

STUDENT DISCIPLINE:  
PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION  
SETTING

FOC  
(LEGAL)

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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 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 designee 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 the Superintendent's designee may consider all available information, including the information furnished under Code of Criminal Procedure Article 15.27. *Education Code 37.006(e)* [See GRA]
- PERMISSIVE REMOVAL**
- NON-TITLE 5 FELONY** 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:

1. The Superintendent or designee 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)*

TITLE 5  
FELONY

Notwithstanding any other provision of Education Code Chapter 37, Subchapter A, the Board, or its designee, after an opportunity for hearing, may elect to place a student in a DAEP if:

1. The student has received deferred prosecution (under Family Code 53.03) for conduct defined as a felony offense under Title 5, Penal Code; or the student has been found by a court or jury to have engaged in delinquent conduct (under Family Code 54.03) for conduct defined as a felony offense under Title 5, Penal Code; and
2. The Board or its designee determines that the student's presence in the regular classroom threatens the safety of other students or teachers, will be detrimental to the educational process, or is not in the best interests of the District's students.

The Board or its designee may order placement regardless of:

1. The date or location of the conduct;
2. Whether the conduct occurred while the student was enrolled in the District; or
3. Whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

LENGTH OF  
PLACEMENT

Notwithstanding Education Code 37.009(c) (placements beyond one year) or any other provision of Education Code Chapter 37, Subchapter A, the Board or designee may order placement for any period considered necessary in connection with the above determinations. The student is entitled to the periodic review prescribed by Education Code 37.009(e).

FINAL  
DECISION

The decision of the Board or designee is final and may not be appealed.

*Education Code 37.0081*

ONE YEAR  
AFTER

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

CONDUCT	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. <i>Education Code 37.006(n)</i>
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. <i>Education Code 37.006(f); 37.007(e)</i> [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. <i>Education Code 37.006(f)</i>
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. <i>Education Code 37.006(l)</i>
CONFERENCE	<p>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.</p> <p>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.</p> <p><i>Education Code 37.009(a)</i></p>
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. <i>Education Code 37.009(d)</i>
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)*

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 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	<p>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:</p> <ol style="list-style-type: none"> <li>1. The student is a threat to the safety of other students or to District employees; or</li> <li>2. Extended placement is in the best interest of the student.</li> </ol>
COURT-ORDERED PLACEMENT	<p><i>Education Code 37.008(j-1)</i></p> <p>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:</p>
EXPELLED STUDENT	<ol style="list-style-type: none"> <li>1. A court may not order a student expelled under Section 37.007 to attend a District DAEP as a condition of probation;</li> </ol>
MULTIPLE REFERRALS	<ol style="list-style-type: none"> <li>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.</li> </ol> <p><i>Education Code 37.010(c), (d)</i></p>
SCHOOL ACTIVITIES	<p>Any court placement in a DAEP must prohibit the student from attending or participating in school-sponsored or school-related activities. <i>Education Code 37.010(d)</i></p>
PLACEMENT AFTER COURT DISPOSITION	<p>After the student has successfully completed any court disposition requirements, including conditions of deferred prosecution or conditions required by the prosecutor or probation department, a 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.</p>
NOT GUILTY / INSUFFICIENT	<p>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.</p> <p><i>Education Code 37.010(f)</i></p> <p>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,</p>

EVIDENCE /  
CHARGES  
DROPPED

the Superintendent or designee 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.

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)*

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 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 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(1). [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)*

REPORTING

The District shall include the number of students removed to a DAEP in its annual performance report. *Education Code 37.053(e)(5)* [See BR]

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

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