

Senate Education Committee
Written Testimony - Morgan Craven, Texas Appleseed
March 26, 2018

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

A major concern that many students, parents, educators, researchers, and advocates have with Chapter 37 of the Education Code, which covers “Discipline, Law and Order” in schools, is that it is heavily focused on exclusionary and criminal responses to misbehaviors in schools, including in-school suspensions, out-of-school suspensions, alternative school placements, expulsions, corporal punishment, restraints, complaints, arrests, and court referrals. These approaches are reactive, ineffective, and harmful to kids. These approaches push students out of class, out of the reach of adults (who, with appropriate training, could be supportive and watchful), and isolate them from their peers. We also know that some groups of children---African American, Latino, and kids with disabilities---are consistently over-represented in the punitive school discipline system even though they are not more likely to misbehave than their peers or, in the case of kids with disabilities, they may need different or additional supports from their schools. This all points to a need for changes to Chapter 37. We must encourage, incentivize, and monitor the use of research-based programs that have been shown to reduce behavioral incidents, equip educators with effective tools, hold school districts accountable, and actually give students what they need.

Discipline in Texas Schools: Background

Chapter 37 of the Texas Education Code essentially allows for Texas school districts to respond to student behavior in four general ways: discretionary removals, mandatory removals, school police, court, and probation referrals, and research-based alternatives to exclusion and criminalization.

Discretionary Removals

The Code instructs each school district to establish a Student Code of Conduct,¹ which, among other things, gives districts the power to establish “standards for student conduct” and the punishments that will result from violating those standards, including in-school suspensions, out-of-school suspensions, placements in Disciplinary Alternative Education Programs (DAEP), or other classroom and school removals.

These removals are called “discretionary,” because they are determined by the school district and executed by school administrators, but are not required by Chapter 37 or any other law. The “offenses” do not rise to the level of those specifically covered in the Code. The majority of school removals in Texas are discretionary, for violations of a school district’s Code of Conduct. All in-school and out-of-school suspensions are discretionary. In 2016-17, about 55% of DAEP placements were discretionary.²

The use of corporal punishment is also at the discretion of a school district. Parents with children in school districts that adopt corporal punishment policies who wish to opt out must do so, in writing, at the start of each school year.³

Mandatory Removals

The Code instructs school districts to remove students and place them in DAEPs, or expel them to a DAEP, Juvenile Justice Alternative Education Program, or to the street, for violations like drug or alcohol use, assault, or violations of the Penal Code. “Mandatory” describes removals made in response to specific offenses explicitly described in Chapter 37, but is actually a misnomer. The Code requires schools to consider four factors before *any* student is removed for *any* offense. A school must consider the student’s past discipline history, whether the student acted in self-defense, a student’s intent or lack of intent at the time of the conduct, and whether the student has a disability that substantially impairs their ability to appreciate the wrongfulness of their conduct.⁴

Despite the Code’s clear requirement that these four factors must be considered, Texas Appleseed receives frequent reports that some school administrators ignore these mitigating factors.

Police, Courts, and Referrals to Juvenile Probation:

Chapter 37 instructs school districts on the use of school police, Class C complaints (heard in adult criminal courts), and referrals to the justice system (juvenile court/probation for students under age 17). This means that students can be sent directly into the justice system for school based behaviors. School police officers (many of whom are untrained to interact with young people) are often called to handle non-

¹ Tex. Educ. Code § 37.001.

² Data can be found at <https://rptsvr1.tea.texas.gov/cgi/sas/broker>.

³ See Tex. Educ. Code § 37.0011.

⁴ Tex. Educ. Code § 37.001.

emergency, routine behavior issues and are able to arrest and use force against students, including tasers and pepper spray.

Research-based Alternatives to Exclusion

The majority of Chapter 37 focuses on exclusionary discipline and responses to school-based behaviors that criminalize students and send them into the justice system.

There are two main exceptions:

- Section 37.0012, requires schools to designate a Campus Behavior Coordinator, whose duties include contacting parents, disciplining students removed from class by their teachers (Sec. 37.002), and assisting with the development of behavior programs for students in grades below three in schools/districts that choose to adopt such programs (Sec. 37.0013).
- Section 37.002 describes the elements of an appropriate behavior program that does not rely on exclusionary discipline, but this section is focused on programs for students in grades below third grade, and is discretionary.

Despite research confirming the efficacy of programs like Positive Behavioral Interventions and Supports and Restorative Justice *and* the availability of training in these models through Regional Education Service Centers and other organizations, Chapter 37 currently provides little guidance or support for school districts to access and implement these models.

Unfortunately, some groups of students experience the harmful types of discipline described above at disproportionately high rates. For example, a recent report about Homeless Youth by Texas Appleseed and the Texas Network of Youth Services highlighted the number of homeless youth, particularly unaccompanied youth (young people who are not living with a parent or guardian), who are suspended out of school.⁵ Homeless youth are more than twice as likely than non-homeless youth to receive these punishments, mostly for Student Code of Conduct violations, not for more serious offenses. This means that schools are punishing students who have no stable home environment by sending them out of school for up to three days at a time. That is certainly no way to address or change behavior which could itself be caused by serious life challenges.

African American children and students with disabilities are consistently over-represented in the exclusionary discipline system and Latino students are over-

⁵ Texas Appleseed and the Texas Network of Youth Services, *Young, Alone, and Homeless in the Lone Star State*, p.44 (2017), available at https://www.texasappleseed.org/sites/default/files/YoungAloneHomeless_FullReport_fin.pdf.

represented in some punishments in some districts (see data section below). It is important to note that these students are disproportionately punished even though they are not more likely to misbehave than their peers.

The Impacts and Costs of Exclusionary Discipline

There are now four decades of research about the harms of pushing kids out of classrooms and schools through the use of exclusionary discipline. The most basic and obvious harm is missed learning and socialization time in the regular classroom with

teachers and peers. There are numerous other negative consequences that result from pushing kids out of class, rather than doing what works to address root issues, finding appropriate ways to support development, or giving educators the tools to appropriately manage their classrooms.

Academic Impacts - Individual Students

When students miss learning time in their regular classrooms with their teachers and peers, they can quickly fall behind academically and have trouble catching up. Students can be sent to in-school or out-of-school suspension for up to three days and to DAEP programs for anywhere from a few days to more than an entire school year. These removals can lead to significant lapses in learning and threaten students' chances of passing to the next grade and graduating.

Studies show that:

- **Students who are suspended or expelled are more likely to repeat a grade or drop out.** Through a review of millions of school and juvenile justice records for Texas students between seventh and twelfth grades, researchers found that 31% of students who were suspended or expelled repeated a grade, while only 5% of students who were not suspended or expelled repeated a grade. Additionally, about 10% of students who were suspended or expelled dropped out of school.⁶
- **Exclusionary discipline and the resulting missed classroom time widen achievement gaps.** Researchers estimate that, in schools across the country, exclusionary discipline leads to the equivalent of 18 million days of instruction in one school year. Missed time “damages student performance” and has been shown to impact standardized test scores.⁷

⁶ The Council of State Gov'ts and Public Policy Research Institute, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, 2011, available at https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

⁷ Losen, Daniel, et. al, *Are We Closing the School Discipline Gap?*, (February 2015), available at https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf.

- **Students who are suspended have lower standardized reading scores compared to non-suspended students.** Additionally, among suspended students, scores were lower for students who were suspended longer.⁸

Impacts on School Climate and Academic Achievement:

When educators and administrators rely on removals, instead of doing the work to find solutions that actually change behavior, other students in the class and school are harmed, too. Many of the research-based behavior programs that work are based on the idea that positive behavior can and should become part of the entire school environment, so that every educator, staff member, and student knows what the expectations are and can follow them, and the school can provide additional supports to those who struggle to meet expectations. Simply excluding students who have challenging behaviors destabilizes this system of monitoring and care.

Studies show that:

- **The use of classroom exclusions is associated with less satisfactory school climate⁹ ratings and lower school-wide academic achievement for ALL students, not just those who are excluded from their classrooms.¹⁰** The grades of all students and the climate and safety of the entire school can be negatively impacted when schools use exclusionary discipline to punish students.
- **Reductions in suspensions, even for relatively serious offenses, have a positive impact on test scores.** A study of seven years of suspension data from Chicago schools revealed that when schools reduced reliance on suspensions for severe

⁸ Arcia, E. (2006). *Achievement and enrollment status of suspended students: Outcomes in a large, multicultural school district*. *Education and Urban Society*, 38, 359–369.

⁹ According to the Region 10 Education Service Center: “The connection between school climate and student achievement has been well-established in research. Focusing on the development of a campus’s climate as a learning environment is fundamental to improved teacher morale and student achievement. Formally assessing and addressing school climate is essential to any school’s effort toward successful school reform, achievement, and making a difference for underprivileged student groups. Indicators of a positive school climate and welcoming learning environment are increased attendance and reduced discipline referrals.” <https://www.region10.org/programs/title-i-capacity-building-initiative/best-practices/critical-success-factors/6-improve-school-climate/>.

¹⁰ Skiba, Russell, et. al, *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, A Report by the American Psychological Association Zero Tolerance Taskforce (2006) available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

behaviors, test scores, attendance, and overall school climate perceptions increased.¹¹

- **Higher levels of exclusionary discipline can negatively impact the academic achievement of non-suspended students.** Researchers analyzed student records over time and concluded that an overly punitive school discipline system creates collateral consequences for non-suspended students who are exposed to the hostile environments caused by harsh discipline.¹²

Impacts on Student Contact with the Justice System:

One of the seminal studies on the impacts of exclusionary discipline was conducted in Texas and published in 2011. The report, called *Breaking Schools' Rules*, was published by the Council of State Governments and the Public Policy Research Institute.¹³ The researchers examined millions of individual school and juvenile justice records for all seventh grade public students in Texas as they moved through school, over a six year period. They identified over 80 variables in order to determine the drivers and the consequences of suspensions, alternative school placements, and expulsions on academic achievement and contact with the justice system.

Among the main findings of this study were: 1. Almost six out of 10 Texas public school students were suspended or expelled between seventh and twelfth grades; 2. When controlling for all other factors, other than race, African American students were 31% more likely to receive a discretionary punishment (that is, one based on a violation of a Student Code of Conduct, not a more serious violation of the law); 3. Three quarters of students who qualified for special ed services were suspended or expelled at least once; and 4. Students who were suspended or expelled for discretionary reasons were almost three times more likely than their non-punished peers to have contact with the juvenile justice system within a year.

Not only do exclusions like suspensions predict contact with the justice system, but schools across the state use the adult and juvenile justice systems to respond directly to student behavior with disturbing frequency. The use of Class C misdemeanor complaints

¹¹ Hinze-Pifer, Rebecca & Lauren Sartain (2018) *Rethinking Universal Suspension for Severe Student Behavior*, *Peabody Journal of Education*, DOI: [10.1080/0161956X.2018.1435051](https://doi.org/10.1080/0161956X.2018.1435051)

¹² Perry, Brea L. and Edward W. Morris, *Collateral Consequences of Exclusionary Punishment in Public Schools*, *American Sociological Review*, 2014.

¹³ The Council of State Gov'ts and Public Policy Research Institute, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, 2011, available at https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

and referrals to juvenile probation create a straight path from school to court contact and incarceration.¹⁴

Economic Impacts:

Other studies have since relied on the incredible, Texas-specific dataset from *Breaking Schools' Rules*. One such study estimated that the costs of grade retention due to exclusionary discipline in Texas total approximately \$71 million dollars each year.¹⁵ That

number was calculated by multiplying the cost of an additional year of education by the number of students whose grade retention was found to be related to the use of exclusionary discipline. Based on the average cost per year for the 2016-17 school year, that cost now likely exceeds \$75 million. That does not include *at least* an additional \$711 million dollars in individual and social costs, including lost wages, lost sales tax revenue from decreased wages, and increased social program expenditures for students who drop out of school for reasons related to school discipline.

And we know that justice system involvement presents additional costs to systems statewide and makes it more challenging for students to go on to apply for jobs, enroll in college, and enlist in the military.

Policy Recommendations

- 1. Utilize research-based behavior programs:** There are a number of age-appropriate, research-based programs that work to model behavior expectations, give appropriate consequences, and identify when additional supports and services are needed to address the root causes of behavior challenges.¹⁶ Often these models focus on a tiered approach to changing behavior, starting with schoolwide methods and supports, and addressing individual student needs as they are identified. Examples of these models include Positive Behavioral Interventions and Supports and Restorative Justice. Many Regional Education Service Centers (ESC) already have resources and trained staff members who can provide help to school districts. For example, TEA partnered with the University of Texas School of Social Work to provide training to ESCs in Restorative

¹⁴ See Texas Appleseed, *Dangerous Discipline: How Texas Schools are Relying on Law Enforcement, Courts, and Juvenile Probation to Discipline Students* (2016), available at <http://stories.texasappleseed.org/dangerous-discipline> .

¹⁵ Marchbanks, et. al, *The Economic Effects of Exclusionary Discipline on Grade Retention and High School Dropout* (2015) available at <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/the-economic-effects-of-exclusionary-discipline-on-grade-retention-and-high-school-dropout/marchbanks-exclusionary-discipline-ccrr-conf.pdf>

¹⁶ See Best Practices Chapter, *Dangerous Discipline*, available at <http://stories.texasappleseed.org/dangerous-discipline> .

Justice.¹⁷ And the Texas Behavior Support Network exists to make sure all ESCs have access to PBIS training and resources in order to support all Texas schoolchildren.¹⁸

Access to these and other resources should be streamlined and easy for any district in the state, especially rural districts that may not have easy access to local organizations and experts that can provide training. The cost should be low so that providing supports for educators and students is an easier choice for school districts to make.

2. **Create an accountability system:** There must be an accountability system in place to ensure: 1) school districts and campuses reduce the use of exclusionary discipline and 2) school districts and campuses adopt research-based behavior programs and implement them with fidelity. While TEA collects exclusionary discipline data and makes portions of it available on its website, there could and should be a more robust and user-friendly system of tracking discipline data and showing changes over time. Some states, like Georgia, include a discipline dashboard on their website, and include the use of exclusionary discipline in their school rating system (under the state's school climate metric, which is an indicator of academic achievement).¹⁹

It is not enough to simply monitor the use of exclusionary discipline, we should also monitor the implementation of behavior programs that actually work. This will ensure that school districts are reducing harmful behaviors *and* adopting systems to support teachers and students.

After collecting this data, there should be incentives to encourage school districts to utilize appropriate programs and sanctions put into place to respond to school districts that fail to reduce the use of exclusionary discipline. Currently, the only time that school districts receive notice about (and are required to act in response to) inappropriate disparities in the disciplining of students is when they are asked to correct possible data deficiencies through the agency's Data Validation Monitoring System.²⁰ This notice is strictly about the recording of data, not the underlying inappropriate actions that led to the over- and misuse of exclusionary discipline.

¹⁷ See https://tea.texas.gov/Restorative_Discipline/ .

¹⁸ See <http://www.txbehaviorsupport.org/about-tbs/about-us> .

¹⁹ See <http://www.gadoe.org/Georgia-Insights/Pages/School-Climate-Star-Rating.aspx> .

²⁰ See https://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/2016-2017_Data_Validation_Monitoring_Discipline_Records_Staging/ .

3. **Hire and support professionals that focus on prevention and intervention:**
More support and funding should be given to hiring and supporting professionals like social workers, counselors, psychiatrists, and mental and behavioral health experts. When schools have access to these professionals, they can use them to provide support to educators and students and identify needs *before* they become behavior challenges.

Data from the State and Select School Districts

The data below were collected from the Texas Education Agency through Open Records Requests or are available at www.teatexas.gov.

Statewide Data

For the 2016-17 school year, TEA reports²¹ that there were **575,031 students** in Texas public schools who were suspended (in-school and out-of-school), placed in Disciplinary Alternative Education Programs, or expelled to Juvenile Justice Alternative Education Programs or to the street. Some of those students received multiple punishments---TEA reports that the total number of **discipline incidents was 1,652,775** in 2016-17. The breakdown of punishments, according to TEA is as follows (“count of students” refers to individual students, and not to the total number of actions or referrals, which may be greater to account for students are punished more than once):

²¹ Data can be found at <https://rptsvr1.tea.texas.gov/cgi/sas/broker> .

| | |
|---------------------------------------|---------|
| COUNT OF STUDENTS EXPELLED TO JJAEP | 2,255 |
| MANDATORY EXPULSIONS TO JJAEP | 1,157 |
| DISCRETIONARY EXPULSIONS TO JJAEP | 1,183 |
| COUNT OF STUDENTS EXPELLED | 3,671 |
| MANDATORY EXPULSIONS | 1,583 |
| DISCRETIONARY EXPULSIONS | 2,288 |
| COUNT OF STUDENTS REMOVED TO A DAEP | 72,380 |
| MANDATORY DAEP REMOVALS | 39,503 |
| DISCRETIONARY DAEP REMOVALS | 47,952 |
| COUNT OF STUDENTS SUSPENDED IN SCHOOL | 475,593 |
| STUDENTS SUSPENDED OUT OF SCHOOL | 226,039 |

It is important to note the difference between discretionary and mandatory referrals. Discretionary referrals are for violations of a district's Student Code of Conduct. Mandatory referrals are made for violations described in Chapter 37 of the Education Code, though even these do not actually require removal since school administrators are instructed to consider several mitigating factors before removing any student.

The data below show the number of students referred and the total number of placements in Disciplinary Alternative Education Programs (DAEPs), disaggregated by race and special education status during the 2016-17 school year.

| | |
|--------------------------------------|--------|
| SPEC. ED. STUDENTS IN DAEP PLACEMENT | 11,808 |
| SPEC. ED. DAEP PLACEMENTS | 14,534 |
| NON SPEC. ED. DAEP PLACEMENTS | 72,921 |

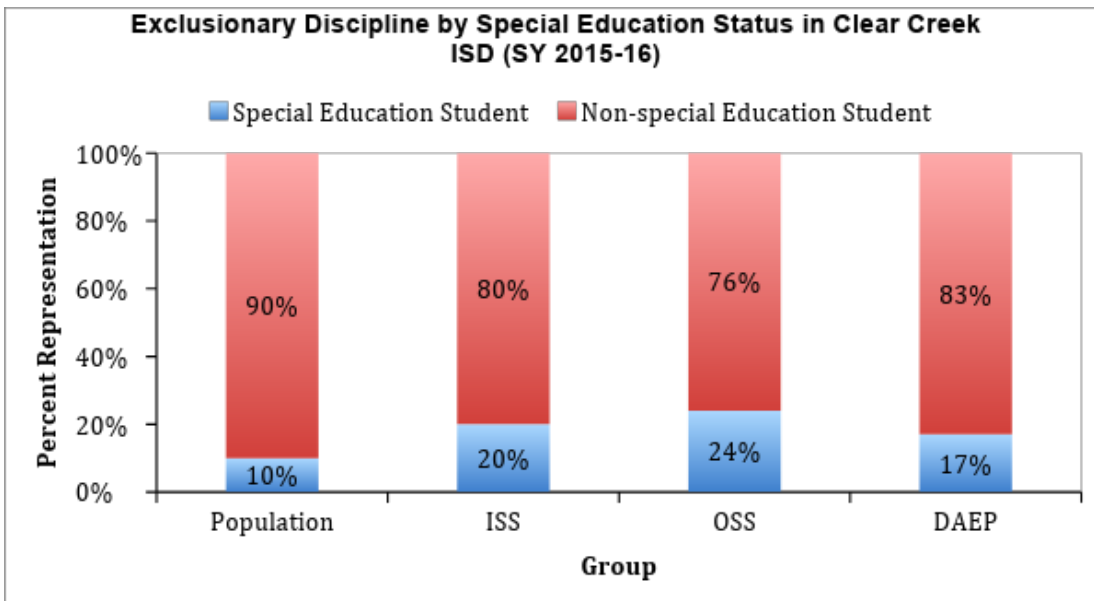
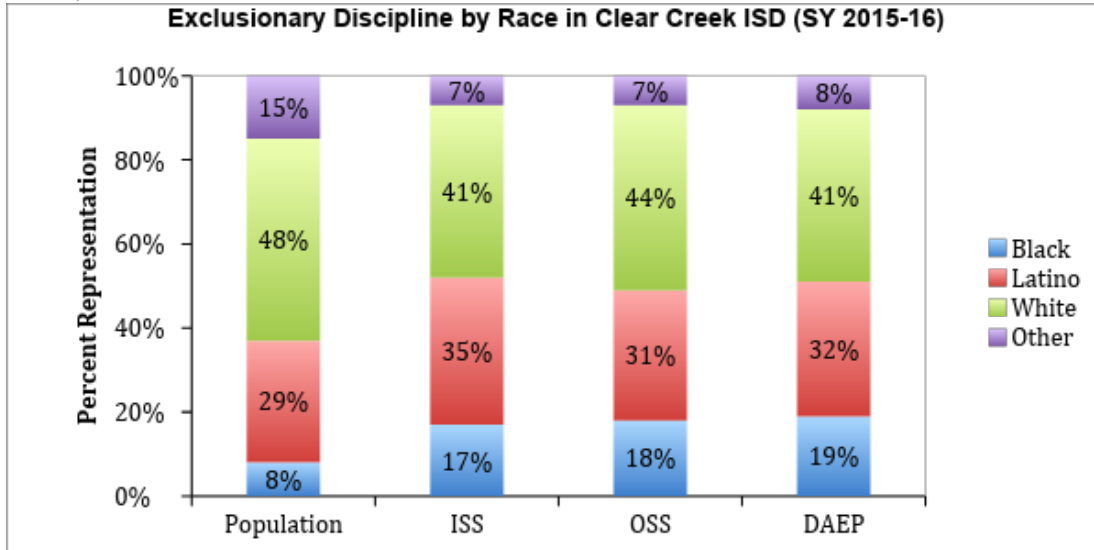
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|-------------------------------|--------|
| AMERICAN INDIAN OR ALASKA NAT | 310 |
| ASIAN | 534 |
| BLACK OR AFRICAN AMERICAN | 21,121 |
| HISPANIC/LATINO | 45,837 |
| NATIVE HAWAIIAN/OTHER PACIFIC | 86 |
| TWO OR MORE RACES | 1,739 |
| WHITE | 17,828 |

For comparison, in the 2016-17 school year:

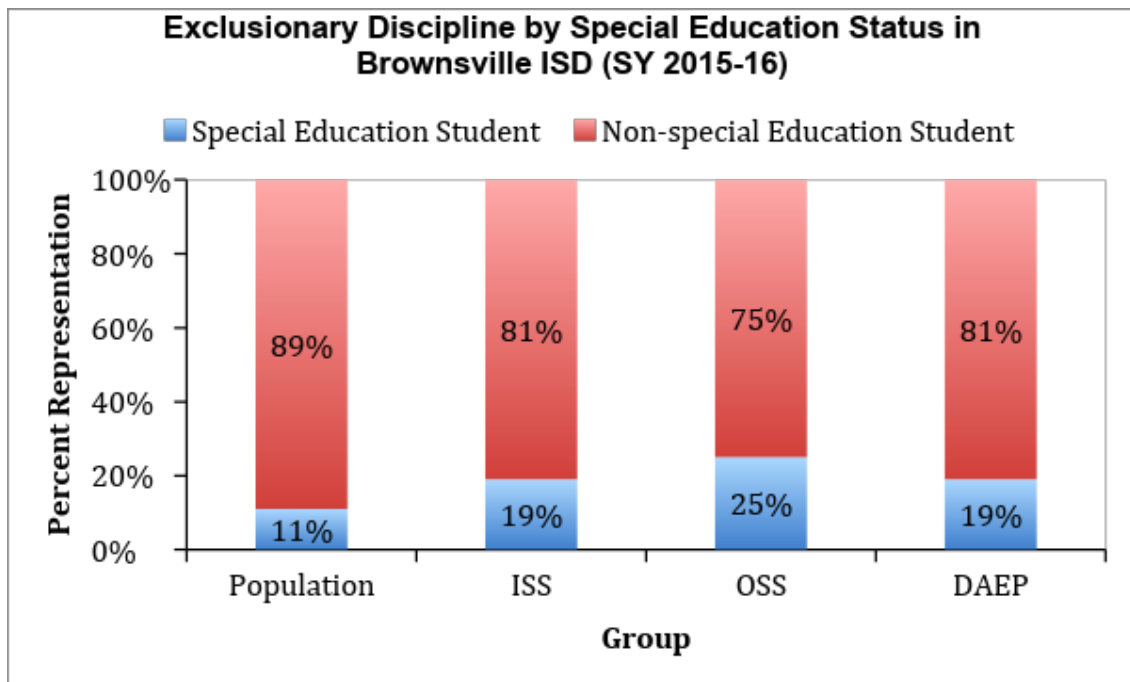
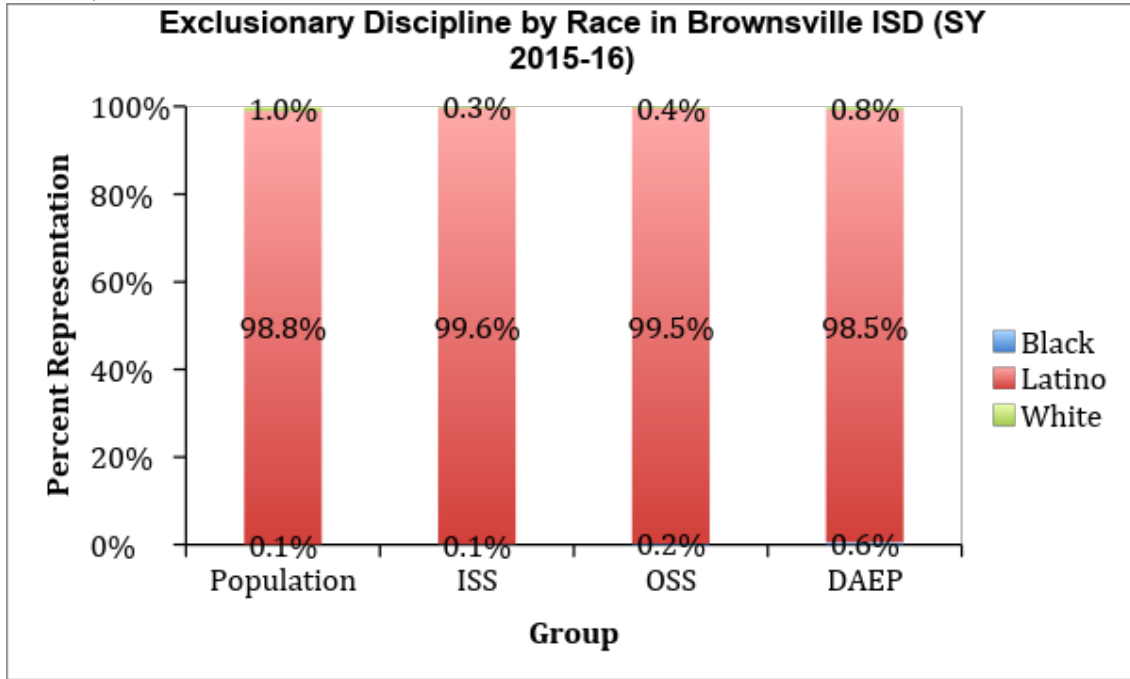
- Students with special education needs made up 8.8% of the student population, but accounted for 16.6% of DAEP placements.
- Black or African American students made up 12.6% of the student population, but accounted for 24.1% of DAEP placements.
- Hispanic students made up 52.4% of the student population, and accounted for 52.4% of DAEP placements.
- White students made up 28.1% of the student population, but accounted for 20.3% of DAEP placements.

Below are some district-specific data for school removals:

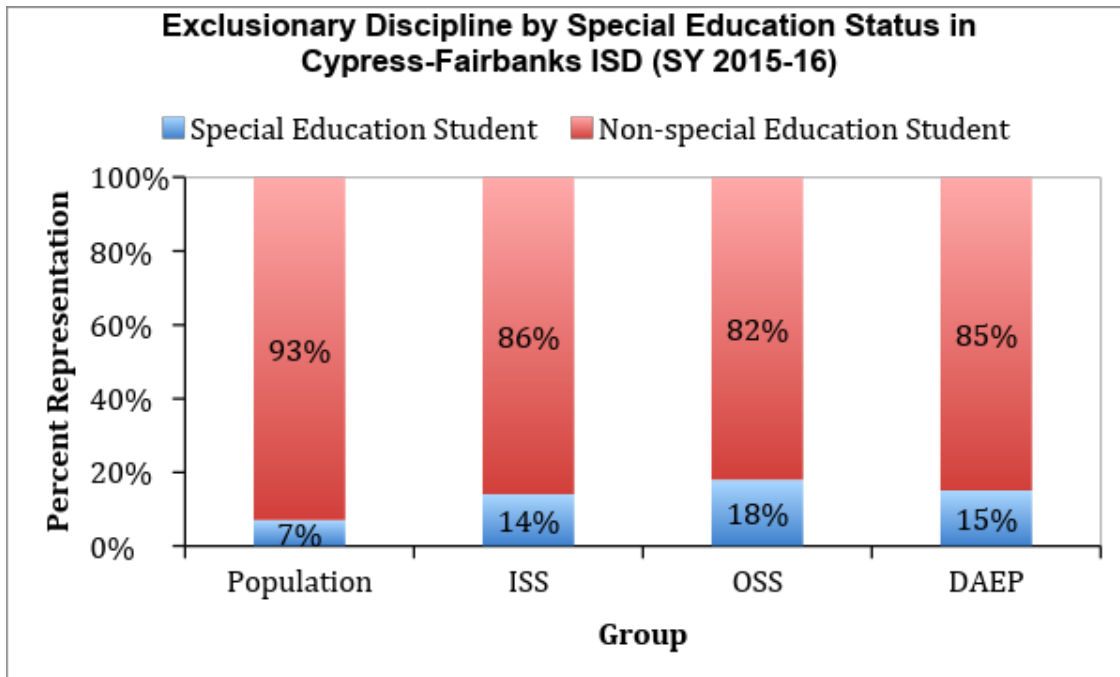
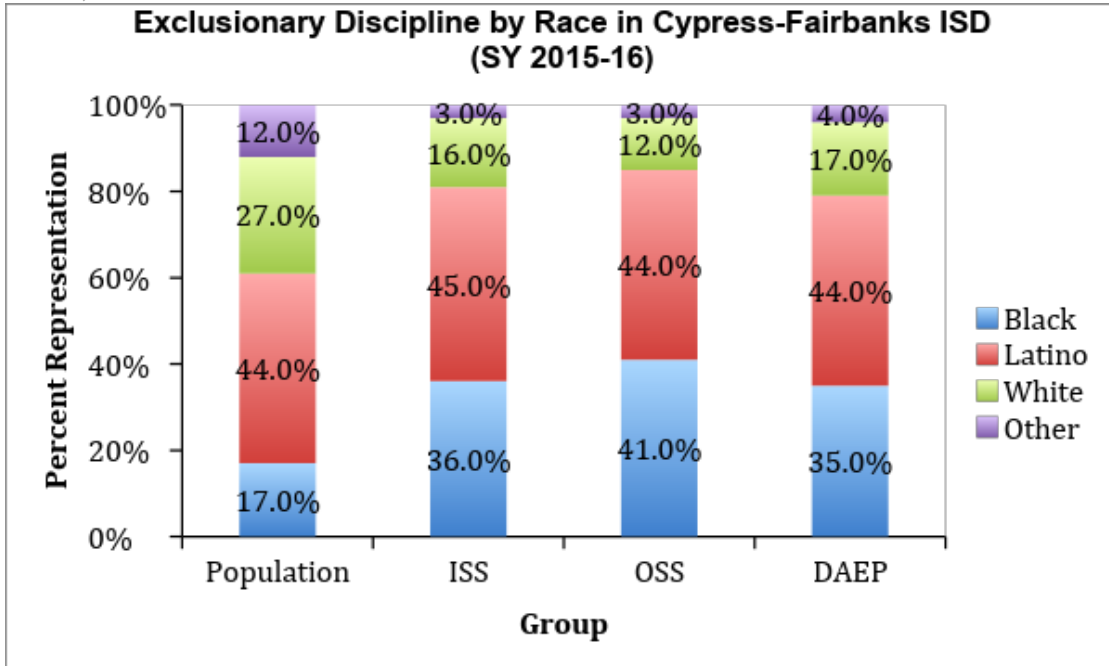
Clear Creek ISD



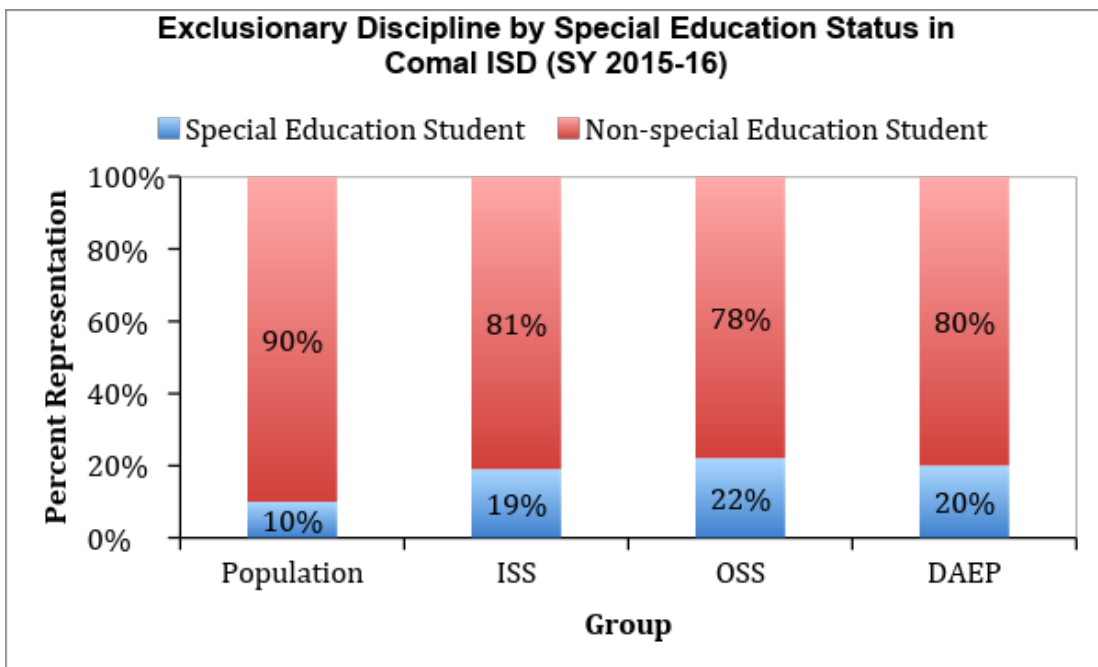
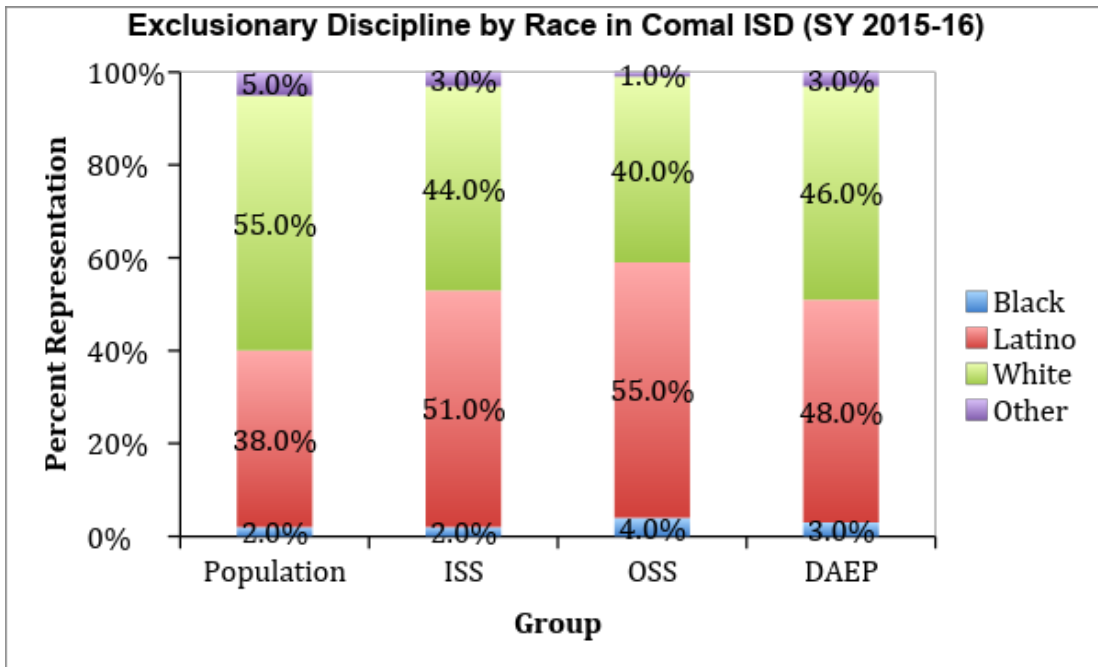
Brownsville ISD



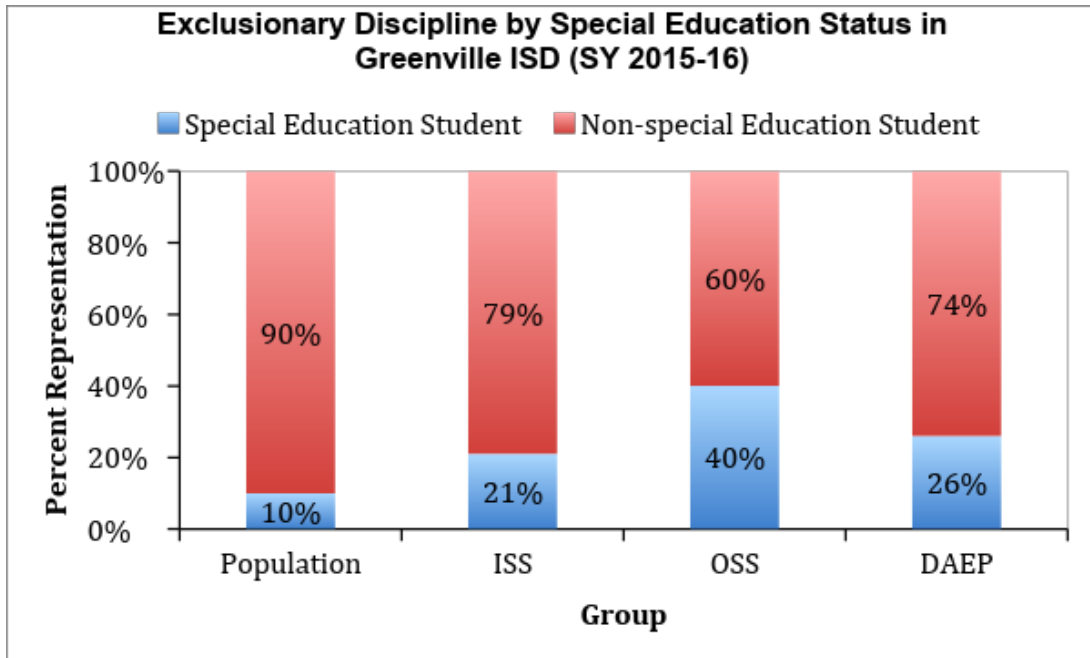
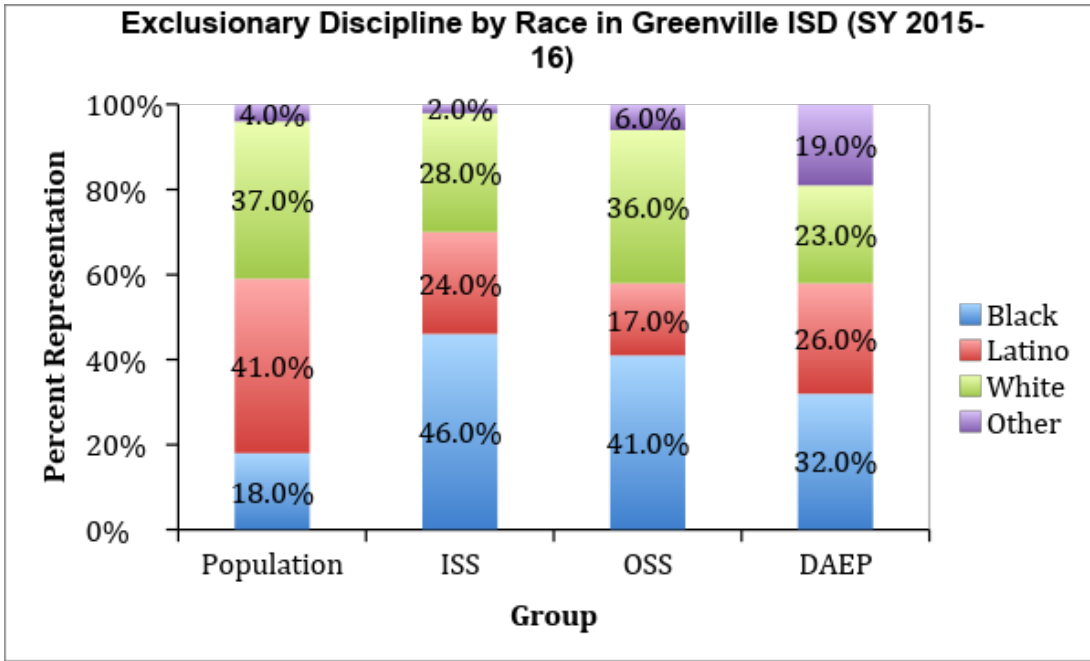
Cypress-Fairbanks ISD



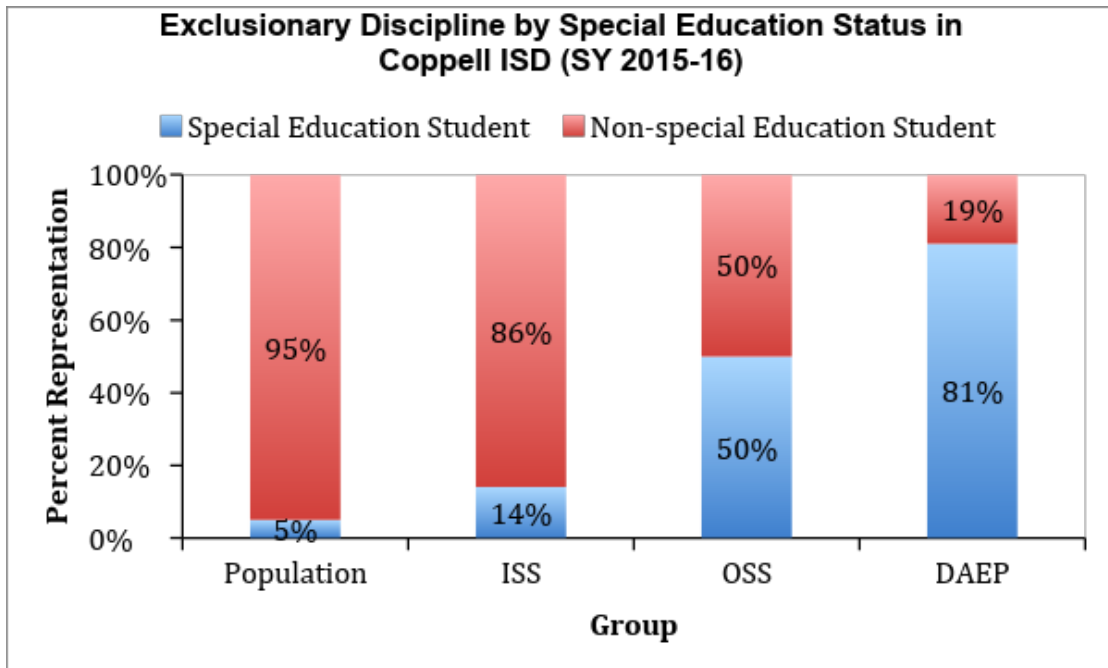
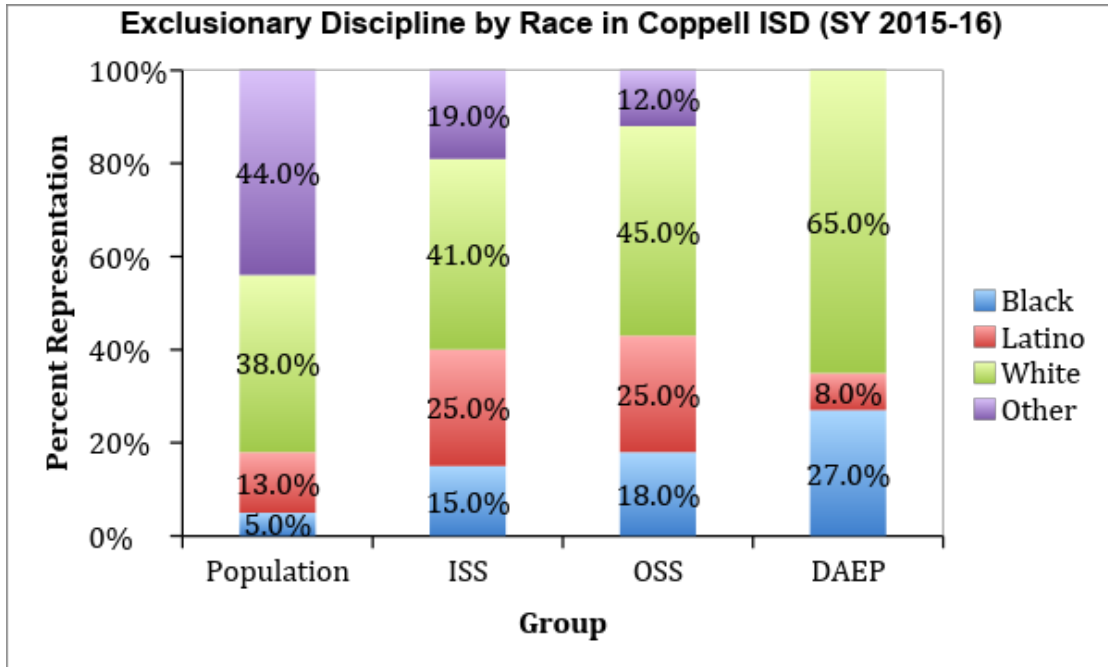
Comal ISD



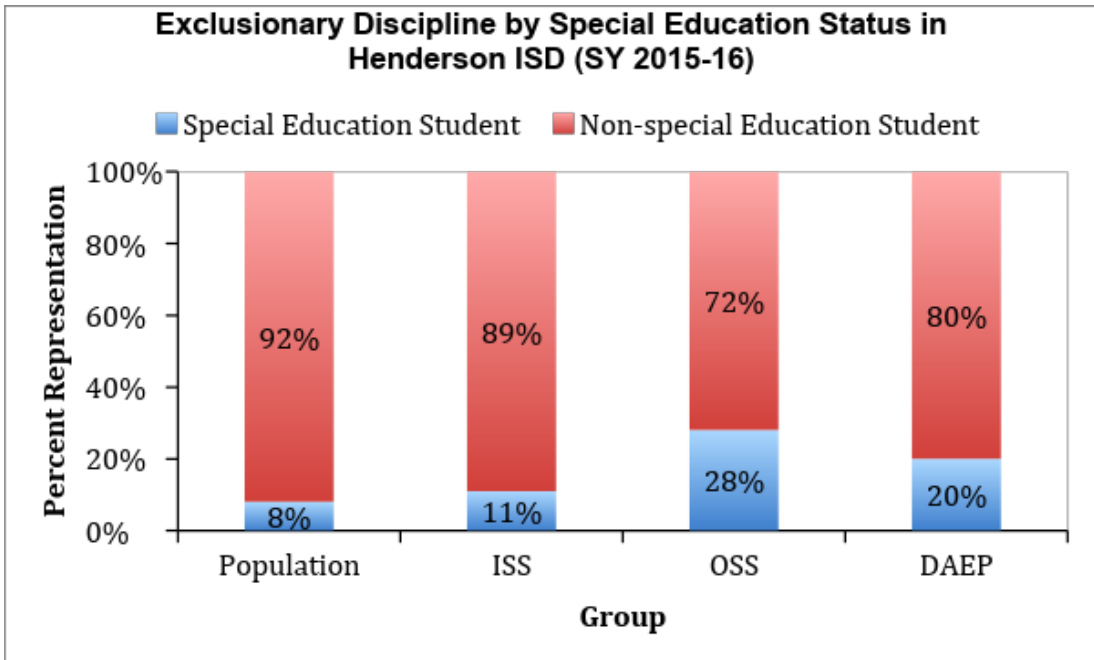
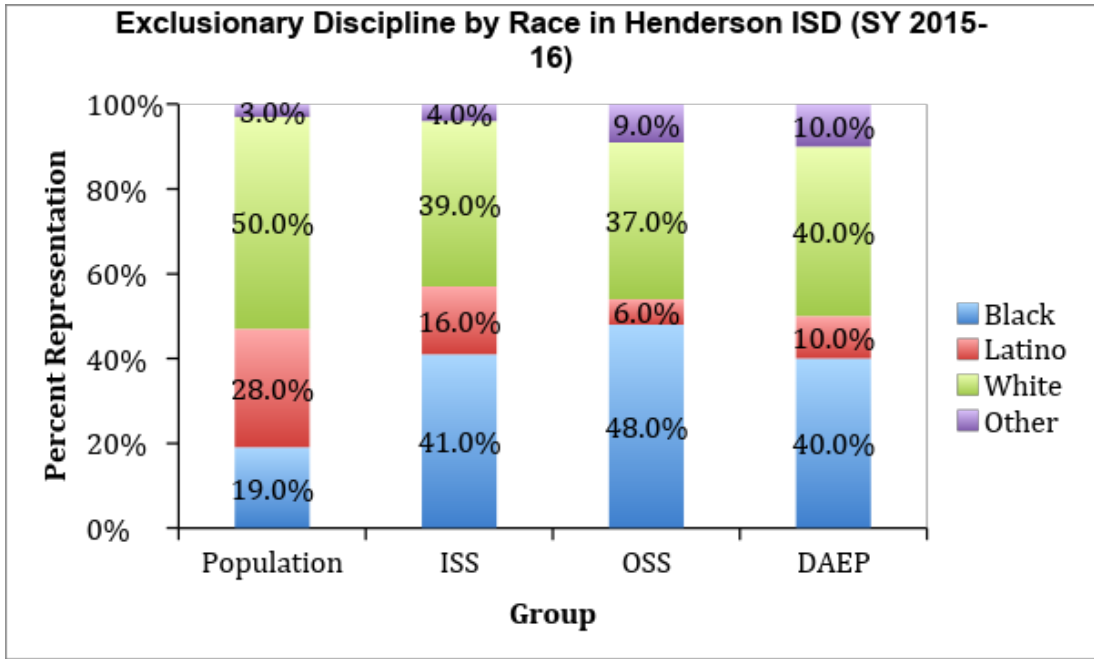
Greenville ISD



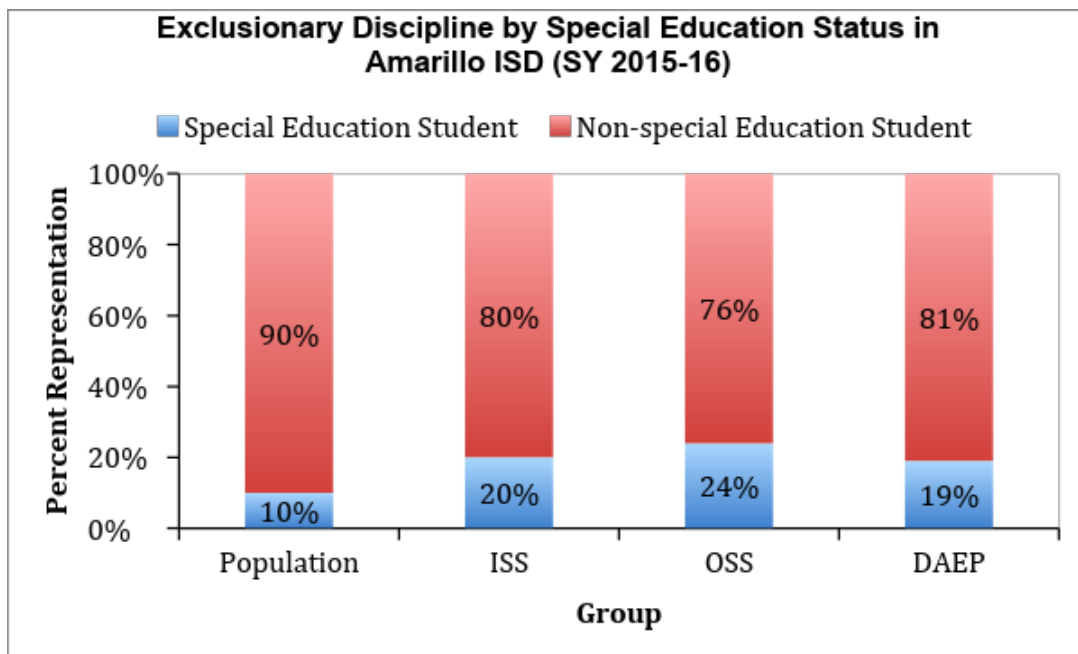
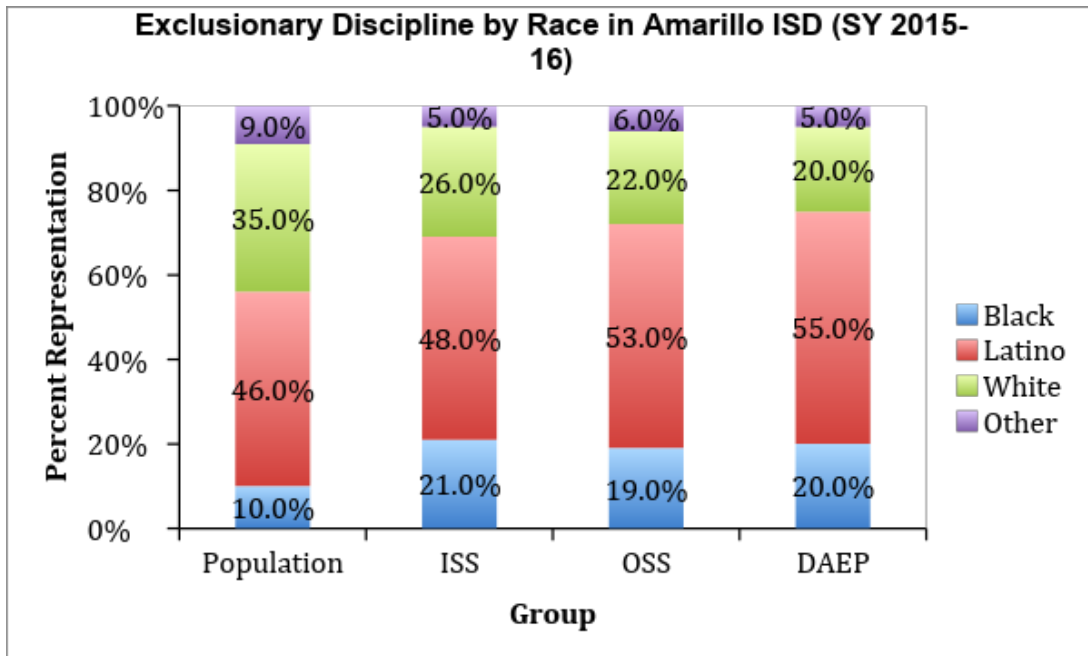
Coppell ISD



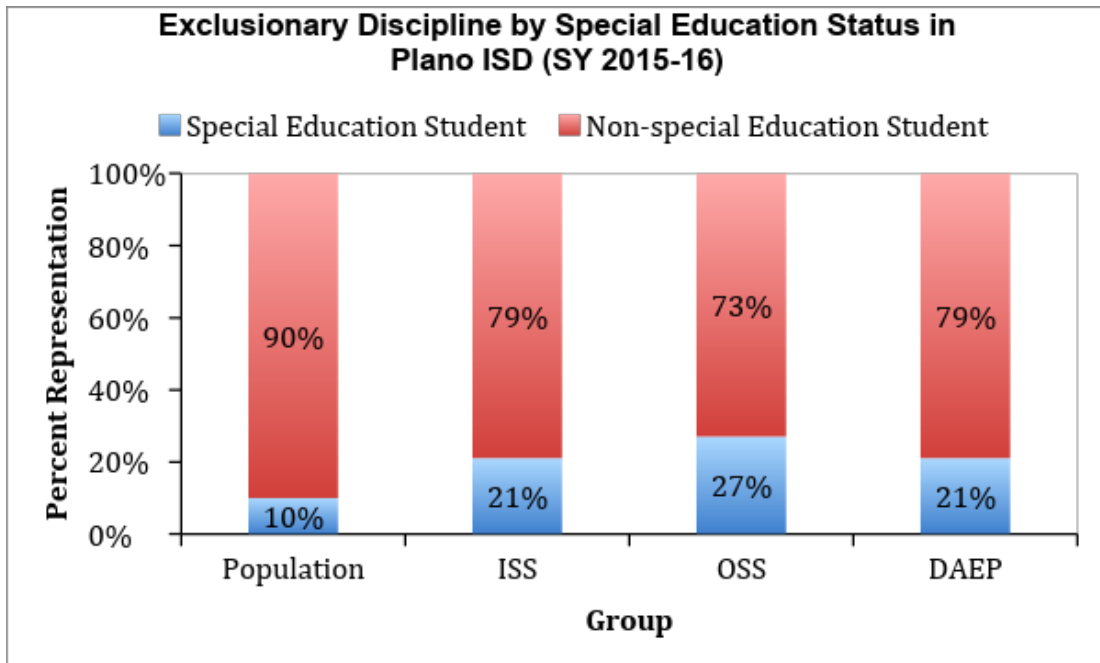
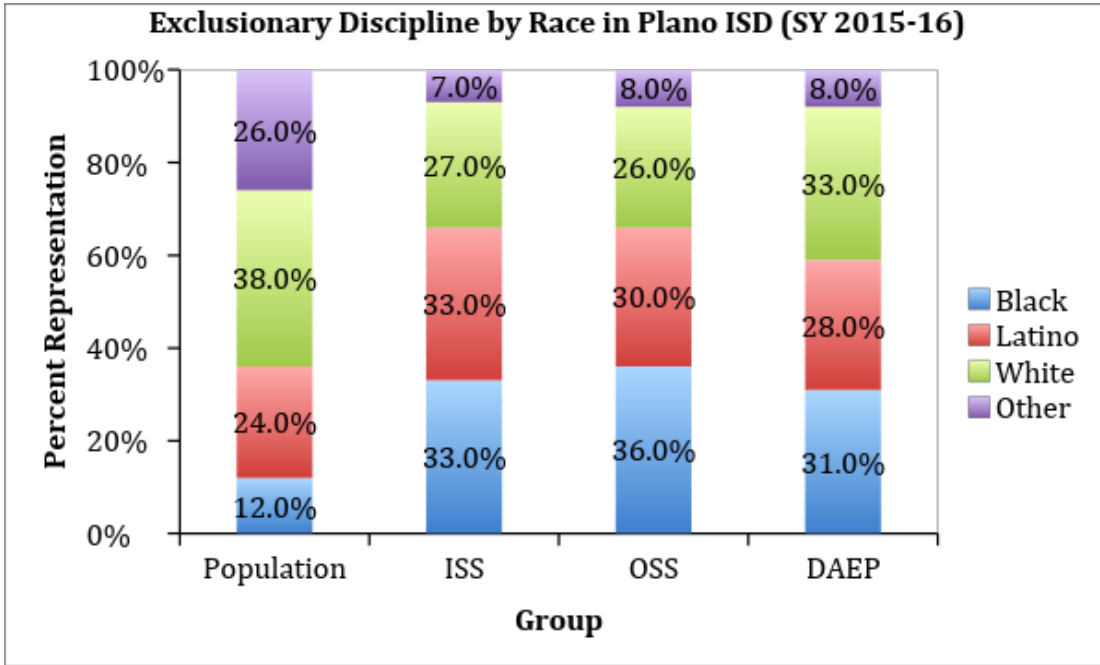
Henderson ISD



Amarillo ISD



Plano ISD



Cedar Hill ISD

