

Unfortunately, Texas law provides relatively limited procedural protections for students until they face expulsion.

For a removal that may result in DAEP placement, Texas law generally requires a conference within three class days. At that conference, the student is entitled to written or oral notice of the reasons for removal, an explanation of the basis for the removal and an opportunity to respond. Tex. Educ. Code § 37.009(a). Those protections are important, but they leave substantial gaps.

Chapter 37 does not generally guarantee a student facing DAEP placement the right to inspect the underlying evidence before the conference, the assistance of an advocate or attorney, an impartial adjudicator independent from the underlying disciplinary decision, or a clearly articulated statewide evidentiary standard for determining whether the alleged conduct occurred.

The contrast is particularly important because disciplinary decisions often involve contested facts. Students may dispute what they said, what they intended, whether they participated in an incident, whether conduct was self-defense, or whether an administrator's characterization of their behavior accurately reflects what occurred. A student cannot meaningfully respond to an allegation if the student does not know the evidence supporting it.

Due process should not become more robust only after the stakes have escalated to expulsion.

Strong Due Process Protects Students, Families and Educators

Due process is sometimes treated as an obstacle to effective school discipline. It should instead be understood as a tool for better decision-making school-parent partnership.

Fair procedures help school leaders determine what actually happened, distinguish serious misconduct from misunderstandings or developmentally appropriate behavior, identify mitigating circumstances, and select appropriate interventions. They also give students and families confidence that consequential decisions are based on evidence rather than assumptions.

Texas already recognizes some of these principles. Before ordering certain disciplinary consequences, decision-makers must consider mitigating circumstances identified in the Education Code. HB 6 also created additional opportunities for parent involvement and behavioral agreements and established an appeal process for certain teacher removals. The Legislature should build on those protections and establish a stronger statewide floor for student due process.

Recommendations

IDRA recommends that Texas strengthen Chapter 37 and encourage school districts to adopt policies incorporating the following protections.

1. **Designate exclusionary discipline and alternative education placements as measures of last resort.** Schools should use removal when necessary to address serious conduct or safety concerns, rather than as a routine response to behavior that can be addressed through less exclusionary interventions. Texas should also restore and expand protections for young children and sharply limit suspension, expulsion, and alternative placement for developmentally appropriate or non-dangerous behavior.

2. **Require timely and understandable notice of the allegations, potential consequences, disciplinary process and students' procedural rights.** Notice should identify the specific conduct alleged, applicable rule or policy, potential consequence, hearing and appeal procedures, and rights available to the student and family.
3. **Establish clear standards for the evidence required to support disciplinary decisions and train decision-makers to apply those standards consistently.** Significant exclusionary consequences should not rest on speculation, unsupported accusations or inconsistent standards of proof.
4. **Provide students with timely access to review and obtain copies of the evidence against them before a disciplinary hearing.** An explanation or summary of the evidence is not a substitute for meaningful access to the evidence itself. Disclosure must occur sufficiently in advance to allow the student, family, counsel or advocate to prepare a response.
5. **Ensure administrators consistently apply mitigating factors and individual circumstances before imposing exclusionary discipline.** Decision-makers should meaningfully consider and document decisions the application of Chapter 37's mitigating factors (age, intent, disciplinary history, self-defense, foster status and disability). Texas should further expand the factors administrators must consider in making disciplinary placement decisions, such as the circumstances surrounding the incident, the presence of an adverse childhood experience or other trauma impacted behavior, and the availability of less exclusionary interventions.
6. **Require disciplinary decision-makers to document their findings, the evidence relied upon, and the factors considered in determining the appropriate consequence.** Written findings create transparency, facilitate meaningful appeals, and help ensure that required considerations are not treated as a procedural formality.
7. **Ensure students have a clear pathway and appropriate supports to return to their regular educational placement following exclusionary discipline.** Every DAEP placement or expulsion should include transparent criteria for return and a transition process designed to reconnect the student successfully with the school community.

IDRA is available for any questions or further resources that we can provide. Thank you for your consideration. For more information, please contact Paige Duggins-Clay, J.D., chief legal analyst, at paige.duggins-clay@idra.org.

IDRA is an independent, non-profit organization led by Celina Moreno, J.D. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college.