

A CHECKLIST FOR STUDENT EXPULSION (Special 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 includes the procedures for the expulsion 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 school 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. **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.

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. Tex. Educ. Code § 37.005(c).

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).

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 expulsion form "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.

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

Step 7

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. Also inquire about parent consent to share special education records with law enforcement or judicial authorities.

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 special education expulsion forms entitled “Step 7-A: Notice to Parents Scheduling Expulsion Hearing” and “Step 7-B: Waiver of Right to an Expulsion Hearing”

Step 8 Contact the parent/guardian to schedule an ARD committee meeting to occur **after** the expulsion hearing. An ARD committee meeting is still necessary even if the parent waives the expulsion hearing.

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 include the “Notice of Procedural Safeguards” document.

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 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 special education 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 special education 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.
- **Indicate that enforcement of the expulsion order is subject to action by the ARD committee.**
- 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 special education expulsion forms entitled "Step 20-A: Expulsion Order" and "Step 20-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. The written notice must identify that enforcement of the expulsion order is subject to action by the student's ARD committee. 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 expulsion forms entitled “Step 21-A: Letter to Parents Providing Expulsion Order” and “Step 21-B: Letter to Parents Providing Expulsion Order If Hearing Waived”

AT THE ARD MEETING:

Step 20 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 21 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 expelled 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 expelled unless the parents and school agree to a change of placement as part of a modification to the student's BIP. This does not constitute a disciplinary placement. Even with parent agreement, 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. 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 can be expelled. 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 expulsion.

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 Interim Alternative Educational Setting (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 the student will be served in a setting that satisfies these standards.

AFTER THE EXPULSION HEARING & ARD MEETING, IF THE STUDENT IS EXPELLED:

Step 22 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 special education expulsion form entitled “Step 22 & 23: Letter to Juvenile Court/JJAEP Enclosing Expulsion Order”

Step 23 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.



See special education expulsion form entitled “Step 22 & 23: Letter to Juvenile Court/JJAEP Enclosing Expulsion Order”

Step 24 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 special education expulsion form entitled “Step 24: Expulsion Notice to Instructional Educators”

Step 25 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 20 of the Special Education DAEP Checklist in this guide for more information on how to conduct that review.

Step 26 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 27** 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 28** 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 29** 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 special education expulsion form entitled "Step 29: Letter to Parents Scheduling Expulsion Appeal"

- Step 30** 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 31** 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 32 Post the meeting agenda at least 72 hours before the scheduled Board meeting. Tex. Gov't Code § 551.043.

Step 33 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 special education expulsion form entitled “Step 33: Authorization to Release Education Records in Open Session”

Step 34 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 35 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.