



# Texas' School-to-Prison Pipeline

.....  
Dropout to Incarceration

*The Impact of School Discipline and Zero Tolerance*

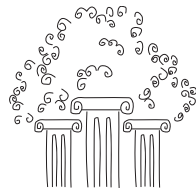




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Texas  
APPLESEED

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Special thanks to Elyshia Aseltine with the University of Texas Population Center for her work as Research Assistant on the School-to-Prison project.

## Texas Appleseed Mission

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to find practical solutions to broad-based problems. Our prior work to protect the rights of juveniles and persons with mental disabilities in the criminal justice system—timed with the Harvard School of Civil Rights' invitation to join a national discussion on the “school-to-prison pipeline”—alerted us to the need to explore the relationship between school discipline policies, the dropout rate, and “gateways” into the juvenile justice system.

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## Acknowledgements

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Texas Appleseed is deeply indebted to our Consulting Committee for providing crucial guidance on the school-to-prison pipeline project.

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# SCHOOL DISCIPLINE:

## A Timeline

### 1947–1965

During this period, the State of Texas becomes involved in overseeing the public education system—focusing on school funding, minimum standards, and teacher education and certification requirements.

Increased interest in juvenile crime and community-based mental health services in the 1960s leads state lawmakers to consider the need for school counseling to address students' behavior problems.

### 1967

The Interim Committee on Juvenile Crime recommends improved school counseling and greater attention to dropout prevention—and urges those Texas school districts prohibiting corporal punishment to reconsider that decision and “avoid the excesses of coddling.” The only recommendation to become law is creating new counseling positions in schools.

### 1976

An interim committee report to the 65<sup>th</sup> Legislature concludes that school “disciplinary procedures...are best handled at the local level.”

### 1981

The Select Committee on Public Education endorses written student Codes of Conduct along with pilot programs to educate disruptive students in alternative settings, but stops short of recommending the state mandate these measures.

### 1980

Attorney General Mark White's office publishes a proposed “Voluntary Student Code of Conduct” for use in public schools.

1965

### 1965

The State of Texas creates the Texas Department of Mental Health and Mental Retardation—with a new focus on providing community mental health services for children and adults.

1970

### 1971

The Committee to Study the Psychiatric Problems of Youth recommends training teachers and other public school personnel to identify students with “mental health problems.”

1975

### 1978

The Select Committee on Drug and Alcohol Abuse recommends adding alcohol and drug education programs to public school curriculum in Texas.

1980

### 1979

The Texas Education Code is amended to allow teachers to remove a pupil from the classroom “to maintain effective discipline” and to recommend suspension of any student who assaults a teacher or who “repeatedly interfere(s) with that teacher's ability to communicate effectively with the majority of students in the class.” A due process hearing is required.

Governor Bill Clements' Advisory Committee on Education recommends written student Codes of Conduct and better enforcement of student attendance.

### 1969

The State of Texas creates the Texas Education Code. Subchapter I, entitled “Discipline; Law & Order,” allowing school districts to suspend “incorrigible” students and bring proceedings in juvenile court against students “who persistently violate the reasonable rules and regulations of the school.”

## 1983

The National Commission on Excellence in Education releases *“A Nation at Risk: The Imperative for Educational Reform”*—claiming that U.S. students lag those in other nations and warning of *“a rising tide of mediocrity.”*

The reconstituted Select Committee on Public Education headed by H. Ross Perot begins to examine “every aspect of the public education system”—ultimately recommending state-funded alternative schools and Texas Education Agency approval of discipline management programs implemented by school districts.

## 1986

A special session of the 69<sup>th</sup> Legislature amends the Education Code to allow school boards to suspend students for up to six days without referring them to an alternative education program. The Code does not mandate suspension or expulsion for any offense—that decision is left to local districts.

## 1995

In his State of the State address to the 74<sup>th</sup> Legislature, Governor George W. Bush notes: *“We must adopt one policy for those who terrorize teachers or disrupt classrooms—zero tolerance.”*

The 74<sup>th</sup> Legislature rewrites the Texas Education Code to include Chapter 37—creating Disciplinary Alternative Education Programs (DAEPs) and Juvenile Justice Alternative Education Programs (JJAEPs), listing the offenses that trigger mandatory referrals to these programs, and giving school districts discretion to refer students for other Code of Conduct violations.

In its 1995 Long-range Plan for Public Education, the State Board of Education includes: *“Promote zero-tolerance guidelines for behaviors and actions that threaten school safety.”*

1985

1990

1995

2000+

## 1985

The 69<sup>th</sup> Legislature replaces out-of-school suspension and expulsion of students with their being assigned to alternative education programs. School districts are required for the first time to adopt a discipline plan, provide teacher training in discipline management, and develop and distribute a Student Code of Conduct.

## 1992

The State Board of Education begins to call for zero tolerance policies to prevent school violence and drug abuse, a shift rooted in the state and national “war on drugs” campaigns of the 1980s and the passage of the federal Gun Free School Zones Act in 1990.

## 1996-2007

The Texas Education Code, Chapter 37, Discipline; Law & Order, is amended almost every legislative session in this period.

In 2007, state lawmakers pass legislation requiring the Texas Education Agency (TEA) to develop minimum standards for DAEPs, but stop short of requiring TEA to monitor or implement those standards.



# Texas' School-to-Prison Pipeline: Dropout to Incarceration

*The Impact of School Discipline and Zero Tolerance*

## EXECUTIVE SUMMARY

*“He who opens a school door, closes a prison.” – Victor Hugo*

Involvement in the criminal justice system can be viewed as a continuum of entry points—from early school-based behavior problems that result in suspensions, expulsions, or Disciplinary Alternative Education Program (DAEP) placements to more serious law breaking and probation violations that can involve the juvenile justice system and, ultimately, the adult penal system.

In Texas and nationally, zero tolerance policies are removing thousands of juveniles from the classroom and sending them to in-school and out-of-school suspension and to DAEPs. For too many, involvement in the school disciplinary system becomes a gateway to the justice system.

Over the past year, **Texas Appleseed**—a nonprofit public interest law center—has worked in pro bono collaboration with nine law firms and corporate legal departments, a consulting team of interdisciplinary experts, and other organizations as diverse as the Texas Public Policy Foundation, Advocacy Inc., and the Harvard Civil Rights Project to document the impact of a “school-to-prison pipeline” in Texas and identify policy areas in need of systemic reform.

Numerous studies by national experts in the fields of education, criminal justice, and mental health have established a link between school dropout rates and incarceration. This link holds true in Texas. *One in three juveniles* sent to a locked down facility operated by the Texas Youth Commission has already dropped out of school—and *more than 80 percent of Texas adult prison inmates are school dropouts.*



### School-to-Prison Dropout Link...

- **More than a third** of Texas public school students dropped out in 2005-06.
- Disciplinary Alternative Education Programs have **five times the dropout rate** of mainstream schools.
- **One in three juveniles** sent to the Texas Youth Commission are school dropouts.
- **More than 80 percent** of Texas prison inmates are dropouts.

What is less well known is that the precursor for many young people's involvement in the juvenile justice system is disciplinary referrals in school—referrals to in-school suspension (ISS), out-of-school suspension (OSS), and to Disciplinary Alternative Education Centers (DAEPs). The more serious offenders are sent to more restrictive Juvenile Justice Alternative Education Programs (JJAEPs) or to Texas Youth Commission facilities. The last segment of the “pipeline” is adult prison.

A study published by Texas A&M University's Public Policy Research Institute in 2005 concluded that, among the “risk factors” commonly associated with future involvement in the juvenile justice system, the *single most important predictor is a history of disciplinary referrals at school.*

In Texas, the number of student disciplinary referrals to ISS classrooms, out-of-school suspension—and ultimately to alternative campuses (DAEPs)—increased dramatically in the mid-1990s following passage of the Federal Gun Free Schools Act of 1994 and the subsequent 1995 overhaul of Texas school discipline laws (see *Texas Education Code, Chapter 37, Discipline; Law & Order*). Chapter 37 mandates the serious offenses for which students *must* be removed to DAEPs in order to maintain safe schools. It also gives school districts wide latitude to remove students for other violations of their student Code of Conduct. Though most districts do not have a *written* zero tolerance policy, many Texas school districts currently exercise their discretion under Chapter 37 to adhere to the spirit of zero tolerance in removing students from the classroom for offenses such as profanity, disrupting class, and persistent violation of a student Code of Conduct.

The single greatest predictor of future involvement in the juvenile system is a history of disciplinary referrals at school.

– Public Policy Research Institute,  
Texas A&M University (2005)

Working closely with the Population Research Center at The University of Texas, Texas Appleseed examined the disciplinary data self-reported by school districts to the Texas Education Agency—calculating in-school suspension (ISS), out-of-school suspension (OSS), and Disciplinary Alternative Education Program (DAEP) referral rates for all Texas school districts. This analysis specifically examined disciplinary referrals for a five-year period (2001-06)—disaggregated by seriousness of offense (mandatory versus

discretionary referrals), race, ethnicity, participation in special education, and grade level for all Texas school districts. It identified districts with the highest annual referral rates to DAEPs, OSS, and ISS as well as those disproportionately referring minority and special education students at rates exceeding what could be anticipated given their representation in the overall school population. (For a more detailed explanation of the methodology used, see *Quantitative Methods* in the *Appendix*.)

Texas Appleseed is deeply grateful to the more than 40 volunteers at major law firms and corporate legal departments who interviewed principals, teachers, counselors, and police officers in nine school districts across the state about school disciplinary practices, their attitudes toward zero tolerance discipline, and the role of Disciplinary Alternative Education Programs (DAEPs). These pro bono partners visited alternative schools as well as public elementary, middle, and high schools. Texas Appleseed also conducted several focus groups with parents and students to obtain their views on DAEP referrals and related school discipline issues.

The statewide average overall referral rate to a Disciplinary Alternative Education Program is *2% a year*, however **167 school districts** referred students at *two to six times the state average* for one or more years between 2001 and 2006.

– Analysis of data self-reported by school districts to the Texas Education Agency

Our findings underscore the importance of Texas school districts utilizing more effective, research-based strategies to improve student behavior, reduce school dropouts, and help stem the growth of Texas' prison system—the largest in the nation. A survey of current research in the field suggests this *can be done while maintaining safe schools* and classrooms where teachers can teach and students can learn.

### Major Findings: Discipline in Texas Public Schools

Texas has one of the largest school systems in the nation—with more than **4.4 million students** currently attending public schools in **1,037 school districts**. This report focuses on the discretionary application of school discipline—and not the disciplinary actions that schools are mandated to take under Chapter 37, Texas Education Code, to address students' most serious misbehavior.

The following is a summary of major findings based on both quantitative and qualitative data collected over the last year:

❖ **High recidivism and dropout rates underscore the failure of Disciplinary Alternative Education Programs (DAEPs) to meet the needs of large numbers of students—a problem compounded by the lack of state oversight.**

- In Texas, DAEPs have *five times the dropout rate* of mainstream schools.
- In 2005-06 alone, the *recidivism rate approached 30 percent*—with 105,530 unduplicated students accounting for almost 137,000 DAEP referrals that year.

- ♦ The 80<sup>th</sup> Legislature voted in 2007 to require the Texas Education Agency (TEA) to adopt the state’s first minimum standards for DAEPs—but *did not require TEA to monitor or enforce them*.
- ♦ Two-thirds of the students sent to DAEPs in Texas are referred at the *discretion of school districts*, and are not mandatory removals under state law.
- ❖ **Where a child attends school—and not the nature of the offense—is the greater predictor of the likelihood of a student’s receiving a disciplinary referral.**
  - ♦ The overall statewide average referral rate to a Disciplinary Alternative Education Program is *2 percent a year*—however **167 districts** referred students at *two to six times the state average* for one or more years between 2001 and 2006.
  - ♦ In 2005-06, **79 school districts** referred students to out-of-school suspension (OSS) at a rate of *20 percent or higher*—compared to the statewide average of *14 percent*. The “Top 10” districts had overall OSS referral rates *ranging from 37 to 58 percent* that year.
  - ♦ **More than 300 districts (326)** exceeded the statewide overall ISS referral rate of *17 percent* in 2005-06, and the “Top 10” districts had overall ISS referral rates *ranging from 45 to 67 percent* that year.
- ❖ **African American students—and to a lesser extent Hispanic students—are significantly over-represented in schools’ discretionary disciplinary decisions (suspensions and DAEP referrals) compared to their percentage in the overall student population.**
  - ♦ In Texas, **211 school districts** disproportionately referred African American students to DAEPs for one or more years between 2001 and 2006. In 2005-06 alone, **15 school districts** referred African American students *at more than twice their representation in the student population, with discretionary referral rates ranging from 21 to 65 percent*.
  - ♦ For one or more years between 2001 and 2006, **503 school districts** over-represented African American students in discretionary referrals to out-of-school suspension (OSS) and **347 districts** over-represented them in discretionary referrals to in-school suspension (ISS).
  - ♦ **Forty school districts** overrepresented Hispanic students in discretionary DAEP referrals, **224 districts** disproportionately suspended them from school, and **92 districts** over-represented them in discretionary referrals to ISS for one or more years (2001-06).

❖ **Special education students are significantly overrepresented in discretionary disciplinary referrals compared to their percentage in the overall school population.**

- ♦ Although special education students represented *11 percent* of the overall Texas public school population in 2005-06, they accounted for *22 percent* of total annual DAEP referrals, *26 percent* of out-of-school suspensions, and *21 percent* of ISS referrals that year.
- ♦ Almost a third of Texas' school districts—or **412 districts**—referred special education students to DAEPs at rates exceeding their representation in the student population for one or more years between 2001 and 2006.
- ♦ Every year in that five-year period, **79 school districts** disproportionately referred special education students to DAEPs, **317 districts** disproportionately suspended them from school, and **328 districts** over-referred them to ISS.

❖ **Texas school districts referred about 500 pre-K and kindergarten students and about 2,700 1<sup>st</sup> graders to DAEPs between 2001 and 2006—even though Texas law restricts referral of children under age 6 to those who *bring a gun to school*.**

- ♦ **Fourteen school districts**—led by *Pasadena ISD (85 referrals)*—account for almost *half (271)* of the referrals of pre-K and kindergarten students to DAEPs in this five-year period.

### What These Findings Mean for Students and Parents

Research studies and interviews conducted for this report in nine Texas school districts point to *fewer discipline problems in schools where parents are involved*. When schools actively reach out to parents—and when parents discuss behavior expectations with their children and communicate actively with the school—there is less classroom disruption and greater capacity to keep schools safe.

If a teacher conference or disciplinary hearing is scheduled to discuss a child's behavior issues and determine whether suspension, expulsion, or a referral to a Disciplinary Alternative Education Program (DAEP) is needed, *it is critical that a parent or guardian attend*. If the school has made sufficient attempts to secure their attendance—and a parent or guardian is not present for a scheduled disciplinary hearing, the school can proceed and make a disciplinary decision without their input.

Almost a third of Texas' school districts—or **412 districts**—referred special education students to DAEPs at rates exceeding their representation in the student population for one or more years between 2001 and 2006.

Likewise, African American students—and to a lesser extent Hispanic students—are significantly overrepresented in discretionary suspensions and DAEP referrals.

– Analysis of data self-reported by school districts to the Texas Education Agency

Parents and students must be aware of their rights and responsibilities when it comes to laws and school policies governing school discipline. This is particularly true in cases involving special education students, where different state and federal laws impact how these students can be appropriately disciplined and how disciplinary decisions can be appealed.

### Policy Recommendations

Based on its findings, Texas Appleseed has developed the following policy recommendations to promote school discipline programs that work, are fairly applied, and have the greatest potential to reverse the trend toward higher rates of school dropouts and incarceration.

**Amend the Texas Education Code to** achieve the following:

- **Provide state oversight of DAEPs.** Require the Texas Education Agency (TEA) to monitor and enforce standards for Disciplinary Alternative Education Programs (DAEPs). In 2007, TEA was mandated to develop the state’s first standards for DAEPs, but not required to monitor or enforce those standards.
- **Factor “intent” into discretionary discipline decisions.** Require school officials and school districts to consider a student’s “intent” when making discretionary disciplinary decisions. Currently, districts *may* consider intent but are not required to do so.
- **Place a cap on suspensions.** Place a cap on the number of days that a student may be referred to in-school and out-of-school suspension (ISS and OSS) in an academic year.
- **Notify districts with disproportionate disciplinary referrals.** Require the Texas Education Agency (TEA) to notify and provide guidance to districts that exceed the prior year’s statewide average referral rate to ISS, OSS, and DAEP or are at high risk for referring a disproportionate number of minority or special education students for disciplinary action. The TEA already collects this disciplinary data.
- **Compliance with federal laws.** Require TEA to monitor DAEPs to ensure compliance with federal and state statutes governing English as a Second Language instruction and education of students with disabilities.
- **Improve DAEP academic standards and course offerings.** Require TEA to improve academic standards and range of course offerings—and *explore the use of technology* to more closely link curriculum offered at DAEPs and mainstream schools.
- **Early parent notification requirements.** Require schools to alert parents *immediately* when disciplinary action is taken. Current policy requires notification within three days.
- **Rights and responsibilities.** Require the Texas Education Agency to create a model student and parent “Bill of Rights and Responsibilities” for inclusion in a school’s Code of Conduct.

In addition, the State of Texas should provide *funding for expanded school-based mental health services* and encourage partnerships between schools and community mental health providers to support students and families.

The Texas Education Agency should create a *discretionary grant program* to help fund implementation of research-based practices proven successful at reducing the number of school discretionary referrals.

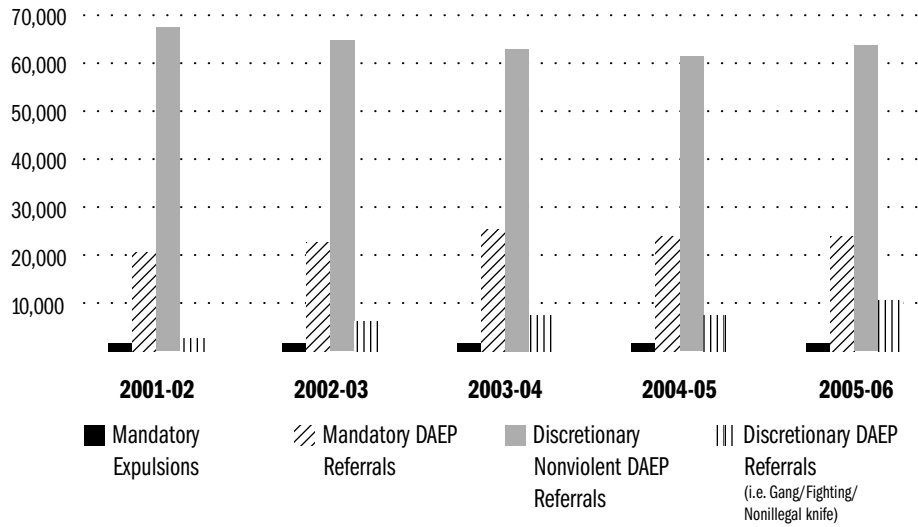
**Policy recommendations at the school district and campus level include:**

- **Research-based discipline strategies.** Develop, implement, and regularly evaluate a school-wide disciplinary plan that employs *research-based strategies* that have been shown to reduce the number of disciplinary referrals.
- **Positive behavior support.** Ensure that expectations for behavior and consequences for misbehavior are well-defined, easily understood, and well-publicized to faculty, staff, students, and parents. Regularly recognize and *positively reward* good behavior.
- **Teacher/staff training.** Provide ongoing teacher and staff training in positive behavior management, as well as training to enhance cultural competency and the ability to form a positive relationship with parents and students.
- **Formalized plans to monitor at-risk students.** Adopt formalized, campus-based programs to monitor at-risk students to prevent escalating disciplinary action and support their success in school.
- **Transition planning.** Strengthen transition planning, monitoring, and support of students upon their return to school from a disciplinary suspension or alternative school placement.
- **Parent involvement.** Engage parents as partners in reinforcing positive behaviors at school—notifying them immediately when a disciplinary action is taken, and offering them the opportunity to enter into a signed agreement establishing a plan to address the student’s behavior as an alternative to a discretionary disciplinary referral to a DAEP for non-violent, non-criminal behavior.
- **Improve administrative oversight of ISS academics.** Ensure that students assigned to ISS are given daily assignments to keep them *on track in regular classes*.

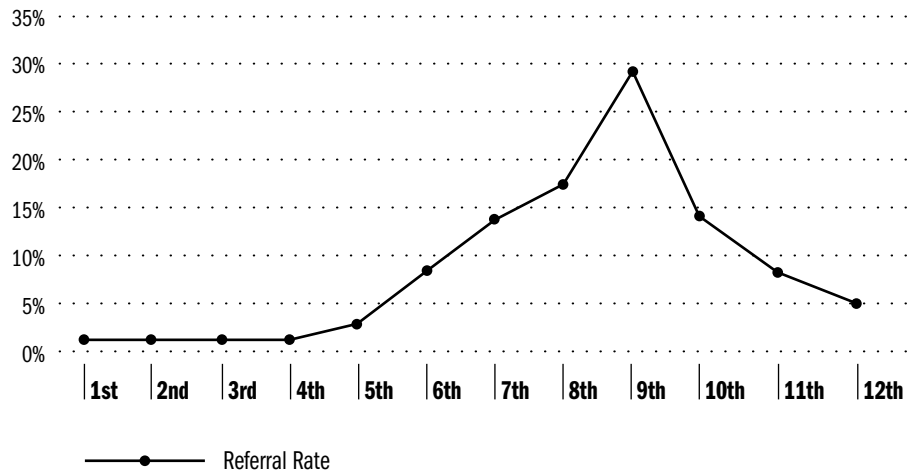
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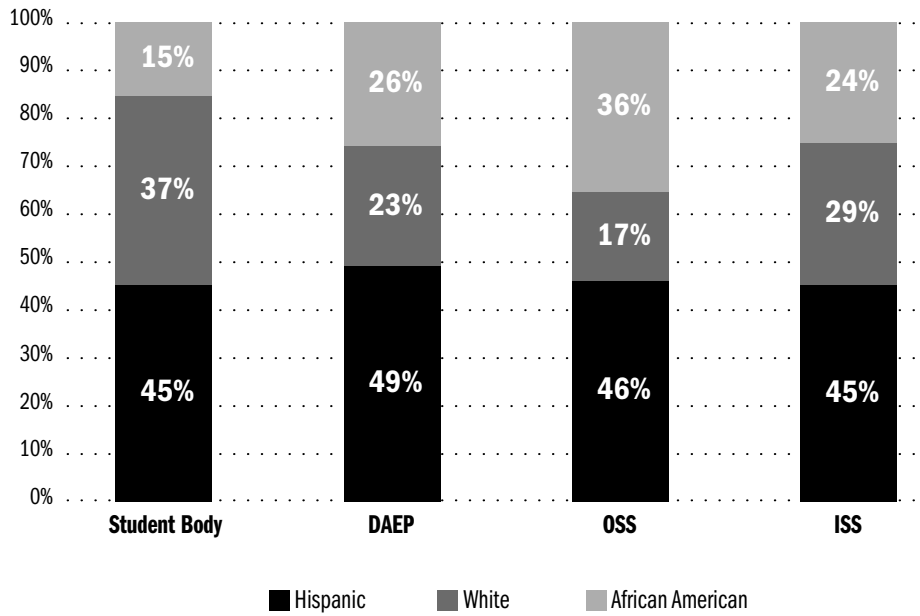
### Statewide Discretionary vs. Mandatory DAEP Referrals, 2001-06



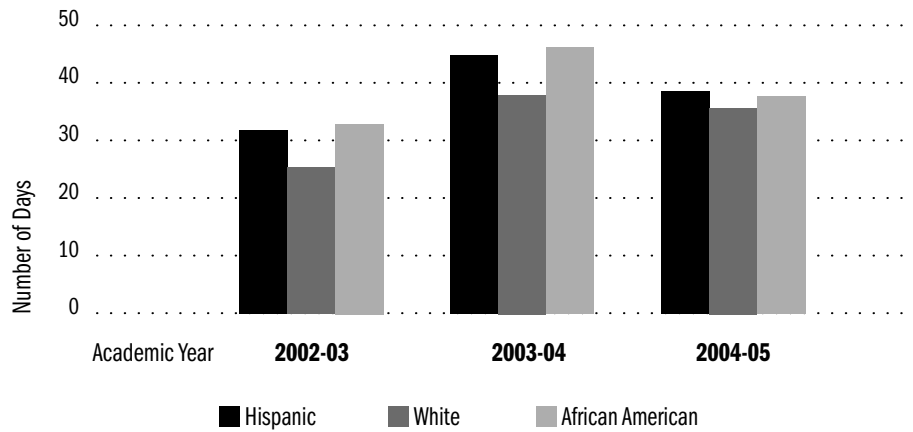
### Statewide DAEP Referral Rate by Grade Level, 2005-06



**Overrepresentation of Minority Students  
in Discretionary Discipline Referrals, 2005-06**

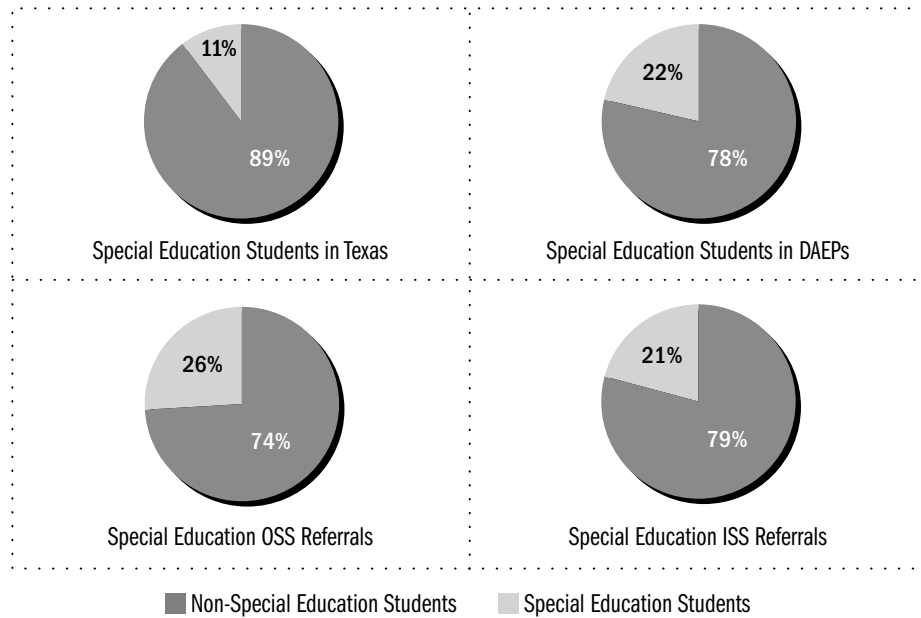


**Length of Stay at DAEPs, By Race/Ethnicity, 2002-05**





### Statewide Profile of Disciplinary Referrals of Special Education Students, 2005-06



### School Districts Referring More than 40 1<sup>st</sup> Graders to DAEPs, 2001-06

School District	1st Graders Referred
Alief ISD	124
Arlington ISD	125
Conroe ISD	55
Cypress-Fairbanks ISD	42
Dallas ISD	148
Ector County	40
Harlingen CISD	44
Hurst-Euless-Bedford ISD	46
Irving ISD	46
Leander ISD	40
Mesquite ISD	153
North East ISD	147
Northside ISD	57
Pasadena ISD	345
Waco ISD	94

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**School Districts Referring More than 10  
Pre-K & Kindergarten Students to DAEPs, 2001-06**

<b>School District</b>	<b>Pre-K &amp; Kindergarten Students Referred to DAEPs</b>
Dallas ISD	13
Denton ISD	10
Ector County	12
Grand Prairie ISD	12
Irving ISD	14
Katy ISD	11
Killeen ISD	19
Leander ISD	19
Mesquite ISD	14
Northside ISD	19
Pasadena ISD	85
Plano ISD	10
Temple ISD	16
Waco ISD	17

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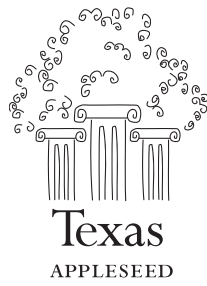
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Greenberg Traurig, LLP,\* *Houston*

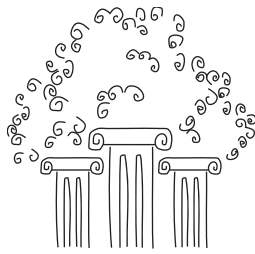
Mark Wawro  
Susman Godfrey L.L.P. \* *Houston*

Luis Wilmot  
*San Antonio*

*\*affiliations listed for identification only*



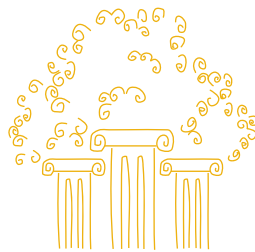
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