



WRITTEN TESTIMONY

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
TEXAS CRIMINAL JUSTICE COALITION**

REGARDING INTERIM CHARGE 9

SENATE CRIMINAL JUSTICE COMMITTEE

APRIL 29, 2010

TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to present testimony on Charge 9: *“Consider the impact that secondary education school disciplinary laws and policies have on the juvenile justice system and the adult prison system. Recommend changes, if needed, to current law.”*

INTRODUCTION

“The strictest law sometimes becomes the severest injustice.” These words by Benjamin Franklin echo today as Texas schools continue to implement zero tolerance and strict discipline policies. The rationale behind these policies – to deter violent misbehavior – was well intentioned, but their effect has led the state down a road we were determined to avoid. Expanded zero tolerance and far-reaching discretionary discipline measures often lead to unfair and harsh consequences for children already considered at-risk. The policies’ heavy-handed and often inequitable use (including for minor in-class disruptions) may increase school truancy and dropout rates, further threatening stability in vulnerable communities and potentially resulting in more children entering the juvenile justice or adult prison system.

ZERO TOLERANCE LAWS

Zero tolerance policies were enacted in Texas and across the nation in response to the public’s perception that schools were becoming increasingly dangerous places. Such discipline policies were intended to reduce violence and make schools safe learning environments. The severity of the law was intended to act as a deterrent to students: presumably, students would curb their misbehavior out of fear of suspension or expulsion. The effect of the laws, however, has led to a rapid increase in student expulsions and dropouts, which negatively impacts the community both in the short and long term.

As emphasized by the American Academy of Pediatrics, “suspension and expulsion may exacerbate academic deterioration, and when students are provided with no immediate educational alternative, student alienation, delinquency, crime, and substance abuse may ensue” – thus decreasing public safety in our communities.¹

Since the Texas Legislature specifically enacted zero tolerance laws in 1999, the state has seen an increase in the implementation of punitive disciplinary sanctions. For instance, from the 2002-03 school year to the 2007-08 school year, “the number of expulsions from Texas schools increased by 23%, and the number of out-of-school suspensions increased by 43%. In just one academic year, 2007-08, there were 9,899 expulsions and 644,853 out-of-school suspensions in Texas.”² School expulsions and suspensions peaked during the 2006-07 school year with 11,135 and 644,884 actions respectively.³ While the actual count of out-of-school suspensions and expulsions may have slightly declined in recent years, the overall percentage of students receiving discipline referrals remains steady.

This high number of school suspensions presents an especially precarious situation because “students whose education is disrupted for a period of time may have difficulty catching up and may eventually drop out of school rather than fall further behind.”⁴

The passage of Texas House Bill 171 in June, 2009, was a strong first step in resolving one of the fundamental problems with zero tolerance laws: the lack of discretion. House Bill 171 requires that school districts consider extenuating circumstances before deciding punishment. However, for this law to be truly effective, school administrators must make every attempt to eliminate bias in disciplinary decisions.

THE ROLE OF BIAS IN SCHOOL DISCIPLINE

Data trends not only point to increasing rates of discipline in our schools, but to certain categories of students most likely to be targeted. Indeed, evidence indicates that bias plays a significant role in the discipline process, further undermining the legitimacy and effectiveness of schools' policies. Statistics obtained by the Texas Education Agency from school districts across the state illustrate that male students, minority students, students of low socioeconomic status, and students in special education programs are disproportionately impacted by school discipline policies.

During the 2008-09 school year:

- Male students comprised 51% of the total student population in Texas but accounted for over 70% of all disciplinary referrals. Additionally, male students were expelled from school at a rate of 3:1 compared to their female counterparts.
- Students classified as economically disadvantaged comprised 55% of the total student population but accounted for over 73% of out-of-school suspensions.
- Special education students comprised only 10% of the total student population but were suspended and expelled at rates exceeding 20%.

Perhaps the most troubling statistic is the disparity at which minority students, especially African-American students, were disciplined in comparison to their white classmates. During the past school year, African-American, Hispanic, and white students comprised 14%, 48%, and 34% of the student population respectively; despite being vastly outnumbered by their Hispanic and white classmates, African-American students were most likely to be disciplined.

During the 2008-09 school year:

- African American students comprised nearly 33% of all the students suspended out of school, while white students comprised only 18%.
- African American students comprised nearly a quarter of all expulsions, on par with their white classmates. Hispanic students accounted for the remaining half.

THE EFFECT OF ZERO TOLERANCE AND STRICT DISCRETIONARY DISCIPLINE

The biased implementation of zero tolerance and discretionary discipline policies has severe consequences. One case study examining a large multicultural school district found zero tolerance policies to be counterproductive: the more a school implements student suspensions, the higher the

dropout rates and the lower the academic achievement rates; conversely, the lower the student suspension rates, the better the attendance rates, academic achievement rates, and overall outcomes.⁵ Although another meta-analysis of alternative schools and zero tolerance policies found they had no effect on delinquency,⁶ one did find that in certain situations, zero tolerance policies have “helped reduce incidents of fighting.”⁷ However, the latter study also points out that “although arrest may have a deterring effect, it can also have a crushing effect on young people.”⁸ Enforcing strict disciplinary policies can backfire when youth are at such an early stage in their lives, effectively pushing them out of schools and increasing their potential likelihood of entering the juvenile justice system.

The school-to-prison dropout link has been well researched and documented by Texas Appleseed. According to their findings, more than one-third of Texas public school students dropped out during the 2005-06 school year. Students referred to a Disciplinary Alternative Education Program were five times more likely to drop out than a student in a mainstream school. One-third of the juveniles sent to the Texas Youth Commission are school dropouts, and more than 80% of Texas prison inmates are dropouts.⁹

Zero tolerance and other strict discipline policies were intended to make school safer – and, hence more conducive to learning – by immediately removing those students deemed to be a threat to the safety of the school. But since their enactment in Texas more than a decade ago, the rate of school discipline has remained constant, and the threat of suspension and expulsion has not resulted in effective deterrence. Although the immediate suspension or expulsion of a student may end an instant disruption to the learning environment, it does little to provide for stability in the long term and may likely lead to greater harm and deep collateral consequences to the student than were intended or deserved. Students that are consistently suspended or expelled invariably drop out of school permanently. These individuals, uneducated and ill-equipped to effectively contribute in today’s society, may seek survival through criminal activity and risk greater costs to society by entering the juvenile justice or adult criminal justice system.

POLICY RECOMMENDATIONS

- Require training and guidance for teachers and principals in school districts that exceed the statewide average for disciplinary referrals or that discipline a disproportionate amount of minority, low-income, and special education students.
 - Require teachers to receive training on evidence-based classroom management techniques designed to reduce the amount of disciplinary referrals.
 - Require schools that disproportionately discipline minority, special education, and low-income students to formulate a plan to address the overrepresentation problem.
- Require school officials to identify and document a student’s intent to cause harm or offense in his/her behavior before deciding on a disciplinary referral.
- Require school administrators at the district level to review all discretionary out-of-school suspensions and expulsions.

- To protect students' due process rights, districts should implement written policies that ensure students have the right to receive notice of formal disciplinary action being considered against him or her, the right to be represented by counsel or a representative, the opportunity to present his or her case before a committee, the right to cross-examine witnesses, and an automatic review or the right to appeal a school's decision to suspend or expel that student from school.
- Require schools to distribute a print or electronic copy of the student handbook to every family upon commencement of the school year. The handbook should sufficiently detail the behavioral expectations of students while on campus, as well as detail the factors to be considered and the procedures to be followed by school officials when referring a student for discipline.
- Develop stronger standards for on-campus police and limit their involvement to legitimate public safety issues. Many schools have hired untrained police officers and security personnel and, as a result, have seen a hike in school arrests for nonviolent violations of the school's code of conduct.¹⁰ In Texas, 163 school districts have their own police departments.¹¹ The vast majority of students arrested on campus commit nonviolent and vague offenses labeled "disturbance of the peace" or "disruptive conduct."¹²
- Ensure transparency in and an accurate understanding of the implementation and practice of discipline in schools.
 - Track the number of referrals made by school administrators to on-campus and local law enforcement and report that data to the Texas Education Agency (TEA) at the conclusion of every school year. This information should be made publicly available as well.
 - In addition to reporting numbers of discretionary suspensions, referrals, and expulsions (by race, ethnicity, gender, etc.) to TEA at the conclusion of every school year, school districts should also provide the number of Class C misdemeanors resulting from school disciplinary decisions, especially for such nonviolent offenses as "disturbance of the peace" or "disruptive conduct."

NOTES

¹ American Academy of Pediatrics, "Out-of-School Suspension and Expulsion," *Pediatrics* 112, no. 5, (2003): 1206.

² Advancement Project, *Test, Punish, and Push Out: How "Zero Tolerance" and High-Stakes Testing Funnel Youth Into the School-To-Prison Pipeline*. Los Angeles, CA & Washington D.C: Advancement Project, January 2010, <http://www.advancementproject.org/sites/default/files/publications/01-EducationReport-2009v8-HiRes.pdf>.

³ Texas Education Agency, *Discipline Data Products*,

http://ritter.tea.state.tx.us/cgi/sas/broker?_service=marykay&_program=adhoc.download_static_summary.sas&district=&agg_level=STATE&referrer=Download_State_Summaries.html&test_flag=&_debug=0&school_yr=07&report_type=txt&Download_State_Summary=Generate+Report.

⁴ Kim Potts and others, *Zero Tolerance in Tennessee Schools: An Update*. Nashville, TN: Tennessee State Comptroller of the Treasury Office of Educational Accountability, August 2003.

⁵ Emily Arcia, "Achievement and enrollment status of suspended students: Outcomes in a large, multicultural school district," *Education and Urban Society* 38, no. 3 (2006): 359-369.

⁶ Stephen M. Cox, William S. Davidson, and Timothy S. Bynum, "A Meta-Analytic Assessment of Delinquency-Related Outcomes of Alternative Education Programs," *Crime & Delinquency* 41 no. 2 (1995): 219-235.

⁷ Ronnie Casella, "Zero Tolerance Policy in Schools: Rationale, Consequences, and Alternatives," *Teachers College Record* 105 no. 5 (2003): 875.

⁸ *Ibid.*, 884.

⁹ Texas Appleseed, *Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance*. Austin, TX: Texas Appleseed, October 2007.

¹⁰ Brown, B. (2006). Understanding and assessing school police officers: A conceptual and methodological comment. *Journal of Criminal Justice*, 24, 591-604.

doi:10.1016/j.jcrimjus.2006.09.013.

¹¹ Advancement Project. (2010).

¹² Advancement Project. (2005). *Education on Lockdown: The Schoolhouse to Jailhouse*. Los Angeles & Washington D.C.: Advancement Project Retrieved from <http://www.advancementproject.org/reports/FINALEOLrep.pdf>, p. 15.