

APPENDIX E

ADDITIONAL INFORMATION RELATED TO DISCIPLINE

Disciplinary Alternative Education Program (DAEP) Conferences, Expulsion Hearings, and Placement Reviews

Before removing a student to a DAEP under Texas Education Code (TEC) §37.008, the appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. **If the student has been alleged to have committed an offense as described in TEC §37.006 then the district official holding the conference meeting must present substantiated documentation of the alleged behavior as provided by a law enforcement agency or as created/obtained by the school district administrator.** Refer to PEIMS Data Standards Section 2, 425 Student Disciplinary Action Record for more information on this requirement.

Before a student may be expelled under TEC §37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the school district. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located. **If the student has been alleged to have committed an offense as described in TEC §37.007 then a district official holding the expulsion hearing must present substantiated documentation of the alleged behavior as provided by a law enforcement agency or as created/obtained by the school district administrator.** Refer to PEIMS Data Standards Section 2, 425 Student Disciplinary Action Record for more information on this requirement.

If the student's **placement** in a DAEP is to extend beyond the end of the next grading period, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

Before assigning a student to a disciplinary alternative education setting that extends beyond the end of the school year in which the initial assignment was made, the board or the board's designee must determine that: **(1)** the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual, **or (2)** the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.

A student placed in a DAEP under TEC §37.002 or 37.006 shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parents or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. At

the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus.

The disciplinary placement of all students who are served in special education with an Individualized Education Program (IEP) must be determined by an Admission, Review, and Dismissal (ARD) committee. TEC §37.004(a) Further, any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's ARD committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulation, including laws or regulations requiring the provision of:

- (1) functional behavioral assessments;
- (2) positive behavioral interventions, strategies, and supports; and
- (3) behavioral intervention plans. TEC §37.004(b)

Truancy

For truancy violations, a juvenile court always has original jurisdiction under the Family Code. Once jurisdiction is waived to a Justice of the Peace or Municipal court, truancy becomes "failure to attend" under Chapter 45 code of Criminal Procedure. Under TEC §25.0951, a court is required to dismiss a complaint regarding absences if the school fails to file the complaint within ten school days of the student's tenth absence.

Disciplinary Action Reasons (Codes and Definitions)

Under TEC §37.006(a), (b), (c), and (l), all students, who are at least 6 years of age on the date that an offense is committed, **must be removed to a DAEP**, for a time period that is determined by the local Student Code of Conduct, if one of the following acts are committed: on or within 300 feet of school property, or while the student is attending a school-sponsored, or school related activity, on or off of school property. The school administrator designated must first establish a reasonable belief that the act has been committed and then corroborate and document that belief with appropriate law enforcement officials.

Refer to the PEIMS *Data Standards* Code Table C165 for codes used to report these behaviors.

1. **Engages in Conduct Punishable as a Felony** (Action Reason Code 02) - Includes all felony activities that are not otherwise more specifically defined or included as a behavior that requires a mandatory expulsion action.
2. **Assault of Someone other than School Staff** (Action Reason Code 28) - Section 22.01 (a)(1), Penal Code, defines assault as when a person intentionally, knowingly, or recklessly causes bodily injury to another person. **Two or more students cannot assault each other.** For purposes of this reason, an assault must involve a victim and a perpetrator(s) and the victim must receive bodily injury. If these criteria are not met, then the proper category would be **Other Student Code of Conduct Violation** (Action Reason Code 21).
3. **Assault of School Staff** (Action Reason Code 27) - Section 22.01 (a)(1), Penal Code, defines assault as when a person intentionally, knowingly, or recklessly causes bodily injury to another person. For purposes of this reason, an assault must involve a victim and a perpetrator(s) and the victim must receive bodily injury. If these criteria are not met, then the proper category would be **Other Student Code of Conduct Violation** (Action Reason Code 21).

"Assault of School Staff" *violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.*

4. **Terroristic Threat** (Action Reason Code 26) - Under Section 22.07 Penal Code, a person commits an offense if he threatens to commit any offense involving violence to any person or property with the intent to:
- cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies; or
 - place any person in fear of imminent serious bodily injury; or
 - prevent or interrupt the occupation or use of a building; room; place of assemble; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place; or
 - cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service.

A person who receives a terroristic threat must not only believe the threat, but also believe that the person making the threat will carry it out.

"Terroristic Threat" *violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.*

5. **Marihuana or Controlled Substance or Dangerous Drug** (Action Reason Code 04) - sells, gives, or delivers to another person or possesses or uses or is under the influence of marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or a dangerous drug, as defined by Chapter 483, Health and Safety Code.

Chapter 481, Health and Safety Code, defines **marihuana** as Cannabis Sativa whether growing or not, the seeds of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include resin extracted from a part of the plant, the mature stalks of the plant or fiber produced from the stalks, oil or cake made from the seeds of the plant, the sterilized seeds of the plant or a compound, manufacture, salt, derivative, mixture, or preparations of the mature stalks, fiber, oil or cake.

Chapter 481, Health and Safety Code, defines a **controlled substance** as a substance, including a drug and an immediate precursor, listed in Schedules I-V or penalty Groups 1-4 of the Health and Safety Code. Possession of any amount in Penalty Groups 1 and 2 is a felony. Possession of a controlled substance in Penalty Groups 3 and 4 is a felony if the amount is more than 28 grams. It is also a felony to deliver a controlled substance to a minor. (However, this offense does not apply to minors in some circumstances.)

Chapter 483, Health and Safety Code, defines a **dangerous drug** as a device or a drug that is unsafe for self-medication and that is not included in Schedules I-V or penalty Groups 1-4 of the Health and Safety Code. The term includes a device or drug that bears or is required to bear the legend:

- Caution: federal law prohibits dispensing without a prescription; or
- Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

"Marihuana or Controlled Substance or Dangerous Drug" *violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.*

If a violation under this category is committed at a felony level, then the student must be expelled from their regular education setting. Use Action Reason Code 36 for violations under this reason.

6. **Alcohol** (Action Reason Code 05) - sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage.

Section 1.04, Alcoholic Beverage Code, defines an alcoholic beverage as alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

"Alcohol" violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.

If a violation under this category is committed at a felony level, then the student must be expelled from their regular education setting. Use Action Reason Code 37 for violations under this reason.

7. **Abuse of a Volatile Chemical** (Action Reason Code 06) - engages in conduct that contains the elements of an offense relating to an abusable volatile chemical (glue, aerosol paint, etc) under Sections 485.031 through 485.034, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code.

Chapter 485.031, Health and Safety Code, defines the offense abuse of a volatile chemical as when a person inhales, ingests, applies, uses, or possesses a volatile chemical with the intent to inhale, ingest, apply, or use a volatile chemical (glue, aerosol paint, etc) in a manner contrary to the directions for use, cautions or warnings appearing on a label of a container of chemical and is designed to affect the persons central nervous system, create or induce a condition of intoxication, hallucination, or elation or change or distort or disturb the person's eyesight, thinking process, balance or coordination.

"Abuse of a Volatile Chemical" violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.

8. **Public Lewdness/Indecent Exposure** (Action Reason Code 07) - engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

Chapter 21.07, Penal Code, defines public lewdness as when a person knowingly engages in any of the following acts in a public place or, if not in a public place, is reckless about whether another is present or will be offended or alarmed by:

- (a) an act of sexual intercourse;
- (b) act of deviate sexual intercourse;
- (c) act of sexual contact; or
- (d) act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

Chapter 21.08, Penal Code, defines indecent exposure as an offense when a person exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

9. **Retaliation against School Employee** (Action Reason Code 08) - engages in conduct that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

Section 36.06, Penal Code, defines the offense of retaliation as when a person intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness, prospective witness, informant, or a person who has reported or who the actor knows intends to report the occurrence of a crime or to prevent or delay the service of another as a public servant, witness, prospective witness, informant, or a person who has reported or who the actor knows intends to report the occurrence of a crime.

"Retaliation against School Employee" *violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.*

If a violation under this category is committed at a felony level, then the student must be expelled from their regular education setting.

10. **Title 5 Felony Committed Off Campus** (Action Reason Code 09) - a student who commits an off-campus felony **must be removed from their regular education program and placed** in a DAEP if:
- the student receives deferred prosecution for conduct and the conduct is defined as a felony under Title 5 of the Penal Code;
 - a court or jury finds that the off-campus conduct engaged in by the student constitutes delinquent conduct and is defined as a felony under Title 5 of the Penal Code; or,
 - the superintendent or the superintendent's designee has a reasonable belief that the student engaged in conduct defined as a felony under Title 5 of the Penal Code.

Title 5 felonies include but are limited to: murder; capital murder; manslaughter; criminally negligent homicide; kidnapping; aggravated kidnapping; indecency with a child; felony assault; sexual assault; aggravated assault; aggravated sexual assault; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; deadly conduct; terroristic threat; aiding suicide; and tampering with a consumer product.

A student who is at least 10 years of age **may be expelled** if the student engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) (**murder, capital murder, criminal attempt to commit murder or capital murder; aggravated assault** under Penal Code §22.02; **sexual assault** under Penal Code §22.011 or **aggravated sexual assault** under Penal code §22.021), **against another student from the same campus**, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

"The provision for a *discretionary expulsion under for these offenses is dependent on the local Student Code of Conduct.*"

11. **False Alarm/False Report** (Action Reason Code 35) - a student who commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:
- cause action by an official or volunteer agency organized to deal with emergencies;
 - place a person in fear of imminent serious bodily injury; or
 - prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

"False Alarm/False Report" violation is also a discretionary expellable offense dependent on the local Student Code of Conduct.

Disciplinary Information for Students At Least Age 6

Under TEC §37.006(d) and (l), students, who are at least 6 years of age on the date that an offense is committed, **may be removed to a DAEP**, for a time period that is determined by the local Student Code of Conduct. The school administrator designated must first establish a reasonable belief that the act has been committed and then corroborate and/or document that belief with appropriate law enforcement officials.

A student **may be removed** from their regular education program and placed in a DAEP under TEC §37.001 as identified in the Student Code of Conduct and based on conduct occurring on campus and/or while the student is in attendance at a school-sponsored or school-related activity. **A conference hearing must be held as required under TEC §37.009 in order to make a placement for one of these discretionary placement reasons.**

1. **Non-Title 5 Felony Committed Off Campus** (Action Reason Code 10) - a student **may be removed** from class and placed in a DAEP under TEC §37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if;
 - (a) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and
 - (b) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

A student who is at least 10 years of age **may be expelled** if the student engages in conduct that contains the elements of **aggravated robbery** under Penal Code §29.03, **against another student from the same campus**, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

"The provision for a *discretionary expulsion under this offense is dependent on the local Student Code of Conduct.*"

2. **Criminal Mischief** (Action Reason Code 22) - a student may also be expelled under Section 37.007(f) for conduct that contains the offense of criminal mischief **if that conduct is punishable as a felony**. Otherwise, the most severe action that may be taken would be placement in a DAEP.

Section 28.03, Penal Code, defines criminal mischief as when a person intentionally or knowingly damages or destroys the tangible property of the owner, intentionally or knowingly tampers with the tangible property of the owner and causes a pecuniary loss or substantial inconvenience to the owner or a third person. A felony under this section occurs when damage exceeds \$1,500. For example, this section would apply to cases of graffiti if the total cost of repair and cleaning exceeds \$1,500.

3. **Permanent removal by a teacher from class** (Action Reason Code 01) – a teacher may permanently remove a student from the classroom **(1)** who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or **(2)** whose

behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.

4. **Violation of Student Code of Conduct** (Action Reason Code 21) - this category includes bullying, harassment, and making hit lists (TEC §37.001) and reasons not specifically identified in TEC Chapter 37 that are adopted by the local school board and itemized and identified in the local Student Code of Conduct.

5. **Tobacco Violations** (Action Reason Code 33) –
Health and Safety Code, Section 3.01, Chapter 161.252 – An individual who is younger than 18 years of age commits an offense if the individual: (1) possesses, purchases, consumes, or accepts a cigarette or tobacco product; or (2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

TEC § 38.006 Tobacco on School Property – The board of trustees of a school district shall: (1) prohibit smoking or using tobacco products at a school-related or school-sanctioned activity on or off school property; (2) prohibit students from possessing tobacco products at a school-related or school-sanctioned activity on or off school property; and (3) ensure that school personnel enforce the policies on school property.

6. **School Related Gang Violence** (Action Reason Code 34) – A violent action not otherwise defined under TEC §37.006 and/or §37.007 by three or more persons having a common identifying sign or symbol or an identifiable sign or symbol or an identifiable leadership who associate in the commission of criminal activities under Penal Code §71.01

7. **Fighting/Mutual Combat** (Action Reason Code 41)
Fighting is two or more students or persons that choose to mutually engage in physical combat using blows or force to strive to overcome the other student(s) or person(s).

8. **Truancy (failure to attend school) – Parent contributing to truancy** –
(Action Reason Code 42)

TEC § 25.093. Parent Contributing to Truancy

(a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 25.094, the parent commits an offense.

9. **Truancy (failure to attend school) – Student with at least 3 unexcused absences** –
(Action Reason Code 43)

TEC § 25.094. Failure to Attend School

(a) An individual commits an offense if the individual: (1) is required to attend school under Section 25.085; and (2) fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

10. **Truancy (failure to attend school) – Student with 10 unexcused absences** –
(Action Reason Code 44)

TEC § 25.094. Failure to Attend School

(a) An individual commits an offense if the individual: **(1)** is required to attend school under Section 25.085; and **(2)** fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

11. Truancy (failure to attend school) – Student failure to enroll in school –
(Action Reason Code 45)

TEC § 25.085. Compulsory School Attendance

(b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18th birthday shall attend school.

12. Deadly Conduct – (Action Reason Code 49)

Section 22.05, Penal Code, defines **deadly conduct** as when a person recklessly engages in conduct that places another in imminent danger of serious bodily injury, or a person commits an offense if he knowingly discharges a firearm at or in the direction of: (1) one or more individuals; or (2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied. Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded. For purposes of this section, "building," "habitation," and "vehicle" have the meanings assigned those terms by Section 30.01. An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

Disciplinary Information for Students at Least Age 10

Under TEC §37.007(a), (d), (e), and (h), students, who are at least 10 years of age on the date that an offense is committed, **must be expelled from their regular education setting** for a time period that is determined by the local Student Code of Conduct. The only exception is that TEC §37.007(e) requires that students who bring a firearm to school be expelled for a minimum of one year. The school administrator designated must first establish a reasonable belief that the act has been committed and then corroborate and/or document that belief with appropriate law enforcement officials.

Students who are less than 10 years of age and commit an expellable offense must be expelled with placement to a DAEP.

1. Firearm (Action Reason Code 11) - uses, exhibits, or possesses a firearm as defined by Section 46.01(3), Penal Code.

Section 46.01(3) defines a **firearm** as any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. This definition does not include antique or curio firearms manufactured prior to 1899.

In accordance with federal law, a local educational agency (LEA), including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

- (a) the superintendent or other chief administrative officer of the school district or of the other LEA, as defined by 20 U.S.C. Section 2891, may modify the length of the expulsion in the case of an individual student;

- (b) the district or other LEA shall provide educational services to [the] an expelled student in an alternative education program as provided by TEC §37.008 if the student is younger than 10 years of age on the date of expulsion; and
- (c) the district or other LEA may provide educational services to an expelled student who is older than 10 years of age in an alternative education program as provided in TEC §37.008.

BB guns and pellet guns are not considered firearms under this definition. The use, exhibition, or possession of these items, while probably prohibited by the local Student Code of Conduct, is not an acceptable reason for expelling a student.

2. **Illegal Knife** (Action Reason Code 12) - uses, exhibits, or possesses an illegal knife as defined by Section 46.01, Penal Code, or by local policy.

Section 46.01 defines an **illegal knife** as one with a **blade length longer than 5.5 inches** and includes in the definition of knife a hand instrument designed to cut or stab another by being thrown, a dagger, a bowie knife, a sword or a spear. School districts wishing to ban any other knives should adopt an appropriate local policy.

Non-Illegal Knife (Action Reason Code 50) – uses, exhibits or possesses a non-illegal knife as defined by local policy.

Local Policy: May define a non-illegal knife as one with a blade equal to or less than 5.5 inches and may include in the definition of non-illegal knife a hand instrument designed to cut or stab another or by being thrown.

3. **Club** (Action Reason Code 13) - uses, exhibits, or possesses a club as defined by Section 46.01(1), Penal Code.

Section 46.01(1) defines a **club** as an instrument that is specifically designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to a blackjack, nightstick, mace, or a tomahawk.

4. **Weapon** (Action Reason Code 14) - uses, exhibits, or possesses a weapon listed as a prohibited weapon under Section 46.05, Penal Code.

Section 46.05 defines a **prohibited weapon** as one of the following: an explosive weapon, a machine gun, a short-barrel firearm, a firearm silencer, a switchblade knife, knuckles (i.e. brass knuckles), armor-piercing ammunition, a chemical dispensing device (i.e. Mace or Pepper Gas), or a zip gun.

5. **Aggravated Assault against School Staff** (Action Reason Code 29) - aggravated assault against a school district employee or volunteer under Section 22.02, Penal Code.

Section 22.02, Penal Code, defines **aggravated assault** as an offense as defined in §22.01 if the person causes **serious bodily** injury to another, including the person's spouse, or **uses or exhibits a deadly weapon** during the commission of the assault. For this Action Reason there must be a victim(s) and a perpetrator(s). Two students cannot commit aggravated assault against each other.

6. **Aggravated Assault against Student** (Action Reason Code 30) - aggravated assault against someone other than a school district employee or volunteer under Section 22.02, Penal Code.

Section 22.02, Penal Code, defines **aggravated assault** as an offense as defined in §22.01 if the person causes **serious bodily** injury to another, including the person's spouse, or **uses or exhibits a deadly weapon** during the commission of the assault. For this Action Reason there must be a victim(s) and a perpetrator(s). Two students cannot commit aggravated assault against each other.

7. **Sexual Assault/Aggravated Sexual Assault against School Staff** (Action Reason Code 31) - sexual assault under Section 22.011, Penal Code or aggravated sexual assault under Section 22.021, Penal Code against a school district employee or volunteer.

(See 8. below for explanation of sexual assault and aggravated sexual assault.)

8. **Sexual Assault/Aggravated Sexual Assault against Student** (Action Reason Code 32) - sexual assault under Section 22.011, Penal Code or aggravated sexual assault under Section 22.021, Penal Code against someone other than a school district employee or volunteer.

Section 22.011, Penal Code, defines **sexual assault** as when a person intentionally or knowingly causes the penetration of the anus or female sexual organ of another person by any means without that person's consent, causes the penetration of the mouth of another person by the sexual organ of the actor without the person's consent or causes the sexual organ of another person, without the person's consent, to contact, or penetrate the mouth, anus, or sexual organ of another person, including the actor.

Sexual assault is also defined as when a person intentionally or knowingly causes the penetration of the anus or female sexual organ of a child by any means, causes the penetration of the mouth of a child by the sexual organ of the actor, causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor, or causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor.

Section 22.021, Penal Code, defines **aggravated sexual assault** as any of the offenses listed above in Section 22.011 if the person causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode, places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person, by acts or words threatens to cause death or serious bodily injury or kidnapping of any person or who uses or exhibits a deadly weapon in the course of the same criminal episode. A person also commits the offense of aggravated sexual assault if they act in concert with another who engages in such conduct or commits the offense of sexual assault on a person who is younger than 14 or 65 years of age or older (Chapter 318, Section 9).

9. **Arson** (Action Reason Code 16)

Section 28.02, Penal Code, defines **arson** as when a person starts a fire or causes an explosion with intent to destroy or damage any vegetation, fence, structure, open-space land, building or vehicle knowing that it is within the limits of an incorporated city or town, it is insured, it is subject to mortgage or it is located on property belonging to another.

10. **Murder, Capital Murder, or Criminal Attempt to Commit Murder/Capital Murder** (Action Reason Code 17)

Section 19.02, Penal Code, defines **murder** as when a person intentionally or knowingly causes the death of another person, intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual or commits or attempts to commit a felony, other than manslaughter, and in the course thereof he commits an act clearly dangerous to human life that causes the death of an individual.

Section 19.03, Penal Code, defines **capital murder** as when a person commits an offense defined under Section 19.02 and the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty, the person intentionally commits murder during the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, or obstruction or retaliation. A person also commits capital murder if the person commits murder for remuneration or the promise of remuneration or employs another to commit murder for remuneration.

Section 15.01, Penal Code, defines **criminal attempt** as when a person if, with specific intent to commit an offense, does the act amounting to more than mere preparation but fails to effect the commission of the offense intended.

11. **Indecency with a Child** (Action Reason Code 18)

Section 21.11, Penal Code, defines **indecent with a child** as when a person, with a person younger than 17 years, engages in sexual contact with student or exposes his anus or any part of his genitals knowing the student is present with intent to arouse or gratify the sexual desire of any person.

12. **Aggravated Kidnapping** (Action Reason Code 19)

Section 20.04, Penal Code, defines **aggravated kidnapping** as when a person intentionally or knowingly abducts another person with intent to hold him for ransom, use him as a hostage, facilitate the commission of a felony, afflict bodily injury on him or abuse him sexually, terrorize him or a third person, or interfere with the performance of any governmental or political function.

13. **Felony Controlled Substance Violation** (Action Reason Code 36)

Examples would include four (4) ounces or more of marijuana, any amount of cocaine, and other controlled substances. Always get corroboration from law enforcement before using this Action Reason code.

14. **Felony Alcohol Violation** (Action Reason Code 37)

An example would be intoxication manslaughter. Always get corroboration from law enforcement before using this Action Reason code.

15. **Aggravated Robbery** (Action Reason Code 46)

Section 29.03, Penal Code, defines **aggravated robbery** as when a person commits robbery as defined in Section 29.02, and he: (1) causes serious bodily injury to another; (2) uses or exhibits a deadly weapon; or (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is: (A) 65 years of age or older; or (B) a disabled person.

Section 29.02, Penal Code, defines **robbery** as a person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

16. Manslaughter (Action Reason Code 47)

Section 19.04, Penal Code, defines **manslaughter** as a person commits an offense if he recklessly causes the death of an individual.

17. Criminally Negligent Homicide (Action Reason Code 48)

Section 19.05, Penal Code, defines **criminally negligent homicide** as a person commits an offense if he causes the death of an individual by criminal negligence.

Instructions on Appropriate Use of Emergency Placement/Expulsion

Emergency Placement/Expulsion (Action Reason Code 23) - the use of this code is limited based upon the behavior the student has committed.

If the student has committed a behavior that either under state law (TEC §37.006) or the local Student Code of Conduct requires a DAEP placement and the principal or their designee **reasonably believes** that the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity, then the student may be placed on an **emergency and temporary basis** to a DAEP pending a conference hearing required under TEC §37.009 taking place.

The principal should consider whether Out-of-School Suspension would be a more appropriate action to deal with such behavior. In rare circumstances, it would be allowable for the principal or their designee to order an Out-of-School Suspension immediately followed by an Emergency Placement to a DAEP pending a conference hearing that provides the due process hearing for more formally placing the student at the DAEP.

If the student has committed a behavior under state law (TEC §37.007) that would require an expulsion or the student has committed a behavior under state law (TEC §37.007) that would allow for a discretionary expulsion and the local Student Code of Conduct requires/allows for the discretionary expulsion and the principal or their designee **reasonably believes** that the immediate expulsion of the student is necessary to protect persons or property from imminent harm, then the student may be expelled on an **emergency and temporary basis** to a setting without educational services available pending an expulsion hearing required under TEC §37.009 taking place.

The principal should consider whether Out-of-School Suspension or In-School Suspension would be a more appropriate action to deal with such behavior.

2009-2010 PEIMS Data Standards
Appendix E: Additional Information Related to Discipline

Chart for Determining Mandatory Placement and Expulsion Codes for 425 Record

Disciplinary Action Reason Codes (C165)		Disciplinary Action Codes	
Code and Translation		Mandatory DAEP Placement	Mandatory Expulsion
01	Permanent removal by a teacher from class (Teacher has removed the student from classroom and denied the student the right to return. TEC §37.003 has been invoked.) – TEC §37.002(b)		
02	Conduct punishable as a felony-TEC §37.006(a)(2)(A)	X	
04	Possessed, sold, or used marihuana or other controlled substance-TEC §37.006(a)(2)(C) and 37.007(b) for under the influence	X	
05	Possessed, sold, used, or was under the influence of an alcoholic beverage-TEC §37.006(a)(2)(D) and 37.007(b)	X	
06	Abuse of a volatile chemical- TEC §37.006(a)(2)(E)	X	
07	Public lewdness or indecent exposure-TEC §37.006(a)(2)(F)	X	
08	Retaliation against school employee-TEC §37.006(b) and 37.007(d)	X	X*
09	Based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity for felony offenses in Title 5, Penal Code-TEC §37.006(c) , TEC §37.007(b)(4), and TEC §37.0081	X	
10	Based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity for felony offenses not in Title 5, Penal Code-TEC §37.006(d) and TEC §37.007(b)(4)		
11	Used, exhibited, or possessed a firearm-TEC §37.007(a)(1)(A) and/or 37.007(e) brings a firearm to school.		X
12	Used exhibited, or possessed an illegal knife-TEC §37.007(a)(1)(B)		X
13	Used exhibited, or possessed an illegal club-TEC §37.007(a)(1)(C)		X
14	Used exhibited, or possessed a prohibited weapon under Penal Code Section 46.05-TEC §37.007(a)(1)(D)		X
16	Arson-TEC §37.007(a)(2)(B)		X
17	Murder, capital murder, criminal attempt to commit murder, or capital murder-TEC §37.007(a)(2)(C)		X
18	Indecency with a child-TEC §37.007(a)(2)(D)		X
19	Aggravated kidnapping-TEC §37.007(a)(2)(E)		X
20	Serious or persistent misconduct violating the student code of conduct while placed in a DAEP-TEC §37.007(c)		
21	Violation of student code of conduct not included under TEC §37.006, 37.007, or 37.002(b)		
22	Criminal mischief-TEC §37.007(f)		
23	Emergency Placement/Expulsion-TEC §37.019		
26	Terroristic threat-TEC §37.006(a)(1) or 37.007(b)	X	
27	Assault under Penal Code Section 22.01(a)(1) against a school district employee or volunteer-TEC §37.007(b)(2)(C)	X	
28	Assault under Penal Code Section 22.01(a)(1) against someone other than a school district employee or volunteer-TEC §37.006(a)(2)(B)	X	
29	Aggravated assault under Penal Code Section 22.02 against a school district employee or volunteer-TEC §37.007(d)		X
30	Aggravated assault under Penal Code Section 22.02 against someone other than a school district employee or volunteer-TEC §37.007(a)(2)(A)		X
31	Sexual assault under Penal Code Section 22.011 or aggravated sexual assault under 22.021 against a school district employee or volunteer-TEC §37.007(d)		X
32	Sexual assault under Penal Code Section 22.011 or aggravated sexual assault under 22.021 against someone other than a school district employee or volunteer-TEC §37.007(a)(2)(A)		X
33	Possessed, purchased, used or accepted a cigarette or tobacco product as defined in the Health and Safety Code, Section 3.01, Chapter 161.252		
34	School-related gang violence		
35	False alarm/false report-TEC §37.006(a)(1) and 37.007(b)	X	
36	Felony controlled substance violation-TEC §37.007(a)(3)		X
37	Felony alcohol violation-TEC §37.007(a)(3)		X
41	Fighting/Mutual Combat-Excludes all offenses under Penal Code §22.01		
42	Truancy (failure to attend school) – Parent contributing to truancy - TEC §25.093(a)		
43	Truancy (failure to attend school) – Student with at least 3 unexcused absences - TEC §25.094		
44	Truancy (failure to attend school) – Student with 10 unexcused absences - TEC §25.094		
45	Truancy (failure to attend school) – Student failure to enroll in school - TEC §25.085		
46	Aggravated robbery - TEC §37.007(a)(2)(F)		X
47	Manslaughter - TEC §37.007(a)(2)(G)		X
48	Criminally negligent homicide - TEC §37.007(a)(2)(H)		X
49	Engages in deadly conduct - TEC §37.007(b)(3)		
50	Used, exhibited, or possessed a non-illegal knife as defined by the district's student code of conduct and as allowed under TEC 37.007. (Knife length equal to or less than 5.5 inches.)		
51	Firearm (Off Campus 300 ft Zone) - TEC §37.007(a)(1)(A)		
52	Illegal Knife, Club, or Prohibited Weapon (Off Campus 300 ft Zone) - TEC §37.007(a)(1)(B-D)		
53	Serious Offense Conduct (Off Campus 300 ft Zone) - TEC §37.007(a)(2)(A-H)		
54	Felony Marihuana, Controlled Substance, Dangerous Drug, or Alcoholic Beverage (Off Campus 300 ft Zone) - TEC §37.006(a)(2)(C) or (D)		
55	Student is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure and is under court supervision - TEC §37.304. The offense(s) for which the student is required to register as a sex offender must have occurred on or after Sept. 1, 2007.	X	
56	Student is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure and is not under court supervision - TEC §37.305. The offense(s) for which the student is required to register as a sex offender must have occurred on or after Sept. 1, 2007.		
57	Continuous sexual abuse of young child or children under Penal Code §21.02, occurring on school property or while attending a school-sponsored or school-related activity on or off school property – TEC §37.007(a)(2)(I).		X

* Retaliation against school employee or volunteer coupled with an offense in TEC 37.007 (a) or (d).

Shaded areas indicate that the disciplinary action reason code has more than one corresponding disciplinary action code.

While a school may find it necessary to temporarily remove a student for safety reasons using in-school or out-of-school suspension, the mandatory actions taken against a student for a particular offense should include at least one (1) 425 record that matches this chart.