

# school crime and discipline handbook

a practical  
reference guide



ATTORNEY GENERAL OF TEXAS  
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### **Glossary of Acronyms**

|          |                                                                     |
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| ARD:     | Admission, Review and Dismissal Committee                           |
| CINS:    | Conduct Indicating a Need for Supervision                           |
| DAEP:    | Disciplinary Alternative Education Program                          |
| DFPS:    | Department of Family and Protective Services                        |
| DPSL:    | Department of Public Safety                                         |
| ESC:     | Education Service Center                                            |
| FERPA:   | Family Educational Rights and Privacy Act                           |
| IDEA:    | Individuals with Disabilities Education Act                         |
| IEP:     | Individualized Education Program                                    |
| JJAEP:   | Juvenile Justice Alternative Education Program                      |
| MOU:     | Memorandum of Understanding                                         |
| SBEC:    | State Board of Educator Certification                               |
| TAKS:    | Texas Assessment of Knowledge and Skills                            |
| TCLEOSE: | Texas Commission on Law Enforcement Officer Standards and Education |
| TEA:     | Texas Education Agency                                              |
| TJPC:    | Texas Juvenile Probation Commission                                 |
| TYC:     | Texas Youth Commission                                              |

# Roles & Responsibilities of School Officials

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## Board of Trustees' Duties

The board of trustees of a school district, commonly referred to as the school board, must regularly meet with the juvenile board (or its designee) of the county where the district's central administrative office is located. The board of trustees and the juvenile board are to discuss supervision and rehabilitative services for students who have been expelled or who are attending a **Disciplinary Alternative Education Program (DAEP)**. In addition, the two boards must discuss the service of probation officers and the recruitment of volunteers to serve as mentors and tutors, as well as coordination with other social service agencies.<sup>1</sup>

Each school district must provide a **Disciplinary Alternative Education Program (DAEP)** for students who have been removed from their classrooms and separated from students who are not assigned to the DAEP. Tex. Educ. Code § 37.008.

## Parental Notification

Each school year, a school district must provide parents notice of and information regarding the **Student Code of Conduct**.<sup>2</sup> The Student Code of Conduct must address the notification of a student's parent or guardian of a violation committed by the student that results in suspension, removal to a DAEP, or expulsion.<sup>3</sup> Additionally, a non-custodial parent may request in writing that a school district or school provide that parent with a copy of any written notification relating to student misconduct that is generally provided to a student's parent or guardian. A school district or school may not unreasonably deny such a request and must comply with any applicable court order of which the district or school has knowledge.<sup>4</sup>

The **Student Code of Conduct** establishes standards for student conduct and specifies when a student may be removed from class, suspended or expelled. Tex. Educ. Code § 37.001. (See discussion on page 10)

## Principals' Duties and Liabilities

Among other things, the law requires that a principal:

- report certain serious criminal activities to law enforcement officials and to certain school personnel;
- take appropriate action when a student has misbehaved; and
- notify parents when a student has violated the student code of conduct.

## Placing students in proper behavior management settings

When a teacher sends a student to the principal's office in order to maintain effective discipline in the classroom, the law requires that the principal respond to the situation by using appropriate disciplinary techniques that are consistent with the school district's Student Code of Conduct.<sup>5</sup> Although the principal (or the designee) is generally the person responsible for imposing disciplinary measures for regular education students, including disciplinary placement decisions, only a duly constituted

**“Admission, review, and dismissal (ARD) committee** means the committee required by State Board of Education rules to develop the individualized education program required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) for any student needing special education.” Tex. Educ. Code § 29.301 (1).

**Admission, Review, and Dismissal (ARD)** committee can make placement decisions regarding a student with a disability who receives special education services.<sup>6</sup>

When a teacher removes a student who has repeatedly interfered with the instructor's ability to teach effectively or whose behavior is so unruly, disruptive or abusive that it seriously interferes with the teacher's ability to communicate effectively, the principal may place the student in another appropriate classroom, in-school suspension, or a DAEP. However, the principal may not return the student to the teacher's class without the teacher's consent, unless the **placement review committee**

The **placement review committee** determines the placement of a student removed from class and makes recommendations about the readmission of expelled students. Tex. Educ. Code § 37.003. See discussion on page 9.

finds that such placement is the best or only alternative available.<sup>7</sup> The principal is required to choose one person from the school's professional staff to serve as a member of the school's placement review committee, while the campus faculty must choose two teachers to serve as members and one teacher to serve as an alternate member. The teacher refusing to readmit the student may not serve on the committee.<sup>8</sup>

Additionally, the committee's placement determination regarding a student with a disability who receives special education services is subject to the Individuals with Disabilities Act (IDEA-04) and federal regulations, state statutes and agency requirements necessary to carry out federal law or regulations or state law relating to special education.<sup>9</sup>

A principal may, alternatively, suspend a student who engages in conduct identified in the student code of conduct as conduct for which a student may be suspended. The suspension may not exceed three school days.<sup>10</sup> Neither a principal nor a designee will incur civil liability for the emergency placement of a student into a DAEP.<sup>11</sup>

### **Reporting Serious Crimes**

In general, a principal should report all serious criminal activity to law enforcement officials. A principal is required to notify the school district's police department, if one exists, and the local law enforcement agency if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off of school property:

- conduct that may constitute murder, capital murder, aggravated kidnapping, indecency with a child, sexual assault, aggravated assault, aggravated sexual assault, injury to a child or an elderly or disabled person, arson, robbery, aggravated robbery, or burglary;
- deadly conduct under Section 22.05 of the Penal Code;
- terroristic threat under Section 22.07 of the Penal Code;
- use, sale, or possession of a controlled substance, drug paraphernalia, or marijuana;
- possession of illegal weapons and devices; or
- conduct that may constitute engaging in organized criminal activity under Section 71.02 of the Penal Code; or
- conduct that may constitute a criminal offense for which a student may be expelled under Education Code Section 37.007 (a), (d), or (e).<sup>12</sup> (See discussion on "Illegal activities that must be reported" on page 35.)

In addition to notifying law enforcement about such activities, the law requires that a principal also notify each instructional or support employee at the school who has regular contact with the student whose conduct is the subject of the notice.<sup>13</sup> The principal or the designee who makes such a report is required to include the name and address of each person suspected of participating in the illegal activity.<sup>14</sup> Note that the law requires principals to report these activities regardless of whether they involve any students and regardless of whether the activity is investigated by school security officers.

### **Teachers' and school employees' liability for reporting crimes**

In general, a school official who in good faith reports a crime to law enforcement will not incur civil liability.<sup>15</sup> The law specifically provides that a teacher, school administrator or school employee may not be held liable for civil damages for making a good faith report to the school's principal when the report states that within the scope of the person's duties and while exercising professional judgment, he or she suspects the student was using, passing or selling certain illegal items on school property. These items include marijuana or a controlled substance, a dangerous drug, an abusable glue, aerosol paint or a volatile chemical used or sold for the purpose of inhaling its fumes or vapors, or an alcoholic beverage.<sup>16</sup>

### **Immunity from personal liability for professional employees**

The Education Code also provides civil immunity for school district professional employees. A school district professional employee will not be held personally liable for any act if:

- the act is incident to or within the scope of the duties of the employee's position of employment;
- the act involves the exercise of judgment or discretion on the part of the employee;
- the act does not involve circumstances in which the employee used excessive force in disciplining a student or negligence resulting in bodily injury to a student; and
- the act does not involve the operation, use or maintenance of any motor vehicle.<sup>17</sup>

"Professional employees" include:

- superintendents, principals, teachers, supervisors, social workers, counselors, nurses and teacher's aides;
- teachers employed by a company that contracts with a school district to provide the teachers' services to the district;
- students in an educational preparatory program participating in a field experience or internships (for example, student teachers);
- school bus drivers certified in accordance with the standards and qualifications adopted by the Department of Public Safety (DPS);
- members of the board of trustees of an independent school district; and
- any other person whose employment requires certification and the exercise of discretion (this includes school district peace officers).<sup>18</sup>

If an employee is sued for actions committed in the person's capacity as an employee of a school district, a court may award costs and attorney fees to the employee if:

- the court finds that the lawsuit is frivolous, unreasonable and without foundation; and
- the suit is dismissed or the court enters judgment in favor of the defendant employee.<sup>19</sup>

School volunteers are immune from civil liability to the same extent as school district professional employees. However, the Education Code does not limit in any way the liability of a person who engages in intentional misconduct or gross negligence.<sup>20</sup>

## **Confidentiality of Records**

Schools maintain various types of information on their students. Under the Family Educational Rights and Privacy Act (FERPA),<sup>21</sup> an educational agency or institution may be denied federal funds if it discloses personally identifiable information from student education records without the written consent of the student’s parents, or of the student if he or she is 18 years old or is attending an institution of post-secondary education.<sup>22</sup> An educational institution or agency that improperly discloses student information may risk not only the loss of federal funds, but also a lawsuit from the student or his or her parents for civil rights violations under 42 U.S.C.A., Section 1983.

### **What are education records?**

The term “education records” includes records that:

- contain information directly related to a student; and
- are maintained by an educational institution or agency or by a person acting for such an agency or institution.<sup>23</sup>

Among other things, a student’s education records may include information on the student’s:

- academic progress;
- socioeconomic background (for example, information relating to the determination of eligibility for certain programs, such as a free lunch program); and
- psychological background (for example, information on whether the student has been a victim of abuse or suffers from emotional disorders).

Reports of a student’s violation of the Student Code of Conduct that are created and maintained by the school are also part of the student’s education record. This includes records regarding disciplinary measures taken against a student, such as corporal punishment, suspension or expulsion.

Education records do not include:

- records of instructional, supervisory, and administrative personnel, and educational personnel pertaining to those people, that are kept in the sole possession of the record’s maker and that are not accessible or revealed to any other person except a temporary substitute for the record’s maker;
- records of a law enforcement unit of an educational agency or institution that are created by that law enforcement unit for the purpose of law enforcement;
- records that relate to a non-student employee of an educational agency or institution, that are made and maintained in the normal course of business,

- relate exclusively to the individual in that individual's capacity as an employee, and are not available for use by any other person; and
- records that relate to a student who is 18 years old or older or who is attending an institution of post-secondary education that were made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, and made, maintained, or used only in the treatment of the student.<sup>24</sup>

Information received by a school from law enforcement relating to a student's arrest, detention, conviction or adjudication is not part of a student's education records. School officials may not include such information in a student's permanent academic file and must destroy such information at the end of the school year in which the information was filed.<sup>25</sup> Access to this information is limited to the school district superintendent or a person designated by the superintendent.

A superintendent and a juvenile probation department may enter into written interagency agreements to share information about juvenile offenders.<sup>26</sup> The information must relate to the juvenile system's ability to serve, prior to adjudication, the student whose records are being released. The juvenile justice agency that receives the educational information may not disclose it to a third party other than another juvenile justice agency, and must destroy all information when the child is no longer under the jurisdiction of a juvenile court.

If a student has been arrested, detained, convicted, or adjudicated of any felony and certain misdemeanors, the superintendent or the designee must notify all instructional and support personnel who have regular contact with the student within 24 hours of receiving the notification.<sup>27</sup> A school district employee who has supervisory responsibility over the student may be given the complete confidential notice received by the superintendent if the superintendent, or the person designated by the superintendent, determines that the employee needs the additional information for educational purposes or for the protection of others.<sup>28</sup>

### **Who may access a student's education records?**

A student's parents may access a student's education records. In fact, under the Education Code, a student's parents are entitled to access to "all written records of a school district" concerning their child, including "disciplinary records" and "reports of behavioral patterns."<sup>29</sup> If the student is 18 or older, the right of access belongs to the student rather than to his or her parents. Anyone who has the parents' written consent (or the student's written consent, if the student is 18 or older) may inspect the student's education records.

School officials, including teachers, who the school district has determined have legitimate educational interests in the records of a student, are also allowed to inspect a student's education records.

### **School Attendance Officers**

School attendance officers, who are not commissioned peace officers, are charged with the responsibility of enforcing the compulsory school attendance law that requires children between the ages of six and 18 to attend school.<sup>30</sup> Beginning with the 2007 - 2008 school year, individual districts may adopt policies requiring compulsory attendance for students between the ages of 18 and 21.<sup>31</sup>



Attendance officers may be selected:

- by the county school trustees;
- by the school board of any district; or
- in conjunction with the school boards of two or more school districts.<sup>32</sup>

School board trustees may appoint a county probation officer or a juvenile court officer as a school attendance officer.<sup>33</sup> If a school attendance officer is appointed, he or she may be paid from county funds or from school district funds, depending on the type of officer appointed.<sup>34</sup>

In school districts where no one is selected as a school attendance officer, the school superintendent and the county and school district peace officers are to perform the duties of the attendance officer. However, such persons may not receive extra compensation for performing attendance officer services.<sup>35</sup>

### **Powers and duties of school attendance officers**

A school attendance officer, who is not a commissioned peace officer, has the following powers and duties:

- investigating all cases of unexcused absences;
- enforcing the compulsory school attendance law by:
  - ▶ referring a student to juvenile court or filing a complaint against a student in a county, justice or municipal court within the ten (10) day deadline (§25.0951(a), E.C.); and
  - ▶ filing a complaint in a county, justice or municipal court against a parent for contributing to nonattendance within the newly created 10-day deadline (§25.0951(a), E.C.);
- monitoring school attendance compliance by each student investigated by the officer;
- maintaining an investigative record on each violation and related court action;
- making home visits or otherwise contacting the parents of a student who is in violation of school attendance laws;
- escorting a student, at the request of a parent, from any location to a school campus to ensure compliance with school attendance laws; and
- contacting the sheriff, constable or any peace officer (if the school district does not employ its own police department) to request that the student be taken into custody and processed if the officer has been informed of a court-ordered legal process directing that the student be taken into custody.<sup>36</sup>

A school attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence.<sup>37</sup>

### **Campus Security Personnel**

The Education Code states that “[t]he criminal laws of the state apply in the areas under the control and jurisdiction of the board of trustees of any school district in this state.”<sup>38</sup> A school district may hire campus security personnel and commissioned peace officers to maintain law and order on behalf of the school district. There are essentially two types of campus security personnel: security

personnel who are commissioned peace officers and are therefore authorized to carry a weapon, and security personnel who are not authorized to carry a weapon.<sup>39</sup>

## **School District Peace Officers**

A number of school districts have established school district police departments that are staffed by security personnel. The powers and duties of security personnel who are commissioned peace officers differ from the powers and duties of those who are not. For example, only commissioned peace officers may take a child into custody if there is probable cause to believe that a child engaged in:

- conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state;
- delinquent conduct or conduct indicating a need for supervision (CINS); or
- conduct that violates a condition of probation imposed by the juvenile court.<sup>40</sup>

The chief of each school district police department is accountable to the superintendent and is required to report to the superintendent or a person designated by the superintendent. School district peace officers are to be supervised by the school district police chief or the chief's designee. All school district peace officers must be licensed by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).<sup>41</sup>

## **Jurisdiction**

The jurisdiction of a school district peace officer is determined by the board of trustees and may include the area within the boundaries of the school district and all school property that is owned, leased, rented or otherwise under the control of the school district but lies outside the boundaries of the school district.<sup>42</sup>

A school district peace officer may provide assistance to another law enforcement agency. A school district may contract with a political subdivision for the jurisdiction of a school district peace officer to include all territory in the jurisdiction of the political subdivision.<sup>43</sup>

## **Powers and duties**

School district peace officers are to perform whatever administrative and law enforcement duties are set out by the school district's board of trustees. These duties include protecting the safety and welfare of any person in the peace officer's jurisdiction and protecting the school district's property.<sup>44</sup>

The board of trustees is required to determine the scope of the on-duty and off-duty law enforcement activities of its school district peace officers. Any off-duty law enforcement activities to be performed by a school district peace officer must be authorized in writing by the school district.<sup>45</sup>

School district peace officers must be commissioned in order to carry firearms. Such commissioned peace officers have the same powers, privileges and immunities as other peace officers and may enforce all laws, including municipal ordinances, county ordinances and state laws.<sup>46</sup>

Commissioned school district peace officers, like other peace officers, have a duty to preserve the peace within their jurisdiction and to employ all lawful means to do so. In addition, each school district peace officer must:

- take actions to prevent and suppress crime;
- execute all lawful processes issued by any magistrate or court;
- notify a magistrate of all offenses committed within the officer's jurisdiction when the officer has good reason to believe a penal law has been violated;
- arrest offenders, even without a warrant, but only when authorized by law; and
- take possession of missing children pursuant to Art. 63.009(g), Code of Criminal Procedure.<sup>47</sup>

Like other law enforcement officers, commissioned school district peace officers are authorized to take a student into custody,<sup>48</sup> which means detaining a child under the same circumstances in which an adult could be arrested. School security personnel who are not commissioned peace officers may not take a child into custody.

### **Interference with the duties of school district peace officers**

It is a crime for any person, including a school administrator, teacher, parent or student, to impede or interfere with school district peace officers while they are performing their duties or lawfully exercising their authority.<sup>49</sup> A person may assert, as a defense to prosecution, that the alleged interference consisted only of speech.<sup>50</sup>

### **Relationship with other law enforcement agencies**

A school district peace officer may assist other law enforcement agencies. If a school district police department and other law enforcement agencies have overlapping jurisdictions, they are required to enter into a memorandum of understanding (MOU) that outlines reasonable communication and coordination efforts between the department and the agencies.<sup>51</sup>

### **Standards for school district peace officers**

Any peace officer who is commissioned by a school district must:

- take and file the oath required of peace officers;
- execute and file a bond in the amount of \$1,000 payable to the board of trustees; and
- meet all the minimum standards for peace officers established by the TCLEOSE.<sup>52</sup>

### **Unauthorized Persons on School Property**

A school district's board of trustees, or persons authorized by the board, may refuse entry to anyone who does not have legitimate business on property controlled by the board. The school board or its authorized representatives may also eject any person from board-controlled property if the person is asked to leave the property but refuses to do so peacefully. In addition, school officials may require persons on school property to carry some form of government issued photo identification.<sup>53</sup>

### **Placement Review Committee**

Each school is required to establish a placement review committee.<sup>54</sup> A placement review committee is a three-member committee responsible for:

- determining the proper placement of a student when a teacher refuses his or her return to the teacher's classroom following the teacher's removing the student for disciplinary purposes, and

- making recommendations to the school district concerning the readmission of expelled students.<sup>55</sup>

For instance, when a teacher has removed a student from class, the student may not be returned to that class without the teacher's consent unless the placement review committee determines that returning the student is the best or only alternative available.<sup>56</sup> However, a student who was placed in a DAEP for injurious behavior may not be returned to the teacher's classroom without the teacher's consent under any circumstances, and the teacher may not be coerced into consenting.<sup>57</sup>

As part of its duties, a placement review committee may be asked by the school district to make a recommendation about whether the school district should readmit an expelled student while the student is completing a disposition imposed by a court.<sup>58</sup> However, even if the placement review committee recommends re-admission, it may not recommend that the student be returned to the supervision of the same teacher in whose classroom the student committed the misconduct unless the teacher consents.

If an expelled student enrolls in another school district in Texas, that district 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.<sup>59</sup> Recent legislative amendments make it clear that a school district may choose to continue the expulsion of a student who transfers from another state if the out-of-state district provides a copy of the expulsion order and the grounds for the expulsion.<sup>60</sup> The Texas district must reduce the period of expulsion so that it does not exceed one year unless the district determines that the student is a threat to the safety of other students or to district employees or that an extended placement is in the best interest of the student.<sup>61</sup>

Each placement review committee must include two teachers and one person from the campus professional staff. The school faculty is to choose two teachers to serve as regular members of the committee. An alternate member is necessary because a teacher who refuses the return of a student is not allowed to serve on the committee. The professional staff member is to be chosen by the school principal.<sup>62</sup>

## **Liaison Officers**

Each school district must appoint at least one educator to act as a liaison officer for court-related children who are enrolled in the district. The officer is responsible for providing counseling and services to deal with the child's attendance issues and progress in school.<sup>63</sup>

# Laws That Pertain to Disciplinary Punishment

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To maintain discipline and order in school, it is critical that teachers and administrators be able to act quickly and decisively when a student is disruptive or breaks the rules. School officials who have the responsibility of assessing and administering punishment must be aware of each student's constitutional rights. In the case of disciplinary punishment, the primary concern is a student's Fourteenth Amendment right to due process of law. Due process of law means providing adequate procedural safeguards to protect persons from having their rights and privileges unfairly denied.

When adopting policies with respect to discipline, school officials need to keep in mind the ends and the means of each policy. Policies must not violate the constitutional rights of students, parents or educators. Before adopting a policy, school officials should ask themselves whether the policy will withstand a court challenge.

## Legal Parameters of Classroom Discipline

The law requires school districts to keep their teachers and administrators informed of the laws and school district policies that concern discipline and behavior management. Section 37.018 of the Education Code requires school districts to provide each teacher and administrator with a copy of Subchapter A of Chapter 37 (Alternative Settings for Behavior Management) and with a copy of the local policy relating to that subchapter.

## Student Code of Conduct

The Education Code states that the board of trustees of an independent school district must adopt a Student Code of Conduct for the district.<sup>64</sup>

### What must a Student Code of Conduct contain?

In addition to establishing standards for student conduct, the Student Code of Conduct must:

- specify the circumstances under which a student may be removed from a classroom, campus or DAEP;
- specify conditions that would authorize or require a principal or other appropriate administrator to transfer a student to a DAEP;
- outline conditions under which a student may be suspended or expelled;
- specify whether consideration is given, as a factor in a decision to order suspension, removal to a DAEP, or expulsion to:
  - ▶ self defense;
  - ▶ intent or lack of intent at the time of the conduct;
  - ▶ the student's disciplinary history; or
  - ▶ a disability that impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- provide guidelines for setting the length of a term of removal and expulsion; and

Student Code of Conduct must prohibit bullying, harassment and the making of hit lists as now defined by the Education Code; (§37.001(7) & §37.001(b), E.C.)

- address the notification of a student’s parent or guardian of a violation of the student code of conduct that results in suspension, removal to a DAEP, or expulsion.<sup>65</sup>

School districts may also want to include in the code of conduct:

- the stipulation that if a student is removed from class, the student may be prohibited from participating in or attending any school-sponsored or school-related activities;
- the stipulation that if a student is expelled from school, the school district must refer the student or the student’s case to the proper authorities of the juvenile court;
- a description of the types of behavior considered to be serious or persistent misbehavior; and
- a specification of the length of time for which a student may be suspended, expelled, or removed to a DAEP.

**Bullying** means engaging in written or verbal expression or physical conduct that the school board determines will have the effect of physically harming a student, damaging a student’s property, placing a student in reasonable fear of harm or damage, or is sufficiently severe, persistent or pervasive enough to create an intimidating, threatening or abusive environment. A victim of bullying may have a right to transfer away from a bully. (§25.0341, E.C.)

### **Should a school district distribute its Student Code of Conduct to students?**

Students, parents, educators and administrators need to be informed about a school district’s standards of conduct and the consequences of violating those standards. There is no longer a requirement that the Student Code of Conduct contain information regarding the juvenile board; therefore, its sole focus is discipline-related. Once the Student Code of Conduct is adopted, it must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal.<sup>66</sup> Each school year, a school district must provide parents notice of and information regarding the Student Code of Conduct.<sup>67</sup> It is also advisable to provide a copy to each student, although such action is not mandated by statute.

### **What happens if a student violates the Student Code of Conduct?**

In addition to setting out the standards of behavior that are expected of each student who is enrolled in a school district, a Student Code of Conduct must set out the consequences for violating these standards.

### **Discipline Management Programs**

Each school district must adopt and implement a discipline management program that is to be included in its district improvement plan.<sup>68</sup> The Education Code does not impose requirements or restrictions on what a school district’s discipline management program should contain. Consequently, school districts are free to adopt and implement whatever program they believe will best suit the needs of its students and teachers.

For example, a school district could provide in its discipline management program the following:

- the designation of a person with special training in discipline management in each school to implement and assess the program in that school and to identify and refer appropriate students to school-community guidance programs;
- a strategy for increasing parental involvement in the disciplinary process; and
- a plan for teaching school officials, parents and students alternative dispute resolution methods for peacefully resolving conflicts.

### **Failure to Attend School**

Under the Texas compulsory school attendance law, everyone between the ages of six and 18 is required to attend school, unless specifically exempted from doing so.<sup>69</sup> The 80<sup>th</sup> Texas Legislature authorized local school districts to adopt policies requiring compulsory attendance for students attending school after the age of 18.<sup>70</sup> In 2001, the Legislature made significant changes to several school attendance statutes to more effectively deal with the State's growing truancy problem.

The following persons may enforce the compulsory school attendance statute:

- a school attendance officer, who is not a commissioned peace officer, if one has been selected by the school district;<sup>71</sup> and
- the school superintendent and the peace officers in the county and district in which the school district is located, if no school attendance officer has been selected.<sup>72</sup>

A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

- to investigate violations of compulsory school attendance requirements;
- to enforce compulsory school attendance requirements by:
  - ▶ referring a student to juvenile court or filing a complaint against a student in a county, justice or municipal court within the new seven day deadline; and
  - ▶ filing a complaint in a county, justice or municipal court against a parent for contributing to nonattendance.
- to serve court-ordered legal process;
- to review school attendance records for compliance by each student investigated;
- to maintain an investigative record on each violation and related court action;
- to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements; and
- to take a student into custody with the permission of the student's parent or as required by a court order.<sup>73</sup>

A peace officer serving as an attendance officer may not enter a residence without permission of the parent or of the tenant or owner of the residence, except to lawfully serve court-ordered legal process on the parent. Additionally, a peace officer may only take a student into custody with the permission of the student's parent or pursuant to court-ordered legal process.<sup>74</sup>

## Sanctions for Students

Compulsory attendance is required for students between the ages of 6 and 18, or upon enrollment in pre-kindergarten and kindergarten. As previously mentioned, some school districts may enact policies requiring attendance beyond 18 years of age. An individual may be prosecuted for the Class C misdemeanor of failure to attend school without excuse if he or she fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.<sup>75</sup> If the student is 10 or older but younger than 17, the child may also be adjudicated in the juvenile court system for truancy.<sup>76</sup>

If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district must:

- within 10 days of the 10th absence, file a complaint against the student, the student's parent, or both, in a county, justice or municipal court or, in a county with a population of less than 100,000, refer the student to a juvenile court for failure to attend school; or
- refer the student to a juvenile court for CINS.

A school district has the discretion to file a complaint or to refer a student to court if the student fails to attend school without excuse on three or more days or parts of days within a four-week period, but does not fail to attend school for the specified amount of time for mandatory filing.<sup>77</sup>

Procedures applicable to truancy-related offenses in county, justice or municipal court must follow the procedures authorized in Chapter 45 of the Code of Criminal Procedure, unless otherwise provided in the Education Code.<sup>78</sup> On approval of the commissioners court, city council, school district board of trustees, juvenile board (or other appropriate authority), a justice, municipal or court, school district, juvenile probation department (or other appropriate governmental entity) may employ a case manager to provide services in cases involving juvenile offenders before a court consistent with the court's statutory powers.<sup>79</sup> As a means of funding a juvenile case manager, courts may add a \$5 court cost to all fine-only offenses for the Juvenile Case Manager Fund after approval from the appropriate commissioners court or city council. The collected funds may only be used for a juvenile case manager and the assessment of such court cost must be discretionary based upon applicable indigency standards.

If a county, justice or municipal court (or a juvenile court in a county with a population of less than 100,000) finds that an individual engaged in failure to attend school, the court may enter an order that includes one or more of the following provisions requiring the student to:

- attend school without unexcused absences;
- attend a preparatory class for the high school equivalency examination, if the court determines that the individual is too old to do well in a formal classroom setting;
- if the individual is at least 16, take the high school equivalency examination;
- attend a special program that the court determines to be in the individual's best interest, such as an alcohol and drug abuse program, counseling, work and job skills training, etc.;
- attend a class for students at risk of dropping out of school, with the individual's parent;



- complete reasonable community service requirements; or
- participate in a tutorial program, provided by the individual’s school, in the academic subjects in which the individual is enrolled for a total number of hours ordered by the court.<sup>80</sup>

Additionally, a student’s driver’s license may be suspended or, if the individual does not have a license, the issuance of a license or permit may be denied for up to one year. An order requiring a parent to attend a class for students at risk of dropping out of school is enforceable in the justice, municipal or juvenile court by contempt.<sup>81</sup>

A peace officer who, pursuant to a court order, takes an individual into custody based on an affidavit showing probable cause to believe that the individual has violated the compulsory attendance statute must:

- promptly notify the parent, guardian or custodian that the individual was taken into custody and the reason for that action; and
- without unnecessary delay release the individual to a parent, guardian, custodian or another responsible adult who promises to bring the student back to court; or
- take the individual to a county, justice or municipal court with venue over the offense.<sup>82</sup>

### **Prosecution of Parents**

A school district must notify a student’s parent in writing at the beginning of the school year that if the student is absent from school on 10 or more days or parts of days within a six-month period in the same school year, or on three or more days or parts of days within a four-week period, that:

- the student’s parent is subject to prosecution; and
- the student is subject to prosecution or referral to a juvenile court in a county with a population of less than 100,000 for failure to attend school.<sup>83</sup>

A school district must also notify a student’s parent if the student has been absent from school without excuse on three days or parts of days within a four-week period. The notice must inform the parent that:

- it is the parent’s duty to monitor the student’s school attendance and require the student to attend school;
- the parent is subject to prosecution; and
- a conference is requested between school officials and the parent to discuss the absences.<sup>84</sup>

A parent commits a Class C misdemeanor if a written warning notice is issued, the parent with **criminal negligence** fails to require the child to attend school as required by law, and the child has absences for the specified amount of time. The attendance officer, or other appropriate school official, must file a complaint against the parent in a constitutional county court if the

“A person acts with **Criminal Negligence**, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur.” Tex. Penal Code §6.03(d).

county has a population of two million or more; in a justice court of any precinct in the county; or in a municipal court of the municipality in which the parent resides or in which the school is located. Each day the child remains out of school may constitute a separate offense, although two or more offenses may be consolidated and prosecuted in a single action.<sup>85</sup> It is now also a Class C misdemeanor for a parent to fail to attend a hearing after receiving notice to do so.<sup>86</sup>

If a court **defers disposition** of a sentence for a parent contributing to nonattendance, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral. A court may also order the defendant to attend a program that provides instruction designed to help parents identify and resolve problems that contribute to unexcused absences from school, if such a program is available. If a parent refuses to obey a court order, the court may punish the parent for contempt of court.<sup>87</sup>

A judge may, at the judge's discretion, **defer disposition** in a misdemeanor case (punishable by fine only) by deferring further proceedings without entering an adjudication of guilt and placing the defendant on probation for a period not to exceed 180 days. Tex. Code Crim. Proc. Art. 45.051 (a).

## Ban on Tobacco Products

Every school board is required to:

- prohibit smoking or the use of tobacco products at school-related or school-sanctioned activities, regardless of whether the activities take place on or off school property;
- prohibit students from possessing tobacco products at school-related or school-sanctioned activities, regardless of whether the activities take place on or off school property; and
- ensure that school personnel enforce the policies on school property.<sup>88</sup>

It is also a crime for a **minor** to possess, purchase, consume or accept cigarette or tobacco products.<sup>89</sup> If a minor is convicted of a tobacco-related offense, the court must enter an order suspending the sentence (a fine not to exceed \$250) and require the child to attend a tobacco awareness program or to perform eight to 12 hours of tobacco-related community service.<sup>90</sup> If the child does not satisfactorily complete the required program or service, the court must order DPS to suspend or deny the issuance of a driver's license or permit. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.<sup>91</sup> The law also contains preventive measures, such as the prohibition of cigarette or other tobacco advertisements within 1,000 feet of a school and the implementation of a tobacco-use public awareness campaign.<sup>92</sup>

A **minor** is a person under age 18 who is not and has not been married, or who has not had the disabilities of minority removed for general purposes. Tex. Fam. Code § 101.003.

## School Uniforms

A school board may adopt rules that require its students to wear school uniforms if it is determined that the requirement would improve the learning environment at the particular school.<sup>93</sup> This may be an option for school boards to consider when trying to prevent conflicts among students who intentionally or unintentionally wear gang-related clothing or accessories.

The parent or guardian of a student who is assigned to attend a school where students are required to wear uniforms may have the student exempted from the uniform requirement or have the student transferred to a school where uniforms are not required and where space is available, if the parent provides a written statement of a good faith religious or philosophical objection to the requirement.<sup>94</sup> The school board will determine whether the parent or guardian's objection is made in good faith.

If a school board decides to require uniforms, it must designate a source of funding to be used for providing uniforms to students who are economically disadvantaged. Students must start wearing uniforms on the 90<sup>th</sup> day after the date the school board adopts the uniform policy.<sup>95</sup>

## **Removing a Student from Class**

### **When may a teacher remove a student from class?**

The revised Education Code expanded the authority of a teacher to remove a student from class for disciplinary reasons. Each school district's Student Code of Conduct must specify the circumstances under which a student may be removed from a classroom.<sup>96</sup> In general, teachers have a great deal of discretion in determining whether to remove a student from class. For instance, a teacher may send a student to the principal's office at any time in order to maintain classroom discipline. The principal, in turn, is required to implement appropriate discipline management techniques, consistent with the Student Code of Conduct, to address the situation.<sup>97</sup>

A teacher has discretion to remove a student from class when the student:

- has been documented by the teacher to interfere repeatedly with the teacher's ability to communicate effectively with students in the class or with the ability of the student's classmates to learn; or
- behaves in a manner that is so unruly, disruptive or abusive that he or she seriously interferes with the ability of the teacher to teach or with the ability of the student's classmates to learn.<sup>98</sup>

When a teacher removes a student from a class under the circumstances described above, the school principal may place the student into another appropriate classroom, in-school suspension, or a DAEP. Note that expulsion is not an alternative. When a teacher exercises discretion in removing a student from class, the student may be prohibited from attending or participating in school-sponsored or school-related activities as part of the terms of the removal.<sup>99</sup>

### **When must a teacher remove a student from class?**

School personnel are required to remove from a classroom any student who engages in conduct that may be punished as a felony.<sup>100</sup> A student must also 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, or terroristic threat.<sup>101</sup>

A student must also be removed from class if, while on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off of school property, the student engages in conduct that may constitute any of the following offenses:

- assault causing bodily injury;

- sells, gives or delivers to another person, or possesses, uses or is under the influence of marijuana, a controlled substance or a dangerous drug;
- sells, gives or delivers to another person an alcoholic beverage, commits a serious act or offense while under the influence of alcohol, or possesses, uses or is under the influence of an alcoholic beverage;
- engages in an offense relating to an abusable volatile chemical;
- public lewdness or indecent exposure; or
- retaliation against a school employee.<sup>102</sup>

In addition, school officials must remove from a classroom any student who intentionally or knowingly harms or threatens to harm any school employee, on or off of school property, in retaliation for carrying out the duties of his or her job (including the duty to report the occurrence of certain crimes).<sup>103</sup> If a teacher is assaulted by a student to the extent the assault causes bodily injury, aggravated assault or sexual assault, the student may not be returned to the teacher's class without the teacher's consent, which cannot be coerced.<sup>104</sup> A student who is removed from class for engaging in any of the conduct described above must be prohibited from attending or participating in any school-sponsored or school-related activity.<sup>105</sup>

If a teacher removes a student from his or her class for any of the reasons previously stated, the student may not be returned to the teacher's class without the teacher's consent, unless the placement review committee makes a determination that returning the student to the teacher's class is the best or only alternative available. It is the committee's job to determine the proper placement of a student when a teacher refuses to consent to the student's return.<sup>106</sup>

Note that every school district must provide each teacher and administrator with a copy of Subchapter A, Chapter 37 (Alternative Settings for Behavior Management) and a copy of the school district's policy with respect to Subchapter A.<sup>107</sup>

### **Must a conference be held when a teacher removes a student from class?**

A conference must be held not later than the third class day after the day on which a student is removed from class. It is the principal's duty to schedule the conference, which must include the principal or other appropriate administrator, the student's parent or guardian, the teacher who removed the student from class, and the student. The student may not be returned to his or her regular classroom pending the conference. After the conference, the principal must order a placement of the student that is consistent with the Student Code of Conduct.<sup>108</sup>

If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the principal or other appropriate administrator (other than an expulsion), then the board's decision is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included 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 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.<sup>109</sup>

## **Suspension**

Under the Education Code, a school principal or other appropriate administrator may suspend a student for engaging in conduct identified in the Student Code of Conduct as conduct for which a student may be suspended.<sup>110</sup> (See the discussion below on removal to a DAEP.) A school district may want to have the option of suspending students for other kinds of misconduct or perhaps use suspension in combination with other disciplinary measures such as removing a student to a DAEP. Regardless of whether it chooses to expand this option, a school district must outline in its Student Code of Conduct the circumstances under which a student may be suspended.<sup>111</sup> A student may not be suspended for more than three days at a time.<sup>112</sup>

In-school suspension is considered a discipline management technique and does not have the same three-day limitation as out-of-school suspension. Nevertheless, in-school suspension could constitute a substantive due process violation when the suspension lasts for a longer period of time and results in a marked learning disadvantage for suspended students.<sup>113</sup>

If a school district removes a student from the regular classroom and places the student in in-school suspension or another setting (other than a DAEP), the district must offer the student the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of the removal. The district may provide the opportunity to complete courses by any method available, including a correspondence course, distance learning or summer school.<sup>114</sup>

### **Notice of disciplinary action**

If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the punishment period, the governing body of the district or school taking the disciplinary action must provide to the district or school in which the student enrolls, at the same time other student records are provided, a copy of the order of disciplinary action. The district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the punishment period.<sup>115</sup>

### **Procedural due process requirements when a student is suspended**

The United States Supreme Court has held that students must be afforded procedural due process before being suspended, even if the suspension is for a short period of time.<sup>116</sup> A student who is facing short-term suspension has a constitutional right to:

- oral or written notice of the nature of the infraction and the punishment for the infraction;
- an explanation of the evidence the authorities have if the student denies the charges; and
- an opportunity to refute the charges before an objective decision maker.

The Education Code requires that a conference be held not later than the third class day after a student is removed from class, as previously described. After the conference, the principal must order that the student be placed for a length of time and in a setting that is consistent with the student code of conduct.

## Alternative Educational Settings

### What is a DAEP?

In 1995, the Texas Legislature clearly recognized that school officials must be allowed to remove disruptive and dangerous students from the regular classroom environment. At the same time, the Legislature acknowledged the importance of providing and implementing an alternative learning environment so that students who have been removed from class for disciplinary reasons will be provided educational services as well as other special services that address their behavioral needs. In 2003, the Legislature added the word “disciplinary” to the alternative settings and they were known as “DAEPs.” In 2007, the 80<sup>th</sup> Legislature removed the word “disciplinary” in some parts of the Education Code and simply refers to “alternative settings”.<sup>117</sup> However, because the change was not universal this handbook will continue to refer to these alternative settings as “DAEPs”.

### What is required of an Alternative Setting?

Each school district is required to provide an alternative setting that:

- is located in a setting other than a student’s regular classroom;
- is located on or off a regular school campus;
- ensures the separation of students who are assigned to the DAEP from those who are not;
- focuses on English language arts, mathematics, science, history and self-discipline;
- provides for students’ educational and behavioral needs; and
- provides supervision and counseling.
- employs only teachers who meet all certification requirements; and
- provides not less than the minimum amount of instructional time per day required by Section 25.082(a).<sup>118</sup>

If a student is placed in a DAEP as a result of a drug- or alcohol-related offense, educational and support services may be provided to the student and the student’s parents or guardians.<sup>119</sup> In addition, a DAEP may provide for the transfer of a student to a different campus, a school-community guidance center, or a community-based alternative school.<sup>120</sup> In-school suspension no longer satisfies the requirements of a DAEP under the Education Code.

The following are applicable to an off-campus DAEP:

- limitation of liability;
- Texas Education Agency (TEA) reporting;
- Chapter 37 of the Education Code (relating to safe schools); and
- Chapter 39 of the Education Code (relating to public school system accountability, including TAKS testing).<sup>121</sup>

### Establishing a DAEP

A school district may work in conjunction with one or more other school districts to provide a DAEP. Each school district is required to cooperate with government agencies and community organizations in its district to provide services to students placed in a DAEP.<sup>122</sup> A regional Education Service Center (ESC) may, on the request of a school district, provide information on

developing a DAEP that takes into account the district's size, wealth and existing facilities to design a program that is best suited to the district.<sup>123</sup>

### **Funding**

For the purpose of calculating the average daily attendance of students in a district, the students' actual time in attendance at the DAEP is to be included in making the computation. By law, a school district must allocate to a DAEP the same expenditure per student, including federal, state and local funds, that would be allocated to the school if the student were attending a regularly assigned education program, including a special education program.<sup>124</sup>

A school district is now required to provide in its DAEP a course necessary to fulfill a student's high school graduation requirements. A district must offer a student in a DAEP an opportunity to complete coursework before the beginning of the next school year through any method available, including a correspondence course, distance learning or summer school. The district may not charge the student for a course that it provides.<sup>125</sup>

### **Placement in a DAEP**

#### **When may a student be removed to a DAEP?**

A student may be, but is not required to be, placed in a DAEP if the student's regular teacher has removed the student from class for:

- repeatedly interfering with the teacher's ability to communicate effectively with his or her students or with the ability of the student's classmates to learn; or
- being so unruly, disruptive or abusive that the conduct seriously interferes with the teacher's ability to communicate with his or her students or with the ability of the student's classmates to learn.<sup>126</sup>

In addition, a student may be removed from class and placed in a DAEP for conduct that occurred off campus and not while attending a school-sponsored or school-related activity if:

- the superintendent or designee has a reasonable belief that the student has engaged in conduct that constitutes a felony other than a felony as defined by Title 5 of the Penal Code (offenses against the person); and
- 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.<sup>127</sup>

When a student is placed in a DAEP under the circumstances described above, the student may be, but is not required to be, prohibited from attending or participating in any school-sponsored or school-related activities during the period of the removal.<sup>128</sup>

In 2003, the Legislature added Section 37.0081 to the Education Code, dealing with the placement of certain students into a DAEP. This new provision allows a school district to place a student in a DAEP if the student received deferred prosecution or was adjudicated for a Title 5 felony offense and the board of trustees determines that the student's presence in the regular classroom threatens the safety of others, will be a detriment to the educational process, or is not in the best interests of the district's students.<sup>129</sup> The board's decision is final and may not be appealed. The board may also

order placement in a DAEP regardless of when or where the conduct occurred, whether the conduct occurred while the student was enrolled in the district, or whether the student successfully completed any court disposition requirements imposed in connection with the conduct.<sup>130</sup>

### **When must a student be removed to a DAEP?**

A student must 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 or terroristic threat. A student must also be removed from class and placed in a DAEP if, while on or within 300 feet of school property, or while attending a school-sponsored or school-related activity on or off of school property, the student commits any of the following:

- a felony;
- assault;
- selling, giving, delivering, possessing, using or being under the influence of marijuana, a controlled substance or a dangerous drug;
- selling, giving, delivering, possessing, using or being under the influence of an alcoholic beverage;
- a serious act or offense while under the influence of alcohol;
- an offense involving an abusable volatile chemical;
- public lewdness;
- indecent exposure; or
- retaliation against any school employee.<sup>131</sup>

In addition, a student must be removed from class and placed in a DAEP for conduct that occurred off campus and not while in attendance at a school-sponsored or school-related activity if:

- the student receives deferred prosecution for conduct that is defined as a felony under Title 5 of the Penal Code (offenses against the person);
- a court or jury finds that the student engaged in delinquent conduct that constitutes a felony under Title 5; or
- the superintendent or the designee has a reasonable belief that the student has engaged in conduct that constitutes a felony under Title 5.<sup>132</sup>

When the removal of a student to a DAEP is required by law, the terms of the removal must prohibit the student from participating in or attending any school-sponsored or school-related activities.<sup>133</sup>

In 2003, the Legislature mandated that removal to a DAEP is not required if the student is expelled for a serious offense that is the same conduct for which removal would be required.<sup>134</sup> Additionally, 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 is required if the principal or administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.<sup>135</sup>

A student who is younger than six years of age may not be removed from class and placed in a DAEP, unless the student brings a firearm to school.<sup>136</sup> A student who brings a firearm to school must be expelled from the regular campus for at least one year, except that:

- the length of expulsion may be modified in the case of an individual student;



- educational services must be provided to a student in a DAEP if the student is younger than 10 on the date of the expulsion; and
- educational services may be provided in a DAEP to an expelled student who is 10 years of age or older.<sup>137</sup>

### **What happens if a student has been placed in a DAEP and moves to another district?**

If a student who has been placed in a DAEP enrolls in another school district before the end of the period of placement, the school board of the district that required the placement must provide the new school district with a copy of the placement order at the same time other records are provided. The school district in which the student enrolls may decide to continue the DAEP placement under the terms of the order or to allow the student to attend regular classes without having to complete the period of placement.<sup>138</sup>

### **What happens if an out-of-state student has been placed in a DAEP and moves to Texas?**

If a student who has been placed in a DAEP in another state moves to this state, the Texas school district may continue the placement under the terms of the order if:

- the out-of-state district provides a copy of the placement order; and
- the grounds for the placement are grounds for placement in the Texas district in which the student is enrolling.<sup>139</sup>

If a student was placed in a DAEP by a school district in another state for more than one year and a district in this state continues the placement, the Texas school district must reduce the period of the placement so that the aggregate period does not exceed one year unless, after 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.<sup>140</sup>

### **What constitutes emergency removal to a DAEP?**

The Education Code authorizes the removal and immediate placement of a student in a DAEP if the principal (or designee) reasonably believes that the student's behavior is so unruly, disruptive or abusive that it seriously interferes with:

- a teacher's ability to communicate effectively with the student's class;
- the ability of the student's classmates to learn; or
- the operation of the school or a school-sponsored activity.<sup>141</sup>

If emergency placement is ordered, the student must be given oral notice of the reason for the action and the reason must be one for which placement in a DAEP or expulsion can be made on a non-emergency basis. Within a reasonable time after an emergency placement, but not later than the 10<sup>th</sup> day after the date of the placement, a student must be provided notice of and an opportunity to participate in a hearing. If a student has a disability and receives special education services, the emergency placement is subject to federal law and regulations and must be consistent with the consequences that would apply to a student without a disability. A principal (or designee) may not incur civil liability for ordering an emergency placement of a student under this law.<sup>142</sup>

### **Court-ordered placement in a school district DAEP**

A juvenile court may not order an expelled student to attend a regular classroom, a regular campus or a school district DAEP as a condition of probation, unless the county juvenile board has entered into an MOU with the district's school board. The MOU must define the county juvenile probation department's role in supervising and providing other services for students in a DAEP.<sup>143</sup>

If a juvenile court does order a student to attend a DAEP as a condition of probation and the student is referred to the juvenile court again during the same school year, the juvenile court may not order the student to attend a DAEP in any school district unless:

- the juvenile board for the county in which the school district's main administrative office is located has entered into an MOU with the district's school board concerning the county juvenile probation department's role in supervising and providing other support services for students in DAEPs;
- the student has successfully completed any sentencing requirements imposed by the court; or
- the school district consents.<sup>144</sup>

If a juvenile court orders that a student be placed in a DAEP, the student must be prohibited from attending or participating in school-sponsored or school-related activities.<sup>145</sup>

### **Due Process Requirements for Removal to a DAEP**

#### **Notice in the Student Code of Conduct**

The Student Code of Conduct of each school district must set out standards of student behavior and must specify which violations of the Student Code of Conduct could result in the placement of the student in a DAEP. Each school year, a school district must provide parents notice of and information regarding the Student Code of Conduct.<sup>146</sup> School districts should make sure that students and their parents know the circumstances under which a student may be sent to a DAEP.

#### **Conference regarding a student's removal**

Not later than the third class day after a student is removed from class, the school principal must schedule a conference to be attended by the principal (or other appropriate administrator), the parent or guardian of the student, the teacher who removed the student from class, and the student. After the conference, the principal must order the proper placement of the student for a period consistent with the guidelines set forth in the school district's Student Code of Conduct.<sup>147</sup> The principal should then send a copy of the placement order to the student and his or her parent.

If the school district's policy allows a student to appeal the principal's decision to the school board (or its designee), other than an expulsion order, the board's decision is final and may not be appealed. If the placement period is inconsistent with the guidelines contained 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 the 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.<sup>148</sup>

Due process requires not only the opportunity for a conference, but also that reasonable notice of the conference be given to all parties. In situations where notice must be provided, a school board may be well advised to develop policies to ensure that notices are timely, clearly written and reasonable.

### **Length of removal to a DAEP**

The Education Code does not set any absolute limits on the period of time for which a student may be placed in a DAEP, but the language allows the possibility of placement for more than one grading period. Nonetheless, school districts may want to establish guidelines for determining the length of placement in a DAEP.

If a student's 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 hearing before the school board (or its designee). Any decision of the board or the board's designee is final and may not be appealed.<sup>149</sup>

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

- the student's presence in the regular classroom program or at the student's regular campus presents danger of physical harm to the student or to another individual; or
- the student has engaged in serious or persistent misbehavior that violates the school district's student code of conduct.<sup>150</sup>

The board (or its designee) is mandated to set a term for a student's placement in a DAEP. If the period of the placement is inconsistent with the guidelines included in the Student Code of Conduct, the order must give notice of the inconsistency. The placement period 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.<sup>151</sup>

In either case, a student who is placed in a DAEP must be provided with a review of his or her status at intervals of 120 days or less by the board (or its designee). In the case of a high school student, the student's progress toward meeting graduation requirements must be reviewed and a specific graduation plan must be established.<sup>152</sup> The student and the student's parent must also be given the opportunity to present arguments that advocate for the return of the student to his or her regular classroom or campus. The student may not be returned to the class of the teacher who removed the student unless the teacher consents, and the teacher may not be coerced into consenting. The placement review committee has no authority to override the teacher's decision.

### **Referral to juvenile court**

Not later than two business days after a conference is provided for a student who has been ordered to attend a DAEP, the school board (or its designee) must refer the student's case to the juvenile court by delivering a copy of the placement order to the authorized officer of the court. The following information must accompany the referral or be provided as quickly as possible:

- all information in the possession of the school district pertaining to the identity of the student and his or her address;
- the name and address of the student’s parent, guardian or custodian; the names of any witnesses; and the student’s current whereabouts;
- a complete statement of the circumstances of the student’s alleged delinquent conduct or CINS (*i.e.*, a description of the circumstances surrounding the student’s misconduct); and
- if the student was taken into custody, a complete statement of the circumstances under which the student was taken into custody.<sup>153</sup>

### **School-Community Guidance Centers**

Each school district may establish a school-community guidance center to identify and help children, including juvenile offenders and children with severe behavioral problems or character disorders, with problems that interfere with their education.<sup>154</sup> These centers represent another effort by the Legislature to encourage cooperation between school districts and local governmental entities to address the needs of students in their community. Each school-community guidance center is required to coordinate the efforts of school district personnel, local law enforcement agencies, school attendance officers and probation officers in working with students, dropouts and parents in identifying and correcting factors that adversely affect the education of these children.<sup>155</sup> In fact, when requested by a school district superintendent, each governmental agency that deals with students in the jurisdiction of the school district is required to cooperate with the school district in identifying and correcting problems faced by students within the district.<sup>156</sup>

School boards may work with state youth agencies to develop cooperative programs for students who have been found to have engaged in delinquent conduct.<sup>157</sup> In addition, a school district may enter into an agreement with the county, the juvenile board or other governmental agency that deals with school children to establish and/or finance a school-community guidance center.<sup>158</sup>

### **Parental notification**

Before a student is admitted to a school-community guidance center, the administrator of the center must notify the student’s parent or guardian. The notification must state:

- the reason the child has been assigned to the center;
- the parent or guardian’s right to be fully informed in writing of any treatment method or testing program involving the student; and
- the parent or guardian’s right to give written, signed consent for any psychological testing or treatment involving the student.<sup>159</sup>

If, after notification, a parent refuses to consent to testing or treatment of the student, the school-community guidance center may not do any further psychological testing or treatment.<sup>160</sup>

### **Parental involvement/parental rights**

The parent or guardian of a student attending a school-community guidance center is entitled to inspect any instructional or guidance materials used by the center, including teachers’ manuals and the results of any treatment, testing or guidance methods involving the student.<sup>161</sup>

Parental involvement is required when a student is admitted to a school-community guidance center. A school district representative, the student and the student’s parent are required to develop an

agreement that sets out the responsibilities of the parent and the student. The agreement must include:

- a statement of the student’s behavior and learning goals;
- a requirement that the parent meet with the student’s teacher at specified times to discuss the student’s progress; and
- the parent’s acknowledgment that he or she understands and accepts the responsibilities imposed by the agreement.<sup>162</sup>

If the parent refuses to comply with the agreement, the school superintendent may get a district court order to compel the parent’s compliance.<sup>163</sup> If an agreement cannot be reached between the school district representative, the student and the student’s parent, any of the three parties may request that a juvenile court or a juvenile court referee hold a hearing. After the hearing, the juvenile court or the appointed referee can enter an order that sets out the responsibilities and duties of each of the parties as the court deems appropriate.<sup>164</sup> Any party who violates the court order may be punished for contempt of court.<sup>165</sup> A school district may enter into an agreement to share the costs that may be incurred by a county under this law.<sup>166</sup>

## **Expulsion from School**

There are some circumstances under which a school district has discretion about whether to expel a student. Because expulsion deprives a student of the right to attend school, school districts should exercise this discretion with extreme caution. Each district’s Student Code of Conduct must outline the conditions under which a student may be suspended or expelled.<sup>167</sup>

### **When may a student be expelled?**

A student may be expelled if the student, while placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the student code of conduct.<sup>168</sup>

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 or terroristic threat.<sup>169</sup> In addition, a student may be expelled if he or she 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:

- sells, gives or delivers to another person or possesses, uses or is under the influence of any amount of marijuana, a controlled substance, a dangerous drug or an alcoholic beverage;
- engages in an offense relating to an abusable volatile chemical;
- assaults a school employee or volunteer, if the assault results in bodily injury;
- engages in conduct relating to deadly conduct;
- engages in conduct listed under the mandatory expulsion offenses, if committed within 300 feet of a school campus;
- retaliates against a school employee or volunteer by committing assault on or off campus; or
- engages in conduct that amounts to a felony offense of criminal mischief on or off campus.<sup>170</sup>

Note that if the student engaged in conduct that amounts to a felony offense of criminal mischief, the school district must refer the student to the authorized officer of the juvenile court, regardless of whether the student was expelled.<sup>171</sup>

Additionally, a student may be expelled for any of the mandatory expulsion reasons listed in the Education Code if the student engages in that conduct:

- on school property or another district in this state; or
- while attending a school-sponsored or school-related activity of a school in another district in this state.<sup>172</sup>

### **When must a student be expelled?**

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

- uses, exhibits or possesses a firearm, an illegal knife, a club or any other prohibited weapon;
- engages in any of the following offenses:
  - ▶ aggravated assault, sexual assault or aggravated sexual assault;
  - ▶ arson;
  - ▶ murder, capital murder, or criminal attempt to commit murder or capital murder;
  - ▶ indecency with a child; or
  - ▶ aggravated kidnapping;
  - ▶ aggravated robbery;
  - ▶ manslaughter; or
  - ▶ criminally negligent homicide;
  - ▶ continuous sexual abuse of young child or children under Section 21.02, Penal Code;<sup>173</sup>
- engages in any offense involving drugs or alcohol that is punishable as a felony; or
- engages in conduct that contains the elements of any of the above offenses against any school district employee or volunteer in retaliation for or as a result of the person's employment with a school district.<sup>174</sup>

Attorney General Opinion No. JC-0446 (2001) determined that a school district is not required to expel a student whose conduct:

- constitutes a felony;
- involves marijuana, a controlled substance, a dangerous drug or an alcoholic beverage;
- does not occur on school property or while attending a school-sponsored or school-related activity on or off of school property; and
- does occur within 300 feet of school property.

Note that subject to an expulsion for bringing a firearm to school, a student who is younger than 10 may not be expelled for engaging in conduct described by this section.<sup>175</sup>

There is no longer specific language in the Education Code concerning the ability of a teacher to recommend that a student be expelled. However, the absence of such language does not necessarily prohibit such recommendations. If a teacher removes a student from a class and the student is expelled, the student may not be returned to the teacher's class without the teacher's consent, unless the placement review committee finds that such a placement is the best or only alternative available.<sup>176</sup>

### **Notifying teachers**

A school district must inform each educator who supervises or instructs a student who has engaged in any violation that requires expulsion. Each educator must keep the information confidential with the exception of informing the student's parent. If a teacher intentionally violates the confidentiality of such information, his or her certification may be revoked or suspended by the State Board of Educator Certification (SBEC).<sup>177</sup> Additionally, all instruction and support staff who are responsible for supervising a student who has been arrested or referred to juvenile court must be notified of that student's arrest or referral. This information must also be kept confidential by the persons so notified.<sup>178</sup>

### **Emergency expulsion**

Section 37.019 of the Education Code expressly states that nothing in Subchapter A (relating to Alternative Settings for Behavior Management) would "prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm."<sup>179</sup> The principal (or the designee) must immediately give the student oral notice of the reason for the immediate expulsion. The reason must be a reason for which placement in a DAEP or expulsion may be made on a non-emergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10<sup>th</sup> day after the date of the placement or expulsion, the student must be accorded the appropriate due process. If the student has a disability and receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply to a student without a disability. A principal (or the designee) is protected from civil liability for ordering the emergency expulsion of a student under this law.<sup>180</sup>

To protect the due process rights of a student who is subject to immediate expulsion, a school board may want to provide the student and the student's parent or guardian with notice of and an opportunity to participate in a hearing within a reasonable time following the expulsion.

### **Mandatory procedures preceding expulsion from school**

Because expulsion is a more severe sanction than suspension or removal to a DAEP, a student must be given greater procedural protection when expulsion is contemplated. The Education Code requires the following before a student can be expelled:

- The school board (or its designee) must provide the student with a hearing at which the student is "afforded appropriate due process as required by the federal constitution and to which the student's parent or guardian is invited, in writing, to attend;" and
- At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not a school district employee.<sup>181</sup>

To ensure that a student is accorded “appropriate due process,” a school district should consider informing the student and his or her parent or guardian of the following:

- the alleged violation by the student;
- the school district’s intention to expel the student;
- the time and place of the hearing at which the student will be given the opportunity to refute the charges; and
- the right of the student and his or her parent or guardian to appeal the decision to expel to:
  - ▶ the school board, if the board’s designee makes the decision to expel; and
  - ▶ a district court of the county in which the school district’s central administrative office is located, if the school board makes the decision to expel.

A hearing may be held without the student, the student’s parent or guardian, or another adult representing the student, if the school district made a good-faith effort to notify those persons of the time and place of the hearing.

After making the decision to expel a student, the school board (or its designee) must deliver a copy of the order of a DAEP placement or expulsion to the student and the student’s parent or guardian.<sup>182</sup> If the expulsion period is inconsistent with the guidelines set forth in the Student Code of Conduct, the expulsion order must give notice of the inconsistency. The expulsion period may not exceed one year unless, after a review, the district determines that the student is a threat to the safety of students or staff or that extended placement is in the best interest of the student. Once a student is expelled, it becomes the responsibility of the student’s parent or guardian to provide adequate supervision for the student.<sup>183</sup>

Under Section 37.010 of the Education Code, if a student is expelled the board (or its designee) must also refer the student to the authorized officer of the juvenile court for appropriate proceedings under the Family Code. (See discussion of Juvenile Justice Alternative Education Programs (JJAEPs) on page 32.) In 2007, the Legislature enacted H.B. 1137 which specifically prohibits districts from placing a student over the age of 21 in an alternative setting or a JJAEP if the student is charged with a removable offense. In these situations, districts are required to revoke the admission of the over 21 student.<sup>184</sup>

## **Corporal Punishment**

Corporal punishment has long been recognized as a method for disciplining students.<sup>185</sup> In Texas, an educator entrusted with the care, supervision or administration of a student may use force, but not deadly force, against the student for the “special purpose” of controlling, training or educating the student. However, the use of force is justified only when and to the extent that the educator reasonably believes the force is “necessary to further the special purpose or to maintain discipline in a group.”<sup>186</sup>

The United States Supreme Court has recognized that a student’s liberty interests are implicated when corporal punishment is imposed by educators.<sup>187</sup> However, the due process to which a student is entitled before corporal punishment is administered is not great. For example, a formal hearing is not required before corporal punishment is used. The Supreme Court has held that because of the



“openness of schools” and the availability of common-law safeguards, the risk that corporal punishment would violate a student’s substantive rights is minimal.<sup>188</sup>

The fact that educators may be subject to both civil and criminal liability for the unreasonable use of corporal punishment is one of the common-law safeguards.<sup>189</sup> Texas statutes prohibiting assault and injury to a child also provide protection against excessive corporal punishment.<sup>190</sup> Under the Education Code, a professional employee of a school district is not personally liable for discretionary acts incident to or within the scope of the duties of the employee’s position, “except in circumstances in which a professional employee uses excessive force in the discipline of students or [commits] negligence resulting in bodily injury to students.”<sup>191</sup>

On the issue of corporal punishment, Attorney General Opinion No. JC-0491(2002) ruled that the Arlington Independent School District’s policy statement of prohibiting corporal punishment and limiting when physical restraint may be used on students is generally within the district’s authority to manage the district and to adopt rules for the safety and welfare of students, employees and property.

In determining whether the use of corporal punishment is reasonable, courts take into account all of the circumstances of a particular case. Among the most important factors a court may consider are the seriousness of the student’s infraction, the attitude and past behavior of the child, the nature and severity of the punishment, the age and strength of the child, and the availability of less severe but equally effective means of discipline.<sup>192</sup>

To protect themselves from liability, educators in Texas should consider following these guidelines:

- inform students and their parents in advance about the types of behavior that may result in corporal punishment;
- consider alternative disciplinary measures other than corporal punishment;
- have another staff member witness the administration of the corporal punishment; and
- upon request, prepare for the student’s parent a written statement of the reasons for imposing corporal punishment.<sup>193</sup>

## **Disciplining Special Education Students**

While student discipline is generally a state and local matter, federal law applies when students with disabilities are involved. If a student with a disability misbehaves, the types of disciplinary measures that may be employed depend on whether the student’s behavior is related to the student’s disability or whether the student’s misconduct involves carrying or possessing a weapon or possessing, using or selling illegal drugs at school.

The Education Code provides that only a duly constituted Admission, Review and Dismissal (ARD) committee may make decisions regarding the placement of a student with a disability who receives special education services. Such “placement” refers to the educational program and services specified in the student’s **Individualized Education Program (IEP)**. In addition, the Education Code prohibits the placement of a student with a disability who receives

An **Individualized Education Program (IEP)** means a written statement for each child with a disability that is developed, reviewed and revised by a committee responsible for developing the child’s IEP. 20 U.S.C.A. 1401 (11); Tex. Educ. Code § 29.005.

special education in alternative education programs solely for educational purposes. A teacher in an AEP who has a special education assignment must hold an appropriate certificate or permit for that assignment.<sup>194</sup>

### **Change in placement**

The Individuals with Disabilities Education Act (IDEA)<sup>195</sup> provides for a change of placement for disciplinary purposes when any change of placement for a special education student must be made by that child's ARD committee. IDEA was re-enacted as IDEA-04 and became effective on July 1, 2005.

Additionally, school personnel may order a change in placement for a special education student to an appropriate interim alternative educational setting for the same amount of time as a child without disabilities, but for no more than 45 calendar days, if:

- the student carries or possesses a weapon at school or at a school function that is under the jurisdiction of a state or school district; or
- the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function that is under the jurisdiction of a state or school district.<sup>196</sup>

Again, the interim alternative educational setting to which school personnel may remove such a student must be determined by the student's ARD committee. This type of alternative educational setting is basically any appropriate setting outside the regular classroom that enables the student to continue to progress in the general curriculum, to meet the goals set out in his or her IEP, and to address behavior modification.<sup>197</sup>

### **Manifestation Determination Review**

If disciplinary action that may result in a "change of placement" is contemplated for a special education student, the following guidelines must be followed:

- the student's parents must be notified of that decision and given notice of the procedural safeguards under IDEA; and
- the student's ARD committee must meet to review the relationship between the student's disability and the alleged misbehavior.<sup>198</sup>

**A Manifestation Determination Review** is required if a disciplinary action is considered for behavior of a child with a disability to determine the relationship between the child's disability and the behavior subject to the disciplinary action. 20 U.S.C.A. § 1415 (k)(4)(A).

Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's ARD committee conducts a manifestation determination review. Any disciplinary action regarding the student must be determined in accordance with federal laws and regulations, including laws or regulations requiring the provision of:

- functional behavioral assessments;
- positive behavioral interventions, strategies and supports; and
- behavioral intervention plans.<sup>199</sup>

If the ARD committee decides that the behavior subject to disciplinary action was not a manifestation of the student's disability, the committee must determine that:

- the student's IEP and placement, in relation to the behavior, were appropriate and that the special education services, supplementary aids and behavior intervention strategies were also consistent with the student's IEP and placement;
- the disability did not impair the student's understanding of the effects and consequences of the behavior; and
- the disability did not impair the student's ability to control his or her behavior.<sup>200</sup>

If the ARD committee determines that any of these guidelines were not met, the behavior must be considered a manifestation of the student's disability. Also, if the ARD committee identifies deficiencies in the student's IEP or placement, or in their implementation, the committee must take immediate steps to remedy those deficiencies.

Finally, if the ARD committee determines that the student's behavior was not a manifestation of the disability, the same disciplinary procedures may be applied as for students without disabilities.<sup>201</sup>

### **The "Stay Put" rule**

If the parent of a special education student disagrees with the disciplinary decision of the ARD committee, the parent may request a due process hearing. Unless the school district and the parent agree otherwise, the student involved in the complaint must remain, or "stay put," in his or her current educational placement pending the outcome of the hearing.<sup>202</sup> If a student is placed in an interim alternative educational setting due to drug or weapons charges, the school district may propose a change in the placement after the expiration of the interim alternative placement. In that case, the student must remain in the current placement during the pendency of the due process hearing unless the school district obtains a court order that overrides such placement based on a showing of dangerousness.

If a student with a disability who receives special education services is expelled in a county with a juvenile justice alternative education program (JJAEP) and placed in a JJAEP, the school district from which the student was expelled must provide the administrator of the JJAEP with reasonable notice of the meeting of the student's ARD committee to discuss the expulsion. A JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the program. This law applies only to expulsions for certain enumerated offenses under the Education Code.<sup>203</sup>

If, after placement of a student in a JJAEP, the administrator of the program has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator (or the designee) must immediately provide written notice of those concerns to the school district from which the student was expelled. The student's ARD committee must then meet to reconsider the placement of the student in the JJAEP. The district must, in accordance with applicable federal law, provide the administrator with reasonable notice of the meeting and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.<sup>204</sup>

### Provision of educational services

If a special education student is removed from his or her educational placement for 10 school days or less during the school year, the school district is not required to provide educational services to that student if such services are not provided to students without disabilities who have been similarly removed. However, if the removal is for more than 10 school days, the school district must, for the remainder of any removals during the school year, provide educational services to enable the student to progress in the general curriculum and to advance toward achieving the goals set out in his or her IEP.<sup>205</sup>

### Juvenile Justice Alternative Education Programs (JJAEPs)

To increase the options available for behavior management settings, the Education Code authorizes, and in some instances mandates, the creation of JJAEPs by county juvenile boards. Only a DAEP operated under the authority of a juvenile board of a county is considered a JJAEP.<sup>206</sup>

Each county with a population greater than 125,000 must develop a JJAEP, subject to the approval of the Texas Juvenile Probation Commission (TJPC).<sup>207</sup> A county with a population of 125,000 or less may, but is not required to, develop a JJAEP. If the county decides to develop such a program, it does not have to be approved by TJPC nor is it subject to various other requirements, as noted below.

If a student admitted into the public schools of a school district is expelled for conduct for which expulsion is required (see the discussion above on expulsion), the juvenile court, the juvenile board or the board's designee, as appropriate, shall:

- if the student is placed on probation, order the student to attend the JJAEP in the county in which the student resides as a condition of probation (unless the student is placed in a post-adjudication treatment facility);
- if the student is placed on **deferred prosecution**, require the student to immediately attend the JJAEP in the county in which the student resides for a period not to exceed six months as a condition of deferred prosecution;
- consider the length of the school district's expulsion order for the student in determining the conditions of the deferred prosecution or court-ordered probation; and
- provide timely educational services to the student in the JJAEP in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.<sup>208</sup> (This does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001 (b) or (b-1) of the Education Code.<sup>209</sup>)

**“Deferred Prosecution** is an alternative to seeking a formal adjudication of delinquent conduct or conduct indicating a need for supervision. It is essentially a six-month probation period.” Dawson, Texas Juvenile Law, 5<sup>th</sup> Ed., pg. 57. (See also, Tex. Fam. Code § 53.03.)

In a county that develops and operates a JJAEP, the juvenile board, the commissioners court and the county are immune from liability to the same extent as a school district. In addition, the professional

employees and volunteers of the juvenile board and county are immune from liability to the same extent as a school district's employees and volunteers.<sup>210</sup>

### **Legal requirements**

Each JJAEP in a county with a population greater than 125,000 must strive to enable students to perform at grade level and:

- adopt a Student Code of Conduct;
- focus on English language arts, mathematics, science, social studies, history and self-discipline;
- administer assessment tests under Chapter 39 (Subchapter B) of the Education Code;
- offer a high school equivalency program;
- operate at least seven hours per day and 180 days per year, unless a waiver of the 180-day requirement has been granted by the TJPC; and
- be subject to a written operating policy developed by the local juvenile justice board and submitted to the TJPC for review and comment.<sup>211</sup>

A JJAEP may apply to TJPC for a waiver of the 180-day requirement; however, the commission may not grant a waiver to a program for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.<sup>212</sup>

As previously noted, the above requirements do not apply to JJAEPs in counties with populations of 125,000 or less.

A student who is transferred to a JJAEP must participate in the program for the full period of time ordered by the juvenile court unless the student's school district agrees to accept the student before the completion of that period. A juvenile court may not order a student to be transferred to a JJAEP for a period of time that is longer than the term of any court-ordered probation period.<sup>213</sup>

### **Funding of JJAEPs**

If a student is expelled for conduct for which expulsion is permitted but not required, the student's school district must, if the student is served by the JJAEP, transfer funds to the juvenile board for the portion of the school year for which the JJAEP provides educational services as determined by the MOU entered into under Section 37.011(k)(2) of the Education Code. The juvenile board must use the funds for JJAEPs.<sup>214</sup> However, a school district is not required to provide funding to a juvenile board for a student who is assigned by a court to a JJAEP but who has not been expelled.<sup>215</sup>

Additionally, the Office of State-Federal Relations, a state agency, is required to help local juvenile probation departments identify additional state or federal funds to assist local juvenile probation departments in conducting educational or job training programs within JJAEPs.<sup>216</sup>

In 2002, Attorney General Opinion No. JC-0459 ruled that a school district is not obligated to fund the construction of JJAEP facilities. While a juvenile board may purchase real estate for JJAEP purposes, a juvenile board may not accept contributed real estate for JJAEP purposes unless the Legislature has expressly authorized it to do so.

# Laws That Pertain to Crimes in Schools

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## Reporting Crimes in School

The principal of a public or private school has a legal duty to notify a school district's police department, if there is one, and the local law enforcement agency if there are reasonable grounds to believe that certain criminal activities are taking place or have taken place in school. This includes crimes committed in school, on school property, or at a school-sponsored or school-related activity, on or off of campus. The principal must report any illegal activity regardless of whether school security personnel are investigating the incident and regardless of whether students or non-students are involved. The principal may designate an employee over whom he or she has direct supervision to make these reports.

Both the principal (and the designee) are protected from civil liability for the good-faith reporting of illegal activities. Notification is not required if the principal (or the designee) reasonably believes that the activity in question is not a criminal offense.<sup>217</sup>

Local law enforcement agencies are required to report to school officials any felonies and certain misdemeanors involving students and to take appropriate action regarding school crime.<sup>218</sup> Attorney General Opinion No. DM-0294 (1994) emphasized that the notice should include sufficient details such as:

- the nature of the charges;
- the identity of any alleged victims who are students or staff; and
- all other information that will allow a school administrator to take appropriate action to prevent violence, protect students and staff, and to further the educational process.

## Notice to law enforcement

Whenever a school principal (or the designee) notifies a law enforcement agency about criminal activity on school property or at a school-sponsored or school-related activity, it is required that the name and address of each student who is believed to have participated in the illegal activity be included.<sup>219</sup>

## Notice to instructional and support personnel

Whenever a principal (or the designee) makes a required notification to law enforcement about suspected criminal activity, he or she must also notify each instructional or support employee who has regular contact with the student.<sup>220</sup> If a student engages in any conduct for which the student must be expelled, the school district is required to inform each teacher who has regular contact with a student through a classroom assignment of that student's conduct. A teacher is required to keep the information confidential or risk having his or her certification revoked by the SBEC.<sup>221</sup>

## Illegal activities that must be reported

The following are activities a principal (or the designee) is required by law to report if there are reasonable grounds to believe the activities are taking place on school property or at a school-sponsored or school-related activity on or off of school property:

- murder;
- capital murder;
- aggravated kidnapping;
- sexual assault;
- aggravated assault;
- aggravated sexual assault;
- injury to a child, an elderly or disabled person;
- arson;
- robbery;
- aggravated robbery;
- burglary;
- a felonious drug offense that is committed in a drug-free zone (the punishment for which can be increased under Section 481.134 of the Health and Safety Code);
- deadly conduct under Section 22.05 of the Penal Code;
- terroristic threat under Section 22.07 of the Penal Code;
- the use, sale, or possession of a controlled substance, drug paraphernalia, or marijuana;
- the possession of any prohibited weapons or devices, including clubs, explosive weapons, firearms, firearm silencers, knives, knuckles, chemical dispensing devices, and zip guns;
- conduct that may constitute organized criminal activity under Section 71.02 of the Penal Code; or
- conduct that may constitute a criminal offense for which a student may be expelled under Section 32.007 (a), (d), or (e) of the Education Code.<sup>222</sup>  
(See discussion on “Reporting Serious Crimes” on page 2.)

### **Mandate to report child abuse**

Any person who has reason to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person must immediately make a report to:

- any local or state law enforcement agency;
- the Department of Family and Protective Services (DFPS)<sup>223</sup>;
- the state agency that operates, licenses or registers a facility in which the alleged abuse or neglect occurred; or
- the agency designated by the court to be responsible for the protection of children.<sup>224</sup>

The law imposes a more stringent duty on professionals. A professional who has cause to believe that a child has been abused or neglected must make a report not later than 48 hours after the professional first suspected that the child has been neglected or abused. Professionals include principals, teachers, counselors, psychologists, nurses, doctors, lawyers, juvenile probation officers, detention or correction officers, and anyone else who is licensed or certified by the state. The law does not allow a professional to delegate to or rely on another person to report child abuse or neglect. Thus, a teacher or a counselor who makes a child abuse report to his or her principal with the expectation that the principal will report it to the proper authorities has not fulfilled the statutory duty.

In 2003, Attorney General Opinion No. GA-0106 noted that the DFPS is required to investigate a report of child sexual abuse “allegedly committed by a person responsible for a child’s care, custody, or welfare,” with assistance from the appropriate state or local law enforcement agency. Law enforcement officers, whether on or off duty, are required to report suspected child sexual abuse when they have cause to believe it has occurred or is occurring. Whether a specific person has cause to believe that a child has been a victim of sexual abuse depends on the facts within that person’s knowledge.

Failure to report child abuse or neglect is a Class B misdemeanor, punishable by a fine of up to \$2,000, confinement in jail for up to 180 days, or both.<sup>225</sup> An educator who fails to report child abuse or neglect may also risk having his or her certification revoked or suspended. A person wishing to report child abuse or neglect may report to law enforcement, other state agencies, or the DFPS on a 24-hour toll-free number: **1 (800) 252-5400**.<sup>226</sup>

### **Parental Liability**

A child’s parent or guardian has the responsibility to control and reasonably discipline his or her child.<sup>227</sup> The parent or guardian is liable for property damages caused by a child’s negligent conduct if the child’s negligence is reasonably attributable to the parent or guardian’s negligence in supervising the child. If a child who is at least 10 years of age and under 18 years of age deliberately and maliciously engages in conduct that causes property damage, the child’s parent or guardian may also be held liable for the property damage.<sup>228</sup> However, the liability of the parent or guardian for property damage caused by his or her child’s deliberate and malicious act is limited to actual damages and may not exceed \$25,000 for each act, plus court costs and reasonable attorney fees.<sup>229</sup> A parent or guardian may also be held liable for civil damages for failing to control or reasonably discipline a child whose actions cause personal injury.

### **Contraband**

Contraband is defined as “any property which is unlawful to produce or possess.”<sup>230</sup> In the school context, contraband includes drugs, drug paraphernalia, tobacco products, alcoholic beverages and weapons.<sup>231</sup>

### **Drug offenses**

A principal must report to the school district police department, if there is one, and to the local law enforcement agency if he or she has reasonable grounds to believe that students are involved in the use, sale, or possession of a controlled substance, drug paraphernalia, or marijuana in school, on school property, or at a school-related or school-sponsored event. A principal, teacher, school administrator or school employee who makes such a report in good faith may not be held civilly liable.<sup>232</sup>

A student must be removed from class and placed in a DAEP if, while on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off of school property, he or she:

- sells, gives or delivers to another person marijuana, a controlled substance or a dangerous drug; or
- possesses, uses or is under the influence of marijuana, a controlled substance or a dangerous drug.<sup>233</sup>



If the student's conduct is punishable as a felony, the student must be expelled.<sup>234</sup> A school district may provide a program of educational and support services to a student and his or her parents if the student is placed in an AEP because of a drug-related offense.<sup>235</sup>

### **Possession of drug paraphernalia**

Drug paraphernalia is equipment, product or material that is used or intended for use in, among other things:

- packaging, repackaging, storing or concealing a controlled substance in violation of the Texas Controlled Substances Act; or
- injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act.<sup>236</sup>

It is illegal to possess, deliver or manufacture with intent to deliver drug paraphernalia. A person commits an offense if he or she knowingly or intentionally uses or possesses with the intent to use drug paraphernalia to inject, ingest, inhale or otherwise introduce a controlled substance into a human body. It is also illegal for a person to knowingly or intentionally deliver, possess with the intent to deliver, or manufacture with the intent to deliver drug paraphernalia if the person knows that the person who receives or is intended to receive the drug paraphernalia intends to use it to somehow introduce a controlled substance into his or her body.<sup>237</sup>

### **Drug-free zones**

The federal Comprehensive Drug Abuse Prevention and Control Act of 1970 was amended in 1990 to create drug-free zones. Drug-free zones include areas around schools, playgrounds, youth centers, public swimming pools and arcade facilities. Under federal law, a drug-free zone is that area which is in, on, or within 1,000 feet of the premises of a school. If an individual is caught possessing, using, selling or distributing a controlled substance in a drug-free zone, the minimum term of imprisonment and the maximum fine for the offense must be doubled.<sup>238</sup>

Under the Texas Drug-Free Zones statute,<sup>239</sup> punishment for a drug offense is increased to the next higher category of punishment (for example, from a third degree felony to a second degree felony) if the offense was committed in, on, or within 1,000 feet of any real property owned, rented or leased by a school, or the premises of a public or private youth center. Punishment for most drug offenses is also increased if they take place on a school bus.

### **Use of paging devices**

A paging device is defined as "a telecommunications device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor."<sup>240</sup> Paging devices are useful and convenient communications tools, but in the school context their presence may be both distracting and disruptive. Before 1995, the Education Code provided for an absolute ban on paging devices in schools and authorized schools to confiscate such devices. Under the current law, a school board may adopt a policy that prohibits students from possessing paging devices while on school property or while attending a school-sponsored or school-related activity on or off of school property. The school board's policy on prohibiting paging devices may:

- establish disciplinary measures that may be imposed for violation of the prohibition;
- provide for the confiscation of paging devices;

- provide for the disposal of a confiscated paging device after the student’s parent and the company whose name and address or telephone number appear on the paging device have been given 30 days’ prior notice by telephone, telegraph or in writing, including the serial number, of the school board’s intent to dispose of the paging device; and
- allow the school district to charge the owner of the paging device or the student’s parent an administrative fee of not more than \$15 before the school board releases the paging device.<sup>241</sup>

To ensure due process and to encourage compliance with its policy, it may be advisable for a school board to provide a written copy of its policy regarding paging devices to students and their parents or guardians, teachers, and administrators. The school board may also want to include the paging device policy in its student code of conduct.

### **Cell Phones**

Most schools prohibit use of cell phones during school hours under the 1995 “paging device” prohibition. Clearly, if a cell phone is used in the commission of an offense or school violation, it is contraband. Cyber-bullying, harassment, threats and cheating are violations that justify classification as contraband. However, the Education Code and the relevant Attorney General Opinion JM-1225 only address the disturbance of class by the ringing of the “car phone” and do not specifically address text messaging or camera features.

### **Possession of tobacco**

It is an offense (punishable by a fine not to exceed \$250) for a person younger than 18 to:

- possess, purchase, consume or accept a cigarette or tobacco product; or
- falsely represent himself or herself to be 18 or older by displaying proof of age that is false, fraudulent or not actually proof of the individual’s correct age in order to possess, purchase or receive a cigarette or tobacco product.<sup>242</sup>

On conviction, the court is required to suspend the sentence and order the minor to attend a tobacco awareness program or perform tobacco-related community service.<sup>243</sup> Once the required program or community service is completed, the court executes the sentence, either imposing a fine (if the accused has previously been convicted of an offense under this law) or discharging the defendant and dismissing the case.<sup>244</sup> This system is similar to deferred prosecution except that a defendant is not automatically entitled to dismissal upon satisfactory completion of the program or community service. If the accused does not fulfill the court’s requirements, the court must order the DPS to suspend or deny the issuance of a driver’s license or permit to the minor. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.<sup>245</sup>

### **Possession of alcohol**

Each school board is required to prohibit the use of alcoholic beverages at all school-sponsored or school-related activities, regardless of whether they take place on or off school property.<sup>246</sup>

It is a Class C misdemeanor for a person to possess an intoxicating beverage for consumption, sale, or distribution while:

- on school grounds;
- in a school building; or
- entering or inside any enclosure, field, or stadium where:
  - ▶ a school-sponsored athletic event is being held; or
  - ▶ an athletic event is being held in which a public school is a participant.<sup>247</sup>

The law requires that “an officer of this state” who sees a person committing the offense described above must immediately seize the alcoholic beverage and within a reasonable time deliver it to the local prosecutor’s office to be held as evidence pending the trial of the person accused of possessing alcohol.

### **Reporting alcohol-related offenses**

A teacher, school administrator, or school employee who reports in good faith a student who is reasonably suspected of using, passing (delivering), or selling an alcoholic beverage on school property may not be held liable for civil damages arising from making such a report.<sup>248</sup>

A student is required to be removed from class and placed in a DAEP if, while on or within 300 feet of school property, or while attending a school-related or school-sponsored activity on or off of school property, he or she:

- sells, gives or delivers to another person an alcoholic beverage;
- commits a serious act or offense while under the influence of alcohol; or
- possesses, uses or is under the influence of an alcoholic beverage.<sup>249</sup>

If the student’s conduct is punishable as a felony, the student must be expelled.<sup>250</sup> A school district may provide a program of educational and support services to a student and his or her parent if the student has been placed in a DAEP because of an alcohol-related offense.<sup>251</sup> A school board should include in its Student Code of Conduct information on alcohol-related misconduct and the consequences for engaging in such misconduct.

### **Alcohol-free school zones**

In addition to the statutes discussed above, which deal with the possession, consumption and sale of alcohol on school grounds or at school-related athletic events, it is also illegal for a person to possess an open container or to consume an alcoholic beverage on a public street, public alley or public sidewalk within 1,000 feet of the property line of a public or private primary or secondary school.<sup>252</sup>

To provide a safer environment for school children, laws relating to the possession, consumption and sale of alcohol near schools have been strengthened. For example, each school board must attempt to provide a safe alcohol-free environment for students while they travel to and from school. To accomplish this, Section 38.007 of the Education Code specifically authorizes school boards to work with local law enforcement officials and the Alcoholic Beverage Commission to enforce laws relating to the sale and consumption of alcohol at or near schools.

Section 38.007 also permits school boards to work with their county commissioners court and city council to encourage the adoption of alcohol-free school zones if the school district is located in a municipality with a population of 900,000 or more. The Alcoholic Beverage Code specifically authorizes commissioners courts and city councils to enact regulations that prohibit the sale of

alcoholic beverages by a dealer whose place of business is within 1,000 feet of a public school if the commissioners court or city council has received a request from the school board to adopt such regulations. Regardless of the population of a county or municipality, a local governing body (either a commissioners court or a city council) may enact regulations that prohibit the sale of alcoholic beverages by any business located within 300 feet of a public or private school.<sup>253</sup>

### **Volatile chemicals**

It is a Class B misdemeanor for a person to inhale, ingest, use or possess a substance containing a volatile chemical with the intent to inhale, ingest, apply or use these products in a manner:

- contrary to the directions, cautions or warnings appearing on the label of the container; and
- designed to:
  - ▶ affect the person's central nervous system;
  - ▶ create or induce a condition of intoxication, hallucination or elation; or
  - ▶ change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.<sup>254</sup>

In 2001, nitrous oxide was added to the list of volatile chemicals.<sup>255</sup> Consequently, a person commits a Class B misdemeanor by inhaling, ingesting, applying, using or possessing a substance containing nitrous oxide with the intent to inhale, ingest, apply or use the substance in a manner designed to:

- affect the person's central nervous system;
- create or induce a condition of intoxication, hallucination or elation; or
- change, distort or disturb the person's eyesight, thinking process, balance or coordination.<sup>256</sup>

It is also illegal to:

- deliver volatile chemicals to minors;<sup>257</sup>
- intentionally use or possess with intent to use inhalant paraphernalia;
- deliver, sell or possess with the intent to deliver or sell inhalant paraphernalia; and
- manufacture with intent to deliver or sell inhalant paraphernalia.<sup>258</sup>

A student must be removed from class and placed in a DAEP if, while on school property or while attending a school-sponsored or school-related event on or off of school property, the student engages in misconduct involving an abusable volatile chemical.<sup>259</sup>

A teacher, school administrator, or school employee may not be held liable for civil damages for reporting in good faith to the proper authorities a student who is reasonably suspected of using, passing or selling on school property an abusable glue or aerosol paint, or a volatile chemical, if the substance is used or sold for the purpose of inhaling its fumes or vapors.<sup>260</sup>

### **Possession of weapons**

The presence of weapons in and around schools is a growing concern among administrators, law enforcement, teachers, parents and students. Unless a school authorizes a person by written permission or by written regulations, a person commits a third degree felony by intentionally, knowingly or recklessly carrying or possessing a weapon on:

- the physical premises of a school or educational institution;
- any grounds or in any building in which a school or educational institution sponsored activity is being held; or
- a passenger transportation vehicle of a school or educational institution.<sup>261</sup>

It is not a defense to prosecution that the person carrying a handgun was licensed to carry a concealed weapon.<sup>262</sup>

### **Duty to report weapons-related offenses**

A principal has a duty to report to the school district police department, if there is one, and the local law enforcement agency if there are reasonable grounds to believe that any weapon is being possessed in school, on school property, or at a school-sponsored or school-related event on or off school property. The principal may designate an employee over whom he or she has direct supervision to make these reports. Neither the principal nor his or her designee may be held liable in a civil lawsuit for making such a report in good faith.<sup>263</sup>

### **Expulsion of students who bring weapons to school**

A student must be expelled from school if, while on school property or while attending a school-sponsored or school-related activity on or off of school property, the student uses, exhibits, or possesses any of the following prohibited weapons:

- a firearm;
- an illegal knife;
- a club;
- an explosive weapon;
- a machine gun;
- a short-barrel firearm;
- a firearm silencer;
- a switchblade knife;
- knuckles;
- armor-piercing ammunition;
- a chemical dispensing device; or
- a zip gun.<sup>264</sup>

### **Notifying teachers**

A school district must inform each teacher who has regular contact with a student through a classroom assignment about the conduct of a student who has engaged in a weapons-related violation. Such information is confidential, and any teacher who intentionally breaches the confidentiality of such information risks having his or her certification revoked or suspended.<sup>265</sup>

### **Weapon-free school zones**

Punishment for a person who commits a weapons-related offense is increased to the punishment prescribed for the next higher category of offense (for example, from a second degree felony to a first degree felony) if the offense is committed in a place the person knew was:

- within 300 feet of the premises of a school; or
- on premises where:

- ▶ an official school function is taking place; or
- ▶ an event sponsored or sanctioned by the University Interscholastic League is taking place.<sup>266</sup>

### **Exhibition of firearms**

A person commits a third degree felony if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally exhibits, uses or threatens to exhibit or use a firearm:

- in or on any property, including a parking lot, parking garage or other parking area, that is owned by a private or public school; or
- on a school bus being used to transport children to or from school-sponsored activities of a private or public school.<sup>267</sup>

### **Illegal knives**

The Penal Code defines an illegal knife as a knife with a blade over five and one-half inches long or a hand instrument that, when thrown, can cut or stab someone. Other illegal knives include daggers, dirks, stilettos, poniards, Bowie knives, swords, spears and throwing stars. A switchblade knife is any knife that has a blade that folds, retracts or closes into the handle or sheath and opens automatically by pressing a button or other device on the handle or by centrifugal force with the flick of a wrist.<sup>268</sup>

A school board may, by local policy, prohibit students from bringing other knives to school in addition to the prohibited knives described above. If a school board chooses to adopt such a policy, it should be included in its Student Code of Conduct.

### **Clubs**

A club is a weapon that has the intended purpose of inflicting serious bodily injury or death by striking a person. Illegal clubs include but are not limited to blackjacks, nightsticks, mace and tomahawks.<sup>269</sup>

### **Explosives**

A person commits a third degree felony if he or she knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal act.<sup>270</sup> It is a Class A misdemeanor to knowingly manufacture, sell, purchase, transport or possess a hoax bomb with the intention of making another person believe that the fake bomb is real. A hoax bomb offense is also committed if an official of a public safety agency or a police officer has to be called in to attend to what is thought to be an emergency situation.<sup>271</sup>

## **Other Illegal Acts**

### **Disruptive activities**

It is a Class B misdemeanor for a person, acting alone or in concert with others, to intentionally engage in disruptive activity on the campus or property of any private or public school. Disruptive activities include:

- obstructing or restraining people from passing through an exit, entrance or hallway of a building without the authorization of the school administration;

- seizing control of any building or portion of a building for the purpose of interfering with an administrative, educational, research or other authorized activity;
- preventing or attempting to prevent, by force or violence or the threat of force or violence, any lawful assembly authorized by the school administration;
- disrupting a lawful assembly by force or violence or the threat of force or violence; or
- obstructing or restraining people from passing through an exit or an entrance or preventing or attempting to prevent persons from entering or leaving school property by force or violence or threat of force or violence without the permission of the school administration.<sup>272</sup>

Attorney General Opinion No. JC-0504 (2002) addressed the issue of whether the disruptive activities statute in the Education Code requires proof of intent. The opinion clarifies that in order to sustain a conviction for disruptive activities on a school campus the actor must intentionally engage in one of the five types of conduct described above, rather than merely engage in conduct that ultimately results in one of the effects described in the statute.

### **Disruption of classes**

It is a Class C misdemeanor for a person or group of persons who are on school property or on public property within 500 feet of school property to intentionally disrupt a teacher from conducting classes or other school activities. School property includes any grounds or buildings used by a school for assemblies or other school-sponsored activities. Public property includes any street, highway, alley, public park or sidewalk.<sup>273</sup>

Included among the types of conduct that constitute disruption of class are:

- emitting noise, by any means, of an intensity that prevents or hinders classroom instruction;
- enticing or attempting to entice students away from their classes or from other activities that the students are required to attend;
- preventing or attempting to prevent students from attending classes or required school activities; or
- entering a classroom without the consent of the principal or teacher and disrupting class activities by committing acts of misconduct and/or using loud or profane language.<sup>274</sup>

### **Disruption of transportation**

It is also a Class C misdemeanor for a person to intentionally disrupt, prevent, or interfere with the lawful transport of children to or from school or a school-sponsored activity on a vehicle owned or operated by a school district.<sup>275</sup> If a person exhibits, uses or threatens to exhibit or use a firearm during the commission of this offense, the person commits a third degree felony.<sup>276</sup>

### **Physical violence**

A person commits an assault when he or she:

- intentionally, knowingly or recklessly causes bodily injury to another person;
- intentionally or knowingly threatens another person with bodily harm; or

- intentionally or knowingly causes physical contact with another person knowing that the contact will be offensive or provocative to that person.<sup>277</sup>

The Education Code does not require the expulsion of a student who commits an assault unless the assault rises to the level of aggravated assault. Aggravated assault is an assault that causes serious bodily injury or involves the use of a deadly weapon during the commission of the assault. Although the Education Code does not require expulsion, a school district is free to make assault an expellable offense. If it chooses to do so, the school district must include the policy in its Student Code of Conduct. Regardless of the presence or absence of a specific policy on assault, a principal (or the designee) may order the immediate expulsion of a student if he or she believes that such action is necessary to protect persons or property from imminent harm.<sup>278</sup>

A school district employee who is physically assaulted while performing his or her regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault. The days of leave taken are not to be deducted from the employee's accrued personal leave. However, assault leave cannot extend for more than two years after the assault took place.<sup>279</sup>

An employee of a school district is physically assaulted if the person engaging in the conduct causing injury to the employee:

- could be prosecuted for assault; or
- could not be prosecuted for assault only because the person's age or mental capacity makes the person a non-responsible person for purposes of criminal liability.<sup>280</sup>

A victim of serious bodily injury that is a result of a student's conduct has certain rights that are enumerated in Chapter 57 of the Family Code, including the right to receive information regarding compensation for victims of crimes, the costs that may be compensated, and the amount of, eligibility for, and procedures for applying for compensation. A victim who suffers serious bodily injury as a result of an adult offender's conduct has similar rights under Chapter 56 of the Code of Criminal Procedure. (To obtain more information about crime victim's compensation, please contact the Crime Victim Services Division of the Attorney General's Office at **1 (800) 983-9933**.)

### **Sex offenses**

Juveniles may be adjudicated for the same sexual offenses as adults and can also be required to register as sex offenders under the sex offender registration law. This law first became effective in 1991 and was recently re-codified in Chapter 62 of the Code of Criminal Procedure. The purpose of the sex offender registration law was to create a registry to assist law enforcement investigations, establish legal grounds to hold offenders who are found in suspicious circumstances, deter sex offenders from committing new offenses, and offer citizens information to protect themselves.<sup>281</sup>

In 2001, the Legislature revised Chapter 62 by adding art. 62.13, giving judges greater discretion regarding sex offender registration for juveniles. Previously, juveniles were required to register if they were adjudicated for certain sex-related offenses. Under art. 62.13, either during or after the disposition of a case, a juvenile court may enter an order excusing compliance with the registration requirements after conducting a hearing to determine whether the interests of the public require sex offender registration. A juvenile respondent may file a motion for such a hearing and the hearing may



be held regardless of whether the respondent is under 18 years of age.<sup>282</sup> Art. 62.13 first became effective Sept. 1, 2001, and is fully retroactive, meaning that it applies to cases decided before that date. In 2005, the Legislature again revised Chapter 62 making extensive changes in the adult system, but merely numerical changes to the applicable juvenile statutes.

After a hearing, the juvenile court must enter an order excusing compliance with the registration requirements if the court determines that:

- the protection of the public would not be increased by registration; or
- any potential increase in protection of the public resulting from registration is clearly outweighed by the anticipated substantial harm to the child and the child's family that would result from registration.<sup>283</sup>

Another option for the juvenile court is to enter an order, again after conducting a hearing, deferring the decision on registration until the child has completed treatment for the respondent's sexual offense as a condition of probation or while committed to the Texas Youth Commission (TYC). The court retains discretion to require or excuse registration at any time during the treatment or on its successful or unsuccessful completion. During the period of deferral, registration may not be required.<sup>284</sup>

Following successful completion of treatment, registration will be excused unless a hearing is held at the request of the prosecution and the court determines the interests of the public require registration. Not later than the 10<sup>th</sup> day after the date of the respondent's successful completion of treatment, the treatment provider must notify the juvenile court and prosecuting attorney of the completion.<sup>285</sup>

A third option, also after a hearing, is for the juvenile court to enter an order requiring the child to register as a sex offender, but to provide that the registration information is not public information and is restricted to use by law enforcement, criminal justice agencies, and public or private institutions of higher education. Information obtained in this manner may not be posted on the Internet or released to the public.<sup>286</sup>

Of course, a juvenile court judge still has the authority to require full registration, including publication of the juvenile's name and photograph on the Internet. Consequently, the school notification requirements will still apply for students who are court ordered to register as sex offenders. If a student is subject to registration and is enrolled in a public or private secondary school, or if the victim is under the age of 17 at the time of the offense or is a student enrolled in a public or private secondary school, local law enforcement authorities must notify the school of this by mail.<sup>287</sup> Likewise, after Sept. 1, 2007, prosecutors must notify the superintendent or private school principal if a student is required to register as a sex offender, within 24 hours of the finding.<sup>288</sup> The superintendent must release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, teachers, nurses and counselors.<sup>289</sup> A private primary or secondary school, public or private institution of higher education (or its administrator) may release to the public information regarding the person who is required to register, without incurring any liability, only if the information is considered public information.<sup>290</sup>

Persons, including students, who move to Texas and who are required to register under the laws of another state or of a foreign country, but who do not have a conviction or adjudication that would

otherwise require registration in Texas, must nevertheless register.<sup>291</sup> The reverse is also true, meaning that a Texas resident who is a student in another state must register in that state if it has a registration system. If the person is employed, carries on a vocation, or is a student at a public or private institution of higher education in the other state, and if an authority for campus security exists at the institution, the person must also register with that authority not later than the 10<sup>th</sup> day after the date on which the person begins to work or attend school.<sup>292</sup> If a sex offender lives outside of Texas but works or goes to school in this state (for example, a student who commutes to school from a bordering state), he or she must register in the municipality or county in which he or she resides or goes to school.<sup>293</sup> The school notification requirements also apply to this type of interstate student. The 79<sup>th</sup> Legislative rewrite of the Chapter 62 establishes a new graduated penalty range for failure to register violations which is found in Art. 62.102, Tex. Code Crim. Proc. Ann. Failure to register is a state jail felony for a person who is ordered to register as a sex offender for up to 10 years. A life-time registrant who is required to verify registration information at least once per year who fails to register commits a third degree felony. A life-time registrant who is required to verify registration information at least once every 90 days who fails to register commits a second degree felony. Repeat offenders of either “fail to register” or “attempted fail to register” offenses may be enhanced to the next highest degree of felony.<sup>294</sup>

Finally, a new provision in Chapter 62 requires that DPS remove all information about a person from the sex offender registry when that person is no longer required to register as a sex offender for an offense committed as a juvenile. The duty to remove the information arises only if DPS receives reliable information that the person is no longer required to register as a sex offender.<sup>295</sup> Once a student has been ordered to register as a sex offender, prosecutors are required to notify school officials of the duty to register within 24 hours of the Court's order and school officials must take action as required by the newly created Education Code Section 37.302.

### **Obstruction or retaliation**

A person commits the offense of obstruction or retaliation if he or she intentionally or knowingly harms or threatens to harm another person by committing an unlawful act:

- in retaliation for or on account of the service or status of another as a:
  - ▶ public servant, witness, prospective witness or informant; or
  - ▶ person who has reported or who the actor knows intends to report the occurrence of a crime; or
- to prevent or delay the service of another as a:
  - ▶ public servant, witness, prospective witness or informant; or
  - ▶ person who has reported or who the actor knows intends to report the occurrence of a crime.<sup>296</sup>

Obstruction or retaliation is a third degree felony unless the victim was harmed or threatened because of the victim's service or status as a juror, in which case the offense is a second degree felony.<sup>297</sup>

A student who engages in conduct that contains elements of the offense of retaliation against any school employee, on or off of school property, is required to be removed from class and placed in an AEP.<sup>298</sup> A student may also be expelled if he or she assaults a school employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, regardless of where the retaliatory conduct took place. If a student is expelled because of retaliatory conduct committed against a school employee, the school district must inform each teacher of the

expulsion. Teachers who have regular contact with such a student through a classroom assignment must keep the information confidential or risk having their certification revoked or suspended.<sup>299</sup>

### **Trespassing**

Trespassing is the unauthorized entry by a person onto property that belongs to someone else. It is a Class C misdemeanor for any person to trespass on the grounds of any school district in the state.<sup>300</sup>

A person who trespasses on or in school district property may also be prosecuted for the offense of criminal trespass under the Penal Code.<sup>301</sup>

The board of trustees of a school district, or anyone authorized by it, may refuse to allow entry onto school property to any person who does not have legitimate business there. The school board or its authorized representative may eject a trespasser from the property if he or she is asked to leave and refuses to do so peaceably. School officials may also require any person who is on school property to produce some form of government-issued photo identification.<sup>302</sup>

### **Public lewdness/indecent exposure**

A person commits the Class A misdemeanor of public lewdness by knowingly engaging in an act of sexual intercourse or sexual contact in a public place.<sup>303</sup> A public place is defined as any place to which the public or a substantial group of the public has access and includes, but is not limited to streets, highways and the common areas of schools, apartment houses and office buildings.<sup>304</sup>

A person commits the Class B misdemeanor of indecent exposure by exposing his or her anus or any part of the genitals with intent to arouse or gratify the sexual desire of any person, and is reckless about whether another person who might be offended or alarmed by the act of exposure is present.<sup>305</sup>

A juvenile may be required to register as a sex offender upon a second adjudication for the offense of indecent exposure.<sup>306</sup>

A student who, within 300 feet of school property or while attending a school-related or school-sponsored event on or off of school property, engages in conduct that constitutes the offense of public lewdness or indecent exposure is required to be removed from class and placed in a DAEP. As part of the terms of the placement, the student must also be prohibited from attending or participating in any school-sponsored or school-related activities.<sup>307</sup>

### **Vandalism**

It is against the law for anyone to damage or deface any buildings, statues, monuments, memorials, trees, shrubs, grasses, plants or any property owned by another person without the property owner's consent, including tagging school property. It is also illegal to make markings, inscriptions, slogans, drawings or paintings on another's property with aerosol paint, an indelible marker, or an etching or engraving device. A person who engages in the conduct described above may be subject to prosecution for the offense of criminal mischief, reckless damage or destruction of property, or graffiti.<sup>308</sup>

A student who has engaged in criminal mischief may be expelled at the discretion of the school district if the conduct would be punishable as a felony. Regardless of whether the student is expelled, the school district must refer the student to the authorized officer of the juvenile court.<sup>309</sup>

Criminal mischief is a state jail felony if the loss to real property or to tangible personal property is \$1,500 or more but less than \$20,000 and the damage or destruction is inflicted on a public or private elementary or secondary school, or on an institution of higher learning.<sup>310</sup>

If a school district expels a student for engaging in criminal mischief, the school district must inform each teacher who has regular contact with the student through a classroom assignment of that student's conduct, and every teacher who receives such information must keep the information confidential or risk having his or her certification revoked or suspended.<sup>311</sup>

The owner or lessor of property that is damaged or lost as a result of a child's act of vandalism is entitled to certain victim rights under the juvenile justice system.<sup>312</sup>

### **Arson**

A person commits arson if he or she starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with the intent to destroy or damage a building, habitation or vehicle, including a school building or a school bus.<sup>313</sup>

A school district must expel any student who commits arson on school property or while attending a school-sponsored or school-related activity on or off of school property. In addition, the school district must inform each teacher who has regular contact with the student through a classroom assignment of the student's actions. Teachers receiving such information must keep it confidential or risk having his or her certification revoked or suspended.<sup>314</sup>

An owner or lessor of property that is damaged or lost as a result of a child's act of arson is entitled to the same rights as an owner or lessor of property that is damaged or lost as a result of a child's act of vandalism. (See the discussion above on Vandalism.)

### **Fraternities, Sororities, Secret Societies and Gangs**

It is a Class C misdemeanor for a person to be a member of, to pledge to become a member of, join, or solicit another person to join or pledge to become a member of a public school fraternity, sorority, secret society or gang. It is also illegal for a person who is not a public school student to solicit another person to attend a meeting of a fraternity, sorority, secret society or gang, or a meeting at which the person will be encouraged to become a member of such an organization. Public school fraternities, sororities, secret societies or gangs are defined as organizations that seek to perpetuate themselves by taking in members on the basis of the decision of their members rather than by the free choice of the student.<sup>315</sup>

If a student is found to have engaged in any of the activities described above, the school board must recommend the placement of that student in an AEP.<sup>316</sup>

### **Hazing**

Hazing is a form of bullying that is committed in the name of an organization or club. It is legally defined as any intentional, knowing, or reckless act; occurring on or off the campus of a high school, by one person alone or acting with others, directed against a student, that endangers the mental or physical health or safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in an organization.

It is a Class B misdemeanor for a person to:

- engage in hazing;
- solicit, encourage, direct, aid or attempt to aid another person in engaging in hazing;
- recklessly permit hazing to occur;
- have firsthand knowledge of the planning of a hazing incident involving a high-school student; or
- have firsthand knowledge that a specific hazing incident has occurred and knowingly fail to report that knowledge in writing to appropriate school officials.<sup>317</sup>

Personal hazing becomes a Class A misdemeanor if it causes serious bodily injury, and a state jail felony if it causes the death of another person. Failing to report a hazing incident is a Class B misdemeanor.<sup>318</sup>

# **Guidelines for Conducting Searches In Schools**

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The increasing number of weapon- and drug-related incidents in schools has heightened the need for educators to conduct searches of students and their property. Searches and seizures of property involve constitutional issues that are governed largely by case law rather than by statute.

The Fourth Amendment to the United States Constitution provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated . . . .”<sup>319</sup> The United States Supreme Court has held that “[a]lthough the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context in which the search takes place.”<sup>320</sup> Thus, the Supreme Court has acknowledged that students have certain privacy interests in the school environment and that they have a Fourth Amendment right to be free from unreasonable searches and seizures while at school. However, the Supreme Court has also recognized the “substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds” and that “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.”<sup>321</sup> For example, school officials are not required to get a warrant before searching a student who is under their authority.

Two different standards govern the legality of searches of students, depending on who actually conducts the search. Law enforcement officials, including campus security personnel who are commissioned peace officers, must have probable cause to believe that a student has violated or is violating a law before conducting a search. On the other hand, the legality of a search that is conducted by a school official who is not a commissioned school district peace officer depends on whether the search was reasonable in light of all the circumstances of the search.<sup>322</sup> This reasonableness standard is not as restrictive as the probable cause standard and reflects the Supreme Court’s recognition of the need to accord some degree of flexibility to school officials in maintaining order and discipline.<sup>323</sup> (For the remainder of this chapter only, the term “school official” will refer to school personnel other than a commissioned peace officer.)

## **What is a Reasonable Search?**

To be a reasonable search, a search must be:

- justified at its inception; and
- reasonably related in scope to the circumstances that justify the interference with the student’s privacy rights in the first place.<sup>324</sup>

In other words, there must be reasonable grounds for conducting the search, and the search must be conducted in a reasonable manner. Before proceeding with a search, school officials should always consider whether there are other ways of discovering the information they seek or whether other less intrusive means of searching are available. If school officials decide that a search is necessary, they should use the least intrusive means of conducting the search.

## **When is a search justified at its inception?**

A search is justified at its inception if a school official “has reasonable grounds for suspecting that a search will turn up evidence that the student has violated or is violating either the law or the rules of the school.”<sup>325</sup> This is often referred to as the “reasonable suspicion” standard.

A number of factors may contribute to the formation of a reasonable suspicion. If information has been provided by an informant, the informant's past record of reliability may be an important factor. The degree of specificity of information provided by an informant or an anonymous source should also be considered.

The more specific the information is, the more reliable it may be. A student's past and present behavior may also be taken into account. For example:

- Does the student have a history of being violent?
- Does the student pose an immediate danger to himself or herself or to others?
- What is the student's reaction to questioning by school authorities?
- Does the student appear to be hiding something or is the student lying?

These are among the many factors that may be taken into consideration by school officials in determining whether there were reasonable grounds for searching a student.

### **How extensive may a search be?**

Even if a school official has reasonable grounds for searching a student, the search is not reasonable unless the official acts reasonably in conducting the search. The scope of the search and the manner in which it is conducted must be reasonable. The search must not be excessive in scope, and it must be no more intrusive than necessary. A search is permissible in scope "when the measures adopted and used are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction."<sup>326</sup>

If an initial search based on reasonable suspicion does not reveal anything that gives rise to a reasonable suspicion, another search cannot be conducted. For example, a school official who suspects that a student is skipping school for the purpose of selling drugs may do an initial pat-down of the student for safety reasons. However, if the pat-down reveals no contraband or other evidence of illegal activity, the school official may not later conduct a search of the student's car or locker unless reasonable grounds exist for conducting the subsequent search.<sup>327</sup> Searches based on a mere hunch are not permissible.

### **What does "reasonable" mean in the context of searches?**

In deciding upon the reasonableness of a search, a court will look at all of the circumstances surrounding the search. Since no two situations are exactly alike, the determination of whether a search is reasonable will be made on a case-by-case basis.

Reasonableness is examined from the perspective of the school official who conducts the search. The actions of the school official are compared to those of a hypothetical reasonable person with the same information and under the same or similar circumstances. That is, would a reasonable person have believed there were reasonable grounds for conducting a search? Would a reasonable person have conducted the search in the same or similar manner as the school official? Would a reasonable person have reached the same conclusions as the school official?

### **What are the Consequences for Conducting an Illegal Search?**

If a school official conducts an unreasonable search, any evidence illegally seized or obtained may not be used against the student in court.<sup>328</sup> In addition, the school official may incur civil liability for wrongfully searching a student in violation of the student's Fourth Amendment rights.<sup>329</sup>

## **If a Student Consents to a Search, is it Valid?**

Consent is valid only if it is given freely and voluntarily.<sup>330</sup> Under some circumstances, students may not feel free to refuse to consent to a search when asked to do so by authority figures such as school officials, so this may be a gray area. However, if consent is obtained by trickery or coercion, the consent is certainly not valid. For example, a school official's threat to call a student's parents or to get a warrant if the student refuses to consent to a search constitutes coercion that will invalidate a student's consent.<sup>331</sup> In a California case, two 5<sup>th</sup> grade students were considered too young to give proper consent.<sup>332</sup> These are factors school officials should consider before seeking a student's consent to conduct a search.

## **What Types of Searches are Allowed?**

The Fourth Amendment protects students from unreasonable searches and seizures, but a search of a student is legal if there are reasonable grounds for conducting the search and if it is reasonable in light of all the circumstances surrounding the search. Similarly, the Fourth Amendment will protect the private property of school employees against unreasonable searches and seizures by their employer.<sup>333</sup> Whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis. When a search is conducted by a public employer, the court must balance the invasion of the employee's legitimate expectation of privacy against the employer's need for supervision, control, and efficient operation of the workplace.<sup>334</sup>

### **Pocket searches**

In deciding whether to search a student's pockets, school officials must balance the school's interest in providing a safe educational environment against the student's constitutionally protected privacy interest. A report that a student has carried a gun to school may justify a pat-down search for weapons, even if it is conducted during the next school day.<sup>335</sup> Similarly, a case in which a student was observed to be "messing" with one of the pockets of his baggy shorts justified a pat-down search by a school resource officer based on reasonable grounds.<sup>336</sup> The fact that a search does not produce a weapon or contraband does not necessarily mean that it was unreasonable.

### **Backpacks/purses**

Backpacks and purses can present problems for school officials. Backpacks are large enough not only to carry books and school supplies, but also to carry weapons and other illegal items. Similar problems may be posed by purses. Because students have a privacy interest in items they carry on their person, the Fourth Amendment requirement of reasonableness must be met.<sup>337</sup> Before searching a student's backpack or purse, school officials must have a reasonable suspicion that the search will reveal evidence that the student is violating or has violated a law or a school rule.<sup>338</sup> In addition, the search must be reasonably related in scope to the circumstances that give rise to the search. Factors to consider include the age and sex of the student and the rule or law that the student is suspected of violating.<sup>339</sup>

### **Locker searches**

School districts may adopt a written policy establishing that lockers belong to the district, are subject to random searches, and are not the private property of students. Such "locker policies" essentially do away with students' expectation of privacy in their lockers. A locker search that conforms to the school's policy does not violate the Fourth Amendment. However, if a school district does not have such a policy, then students do have a reasonable expectation of privacy which cannot be violated without reasonable suspicion.



A recent Texas case held that a high school student lacked a legitimate expectation of privacy in her school locker, where the district policy clearly established that lockers were school property and remained under the control of school authorities. In fact, the court noted that the Student Code of Conduct put students and their parents on notice that school lockers could be searched at any time.<sup>340</sup>

### **Strip searches**

Because of their highly intrusive nature, strip searches in school should be discouraged and they may not be permissible if school officials do not adhere closely to the reasonableness requirement imposed by the Fourth Amendment. Before undertaking a strip search, a school official must have a reasonable suspicion that the search will turn up evidence that the student is violating or has violated a law or a school rule, typically drug or weapons-related.<sup>341</sup> If less intrusive, but equally effective, methods are available, a strip search should not be conducted. However, if a strip search is conducted, school officials must make sure that the search is not more intrusive than necessary in light of all the circumstances that justified the strip search in the first place. They must take into account the age and sex of the student being searched, the place in which the search takes place, and the nature of the law or school rule that the student is suspected of violating.<sup>342</sup> School officials are also well advised to consider the gender of the student being searched in relation to the gender of the person conducting the search, as well as the number and necessity of persons present during the search.

### **Vehicle searches**

School officials may search a student's vehicle that is parked on school property if they have a reasonable suspicion that a search of the vehicle will turn up evidence that the student has violated or is violating a law or a school rule. The scope of the search and the way it is conducted must be reasonable in light of all the circumstances that gave rise to the reasonable suspicion for the search.<sup>343</sup>

The use of drug-detecting dogs to sniff the air around a vehicle is not a search and, therefore, is not subject to the requirements of the Fourth Amendment.<sup>344</sup> This is based on the idea that a person's reasonable expectation of privacy does not extend to the airspace surrounding that person's property.<sup>345</sup> Having reasonable grounds to believe that the search may reveal evidence that a student is violating or has violated a law or a school rule before proceeding with the dog sniff will help to ensure that the search will not later be held invalid.

### **Searching an entire class**

School administrators do not have the authority to conduct mass searches, such as a search of an entire class, based on suspicion that someone in the class has violated or is violating a law or school rule.<sup>346</sup> School officials must have a reasonable "individualized suspicion" that a search of specific students will reveal evidence that they have violated or are violating a law or a school rule. For example, school officials who believe that money was stolen from a child's coat but do not have any reasonable suspicion as to who stole the money (individualized suspicion) may not search every child in the class.<sup>347</sup>

### **Use of drug-detecting dogs**

Schools may use drug-detecting dogs to sniff lockers in hallways and vehicles parked on school property. Sniffs of lockers and cars by drug-detecting dogs are not considered searches because the air surrounding these objects constitutes a "public smell" in which persons do not have any privacy interests. Consequently, the Fourth Amendment does not apply to the use of drug-detecting dogs in

these limited circumstances.<sup>348</sup> If a drug-detecting dog alerts to the presence of drugs in a vehicle or locker, the dog's alert may give rise to a reasonable suspicion to search those objects. If the reasonableness of the search is later challenged, it may be necessary to show that the drug-detecting dog's reliability in detecting the presence of drugs provided reasonable grounds for the school official to believe that a search of the object would turn up evidence that a student was violating or has violated a law or school rule.<sup>349</sup>

Using a drug-detecting dog to sniff the air around a student can rise to the level of a search, especially in situations where the dog is allowed to touch the student. Such searches are more intrusive of a student's privacy rights and are subject to the Fourth Amendment requirement of reasonableness. Searches conducted pursuant to a drug-detecting dog's alert must be based on a reasonable suspicion and must be reasonable in manner and scope in light of all the circumstances of the search.<sup>350</sup>

### **Use of metal detectors**

While the use of metal detectors in airports and courthouses is now well established, their use in schools is still relatively new and little case law exists on the subject. In light of this, school officials may want to follow the reasonableness standard set forth by the Supreme Court for conducting searches in schools.<sup>351</sup>

If school officials have reasonable grounds to believe that many students are bringing weapons to school, they may use metal detectors to provide a safe environment for students and school personnel. Metal detector searches are relatively unintrusive and are considered to be "administrative" in nature.<sup>352</sup> Additionally, the use of metal detectors may prevent or deter students from bringing weapons or contraband to school.

However, any use of metal detectors must be reasonable in manner and scope. For example, metal detectors that students walk through are not as intrusive as hand-held metal detectors (sometimes referred to as "wands"), because wands are more likely to come into contact with a student's body. If a hand-held metal detector is used, school officials may need reasonable grounds to believe that its use on a student will reveal evidence that the student has violated or is violating a law or a school rule. It may also be a good idea for school officials who want to use metal detectors to inform students and parents at the beginning of the school year that metal detectors may be used from time to time during the school year or to post such notices in school hallways.

### **Searches of students in JJAEP**

Students who are placed in a JJAEP have typically committed serious school-related or criminal violations, or have been found to persistently misbehave in school. The Texas Administrative Code outlines the rules and regulations governing JJAEPs, including student searches. All students entering a JJAEP must, at a minimum, be subjected to a pat-down search or a metal detector screening on a daily basis and staff may not conduct strip searches.<sup>353</sup>

### **Searches of student probationers**

A student's status as a juvenile probationer or parolee may lessen his or her expectation of privacy under the Fourth Amendment. A Texas court has held that school checks, including searches, of juvenile probationers at school are reasonable because of the "special need" to protect other students while accommodating the juvenile probation system.<sup>354</sup> Similarly, students assigned to a disciplinary school facility may be required to empty their pockets, pass through a metal detector, and remove

their shoes for security purposes. Such administrative searches are justified as part of a daily routine for disciplinary students and “as a method of furthering the state’s interest in maintaining a safe and disciplined learning environment in a setting at high risk for drugs and violence.”<sup>355</sup>

### **Random drug testing**

The United States Supreme Court has noted that a search can be constitutional, even if the search is unsupported by probable cause, “when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.”<sup>356</sup> Such “special needs” are more likely to exist in the context of public schools.

In 1995, the Supreme Court upheld a school district’s policy of conducting random, suspicionless urinalysis of its student athletes.<sup>357</sup> While acknowledging that students enjoy Fourth Amendment rights while at school, the court noted that students have fewer expectations of privacy in the public school context because schoolchildren are committed to the temporary custody of school officials during the school day. Consequently, school officials are accorded a “degree of supervision and control that could not be exercised over free adults.”<sup>358</sup> Given this decreased expectation of privacy, the relative unobtrusiveness of the method by which urine samples were obtained, and the severity of the need served by the search (the need to prevent drug abuse, to protect student athletes from injury, and to provide treatment for athletes with drug problems), the school district’s policy was reasonable and therefore constitutional.<sup>359</sup>

In 2002, the Supreme Court extended that ruling to hold that the suspicionless drug testing by an Oklahoma school district of students who participate in any type of extracurricular activity was reasonable.<sup>360</sup> The court held that testing students who participate in extracurricular activities is a reasonably effective way to address the school district’s legitimate concern in preventing, deterring, and detecting drug use. The drug testing policy effectively serves the district’s interest in protecting the safety and health of its students.<sup>361</sup> Beginning in the 2007 - 2008 school year, Texas high school students who participate in University Interscholastic League athletic competitions are required to submit to random testing for the illegal use of steroids.<sup>362</sup>

Whether the Supreme Court will condone random drug-testing of the general student population remains to be seen. At least one federal court in Texas has held that mandatory drug testing of all students is prohibited under the Fourth Amendment.<sup>363</sup> School officials should, therefore, exercise caution when considering the adoption of a more inclusive drug testing policy.

# Taking Students into Custody

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Under Title 3 of the Family Code, a child is defined as a person who is:

- 10 years of age or older and under 17 years of age; or
- 17 years of age or older and under 18 years of age, who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before reaching the age of 17.<sup>364</sup>

For additional information regarding the juvenile justice system in Texas please refer to the Attorney General's *Juvenile Justice Handbook*.

Consequently, students who are younger than 10 may not be taken into custody.

## What are the Grounds for Taking a Student into Custody?

A child may be taken into custody:

- on the order of a juvenile court;
- pursuant to the general laws of arrest (for example, if the child commits an offense in the officer's presence or within the officer's view);
- by a commissioned law enforcement officer, including a commissioned school district peace officer, if there is probable cause to believe that the child has violated a penal law of this state or a penal ordinance of any political subdivision of this state, engaged in delinquent conduct or CINS, or conduct that violates a condition of probation imposed by the juvenile court;
- by a probation officer if there is probable cause to believe that the child has violated a condition of probation or release; and
- pursuant to a juvenile court's directive to apprehend.<sup>365</sup>

A directive to apprehend is essentially a juvenile arrest warrant issued by a juvenile court that directs any law enforcement or probation officer to take a child into custody. A juvenile court may issue a directive to apprehend on the request of a law enforcement or probation officer if the court finds there is probable cause to take the child into custody. A directive to apprehend is not subject to appeal.<sup>366</sup> Note that only commissioned peace officers are authorized to take a child into custody, while non-commissioned school district security personnel may not carry weapons or take juveniles into custody.<sup>367</sup>

## What is Delinquent Conduct?

Delinquent conduct is:

- conduct, other than a traffic offense, that violates a penal law of this state or of the United States and is punishable by imprisonment or confinement in jail;
- conduct that violates a lawful order of a court under circumstances that would constitute contempt of court in a justice or municipal court or a county court for conduct punishable only by fine;

- conduct that constitutes driving while intoxicated, flying while intoxicated, boating while intoxicated, intoxication assault, or intoxication manslaughter; or
- conduct that constitutes the offense of driving under the influence of alcohol by a minor (third or subsequent offense).<sup>368</sup>

### **What is Conduct Indicating a Need for Supervision (CINS)?**

Conduct indicating a need for supervision (CINS) covers less serious violations of the law and includes certain non-criminal acts that are commonly known as status offenses. CINS includes:

- conduct, other than a traffic offense, that violates the penal laws of this state and that is punishable by a fine only;
- conduct, other than a traffic offense, that violates a penal ordinance of any political subdivision of this state;
- the absence of a child, for 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;
- the voluntary absence of a child from the child’s home without the consent of a parent or guardian for a substantial length of time without intent to return;
- conduct prohibited by a city ordinance or state law involving the inhalation of the fumes or vapors of paint and other protective coatings, glue and other adhesives, or volatile chemicals;
- an act that violates a school district’s previously communicated written standards of student conduct for which the child has been expelled; or
- conduct that violates a reasonable and lawful order of a court entered under Section 264.305 of the Family Code (relating to at-risk youth).<sup>369</sup>

### **What are the Various Notification Requirements?**

To protect individuals, prevent additional violence, and further educational purposes, the Code of Criminal Procedure requires law enforcement agencies to notify school officials when a student has been arrested for any felony offense and for certain misdemeanors. Notification is also required when a student has been convicted or adjudicated of delinquent conduct, or received deferred prosecution or deferred adjudication of delinquent conduct.<sup>370</sup> An adjudication hearing is the juvenile justice equivalent of the adult criminal trial.

#### **Notification of the arrest or detention of a student**

Law enforcement officials are required to notify the school district superintendent (or the designee) if it is believed the child is enrolled as a student in the school district. The notification must be both oral and written. Oral notification must be provided within 24 hours after the student is arrested or taken into custody, or on the next school day. Written notification, marked “PERSONAL and CONFIDENTIAL” on the mailing envelope, must be mailed within seven days after the oral notification.<sup>371</sup> If a person who is required to give notifications to schools initiates an electronic notification to the school district within the initial 24 hour oral notification time period, the single electronic notification will comply with Art. 15.27 oral and written notification requirements.<sup>372</sup>

The superintendent (or the designee) may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice if it

is determined that the school district employee needs the information for educational purposes or for the protection of the person informed or others. All notified persons must keep such information confidential. A person who intentionally violates the confidentiality of the information commits a Class C misdemeanor.<sup>373</sup>

### **Notification of conviction, deferred prosecution, deferred adjudication or adjudication**

When a student is convicted, receives deferred prosecution or deferred adjudication, or is adjudicated of delinquent conduct, the office of the prosecuting attorney is required to notify school officials as well.<sup>374</sup> After September 1, 2007, prosecutors must also send schools notification of a student who is required to register as a sex offender.<sup>375</sup>

Offenses requiring notification include:

- any felony offense;
- unlawful restraint, indecent exposure, assault, deadly conduct, terroristic threat, engaging in organized criminal activity;
- unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marijuana;
- unlawful possession of certain weapons or prohibited weapons; or
- a felony offense in which a deadly weapon was used or exhibited.<sup>376</sup>

Oral notification must be provided to the school district superintendent (or the designee) within 24 hours of the time of the order or on the next school day. Written notification must be given within seven days of the oral notice. The new authorization of electronic notification applies here as well.<sup>377</sup> The superintendent must promptly notify all instructional and support personnel who have regular contact with the student. The written notification must include a description of the offense for which the student was convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded.<sup>378</sup>

### **Notification of the transfer of a student**

A parole, probation or community supervision office that has jurisdiction over a student who transfers from one school to another must provide notification of the student's status to the superintendent or private school principal in the new school within 24 hours.<sup>379</sup> Notice must also be provided if a student was removed from a school and placed in a school or school district other than the one in which he or she was enrolled at the time of arrest, detention, conviction, or adjudication for delinquent conduct.

If the student was arrested or placed in detention, the parole or probation office must provide notice in a manner similar to the notice required of a law enforcement agency. If, however, the student has been adjudicated for delinquent conduct or convicted of a criminal offense, the parole or probation office must satisfy the notice requirements imposed upon a prosecuting attorney.<sup>380</sup>

### **Notification to other school officials**

The superintendent (or the designee) who has received notice that a student has been arrested, taken into custody, adjudicated, or convicted is authorized, but not required, to send the information contained in the notice to any school district employee who has direct supervisory responsibility over the student. This notification contains more than just a notification that a child has been arrested, detained, adjudicated, or convicted and may be provided only after it is determined that the

additional information contained in the notice is needed for educational purposes or for the protection of the person informed or other persons.<sup>381</sup>

### **Confidentiality of information contained in the notice**

Information contained in a notice that a student has been arrested, taken into custody, detained, adjudicated, or convicted is confidential and is not to be disclosed to anyone except as authorized by law. The notice is to be kept in a file that is separate from the student's permanent academic file and must be destroyed at the end of the school year in which the information was filed.<sup>382</sup> A person commits a Class C misdemeanor if he or she intentionally discloses any of the information without being legally authorized to do so. In addition, any person who discloses confidential information risks having his or her certification revoked.<sup>383</sup>

### **Amount of detail to be provided**

Attorney General Opinion No. DM-294 (1994) clarifies that in notifying the appropriate school officials about a student's arrest or detention, "all the circumstances surrounding an arrest or detention that would be relevant to the consideration of necessary precautions to protect students and employees and prevent disruption of school activities" may be provided. This information may include the "nature of the charges against an arrested or detained student, the identities of any alleged victims who are students or school personnel, and all other information about the arrest or detention to enable the school official to take appropriate action to prevent violence, protect students and school personnel, and further educational purposes."

### **Steps that may be taken upon receiving notice**

School officials who receive notice may take whatever precautionary measures are necessary to prevent further violence in the school, on school property, or at school-sponsored or school-related activities. However, a student is not to be penalized based solely on the fact that a notice was received regarding him or her.

After September 1, 2007, school officials receiving notice that a student is a registered sex offender and under court supervision are required to remove the student for placement in an alternative setting for a minimum of one semester.<sup>384</sup>

## Endnotes

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1. Tex. Educ. Code Ann. § 37.013.
2. Id. at § 37.001(d).
3. Id. at § 37.001 (a)(6).
4. Id. at § 37.0091.
5. Id. at § 37.002 (a).
6. Id. at § 37.004.
7. Id. at § 37.002 (c).
8. Id. at § 37.003 (b).
9. Id. at § 37.003 (c).
10. Id. at § 37.005.
11. Id. at § 37.019 (d).
12. Id. at § 37.015 (a).
13. Id. at § 37.015 (e).
14. Id. at § 37.015 (b).
15. Id. at § 37.015 (f).
16. Id. at § 37.016.
17. Id. at § 22.0511 (a) and (b).
18. Id. at § 22.051 (a).
19. Id. at § 22.055.
20. Id. at § 22.053.
21. 20 U.S.C.A. § 1232g.
22. Id. at § 1232g(d).
23. Id. at § 1232g(a)(4)(A).
24. Id. at § 1232g(a)(4)(B).
25. Tex Educ. Code Ann. § 37.017.
26. Tex. Family Code Ann. § 58.0051; (*See also*, Tex. Educ. Code Ann. § 37.084, a corollary statute authorizing interagency sharing of records).
27. Tex Code Crim. Proc. Ann. art. 15.27 (a), (b). *See* H.B. 2532 and S.B. 6 of the 80<sup>th</sup> Texas Legislature which specifies that a superintendent must notify other school personnel within 24 hours of receiving 15. 27 notifications.
28. Id. at art. 15.27 (a-1).



29. Tex. Educ. Code Ann. § 26.004.
30. Id. at § 25.091(b); (*See also*, Tex. Educ. Code Ann. § 25.085 (b) and (c), which requires mandatory school attendance for children younger than six who have previously been enrolled in first grade. A child must also attend school upon enrollment in pre-kindergarten or kindergarten).
31. *See* H.B. 566 of the 80<sup>th</sup> Texas Legislature which adds subsection Tex. Educ. Code Ann. § 25.085 (f). Effective beginning in the 2007 - 2008 school year.
32. Id. at § 25.088.
33. Id. at § 25.089 (b).
34. Id. at § 25.089 (a).
35. Id. at § 25.090.
36. Id. at § 25.091 (b). *See also* S.B. 1161 of the 80<sup>th</sup> Texas Legislature changed the deadline to file a compulsory attendance complaint of Tex. Educ. Code Ann. § 25.0951 from 7 to 10 school days from the student's last absence. In H.B. 2884, Section 31, the 80<sup>th</sup> Texas Legislature changed "last" to "10<sup>th</sup>". When read together, the amendments will extend the deadline to file a school attendance complaint to 10 schools days from the student's 10<sup>th</sup> absence. Effective on or after September 1, 2007.
37. Id. at § 25.091 (b)(5).
38. Id. at § 37.101.
39. Id. at § 37.081.
40. Tex. Fam. Code Ann. § 52.01 (a)(3) and Tex. Educ. Code Ann. § 37.081 (b)(3).
41. Tex. Educ. Code Ann. § 37.081 (f).
42. Id. at § 37.081 (a).
43. Id. at § 37.081 (c).
44. Id. at § 37.081 (d).
45. Id. at § 37.081 (e).
46. Id. at § 37.081 (b).
47. Tex. Code Crim. Proc. Ann. art. 2.13.
48. Tex. Educ. Code Ann. § 37.081 (b)(3) and Tex. Fam. Code Ann. § 52.01 (a)(3).
49. Tex. Penal Code § 38.15.
50. Id. at § 38.15 (d).
51. Tex. Educ. Code Ann. § 37.081 (g).
52. Id. at § 37.081 (h).
53. Id. at § 37.105. *See also* S.B. 9 of the 80<sup>th</sup> Texas Legislature which added Tex. Educ. Code Ann. §38.022 specifically authorizing schools to require all visitors to show a government issued photo identification and to establish a database to store visitor information; schools are

required to adopt policies requiring action if a visitor is a registered sex offender. Effective on or after June 15, 2007.

54. Id. at § 37.003 (a).
55. Id.
56. Id. at § 37.002 (c), (d).
57. Id. at § 37.009 (e).
58. Id. at § 37.010 (f).
59. Id. at § 37.010 (g).
60. Id.
61. Id. at § 37.010 (g-1).
62. Id. at § 37.003 (a)(2) and (b).
63. Id. at § 37.014.
64. Id. at § 37.001 (a).
65. Id.
66. Id.
67. Id. at § 37.001 (d).
68. Id. at § 37.083 (a).
69. Id. at § 25.085 (b); (*See* § 25.086 for exemptions).
70. Tex. Educ. Code Ann. 25.085(f); The 80<sup>th</sup> Texas Legislature enacted H.B. 566 which added subsection (f) allowing districts to extend compulsory attendance to those students voluntarily enrolling or attending after 18. Effective beginning with the 2007 - 2008 school year.
71. Id. at § 25.088.
72. Id. at § 25.090.
73. Id. at § 25.091 (a); *See also*, Tex. Fam. Code Ann. § 52.01 (a), Tex. Educ. Code Ann. § 25.094 (d-1) and §25.0951(a) Tex. Educ. Code; *See also* S.B. 1161 of the 80th Texas Legislature changed the deadline to file a compulsory attendance complaint of Tex. Educ. Code Ann. § 25.0951 from 7 to 10 school days from the student’s last absence. In H.B. 2884, Section 31, the 80th Texas Legislature changed “last” to “10th”. When read together, the amendments will extend the deadline to file a school attendance complaint to 10 school days from the student’s 10th absence. Effective on or after September 1, 2007.
74. Tex. Educ. Code Ann. § 25.091 (a)(6) and (7).
75. Id. at § 25.094 (a) and Tex. Fam. Code Ann. § 51.03 (b)(2).
76. Tex. Fam. Code Ann. § 51.02 (2).
77. Tex. Educ. Code Ann. § 25.0951.
78. Id. at § 25.0952 (Procedures Applicable to School Attendance-related Offenses).

79. Tex. Code Crim. Proc. Ann. art. 45.056 (a).
80. Tex. Educ. Code Ann. § 25.094 (c) and Tex. Code Crim. Proc. Ann. art. 45.054; (*See also*, Tex. Fam. Code Ann. § 54.021).
81. Tex. Fam. Code Ann. § 54.021 and Tex. Code Crim. Proc. Ann. art. 45.054 (f), (b).
82. Tex. Educ. Code Ann. § 25.094 (d-1).
83. Id. at § 25.095 (a).
84. Id. at § 25.095 (b).
85. Id. at § 25.093 (a)-(c) (Parent Contributing to Nonattendance).
86. Tex. Code Crim. Proc. Ann. art. 45.054 (d).
87. Tex. Educ. Code Ann. § 25.093 (c), (f) and (g).
88. Id. at § 38.006.
89. Tex. Health & Safety Code Ann. § 161.252 (a)(1).
90. Id. at § 161.253 (a)-(c).
91. Id. at § 161.254 (a).
92. Id. at § 161.122 and § 161.124.
93. Tex. Educ. Code Ann. § 11.162 (a).
94. Id. at § 11.162 (c).
95. Id. at § 11.162 (b) and (d).
96. Id. at § 37.001 (a)(1).
97. Id. at § 37.002 (a).
98. Id. at § 37.002 (b).
99. Id. at § 37.002 (c).
100. Id. at § 37.006 (a)(2)(A), (c)(2).
101. Id. at § 37.006 (a)(1).
102. Id. at § 37.002 (d). (*See also*, §§ 37.006-37.007).
103. Id. at § 37.006 (b) and § 37.007 (d).
104. Id. at § 37.002 (c) and (d). Effective September 1, 2005
105. Id. at § 37.006 (g).
106. Id. at § 37.003.
107. Id. at § 37.018.
108. Id. at § 37.009 (a).
109. Id.

110. Id. at § 37.005 (a).
111. Id. at § 37.001 (a)(3).
112. Id. at § 37.005 (b).
113. *Alabama and Coushatta Tribes of Texas v. Big Sandy Independent School District*, 817 F.Supp. 1319, 1336 (E.D. Tex. 1993), holding that in-school suspensions lasting four to six weeks, which afforded students at least some opportunity to pursue their regular course work and receive assistance from teachers and teachers' aides, did not constitute unreasonable punishment.
114. Tex. Educ. Code Ann. § 37.021.
115. Id.
116. *Goss v. Lopez*, 419 U.S. 565, 581 (1975).
117. See H.B. 2532 of the 80<sup>th</sup> Texas Legislature which modified Sec. 37.0081 of the Texas Education Code to remove “disciplinary alternative education programs” and replace with “alternative settings”. Effective on or after September 1, 2007.
118. Tex. Educ. Code Ann. § 37.008 (a). See also H.B. 426 enacted by the 80<sup>th</sup> Texas Legislature which strikes the previously set deadlines for schools to employ certified teaches for alternative educational settings. Effective beginning with the 2007 - 2008 school year.
119. Id. at § 37.008 (k); [See also, Tex. Health & Safety Code Ann. §464.020 (a) (“An alternative education program under § 37.008, Tex. Educ. Code, may apply for a license under this chapter to offer chemical dependency treatment services.”)]
120. Id. at § 37.008 (b).
121. Id. at § 37.008 (c).
122. Id. at § 37.008 (d) and (e).
123. Id. at § 37.008 (i).
124. Id. at § 37.008 (f) and (g).
125. Id. at § 37.008 (l).
126. Id. at § 37.002 (b) and (c).
127. Id. at § 37.006 (d).
128. Id. at § 37.002 (c).
129. Id. at § 37.0081 (a).
130. Id. at § 37.0081 (b) and (c).
131. Id. at § 37.006 (a) and (b).
132. Id. at § 37.006 (c).
133. Id. at § 37.006 (g).
134. Id. at § 37.006 (m).

135. Id. at § 37.006 (n).
136. Id. at § 37.006 (l).
137. Id. at § 37.007 (e).
138. Id. at § 37.008 (j).
139. Id.
140. Id. at § 37.008 (j-1).
141. Id. at § 37.019 (a).
142. Id. at § 37.019 (c) and (d).
143. Id. at § 37.010 (c).
144. Id. at § 37.010 (d).
145. Id. at § 37.010 (e).
146. Id. at § 37.001 (a)(2) and (d).
147. Id. at § 37.009 (a).
148. Id.
149. Id. at § 37.009 (b).
150. Id. at § 37.009 (c).
151. Id. at § 37.009 (d).
152. Id. at § 37.009 (e).
153. Id. at § 37.010 (a) and Tex. Fam. Code Ann. § 52.04 (a). (Note that when the referral is made by a law enforcement agency, such as a school district police department, a complete statement of all prior contacts with the student by officers of that law enforcement agency must be made.)
154. Id. at § 37.051.
155. Id.
156. Id. at § 37.053 (a).
157. Id. at § 37.052.
158. Id. at § 37.053 (b).
159. Id. at § 37.054 (a) and (b).
160. Id. at § 37.054 (c).
161. Id. at § 37.054 (d).
162. Id. at § 37.055 (a).
163. Id. at § 37.055 (b).
164. Id. at § 37.056 (b).
165. Id. at § 37.056 (e); [*See also*, § 37.055 (b)].

166. Id. at § 37.056 (f).
167. Id. at § 37.001 (a)(3).
168. Id. at § 37.007 (c).
169. Id. at § 37.007 (b)(1).
170. Id. at § 37.007 (b)(2) and (3), (d), (f).
171. Id. at § 37.007 (f).
172. Id. at § 37.007 (i).
173. Id. at § 37.007 (a), (d) and (e); *see also* H.B. 8 enacted by the 80<sup>th</sup> Texas Legislature. It adds “Continuous Sexual Abuse of a Child” under Texas Penal Code §21.02, to the list of offenses requiring expulsion if committed on school property or at a school related event. Effective September 1, 2007.
174. Id. at § 37.007(a) and (d).
175. Id. at § 37.007 (h).
176. Id. at § 37.002 (d).
177. Id. at § 37.007 (g).
178. Tex. Code Crim. Proc. Ann. art. 15.27 (a).
179. Id. at § 37.019 (b).
180. Id. at § 37.019 (c) and (d).
181. Id. at § 37.009 (f).
182. Id. at § 37.009 (g).
183. Id. at § 37.009 (h).
184. Id. at § 25.001(b-1). *See also* H.B. 1137 enacted by the 80<sup>th</sup> Texas Legislature which prohibits the placement of any student over the age of 21 in an alternative setting for committing a removable offense. If a student over the age of 21 commits a removable offense, the district is required to revoke the student’s admission. Effective on or after September 1, 2007.
185. *Ingraham v. Wright*, 430 U.S. 651, 660 (1977); [*See also, Fee v. Herndon*, 900 F.2d 804, 808 (5<sup>th</sup> Cir. Tex. 1990) (Reasonable corporal punishment of student is not at odds with due process and does not constitute arbitrary state action.)]
186. Tex. Penal Code Ann. § 9.62; [*See also, Hogenson v. Williams*, 542 S.W.2d 456, 459-460 (Tex.App-Texarkana 1976, no writ)].
187. *Ingraham*, 430 U.S. at 672.
188. Id. at 672.
189. *See, Woodward v. Los Fresnos Indep. School Dist.*, 732 F.2d 1243 (5th Cir. 1984) (“Texas provides these common law remedies.”) and *Cunningham v. Beavers*, 858 F.2d 269 (5th Cir. 1988), cert. denied, 489 U.S. 1067 (1989).
190. Tex. Penal Code Ann. §§ 22.01 and 22.04.

191. Tex. Educ. Code Ann. § 22.0511 (a); (*See also*, Tex. Educ. Code Ann. § 22.051(a) for the legal definition of “professional employee of a school district.”)
192. *Ingraham*, 430 U.S. at 662.
193. *Baker v. Owen*, 395 F.Supp. 294, 302 (M.D.N.C. 1975), *aff’d*, 423 U.S. 907 (1975).
194. *Id.* at § 37.004 (c) and (d).
195. 20 U.S.C.A. § 1400 *et seq.*
196. *Id.* at § 1415 (k)(1)(A)(ii)(I) and (II).
197. *Id.* at § 1415 (k)(3).
198. *Id.* at § 1415 (k)(4)(A).
199. Tex. Educ. Code Ann. § 37.004 (b).
200. 20 U.S.C.A. § 1415 (k)(4)(C)(ii).
201. *Id.* at § 1415 (k)(5)(A).
202. *Id.* at § 1415 (k)(7)(B); [*See also*, *Honig v. Doe*, 484 U.S. 305 (1988)].
203. Tex. Educ. Code Ann. § 37.004 (e).
204. *Id.* at § 37.004 (f).
205. 20 U.S.C.A. § 1412 (a)(1).
206. Tex. Educ. Code Ann. § 37.011 (a).
207. *Id.*
208. *Id.* at § 37.011 (b).
209. *Id.* at § 37.011 (b-1). *See also* H.B. 1137 enacted by the 80<sup>th</sup> Texas Legislature which prohibits the placement of any student over the age of 21 in an alternative setting for committing a removable offense. If a student over the age of 21 commits a removable offense, the district is required to revoke the student’s admission. Effective on or after September 1, 2007.
210. *Id.* at § 37.011 (j).
211. *Id.* at § 37.011 (c), (d), (f), (g) and (l).
212. *Id.* at § 37.011 (f).
213. *Id.* at § 37.011 (i).
214. *Id.* at § 37.012 (a) and (b).
215. *Id.* at § 37.012 (d).
216. *Id.* at § 37.012 (c).
217. *Id.* at § 37.015 (f) and (c).
218. Tex. Code Crim. Proc. Ann. art. 15.27 (h).
219. Tex. Educ. Code Ann. § 37.015 (b).

220. Id. at § 37.015 (e).
221. Id. at § 37.007 (g).
222. Id. at § 37.015 (a).
223. Act of June 1, 2003, 78<sup>th</sup> Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (A reference in law to the Department of Protective and Regulatory Services now means the Department of Family and Protective Services.)
224. Tex. Fam. Code Ann. § 261.101 and § 261.103 (Relating to persons required to report child abuse or neglect and agencies to which reports must be made. Reports may also be made to the “state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred” or the “agency designated by the court to be responsible for the protection of children.”)
225. Id. at § 261.109; (*See also*, Tex. Penal Code § 12.22).
226. *Sampson & Tindall’s Texas Family Code Annotated*, Comment to § 261.103, pg. 1015.
227. Tex. Fam. Code Ann. § 151.001 (a)(2); (*See also*, Tex. Fam. Code Ann. § 153.074).
228. Id. at § 41.001.
229. Id. at § 41.002.
230. *Black’s Law Dictionary* 322 (6th Ed. 1991).
231. *See*, Tex. Educ. Code Ann. §§ 38.015 and 38.016 for special provisions regarding Self-Administration of Prescription Asthma Medicine by Students and Psychotropic Drugs and Psychiatric Evaluations or Examinations.
232. Id. at § 37.015 (f) and § 37.016.
233. Id. at § 37.006 (a)(2)(C).
234. Id. at § 37.007 (a)(3).
235. Id. at § 37.008 (k).
236. Tex. Health & Safety Code Ann. § 481.002 (17).
237. Id. at § 481.125 (c), (f). (Delivery of drug paraphernalia is a state jail felony if the actor is 18 or older, and the person who receives the drug paraphernalia is younger than 18 and at least three years younger than the actor).
238. 21 U.S.C.A. § 860 (a).
239. Tex. Health & Safety Code Ann. § 481.134.
240. Tex. Educ. Code Ann. § 37.082 (c).
241. Id. at § 37.082 (a) and (b).
242. Tex. Health & Safety Code Ann. § 161.252 (a) and (d).
243. Id. at § 161.253 (a) and (c).
244. Id. at § 161.253 (f).



245. Id. at § 161.254 (a).
246. Tex. Educ. Code Ann. § 38.007 (a).
247. Id. at § 37.122.
248. Id. at § 37.016 (d).
249. Id. at § 37.006 (a)(2)(D).
250. Id. at § 37.007 (a)(3).
251. Id. at § 37.008 (k).
252. Tex. Alc. Bev. Code Ann. §101.75 (a).
253. Id. at § 109.33 (a)(1).
254. Tex. Health & Safety Code Ann. § 484.003 (a) and § 485.031 (relating to possession and use of a substance containing a volatile chemical).
255. Id. at § 484.002 (25).
256. Id. at § 484.003 (b).
257. Id. at § 484.005 and § 485.032 (relating to delivery of a substance containing a volatile chemical to a minor).
258. Id. at § 484.004 and § 485.033 (relating to volatile chemicals).
259. Tex. Educ. Code Ann. § 37.006 (a)(2)(E).
260. Id. at § 37.016 (c).
261. Tex. Penal Code Ann. § 46.03 (a)(1).
262. Id. at § 46.03 (f).
263. Tex. Educ. Code Ann. § 37.015 (a)(5) and (f).
264. Id. at § 37.007 (a)(1); (*See also*, Tex. Penal Code Ann. § 46.01 for legal definitions of the various prohibited weapons).
265. Id. at § 37.007 (g).
266. Tex. Penal Code Ann. § 46.11 (a). (Note that the punishment for possessing a prohibited weapon on the physical premises of a school, as described in §46.03 (a)(1), is not subject to this provision.)
267. Tex. Educ. Code Ann. § 37.125; *See also* H.B. 2112 enacted by the 80th Texas Legislature which specifically adds parking areas of schools to the Exhibition of Firearms offense. Effective on or after September 1, 2007.
268. Tex. Penal Code Ann. § 46.01 (6) and (11).
269. Id. at §46.01 (1).
270. Id. at § 46.09.
271. Id at § 46.08.

272. Tex. Educ. Code Ann. § 37.123.
273. Id. at § 37.124.
274. Id. at § 37.124 (c)(1).
275. Id. at § 37.126.
276. Id. at § 37.125.
277. Tex. Penal Code Ann. § 22.01 (a).
278. Tex. Educ. Code Ann. § 37.019 (b).
279. Id. at § 22.003 (b).
280. Id. at § 22.003 (c).
281. *See*, Tex. Civ. Stat. Ann. art. 6252-13c.1 (re-designated as Tex. Code Crim. Proc. Ann. arts. 62.01-62.14). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.001 - 62.408
282. Tex. Code Crim. Proc. Ann. Art. 62.13 (a) and (b). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.352 (c)
283. Id. at art. 62.13 (e). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.352 (a)
284. Id. at art. 62.13 (j). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.352 (c)
285. Id.
286. Id. at art. 62.13 (k); (*See also*, art. 62.01 (8) defining “public or private institution of higher education” as a college, university, community college, or technical or trade institute). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.352 (d)
287. Id. at arts. 62.032 (a) and 62.03 (e). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.054 (a) and 62.053 (e)
288. H.B. 2532 and S.B. 6 enacted by the 80<sup>th</sup> Texas Legislature modified art. 15.27 (b) of the Tex. Code of Crim. Proc. Ann. to require a prosecutor to notify schools if a student is required to register as a sex offender. Schools must also take action to place a registered sex offender in an alternative setting for at least one semester, but possibly until graduation if the safety of others is at risk. H.B. 2532 is effective on or after June 15, 2007, and S.B. 6 is effective on or after September 1, 2007.
289. Id. at arts. 62.03 (e), 62.04 (f). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.053 (e) and 62.055 (f)
290. Id. at art. 62.09 (d); (*See also*, art. 62.02 (b) for the public information required by DPS on its sex offender registration form and art. 62.08 (b), which states that public information does not include a person’s social security, driver’s license or telephone numbers or information that would identify the victim of the offense for which the person is subject to registration). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.009 (d); (*see also* cites: 62.051( c) & 62.005(b)
291. Id. at art. 62.021 (a) and (b). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.052 (a)

292. Id. at art. 62.02 (g); (*See also*, art. 62.01 (9) defining “authority for campus security” as the authority with primary law enforcement jurisdiction over property under the control of a public or private institution or higher education, other than a local law enforcement authority). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.051 (i) (*See also*, becomes 62.002 (9) effective September 1, 2005
293. Id. at art. 62.021 (b). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.052 (a)
294. Id. at art. 62.10 (b)(1), (c). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.102 (b), (c)
295. Id. at art. 62.14 (a) and (b). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.251(a), (b)
296. Tex. Penal Code § 36.06.
297. Id. at § 36.06 (c).
298. Tex. Educ. Code Ann. § 37.006 (b).
299. Id. at § 37.007 (d) and (g).
300. Id. at § 37.107.
301. Tex. Penal Code Ann. § 30.05.
302. Tex. Educ. Code Ann. § 37.105. *See also* S.B. 9 of the 80<sup>th</sup> Texas Legislature which added Tex. Educ. Code Ann. §38.022 specifically authorizing schools to require all visitors to show a government-issued photo identification and to establish a database to store visitor information; schools are required to adopt policies requiring action if a visitor is a registered sex offender. Effective on or after June 15, 2007.
303. Tex. Penal Code Ann. § 21.07.
304. Id. at § 1.07 (40).
305. Id. at § 21.08.
306. Tex. Code Crim. Ann. § 62.01 (5)(H)(ii). Effective September 1, 2005, Tex. Code Crim. Proc. Ann. Art. 62.001(5)(H)(ii).
307. Tex. Educ. Code Ann. § 37.006 (a)(2)(F) and (g).
308. Tex. Penal Code Ann. §§ 28.03-28.04 and 28.08.
309. Tex. Educ. Code Ann. § 37.007 (f).
310. Id. at § 28.03 (h).
311. Id. at § 37.007 (g).
312. Tex. Fam. Code Ann. § 57.002.
313. Tex. Penal Code Ann. § 28.02 (a).
314. Tex. Educ. Code Ann. § 37.007 (a) (2)(B) and (g).

315. Id. at § 37.121 (a), (c) and (d). (Note, the term does not include an agency for public welfare, including Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan-American Clubs, scholarship societies, or other similar educational organizations sponsored by state or national education authorities.)
316. Id. at § 37.121 (b).
317. Id. at §§ 37.151-37.157.
318. Id. at § 37.152 (b)-(d).
319. U.S. Const. amend IV; (*See also*, Tex. Const. art. I, §9).
320. *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985).
321. Id. at 339-340.
322. Id. at 341.
323. Id. at 339.
324. Id. at 341-342, quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968).
325. Id. (*See also*, *Shoemaker v. State*, 971 S.W.2d 178 (Tex.App.-Beaumont, 1998, reh'g overruled).
326. *T.L.O.*, 469 U.S. at 342.
327. *Coronado v. State*, 835 S.W.2d 636, 641(Tex.Crim.App. 1992).
328. Tex. Fam. Code Ann. § 54.03 (e). *See also*, Tex. Code Crim. Proc. Ann. art. 38.23 (note that if a law enforcement official obtained the evidence in objective good faith reliance on a warrant issued by a neutral magistrate based on probable cause, the evidence is admissible); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court).
329. *See*, 42 U.S.C. A. § 1983.
330. *See*, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), quoting *Bumper v. N. Carolina*, 391 U.S. 543, 548 (1968).
331. *See*, e.g., *Jones v. Latexco Indep. School Dist.*, 499 F.Supp. 223, 237 (E.D.Tex.1980).
332. *Bilbrey v. Brown*, 738 F.2d 1462 (9<sup>th</sup> Cir.1984).
333. *O'Conner v. Ortega*, 480 U.S. 709, 715 (1987).
334. Id. at 719-20.
335. *Wilcher v. State*, 876 S.W.2d 466 (Tex.App.-El Paso 1994).
336. *Russell v. State*, 74 S.W.3d 887 (Tex.App.-Waco 2002).
337. *T.L.O.*, 469 U.S. at 337-338.
338. *See*, e.g., *Coffman v. State*, 782 S.W.2d 249, 251 (Tex.App.-Houston [14th Dist.], 1989).
339. *T.L.O.*, 469 U.S. at 342.

340. *Shoemaker v. State*, 971 S.W.2d 178 (Tex.Crim.App.1998).
341. See, e.g., *Widener v. Frye*, 809 F.Supp. 35 (S.D.Ohio 1992) and *Cornfield v. CHSD*, 991 F.2d 1316 (7<sup>th</sup> Cir. 1993).
342. *T.L.O.*, 469 U.S. at 342-343.
343. *Id.*
344. *Horton v. Goose Creek Indep. School Dist.*, 693 F.2d 524, 525 (5<sup>th</sup> Cir. 1982, motion for reh'g denied) (*Horton II*).
345. *Horton v. Goose Creek Indep. School Dist.*, 690 F.2d 470 (5<sup>th</sup> Cir. 1982, motion for reh'g denied) (*Horton I*).
346. *Id.* at 481, citing *Bellnier v. Lund*, 438 F.Supp. 47 (N.D.N.Y. 1977); (*See also, Jones v. Latexco Indep. School Dist.*, at 236).
347. *Id.* at 482.
348. *Id.* at 477.
349. *Horton II*, 693 F.2d at 525.
350. *Horton I*, 690 F.2d at 479-481.
351. *T.L.O.*, 469 U.S. at 342.
352. *Gibson v. State*, 921 S.W.2d 747 (Tex.App.-El Paso 1996, pet. denied).
353. Tex. Admin. Code Ann., Title 37, Part II, Ch. 348, Subch. A, § 348.110 (g).
354. See, *In the Matter of D.D.B.*, UNPUBLISHED, No. 3-99-00030-CV (Tex.App.-Austin 2000).
355. See, *In the Matter of O.E.*, UNPUBLISHED, No. 3-02-00516-CV (Tex.App.-Austin 2003).
356. *Vernonia School Dist. v. Acton*, 115 S.Ct. 2386, 2391 (1995), quoting, *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987).
357. *Id.* at 2396.
358. *Id.* at 2392.
359. *Id.* at 2396.
360. *Board of Education v. Earls*, 122 S.Ct. 2386 (2002).
361. *Id. If signed,...*
362. See S.B. 8 enacted by the 80<sup>th</sup> Texas Legislature requiring high school students who participate in University Interscholastic League sponsored athletic events to be subject to random testing for illegal steroid use. Effective for the 2007 - 2008 school year.
363. *Tannahill v. Lockney Indep. School Dist.*, 133 F.Supp. 2d 919 (N.D. Tex. 2001).
364. Tex. Fam. Code Ann. § 51.02 (2).
365. *Id.* at § 52.01 (a).
366. *Id.* at § 52.015.

367. Tex. Educ. Code Ann. § 37.081 (a) and (b).
368. Tex. Fam. Code Ann. § 51.03 (a).
369. Id. at § 51.03 (b).
370. Id. at art. 15.27 (a), (b) and (h).
371. Id. at art. 15.27 (a).
372. Art. 15.27(i), C.C.P.
373. Id at art. 15.27 (d) and (f).
374. Id. at art. 15.27 (b).
375. H.B. 2532 and S.B. 6 enacted by the 80<sup>th</sup> Texas Legislature modified art. 15.27 (b) of the Tex. Code of Crim. Proc. Ann. to require a prosecutor to notify schools if a student is required to register as a sex offender. Schools must also take action to place a registered sex offender in an alternative setting for at least one semester if the student is under court orders, but possibly until graduation if the safety of others is at risk. H.B. 2532 is effective on or after June 15, 2007 and S.B. 6 is effective on or after September 1, 2007.
376. Id. at art. 15.27 (h).
377. Art. 15.27(i), C.C.P.
378. Id. at art. 15.27 (b).
379. H.B. 2532 and S.B. 6 enacted by the 80<sup>th</sup> Texas Legislature modified art. 15.27 (c) of the Tex. Code of Crim. Proc. Ann. to require a parole, probation or community supervision department to notify schools within 24 hours if a probationer transfers to a new school during the pendency of supervision. H.B. 2532 is effective on or after June 15, 2007 and S.B. 6 is effective on or after September 1, 2007.
380. Id. at art. 15.27 (c).
381. Id. at art. 15.27 (a-1).
382. Tex. Educ. Code Ann. § 37.017.
383. Tex. Code Crim. Proc. Ann. art. 15.27 (f).
384. H.B. 2532 and S.B. 6 enacted by the 80<sup>th</sup> Texas Legislature created Subchapter I, Sections 37.301 - 37.313 of the Tex. Educ. Code Ann. to require schools to place a registered sex offender in an alternative setting for at least one semester if the student is under court orders, but possibly until graduation if the safety of others is at risk. H.B. 2532 is effective on or after June 15, 2007 and S.B. 6 is effective on or after September 1, 2007.