



Firearms on School District Property

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State and federal statutes create a complex web of regulations related to the presence of firearms on school district property. Whether a firearm is permitted depends on several factors, including who is carrying the firearm, the location on school property, and local school district policy, among other factors. Both federal and state laws begin with a presumption that school premises are gun-free zones. Both federal and state laws also create certain exceptions, and allow school boards to create additional exceptions, to that general rule.

Gun-Free School Zones

Federal Gun-Free School Zones Act: Originally enacted in 1990 the Gun-Free School Zones Act (GFSZA) is a federal law that requires states restrict firearms on school property. Under the GFSZA, 18 U.S.C. § 922(q)(2)(A):

It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

For purposes of the GFSZA, *firearm* means any weapon, including a starter gun, which will or is designed to or which may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler, a firearm silencer, or any destructive device such as an incendiary, any explosive, or poison gas. 18 U.S.C. § 921(a)(3), (4). Antique firearms and fireworks are not included in this definition. Nor are knives included in the definition; they are regulated only by state law.

School zone means in, or on the grounds of, or within 1,000 feet from the grounds of a public, parochial or private school. 18 U.S.C. § 921(a)(25).

The federal law prohibition does not apply to the possession of a firearm:

- **When the carrier is licensed:** If the individual possessing the firearm is licensed to do so by the state in which the school zone is located or by a political subdivision of the state, and the law of the state or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the state or political subdivision verify that the individual is qualified under law to receive the license;
- **When the firearm is unloaded and locked up:** If the firearm is not loaded and is stored in a locked container or a locked firearms rack that is on a motor vehicle;

- **As part of an approved program:** If the firearm is carried by an individual for use in a program approved by a school in the school zone;
- **When authorized by written contract:** If the firearm is carried by an individual in accordance with a contract entered into between the school district and the individual or an employer of the individual; or
- **By law enforcement:** If the firearm is carried by a law enforcement officer acting in his or her official capacity.

18 U.S.C. § 922(q)(2)(B).

Texas Penal Code: Absent written authorization from the school district, the Texas Penal Code prohibits citizens, including handgun license holders, from carrying firearms on the physical premises of a school building, any grounds or building where a school activity is taking place, or on a bus or other passenger vehicle of a school.

A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm . . . on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution.

Tex. Penal Code § 46.03(a)(1).

It is not a defense to prosecution under this section that the actor was licensed to carry a handgun. Tex. Penal Code § 46.03(f).

Under Texas law, *firearm* means 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. Tex. Penal Code § 46.01(3). The state definition overlaps with, but is slightly different from, the federal GFSZA definition.

For purposes of Section 46.03, *premises* means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. Tex. Penal Code §§ 46.03(c)(1), .035(f)(3). *Entry* is defined elsewhere in the Penal Code to mean going inside with a person's entire body. Tex. Penal Code § 30.05.

Prohibited Weapons

The Texas Penal Code provides that a person commits an offense if he or she intentionally or knowingly possesses, manufactures, transports, repairs or sells a weapon prohibited by state law, at any location including school district property. Weapons prohibited by state law include,

with some exceptions, explosive weapons, machine guns, short-barrel firearms, firearm silencers, armor-piercing ammunition, zip guns, and improvised explosive devices as those items are defined by law. Tex. Penal Code § 46.05.

Firearm Possession by Law Enforcement and Certain Public Officials

The federal GFSZA permits states to license qualified individuals to carry firearms on school property. 18 U.S.C. § 922(q)(2)(B)(ii).

School premises: Texas law indirectly authorizes the following officials to bring firearms onto the premises of a school:

- **Armed forces and guards:** It is a defense to prosecution under Texas Penal Code section 46.03 that the actor possessed a firearm while in the actual discharge of official duties as a member of the armed forces or national guard, a guard employed by a penal institution, or an officer of the court. Tex. Penal Code § 46.03(b).
- **Peace officers and special investigators:** Texas Penal Code sections 46.02 and 46.03 do not apply to peace officers or special investigators under Texas Code of Criminal Procedure Article 2.122, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon. Tex. Penal Code § 46.15(a)(1).
- **Parole officers:** Texas Penal Code sections 46.02 and 46.03 do not prohibit a parole officer from carrying a weapon while on duty and in compliance with policies and procedures adopted by the Texas Department of Criminal Justice. Tex. Penal Code § 46.15(a)(2).
- **Corrections officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to community supervision and corrections department officers appointed or employed under Texas Government Code section [76.004](#) while on duty and authorized to carry a firearm. Tex. Penal Code § 46.15(a)(3).
- **Judicial officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to an active judicial officer, as defined by Texas Government Code section [411.201](#), who is licensed to carry a handgun. Tex. Penal Code § 46.15(a)(4).
- **Retired officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to an honorably retired peace officer, qualified retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies. The retired officer must hold a certificate of proficiency and a government-issued identification card verifying the officer's qualifications. Tex. Penal Code § 46.15(a)(5).

- **Attorneys general and related personnel:** Texas Penal Code sections 46.02 and 46.03 do not apply to the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun. Tex. Penal Code § 46.15(a)(6). Further, Sections 46.02 and 46.03 do not apply to an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun. Tex. Penal Code § 46.15(a)(7).
- **Bailiffs:** Texas Penal Code sections 46.02 and 46.03 do not apply to a bailiff designated by an active judicial officer, as defined by Texas Government Code section [411.201](#), who is escorting a judicial officer and licensed to carry a handgun. Tex. Penal Code § 46.15(a)(8).
- **Probation officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to a juvenile probation officer who is authorized to carry a firearm under Texas Human Resources Code section 142.006. Tex. Penal Code § 46.15(a)(9).
- **Volunteer emergency services:** Texas Penal Code sections 46.02 and 46.03 do not apply to a person who is volunteer emergency services personnel if the person is engaged in providing emergency services and licensed to carry a handgun. Tex. Penal Code § 46.15(a)(10).

Volunteer emergency services personnel includes a volunteer firefighter, an emergency medical services volunteer as defined by law, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer. Tex. Penal Code § 46.01(18). A school district is not liable in a civil action arising from the discharge of a handgun by a volunteer emergency services personnel who is licensed to carry a handgun; however, it is not within the course and scope of the duties of a volunteer emergency services personnel to discharge a handgun. Tex. Civ. Prac. & Rem. Code § 112.001.

School events and board meetings: A number of public officials who are handgun license holders are authorized to bring handguns on the premises where a board meeting, high school sporting event, or other interscholastic event is taking place. These individuals include state or federal judges, active judicial officers, bailiffs designated to escort active judicial officers, U.S. attorneys or assistant U.S. attorneys, district attorneys or assistant district attorneys, criminal district attorneys or assistant criminal district attorneys, the attorney general or assistant attorneys general, and county attorneys or assistant county attorneys. Tex. Penal Code § 46.035(h-1). *Volunteer emergency services personnel* may also carry handguns to school events without violating the law, but only while they are engaged in providing emergency services. Tex. Penal Code § 46.035(m).

The Texas attorney general has concluded that school board members who lawfully possess a handgun license may carry a firearm at school board meetings as long as the board has issued written authorization for this action. Tex. Att’y Gen. Op. No. GA-1051 (2014).

Firearm Possession by Other Campus Visitors, Including Parents

School district buildings: Unless a person has special authorization, a person commits an offense (third degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon, as defined by state law, on the physical premises of a school or educational institution. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f).

The prohibition of firearms in Section 46.03 includes the physical premises of both schools and educational institutions. *Educational institution* is not specifically defined in Section 46.03. The Texas attorney general has determined that a school district is an *educational institution*; consequently, trespass warning signs could be posted at the administrative building of the Elgin Independent School District. Tex. Att’y Gen., 30.06 Ruling Letter, [Complaint No. 23](#) (Apr. 29, 2016). In reaching this conclusion, the attorney general relied on the Texas Public Information Act and its exception for student records based on the federal Family Educational Rights and Privacy Act (FERPA). See Tex. Gov’t Code § 552.114 (citing 20 U.S.C. § 1232g(a)(4)).

School events on and off campus: Texas law prohibits the unauthorized possession of weapons, including firearms, at school events regardless of the location of the event.

- **Unauthorized weapons:** Unless a person has special authorization, a person commits an offense (third degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon, as defined by state law, on any grounds or building on which a school-sponsored activity is being conducted. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f).

This prohibition applies to all school-sponsored events, regardless of whether the events happen on or off school property. For example, a school-sponsored middle school softball game may take place on school property, but in an outdoor facility that would not meet the statutory definition of *premises*. Nevertheless, this law would prohibit all firearms at the softball game. Similarly, a high school theater performance may take place in a city auditorium, not owned or leased by the school district, but this law would still prohibit firearms at the performance.

- **Handguns:** In addition, a handgun license holder commits an offense (Class A misdemeanor) if he or she intentionally, knowingly, or recklessly carries a handgun on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event. Tex. Penal Code § 46.035(b)(2), (g).

Buses and other school vehicles: Unless a person has special authorization, a person commits an offense (third degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon, as defined by state law, on a passenger transportation vehicle of a school. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f).

Board meetings: A school board meeting is an activity sponsored by a school or educational institution; as such, an unauthorized person commits a third degree felony if he or she possesses a firearm or other prohibited weapon at a board meeting. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f). Moreover, most school board meetings take place in school district buildings, where handguns are not permitted.

In addition, a handgun license holder commits an offense (Class A misdemeanor) if he or she intentionally, knowingly, or recklessly carries a handgun under the authority of the license in the room or rooms where a meeting of a governmental entity is held pursuant to the Texas Open Meetings Act, as long as the license holder was given effective notice under Texas Penal Code sections 30.06 or 30.07 that handguns were prohibited. Tex. Penal Code §§ 30.06, .07, 46.035(c), (g), (i). Volunteer emergency services personnel are not subject prosecution under this section. Tex. Penal Code §§ 30.06(f); 30.07(g); 46.035(m). See below at *Firearm Warning Signs on School District Property*.

Polling places: Unless a person is authorized by law to carry the weapon, a person commits an offense (third degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon, as defined by state law, on the premises of a polling place on the day of an election or while early voting is in progress. Tex. Penal Code § 46.03(a)(2), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f).

The attorney general has opined that a presiding election judge who is licensed to carry a handgun is exempt from this prohibition while performing the presiding election judge's duties under the Texas Election Code. Tex. Att'y Gen. Op. No. KP-212 (2018). Notwithstanding the attorney general's opinion, Texas Education Code section 37.125 creates an offense if a person exhibits or uses (or threatens to exhibit or use) a firearm on school property in a manner intended to cause alarm, personal injury, or damage to school property. To avoid conflict with this provision as well as allegations of voter intimidation, the secretary of state's office recommends that, to the extent a presiding judge determines that it is appropriate to carry a handgun at a polling place on school property, the presiding judge should consider concealed rather than open carry.

If a district has authorized school personnel to carry handguns on school property, this authorization does not extend to school property while it is used as a polling place. A polling place is subject to different rules than school property.

For more information, see the Texas Secretary of State's Election Advisory No. 2018-29, [Handguns in Polling Places \(KP-0212\)](#).

Parking lots and sidewalks: Questions frequently arise about the legality of transporting or carrying a handgun or other firearm in school district parking lots or on school district sidewalks.

- **Firearms other than handguns:** If federal law applies because the firearm has moved in or has affected interstate or foreign commerce, the parking lot is the only place an unauthorized individual can carry a firearm. The unauthorized person must have the firearm unloaded and in a locked container or in a locked firearms rack on a vehicle. 18 U.S.C. § 922(q)(2)(B)(iii).
- **Concealed handguns:** A handgun license holder may transport a handgun in a private vehicle or concealed on his or her person only in accordance with the license. Absent special permission from the school district, handguns may not be carried inside of school district buildings, vehicles, or on the grounds where a school activity is taking place. Tex. Penal Code § 46.03(f).
- **Open carry:** A handgun license holder in Texas may choose to wear his or her firearm in a shoulder or belt holster rather than concealing the handgun. Except for authorized individuals, both open and concealed carry are prohibited on the physical premises of a school or educational institution, any grounds or building where a school-sponsored activity is taking place, or a school passenger vehicle. The attorney general has opined that openly carried firearms must be permitted in the portions of school property not covered by Texas Penal Code sections 46.03 and 46.035, which would include outdoor property not currently in use for a school-sponsored activity. However, firearms are prohibited wherever a school-sponsored activity is happening; this would include not only school district premises (the buildings), but also any grounds where a school-sponsored activity is taking place including parking lots and sidewalks. Tex. Att'y Gen. Op. No. KP-50 (2015).

School-sponsored activities: In Texas Attorney General Opinion number KP-50, the attorney general opined that whether and where on school grounds an activity is taking place is a factual inquiry that must be determined on a case-by-case basis. He offered one example of the use of school grounds for a school-sponsored activity: If a high school marching band uses a parking lot for rehearsal, the parking lot is an area where the district may restrict firearms during the time of rehearsal. Other determinations about when and where school activities are happening are left to local school officials; however, if an aggrieved individual files a legal challenge to how a school district interprets the law, the district's choices will be subject to judicial review.

Because when and whether a school activity is taking place is a factual determination, school districts may want to begin by assessing, campus by campus, the use of the exterior portions of each school district building for school sponsored activities. Consider band practices, athletics, and other extracurricular uses; classroom uses (like outdoor science experiments); recess and physical education; lunch breaks; and so forth. Perhaps the most important judgment the

district will have to make is whether to deem school pick-up and drop-off periods school-sponsored activities. Certainly there are good faith arguments that these activities are school-sponsored, as the district is operating school transportation and providing staff to oversee the safety and security of the students, grounds, and vehicles during these times.

Once a district has assessed its use of school grounds for school-sponsored activities, the district may consider options for clarifying and communicating with staff, parents, and the public when and where firearms are prohibited on school property. State law does not require the district to publish or post a determination about when firearms are prohibited or what constitutes school-sponsored activities. As a result, one option will be to take no further action and rely on current law and policy. Policy GKA(LEGAL) recites Texas Penal Code section 46.03, which states that it is a felony to bring a firearm onto any grounds on which a school activity is being conducted. In addition, most Texas school boards have adopted a local policy at GKA(LOCAL), which states that the district prohibits the unauthorized use, possession, or display of any firearm on all district property at all times.

Firearm Possession on School District Property

The ability of visitors to carry firearms on school district property raises important questions.

Who may ask a visitor who is openly carrying a handgun whether the visitor is properly licensed to do so? School resource officers and other peace officers are authorized by law to verify an individual's handgun license when they are verifying the individual's identification. Tex. Gov't Code § 411.205. A peace officer is in the best position to seek verification of a visitor's purpose, identity, and licensure. Peace officers are also trained to know when Texas honors out-of-state handgun licenses through reciprocity agreements with neighboring states, and they are authorized to temporarily disarm license holders under certain conditions. Tex. Gov't Code § 411.206.

Other school officials are not specifically authorized to (or prohibited from) inquiring about a visitor's handgun license. That said, a lawfully licensed individual who is questioned by school staff merely because he or she is carrying openly might raise a concern. A better practice whenever possible is for school staff who are monitoring outdoor areas to approach all unfamiliar visitors, regardless of whether they are armed, to greet them and ascertain the purpose of their visit. If an individual is behaving in an unusual manner or reacts strangely to the school official's greeting, the school official should alert law enforcement.

May a person who is carrying a firearm ever draw, display, or use the firearm? Texas law is clear that a licensed firearm must remain concealed or in its holster absent the rare circumstances in which a gun owner would be justified in responding with force or deadly force. Under ordinary circumstances, a license holder is obligated to keep the firearm concealed or in its holster. An individual commits the offense of disorderly conduct if he or she displays a firearm in a manner calculated to cause alarm.

Texas Education Code section 37.125 makes it a third degree felony for an individual with immediate access to a firearm to intentionally exhibit, use, or threaten to exhibit or use the firearm in a manner intended to cause alarm or personal injury to another person or to damage school property, on any public or private school property or on a school bus being used to transport children to or from public or private school-sponsored activities. If an individual engages in this conduct but does not have access to a firearm, the offense is punishable as a Class A misdemeanor.

If a visitor is not subject to the prohibition on carrying a firearm on school premises does the individual have an obligation to identify himself or herself as carrying a firearm upon entering the premises? Texas law provides that several office holders, including off-duty peace officers, are not subject to the prohibition on carrying a firearm on school premises found in Texas Penal Code section 46.03. Tex. Pen. Code § 46.15. State law is silent as to whether these individuals are required to disclose to school officials that they are carrying a firearm inside a school district building. For practical reasons, an individual who is engaged in the open carry of a handgun inside a school district building should be expected to inform school officials upon arrival. Otherwise, the presence of a visible firearm inside a school building, especially on an individual who is not in uniform, is likely to cause alarm. Even if the individual has lawful authority to carry the firearm, an unidentified individual carrying a firearm inside a school building may be viewed as a threat that could trigger the school's lockdown procedures or even cause a reaction by an official or volunteer agency organized to deal with emergencies. Campus officials may want to discuss these issues with parents or other visitors who are authorized to openly carry firearms in schools.

Firearm Warning Signs on School District Property

Since the passage of state laws permitting the concealed carry of handguns back in 1995, most Texas school districts have posted signs on school district buildings indicating that carrying handguns into school building is not permitted. These signs are not necessary to make it illegal to carry a handgun into a school; that was already established by other law. See Tex. Penal Code §§ 46.03 (prohibiting unauthorized individuals from carrying weapons into school district buildings, in school district passenger vehicles, at school events, and at polling places) and 46.035 (prohibiting all but certain authorized handgun license holders from possessing a handgun at school board meetings and interscholastic or high school sporting events). Rather, school districts post signs both as a warning and so that violators may be charged with the additional offenses of Trespass by License Holder with a Concealed Handgun under Texas Penal Code section 30.06 and Trespass by License Holder with an Openly Carried Handgun under Texas Penal Code section 30.07.

School districts, unlike private property owners, may not post trespass warning signs in a way that restricts visitors from carrying firearms in locations not already restricted by state law. The Texas legislature has created a civil offense for school districts and other political subdivisions that give notice under Section 30.06 for Trespass by License Holder with a Concealed Handgun or by any sign expressly referring to that law or to a license to carry a handgun in locations

other than a building or other location where handguns are already prohibited by Texas Penal Code sections 46.03 and 46.035. Tex. Gov't Code § 411.209. In other words, if Sections 46.03 and 46.035 do not prohibit carrying handguns in a location on school district property, school district signage cannot state that it would violate Section 30.06 or Section 30.07 for an individual to carry a handgun in that location.

Due to the expense and administrative difficulty of posting more signs, and due to the threat of civil penalties for posting signs in incorrect locations, school districts are reexamining the need for and location of warning signs about firearms.

Where are firearms illegal, even without posted notice?

Notice is not required for firearms to be illegal in school district buildings, at school-sponsored events, or in school district passenger vehicles: Texas law makes it clear that it is not legal for an unauthorized individual to carry a firearm into the premises of a school district building:

“A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm . . . on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution.” Tex. Penal Code § 46.03(a)(1).

For this purpose, *premises* means a building or a portion of a building, and not a public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. Tex. Penal Code § 46.03(c)(1), .035(f)(3). It is not a defense to prosecution under this section that the actor was licensed to carry a handgun, and an offense under this section is a third degree felony. Tex. Penal Code § 46.03(f)-(g).

Notice is not required for firearms to be illegal at polling places: Texas law specifies that carrying a firearm on the premises of a polling place on election day or while early voting is taking place is a third degree felony. Tex. Penal Code §§ 46.03(a)(2), (g). In addition, the offense may be enhanced to a second degree felony if the actor knew he or she were within 300 feet of school premises, with premises defined by Health and Safety Code section 481.134 to include the entire real property and all buildings on the campus.

Notice is not required for firearms to be illegal at high school sports or interscholastic events: Texas law specifies that a handgun license holder commits a Class A misdemeanor offense if he or she brings a firearm, under the authority of the handgun license, on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event. Tex. Penal Code § 46.035(b)(2), (g). For this purpose, *premises* means a building or a portion of a

building, and not a public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. Tex. Penal Code § 46.035(f)(3). In addition, the offense may be enhanced to the next higher category of offense if the actor knew he or she were within 300 feet of school premises, with premises defined by Texas Health and Safety Code section 481.134 to include the entire real property and all buildings on the campus.

When are signs or other notice required?

Signs or other forms of notice are considered valuable as a warning to the public that firearms are not permitted. Written or oral communication is not required, however, to make it illegal for an unauthorized person to take a handgun into a school district building, the building or grounds where a school-sponsored activity is taking place, a school district passenger vehicle, a polling place, an open meeting of the school board, or the location of a high school sport or interscholastic event (i.e., the places firearms are not allowed under Texas Penal Code sections 46.03 and 46.035). Signage or other notice is only required if the school district wishes to establish that a handgun license holder has committed one of the following offenses.

Unlawful Carrying of Handgun at Open Meeting of School Board: A handgun license holder commits an offense (Class A misdemeanor) if he or she intentionally, knowingly, or recklessly carries a handgun under the authority of the license into the room or rooms where an meeting of a governmental entity is held pursuant to the Texas Open Meetings Act, as long as the license holder was given effective notice that handguns were prohibited. Tex. Penal Code §§ 30.06, .07, 46.035(c), (g), (i).

In order to seek prosecution of a license holder who violates this section, the district would have to show that the license holder received notice, as described below under Texas Penal Code sections 30.06 and 30.07, that handguns were prohibited in the meeting room. However, in light of other statutes making it a felony to carry a firearm into school district buildings (i.e., the premises of a school or educational institution) or onto the grounds where a school-sponsored event is taking place, the absence of notice to a license holder should rarely affect the ability of a school district to exclude firearms from school board meetings. If a school board conducts an open meeting in a building that is not owned by the district, however, the district might consider posting notice with signs or printing notice on the open meeting agenda, in accordance with Sections 30.06 and 30.07.

Trespass by License Holder with a Concealed Handgun: A license holder commits a Class C misdemeanor offense if he or she carries a concealed handgun, under the authority of the license and without effective consent, onto school district property where firearms are prohibited by either Section 46.03 or Section 46.035, if the license holder received notice by written communication that entry with a concealed handgun is forbidden. In addition, if the license holder receives oral notice that handguns are prohibited and fails to depart, the offense is a Class A misdemeanor. Tex. Penal Code § 30.06.

Under Section 30.06, notice by *written communication* means either: (1) a card or other document with specific text; or (2) a sign that meets the statutory requirements.

- **Card or other document:** Written notice may be given through a card or other document containing this exact language: “Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.”

Due to districts’ use of signs, as opposed to other documents, for notice, school districts have few examples of how to provide written notice through means other than signs. To be effective, any alternative means of providing written (or, for that matter, oral) notice would need to include a means of proving that notice was received by the license holder. One option might be to print out the required language whenever a building visitor receives a visitor badge. This might work well for campus visitors, but be less effective for events that are open to the public, where check in is not required.

- **Sign:** Written notice may be given through a sign posted on the property that includes the precise language above in both English and Spanish; appears in contrasting colors with block letters at least one inch in height; and is displayed in a conspicuous manner clearly visible to the public.

Trespass by License Holder with an Openly Carried Handgun: A license holder commits a Class C misdemeanor offense if he or she openly carries a handgun, under the authority of the license and without effective consent, onto school district property where firearms are prohibited by either Section 46.03 or Section 46.035, if the license holder received notice by written communication that entry with an openly carried handgun is forbidden. In addition, if the license holder receives oral notice that openly carried handguns are prohibited and fails to depart, the offense is a Class A misdemeanor. Tex. Penal Code § 30.07.

Under Section 30.07, notice by *written communication* means either: (1) a card or other document with specific text; or (2) a sign that meets the statutory requirements.

- **Card or other document:** Written notice may be given through a card or other document containing this exact language: “Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.”
- **Sign:** Written notice may be given through a sign posted on the property that includes the precise language above in both English and Spanish; appears in contrasting colors with block letters at least one inch in height; and is displayed in a conspicuous manner clearly visible to the public *at each entrance to the property*.

If a school district chooses to provide notice through signs, Section 30.07 for openly carried handguns requires a second sign, with slightly different wording from Section 30.06 on concealed handguns, to be posted at every entrance. *Entrance* is not defined. The determination of what constitutes an entrance to school district property is inherently a local decision. Every exterior door is not necessarily an entrance to the premises, especially if the school district has taken specific steps, as many have, to limit access through exterior doors and direct all visitors to a single secure entrance. If a school district has made it clear, through whatever means, that visitors are not allowed to come in through a particular exterior door, a sign regarding openly carried handguns may not be required at that location.

Can districts use temporary trespass warning signs for certain events, like athletic events or school board meetings?

The Texas attorney general has indicated that a temporary sign displaying the required statutory text is a permissible way to issue a trespass warning to handgun licensees when an event is being conducted in a location where handguns might otherwise be permitted. For example, the Texas attorney general affirmed that it was appropriate for the City of Lake Dallas to display temporary signs complying with Sections 30.06 and 30.07 outside the chambers when municipal court or city council meetings were in session, even though generally handguns could not be excluded from the municipal building. Tex. Att’y Gen., 30.06 Ruling Letter, [Complaint No. 25](#) (Apr. 29, 2016).

For schools districts, temporary signs may be useful if the district conducts school board meetings, athletic contests, or other school-sponsored events in locations not owned and operated by the school district, such as a civic center or municipal stadium.

Can districts post a general warning sign at the perimeter of school property?

In 2003, before open carry was authorized in belt and shoulder holsters for handgun license holders, Texas law was amended to clarify that public property owners, like school districts, could not post written communications including signs to stop handgun license holders from bringing concealed handguns onto government property, except to the extent the guns were already prohibited by other law—specifically, Texas Penal Code sections 46.03 (prohibiting unauthorized possession of weapons on school premises, in school vehicles, at school events, and at polling places) and 46.035 (prohibiting all but certain authorized handgun license holders from possessing a handgun at school board meetings and interscholastic or high school sporting events). Tex. Penal Code § 30.06(e).

Effective September 1, 2015, the Texas Legislature took the additional step of creating a civil penalty for school districts and other political subdivisions that provide notice (including by posting signs) expressly referring to Section 30.06 or concealed handgun licenses indicating that a license holder carrying a handgun within the scope of the license may not enter or remain on

property owned or leased by the political subdivision except in locations where firearms are prohibited by Texas Penal Code sections 46.03 and 46.035. In 2017, the law was expanded to prohibit improper signage referring to any handgun license, which would include the signage described by Section 30.07 on openly carried handguns. Tex. Gov't Code § 411.209.

A school district or other political subdivision that violates this provision is liable for a civil penalty of not less than \$1,000 and not more than \$1,500 for the first violation and not less than \$10,000 and not more than \$10,500 for a second or subsequent violation. Each day an impermissible sign is displayed is a separate violation. A citizen of this state or a person licensed to carry a handgun may file a complaint with the attorney general identifying a violation. After an investigation and an opportunity to cure the violation, the attorney general may file a lawsuit against the political subdivision, and sovereign immunity is abolished for this purpose. Tex. Gov't Code § 411.209. In light of this potential penalty, school districts should exercise care and consult with a school attorney regarding the appropriate location for criminal trespass signs under Sections 30.06 and 30.07.

In addition, school districts should be cautious about posting or failing to remove signs at the perimeter of school district property that could violate Texas Government Code section 411.209. *See, e.g.,* Tex. Att'y Gen. Op. No. KP-49 (2015) (opining that a sign on county property stating "Weapons Free Zone" could violate Section 411.209). A district that nevertheless wants to place warning signs at the perimeter of school property should consult its school attorney to determine the wording. One option could be to restate the felony prohibition in Texas Penal Code section 46.03, rather than the criminal trespass notice language in Texas Penal Code sections 30.06 and 30.07. A locally developed sign would not constitute adequate notice for purposes of prosecuting criminal trespass, but it might serve to warn the public about the felony offense of entering parts of school property with a firearm.

District-Approved Activities Involving Firearms

Local school districts can grant permission to certain persons to possess otherwise prohibited weapons by passing written regulations or issuing written authorization. Tex. Penal Code § 46.03(a)(1).

Most Texas school districts have a statement at TASB Policy GKA(LOCAL) that prohibits unlawfully carried weapons, then provides the following exception:

EXCEPTION

No violation of this policy occurs when the use, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities.

Texas school districts often authorize the possession of firearms or other weapons on campus for approved activities such as gun safety or hunter training, historical reenactments, and JROTC. School districts have also authorized bringing firearms on campus for special events such as guest speakers, theatrical performances, and PTA or booster club fundraising raffles where a rifle or other weapon was offered as the prize. If the firearm is used in a program approved by the school or in accordance with a contract entered into between the school and the user or user's employer, the federal GFSZA does not apply. 18 U.S.C. § 922(q)(2)(B)(iv), (v). The GFSZA also does not apply if the person carrying the firearm is on school property for the purpose of gaining access to hunting lands, the firearm is unloaded, and school authorities authorize the person's entry onto school property. 18 U.S.C. § 922(q)(2)(B)(vii).

Employee Possession of Firearms

Storage in locked cars:

Texas Education Code section 37.0815 provides that a school district may not prohibit an employee who is licensed to carry a handgun from transporting or storing a handgun, other firearm, or ammunition in a locked, privately owned vehicle in a school district parking lot, provided that the firearm or ammunition is not in plain view. See TASB Policy DH(LOCAL). In light of the fact that school employees may have access to firearms in their personal vehicles, a district may wish to clarify that any action an employee takes with regard to his or her firearm is not taken at the district's direction and is outside the course and scope of employment.

For more information regarding firearms and school district employees, see TASB Legal Services' memorandum titled [School Marshals and Other School District Personnel Carrying Firearms](#).

Contracts with vendors: Many school districts and vendors, such as service providers or construction companies, have entered into written contracts with provisions that prohibit the vendor and any agents or subcontractors from bringing firearms on school property.

Limits on Transportation or Display of Firearms on School Property

Of course, handgun license holders may display and use their handguns only within the scope of their licenses. Other than open carry in a belt or shoulder holster, a license holder is permitted to display his or her gun in public only when the use of force would be justified under Texas Penal Code chapter 9. Tex. Penal Code § 46.035(h). A person who carries a handgun in a vehicle or on their person must not be engaged in a criminal activity, prohibited from possessing a firearm, or a member of a street gang. Tex. Penal Code § 46.02(a-1)(2). Moreover, a license holder may not carry a handgun while intoxicated. Tex. Penal Code § 46.035(d).

In addition, a person commits an offense if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally exhibits, uses, or threatens to use a firearm in or on any school property, including parking areas, or on a school

bus. The offense is a third degree felony if the individual was in possession of or had immediate access to a firearm at the time. The offense is a Class A misdemeanor if the individual made such a threat, but did not in fact possess a firearm at the time. Tex. Educ. Code § 37.125.

Finally, the Texas Penal Code contains a provision enhancing the degree of a weapons-related offense if the offense occurs within 300 feet of school premises or the premises where a school function or UIL event is taking place. Tex. Penal Code § 46.11.

Student Possession of Firearms

Student discipline for firearms is described in more detail in a related [flow chart](#) from TASB Legal Services.

Federal Gun-Free Schools Act: Originally enacted in 1994 and reauthorized as part of the Every Student Succeeds Act in 2015, the Gun-Free Schools Act (GFSA) is a federal law that requires states receiving federal funds under the Elementary and Secondary Education Act to restrict firearms on school property. The GFSA requires schools to expel, for not less than one year, a student who brings a weapon to school or possesses a weapon at school. 20 U.S.C. § 7151(b)(1).

In its [Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act](#), the United States Department of Education defines *school* as not only school buildings but also any setting that is supervised and controlled by a local educational agency (LEA) for the purpose of student activities approved and authorized by the LEA. Public school districts are a type of LEA.

The GFSA contains exceptions to the federal mandatory expulsion requirement. Since the Act's reauthorization, the GFSA has included an exception for firearms that are lawfully stored inside locked vehicles on school property. The Act also includes an exception for activities approved and authorized by the school district, such as gun safety classes, so long as the school district has appropriate safeguards to ensure student safety. 20 U.S.C. § 7151(g).

Texas law—mandatory expulsion: In response to the federal GFSA, Texas enacted a state law that expels students who bring firearms to school for at least one calendar year:

In accordance with 20 U.S.C. Section 7151, a local educational agency, 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:

- (1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;

- (2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
- (3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.

Tex. Educ. Code § 37.007(e).

In addition, a student shall be expelled if on school property or at a school event the student unlawfully carries a weapon under Texas Penal Code section 46.02 or commits an offense related to prohibited weapons under Texas Penal Code 46.05. Tex. Educ. Code § 37.007(a)(1).

Texas law—permissive expulsion: A student may be expelled if, while within 300 feet of school property, the student possesses a firearm. Tex. Educ. Code § 37.007(b)(2)(B).

Disciplinary process: Both federal and state law require that the student be expelled for at least one year, with certain exceptions. Depending on the circumstances and the discretion of the administration, a student with a firearm may be subjected to mandatory or permissive expulsion.

Students accused of possessing a firearm at school are entitled to receive due process before being punished in accordance with the district's Student Code of Conduct (SCOC). If the school district determines that the student committed the offense, the district still has some discretion in handing down the student's punishment.

Although federal and state law require mandatory expulsion for students who bring firearms to school or school related activities, under the GFSA, the district's designated chief administrative officer has the discretion to modify the federal one-year expulsion requirement in a case-by-case review. The superintendent or a designee may alter the one-year expulsion by changing the length of the expulsion, or by placing the student in an alternative setting during the expulsion, or by some combination of the two. Tex. Educ. Code § 37.007(e)(1).

At times, state law requires that an expelled student be placed in an alternative education setting. For example, students in districts located in counties with a population over 125,000 must provide services to expelled students in a Juvenile Justice Alternative Education Program (JJAEP). Tex. Educ. Code §§ 37.010(a), 011(a). In all districts, if the expelled student is younger than ten years of age, the district must provide educational services in a Disciplinary Alternative Education Program (DAEP). If an expelled student is ten years of age or older, the district *may* provide educational services in a DAEP. 20 U.S.C. 7151(h); Tex. Educ. Code § 37.007(e)(2)-(e)(3).

In addition, every school district's local SCOC indicates that appropriate district officials will take into consideration factors such as the student's intent, disciplinary history, disability, or whether the student was acting in self-defense. The disciplining officials must consider these factors when deciding whether to exercise discretion in altering the length of or placement during an expulsion. Tex. Educ. Code §§ 37.001(a)(4)(A)-(D), .009(a), (f).

Remember also that the requirements of state and federal law must be followed with respect to the discipline of students with disabilities. In its [Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act](#), the Department of Education observes that the GFSA must be applied in a manner consistent with the Individuals with Disabilities in Education Act (IDEA) and Section 504 of the Rehabilitation Act.

Reporting firearm offenses: If a principal or a principal's designee has reasonable grounds to believe that certain activities have occurred at school or a school related event, he or she must report this to local law enforcement regardless of whether the activity is investigated by school security personnel. Tex. Educ. Code § 37.015. The firearm-related activities that a principal must report include:

- Terroristic threat. Tex. Penal Code § 22.07
- Possession, manufacture, transport, repair, or sale of a prohibited weapon. Tex. Penal Code §§ 46.01, .05.
- Bringing a firearm to school or committing another expellable offense related to prohibited weapons. Tex. Educ. Code § 37.007(a), (d)-(e).
- Deadly conduct, including knowingly pointing a firearm at or in the direction of another whether or not the person believes the firearm is loaded. Tex. Penal Code § 22.05(c).
- Organized criminal activities including the unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons. Tex. Penal Code § 71.02(a)(4).

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/firearms_on_dist_property.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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