

MODEL STUDENT CODE OF CONDUCT

The *TASB Model Student Code of Conduct* is intended to assist your district in developing and maintaining your local Student Code of Conduct, mandated by Chapter 37 of the Texas Education Code. The *Model* addresses the legal requirements and offers suggestions you may wish to include in your Student Code of Conduct.

The *Model* attempts to organize and harmonize the provisions of the law into a framework that, with fine-tuning by individual districts, can serve to communicate to students, parents, school staff, and the community exactly what is expected of students and how misconduct will be handled.

Changes from the 80th legislative session go into effect with the start of the 2007–2008 school year, so it is important they be incorporated into the district’s Code as soon as possible. Two bills address some of the most serious student behavior and led us to create a new section of the Code titled Placement and/or Expulsion for Certain Serious Offenses. Both bills include procedural requirements and consequences for specific offenses not previously addressed in Chapter 37. Other bills address the continuous sexual abuse of a young child and dating violence.

- Senate Bill 6 adds Subchapter I, Placement of Registered Sex Offenders, to Chapter 37, requiring the immediate removal of a student from the regular classroom on the receipt of notification that the student is required to register as a sex offender. The district follows procedures to determine and review the appropriate alternative placement: DAEP, JJAEP, or a regular classroom. The district may want to modify the memorandum of understanding with the JJAEP to include the possibility of this type of placement.
- House Bill 2532 expands Section 37.0081 of the Education Code to include more circumstances involving Title 5 felony offenses, including being arrested, charged with, or referred to a juvenile court for an offense. The consequence is now expulsion; however, either JJAEP or DAEP placement is required. This provision still requires a hearing prior to placement and may only be useful when the offense is not covered by any other section of the Code. HB 2532 also includes provisions identical to those in SB 6 on registered sex offenders.
- House Bill 8 adds a mandatory expulsion for conduct occurring on campus or at a school activity that constitutes the offense of continuous sexual abuse of a young child or children. This bill also amends Section 25.0341 of the Education Code by adding this offense as a reason that a student could be assigned to a different campus or DAEP when the victim is on the same campus.
- House Bill 121 adds Section 37.0831 of the Education Code, requiring that the district adopt a dating violence policy to be included in the district improvement plan. The policy needs to address safety planning, enforcement of protective orders, training, counseling, and awareness education. TASB will provide additional information on this new policy requirement in Update 81, to be released in September. Dating violence has been added to the list of General Conduct Violations and the definition is now in the Glossary.

We have lightly edited the document throughout for clarity, added new conduct violations regarding computer use and being under the influence of prescription or over-the-counter drugs, and added terms to the glossary. In the General Conduct Violations section, we have clarified that some off-campus behavior may result in disciplinary consequences if it causes a substantial disruption to the educational environment.

TIPS FOR DEVELOPERS

- **Copyright** – This document is copyrighted by TASB but may be reproduced by the district for internal use in the development of the district’s Code. Further use or copying is prohibited without the written consent of TASB Policy Service.
- **Discipline-Related Resources** –
 - District staff members who administer discipline for Code of Conduct violations may find it useful to maintain a copy of the *Model* with the editorial notes intact as a resource.
 - A copy of Chapter 37 Subchapter A with the changes from the 80th legislative session annotated is included with the *Model Student Code of Conduct* files and available under the Student Discipline and School Safety section on the Policy Service page of the TASB Web site (<http://policy.tasb.org>). Education Code 37.018 requires the district to provide a copy of this subchapter to educators and administrators.
 - The *Regulations Resource Manual*, available through myTASB, has an assortment of forms related to discipline issues: FO(EXHIBIT) on corporal punishment and audio/video recording of students; FOA(EXHIBIT) on removal of a student by a teacher; FOB(EXHIBIT) on suspension; FOC(EXHIBIT) on placement in a DAEP; FOD(EXHIBIT) on expulsion; and FOE(EXHIBIT) on emergency removal.
- **Editing** –
 - Please note that text appears in a shaded block when a local decision is required. A shaded box **with a border** indicates a choice between alternatives; one provision should be kept and the other removed. A shaded box **without a border** indicates a district decision is required about whether text should be kept, deleted, or moved to another section.
 - We suggest that developers begin by reviewing the entire document to get the scope of the project.
- **Glossary** – An integral part of the document that includes legal definitions and establishes local definitions of terms, the glossary must be retained as part of the Code.
- **Adoption** – State law requires that all changes to the Student Code of Conduct be board adopted. The Code stands as an authoritative document on its own and, once adopted, has the force of policy. Its provisions should not be repeated in the local policy manual.

- **Legal Review** – We recommend that your local attorney review the district’s completed Code.
- **Availability** – The Education Code requires districts to post the Student Code of Conduct on each campus or to make it available for review at the office of the campus principal.
- **Notice** – Districts are required to provide parents with notice of and information regarding the district’s Code. This goal can be met in several ways, including the following:
 - The district’s Code can be reproduced and disseminated, either as a clearly labeled attachment to the student handbook or as a separate booklet. TASB recommends that parents and students be asked to sign and return an acknowledgment that they have received the Code.
 - The Code could also be posted on the district Web site in lieu of paper distribution. TASB recommends sending a hard copy notice of the posting, seeking written confirmation that the Code has been reviewed, and allowing parents to request a hard copy of the Code.
 - The next page contains a sample acknowledgment form you can include in your published Code or revise to include with the notice of the Web site posting.

Disclaimer: This document is provided to assist the district in developing a Student Code of Conduct, but it is not an exhaustive restatement of the law on this subject. We strongly urge the district to consult its own attorney regarding the content before adopting the district’s Student Code of Conduct.

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ACKNOWLEDGMENT

Student Code of Conduct Acknowledgment

Dear Student and Parent:

As required by state law, the board of trustees has officially adopted the Student Code of Conduct in order to promote a safe and orderly learning environment for every student.

We urge you to read this publication thoroughly and to discuss it with your family. If you have any questions about the required conduct and consequences for misconduct, we encourage you to ask for an explanation from the student's teacher or campus administrator.

The student and parent should each sign this page in the space provided below, and then return the page to the student's school.

Thank you.

(Name of superintendent or appropriate administrator and title)

.....
We acknowledge that we have received a copy of the *(name of district)* Student Code of Conduct for the 2007–2008 school year and understand that students will be held accountable for their behavior and will be subject to the disciplinary consequences outlined in the Code.

Print name of student: _____

Signature of student: _____

Print name of parent: _____

Signature of parent: _____

Date: _____

School: _____

Grade level: _____

Please sign this page, remove it, and return it to the student's school. Thank you.

STUDENT CODE OF CONDUCT

Purpose

The Student Code of Conduct is the district's response to the requirements of Chapter 37 of the Texas Education Code.

The Code provides methods and options for managing students in the classroom and on school grounds, disciplining students, and preventing and intervening in student discipline problems.

The law requires the district to define misconduct that may—or must—result in a range of specific disciplinary consequences including removal from a regular classroom or campus, suspension, placement in a disciplinary alternative education program (DAEP), or expulsion from school.

This Student Code of Conduct has been adopted by the (district name) Board of Trustees and developed with the advice of the district-level committee. This Code provides information to parents and students regarding standards of conduct, consequences of misconduct, and procedures for administering discipline.

In accordance with state law, the Code will be posted at each school campus or will be available for review at the office of the campus principal. Parents will be notified of any conduct violation that may result in a student being suspended, placed in a DAEP, or expelled.

Contents

This Code is organized into the following sections:¹

1. School District Authority and Jurisdiction	page 2
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4. Discipline Management Techniques	page 8
5. Removal from the Regular Educational Setting	page 10
6. Suspension	page 11
7. DAEP Placement	page 12
8. Placement and/or Expulsion for Certain Serious Offenses	page 19
9. Expulsion	page 21
10. Glossary	page 28

¹ In the Model, the Contents topics listed are found on the pages shown. After your editing is complete, replace the page numbers with those appropriate for your local Code.

Because the Student Code of Conduct is adopted by the district's board of trustees, it has the force of policy; therefore, in case of conflict between the Code and the student handbook, the Code will prevail.²

Please Note: The discipline of students with disabilities who are eligible for services under federal law (Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973) is subject to the provisions of those laws.³

² In order to avoid this type of conflict, the student handbook is usually not adopted by the board. Review your BP(LOCAL) and FN(LOCAL) policies to confirm this statement.

³ You may want to contact the district's local attorney regarding the Code and disciplining students with disabilities.

School District Authority and Jurisdiction

School rules and the authority of the district to administer discipline apply whenever the interest of the district is involved, on or off school grounds, in conjunction with or independent of classes and school-sponsored activities.

The district has disciplinary authority over a student:

1. During the regular school day and while the student is going to and from school on district transportation;
2. During lunch periods in which a student is allowed to leave campus;
3. While the student is in attendance at any school-related activity, regardless of time or location;
4. For any school-related misconduct, regardless of time or location;
5. When retaliation against a school employee or volunteer occurs or is threatened, regardless of time or location;
6. When criminal mischief is committed on or off school property or at a school-related event;
7. For certain offenses committed within 300 feet of school property as measured from any point on the school's real property boundary line;
8. For certain offenses committed while on school property or while attending a school-sponsored or school-related activity of another district in Texas;
9. When the student commits a felony, as provided by Education Code 37.006 or 37.0081; and
10. When the student is required to register as a sex offender.

The district has the right to search a vehicle driven to school by a student and parked on school property whenever there is reasonable cause to believe it contains articles or materials prohibited by the district.

The district has the right to search a student's locker when there is reasonable cause to believe it contains articles or materials prohibited by the district.

OR

District administrators conduct routine blanket inspections and searches of lockers.⁴

⁴ LOCKER SEARCHES. Coordinate this statement with your FNF(LOCAL) and delete one of the choices.

⁵ REPORTING CRIMES. Education Code 37.015 requires principals to report certain offenses that occur on school property. School administrators should not hesitate to call law enforcement for assistance in determining whether a crime has been committed.

⁶ REVOCATION OF TRANSFER. Include this statement only if you have nonresident transfer students and have included a revocation provision in your transfer agreement and at FDA(LOCAL).

Reporting Crimes

School administrators will report crimes as required by law and will call local law enforcement when an administrator suspects that a crime has been committed on campus.⁵

Revoking Transfers

The district has the right to revoke the transfer of a nonresident student for violating the district's Code.⁶

Standards for Student Conduct⁷

Each student is expected to:

- Demonstrate courtesy, even when others do not.
- Behave in a responsible manner, always exercising self-discipline.
- Attend all classes, regularly and on time.
- Prepare for each class; take appropriate materials and assignments to class.
- Meet district and campus standards of grooming and dress.
- Obey all campus and classroom rules.
- Respect the rights and privileges of students, teachers, and other district staff and volunteers.
- Respect the property of others, including district property and facilities.
- Cooperate with and assist the school staff in maintaining safety, order, and discipline.
- Adhere to the requirements of the Student Code of Conduct.

⁷ STANDARDS FOR CONDUCT. Chapter 37 requires the Code to include standards that schools expect from students. Modify the list to emphasize conduct the district would like to encourage.

General Conduct Violations⁸

The categories of conduct below are prohibited at school and all school-related activities, but the list does not include the most serious offenses. In the subsequent sections on Suspension, DAEP Placement, Placement and/or Expulsion for Certain Serious Offenses, and Expulsion, severe offenses that require or permit specific consequences are listed. Any offense, however, may be serious enough to result in Removal from the Regular Educational Setting as detailed in that section.

Students shall not:

Disregard for Authority

- Fail to comply with directives given by school personnel (insubordination).
- Leave school grounds or school-sponsored events without permission.
- Disobey rules for conduct on school buses.
- Refuse to accept discipline management techniques assigned by a teacher or principal.

Mistreatment of Others

- Use profanity or vulgar language or make obscene gestures.
- Fight or scuffle.⁹ (For assault see DAEP Placement and Expulsion)
- Threaten a district student, employee, or volunteer, including off school property if the conduct causes a substantial disruption to the educational environment.
- Engage in bullying, harassment, or making hit lists. (See glossary for all three terms)
- Engage in conduct that constitutes sexual harassment or sexual abuse, whether by word, gesture, or any other conduct, directed toward another person, including a district student, employee, or volunteer.¹⁰
- Engage in conduct that constitutes dating violence, including the intentional use of physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control another person with whom the student has or has had a dating relationship.¹¹
- Engage in inappropriate or indecent exposure of private body parts.
- Participate in hazing. (See glossary)
- Cause an individual to act through the use of or threat of force (coercion).
- Commit extortion or blackmail (obtaining money or an object of value from an unwilling person).
- Engage in inappropriate verbal, physical, or sexual conduct directed toward another person, including a district student, employee, or volunteer.
- Record the voice or image of another without the prior consent of the individuals being recorded or in any way that disrupts the educational environment or invades the privacy of others.

⁸ GENERAL CONDUCT VIOLATIONS. The district should modify the list to reflect the district's decisions on what is unacceptable student behavior. The district may want to move some of the general violations to the list of offenses for which a student may be placed in a DAEP on page 12.

⁹ FIGHT. Keep in mind that not all fighting constitutes assault and may not require placement in a DAEP. [See FNCH(LEGAL)]

¹⁰ SEXUAL HARASSMENT. Refer to district policies DIA, FNC, and FFH(LOCAL) for the district's provisions regarding harassment, including sexual harassment.

¹¹ HB 121 requires the district to develop a policy on dating violence. The term has also been added to the glossary.

General Conduct Violations

Property Offenses

- Damage or vandalize property owned by others.¹² (For felony criminal mischief see DAEP Placement or Expulsion)
- Deface or damage school property—including textbooks, lockers, furniture, and other equipment—with graffiti or by other means.¹²
- Steal from students, staff, or the school.
- Commit or assist in a robbery or theft even if it does not constitute a felony according to the Texas Penal Code. (For felony robbery and theft see DAEP Placement and Expulsion)

¹² VANDALISM. Damage to property equal to or in excess of \$1,500 is felony criminal mischief and requires placement in a DAEP or expulsion.

Possession of Prohibited Items

- Possess or use:
 - fireworks of any kind, smoke or stink bombs, or any other pyrotechnic device;
 - a razor, box cutter, chain, or any other object used in a way that threatens or inflicts bodily injury to another person;
 - a “look-alike” weapon;
 - an air gun or BB gun;
 - ammunition;
 - a stun gun;¹³
 - a pocketknife or any other small knife;¹⁴
 - mace or pepper spray;
 - pornographic material;
 - tobacco products;
 - matches or a lighter;
 - a laser pointer for other than an approved use; or¹⁵
 - any articles not generally considered to be weapons, including school supplies, when the principal or designee determines that a danger exists. (For weapons and firearms see DAEP Placement and Expulsion)

¹³ STUN GUN. Since stun guns are not included in Texas law as a prohibited weapon, the district may want to include them on this list.

¹⁴ POCKETKNIFE. If the district lists possession of any knife as a mandatory expellable offense on page 23, this text should be deleted. If the district expels for illegal knives but uses other consequences for smaller knives, including pocketknives, this should be retained and coordinated with page 23.

¹⁵ LASER POINTERS. Laser pointers are not addressed in Chapter 37. Because laser pointers can cause injury to eyes, however, districts should decide whether to prohibit or allow these items in school and/or at school-related activities.

¹⁶ TELECOMMUNICATIONS DEVICES. Choose one of the three options or write your own. State law does not prohibit possession of cell phones or other telecommunications devices at school. Districts, however, may adopt and enforce a local prohibition. If the district confiscates and disposes of unauthorized telecommunications devices, a provision must be included at FNCE(LOCAL); otherwise, no policy statement is required.

Possession of Telecommunications Devices

- Display, turn on, or use a cellular telephone or other telecommunications device on school property during the school day.¹⁶
- OR
- Possess a cellular telephone or other telecommunications device at school during the school day.
- OR
- Possess a cellular telephone or other telecommunications device at school or at a school-related or school-sponsored event.

Illegal, Prescription, and Over-the-Counter Drugs

- Possess or sell seeds or pieces of marijuana in less than a usable amount. (For illegal drugs, alcohol, and inhalants see DAEP Placement and Expulsion)

General Conduct Violations

- Possess, use, give, or sell paraphernalia related to any prohibited substance. (See glossary for “paraphernalia”)
- Possess or sell look-alike drugs or attempt to pass items off as drugs or contraband.
- Abuse the student’s own prescription drug, give a prescription drug to another student, or possess or be under the influence of another person’s prescription drug on school property or at a school-related event. (See glossary for “abuse”)
- Abuse over-the-counter drugs. (See glossary for “abuse”)
- Be under the influence of prescription or over-the-counter drugs that cause impairment of the physical or mental faculties. (See glossary for “under the influence”)
- Have or take prescription drugs or over-the-counter drugs at school other than as provided by district policy.¹⁷
- Violate computer use policies, rules, or agreements signed by the student or the student’s parent.¹⁸
- Attempt to access or circumvent passwords or other security-related information of the district, students, or employees or upload or create computer viruses, including off school property if the conduct causes a substantial disruption to the educational environment.¹⁸
- Attempt to alter, destroy, or disable district computer equipment, district data, the data of others, or other networks connected to the district’s system, including off school property if the conduct causes a substantial disruption to the educational environment.¹⁸
- Use the Internet or other electronic communications to threaten district students, employees, or volunteers, including off school property if the conduct causes a substantial disruption to the educational environment.
- Send or post electronic messages that are abusive, obscene, sexually oriented, threatening, harassing, damaging to another’s reputation, or illegal, including off school property if the conduct causes a substantial disruption to the educational environment.

¹⁷ PRESCRIPTION OR OVER-THE-COUNTER DRUGS. Coordinate with your FFAC(LOCAL) policy or regulations on administering medication.

¹⁸ COMPUTER USE POLICIES OR RULES. Coordinate with your CQ(LOCAL) policy, regulations, user agreements, and rules related to computer use.

Misuse of Computers and the Internet

Safety Transgressions

- Possess published or electronic material that is designed to promote or encourage illegal behavior or that could threaten school safety.
- Engage in verbal (oral or written) exchanges that threaten the safety of another student, a school employee, or school property.
- Make false accusations or perpetrate hoaxes regarding school safety.
- Engage in any conduct that school officials might reasonably believe will substantially disrupt the school program or incite violence.

General Conduct Violations

Miscellaneous Offenses

- Throw objects that can cause bodily injury or property damage.
- Discharge a fire extinguisher without valid cause.
- Violate dress and grooming standards as communicated in the student handbook.
- Cheat or copy the work of another.
- Gamble.
- Falsify records, passes, or other school-related documents.
- Engage in actions or demonstrations that substantially disrupt or materially interfere with school activities.
- Repeatedly violate other communicated campus or classroom standards of conduct.

The district may impose campus or classroom rules in addition to those found in the Code. These rules may be posted in classrooms or given to the student and may or may not constitute violations of the Code.

Discipline Management Techniques¹⁹

Discipline will be designed to improve conduct and to encourage students to adhere to their responsibilities as members of the school community. Disciplinary action will draw on the professional judgment of teachers and administrators and on a range of discipline management techniques. Discipline will be correlated to the seriousness of the offense, the student's age and grade level, the frequency of misbehavior, the student's attitude, the effect of the misconduct on the school environment, and statutory requirements.

Because of these factors, discipline for a particular offense (unless otherwise specified by law) may bring into consideration varying techniques and responses.

The discipline of students with disabilities is subject to applicable state and federal law in addition to the Student Code of Conduct. To the extent any conflict exists, state and/or federal law will prevail.²⁰

In accordance with the Education Code, a student who is enrolled in a special education program may not be disciplined for conduct meeting the definition of bullying, harassment, or making hit lists (see glossary) until an ARD committee meeting has been held to review the conduct.²⁰

In deciding whether to order suspension, DAEP placement, or expulsion, the district will take into consideration a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct.²⁰

The following discipline management techniques may be used—alone or in combination—for behavior prohibited by the Student Code of Conduct or by campus or classroom rules:

- Verbal correction, oral or written.
- Cooling-off time or “time-out.”
- Seating changes within the classroom.
- Temporary confiscation of items that disrupt the educational process.
- Rewards or demerits.
- Behavioral contracts.
- Counseling by teachers, counselors, or administrative personnel.
- Parent-teacher conferences.
- Grade reductions for cheating, plagiarism, and as otherwise permitted by policy.²¹
- Detention.²²
- Sending the student to the office or other assigned area, or to in-school suspension.²³
- Assignment of school duties such as cleaning or picking up litter.

¹⁹ DISCIPLINE MANAGEMENT TECHNIQUES. Add and delete techniques as appropriate for your district. A variety of techniques may be used for violations of campus rules, classroom rules, or the Code.

²⁰ STUDENTS WITH DISABILITIES. The Model does not include specifics about the discipline of special education students. Please note, however, Section 37.001 addresses the discipline of a special education student for conduct meeting the definition of bullying, harassment, or making hit lists. Section 37.001 also requires the district to specify in the Code whether consideration will be given to the impaired capacity to appreciate wrongfulness.

²¹ GRADE REDUCTIONS. Grade reductions must be consistent with EIA and EIAB(LOCAL).

²² DETENTION. Refer to FO(LOCAL) to determine whether local policy imposes requirements on detention procedures.

²³ IN-SCHOOL SUSPENSION. This does not have the three-day limit associated with out-of-school suspension, addressed later in the Model.

Students with Disabilities

Techniques

- Withdrawal of privileges, such as participation in extracurricular activities, eligibility for seeking and holding honorary offices, or membership in school-sponsored clubs and organizations.
- Penalties identified in individual student organizations' extracurricular standards of behavior.²⁴
- Withdrawal or restriction of bus privileges.²⁵
- School-assessed and school-administered probation.
- Corporal punishment.²⁶
- Out-of-school suspension, as specified in the Suspension section of this Code.
- Placement in a DAEP, as specified in the DAEP section of this Code.
- Placement and/or expulsion in an alternative educational setting, as specified in the Placement and/or Expulsion for Certain Serious Offenses section of this Code.
- Expulsion, as specified in the Expulsion section of this Code.
- Referral to an outside agency or legal authority for criminal prosecution in addition to disciplinary measures imposed by the district.
- Other strategies and consequences as determined by school officials.

Notification

The principal or appropriate administrator will notify a student's parent by phone or in writing of any violation that may result in a suspension, placement in a DAEP, or expulsion. Notification will be made within three school days after the administrator becomes aware of the violation.

Appeals

Parental questions or complaints regarding disciplinary measures should be addressed to the teacher or campus administration, as appropriate, and in accordance with policy FNG(LOCAL). A copy of the policy may be obtained from the principal's office or the central administration office or through Policy On Line at the following address: *(add the district's URL or Web address)*.²⁷

Consequences will not be deferred pending the outcome of a grievance.²⁸

²⁴ **EXTRACURRICULAR STANDARDS OF BEHAVIOR.** Principals, the superintendent, or the board may approve extracurricular standards of behavior developed by sponsors and coaches of extracurricular activities. The activities may have higher standards than the Code. Students may be denied participation in an activity for violating the extracurricular standards of behavior. Refer to policies FNC and FO(LOCAL). In light of numerous legal challenges to various aspects of stricter standards as a condition of participation, the district is advised that such codes be in writing and be signed by the students and their parents.

²⁵ **TRANSPORTATION.** A student's transportation privileges may be revoked or restricted. However, transportation privileges may be taken away from a student with disabilities only in accordance with state and federal law.

²⁶ **CORPORAL PUNISHMENT.** Delete this item from the list if corporal punishment is not permitted. Refer to policy FO(LOCAL).

²⁷ **POLICY ON LINE.** If the district is a Policy On Line subscriber, the URL or Web address could be published here. If the district does not have Policy On Line, delete this text.

²⁸ **APPEALS.** Districts are not required to delay a consequence while a parent pursues a grievance.

Removal from the Regular Educational Setting

In addition to other discipline management techniques, misconduct may result in removal from the regular educational setting in the form of a routine referral or a formal removal.

Routine Referral

A routine referral occurs when a teacher sends a student to the principal's office as a discipline management technique. The principal may then employ additional techniques.²⁸

Formal Removal

A teacher or administrator **may** remove a student from class for a behavior that violates this Code to maintain effective discipline in the classroom. A teacher **may** also initiate a formal removal from class if:

1. The student's behavior has been documented by the teacher as repeatedly interfering with the teacher's ability to teach his or her class or with the student's classmates' ability to learn; or
2. The behavior is so unruly, disruptive, or abusive that the teacher cannot teach, and the students in the classroom cannot learn.

A teacher or administrator **must** remove a student from class if the student engages in behavior that under the Education Code requires or permits the student to be placed in a DAEP or expelled. When removing for those reasons, the procedures in the subsequent sections on DAEP or expulsion will be followed. Otherwise, within three school days of the formal removal, the appropriate administrator will schedule a conference with the student's parent; the student; the teacher, in the case of removal by a teacher; and any other administrator.

At the conference, the appropriate administrator will inform the student of the misconduct for which he or she is charged and the consequences. The administrator will give the student an opportunity to give his or her version of the incident.

When a student is removed from the regular classroom by a teacher and a conference is pending, the principal may place the student in:

- Another appropriate classroom
- In-school suspension
- Out-of-school suspension
- DAEP

Returning Student to Classroom

When a student has been formally removed from class by a teacher for conduct against the teacher containing the elements of assault, aggravated assault, sexual assault, aggravated sexual assault, murder, capital murder, or criminal attempt to commit murder or capital murder, the student may not be returned to the teacher's class without the teacher's consent.

When a student has been formally removed by a teacher for any other conduct, the student may be returned to the teacher's class without the teacher's consent, if the placement review committee determines that the teacher's class is the best or only alternative available.

²⁸ ROUTINE REFERRAL. For a routine referral, the principal may employ one of the discipline management techniques listed. If a teacher repeatedly refers a student to the office for misconduct, the principal should alert the student's parent to the recurring misconduct and the possibility of placement in a DAEP if documented misconduct continues.

Suspension²⁹

Misconduct

Students may be suspended for any behavior listed in the Code as a general conduct violation, DAEP offense, or expellable offense.

In deciding whether to order suspension, the district will take into consideration:³⁰

1. Self-defense (see glossary),
2. Intent or lack of intent at the time the student engaged in the conduct, and
3. The student's disciplinary history.

OR

In deciding whether to order suspension, the district will not take into consideration:

1. Self-defense (see glossary),
2. Intent or lack of intent at the time the student engaged in the conduct, or
3. A student's disciplinary history.

Process

State law allows a student to be suspended for no more than three school days per behavior violation, with no limit on the number of times a student may be suspended in a semester or school year.³¹

Before being suspended a student will have an informal conference with the appropriate administrator, who shall advise the student of the conduct of which he or she is accused. The student will be given the opportunity to explain his or her version of the incident before the administrator's decision is made.

The number of days of a student's suspension will be determined by the appropriate administrator, but will not exceed three school days.

The appropriate administrator will determine any restrictions on participation in school-sponsored or school-related extracurricular and cocurricular activities.

²⁹ SUSPENSION. Districts may add to the list of offenses for which students may be suspended or removed to a DAEP, but all such offenses must be listed and defined in the Code.

³⁰ CONSIDERATIONS IN DECISION. The district is required to specify whether consideration is given to these three factors. Choose one set or use both lists together and include each factor on only one list.

³¹ LENGTH OF SUSPENSION. Chapter 37 does not place any limits on the number of times a student can be suspended in a semester or year. Case law prior to the 1995 revisions to the Education Code, however, suggests the need for limiting the number of days a student may be suspended in a semester. A district may be challenged if it suspends a student for so many days during a semester that the suspension has the effect of depriving a student of his or her right to an education.

Disciplinary Alternative Education Program (DAEP) Placement

A student who is expelled for an offense that otherwise would have resulted in a DAEP placement does not have to be placed in DAEP in addition to the expulsion.

In deciding whether to order placement in a DAEP, the district will take into consideration:³²

1. Self-defense (see glossary),
2. Intent or lack of intent at the time the student engaged in the conduct, and
3. The student's disciplinary history.

OR

In deciding whether to order placement in a DAEP, the district will not take into consideration:

1. Self-defense (see glossary),
2. Intent or lack of intent at the time the student engaged in the conduct, or
3. The student's disciplinary history.

³² CONSIDERATIONS IN DECISION. The district is required to specify whether consideration is given to these three factors. Choose one set or use both lists together and include each factor on only one list.

Discretionary Placement: Misconduct That May Result in DAEP Placement

A student **may** be placed in a DAEP for behaviors prohibited in the General Conduct Violations section of this Code.³³

OR

A student **may** be placed in a DAEP for the following conduct violations:

- 1.
- 2.

³³ ADDITIONAL BEHAVIORS FOR DAEP PLACEMENT. Choose between referring to the list in the General Conduct Violations section, beginning on page 4, as behaviors that may result in placement or create a list of behaviors that the district has decided warrant DAEP placement and delete the other option.

Misconduct Identified in State Law

In accordance with state law, a student **may** be placed in a DAEP for any one of the following offenses:

- Involvement in a public school fraternity, sorority, or secret society, including participating as a member or pledge, or soliciting another person to become a pledge or member of a public school fraternity, sorority, secret society, or gang. (See glossary)
- Involvement in criminal street gang activity. (See glossary)³⁴

- Criminal mischief, not punishable as a felony.³⁵

OR

- Any criminal mischief, including a felony.

In accordance with state law, a student **may** be placed in a DAEP if the superintendent or the superintendent's designee has reasonable belief (see glossary) that the student has engaged in conduct punishable as a felony, other than those listed as offenses

³⁴ GANGS. Districts having problems with gang activity should consult their school attorneys to define gang-related activity and should discipline consistently for such activity.

³⁵ FELONY CRIMINAL MISCHIEF. Criminal mischief constitutes a felony if the property damage meets or exceeds \$1,500. The district must decide whether to make this an offense for which a student will be placed in a DAEP or expelled. If the felony is retained here, delete the text on page 21.

involving injury to a person in Title 5 (see glossary) of the Texas Penal Code, that occurs off school property and not at a school-sponsored or school-related event, if the student's presence in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

The appropriate administrator **may**, but is not required to, place a student in a DAEP for off-campus conduct for which DAEP placement is required by state law if the administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

**Mandatory Placement:
Misconduct That
Requires DAEP
Placement**

A student **must** be placed in a DAEP if the student:

- Engages in conduct relating to a false alarm or report (including a bomb threat) or a terroristic threat involving a public school. (See glossary)³⁶
- Commits the following offenses on school property or within 300 feet of school property as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off school property:
 - Engages in conduct punishable as a felony.
 - Commits an assault (see glossary) under Texas Penal Code 22.01(a)(1).
 - Sells, gives, or delivers to another person, or possesses, uses, or is under the influence of marijuana, a controlled substance, or a dangerous drug in an amount not constituting a felony offense. (School-related felony drug offenses are addressed in the Expulsion section.) (See glossary for "under the influence")³⁷
 - Sells, gives, or delivers to another person an alcoholic beverage; commits a serious act or offense while under the influence of alcohol; or possesses, uses, or is under the influence of alcohol, if the conduct is not punishable as a felony offense. (School-related felony alcohol offenses are addressed in the Expulsion section.)
 - Behaves in a manner that contains the elements of an offense relating to abusable volatile chemicals.
 - Behaves in a manner that contains the elements of the offense of public lewdness or indecent exposure.

³⁶ FALSE ALARM, REPORT, OR TERRORISTIC THREAT. If the district decides that it will always expel for these offenses, delete the text here in favor of the text in the section on expulsion on page 21. This includes behaviors such as calling in a bomb threat or pulling a fire alarm without cause. A district may want to list bomb threats as an expellable offense and the pulling of a fire alarm as a DAEP placement. The district may also want to take age and grade level into consideration when determining consequences.

³⁷ DRUGS, ALCOHOL, AND ABUSABLE VOLATILE CHEMICALS. Chapter 37 allows districts to choose expulsion or mandatory placement in a DAEP for drug, alcohol, or abusable volatile chemical offenses involving amounts that are less than felony violations. If the district wishes to have the option of punishing these offenses with DAEP placements, the shaded material should be retained. If the board decides to always expel for these lesser-amount offenses, these three bullets should be deleted here and retained in the expulsion section on page 22. Districts also have the option to use a DAEP placement for a first offense and expel for repeated offenses. The district may also indicate that it will be decided on a case-by-case basis whether to place a student in a DAEP or to expel. In whatever manner the district decides to treat these offenses, the decision should be clearly spelled out in the Code.

Disciplinary Alternative Education Program (DAEP) Placement

- Engages in expellable conduct and is between six and nine years of age.³⁸
- Commits a federal firearms violation and is younger than six years of age.³⁸
- Engages in conduct that contains the elements of the offense of retaliation against any school employee or volunteer on or off school property. (Committing retaliation in combination with another expellable offense is addressed in the Expulsion section of this Code.)
- Engages in conduct punishable as a felony listed under Title 5 (see glossary) of the Texas Penal Code when the conduct occurs off school property and not at a school-sponsored or school-related event and:
 1. The student receives deferred prosecution (see glossary),
 2. A court or jury finds that the student has engaged in delinquent conduct (see glossary), or
 3. The superintendent or designee has a reasonable belief (see glossary) that the student engaged in the conduct.³⁹

Sexual Assault and Campus Assignments

If a student has been convicted of continuous sexual abuse of a young child or children or convicted of or placed on deferred adjudication for sexual assault or aggravated sexual assault against another student on the same campus, and if the victim's parent or another person with the authority to act on behalf of the victim requests that the board transfer the offending student to another campus, the offending student shall be transferred to another campus in the district. If there is no other campus in the district serving the grade level of the offending student, the offending student will be transferred to a DAEP.⁴⁰

Emergencies

In an emergency, the principal or the principal's designee may order the immediate placement of a student in a DAEP for any reason for which placement in a DAEP may be made on a nonemergency basis.

Process

Removals to a DAEP will be made by the (fill in the blank with the appropriate title or position for the district).⁴¹

Conference

When a student is removed from class for a DAEP offense, the appropriate administrator will schedule a conference within three school days with the student's parent, the student, and the teacher, in the case of a teacher removal.

At the conference, the appropriate administrator will inform the student, orally or in writing, of the reasons for the removal and will give the student an explanation of the basis for the removal and an opportunity to respond to the reasons for the removal.

Following valid attempts to require attendance, the district may hold the conference and make a placement decision regardless of whether the student or the student's parents attend the conference.

Placement Order

After the conference, if the student is placed in the DAEP, the appropriate administrator will write a placement order. A copy of the DAEP placement order will be sent to the student and the student's parent.

³⁸ STUDENTS UNDER THE AGE OF TEN. The law regarding young students is as follows:

- Students under age six cannot be placed in a DAEP unless they commit a federal firearms offense.
- Students between six and nine years of age who commit expellable offenses must be placed in a DAEP.
- Elementary students cannot be placed in a DAEP with students not in elementary school.

³⁹ DETERMINATION OF OFFENSE. To determine whether a violation includes elements of an offense under the Penal Code, the district may rely on reports from law enforcement authorities in accordance with Article 15.27 of the Code of Criminal Procedure. Article 15.27 requires law enforcement officers and officers of juvenile courts to provide information to districts when a young person gets into trouble. The superintendent or designee can use such a report to determine whether or not to remove a student from the regular classroom and place him or her in a DAEP.

⁴⁰ SEXUAL ASSAULT AND CAMPUS ASSIGNMENTS. HB 8 adds "the continuous abuse of a young child or children" as another reason for assignment to a different campus when the victim is on the same campus.

⁴¹ AUTHORITY TO REMOVE. The board must delegate the authority to place a student in a DAEP to either the campus principal or another appropriate administrator. The board may want to designate specific hearing officers or a review committee for placement hearings.

Disciplinary Alternative Education Program (DAEP) Placement

Not later than the second business day after the conference, the board's designee will deliver to the juvenile court a copy of the placement order and all information required by Section 52.04 of the Family Code.

If the student is placed in the DAEP and the length of placement is inconsistent with the guidelines included in this Code, the placement order will give notice of the inconsistency.

Length of Placement

The duration of a student's placement in a DAEP will be determined by the (fill in the blank with the appropriate title or position for the district).

The duration of a student's placement will be determined on a case-by-case basis. DAEP placement will be correlated to the seriousness of the offense, the student's age and grade level, the frequency of misconduct, the student's attitude, and statutory requirements.

The maximum period of DAEP placement shall be one calendar year except as provided below.⁴²

Exceeds One Year

Placement in a DAEP may exceed one year when a review by the district determines that:

1. The student is a threat to the safety of other students or to district employees, or
2. Extended placement is in the best interest of the student.

The statutory limitations on the length of a DAEP placement do not apply to a placement resulting from the board's decision to place a student who engaged in the sexual assault of another student so that the students are not assigned to the same campus.

Exceeds School Year

Students who commit offenses requiring placement in a DAEP at the end of one school year may be required to continue that placement at the start of the next school year to complete the assigned term of placement.

For placement in a DAEP to extend beyond the end of the school year, the (fill in the blank with the board or the appropriate title or position of the board's designee) must determine that:

1. The student's presence in the regular classroom or campus presents a danger of physical harm to the student or others, or
2. The student has engaged in serious or persistent misbehavior (see glossary) that violates the district's Code.

Exceeds 60 Days

For placement in a DAEP to extend beyond 60 days or the end of the next grading period, whichever is sooner, a student's parent will be given notice and the opportunity to participate in a proceeding before the board or the board's designee.

Appeals

Questions or complaints from parents regarding disciplinary measures should be addressed to the campus administration, in accordance with policy FNG(LOCAL). A copy of this policy may be obtained from the principal's office or the central administration office or through Policy On Line at the following address: (add the district's URL or Web address).⁴³

⁴² GUIDELINES. Districts are required to have guidelines for setting the term of a DAEP placement. The length of placement may be for as few as three days or as long as one year. Districts may list categories of offenses or individual offenses or may list one year as the maximum for any offense. You may also choose to specify the length of a placement for a student who repeats an offense.

⁴³ POLICY ON LINE. If the district is a Policy On Line subscriber, the URL or Web address could be published here. If the district does not have Policy On Line, delete this text.

Disciplinary Alternative Education Program (DAEP) Placement

Disciplinary consequences will not be deferred pending the outcome of an appeal. The decision to place a student in a DAEP cannot be appealed beyond the board.⁴⁴

Restrictions during Placement

State law prohibits a student placed in a DAEP for reasons specified in state law from attending or participating in school-sponsored or school-related extracurricular activities.⁴⁵

OR

The district does not permit a student who is placed in a DAEP to participate in any school-sponsored or school-related extracurricular or cocurricular activity, including seeking or holding honorary positions and/or membership in school-sponsored clubs and organizations.

A student placed in a DAEP will not be provided transportation unless he or she is a student with a disability who has transportation designated as a related service in the student's IEP.⁴⁶

OR

The district will provide transportation to students in a DAEP.

For seniors who are eligible to graduate and are assigned to a DAEP at the time of graduation, the last day of placement in the program will be the last instructional day, and the student will be allowed to participate in the graduation ceremony and related graduation activities unless otherwise specified in the DAEP placement order.⁴⁷

OR

For seniors assigned to a DAEP who are eligible to graduate, the placement in the program will continue through graduation, and the student will not be allowed to participate in the graduation ceremony and related graduation activities.

⁴⁴ APPEALS. Some districts have had problems with parents who grieve disciplinary action in an effort to delay or avoid the consequence. Districts are not required to delay a consequence while a parent submits a grievance.

⁴⁵ EXTRACURRICULAR ACTIVITIES. Choose one option. State law prohibits students placed in a DAEP for state-mandated removal reasons from attending or participating in school-sponsored or school-related extracurricular or cocurricular activities during the period of placement (option 1). The district can expand that prohibition to include placement in a DAEP for locally defined reasons (option 2). In addition to the legal prohibition, the district could choose specific conduct violations for which participation is prohibited.

⁴⁶ TRANSPORTATION. A student's transportation privileges may be taken away or restricted. However, the removal of transportation privileges from students with disabilities must be consistent with state and federal law.

⁴⁷ GRADUATION. The Education Code prohibits students in a DAEP for certain reasons from participating in school-sponsored or school-related activities. Districts should decide and communicate clearly to parents and students whether a DAEP placement in the second semester ends on the last day of instruction or continues through graduation and graduation-related activities.

Placement Review

A student placed in a DAEP will be provided a review of his or her status, including academic status, by the (fill in the blank with the board or the appropriate title or position of the board's designee) at intervals not to exceed 120 days. In the case of a high school student, the student's progress toward graduation and the student's graduation plan will also be reviewed. At the review, the student or the student's parent will be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of a teacher who removed the student without that teacher's consent.

Additional Misconduct

If during the term of placement in a DAEP the student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted, and the appropriate administrator may enter an additional disciplinary order as a result of those proceedings.

Notice of Criminal Proceedings

The office of the prosecuting attorney will notify the district if a student was placed in a DAEP for certain offenses including any felony, unlawful restraint, indecent exposure, assault, deadly conduct, terroristic threats, organized crime, certain drug offenses, or possession of a weapon, and:

1. Prosecution of a student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication (see glossary), or deferred prosecution will be initiated; or
2. The court or jury found a student not guilty, or made a finding that the student did not engage in delinquent conduct or conduct indicating a need for supervision, and the case was dismissed with prejudice.

If a student was placed in a DAEP for such conduct, on receiving the notice from the prosecutor, the superintendent or designee will review the student's placement and schedule a review with the student's parent not later than the third day after the superintendent or designee receives notice from the prosecutor. The student may not be returned to the regular classroom pending the review.

After reviewing the notice and receiving information from the student's parent, the superintendent or designee may continue the student's placement if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

The student or the student's parent may appeal the superintendent's decision to the board. The student may not be returned to the regular classroom pending the appeal. In the case of an appeal, the board will, at the next scheduled meeting, review the notice from the prosecutor and receive information from the student, the student's parent, and the superintendent or designee, and confirm or reverse the decision of the superintendent or designee. The board will make a record of the proceedings.

If the board confirms the decision of the superintendent or designee, the student and the student's parent may appeal to the Commissioner of Education. The student may not be returned to the regular classroom pending the appeal.

Withdrawal during Process

When a student violates the district's Code in a way that requires or permits the student to be placed in a DAEP and the student withdraws from the district before a placement order is completed, the district may complete the proceedings and issue a placement order. If the student then reenrolls in the district during the same or a subsequent school year, the district may enforce the order at that time, less any period of the placement that has been served by the student during enrollment in another district. If the appropriate administrator or the board fails to issue a placement order after the student withdraws, the next district in which the student enrolls may complete the proceedings and issue a placement order.

Disciplinary Alternative Education Program (DAEP) Placement

Newly Enrolled Students

The district will continue the DAEP placement of a student who enrolls in the district and was assigned to DAEP in an open-enrollment charter school or another district.⁴⁸

OR

The district will decide on a case-by-case basis whether to continue the placement of a student who enrolls in the district and was assigned to a DAEP in an open-enrollment charter school or another district. The district may place the student in the district's DAEP or a regular classroom setting.

OR

The district will place a student who enrolls in the district and was previously assigned to a DAEP in an open-enrollment charter school or another district directly into a regular classroom setting.

⁴⁸ NEWLY ENROLLED STUDENTS. Choose one of the three options. The district may place a student enrolling from an open-enrollment charter school or another district in the DAEP if the student was in the school's DAEP, and the school provides a copy of the placement order to the district. The district may place an enrolling student who was in a DAEP in another state in the DAEP if the student's placement would also have been a DAEP placement in the receiving district, and the sending district provides a copy of the placement order.

A newly enrolled student with a DAEP placement from a district in another state will be placed as any other newly enrolled student if the behavior committed is a reason for DAEP placement in the receiving district.

If the student was placed in a DAEP by a school district in another state for a period that exceeds one year, this district, by state law, will reduce the period of the placement so that the total placement does not exceed one year. After a review, however, the placement may be extended beyond a year if the district determines that the student is a threat to the safety of other students or employees or the extended placement is in the best interest of the student.⁴⁹

⁴⁹ OUT-OF-STATE DISTRICT. If a student was placed in a DAEP by a district in another state for a period that exceeds one year, a district in Texas must count the student's time spent in the DAEP in the other state so that the student's total placement time does not exceed one year except as allowed by the same review process used for district students.

Emergency Placement Procedure

When an emergency placement occurs, the student will be given oral notice of the reason for the action. Not later than the tenth day after the date of the placement, the student will be given the appropriate conference required for assignment to a DAEP.

Placement and/or Expulsion for Certain Serious Offenses

This section includes two categories of serious offenses for which the Education Code provides unique procedures and specific consequences.

Registered Sex Offenders

Upon receiving notification in accordance with state law that a student is currently required to register as a sex offender, the administration must remove the student from the regular classroom and determine appropriate placement unless the court orders JJAEP placement.⁵⁰

If the student is under any form of court supervision, including probation, community supervision, or parole, the placement will be in either DAEP or JJAEP for at least one semester.

If the student is not under any form of court supervision, the placement may be in DAEP or JJAEP for one semester or the placement may be in a regular classroom. The placement may not be in the regular classroom if the board or its designee determines that the student's presence:

1. Threatens the safety of other students or teachers,
2. Will be detrimental to the educational process, or
3. Is not in the best interests of the district's students.

Review Committee

At the end of the first semester of a student's placement in an alternative educational setting and before the beginning of each school year for which the student remains in an alternative placement, the district shall convene a committee, in accordance with state law, to review the student's placement. The committee will recommend whether the student should return to the regular classroom or remain in the placement. Absent a special finding, the board or its designee must follow the committee's recommendation.

The placement review of a student with a disability who receives special education services must be made by the ARD committee.

Newly Enrolled Student

If a student enrolls in the district during a mandatory placement as a registered sex offender, the district may count any time already spent by the student in a placement or may require an additional semester in an alternative placement without conducting a review of the placement.

Appeal

A student or the student's parent may appeal the placement by requesting a conference between the board or its designee, the student, and the student's parent. The conference is limited to the factual question of whether the student is required to register as a sex offender. Any decision of the board or its designee under this section is final and may not be appealed.

Certain Felonies

Regardless of whether placement or expulsion is required or permitted by one of the reasons in the DAEP Placement or Expulsion sections, in accordance with Education Code 37.0081, a student **may** be expelled and placed in either DAEP or JJAEP if the board or its designee makes certain findings and the following

⁵⁰ SB 6 and HB 2532 create Subchapter I of Chapter 37 on the placement of registered sex offenders. The district is required to remove a student from the regular classroom and determine the appropriate placement when the district receives notice under Article 15.27 or Chapter 62, Code of Criminal Procedure, that the student is currently required to register as a sex offender. The new law also requires a particular composition of the review committee and for the board or its designee to make certain determinations if the committee's recommendation is reversed.

Placement and/or Expulsion for Certain Serious Offenses

circumstances exist in relation to a felony offense under Title 5 (see glossary) of the Texas Penal Code.⁵¹ The student must:

- Have received deferred prosecution for conduct defined as a Title 5 felony offense;
- Have been found by a court or jury to have engaged in delinquent conduct for conduct defined as a Title 5 felony offense;
- Have been charged with engaging in conduct defined as a Title 5 felony offense;
- Have been referred to a juvenile court for allegedly engaging in delinquent conduct for conduct defined as a Title 5 felony offense; or
- Have received probation or deferred adjudication or have been arrested for, charged with, or convicted of a Title 5 felony offense.

The district may expel the student and order placement under these circumstances regardless of:

1. The date on which the student's conduct occurred,
2. The location at which the conduct occurred,
3. Whether the conduct occurred while the student was enrolled in the district, or
4. Whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

Hearing and Required Findings

The student must first have a hearing before the board or its designee, who must determine that in addition to the circumstances above that allow for the expulsion, the student's presence in the regular classroom:

1. Threatens the safety of other students or teachers,
2. Will be detrimental to the educational process, or
3. Is not in the best interest of the district's students.

Any decision of the board or the board's designee under this section is final and may not be appealed.

Length of Placement

The student is subject to the placement until:

1. The student graduates from high school,
2. The charges are dismissed or reduced to a misdemeanor offense, or
3. The student completes the term of the placement or is assigned to another program.

Newly Enrolled Students

A student who enrolls in the district before completing a placement under this section from another school district must complete the term of the placement.

⁵¹ HB 2532 expanded 37.0081 to include JJAEP placement in addition to DAEP and to include additional circumstances in relation to a Title 5 felony offense. Because this provision requires a hearing before placement, the district may only want to use it for offenses that are not covered elsewhere in the Code.

Expulsion

In deciding whether to order expulsion, the district will take into consideration:⁵²

1. Self-defense (see glossary),
2. Intent or lack of intent at the time the student engaged in the conduct, and
3. The student's disciplinary history.

OR

In deciding whether to order expulsion, the district will not take into consideration:

1. Self-defense (see glossary),
2. Intent or lack of intent at the time the student engaged in the conduct, or
3. The student's disciplinary history.

Discretionary Expulsion: Misconduct That May Result in Expulsion *Any Location*

A student **may** be expelled for:

- Engaging in the following, no matter where it takes place:
 - Conduct that contains the elements of assault under Penal Code 22.01(a)(1) in retaliation against a school employee or volunteer.
 - Criminal mischief, if punishable as a felony.⁵³
- Engaging in conduct that contains the elements of one of the following offenses against another student, without regard to where the conduct occurs:
 - Aggravated assault.
 - Sexual assault.
 - Aggravated sexual assault.
 - Murder.
 - Capital murder.
 - Criminal attempt to commit murder or capital murder.
 - Aggravated robbery.
- Engaging in conduct relating to a false alarm or report (including a bomb threat) or a terroristic threat involving a public school.⁵⁴

⁵² CONSIDERATIONS IN DECISION. The district is required to specify whether consideration is given to these three factors. Choose one set or use both lists together and include each factor on only one list.

⁵³ FELONY CRIMINAL MISCHIEF. According to the Texas Penal Code, criminal mischief that results in damage to property of \$1,500 or more is punishable as a felony. The district must decide whether to make this an offense for which a student will be placed in a DAEP or expelled. If the text regarding criminal mischief that includes a felony was retained on page 12 as a DAEP placement, it should be deleted here.

⁵⁴ MAKING A FALSE ALARM OR REPORT OR A TERRORISTIC THREAT. If the district decides these offenses should result only in a DAEP placement, delete the text here in favor of the text on page 13. The minimum punishment for a student who makes a false alarm or report or a terroristic threat involving a public school is placement in a DAEP. This includes calling in a bomb threat or pulling a fire alarm without cause. Districts may also expel for these offenses. A district may want to list bomb threats as an expellable offense and the pulling of a fire alarm as a DAEP placement. If so, list the offenses under the appropriate category.

Expulsion

At School, Within 300 Feet, or at School Event	<ul style="list-style-type: none">■ Committing any of the following offenses on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off school property:	
	<ul style="list-style-type: none">• Selling, giving, or delivering to another person, or possessing, using, or being under the influence of marijuana, a controlled substance, or a dangerous drug, if the conduct is not punishable as a felony.⁵⁵• Selling, giving, or delivering to another person, or possessing, using, or being under the influence of alcohol; or committing a serious act or offense while under the influence of alcohol, if the conduct is not punishable as a felony.• Engaging in conduct that contains the elements of an offense relating to abusable volatile chemicals.• Engaging in conduct that contains the elements of assault under Section 22.01(a)(1) against an employee or a volunteer.⁵⁶• Engaging in deadly conduct. (See glossary)	<p>⁵⁵ DRUGS, ALCOHOL, AND ABUSABLE VOLATILE CHEMICALS. Districts should decide if these three misconduct categories are going to be expellable offenses or DAEP placements in the district. If the board decides not to expel for offenses involving drugs, alcohol, or abusable volatile chemicals of less than a felony amount, these three bulleted items should be deleted from this section and retained in the DAEP section on page 13.</p> <p>⁵⁶ ASSAULTS. Chapter 37 allows districts to expel a student who assaults an employee or volunteer on campus. Districts may also expel a student if an employee or volunteer is assaulted in retaliation for his or her work with the district no matter where the assault occurs.</p>
Within 300 Feet of School	<ul style="list-style-type: none">■ Engaging in the following conduct while within 300 feet of school property, as measured from any point on the school's real property boundary line:• Aggravated assault, sexual assault, or aggravated sexual assault.• Arson.• Murder, capital murder, or criminal attempt to commit murder or capital murder.• Indecency with a child, aggravated kidnapping, manslaughter, criminally negligent homicide, or aggravated robbery.• Continuous sexual abuse of a young child or children.• Felony drug- or alcohol-related offense.• Use, exhibition, or possession of a firearm (as defined by state law), an illegal knife, a club, or prohibited weapon, or possession of a firearm (as defined by federal law).	
Property of Another District	<ul style="list-style-type: none">■ Committing any offense that is a state-mandated expellable offense if the offense is committed on the property of another district in Texas or while the student is attending a school-sponsored or school-related activity of a school in another district in Texas.	
While in DAEP	<ul style="list-style-type: none">■ Engaging in serious offenses or persistent misbehavior (see glossary) that violates the district's Code, while placed in a DAEP.⁵⁷	
Mandatory Expulsion: Misconduct That Requires Expulsion	<p>A student must be expelled for any of the following offenses that occur on school property or while attending a school-sponsored or school-related activity on or off school property:</p>	<p>⁵⁷ SERIOUS OFFENSES OR PERSISTENT MISBEHAVIOR. The definition of these terms is now included in the glossary. Edit and amend the list as necessary to reflect district practice. Serious or persistent misbehavior is not defined in law. Each district must define this behavior and determine the consequences. Districts located in counties that operate JJAEPs must include in the Memoranda of Understanding those categories of conduct the districts have defined as constituting serious or persistent misbehavior for which a student may be placed in the JJAEP.</p>

Expulsion

Federal Law

- Bringing to school a firearm, as defined by federal law. “Firearm” under federal law includes:⁵⁸
 - Any weapon (including a starter gun) that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive.
 - The frame or receiver of any such weapon.
 - Any firearm muffler or firearm weapon.
 - Any destructive device, such as any explosive, incendiary or poison gas bomb, or grenade.

Texas Penal Code

- Using, exhibiting, or possessing the following, as defined by the Texas Penal Code:
 - A firearm (any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use).⁵⁹
- An illegal knife, such as a knife with a blade over 5½ inches; hand instrument, designed to cut or stab another by being thrown; dagger, including but not limited to a dirk, stiletto, and poniard; bowie knife; sword; or spear.⁶⁰

OR

 - An illegal knife or a prohibited knife as defined by the district. (Include definition)

OR

 - Any knife including a pocketknife.
- A club (see glossary) such as an instrument specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, including a blackjack, nightstick, mace, and tomahawk.
 - A prohibited weapon, such as an explosive weapon, a machine gun, a short-barrel firearm, a firearm silencer, a switchblade knife, knuckles, armor-piercing ammunition, a chemical dispensing device, or a zip gun. (See glossary)
- Behaving in a manner that contains elements of the following offenses under the Texas Penal Code:
 - Aggravated assault, sexual assault, or aggravated sexual assault.
 - Arson. (See glossary)
 - Murder, capital murder, or criminal attempt to commit murder or capital murder.
 - Indecency with a child.
 - Aggravated kidnapping.
 - Aggravated robbery.
 - Manslaughter.

⁵⁸ FIREARM VIOLATION UNDER FEDERAL LAW. The district must expel a student for a period of one calendar year if the student brings to school a firearm as defined by federal law. [See FNCG(LEGAL)] The superintendent may decide on a case-by-case basis to modify the length of expulsion. The district may provide educational services to expelled students age ten or older in the DAEP; the district must provide services to students nine and younger in the DAEP. [See FOD(LEGAL)]

⁵⁹ FIREARM VIOLATION UNDER STATE LAW. We included in the Model the state definition of a firearm for clarity because we included the federal definition.

⁶⁰ KNIVES. Choose one of the three options. Districts must decide whether to prohibit knives other than illegal knives. [See FNCG(LEGAL)] Districts may prohibit all knives including pocketknives or knives as defined by the district. If pocketknives are included here, they should be deleted as a general conduct violation on page 5. The district may decide to expel for any illegal knife and to discipline in another manner for a different type of smaller knife, including a pocketknife. The district's Code should reflect the decisions on knives. Be sure the offense and consequences are listed properly.

Expulsion

- Criminally negligent homicide.
- Continuous sexual abuse of a young child or children.
- Behavior punishable as a felony that involves selling, giving, or delivering to another person, or possessing, using, or being under the influence of marijuana, a controlled substance, a dangerous drug, or alcohol; or committing a serious act or offense while under the influence of alcohol.
- Engaging in retaliation against a school employee or volunteer combined with one of the above-listed mandatory expulsion offenses, with the exception of a federal firearm offense, on or off school property or at a school-related activity.

Under Age Ten

When a student under the age of ten engages in behavior that is expellable behavior, the student will not be expelled, but will be placed in a DAEP. A student under age six will not be placed in a DAEP unless the student commits a federal firearm offense.⁶¹

⁶¹ STUDENTS UNDER THE AGE OF TEN. The Education Code requires that any student under ten years of age who commits an expellable offense be placed in a DAEP. He or she cannot be expelled from the district.

Emergency

In an emergency, the principal or the principal's designee **may** order the immediate expulsion of a student for any reason for which expulsion may be made on a nonemergency basis.

Process

If a student is believed to have committed an expellable offense, the principal or other appropriate administrator will schedule a hearing within a reasonable time. The student's parent will be invited in writing to attend the hearing.

Until a hearing can be held, the principal may place the student in:

- Another appropriate classroom
- In-school suspension
- Out-of-school suspension
- DAEP

Hearing

A student facing expulsion will be given a hearing with appropriate due process. The student is entitled to:

1. Representation by the student's parent or another adult who can provide guidance to the student and who is not an employee of the district,
2. An opportunity to testify and to present evidence and witnesses in the student's defense, and
3. An opportunity to question the district's witnesses.

After providing notice to the student and parent of the hearing, the district may hold the hearing regardless of whether the student or the student's parent attends.

Expulsion

The hearing will be conducted by the board of trustees and the decision to expel will be made by the board.⁶²

OR

The board of trustees delegates to the (fill in the blank with the appropriate title or position for the district) authority to conduct hearings and expel students.

After the due process hearing, the expelled student may request that the board review the expulsion decisions. The student or parent must submit a written request to the superintendent within seven days after receipt of the written decision. The superintendent must provide the student or parent written notice of the date, time, and place of the meeting at which the board will review the decision.

The board will review the record of the expulsion hearing in a closed meeting unless the parent requests in writing that the matter be held in an open meeting. The board may also hear a statement from the student or parent and from the board's designee.

The board will hear statements made by the parties at the review and will base its decision on evidence reflected in the record and any statements made by the parties at the review. The board will make and communicate its decision orally at the conclusion of the presentation. Consequences will not be deferred pending the outcome of the hearing.

⁶² BOARD REVIEW. If the board conducts all expulsion hearings, the text on board review should be deleted. If the board delegates the authority to expel a student to an administrator, a student may appeal the decision to the board and the board review text needs to be included.

Board Review of Expulsion

Expulsion Order

After the due process hearing, if the student is expelled, the board or its designee will deliver to the student and the student's parent a copy of the order expelling the student.

Not later than the second business day after the hearing, the (fill in the blank with the appropriate title or position for the district) will deliver to the juvenile court a copy of the expulsion order and the information required by Section 52.04 of the Family Code.

If the length of the expulsion is inconsistent with the guidelines included in the Student Code of Conduct, the expulsion order will give notice of the inconsistency.

Length of Expulsion

The length of an expulsion will be correlated to the seriousness of the offense, the student's age and grade level, the frequency of misbehavior, the student's attitude, and statutory requirements.

The duration of a student's expulsion will be determined on a case-by-case basis. The maximum period of expulsion is one calendar year except as provided below.⁶³

An expulsion may not exceed one year unless, after review, the district determines that:

1. The student is a threat to the safety of other students or to district employees, or
2. Extended expulsion is in the best interest of the student.

State and federal law require a student to be expelled from the regular classroom for a period of at least one calendar year for bringing a firearm, as defined by federal law, to school. However, the superintendent or other appropriate administrator may modify the length of the expulsion on a case-by-case basis.

⁶³ GUIDELINES. Districts are required to have guidelines for setting the term of an expulsion. Districts may list categories of offenses or individual offenses or may list one year as the maximum for any offense.

Expulsion

Students who commit offenses that require expulsion at the end of one school year may be expelled into the next school year to complete the term of expulsion.

Withdrawal during Process

When a student has violated the district's Code in a way that requires or permits expulsion from the district and the student withdraws from the district before the expulsion hearing takes place, the district may conduct the hearing after sending written notice to the parent and student.

If the student then reenrolls in the district during the same or subsequent school year, the district may enforce the expulsion order at that time, less any expulsion period that has been served by the student during enrollment in another district.

If the appropriate administrator or the board fails to issue an expulsion order after the student withdraws, the next district in which the student enrolls may complete the proceedings.

Additional Misconduct

If during the expulsion, the student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted, and the appropriate administrator or the board may issue an additional disciplinary order as a result of those proceedings.

Restrictions during Expulsion

Expelled students are prohibited from being on school grounds or attending school-sponsored or school-related activities during the period of expulsion.

No district academic credit will be earned for work missed during the period of expulsion unless the student is enrolled in a JJAEP or another district-approved program.⁶⁴

Newly Enrolled Students

The district will continue the expulsion of any newly enrolled student expelled from another district or an open-enrollment charter school until the period of the expulsion is completed.⁶⁵

OR

The district will place a newly enrolled student expelled from another district or an open-enrollment charter school directly into a DAEP until the period of the expulsion is completed.

OR

The district will decide on a case-by-case basis the placement of a student who is subject to an expulsion order from another district or an open-enrollment charter school upon enrollment in the district.

OR

The district will place a newly enrolled student expelled from another district or another open-enrollment charter school directly into a regular classroom setting.

If a student expelled in another state enrolls in the district, the district may continue the expulsion under the terms of the expulsion order, may place the student in a DAEP for the period specified in the order, or may allow the student to attend regular classes if:

⁶⁴ ACADEMIC CREDIT.

Common practice for most districts has been not to give academic credit during the time a student is expelled from school. However, districts in counties that have JJAEPs cannot expel students to the street and must provide educational services to those students in the JJAEP, in a setting provided by the district, or through a private provider. Each district should ensure that its Code accurately reflects local decisions in this area.

⁶⁵ NEWLY ENROLLED

STUDENTS. Chapter 37 allows the district to enroll a student expelled from another district and make one of three placements. If decisions are to be made on a case-by-case basis, the criteria for the decisions must not unlawfully discriminate against a student on the basis of race, color, religion, sex, national origin, or disability.

Expulsion

1. The out-of-state district provides the district with a copy of the expulsion order, and
2. The offense resulting in the expulsion is also an expellable offense in the district in which the student is enrolling.

If a student is expelled by a district in another state for a period that exceeds one year and the district continues the expulsion or places the student in a DAEP, the district will reduce the period of the expulsion or DAEP placement so that the entire period does not exceed one year, unless after a review it is determined that:

1. The student is a threat to the safety of other students or district employees, or
2. Extended placement is in the best interest of the student.

Emergency Expulsion Procedures

When an emergency expulsion occurs, the student will be given verbal notice of the reason for the action. Within ten days after the date of the emergency expulsion, the student will be given appropriate due process required for a student facing expulsion.

DAEP Placement of Expelled Students

The district may provide educational services to any expelled student in a DAEP; however, educational services in the DAEP must be provided if the student is less than ten years of age.

Glossary

The glossary provides legal definitions and locally established definitions and is intended to assist in understanding terms related to the Student Code of Conduct.

Abuse is improper or excessive use.

Armor-piercing ammunition is handgun ammunition used in pistols and revolvers and designed primarily for the purpose of penetrating metal or body armor.

Arson is a crime that involves starting a fire or causing an explosion with intent to destroy or damage:

1. Any vegetation, fence, or structure on open-space land; or
2. Any building, habitation, or vehicle:
 - a. Knowing that it is within the limits of an incorporated city or town,
 - b. Knowing that it is insured against damage or destruction,
 - c. Knowing that it is subject to a mortgage or other security interest,
 - d. Knowing that it is located on property belonging to another,
 - e. Knowing that it has located within it property belonging to another, or
 - f. When the person starting the fire is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

Assault is defined in part by Texas Penal Code 22.01(a)(1) as intentionally, knowingly, or recklessly causing bodily injury to another.

Bullying is written or oral expression or physical conduct that a school district's board of trustees or the board's designee determines:

1. To have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or
2. To be sufficiently severe, persistent, or pervasive to create an intimidating, threatening, or abusive educational environment for a student.

Chemical dispensing device is a device designed, made, or adapted for the purpose of causing an adverse psychological or physiological effect on a human being. A small chemical dispenser sold commercially for personal protection is not in this category.

Club is an instrument specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death. A blackjack, mace, and tomahawk are in the same category.

Criminal street gang is three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

Dating violence is the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person with whom the student has or has had a dating relationship, as defined by Section 71.0021 of the Family Code.

Deadly conduct occurs when a person recklessly engages in conduct that places another in imminent danger of serious bodily injury, such as knowingly discharging a firearm in the direction of an individual, habitation, building, or vehicle.

Deferred adjudication is an alternative to seeking a conviction in court that may be offered to a juvenile for delinquent conduct or conduct indicating a need for supervision.

Deferred prosecution may be offered to a juvenile as an alternative to seeking a conviction in court for delinquent conduct or conduct indicating a need for supervision.

Delinquent conduct is conduct that violates either state or federal law and is punishable by imprisonment or confinement in jail. It includes conduct that violates certain juvenile court orders, including probation orders, but does not include violations of traffic laws.

Discretionary means that something is left to or regulated by a local decision maker.

Explosive weapon is any explosive or incendiary bomb, grenade, rocket, or mine and its delivery mechanism that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror.

False Alarm or Report occurs when a person knowingly initiates, communicates, or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he or she knows is false or baseless and that would ordinarily:

1. Cause action by an official or volunteer agency organized to deal with emergencies;
2. Place a person in fear of imminent serious bodily injury; or
3. Prevent or interrupt the occupation of a building, room, or place of assembly.

Graffiti are markings with aerosol paint or an indelible pen or marker on tangible property without the effective consent of the owner. The markings may include inscriptions, slogans, drawings, or paintings.

Harassment is:

1. Conduct that meets the definition established in district policies DIA(LOCAL) and FFH(LOCAL); or
2. Conduct that threatens to cause harm or bodily injury to another student, is sexually intimidating, causes physical damage to the property of another student, subjects another student to physical confinement or restraint, or maliciously and substantially harms another student's physical or emotional health or safety.

Hazing is an intentional or reckless act, on or off campus, by one person alone or acting with others, that endangers the mental or physical health or safety of a student for the purpose of pledging, initiation into, affiliation with, holding office in, or maintaining membership in an organization.

Hit list is a list of people targeted to be harmed, using a firearm, a knife, or any other object to be used with intent to cause bodily harm.

Knuckles is any instrument consisting of finger rings or guards made of a hard substance and designed or adapted for inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

Machine gun is any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

Mandatory means that something is obligatory or required because of an authority.

Paraphernalia are devices that can be used for inhaling, ingesting, injecting, or otherwise introducing a controlled substance into a human body.

Persistent misbehavior is two or more violations of the Code in general or repeated occurrences of the same violation.

Possession means to have an item on one's person or in one's personal property, including but not limited to clothing, purse, or backpack; a private vehicle used for transportation to or from school or school-related activities, including but not limited to an automobile, truck, motorcycle, or bicycle; or any other school property used by the student, including but not limited to a locker or desk.

Public school fraternity, sorority, secret society, or gang means an organization composed wholly or in part of students that seeks to perpetuate itself by taking additional members from the students enrolled in school based on a decision of its membership rather than on the free choice of a qualified student. Educational organizations listed in Section 37.121(d) of the Education Code are excepted from this definition.

Reasonable belief is a determination made by the superintendent or designee using all available information, including the information furnished under Article 15.27 of the Code of Criminal Procedure.

Self-defense is the use of force against another to the degree a person reasonably believes the force is immediately necessary to protect himself or herself.

Serious offenses include but are not limited to:

- Murder.
- Vandalism.
- Robbery or theft.
- Extortion, coercion, or blackmail.
- Actions or demonstrations that substantially disrupt or materially interfere with school activities.
- Hazing.
- Insubordination.
- Profanity, vulgar language, or obscene gestures.
- Fighting, committing physical abuse, or threatening physical abuse.
- Possession or distribution of pornographic materials.
- Leaving school grounds without permission.

- Sexual harassment of a student or district employee.
- Possession of or conspiracy to possess any explosive or explosive device.
- Falsification of records, passes, or other school-related documents.
- Refusal to accept discipline assigned by the teacher or principal.

Short-barrel firearm is a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a rifle or shotgun that, as altered, has an overall length of less than 26 inches.

Switchblade is any knife with a blade that folds, closes, or retracts into the handle or sheath and that opens automatically by pressing a button or by the force of gravity or centrifugal force.

Terroristic threat is a threat of violence to any person or property with intent to:

1. Cause a reaction of any type by an official or volunteer agency organized to deal with emergencies;
2. Place any person in fear of imminent serious bodily injury;
3. Prevent or interrupt the occupation or use of a building; room, place of assembly, or place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place;
4. Cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
5. Place the public or a substantial group of the public in fear of serious bodily injury; or
6. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state (including the district).

Title 5 offenses are those that involve injury to a person and include murder; kidnapping; assault; sexual assault; unlawful restraint; coercing, soliciting, or inducing gang membership if it causes bodily injury to a child; indecency with a child; injury to a child, an elderly person, or a disabled person; abandoning or endangering a child; deadly conduct; terroristic threat; aiding a person to commit suicide; and tampering with a consumer product. [See FOC(EXHIBIT)]

Under the influence means lacking the normal use of mental or physical faculties. Impairment of a person's physical or mental faculties may be evidenced by a pattern of abnormal or erratic behavior, the presence of physical symptoms of drug or alcohol use, or by admission. A student "under the influence" need not be legally intoxicated to trigger disciplinary action.

Use means voluntarily introducing into one's body, by any means, a prohibited substance.

Zip gun is a device or combination of devices, not originally a firearm, but adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.