

A CHECKLIST FOR STUDENT EXPULSION (General Education)

- This is a general guide for student expulsion based on the legal requirements of Chapter 37 of the Texas Education Code. **Please check your district policy and Student Code of Conduct for additional or different requirements.**
- Double-underlining indicates when form letters or other written communications are required. If the student is age 18 or older, send the student copies of all correspondence.
- This checklist does not include the procedures for disciplining students with an IEP or 504 Plan and should not be used in those circumstances. Please refer to the expulsion checklist in the special education section of this guide.
- The material provided in this guide is for informational purposes only. Consult your attorney if you need specific legal advice.

REMINDER: Students engaged in distance or remote learning are engaging in a school-sponsored or school-related activity, and therefore remain subject to the Student Code of Conduct.

WHEN YOU THINK A STUDENT HAS ENGAGED IN MISCONDUCT:

Step 1 Gather information concerning the alleged infraction and investigate the events related to that allegation. This should be done on the day of the offense or as soon as possible given the circumstances and the complexity of the situation. Be efficient and prompt, but do not rush to judgment. Properly document the investigation.

Step 2 If permitted by the Student Code of Conduct, consider out-of-school suspension for a maximum of three school days as an interim measure. **REMINDER:** an out-of-school suspension cannot exceed three school days. If more time is needed to complete the investigation, place the student into in-school suspension after the third day of out-of-school suspension. Before imposing any suspension, inform the student of the alleged offense and permit the student to give the student's version of the events.

Prior to ordering out-of-school suspension, the administrator must meet with the student and conduct an informal conference. During the conference the administrator must inform the student of the charge and give the student an opportunity to tell the student side of the story before imposing the out-of-school suspension. If the student denies the charge, the student must be advised of the information supporting the suspension. **NOTE:** The school does not have to wait for the student's parent to be present to hold this informal conference.

A student placed in in-school or out-of-school suspension must be provided an alternative means of receiving all course work provided in the classes in the foundation curriculum the student misses as a result of the suspension, and at

least one option for receiving the instruction must not require use of the Internet. Tex. Educ. Code §37.005(e).

NOTE: A student who is homeless, as defined under federal law, may not be placed in out-of-school suspension unless, on school property or while attending a school-sponsored or school-related activity, the student engaged in: 1) conduct that contains the elements of an offense related to weapons under Section 46.02 or 46.05, Penal Code; 2) conduct that contains the elements of a violent offense under Section 22.01, 22.011, 22.02, or 22.021, Penal Code; or 3) selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of marijuana or a controlled substance, a dangerous drug, or an alcoholic beverage, as defined under state law. The campus behavior coordinator should coordinate with the district's homeless education liaison to identify appropriate alternatives to out-of-school suspension for a homeless student. Tex. Educ. Code §37.005(d).

NOTE: A student enrolled in a grade level below grade three cannot be placed in out-of-school suspension unless, while on school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in: 1) conduct that contains the elements of an offense related to weapons under Texas Penal Code Sections 46.02 or 46.05; 2) conduct that contains the elements of a violent offense under Texas Penal Code Sections 22.01 , 22.011 , 22.02 , or 22.021; or (3) selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of marijuana or a controlled substance, a dangerous drug, or an alcoholic beverage, as defined under state law. Tex. Educ. Code § 37.005(c).

Step 3 If out-of-school suspension is ordered, issue a discipline referral form if appropriate. The campus behavior coordinator must also promptly contact the parent/guardian by phone or in person and make a good faith attempt to provide the student with written notice of the disciplinary action to be delivered to the parent/guardian on the same day the consequence is assigned. If the parent/guardian is not reached by phone or in person by 5:00 p.m. on the first business day after out-of-school suspension is assigned, written notice must be sent to the parent's/guardian's last known address. Another campus administrator may provide notice of disciplinary action if the campus behavior coordinator is not able or available to provide notice.

Step 4 Conduct and document the investigation, review the Student Code of Conduct, identify the misconduct committed, and ascertain the appropriate recommended disciplinary consequence to be applied.

Step 5 Check the age of the student. Remember:

- If the student is under age 10, he or she may not be expelled, but must instead be placed in DAEP for the commission of an expellable offense.
- Students under age 6 may not be expelled or assigned to DAEP unless the student commits a federal firearm offense. Tex. Educ. Code §37.006(f)&(l).

BEFORE THE EXPULSION HEARING:

Step 6 For certain offenses, the principal or designee **must** report the offense to the school district police and the city or county police if he or she has reasonable grounds to believe the offense occurred at school or a school-related activity. Those offenses are:

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| ▪ murder or capital murder | ▪ criminally negligent homicide |
| ▪ criminal attempt to commit murder or capital murder | ▪ continuous sexual abuse of a young child(ren) |
| ▪ manslaughter | ▪ indecency with a child |
| ▪ aggravated assault | ▪ sexual performance of a child |
| ▪ sexual assault | ▪ compelling prostitution |
| ▪ aggravated sexual assault | ▪ criminal solicitation |
| ▪ injury to a child, elderly, or disabled person | ▪ using a child to assist or commit a drug offense |
| ▪ arson | ▪ certain drug-related offenses |
| ▪ burglary | ▪ deadly conduct |
| ▪ robbery | ▪ terroristic threat |
| ▪ aggravated robbery | ▪ mandatory expellable conduct |
| ▪ organized criminal activity | ▪ possessing or promoting lewd visual material depicting a child |
| ▪ retaliatory assault of an employee or volunteer | ▪ certain weapon offenses |

Notice must also be provided to each instructional or support employee who has regular contact with the student. Tex. Educ. Code § 37.015.

For certain other offenses, the principal or designee may report the offense to the school district police or the city or county police if the principal or designee

has reasonable grounds to believe that the student engaged in conduct that constitutes any of the following offenses:

- assault
- harassment through repeated electronic communications

Tex. Educ. Code § 37.0151(a).



See expulsion forms entitled “Step 6-A: Notice to Law Enforcement” and “Step 6-B: Notice to Instructional or Support Employees”

Step 7 Consider special circumstances before proceeding with the expulsion hearing.

Has the student been identified as eligible for services under Section 504? If so, refer to the Expulsion Checklist (Special Education) for procedures for the expulsion of students with disabilities.

Is the student one who may be entitled to the protections of special education law? Keep in mind that the protections of special education law are available to general education students if the school district “had knowledge” that the student was a child with a disability prior to the behavior that precipitated disciplinary action. These students fall into three categories:

- A. The parent “expressed concern” that the student is in need of special education services. This expression of concern must be in writing to supervisory or administrative personnel of the school, or to one of the student’s teachers. The expression of concern must have been made prior to the student’s infraction;
- B. The parent requested an evaluation pursuant to IDEA prior to the student’s infraction; or
- C. If any of the student’s teachers or other district employees expressed specific concerns about a pattern of behavior of the student. This expression of concern must be made directly to the director of special education or other supervisory personnel prior to the student’s infraction.

On the other hand, the school does not “have knowledge” if, prior to the disciplinary infraction, the student: (1) was actually evaluated for special education eligibility; (2) was determined by ARD committee action to be ineligible; and (3) the parents were informed in writing of this decision.

Furthermore, the school does not “have knowledge” if, prior to the disciplinary action, the parent: (1) did not allow an evaluation to take place, or (2) refused special education services. If the parent asserts that the student has a disability

after the disciplinary infraction occurred, contact your school attorney for specific advice.

Step 8

Notify the parent/guardian that an expulsion recommendation has been made and a hearing must be conducted to consider the recommendation before a final decision is made. Only speak in terms of “recommending” expulsion; do not tell the parent the student has been expelled or make other comments to create the impression that it is a foregone conclusion that the student will be expelled.

Schedule the expulsion hearing with the parent/guardian at a mutually agreeable date and time. Provide written notice to the parent/guardian; allow enough time (at least 72 hours) for the parent/guardian to prepare for the hearing. The written notice should:

- Be sent by either hand delivery with confirmation of receipt or, if this is not practical, by both certified mail return receipt requested and regular mail.
- Indicate the date, time, and location of the expulsion hearing.
- Invite the student and parent/guardian to attend the hearing.
- Explain the specific nature of the misconduct as set out in the Student Code of Conduct, local policy, and Texas Education Code §§ 37.0052, 37.007 or 37.0081.
- Identify the proposed sanction.
Inform the student and parent/guardian of their right to testify, present evidence, and cross-examine witnesses.
- Name any witnesses whose testimony may be used against the student and generally describe the subject of their testimony.
- Inform the student and parent/guardian of the right to have a representative present at the hearing.
- Inquire whether the parent/guardian will have an attorney present at the meeting.
- Provide the parent/guardian with the option of waiving the expulsion hearing and include a written waiver form to that effect.
- Include a copy of legal and/or local policies FOD and FNG.



[See expulsion forms entitled “Step 8-A: Notice to Parents Scheduling Expulsion Hearing” and “Step 8-B: Waiver of Right to an Expulsion Hearing”](#)

- Step 9** Arrange to have the district's legal counsel present at the expulsion hearing if the student will have an attorney or advocate present or if the facts of the expulsion are complex.
- Step 10** Prepare the administration's presentation:
- Determine who will present the administration's position;
 - Prepare an outline of the administration's presentation;
 - Prepare all administration witnesses for the hearing, if any will be used. Inform them of the time and place of the hearing, give them an idea of the questions that may be asked at the hearing, and remind them to tell the truth. Do not, however, tell the witnesses what to say;
 - Prepare and mark all documents that will be submitted as evidence at the expulsion hearing. Be sure to redact the personally identifiable information of other students from the documents. Prepare enough copies for each board member (if applicable), district legal counsel, the student, parent/guardian, and the student's legal representative; and
 - Anticipate and prepare for cross-examination questions.
- Step 11** Make the following preliminary arrangements for the expulsion hearing:
- Have a good quality audio or audio/video recording (preferably digital) made of the hearing. In addition, consider arranging to have a court reporter present to create a record of the proceeding, especially if there is a likelihood of an appeal to a state court.
 - Have a foreign language interpreter or an interpreter for the deaf present if needed to ensure the parent/guardian fully understands the proceeding.
- Step 12** Arrange to have a clerk or a court reporter present to swear in all witnesses and to receive and mark all documents submitted at the hearing. The clerk should be someone who is (1) an employee of the school district, and (2) a notary public.
- Step 13** If your county has a JJAEP, initiate contact and ascertain what information the JJAEP needs to admit the student. This will facilitate the process if expulsion is ordered.

AT THE EXPULSION HEARING:

Step 14 After making a good faith effort to inform the student and the student's parent of the time and place of the expulsion hearing, a school district may hold the expulsion hearing regardless of whether the student, the student's parent, or another adult representing the student attends. Tex. Educ. Code § 37.009(f). An audio or audio/visual recording should be made as well.

When a student withdraws before an Expulsion Order is entered, a school district may complete the expulsion proceedings and issue an Expulsion Order. Tex. Educ. Code § 37.009(i).

Step 15 If a non-parent attends the expulsion hearing in lieu of the parent or guardian, obtain written consent from the parent/guardian or eligible student to discuss the student's personally identifiable information and education records in the presence of the non-parent in accordance with the Family Educational Rights and Privacy Act (FERPA) If the parent or guardian is also present at the expulsion hearing but refuses to provide written consent, make sure the audio recording reflects verbal consent and the refusal to sign a written consent.



See expulsion form entitled "Step 15: Authorization to Release Education Records"

Step 16 Make sure the audio or video recorder is functioning properly and picking up all voices.

Step 17 At the expulsion hearing, the Board or Board's designee acts as an impartial hearing officer. By law, the District must consider the student's intent or lack of intent, the student's discipline history, whether the student acted in self-defense, whether the student is under the conservatorship of the Department of Family and Protective Services, whether the student is homeless (as defined under federal law), or whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. Also, remember to discuss all of the documents and factors that the Student Code of Conduct requires you to consider as part of the decision-making process. Check the Student Code of Conduct to be certain, but the factors usually include the severity and effect of the misconduct, the age and grade level of the student, the student's demeanor, discipline history, frequency of misconduct, and legal requirements. These factors should be considered and addressed during the expulsion hearing.



For a script to follow during the expulsion hearing, see expulsion form entitled “Step 17: Expulsion Hearing Guide for the Board or Board Approved Designee”

The administrator presenting the administration’s case, usually the principal, should submit all supporting documents to the hearing officer for consideration, call witnesses and ask questions to elicit important supporting facts, and be prepared to cross-examine any witnesses the student may call on the student’s behalf.

Supporting evidence should always include:

- The Student Code of Conduct in its entirety;
- The Student’s signed Signature page for the Code of Conduct;
- Relevant policies;
- Scheduling letters and notices to parents about the expulsion; and
- Prior discipline history of the student, if any.

In addition, the following documentation may be useful evidence depending on the circumstances and should be made a part of the record of the hearing:

- Discipline referral forms;
- Witness statements (any verbal or hand written student statements should be typed and redacted);
- Investigation reports or findings, with the names of other students redacted;
- Photographs or physical evidence;
- Drug dog reports;
- Police reports, such as notices sent per article 15.27 of the Code of Criminal Procedure; and
- Provisions of the Texas Education Code or other relevant laws.

NOTE: If the district is closed due to a weather or health-related emergency or government order, and the expulsion hearing cannot take place on school property, arrange to conduct the disciplinary proceeding remotely, either by telephone or through a video conferencing application.

AFTER THE EXPULSION HEARING, IF THE STUDENT IS EXPELLED:

Step 18 Draft the Expulsion Order. If a waiver of an expulsion hearing is obtained, an Expulsion Order still needs to be issued. The Expulsion Order should:

- Indicate the date, time, and location of the expulsion hearing.
- Identify who was present at the expulsion hearing.
- Identify the misconduct and refer to the appropriate provisions of the Student Code of Conduct, local policy, and Texas Education Code §§ 37.0052, 37.007 or 37.0081.
- Specify the period of expulsion.
 - Make sure the period of expulsion is consistent with the placement guidelines established in your school district's Student Code of Conduct. If the period of expulsion is inconsistent with the guidelines set out in the Student Code of Conduct, the Expulsion Order must give notice of the inconsistency. Tex. Educ. Code § 37.009(h).
 - In most cases the period of expulsion cannot exceed one year unless the district determines that: (1) the student is a threat to the safety of other students or employees, or (2) extended placement is in the best interest of the student. Tex. Educ. Code § 37.009(h).
 - Expulsions made in accordance with Texas Education Code § 37.0081 may be for an extended length of time as provided by that specific law.
- Specify that the student is prohibited from being on campus or attending or participating in school events during the period of expulsion. If a student will be precluded from "walking" at graduation because of the expulsion, the order should specifically say so.
- Indicate that a copy of the Expulsion Order will be sent to the juvenile court and JJAEP juvenile board if appropriate.
- Include a signature line for the hearing officer.
- Write in the date the Expulsion Order was signed.
- Identify the misconduct and refer to the appropriate provisions of the Student Code of Conduct, local policy, and Texas Education Code sections 37.0052, 37.007, or 37.0081.

NOTE: If the district is closed due to a weather or health-related emergency or government order, and instruction is being provided remotely, follow district policies or administrative regulations that address the impact on the closure and the terms of the student's expulsion, including calculation of the length of the

disciplinary placement, or whether the placement will begin when schools re-open.



See expulsion form entitled “Step 18-A: Expulsion Order” and “Step 18-B: Expulsion Order If Hearing Waived”

Step 19 Under cover letter, send a copy of the Expulsion Order to the student and parent/guardian. Enclose with the cover letter a copy of local policy FNG and/or FOD as appropriate. Tex. Educ. Code § 37.009(g).

The campus behavior coordinator must promptly contact the parent/guardian by phone or in person and make a good faith attempt to provide the student with written notice of the expulsion to be delivered to the parent/guardian on the same day the consequence is assigned. If the parent/guardian is not reached by phone or in person by 5:00 p.m. on the first business day after expulsion is ordered, written notice must be sent to the parent’s/guardian’s last known address. Another campus administrator may provide notice of disciplinary action if the campus behavior coordinator is not able or available to provide notice.



See expulsion form entitled “Step 19-A: Letter to Parents Providing Expulsion Order” and “Step 19-B: Letter to Parents Providing Expulsion Order If Hearing Waived”

Step 20 If expulsion was ordered pursuant to Texas Education Code § 37.007, under cover letter send a copy of the Expulsion Order to the authorized officer of the juvenile court within two business days following the expulsion hearing. Tex. Educ. Code § 37.010(a).



See expulsion form entitled “Step 20 & 21: Letter to Juvenile Court/JJAEP Enclosing Expulsion Order”

Step 21 If your county has a JJAEP or your district contracts with a JJAEP for services, under cover letter send a copy of the Expulsion Order and documents needed for JJAEP admission to the juvenile board’s designated representative (often the JJAEP director) within two business days following the expulsion hearing. Tex. Educ. Code § 37.010.

NOTE: A student enrolled in a grade level below grade three cannot be placed in out-of-school suspension unless, while on school property or while attending a school-sponsored or school-related activity on or off school property, the student

engages in: 1) conduct that contains the elements of an offense related to weapons under Texas Penal Code sections 46.02 or 46.05; 2) conduct that contains the elements of a violent offense under Texas Penal Code sections 22.01 , 22.011 , 22.02 , or 22.021; or (3) selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of marijuana or a controlled substance, a dangerous drug, or an alcoholic beverage, as defined under state law. Tex. Educ. Code § 37.005(c).



[See expulsion form entitled “Step 20 & 21: Letter to Juvenile Court/JJAEF Enclosing Expulsion Order”](#)

Step 22 Provide written notice of the expulsion to each educator who has responsibility for (or is under the direction and supervision of an educator who has responsibility for) the instruction of the student. The notice should also indicate that the teacher must keep the information confidential except to the extent provided by state or federal law or risk having his or her certificate revoked or suspended by the State Board for Educator Certification. Tex. Educ. Code § 37.007(g).



[See expulsion form entitled “Step 22: Expulsion Notice to Instructional Educators”](#)

Step 23 If the student was expelled and placed in an alternative setting pursuant to Texas Education Code § 37.0081, conduct a review of the placement at intervals not to exceed 120 calendar days. Tex. Educ. Code § 37.0081(e). See Step 18 of the DAEP Checklist in this guide for more information on how to conduct that review.

Step 24 Maintain internal documentation of the expulsion to be used in the annual report to the Commissioner of Education. Tex. Educ. Code § 37.020.

EXPULSION APPEAL TO THE BOARD OF TRUSTEES:

Step 25 If the Board’s designee held the expulsion hearing, an appeal may be filed. If an appeal is submitted, confirm that the appeal was filed in a timely manner in accordance with local policy.

Step 26 Prepare a transcript from the recording made of the expulsion hearing held at the level below and attach to it copies of all exhibits made a part of the record at the hearing.

Step 27 Send the parent/guardian written confirmation scheduling the expulsion appeal; allow enough time (at least 72 hours) for the parent to prepare.

The written confirmation should:

- Be sent by hand delivery with confirmation of receipt. If this is not practical, send by certified mail return receipt requested and regular mail.
- Indicate the date, time, and location of the expulsion appeal.
- Briefly explain the appeal procedures.
- Inform the student and parent/guardian of the right to have a representative present at the appeal and inquire whether the parent/guardian will have an attorney present.
- Provide the parent/guardian with a copy of the “record” from the expulsion hearing that will be presented to the Board of Trustees, including the transcript of the audio recording, if made.
- Include a copy of legal and local policies FOD and/or FNG.

NOTE: If the district is closed and the Board is unable to meet in person due to weather or health-related emergency or government order, note whether and how the expulsion appeal will be heard virtually by the Board.



See expulsion form entitled “Step 27: Letter to Parents Scheduling Expulsion Appeal”

Step 28 Arrange to have an audio or audio/video recording (preferably digital) made of the expulsion appeal or have a court reporter present to create a record of the proceeding. Check the school district's policy requirements.

Step 29 Arrange to have the district’s legal counsel present at the expulsion appeal if the student will have an attorney or if the facts of the expulsion are complex.

Step 30 Post the meeting agenda at least 72 hours before the scheduled Board meeting. Tex. Gov’t Code § 551.043.

Step 31 If the parent/guardian requests that the expulsion appeal be held in open session, in accordance with the Family Educational Rights and Privacy Act obtain written consent from the parent/guardian or eligible student to discuss the student’s personally identifiable information and education records in open session.



See expulsion form entitled “Step 31: Authorization to Release Education Records in Open Session”

Step 32 At the appeal, the Board should be provided with the “record” developed at the expulsion hearing including, but not limited to, all documents submitted by the student and administration, relevant discipline referral forms, notices, correspondence, transcript from the lower level, and other exhibits.

Step 33 At the appeal, the parent/guardian will present arguments in support of overturning the expulsion or reducing the length of the expulsion, and the superintendent or designee will present arguments to the Board supporting the student's expulsion and its length. The Board will make its decision on the appeal in open session, even if the arguments are made in closed session, and that decision should be reflected in the official minutes of that meeting.

Have a good quality audio or audio/video recording (preferably digital) made of the appeal. In addition, consider arranging to have a court reporter present to create a record of the proceeding, especially if there is a likelihood of a further appeal to a state court.

Have a foreign language interpreter or an interpreter for the deaf present if needed to ensure the parent/guardian fully understands the proceeding.