

## A CHECKLIST FOR STUDENT DAEP PLACEMENT (Special Education)

- This is a general guide for DAEP placement 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 includes the procedures for the DAEP placement **of students with disabilities**. It should not be used for general education students.
- 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** Consider an interim assignment pending conclusion of the investigation.

If the student is in the “FAPE Free Zone” (FFZ) all options are available (including out-of-school suspension for up to three days, see below for possible exceptions if the student is enrolled in a grade level below grade three or homeless; additionally, you will want to review your Student Code of Conduct). The student is in the FFZ if the student has not been removed from his/her Individualized Education Program (“IEP”) placement for disciplinary reasons more than ten total days during the current school year.

If the student is in the FFZ, and an out-of-school suspension of up to three days is to be ordered, before any 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’s side of the story before imposing the out-of-school suspension. If the student denies the charge, he or she must be advised of the information supporting the suspension.

NOTE: A student who is homeless, as defined under federal law, may not 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 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, conduct that contains the elements of an offense related to weapons or a violent offense, or engages in selling, giving, or delivering to another person or possessing, using, or being under the influence of marijuana or a controlled substance, a dangerous drug, or an alcoholic beverage. Tex. Educ. Code §37.005(c).

A student placed 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).

If the student is beyond the FFZ, the interim assignment must be one in which the student can continue to participate in the general curriculum and continue to progress toward achievement of the goals set out in the student's IEP.

Also, be sure to document both the removal from the current educational placement, the interim assignment, and the services to be provided during the interim assignment; this documentation should be kept in the student's special education eligibility folder.

Use an “Interim Assignment” form when the student is removed for disciplinary reasons after the first ten cumulative days of removal. It is not necessary to use this form for the first ten cumulative days of removal in the school year.



See Special Education DAEP form entitled “Step 2: Interim Assignment”

**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. **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.

**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 6, he or she may not be placed in DAEP *unless* the student committed a federal firearm offense.
- Elementary students may not be placed in a DAEP program with any other student who is not an elementary student.
- Students younger than 10 and over age 5 must be placed in DAEP if they commit an expellable offense.

## **BEFORE THE DAEP PLACEMENT CONFERENCE:**

**Step 6** Notify the parent/guardian that DAEP placement is being recommended and that a DAEP placement conference must be conducted to consider the recommendation before a final decision is made. Only speak in terms of “recommending” DAEP placement; do not tell the parent the student is being placed in DAEP or make other comments to create the impression that it is a foregone conclusion that the student will be ordered to DAEP.

Schedule a DAEP placement conference with the parent/guardian. The conference must be scheduled within three days of the student's removal from class. If time permits, provide the parent/guardian with written confirmation of the agreed date, time, and location for the conference. Provide the parent/guardian with the option of waiving the DAEP placement conference and include a written waiver form to that effect.



See Special Education DAEP form entitled “Step 6: Letter to Parents Scheduling DAEP Conference”

The student may not be returned to the regular classroom before the conference is held. However, other interim options are available, such as placing the student into in-school suspension or ordering out-of-school suspension for up to three school days. Tex. Educ. Code § 37.009(a).

#### **Step 7**

Contact the parent/guardian to schedule an ARD meeting to occur **after** the DAEP conference. Send out an invitation to the ARD meeting, with the meeting scheduled no later than 10 school days after the date the student is first removed from the IEP placement, but no earlier than 5 school days after the notice of the meeting if provided, unless you have parent agreement to waive the required 5 school days prior written notice. Make sure the invitation indicates that a change of placement will be discussed. **Also, be sure to include the “Notice of Procedural Safeguards” document.**

#### **Step 8**

For certain offenses, the principal or designee **must** report the offense to the school district police department, if applicable, and to the city or county police if the principal or designee 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
- robbery
- aggravated robbery
- organized criminal activity
- retaliatory assault of an employee or volunteer
- deadly conduct
- terroristic threat
- mandatory expellable conduct
- possessing or promoting lewd visual material depicting a child
- 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 offenses, the principal or designee **may** report the offense to the school district police department, if applicable, or to the city or county police if he or she 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 Special Education DAEP forms entitled “Step 8-A: Notice to Law Enforcement” and “Step 8-B: Notice to Instructional or Support Employees”

## CONDUCT A DAEP PLACEMENT CONFERENCE:

**Step 9** Make the following preliminary arrangements for the DAEP placement conference:

- Arrange to have the district’s legal counsel present at the DAEP placement conference if the student will have an attorney or other advocate present.
- Have a good quality audio or audio/video recording (preferably digital) made of the DAEP placement conference.
- Have a foreign language interpreter present if needed to ensure the parent/guardian fully understands the proceeding.

**Step 10** If a non-parent attends the DAEP placement conference in lieu of or along with 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 DAEP placement conference but refuses to provide written consent, make sure the audio recording reflects verbal consent and the refusal to sign a written consent.



See Special Education DAEP form entitled “Step 10: Authorization to Release Education Records”

**Step 11** Absent extenuating circumstances, conduct the DAEP placement conference within three days of the student’s removal from class. Tex. Educ. Code § 37.009.

- At the DAEP placement conference, the campus behavior coordinator acts as an impartial decision maker who oversees the conference.
- The campus behavior coordinator or other appropriate administrator, the teacher removing the student from class (if applicable), the parent/guardian, and the student should all attend the DAEP placement conference.
- Give the student written or oral notice of the reason for the proposed removal.
- Allow the student an opportunity to explain his or her version of the incident before issuing your decision.
- Make sure the student’s special education and disciplinary records are considered.
- Inquire about parental consent to share special education records with law enforcement or judicial authorities, if applicable.
- 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 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 DAEP placement conference.



See Special Education DAEP form entitled “Step 11: DAEP Placement Conference Guide” for a script to follow during the Placement Conference

After making valid attempts to require the student’s and parent’s attendance at the DAEP placement conference, a school district may hold the conference and make a DAEP placement decision regardless of whether the student or the student’s parent attends the conference. Tex. Educ. Code § 37.009(a).

When a student withdraws before a DAEP Placement Order is entered, a school district may complete the DAEP placement proceedings and issue a DAEP Placement Order. Tex. Educ. Code § 37.009(i). The conference should be recorded, even if the student or the student’s parent does not attend.

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

## **AFTER THE DAEP PLACEMENT CONFERENCE, IF THE STUDENT IS ORDERED TO DAEP:**

**Step 12** The campus behavior coordinator must draft a DAEP Placement Order.

- Indicate the date, time, and location of the DAEP placement conference.
- Identify who was present at the DAEP placement conference.
- Identify the specific misconduct committed and refer to the appropriate provisions of the Student Code of Conduct, local policy, and Texas Education Code.
- Specify the period of DAEP placement.
  - Make sure the length of DAEP placement is consistent with the placement guidelines established in the Student Code of Conduct. If the period of DAEP placement is inconsistent with the guidelines set out in the Student Code of Conduct, the DAEP Placement Order must give notice of the inconsistency. Tex. Educ. Code § 37.009(a).
  - In order for the placement to extend beyond the end of the school year, the district must determine that: (1) the student's presence in the regular classroom or campus presents a danger of physical harm to the student or another, or (2) the student engaged in serious or persistent misbehavior that violates the Student Code of Conduct. Tex. Educ. Code § 37.009(c). Check the Student Code

of Conduct to see how “serious and persistent” is defined for this purpose. Be sure the definitions in state law and the Student Code of Conduct align.

- In most cases DAEP placement cannot exceed one year unless the student is a threat to the safety of other students or employees, or extended placement is in the best interest of the student. Tex. Educ. Code § 37.009(a)&(d).
  - DAEP placements made in accordance with Texas Education Code §§ 37.0081, 37.304, or 37.305 may be for an extended length of time as provided by those specific laws.
- **Indicate that enforcement of the DAEP order is subject to action by the ARD committee.**
  - Specify that the student is prohibited from attending or participating in school-sponsored or school-related activities during the term of placement in DAEP. Tex. Educ. Code § 37.006(g). If a student will be precluded from “walking” at graduation because of the placement in DAEP, the order should specifically say so.
  - If appropriate, indicate that a copy of the Placement Order will be sent to the juvenile court; see Step 16 for more information.

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 in the placement order the impact of any closure, including how the student will be provided coursework, calculation of the length of the disciplinary placement, or whether the placement will begin when that program re-opens.



See Special Education DAEP form entitled “Step 14: DAEP Placement Order”

### **Step 13**

Under cover letter, send a copy of the DAEP Placement Order to the student and parent/guardian. Enclose with the cover letter a copy of local policy FNG and/or FOC as appropriate and the local DAEP rules. Tex. Educ. Code § 37.009(g). If the parents are not provided with a cover letter, be sure to find another manner of informing them of the opportunity to complete coursework before the beginning of the next school year.

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 DAEP placement 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 DAEP 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.



See Special Education DAEP form entitled “Step 15: Letter to Parents Enclosing DAEP Placement Order”

### **HOLD THE ARD MEETING:**

**Step 14** The ARD meeting must be held within ten school days after the removal from the IEP placement. Review all relevant information from the student's file including, but not limited to the disciplinary conduct that led to the removal, the student's most recent evaluations and IEP and teacher and parent input. After a review of all relevant information, determine whether or not the behavior of the student is a manifestation of the student's disability.

**Step 15** If the ARD committee comes to consensus that the behavior of the **student was not a manifestation** of the student's disability, the student can be placed in DAEP for the same length of time as a general education student. However, the school must continue to provide services to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the IEP. The ARD committee should verify and document that this can be done. Additionally, within 10 days after the change in placement, the District must: (1) seek parent consent to conduct a Functional Behavioral Assessment (FBA), if a FBA has not previously been conducted on the student or the student's most recent FBA is more than one year old; (2) review any previously conducted FBAs and any Behavioral Intervention Plan (BIP) developed for the student based on that FBA; and as necessary, (3) develop a BIP for the student if the student does not have one or if the student does have a BIP, review and revise the BIP.

If the ARD committee comes to consensus that the behavior of the student **was a manifestation** of the student's disability, the ARD committee must: (1) conduct a FBA or review the existing one, and (2) develop a BIP or review and modify the existing one to address the behavior. The student cannot be placed in DAEP unless the parents and school agree with the DAEP placement as part of a modification to the student's BIP. This does not constitute a disciplinary placement. If the parent does not agree to placement in the DAEP as a modification to the BIP, the student should be returned to the original placement unless the misconduct involved one of the “special circumstances” (see below).

If the ARD committee determines that the behavior of the student was not a manifestation of the disability, but the parent or adult student disagrees, the student will be placed in an Interim Alternative Educational Setting (IAES). However, the parent or adult student should be advised of their right to request a special education due process hearing, seek mediation, or file a complaint. The ARD committee is not required to offer the parent a ten-day recess when the student has committed an offense that calls for DAEP placement.

If the disciplinary removal was based on “special circumstances” (i.e. a drug or weapons offense at school or at a school function, or a case in which the student inflicted serious bodily injury on another person at school or a school function), the school can assign the student to an IAES for up to 45 school days — even if the behavior is found to be a manifestation of his/her disability by the ARD committee. IAES is a term in federal law that refers to a setting where:

- the student can continue to progress in the general curriculum, although in another setting;
- the student can continue to receive services and modifications that will enable the student to meet the goals set out in the IEP; and
- the setting includes services and modifications designed to prevent a recurrence of the offense.

The ARD committee should verify that DAEP satisfies these standards.

## **AFTER THE DAEP CONFERENCE & ARD MEETING, IF THE STUDENT IS ORDERED TO DAEP:**

**Step 16** The following are some of the issues that your DAEP rules should address:

- Withdrawal before or after the DAEP placement conference,
- Compulsory attendance in DAEP, and whether transportation will be provided,
- Preparation of a transition plan for a student returning from DAEP, and
- Special behavior requirements.

If DAEP was ordered pursuant to Texas Education Code § 37.006 (and not a local reason for DAEP placement), under cover letter send a copy of the DAEP Placement Order to the authorized officer of the juvenile court *within two business days* following the DAEP placement conference. Tex. Educ. Code § 37.010(a).



See Special Education DAEP form entitled “Step 16: Letter to Juvenile Court Enclosing DAEP Order”

**Step 17** Provide written notice of the DAEP placement 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 § 37.006(o).



See Special Education DAEP form entitled “Step 17: DAEP Notice Memo to Instructional Educators”

#### **AFTER DAEP PLACEMENT IS ORDERED:**

**Step 18** Ensure that the student is receiving the appropriate academic instruction, as well as all services provided for in the student’s IEP, while in DAEP. The student must receive an academic and self-discipline program that includes instruction in each foundation curriculum course the student was enrolled in prior to DAEP placement if the course is necessary to meet the student’s individual graduation plan, including special education services. The student’s four-year graduation plan (minimum, recommended, distinguished, or advanced) may not be altered when the student is assigned to DAEP. Additionally, students placed in DAEP must have an opportunity to complete coursework they were enrolled in at the time of removal that is required for graduation, at no cost to the student, before the beginning of the next school year. Tex. Educ. Code § 37.008(l) & 19 TAC §103.1201(f).

Educators at alternative education programs and regular education programs must prepare and follow a personalized transition plan for each student who is being released from an alternative education program to a regular classroom. Tex. Educ. Code § 37.023.

**Step 19** Conduct a review of the DAEP placement at intervals not to exceed 120 calendar days.

- If possible, provide the parent/guardian with written confirmation of the agreed date, time, and location for the review.

- At the review, the student or parent/guardian must be given an opportunity to present arguments for the student's return to regular classes.
- If the student attends high school, the review must include looking at the student's progress toward graduation and establishing a specific graduation plan for the student. Tex. Educ. Code § 37.009(e).
- NOTE: Students that are expelled and placed in an alternative setting pursuant to Texas Education Code § 37.0081 are subject to the same periodic review as students placed in DAEP for other reasons.



See Special Education DAEP form entitled “Step 20: Letter to Parents Scheduling DAEP Placement Review”

## **Step 20**

For students placed in DAEP because they are registered sex offenders, conduct a committee review of the DAEP placement at the end of the first semester (or the school day equivalent of a semester's worth of time). Tex. Educ. Code § 37.306.

The committee reviewing the student's placement must include a classroom teacher from the campus the student would be assigned to if not in DAEP, the student's parole or probation officer (if one has been assigned; if not, then a representative of the juvenile probation department), an instructor from DAEP, a district designee selected by the Board of Trustees, and a counselor employed by the school district. For special education students, the review must be conducted by a duly constituted ARD committee unless the ARD committee requests the assistance of the review committee described above. By a majority vote, the committee must decide to recommend to the Board whether the student should continue in DAEP or be returned to the regular classroom.

The Board or its designee (different from the person serving on the review committee) must follow the committee's recommendation to return the student to the regular classroom unless the designee finds the student's presence in the regular classroom is a threat to the safety of others, is detrimental to the educational process, or is not in the best interests of the district's students. Conversely, the Board or its designee must follow the committee's recommendation to continue the student's placement in DAEP unless the Board or its designee finds the student's presence in the regular classroom is not a threat to the safety of others, is not detrimental to the educational process, or is not contrary to the best interests of the district's students.

If the outcome of the review is that the student must remain in DAEP, the review committee must reconsider the student's DAEP placement before the beginning of the next school year.

**Step 21** If the district receives notice under Article 15.27(g) of the Texas Code of Criminal Procedure that the student's criminal charges for *off-campus* misconduct have been refused or the court or jury found the student not guilty, the superintendent or designee must schedule a review of the student's placement. Tex. Educ. Code § 37.006(h).

- If possible, provide the parent/guardian with written confirmation of the agreed date, time, and location for the review.
- The review must be scheduled no later than the third class day after receiving notice.
- The student may not be returned to the regular classroom pending the review.
- The DAEP placement may be continued only if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.



[See Special Education DAEP form entitled "Step 22: Letter to Parents Scheduling Review of Criminal Status"](#)

**Step 22** If the student was placed in DAEP for 90 school days or longer, the district must administer a Commissioner-approved assessment instrument on the date of the student's departure from DAEP or as near that date as possible. Assessment results reflecting the pre- and post-assessment scores must be provided to the student's locally assigned campus within 10 days. Tex. Educ. Code § 37.0082 & 19 TAC § 103.1203.

**Step 23** Maintain internal documentation of the DAEP placement to be used in the annual report to the Commissioner of Education. Tex. Educ. Code § 37.020.

## **IN THE EVENT OF AN APPEAL OF THE DAEP PLACEMENT:**

**Step 24** If the parent/guardian appeals the DAEP placement as provided by policy FNG, FOC, or the student code of conduct, first confirm that the appeal was filed in a timely manner in accordance with those local policies. CAUTION: It may not be clear what may be appealed under those policies and what should go to a due

process hearing; always check with Special Education counsel in making a determination about the applicable appeal route.

- Step 25** An administrator should contact the parent/guardian to schedule an appeal conference. The conference must be conducted in accordance with the timelines set out in policy FNG, FOC, or the student code of conduct, as appropriate. If time permits, provide the parent/guardian with written confirmation of the date, time, and location for the appeal conference.



See Special Education DAEP form entitled “Step 26: Scheduling DAEP Appeal”

- Step 26** Arrange to have the district’s legal counsel present at the DAEP appeal if the student will have an attorney or other advocate present.

- Step 27** Arrange to make an audio/video recording of the DAEP appeal. Check the district’s policy requirements.

- Step 28** If a non-parent who was not present at the initial DAEP placement conference attends the DAEP appeal in lieu of the parent or guardian, obtain written consent from the parent/guardian or eligible student in lieu of a parent/guardian 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 DAEP appeal but refuses to provide written consent, make sure the audio recording reflects verbal consent and the refusal to sign a written consent.



See Special Education DAEP form entitled “Step 10: Authorization to Release Education Records”

- Step 29** At the appeal conference an administrator will listen to the concerns expressed by the parent/guardian.

- Step 30** Following the DAEP appeal, the administrator should issue a written response within the timelines and other rules set out in local policy FNG, FOC, and the student code of conduct.