/ethnicity and special education status.
- Average length of stay (in days) in a JJAEP.

Masked Data: Using Low Estimates

The Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) require agencies such as the Texas Education Agency (TEA) to provide safeguards for the protection of students’ personal information.

When Appleseed received data from TEA, all student counts that were more than one but less than five were “masked.” To ensure that our counts were conservative and did not overestimate the degree to which a particular practice was occurring in Texas school districts, we replaced masked values with the lowest possible value of “1.” Given that only low estimates were used, it is possible that our data underestimates the gravity of disproportional disciplinary actions within Texas school districts.

Reason Groups

To reduce the degree to which data would be affected by masking, we collapsed the various reasons for which students could be expelled into three groups:

Mandatory Expulsion Offenses

- Used, exhibited or possessed a firearm and/or brought a firearm to school
- Used, exhibited or possessed an illegal knife
- Used, exhibited or possessed a club
- Used, exhibited or possessed a prohibited weapon under Penal Code
- Arson
- Murder, capital murder, criminal attempt to commit murder, or capital murder
- Indecency with a child
- Aggravated kidnapping
- Aggravated assault
- Sexual assault or aggravated sexual assault
- Felony controlled substance violation
- Felony alcohol violation
- Aggravated robbery
- Manslaughter
- Criminally negligent homicide
- Continuous sexual abuse of young child

Mid-level Discretionary Expulsion Offenses

- Conduct punishable as a felony
- Possessed, sold, used or was under the influence of marijuana or other controlled substance
- Possessed, sold, used or was under the influence of an alcoholic beverage
- Abuse of a volatile chemical
- Public lewdness or indecent exposure
- Retaliation against school employee (Note: This can be an offense which requires mandatory expulsion if retaliation is coupled with TEC 37.007 (a) and (d) offense.)

- Conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity for felony offenses in Title 5, Penal Code
- Terroristic threat
- Assault
- False alarm/false report
- Emergency Placement/expulsion
- Student is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure and is under court supervision (Note: The offense(s) for which the student is required to register as a sex offender must have occurred on or after Sept. 1, 2007.)

“Serious or Persistent Misbehavior”/Local Code of Conduct Expulsions

- Permanent removal by a teacher from class
- “Serious or persistent misconduct” violating the Student Code of Conduct while placed in a Disciplinary Alternative Education Program - TEC §37.007(c)
- Violation of Student Code of Conduct
- Other Code of Conduct reason

Offenses discussed above comprise the vast majority of reasons offered by a school district as justification for expelling a student. There are, however, a number of offenses for which students have been expelled that are not discussed in the report because expulsion counts for these offenses were very small; in 2007-2008, less than 3 percent of all expulsions were for the following reasons: tobacco, truancy, non-Title 5 felonies occurring off campus, criminal mischief, gang violence, fighting, engaging in deadly conduct, non-illegal knife, or off campus substance or weapon violation.

Counts of School Districts Expelling Students by Target Group

- 522 school districts expelled at least one student during the 2007-2008 school year
- 262 school districts expelled at least one student for “serious or persistent misconduct” during the 2007-2008 school year
- 162 school districts expelled at least one African American student during the 2007-2008 school year
- 178 school districts expelled at least one Hispanic student during the 2007-2008 school year
- 324 school districts expelled at least one special education student during the 2007-2008 school year

Calculating Statistically Significant Overrepresentation

In the report, we consider the overrepresentation of both minority and special education populations in expulsions. A statistical analysis was conducted for each school district to determine if overrepresentation in expulsions was occurring at statistically significant levels.

It is important to note that, while the report only references disproportional rates of disciplinary action for Hispanic, African American and special education students, the statistical procedures outlined below were also conducted with respect to white and “other” students (i.e., Native American, Asian American, etc.); however, in no school district were white or other students disproportionately represented in expulsions.

To identify school districts with statistically significant disproportionate expulsions of minority or special education students, we utilized the “Chi Squared Statistic.” Use of the Chi Squared Statistic is common in academic and statistical analysis when trying to discern if two variables are independent of each other. For the purposes of this report, we are interested in whether race (or special education status) and expulsion are independent of each other, i.e., that the race or special education status of the student does not appear to influence the decision to expel.

When using a Chi Squared Statistic, we are concerned with the difference between the number of referrals we would expect for a certain population (based on their proportion within the general population) and the actual number of referrals for that population (i.e., the observed number of referrals).

While it can be said that anytime there is a difference between expected number of referrals and actual number of referrals, there is a disproportion rate of referral, the Chi Squared Statistic is a more rigorous test of disproportionality because it alerts us to disproportionality that is extreme enough to suggest that independence does not exist between race (or special education status) and expulsion. The Chi Squared Statistic was calculated for each school district for the 2007-2008 school year according to the following steps:

Step One: Determine the proportion of the target group (e.g., African American students) within the student body.

$$\text{Number of students in Target Population} / \text{Number of students enrolled in district} \\ = \text{Proportion of Target Population}$$

Step Two: Generate the “expected” number of expulsions for the target population based on their proportion of the population and the total number of observed expulsions in the district.

$$\text{Proportion of Target Population} \times \text{Number of Total Observed Expulsions} \\ = \text{Estimate of Expected Expulsions}$$

Step Three: Generate the Chi Squared Statistic

$$(\text{Number of Observed Expulsions for Target Population} - \text{Number of Expected} \\ \text{Expulsions})^2 / \text{The Expected Expulsions} \\ = \text{The Chi Squared Statistic}$$

Step Four: Eliminate the instances in which there are less than three observed expulsions (With such a small number of referrals, it is difficult to determine if there is a relationship between race and disciplinary referral.)

Step Five: Select nine as the “cut off” value for the Chi Squared Statistic.

The Chi Squared Statistic is sometimes used to test a hypothesis, but here we are using it as a measure of disproportionality. A cut off value of nine was used to identify the most extreme cases of disproportionality. All school districts that had chi squared statistic values greater than nine are statistically highly significant (at a level of .01 or better). This is why we are confident, for the school districts that have been identified, that race (or special education) and expulsions are *not* independent of each other.

Calculating Odds Ratios

An odds ratio is the ratio of the odds of an event occurring in one group to the odds of the same event occurring in another group. For example, in our study we compare the odds of an African American student being expelled to the odds of a student from any other racial/ethnic group being expelled. We followed the following steps to calculate odds ratios for each racial/ethnic group and for special education students within in each school district for 2007-2008:

Step One: Determine the following values.

A = Number of students in the target population who have been expelled

B = Number of all students outside of the target population who have been expelled

C = Number of students in the target population who were not expelled

D = Number of students outside of the target population who were not expelled

	Target Population	All Other Students
Expelled	A	B
Non-Expelled	C	D

Step Two: Calculate Odds Ratio.

$$\frac{A \times D}{B \times C} = \text{Odds Ratio}$$

An odds ratio of one indicates that that expulsion is equally likely to occur in both the target population and a group containing all other students. For example, if our target population is special education students, an odds ratio of one would mean that special education students are as likely as non-special education students to be expelled. An odds ratio of greater than one indicates that the expulsion is more likely to occur in the target group (e.g., special education students) than the non-target group (e.g., non-special education students). Finally, an odds ratio of less than one indicates that expulsion is less likely to occur in the target group than in a group containing all other students.

Step Three: Determine if the odds ratio is statistically significant. To test for statistical significance, we conducted the following calculation:

$$Z = \frac{\log(\text{Odds Ratio})}{\sqrt{[(1/A) + (1/B) + (1/C) + (1/D)]}}$$

If the Z value obtained from the calculation above is 1.96 or greater, the confidence interval is 95 percent. If the Z value obtained is 1.65, the confidence interval is 90 percent. No odds ratios reported as statistically significant in our report have a confidence interval of less than 90 percent.

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*Methodology
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TJPC DATA

Data obtained from the Texas Juvenile Probation Commission (TJPC) includes:

- Referrals to juvenile probation by source, race/ethnicity, gender, age and special education status.
- Referrals to juvenile probation for counties with a JJAEP by source, race/ethnicity, gender, age and special education status.
- Re-offense & rates of admission to the Texas Youth Commission (TYC) for juveniles exiting a JJAEP for 2004-2005 school year.
- JJAEP entries by county, school district, gender, race/ethnicity, special education status and grade.
- JJAEP entries by county and school district for serious and persistent misconduct.
- JJAEP entries by county and school district for mandatory and discretionary offenses.

NCES DATA

Enrollment data for 2007-2008 was obtained from National Center for Education Statistics' (NCES) Common Core of Data. Website address: <http://nces.ed.gov/ccd/bat/>.

DEFINITIONS OF “SERIOUS OR PERSISTENT MISBEHAVIOR”

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15 Texas School Districts Expelling the Largest Number of Students for “Serious or Persistent Misbehavior,” 2007-08

NOTE: All Texas Juvenile Justice Alternative Education Programs (JJAEPs) are listed below by county. The 15 highest expelling school districts are listed in bold. Also listed below is the definition of “serious or persistent misbehavior” contained in each JJAEP’s Memorandum of Understanding (MOU) with the school districts it serves, and the definition included in the Student Code of Conduct for each of the 15 highest expelling school districts. The definition is not uniform across school districts.

JJAEP County: Bell

School Districts Served

Bartlett ISD	Georgetown ISD	Round Rock ISD
Belton ISD	Holland ISD	Salado ISD
Copperas Cove ISD	Killeen ISD	Taft ISD
Florence ISD	Lewisville ISD	Temple ISD
Fort Worth ISD	Rogers ISD	

Definition of “serious or persistent misbehavior” in school districts’ Memorandum of Understanding (MOU) with the JJAEP:

Two or more violations of the district’s Student Code of Conduct; or

Conduct that violates the districts’ individual Student Code of Conduct and subjects the student to the possibility of proceedings in juvenile court.

Killeen ISD’s Student Code of Conduct

Defines “persistent misconduct” as two or more separate violations of the Code of Conduct or repeat Code violations for the same offense, and includes a three-page list of “serious” offenses such as insubordination, “lewd conduct,” profanity and “school bus safety violation.”

JJAEP County: Bexar

School Districts Served

Alamo Heights ISD	Judson ISD	Schertz-Cibolo- Universal City ISD
East Central ISD	Medina Valley ISD	Somerset ISD
Edgewood ISD	North East ISD	South San Antonio ISD
Floresville ISD	Northside ISD	Southside ISD
Fort Sam Houston ISD	Randolph Field ISD	Southwest ISD
Harlandale ISD	San Antonio ISD	

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“Serious misbehavior” is an offense which includes, but is not limited to, the following:

- Assault of teacher or individual
- Retaliation against school employee
- Use, gift, sale, delivery, possession, or being under the influence of alcohol, marijuana, other controlled substances, dangerous drugs, abusable glue or volatile chemicals
- Engaging in conduct that constitutes criminal mischief
- Vandalism
- Robbery or theft
- Extortion, coercion, or blackmail
- Hazing
- Fighting, committing physical abuse, or threatening physical abuse
- Sexual harassment of a student or district employee
- Possession of or conspiracy to possess any explosive or explosive device
- Possession or distribution of pornographic materials
- Making or assisting in making threats, including threats against individuals

“Persistent misbehavior” is two or more violations of the school district’s Student Code of Conduct or repeat Code violations for the same behavior.

North East ISD Student Code of Conduct

The Code does not define “serious or persistent misbehavior.”

Northside ISD Student Code of Conduct

Defines “persistent misbehavior” as two or more violations of its Student Code of Conduct or repeat Code violations for the same behavior.

Serious offenses include but are not limited to:

- Murder
- Vandalism
- Robbery or theft
- Extortion, coercion, or blackmail
- Actions or demonstrations that substantially disrupt or materially interfere with school activities
- Hazing
- Insubordination

- Profanity, vulgar language, or obscene gestures
- Fighting, committing physical abuse, or threatening physical abuse
- Possession or distribution of pornographic materials
- Leaving school grounds without permission
- Sexual harassment of a student or district employee
- Possession of or conspiracy to possess any explosive or explosive device
- Falsification of records, passes, or other school-related documents
- Refusal to accept discipline assigned by the teacher or principal

Southwest ISD Student Code of Conduct

Defines “persistent misbehavior” as three or more violations of its Student Code of Conduct or repeat Code violations for the same behavior.

Defines “serious misbehavior” as any misconduct punishable with placement in a Disciplinary Alternative Education Program or expulsion.

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JJAEP County: Brazoria

School Districts Served

Alvin ISD	Damon ISD
Angleton ISD	Danbury ISD
Bay City ISD	Palacios ISD
Brazosport ISD	Pearland ISD
Columbia-Brazoria ISD	Sweeny ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“Serious” offenses are defined as those which violate the district’s Student Code of Conduct.

“Persistent” offenses are defined as two or more violations of the district’s Student Code of Conduct or repeat Code violations for the same behavior.

Only children under the age of 17, or otherwise within the jurisdiction of juvenile authorities, may be expelled for “serious or persistent misbehavior.”

JJAEP County: Brazos

School Districts Served

Bryan
College Station

The JJAEP does not accept expulsions for “serious or persistent misbehavior.”

JJAEP County: Cameron

School Districts Served

Brownsville ISD	Los Fresnos ISD	Rio Hondo ISD
Harlingen CISD	Lyford CISD	San Benito CISD
Irving ISD	Point Isabel ISD	Santa Rosa ISD
La Feria ISD	Raymondville ISD	South Texas ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

Offenses occurring on school grounds, which may be considered “serious” and become “persistent,” include but are not limited to the following:

- Assault of a teacher or other individual
- Kidnapping
- Use, gift, sale, delivery, possession or being under the influence of alcohol, marijuana, other controlled substances, dangerous drugs, or abusable glue or volatile chemicals.
- Engaging in conduct that constitutes criminal mischief
- Vandalism
- Robbery or theft
- Extortion, coercion, or blackmail
- Aggressive, disruptive action or group demonstration that substantially disrupts or materially interferes with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting, committing physical abuse, or threatening physical abuse
- Falsification of records, passes, or other school-related documents
- Possession or distribution of pornographic materials
- Leaving school grounds without permission
- Making or assisting in making threats, including threats against individuals and bomb threats
- Refusal to accept discipline management techniques proposed by the teacher or principal
- Indecent exposure
- Title 5 Felony Offenses – discretionary placement not to exceed 90 attended days
- Registered Sex Offenders – off-campus discretionary placement not to exceed 90 attended days
- False alarm or report
- Terroristic threat
- While on school property, at a school-related event, or within 300 feet of school property:
 - Misdemeanor drug, alcohol or inhalants offenses
 - Possession of marijuana under four ounces
 - Felony drugs, only if within 300 feet of school property
 - Class “A” misdemeanor assault on school employee/volunteer
 - Deadly conduct
 - Felony criminal mischief

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- Any offense listed under “mandatory expulsions” in the Texas Education Code, if within 300 feet of school property
- Aggravated assault, sexual assault, aggravated sexual assault, murder or capital murder, regardless of location of offense

“Persistent” is defined as two or more violations of the Student Code of Conduct or repeat Code violations for the same behavior.

JJAEP County: Collin

School Districts Served

Allen ISD	Farmersville ISD	Plano ISD
Anna ISD	Frisco ISD	Princeton ISD
Blue Ridge ISD	McKinney ISD	Prosper ISD
Celina ISD	Melissa ISD	Wylie ISD
Community ISD		

Definition of “serious or persistent misbehavior” in school districts’ MOU with the JJAEP:

School districts’ MOU with the JJAEP requires that all students subject to mandatory and discretionary expulsion be placed on a deferred prosecution agreement for “at least the length of stay” in the JJAEP.

Under the MOU, “serious misbehavior” shall include, but not be limited to, the following offenses that occur on school premises:

- Vandalism
- Robbery or theft
- Extortion, coercion, or blackmail
- Aggressive, disruptive action or group demonstration that substantially disrupts or materially interferes with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting, committing physical abuse, or threatening physical abuse
- Possession or distribution of pornographic materials
- Leaving school grounds without permission
- Making or assisting in making threats, including threats against individuals and bomb threats
- Sexual harassment of a student or district employee
- Falsification of records, passes or other school- related documents
- Refusal to accept discipline management techniques proposed by the teacher or principal
- Assault of a teacher or other individual

“Persistent misbehavior” shall include, but not be limited to, two or more violations of the Student Code of Conduct, two or more Code violations for the same behavior, or two or more incidents of disruption of the classroom/educational environment.

JJAEP County: Dallas

School Districts Served

Carrollton-Farmers Branch ISD	Desoto ISD	Irving ISD
Cedar Hills ISD	Duncanville ISD	Lancaster ISD
Coppell ISD	Garland ISD	Mesquite ISD
Dallas ISD	Grand Prairie ISD	Richardson ISD
	Highland Park ISD	Sunnyvale ISD

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**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“Serious misbehavior” shall include, but not be limited to, the following conduct:

- Assault of a teacher or other individual
- Retaliation against a school employee
- Use, gift, sale, delivery or possession of or being under the influence of alcohol, marijuana ,other controlled substances, dangerous drugs, or abuse of glue or volatile chemicals
- Aggressive action that poses a direct threat to the health or safety of others
- Public lewdness.
- Indecent exposure
- Terroristic threat or false alarm or report pursuant to TEC 37.007(b)(1)

“Persistent misbehavior” shall mean two or more of the following specific violations of an ISD’s Student Code of Conduct, or three or more violations of other provisions of the Student Code of Conduct where the school district can document interventions to address the misbehavior:

- Engaging in conduct that constitutes criminal mischief
- Vandalism
- Extortion, coercion, or blackmail
- Aggressive, disruptive action or group demonstration that substantially disrupts or materially interferes with school activities
- Hazing
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting
- Sexual harassment of a student or district employee
- Falsification of records, passes or other school-related documents
- Possession or distribution of pornographic materials

Dallas ISD Student Code of Conduct

Serious/Mandatory – While assigned to a Disciplinary Alternative Education program, the student **will** be transferred to a JJAEP for 90 days of good behavior for the following Code of Conduct violations:

- Class C or Assault with bodily injury on any district employee
- Class A assault student on student
- Possession of marijuana
- Terroristic threat
- Public lewdness
- Indecent exposure
- Any felony on campus
- False fire report

Persistent/Discretionary – While a student is assigned to a DAEP, the student **may** be expelled to a Juvenile Justice Alternative Education Program for the following “persistent” misbehaviors when they occur on school property, when the student has received three referrals in a period of 10 school days, and when required interventions have proven ineffective: fighting on school property, Class C assault on school property (student-on-student), and profanity/obscene gestures toward personnel.

Irving ISD Student Code of Conduct

Defines “persistent misbehavior” as two or more violations of the Student Code of Conduct or repeat Code violations for the same behavior.

“Serious misbehavior” Includes but is not limited to all offenses listed in Phases II, III and IV of the Student Code of Conduct.

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JJAEP County: Denton

School Districts Served

Argyle ISD	Gainesville ISD	Northwest ISD
Aubrey ISD	Krum ISD	Pilot Point ISD
Birdville ISD	Lake Dallas ISD	Ponder ISD
Denton ISD	Lewisville ISD	Sanger ISD
Frisco ISD	Little Elm ISD	Valley View ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“Serious misbehavior” shall include, but not be limited to, the following offenses:

- Vandalism
- Robbery or theft
- Extortion, coercion, or blackmail
- Aggressive, disruptive action or group demonstration that substantially interferes with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting, committing physical abuse, or threatening physical abuse
- Leaving school grounds without permission
- Making or assisting in making threats, including threats against individuals and bomb threats
- Sexual harassment of a student or district employee
- Possession of or conspiring to possess any explosive or explosive device
- Falsification of records, passes or other school-related documents
- Refusal to accept discipline management techniques proposed by the teacher or principal
- Assault of a teacher or other individual

“Persistent misbehavior” shall include, but not be limited to, two or more violations of the Student Code of Conduct, repeat Code of Conduct violations for the same behavior, or (two or more) disruptions of the classroom/educational environment. The notice of expulsion shall include the number of Student Code of Conduct violations.

JJAEP County: El Paso

School Districts Served

Anthony ISD	San Elizario ISD
Canutillo ISD	Socorro ISD
Clint ISD	Ysleta ISD
El Paso ISD	

The JJAEP is reserved for mandatory referrals only.

JJAEP County: Fort Bend

School Districts Served

Alief ISD	Fort Bend ISD	Needville ISD
Alvin ISD	Katy ISD	Stafford MSD
Angleton ISD	Lamar CISD	Victoria ISD
Damon ISD	Muleshoe ISD	

Definition of “serious or persistent misbehavior” in school districts’ MOU with the JJAEP:

No definition of “serious or persistent misbehavior” is found in these school districts’ MOU with the JJAEP.

Victoria ISD Student Code of Conduct

“Serious” offenses include, but are not limited to, the following:

- Murder
- Vandalism
- Robbery or theft
- Extortion, coercions, or blackmail
- Actions or disruptions that substantially disrupt or materially interfere with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures
- Fighting, committing physical abuse, or threatening physical abuse
- Possession or distribution of pornographic materials
- Leaving school grounds without permission
- Sexual harassment of a student or district employee
- Possession of or conspiracy to possess any explosive or explosive device
- Falsification of records/passes or other school-related documents
- Refusal to accept discipline assigned by the teacher or principal

“Persistent misbehavior” is two or more violations of the Student Code of Conduct or repeated Code of Conduct violations for the same behavior.

JJAEP County: Galveston

School Districts Served

Clear Creek ISD	Galveston ISD	La Marque ISD
Dickinson ISD	High Island ISD	Santa Fe ISD
Friendswood ISD	Hitchcock ISD	Texas City ISD

The MOU between school districts and the JJAEP accepts each district’s individual criteria for expulsions and its definition of “serious or persistent misbehavior.”

The MOU also allows a student to be placed at the JJAEP, even if “not specifically eligible,” by “voluntary agreement” between the school district and the student’s parents.

JJAEP County: Harris

School Districts Served

Aldine ISD	Goose Creek ISD	Pasadena ISD
Alief ISD	Houston ISD	Sheldon ISD
Channelview ISD	Huffman ISD	Spring Branch ISD
Clear Creek ISD	Humble ISD	Spring ISD
Crosby ISD	Katy ISD	Tomball ISD
Cypress-Fairbanks ISD	Klein ISD	Waller ISD
Deer Park ISD	La Port ISD	
Galena Park ISD	North Forest ISD	

No definition of “serious or persistent misbehavior” is found in school districts’ MOU with the JJAEP.

Aldine ISD Student Code of Conduct

No definition of “serious or persistent misbehavior” is found in Aldine’s Student Code of Conduct.

JJAEP County: Hays

School Districts Served

Hays CISD
San Marcos CISD

There is no definition of “serious or persistent misbehavior” in school districts’ MOU with the JJAEP. Also, the JJAEP will only accept students in 6th grade or younger if expelled for mandatory reasons.

JJAEP County: Hidalgo

School Districts Served

Donna ISD	McAllen ISD	Sharyland ISD
Edcouch-Elsa ISD	Mercedes ISD	South Texas ISD
Edinburg CISD	Mission CISD	Weslaco ISD
Hidalgo ISD	Pharr-San Juan-Alamo ISD	
La Joya ISD	Progreso ISD	

There is no definition of “serious or persistent misbehavior” in school districts’ MOU with the JJAEP.

JJAEP County: Jefferson

School Districts Served

Beaumont ISD	Nederland ISD	Port Neches-Groves ISD
Hamshire-Fannett ISD	Port Arthur ISD	Sabine Pass ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

Requires school districts to “identify categories of student conduct that the school district has defined as conduct constituting serious or persistent misbehavior.” The principal of the JJAEP is responsible for “acquiring these categories and communicating them to the juvenile probation department and other appropriate entities and personnel.”

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JJAEP County: Johnson

School Districts Served

Alvarado ISD	Godley ISD	Rio Vista ISD
Burleson ISD	Grandview ISD	Venus ISD
Cleburn ISD	Joshua ISD	

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

The MOU specifies that the definition of “serious or persistent misbehavior” contained in individual school districts’ Student Code of Conduct for the current year will be used by the JJAEP. (These definitions can differ between districts using this same JJAEP.) According to the MOU, students typically must first be placed in a Disciplinary Alternative Education Program before a school district expels them to a JJAEP for “serious or persistent misbehavior.”

JJAEP County: Lubbock

School Districts Served

Frenship ISD	Lubbock-Cooper ISD	Shallowater ISD
Idalou ISD	New Deal ISD	Slaton ISD
Lubbock ISD	Roosevelt ISD	

No definition of “serious or persistent misbehavior” is contained in school districts’ MOU with the JJAEP. Instead, the MOU specifies that “students who are seventeen (17) years of age or older and who are expelled for serious and persistent misbehavior should not be placed in the JJAEP. The school district of residence shall be responsible for providing the student’s education or G.E.D. preparatory classes.”

JJAEP County: McLennan

School Districts Served

Axtell ISD	La Vega ISD	Riesel ISD
Bosqueville ISD	Lorena ISD	Robinson ISD
Bruceville-Eddy ISD	Marlin ISD	Rosbud-Lott ISD
Chilton ISD	Mart ISD	Waco ISD
China Spring ISD	McGregor ISD	West ISD
Connally ISD	Midway ISD	
Crawford ISD	Moody ISD	

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“A student may be expelled for engaging in serious and persistent misbehavior that violates the District’s Student Code of Conduct, while placed in a DAEP. The District defines ‘persistent’ as two or more violations of the Student Code of Conduct in general or repeated occurrences of the same violation.”

Waco ISD Student Code of Conduct

“Persistent misbehaviors” are those behaviors listed under Behaviors that Require a Referral.

Serious offenses include, but are not limited to, the following:

- Assault or retaliation of a school employee or other individual
- Murder, capital murder, or criminal attempt to commit murder
- Indecency with a child
- Possession of a prohibited weapon
- The use, gift, sale, delivery, possession or being under the influence of alcohol, marijuana, other controlled substances, dangerous drugs, or abusable volatile chemicals
- Engaging in conduct that constitutes criminal mischief
- Vandalism, robbery or theft
- Extortion, coercion or blackmail
- Aggressive, disruptive action or group demonstration that substantially disrupts or materially interferes with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting, committing physical abuse, or threatening physical abuse
- Sexual harassment of a student or district employee
- Possession of or conspiring to possess any explosive or explosive device
- Falsification of records, passes or other school-related documents
- Possession or distribution of pornographic materials
- Leaving school grounds without permission
- Making or assisting in making threats, including threats against individuals and bomb threats

JJAEP County: Montgomery

School Districts Served

Conroe ISD	Splendora ISD
Magnolia ISD	Tomball ISD
Montgomery ISD	Willis ISD
New Caney ISD	

**Definition of “serious or persistent misbehavior” in school districts’
Memorandum of Understanding with the JJAEP**

No definition of “serious or persistent misbehavior” is found in school districts’ MOU with the JJAEP. Under the MOU, students expelled to a JJAEP for “serious or persistent misbehavior” must be younger than 17. Minimum length of placement in a JJAEP for “serious or persistent misbehavior” is 30 successful days.

Conroe ISD Student Code of Conduct

Persistent misbehavior is two or more violations of the Student Code of Conduct or repeat Code violations for the same behavior.

Serious offenses include, but are not limited to, the following:

- Murder
- Vandalism
- Robbery or theft
- Extortion, coercion or blackmail
- Actions or demonstrations that substantially disrupt or materially interfere with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures
- Fighting, committing physical abuse, or threatening physical abuse
- Possession or distribution of pornographic materials
- Leaving school grounds without permission
- Sexual harassment of a student or district employee
- Possession of or conspiracy to possess any explosive or explosive device
- Falsification of records, passes or other school-related documents
- Refusal to accept discipline assigned by the teacher or principal

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JJAEP County: Nueces

School Districts Served

Aransas Pass ISD	Corpus Christi ISD	Robstown ISD
Banquete ISD	Flour Bluff ISD	Santa Gertrudis ISD
Bishop CISD	Gregory-Portland ISD	Tuloso-Midway ISD
Calallen ISD	Port Aransas ISD	West Oso ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“The definition of serious and/or persistent misbehavior occurring at an AEP is that a student has established a pattern of defiance of authority, including chronic truancy and disruptive behaviors while at the AEP. This must be demonstrated through attendance records and behavior reports.”

JJAEP County: Smith

School Districts Served

Arp ISD	Troup ISD
Bullard ISD	Tyler ISD
Chapel Hill ISD	Whitehouse ISD
Lindale ISD	Winona ISD

The JJAEP does not accept expulsions for “serious or persistent misbehavior.”

JJAEP County: Tarrant**School Districts Served**

Alpine ISD	Crowley ISD	Keller ISD
Arlington ISD	Eagle Mt-Saginaw ISD	Kennedale ISD
Azle ISD	Everman ISD	Lake Worth ISD
Birdville ISD	Forney ISD	Mansfield ISD
Burleson ISD	Fort Worth ISD	White Settlement ISD
Carroll ISD	Grapevine-Colleyville ISD	
Castleberry ISD	Hurst-Euless-Bedford ISD	

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP:**

“The District’s Student Code of Conduct’s list of behaviors that could be considered serious or persistent will constitute the behaviors for which a student may be placed in the JJAEP if the conduct occurs while the student is enrolled in the District’s Alternative Education Program.”

Arlington ISD Student Code of Conduct

“Persistent misbehavior”: Two or more violations of the Code of Conduct or repeat Code violations for the same behavior.

“Serious misbehavior” includes, but is not limited to, the following:

- Murder
- Vandalism
- Robbery or theft
- Extortion, coercion or blackmail
- Actions or demonstrations that substantially disrupt or materially interfere with school activities
- Hazing
- Insubordination
- Profanity, vulgar language, or obscene gestures
- Fighting, committing physical abuse, or threatening physical abuse
- Possession of or distribution of pornographic materials
- Leaving school grounds without permission
- Sexual harassment of a student or district employee
- Possession of or conspiracy to possess any explosive or explosive device
- Falsification of records, passes or other school-related documents
- Refusal to accept discipline assigned by the teacher or principal

APPENDIX

*Definitions of
“Serious or Persistent
Misbehavior”*

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JJAEP County: Taylor

School Districts Served

Abilene ISD Merkel ISD
Jim Ned CISD Wylie ISD

No definition of “serious or persistent misbehavior” is found in school districts’ MOU with the JJAEP. Students under 11 or younger than 6th grade cannot be expelled for “serious or persistent misbehavior.”

JJAEP County: Travis

School Districts Served

Austin ISD Manor ISD
Del Valle ISD Pflugerville ISD
Eanes ISD Round Rock ISD
Lake Travis ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP**

“Serious or persistent misbehavior” shall mean two or more violations of the District’s Student Code of Conduct in general, or repeated occurrences of the same violation.

‘Serious’ offenses include, but are not limited to:

- Assault of a teacher or other individual
- Retaliation against a school employee or volunteer
- The use, gift, sale, delivery, possession or being under the influence of alcohol, marijuana, other controlled substances, dangerous drugs, or abusable glue or volatile chemicals
- Engaging in conduct that constitutes criminal mischief
- Vandalism, robbery or theft
- Extortion, coercion or blackmail
- Aggressive, disruptive action or group demonstration that substantially disrupts or materially interferes with school activities
- Hazing
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting
- Public lewdness
- Sexual harassment of a student or district employee
- Falsification of records, passes or other school-related documents

- Terroristic threat or false report pursuant to Texas Education Code Sec. 37.007(b)(1)
- Possession or distribution of pornographic materials

A student may be subject to discretionary expulsion for “serious or persistent misbehavior” only if the student is already in a school district Disciplinary Alternative Education Program.

These categories of misconduct are intended to be illustrative, and not comprehensive.

JJAEP County: Webb

School Districts Served

Laredo ISD	Webb CISD
United ISD	Zapata County ISD

No definition of “serious or persistent misbehavior” is found in school districts’ MOU with the JJAEP.

Laredo ISD Student Code of Conduct

“Persistent misbehavior” includes two or more documented serious offenses, five or more documented minor offenses, or serious offenses and minor offenses that the principal or designee deems to interfere with the district’s ability to provide an education to other students.

However, “persistent misbehavior” is defined differently in the glossary of the Student Code of Conduct. The glossary defines “persistent misbehavior” as two or more documented major offenses, five or more documented serious offenses, or any combination of documented major offenses and serious offenses that the principal or designee deems to be an impairment of the ability of either the program or the school to provide an education to other students.

A list of 36 “serious offenses” is set out in the Code, including numerous low-level behavioral violations such as “engaging in any conduct (unruly, disruptive, disrespectful, abusive, etc.) that school officials might reasonably believe will substantially disrupt the school program,” failing to comply with directives, and refusing to accept discipline management techniques.

United ISD Student Code of Conduct

Serious offenses are those that substantially disrupt or materially interfere with the orderly process in the classroom, on school transportation, at the school, or at any school-related activity—and may include “persistent misbehavior” of Level II or higher misconduct.

“Persistent misbehavior” is defined as five or more instances of Level I misconduct, or more than one instance of Level II or higher misconduct.

JJAEP County: Wichita

School Districts Served

Burkburnett ISD Iowa Park CISD
City View ISD Wichita Fallas ISD

**Definition of “serious or persistent misbehavior”
in school districts’ MOU with the JJAEP**

The JJAEP does not accept students expelled for “serious or persistent misbehavior.”

JJAEP County: Williamson

School Districts Served

Austin ISD Hutto ISD Mexia ISD
Bartlett ISD Jarrell ISD Needville ISD
Center Point ISD Lago Vista ISD Palestine ISD
Comal ISD Lake Travis ISD Pflugerville ISD
Florence ISD Leander ISD Round Rock ISD
Georgetown ISD Lewisville ISD Stockton ISD
Grand Prairie ISD Liberty Hill ISD Taylor ISD
Granger ISD Lockhart ISD **Temple ISD**
Greenville ISD Mercedes ISD Thrall ISD

School districts’ MOU with the JJAEP adheres to the definition of “serious or persistent misbehavior” in each individual school district’s Student Code of Conduct.

Temple ISD Student Code of Conduct

“Persistent misbehavior” consists of two or more separate violations of the Student Code of Conduct or repeated Code violations for the same offense.

“Serious offenses” include the following:

- Conduct punishable as a felony
- Assault resulting in bodily injury
- Making a false report of bombing, fire or other emergency involving a public school
- Terroristic threat
- Offenses relating to marijuana, controlled substances and dangerous drugs
- Offenses relating to alcohol
- Offenses relating to abusable glue, volatile chemicals and aerosol paint
- Indecent exposure
- Public lewdness
- Retaliation against a school employee, regardless of where the conduct takes place

NOTE: San Angelo ISD is also among the Texas school districts expelling the largest number of students for “serious or persistent misconduct” in 2007-08, however this school district does not have a JJAEP. San Angelo uses the following definitions of “serious or persistent misbehavior”:

“Serious misbehavior” includes, but is not limited to, the following offenses:

- Conduct punishable as a felony
- Assault resulting in bodily injury
- Terroristic threats involving a public school
- Offenses relating to marijuana, controlled substances, and dangerous drugs
- Offenses relating to alcohol
- Offenses relating to abuse of volatile chemicals
- Vandalism or criminal mischief in any amount of damage
- Aggressive, disruptive action that substantially disrupts or materially interferes with school activities
- Profanity, vulgar language, or obscene gestures directed toward teachers or other school employees
- Fighting, committing physical abuse, or threatening physical abuse
- Falsification of records, passes or other school-related documents
- Sexual harassment of a student or district employee
- Refusal to accept discipline management techniques assigned by teachers or the administration
- Indecent exposure
- Public lewdness
- Retaliation against a school employee, regardless of where the conduct takes place
- Committing or assisting in a robbery or burglary
- Committing extortion, coercion or blackmail
- Any misbehavior that gives school officials reasonable cause to believe that the conduct will substantially disrupt the school program or incite violence
- False report or alarm of a bomb, fire or other emergency involving the public school
- Repeated offenses warranting in-school suspension
- Failure to attend DAEP and/or comply with the rules of the DAEP

“Persistent misbehavior” consists of two or more separate violations of the Student Code of Conduct.

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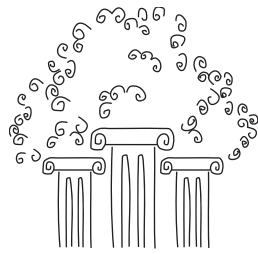
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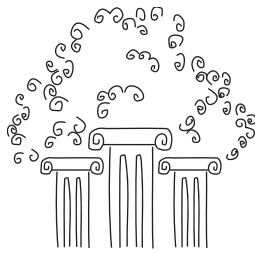
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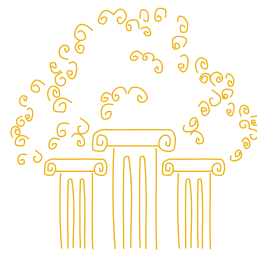
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