



Policymakers Must Strengthen Student and Parent Due Process Rights, Not Make it Easier to Push Out Students

IDRA Written Testimony Against CS HB 6 Submitted by Paige Duggins-Clay, J.D., to the Texas Senate Committee on Education K-16, May 8, 2025

Dear Chair Creighton and Honorable Members of the Committee:

My name is Paige Duggins-Clay, J.D., and I am the Chief Legal Analyst at IDRA, an independent, non-partisan non-profit committed to achieving equal educational opportunity for every child through strong public schools. A proud product of Texas public schools myself, I am the daughter of a recent teacher of the year and a parent of four children who have been educated in Texas public schools. For me, the issue of supporting students and educators is personal.

IDRA opposes the committee substitute for House Bill 6, which would take Texas schools back to an era of failed “zero tolerance” policies that have led to increased attrition and unjust outcomes for students and parents in our public schools (Quintanilla-Muñoz & Sánchez, 2024; Lyons, 2023).

IDRA has serious concerns about the provisions of HB 6 that expand schools’ ability to remove students for vaguely defined behaviors, allow for unlimited in-school suspension placements, and allow the placement of students in “virtual DAEPs” (Wright, 2025).

The bill also lowers the bar for schools to deprive students of their constitutional right to a public education under the Texas Constitution, and it undermines rights to due process guaranteed by the Fifth and Fourteenth Amendments of the U.S. Constitution. Further, some provisions may be preempted by federal law. These legal concerns are discussed in more detail below.

Current Law Allows Educators to Remove Students Who Exhibit Threatening, Dangerous or Illegal Behavior On or Off Campus

Section 10 of CS HB 6 would expand current law establishing a “mandatory” referral for certain alleged criminal activities to include allegations of criminal behavior that occurred off campus and is unconnected to the school community. IDRA opposes state mandates that remove discretion and flexibility for school leaders, students and caregivers to address problematic behavior in student-centered, evidence-based ways.

Schools should and *currently do* have the ability to remove students who have been determined to pose a threat to themselves or the safety of the school community. For example, TEC 37.006 allows for the removal of students for *alleged* felony behavior; assault; possession, use or distribution of controlled substance; public lewdness; harassment; and a variety of criminal behaviors.

And administrators can and frequently do charge students with code of conduct violations and remove them when they become aware of alleged criminal activity, even when such behavior is not connected to the school environment. This is the reality even when students charged with criminal activity have not had an opportunity to contest the criminal charges, let alone been convicted of the alleged crime.

IDRA has engaged in statewide listening sessions with students who have been placed in disciplinary or juvenile alternative educational placement settings for alleged crimes that were ultimately dismissed. I have personally spoken with families whose students were trapped in an alternative school setting for months based on an unproven charge for which they were ultimately acquitted. These students lose valuable learning time, lose connection to community, and suffer severe emotional distress. They do not get that time back, and the harmful impact of the arbitrary, exclusionary discipline can have lifelong consequences (Craven, 2022).

This practice, if unchecked, raises significant constitutional concerns. In *Goss v. Lopez*, the U.S. Supreme Court held that young people have a property interest in their education, which they cannot be deprived of without sufficient due process. 419 U.S. 565 (1975). While the court acknowledged the need for educators to have sufficient latitude to address problematic behavior effectively, it also emphasized the importance of adequate notice and process for students and families whose “good name, reputation, honor or integrity [are] at stake” *Id.* at 574 (cleaned up).

Mechanically sending students who pick up a charge in the community who have not had the opportunity to defend themselves to an alternative setting trouble all of us who value liberty and believe in the constitutional presumption of “innocent until proven guilty.” Instead, schools should engage in an individualized, fair threat assessment with sufficient notice and due process for students accused of serious misconduct and their caregivers.

The Committee Should Not Further Complicate Chapter 37 Through the Expansion of Judicial Proceedings for Student Discipline

Section 21 of HB 6 creates a new statutory framework for a school district to pursue court-initiated removals of students to “alternative educational settings” if the district believes (with no enumerated standards) that a student is “substantially likely” to cause physical harm to themselves or another person. Modeled after the federal “*Honig* injunction” proceeding, the provision would allow school districts to seek “immediate removal” of a student by filing a lawsuit against a family in state court.

Similarly, Section 19 of the bill would allow school leaders to refer parents to district, county or justice court for failing to “comply with” the terms of a student behavior agreement established by the school.

IDRA opposes these provisions because involving courts will unnecessarily drive up the costs of discipline and behavior management through increased school district attorney fees and litigation expenses. The proposed policy would force families into an unfair and inequitable adversarial system with no resources (such as assigned pro bono counsel or professional advocates) to help families navigate the complex legal system. Further, courts already have robust caseloads relating to child development and welfare.

