

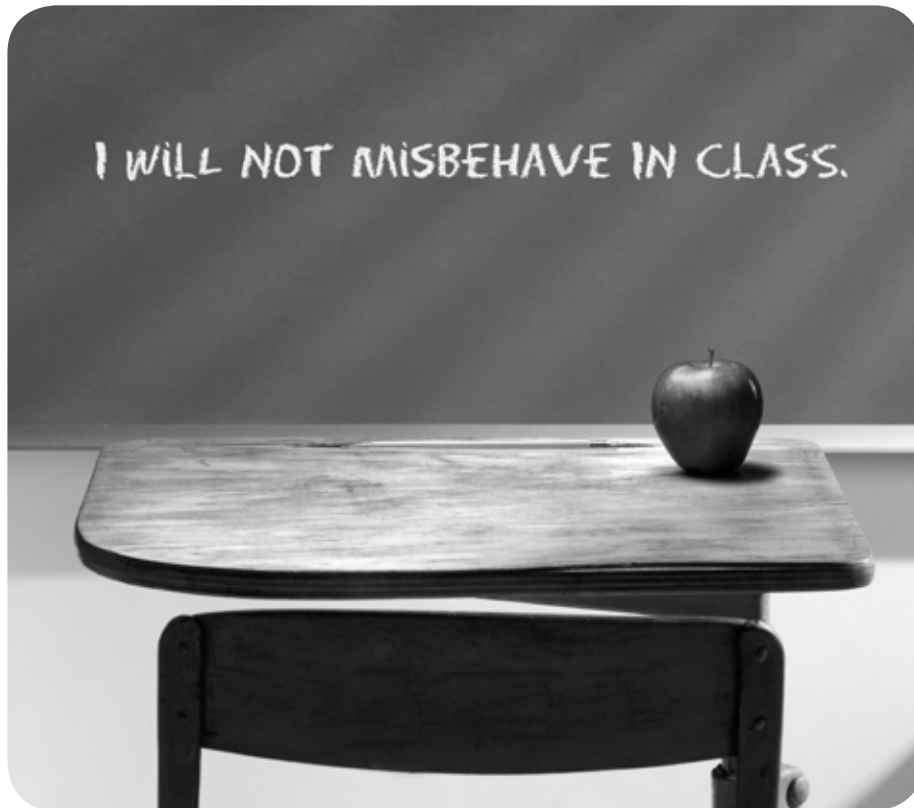
# When My Child is Disciplined at School

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A Guide for Families



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A Guide for Families



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## **Texas Appleseed Mission**

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to find practical solutions to broad-based problems. Our research into Texas' school-to-prison pipeline alerted us to how early disciplinary problems at school can escalate to justice system involvement. Parent involvement in schools is critically important—not only to ensure a child's educational progress, but to help maintain safe schools and minimize the need to remove children from the regular classroom. This guidebook is a tool to help parents become informed advocates for their child and for fair, equitably applied school discipline policies.

## **For More Information**

Visit our website for more information about this and other Texas Appleseed projects:  
[www.texasappleseed.net](http://www.texasappleseed.net)

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# When My Child is Disciplined at School:

## A Guide for Families

### Introduction

When a child is involved in a school disciplinary action, it is important that you—as the child’s parent or guardian—promptly become involved. School discipline is a serious matter, and it is important to advise your children to come to you immediately when they find themselves in a disciplinary situation. Parental involvement is a key factor in school discipline. Studies have shown that schools with more parental involvement have lower rates of disciplinary referral as well as fewer incidents of violence. When a parent or guardian establishes an open line of communication with the school and asks to be contacted at the first signs of a behavior problem, it is possible to prevent more serious misbehavior that can result in a disciplinary removal from the regular classroom.

School discipline is guided by Chapter 37 of the *Texas Education Code*. At the beginning of every school year, Texas public schools are required to send a copy of the Student Code of Conduct to every child’s parent or guardian, who must then sign a statement that they have read and discussed the contents with their child.

To advocate effectively on behalf of your child when he or she is involved in an emotionally-charged incident at school, it is important to:

- Remain calm and open to listening to both your child and the school.
- Make sure that your child is aware of what is expected in the way of appropriate behavior in school—and the possible disciplinary consequences for violating the Student Code of Conduct.
- Ensure that teachers and administrators apply discipline appropriately as outlined in the Student Code of Conduct—and that they adhere to any parent notification and disciplinary conference or hearing requirements.
- Make sure that, if your child receives special education or other modified educational services, the school follows your child’s Individual Education Plan (IEP) in addressing behavioral problems and administering appropriate discipline that will not harm your child. It is not appropriate for the school to alter your child’s IEP to fit the alternative school placement.

- Check frequently to make sure that your child is continuing to make educational progress in any out-of-classroom disciplinary setting.
- Consider seeking legal counsel if the courts become involved, or if a lengthy alternative school placement is assigned.

The Student Code of Conduct outlines many of the policies and procedures governing most disciplinary actions, however you may disagree with the school’s assessment of the situation, the decision to discipline your child, or the severity of the punishment.

Texas Appleseed has developed this handbook to provide you with guidelines governing the school disciplinary process—and strategies to make you both an informed advocate for your child and an involved partner in your child’s education. In this guide, we cover the different types of disciplinary actions, how to advocate for your child, and more detailed information on serious actions, such as referrals to Disciplinary Alternative Education Programs and expulsions.

Our hope is that you find this guide helpful during this challenging time for you and your child.

## Chapter 1 – School Discipline: A Parent’s First Response

Your child is accused of breaking the rules at school. Your first step is to talk to your child and the school to find out what happened and what kinds of disciplinary actions could be imposed. Your child’s school district may have zero tolerance policies in place that could trigger your child’s immediate removal from the regular classroom. Depending on the seriousness of the disciplinary problem, your child could face a range of school-imposed consequences—from short-term loss of privileges to referral to an alternative school or expulsion. The situation becomes even more serious if your child is ticketed or arrested on campus and the municipal court, justice of the peace, or juvenile court becomes involved.

Some of the most commonly imposed consequences for classroom misbehavior are listed below:

- **Loss of privileges.** Schools may revoke certain classroom or school privileges or require the student to complete extra school work to address classroom misbehavior.
- **Behavior contract.** A teacher or school administrator may set up a parent meeting or conference to create a behavior contract for your child and to establish regular communication between the school and parents to ensure that your child meets classroom expectations for behavior and academic performance.
- **Detention.** A student in detention must remain after school, be assigned to a detention classroom during the lunch period, or be required to attend Saturday school to complete their work.
- **In-School Suspension (ISS).** A disruptive student can be removed from the regular classroom and assigned one or more days to a separate ISS classroom to complete his/her class assignments. (The school does not always give them their class assignments, and your child may fall behind unless you intervene to make sure the work is provided.)
- **Exclusion.** A teacher may exclude a seriously disruptive student from his or her class, in which case the student is reassigned to another teacher.



- **School or community service requirement.** As a consequence of having broken school rules, a student may be assigned school or community service. Examples include picking up trash, cleaning graffiti, or providing after-school help to a teacher.
- **Out-of-School Suspension (OSS).** A suspended student cannot attend school for a maximum of three days.
- **Removal to a Disciplinary Alternative Education Program (DAEP).** A student can be assigned to an alternative school setting for a set amount of time, typically between 30 and 40 days. The time served may be reduced or increased depending on the nature of the offense and the student's behavior in the DAEP. A **mandatory removal** to a DAEP is required by state law for more serious behavior offenses. The school can make a **discretionary removal** to a DAEP when a student violates the school's Student Code of Conduct, which the school district approves at the beginning of each school year. It is also up to the discretion of the school district whether to take into account *intent, self-defense, and a student's disciplinary history* when deciding how to discipline a student. Each school district is required to specify in the Student Code of Conduct whether these factors are considered in disciplinary decisions. For more information on mandatory and discretionary violations, go to <http://www.tasb.org/policy/resources/safety.aspx> and click on the Chapter 37 Offenses and Consequences Chart.
- **Ticketing.** Tickets issued at school are for Class C misdemeanors that often carry a fine. Failure to pay a ticket on time can result in additional fines. If the ticket is ignored, an arrest warrant can be issued when your child turns age 17.
- **Expulsion.** An expelled student is prohibited from attending their regular school for a specified period of time, depending on the offense. In some school districts, expelled students are required to attend a **Juvenile Justice Alternative Education Program (JJAEP)**.

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## Emergency removals from school

Emergency school expulsions or placements in a Disciplinary Alternative Education Program are used in cases where a student's conduct requires immediate action on the part of the school. An emergency DAEP placement is *permitted only if the student's behavior is so unruly, disruptive or abusive that it seriously interferes with a teacher's ability to communicate in class, with students' ability to learn, or the operation of the school or a school-sponsored event.*

Emergency expulsion from school is allowed only if the principal believes it is necessary to protect persons or property from *imminent harm*.

A student must be given oral notice of the reason for any emergency removal from school. If a student is removed on an emergency basis, a disciplinary conference must be held within 10 days. Students subject to emergency expulsion must also be afforded a formal expulsion hearing, required by state law, "within a reasonable time."

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If you disagree with the way your district or individual school exercises its discretion to discipline students for certain offenses, you and other interested parents should talk to your principal. You also have the right to contact your school superintendent or school board members and request a meeting or other avenue to recommend changes in school or district-wide disciplinary policy.

## How to Stay Involved When a Child is Disciplined at School

Regardless of the nature of the disciplinary incident at school, parents should take these steps to stay informed and actively engage in the disciplinary process.

- STEP 1** Contact the school as soon as you know that your child is involved in a behavioral incident at school—particularly when there could be disciplinary consequences.
- STEP 2** Ask your child what happened and who was involved. Write this down.
- STEP 3** Ask your child—and his or her teachers—if he or she is having trouble keeping up in class or is experiencing any other problem at school, such as bullying.
- STEP 4** Use this opportunity to find out if your child feels misunderstood or wrongly accused.
- STEP 5** Collect any evidence and/or take pictures if your child has been hurt.
- STEP 6** Gather information from your child, any witnesses and the school about the disciplinary incident.
- STEP 7** Keep a contact log, writing down the name, job title, phone number and email address of all persons you contact regarding your child’s disciplinary issue. Recording the date and time of all conversations will make future contacts easier and will document your progress.
- STEP 8** Keep a paper trail and electronic records during the disciplinary process. **SAVE EVERYTHING!** Keep all written and emailed communications from the school about the disciplinary incident—including any parent conference or hearing notices. Make copies of anything you send through the mail or electronically to the school.
- STEP 9** It is important to find out whether the disciplinary offense will become part of your student’s record—and if it is serious, whether your student will be ticketed, arrested and required to appear in court, where the incident could become part of a municipal court, justice court, or juvenile court record.
- STEP 10** Find out if your school has a **zero tolerance** approach to certain kinds of offenses. Refer to your school’s Student Code of Conduct to see whether a zero tolerance policy is included along with information about whether **intent, self-defense, and disciplinary history** are considered before disciplinary decisions are made.

If you believe that zero tolerance policies are counterproductive, you can communicate your concerns at the school or district level. Attend school board meetings when disciplinary policies are addressed. Consider talking to like-minded parents and organizing an effort to change zero tolerance policies.



## What if...

Your child has gotten into trouble for fighting at school, but says she acted in self-defense when another child attacked her. What should you do first?

- Ask her to explain what happened. Ask questions so that you fully understand how the fight occurred, and take notes.
- Ask if any friends or other students saw what happened. If they did, ask them to write down what they saw, if possible.
- Ask your child if she knows what disciplinary action the school intends to take.
- Did your child get a ticket for fighting? If so, ask to see a copy of the ticket. Make sure you know when you have to be in court for the ticket.
- Consult a copy of the school's Student Code of Conduct. It should say whether the school will consider self-defense or a student's intent when making disciplinary decisions.
- If the school has not already contacted you, call the school to schedule a conference to discuss the fight. Try to get a sense of what steps the school is considering.
- If your meeting with the school is not for several days, ask if your child will be allowed to attend his or her regular classes while the school is determining the consequences for the fight. Will the school refer your child to in-school suspension (ISS) or out-of-school suspension (OSS) instead?
- If your child is being referred to ISS or OSS, make sure you and your child ask teachers for any assignments your child will need to complete during the suspension period.

## Chapter 2 – Meeting with the School on Discipline Problems

Open communication between parents and school staff is important when a child has discipline problems. At any time, either the school or the parent can call to schedule a meeting to discuss these issues.

There is a difference, however, between this type of meeting and a ***required disciplinary conference*** where serious misbehavior (including chronic classroom disruption) are discussed and a range of disciplinary actions considered (including referral to a Disciplinary Alternative Education Program). In smaller school districts, this required conference may consist of a brief meeting with the principal. In larger districts, these conferences may be more formal—with the school district’s representative (usually the principal or assistant principal) following a prescribed script and tape recording the proceedings to preserve a record of input from administrators, teachers, counselors, parents, the student and other parties. This type of conference format is not required, however.

***Schools must notify parents and students when scheduling any required school disciplinary conference or expulsion hearing.*** You and your child have a right to address the circumstances surrounding the behavioral incident, the disciplinary action proposed by the school, and alternative courses of action if appropriate. Request an interpreter if needed.

***If you do not attend a disciplinary conference or hearing after being given adequate notice, the school may move ahead and decide how to discipline your child without your input.***

### **When You Agree with the School on Disciplining Your Child**

As the parent or guardian, you can make the school aware of whether you think your child’s misconduct was intentional or not, and if your child has learned his or her lesson. Let the school know what consequences have been imposed at home for your child’s having misbehaved at school. If your child did violate the school’s Student Code of Conduct and is sorry, consider having your child apologize. Working with the school can reduce the amount of time your child spends outside the classroom for behavior problems.

Even if you agree with how the school proposes to address your child’s misbehavior, it is critical that you attend any requested school meeting, required school conference or mandatory expulsion hearing to ensure that the discipline imposed is fair and in your child’s best interests. In those conferences or hearings:

- Listen to what school representatives have to present about the disciplinary incident.
- Present supporting documents—including a letter of apology from your child, if appropriate.
- Reach agreement on your child’s educational needs—how these will be met during the disciplinary period and how the child can return to the classroom as soon as possible. (See *Appendix* for an overview of the legal issues that pertain to disciplining a child with disabilities.)
- Establish a system for maintaining regular contact with teachers concerning your child’s behavior and performance in the regular classroom or in an alternative placement.

### **When You Disagree with the School on Disciplining Your Child**

When you want to challenge a school’s decision to discipline your child for a violation of the Student Code of Conduct, it is even more important that you communicate with the school and attend all disciplinary conferences or hearings. In those situations:

- Let school representatives present their side first. You may gain new information.
- Keep calm.
- Present your most persuasive arguments first to support a different disciplinary approach that you believe best meets your child’s educational and emotional needs. Be concise.
- Explore the option to request a behavioral contract for your child to avoid escalating the consequences of your child’s misbehavior to an out-of-classroom disciplinary placement. Make sure the terms are reasonable and realistic for your child.
- Stay informed about your child’s behavior and performance in the regular classroom or in an alternative placement.
- Ask your principal or school counselor about the process in your district for appealing disciplinary decisions. While state law requires an appeals process for expulsion hearings (a principal’s decision can be appealed to the school board), local school districts set their own procedure for appealing other disciplinary decisions. In some cases, the principal’s decision is final and cannot be appealed. The appeals process may not be included in the Student Code of Conduct. ***It is important to check with your individual school district to see what avenues of appeal are available to you.***

## Texas Education Code – Disciplinary Procedures

### Parent Notification and Disciplinary Conference

Under the *Texas Education Code, Chapter 37*, once a child has been removed from his or her classroom, a school administrator, such as a principal or assistant principal, must schedule a discipline conference ***no later than the third class day*** after the removal. This conference would involve a school administrator, such as the principal, the teacher, the student, and a parent or guardian. However, if the school has made a reasonable effort to contact a parent or guardian and has received no response, the school may proceed to discipline the student (including assignment to an alternative school) without meeting with the parent.

A conference is less formal than a hearing (only required in school expulsion cases), but the results can be serious. Disciplinary consequences are decided at this conference. The *Texas Education Code* provides few mandatory guidelines governing the disciplinary conference process—but does impose more requirements on expulsion hearings (*See page 27*).

### Placement Review Committee

*Texas Education Code, § 37.003* establishes the Placement Review Committee at each school. Composed of three members, the committee determines the placement of a student on those rare occasions when a teacher refuses to allow a seriously disruptive student's return to his or her classroom. The committee also makes recommendations to the school district regarding the readmission of students who have been expelled. The school's teachers choose two members and an alternate, and the principal chooses one member. The teacher involved in a school discipline situation cannot be on the review committee.

If your child is facing long-term removal from school, seek legal advice. See the resources listing in the *Appendix*.

## What if...

Your child has gotten into trouble for fighting at school. You believe her when she says she acted in self-defense. You have talked to the school and scheduled a conference to discuss the fight. You have a written description of what happened from your daughter and a friend who saw the fight. You have talked to teachers to make sure that your daughter has all the assignments she will miss while the school is deciding what action to take. What can you expect at the conference?

- This conference will be a meeting with a school administrator and perhaps the teacher or staff who witnessed the fight.
- Let the school's officials begin the meeting. Try not to be defensive or get visibly angry, even though you may be upset.
- Listen to what the school officials tell you about the incident, and take notes. Consider any differences between what your child has told you about the fight and what the school officials describe. Is there a possibility that the school officials who witnessed the fight misunderstood what happened? Is there a possibility your child misunderstood the other student's actions?
- Describe what your child told you about the events, or have your child explain what happened. Make sure you stress the importance of staying calm to your child before the meeting. Share any written eyewitness accounts of the incident that support your child with school officials.
- Ask the school officials if they will consider self-defense, or your child's intent, before they impose discipline.
  - If they say they WILL NOT, but the Student Code of Conduct says they DO consider these factors, point out the discrepancy and note that state law requires them to follow what is laid out in the Code of Conduct.
  - If the Student Code of Conduct does not address intent, point out to school officials that state law requires that the Code address such issues.
- If your child has never been in trouble before or is a good student, make sure the school is aware of these facts.
- If no disciplinary determination is reached at the conference, ask when you can expect a decision and write down the date.
- If you disagree with the outcome of the disciplinary conference, ask the school how to appeal the decision and how long you have to file the appeal. Ask school officials where you can find any necessary forms that must be filled out to appeal a disciplinary decision.



## Chapter 3 – When to Challenge a School Discipline Decision

By gathering information and talking to both your child and the school, you can better decide whether your child needs to accept the consequences for his or her misbehavior or if the school's disciplinary action should be challenged. ***If you decide to challenge a school disciplinary decision, be sure to keep the lines of communication open with the school administrators involved.***

Even if you agree that the school is taking appropriate action to discipline your child, you should partner with the school to make sure that your child's behavior and success in school improves. You may want to meet with teachers, a school counselor, school administrators, and/or a behavioral specialist assigned to your school if your child is experiencing more serious or more frequent behavior problems.

It is important that you consult with the school or an outside specialist to determine whether or not a learning disability or other condition may be impacting your child's behavior. If testing uncovers a need for special education services or other learning accommodations, you can request that the school work within those findings to accommodate the learning needs of your child. You should maintain close contact with the school to make sure that any new accommodations are having the desired positive effects on your child's learning and behavior.

### Defining Your Goals

It is important to remain clear about your goals and priorities when meeting with teachers and administrators to resolve a disciplinary issue. ***Your aims may include one or more of the following:***

- ✓ Reduce the academic impact of the disciplinary action. For example, make sure your child will receive assignments while in In-School Suspension or during a three-day suspension from school.
- ✓ Schedule suspension days or detentions so they do not conflict with tests or other difficult to schedule schoolwork.

- ✓ Accept a reduced punishment in exchange for changes in student behavior and agreed upon out-of-classroom work, community service, or other consequence.
- ✓ Change class assignments to avoid any personality conflicts with particular students or teachers.
- ✓ Return the student to school and to the regular classroom as soon as possible.
- ✓ Reverse the discipline.
- ✓ Reduce the length or severity of the punishment.
- ✓ Request an evaluation for special education services if you feel that the child's behavior is related to a disability or special need that should be addressed by the school. This request should be in writing.
- ✓ Establish or modify an Individualized Education Plan (IEP) if your child is a special education student.

### **First Steps to Challenge Proposed School Discipline**

If you disagree with the school's recommendation that your child be removed from the classroom and sent to In-School Suspension (ISS), out-of-school suspension, or to an alternative education program, it is important to be able to clearly state the reasons for your opposition and your desired outcome for your child.

These are some helpful first steps:

- Write down your reasons for challenging the proposed discipline for your child.
- If you feel the proposed disciplinary action is too severe, determine your goal in the situation and a strategy to meet that goal.
- Build a persuasive argument and gather supporting documents before setting up a meeting with school administrators.
- Ask the school or school district for a copy of the process to follow for appealing a disciplinary decision.

After gathering all relevant information and talking to both your child and the school, you may conclude that the disciplinary action taken against your child has been inappropriate or unfair for one or more of the following reasons:

**Your child is innocent.**

This is a difficult argument to win. Students can be wrongly accused, wrongly identified, or their actions misunderstood, but it is difficult to refute a claim by a teacher or administrator without witnesses or other evidence supporting your child's account of what occurred. Acknowledge that you did not see the misbehavior that occurred at school, but ask lots of questions to help reconstruct the incident and help clarify how your child was involved.

Your child's behavior did not violate a school rule.

While the student may have done what the school accuses him of, the behavior may not violate any written school rule. Bring it to the school's attention if the behavioral infraction and prescribed punishment are NOT listed as required in the Student Code of Conduct.

The enforcement of the proposed discipline is illegal.

In some cases, a school may impose a punishment that may not be legally valid and should not be enforced. For example, under state law, children under the age of six cannot be sent to a Disciplinary Alternative Education Program unless they take a firearm to school; however, in Texas, data suggests that children that young may have been sent to DAEPs for other reasons.

While a district may resist addressing the legal validity of its rules in the middle of disciplinary proceedings with your child, continue to raise your concerns during the proceeding and document them in a letter written to the school principal and to the school district. A court can overturn a school disciplinary action that violates the law, or reverse a disciplinary policy that punishes student behavior that is protected by state or federal law.

The punishment does not fit the situation.

At times, a punishment may seem too extreme. Under *zero tolerance*, the punishment may be removal to a Disciplinary Alternative Education Program, or expulsion to a Juvenile Justice Alternative Education Program or, in some districts, expulsion to the street.

Under *Texas Education Code, Chapter 37.001*, school districts have the discretion to *consider a student's intent* when making a disciplinary determination. Refer to your school's Student Code of Conduct to determine whether intent must be taken into account and whether you can use intent as an argument for the school's imposing a less severe disciplinary action. If a school's Student Code of Conduct states that intent or self-defense are taken into account in disciplinary determinations, then the school *must* do so.

Your child was singled out unfairly.

Research has consistently shown that minority and special education students are disproportionately referred to in- and out-of-school suspensions, expulsions, and alternative education programs compared to their percentage in the overall school population—giving evidence to possible discrimination in imposing school discipline.<sup>2</sup> However, proving discrimination in a specific disciplinary situation can be difficult.

If you feel this may be happening in your child's case, it is important to find out if other children have been disciplined differently for the same behavior, or if some students are punished for this behavior and others are not. It may be helpful to talk to other parents about their experiences, since obtaining other students' disciplinary records will not be possible due to confidentiality restrictions. If you decide to pursue a course of action

based on discrimination, beginning at the school and possibly proceeding to the school district level:

- Use specific facts to back up your concerns.
- Clearly state what disciplinary actions, if any, you think the school should take.

If you do not feel you can receive a fair hearing at the local level, it is possible to file a complaint at the federal level. The Department of Education's Office of Civil Rights handles such complaints. (*See page 18.*)

### The school did not follow the child's Individual Education Plan (IEP) in managing the student's behavior.

If your child is in special education, review his or her IEP to determine how the school must address your child's behavioral and emotional issues. Request an Admission Review and Dismissal (ARD) meeting to ask the school district to provide your child with positive behavioral supports and interventions to address your child's behavior issues. This could include a functional behavioral assessment, a Behavior Intervention Plan and psychological services such as individual and group counseling.

If the school decides to take disciplinary action against your child and changes your child's placement for more than 10 school days, the school district must hold an ARD meeting to conduct a manifestation determination. The ARD committee must determine if your child's conduct was related to his or her disability or a result of the school district's failure to implement his IEP, including any positive behavioral supports and interventions that had been approved by your child's ARD committee. If the ARD committee approves your child's placement in a DAEP, make sure that your child's educational and emotional needs are being met at the DAEP, in accordance with the IEP and Behavior Intervention Plan. An alternative education placement must ensure that your child continues to make progress towards his IEP goals and receives positive behavioral supports and interventions to address the behavior that led to the disciplinary removal. If the ARD committee determines that your child's conduct was a manifestation of his or her disability, your child cannot be removed to a Disciplinary Alternative Education Program unless the disciplinary action involved drugs, weapons or serious bodily injury.

### There have been procedural errors in the disciplinary process.

In some instances, the school may not have followed the disciplinary procedures contained in its own Student Code of Conduct or in accordance with *Texas Education Code, Chapter 37*. Examples of procedural problems can include improper student/parent notification and failure to hold a required disciplinary conference or expulsion hearing before imposing discipline. Procedural errors alone, however, are not likely to change the disciplinary action. It is important, however, that any errors are pointed out to school administrators in order for them to be corrected and to ensure your child has a fair hearing.



## Chapter 4 – Appealing A School Disciplinary Decision

If you disagree with the school’s decision to discipline your child, you may file an appeal. *State law only guarantees an appeals process in cases of expulsion, but for any severe disciplinary action, appeal procedures should be outlined in the Student Code of Conduct or in school district policy.*

It is important to note that the procedures for appealing suspensions and assignments to Disciplinary Alternative Education Programs (DAEPs) *may vary between school districts*. For example, some school districts allow a parent and student to meet with the principal to appeal a three-day suspension. In other school districts, a decision to suspend a student is final, and there is no opportunity to appeal. In others, referrals to a DAEP can be appealed to the school board. When navigating the appeals process, it is important to find out where the final decision to discipline a student is made.

If appealing a lengthy removal from school for a serious misbehavior, you should consult an attorney or an adult advocate who is knowledgeable about school discipline procedures. A list of available resources is provided in the *Appendix*. Unless your child receives special education services, there may be little opportunity to obtain free legal representation in a school disciplinary proceeding.

### **School Grievance Procedure**

If you cannot appeal the disciplinary action imposed by the school, you may be able to file a grievance with the school district. The procedures to file a grievance are outlined in each district’s Student Code of Conduct or can be obtained from your school district’s central office.

### **Filing a Complaint with the Texas Education Agency**

Since the Texas Education Agency (TEA) has limited capacity to handle complaints about school discipline, the agency asks that parents attempt to resolve disputes at the local level before filing a complaint at the state level. TEA does have a complaint procedure

for students who receive special education services, however.<sup>3</sup> If your child has had a history of behavioral problems that you believe could stem from a disability or special need and the local school district has not evaluated your child for special education services, you may file a complaint with TEA without having to attempt resolution at the school or district level.

Advocacy, Inc., a disability rights organization with attorneys on staff, may be able to help you file a complaint on your child's behalf. There is usually a ***one-year statute of limitations on filing a complaint***, but visit the Advocacy, Inc. website for more information: <http://www.advocacyinc.org/>.

If your child is not receiving special education services, TEA is likely to investigate your complaint from a compliance point of view, determining if there have been any errors in policy, procedure or ethics, since TEA attempts to leave disciplinary decisions to the school districts. For more information, visit <http://www.tea.state.tx.us/gir/GeningMain.html> or contact TEA's School Governance and General Inquiries Office, 1701 North Congress Avenue, Austin, TX 78701-1494, (512) 475-3697.

### **Filing an Office of Civil Rights (OCR) Complaint**

If you believe your child has been discriminated against based on race, color, national origin, sex, disability or age, contact the Office of Civil Rights of the U.S. Department of Education. While it is recommended that parents attempt to resolve the situation first at the school level, and then at the district/school board level, it is not necessary to file a complaint at these levels before filing with the OCR. ***A complaint must be filed within 180 calendar days of the date that the alleged discrimination took place.***

More information and the complaint form can be found online at: <http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>.

## Chapter 5 – Disciplinary Alternative Education Programs

Since adoption of the Texas Safe Schools Act of 1995, all Texas public school districts are required to provide Disciplinary Alternative Education Programs (DAEPs).<sup>4</sup> DAEPs were created so that students who are suspended for more than a few days can continue to receive instruction. A DAEP may be on the same campus as the mainstream school, but students sent to a DAEP must be separated from the rest of the student body. A DAEP is often housed on a separate campus.

**Mandatory placement** in a DAEP results when the school has reason to believe the student is guilty of serious misconduct specified by *Texas Education Code, Chapter 37*. The Student Code of Conduct will list all mandatory offenses, as well as less serious offenses that can result in a school district-specific **discretionary referral** to a DAEP. Principals also have the discretion to assign students to a DAEP when the student's teacher or a school administrator views the conduct as serious and/or continuously disruptive. **The average length of stay for a student in a DAEP is between 30 and 40 days.** It is not necessary for a court to be involved in order for a school to authorize a mandatory placement in a DAEP.

### Frequently Asked Questions

#### How will I be notified if my child is being referred to a DAEP?

The principal or assistant principal must schedule a conference with the student, parent or guardian, and the teacher or administrator who removed the student from class **within three days** of that removal—with one exception: emergency removals from school (*See page 4*).

If your child is subject to an **emergency placement** in a DAEP, the school administration must give the student oral notice of the reason for such action. There is no mandate that parents be notified prior to an emergency placement; however, the school must schedule a disciplinary conference within 10 days of the student's removal to a DAEP and notify parents of their right to attend that conference with their child.



**How long can a DAEP placement last?**

A student’s placement in a DAEP cannot exceed one year unless, after a review, the district decides the student is a threat to the safety of other students or district employees, or that an extended placement is in the best interest of the student and the school. Some DAEP programs will shorten the length of time that a student is assigned IF the parent or guardian participates with their student in a limited number of evening classes. Some also will shorten the time based on the student’s “good behavior.”

**How do I know how my student is performing at the DAEP?**

At the DAEP orientation, ask administrators how you can stay regularly updated on your child’s attendance, behavior and academic progress. It may be possible for the DAEP to send a written log home once a week for you to review, sign and return; or, another form of regular communication can be established that works for both you and the alternative school. It is important that parents initiate and pursue close communication with the DAEP and that you let your child know that you are staying informed.

**What if my child skips class while assigned to a DAEP?**

It is important that you make your child aware of the DAEP rules for absences and tardies. In many cases, an unexcused absence can result in your child’s being assigned an additional day to the DAEP beyond making up the missed day. This can extend the length of time your child is removed from his or her home school.

**Is there any chance to have my child’s assignment to a DAEP reviewed?**

The average length of stay at a DAEP is 30 to 40 days, but students can be sent for up to a year. For students assigned for longer periods, DAEPs must review those cases every 120 days. At this review, the student and parent or guardian must be given a chance to explain why the student should be allowed to return to her regular campus or classroom. A review by the school board’s designee must be held when a student has been referred to a DAEP for over 60 days, but the decision of the board cannot be appealed. The student or the student’s parent or guardian must to be allowed to present their case for the student’s return to his or her regular classroom.

**Can my child complete his regularly assigned courses at a DAEP?**

DAEPs must offer basic subjects—English, math, science, history—as well as emphasize self-discipline. The academic goal for students in DAEPs is to perform at grade level. Electives and advanced courses are not offered at DAEPs, but school districts are required to offer students the opportunity to complete any of their courses before the beginning of the following school year at no expense to the student. This opportunity can be offered through summer school, distance learning, a correspondence course, or some other means.

**How will regular classroom assignments be coordinated with the DAEP?**

A DAEP should communicate directly with the student’s home campus, however parents need to follow up with both the DAEP and the school to make sure this happens. A parent should ask if the child can complete regular classroom assignments while at the DAEP—and should work with the regular classroom teachers to ensure those assignments are sent to the alternative school. Given the alternative school’s different schedule and

aims, it may not be possible for your student to keep up with regular classroom assignments. The DAEP classroom teacher will assign work, and the grades received at a DAEP will transfer back to the regular school and appear on the report card.

**What if my child falls behind academically while attending the DAEP?**

This can happen—making it critically important that you work with your child’s teachers and counselors to ensure a smooth transition to the regular classroom from the DAEP. Even if your child has made higher grades at the DAEP, he may need tutoring and other help to master material he missed when he returns to his regular campus. *Also consult with the school counselor about having behavioral supports in place for your child.*

**What happens if my child has behavior problems at the DAEP?**

When your child is referred to a DAEP, he or she should receive a Student Code of Conduct outlining the consequences for specific behavior violations for that particular alternative school. Depending on the severity of the misbehavior while assigned to a DAEP, the student may be given more days in the DAEP, or expelled to a Juvenile Justice Alternative Education Program or to the street (in counties where there is no JJAEP). Students in DAEPs can be expelled for the same misbehavior triggering a mandatory or discretionary expulsion at their home school—AND they can be expelled from the DAEP for *serious or persistent misbehavior*. Every school district defines serious or persistent behavior a little differently, so make sure you and your child have a clear understanding of how your DAEP defines it. *The majority of students discretionarily assigned to more restrictive Juvenile Justice Alternative Education Programs are expelled from DAEPs for serious and persistent misbehavior.*

**Are there standards for DAEPs?**

In 2007, the 80th Texas Legislature passed House Bill 426 requiring the Texas Education Agency (TEA) to establish minimum standards for DAEPs. These standards will be implemented during the 2008-2009 school year, however TEA is not required to monitor DAEPs to ensure that these standards are met. Visit TEA’s website at <http://www.tea.state.tx.us/> and enter “DAEP standards” into the Search box for the most recent copy of these standards.

## **What if...**

Your child has gotten into trouble for fighting at school. You believe she acted in self-defense, but the school does not. The school is sending your child to a DAEP. What should you do?

- Appeal the disciplinary decision if you and your child want go through this process—however, your child’s referral to the DAEP will still move forward even if you decide to appeal. In many cases, the appeal process does not work quickly enough to make a meaningful difference in the disciplinary consequence, but could clear your child’s disciplinary record, which might be important if your child ever gets into trouble again.
- Make sure you meet with the principal and the teachers at the DAEP. Many DAEPs have an orientation process for parents, or require parents to meet with them when the student is referred. This is an important opportunity for you to find out what is expected of your child at the DAEP.
- Make sure that you talk with the teachers at your child’s regular school about any work that cannot be done while she is at the DAEP. This is particularly important for electives, or for classes that are not offered at the DAEP. If these classes are part of your child’s graduation plan, the regular school must give your child an opportunity to make up any work she misses so that she can get credit for that course—even if it means taking a free summer school class.
- Communicate regularly with the teachers and staff at the DAEP to make sure your child is on track and will not have to stay any longer than is necessary.

## Chapter 6 – Ticketing and Arrest at School

Texas schools have experienced a shift in the way discipline is applied. There is a strong public perception that schools have become more violent and that strong discipline is needed. Law enforcement presence on campus means that it is more likely that students will receive tickets related to misbehavior at school. Students may also be arrested at school if they commit a criminal offense.

Procedures for ticketing and arrest of students on school campuses will vary depending on the school district. Any ticketing or arrest at school should be taken seriously. ***If a student does not follow court orders resulting from ticketing or arrest at school, he or she may be issued an arrest warrant at the age of 17.***

### Ticketing

Tickets issued at school are for Class C misdemeanors that often carry a fine. The Student Code of Conduct may list the offenses that will result in ticketing—usually fighting, disorderly conduct, disruptions in the classroom and on school buses, curfew violations, and truancy. It is important that students take these tickets seriously. If your child has been arrested at school or issued a ticket that carries a large fine, it is advisable to consult an attorney. If the court offers your child an opportunity to have the ticket dismissed in exchange for community service, ***it is critical that your child meet all court-imposed deadlines.***

### Class C Citations

If not dismissed by the court, a Class C citation issued at school can have long-lasting implications:

- Included on adult criminal record
- Not automatically expunged from a criminal record
- Must be disclosed on job and college applications as a “criminal conviction”
- May be considered in sentencing in future criminal case<sup>5</sup>

## Arrest at School

Campus police officers can arrest students accused of having committed a criminal offense at school. Even before a student is arrested, school officials who have a reasonable belief that a student has committed a crime may search the student's backpack or locker, and may question a student. Schools are given greater leeway to question and search students than exists in typical law enforcement settings.

Sometimes schools question students and ask them to sign "confessions." The law does not require Miranda rights be read to students when they are being questioned on campus about a crime, even if they are asked to write out and sign a confession. ***These confessions can be used against students in juvenile court proceedings.*** That is why it is very important that students ask to speak with a parent and have a parent present if they are being questioned about a crime.

Once the student is formally taken into custody, the officer will transport the student to a juvenile processing office. Here, the child will be fingerprinted and photographed. Before a written statement or confession can be taken, a magistrate (similar to a judge) must read Miranda warnings to the child. The magistrate must determine that the child has voluntarily waived his or her rights before a statement or confession may be given.

## Juvenile Justice Guide

Obtain your free copy of the Texas Appleseed guide, *Navigating the Juvenile Justice System: A Handbook for Juveniles and Their Families*, by downloading the file from our website, [www.texasappleseed.net](http://www.texasappleseed.net) (see *Publications, Attorney & Family Handbooks*), or call:

Texas Appleseed  
1609 Shoal Creek Blvd., Suite 201  
Austin, TX 78701  
(512) 473-2800 ext. 107

## Searches at School

Schools have wide discretion to search a student's locker or backpack if they suspect he or she is in possession of an illegal substance, stolen property, or a weapon; however, the school's authority to search a student's physical person is very limited.

If your child has been strip searched at school, contact an attorney to find out whether all standards and procedures governing a body search were followed.

## Going to Court

It is important to keep a written record of court dates to resolve a ticket or criminal charge. Find out who will prosecute your child's case, what the exact charge against your child will be, the range of potential court-imposed punishment, and how long your child might be removed from the regular classroom.

For a court appearance, it is important that you and your child be on time and appropriately dressed. It is important to maintain a positive attitude and to have all supporting documents with you.

Once the court has reached a decision in your child's case, it is important to follow through on any court-imposed judgment.

- If a fine is assessed, ask if it is possible to pay it in installments—and make the payments on time.
- If your child is assigned community service hours, make the court aware of any transportation difficulties and family situations that should be taken into account when determining how long your child will have to complete community service.
- Ask about the impact of the ticket or the arrest on your child's legal record. Find out what it takes to have the record expunged, or permanently cleared.
- Keep a record of any court-imposed deadlines for paying fines or completing any other requirements. Be aware that failure to comply with court-imposed deadlines can mean additional penalties. ***If a child does not comply with court orders, a warrant for his or her arrest can be issued when the child turns 17.***

## What if...

Your child has gotten into trouble for fighting at school. In addition to being sent to the DAEP, she received a ticket. What should you do?

- Even though this ticket is likely for a low-level misdemeanor offense, you may want to consult with an attorney because a ticket can trigger unanticipated consequences should your child get into trouble with the law again.
- Make sure you attend the court dates set for the ticket.
- If you believe your child acted in self-defense, make sure the prosecutor or judge is aware of these facts. Self-defense is a legal defense, even when a school will not consider it during disciplinary proceedings.
- Make sure your child can comply with court-ordered community service. If she has a disability or there are family issues that will make completion of community service difficult within a short period of time, make sure the prosecutor and judge are aware of those facts.
- Make sure your child successfully completes anything she is ordered by the court to do; if she does not pay the fine or complete the community service, ***a warrant could be issued for her arrest when she turns 17.***

## Chapter 7– Expulsion & Juvenile Justice Alternative Education Programs

A student is assigned to a Juvenile Justice Alternative Education Program (JJAEP) when expelled from school for conduct specified in *Texas Education Code, Chapter 37*; by order of a juvenile court; or for serious and persistent misconduct while in a Disciplinary Alternative Education Program. Only counties with populations of 125,000 or larger are required to have JJAEPs, however some smaller counties operate a JJAEP. Statewide, there are 33 JJAEPs serving 283 school districts. If such a program is not available, students are expelled “to the street.”

In some cases, students expelled for discretionary reasons not outlined in *Chapter 37* are sent to a less restrictive Disciplinary Alternative Education Program.

JJAEPs are operated by the local county juvenile board with oversight by the Texas Juvenile Probation Commission.

### Mandatory & Discretionary Expulsions

Under *Texas Education Code, Chapter 37*, expulsion from school is **mandatory** if a student uses, exhibits or possesses a firearm, illegal knife, club or prohibited weapon on school property or while attending a school-sponsored event or school-related activity.<sup>6</sup> A student also must be expelled for aggravated assault (including sexual assault), arson, murder or attempted murder, indecency with a child, aggravated kidnapping, aggravated robbery, manslaughter or criminally negligent homicide.<sup>7</sup> Selling, giving or delivering marijuana, a controlled substance, dangerous drug, or alcohol on school property is a felony—and such conduct will result in mandatory expulsion from school.<sup>8</sup> Under the federal Gun-Free Schools Act, students caught bringing a firearm to school must be expelled for at least one year. Federal law defines a “firearm” as a gun, bomb, rocket, missile, grenade or similar device.<sup>9</sup>

Texas school districts can exercise their **discretion** to expel a student if he or she engages in a false alarm or report—such as pulling a fire alarm—or commits the following within 300 feet of school property or while attending a school-sponsored or related activity: sells, gives or delivers marijuana, a controlled substance, dangerous drug, or alcohol; engages in

an offense involving abuse of glue or aerosol paint or use of a volatile chemical; assaults a school employee or volunteer; engages in public lewdness or indecent exposure; or engages in deadly conduct as defined by the Texas Penal Code.<sup>10</sup> A student also may be expelled to a JJAEP for engaging in conduct off-campus that would have required expulsion if committed on campus, possessing a firearm, assaulting another student, or committing aggravated robbery against another student.<sup>11</sup>

A student attending a Disciplinary Alternative Education Program *may be expelled to a JJAEP for engaging in “serious and persistent misconduct”* that violates the district’s Student Code of Conduct. How “serious and persistent” is defined depends on what appears in written agreements between the school district and the JJAEP—no uniform definition is used in Texas.

### Expulsion Hearings

When a student is removed from the classroom for any reason (even pending expulsion), the school must hold a school disciplinary conference within three days. If the decision is made at that conference to proceed with an expulsion, a mandatory formal expulsion hearing, affording the student due process rights, must be held within 10 days.<sup>12</sup> The parent or guardian is invited in writing to attend.<sup>13</sup> At the hearing, the parent, guardian or another adult can advise the student. An adult can attend as an advocate for the child provided they are not employed by the school district.<sup>14</sup> The hearing may be held without the student and/or parent present if there has been a good faith effort to notify them.<sup>15</sup> If the school board’s designee makes the decision to expel the student, that decision can be appealed to the school board—and that decision may be appealed by trial *de novo* to a district court in the home county.<sup>16</sup>

An expulsion may not exceed one year, unless the district determines the student is a threat to the safety of other students or district employees or that extended placement is in the best interest of the student.<sup>17</sup> A student’s parents are responsible for his or her supervision during expulsion.<sup>18</sup> Different timetables are applicable when a student is subject to an emergency expulsion from school. (*See page 4.*)

### Types of JJAEPS

A Juvenile Justice Alternative Education Program (JJAEP) is considered a safe environment for students who have committed serious offenses. The Texas Juvenile Probation Commission monitors the following three types of JJAEPS:

- **Military Style:** This model can include one or more of the following components: drill instructors, military uniforms, physical training, and/or military style-discipline and drill. They are typically referred to as “boot camp” programs.
- **Therapeutic:** The therapeutic model places a large emphasis on behavior management and counseling—and may include substance abuse counseling or other “therapeutic” programs.
- **Traditional:** This model is patterned after the regular school setting.



## **What if...**

Your child has gotten into trouble for fighting at school. Because the school says there was a weapon involved, the school is taking action to expel her. What should you do?

- Consult an attorney, if possible. Expulsion is a serious disciplinary consequence. Some lawyers will represent students at expulsion hearings.
- Find out when the school intends to hold the expulsion hearing.
- Make sure you are fully prepared. This hearing is more formal than the conference that schools hold for lesser disciplinary consequences. While it will not be in a court setting, some procedures are similar.
- Consult the school's Student Code of Conduct to determine whether the school has any discretion in determining whether your child should be expelled.
- Gather any supportive evidence to present at the hearing.
- If the school has some discretion in determining whether or not to expel your child or there is flexibility in the length of the expulsion, you may influence the outcome if you can show that your child is a good student, has never been in trouble before, or deserves another chance before being expelled.
- Find out whether your child will be sent to a JJAEP during her expulsion. If that is the case, contact the JJAEP teachers and staff and make sure you follow her progress while there.
- ***If your child was also arrested in this same behavior incident***, make sure you consult with an attorney prior to the expulsion hearing. You do not want to do anything that could have a negative consequence on the outcome of the pending case in the juvenile court.

## End Notes

- 1 Texas Appleseed, *Texas School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance* (October 2007), pps. 36-37.
- 2 Texas Education Agency, *Special Education in Texas: Special Education Complaint Resolution Process*. Online. Available: <http://www.tea.state.tx.us/special.ed/medcom/compfaq.html>.
- 3 Texas Education Agency, *Disciplinary Alternative Education Program Practices*. Online. Available: <http://www.tea.state.tx.us/research/pdfs/prr17.pdf>.
- 4 Advocacy, Incorporated, *Representing Special Education Students in School Citation Cases*, p 5.
- 5 *Id.* at §37.007(a).
- 6 *Id.*
- 7 *Id.* at §37.007(a)(3).
- 8 Safe Schools Act, 18 U.S.C. §921.
- 9 TEX. EDUC. CODE §37.007(b)(2006).
- 10 *Id.*
- 11 *Id.* §37.007(c).
- 12 *Id.* §37.007(f).
- 13 *Id.*
- 14 *Id.*
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*

*End Notes*

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# APPENDIX

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## School Discipline: Parent/Guardian Bill of Rights

When navigating the school disciplinary process, a parent or guardian has a right to:

- **Visit a child's school and classrooms**, attend school activities, and/or observe class in accordance with district guidelines.
- **Have access to a school principal or designated administrator** who has the authority to remove your child from class or reassign your child to another classroom.
- **Advocate** for your child and be shown respect by all district employees.
- **Request a conference with a school principal or designated administrator** to discuss proposed disciplinary actions and possible alternatives.
- **Request an interpreter** at parent conferences, school meetings, and other activities if you do not speak or understand English or need cued speech or sign language.
- **Have access to all written school records regarding your child**, including disciplinary records, counseling records, attendance records, teacher and counselor evaluations, and reports of behavioral patterns.
- **Receive the Student Code of Conduct** or obtain a copy upon request.
- **Receive information on special education services** for students with learning difficulties.
- **Request and receive an evaluation** of your child if you suspect he or she may need special education services.
- **Report possible discrimination, harassment or bullying** involving your child to the school and school district through a grievance procedure adopted by the local school board.
- **Receive timely notice from the school** and an invitation to attend all conferences or hearings related to the discipline of your child by the school.
- **Appeal disciplinary actions** such as expulsion, suspensions or assignment to a Disciplinary Alternative Education Program (DAEP).
- **Participate and provide input** in the development of the school district's disciplinary policies and procedures.

## When My Child is Disciplined at School: A Parent Checklist

- 1. Gather all relevant information—notes from conversations with your child, witnesses, teachers, counselors.
- 2. Consult your school’s current Student Code of Conduct to learn what consequences (including removal from school) your child could face for violating the school’s rules for student behavior.
- 3. Find out if **self-defense, intent, and disciplinary history** must be considered when your school decides whether to discipline a student. This must be included in the school’s Student Code of Conduct.
- 4. Check the Code of Conduct for any mention of the school’s taking a “zero tolerance” approach to applying discipline to some or all offenses.
- 5. If your child receives special education services, obtain a copy of his or her Individualized Education Plan (IEP) to see if it adequately addresses your child’s learning and behavioral needs. Determine if failure to follow the IEP is contributing to your child’s behavior problems.
- 6. Meet with an administrator or teacher involved to discuss the disciplinary situation.
- 7. Remain calm and diplomatic.
- 8. Be present and on time for any school conference and for any scheduled disciplinary hearing. Remember to always take notes.
- 9. If you are not satisfied with the disciplinary action taken against your child, consult the Student Code of Conduct for appeal procedures.
- 10. If your child is ticketed or arrested at school and must go to court, be present and on time for any court appearance. Make the court aware of any circumstances that would affect the assigned timetable for paying a fine or your child’s completing community service.
- 11. Consult the resources section in this guide if you need to contact a legal aid center or need additional help.

## Glossary

**Admission, Review, and Dismissal (ARD) committee** – Under federal law, an ARD committee must conduct a manifestation determination review when the proposed disciplining of a student with a disability would require changing the student’s school placement. An ARD committee must include: 1) the child whenever appropriate; 2) the child’s parent(s) or guardian; 3) at least one regular education teacher who has the child in class; 4) at least one special education teacher or service provider; 5) an administrator who is familiar with providing instruction to students with disabilities and who is knowledgeable about the general education curriculum and resources available in the school district; 6) an individual who can interpret the implications of evaluation information; and 7) other individuals with special education expertise invited at the discretion of the parents or the school district. Whenever possible the regular education and special education teachers participating in the ARD should be responsible for implementing parts of the student’s Individual Education Plan. (*See definition on page 34.*)

**Behavior Intervention Plan** – Under the federal Individuals with Disabilities Education Act (IDEA), special education students experiencing behavioral problems may undergo a functional behavioral assessment and the findings are then translated into a concrete plan of action for managing the behavior of a student with disabilities. The Behavior Intervention Plan may specify ways to change the environment to prevent misbehavior, reinforce good behavior and provide supports so that the student will not be driven to act out due to frustration or fatigue.

**Disciplinary Alternative Education Program (DAEP)** – A DAEP serves students removed temporarily from their regular classroom for serious misconduct and chronic disruptive behavior. A DAEP is usually located on a separate campus but, if housed in the home school, students assigned to a DAEP must be kept separate from the rest of the student body. The average length of placement in a DAEP is 30 to 40 days. A student disciplinary conference is required before a student is sent to a DAEP, except in emergency placements.

**Disciplinary Conference or Review** – The principal or appropriate administrator must schedule a conference with the student’s parent or guardian, the teacher who removed the student from class for misbehavior (if applicable), and the student *within three days of the student’s removal from class*. Disciplinary decisions can be made at that conference, with the principal or her designate making the final determination (which *may* be subject to appeal). The parent and student can present their views and recommend that a lesser consequence be imposed.

**Discretionary Disciplinary Referral** – Schools in Texas have discretion to remove a student to a Disciplinary Alternative Education Program (*see definition above*) for behaviors violating a school district’s Student Code of Conduct. The behaviors triggering discretionary DAEP referrals can vary from district to district and include nonviolent offenses.

**Due Process** – A student has a right to be informed of his or her alleged misbehavior and to respond to the accusations. Depending on the misbehavior, a student has a right to a disciplinary conference or a more formal expulsion hearing where court-like procedures are required by federal law.

**Emergency Placement or Emergency Expulsion** – Under limited conditions, a principal or designee may order a student immediately removed from the regular school campus and placed in a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP)—or sent home to the custody of a parent or guardian. Such action can only be taken if the student’s conduct is so unruly, disruptive or abusive that it seriously interferes with a teacher’s ability to communicate with the class, keeps other students’ from learning, or prevents the school from continuing to operate or proceed with a school-sponsored event. The student must be given oral notice of the reason for the emergency removal from school. The student must receive a disciplinary hearing no later than the 10th day after the emergency placement in a DAEP or “within a reasonable time” after an emergency removal to a JJAEP. If the student receives special education services, the emergency placement/expulsion is subject to federal law and regulations.

**Expulsion** – Expelled students are no longer allowed to attend their regular school due to serious misbehavior. Assignment to a Juvenile Justice Alternative Education Program (JJAEP) is possible, depending on the offense and the school district in which the student is enrolled. Not all school districts have access to a JJAEP, in which case the student is “expelled to the street.”

**IDEA** – The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education and related services to more than 6.5 million eligible infants, toddlers, children and youth with disabilities. IDEA delineates the school discipline procedures for special education students that must be followed under federal law.

**Individualized Education Program (IEP)** – This written document, created by the school’s special education team, outlines how to meet the educational needs of an individual student who qualifies for special education services. It can be modified to include a Behavior Intervention Plan.

**In-School Suspension** – This disciplinary consequence is given for minor infractions of the Student Code of Conduct, classroom rules, or campus rules. Teachers or administrators may assign a student one or more days of in-school suspension, under the supervision of a certified teacher or paraprofessional, where students are supposed to finish assignments given to them by their regular teachers. In-school suspension is implicitly recognized by *Texas Education Code Section 37.002(c)*, but is not regulated by the state—this is left to local policy. It is critical that parents make sure their child is receiving his assignments while in ISS and does not fall further behind. It is common for children to sit in ISS without assignments or to complete worksheets that may have no relevance to their assigned classes.

**Intent** – In a school disciplinary situation, this refers to a child’s reasons or motivation for violating a Student Code of Conduct. Under the *Texas Education Code*, school districts have the choice to consider intent when making discretionary disciplinary decisions to remove a student to an alternative education program. Intent is not considered when schools are mandated by state law to remove students to alternative education programs for serious offenses listed in *Texas Education Code, Chapter 37*.

**Mandatory Disciplinary Referral** – A mandatory disciplinary referral is given to a student for behavior that violates the *Texas Education Code* and requires his or her removal to an alternative education placement. The reasons for mandatory referral are the same for all school districts.

**Manifestation Determination Review** – This review is required before students who qualify for special education services can be expelled or suspended, or subjected to another significant change in placement. The Review Committee must conduct a “manifestation determination” to decide whether the student’s misconduct was related to his/her disabling condition. The current standard is that the misbehavior must have been “caused by” or had a “direct and substantial relationship” to the child’s disability, or was the “direct result” of a school district’s failure to implement the Individual Education Plan (IEP). Manifestation determinations are not required for student removals of less than 10 consecutive school days.

**Out-of-School Suspension** – The principal or other appropriate administrator may suspend a student for a maximum of three school days at a time if the student violates the Student Code of Conduct by engaging in any prohibited conduct. Both the length of the suspension and restrictions on participation in school-sponsored or school-related extracurricular activities during the suspension are left to the discretion of the administrator. State law does not impose a limit on the number of times a student can be suspended during a semester or school year; however, certain restrictions apply if a child receives special education services.

**Placement Review Committee** – A three-member committee at each school must determine the placement of a student in those rare instances when a teacher refuses a student’s return to his or her classroom. The committee also makes recommendations to the district regarding the readmission of expelled students. The committee is composed of two teachers, one alternate teacher, and one professional staff member. The teacher refusing to readmit a student cannot serve on the committee.

**Student Code of Conduct** – This Code includes standards for student conduct established by a school district’s board of trustees, with the advice of a district-level committee. The Code of Conduct must be displayed openly at every school or be readily available for review. Every parent or guardian must receive a copy and return a signed statement to the school acknowledging that they have read and discussed the contents with their child. The Code of Conduct also must outline what disciplinary actions can be taken for specific behaviors.

**Zero Tolerance** – Discipline policies that require immediate removal of students without regard to the specific circumstances of that disciplinary incident.



## Special Education Services

Children who receive special education services have protections under federal law that establish how disciplinary situations must be handled. Even if your child does not receive special education services, but you feel that she/he should be evaluated, this section will give you insight on how to approach disciplinary issues.

### **If you suspect that your child has disabilities but your child has not been evaluated for special education services:**

Request an evaluation for special education services in writing. Although the primary reason for your child receiving special education services would be to allow him to receive the services and planning he needs to progress academically, special education status also may create some protections for your child regarding discipline for any problem behaviors related to his disability.

### **If your child receives Section 504<sup>1</sup> services and engages in problem behavior:**

Section 504 services are guaranteed by the Office for Civil Rights. Children receiving 504 accommodations to meet educational needs do not receive the extensive services that are part of special education. Also, Section 504 status does not offer legal protection for your child against disciplinary consequences outlined in the school district's Student Code of Conduct.

### **If your child receives special education services and engages in problem behavior:**

Make sure that your child has a Behavior Intervention Plan addressing how specific problem behaviors will be addressed. The Behavior Intervention Plan should be based on a recent Functional Behavior Assessment and can be adopted and updated by working through the Admissions Review and Dismissal (ARD) committee. Sometimes it takes time and experimentation for the adults in your child's life to know best how to prevent and redirect problem behavior. If you disagree with the Functional Behavior Assessment performed by the district or with the Behavior Intervention Plan designed by the ARD committee, see "It's a New IDEA 2007" (*page 38*) for advice on advocating for your child. The Behavior Intervention Plan serves as a modification of the school's Student Code of Conduct as it applies to your child.

### **If your child has been referred for disciplinary measures for any problem behavior:**

Schools *may consider the student's unique circumstances* when deciding whether to discipline a special education student for any violation of the Student Code of Conduct. This change in state law (80th Legislature, 2007) gives discretion to school administrators to discipline for behavior problems, replacing a "zero tolerance" approach. The school

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<sup>1</sup> Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of or be subjected to discrimination under" any program receiving federal financial assistance, which includes public schools.

may consider such factors as a student’s disciplinary history, ability to understand the consequences, expression of remorse, and supports provided to the student before the misbehavior occurred. The school has the option not to discipline the student. In Texas, a school district may specify in its Student Code of Conduct whether a disability, that clearly prevents the student from understanding that what he did was wrong, be factored into a disciplinary decision.

**If your child receives special education services and has been suspended for less than 10 days (cumulative) within school year for misbehavior:**

The school is *not required* to conduct a Manifestation Determination Review, or review the student’s Individualized Education Plan (IEP) or placement. The school cannot suspend the student for more than three consecutive days.

See <http://www.advocacyinc.org/guides> for more information.

**If your child receives special education services and has been suspended for 10 days or more (cumulative) within a school year or referred to a Disciplinary Alternative Education Program (DAEP):**

Your child is entitled to a Manifestation Determination Review (MDR), a special ARD meeting to determine whether the misconduct was caused by, or had a direct and substantial relationship to, the student’s disability, or was the direct result of the school’s failure to implement the student’s Individual Education Plan. If the MDR committee finds such a casual relationship exists, the student will remain in his or her current classroom placement. The exception occurs if the special education student brought a weapon or illegal drugs to school or caused a serious bodily injury. Then, the child can be sent to a DAEP even if the MDR committee found the misbehavior to be a manifestation of a disability or the school’s failure to implement the student’s Behavior Improvement Plan.

Even if the MDR committee finds that the child’s behavior was *not* a manifestation of a disability or due the school’s failure to implement the student’s Behavior Improvement Plan, the school can consider the student’s unique circumstances as mentioned above. Otherwise, she will be disciplined like her non-disabled peers as set out in the Student Code of Conduct.

## For More Information:

Consult resources provided by Advocacy Inc., a nonprofit organization federally designated to protect and advocate for the rights of people with disabilities, [www.advocacyinc.org/guides](http://www.advocacyinc.org/guides) for more information. “*It’s a New IDEA 2007: The Manual for Parents and Students about Special Education Services in Texas*” is also available online.<sup>2</sup> This document has information about evaluations, ARD meetings, the Individualized Education Plan (IEP), and how to resolve disagreements with the school district.

Advocacy, Inc. may be able to help you on a pro bono basis if your child receives special education services and his or her situation requires one of the following priority actions:

- Preventing the illegal removal of students with disabilities for disciplinary reasons to juvenile detention centers, Juvenile Justice Alternative Education Programs, Disciplinary Alternative Education Programs, interim Alternative Education Programs, and/or in-school suspensions that meet the standard for a change-of-placement.
- Preventing school districts in Texas from foregoing positive behavior supports and, instead, contacting law enforcement entities, including school district police or other district security personnel, city or county law enforcement agencies, and/or the juvenile justice system as a response to special education students’ behavior problems.
- Ensuring parents, school personnel, legislators and policy-makers have information about current laws and regulations governing use of physical restraint and seclusion, current best practices in behavior interventions and supports, and alternatives to restraint and seclusion.
- Preventing students with disabilities in Texas public schools from being subjected to use of physical restraints, locked seclusion, or time-out in violation of state statute and federal regulations.

If you are interested in contacting Advocacy, Inc. to see if the organization can take your child’s case, please call intake at **1-800-315-3876**.<sup>3</sup>

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<sup>2</sup> <http://www.advocacyinc.org/handoutEducation.cfm>.

<sup>3</sup> The Special Education Services section is authored by Ian Spechler with Advocacy, Inc., Austin, TX.

## Sample Letter to Appeal a School Expulsion

APPENDIX

*Sample  
Letter to  
Appeal  
a School  
Expulsion*

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[DATE]

Re: [STUDENT'S NAME]

[STUDENT'S DATE OF BIRTH]

[STUDENT ID # IF AVAILABLE]

Name

Address

Dear Superintendent,

This letter is to formally appeal the expulsion of [STUDENT'S NAME], a [CHILD'S GRADE LEVEL] student at [STUDENT'S SCHOOL]. [STUDENT'S NAME] was expelled on [DATE] by [ADMINISTRATOR], of the [NAME] School District. I do not believe that [STUDENT'S NAME] should have been expelled. Therefore, I am requesting a hearing before the entire school board. I will not accept a review by a designee from the school system. I hereby request that the school board set a time to review the findings of this expulsion hearing.

As [STUDENT'S NAME] has been out of school for [PERIOD OF TIME], I respectfully ask that this matter be handled as quickly as possible. Unfortunately, I will not be available on [DAY(S)] at [TIME] due to prior obligations, so I would appreciate your scheduling a hearing when I may be present to address the Board.

If you have any questions, please contact me at (512) - \_\_\_\_ - \_\_\_\_.

Sincerely,

\_\_\_\_\_  
[PARENT OR GUARDIAN'S NAME]

Parent/ Guardian of [STUDENT'S NAME]

\_\_\_\_\_  
[STUDENT'S NAME]

Student

Garza High School

CC:

Superintendent, School District

Each Member of the School Board

State Commissioner, Texas Education Agency

## Resources for Parents and Students

### **Advocacy, Inc.**

7800 Shoal Creek Blvd. #171-E  
Austin, TX 78757-1024  
1-800-252-9108 (V/TDD)  
(Only open for calls weekdays, 12:30 pm to 5 pm.)  
infoai@advocacyinc.org  
<http://www.advocacyinc.org>

### **American Civil Liberties Union (ACLU) of Texas**

P.O. Box 12905, Austin, TX 78711-2905  
(512) 478-7300  
(512) 478-7303 fax  
<http://www.aclutx.org>

\*The ACLU of Texas has developed a one-page pamphlet, *The Basics: Texas School Discipline, Know the Rules, Take Action*, which provides basic information on the rights of students relating to school discipline: <http://www.aclutx.org/projects/schooldiscipl.php>.

### **Council on At-Risk Youth (CARY)**

3710 Cedar Street Suite 220, Box 23  
Austin, Texas 78705  
(512) 451-4592  
(512) 451-3110  
<http://www.councilonatriskyouth.org>

### **Southern Disabilities Law Center**

1307 Payne Ave.  
Austin, Texas 78757  
(512) 458-5800  
(512) 458-5850 fax  
<http://www.sdlcenter.org>

### **Texas Civil Rights Project Headquarters**

The Michael Tigar Human Rights Center  
1405 Montopolis Drive  
Austin, TX 78741-3436  
(512) 474-5073  
questions@texascivilrightsproject.org  
<http://www.texascivilrightsproject.org>

### **Texas Legal Aid Offices**

Lone Star Legal Aid (SE Texas)  
1-800-733-8394  
<http://www.lonestarlegal.org>

Texas Rio Grande Legal Aid (SW Texas)  
1-888-988-9996  
<http://www.trla.org>

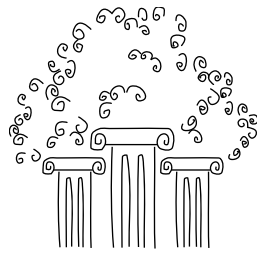
Northwest Legal Aid (NW Texas)  
214-748-1234 within Dallas-Fort Worth  
1-888-529-5277 non-metropolitan areas  
<http://www.lanwt.org>

APPENDIX

*Resources for  
Parents and  
Students*

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Texas

APPLESEED

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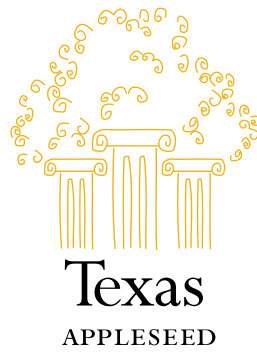
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Luis Wilmot  
Dow Chemical Employees  
Federal Credit Union,\* *Lake Jackson*

*\*affiliations listed for identification only*



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