

School Discipline in Texas: Past, Present, and Future

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Executive Summary

Students should feel safe from physical harm in a classroom. They should be able to learn in a quiet and disciplined atmosphere. Teachers should feel secure, and be able to operate within the orderly environment required to do their jobs. Without this security and order, it is difficult for the education process to occur. By having school discipline procedures in place is how school administrations make security and order possible.

Texas has gone overboard at times in its attempts to appropriately maintain a safe and orderly classroom. The use of zero tolerance policies, school ticketing, and removal from classrooms have been subject to criticism. Fortunately, the state has removed many negative practices such as school ticketing, has introduced greater discretionary decision-making to prevent harsh unintended consequences, and is proving the effectiveness of long-understood disciplinary methods.

Some concerns remain, however, regarding special education youth subject to disciplinary actions, complications arising from zero tolerance policies, and out-of-school suspensions. In particular, Texas should examine the discipline options available to schools, broadening the range from primarily exclusionary methods—e.g., suspension and expulsion—to include alternative disciplinary methods such as school restorative justice programs that allow students to take personal responsibility for their actions.

In examining these options, policymakers should take into account the effect school discipline has on the overall learning environment and the student on its receiving end. Some studies find that youth who are suspended out of school or expelled struggle in school and in life, and frequently become involved in the juvenile—and later the adult—justice system. While these outcomes may be attributable to the underlying behaviors that led to the suspensions, finding alternatives that have proven successful in other states and school districts may reduce further disciplinary actions and provide greater satisfaction to all those involved.

School Discipline Accomplishes Two Goals

There are generally two purposes behind school discipline. First, it should keep students and educators safe and maintain an environment conducive to learning so students can accomplish their own goals. Second, it should help disruptive students change their behavior, resolve their issues, and return as productive contributors to the educational process. Both are important to the mission of the educational system.

Studies have shown teachers spend a great deal of instructional time on misbehaving students, which detracts from the other students' ability to learn. In a broad survey on crime and safety in the 2011-12 school year, 38 percent of teachers stated that student misbehavior interfered with their teaching ([Robers et al., 54](#)). Further, 35 percent of teach-

KEY POINTS

- School discipline should strive for safety and a positive learning environment.
- There are disciplinary methods – tried in other districts/states – that protect safety and learning environments, while decreasing the likelihood of misbehavior from difficult students.
- Overall, school disciplinary actions are decreasing, as well as the number of offenses committed on campus.
- The Texas Legislature should reduce disciplinary actions to entirely discretionary offenses to avoid zero tolerance policies unfairly impacting students. School districts themselves should take note of successful restorative justice programs in districts across the country.

ers stated that tardiness and class cutting interfered with their teaching as well.

Additionally, school violence is a continuing concern for students and their parents. Although school violence is declining, students are still more likely to be victimized at their school than away from it, according to surveys on crime and safety (Robers et al., 10). School violence can have far reaching effects on students, which makes its continued decline that much more important. In 2013, 3 percent of students ages 12-18 nationwide stated they were afraid when attending school because they felt they were in danger of physical harm. Five percent of the same students stated they had avoided a school activity because they were afraid of attack or harm. Among that subset of students, 2 percent stated that they “avoided a school activity” and 4 percent “avoided one or more places in school.”

Recent Changes to Texas’ School Discipline Methods

While many consider a visit to the principal’s office the traditional punishment for disruptive and mischievous students, until recently, Texas students were increasingly subject to criminal sanctions for classroom misbehavior (Fowler 2010, 67). Class C misdemeanor citations, or “school tickets,” were handed out by the school’s police officers for errant behavior in classrooms, in hallways, or on the bus. Restrictions to this system, as well as the decriminalization of truancy—placing the offense fully in the civil system—are two significant changes to school discipline procedures.

These tickets entailed a courtroom visit for the minor offender, and often their parents as well. In addition, a Class C misdemeanor comes with a fine of up to \$500 (Fabelo et al., 23). If students reached their 17th birthday and their family or they were unable to pay the fine, that is more serious. A 17-year-old in Texas is eligible for a Notice of Continuing Obligation to Appear. Continued failure to comply allowed further charges and a warrant for the student’s arrest. Lawsuits have been filed on behalf of hundreds of students who were jailed for unpaid truancy tickets after turning 17 (Roebuck).

This would be understandable, were it occurring only to students who present serious and imminent threats to schools and their students. Unfortunately, prior to the

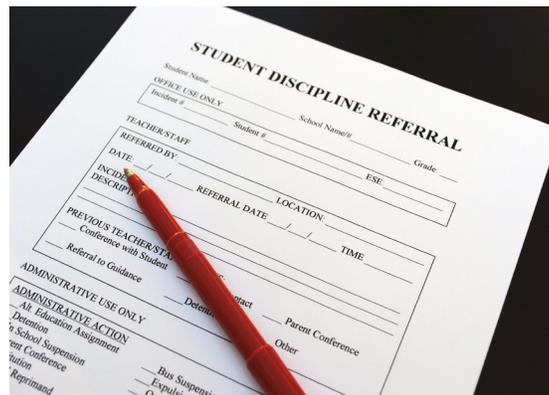
recent changes it was common for students to be awarded these tickets for vague, minor charges, such as classroom disruption, which may simply mean a student cursing in class (Freeman). Some examples of the excessive use of ticketing include a 12-year-old student who was ticketed for spraying “too much perfume,” and another student who was throwing paper airplanes (McGreal). These behaviors can be disruptive in a classroom but do not require out-of-school disciplinary measures.

The Texas Legislature responded to the increasing use of the criminal justice system to deal with misbehavior in schools. In 2013, SB 393 created a tiered discipline system with intermediate steps before the introduction of police and courts (Texas School Safety Center). Also in 2013, SB 1114 abolished immediate court involvement in minor school misbehaviors (SB 1114). It required officers referring students to courts to provide offense reports, as well as witness and victim statements.

Currently, when school officers refer a student to a court over school misbehavior, they are required to file a complaint with the local prosecutor, who then decides whether charges will be filed (Serrano). Ticketing decreased by 83 percent in 2014, the year changes were made (Texas Office of Court Administration, 120). This decrease was significant. However, such direct referrals are not the only way school discipline procedures affect what interactions students have with the Texas criminal justice system.

Truancy, until recently, also subjected Texas youth to criminal charges and penalties. In Texas, if a student misses 10 days of school in a six-month period, or three days in a one-month period, they are regarded as “truant.” Until recently, there were two different mechanisms for prosecuting truancy offenders.

In the Family Code, “Conduct in Need of Supervision,” or CINS, allowed the offending youth to be brought into juvenile courts. The Education Code also had a provision, “Failure to Attend School,” or FTAS, which brought the case into the purview of the municipal, or justice, courts as a Class C misdemeanor (Fowler, 2013, 1). FTAS cases were numerous in Texas, numbering over 76,000 cases in 2012; they made up over one-third of Class C cases brought against juveniles. There were enough cases that two specialized truancy courts were created that exclusively handled these offenses.



In 2015, the 84th Texas Legislature decriminalized truancy in Texas with HB 2398 ([Associated Press](#)). This bill required schools to ascertain the reason behind an instance of truancy—to determine causes such as homelessness or illness—before bringing a case. Schools are still able to bring a student to court for missing school, but the punishment is civil instead of criminal.

That Legislature also provided a relaxation in “zero tolerance” laws for schools. Senate Bill 107 attempted to offset requirements that schools expel or send offending students to alternative education programs by introducing a list of mitigating considerations ([Texas Classroom Teachers Association](#) 2015). This introduced some discretion into what was a strict policy that occasionally yielded unintended results.

What School Discipline Procedures Look like Today

School districts today have a wide array of options when dealing with disciplinary issues. As common sense would dictate, the more basic interventions occur in the classroom from the initiative of the teacher and are discretionary ([Walker et al.](#)). In practice, these can take the form of a note to parents, a request for a parent–teacher conference, or a behavior contract with the student. These forms of intervention are the common ones students and parents imagine they will likely experience at some point in the educational process. More significant, but still necessary for serious behavioral issues, are forms of school discipline that have been referred to as “exclusionary discipline” because they remove a student from the classroom. These can vary, from an in-school suspension to an out-of-school suspension, or all the way to a full expulsion from the system.

The most minor form of exclusionary discipline is in-school suspension, or ISS. Students who receive an ISS remain in the school but are removed from their classroom ([Fabelo et al.](#), 20). The length of an ISS varies from one period to multiple days, although there is no clearly documented average length. The Texas Association of School Boards notes that there is no explicit statutory limit for an ISS in its guide on school discipline procedures ([Texas Association of School Boards](#)). Out-of-school suspensions (OSSs) are a step farther for exclusionary discipline. An OSS means the student in question cannot return to his or her campus until the time specified has passed, which by statute can range up to three days. While the maximum length of an OSS is mandated, there is no limit on the number of these suspensions a student can receive in a semester.

Newer additions to the set of disciplinary options are Disciplinary Alternative Education Programs (DAEPs) and Juvenile Justice Alternative Education Programs (JJAEPs). These programs were created in 1995 by the Texas Safe Schools Act to maintain classroom safety without jeopardizing the removed students’ educational experience ([Levin, 2](#)). School districts were required to form continuing programs for the benefit of students who were removed from the classroom so their education would continue and they would not be left to stir up further mischief on their own.

Initially, there were minimal standards for DAEPs. State Education Code 37.008 had established vague requirements that these programs “provide for students’ educational and behavioral needs ([Levin, 10](#)).” Now the statute also requires the Texas Education Agency to establish requirements for them ([Texas Education Code](#)). These have been created, and include provisions such as a requirement for both pre- and post-assessments of students who enter DAEPs, as well as specific student/teacher ratios and essential training for teachers.

Juvenile Justice Alternative Education Programs (JJAEP) are different from DAEPs ([Levin, 2](#)). Instead of being operated by the school district, they are operated by the county juvenile boards. Two typical ways to enter a JJAEP are either by being expelled or because of persistent or serious misconduct in a DAEP. JJAEPs often operate differently than a regular school district, or even a DAEP. There are three common types of JJAEP. One is the “school district”-style model, familiar to most students. Another is a “therapeutic” model, and the third is a “military” or boot camp-style model.

Both ISS and OSS can either be discretionary or mandated by statute ([Fabelo et al.](#), 15). Discretionary referrals usually occur as a part of the Student Code of Conduct in each district, rather than as a part of a statute, and vary by district. Mandatory removals, either by suspension to a DAEP or by an expulsion to a JJAEP, are intended to be for more serious conduct. As spelled out in the Education Code, suspension from the classroom and removal to a DAEP is for offenses such as creating a false alarm or committing a felony, a lewdness offense, or an assault—including misdemeanor assault—on school property. A full expulsion from the school to a JJAEP must occur if the student uses or possesses a listed weapon, such as a firearm, an illegal knife, or a club, on school property or commits other crimes listed such as arson or murder ([Education Code](#), 37.006–7).

This list of mandatory offenses was created along with the DAEP and JJAEP in 1995 ([Hope](#)). The offenses are frequently referred to as “zero tolerance” offenses, meaning that the schools may not use discretion in enforcing them. This was eased somewhat in the last legislative session, with SB 107. Under SB 107, school districts may now ask certain questions before suspending or expelling a student. For example, the school administration can inquire into the intent of students—whether they acted in self defense, or whether they have a disability that precluded them from understanding their actions ([Texas Classroom Teachers Association](#) 2015).

Answers to Concerns That Exclusionary Discipline is in a Crisis

Studies have expressed concern over school funding lost when students are removed from classrooms through OSSs, about the cost of state mandated DAEPs, as well as about whether exclusionary discipline in Texas is becoming more widely relied upon instead of more immediate classroom-based disciplinary procedures ([Freeman](#)). The steep increase in referrals to DAEPs in the first few years of their creation and the continued high rates of discretionary versus mandatory referrals has seemingly given legitimacy to these concerns. There is reason to believe several theories were proven in later years to be unfounded. While there are still long-term concerns in student discipline that remain unresolved, overall, the school discipline methods in Texas are far from being in crisis; they are actually improving, while providing a safer, more harmonious environment for learning.

In a recent study, Texas Appleseed noted districts lose money when they send students away through OSSs ([Freeman](#), 2012, 1). Other groups have expressed concern that the exclusionary discipline practice pushes the students away from a positive course (Education Week). These groups have expressed concerns that students could see OSSs as “a reward and not a punishment,” thereby reinforcing the negative behavior. The end result of many of these arguments seems to be that exclusionary discipline is out of control, or in a crisis state.



However, examining the available state data shows the number of OSSs has been decreasing steadily in the last eight years (Texas Education Agency). In fact, during the 2007–08 school year, over 311,000 students were suspended, while in the most recent data, for the 2013–14 school year, the number had dropped by nearly a third, to 232,000. A similar drop can be seen in ISSs as well.

A valid issue highlighted by these reports is that some populations are disproportionately affected by discipline that removes them from the classroom. Particularly concerning are the significantly higher rates of OSSs for students with special needs. These studies find that these students—more likely to misbehave in the classroom—are twice as likely to be removed from their classroom with a suspension (Education Week). Students with disabilities should, of course, be subject to school discipline procedures, and it is true that some of these students may be more likely to create difficulties in the classroom environment ([Dwyer](#)). However, according to the Individuals with Disabilities Education Act (IDEA), these students are not allowed to be expelled for behavior stemming from their disability, and only may be moved to alternate placements after consultation with parents and the determination that their Individualized Education Plan (IEP) will not be interrupted.

Concerns over referrals to DAEPs and JJAEPs largely stem from the steady increase that occurred in the populations of those programs initially, as well as from the high number of discretionary versus mandatory referrals. As the Center for Effective Justice noted in 2007, DAEPs and JJAEPs had been seeing steady increases in their referrals ([Levin](#), 1). From the 1998–99 school year, the first year that the Texas Education Agency began measuring discipline data, to that of 2003–04, there was a 47 percent increase in DAEP referrals and a 33 percent increase in JJAEP referrals.

Other organizations have pointed out that discretionary disciplinary proceeding and referrals, as opposed to mandatory proceedings and referrals, make up the significant

majority of discipline cases (Fowler 2010, 67; Fabelo et al.). In 2008–09, discretionary expulsions, which require the student to attend the JJAEP and the school district to pay for it, outnumbered mandatory expulsions more than two to one. Fabelo et al. report that only 3 percent of the disciplinary actions taken in Texas were mandatory, while the other 97 percent were discretionary actions, primarily arising through violations of the individual district’s Student Code of Conduct.

Recognition of the increase in referrals and particularly discretionary referrals engendered concerns that schools were using DAEPs as dumping grounds for difficult students, and that the leeway offered through discretionary referrals allowed this to happen to students for whom it was not truly necessary. Fortunately, there has been less cause for these concerns in recent years. Since the 2007–08 school year, disciplinary actions have decreased across the board (Texas Education Agency). In 2007–08, referrals to DAEPs were made for over 100,000 youth. Today, referrals to DAEPs have dropped to just over 27,000. Referrals to JJAEPs dropped by over half in this period, from almost 6,000 to just over 2,500. The initial upward movement in DAEP populations could have been because of overuse of the new disciplinary institution, or it could have been due to an adjusting period for schools getting used to entirely new programming. Regardless, currently the numbers are in a steep decline, indicating that schools are either decreasing disciplinary actions across the board or finding less exclusionary methods for handling them.

The Effectiveness of Current School Discipline Procedures

Clearly, school discipline is required for maintaining an environment that promotes both school safety and effective teaching in the classroom. Although school disciplinary referrals have been decreasing, the need to ensure that the disciplinary methods are achieving the best results for the schools, the students, and the parents is still present. The challenge is in ensuring the effectiveness of the discipline measures without going overboard in ways that harm students without improving safety, as has often been the case with the use of ticketing and zero tolerance policies.

Past examples of going overboard show the need for maintaining a balance in school discipline policies. In 2008, a member of the honor society in a Fort Bend school received a seven-week suspension because her brother’s theater prop sword was discovered in her car’s back seat (Hylton). In 2010, a boy was expelled to a DAEP because his belt buckle resembled a brass knuckle (Fowler 2010, 67). That same year, a 13-year-old student was sus-

pending for three days over an alleged “terroristic threat” that occurred when she imitated a gun with her fingers (ABC-13). More recently, in January of 2016, a young girl was sent to a DAEP for 30 days after she lent her asthma inhaler to another student who was suffering an asthma attack who did not have an inhaler of her own (Hope, 2016). That incident was classified as sharing a prohibited substance and will remain on her record as a disciplinary action, although the parents of the girl who received the inhaler credit the girl who was punished with saving their daughter’s life.



The intention was to address these situations when SB 107 allowed school districts to ask questions about the circumstances of an incident before enforcing mandatory removals. It is yet to be seen how well this change affects outcomes. In several of the cases listed above, questions about self defense or disability would not have changed the outcome. That leaves only a determination of the intent of the student, which is difficult to ascertain. It might be necessary to reduce all mandatory removals to discretionary offenses and to require that only students who present an actual safety threat be removed.

Removal of students from their classrooms and sometimes from their school is the most serious form of school discipline, and may in some instances be the best options available to teachers who are trying to maintain a peaceful and safe classroom. However, studies have acknowledged that this method of discipline frequently does not resolve the issues of students engaging in misbehavior. These students overwhelmingly do not learn from the intervention and continue in negative behavior later on. According to a recent study of classroom discipline in Texas, students who were removed from their classrooms were six times more likely to be held back a grade and four times more likely to drop out of school altogether (Fabelo et al., 56–59). In another study, disciplinary records were shown to be a better predictor of student dropout rates than

other common predictors such as teen pregnancy and low socio-economic status ([Sherbo-Huggins](#)). Students with disciplinary records or who have dropped out of school have also been shown in reports to be more likely to become involved in the criminal justice system ([Fabelo et al.](#), 61–72).

The cost of the students in DAEP and JJAEP programs is high, ranging by district from \$79 to more than \$200 per student per day. This is well over the average of \$53 that Texans spend on student education ([Stutz](#)). The operation of these programs often costs districts millions of dollars. In Dallas, where the operating cost ran over \$9 million, the school district also lost over \$700,000 on fees related to referrals to JJAEPs ([Appleseed](#), 1).

Paying for these programs is common sense if it is the best method to resolve conflicts in schools and provide safe campuses for Texas' students and teachers. Although exclusionary discipline does not always reform the misbehaving student, it is a tool for the peace and safety of teachers and the other students, which should be a priority.

However, there are other disciplinary methods that have reduced exclusions from schools. Restorative justice programs are one of these methods. These programs have not been widely adopted by school districts, but when they have been adopted, they generally report excellent results and therefore have been expanded. Restorative justice programming is used to resolve conflict in both the criminal justice system and in schools across the country. In schools, restorative justice programs intentionally bring an element of personal responsibility into the process, frequently bringing the student who injured another or misbehaved into face-to-face contact with the injured student or teacher. Models vary, but usually focus on the issue being defined, the aggravating party taking responsibility, and guilty party attempting to correct his or her behavior.

One such program was started in Lansing, Michigan, in 2005 ([Porter](#), 1). After its introduction, the school district saw a 15 percent drop in suspensions, even as neighboring districts saw an increase in their suspensions. Further, 93 percent of the participating students stated the program resolved their conflicts.

Restorative justice programming also has been shown to lower incidents of misbehavior. A school district near Philadelphia implemented restorative justice programming in 2000 ([Mirsky](#) 2003). In the first year the program

was implemented, the school began collecting data on incidents of inappropriate behavior, disrespect to teachers, and disruptions in class. Program administrators found that while the first year of the new program saw 99 incidents of inappropriate behavior, one short year later there were only 32 such incidents. In the same time frame, there was a decrease from 71 to 21 incidents of disrespect to teachers, and a decrease from 90 to 26 incidents of classroom disruption.

Recommendations

Schools in Texas have already improved their discipline system, but they could make a few more positive changes. First, the state legislature should consider reducing all disciplinary actions to discretionary actions. This will allow common sense to take hold and prevent unexpected results from zero tolerance rules, which unfairly impact some students. While mandatory suspensions and expulsions were well intentioned, additional discretion will address situations such as that of the student who lent another her asthma inhaler.

Texas school districts should also take note of alternative disciplinary methods such as restorative justice, and consider implementing such programs themselves. As a whole, these programs seem to address all elements of school discipline effectively. They address disruptive behavior that prevents learning, protecting the students that are simply trying to receive an education, but they also focus on the root of the issue in conflicts, and show that they have done so by reforming the youth in question. Through personal responsibility, these programs reduce the later likelihood of students acting out again.

Conclusion

School discipline has a significant impact on several levels. It increases safety in schools and provides calm areas where instruction can be productive. It also has serious impacts on students who are removed from their classrooms, and creates another expense for taxpayers. Thankfully, Texas has made several positive changes to its school discipline in recent years, such as the decriminalization of truancy and the reduction of school ticketing, that have lowered the negative impacts while maintaining the positive.

While some may argue that discretionary referrals leave the system in crisis, Texas legislators and school districts are continuing to improve these programs, and should do so. The Legislature should be aware of the oft unintended

impact of mandatory discipline—or zero tolerance—policies in schools, and consider ending the practice altogether. Further, schools should be aware that while they should first and foremost protect the safety and learning environment in their schools, there are other methods of

discipline that do so more effectively without removing students from schools. School districts should look to restorative justice programming that advocates for personal responsibility in school discipline in order to truly resolve misbehavior. ★

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