



June 6, 2018

Honorable Greg Abbott  
Governor of the State of Texas  
Office of the Governor  
State Insurance Building  
1100 San Jacinto  
Austin, Texas 78701

*Delivered via regular and electronic mail*

Dear Governor Abbott,

Tragedies like the shooting at Santa Fe High School are traumatic and terrifying for the students, educators, and families who are directly impacted by the violence, and for the many people who care about young people. We, like you, are concerned with the safety and wellbeing of Texas students. Also like you, we want to make sure that all children in Texas schools receive an excellent education, are guided and supported by adults who care about them, and feel safe and secure when they enter the school building. Because we share these common and important goals, we write with concerns related to some of the proposals in your School and Firearm Safety Action Plan, and hope that you will reconsider some of the priorities you have identified for immediate funding.

Together, our organizations have years of experience in researching and advocating for evidence-based strategies that keep students safe, improve school climates, and show good outcomes for students and schools. While we support several of the research-based responses included in your plan, like using threat assessments and increasing mental health supports and counselors, many of your other proposals are not proven as effective ways to ensure campus safety, may in fact make students less safe, and have been shown to be harmful to student outcomes.

We understand that crafting a school safety plan for a state as large and diverse as Texas is difficult—there are many opinions, positions, and interests to consider. But, because the landscape is complex, we believe that there should be some basic tenets that guide how these important decisions are made. First, the proposals should be based in research about what works to improve school safety, not solely on anecdotes. Second, we must consider what

school safety means for **all** children. School safety is not just about the immediate security of a physical campus, but should be about the entire school climate that is cultivated through relationships, supports, and a strong community.<sup>1</sup> Third, it is important to engage everyone who has a stake in these issues in order to consider the impacts of policy proposals on all Texas children. We cannot afford to adopt strategies that will endanger the safety and limit the opportunities for students in the future. Finally, we must prioritize resources<sup>2</sup> to focus on meaningful prevention and intervention strategies, so that we are not left to react after tragedies occur.

We applaud the elements of your plan that are research-based and consistent with a prevention and early intervention framework. Your plan recognizes that every school district in the state would benefit from resources that are dedicated to increasing access to mental health crisis intervention, mental and behavioral health specialists, and counselors who are focused on students' health needs, rather than on academics or testing.<sup>3</sup>

We also support the use of an evidence-based threat assessment system<sup>4</sup> that provides the support administrators need to identify those who pose a true threat, and avoid reactions that are overly-harsh and harm students who do not. Since the tragedy in Parkland, Florida, advocates, attorneys, educators, and police officers across Texas have reported an increase in the arrest and charging of students for the felony offenses of "Terroristic Threat" and "Exhibition, Use, or Threat of Exhibition or Use of Firearms."<sup>5</sup> Often, these charges are completely inappropriate. We are aware of children with disabilities, some as young as 10 years old, being handcuffed and charged with these offenses for "threats" like "pretending to shoot zombies" or for reacting to a bully while they were being taunted for their disability. Certainly school officials should respond when they believe someone poses a safety threat. But they often need resources, supports, and services to appropriately screen, identify and address threatening

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<sup>1</sup> School climate refers to the quality of school life, as experienced by all students, educators, administrators, staff, and parents/guardians in the community. School climate can be impacted by official rules and policies, norms, relationships, values, academic and behavior programs, and support systems.

<sup>2</sup> It is important to emphasize that all programs in schools should be implemented in equitable and fair ways. Any use of federal funds, in particular, requires compliance with anti-discrimination laws and regulations. See, e.g., Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c et seq., which prohibits discrimination in public elementary and secondary schools based on race, color, or national origin, among other bases, and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulations, 34 C.F.R. Part 100, which prohibits discrimination based on race, color, or national origin by recipients of Federal financial assistance.

<sup>3</sup> While we support these prevention and intervention services, we believe that any program used in schools should be research-based, transparent, and should reduce, not support, the use of suspensions, alternative schools, or expulsions as a response to student behavior. Programs that exclude students, or recommend that schools exclude students, are ineffective and can be harmful to school climates and individual young people.

<sup>4</sup> We urge you to ensure that any threat assessment system that is made available to Texas schools is evidence-based, with sufficient oversight to ensure that schools are implementing the system with fidelity. Threat assessment systems should not rely on school exclusions or unnecessary referrals to law enforcement to respond to student behavior. They should set out clear guidelines so that they are utilized equitably, and are not simply used as a tool to push students who are perceived to have challenging behaviors out of school.

<sup>5</sup> TEXAS PENAL CODE § 22.07 and TEXAS EDUCATION CODE § 37.125.

student behavior. This is why we were pleased to see your recognition that threat assessment tools are so important. Evidence-based threat assessment tools allow schools to focus resources appropriately, keep school communities safe, and respond reasonably and proportionally to student behavior.

Unfortunately, there are other portions of your plan with which we strongly disagree. Not only would some of the proposals, discussed below, hurt students and negatively impact school climates and safety, they would undermine the impact of the good strategies your plan includes.

#### Increasing the Presence of Law Enforcement and Hardening Schools

We absolutely believe that police officers should be called to respond to emergencies that threaten the safety of students and staff in schools. **However, increasing the number and regular presence of police officers in schools has not been shown to increase overall school safety.** We understand why this feels like the right approach, particularly for the students, educators, and parents who have survived violent incidents in schools. They have experienced a significant, traumatic event and are looking for something that will make them feel safe on their campuses. But research does not support assumptions that increasing the presence of police officers in schools increases safety. In fact, available research suggests that it can backfire by contributing to poor school climates, making schools *less* safe for students and staff—despite the good intentions of individual officers, “strict security measures in and of themselves can harm the educational climate by alienating students and generating mistrust, which, paradoxically, may lead to even more disorder and violence.”<sup>6</sup> Hardening schools with the overuse of security measures like cameras and metal detectors can have a similar, negative impact on school climates and students’ perceptions of safety.<sup>7</sup>

Additionally, individual students can face significant harms. When police officers have a regular presence in schools, they are used to handle routine discipline issues that should be addressed by teachers or school administrators,<sup>8</sup> simply because—thankfully—major safety threats are rare. Some Texas court experts have referred to this transfer of discipline, from school

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<sup>6</sup> Nance, Jason, *Students, Police, and the School-to-Prison Pipeline*, Washington University Law Review, 2016.

<sup>7</sup> See Nance, Jason, *Students, Security, and Race*, 63 Emory Law Journal 1, 7–13 (2013), citing Carol Ascher, *Gaining Control of Violence in the Schools: A View from the Field*, Eric Digest, Sept. 1994, at 1, 4 (1994), available at <http://www.eric.ed.gov/PDFS/ED377256.pdf> (“Rather than offering reassurance, metal detectors and other mechanical devices, as well as security forces, are seen as providing a false sense of safety, if not a harsh symbol of the failure to create safe schools.”).

<sup>8</sup> See, e.g., *14-year-old arrested after homemade clock is mistaken for bomb, prompts #StandWithAhmed on Twitter*, PBS NewsHour, (Sep. 16, 2015), available at <https://www.pbs.org/newshour/nation/14-year-old-arrested-homemade-clock-mistaken-bomb-prompts-istandwithahmed-twitter> ; *Incident between Round Rock PD officers and student caught on camera*, CBS Austin, (Oct. 9, 2015), available at <http://cbsaustin.com/news/local/incident-between-round-rock-pd-officer-and-student-caught-on-camera> ; *Texas school cop who body slammed 12-year-old girl is fired*, NBC News, (Apr. 11, 2016), available at <https://www.nbcnews.com/news/us-news/texas-school-cop-who-body-slammed-12-year-old-girl-n554286>.

administrators to law enforcement and courts, as “the passing of the paddle.”<sup>9</sup> This can pose a danger to the immediate and long-term safety of students. Kids as young as 10 years old are arrested, charged with criminal offenses, and exposed to use of force techniques (like tasers and pepper spray) for school-based behaviors that in the past would have been handled with a trip to the principal’s office.<sup>10</sup> This causes significant and immediate mental and physical trauma for children and long-term negative consequences that can impact students’ abilities to grow into happy, healthy, productive Texans.

Black and Latino children, who are disciplined and have contact with school police officers at disproportionately high rates, bear the brunt of policies that increase police presence and take a punitive approach to students.<sup>11</sup> This happens even though they are not more likely than their peers to misbehave or threaten the safety of their schools.<sup>12</sup> Students with disabilities are also disproportionately represented in law enforcement interactions for behavior that is often related to their disability.<sup>13</sup>

Texas schools already have a significant law enforcement presence. Most large districts have their own police forces and many others across the state contract with local law enforcement agencies to have police officers stationed on school campuses. Increasing the presence of law enforcement in schools is not the most effective and efficient use of precious state resources. Funds should instead be focused on the other important pieces of your plan that schools do not

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<sup>9</sup> See Ryan Kellus Turner & Mark Goodner, *Passing the Paddle: Nondisclosure of Children’s Criminal Cases*, JUV. LAW SEC. NEWSL. (Juvenile Law Section, State Bar of Tex., San Antonio, Tex.), Dec. 2010.

<sup>10</sup> See, e.g., *Texas student tased by police exits coma, enters rehabilitation, attorney says*, CNN, (Feb. 3, 2014), available at <https://www.cnn.com/2014/01/31/us/texas-taser-high-school-student-coma/index.html>; *Local school police used force on students hundreds of times in recent years*, Houston Chronicle, (Mar. 27, 2015), available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Local-school-police-used-force-on-students-6164190.php>; *Pasadena family accuses school officer of ‘brutal and excessive’ beating*, Houston Chronicle, (Feb. 5, 2015), available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Pasadena-family-accuses-school-officer-of-brutal-6064567.php>.

<sup>11</sup> See, e.g., Fabelo, Tony et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* (2011) (noting that “The great majority of African-American male students had at least one discretionary violation (83 percent), compared to 74 percent for Hispanic male students, and 59 percent for white male students. The same pattern was found, though at lower levels of involvement, for females—with 70 percent of African-American female pupils having at least one discretionary violation, compared to 58 percent of Hispanic female pupils and 37 percent of white female pupils. Whereas white, Hispanic, and African-American students experienced discretionary actions at significantly different rates, students in these racial groups were removed from school for mandatory violations at comparable rates.”).

<sup>12</sup> Skiba, Russell J. et al., *Are Black Kids Worse? Myths and Facts About Racial Differences In Behavior: A Summary of the Literature*, Indiana University, March 2014, available at: [http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior\\_031214.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf).

<sup>13</sup> According to data collected by the Texas Education Agency, in the 2016-17 school year, students who received special education services accounted for 16.6% of placements in Disciplinary Alternative Education Programs, even though they reportedly made up 8.8% of the student population (data available at [tea.texas.gov](http://tea.texas.gov)); see Fabelo, Tony et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* (2011).

currently have access to and that have been proven to improve the safety and health of all children and foster positive school climates, particularly counselors, social workers, psychiatrists, mental and behavioral health specialists, and other mental health supports.

#### Adopting Zero Tolerance Policies and Pushing Students Out of School

**Zero tolerance policies harm students, push them out of the school community, and compromise school safety.**<sup>14</sup> While schools must respond to assaultive behavior, a system of blanket removals is not a research-based response:

- Zero tolerance policies do not address the underlying issues that may be leading to behavior challenges in students. This means that issues like abuse, bullying, homelessness, trauma, disabilities, and mental health challenges will persist (and potentially worsen) and will not be addressed with meaningful guidance, supports, and services from caring adults.
- Zero tolerance policies lead to poor school climates that impact all students at the campus.<sup>15</sup> A critical part of creating safe schools is fostering positive school climates where students trust and confide in adults.<sup>16</sup> Strong relationships between students and adults mean that students will be more comfortable discussing issues that they are dealing with and sharing concerns that they may have about the behavior of their peers. When trusting relationships are built, serious threats and violence can be prevented.<sup>17</sup> Zero tolerance approaches destabilize campus environments because they rely on exclusion and severe and ineffective one-size-fits-all approaches to students.
- Zero tolerance policies do not deter future challenging behaviors.<sup>18</sup> A common misconception about taking a zero tolerance approach to students is that doing so will

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<sup>14</sup> See Texas Appleseed, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance*, (Oct. 2007), available at <https://www.texasappleseed.org/sites/default/files/01-STPPReport2007.pdf>; Fabelo, Tony et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (2011) (explaining that "... research to date does not support the conclusion that "zero tolerance" and other efforts emphasizing suspension and expulsion are responsible for the reduction in crimes committed in schools.").

<sup>15</sup> Skiba, Russel et al., *Are Zero Tolerance Policies Effective in the Schools?*, A Report by the American Psychological Association Task Force (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf> (noting that "schools with higher rates of school suspension and expulsion appear to have less satisfactory ratings of school climate, less satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters. Perhaps more importantly, recent research indicates a negative relationship between the use of school suspension and expulsion and school-wide academic achievement, even when controlling for demographics such as socioeconomic status.").

<sup>16</sup> *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, U.S. SECRET SERVICE & U.S. DEP'T OF EDUC. (Jul. 2004).

<sup>17</sup> *Id.*

<sup>18</sup> See Skiba, Russel et al., *Are Zero Tolerance Policies Effective in the Schools?*, A Report by the American Psychological Association Task Force (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

prevent similar behaviors in the future. This is simply not the case—if the behavior, community, or campus conditions are not addressed in a meaningful way, nothing will change.

Placement in a Disciplinary Alternative Education Program (DAEP) has been identified by the Texas Education Agency as a factor that increases the likelihood that students will drop out of school.<sup>19</sup> Funneling students into DAEPs through zero tolerance policies and through an expansion of the list of mandatory offenses not only threatens school safety, but also increases the likelihood that students will be held back, drop out of school, and will have additional justice system contact in the future.<sup>20</sup> This approach fails individual students and is contrary to the goal of creating safe and supportive schools that so many of us share.

In the discipline portion of your plan there are good recommendations for ways to support students, but unfortunately, those important supports are suggested to be offered in the DAEP setting, *after* a student is punished, rather than being prioritized for the regular campus where they would be most effective. Involving parents/guardians, offering counseling and mental health supports (if appropriate) and implementing restorative practices are all research-based approaches. But, if we wait until after a student has been removed to a DAEP to provide these supports we have wasted time and critical prevention and intervention opportunities.

In your plan you acknowledge that screenings and services could help to treat the “underlying causes of misbehavior.” Because we know that there are underlying causes of challenging behavior, some of which are potentially serious, we should not be punishing students first and addressing the issues later. Texas cannot be in the business of punishing students because they have mental health needs, or because they have special education needs, or because they were responding to a bully, or because they were in a frustrating situation that they did not know how to handle. We must continue to move away from the idea that an expulsion or a placement in a DAEP is a meaningful solution or a way to warehouse students until we can address their needs.

When schools punish students harshly, without asking what is going on in the student’s life or in the school community that could be leading to the behavior, they miss an important opportunity to support students, address classroom issues, and prevent more serious problems. “Zero tolerance” policies also create absurd results, punishing students for behavior that does not merit such a harsh response.<sup>21</sup> This understanding led to a bi-partisan movement to roll back

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<sup>19</sup> Texas Education Agency, *2006 Comprehensive Annual Report on Texas Public Schools: A Report to the 80th Legislature from the Texas Education Agency* (2006) (explaining that students in DAEP programs have a dropout rate that is five times higher than students in mainstream education programs).

<sup>20</sup> See Fabelo, Tony et al., *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* (2011).

<sup>21</sup> *4-year-old Accused of Improperly Touching Teacher*, KXXV-TV News Channel 25 (December 18, 2006), available at [www.kxxv.com/global/story.asp?s=5785699](http://www.kxxv.com/global/story.asp?s=5785699) (A 4-year-old student in Waco was sent to ISS for hugging his teacher.); *Student suspended after finger gun incident*, KTRK-TV Houston, (Apr. 18, 2010), available at <http://abc13.com/archive/7392273/>; see also Texas Appleseed, *Texas’ School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance*, (Oct. 2007),

these policies in Texas. Over the past several legislative sessions, lawmakers have taken important steps to move away from zero tolerance in schools<sup>22</sup> because the approach is simply ineffective.

Finally, implementing zero tolerance policies will undermine some of the other important proposals in your plan. For example, threat assessment systems—including the one used by SIGMA, the company that you recommend—work best within positive and open school climates where adults are aware of the issues that students are experiencing and students feel comfortable confiding in adults about their concerns.<sup>23</sup> It is impossible to build these relationships, encourage communication, and accurately assess threats when students are immediately removed from the community for certain behaviors, without an evaluation of the particular circumstances that led to that behavior.

### Expanding the School Marshal Program

If school safety is truly our goal, we should be decreasing, rather than increasing, the presence of weapons on our campuses. There is no research that shows that arming teachers improves school safety. Instead, studies seem to show that the number of responsible citizens who carry concealed weapons has no correlation to a reduction in crime or violence.<sup>24</sup> Additionally, having multiple armed people in an active shooter situation would prove to be chaotic and dangerous, not helpful, for officers responding to an emergency. Our limited resources should not be spent on an ineffective, potentially dangerous strategy. The provision of your plan that removes the firearm storage requirement for school staff who have frequent interactions with students creates additional harms for students and educators (since anyone could easily access the firearm) and is contrary to other parts of your plan that promote proper firearm storage and encourage the use of gun locks.

**In order to ensure safe school environments that are supportive of all Texas students and educators, we hope that you will consider shifting immediate funding priorities to:**

- Increase training opportunities and access to resources for research-based behavior programs like restorative practices and Positive Behavioral Interventions and Supports.

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available at <https://www.texasappleseed.org/sites/default/files/01-STPPReport2007.pdf> (describing a 4-year-old student who was suspended for coming to school with pink hair.).

<sup>22</sup> According to TEXAS EDUCATION CODE § 37.001, before any student can be punished for any offense (other than bringing a firearm to school), school administrators must consider four mitigating factors: 1) whether the student acted in self-defense, 2) the student's discipline history, 3) intent or lack of intent at the time of the conduct, and 4) whether the student has a disability that impacts their ability to appreciate the wrongfulness of their conduct; see also Fabelo, Tony et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (2011) (noting that the adoption of the four mitigating factors above was a key legislative change in Texas.).

<sup>23</sup> See Borum, Randy et al., *What Can Be Done About School Shootings? A Review of the Evidence*, Educational Researcher (2010), available at [http://www.sigmatma.com/wp-content/uploads/2018/04/WhatCanBeDoneAboutSchoolShootings\\_ER\\_AERA\\_20101.pdf](http://www.sigmatma.com/wp-content/uploads/2018/04/WhatCanBeDoneAboutSchoolShootings_ER_AERA_20101.pdf)

<sup>24</sup> Phillips, Charles et al., *Concealed Handgun Licensing and Crime in Four States*, *Journal of Criminology*, (2015), available at <https://crimeresearch.org/wp-content/uploads/2015/09/TexasAMConcealCarry.pdf>

When these programs are used in schools, they improve student achievement, reduce discipline referrals, and limit the use of law enforcement resources.

- Invest more money in professionals like counselors, social workers, behavioral and mental health specialists, and therapists in lieu of funding more police officers and School Marshal training programs. As you note in your plan, devoting funds to prevention and intervention services like counseling and mental health supports is a necessary step to improving school safety—more money should be spent on these important professionals and programs, instead of responses that could be harmful for students.

**Additionally, we urge you to reconsider your plan in light of research and best practices:**

- Ensure that police officers are only called upon to interact with students if there is a safety concern. Because an increased police presence has not been shown to improve school safety, but has been shown to create harmful interactions between officers and students, it is important to limit the presence of law enforcement in schools.
- Ensure that law enforcement time and resources are focused on emergencies, not on routine discipline issues, and that all district policies and Memoranda of Understanding between school districts and law enforcement agencies clearly describe that limited focus.
- Eliminate any zero tolerance policies and do not expand the list of mandatory placement offenses for Disciplinary Alternative Education Programs and expulsions. Schools should prioritize addressing the underlying causes of challenging behavior rather than pushing students out of their regular school communities with one-size-fits-all punishments.

We anticipate a productive summer and legislative session working on these important issues that impact millions of children across our state. We look forward to engaging with you and other policy makers.

Sincerely,

Texas Appleseed  
Children's Defense Fund—Texas  
NAACP Legal Defense and Educational Fund, Inc.  
MALDEF (Mexican American Legal Defense and Educational Fund)