



CENTER FOR EFFECTIVE JUSTICE

September 20, 2006

Texas Senate Education Committee, 10:00 AM, E1.028

Testimony of Marc Levin on

Disciplinary Alternative Education Programs

I am pleased to appear before Chairman Shapiro and this distinguished committee.

I am the Director of the Center for Effective Justice at the Texas Public Policy Foundation, a non-profit, non-partisan research institute guided by the core principles of limited government, free markets, private property rights, individual liberty and personal responsibility.

One of the Center's primary goals is to reduce the level of crime in Texas, including by preventing juveniles from succumbing to a life of crime, which often begins with educational failure, disciplinary problems, and delinquency. We have been working closely with Texas Appleseed and Advocacy, Inc. in developing recommendations for the 80th Legislature on school discipline and juvenile justice and they support the policy proposals I am outlining today.

We believe that in order to effectively intervene in the lives of our young people before they become tomorrow's criminals, stronger state standards and accountability are needed for Disciplinary Alternative Education Programs (DAEPs) at which over 138,000 Texas students are placed every school year. Currently, DAEP students are twice as likely to drop out as other students only 41 percent pass the TAKS test.

First, we must tighten up state law on DAEP referrals to assure that students are not unnecessarily relegated to alternative schools. Approximately 73 percent of

DAEP referrals are discretionary. For conduct that does not involve a crime under state or local law, violence, or threatened violence, we have suggested that schools be required to work with parents to develop a plan that the parents can use at home to correct misbehavior at school. While parents have an obligation to discipline their children, it is only fair that they be put on notice that their child is on the verge of being referred to a DAEP so that they have an opportunity to effectively intervene at home to reinforce the disciplinary action taken at school.

The Legislature should also consider specific criteria for DAEP referrals of very young children, as there are currently between 135 and 495 kindergartners in DAEPs and between 595 and 2074 1st graders sent to DAEPs every school year. The wide range in these estimates is due to educational privacy laws that limit reporting in small districts with only a handful of referrals. The referral of such young children to DAEPs is particularly problematic, since many of them may be placed in a DAEP classroom with much older students who may be a negative influence.

Another way to reduce discretionary referrals to DAEPs is to improve in-school disciplinary practices through better training of teachers in classroom management, progressive sanctions, and identifying misbehavior associated with disabilities and psychiatric disorders. In particular, we suggest that principals be required to keep track of the teachers responsible for the most DAEP referrals and determine whether these teachers could benefit from special training in classroom management. We also recommend the use of teen courts and victim-offender mediation inside the school itself, which can address property offenses and less severe instances of fighting through binding behavior modification and restitution agreements, without resorting to a DAEP or the criminal justice system.

We also support reforming the current approach of sending students guilty of violent crimes to DAEPs if those crimes occurred more than 300 feet of the campus, which results in those students being commingled with students who were simply disruptive in class. Currently, a student charged with a Title 5 felony, which includes homicide and sexual assault, is placed in a DAEP if the offense occurred off-campus. Fort Worth ISD has been successful with tiered DAEPs in which there are two separate types of facilities for nonviolent and violent students. This approach is workable in districts with enough DAEP students to have at least several DAEPs.

The law could also be changed so that students guilty of serious crimes off-campus could be referred to JJAEPs, but in order to accomplish this without creating a new

funding stream or an unfunded mandate, the state share of school funding must follow the student from the school district to the JJAEP, for which there is no provision in current law. Moreover, since there are 221 counties without a JJAEP where students are simply expelled to the street, we need another approach in those places such as having parents bring their students to live or recorded evening classes at the school where probation officers or school or local police officers would be present.

Perhaps the most gaping hole in current state law is that we allow schools to offer as little as two hours of instruction per day at off-campus DAEPs. Many districts run half-day DAEPs that provide only four hours of instruction. Given that districts are pulling down full state funding for these students, which in many cases is weighted for limited English proficiency, socioeconomic disadvantage, and special education, there is no reason DAEP students should not receive a full seven hours of instruction, particularly when they are on average several grades behind when they are referred to a DAEP. House Bill 2127 by Rep. Olivo introduced last session would have required a seven hour day.

Also, while the Education Code previously required DAEPs to offer the classes needed for high school graduation, this provision was repealed. In large districts with thousands of students in DAEPs, we think it is appropriate for the state to require that classes needed for high school graduation be offered. Likewise, in large districts, DAEPs should have qualified teachers in each of the main subject areas and students of widely varying grade levels should not be grouped together. I toured the Community Education Partners DAEP in Houston and noted that their use of qualified teachers in each subject is one of the keys to their success. In smaller districts where this is not workable, virtual distance education can play a vital role and House Corrections Chairman Jerry Madden will be reintroducing legislation to create a statewide system for delivering classes taught by the best teachers in the state, which DAEPs, JJAEPs, juvenile detention centers, and others schools and institutions can tap into.

We also recommend that the Texas Education Agency be charged with providing oversight and developing an accountability system that is specific to DAEPs. One way to do this is through the Kaufman Test for Educational Achievement (KTEA), a diagnostic exam that is administered to long-term students at JJAEPs so that their academic proficiency can be assessed on intake and outtake. We desperately need data showing whether students are learning while at DAEP; whether their attendance, behavior, and achievement improve upon being returned to their home campus after placement in a DAEP; and whether they have subsequent

involvement in the juvenile or adult justice systems. Due to state law and the work of the Texas Juvenile Probation Commission, we have this data for JJAEPs. In many instances, the changes in law we need for DAEPs simply involve writing into law the same standards and monitoring that currently apply to JJAEPs.

TEA stated last session that they interpret a 2003 law passed by the Legislature as removing their authority to exercise oversight over DAEPs. Parents who have concerns about the lack of education their children at a DAEP receive cannot complain to TEA and be confident that the agency will investigate the issue. In addition to TEA's position that they lack the authority or mandate from the Legislature, TEA has also claimed they don't have sufficient resources to perform oversight of DAEPs, but there may be existing funds appropriated to the agency that can be reallocated. Ultimately, we must ensure that there is an effective mechanism whereby parents can make complaints about DAEPs on which there is follow-up and, when appropriate, action taken.

Finally, we want to make sure that tightening the rules on DAEP referrals does not result in the unintended effect of a flood of students being left for indeterminate periods in in-school-suspension. These rooms often have as many as 40 students of widely varying grade levels, a proctor rather than a qualified teacher, little instruction, and students simply sitting around. Like DAEPs, there is a role for ISS, but we must make sure students who are challenging to educate are not unnecessarily removed from regular classroom settings when less drastic disciplinary approaches may be sufficient to address the misbehavior.

Since it is the subject of another panel, I will not comment in detail on JJAEPs or zero tolerance, but I have made recommendations on these topics in my reports that I have shared with the Committee and would be happy to answer any questions on these issues as well.

Thanks very much for your consideration.