



Dear Colleague:

I am writing to you to address an issue related to student discipline and COVID-19 school closures throughout Texas.

As you are aware, the Texas Education Agency (“TEA”) recently released guidance about the effects of COVID-19 on school discipline.<sup>1</sup> In the guidance, TEA notes that the decision of whether to consider distance-learning days for purposes of DAEP and JJAEP placement lengths is a “local decision.”<sup>2</sup> TEA uses an example of a student who had a 45-day DAEP placement before school closed and had only served 10 days at the time.<sup>3</sup> According to the guidance, that student could be on day 11 of their DAEP placement when schools reopen or could be allowed to reenroll at their home campus.<sup>4</sup>

I am writing to you to ask you to commit to counting distance-learning days for purposes of both DAEP and JJAEP placement lengths when your district reopens. In the alternative, we ask that you reduce or waive DAEP and JJAEP placements on an individual basis so that students can return to their home campuses during the 2020–2021 school year with a fresh start. TEA’s guidance specifically allows for this, noting that “nothing prohibits an LEA from reducing DAEP placement time and allowing a student to reenroll at their home campus.”<sup>5</sup>

As you are certainly aware, removals to DAEP and JJAEP, like all exclusionary discipline, contribute to the school-to-prison pipeline, a phenomenon by which kids are pushed out of schools and into the juvenile and criminal justice systems, often for minor infractions. When a student is expelled, suspended, or sent to an alternative school, that student becomes more likely to interact with the criminal and juvenile justice systems in the future<sup>6</sup> and is more likely to drop out of school and not to be promoted to the next grade level.<sup>7</sup>

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<sup>1</sup> Tex. Educ. Agency, COVID-19 FAQ: Discipline Guidance, (Apr. 3, 2020), [https://tea.texas.gov/sites/default/files/covid19\\_discipline\\_guidance\\_april\\_3.pdf](https://tea.texas.gov/sites/default/files/covid19_discipline_guidance_april_3.pdf).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Council of State Governments Justice Center & The Public Policy Research Institute, Texas A&M, *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*, July 2011, at 61–72.

<sup>7</sup> *Id.* at 54–60.

Moreover, these exclusionary discipline practices have a disproportionate impact on students of color and students with disabilities in terms of the frequency and severity of the discipline.<sup>8</sup> The school, which is the place where these students should be able to go to gain the appropriate skills for success in life, is the same place that introduces these students to the criminal justice system that could potentially derail their futures.

Accordingly, if a school district decides not to count DAEP or JJAEP days during COVID-19 closures, that decision will disproportionately impact students of color and students with disabilities. This could cause far-reaching and unintended consequences for these students. Notably, both students of color and students with disabilities are already facing additional barriers during this difficult time because both groups are disproportionately impacted by public health issues, including COVID-19.<sup>9</sup> Failure to count these days would be one more way the systems in place negatively impact them.

In correspondence, some school districts have indicated they plan to count distance learning days for purposes of school discipline only on days when students log in online or turn in assignments. While this approach is better than not counting distance-learning days at all, this commitment does not go far enough. If students are not logging in regularly for distance learning or turning in assignments in a timely manner, it may be due to technological issues or other COVID-19 related challenges. Failure to consider the challenges the most marginalized students are currently facing would result in more privileged students being able to complete their DAEP and JJAEP placements during the COVID-19 school closures, while less privileged students would have to serve additional days when schools reopen.

For example, in our community outreach discussions with school-aged students in the Houston area, many students reported lack of access to laptops, tablets, and Wi-Fi.<sup>10</sup> Those students who do have access to the technology they need to excel during distance learning are often living in households with a higher income. Other students reported COVID-19 related deaths or illnesses in their families, which prevented them from focusing on the schoolwork provided. A recent survey showed that people with low income and people of color are more likely to contract COVID-19 and face complications from the virus because they are less likely to be able to work remotely, are more likely to work essential jobs, and are less likely to have access to healthcare.<sup>11</sup>

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<sup>8</sup> *Id.* at 40–46 and 47–53.

<sup>9</sup> See, e.g., Center for Disease Control, *People Who Are At Higher Risk, Coronavirus Disease 2019* (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>; UNICEF, *COVID-19 Response: Considerations for Children and Adults with Disabilities*, [https://www.unicef.org/disabilities/files/COVID-19\\_response\\_considerations\\_for\\_people\\_with\\_disabilities\\_190320.pdf](https://www.unicef.org/disabilities/files/COVID-19_response_considerations_for_people_with_disabilities_190320.pdf); World Health Organization, *Human Rights and Health*, (Dec. 29, 2017), <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>; Haltiwanger, John, *Surgeon General Says People of Color Are Getting Hit Harder by Coronavirus Because of Social Issues, Not Genetics or Biology*, *Business Insider*, (Apr. 10, 2020), <https://www.businessinsider.com/surgeon-general-people-of-color-vulnerable-coronavirus-social-issues-2020-4>.

<sup>10</sup> Lara Fishbane & Adie Tomer, *As Classes Move Online During COVID-19, What Are Disconnected Students To Do?*, *The Brookings Institution: The Avenue* (Mar. 20, 2020), <https://www.brookings.edu/blog/the-avenue/2020/03/20/as-classes-move-online-during-covid-19-what-are-disconnected-students-to-do/>.

<sup>11</sup> See, e.g., Hannah Hageman, *New Survey Highlights Racial Disparities in the Coronavirus Pandemic*, *NPR* (Apr. 14, 2020, 5:48 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/14/834466606/new-survey->

An additional group of individuals shown to be at a higher risk of developing complications from the virus are people with disabilities.<sup>12</sup> Accordingly, students in low-income households, students of color, and students with disabilities are more likely to be affected by COVID-19, which makes it more difficult for them to keep up with their schoolwork during this time.

Other students in these community outreach discussions reported experiencing family stresses or pressures related to being stuck at home for quarantine, including taking care of siblings and parental substance abuse. Several students reported feelings of depression and anxiety. One student reported that he had not logged in to complete school assignments because he was grieving after another student was murdered.

These students should not be punished as a result of their struggle to focus on school during an unprecedented global pandemic that has caused challenges which are traumatizing to both children and adults. Even adults are struggling to concentrate right now.<sup>13</sup> According to one survey, nearly 25% of American adults reported trouble concentrating due to coronavirus concerns.<sup>14</sup>

Further, the policy reasons that schools typically cite for utilizing exclusionary discipline in the first place are currently being addressed by the COVID-19 school closures and social distancing. Students who are serving a DAEP or JJAEP placement are not interacting with their peers. They have been excluded from extracurricular activities. They are unable to attend sporting events and school dances. Their freedom has been greatly limited, and they have had time to reflect and consider their actions and their futures. It is not the students' fault that they are currently unable to serve their DAEP and JJAEP assignments, and they should not be penalized for school closures over which they had no say. Furthermore, in order for discipline measures to be effective, they must be implemented in a timely manner. Not counting these days would be effectively implementing the discipline months after the infraction(s) occurred.

Accordingly, all school districts should commit to counting distance-learning days for purposes of both DAEP and JJAEP placement lengths or to reducing or waiving DAEP and JJAEP placements on a case-by-case basis so that students can start fresh next year.

As you are aware, if a school district decides not to exercise the discretion urged by this letter, the Texas Education Code still requires that schools show that a student's presence in the regular classroom presents a threat of physical harm or that the student has engaged in serious or persistent misbehavior in order to hold that student in DAEP past the end of the school year.<sup>15</sup> TEA's recent

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highlights-racial-disparities-in-the-coronavirus-pandemic; J. Edward Moreno, *Black, Latino Communities Suffering Disproportionately From Coronavirus, Statistics Show*, The Hill (Apr. 7, 2020, 10:07 AM), <https://thehill.com/homenews/state-watch/491518-black-latino-communities-suffering-disproportionately-from-coronavirus>; <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>.

<sup>12</sup> See sources cited *supra* note 10. People with disabilities are not inherently more likely to contract COVID-19 or to face complications, but people with disabilities are more likely to have underlying medical conditions, which may put them at higher risk. United Nations, *COVID-19 Outbreak and Persons with Disabilities*, <https://www.un.org/development/desa/disabilities/covid-19.html> (last visited Apr. 17, 2020).

<sup>13</sup> American Psychiatric Association, <https://www.psychiatry.org/newsroom/news-releases/new-poll-covid-19-impacting-mental-well-being-americans-feeling-anxious-especially-for-loved-ones-older-adults-are-less-anxious> (last visited Apr. 15, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> Tex. Educ. Code § 37.009(c).

guidance about school discipline during COVID-19 school closures did not waive this requirement.

As social justice organizations committed to justice for all Texas children, we hope you will consider this letter and reach out with questions or comments. We request and look forward to a response from you as to what your district plans to do regarding counting, reducing, or waiving disciplinary days when schools reopen. Thank you.

Sincerely,



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