



## How Texas Can Upgrade School Discipline Policies

*Testimony before the Texas Senate Committee on Education\**

by Marc Levin, Esq.

### KEY POINTS

- School discipline policies should be motivated by classroom safety and based on evidence.
- Zero-tolerance policies are one-size-fits-all discipline, which can result in punishments that defy common sense.
- Texas should consider reducing all disciplinary actions to discretionary actions or narrowing the conduct that triggers automatic exclusionary discipline.
- Given the nature of truancy, punishing children with out-of-school suspension for this offense is imprudent policy and can harm academic performance.
- Texas Education Agency's Accountability Rating System should include disciplinary metrics to help determine whether a school or school district is persistently failing and, therefore, subject to closure or consolidation.

**Interim charge** – Classroom Conduct and Teacher Support: Examine current student discipline mandates in code, study best practice models to reduce classroom discipline issues, and provide direct support for students and classroom teachers.

### Introduction: The Purpose of School Discipline and Why It Matters

The purpose of student discipline is twofold. First, it should maintain order in the classroom so that students and educators are safe in a productive learning environment. Second, it should help reform the behavior of disruptive students and seek to resolve the root problem of their issues so that they may return as productive contributors to the educational process. The most effective school discipline policies are motivated by safety and based on evidence. Additionally, it is important to realize the effects of these policies reach beyond the classroom.

### Considering youth's unique capacity for transformation, school discipline is an opportunity for early intervention.

A Texas-specific study shows a high correlation between exclusionary discipline and dropping out of school. Even when adjusting for variables, students who are removed from school are more likely to eventually drop out

compared to similarly situated students who are disciplined in alternative ways ([Fabelo et al., 56-72](#)). This does not necessarily mean that suspensions or expulsions are the defining reasons students drop out. However, the correlation is significant given the fact that there is a high rate of imprisonment among school dropouts. School disciplinary action is often a precursor to involvement in the juvenile and criminal justice systems.

In comparison to adults, however, youths are much more prone to reforming behavior. Considering youth's unique capacity for transformation, school discipline is an opportunity for early intervention. Adopting best practices is critical to the success of Texas youth, as it could mean the difference between falling into a cycle of wrongdoing that leads into adulthood and correcting misbehavior in adolescence.

School discipline is an early opportunity to get kids on the right and productive path. Best practices in school discipline lead to better outcomes for students, which, in turn, creates safer and more productive learning

\* Sections of this testimony are materials previously developed by the Center for Effective Justice at the Texas Public Policy Foundation.

environments for both educators and kids. 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. But there remains work to be done. Appropriate responses to behavior and ensuring that children remain in school when appropriate must be a priority.

### Zero-Tolerance Policies

In 2015, the Legislature 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](#)). This introduced some discretion into what was a strict policy that occasionally yielded unintended results.

Today school districts 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.

The most minor form of exclusionary discipline is the in-school suspension (ISS). Students who receive an ISS remain in the school but are removed from their classroom ([Fabelo et al., 20](#)). The length of ISSs 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 punishments in which the student cannot return to their campus until the time specified has passed, which by statute can last up to three days. While the maximum length of an OSS is mandated, there is no limit on the number of these suspensions that a student can receive in a semester.

The Disciplinary Alternative Education Programs (DAEPs) and Juvenile Justice Alternative Education Programs (JJAEPs) were created in 1995 by the Texas Safe Schools Act to maintain the safety of classrooms without jeopardizing the removed students’ educational experience ([Levin, 2](#)). DAEPs are operated by the school district, while JJAEPs are operated by the county juvenile boards. Two common ways to enter a JJAEP are either

by being expelled or because of persistent or serious misconduct in a DAEP.

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 can be for offenses such as creating 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 ([Texas Education Code, 37.006–7](#)).

This list of mandatory offenses was created along with the DAEPs and JJAEPs 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

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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 the student—whether they acted in self-defense, or whether they have a disability that precluded them from understanding their actions ([Texas Classroom Teachers Association](#)).

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 there. 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](#), 67). That same year, a 13-year-old student was suspended for three days over an alleged “terroristic threat” that occurred when she imitated a gun with her fingers ([ABC-13](#)). More recently, in January 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 and did not have an inhaler of her own ([Hope](#), 2016). That incident was classified as sharing a prohibited substance and the disciplinary action will remain on her record, although the parents of the girl who received the inhaler credit the girl who was punished with saving their daughter’s life.

These situations were intended to be addressed 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 does. 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 will be difficult to ascertain. This is why it may be necessary for Texas to reduce all mandatory removals to discretionary offenses and to require that only the students that present an actual safety threat be removed.

Removals of students from their classrooms and sometimes from their schools are the most serious forms of school discipline and may in some instances be the best options available to teachers trying to maintain a peaceful and safe classroom. However, studies have acknowledged that this method of discipline frequently does not resolve the issues of the student 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 then more likely to become involved in the criminal justice system ([Fabelo et al.](#), 61-72).

The cost of the students in DAEPs and JJAEPs is high, ranging by district from \$79 to over \$200 per student per

day. This is well over the average of \$53 per student per day that Texans spend on student education ([Stutz](#)). The operation of these programs often costs districts millions of dollars. In Dallas, where the operating costs 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 have been expanded. Restorative justice programming is used to resolve conflict in both

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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, providing an opportunity for the perpetrator to apologize, make things right as much as possible, and better understand the connection between their conduct and the disruption and harm experienced by others. Models vary but usually focus on the issue being defined, the aggravating party taking responsibility, and attempting to make their behavior right.

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

Restorative justice programming has also been shown to lower incidents of misbehavior. A school district near Philadelphia implemented restorative justice programming in 2000 ([Mirsky](#)). Beginning the first year that the program was implemented, the school also collected data on incidents of inappropriate behavior, disrespect to teachers, and disruptions in class. They 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 timeframe, 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:** First, the state 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 the mandatory suspensions and expulsions were well-intentioned, additional discretion will address situations such as that of the student who lent another her asthma inhaler.

Even if all disciplinary actions are not categorized to discretionary actions, the Legislature should consider narrowing the conduct that triggers automatic suspension or expulsion. For example, current law requires out-of-school suspension to a DAEP for possessing alcohol within 300 feet of the school, which can be a beer can in a high school student's parked car. Additionally, the current law requires expulsion of students caught with unauthorized prescription drugs, including asthma inhalers. At the most, this should be discretionary grounds for expulsion.

Another common sense measure would be to prohibit the use of out-of-school suspension as a punishment for truancy. Believe it or not, this is authorized under state law and actually used in some school districts. What is the point in “punishing” a kid for not coming to school by prohibiting him from coming to school?

We also need to look at procedural reforms to address the fact that currently a kid can be placed in out-of-school suspension for an unlimited number of three-day periods without any recourse. After a few consecutive suspensions, the parent/student ought to be able to appeal to the school board or the board's designee.

Texas school districts should also take note of alternative disciplinary methods such as restorative justice approaches like peer mediation, 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 this student acting out again.

## Truancy

Until recently, truancy subjected Texas youth to criminal charges and penalties. In Texas, if students miss 10 days of school in a six-month period, or 3 days in a one-month period, they are regarded as “truant.” There were two different mechanisms for prosecuting truancy offenders prior to the legislative change in 2015. 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.

This reform yielded positive results for students and taxpayers. After the law went into effect, Texas saw a 90 percent decline in the number of truancy court filings. At the same time, attendance remained virtually the same, with a 0.13 percent increase, suggesting there is no correlative connection between truancy filings and school attendance ([Fowler and Holik](#)).

Under Texas law, however, school districts are authorized to utilize OSS as a punishment for truancy. Removals from class can be for any reason so long as it is adopted by the school board in its local Student Code of Conduct ([Texas Education Code, 37.005](#)). While truancy should undoubtedly be addressed, many status offenders lack support networks or come from broken homes. Research has indicated that out-of-school suspension actually accelerates delinquency, as these students often lack proper parental supervision, particularly when there is only one parent who is working, and frequently wind up getting into trouble on the street. Also, studies have found that suspended students' behavior and academic performance do not improve upon returning to school ([Skiba](#)). Moreover, punishing a child for not attending school by prohibiting him from coming to school is hardly a disciplinary measure.

**Recommendations:** Prohibit the use of out-of-school suspension as a punishment specifically for truancy. While discretion is valuable in determining the most appropriate means of discipline, truancy is an atypical status offense. Given the unique characteristics of the offense, the root problem of truancy is best addressed through interventions undertaken in the community, where families, schools, churches, and nonprofit organizations can act as sources of support. This type of intervention often leads to more sustainable results, as out-of-school suspension does little to resolve the underlying issue for skipping school ([Shubick](#)).

### **Texas Accountability Ratings**

Chapter 39 of the Texas Education Code establishes the Texas Education Agency's Accountability Rating System. The system considers academic performance, course availability, improvement in core courses, college-ready graduates, attendance, and a variety of other measures

to provide information to parents and evaluate the ways in which schools are effectively imparting education to Texas students ([Texas Education Code, 39.021](#)). Texas parents would likely value transparency concerning the ways which schools will treat their children for a schoolyard fight or minor misbehavior.

**Recommendations:** To ensure this information is reported and publicly available, Texas should include adoption of disciplinary metrics in its accountability ratings. Including disciplinary system information in these ratings would be one way to provide accurate and pertinent information to parents as to how their children will be treated in school, particularly given its close connection to attendance and dropout rates. Such disciplinary data, especially the change over time, also could be considered along with academic and attendance rates used in determining whether a school or school district is persistently failing and, therefore, subject to closure or consolidation. ★

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An attorney and accomplished author on legal and public policy issues, Levin began the Foundation's criminal justice program in 2005. This work contributed to nationally praised policy changes that have been followed by dramatic declines in crime and incarceration in Texas. Building on this success, in 2010, Levin developed the concept for the Right on Crime initiative, a TPPF project in partnership with Prison Fellowship and the American Conservative Union Foundation. Right on Crime has become the national clearinghouse for conservative criminal justice reforms and has contributed to the adoption of policies in dozens of states that fight crime, support victims, and protect taxpayers.

In 2014, Levin was named one of the "*Politico* 50" in the magazine's annual "list of thinkers, doers, and dreamers who really matter in this age of gridlock and dysfunction."

Marc has testified on criminal justice policy on four occasions before Congress and has testified before numerous state legislatures. He also has met personally with leaders such as U.S. presidents, speakers of the House, and the Justice Committee of the United Kingdom Parliament to share his ideas on criminal justice reform. In 2007, he was honored in a resolution unanimously passed by the Texas House of Representatives that stated, "Mr. Levin's intellect is unparalleled and his research is impeccable."

Since 2005, Marc has published dozens of policy papers on topics such as sentencing, probation, parole, reentry, and overcriminalization, which are available on the TPPF website. Levin's articles on law and public policy have been featured in publications such as the *Wall Street Journal*, *USA Today*, *Texas Review of Law & Politics*, *National Law Journal*, *New York Daily News*, *Jerusalem Post*, *Toronto Star*, *Atlanta Journal-Constitution*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Washington Times*, *Los Angeles Daily Journal*, *Charlotte Observer*, *Dallas Morning News*, *Houston Chronicle*, *Austin American-Statesman*, *San Antonio Express-News* and *Reason Magazine*.

In 1999, Marc graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Marc received his J.D. with honors from the University of Texas School of Law. Marc was a Charles G. Koch Summer Fellow in 1996. He served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and staff attorney at the Texas Supreme Court.

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