

TEXAS SCHOOL FOR THE DEAF

**STUDENT DISCIPLINE:
PLACEMENT IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS**

FOC

**APPLICABILITY OF THIS
POLICY TO TSD
STUDENTS**

TSD Board Policy FOF addresses discipline of students with disabilities, which includes all TSD students.

The provisions of this policy apply to a TSD student only if:

1. the student's behavior was not a manifestation of the student's disability; and
2. the student does not have in place a Behavior Intervention Plan that addresses the type of behavior for which removal from the classroom is required.

See FOF for provisions concerning removal of TSD students from the current placement.

**REMOVAL UNDER
STUDENT CODE OF
CONDUCT**

The Student Code of Conduct must specify conditions that authorize or require the Superintendent or 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**

Subject to the provisions related to change of placement contained in TSD Policy FOF, 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**

Subject to the provisions of TSD Board Policy FOF, a student shall be removed from class and placed in a DAEP if the student engages in conduct at the 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

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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)

RETALIATION

Subject to the provisions of TSD Board Policy FOF, 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 Title 5, Penal Code;
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 Title 5, Penal Code; or
3. The Superintendent or other appropriate Administrator has a reasonable belief that the student has engaged in conduct defined as a felony offense in Title 5, Penal Code.

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

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 Administrator may consider all available information, including the information furnished under Code of Criminal Procedure Article 15.27.

Education Code 37.006(e) [See GRA]

TITLE 5 FELONIES

The following are felony offenses listed in Penal Code, Title 5, Offenses Against the Person.

1. Murder. *Penal Code 19.02*
2. Capital Murder. *Penal Code 19.03*
3. Manslaughter. *Penal Code 19.04*
4. Criminally Negligent Homicide. *Penal Code 19.05*
5. Unlawful Restraint, if:
 - a. The person restrained was younger than 17 years of age; or
 - b. The actor recklessly exposes the victim to a substantial risk of serious bodily injury; restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty; or while in custody restrains any other person.

Penal Code 20.02

6. Kidnapping. *Penal Code 20.03*
7. Aggravated Kidnapping. *Penal Code 20.04*
8. Smuggling of Persons. *Penal Code 20.05*
9. Continuous Smuggling of Persons. *Penal Code 20.06*
10. Trafficking of Persons. *Penal Code 20A.02*
11. Continuous Trafficking of Persons. *Penal Code 20A.03*
12. Continuous Sexual Abuse of Young Child or Children. *Penal Code 21.02*
13. Bestiality. *Penal Code 21.09*
14. Indecency with a Child. *Penal Code 21.11*
15. Improper Relationship between Educator and Student. *Penal Code 21.12*
16. Invasive Visual Recording. *Penal Code 21.15*
17. Unlawful Disclosure or Promotion of Intimate Visual Material. *Penal Code 21.16*
18. Voyeurism, if the victim was younger than 14 years of age at the time of the offense. *Penal Code 21.17*
19. Sexual Coercion. *Penal Code 21.18*
20. Assault, if the offense is punishable as a felony as specified in Penal Code 22.01(b), (b-1), and (b-2). *Penal Code 22.01*

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21. Sexual Assault. *Penal Code 22.011*
22. Aggravated Assault. *Penal Code 22.02*
23. Aggravated Sexual Assault. *Penal Code 22.021*
24. Injury to a Child, Elderly Individual, or Disabled Individual. *Penal Code 22.04*
25. Abandoning or Endangering a Child. *Penal Code 22.041*
26. Deadly Conduct, if the person knowingly discharges a firearm at or in the direction of one or more individuals, or at or in the direction of a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied. *Penal Code 22.05*
27. Terroristic Threat, if the actor threatens to commit any offense involving violence to any person or property with intent to:
 - a. Place any person in fear of imminent serious bodily injury if the actor knows the person is a peace officer or judge;
 - b. Prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place if the prevention or interruption causes pecuniary loss of \$1,500 or more to the owner;
 - c. Cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
 - d. Place the public or a substantial group of the public in fear of serious bodily injury; or
 - e. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision.

Penal Code 22.07
28. Aiding Suicide, if the conduct causes suicide or attempted suicide that results in serious bodily injury. *Penal Code 22.08*
29. Tampering with Consumer Product. *Penal Code 22.09*
30. Harassment by Persons in Certain Facilities or of Public Servant. *Penal Code 22.11*

FELONY CONVICTIONS

Students convicted of felonies, including sexual assault, are most often referred back to their Local School District in order to continue to receive services.

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

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1. The student received adjudication for, or was placed on probation for sexual assault of another student, regardless of whether the assault occurred on or off school property; and
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 a district serving the grade level in which the student is enrolled.

Education Code 25.0341, 37.0051(a) [See FDD]

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

Since TSD is a one-campus school, on the request of a parent or other person with authority to act on behalf of the victim of the sexual assault, the Superintendent or Administrator may transfer the victim to another classroom, whether that assault occurred on or off campus, and that student has been placed on probation or received deferred adjudication for that assault. The student may also be referred back to their Local Education Agency depending on the severity of the assault.

A DAEP program serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program (IEP) established by a duly-constituted admission, review, and dismissal (ARD) committee, in accordance with the TEC, §37.004, and federal requirements.

PERMISSIVE
REMOVAL

Subject to the provisions of TSD Board Policy FOF, 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 other appropriate Administrator has a reasonable belief (as determined above) that the student has engaged in conduct defined as a felony offense other than those listed in Title 5, Penal Code [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)

A student may be removed from class and placed in a DAEP if the student:

1. Engages in bullying that encourages a student to commit or attempt to commit suicide;

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BULLYING

2. Incites violence against a student through group bullying; or
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.

Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor to law enforcement.

“Bullying” has the meaning assigned by Education Code 37.0832. [See FFI]

Definitions

“Bullying”

“Intimate visual material” has the meaning assigned by Civil Practice and Remedies Code 98B.001.

*“Intimate Visual
Material”*

Education Code 37.0052

**ONE YEAR AFTER
CONDUCT**

Subject to the provisions of TSD Board Policy FOF, the Superintendent or 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 Superintendent or 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)

**PLACEMENT OF
YOUNGER STUDENTS**

Subject to the provisions of TSD Board Policy FOF, 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); 37.007(e) [See FOD]

**Elementary School
Students**

An elementary school student may not be placed in a DAEP with any other student who is not an elementary school student.

Education Code 37.006(f)

**Students Younger Than
Six**

Subject to the provisions of TSD Board Policy FOF, 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.

Education Code 37.006(l), .007(e)(2)

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MITIGATING FACTORS

In deciding whether to place a student in a DAEP, regardless of whether the action is mandatory or discretionary, the department behavior coordinator shall take into consideration:

1. Self-defense
2. Intent or lack of intent at the time the student engaged in the conduct, and
3. The student's disciplinary history, or
4. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct.
5. A student's status in the conservatorship of the Department of Family and Protective Services (foster care), or
6. A student's status as homeless

**Parental/Guardian
Notification**

The district must notify the parent of the recommended discipline on the date on which the decision is made to make a discipline removal that constitutes a change in placement and must provide the parents with the procedural safeguards notice. (34 C.F.R. § 300.530(h)). An ARD must be convened within ten school days of the start of the removal.

Proper notice of the ARD committee meeting must be sent to the parent within 5 school days prior to the meeting. (34 C.F.R. § 300.503(a)) (19 T.A.C. § 89.1015) The notice should be clear, complete, and list MDR as a task of the meeting.

**MANIFESTATION
DETERMINATION**

Before any disciplinary action may be taken regarding an IDEA student that would constitute a change of placement, a manifestation determination review (MDR) must be conducted. And a duly constituted ARD meeting must be convened within 10 days of the decision to implement discipline that will change the student's placement. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e); TEC § 37.004(b)).

If the ARD committee determines that the behavior of concern IS a manifestation of the student's disability a Functional Behavior Analysis (FBA) must be offered. If the student has a current FBA or Behavior Interventional Plan already in place, a review will be conducted. At the ARD meeting, 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.

Discretionary Placements

If the ARD committee determines that the behavior IS a manifestation of the child's disability and the placement is NOT a mandatory placement (discretionary). The child must be returned to the placement from which the student was removed unless (1) special circumstances involving weapons, drugs, or bodily injury exist or (2) the parent and school agree to the change of placement as a part of the modification of the Behavior Intervention Plan. (20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)). A student that receives special education services may not be placed in an alternative education program solely for educational purposes. (TEC § 37.004(c)).

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Placement Disagreements	<p>If mutual agreement is not achieved by the ARD committee, the parent is offered a single opportunity to recess for up to 10 school days, unless the parties agree to a longer time, and then reconvene to attempt to achieve mutual agreement. (19 T.A.C. § 89.1050(f)(1)) However, if the student has committed an offense which might lead to a placement in a DAEP, or the student's presence on the campus presents a danger of physical harm to the student or others, the 10-day recess is not required. If the ARD committee does not reach mutual agreement on the MDR analysis, the ARD committee meeting concludes and the parent is not offered a 10 school day recess. The district implements the decision of the school-based members of the ARD committee and provides prior written notice to the parent as required by IDEA under 34 C.F.R. § 300.503. (19 T.A.C. § 89.1050(f)(3), (g))</p>
ORDER	<p>Following the ARD, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal or CBC, after considering any mitigating factors under Education Code 37.001(a)(4) [see FO], shall order the placement of the student for a period consistent with the Student Code of Conduct. The ARD deliberations will serve as the order.</p> <p>Education Code 37.009(a)(g)</p>
TERM OF REMOVAL	<p>The Superintendent or Principal or other appropriate Administrator 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 school determines that the student is a threat to the safety of other students or to School employees. Education Code 37.009(a),(d). However, if the behavior was determined to be a manifestation of the student's disability, the student may only be removed for up to 45 school days. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(9)) The requirement to provide FAPE in the discipline setting applies to these removals.</p>
BEYOND GRADING PERIOD OR 45 DAYS	<p>If placement in a DAEP is to extend beyond 45 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 Superintendent or Principal or other appropriate administrator. At the end of each 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 School shall convene an ARD committee to review the student's placement. The committee shall determine whether the student should return to the regular classroom or remain in the placement.</p>
NO APPEAL	<p>Any decision of the Superintendent or Principal or other appropriate administrator concerning placement beyond 60 days or the end of the next grading period is final and cannot be appealed.</p> <p>Education Code 37.009(b)</p>
BEYOND END OF	<p>Before a student may be placed in a DAEP for a period that extends beyond the end of the school year, the Superintendent or Principal must determine that:</p>

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SCHOOL YEAR

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)

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 GRA], the principal or other appropriate administrator 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 TSD 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 TSD the same or subsequent school year, TSD 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 A LOCAL
SCHOOL DISTRICT

If a student is placed in a DAEP at TSD and then enrolls in a district before the expiration of the placement, TSD shall provide to the district in which the student enrolls a copy of the ARD deliberations at the same time it provides other records. The local 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 ARD deliberations. Each educator shall keep the information confidential from any person not entitled to the information, except

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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 ARD deliberations; 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 ARD deliberations; and
 - b. The grounds for placement are the same as grounds for placement in the enrolling district.

Education Code 37.008(j)

**COURT-ORDERED
PLACEMENT**

Unless Texas School for the Deaf and the juvenile board for Travis County 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 TSD’s DAEP as a condition of probation;

Multiple Referrals

2. A court may not order a student to attend a DAEP without TSD’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. If the court orders a currently enrolled student to attend a DAEP, the student would be referred back to their home district for services.

Education Code 37.010(c), (d)

Placement After Court
Disposition

After a student has successfully completed any court disposition requirements, including conditions of deferred prosecution or conditions required by the prosecutor or probation department, TSD may admit the student if the student meets the requirements for admission into the The School.

Subject to the provisions of TSD Board Policy FOF, 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)

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NOT GUILTY /
INSUFFICIENT EVIDENCE /
CHARGES DROPPED

If a student was removed to DAEP for a reason other than false alarm or report, terroristic threat, or conduct on or within 300 feet of school property, the Superintendent or Principal or other appropriate Administrator shall review the student's placement in the DAEP upon receipt of notice under Article 15.27(g), Code of Criminal Procedure, stating that:

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.

Subject to the provisions of TSD Board Policy FOF, the student may not be returned to the regular classroom pending the review. The Superintendent or Principal or other appropriate administrator 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 Principal or other appropriate Administrator 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 Principal or other appropriate Administrator 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)

Appeal After Placement
Upheld

The student or the student's parent or guardian may appeal the decision of the Superintendent or Principal or other appropriate Administrator 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 under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the Superintendent or Principal or other appropriate Administrator and confirm or reverse the decision of the Superintendent or Principal or other appropriate Administrator. 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 of Education.

Education Code 37.006(i), (j)

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**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 Superintendent or Principal or other appropriate Administrator, as appropriate, may enter an additional order.
Education Code 37.009(j)

REPORTING

TSD shall include the number of students removed to a DAEP in its annual performance report.

Education Code 37.053(e)(5) [See BR]

Issued: 12-10-04

Adopted: 12-10-04

Amended: 12-14-07
05-06-16
08-25-16
08-16-19