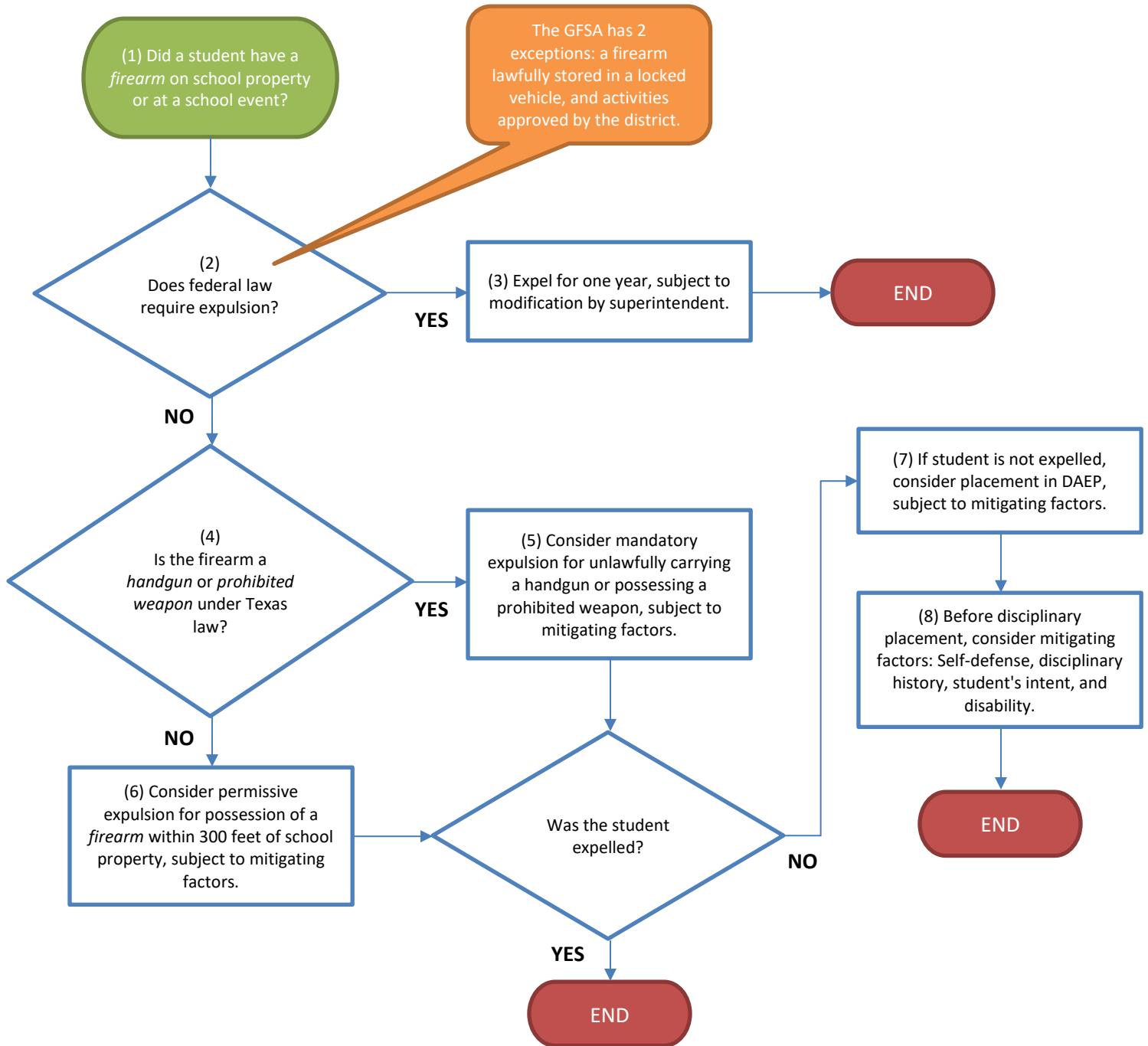




Student Discipline for Firearms at School

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REMEMBER, all disciplinary placements are subject to the requirements of federal and state laws regarding students with disabilities.

- (1) The federal Gun-Free Schools Act (GFSA) applies to any setting that is under the control and supervision of the district for the purpose of student activities approved and authorized by the district. Gun-Free Schools Act, 20 U.S.C. § 7961(f). The term *firearm* means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm. 18 U.S.C. § 921(a)(3).
- (2) The GFSA does not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or to firearms used in activities approved and authorized by the district when the district has adopted appropriate safeguards to ensure student safety. 20 U.S.C. § 7961(g).
- (3) Federal law requires a student to be expelled from school for a period of not less than one year if the student is determined to have brought a firearm to a school, or to have possessed a firearm at a school, except that the superintendent may modify the expulsion in writing on a case-by-case basis. 20 U.S.C. § 7961(b)(1); Tex. Educ. Code § 37.007(e)(1). A district that has expelled a student from his or her regular school setting may provide educational services to the student in an alternative setting. 20 U.S.C. § 7961(b)(2).

Committing a federal firearms offense is the only reason a district could place a student under the age of six in a disciplinary alternative education program (DAEP). The Texas Education Code requires a district to provide educational services in a DAEP to an expelled student younger than ten; a district may provide educational services in a DAEP to an expelled student who is ten or older. Tex. Educ. Code § 37.007(e)(2)-(3). For students with disabilities, the federal Individuals with Disabilities in Education Act requires providing a free appropriate public education (FAPE) even when the student has been properly expelled. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a).

- (4) *Handgun* means any firearm that is designed, made, or adapted to be fired with one hand. Tex. Penal Code § 46.01(5). *Prohibited weapons* are set out in Texas Penal Code section 46.05. Prohibited weapons include the following, among other items: an explosive weapon; a machine gun; a short-barrel firearm; a firearm silencer (except as permitted by federal law); armor-piercing ammunition; a zip gun; or an improvised explosive device.

An explosive weapon, machine gun, or short-barrel firearm is not a prohibited weapon if the item: (1) is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives, if such registration is required, or (2) is classified as a curio or relic by the U. S. Department of Justice. Tex. Penal Code § 46.05. *Machine gun* means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger. *Short-barrel firearm* means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches. Tex. Penal Code § 46.01 (9), (10).

- (5) Note that the statute regarding expulsion contains an exception in Subsection (k). A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs: at an approved target range facility that is not located on a school campus,

while participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department. Subsection (k) does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity described by that subsection. Tex. Educ. Code § 37.007(k)-(l).

Unless the statutory exception in Subsection (k) applies, a student shall be expelled if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property, engages in conduct that contains: (1) the elements of the offense of unlawfully carrying weapons under Texas Penal Code section 46.02; or (2) the elements of an offense relating to prohibited weapons under Texas Penal Code section 46.05. Tex. Educ. Code § 37.007(a). A student violates Section 46.02 if he or she intentionally, knowingly, or recklessly carries on or about his or her person a handgun outside of the student's own home, motor vehicle, or watercraft. See Tex. Penal Code § 46.02 (making it an offense to carry a handgun where prohibited by law). Students under the age of 21 are not eligible to obtain a handgun license, and it is unlawful to carry a handgun in public without a license. Tex. Gov't Code § 411.172(a); Tex. Penal Code §§ 46.02, .15(b)(6). In addition, it is unlawful, even for a handgun licensee, to carry a firearm on the physical premises of a school, any grounds or building on which an activity sponsored by a school is being conducted, or a school passenger transportation vehicle, unless authorized in writing by the district. Tex. Penal Code § 46.03. A student violates Section 46.05 if he or she intentionally or knowingly possesses, manufactures, transports, repairs, or sells a prohibited weapons, as described above. Tex. Penal Code § 46.05.

- (6) A student may be expelled if, while within 300 feet of school property, as measured from any point on the school's real property boundary line, the student possesses a firearm as defined by 18 U.S.C. § 921. Tex. Educ. Code § 37.007(b)(3).
- (7) If the student is not expelled, the district should consider placing the student in a DAEP. If a student commits a felony on or within 300 feet of school property, or while attending a school-sponsored or school-related activity, the student must be placed in a DAEP. Tex. Educ. Code § 37.006(a)(2)(A). Carrying a firearm on the physical premises of a school, any grounds or building on which an activity sponsored by a school is being conducted, or a school passenger transportation vehicle, unless authorized in writing by the district, is punishable as a third degree felony. Tex. Penal Code § 46.03. Otherwise the placement is discretionary, subject to the district's student code of conduct.
- (8) Regardless of whether a decision concerning suspension, removal to a DAEP, expulsion, or placement in a juvenile justice alternative education program (JJAEP) is mandatory or discretionary under state law, consideration must be given to: self-defense; intent or lack of intent at the time the student engaged in the conduct; the student's disciplinary history; or a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct. Tex. Educ. Code § 37.001(a)(4). The campus behavior coordinator (or other appropriate decisionmaker in accordance with a district's innovation plan) must

consider these mitigating factors before ordering a student to be suspended, placed in DAEP, expelled or sent to JJAEP; if the board of trustees or a designee conducts an expulsion hearing, the board must consider these factors as well. Tex. Educ. Code § 37.009(a), (f).

Unlawfully carrying a weapon and possession of a prohibited weapon at school or a school-related activity are exceptions to the general rule that a student who is enrolled in a grade level below grade three may not be placed in out-of-school suspension. Tex. Educ. Code § 37.005(c).

- (9) REMEMBER: Application of student discipline may be different for students with disabilities. Even expulsion under the GFSA is subject to the requirements of IDEA. 20 U.S.C. § 7961(c). As a related matter, expulsion or DAEP placement under Texas law requires the consideration of mitigating factors, including disability. Tex. Educ. Code § 37.001(a)(4). For students with disabilities, the district must determine within 10 days of any decision to impose a disciplinary change of placement whether the misconduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or was a direct result of the district's failure to implement the child's individualized education program (IEP). 34 C.F.R. § 300.530(e). Note that a school may remove a student with a disability to an interim alternative educational setting for no more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child carries a weapon to, or possesses a weapon at, school or a school function. 34 C.F.R. § 300.530(g)(1). For purposes of this type of 45-day removal, *weapon* is defined as a weapon, device, instrument, or material used for, or readily capable of, causing death or serious bodily injury. 18 U.S.C. § 930(g)(2). District officials should seek advice from an attorney regarding application of these laws and procedures in a specific instance.

For more information see [Firearms on School District Property](#).

This document is continually updated, and references to online resources are hyperlinked, at https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/student_discipline_for_firearms_at_school.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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