



The Legal ABCs of DAEPs

Presented by:
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The Legal **ABCs** of DAEPs

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Agenda: The Legal **ABCs** of DAEPs

Academics, Development, & Operations

- DAEP Defined; DAEP Discipline Offense Types & Terms; Academic Course Requisites; Standards of Operation and Statutory Requirements

Behavior Management Program & Student Discipline Techniques

- Student Discipline; Multi-Tiered Systems of Support (MTSS); Statutory Transition Requirements; Law Enforcement; Search & Seizure; School Safety and Security

Counseling, Advising, & Student Supports

- Support, Program, & Social Services; Mental & Behavioral Health Resources



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ABOUT ME ...



Attorney specializing in Education & School Law

- Licensed Attorney and Education Leader/Educator
- Education: Doctor of Jurisprudence (J.D.) & Doctor of Education (Ed.D.)

Prior career in public school education in the 4th largest Texas school district (SATX)

- Texas State Board of Education (SBOE) Certifications:
 - Subject Areas: Physics and Integrated Physics & Chemistry (IPC or Physical Science)
 - Leadership: Superintendent and Mid-Management/Principal
- 26 years as education leader, district & campus administrator, and educator:
 - Director of District Department, deemed internal legal hub for student discipline matters & other
 - For over a decade: Trained campus admin on student discipline and legal aspects & served as consult for approximately 150 campuses, all levels; supervised hearing officers and truancy specialists/attendance officers; served on the Bexar County JJAEP Executive Board; worked with DAEP, JJAEP staff.
 - District Hearing Officer
 - Conducted thousands of student discipline hearings for all levels involving the full spectrum of discipline offenses; Zero parent appeals or grievances
 - High School Assistant Principal
 - High School Science & Math teacher

Prior experience legal practice:

- Criminal Defense & Criminal Appellate, Family Law, Public Interest Law & Civil Rights, School/Education Law, & Other

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Student Discipline: A Historical Perspective

- In the 1980s – War on Drugs, highly punitive model; these militarized solutions spilled into schools; 1990 Federal Gun Free School Zones Act
- Early 1990s, State Board of Education (SBOE) begins call for zero tolerance policies to prevent school violence and drug abuse; “promote zero-tolerance guidelines for behaviors and actions that threaten school safety.”
- During the 74th Legislative Session (1995), then Gov. George Bush wrote: *“We must adopt one policy for those who terrorize teachers or disrupt classrooms – zero tolerance.”*
- Legislature rewrites **Texas Education Code Chapter 37: Law And Order**
 - ✓ Outlines offenses for which schools must refer to law enforcement; lower-level offenses are discretionary.
 - ✓ Created DAEPs, JJAEPs, and gives schools discretion to refer students to exclusionary settings for other disciplinary (low level) offenses
 - ✓ Outlines which offenses require Expulsion (JJAEP) and those that require DAEP placement; and discretionary expulsion and discretionary DAEP.



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What is a DAEP?

And how is it different from a JJAEP?

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TEC Chapter 37: Two Types of Alternative Education Programs (AEPs)

Disciplinary Alternative Education Program (DAEP) - TEC § 37.008

- A **setting for lower-level discipline offenses**, like assaultive behavior toward another student, marijuana violation, possession of a vaping or e-cig device, or disruption of the school environment.
- **Operated and Managed by the school district(s), locally.**
- **Located on or off a regular school campus.** A school district may provide a DAEP jointly with one or more other districts.
- **Focus on English language arts, mathematics, science, social studies, and self-discipline.**
- **Provides for students' educational and behavioral needs.**
- **Provides supervision and counseling.**
- **Employs only teachers who meet all certification requirements established under Subchapter B, Chapter 21.**
- **Students in a DAEP shall be separated from students in a JJAEP and students who are not assigned to the DAEP.**

Juvenile Justice Alternative Education Program (JJAEP) – TEC § 37.011

- An **expulsion setting reserved for more serious level discipline offenses**, like possession of firearm, felony controlled substance, or on-campus Title V felony offenses.
- **Operated and Managed by the Juvenile Board of the County** subject to approval by the Texas Juvenile Justice Department (TJJD).
- **Required for Counties with a population greater than 125,000** who enter annually enter into a joint memorandum of understanding (MOU).
- **Smaller counties without a JJAEP often use a DAEP setting** to house their expelled students.
- **Focus on English language arts, mathematics, science, social studies, and self-discipline.**
- Academically, the **mission of the JJAEP shall be to enable students to perform at grade level.**
- **JJAEP students must be separated from DAEP students and other non-JJAEP students.**



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More Legal ABCs on DAEPs: Standards of Operation

TEC § 37.008

- **If student is placed at DAEP by another school district** (in state or out), upon receipt of a placement order, **the district may continue or modify the placement or allow the student to attend regular classes** without completing the placement.
- A **district may take action if student is placed at a DAEP by an open-enrollment charter school** and a placement order is provided.
- A **program of educational and support services may be provided to a student and the student's parents when the offense involves drugs, e-cigarettes, or alcohol as specified under Section 37.006 or 37.007.**
 - A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

TAC§ 103.1201

- **Elementary grade students assigned to the DAEP shall be separated from secondary grade students** assigned to the DAEP.
- The **certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students** in elementary through high school grades.
- **Each school district is responsible for the safety and supervision of the students** assigned to the DAEP.
- **Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior** and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.



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Disciplinary Alternative Education Program (DAEP) Defined

- **What is a DAEP?**
- A disciplinary alternative education program (DAEP) established in conformance with the Texas Education Code (TEC), § 37.008, and this section is defined as an educational and self-discipline alternative instructional program, adopted by local policy, for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP.



Texas Administrative Code, Title 19, Part 2 TEA, Chapter 103 Health and Safety, Rule §103.1201(a)

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DAEP Legal Reading: Texas Education Code AND Chapter 103: Health & Safety Code, Subchapter CC

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TEC Chapter § 37.008: Discipline Alternative Education Programs (DAEPs)

Act 1, 2009.	(5) alternative education program	each educator who directs and supervises the instruction of students	each educator who directs and supervises the instruction of students	student's high school graduation requirements only as provided by this subsection. A school district shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The school district may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.
Act 2009.	(6) A student's transcript shall be confidential	Each educator shall maintain confidential information about a student's performance, except information that is required to be disclosed by law.	Each educator shall maintain confidential information about a student's performance, except information that is required to be disclosed by law.	(1-1) A school district shall provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (1) to provide the student with an opportunity to complete coursework required for graduation. The notice must:
Act 2011.	(7) An alternative education program shall be subject to a liability, a chapter or a section of the Texas Education Code	district in which alternative education program is provided shall allow the student of placement. A district shall:	district in which alternative education program is provided shall allow the student of placement. A district shall:	(1) include information regarding all methods available for completing the coursework; and
Act 2015.	(8) A community or local fund placed in a district is counted as district funds	education program and the charter order; or	education program and the charter order; or	(2) state that the methods are available at no cost to the student.
Act 2023.	(9) A disciplinary alternative education program shall be established in a district	of the placement of the placement of the placement	of the placement of the placement of the placement	(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.
Act 2024.	(10) A disciplinary alternative education program shall be established in a district	district are enrolling.	district are enrolling.	(m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The



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Chapter 103: Health & Safety: Subchapter CC Commissioner's Rules Concerning Safe Schools

Texas Administrative Code

TITLE 12 EDUCATION
PART 1 TEXAS EDUCATION AGENCY
CHAPTER 103 HEALTH AND SAFETY
SUBCHAPTER CC COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS
RULE 103.1201 Standards for the Operation of School District Disciplinary Alternative Education Programs

(a) A disciplinary alternative education program (DAEP) established in conformance with the Texas Education Code (TEC), §37.008, and this section is defined as an educational and self-discipline alternative instructional program, adopted by local policy, for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP.

(b) Each school district participating in a shared services arrangement (SSA) for DAEP services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus required by the TEC, §§11.251 and 11.252, include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

- (1) student groups served, including overrepresentation of students from economically-disadvantaged families, with ethnic and racial representations, with a disability who receive special education services, or receiving limited English proficiency-English learner services;
- (2) attendance rates;
- (3) pre- and post-assessment results;
- (4) dropout rates;
- (5) graduation rates, and
- (6) recidivism rates.

(c) A DAEP may be located on-campus or off-campus in adherence with requirements specified in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). For reporting purposes, the DAEP shall use the county-district-campus number of the student's locally assigned campus (the campus the student would be attending if the student was not attending the DAEP).

(d) An individual school district or an SSA may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider.

(e) The campus of accountability for student performance must be the student's locally assigned campus, including when the individual school district or SSA contracts with a third party for DAEP services.

(f) Each school district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services.

(g) A student's high school personal graduation plan required under TEC, §28.02121, may not be altered when the student is assigned to a DAEP. A student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year, including correspondence or distance-learning opportunities or summer school. A district may not charge for a course required under this section.

(h) The school day for a DAEP shall be at least 240 minutes in length each day, including admissions and recesses as required under the TEC, §21.081.

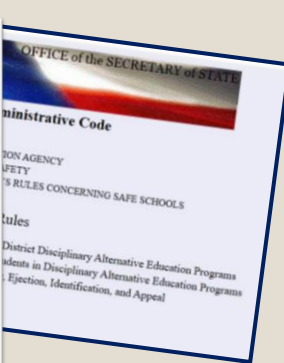

(i) Notwithstanding the TEC, §37.008(a)(3), summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.

(j) A DAEP program serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program established by a duly-constituted admission, review, and dismissal committee, in accordance with the TEC, §37.004, and federal requirements.

(k) Each school district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in the TEC, §22.0511, shall not be impacted.

(l) The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. Elementary grade students assigned to the DAEP shall be separated from secondary grade students assigned to the DAEP. The designation of elementary and secondary will be determined by adopted local policy.


(*) The DAEP shall be assessed and revised or replaced as health, safety, and attendance.

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Behavior Management Program/System & Student Code of Conduct

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Behavior Management Program/System

- It's more than just your SCC

A school/district's comprehensive system of implementing effective strategies & techniques that advances the school climate/culture by eliciting positive behavior, reinforcing/restoring the school connection & relationships, promoting responsibility, respect, & safety, and empowering students to make good decisions.

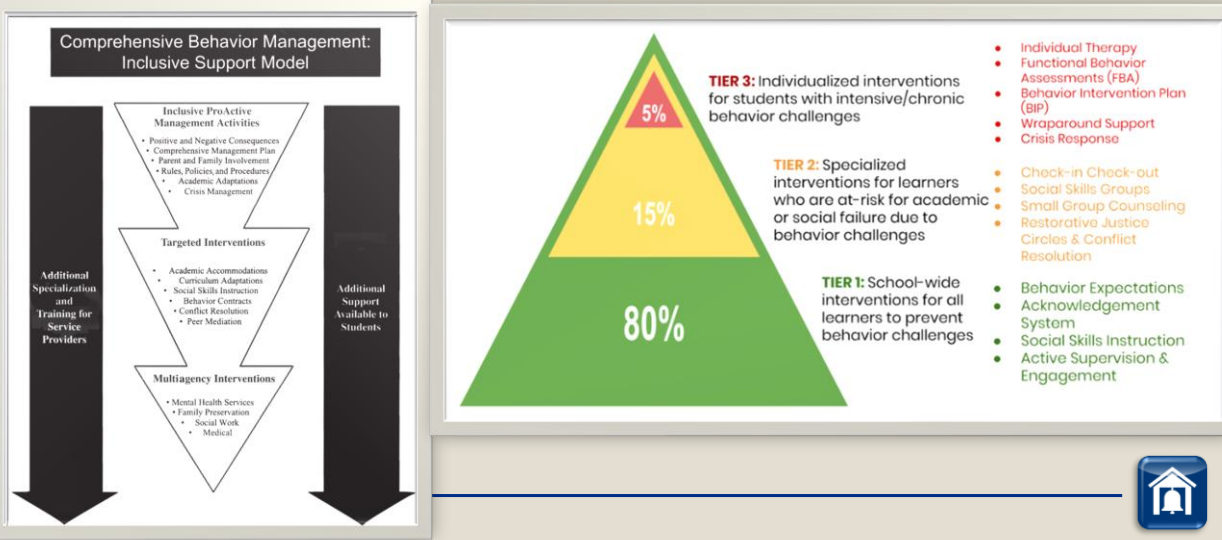
1. **State the purpose/objective:** Define your vision, beliefs, and values
2. **Set the stage:** Establish expectations and rules
3. **Action plan:** Develop your supports and interventions
4. **Educate/Buy-in:** Staff commitment and awareness/training
5. **Publish:** Communicate your plan and policies
6. **Evaluate:** Analyze your progress & outcomes and adjust for improvement



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Behavior Management Models:

Samples of Multi-Tiered Systems of Support (MTSS) Concept



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Student Discipline

- ✓ Texas Education Code, Chapter 37: Discipline; Law & Order
- ✓ Court Cases – Case Law
- ✓ ___ ISD Board Policies, LEGAL and LOCAL Policies
- ✓ ___ ISD Student Code of Conduct
- ✓ Other legal statutes (i.e., Texas Administrative Code, Texas Penal Code, Texas Code of Criminal Procedure, Texas Family Code, etc.)



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Student Code of Conduct

- **Mandatory Expulsion**
 - Offense for which a student **SHALL BE** expelled.
 - Directed by Texas Education Code Chapter 37.
- **Discretionary Expulsion**
 - Offense for which a student **MAY BE** expelled.
 - Directed by Texas Education Code Chapter 37.
- **Mandatory DAEP**
 - Offense for which a student **SHALL BE** placed in a DAEP.
 - Directed by Texas Education Code Chapter 37.
- **Discretionary DAEP**
 - Offense for which a student **MAY BE** placed in a DAEP *and/or* suspended OSS/ISS/Other.
 - Directed by Texas Education Code Chapter 37 & Board-approved local policy/SCC.



Students younger than 6 cannot be assigned to DAEP (unless brings a firearm to school); student younger than 10 cannot be expelled.

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ISD FO (LEGAL) Policy & Student Code of Conduct

STUDENT DISCIPLINE	FO (LEGAL)
<p>Note: The Board has adopted an innovation plan¹ that affects application of provisions in this legally referenced policy.</p> <p>Student Code of Conduct</p> <p>The board shall adopt a Student Code of Conduct for a district, with the advice of its district-level committee. The Student Code of Conduct must:</p> <ol style="list-style-type: none"> Specify the circumstances, in accordance with Education Code Chapter 37, Subchapter A, under which a student may be removed from a classroom, campus, disciplinary alternative education program (DAEP), or vehicle owned or operated by the district. Specify conditions that 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, as provided by Education Code 37.005 [see FOE], or expelled, as provided by Education Code 37.007 [see FOD]. Specify that consideration will be given, as a factor in each decision concerning suspension, removal to a DAEP, expulsion, or placement in a juvenile justice alternative education program (JJAEP), regardless of whether the decision concerns a mandatory or discretionary action, to: <ol style="list-style-type: none"> Self-defense; Intent or lack of intent at the time the student engaged in the conduct; A student's disciplinary history; A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct; A student's status in the conservatorship of the Department of Family and Protective Services; or A student's status as a student who is homeless. Provide guidelines for setting the length of removal to a DAEP or of expulsion. Except as provided by Education Code 37.007(e) (Gun-Free Schools Act [see FOD]), a district is not required to establish a minimum term of removal or expulsion. 	



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Mandatory Expulsion

Sample offenses (TEC § 37.007)

- **Unlawful carrying of weapons, including a handgun or firearm (TPC 46.02)**
- **Possession of Prohibited Weapons (TPC 46.05)**
 - A machine gun
 - A short-barrel firearm
- **Controlled substance, dangerous drugs, if conduct is punishable as a felony, including heroin, cocaine, methamphetamine, LSD, etc. (B)**
- **On-campus/district property, Texas Penal Code Title V Felony (offenses against a person):**
 - **Sexual Assault (TPC 22.011)**
 - **Aggravated Assault (TPC 22.02)**
- **Arson**



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Discretionary Expulsion

Sample offenses (TEC § 37.007)

- **'Serious Misbehavior' while @ DAEP, as defined:**
 - Deliberate violent behavior that poses a direct threat to the health or safety of others;
 - Extortion, Coercion;
 - Public lewdness, indecent exposure, criminal mischief, personal hazing, or harassment
- **Felony Criminal Mischief (TPC 28.03)**
- **Controlled substance, dangerous drugs – misdemeanors (Health & Safety Code 481, 483)**
- **THC Felony Controlled Substance (also mandatory DAEP – TEC 37.006 (a)(C-1) & 37.007(b)(2)(A)(i))**
- **Assault w/Bodily Injury against Staff (TPC 22.01)**
- **False Alarm or Terroristic Threat (TPC 42.06, 22.07)**
- **Felony Weapon/Title V Felony Offenses within 300 feet of school property**
- **Engages in Bullying that encourages a student to commit/attempt suicide; incites violence against a student through group bullying; or releases or threatens to release visual material**
 - May also be a discretionary DAEP



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Mandatory DAEP

Sample offenses (TEC § 37.006)

- **Assault w/ Bodily Injury to Student**
- **Public Lewdness or Indecent Exposure (TPC 27.07, 27.08)**
- **Marihuana, THC, e-Cigs, Alcohol**
- **Conduct punishable as a Felony (under TPC)**
- **Harassment (under TPC 42.07 (1), (2), (3), or (7)) against employee**
- **Deferred prosecution, court/jury finding, or reasonable belief that a Title V Felony (or Aggravated Robbery) has been committed regardless of location & threatens safety of others or detrimental to educational process**
 - May also be a discretionary expulsion



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Discretionary DAEP

Sample offenses

- Engages in Bullying, as described previously
- Assault (no bodily injury) with threat of imminent bodily injury*
- Assault by offensive or provocative physical contact*
- Inappropriate Sexual Behavior*
- Profanity*
- Disruption to the School Environment*
- Flagrant Insubordination*
- Criminal mischief*
- Reasonable belief of a Non-Title V Felony Offense & student's continued presence threatens the safety of others or detrimental to the educational process
 - Off-campus/district-property offense



*Locally-developed, Board-Approved Discretionary DAEP Offenses

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TEC § 37.001(4)(A-F):

Mitigating Factors

Student Code of Conduct must:

Specify that consideration will be given, as a factor in each decision concerning suspension (OSS/ISS), removal to a disciplinary alternative education program (DAEP), expulsion, or placement in a juvenile justice alternative education program (JJAEP), regardless of whether the decision concerns a mandatory or discretionary action, to:

- A. Self-defense;
- B. Intent or lack of intent at the time the student engaged in the conduct;
- C. A student's disciplinary history;
- D. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- E. A student's status in the conservatorship of the Department of Family and Protective Services; or
- F. A student's status as a student who is homeless.



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DUE PROCESS: Disciplinary Conferences and/or Disciplinary Hearings

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Texarkana ISD v. Lewis

Texarkana Indep. Sch. Dist. v. Lewis, 470 S.W.2d 727 (Tex. Civ. App.--Texarkana 1971)

- Suit on behalf of 8 students who had allegedly participated in a major disruptive activity at a high school.
 - Although only 8 were party to this suit, 212 students were involved in a vandalism and in fighting between black and white students on school grounds.
 - 76 students were sent expulsion notices.
- Seeking to enjoin the district from suspending or expelling students.
- Trial Court entered judgment that guidelines adopted by the board were vague and indefinite, that expelled students were not afforded procedural due process.
- DC granted a permanent injunctive relief (i.e., no suspension or expulsion) until the district adopted a method of holding and conducting hearings furnishing students with procedural due process.



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Texarkana ISD v. Lewis

Texarkana Indep. Sch. Dist. v. Lewis, 470 S.W.2d 727 (Tex. Civ. App.--Texarkana 1971)

Trial Court set out the following method for holding and conducting the hearings as guides for procedural due process:

- ✓ (a) that written notice be given to the student involved and to his parents in adequate time for them to prepare for the hearing;
 - ✓ (b) that a specific statement of the offense charged against the student be set out in the notice;
 - ✓ (c) that the student shall be informed in the written notice that he has the right to be represented by counsel at all hearings;
 - ✓ (d) that the student be informed in the said written notice that he may make a record at his own expense of the evidence introduced at the hearing, if he desires;
 - ✓ (e) that all testimony received either by the School Principals or by the Board of Trustees shall be introduced in the presence of the student; his parents and counsel, if they desire to be present, with the right of the student, his parents and counsel to cross-examine.⁷
- School District Appealed.



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Texarkana ISD v. Lewis

Texarkana Indep. Sch. Dist. v. Lewis, 470 S.W.2d 727 (Tex. Civ. App.--Texarkana 1971)

- Court of Civil Appeals held, in part, Students were denied procedural due process in that:
 - Students were not given specific written notice of the charges against them;
 - It is necessary they be apprised with some particularity of the offense with which he is charged, discipline associated.
 - Students were not allowed sufficient time to prepare a defense;
 - That written notice be given to student & parents in adequate time for them to prepare for the hearing.
 - Students were not notified of their right of counsel;
 - Should the matter appear to him to be of sufficient gravity to make legal assistance desirable (i.e., expulsion), or when district proceeds with counsel.
 - Students were not notified of their right to make a record made of the evidence introduced at the hearing;
 - While desirable, not mandatory. If they record, the school district should record.
 - Board of Trustees continued to hear evidence during its deliberations when students and parents were not present; with the right of the student, parents, and his counsel to cross-examine.
 - Right to cross-examination and confrontation is not mandatory (ordinarily not a matter or right) but has been allowed and may be desirable in assessing credibility of witnesses. Notably, board of trustees do not have subpoena power.
- All must be present to ensure fairness.



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TEC §37.009 Conference; Hearing; Review: Notice of Discipline Conference or Hearing

- ❑ **If the discipline offense(s) warrants consideration of a possible DAEP assignment, a conference is required.** (TEC § 37.009(a)).
 - ✓ Schedule conference with the campus behavior coordinator/admin, parent, student.
 - ✓ Student is entitled to written or oral notice of the reasons for removal; an explanation of the basis for the removal; and an opportunity to respond to the reasons for removal.
- ❑ **If the discipline offense(s) warrants consideration of a possible Expulsion placement, a hearing is required.** (TEC § 37.009(f)).
 - ✓ Board or Designee must provide the student a hearing, affording due process.
 - ✓ Parent invited to attend, in writing.
 - ✓ At the hearing, student is entitled to be represented by the student's parent/guardian.



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TEC §37.009 Conference; Hearing; Review: Notice of Discipline Conference or Hearing

- ❑ **Whether the AEP consideration is for a DAEP assignment or Expulsion placement (to JJAEP or alternate setting), we recommend that the Parents & Student:**
 - ✓ Receive notice of discipline offense(s) allegation(s); written notice is always preferred;
 - ✓ Receive an invitation to attend the conference or hearing and opportunity to be represented by legal counsel if they wish;
 - ✓ Receive explanation of the basis for the removal, which includes providing copies of evidentiary or investigative documentation (redacted where appropriate) so that they may have access to all relevant information in which to prepare a defense, if you will.
 - ✓ Have an opportunity to respond to the reason(s) for the removal, commonly known as due process, which includes the presentation of their defense.
- ❑ **This 'Conference; Hearing; Review' process promotes transparency, communication, uniformity, objectivity, and a diligent review & analysis of the investigative evidence, which is a proven method to reducing appeals and grievances.**



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DUAL CONSEQUENCES:

Discipline Offense
(Educational)

versus

Criminal Offense
(involving law
enforcement)

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Dual Consequences: Educational & Criminal Discipline Offense v. Criminal Offense

Dual Consequences:

1. Educational: Texas Education Code (TEC) Chapter 37
2. Criminal: Texas Penal Code (TPC)

- Why dual consequences? For all offenses?
- Does the TEC cite TPC?
- Must school administrators and law enforcement conclude the same offense?
- Implications, if different?
- **Conferring with and involving Law Enforcement *when necessary and appropriate* is critical to the safety of schools.**



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Texas Education Code: Law Enforcement Involvement

TEC § 37.081 – School District Peace Officer, SROs, and Security Personnel

- A school district may:
 - Employ or contract security personnel
 - Enter into an MOU with a local law enforcement agency, county, or municipality that is employing commissioned peace officers for the provision of SROs
 - Contract with a security services contractor, and
 - Commission peace officers



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Texas Education Code: Law Enforcement Involvement

TEC § 37.143 – Citation Prohibited; Custody of Child

- A law enforcement officer (Peace Officer or SRO) may **not** issue a citation to a child who is alleged to have committed a school offense. (SB 393 in 2013).
- School offense is defined as an offense committed by a child enrolled in public school that is a Class C misdemeanor other than a traffic offense and that is committed on property under the control and jurisdiction of a school district.
- School offenses include disruption of the school environment and disorderly conduct :
 - profanity
 - vulgar language
 - offensive gesture
 - abuse or threatens a person
 - fighting



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Texas Education Code: Law Enforcement Involvement

TEC § 37.144 – Graduated Sanctions for Certain School (2013)

- ❑ A school district *may* develop a system of graduated sanctions that may be required to be imposed on a child before a **complaint** is filed against a child for a school offense for **disruption of classes or transportation, or disorderly conduct** (i.e., profanity, vulgar language, offensive gesture, abuse or threatens a person, fighting, chemical odor)
- ❑ **Must include multiple graduated sanctions:**
 - Warning letter
 - Behavior contract
 - Performance of school-based community service
 - Referral to counseling, community-based services, or other services (in and out school services) aimed at addressing the child’s behavioral problems.



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Texas Education Code: Law Enforcement Involvement

TEC § 37.144 – Graduated Sanctions for Certain School (2013)

- ❑ A school district *may* develop a system of graduated sanctions that may be required to be imposed on a child before a **complaint** is filed against a child for a school offense for **disruption of classes or transportation, or disorderly conduct** (i.e., profanity, vulgar language, offensive gesture, abuse or threatens a person, fighting, chemical odor)
- ❑ **Class C *Complaint v. Citation* – not one in the same.**
 - ❑ **Filing a criminal complaint with juvenile or criminal court must be supplemented with the following documents:**
 - The offense report;
 - A statement by the witness to the conduct;
 - A statement by the victim, if any; and
 - A statement from a school employee stating:
 - Whether the child is eligible to receive special education services; and
 - The graduated sanction imposed on the student prior to the filing of the complaint, if the school district has adopted such a system.



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Texas Education Code § 37.081 (2019) School District Peace Officers, SROs, & Security

- **(d-1): ISD Peace Officers, SROs, Security Personnel shall perform law enforcement duties for the school district that must include protecting:**
 - (1) the safety and welfare of any person in the jurisdiction ...; and
 - (2) the property of the school district.
- **(d-2): A school district may not assign or require as duties of an ISD Peace Officer, SROs, or Security Personnel:**
 - (1) routine student discipline or school administrative tasks; or
 - (2) contact with students unrelated to the law enforcement duties ...



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Texas Education Code § 37.015 & § 37.0151 Law Enforcement Notification

- **For offenses listed below in this section, occurring in school, on school property, or at a school-sponsored/related activity, the Principal or Designee:**
 - **SHALL notify any school district police department** and the police department of the municipality in which the school is located, or, if the school is not in a municipality, the sheriff of the county in which the school is located **if the principal has reasonable grounds to believe that the student engaged in any of the offenses listed below in this section.** TEC § 37.015(a).
 - **SHALL notify each instructional or support staff who has regular contact with the student whose conduct is the subject of the notice.** TEC § 37.015(e).
 - **MAY make a report to the appropriate law enforcement agency for conduct constituting assault or harassment.** TEC § 37.0151.



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Texas Education Code § 37.015 & § 37.0151 Required Law Enforcement Notification

- **Offenses requiring notification:**
 - **Conduct for which a student may be expelled** under TEC 37.007(a), (d), or (e), which includes aggravated assault, assault bodily injury against employee or in retaliation against employee, deadly conduct, arson; terroristic threat; possession/use/under the influence/sale of controlled substance, or marijuana; organized criminal activity; unlawful carrying of prohibited weapons/devices, to include club, explosive weapon, firearm, handgun, location-restricted knife, knife, machine gun, short-barrel firearm, armor-piercing ammunition, hoax bomb, chemical dispensing device, zip gun.
 - **May make a report:** Assault (TPC 22.01) and Harassment (TPC 42.07)
 - See statute for a complete list of offenses.



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STUDENT SEARCHES:

Reasonable Suspicion Student
Searches (individualized)

versus

Administrative Student Searches
(ex: uniform search procedure
upon entering the DAEP)

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New Jersey v. TLO (1985)

Reasonable Suspicion Student Searches (Individualized)

- ❑ **Fourth Amendment prohibits unreasonable searches and seizure** and applies to searches of students by school authorities.
- ❑ This landmark case addressed the application of the 4th amendment to school searches; its analysis has become a guide for all courts in deciding school searches:
 - ❑ Rejected 'In Loco Parentis Doctrine'
 - ❑ Creating a balancing test: governmental and private interests
 - ❑ **4th Amendment applies to public schools but in a diminished capacity**
 - ❑ Does not require a warrant or a showing of probable cause
 - ✓ **Reasonable Suspicion Standard**
- ❑ Determining the reasonableness of a student search involves a two-fold inquiry:
 - (1) **The search must be justified at its inception.** Reasonable grounds must show that the search will turn up evidence that the student has violated or is violating either the law or SCC.
 - (2) **It must be reasonably related in scope to the circumstances at hand.** Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. *New Jersey v. TLO*, 469 U.S. 325, at 341 (1985). Why do you believe the item(s) will be found where you are looking?



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Administrative Student Searches

AKA "Special Need" Search Doctrine

- ❑ The **U.S. Supreme Court, and other courts, have permitted administrative searches where law enforcement authorities have no individualized suspicion when the searches are conducted as part of a general regulatory scheme to ensure public safety**, rather than as part of a criminal investigation to secure evidence of a crime. *Gibson v. State*, 921 S.W. 2d 747, 758 (Tex.App.-El Paso 1996, pet. denied).
- ❑ **Such searches are reasonable when the intrusion involved in the search is no greater than necessary to satisfy the governmental interest justifying the search** (i.e., courts balance the degree of intrusion against the need for the search).
 - Courts have approved "special need" searches in airport searches, courthouse security measures, license and registration vehicle stops, and border-patrol checkpoints.
- ❑ **Administrative Searches at schools have been upheld in various circumstances.**
 - ✓ Designed to prevent the occurrence of a dangerous event.
 - ✓ Aimed at an entire group of class of people rather than one particular person.
 - ✓ Will be upheld as reasonable if the intrusion involved is no greater than necessary to satisfy the governmental interest forming the basis for the search.



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Administrative Student Searches

In the Matter of P.P.

□ Key Facts:

- **Officer Jaime Perales performs routine searches of students entering an alternative high school (A DAEP) in Edgewood ISD in Bexar County.**
- During these searches, students must take off their shoes, socks, and belt, and submit to a pat down. Search was **relatively unobtrusive.**
- During one of these routine searches, **Officer Perales felt a little bulge inside P.P.'s right front pocket.**
- The officer swiped his finger into P.P.'s pocket and pulled out a plastic baggy containing a green leafy substance, which was tested and came back **positive for marihuana.**
- **Students were not allowed to bring anything with them to school;** all materials were provided.
- **School employed a uniform search procedure such that every student was searched upon entering the school no matter the circumstances.**
 - See *In re O.E.*, 2003 WL 22669014 at *4 (stating that [s]uch uniformity serves as a safeguard against an abuse of discretion on the part of school officials in making a determination of which persons will be searched).
 - **Accordingly, the search was an administrative search of the sort permissible under the Fourth Amendment.** See *Earls*, 536 U.S. at 838; *Vernonia*, 515 U.S. at 664-65.
- **Student signed a contract, which included an agreement to be searched each day before entering.** Therefore, the student had notice of the routine requirement, which reduced his expectation of privacy.
- Officer testified: **main objective of the search was the security of the students and staff at the school.**

In re P.P., III, No. 04-08-00634-CV, 2009 WL 331887 (Tex. App.--San Antonio Feb. 11, 2009)



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Administrative Student Searches

In re O.E.

□ Key Facts:

- **Student was adjudicated for possession of marihuana in a drug free zone.**
- **Student subjected to a routine search upon entering an alternative learning center – a DAEP.**
- **Upon entering each day, all students had to pass through a metal detector, be patted down, empty their pockets onto a tray, remove their shoes, and place their shoes on a table for inspection.**
- Before attending, **students and parents were required to attend an orientation session** where they were informed of school policies, including the search policy. **Required to sign contractual agreement.**
- **An officer found marihuana in O.E.'s shoe during the routine search.**
- **O.E. appealed the denial of his motion to suppress.**
- **Court of Appeals of Texas, Austin held:**
 - **The search was justified at the inception as a method of furthering the State's interest in maintaining a safe and discipline learning environment in a setting at high risk of drugs and violence.**
 - **Search procedure was tailored to meet the needs of the school setting.**
 - **Intrusion of students more limited expectation of privacy is reasonable.**
 - **Administrative search is permissible under the Fourth Amendment.**

In re O.E., No. 03-02-00516-CV, 2003 WL 22669014 (Tex. App.--Austin Nov. 13, 2003)



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Student Searches: Law Enforcement Involvement

- The **constitutional standard for a legal search in public schools is *reasonable suspicion***.
 - ✓ Includes campus administrators, teachers, and/or other school district staff authorized to conduct student searches.
 - ✓ It may also include school police and local police school liaison officers or school resource officers if acting with authority as a school official.
- **If law enforcement personnel are acting on behalf of the police or as an agent of the police, the evidentiary standard is elevated to the *higher standard of probable cause***.
 - The analysis is different, and the student's expectation of privacy is raised.
- **Courts will look at the conditions surrounding the search and *totality of the circumstances* to determine if the law enforcement staff is acting as an agent of the police or as a school official.**
 - The mere presence of police during a reasonable suspicion search does not, in and of itself, require the establishing of probable cause before initiating the search of the student.
 - **Courts will consider:**
 - the **purpose of the search**;
 - the **individual who initiated the search**;
 - **whether the law enforcement participated in or controlled the search or approved it.**



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Law Enforcement Searches: Reasonable Suspicion v. Probable Cause

- **The U.S. Supreme Court has not settled the issue of what standard should apply to a search in a school context when law enforcement is involved.**
- **However, from the Courts that have addressed this issue, the following have been well established:**
 - 1) Where school officials initiate the search and where law enforcement involvement is minimal, courts have held that reasonable suspicion test should be used.
 - 2) When school police or resource officers act as school officials, reasonable suspicion test should be used.
 - 3) When external or outside law enforcement initiate a search or when school officials act at the direction of outside law enforcement, the probable cause standard has been applied.



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NO MORE ZERO TOLERANCE : Student Discipline or Behavior Management Tool Kit

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Today's Landscape: No Zero Tolerance Student Discipline

• Zero Tolerance is no longer acceptable or appropriate. Why?

- It is antiquated.
- It is exclusive (ejecting the behavior and student from the traditional classroom setting) and not inclusive.
- It is reactive, not responsive.
- It lacks dimension and compassion.
- It does little to educate the student.
- It does not provide the student the opportunity for ascension.
- It is punitive, not restorative.
- And one size does not fit all.

“In academia, educators are trained to employ differentiated instruction when teaching. This values diversity and enhances opportunities to meet individualized instructional needs among students. Similarly, educators ought to use differentiated systems when managing student behavior and address the causative issue, rather than simply ejecting the student from the traditional instructional setting.”

- Dr. Vicky Luna Sullivan



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Restorative Practices

Restorative practices are differentiated relational approaches to building and sustaining relationships and managing student behavior.



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Restorative Practices

✓ **Certified Specialist
in
Restorative
Practices**



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Multi-Tiered Systems of Support (MTSS)

- **Multi-Tiered Systems of Support (MTSS)**

- Is a framework that focuses on intervention best practices with the areas of academics, behavior, and social/emotional supports for the whole child.



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TEC § 37.0013: Positive Behavior Program

- **Positive Behavior Program: districts may develop and implement a program - alternative for discretionary exclusionary discipline**
 - **Program must be**
 - **Age-appropriate and research-based;** Provide models for positive behavior; Promote a positive school environment; Provide alternatives to ISS, OSS, or DAEP
 - **Provide behavior management strategies,** including
 - Positive behavioral intervention and support (PBIS)
 - Trauma-informed practices
 - Social and emotional learning (SEL)
 - A referral for services as necessary and
 - Restorative practices
- **Restorative Practices is a multi-dimensional, progressive approach:**
 - Focuses on developing relationships, restoring relationships, and making connections** before instructional content.
 - Common themes:**
 - **Educators developing and maintaining relationships with students** through restorative practices.
 - **Students repairing any harm caused by their conduct and learning from the experience.**
 - Serves to **educate, support, and guide.**
 - Values the student** – critically distinguishes the misconduct from the student.



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SCC: Behavior Management Techniques

Discipline Management Techniques

Discipline shall be designed to improve conduct and to encourage students to adhere to their responsibilities as members of the school community. Disciplinary action shall draw on the professional judgment of teachers and administrators and on a range of discipline management techniques, including restorative practices. Discipline shall be based on the seriousness of the offense, the student's age and grade level, the frequency of misbehavior, the student's attitude, the effect of the misconduct on the school environment, and statutory requirements.

Students with Disabilities

The discipline of students with disabilities is subject to applicable state and federal law in addition to the Code of Conduct. To the extent any conflict exists, the district shall comply with federal law. For more information regarding discipline of students with disabilities, see policy FOF(LEGAL).

In accordance with the Education Code, a student who receives special education services may not be disciplined for conduct meeting the definition of bullying, cyberbullying, harassment, or making hit lists (see glossary) until an Admission, review, and Dismissal (ARD) committee meeting has been held to review the conduct.

In deciding whether to order suspension, DAEP placement, or expulsion, regardless of whether the action is mandatory or discretionary, the District shall take into consideration a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct.

Techniques

The following discipline management techniques may be used alone, in combination, or as part of progressive interventions for behavior prohibited by the Code of Conduct or by campus or classroom rules:

- Verbal correction, oral or written.
- Cooling-off time or a brief "time-out" period, in accordance with law.
- Seating changes within the classroom or vehicles owned or operated by the district.
- Temporary confiscation of items that disrupt the educational process.
- Rewards or demerits.
- Behavioral contracts.
- Counseling by teachers, school counselors, or administrative personnel.
- Parent-teacher conferences.
- Behavior coaching.
- Anger management classes.
- Mediation (victim-offender).
- Classroom circles.
- Family group conferencing.
- Grade reductions for cheating, plagiarism, and as otherwise permitted by policy.
- Detention, including outside regular school hours.

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- Sending the student to the office, another assigned area, or to in-school suspension (ISS).
- Assignment of school duties, such as cleaning or picking up litter.
- Withdrawal of privileges, such as participation in extracurricular activities, eligibility for seeking and holding honorary offices, or membership in school-sponsored clubs and organizations.
- Penalties identified in student organizations' extracurricular standards of behavior.
- Restriction or revocation of district transportation privileges.
- School-assessed and school-administered probation.
- Corporal punishment, unless the student's parent or guardian has provided a signed statement prohibiting its use.
- Out-of-school suspension, as specified in **Out-of-School Suspension** on page 14.
- Placement in a DAEP, as specified in **DAEP** on page 16.
- Expulsion and/or placement in an alternative educational setting, as specified in **Placement and/or Expulsion for Certain Offenses** on page 22.
- Expulsion, as specified in **Expulsion** on page 25.
- Referral to an outside agency or legal authority for criminal prosecution in addition to disciplinary measures imposed by the district.
- Other strategies and consequences as determined by school officials.

Prohibited Aversive Techniques

Aversive techniques are prohibited for use with students and are defined as techniques or interventions intended to reduce the recurrence of a behavior by intentionally inflicting significant physical or emotional discomfort or pain. Aversive techniques include:

- Using techniques designed or likely to cause physical pain, other than corporal punishment as permitted by district policy. [See policy FO(LLOCAL).]
- Using techniques designed or likely to cause physical pain by electric shock or any procedure involving pressure points or joint locks.
- Directed release of noxious, toxic, or unpleasant spray, mist, or substance near a student's face.
- Denying adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility.
- Ridiculing or demeaning a student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse.
- Employing a device, material, or object that immobilizes all four of a student's extremities, including prone or supine floor restraint.
- Impairing the student's breathing, including applying pressure to the student's torso or neck or placing something in, on, or over the student's mouth or nose or covering the student's face.
- Restricting the student's circulation.
- Securing the student to a stationary object while the student is standing or sitting.

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DAEP STANDARD OPERATIONS

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DAEP: Standard Operations

Policy Research on DAEP Best Practices

- **Summary of successful program practices in Texas DAEPs – AIM Study (2001, published in 2007)**

1. **Academic Performance and Instructional Arrangements**
2. **School Staff and Staff Development**
3. **Discipline, Behavior Management, and School Safety**
4. **Counseling and Support Services**
5. **Transitions**

<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>



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DAEP: Standard Operations

Policy Research on DAEP Best Practices

1. Academic Performance and Instructional Arrangements

- **Have high academic expectations for all students.**
- **Keep classes small in size** to facilitate connections and one-on-one interactions between teachers and students.
- **Develop individualized instructional plans and assessments using information exchanged between sending schools and DAEPs.**
- **Provide adequate special education services.**
- **Develop curricula with assistance from teachers in the regularly assigned classrooms.**
- **Use varied instructional approaches that can accommodate different learning styles,** including teacher-directed, self-paced, hands-on, and group-based instruction.
- **Use weekly grading practices;** in particular, it is important to send oral and written progress reports to parents and to teachers in the regular schools.

<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>



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TAC Rule § 103.1201 DAEPs

Academic Courses & Graduation

- ❑ (f): **Each school district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services.**
 - (1) **A student's high school personal graduation plan required under TEC, §28.02121, may not be altered when the student is assigned to a DAEP. A student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year, including correspondence or distance learning opportunities or summer school. A district may not charge for a course required under this section.**



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TEC § 37.008(l-1): DAEPs

Academic Courses & Graduation

- ❑ **A school district shall provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (l) to provide the student with an opportunity to complete coursework required for graduation.** The notice must: (1) include information regarding all methods available for completing the coursework; and (2) state that the methods are available at no cost to the student.
- ❑ **District may provide an opportunity to complete coursework through any method available,** including a correspondence course, distance learning, or summer school.
 - ❑ Opportunity to complete coursework before the beginning of the next school year.
- ❑ Although the focus is on English language arts, mathematics, science, social studies, and self-discipline, the **DAEP academic program should consider ...**
 - Notice any missing subject areas? Electives? Etc.?
 - AP, Dual Credit, Honors, etc.?
 - Graduation academic requirements...?



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DAEP: Standard Operations

Policy Research on DAEP Best Practices

2. School Staff and Staff Development

- Hire experienced, certified teachers.
- Provide adequate teacher training in:
 - varied instructional approaches to meet the academic needs of individual students;
 - diversity, conflict resolution, and social skills development; and
 - school safety, counseling, and behavior management techniques.

<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>



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TEC § 37.0181: Student Discipline

Professional Development Required

- TEC § 37.0181: Each principal and administrator overseeing student discipline shall, at least once every three school years, attend professional development training regarding TEC Chapter 37, subchapter A, including **training relating to the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under 37.002(b).**
- TEC § 37.018 Information to Educators: Each school district shall provide each teacher and administrator with a copy of this subchapter and with a copy of the local policy relating to this subchapter.



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DAEP: Standard Operations

Policy Research on DAEP Best Practices

3. Discipline, Behavior Management, and School Safety

- **Ensure coherence between district discipline policies and practices and those in DAEPs.**
- **Implement a system of reduced privileges and rewards**, often tracked on point sheets and progress charts, to reinforce strict DAEP rules and behavior management plans.
- **Offer incentives to encourage student behavioral progress**, such as the possibility of a shortened stay in the DAEP.
- **Always use appropriate special education discipline and instructional practices**, including placement of students in appropriate classroom settings and coordination with ARD committees for provision of services.
- **Foster a caring environment with committed, respectful teachers and staff** who help students make behavioral progress.
- **Ensure safety and security** using practices ranging from consistent enforcement of rules to use of technology and procedures.

<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>



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School Safety & Security

- Adopt a broader approach and address not just the student misconduct itself, particularly violent behavior, but its root causes as well (read that again...)
- Several Commission's Investigative (Lessons learned after a school shooting) Reports have endorsed a comprehensive, trustworthy, proactive threat assessment process
- Comprehensive behavioral threat assessments can provide a safer school environment and intercept troubling behavior
- When threat assessments are not comprehensively conducted:
 - *wrongly label students as dangerous or violent*
 - *stigmatize students among staff and students*
 - *students receive harsh, punitive consequences with no meaningful intervention*
 - *results in weaponizing threat assessments*
 - *leaving a false sense of increased school safety and security*



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Texas Education Code § 37.115

Statutory Requirement for a SSSP

- TEC § 37.115 requires each school district to establish a threat assessment and safe and supportive program for each campus.
- The objective of the program is to provide “a systemic and coordinated, multi-tiered support system that addresses students’ social, emotional, behavioral, and mental health and allows for multi-agency collaboration to assess risks and threats in schools and provide appropriate interventions.”

School Safety after Senate Bill 11, TASB School Law eSource, Texas Association of schools Boards, 2019, <https://www.tasb.org/services/legal-services/tasb-school-law-essource/business/documents/school-safetyafter-senate-bill-11.pdf>



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Art. 15.27: Code of Criminal Procedure

(CCP) Notification to Schools Required

- **Notification to Schools Required:**
 - Head of law enforcement agency shall orally notify the Superintendent or designee within 24 hours of an arrest or referral or detention, or before the next school day, whichever is earlier.
 - Within 7 days after the date of the oral notice, law enforcement agency shall mail written notification to the Superintendent or designee. Written notification must include the facts contained in the oral notification, the name of the person who was orally notified, date/time of oral notification.
 - Both oral and written notifications must contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the Superintendent or designee to determine whether there is reasonable belief that the student has engaged in the conduct defined as a felony offense by the TPC or whether it is necessary to conduct a threat assessment or prepare a safety plan.
 - Notifications must include all pertinent details of the offense or conduct, including: (1) assaultive behavior or other violence; (2) weapons used in the commission of the offense/conduct; or (3) weapons possessed during the commission of the offense/conduct.
 - Applies to all felony offenses and select misdemeanors (Art. 15.27(h))
- The Superintendent or designee shall immediately notify all instructional and support personnel who have the responsibility for supervision of the student. See also, TEC § 37.007(g)
- The Superintendent or designee shall determine how the SCC applies to the offense (Title V or non-Title V) and take any necessary action.
- All information is confidential.
- SBOE may revoke or suspend the certification of personnel who intentionally violates this section.



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DAEP: Standard Operations

Policy Research on DAEP Best Practices

4. Counseling and Support Services

- **Maintain a small student-to-counselor ratio and emphasize proactive counseling activities and availability to parents** who need counseling assistance with their children.
- **Include counselor assessments when admitting students.**
- **Develop strong relationships with social service agencies**, including school psychologists, social workers, and nurses, and communicate with parents about services.
- **Require behavior modification and life skills classes**, often guided by curricula designed to address self-esteem, positive social skills, daily living skills, and job preparation.
- **Provide drug and alcohol abuse counseling.**

<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>



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Counseling and Support Services

<https://schoolmentalhealthtx.org/school-mental-health-toolkit/>

[Free Educator and Classroom Resources | Boys Town National Training \(liftwithboystown.org\)](#)



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DAEP: Standard Operations

Policy Research on DAEP Best Practices

5. Transitions (to/from DAEP)

- **Emphasize the importance of objective**, specific discipline referrals from sending schools that communicate effectively with DAEP teachers.
- **Use admission procedures** that help orient newly entering students and their parents to expectations in the DAEP program.
- **Develop individual student plans and written contracts between students, parents, and the program that formalize expectations.**
- **Use exit procedures that have DAEP teachers, counselors, and social workers follow-up on students returning to regular school settings.**
- **Provide transition counseling and other services in regular schools to assist students** as they adjust to the emotional and social effects of reentering the schools.
- **Maintain ongoing communication with regular schools** about issues important to meeting student needs.

<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>



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TEC § 37.023(d): Student's Transition Plan from AEP (DAEP, JJAEP, TJJD)

- ❖ **As soon as practicable after an alternative education program determines the date of a student's release from the program, the alternative education program administrator shall:**
 - (1) **provide written notice of that date to:**
 - (A) **the student's parent** or a person standing in parental relation to the student; and
 - (B) **the administrator of the campus to which the student intends to transition; and**
 - (2) **provide the campus administrator:**
 - (A) **an assessment of the student's academic growth** while attending the alternative education program; and
 - (B) **the results of any assessment instruments** administered to the student.



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TEC § 37.023(d): Student's Transition Plan from AEP (DAEP, JJAEP, TJJD)

❖ **Not later than 5 instructional days after the student's release from AEP, the campus administrator must coordinate the student's transition to a regular classroom. This coordination must include assistance and recommendations from:**

- School counselors;
- School district peace officers;
- School resource officers;
- Licensed clinical social workers;
- Campus behavior coordinators;
- Relevant classroom teachers (if responsible for implementing the transition plan)
- Any other appropriate school district personnel.



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TEC §37.023(d): Student's Transition Plan from AEP (DAEP, JJAEP, TJJD)

❖ **School district personnel and APE administrators are required to develop personalized transition plans for students re-entering the regular classroom from placement in an AEP**

❖ **A personalized transition plan:**

(1) **must include recommendations for the best educational placement of the student;** and

(2) **may include:**

(A) **recommendations for counseling, behavioral management, or academic assistance** for the student with a concentration on the student's academic or career goals;

(B) **recommendations for assistance for obtaining access to mental health services** provided by the district or school, a local mental health authority, or another private or public entity;

...

(D) **a regular review of the student's progress toward the student's academic or career goals.**

(e) **If practicable, the campus administrator, or the administrator's designee, shall meet with the student's parent** or a person standing in parental relation to the student to coordinate plans for the student's transition.

...

* **Statute (HB 3928) now requires require that a parent/guardian is provided with information on how to request a special education evaluation.**



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SPED Eval. Info. Required

Upon DAEP placement & Transition Back to Home Campus

- **On the placement of a student in DAEP under TEC § 37.006, the district shall provide information** to the student's parent information **regarding the process for requesting a full SPED evaluation** (full individual and initial evaluation – FIIE) of the student under IDEA.
- The **personalized transition plan from DAEP back to campus must now include information** for the parent to know they may request a **full SPED evaluation**.



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DAEP: Standard Operations

Policy Research on DAEP Best Practices

- **Summary of successful program practices in Texas DAEPs – AIM Study (2001, published in 2007)**
 1. **Academic Performance and Instructional Arrangements**
 2. **School Staff and Staff Development**
 3. **Discipline, Behavior Management, and School Safety**
 4. **Counseling and Support Services**
 5. **Transitions**
- **AIM Study identified three other DAEP practices that reinforce the goal of behavioral change for students.**
 - 1) **Engaging students in community service** helps them connect with their communities and with other people who need assistance.
 - 2) **Facilitating parent participation at the DAEP program** site builds parenting skills and, potentially, strengthens relationships between DAEP students and their parents.
 - 3) **Providing opportunities for learning about internships, jobs, and continuing education** prepares students for the future after returning to sending schools and, later, after high school graduation.



<https://tea.texas.gov/reports-and-data/school-performance/accountability-research/specpr172007.pdf>

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*Thank you for
joining us today!
Please reach out
with any questions or
needed support.*

Dr. Vicky Luna Sullivan
Senior Associate



EICHELBAUM WARDELL
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