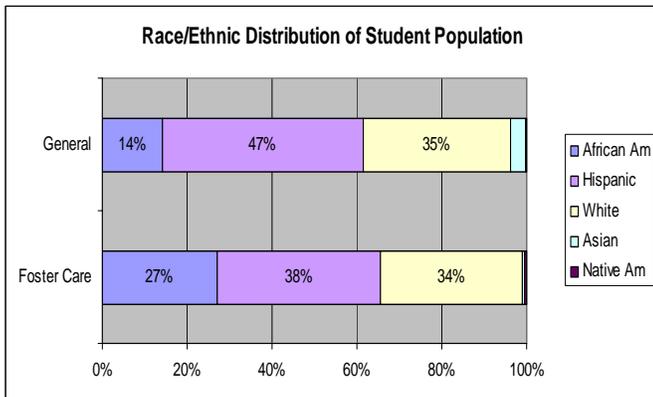


THE TEXAS SCHOOL DISCIPLINARY SYSTEM AND FOSTER CARE CHILDREN

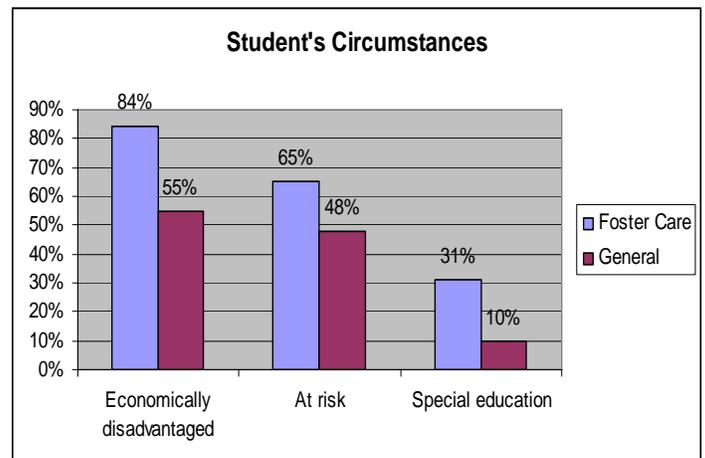
Students¹ in foster care² are under the managing conservatorship of the Department of Family and Protective Services (DFPS) because of abuse or neglect. Research shows that abused and neglected children commonly struggle with social interactions. They are much more likely than their peers to misinterpret neutral situations as threatening, have poor impulse control, and engage in aggressive behavior with adults and other children. These behaviors present public schools with difficult challenges. Tracking how schools meet these challenges is difficult, however, because no public data exist on outcomes for students in foster care. The Texas Education Agency (TEA) does not identify a child's foster care status in its Public Education Information Management System (PEIMS) database. Recently, however, TEA generated some data on foster care children in response to a special request from the House Public Education Committee, which we used for our analysis.³ Continuing our effort to explore school outcomes for students in foster care,⁴ in this paper we compare students in foster care to the general student population and explore differences in how they fare in the school discipline system.⁵

Students in Foster Care Differ from the General Student Population

African-American children are more likely to be in foster care while Hispanic children are less likely to be in foster care.⁶ The same racial disparities are reflected in the student population. Students in foster care are more likely to be African American and less likely to be Hispanic as compared to the general student population.



Students in foster care are also more likely to have difficult circumstances. As illustrated in the chart below, they are more likely to be economically disadvantaged⁷, at-risk of falling behind or dropping out⁸ and need special education services.



Students in Foster Care Face Developmental And Emotional Challenges

Perhaps the most important way in which foster care students differ from the general student population is chronic exposure to stress during critical years of physical, emotional, and social development.⁹ Children who have been abused and neglected often have perpetually abnormal secretions of cortisol, the fight-or-flight hormone.¹⁰ Chronic over-stimulation of anxiety and fear responses can cause a cascade of changes in attention, impulse control, sleep, and fine motor control.¹¹ The chronic exposure to stress also makes abused and neglected children hyper-vigilant, alert to subtle signs that they need to protect themselves.¹² Although this chronic state of physiological arousal may be adaptive for surviving in an abusive environment, it may cause the children to overreact to or misinterpret social interactions whereby positive or neutral actions are perceived as hostile.¹³ As a result, abused and neglected children often have difficulties getting along with classmates and may attempt to provoke fights.¹⁴ Abused and neglected children also have more difficulty paying attention in school. To learn and incorporate new information, whether it is a lesson in the classroom or a new social experience, the child's brain must be in a state of "attentive calm," a state the traumatized child rarely achieves.¹⁵

Given these circumstances, it is not surprising that students in foster care are much more likely to receive special education services for an emotional disturbance. 11 percent of students in foster care are identified as having this special education disability versus less than 1 percent in the general population.

Students in Foster Care Have Worse Discipline Outcomes as Compared to the General Student Population

The TEA data addresses five disciplinary outcomes¹⁶:

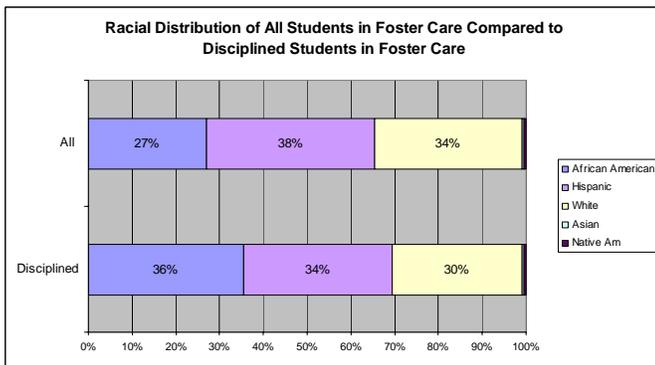
- In-School Suspension (ISS) - a student is removed from his or her regular educational setting, usually temporarily;
- Out-of-School Suspension (OSS) - a student is removed from school for a maximum of three days per offense;
- Disciplinary Alternative Education Placement (DAEP) - instruction is provided in a setting other than a student's regular classroom and is located on or off of a regular school campus, for a period of time determined by the sending school;
- Juvenile Justice Alternative Education Placement (JJAEP) – an alternative educational setting in which the child is supervised by the Texas Juvenile Probation Commission; currently, only large counties must have a JJAEP program, in other counties JJAEP program is optional.¹⁷
- Expulsion – after a due process hearing the student is removed to either no educational setting, a JJAEP or to a DAEP;

Under the Texas Education Code, expulsion, a JJAEP or a DAEP is mandatory for certain behaviors such as weapons, serious crimes, assault, retaliating against a school employee, making a false report or having drugs or alcohol.¹⁸ For all other behaviors, the discipline action is discretionary and based on each school district's own code of conduct.¹⁹

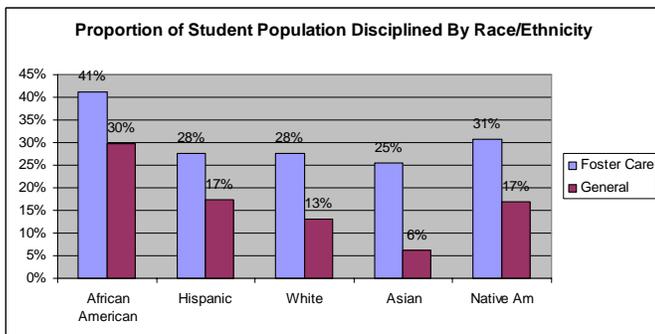
There are other disciplinary outcomes that TEA does not collect at a state level and so are not included in the data.²⁰ These include Class C Misdemeanor citations issued for violations of school policy. The use of corporal punishment, which is allowed in some school districts, is also not tracked by TEA. Additional outcomes that are not counted in the data include detention, extra assignments, community service at school, or other non-formal interventions.

Proportion of Student Population that is Disciplined

Looking at the TEA data we do have, students in foster care are almost twice as likely to be disciplined. 31 percent of all students in foster care received at least one discipline action versus 17 percent of the general student population.²¹ A recent Texas Appleseed study found that the general African American student population in Texas was more likely to be disciplined as compared to students of other races and ethnicities.²² As African Americans children are more likely to be in foster care, we looked at whether race drives the disparity for students in foster care. Similar to the Texas Appleseed study, we found African American students in foster care are more likely to be disciplined as compared to other races or ethnicities in foster care.



But for all races and ethnicities, students in foster care are disciplined at a higher rate as compared to the general student population, indicating that race does not fully account for the disparity.

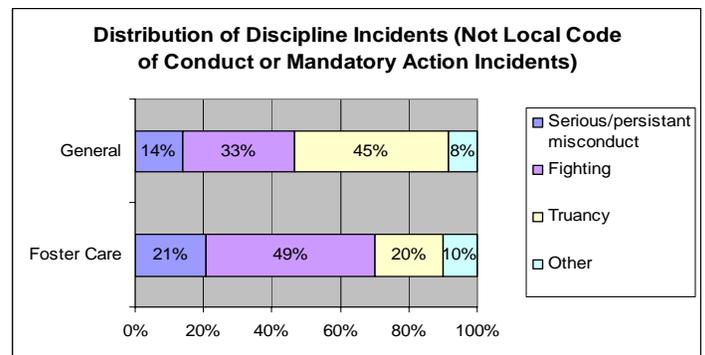


In other words, being in foster care, regardless of race or ethnicity, makes it more likely that a student will be disciplined.

Discipline Incidents

With respect to the type of behavior that results in a discipline action, neither students in foster care nor those in the general student population are likely to be involved with serious incidents that mandate a JJAEP, expulsion or DAEP. About 1.5 percent of incidents for both populations involved such actions.²³

Ninety-one percent of the discipline incidents for both students in foster care and students in the general population involve the general category of violating a local code of conduct. It is unclear exactly what behavior falls into this category because each district develops its own code, so we cannot determine whether differences exist between students in foster care and the general student population. But excluding this category and mandatory action incidents, differences between students in foster care and the general population emerge.²⁴ Discipline incidents involving students in foster care are much more likely to entail serious or persistent misconduct and fighting and much less likely to entail truancy.

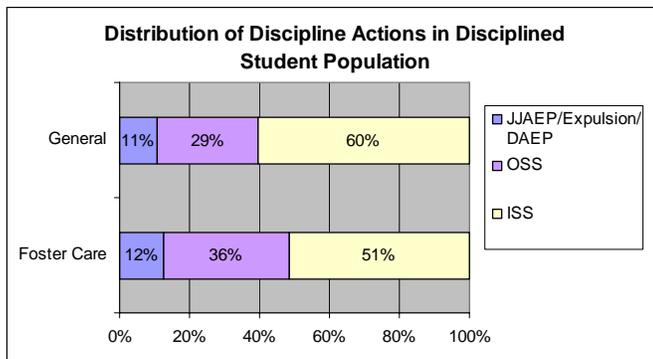


Students in foster care often have difficulty in appropriately navigating social interactions and responding to authority, which most likely contributes to the higher proportion of serious or persistent misconduct and fighting incidents.

With respect to the lower rate of truancy, it may be that living in the more structured foster care environment simply gives them less opportunity to skip school. Or it could be that students in foster care that would be prone to truancy simply drop out of school instead. With the data currently available, there is no way to determine exactly why the differences exist.

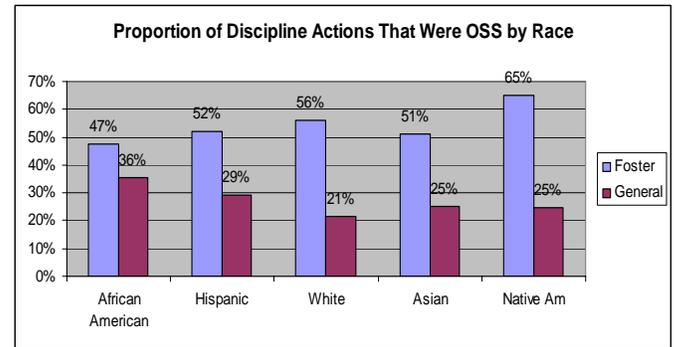
Discipline Actions

Looking at the population of disciplined students, students in foster care and the general student population receive the most serious discipline actions, (JJAEP, expulsion or DAEP) at similar rates—about 12 percent for students in foster care versus about 11 percent for students in the general student population.²⁵ But for those who receive suspension, it appears that students in foster care disproportionately receive out-of-school suspension.



As all of the suspension actions are based on a district's local code of conduct, and these vary widely across Texas, it is impossible to determine why the difference exists.

All race and ethnicities in foster care were more likely to receive an out-of-school suspension compared to the general student population. In other words, being in foster care, regardless of race or ethnicity, increased the likelihood that a disciplined student would receive an out-of-school suspension.



The Interplay between Discipline Incidents and Actions

The interplay between discipline incidents and discipline actions is more complicated. A discipline incident can involve one or more students (e.g., a fight between two students). A discipline incident can also involve more than one discipline action (e.g. a child who brings a weapon to school gets both an out-of-school suspension and a DAEP). As a result, the total number of discipline actions is likely to be higher than the total number of discipline incidents. Looking at the data, this is true for both students in foster care and students in the general population. But the magnitude of the difference varies greatly.²⁶ For every incident involving a student in foster care there are an average of two discipline actions. But for every incident involving the general student population there is only an average of 1.1 discipline actions. This means that students in foster care are either much more likely to have incidents that involve multiple students and/or they are much more likely to receive multiple actions for each incident.

Texas' Formal Discipline System is not Meeting the Special Needs of Students in Foster Care

Students in foster care have worse discipline outcomes compared to the general student population. Although the racial and ethnic make-up of students in foster care differs from the general student population, it does not appear that these racial differences alone account for the disparities. Instead, it seems likely that the difficult circumstances facing students in foster care contribute to

their higher rate of discipline incidents. But other factors may affect outcomes as well. For example, students in foster care may be concentrated in school districts with tougher discipline policies. Without a comprehensive statistical analysis using individual level student data, however, we cannot make any firm conclusions about why the disparities exist.

But it is clear that the Texas' formal discipline system is not structured to meet the special needs of students in foster care. Because of their background and circumstances, students in foster care have difficulty in appropriately navigating social interactions and responding to authority. To help address and resolve these problems, studies have shown that the children need nurturance, stability, predictability, understanding, and support.²⁷ Interventions should address the totality of the child's life, providing frequent, consistent 'replacement' experiences so that the child's brain can begin to incorporate a new environment—one that is safe, predictable, and nurturing.²⁸ Positive behavior supports (PBS) is one model that uses such an approach. It involves school-wide clear communication of expected behavior, reinforcing positive behaviors, and redirecting and de-escalating problem behaviors. Research shows that schools implementing PBS have substantially reduced discipline incidents²⁹ and a recent TEA study on DAEPs found that the most successful programs are those that essentially used a PBS approach.³⁰

Texas' discipline system, however, remains punitive in nature and may include the use of corporal punishment which is especially inappropriate for students in foster care given their past abusive experiences. The formal system also requires removing the child from the classroom and often a complete change in school setting. This type of disruption exacerbates rather than ameliorates the special needs of students in foster care.

Some districts may use positive reinforcement interventions and only resort to the formal discipline system when all other avenues fail. But, there is no

consistent, state wide approach to problematic behavior. There is also no data collected on discipline efforts that fall outside of the formal discipline system. As a result, it is impossible to determine what happened, if anything, before a child entered the formal discipline system.

Recommendations

Students in foster care are a small³¹ but especially vulnerable population. As the effective parent for these students, the state has a special responsibility to ensure that their educational needs are met. With respect to school discipline, we make the following recommendations:

More students in foster care should be assessed for special education services based on an emotional disability.

Many students in foster care likely have emotional problems that interfere with their school performance. But only 11 percent receive special education services for an emotional disturbance. This seems too low. As students in foster care frequently move homes and schools, it seems likely that many may have unnoticed disabilities or disabilities which are mistaken for willful disobedience.

As the managing conservator for these children, DFPS must ensure that more students in its care are evaluated for special education eligibility based on an emotional disability. Getting more students in foster care who have emotional problems eligible for special education services will not only get them the support they need to do better in school; it should improve discipline outcomes as well.

If a student in foster care receives special education services at the time of a discipline incident, under federal law, special disciplinary protections apply.³² For example, the child cannot be given a single discipline action or multiple discipline actions which cumulatively exceed 10 days if a substantial relationship exists between the emotional disturbance and the child's behavior.³³ Instead, the school must conduct an assessment and create a behavioral

intervention plan to address the problem causing the behavior.³⁴

TEA needs to collect more detailed data.

Given the special needs of students in foster care and their high discipline rate, the current discipline structure is failing. To better design the system, the state must understand what is driving the disproportionate outcomes. To that end, we recommend that TEA expands its data collection as follows:

- TEA and DFPS should enter into a memorandum of understanding (MOU) to formalize data collection on students in foster care so information on school outcomes, including discipline, can be comprehensively tracked over time. Senator Watson proposed a bill (SB 939) to require such coordination.
- TEA should require schools to disaggregate data regarding violations of local school district codes of conduct. The overwhelming majority of discipline events fall into this category, which can range from criminal behavior to truancy to failing to turn in a homework assignment. Without disaggregation, it is impossible to fully understand exactly what problematic behavior students in foster care are engaging in and whether this differs from the general student population.
- To better understand the disciplinary system and its impact on students in foster care, TEA should collect data on the full range of discipline actions, including Class C misdemeanor ticketing, corporal punishment, and detention. To the extent possible, TEA should also collect data on efforts made to address a child's behavior before resorting to discipline.
- To better understand why students in foster care are much more likely to have multiple actions for each discipline incident, TEA should develop a

report regarding the inter-play between incidents and actions. It should identify how often multiple actions are given for incidents in each discipline category (e.g., how many times multiple actions are given for incidents involving fighting). For incidents involving multiple actions, the report should also identify what actions were given (e.g., out-of-school suspension and a JJAEP). Reporting on how often multiple students are involved in a single incident would also be useful.

- Students in foster care are more likely to live and go to school at a residential treatment center (RTC)—a facility which provides 24 hour care for emotionally disturbed children.³⁵ At least 13 percent of all students in foster care live and go to school at an RTC versus virtually none of the general student population.³⁶ Since a child lives and goes to school at the RTC, problematic behaviors are often taken care of “in-house” as part of the child's ongoing treatment. In these circumstances, there is no formal discipline action and, as a result, the discipline event is not tracked. TEA should develop a way to track such events so the full range and implication of the problematic behavior of students in foster care can be captured.

Texas schools should explore creating a special discipline process for students in foster care.

As discussed above, federal law requires schools to follow a special process in discipline proceedings regarding special education students.³⁷ Students in foster care are similar to students receiving special education services in that they are vulnerable and have special needs. Texas schools should consider implementing a special disciplinary process for students in foster care similar to that for special education students.

Representative Olivo proposed legislation (HB 171) that is a step in the right direction. Her bill mandates that

administrators consider intent when taking a disciplinary action against a student.

Schools should implement school-wide positive behavioral supports.

Given the proven success of positive behavior supports, schools should employ such efforts with all students. Schools should train teachers how to positively reinforce pro-social behavior and de-escalate problematic behavior. They should also provide teachers with access to behavior consultants who can help them develop appropriate responses to problematic behavior.

Representative Thompson proposed legislation (HB 1375) that would make good progress in this direction. The legislation requires teachers, principals, and other relevant administrators who oversee student discipline to attend staff development training on appropriate disciplinary methods.

Schools should create targeted program for students in foster care to help them do better in school.

Senator West (SB 453) and Representative Madden (HB 552) proposed legislation that would allocate grants to school districts to create violence prevention, drug abuse prevention or delinquency prevention programs for students at risk of dropping out of school, which would include students in foster care. Such programs could help students in foster care better understand their problematic behavior and avoid repeating it in the future.

Conclusion

The recent data TEA provided on students in foster care and their involvement in the disciplinary system is a good first step towards understanding the special needs of this population. But the process for gathering data on students in foster care needs to be formalized so outcomes can be tracked over time. TEA also needs to expand the type of disciplinary data collected. Only then can the state and policymakers fully understand of how the discipline system affects students in foster care and how it should be restructured to meet their special needs. This will improve discipline outcomes and should also improve overall school performance for this vulnerable population.



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The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans.

¹ This paper was co-authored by Jane Burstain, PhD, a Senior Policy Analyst at the Center for Public Policy Priorities, and Alison Little, MPP, a Soros Justice Fellow hosted by the Institute on Domestic Violence and Sexual Assault, The University of Texas at Austin.

² This does not include students receiving in-home services or students who are living with relatives.

³ The Department of Family and Protective Services (DFPS) provided TEA with a list of all children in foster care in 2008. TEA then matched the children on this list to children in the PEIMS database using first and last name, date of birth and social security number. The foster care file contained 45,962 records with 26,263 children between ages 5 and 18 and, thus, likely to be matched with a student record in PEIMS. Through the matching process a total of 25,670 children were matched to PEIMS 2007-08 student records. Using this matching process, TEA created several different reports regarding students in foster care. Unless otherwise noted, the analysis in this policy page is based on the data and reports TEA provided. We want to recognize Nina Taylor and Perry Weirich at TEA for their responsiveness in providing the data needed for this analysis.

⁴ Our policy page on school outcomes for students in foster care entitled *Report Card on the Education of Foster Care Children* is available at: <http://cppp.org/files/4/CPpp%20Foster%20Care%20Education%20Policy%20Page%20319.pdf>.

⁵ Assuming that the data TEA provided captures most, if not all, of the foster care students in the 2007-08 school year, any differences noted between the foster care population and the general school population are statistically significant for that particular year. But we only have aggregate rather than individual level student data. As a result, we are unable to determine whether the differences are statistically significant over a period of time. Students in foster care were not disaggregated from the general student population but given that they care represent less than 1 percent of the general student population, it should not affect the comparisons.

⁶ Comparing the racial distribution of children in foster care at the end of state fiscal 2008 with the racial distribution of the overall child population in Texas. DFPS 2008 databook.

⁷ Economically disadvantaged is measured by whether a student receives a free or reduced cost lunch or otherwise receives public assistance. Texas Education 200802209 Economically Disadvantaged Students Report Criteria. Available at: <http://ritter.tea.state.tx.us/adhocrpt/abteco09.html>. Accessed on April 24, 2009.

⁸ The Texas Education Code defines the circumstances that place a child “at-risk.” Texas Education Code § 29.081(d).

⁹ *Understanding the Effects of Maltreatment on Early Brain Development*, 6. U.S. Department of Health and Human Services; Administration for Children and Families; Administration on Children, Youth, and Families; Children’s Bureau. Child Welfare Information Gateway. Available online: www.childwelfare.gov/pubs/focus/earlybrain/index.cfm. Accessed 4/2009.

¹⁰ Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 6.

¹¹ Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 7.

¹² Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 7.

¹³ Penzerro, Rose Marie and Laura Lein. *Burning Their Bridges: Disordered Attachment and Foster Care Discharge*. Child Welfare, 74(2): 351-366. 1995.

¹⁴ Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 14.

¹⁵ Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 11.

¹⁶ “Glossary of Terms.” Texas Education Agency. Available online: <http://www.tea.state.tx.us/page.aspx?id=170#i>. Accessed 4/2009.

¹⁷ Texas Education Code § 37.011.

¹⁸ Texas Education Code §§ 37.006 and 37.007.

¹⁹ Texas Education Code § 37.001.

²⁰ Based on discussions with individuals at TEA who provided the data.

²¹ Data for the general student population was obtained through TEA’s discipline report available at: http://ritter.tea.state.tx.us/adhocrpt/Disciplinary_Data_Products/Reports/STATE_summary_08.pdf, accessed on April 12, 2009.

²² Texas Appleseed. *School Discipline Polices: A Statistical Overview*. Available at: <http://www.texasappleseed.net/pdf/School%20Discipline%20Stat%20Report.doc>. Accessed on April 15, 2009.

²³ Mandatory action incident includes conduct punishable as a felony, controlled substance/drugs, alcohol violation, abuse of a volatile chemical, public lewdness, retaliation against a district employee, off campus felony, firearm violation, illegal knife, club prohibited weapon, arson, murder/attempted murder, indecency with a child, aggravated kidnapping, assault, aggravated assault, sexual assault, felony controlled substance violation, felony alcohol violation, aggravated robbery, criminally negligent homicide, firearm (off campus), illegal knife, club or weapon, felony marijuana.

²⁴ Other includes permanent removal by teach, criminal mischief, emergency placement/removal, tobacco, school-related gang violence, engages in deadly conduct, non-illegal knife.

²⁵ Number of students who received discipline action/Total number of students who received any discipline action. The numbers count students more than once to the extent they received multiple discipline actions in the same year.

²⁶ Taking total number of discipline actions/total number of discipline incidents.

²⁷ Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 15.

²⁸ Ibid *Understanding the Effects of Maltreatment on Early Brain Development*, 16.

²⁹ *School-wide Positive Behavioral Supports in The Handbook of School Violence and School Safety*. From Research to Practice (Shane R. Jimerson & Michael J. Furlong, eds. 2007). Additionally, an extensive bibliography of pre-post and experimental research on school-wide Positive Behavior Supports, as well as articles about fidelity to the model, updated through March 2009, are available in *Is School-Wide Positive Behavior Support an Evidence-Based Practice?* OSEP Center on Positive Behavioral Interventions and Supports. Available: <http://www.pbis.org/research/default.aspx>. Accessed April 20, 2009.

³⁰ Division of Health and Safety, Texas Education Agency. *Report on HB 426 and HB 2532. Disciplinary Alternative Education Programs: Minimum Standard and Evaluating the Effectiveness*. November 2008. Available at: http://ritter.tea.state.tx.us/comm/leg_reports/2008/08hb426_hb2532.pdf. Accessed on April 17, 2009.

³¹ Less than one percent of the general student population is in foster care.

³² 34 CFR §§ 300.530-300.536.

³³ 34 CFR § 300.530(e) and (f). To determine whether multiple actions should be considered as one effective action the team looks at the length of each action, the total time of the actions combined, whether the behavior involved in the multiple incidents is similar and how close in time the actions occur. 34 CFR § 300.536. If certain circumstances exist, the school may impose a disciplinary action not to exceed 45 days. 34 CFR § 300.530(g).

³⁴ 34 CFR § 300.530(f).

³⁵ DFPS 2006 databook.

³⁶ TEA only tracks the instructional setting for those receiving special education services. To the extent there are students in foster care living in RTCs that are not receiving special education services, the actual proportion of students in foster care going to school at an RTC will be higher.

³⁷ 20 U.S.C. § 1400 et. seq.