STUDENTS YOUNGER THAN TEN

A student younger than ten years of age shall not be expelled but shall be placed in a disciplinary alternative education program (DAEP). *Education Code 37.007(e)(2), (h)*

OVERAGE STUDENTS

A person who is 21 years of age or older and is admitted by the District for the purpose of completing the requirements for a diploma is not eligible for placement in a juvenile justice alternative education program (JJAEP) if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in such conduct, the District shall revoke the student's admission. *Education Code 25.001(b-1)*

MANDATORY EXPULSION

SCHOOL RELATED

A student shall be expelled if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

1. Uses, possesses, or exhibits a firearm, an illegal knife, a club, or a prohibited weapon, as those terms are defined in the Penal Code, or any knife prohibited by local policy [see FNCG];

2. Engages in conduct that contains the elements of the offense of aggravated assault, sexual assault, aggravated sexual assault, arson, murder, capital murder, criminal attempt to commit murder or capital murder, indecency with a child, aggravated kidnapping, aggravated robbery, manslaughter, criminally negligent homicide, or continuous sexual abuse of a young child or children, as those offenses are defined in the Penal Code; or

3. Commits a drug- or alcohol-related offense described at Education Code 37.006(a)(2)(C) or (D), if that conduct is punishable as a felony.

Education Code 37.007(a)

EXCEPTION

A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:

1. At an approved target range facility that is not located on a school campus; and

2. While participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

This section does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored

shooting sports competition or a shooting sports educational activity.

Education Code 37.007(k)

RETALIATION

The District shall expel a student who engages in conduct that contains the elements of any offense listed above against any District employee or volunteer in retaliation for or as a result of the person's employment or association with the District, without regard to whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off of school property. *Education Code 37.007(d)*

FEDERAL FIREARM PROVISION

In accordance with the Gun-Free Schools Act, the District shall expel from the student's regular program, for a period of one year, any student who is determined to have brought a firearm, as defined by federal law, to any District school. This restriction shall not apply to a firearm that is lawfully stored inside a locked vehicle on school property. The Superintendent may modify the term of expulsion for a student or assess another comparable penalty that results in the student's exclusion from the regular school program, on a case-by-case basis. The District or other local educational agency shall provide educational services to an expelled student in a DAEP if the student is younger than ten years of age. The District or other local educational agency may provide educational services to an expelled student who is ten years of age or older in a DAEP. *20 U.S.C. 7151; Education Code 37.007(e)* [See also GRA]

For the purposes of this provision, "firearm" means:

1. Any weapon (including a starter gun), which will or is designed to or which may readily be converted to expel a projectile by the action of an explosive;

2. The frame or receiver of any such weapon;

3. Any firearm muffler or firearm silencer; or

4. Any destructive device. "Destructive device" means any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the preceding described devices. It also means any type of weapon (other than a shotgun shell or a shotgun that is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than

one-half inch in diameter; and any combination of parts either designed or intended for use in converting any device into a destructive device as described in this item, and from which a destructive device may be readily assembled.

18 U.S.C. 921

DISCRETIONARY EXPULSION

THREATS

A student may be expelled if the student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Penal Code 42.06, or terroristic threat under Penal Code 22.07.

SCHOOL- RELATED CONDUCT

A student may be expelled if the student, while 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 of school property:

ALCOHOL OR DRUGS

1. Sells, gives, or delivers to another person, or possesses, uses, or is under the influence of any amount of:

   a. Marijuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. section 801 et seq.; or

   b. A dangerous drug, as defined by Chapter 483, Health and Safety Code; or

   c. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

VOLATILE CHEMICALS

2. Engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Health and Safety Code 485.031–485.034.

ASSAULT ON AN EMPLOYEE OR VOLUNTEER

3. Engages in conduct that contains the elements of an offense under Penal Code 22.01(a)(1) against a District employee, or a volunteer as defined by Education Code 22.053. [See FOC(EXHIBIT)]

DEADLY CONDUCT

4. Engages in conduct that contains the elements of the offense of deadly conduct under Penal Code 22.05.

Education Code 37.007(b)(1)–(2)

CONDUCT WITHIN 300 FEET OF SCHOOL

Subject to the mandatory expulsion requirement for retaliation, a student may be expelled if the student, while within 300 feet of school property, as measured from any point on the school's real property boundary line, engages in the following conduct:

1. Any conduct for which expulsion would have been mandatory under Education Code 37.007(a) [see MANDATORY EXPULSION — SCHOOL RELATED, above]; or

2. Possession of a firearm, as defined by 18 U.S.C. sec. 921 [see FEDERAL FIREARM PROVISION, above].

Education Code 37.007(b)(3)

RETALIATION AGAINST SCHOOL EMPLOYEE OR VOLUNTEER

A student may be expelled if the student engages in an assault, under Penal Code 22.01(a)(1), on an employee or volunteer in retaliation for or as a result of the person's employment or association with the District, without regard to whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property. *Education Code 37.007(d)*

CONDUCT AGAINST ANOTHER STUDENT

A student may be expelled if the student engages in conduct against another student that contains the elements of the offenses of aggravated assault, sexual assault, aggravated sexual assault, arson, murder, capital murder, criminal attempt to commit capital murder, or aggravated robbery, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property. *Education Code 37.007(b)(4)*

CRIMINAL MISCHIEF

The District may use its discretion to expel a student who has engaged in conduct that contains the elements of criminal mischief, as defined in the Penal Code, if the conduct is punishable as a felony. Regardless of whether the student is expelled, the District shall refer the student to the authorized officer of the juvenile court. *Education Code 37.007(f)*

BREACH OF COMPUTER SECURITY

A student may be expelled if the student engages in conduct that contains the elements of the offense of breach of computer security under Penal Code 33.02 if:

1. The conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of the District; and

2. The student knowingly alters, damages, or deletes District property or information; or commits a breach of any other computer, computer network, or computer system.

Education Code 37.007(b)(5)

SERIOUS MISBEHAVIOR IN DAEP

A student placed in a DAEP who engages in documented serious misbehavior while on the DAEP campus despite documented behavioral interventions may be removed from class and expelled.

"Serious misbehavior" means:

1. Deliberate violent behavior that poses a direct threat to the health or safety of others;

2. Extortion, meaning the gaining of money or other property by force or threat;

3. Conduct that constitutes coercion, as defined by Penal Code 1.07; or

4. Conduct that constitutes the offense of:

   a. Public lewdness under Penal Code 21.07;

   b. Indecent exposure under Penal Code 21.08;

   c. Criminal mischief under Penal Code 28.03;

   d. Personal hazing under Penal Code 37.152; or

   e. Harassment, under Penal Code 42.07(a)(1), of a student or district employee.

If the student is expelled, the Board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Family Code Title 3 (Juvenile Justice Code).

Education Code 37.007(c), .010(b)

PROPERTY OR ACTIVITIES OF ANOTHER DISTRICT

The District may expel a student who attends school in the District if:

1. The student engages in conduct for which expulsion would have been mandatory if the conduct had occurred on District property or while attending a District-sponsored or District-related activity; and

2. The student engages in that conduct on the property of another district or while attending a school-sponsored or school-related activity of another district in this state.

Education Code 37.007(i)

EXPULSION PROCEEDINGS

DUE PROCESS

Before a student may be expelled, the Board or its designee shall provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution. *Education Code 37.009(f)*

The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. Federal due process requires notice and some opportunity for hearing.

NOTICE

The notice should contain a statement of the specific charges and grounds that, if proven, would justify expulsion. In some cases, the student should be given the names of the witnesses against him or

her and an oral or written report on the facts to which each witness testifies.

HEARING

The rights of the student may properly be determined upon the hearsay evidence of school administrators who investigate disciplinary infractions.

[See also *Brewer v. Austin Indep. Sch. Dist.*, 779 F.2d 260 (5th Cir. 1985); *Keough v. Tate County Bd. of Educ.*, 748 F.2d 1077 (5th Cir. 1984); *McClain v. Lafayette County Sch. Bd. of Educ.*, 673 F.2d 106 (5th Cir. 1982); *Tasby v. Estes*, 643 F.2d 1103 (5th Cir. 1981); *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697 (5th Cir. 1974), cert. denied, 420 US 962 (1975); *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961)]

REPRESENTATIVE

At the hearing, the student is entitled to be represented by the student's parent, guardian, or another adult who can provide guidance to the student and who is not an employee of the District. If the District makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the District may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends.

TERM OF EXPULSION

If the period of expulsion is inconsistent with the guidelines on length of expulsion in the Student Code of Conduct, the order must give notice of the inconsistency.

EXPULSION BEYOND ONE YEAR

The period of expulsion may not exceed one year unless 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.

Education Code 37.009(h)

NOTICE OF EXPULSION ORDER

TO PARENT OR GUARDIAN

The Board or its designee shall deliver a copy of the order expelling the student to the student and the student's parent or guardian. After such notification, the parent or guardian shall provide adequate supervision for the student during the period of expulsion. *Education Code 37.009(g)–(h)*

TO COURT

Not later than the second business day after the date an expulsion hearing is held, the Board or its designee shall deliver a copy of the expulsion order and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the student resides.

Family Code 52.04 requires the following information from a referring entity that is not a law enforcement agency or has not taken the child into custody:

1. All information in the District's possession pertaining to the identity of the child and the child's address; the name and address of the child's parent, guardian, or custodian; the names and addresses of any witnesses; and the child's present whereabouts; and

2. A complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision.

Education Code 37.010(a); Family Code 52.04(a), .041(a)–(b)

TO JUVENILE BOARD

In a county that operates a JJAEP [see FODA], no student shall be expelled without written notification by the Board or its designee to the juvenile board's designated representative. The notification shall be made not later than two business days following the Board's determination that the student is to be expelled. Failure to timely notify the designated representative shall result in the child's duty to continue attending the District's educational program, which shall be provided to that child until such time as the notification to the designated representative is properly made. *Family Code 52.041*

TO STAFF

In addition to providing any notice required under Code of Criminal Procedure 15.27 [see GRA], the District shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in expellable conduct.

Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law. An educator's certificate may be suspended or revoked for intentional failure to keep such information confidential.

Education Code 37.007(g)

COMPLETION OF PROCEEDING UPON WITHDRAWAL

If a student withdraws from the District before an order for expulsion is entered, the principal or Board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the District during the same or subsequent school year, the District may enforce the order at that time except for any period of the expulsion that has been served by the student in another district that honored the order. If the principal or Board fails to enter an order after the student withdraws, the next district

in which the student enrolls may complete the proceedings and enter an order. *Education Code 37.009(i)*

ADDITIONAL PROCEEDINGS

If, during the term of expulsion, a student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted and the principal or Board, as appropriate, may enter an additional order. *Education Code 37.009(j)*

APPEALS

A decision by the Board's designee to expel a student may be appealed to the Board. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. *Education Code 37.009(f); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961)*

RESTRICTIONS ON COURT ORDERS

A court may not order an expelled student to attend a regular classroom, a regular campus, or the District DAEP as a condition of probation.

EXCEPTION

A court may order a student to attend a regular classroom, a regular campus, or the District DAEP if the District has entered into a memorandum of understanding (MOU) with the juvenile board for the county in which the District's central administrative office is located, concerning the juvenile probation department's role in supervising and providing other support services for students in DAEPs.

Education Code 37.010(c)

DISTRICT RESPONSIBILITY FOR EXPELLED STUDENT

STUDENTS NOT ELIGIBLE FOR EXISTING JJAEP

In a county that operates a JJAEP, the District is responsible for providing an immediate educational program to a student who engages in behavior for which expulsion is permitted but not required under Education Code 37.007, but who is not eligible for admission into the JJAEP in accordance with an MOU. [See FODA]

CONTRACTING FOR SERVICES

The District may provide the program or the District may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program.

Education Code 37.011(l)

CERTAIN DISTRICTS

This provision applies to a district located in a county considered to be a county with a population of 125,000 or less because it has a population of more than 200,000 and less than 220,000; has five or more school districts located wholly within the county's boundaries; and has located in the county a JJAEP that, on May 1, 2011, served fewer than 15 students. A qualifying district shall provide educational services to a student who is expelled from school. The

District is entitled to count the student in the District's average daily attendance for purposes of receipt of state funds under the Foundation School Program. An educational placement under this section may include:

1. The District's DAEP.
2. A contracted placement with another school district, an open-enrollment charter school, an institution of higher education, an adult literacy council, or a community organization that can provide an educational program that allows the student to complete the credits required for high school graduation.

An educational placement other than the District's DAEP is subject to the educational and certification requirements applicable to an open-enrollment charter school under Education Code Chapter 12, Subchapter D.

Education Code 37.011(a-3)–(a-5)

RETURN TO CLASS

EARLY / PERMISSIVE

On the recommendation of the placement review committee, or on its own initiative, the District may readmit an expelled student while the student is completing any court disposition requirements.

REQUIRED

After an expelled student has successfully completed any court disposition requirements, including conditions of a deferred prosecution, or conditions required by the prosecutor or probation department, the District may not refuse to admit the student if the student meets the requirements for admission. [See FD] The District may place the student in a DAEP.

The student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

Education Code 37.010(f)

EXPELLED FROM ANOTHER DISTRICT

If a student has been expelled from another school district, the expelling district shall provide to the district in which the student enrolls a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a DAEP for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion.

OUT-OF-STATE EXPULSION

The District may take any of the above actions if the student was expelled by a district in another state if:

1. The out-of-state district provides a copy of the expulsion order; and

2. The grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

Education Code 37.010(g)

If the student was expelled for more than one year and the enrolling district continues the expulsion or places the student in a DAEP, the aggregate period of expulsion or placement may not exceed one year unless 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.

Education Code 37.010(g-1)

Note: See FOF for provisions concerning expulsion of students with disabilities.