REMOVAL UNDER STUDENT CODE OF CONDUCT

The Student Code of Conduct must specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program (DAEP). *Education Code 37.001(a)(2)*

MANDATORY PLACEMENT IN DAEP

A student shall be removed from class and placed in a DAEP if the student engages in conduct described in Education Code 37.006 that requires placement. *Education Code 37.006*

SCHOOL-RELATED MISCONDUCT

A student shall be removed from class and placed in a DAEP 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.

A student shall also be removed from class and placed in a DAEP if the student commits the following 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:

1. Engages in conduct punishable as a felony.
2. Engages in conduct that contains the elements of assault, under Penal Code 22.01(a)(1).
3. Sells, gives, or delivers to another person or possesses, uses, or is under the influence of:
   a. Marijuana or a controlled substance, as defined by the Texas Controlled Substances Act, Health and Safety Code Chapter 481, or by 21 U.S.C. 801, et seq.;
   b. A dangerous drug, as defined by the Texas Dangerous Drug Act, Health and Safety Code Chapter 483.
4. Sells, gives, or delivers to another person an alcoholic beverage, as defined by Alcoholic Beverage Code 1.04, or commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage.
5. Engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Health and Safety Code 485.031 through 485.034.
6. Engages in conduct that contains the elements of the offense of public lewdness under Penal Code 21.07.
7. Engages in conduct that contains the elements of the offense of indecent exposure under Penal Code 21.08.

*Education Code 37.006(a)*

EXCEPTION

Removal to a DAEP for school-related misconduct is not required if the student is expelled for the same conduct. *Education Code 37.006(m)*

RETALIATION

Except where a student engages in retaliatory acts against a District employee for which expulsion is mandatory [see FOD], a student shall be removed from class and placed in a DAEP if the student engages in conduct on or off school property containing the elements of retaliation, as defined in Penal Code 36.06, against any school employee. *Education Code 37.006(b)*

CONDUCT UNRELATED TO SCHOOL

In addition to the circumstances listed above, a student shall be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The student receives deferred prosecution under Family Code 53.03 for conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03;

2. A court or jury finds that the student has engaged in delinquent conduct under Family Code 54.03 for conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03; or

3. The Superintendent or designee has a reasonable belief that the student has engaged in conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03.

   [See FOC(EXHIBIT) for list of Title 5 felonies]

*Education Code 37.006(c)*

REASONABLE BELIEF

In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense, the Superintendent or the Superintendent's designee may consider all available information and must consider the information furnished under Code of Criminal Procedure Article 15.27(a). *Education Code 37.006(e); Code of Criminal Procedure 15.27(a)* [See GRAA]

SEXUAL ASSAULT OF ANOTHER STUDENT

A student shall be removed from class and placed in a DAEP or juvenile justice alternative education program (JJAEP) if:

1. The student was convicted of, received adjudication for, or was placed on probation for sexual assault of another student while the students were assigned to the same campus, re-

gardless of whether the assault occurred on or off school property;

2. The parent of the victim of the assault has requested that the student be transferred to a campus other than that to which the victim is assigned; and

3. There is only one campus in the District serving the grade level in which the student is enrolled.

*Education Code 25.0341, 37.0051(a)* [See FDE at SEXUAL ASSAULT TRANSFER, TRANSFER OF ASSAILANT]

A limitation imposed by Education Code Chapter 37 on the length of placement in a DAEP or a JJAEP does not apply to a placement under this provision. *Education Code 37.0051(b)*

PERMISSIVE REMOVAL

A student may be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

NON-TITLE 5 FELONY

1. The Superintendent or designee has a reasonable belief [see REASONABLE BELIEF, above] that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Penal Code 29.03, or those offenses listed in Penal Code Title 5 [see FOC(EXHIBIT)]; and

2. The continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

*Education Code 37.006(d)–(e)*

ONE YEAR AFTER CONDUCT

A principal or other appropriate administrator may, but is not required to, remove a student to a DAEP for off-campus conduct, for which removal would otherwise be required, if the principal or other appropriate administrator did not have knowledge of the conduct before the first anniversary of the date the conduct occurred. *Education Code 37.006(n)*

CERTAIN ORGANIZATION AND GANG MEMBERSHIP AND SOLICITATION

The Board or an educator shall recommend placing in DAEP any student who commits the misdemeanor offenses described in Education Code 37.121(a) and (c), regarding membership in or solicitation to join a public school fraternity, sorority, secret society, or gang [see FNCC]. *Education Code 37.121(b)*

OLDER 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 DAEP 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)*

PLACEMENT OF YOUNGER STUDENTS

A student who is younger than ten shall be removed from class and placed in a DAEP if the student engages in conduct for which expulsion would be required by Section 37.007. *Education Code 37.006(f), .007(e)* [See FOD]

STUDENTS YOUNGER THAN SIX

Notwithstanding any other provision of the Education Code, a student who is younger than six years of age may not be removed from class and placed in a DAEP, except that a student younger than six years of age who has been expelled pursuant to the Gun Free Schools Act [see FOD] may be provided educational services in a DAEP. *Education Code 37.006(l)*

PROCESS FOR REMOVAL

CONFERENCE

Not later than the third class day after a student is removed by a teacher or by the school principal or other appropriate administrator, the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, the student's parent or guardian, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular class pending the conference.

ORDER

Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student for a period consistent with the Student Code of Conduct.

APPEAL

If District policy allows a student to appeal to the Board or the Board's designee a decision of the principal or other appropriate administrator, the decision of the Board or the Board's designee is final and may not be appealed.

*Education Code 37.009(a)* [See Student Code of Conduct]

TERM OF REMOVAL

The Board or designee shall set a term for a student's placement in a DAEP. If the period of placement is inconsistent with the guidelines in the Student Code of Conduct, the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the District determines that the student is a threat to the safety of other students or to District employees; or extended placement is in the best interest of the student. *Education Code 37.009(d)*

BEYOND GRADING PERIOD OR 60 DAYS

If placement in a DAEP is to extend beyond 60 days or the end of the next grading period, whichever is earlier, the student's parent or

guardian is entitled to notice of and an opportunity to participate in a proceeding before the Board or designee.

NO APPEAL

Any decision of the Board or designee concerning placement beyond 60 days or the end of the next grading period is final and cannot be appealed.

*Education Code 37.009(b)*

BEYOND END OF SCHOOL YEAR

Before a student may be placed in a DAEP for a period that extends beyond the end of the school year, the Board or designee must determine that:

1. The student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or another individual; or
2. The student has engaged in serious or persistent misbehavior that violates the Student Code of Conduct.

*Education Code 37.009(c)*

ORDER OF REMOVAL

The Board or designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a DAEP. *Education Code 37.009(g)*

Not later than the second business day after the date of the removal conference, the Board or designee shall deliver a copy of the order placing the student in a DAEP and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the juvenile resides. *Education Code 37.010(a)*

ACTIVITIES

The terms of a placement under Education Code 37.006 must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.006(g)*

In addition to any notice required under Code of Criminal Procedure 15.27 [see GRAA], a principal or designee 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 conduct for which DAEP placement must or may be ordered.

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 37.006(o)*

COMPLETION OF PROCEEDINGS UPON WITHDRAWAL

If a student withdraws from the District before an order for placement in a DAEP is entered, the principal or Board, as appropriate, may complete the proceedings and enter an order. If the student re-enrolls in the District the same or subsequent school year, the District may enforce the order at that time except for any period of the placement 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)*

ENROLLMENT IN ANOTHER DISTRICT

If a student placed in a DAEP enrolls in another district before the expiration of the placement, the Board shall provide to the district in which the student enrolls a copy of the placement order at the same time it provides other records. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. 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.

The district in which the student enrolls may continue the placement or allow the student to attend regular classes. [See FO] The district in which the student enrolls may take any of these actions if:

1. The student was placed in a DAEP by an open-enrollment charter school and the charter school provides the district a copy of the placement order; or

2. The student was placed in a DAEP by a district in another state and:

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

   b. The grounds for placement are the same as grounds for placement in the enrolling district.

*Education Code 37.008(j)*

OUT-OF-STATE PLACEMENT

If a student was placed in a DAEP in another state for more than one year and the enrolling district continues the placement under Education Code 37.008(j), the enrolling district shall reduce the period of placement so that the aggregate period does not exceed one year unless the enrolling 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 37.008(j-1)*

COURT-ORDERED PLACEMENT

Unless the Board and the juvenile board for the county in which the District's central administrative office is located have entered into a memorandum of understanding concerning the juvenile probation department's role in supervising and providing other support services for students in DAEP programs:

EXPELLED STUDENT

1. A court may not order a student expelled under Section 37.007 to attend a District DAEP as a condition of probation;

MULTIPLE REFERRALS

2. A court may not order a student to attend a DAEP without the District's consent, until the student has successfully completed any sentencing requirements, if the court has ordered the student to attend a DAEP as a condition of probation once during a school year and the student is referred to juvenile court again during that school year.

*Education Code 37.010(c)–(d)*

SCHOOL ACTIVITIES

Any court placement in a DAEP must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.010(d)*

PLACEMENT AFTER COURT DISPOSITION

After the student has successfully completed any court disposition requirements, including conditions of 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 into the public schools. The District may place the student in the DAEP.

Notwithstanding Education Code 37.002(d) [see FOA], 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)*

NOT GUILTY / INSUFFICIENT EVIDENCE / CHARGES DROPPED

The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a DAEP under Education Code 37.006 if:

1. Prosecution of a student was refused for lack of prosecutorial merit or insufficient evidence, and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

2. A court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

On receipt of the notice, the Superintendent or designee shall review the student's placement in the DAEP. The student may not be returned to the regular classroom pending the review. The Superintendent or designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the Superintendent or designee receives notice from the office or official designated by the court.

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

*Education Code 37.006(h); Code of Criminal Procedure 15.27(g)*

APPEAL AFTER PLACEMENT UPHELD

The student or the student's parent or guardian may appeal the Superintendent's decision to the Board. The student may not be returned to the regular classroom pending the appeal. The Board shall, at the next scheduled meeting, review the notice provided by the office of the prosecuting attorney or the office or official designated by the juvenile board; receive information from the student, the student's parent or guardian, and the Superintendent or designee; and confirm or reverse the Superintendent's decision. The Board shall make a record of the proceedings.

If the Board confirms the decision, the Board shall inform the student and the student's parent or guardian of the right to appeal to the Commissioner. The student may not be returned to the regular classroom pending the appeal to the Commissioner.

*Education Code 37.006(i)–(j)*

120-DAY REVIEW OF STATUS

A student placed in a DAEP shall be provided a review of the student's status, including a review of the student's academic status, by the Board's designee at intervals not to exceed 120 days. In the case of a high school student, the Board's designee, with the student's parent or guardian, shall review the student's progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. This requirement does not, however, obligate the District to provide in the DAEP a course, except as required by Education Code 37.008(l). [See FOCA] At the review, the student or the student's parent or guardian must 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 the teacher that removed the student without that teacher's consent. The teacher cannot be coerced to consent. *Education Code 37.009(e)*

ADDITIONAL PROCEEDINGS

If, during the term of placement, 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)*

REPORTING

The District may include the number of students removed to a DAEP in its annual performance report. *Education Code 39.306(e)(5)* [See AIB]

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***Note:*** See FOF for provisions concerning students with disabilities.

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