

# “From Vaping to Weapons” Addressing Student Offenses When The Student Receives Special Education

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## THE BASICS

We'll review legal issues that apply to various disciplinary alternatives, primarily under Chapter 37 of the Texas Education Code. The Texas Education Code controls, but look at your SCOC.

We'll also discuss some of the recent changes to law and how they apply in the special education context.



<p>But what if we are a District of Innovation?</p>	<p>Under HB 6, DOI's can no longer be exempt from the requirements of Chapter 37.</p>
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<p>MITIGATING FACTORS</p>	<p>Before assigning a student to OSS, DAEP, expulsion, or a JJAEP, a district <i>must consider</i> statutorily described potential mitigating factors in relation to the misconduct. These factors remain in place and they apply in any context. The factors include:</p> <ul style="list-style-type: none"> <li>Self-defense</li> <li>Intent</li> <li>Disciplinary history</li> <li>A disability that “substantially impairs” the student’s capacity to appreciate the wrongfulness of the conduct</li> <li>The student’s status as homeless or in the conservatorship of DFPS</li> </ul>
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<p><b>MANDATORY VS. DISCRETIONARY</b></p>	<p>When an offense is mandatory, the district is required to place the student in the DAEP or expel the student. If the offense is discretionary, it is the <i>district's choice</i> whether to take the action. The discretionary offenses are set forth in statute or in the district's code of conduct.</p> <p>The district's discipline policies can be found in the F series of the school's policy manual.</p> <p>Keep in mind how the due process requirements differ between DAEP removals and expulsions.</p>
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<p><b>SUSPENSION</b></p>	<p>The grounds for a student's suspension are set forth in a district's student code of conduct (SCOC).</p> <p>For out of school suspension, a student may still be suspended for <i>up to three school days</i> at a time.</p>
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<p>Can a student in second grade be placed in out of school suspension?</p>	<p>Under HB 6, a second-grade student (i.e., in a grade level below third) can only receive out-of-school suspension (OSS) if they meet one of three specific criteria under the updated Texas Education Code § 37.005(c):</p> <ul style="list-style-type: none"> <li>Weapons offense (e.g., bringing or using a weapon under Penal Code § 46.02 or § 46.05)</li> <li>Threatens immediate health or safety of others</li> <li>Causes “repeated or significant disruption” to the classroom environment</li> </ul>
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<p>Can a parent seek change from out of school suspension to in school suspension if there is no one at home to supervise the student?</p>	<p>Yes. TEC § 37.005(c-2) as amended by HB6 provides that upon receiving a written request from the student’s parent, the campus administrator or district designee may <i>at the administrator’s or designee’s sole discretion</i> reassign a student placed in out of school suspension to an in-school suspension if the parent demonstrates through supporting information and documentation that the parent is unable to provide suitable supervision for the student during school hours. <i>The alternative placement may be used only in extenuating circumstances and may not be used as a routine replacement.</i></p>
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<p>Is there a limit to how long a student can be placed in in-school suspension?</p>	<p>Under House Bill 6 (HB 6), which amended Texas Education Code § 37.005, there is now no limit on how long a student can be assigned to in-school suspension (ISS) – but the law includes an important new safeguard.</p>
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<p>What is the procedural safeguard you ask?</p>	<p>The statutory Language from TEC § 37.005 as amended by HB 6 provides the following:</p> <p>“If a student is placed in in-school suspension for more than 10 school days, the campus behavior coordinator shall review the student’s placement not later than the 11th school day after the placement began.” The purpose of the review is to determine whether:</p> <ol style="list-style-type: none"><li>1. The student’s behavior has improved,</li><li>2. Continued placement is appropriate,</li><li>3. Additional supports or interventions are needed,</li><li>4. The student is eligible to return to the regular classroom.</li></ol>
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<p>Is parental involvement required for DAEP Placement?</p>	<p>No. Here is the exact statutory language added by HB 6 under Texas Education Code § 37.0014, which governs behavioral agreements and parental involvement for disciplinary placements (DAEP or expulsion):</p> <p>“The board of trustees of a school district <i>may adopt a policy</i> for parental involvement in school disciplinary placements.”</p> <p>The key word is “may” which is discretionary. Schools are not required to adopt such a policy.</p>
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<p>What is required if a school adopts a policy requiring parental participation?</p>	<p>The principal, campus behavior coordinator, or other appropriate administrator will notify the parent or person standing in parental relation to a student who has been placed in a disciplinary alternative education program or expelled of the parent’s or person’s right to request a behavioral agreement that specifies the responsibilities of the parent or person and student to be developed; and if a behavioral agreement described by Subdivision (1) is developed and the student and the student’s parent or person standing in parental relation comply with the terms of the agreement, subject to Subsection (c), a reduction in the period of the disciplinary placement imposed on the student.</p>
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	<p>(c) A reduction in the period of a disciplinary placement under Subsection (b)(2) does not entitle the student for whom the period of placement was reduced to a different disciplinary placement. The reduction in the period of a disciplinary placement is at the sole discretion of the principal, campus behavior coordinator, or other appropriate administrator, and may be revoked or amended at any time if the student or the student's parent or person standing in parental relation does not comply with the terms of the behavioral agreement developed under Subsection (b)(1).</p>
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	<p>(d) A behavioral agreement developed under Subsection (b)(1) must include in writing the specific reduction in the period of the student's disciplinary placement with which the student will be credited if the student and the student's parent or person standing in parental relation comply with the terms of the behavioral agreement.</p>
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<p><b>What should the behavioral agreement include?</b></p>	<p>Per earlier bill versions cited in subcommittee reports, such an agreement would include:</p> <ol style="list-style-type: none"><li>1. Student behavioral and learning objectives</li><li>2. Parental commitment to attend specified progress-meeting(s)</li><li>3. Acknowledgment by the parent of their responsibilities in supporting the student's remediation</li></ol> <p>It would involve the student and parent meeting with district staff (in-person or via telephone/video) to co-develop the plan.</p>
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<p><b>Must a school prohibit electronic device possession by students at school?</b></p>	<p>Personal Electronic Devices: What does HB 1481 do?</p> <p>Effective September 1, 2025, all public and open-enrollment charter schools in Texas must adopt a written policy prohibiting students from using personal communication devices on school property during the school day.</p>
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<p>Does this apply to a student with special needs?</p>	<p>Districts must allow device use if:</p> <div data-bbox="656 457 995 661"><p>The student has a documented medical condition requiring device access.</p></div> <div data-bbox="1029 457 1369 661"><p>The student receives special education or 504 services and needs the device per their IEP or plan.</p></div> <div data-bbox="841 695 1180 898"><p>Administrators determine that use is necessary for a safety or legal purpose.</p></div>
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<p><b>SCHOOL ACTION</b></p>	<p>School officials may take disciplinary action regardless of whether law enforcement officials seek criminal consequences for the same misconduct.</p>
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<p><b>STUDENT WHO WITHDRAWS PENDING THE DISCIPLINARY PROCEEDINGS</b></p>	<p>If a student withdraws from school before an order of expulsion or DAEP is entered, the district may complete the proceedings and enter the order. If the student reenrolls in the district during the same or the subsequent school year, the district may enforce the order, reduced for time served. If the student enrolls in another school district, the new district may honor the order, or, if the preceding district failed to enter an order, the new district may complete the proceedings and enter an order.</p>
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<p><b>VAPING</b></p>	<p>According to TEA stats, over 330,000 middle and high school students reported using vaping devices (e-cigarettes) in 2018 alone.</p> <p>The number represents roughly 13% of Texas students in grades 6-12.</p> <p>The number of users <i>quadrupled</i> from 2012 to 2018.</p>
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<p><b>VAPING AND THE USE OF E- CIGARETTES</b></p>	<p>In 2023, the legislature amended Section 38.006 (b) of the Education Code prohibiting students from smoking, using, or possessing e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property. The law created a mandatory removal to the DAEP for vape related offenses.</p> <p>DAEP placements became overwhelming.</p>
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<p><b>2025 Legislative Change</b></p>	<p>Under HB 6, possession of an e-cigarette is no longer a mandatory DAEP offense. Schools have some flexibility to address vaping incidents on a case-by-case basis. It is basically a tiered response.</p> <p>However, a student selling, delivering, or distributing an e-cig on or within 300 feet of school property is subject to mandatory removal to a DAEP.</p>
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<p><b>Can we still use corporal punishment?</b></p>	<p>Despite legislative efforts to eliminate the use of corporal punishment, the behavior intervention may still be used if a school district so chooses through policy. Texas is one of 18 states that still authorize the use of corporal punishment.</p>
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<p><b>What behaviors entitle a teacher to remove a student from the classroom for behavior?</b></p>	<p>Teachers may now remove a student from class for the following behaviors:</p> <ol style="list-style-type: none"><li>1. Repeatedly interferes with instruction,</li><li>2. Behaves unruly, disruptive, or abusive,</li><li>3. Engages in bullying as defined by Texas law.</li></ol>
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<p>How many incidents must occur before a teacher can remove a student?</p>	<p>Previously, removal typically required repeated behavior. Under HB 6, a single occurrence is sufficient provided it meets one of the criteria.</p>
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<p>Can students with special needs be removed from the classroom based upon teacher request?</p>	<p>For students receiving special education services, any class removal must comply with Texas Education Code Section 37.004, which upholds federal and state procedural safeguards. This section provides the following:</p> <p>The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.</p> <p>Sec. 37.004. Placement of Students with Disabilities</p>
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	<p>(b) 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 admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. § 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:</p>
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	<ul style="list-style-type: none"><li>• Functional behavioral assessments;</li><li>• Positive behavioral interventions, strategies, and supports;</li><li>• Behavioral intervention plans; and</li><li>• The manifestation determination review.</li></ul> <p>Consequently, this law is trumped by federal law that requires removals to be decided by the ARD committee.</p>
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<p><b>Can a student receive a consequence for harassing a school employee?</b></p>	<p>HB 6 amended Texas Education Code § 37.006(a)(2)(G) to require that a student must be removed from class and placed in a Disciplinary Alternative Education Program (DAEP) if they engage in conduct meeting the offense of harassment (under Texas Penal Code § 42.07(a)(1), (2), (3), or (7)) against a school district employee or volunteer, on school property or within 300 feet of it.</p>
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<p><b>What is considered harassment?</b></p>	<p>Harassment defined under Penal Code § 42.07(a) includes:</p> <ol style="list-style-type: none"><li>1. threats of bodily injury</li><li>2. offensive or sexually intimidating conduct</li><li>3. harm to property or emotional health</li><li>4. other harassing behaviors</li></ol>
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