

**STUDENT DISCIPLINE  
EXPULSION**

**FOD**

**General**

The provisions of this policy are subject to all provisions related to the change of placement and discipline of students with disabilities, including all TSD students, contained in TSD Policy FOF, STUDENT DISCIPLINE: STUDENTS WITH DISABILITIES.

**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 School 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 School 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. Engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Penal Code 46.02 or elements of an offense relating to prohibited weapons under Penal Code 46.05 [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), (l)*

**Retaliation** The School shall expel a student who engages in conduct that contains the elements of any offense listed above against any School employee or volunteer in retaliation for or as a result of the person’s employment or association with the School, 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 Firearms Offense** In accordance with the Gun-Free Schools Act and subject to the provisions of TSD Board Policy FOF, the School shall expel a student who brings a firearm, as defined by federal law, to school. The student must be expelled from the student’s regular campus for a period of at least one year, except that the superintendent may modify in writing the length of expulsion in the case of an individual student.

**Exception** This provision shall not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the School and the School adopts appropriate safeguards to ensure student safety. [See also GKA].

**Provision of Educational Services** The School 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 on the date of expulsion. The School 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. 7961; Education Code 37.007(e)*

**Definitions** For purposes of this provision:

**School** “School” means any setting that is under the control and supervision of the School for the purpose of student activities approved and authorized by the School. *20 U.S.C. 7961(f)*

**Firearm** “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, 20 U.S.C. 7961(b)(3)*

For purposes of Texas Penal Code §§ 46.02, 46.03, 46.04–.14, premises includes the entire campus of TSD as there are ongoing school sponsored activities being conducted and utilized on the grounds and buildings of the campus. Guns are not permitted on the premises of the School. No person shall intentionally, knowingly, or recklessly possess or go with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a) on the physical premises of the School, the campus or grounds or enter into any building on which an activity sponsored by the School is being conducted.

The Superintendent is directed to place signage on all school buildings and at all areas of ingress into or upon the campus to notify individuals of the prohibition of carrying firearms, illegal knives, clubs, or prohibited weapons listed in Section 46.05(a) on the physical premises of the School.

**Discretionary  
Expulsion**

Threats

Subject to the provisions of TSD Board Policy FOF, 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

Subject to the provisions of TSD Board Policy FOF, 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:

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.
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.
3. Engages in conduct that contains the elements of an offense under Penal Code 22.01(a)(1) against a School employee, or a volunteer as defined by Education Code 22.053.
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, and the provisions of TSD Board Policy FOF, 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

Subject to the provisions of TSD Board Policy FOF, 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 School, without regard to whether the conduct occurs on or off school

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	property or while attending a school-sponsored or school-related activity on or off school property. <i>Education Code 37.007(d)</i>
Conduct Against Another Student	Subject to the provisions of TSD Board Policy FOF, 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. <i>Education Code 37.007(b)(4)</i>
Bullying	<p>A student may be removed from class and expelled if the student:</p> <ol style="list-style-type: none"> <li>1. Engages in bullying that encourages a student to commit or attempt to commit suicide;</li> <li>2. Incites violence against a student through group bullying; or</li> <li>3. Releases or threatens to release intimate visual material of a minor or student who is 18 years of age or older without the student's consent.</li> </ol> <p>Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor.</p>
<i>Definitions</i>	
Bullying	"Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]
Intimate Visual Material	"Intimate visual material" has the meaning assigned by Civil Practice and Remedies Code 98B.001.
	<i>Education Code 37.0052</i>
Criminal Mischief	Subject to the provisions of TSD Board Policy FOF, TSD 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 School shall refer the student to the authorized officer of the juvenile court. <i>Education Code 37.007(f)</i>
Breach of Computer Security	<p>Subject to the provisions of TSD Board Policy FOF, 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:</p> <ol style="list-style-type: none"> <li>1. The conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of the School; and</li> </ol>

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2. The student knowingly alters, damages, or deletes School property or information; or commits a breach of any other computer, computer network, or computer system. [see CQB]

*Education Code 37.007(b)(5)*

Serious  
Misbehavior in  
DAEP

Subject to the provisions of TSD Board Policy FOF, 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 School employee.

If a TSD student commits an expellable offense the Superintendent will refer the student back to their local education agency.

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

Property or  
Activities of Another  
District

Subject to the provisions of TSD Board Policy FOF, TSD may expel a student who attends TSD if:

1. The student engages in conduct for which expulsion would have been mandatory if the conduct had occurred on School property or while attending a School-sponsored or School-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)*

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**Expulsion  
Proceedings**

Due Process

Subject to the provisions of TSD Board Policy FOF, before a student may be expelled, the Superintendent or Principal or Administrative designee shall provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. *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 TSD. If the School makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, TSD may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends.

Mitigating Factors

Before ordering the expulsion of a student, the TSD Governing Board or the Board's designee must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the board concerns a mandatory or discretionary action. [See Student Code of Conduct, item 4, at FO(LEGAL) for mitigating factors.]

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<b>Term of Expulsion</b>	<p>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.</p>
<p>Beyond One Year</p>	<p>The period of expulsion may not exceed one year unless TSD determines that:</p> <ol style="list-style-type: none"> <li>1. The student is a threat to the safety of other students or to School employees; or</li> <li>2. Extended placement is in the best interest of the student.</li> </ol> <p><i>Education Code 37.009(h)</i></p>
<b>Notice of Expulsion Order</b>	<p>The Superintendent or Principal or Administrative 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. <i>Education Code 37.009(g)–(h)</i></p>
<p>To Parent or Guardian</p>	
<p>To Court</p>	<p>Not later than the second business day after the date an expulsion hearing is held, a 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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. All information in a TSD'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</li> <li>2. A complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision.</li> </ol> <p><i>Education Code 37.010(a); Family Code 52.04(a), .041(a)–(b)</i></p>
<p>To Juvenile Board</p>	<p>In a county that operates a JJAEP [see FODA], no student shall be expelled without written notification by a board or its designee to the juvenile board's designated representative. The notification shall be made not later than two business days following the determination of the Superintendent or Principal or Administrative designee that the student is to be expelled. Failure to timely notify the designated representative shall result in the child's duty to continue attending TSD's educational program, which shall be</p>

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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 Superintendent or other appropriate administrator designated by the Superintendent 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 TSD before an order for expulsion is entered, Superintendent or Principal or Administrative designee, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in TSD during the same or subsequent school year, TSD 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 Superintendent or Principal or Administrative designee 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 Superintendent or Principal or Administrative designee, as appropriate, may enter an additional order. *Education Code 37.009(j)*

**Appeals**

the Superintendent or Principal or Administrative 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)*

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**Restrictions on  
Court Orders**

A court may not order an expelled student to attend a regular TSD classroom or TSD's DAEP as a condition of probation.

**Return to Class**

Early / Permissive

Subject to the provisions of TSD Board Policy FOF, on the recommendation of the Admission, Review and Dismissal Committee, or on its own initiative, a TSD may readmit an expelled student while the student is completing any court disposition requirements, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department.

Required

After an expelled student has successfully completed any court disposition requirements successfully, TSD may not refuse to admit the student if the student meets the requirements for admission to TSD [See FD].

TSD may place the student in a DAEP subject to the provisions of TSD Board Policy FOF, 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 who has been expelled from another school district applies for admission to TSD, the expelling district shall provide TSD a copy of the expulsion order and the referral to the authorized officer of the juvenile court. TSD will review the information and special education records to determine whether the student meets admission criteria to attend the school.

Out-of-State  
Expulsion

TSD 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 at TSD.

*Education Code 37.010(g)*

If the student was expelled for more than one year and TSD places the student in a DAEP, the aggregate period of the placement may not exceed one year unless the School determines that:

1. The student is a threat to the safety of other students or to School employees; or

2. Extended placement is in the best interest of the student.

*Education Code 37.010(g-1)*

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

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