

Schooling a New Class of Criminals?

Better Disciplinary Alternatives for Texas Students

by Marc Levin, director of the Center for Effective Justice

Introduction

While the American education system is regularly buffeted by another round of statistics showing academic achievement trailing that of other industrialized nations, particularly in math and the sciences, the last decade has brought good news on juvenile crime. The juvenile crime rate, which grew substantially during the late 1980s and peaked in 1994, has decreased every year since then for which statistics are available. In 2002, it was nearly half its 1994 peak level. For example, the juvenile murder rate fell 72 percent from its 1993 peak through 2002.¹ Less serious offenses have also declined. In 1998, 596,100 persons under age 18 were arrested for property crimes compared with 481,600 in 2002.²

At the same time the national juvenile crime rate has been falling, Texas schools have increasingly responded to disciplinary problems by removing students to alternative campuses known as Disciplinary Alternative Education Programs (DAEPs) or Juvenile Justice Alternative Education Programs (JJAEPs) and, in many instances, referring them to municipal or justice court. In 1998-99, 70,728 individual Texas students were placed in DAEPs compared to 103,696 placements in 2003-04, a 47 percent increase.³ JJAEP placements over the same period have increased from

5,194 to 6,907, a 33 percent increase. School referrals of students to municipal courts for violations of the Student Code of Conduct have risen from 6,888 to 10,149 during this same period, a 47 percent increase.

Given that national statistics suggest juveniles have become less dangerous over the past decade, the question is if Texas schools are simply choosing to wash their hands of troublesome students, deferring to an alternative campus or court to solve disciplinary problems that were once addressed in school. The 1995 *Safe Schools Act* passed by the Texas Legislature properly recognized that violent or persistently disruptive students must be removed from classrooms so other students can learn, but the evidence suggests that schools are overutilizing alternative campuses and courts. The incentives for such overutilization include the time and stress involved in disciplining unruly students and the fact that the TAKS scores of students in DAEPs and JJAEPs are not assigned to the student's home campus.

While 2,526 juveniles were placed at Texas Youth Commission (TYC) facilities in 2004 and 6,907 at JJAEPs, some 103,696 students were placed at DAEPs and 10,149 students were sent to municipal court⁴ for Education Code cases.

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¹This 10,149 figure does not include referrals to justice of the peace courts (J.P. or justice courts) for violations of the Student Code of Conduct adopted by each school district. In schools that are not located in major cities where there are municipal courts, such cases are often referred to county J.P. courts, but state statistics do not break down the dockets of J.P. courts to indicate the number of Education Code cases.

Although they could be improved, JJAEPs are subject to state standards and monitoring, and the evidence suggests they are effective in raising student achievement and reducing recidivism. However, there is no evidence of the effectiveness of most DAEPs, which are subject to virtually no state oversight. Similarly, no research indicates that the issuance of Class C misdemeanors in school is modifying student behavior, although it is clogging municipal and justice courts ill-equipped to handle juvenile cases.

Thus, while Texas is doing a fairly good job in addressing serious juvenile crime, significant reform is needed at the intersection of school discipline and juvenile justice to address DAEP referral, instructional and accountability policies, and the passing of the paddle to municipal and justice courts. The bulk of the volume in the system is at DAEPs and municipal and justice courts.

Overview of the Juvenile Justice System

Although this report primarily concerns JJAEPs, DAEPs, and the over-reliance of schools on municipal and justice courts, they operate against the backdrop of the broader juvenile justice system in Texas. This system, which is overseen by the Texas Juvenile Probation Commission and the Texas Youth Commission, works in conjunction with county juvenile boards, juvenile courts, and juvenile probation departments. Juveniles in Texas are defined as being between the ages of 10 and 17. The goals of the state's juvenile justice system, as mandated by Family Code Section 51.01 are to provide for the safety and protection of the public, promote the concept of punishment and accountability, and provide treatment and rehabilitation of the juvenile offender in the community.

While the juvenile courts are civil rather than criminal, they have the authority to sentence juveniles to probation that, depending on the case, may be served at home or at a detention center. The juvenile courts have exclusive jurisdiction over minors under the age of 17 who are alleged to have engaged in delinquent conduct or conduct indicating need for supervision.⁵ A juvenile who commits a felony or a third misdemeanor offense may be committed to a Texas Youth Commission residential facility. Also, juveniles as young as 14 or 15, depending on the offense, may be certified to stand trial as an adult for violent crimes. Under determinate sentencing enacted in 1987, juve-

niles who cannot be certified as adults may still be sentenced to both commitment in a TYC facility and, upon turning 18, incarceration in a Texas Department of Justice adult prison. The TYC operates 15 secured facilities (youth prisons), eight halfway houses, and contracts with approximately 30 private and local government service providers. About 80 percent of all youth committed to TYC are placed in secure facilities, with an average stay of 22.7 months.⁶

Some of the TYC's facilities that house the most hardened offenders have actually been cited as models for other states. For example, a new book on the success of one such facility, the Giddings State School, has received national attention. *Last Chance in Texas: The Redemption of Criminal Youth* by John Hubner profiles the Capital Offenders Group program there, which combines a military-style regiment with therapeutic interventions such as extensive group counseling sessions, guest presentations by parents of murdered children, and GED programs.⁷ Hubner found that recidivism rates of graduates were significantly lower than in similar facilities in California, with 51 percent rearrested for any offense compared to 74 percent in California. More importantly, only 3 percent of graduates of the Giddings State School were rearrested for violent crime.

Juvenile Justice Alternative Education Programs (JJAEPs)

What Are JJAEPs and Who Do They Serve?

Created by the Texas Legislature in 1995, Juvenile Justice Alternative Education Programs (JJAEPs) are facilities operated by county juvenile boards and overseen by the Texas Juvenile Probation Commission (TJPC). Generally, JJAEPs are for expelled students while DAEPs are for students who are not subject to mandatory expulsion or whom schools have elected not to put on discretionary expulsion. Students who have committed crimes on campus are eligible for mandatory or discretionary expulsion, depending on the crime. However, students who commit violent crimes off-campus generally cannot be expelled to JJAEPs under Section 37.007 of the Education Code so they are instead sent to DAEPs. The other source of JJAEP referrals are students who engage in serious or persistent misconduct while at a DAEP. Parents can appeal expulsion to a JJAEP to state court, but most parents lack the funds needed to retain attorneys.

Grounds for mandatory expulsion include bringing a weapon to school or prescription drugs without permission. In August 2002, Hurst ISD expelled 16-year-old varsity swim team star, Taylor Hess, to a JJAEP for a year for having a butter knife in his truck, which was in the school parking lot.⁸ Hess' grandmother had suffered a stroke and he had been using his truck to take some of her belongings to Goodwill, since she was moving to an assisted living center. In the process, a 10-inch long butter knife had fallen into the bed of his truck.

In April 2004, Spring ISD settled a federal lawsuit over their zero tolerance policy by Valoria Edwards, whose seventh grade daughter was expelled for possessing a prescription drug at school.⁹ Under the settlement, the girl received in-school suspension instead of referral to a JJAEP.

In 2003, there were 6,407 students in JJAEPs. This represents a 33 percent increase in the JJAEP population compared to 1999.

JJAEPs are funded through a combination of TEA and TJPC appropriations and county funds. Only counties with more than 125,000 people are required to have JJAEPs. Currently, 26 Texas counties, which include 258 school districts, are required to operate JJAEPs. Another six counties choose to operate their own JJAEPs while Karnes and Wilson counties have jointly created a JJAEP. In counties without JJAEPs, which account for approximately 27 percent of the state's population, expelled students are simply released to the street until their expulsion term ends. In 2003, there were 6,407 students in JJAEPs. This represents a 33 percent increase in the JJAEP population compared to 1999, but is still less than 10 percent of the DAEP population.¹⁰

There are three primary types of JJAEPs in Texas. In 2003, 51 percent of JJAEP students were in traditional school model JJAEPs while 26 percent were in therapeutic model JJAEPs and another 23 percent were in military-style model JJAEPs (boot camps). Despite these differing structures, most JJAEPs of all

types offer a wide range of programming in addition to the core academic subjects. For example, 85 percent of JJAEPs offer life skills training, 81 percent offer drug and alcohol prevention programs, 73 percent offer individual counseling, 73 percent offer community service, and 62 percent offer anger management programs.

In 1999, the Legislature required the TJPC and the TEA to jointly develop an oversight accountability system for JJAEPs. Texas Education Code Section 37.011(f) requires that JJAEPs operate at least seven hours a day for 180 days a year. Their academic mission is to enable students to perform at grade level through a focus on courses in English, math, science, social studies, and self-discipline. JJAEPs are required by state law to have one certified-teacher per program and an overall instructional staff to student ratio of no more than 1 to 24. JJAEPs are required to submit their operating policy to the TJPC for review and comment. Local juvenile boards or their designees are required to regularly review each JJAEP student's academic progress and, for high school students, establish a specific graduation plan.

Of the mandatory JJAEP placements in 2003, 48 percent were for felony drug offenses while 27 percent were for weapons offenses, including possession of a *legal* knife in school. Another 11 percent of placements were for aggravated or sexual assault, 8 percent for arson, 4 percent for indecency with a child, and 1 percent for murder and kidnapping. The majority of JJAEP placements are discretionary. Of the discretionary JJAEP placements in 2003, some 78 percent were for serious or persistent misbehavior at a DAEP, 15 percent for misdemeanor drug and alcohol offenses, 3 percent for assault on a teacher, 3 percent for false alarm or terroristic threat, and 1 percent for felony mischief. Some 26 percent of JJAEP students in 2003 were classified as special education, a 37 percent increase over 1999.

Do JJAEPs Work?

By definition, students in JJAEPs are not in regular classrooms, presumably allowing those students who remain to experience a better learning environment. However, unlike DAEPs, with JJAEPs, the student would not have been in the classroom otherwise, but on the street, since almost all JJAEP students have been expelled. Accordingly, JJAEPs likely reduce the

potential for crime by ensuring that expelled students are supervised during the daytime hours when their parents are least likely to be available.

In 2003, 31.7 percent of those JJAEP students who took the TAKS test passed the math section while 55.9 percent passed the reading section. While these numbers are substantially below the state average, that is to be expected based on the JJAEP student population. Additionally, since the average length of stay in those JJAEP programs that require a minimum stay is 65 days, the annual nature of the TAKS assessment makes it difficult to attribute results to the JJAEP, as opposed to the campus from which the student originated. Fortunately, those students who are to remain at the JJAEP for at least 90 days are given the national Kaufman Test of Educational Achievement (KTEA) upon their entrance into and departure from the program. In 2003, the students tested gained .54 in math and .62 in reading, which amounts to slightly more than a half of a grade increase in achievement level. Military-style model JJAEPs had the highest gains with .70 in math and .94 in reading followed by traditional school model JJAEPs with .72 in math and .76 in reading. Therapeutic model JJAEPs had substantially smaller gains of .19 in math and .25 in reading.

JJAEPs had an average daily attendance rate of 83 percent in 2003 compared with 78 percent for DA-EPs, even though JJAEPs have, on average, even more challenging student populations and 15 percent of JJAEP parents are responsible for their own transportation. Additionally, students returning to their home schools following JJAEP placement had a 9 percent lower absence rate as compared to their absence rate prior to JJAEP placement. Absence rates declined 18.5 percent after placement in a military-style program and 11.6 percent after placement in a traditional school program, but actually increased slightly after placement in a therapeutic program.

Most impressively, students had a 92 percent drop in disciplinary referrals after JJAEP placement when comparing the 12 weeks prior to placement with the 12 weeks thereafter. Within six months after JJAEP placement, 33 percent of students have subsequent contact with the juvenile justice system. This consists of either a felony, misdemeanor, or conduct indicating a need for supervision (CINS). The subsequent contact rate was lowest in 2003 for the following JJAEP models: military-style at 24 percent, followed by therapeutic model at 27 percent, and traditional school model at 49 percent.

Kaufman Test of Educational Achievement (KTEA) Average Grade Equivalency Scores by Program Characteristics for Students Assigned to At Least 90 Days in JJAEPs School Year 2003

	Math				Reading			
	n	Admission Average	Exit Average	Difference	n	Admission Average	Exit Average	Difference
Program Format								
Military-Style Model	230	8.01	8.71	0.70	230	7.75	8.69	0.94
Therapeutic Model	427	7.71	7.90	0.19	427	7.03	7.28	0.25
Traditional School Model	574	7.32	8.04	0.72	571	6.94	7.70	0.76
Operation Mode								
Probation department only	160	7.59	8.18	0.59	159	7.60	8.17	0.57
School district and probation department	412	7.74	8.28	0.54	412	7.35	8.16	0.81
Private contractor and probation department	659	7.48	8.00	0.52	657	6.87	7.37	0.50

Source: Juvenile Justice Alternative Education Programs Performance Assessment Report, Texas Juvenile Probation Commission, May 2004.

The state provides \$59 per day of attendance in funding for JJAEP mandatory placement while school districts and juvenile boards reach agreements concerning the allocation of costs for discretionary placements. The military-style model costs more per day at an average of \$119.64, compared to \$103.75 for the therapeutic model and \$105.21 for the traditional school model.

As part of its oversight efforts, the TJPC conducts unannounced, on-site investigations of JJAEPs to ensure compliance with state law and address complaints of abuses. On September 29, 2005, TJPC made such a visit to the McLennan County Challenge Academy, a JJAEP in Waco. They found numerous deficiencies, which they have required the Academy to correct in order to maintain funding.

One of the most disturbing was the Academy's practice of "putting students out" when they violate a disciplinary rule. This involves simply throwing a student outside on the street alone, with the hope that their parent will pick them up, but the TJPC points out that anyone could pick up the student since no one is watching. Moreover, for purposes of obtaining funds from the TJPC and the referring school districts, the Academy counted such students as being in attendance for the entire day. During the first two months of the 2005-06 school year, the TJPC found that 85 students at the Academy were "put out." TJPC required the Academy to reimburse the state \$2,773 for improperly counting students as present who were not at the JJAEP for at least four hours a day, as required by state law.

Dale Caffey, spokesman for Waco ISD, stated that the district is "not getting its \$59 worth if our kids were being put out after an hour or two."¹¹ The \$59 is the district's share of the daily cost of the JJAEP for each student referred. The Academy claims it is necessary to "put students out" because they do not have the authority to physically restrain them. However, the Academy and other JJAEPs can call the police if a student needs to be restrained; they can have incorrigible students written up for conduct indicating a need for supervision, resulting in referral to a juvenile court and possible placement in a TYC residential facility. The primary reason for creating JJAEPs was to avoid having expelled students on the street.

TJPC also criticized a voluntary half-day boot camp hosted by the school's administrators for students at risk of being expelled to the JJAEP because it involves crawling through a "mud-filled pit." TJPC found that the pit was primarily used to humiliate students and that they should have been given a physical examination prior to participation in the boot camp. The director of the Academy, Bob Balshaw, resigned on the heels of the audit and a lawsuit against him by a parent whose son suffered a head injury after falling out of the bed of Balshaw's truck while performing a community service project.¹² The suit alleges Balshaw was negligent because the Texas Transportation Code prohibits minors from riding in the bed of a pick-up.

While the troubles at the Challenge Academy are disconcerting, it is not clear whether similar issues exist at other JJAEPs. This episode illustrates the importance of state audits when state tax dollars are being used, as this audit not only required the deficiencies to be addressed as a condition of funding, but also succeeded in bringing the problems at the Challenge Academy to the attention of the referring school districts, the media, and the public.

In May 2006, the TJPC will release an updated report evaluating the progress of all of the state's JJAEPs. In addition to publishing these reports showing aggregate data for all of the state's JJAEPs, the TJPC has also revamped its auditing program for individual JJAEPs. Every JJAEP will now be audited at least once every three years with additional individual audits being conducted based on complaints and risk scores that suggest non-compliance with state standards. TJPC is also working to put these audits online and has developed an innovative automated system that could serve as a model for other state agencies. This system called COMPETS will allow its auditors to conduct on-site audits and post them online while at the JJAEP while also allowing the JJAEP officials to electronically post comments in response to the findings.

JJAEP Policy Implications

The evidence indicates that JJAEPs are not just keeping expelled students off the streets, but are raising their academic achievement, improving attendance, and succeeding in preventing two-thirds of them from having further contact with the juvenile justice system for six

months. Unlike DAEPs, JJAEPs must meet meaningful state standards and are subject to ongoing state review, factors which have arguably contributed to their success.

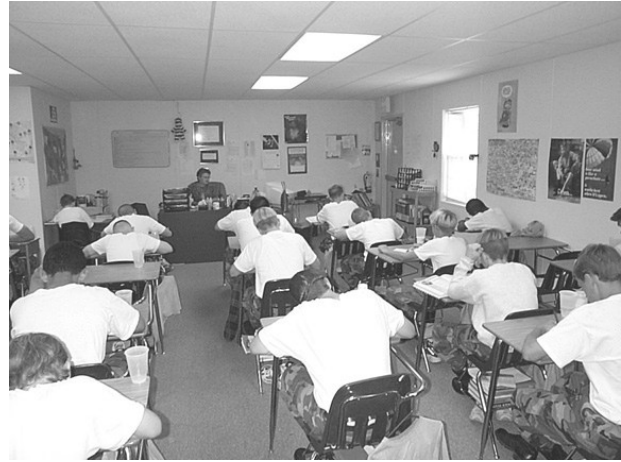
Utilizing Different Types of JJAEPs

Although there are benefits associated with all types of JJAEPs, it appears that the military-style model is most effective at both increasing academic achievement and reducing recidivism. Since this model is more expensive, the state should consider offering at least some of the additional funding needed to convert existing JJAEPs into military-style facilities or establishing new JJAEPs as military-style facilities. It is important to note that, despite the military-style regiment, these facilities are just as likely to have support services such as drug treatment, counseling, anger management training, and community service as the other types of JJAEPs. Future JJAEPs should also offer such services.

Unfortunately, there is no available data concerning how JJAEP students respond to different types of JJAEP programs based on the reason for their expulsion. While further research is needed, the state's largest counties should investigate the possible benefits of evidence-based placement in various types of JJAEPs. For example, students placed in JJAEPs for drug and alcohol offenses might benefit most from a therapeutic-style program while those who have committed assault or arson might benefit most from a military-style program. Additionally, special education students must be placed in JJAEPs where they will receive the Individual Education Programs required under federal law by the *Individuals with Disabilities Education Act (IDEA)* of 2004.

Creating JJAEPs for Counties Where Students Are Currently Expelled to the Street

Perhaps the most important reform the Legislature can undertake with respect to JJAEPs, is to assist the remaining 221 Texas counties that do not have JJAEPs with development of a JJAEP, which could be shared with adjacent counties. Although JJAEPs are now separate campuses, to reduce costs, some JJAEPs could be built as self-contained units on unused land of an existing school. Given the many largely unpopulated areas of the state, it may be unrealistic from a logistical standpoint for all counties and school districts to have a JJAEP.



The Denton County JJAEP has contracted with the Lewisville Independent School District for educational personnel. Teachers hired for this program are certified teachers, and may be Special Education and ESL endorsed.

However, in light of the academic and behavioral modification benefits of JJAEPs as compared to expelling a student to the street, the goal should be to expand their reach throughout the state. An alternative would be to create a central residential facility in which parents of expelled students in counties with no JJAEP could voluntarily choose to enroll their student during their expulsion. The program could be run by the Texas Youth Commission (TYC), but it would be less regimented than at other TYC facilities to which more serious youth offenders are sentenced. Alternatively, like some other non-residential JJAEPs, it could be privately operated with oversight by the TJPC, an arrangement which promotes efficiency and accountability for results. The target audience for such a program would likely be expelled students who have a family situation, such as a household headed by a single working mother, where there is no one to supervise them during their expulsion.

Utilize Distance Learning for Expelled Students in Counties with No JJAEP

Another alternative to simply ignoring expelled students in counties with no JJAEP would be to combine a distance learning program with supervision by probation officers, court-appointed case workers, or school employees to promote compliance. Currently, only those expelled students who are also on probation receive any degree of supervision during their expulsion, and even those students do not participate

in any sort of academic program. Unless a parent has the resources to place the student in a private school—or there is a charter school willing to accept the student—these students will go without an education for up to an entire year while they are expelled.

According to Linda Brooke, Director of Education Services for the TJPC, there are currently two “special purpose” school districts—one run by the University of Texas and one by Texas Tech University—that may be able to provide appropriate computer-based curricula and assignments for such students. Through phone calls, emails, and home visits, juvenile probation officers, case workers, or teacher aides, could provide the increased level of supervision necessary to ensure that the expelled students complete their self-paced assignments while also staying out of trouble. Additional funding would likely be needed to make such supervision feasible, although it would likely cost far less than building a facility. Such a program could reduce the degree to which expelled students are behind academically upon returning to school, a factor which likely contributes to such students subsequently dropping out of school altogether. It is estimated that high school drop-outs cost Texas \$1.48 billion a year in future welfare and incarceration costs alone, which does not include lost tax revenues due to lower workforce productivity.¹³ The long-term cost of simply expelling students to the street, as these uneducated, unreformed individuals continue to burden society for decades as adults, likely far exceeds the cost of effective intervention while these students are still in their formative years.

Reforming Zero Tolerance Expulsion Policies

Even though JJAEPs are fulfilling their purpose, there are many reasons to make sure that only students who truly need to be there are referred. In addition to the cost, which is nearly three times the cost of educating the student at their home campus, a student referred to a JJAEP is likely to come in contact with students who committed violent offenses, gang members, and others who may be bad influences. In the 79th Legislature, House Bill 603 was passed to reform the zero tolerance law. The legislation expressly allows school districts to consider whether a student had a culpable state of mind and a prior disciplinary history before mandatory expulsion or re-

moval to a DAEP. Prior to the passage of this legislation, some school districts had interpreted state law as requiring them to expel students for a weapon, even when the student had, unknowingly brought a nail-clipper or pocket-knife to school. In addition to HB 603, Section 1415(k)(i)(A) of the federal *Individuals with Disabilities Education Act (IDEA)* was amended in 2004 to authorize school districts to consider special circumstances of students with learning disabilities before imposing a mandatory expulsion under the *Safe Schools Act*.

While HB 603 was a step in the right direction, bill sponsor State Rep. Rob Eissler (R-The Woodlands) continues to hear from parents in his district who say that schools are imposing zero tolerance policies without regard to the student’s intent or disciplinary history. Eissler, a former school board member, is looking at strengthening this legislation next session, which he had agreed to make voluntary after being assured by school districts that they would adopt this more sensible approach to zero tolerance. In addition to requiring school districts to consider a student’s intent when bringing to school a prescription drug or an object to school that has an accepted use other than as a weapon, state law should be changed to treat conduct within 300 feet of school property differently from conduct inside the school itself. A knife in the trunk of a car in a school parking lot, or even in a parking lot of a convenience store within 300 feet of the school, simply does not warrant the same response as a knife inside the school building itself. This would have helped students, like Taylor Hess, who are expelled for otherwise legal items found in their cars. Current law is also overly broad because it permits schools to expel students for possessing legal items in their cars not only in school parking lots, but on private property within 300 feet of school property.

Even though JJAEPs are fulfilling their purpose, there are many reasons to make sure that only students who truly need to be there are referred.

Be Here, Behave, and Be Learning: DAEPs that Work

Chris Patterson, Texas Public Policy Foundation

The pipeline from school to prison closes at the doors of Beechnut and Ferndale Schools, Disciplinary Alternative Programs (DAEPs) in Houston Independent School District. These schools are operated by Community Education Partners (CEP), a private education company under contract with Houston since 1997. In Beechnut and Ferndale, students get the opportunity to acquire the academic and social skills necessary to return and succeed at their home schools. Most students at CEP clutch this opportunity, and, against all of the odds, turn themselves around and earn a high school diploma.

A visit to Beechnut shows why CEP has it right. Classes are small with a 1:12 teacher to student ratio. Students, from grade 6 through 12, are grouped by academic ability and sex. Uniforms are required, and students follow the CEP motto: “Be Here, Behave, and Be Learning.” Teachers, formally dressed, provide direct instruction on the required state curriculum from 9:30 am to 4:30 pm, Monday through Friday, and maintain strict order—a job that doesn’t seem to interfere with friendly banter between students and teachers. A large man, dressed in a suit walks from classroom to classroom as a visible reminder for students to “behave and be learning.” When students fail to “be here,” a truant officer goes to their homes and delivers them to their classrooms.

Houston ISD typically places students at Beechnut and Ferndale for an entire academic year. During 2004–05, Houston assigned 3,186 students in CEP. Approximately 40 percent of these students received mandatory placements, referred for such things as assault, weapons, gang activity, and drugs/alcohol use; others were referred for repeated disruptive or abusive behavior.

Arriving at CEP, students are given an academic evaluation, which typically shows performance at or below the fourth grade level in math and reading, and an individualized academic plan is devel-

oped. Students also receive a behavioral evaluation and a behavioral plan is developed, with community-based social providers located at the school to provide individual, group, and family services. Before leaving CEP, students are taught the transitional skills needed to be successful when they return to their home schools.

While in CEP, students generally gain two years’ academic growth, compared to the half year academic gain typical of low-performing students in Houston ISD. Although CEP has a lower average attendance rate than Houston ISD, at 85 percent CEP’s attendance significantly exceeds the average of 78 percent posted by DAEPs. For the last several years, CEP’s dropout rate is significantly lower and its high school continuation rate is significantly higher than Houston ISD.

Houston ISD spends about \$2,000 more per pupil annually for students enrolled in CEP—an amount that actually represents about \$8,000 less than Houston spent before contracting with CEP. This investment is reaping rewards. Comparing CEP students who return to their home schools with their district peers, a recent Temple University study shows few disciplinary infractions, lower retention rates, and higher graduation rates for former CEP students. “Be here, behave, and be learning” is a formula for success in Houston ISD and a model for rethinking state policy on disciplinary alternative education programs.

Sources: Attendance, dropout, and high school continuation data-Texas Education Agency, Campus AEIS Report, 2003, 2004, and 2005. Placement, program, evaluation, and performance information-Community Education Partners (2636 Elm Hill Pike, Ste. 500, Nashville, TN 37214, www.communityeducationpartners.com).

Reduce Discretionary JJAEP Referrals

It is estimated that 70 to 80 percent of JJAEP referrals are discretionary. For example, during 2004-05, the Challenge Academy JJAEP in had 332 discretionary referrals and only 32 mandatory referrals. Most of these discretionary referrals were removal of students from DAEPs for chronic and persistent misbehavior. Through more effective disciplinary practices at DAEPs, the need for such referrals could be reduced. Also, as discussed below in the section on DAEPs, creating a two-tiered system of DAEPs can provide an alternative to JJAEP placement for non-violent students who continue to misbehave at the less stringent DAEP. Such students may need more intensive supervision and behavior modification, but they could be negatively influenced by placement in a JJAEP where they would be side-by-side with students who have committed serious violent offenses.

Another way to reduce discretionary DAEP referrals would be to improve coordination between DAEPs and local government and non-profit providers of family counseling.

There is at least one case study that demonstrates discretionary JJAEP referrals from DAEPs can be entirely eliminated. Kirk Wolfe, Director of Juvenile Probation for Wichita County, notes that a Wichita County JJAEP no longer takes discretionary referrals for chronic and persistent misbehavior from the Wichita Falls ISD DAEP, and the DAEPs in the surrounding smaller school districts that they serve. Instead, Wolfe says the JJAEP receives only those students who have been expelled for conduct in school, such as bringing a weapon to class, and for violent offenses taking place off-campus. The violent, off-campus offenders are referred through the juvenile probation system with JJAEP placement being part of their sentence. Wolfe believes the primary legislative purpose in establishing the JJAEPs was to address violent offenders. He observed that, during previous years prior to this policy change, the DAEP students, some of whom have learning disabilities, who had

committed routine disciplinary violations did not mix well with the dangerous students at the JJAEP. Wolfe said that, because the Wichita Falls ISD has supplied their JJAEP with teachers, computers, and supplies, they, unlike other JJAEPs, did not need the funding associated with the flow of discretionary referrals. The Wichita County JJAEP has received outstanding marks from the TJPC for its programming.

Another way to reduce discretionary DAEP referrals would be to improve coordination between DAEPs and local government and non-profit providers of family counseling. By working with students' families to identify locally available resources such as parenting classes, including sessions for parents with learning disabled children, parents can learn how to take effective measures at home that will result in better behavior at school. Texas Education Code Chapter 37, Subchapter B authorizes school districts to create school-community guidance centers in which schools, juvenile probation officers, and parents would work together to address the needs of students with severe behavioral problems and disorders, but this provision has rarely been used by districts to create such centers. This subchapter also empowers districts to create cooperative programs with various government agencies that offer youth-oriented services.

Allow Parents to Waive State Court Appeal in Favor of Binding Arbitration

While parents can appeal their student's JJAEP placement in state district court, most parents lack the funds to hire attorneys to go up against the armada of top-notch lawyers retained by many school districts. Parents should be permitted to waive their right to go to court and instead choose a hearing before an independent arbitrator.

Disciplinary Alternative Education Programs (DAEPs)

What Are DAEPs and Who Do They Serve?

Disciplinary Alternative Education Programs (DAEPs) are alternatives to the regular classroom for students who commit virtually any disciplinary violation or certain criminal offenses specified in Chapter 37 of the Texas Education Code. Some DAEPs are self-contained campuses while others operate on the premises of a regular school. Under the *Safe Schools Act* of 1995, school districts must establish DAEPs.

DAEP placements have grown dramatically from 1999 to the present, increasing 47 percent from 70,728 individual students placed to 103,696 in 2003-04.¹⁴ Additionally, the average length of a student's stay in a DAEP has increased from 29.04 days in 2002-03 to 42.5 days in 2003-04.

When DAEPs were created in 1995, it was envisioned that most placements would be mandatory, but each year discretionary placements have become a greater share of DAEP referrals. Mandatory placements occur when a student commits a crime on campus or within 300 feet of a campus or commits homicide, kidnapping, illegal trafficking of persons, a sexual offense, or an assault off campus. There are two sources of discretionary placement. First, a school district may place a student in a DAEP if they have a reasonable belief that the student committed a crime off-campus other than those subject to mandatory placement. Second, and most importantly, school districts may place students in DAEPs for any violation of their student code of conduct. It is estimated that over 80 percent of DAEP students are discretionary placements.¹⁵

Since student codes of conduct vary from one district to the next, districts have virtually unlimited discretion to refer students to DAEPs for any disciplinary infraction. Conceivably, a student who talks out of turn or runs down the halls even once could be referred. As an example, Houston ISD's Student Code of Conduct provides more guidance than required by state law, but still leaves wide latitude for excessive discretionary referrals. The HISD Code permits DAEP referral for Level III offenses. These include: "Chronic or repeated disciplinary infractions of Level I and/or Level II offenses," the lowest two of the five levels, which include offenses such as disrupting a classroom by talking out of turn and tardiness. Such an offense committed twice would ostensibly qualify as "repeated." Additionally, some examples of Level III offenses under the HISD Code that, even if committed only once, can result in discretionary referral to a DAEP are:

- profanity, vulgar language, or obscene gestures;
- wearing dress or attire signifying gang affiliations;
- failure to comply with reasonable requests of school personnel and/or defiance of the authority of school personnel;

- interfering with school authorities;
- more than one instance of cutting class or other forms of truancy;
- display of disrespect toward school personnel or campus visitors;
- sending or forwarding inappropriate e-mails containing offensive language; and
- any other acts of serious misconduct that disrupt the school environment in the classroom and/or school.

Suffice to say, the broad nature of many of these categories suggests that HISD can find a basis for using virtually any disciplinary violation as justification for a discretionary DAEP referral. However, under state law, HISD is not required to limit its discretionary referral policy because any violation of a school disciplinary code provision is sufficient to remove a student to a DAEP. Reasonable belief that a student committed an infraction is all that is necessary under Education Code 37.006(e) to refer a student to a DAEP. The decision of the superintendent to place the child in the DAEP may be appealed to the school board or its designee, but their decision is final and may not be appealed. Thus, there is no opportunity for a parent to be heard by any authority not employed by the school district.

State requirements for DAEPs are almost nonexistent. Under Education Code Section 37.008, the state requires only that a DAEP:

- focuses on English language arts, mathematics, science, history, and self-discipline;
- provides for students' educational and behavioral needs; and
- provides supervision and counseling.

A report on DAEPs by Academic Information Management, Inc. noted, "It is not uncommon to have students placed in a DAEP classroom with students in other grade levels. In elementary grades, for instance, there may be one DAEP classroom that serves students in all elementary grade levels. For junior and high schools, depending upon the size of the school districts, many DAEP classrooms serve students of multiple grade levels in one classroom."¹⁶ In the

2005-06 school year, DAEPs are required for the first time to have certified teachers as a result of newly passed legislation.

Do DAEPs Work?

DAEPs serve the purpose of removing disruptive students from the classroom, presumably enhancing the educational environment of other students. However, there is no evidence as to whether most DAEPs improve academic and behavioral outcomes of the students referred there. The primary means of assessing DAEP performance is the TAKS scores of DAEP students. This is a flawed measuring stick because these students are disproportionately likely to have had academic difficulties even before being referred to the DAEP and because most students do not spend an entire school year in a DAEP. Not surprisingly, the TEA found that DAEP students score substantially lower on the TAKS test than students statewide. For example, while 76 percent of statewide students passed the math portion of the TAKS test, only 41 percent of DAEP students passed.¹⁷ Perhaps the closest to an apples to apples comparison is special education students. About 20 percent of DAEP students in 2004 received special education services. These students take the State-Developed Alternative Assessment (SDAA) in lieu of the TAKS and, while 88 percent of statewide students taking the math SDAA met expectations, only 59 percent of DAEP students performed at this level.

By adopting best practices such as positive behavioral supports, progressive sanctions, and in-service training for teachers in classroom management, many school districts can address their high rates of discretionary DAEP placements.

Unfortunately, there is no data available on the percentage of DAEP students who go on to further involvement in the juvenile justice system, an important indicator for determining whether DAEPs suc-

cessfully reform students with discipline problems. A DAEP student who engages in serious or persistent misbehavior while at a DAEP may be expelled to a JJAEP (or to the street in counties without JJAEPs) under Section 37.007 of the Education Code, but there is no data on the percentage of DAEP students who ultimately end up in JJAEPs, TYC residential facilities, or adult prisons. Since districts have almost unlimited discretion in structuring their DAEPs, the effectiveness of different types of DAEPs on academic performance and behavior modification could conceivably be compared, but no such studies have been done.

Many DAEPs offer only a handful of non-grade specific courses. While DAEP students are theoretically supposed to be receiving assignments from their home campus teachers, Richard Lavallo with Advocacy, Inc., has observed that this often does not occur. One Irving ISD DAEP even states on its website that “Students are not allowed to take books or assignments in or out of the building.”¹⁸ This would seemingly preclude the notion of homework. Like many other DAEPs, items such as cell phones and pens are banned at the Irving ISD DAEP—the school supplies pencils.

Policy Implications

Significant reforms are needed in DAEP referral, instructional, and accountability policies.

Reforming DAEP Referral Policies

The state should set standards for discretionary DAEP placements, although an opt-out provision could be included for districts that do not have above-average rates of utilizing DAEPs. This would give districts and schools an incentive to experiment with their own policies for reducing discretionary DAEP referrals in exchange for preserving local control. By adopting best practices such as positive behavioral supports, progressive sanctions, and in-service training for teachers in classroom management, many school districts can address their high rates of discretionary DAEP placements. For districts that continue to over-utilize DAEPs, the state standards for discretionary placements should require more than one documented violation of the Student Code of Conduct if the misbehavior does not involve a crime under state or local law, violence, the threat of violence, or the possession of controlled substances.

Districts should also be required to make an attempt to contact parents before making a discretionary DAEP referral. This would give parents an opportunity to take appropriate action at home to correct the student's misbehavior. Currently, Education Code Section 39.009(a) only requires the principal or other school administrator to attempt to schedule a conference with the parent by the third day after the student has been removed to the DAEP. The state standard for discretionary DAEP referrals should also require that students diagnosed with learning disabilities be referred to an in-school special education class if available prior to discretionary DAEP placement.

Better training for teachers can also lead to fewer discretionary DAEP referrals. Teacher in-service training should be provided in classroom management and evidence-based disciplinary techniques, such as positive behavioral supports, that can be used to reduce the need for removing students from the classroom. In-service training should also assist teachers in identifying and managing students with attention-deficit disorder and other learning disabilities that may be associated with misbehavior.

Reforming DAEP Instruction

DAEPs are largely bereft of any state standards concerning academic policies. First, state law or TEA policy should mandate a minimum number of hours of instruction. The TEA acknowledges that some DAEPs currently offer as little as two hours per day of instruction.¹⁹ In contrast, JJAEPs are subject to substantial state regulation under both the Education Code, which in Section 37.011 requires that they operate for at least seven hours a day, and by guidelines promulgated by the Juvenile Probation Commission.

The state should also require that DAEPs above a certain size segregate students by either grade level or actual academic ability. Where practicable, students of widely varying ages and abilities should not be in the same classroom.

For any curriculum to be successful, the student must be present. Unfortunately, the attendance rate at DAEPs is only 78 percent. One reason may be that DAEPs are exempt from the requirement that school districts provide transportation, even though they are often further away since there are fewer DAEPs than neighborhood schools, and districts can contract with other counties to operate their DAEP. Districts should

be required to provide transportation to students who live beyond a certain distance from the DAEP if there are enough students to make a bus route economically feasible.

Create Two Tiers of DAEPs in Large Districts

In 2001, Fort Worth ISD divided its DAEPs into two tiers as part of a three-tiered disciplinary system in which JJAEPs are the third tier. The decision followed a recommendation of an independent report the district commissioned from the McKenzie Group. Tier I DAEPs in Fort Worth ISD serve students who, for the first time, commit a minor, non-violent offense, including two Tier I DAEPs especially for first-time drug and alcohol offenders. Tier II DAEPs are reserved for students assigned to a DAEP for more serious offenses and for repeat Tier I offenses. A subsequent survey of FWISD secondary school principals found that 100 percent of them agree with the tiered system for separating DAEP students who commit minor offenses from those involved in more serious infractions. For violent crimes committed off-campus, the juvenile court judge can order the student committed to a TYC youth facility or sent to a JJAEP. This is preferable to DAEP placement to avoid mixing the most dangerous offenders with students who have simply been verbally disruptive, particularly since the majority of districts do not have tiered DAEPs.

DAEPs should be fully integrated into the state accountability system that has been instrumental in the improvements in K-12 education over the last decade.

Make DAEPs More Accountable

DAEPs should be fully integrated into the state accountability system that has been instrumental in the improvements in K-12 education over the last decade. The state should require that DAEP students' TAKS scores be assigned to the DAEP and develop separate accountability criteria for DAEPs. Recognizing that most DAEP students are two to three years below grade level and have never passed state assessments, it is necessary to measure academic gains—rather than

passing scores—to determine if schools are teaching and students are learning. TAKS scores of DAEP students are currently assigned only to the district as a whole. There should also be a mechanism for incorporating DAEP students' TAKS scores in the accountability ratings of the referring school. This will remove referring schools' incentive to improve their accountability ratings by referring kids who they think will fail the TAKS to the DAEP, replacing it with an incentive to monitor and remain engaged with their student while in the DAEP.

However, the TAKS is a blunt instrument for holding DAEPs accountable because it is an annual assessment. For this reason, the Kaufman Test of Educational Achievement (KTEA), which is administered to JJAEP students, or a similar exam should be given to DAEP students in medium to long-term placements upon entering and exiting the program. In addition to demonstrating whether students are making academic progress while at DAEPs, such an exam

would serve as a diagnostic tool in identifying areas in which the student may need remedial instruction.

The TEA should also enhance its monitoring of DAEPs. David Anderson, TEA General Counsel, has said that the agency views language in legislation passed by the 78th Legislature as removing its authority to monitor DAEPs and that the TEA also lacks funding to carry out such monitoring. As a result, current TEA oversight is limited to a few pages of discussion in its annual report to the Legislature, the content of which is largely similar from year to year except for updated statistics on the number of students in DAEPs. The information in this report is insufficient for state policymakers to make educated decisions about DAEPs. The TEA should be charged with producing more detailed information, such as DAEP placement rates, test scores, dropout rates, and attendance rates by district and longitudinal data on the number of DAEP students subsequently referred to JJAEPs or other parts of the juvenile or adult criminal justice systems.

11 Year-Old Conroe ISD Student Bumps Into Fire Alarm, Becomes Prepubescent Felon

In February 2005, an 11 year-old student Conroe Independent School District student was arrested and spent the weekend in jail for accidentally triggering a fire alarm. A false alarm or 911 call is a class A misdemeanor except when it involves school property, when it is elevated to a state jail felony punishable by 180 days in jail and a fine of up to \$10,000. On Friday afternoon, the boy's mother, Kerri Rasco, of Conroe, got the kind of phone call no parent wants and probably doesn't think they will get about a child as young as 11.

"I was at work about 2 p.m. when I got a phone call from the sixth-grade assistant principal at the school," Rasco said. "She said my son pulled the fire alarm. 'That is a felony offense,' she told me. I was shocked." Rasco said the assistant principal then put a CISD police officer on the phone with her. "The officer informed me he was arresting my son," Rasco said. "They cuffed him there at the school and took him to juvenile detention."

Later that afternoon, Rasco received another call, this one from a juvenile detention official. "They called and told me they had (her son)," she said. "They told me they were going to keep him over the weekend, until his detention hearing on Monday. I pleaded and begged with them, but they said, 'We have to.'"

With zero tolerance, a policy that public schools implemented after the deaths of 12 students and a teacher at Columbine High School in Colorado in 1999, prosecutors take a false alarm offense "more seriously," according to Bill Patillo, a former juvenile prosecutor for Montgomery County who is now in private practice representing juveniles.

Source: Nancy Flake, "11-year-old arrested, faces felony, for tripping school fire alarm," The Courier of Montgomery County, 02 February 2005, available at <http://www.zerointelligence.net/archives/000531.php>, accessed March 2006.

Just like JJAEPs file their rules and operating procedures with the TJPC, DAEPs should be required to file their policies with the TEA. The TEA should also perform random, unannounced on-site audits of DAEPs to ensure that the information they are receiving is accurate. As the TJPC's audit of the Challenge Academy JJAEP in Waco demonstrated, such investigations are essential for exposing and correcting abuses at public educational facilities supported by state tax dollars. DAEPs should also be required to certify in writing that they have provided all students—identified with a disability—an Individualized Education Plan as required by federal law.

Create Procedure for Parents to Obtain Independent Review of DAEP Placement

Parents should be permitted to appeal their child's DAEP placement to an independent arbitrator by paying a fee to cover the cost of arbitration that is refundable if they prevail. The TEA should be charged with creating and maintaining a list of arbitrators. An independent arbitrator would provide a less expensive and more expeditious option than allowing state court challenges to be brought.

Allow Principal to Return Child to the Classroom Without Teacher's Permission

Another provision of law that should be modified is Education Code 37.009(a), which prohibits a principal or vice principal from returning a student to a classroom from which he or she has been removed without the teacher's consent, even after the student has been disciplined—whether by detention, in-school suspension, DAEP referral, or otherwise. This provision subverts the hierarchy of authority by undermining the appropriate role of principals and vice principals in determining whether a teacher is following proper classroom disciplinary practices.

The Passing of the Paddle to Municipal and Justice Courts

Is the Schoolhouse to Courthouse Pipeline Overflowing?

One of the most disturbing trends in school discipline and juvenile justice is what Texas Municipal Courts Education Center General Counsel Ryan Turner calls the passing of the paddle. Municipal courts and jus-

tice of the peace courts are receiving an avalanche of Class C misdemeanors written to students in school, mostly for violation of the Student Code of Conduct. Speaking at a December 7, 2005, Texas Public Policy Foundation primer, State Rep. Harold Dutton (D-Houston) recalled how he successfully defended an eight year-old student in municipal court who had received a Class C ticket from a school police officer for chewing gum in class.²⁰

State Rep. Harold Dutton (D-Houston) recalled how he successfully defended an eight year-old student in municipal court who had received a Class C ticket from a school police officer for chewing gum in class.

Dutton said the courtroom was full of other young students (and their parents) who had received similar tickets. Similarly, Turner, who also works as a prosecutor in Hays County, was referred a student who had been issued a Class C ticket for going out to get her books from her car in the school parking lot. Speaking to a group of 200 municipal court judges, Turner said almost all of them raised their hands when asked whether they felt like they had become the Vice Principal.

One Harris County judge noted, "A fight around the flagpole used to be handled at school; now it gets filed in court. Growing pains should not be dealt with in court. The kids miss school, the parents miss work, and they have to pay for parking. This has gone too far."²¹ Such anecdotal evidence is borne out by the little data that is available. From September 1, 2004 to August 31, 2005, there were 10,149 Education Code cases referred to Texas municipal courts, according to the Office of Court Administration.²² During the same period from 1998 to 1999, the first years in which such data was kept, there were 6,888 Education Code cases referred to municipal courts.²³ This category of cases does not represent all citations issued at school, but only those issued for violations of the Student Code of Conduct. Many other citations issued in schools for violation of local or state criminal laws

are classified in other, broader categories of municipal court cases. Education Code cases in Justice of the Peace courts are not separately tracked by the Office of Court Administration. With regard to juvenile court, in Harris County alone, of the 20,812 referrals, over a quarter (5,591) were school referrals.²⁴

From September 1, 2004 to August 31, 2005, there were 10,149 Education Code cases referred to Texas municipal courts.

Section 37.102 of the Education Code, enacted as part of the 1995 *Safe Schools Act*, has been interpreted by school boards as empowering them to designate specific violations of the Student Code of Conduct that are Class C misdemeanors, even if such conduct is not a criminal offense under state or local law.

Remarkably, some districts have even argued in court that these criminal offenses they create are not subject to the general defenses in the Penal Code, such as self-defense. Students are issued citations for the school board-created offenses by school police officers, which they are expected to sign promising to appear in court, even though as minors they cannot enter into a contract. In most instances, the teacher, not the officer, is the one who saw the conduct at issue.

What Happens in Municipal Court or J.P. Court?

Class C misdemeanors issued to students follow the same procedure as speeding tickets, which are also Class C misdemeanors. Assuming the student brings the citation home, his parents can choose to simply plead guilty and send in a payment for the fine amount, which can be up to \$500, and court costs, which are \$50 to \$100. If the student does *not* plead guilty and pay the fine, a complaint is sworn out and the case is scheduled for trial before either the judge or a jury. Interestingly, all Class C misdemeanors issued to juveniles other than traffic and tobacco offenses can be filed in juvenile court. However, juvenile court is a more expensive process because indigent student de-

fendants are entitled to appointed counsel and the officer must make a full custodial arrest and detain the student. While a student who talks back to the officer issuing the citation may be written up for “conduct”—indicating a need for supervision and sent to juvenile court—most students who simply accept the Class C citation are now sent to either municipal court or J.P. court.

The irony is that the student referred to the juvenile court will benefit from a more restorative approach. In juvenile court, the student is adjudicated, not convicted, so they do not accumulate a criminal record. In juvenile court, there are no fines, but there can be restitution payments where appropriate. In contrast, judgments rendered in municipal courts and J.P. courts primarily consist of fines, and if a juvenile does not pay the fine by age 17, he can be sent to a county jail upon becoming an adult. Although they can order community service, municipal courts have little or no behavioral modification programs, such as counseling and drug treatment, to which they can refer a student defendant.

Juvenile courts, on the other hand, have access to a full array of such programs, as well as the services of juvenile probation officers to supervise their implementation in each case. The enormous caseloads in municipal and J.P. courts make the individualized attention from the judge that might promote behavior modification almost impossible. At one recent special Saturday session of the City of Austin Municipal Court to dispose of the juvenile case backlog, some 138 cases were heard. Recognizing the growing volume of juvenile cases, the 79th Legislature authorized cities to assess a \$5 fee on all convictions to support the creation of a fund to hire juvenile case managers to assist municipal court judges in monitoring juvenile defendants.

Passing of the Paddle Policy Implications

End Issuance of Class C Citations in School

There is no evidence that the issuance of Class C tickets to students and their subsequent referral to municipal or J.P. court results in positive behavioral change. In most instances, it is the parent, not the student, who pays the fine. Accordingly, the Legislature could simply end the practice of issuing Class C misdemeanors in school for school discipline violations that

do not transgress any local or state criminal law. In fact, Rep. Dutton introduced House Bill 443 in the 79th Legislature that would have amended Section 37.102 of the Education Code to state that school boards may not create new criminal offenses for school discipline violations that are not violations of any law, but the bill did not receive a hearing.

Dutton's bill would have put an end to the issuance of tickets in school for chewing gum, going to get one's books from the car, and other routine disciplinary violations.

If Rep. Dutton's bill had become law, schools would still have many other options for dealing with disruptive students. First and foremost, schools have wide latitude to use appropriate disciplinary measures within the school, such as detention halls where students are forced to stay after school, sit silently, and do their homework and in-school suspension. Students that continue to be disruptive can be referred to a DAEP or expelled to a JJAEP. Schools can also have disruptive students removed to a juvenile detention center for conduct indicating need for supervision. Furthermore, even under Rep. Dutton's legislation, students could still be issued Class C citations for conduct that violates state or local law, such as breach of the peace or possession of illegal drugs. However, Dutton's bill would have put an end to the issuance of tickets in school for chewing gum, going to get one's books from the car, and other routine disciplinary violations.

Limit Authority of School Board to Create Criminal Offenses

The Legislature should set parameters on the authority of school boards to create criminal offenses. For example, the Legislature should require that any such offenses specify a culpable mental state. This is especially important, since unlike in other areas of criminal law, school officials need only have reasonable belief to believe a student committed an offense rather than probable cause.

Provide for Prosecutorial Review to Discourage Unnecessary Citations

Short of Rep. Dutton's bill, there are other piecemeal reforms that could address the problem of the passing of the paddle. One such reform would be to require some prosecutorial review of municipal court and J.P. court complaints before they are brought before a judge. Currently, although a school police officer must write up the citation, anyone can swear out the complaint in municipal court. The teacher or vice principal often does so. By creating a procedure whereby prosecutors would have to sign off on complaints before they are placed on the court's docket, frivolous cases involving nothing more than minor school disciplinary infractions could be weeded out. Such gate-keeping would correct the incentive that schools currently have to hoist their discipline problems onto the court system.

Involve Parents in Process of Issuing Citations

The process of issuing citations to students in school should also be reexamined, particularly for very young and learning disabled students who may not be able to understand the piece of paper they are receiving. Rather than simply issuing a ticket to an eight year-old for chewing gum, schools should be required to attempt to contact the parent and give the parent an opportunity to correct the problem by taking their own disciplinary measures. In addition to attempting to communicate with parents before issuing citations, schools should be required to send home a letter at the beginning of each school year putting parents on notice of the specific violations of the Student Code of Conduct that the school board has also made criminal offenses.

Create Pretrial Diversion Program Operated by School or District

As an alternative to municipal or J.P. court, schools could be empowered to set up a pretrial diversion program within their campus or at a central campus of the school district. Such a diversion program for a student issued a Class C misdemeanor would allow the citation to be dismissed in exchange for the student not engaging in subsequent misbehavior over a specified period, performing community service, and/or paying restitution to anyone harmed. Fines and court fees would be waived. If the student failed to comply with the dismissal agreement, he could then be referred to municipal or J.P. court. Such a pretrial

in-school diversion program would not require lawyers. Indeed, only 8 percent of J.P. court judges and 50 percent of municipal court judges are attorneys.

High school pretrial diversion programs could be analogous to teen courts in involving a student's peers in determining the conditions of the dismissal agreement, but the difference would be that a student would be diverted earlier. Currently, teen courts only become an option once a student is referred to municipal or J.P. court. Texas is among the 48 states with a total of 1,000 local teen court programs in which youths serve as judges, juries, and lawyers.²⁵ A study of a teen court in Arlington, Texas found that teen court participants were a third less likely to commit another offense as compared to similar offenders in the control group.²⁶ While expanding existing teen court programs is desirable, they do not reduce the overall caseload in municipal or J.P. court.



Municipal Court hearing for school disciplinary violations.

Expand Sentencing Programs Available to Municipal and J.P. Court Judges

Finally, to the extent Class C charges for school disciplinary violations are going to continue flooding municipal and J.P. courts, these courts should be given the same set of tools available for fashioning appropriate sentences as juvenile courts. Realizing that fines often do not serve as a deterrent to the juvenile who is not paying them, many municipal and J.P. court judges are not imposing fines in addition to the state-mandated court costs. The new local option fee for funding juvenile case workers should help municipal and J.P. courts better monitor juvenile defendants to ensure that community service is performed. However, municipal and J.P. courts need the option to sentence a juvenile defendant to counseling and treatment specific to their problem. In the City of Austin Municipal Court, for example, there is one short ses-

DAEPs and municipal and J.P. courts have become the paths of least resistance to which schools pass the buck when it comes to dealing with difficult students.

sion that juvenile offenders of all types are often sentenced to attend rather than an array of specific programs that the judge can choose from.

Conclusion

There will always be a legitimate need for schools to refer students to alternative campuses and juvenile courts to ensure that the most incorrigible pupils do not unduly interfere with the ability of other students to learn. Institutions such as juvenile courts and JJAEPs are largely successful in fulfilling their purpose, which is to segregate and reform dangerous students, and their policies and performance are subject to substantial state oversight. In contrast, DAEPs were not intended to be filled with students subject to discretionary referral for minor disciplinary infractions, many of whom have psychiatric problems or learning disabilities such as ADD.

Similarly, municipal and J.P. courts were not intended—and lack the proper resources—to handle tens of thousands of Class C misdemeanors for routine school disciplinary violations. DAEPs and municipal and J.P. courts have become the paths of least resistance to which schools pass the buck when it comes to dealing with difficult students. Yet, there is no evidence that either of these paths is leading to better academic performance or behavior modification. Consequently, the Legislature must make significant policy changes to realign the incentives created by existing law so that no student is prematurely and unnecessarily written up and written off. ★

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Endnotes

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Policy Recommendations

Juvenile Justice Alternative Education Programs:

- Expand the number of military-style facilities.
- Determine how placement in different types of programs based on reason for expulsion affects student outcomes.
- Create JJAEPs in counties where they do not exist currently.
- Strengthen state law to ensure students are placed appropriately.
- Allow parents to appeal placements through binding arbitration.
- Provide distance learning program and home monitoring by juvenile probation officers for expelled students in rural areas with no JJAEPs.
- Reduce discretionary referrals to JJAEPs from DAEPs for chronic and persistent misbehavior through better training of DAEP teachers in classroom management and needs of special education students.

Disciplinary Alternative Education Programs:

- Establish standards to limit discretionary placements for districts with above average placement rates.
- Encourage districts to adopt best practices to reduce discretionary placements, such as in-service teacher training in effective disciplinary techniques.
- Require school districts to attempt to contact parent/guardian before placement.
- Establish a minimum number of instructional hours per day.
- Set standards for grouping by grade/academic ability and type of offenses.

- Integrate programs into the state accountability system and hold programs and referring districts accountable for students to achieve academic gains.
- Administer the Kaufman Test of Education Achievement Analysis to medium and long term placements—on entering and exiting programs.
- Require districts to provide transportation for students who live beyond a certain distance, if there are enough students to make busing economically feasible.
- Charge the TEA to collect performance data, monitor, and audit programs.
- Direct the TEA to create and maintain a list of independent arbitrators for parents to appeal placements.
- Require programs to file rules and operating procedures with the TEA.
- Allow principals to return students to the classroom without a teacher's permission.

Juvenile Justice Code:

- Revoke school districts' ability to issue Class C Citations or establish guidelines for issuing citations (pertaining to age, offense, and parental notification).
- Expand sentencing options available to municipal and J. P. court judges, such as drug treatment and anger management programs.
- Limit district and school board authority to create new criminal offenses for violations of school discipline policies.
- Require prosecutorial review of municipal court and J. P. court before complaints are brought before a judge.
- Encourage districts to create pretrial diversion programs to allow citation dismissal if specific conditions are met.

