



ATTORNEY GENERAL OF TEXAS
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Dear School Officials:

Protecting our children from harm is more important today than ever before. This is especially true in school settings. Children must have a safe and positive learning environment in order to receive the education they deserve.

In recent years, tragic school shootings such as those at Virginia Tech University and Columbine High School in Colorado have focused the nation's attention on the need for secure campuses. Here in Texas, we are committed to ensuring that schools are safe havens of learning for our children – free from violent tragedies and other behaviors that threaten students' safety.

The Office of the Attorney General (OAG) is strongly committed to assisting local school administrators as they create and maintain a safe, positive learning environment for their students. To that end, we have joined with the Texas School Safety Center to offer several resources intended to foster school safety. The first of these resources is this *School Safety Guide*, a practical resource handbook from the OAG that covers the laws applicable to Texas public schools. This *Guide* can help provide direction to school officials in handling a variety of school safety and disciplinary problems.

Other school safety resources available on this CD-ROM include:

- *School Safety: Saving Lives When Seconds Count (video)*
- *Campus Safety and Security Audit Toolkit*
- *School Crime and Discipline Handbook*
- *Incident Command Kit*

None of the resources is intended to replace a school district's legal representative or to provide legal advice; rather, we hope they complement your ongoing school safety efforts.

Thank you for your commitment to provide Texas children with a safe, positive learning environment.

Sincerely,

Greg Abbott
Attorney General of Texas

Table of Contents

Keeping Schools Safe: Who Is Involved?	<u>1</u>
School Districts	<u>1</u>
Parents and Students	<u>2</u>
Texas School Safety Center	<u>2</u>
Campus Crime Stoppers	<u>3</u>
Keeping Schools Safe and Secure: A Positive Learning Environment	<u>4</u>
Discipline – What Texas Law Requires	<u>4</u>
Student Code of Conduct	<u>4</u>
Due Process	<u>4</u>
Discipline Management Programs	<u>4</u>
Expulsion	<u>6</u>
Juvenile Justice Alternative Education Programs	<u>7</u>
Keeping Schools Safe and Secure: Duty to Communicate	<u>8</u>
Notification of a Potentially Dangerous Student	<u>8</u>
No Liability for Reporting Crimes	<u>9</u>
Interagency Information-Sharing Agreements	<u>9</u>
Keeping Schools Safe and Secure: Safety Starts with a Secure Campus	<u>9</u>
Unauthorized Persons on School Property or Trespassing	<u>10</u>
Secret Societies and Gangs	<u>10</u>
School Uniforms	<u>10</u>
Failure to Attend School	<u>10</u>
Keeping Schools Safe and Secure: Healthy Campuses	<u>11</u>
Tobacco-Free Zone	<u>11</u>
Alcohol-Free Zone	<u>11</u>
Drug-Free Zone	<u>11</u>
Keeping Schools Safe and Secure: Violence-Free Campuses	<u>12</u>
Weapon-Free Zone	<u>12</u>
Fear and Violence	<u>13</u>
Keeping Schools Safe and Secure: Removing Contraband	<u>17</u>
What is Contraband?	<u>17</u>
Searches for Contraband in Schools	<u>17</u>
What Searches Are Commonly Used to Keep Schools Safe?	<u>20</u>
Special Needs Searches	<u>21</u>

Appendix A: Articulating Reasonable Suspicion	<u>23</u>
Appendix B: Checklist: Characteristics of Youth Who Have Caused School-Associated Violent Deaths	<u>24</u>
Appendix C: Ten Steps to Developing Safer Schools	<u>26</u>
Appendix D: Requirements for Removal and Notifications	<u>27</u>
Appendix E: Law Enforcement Reports to School Officials	<u>28</u>
Appendix F: Schools Report to Law Enforcement	<u>29</u>
Endnotes	<u>30</u>

Keeping Schools Safe: Who Is Involved?

School Districts

Each school district employee has a role and responsibility in school safety. The district's board of trustees and superintendent set the tone and atmosphere of a school when they create and approve the local Student Code of Conduct. The superintendent has specific obligations under the law to communicate with the principals regarding potentially dangerous students.¹ The 80th Texas Legislature clearly defined the time frame for this communication: The superintendent is required to notify affected school personnel within 24 hours of receiving notification of a potentially dangerous student.² Non-compliance with the notification laws can ultimately place students and teachers in danger.

Principal

The principal bears the primary responsibility for maintaining a controlled and safe school campus. Enforcement of the Student Code of Conduct, criminal and compulsory attendance laws is critical to a safe campus. The law requires that a principal:

- report serious criminal activities to law enforcement and school personnel;³
- take appropriate action when a student has misbehaved⁴; and
- notify parents when a student has violated the Student Code of Conduct.⁵

School Attendance Officers

One key to a safe and secure campus is an environment that encourages participation and involvement by all students. To ensure this, all students must be on campus. Truancy is the first step down the path of an insecure campus. If an emergency were to occur at a school or an evacuation order were given, not knowing who is in school could cause unnecessary delays and endanger lives.

School attendance officers are charged with enforcing the compulsory attendance law that may require children between the ages of 6 and 21 to attend school.⁶ If no one is selected as a school attendance officer, the superintendent, the county and ISD peace officers are to perform the duties of the attendance officer.

Campus Security Personnel

Texas criminal laws apply everywhere the school district controls.⁷ A school district may hire campus security personnel to maintain law and order for the district. There are two types of campus security personnel:

- commissioned peace officers who are authorized to carry a weapon and take a child into custody; and
- security personnel who cannot carry a weapon⁸ or take a child into custody.

School District Peace Officers

The chief of a school district police department is accountable to the superintendent and is required to report to the superintendent or designee. School district peace officers report to the school district police chief or designee. All peace officers must be licensed by the Texas Commission on Law Enforcement Officer Standards and Education.⁹ The jurisdiction of an

ISD peace officer is determined by the board of trustees and may include the area within the boundaries of the school district and all school property.¹⁰

The duties of a school district peace officer include protecting the safety and welfare of any person in the peace officer's jurisdiction, as well as protecting the school district's property.¹¹ Each school district peace officer must:

- take action to prevent and suppress crime;
- execute all lawful processes issued by a court;
- notify a magistrate of offenses when the officer has good reason to believe a penal law has been violated;
- arrest offenders when authorized by law; and
- take possession of missing children.¹²

School Liaison Officers

Each school district must appoint an educator as a liaison officer for court-related children enrolled in the district. The officer is responsible for providing counseling and services to deal with the child's attendance issues and progress.¹³

Parents and Students

Obviously, any effort to curb violence in schools must include parents and students. Parental involvement is paramount to achieving any long-term impact on children's behavior. Parents can support schools by talking with their children about appropriate behaviors at school. Parents also need to be aware of the outside influences children encounter not only on the street corner but on the Internet as well. With the popularity and increased use of chat rooms, blogs, MySpace.com, etc., parents must talk to their children about the risks and dangers associated with these forums and never to provide personal information over the Internet.

Students are an integral part of keeping our schools safe. Past school violence has demonstrated that the aggressors telegraphed the impending violence through conversations and outcries. Telling an adult is not "snitching," but is true heroism. What a student reports may just save his or her life or the life of a friend.

Texas School Safety Center

The Texas School Safety Center (TxSSC) was created in 1999 and authorized by the 77th Texas Legislature in 2001 to serve as a central location for school safety information. TxSSC provides schools with research, training and technical assistance to reduce youth violence and promote safety in Texas schools. The Center conducts safety training free of charge to school districts in Texas. The training includes: development of a positive school environment and proactive safety measures to address local concerns; school safety courses for law enforcement officials; assistance for districts in developing a multi-hazard emergency operations plan; security criteria for instructional facilities; and a model safety and security audit procedure for the state.¹⁴ The center collects school safety data for the state and reports to the public. The center also provides training on bullying prevention and peer sexual harassment.

Schools must take proactive measures to prevent school violence and respond quickly and effectively if an incident does occur. The Texas School Safety Center recommends the following:

- Raise awareness among school officials and local law enforcement officers by conducting exercises relating to school Emergency Operations Plans.
- Raise awareness among school officials and students by conducting training that includes recognizing signs of violence.
- Practice Emergency Operations Plans through drills and exercises.
- Consider a single entry point for all attendees, staff and visitors.
- Create and enforce a visitor identification policy.
- Ensure that emergency communications to and from schools are working.
- Train students and staff to report any suspicious activity to law enforcement authorities.

TxSSC has designed a two-day training course for district teams that will enable them to perform comprehensive campus safety audits. This training focuses on physical plant issues, emergency operation plans and school climate. Training includes a walk-through visit at one campus in the district. Training participants will then have the skills, knowledge and materials necessary not only to perform safety audits at additional campuses but also to train others in ongoing campus safety assessment.

Campus Crime Stoppers

As stated earlier, students must be involved in any solution or discussion involving school safety. One way to facilitate their involvement is to provide a Campus Crime Stoppers program on your school campus. Campus Crime Stoppers programs operate anonymously so students can report threats of violence, illegal drugs, weapons and other potentially dangerous behavior on or off school campuses without fear of retribution.

If these tips lead to an arrest, school suspension or expulsion, recovery of a weapon, or seizure of illegal drugs, the student becomes eligible for a cash reward. These designated tip lines can play an integral role in maintaining a safe campus. Students are often the first line of defense and, if given an outlet to report activities anonymously, they can save the lives of their friends, teachers and other school personnel.

In the Austin area, the Capital Area Crime Stoppers Program report card showed that as of January 2007, their program received 1,527 tips that led to 494 arrests; 693 cases being cleared; and the recovery of 105 weapons. In Laredo, a Campus Crime Stoppers program in 2006 received 279 tips yielding the seizure of illegal drugs and 34 weapons. Campus Crime Stoppers is an effective tool in providing a weapon-free and drug-free learning environment for our children.

For more information please contact your local Crime Stoppers organization or Texas Crime Stoppers toll-free at (866) 220-4357 or online at www.crimestoppers.txstate.edu.

Keeping Schools Safe and Secure: A Positive Learning Environment

Discipline – What Texas Law Requires

Chapter 37 of the Texas Education Code requires the board of trustees of an independent school district to adopt a Student Code of Conduct that describes the school district's expectations regarding student conduct. Discipline management and codes of conduct ensure a positive learning environment. Any behavior that is disruptive or threatening to the learning environment is generally prohibited. School districts must also keep their teachers and administrators informed of the laws and school district policies that concern discipline and behavior management.

Student Code of Conduct

The local Student Code of Conduct identifies conduct that disrupts a positive learning environment, assures the rights and responsibilities of students, and standardizes procedures to be used in responding to disciplinary and safety problems. The Texas Education Code sets forth mandatory requirements that each district must include in its policies; however, each local school district customizes and approves its own Code of Conduct.

The Student Code of Conduct must:

- specify the circumstances under which a student may be removed, suspended, transferred to a disciplinary alternative education program (DAEP) or expelled;
- specify whether consideration is given to self-defense, intent or lack of intent, disciplinary history or manifestation as factors in deciding to remove or expel a student;
- provide guidelines for setting the length of removal and expulsion;
- address parental notification when a student violates the Student Code of Conduct, resulting in suspension, removal to an alternative setting or expulsion;
- include prohibition from participating in or attending any school-sponsored or school-related activities during the term of removal or expulsion; and
- prohibit bullying, harassment and making hit lists.¹⁵

Due Process

When adopting discipline policies, school officials need to keep in mind the means and ends of each policy. Policies must not violate the constitutional rights of students, parents or educators. Before adopting a policy, school officials should determine whether the policy will withstand a court challenge. Each form of disciplinary management must be consistent with the local guidelines set forth in the Student Code of Conduct and comply with due process procedures.

Discipline Management Programs

The Education Code does not impose restrictions on a school district's discipline management program. School districts are free to adopt and implement whatever program they believe will best suit the needs of its students and teachers. There are some circumstances under which a school district has discretion about whether to remove a student and some circumstances that require removal.

In order to comply with minimal due process requirements for removing a student from class, school districts must include in the Student Code of Conduct what behaviors will subject the student to removal. The longer the term of removal from class, the more due process procedures are required.

Removal by Teacher

In general, teachers have a great deal of discretion in determining whether to remove a student from class for disciplinary reasons. A teacher may send a student to the principal's office in order to maintain effective discipline in the classroom. The principal must respond to the situation by using appropriate disciplinary techniques that are consistent with the local Student Code of Conduct.¹⁶

Removal by Principal

When a teacher removes a student who has repeatedly interfered with the instructor's ability to teach or whose behavior is disruptive, the principal may place the student in another appropriate classroom, in-school suspension, out-of-school suspension or an alternative setting.¹⁷ Each district's Student Code of Conduct must outline the conditions under which a student may be suspended.

In-school suspension is considered a discipline management technique and does not have a time limitation as out-of-school suspension does. Nevertheless, in-school suspension could constitute a substantive due process violation when the suspension lasts for a longer period of time and results in a marked learning disadvantage for suspended students.¹⁸

The United States Supreme Court has held that students must be afforded procedural due process before being suspended, even if the suspension is for a short period of time.¹⁹ A student who is facing short-term suspension has a constitutional right to:

- oral or written notice of the nature of the infraction and the punishment for the infraction;
- an explanation of the evidence the authorities have if the student denies the charges; and
- an opportunity to refute the charges before an objective decision maker.

The Education Code requires that a conference be held not later than the third class day after a student is removed from class through the use of an out-of-school suspension. Additionally, an out-of-school suspension may not exceed three school days.²⁰

Disciplinary Alternative Education Programs (DAEP)

Each district must provide an alternative setting for potentially dangerous or disruptive students.²¹ A student may be removed from the regular classroom to the alternative setting for safety or disciplinary purposes.

Discretionary Placement

Behavior at School

A student may be placed in an alternative setting if a teacher has removed the student from class for:

- repeatedly interfering with the teacher's ability to communicate effectively with students or with the ability of the student's classmates to learn; or

- being so unruly, disruptive or abusive that the conduct seriously interferes with the teacher’s ability to communicate with students or with the ability of the student’s classmates to learn.²²

Behavior Off Campus

The superintendent may remove a student to an alternative setting for conduct that occurred off campus if there is reasonable belief that the student has committed a felony offense and the student’s continued presence in the classroom threatens the safety of others or will be detrimental to the educational process.²³

If a student is ultimately placed on deferred prosecution or adjudicated for a “Title 5” felony that occurred off campus, the superintendent must remove the student to an alternative setting. “Title 5” felonies are limited to felony crimes against persons.²⁴

Mandatory Placements

While the Education Code gives school districts great latitude in its discretionary removals, certain behaviors are considered so dangerous or disruptive that mandatory removal to DAEP is required. A student must be removed to an alternative setting if the student commits certain serious criminal violations on school property, within the safety perimeter of school property or at a school-related event. Even off campus behavior can merit mandatory removal if the offense is serious enough.²⁵

Due Process Procedures

Removal to an alternative campus is a more harsh punishment than the suspension options. In order to exercise the harsher punishment, the school must afford the student more due process. In addition to providing notice in the Student Code of Conduct of what behaviors place a student at risk for removal, schools must schedule a conference for the principal, the teacher, the student’s parents and the student no later than the third class day of the removal.²⁶ If the removal is continued, the principal must provide a written copy of the removal order to the student or parents. Not later than two business days after a conference is provided, the school board (or its designee) must refer the student’s case to the appropriate juvenile court.²⁷

Transfers During Term of Removal

If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the punishment period, the district or school taking the disciplinary action must provide to the new district or school a copy of the disciplinary action order. The new district or school may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the punishment period.²⁸

Expulsion

There are some circumstances under which a school district has discretion about whether to expel a student and some circumstances that require expulsion. Because expulsion deprives a student of the right to attend school, school districts should exercise this discretion with extreme caution. Each district’s Student Code of Conduct must outline the conditions under which a student may be expelled.²⁹

Discretionary Expulsion

A student may be expelled if the student continues to engage in serious or persistent misbehavior that violates the Student Code of Conduct while removed to an alternative setting.³⁰ A student may be expelled if the student commits certain criminal violations on school property, within the safety perimeter of school property or at a school-related event, even if the event is located in another school district.³¹

Mandatory Expulsion

A student must be expelled if the student commits certain serious criminal violations on school property or at a school-related event.³²

Due Process

Because expulsion is a more severe sanction than suspension or removal to an alternative setting, a student must be given greater procedural protection when expulsion is contemplated. The Education Code requires the following before a student can be expelled:

- The school board (or its designee) must provide the student with a hearing at which the student is “afforded appropriate due process as required by the federal constitution and to which the student’s parent or guardian is invited, in writing, to attend” and
- 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 a school district employee.³³

If a student is expelled, the school board (or its designee) must provide a copy of the order to the student and the parents.³⁴ Generally, the expulsion period may not exceed one year.³⁵ Once a student is expelled, it becomes the responsibility of the student’s parent or guardian to provide adequate supervision for the student.³⁶ Under Section 37.010 of the Education Code, if a student is expelled the board must refer the student to the appropriate juvenile court.

Emergency Removals or Expulsion

Section 37.019 of the Education Code expressly states that nothing prevents removal or expulsion on an emergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student must be accorded the appropriate due process.³⁷

Juvenile Justice Alternative Education Programs

An alternative setting operated under the authority of a juvenile board of a county is considered a Juvenile Justice Alternative Education Program (JJAEP). A county with a population greater than 125,000 must develop a JJAEP. The Texas Juvenile Probation Commission (TJPC) approves and oversees all mandatory JJAEPs. A county with a population of less than 125,000 may develop a JJAEP. If one of these counties chooses to develop a JJAEP, it does not have to be approved by TJPC nor is it subject to various other requirements, as noted below.³⁸

A student who is expelled from school must be referred to juvenile court and may be placed on probation. If placed on probation or deferred prosecution for expulsion, the conditions of probation must include placement at the JJAEP. A juvenile court may not order a student to be transferred to a JJAEP for a period of time that is longer than the term of any court-ordered probation period.³⁹

In a county that develops and operates a JJAEP, the juvenile board, the commissioners court and the county are immune from liability to the same extent as a school district. In addition, the professional employees and volunteers of the juvenile board and county are immune from liability to the same extent as a school district's employees and volunteers.⁴⁰

Keeping Schools Safe and Secure: Duty to Communicate

In order to protect the entire student body, schools must be aware of any potentially violent or dangerous students on the campus. This fact was recognized by the Texas Legislature in 1993. Section 15.27 of the Texas Code of Criminal Procedure was added as a tool to prevent violence on school campuses.

Notification of a Potentially Dangerous Student

To protect individuals, prevent additional violence and further educational purposes, the Code of Criminal Procedure requires communication and information sharing between law enforcement, justice agencies and schools.⁴¹ Schools are commonly hesitant to share student information for fear of violating the Family Educational Rights and Privacy Act (FERPA).⁴² However, communications between law enforcement and justice agencies are not prohibited. FERPA specifically allows the release of student information to appropriate officials in cases of health and safety emergencies and to state and local authorities within the justice system, pursuant to state law.⁴³

Various Notification Requirements

Law Enforcement Duties

Law enforcement agencies must notify school officials when a student has been charged or arrested for any felony offense and for certain misdemeanors. Prosecutors are also required to provide notifications upon disposition of a student's case.⁴⁴ Even parole, probation and community supervision departments must notify schools if a probationer transfers schools during the supervision period.⁴⁵

Notifications to the district superintendent must be both oral and written. Oral or electronic notification must be provided within 24 hours after the student is arrested or taken into custody, or on the next school day. Written notification must be mailed within seven days after the oral notification if an electronic notification was not sent within the initial 24-hour period.⁴⁶

Attorney General Opinion No. DM-0294 (1994) emphasized that the notice should include sufficient details such as:

- the nature of the charges;
- the identity of any alleged victims who are students or staff; and
- all other information that will allow a school administrator to take appropriate action to prevent violence, protect students and staff, and to further the educational process.

If the student attends a private school, law enforcement and prosecutors must send the required notification to the principal of the private school.⁴⁷

Superintendent's Duties

Once a superintendent receives the notification from law enforcement, the superintendent is required to pass that information on to all instructional and support personnel who have regular contact with the student.⁴⁸ A school district must inform each teacher who has regular contact with a student through a classroom assignment about the conduct of a student who has engaged in a weapons-related violation.⁴⁹

Principal's Duties

The principal of a public or private school has a legal duty to notify a school district's police department, if there is one, and the local law enforcement agency if there are reasonable grounds to believe that criminal activities are taking place or have taken place in school. This includes crimes committed in school, on school property, within the safety perimeter of school property or at a school-related activity that is on or off of campus.

The principal must report illegal activity regardless of whether school security personnel are investigating the incident and regardless of whether students or non-students are involved. When reporting criminal activities, a principal must include the names and addresses of all students believed to be involved in the criminal activity. A principal is also required to notify each educator who has regular contact with the student.⁵⁰

Teacher's Duties

Educators and school personnel who receive notifications of potentially dangerous or disruptive students are required to keep the information confidential.⁵¹

No Liability for Reporting Crimes

A school official who in good faith reports a crime to law enforcement will not incur civil liability.⁵² School volunteers are immune from civil liability to the same extent as school district professional employees. However, the civil liability of a person who engages in intentional misconduct or gross negligence is not limited by the Education Code.⁵³

Interagency Information-Sharing Agreements

A superintendent and a juvenile probation department may enter into written interagency agreements to share information about juvenile offenders. The information must relate to the juvenile system's ability to serve the student whose records are being released. The juvenile justice agency that receives the educational information may not disclose it to a third party other than another juvenile justice agency.⁵⁴

Keeping Schools Safe and Secure: Safety Starts with a Secure Campus

Schools bear the burden of overseeing the health and safety of our children during the majority of their waking hours. Protecting their health and safety begins with a controlled campus. Schools not only need to know who is on the campus, but they also need to control who is on the campus. Schools need to protect our children from unhealthy influences that could put them in danger.

Unauthorized Persons on School Property or Trespassing

A school district's board of trustees, or persons authorized by the board, may refuse entry to anyone who does not have legitimate business on property controlled by the board. The school board or its authorized representatives may also eject any person from board-controlled property if the person is asked to leave the property but refuses to do so peacefully. In addition, school officials may require persons on school property to carry some form of identification.⁵⁵ A person who trespasses on or in school district property may be prosecuted for the offense of criminal trespass under the Education or Penal codes.⁵⁶

Secret Societies and Gangs

One tool available to protect our children from unhealthy and dangerous influences at school is the prohibition of secret societies or gangs at school. It is an offense for a person to be a member of, pledge, join or solicit another to join a public school fraternity, sorority, secret society or gang. It is also illegal for a person who is not a public school student to solicit another person to attend a meeting of a fraternity, sorority, secret society or gang, or a meeting at which the person will be encouraged to become a member of such an organization.⁵⁷ A student who is proven to have engaged in this type of behavior must be removed from campus and placed in the DAEP.⁵⁸

School Uniforms

A school board may adopt rules that require its students to wear school uniforms if it is determined that the requirement would improve the learning environment at the particular school.⁵⁹ This may be an option for school boards to consider when trying to prevent conflicts among students who intentionally or unintentionally wear gang-related clothing or accessories. Some schools also may find that uniforms help unify the student body. If a community atmosphere is developed on a campus, students may be more likely to come forward to report suspicions of school violence.

Failure to Attend School

Under the Texas compulsory school attendance law, everyone who has begun a pre-kindergarten program through the age of 21 may be required to attend school, unless exempted.⁶⁰ If a child is not in school, there is a high probability supervision is being avoided. If there is no supervision, a child's health and safety are at risk.

Compulsory school attendance may be enforced by:

- a non-commissioned school attendance officer, if selected;⁶¹ and
- the superintendent and the peace officers in the county and district in which the school is located, if no school attendance officer has been selected.⁶²

Sanctions for Students

An individual must be prosecuted for failure to attend school if the student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year. An individual may be prosecuted for failure to attend school if the student is absent without excuse on three or more days or parts of days within a four-week period.⁶³ If the student is 10 or older but younger than 17, the child may also be referred to juvenile court for truancy.⁶⁴

In an effort to prevent the mandatory prosecution of a student, a school district must notify a student's parent if the student has been absent from school without excuse for three days or parts of days within a four-week period. Once a student attains the requisite 10 unexcused absences,

a school district must file a complaint against the student within 10 school days in the appropriate court.⁶⁵

Prosecution of Parents

A school district must notify a student's parent in writing at the beginning of the school year that if the requisite number of unexcused absences is reached, that:

- the student's parent is subject to prosecution; and
- the student is subject to prosecution or referral for failing to attend school.⁶⁶

Keeping Schools Safe and Secure: Healthy Campuses

Research has shown that the brain does not fully develop until a child reaches at least 18 years of age. Reasoning and judgment are among the last cognitive skills to develop. It is important for school campuses to be free from unhealthy and dangerous influences during this time of growth and development.

Tobacco-Free Zone

Every school board is required to prohibit the use or possession of tobacco products at school and all school-related activities.⁶⁷ It is also a crime for a minor to possess, purchase, consume or accept any tobacco products.⁶⁸

Alcohol-Free Zone

Each school board is required to prohibit the use of alcoholic beverages at all school-sponsored or school-related activities, regardless of whether they take place on or off school property.⁶⁹ It is an offense for a person to possess an intoxicating beverage for consumption, sale or distribution while:

- on school grounds;
- in a school building; or
- entering or inside any enclosure, field, or stadium where:
 - ▶ a school-sponsored athletic event is being held; or
 - ▶ an athletic event is being held in which a public school is a participant.⁷⁰

The alcohol-free zone also includes a public street, alley or sidewalk within 1,000 feet of the property line of a public or private primary or secondary school.⁷¹ A local governing body may enact regulations that prohibit the sale of alcoholic beverages by any business located within 300 feet of a public or private school.⁷²

If an officer of this state sees a person possessing alcohol in the alcohol-free zone, the officer must immediately seize the alcoholic beverage.⁷³ A school employee who reports in good faith a student who is reasonably suspected of using, passing or selling an alcoholic beverage on school property may not be held liable for civil damages arising from making such a report.⁷⁴

Drug-Free Zone

Drugs and drug paraphernalia are prohibited on school campuses, at school-related events or within the safety perimeter of the school. Prohibited substances include marijuana, controlled substances,

dangerous drugs, inhalants and steroids. Even possession of prescription drugs and over-the-counter medications is restricted. A student is subject to mandatory removal to an alternative setting if the student possesses, uses, is under the influence of, sells, gives or delivers to another person any prohibited substances or paraphernalia.⁷⁵

If the student's conduct is a felony drug-related offense, the student must be expelled.⁷⁶ A school district may provide a program of educational and support services to a student and his or her parents if the student is placed in an alternative setting because of a drug-related offense.⁷⁷

Keeping Schools Safe and Secure: Violence-Free Campuses

Weapon-Free Zone

The presence of weapons in and around schools is a growing concern among administrators, law enforcement, teachers, parents and students. Unless a school authorizes a person by written permission or by written regulations, it is forbidden to possess a gun or any other weapon on school property, school transportation or at school-related activities.⁷⁸ Because schools are free to ban all weapons or potential weapons, some Codes of Conduct may prohibit items that would be legal to possess elsewhere, like large box-cutters. Possession of otherwise legal items is removable conduct. Possession of illegal items is both removable conduct and a violation of the law. Weapon-free zones include the premises of a school, the safety perimeter of a school's premises and school or UIL events.⁷⁹

Gun-Free Zone

A student who brings a firearm to school must be expelled from the regular campus for up to one year. Educational services must be provided to a student in an alternative setting if the student is younger than 10 and may be provided if older than 10 years.⁸⁰

Exhibition of Firearms

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 exhibit or use a firearm:

- in or on any property, including a parking lot, parking garage, or other parking area, that is owned by a private or public school; or
- on a school bus being used to transport children to or from school-sponsored activities of a private or public school.⁸¹

Illegal Knives

The Penal Code defines an "illegal knife" as a knife with a blade over five and one-half inches long or a hand instrument that, when thrown, can cut or stab someone. Other illegal knives include daggers, dirks, stilettos, poniards, Bowie knives, swords, spears and throwing stars. A switchblade knife is any knife that has a blade that folds, retracts or closes into the handle or sheath and opens automatically by pressing a button or other device on the handle or by centrifugal force with the flick of a wrist.⁸²

A school board may, by local policy, prohibit students from bringing other knives or cutting instruments to school in addition to the prohibited knives described above. If a school board chooses to adopt such a policy, it should be included in its Student Code of Conduct.

Brass Knuckles

“Knuckles” means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles. It is illegal to possess knuckles.⁸³

Clubs

A club is a weapon that has the intended purpose of inflicting serious bodily injury or death by striking a person. Illegal clubs include but are not limited to blackjacks, nightsticks, mace and tomahawks.⁸⁴

Explosives

A person commits a felony if he or she knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal act.⁸⁵ It is an offense to knowingly manufacture, sell, purchase, transport or possess a hoax bomb with the intention of making another person believe that the fake bomb is real. A hoax bomb offense is also committed if an official of a public safety agency or a police officer has to be called in to attend to what is thought to be an emergency situation.⁸⁶

Fear and Violence

When fear is present on campus, we are failing our children in not providing a safe environment conducive to learning. Schools should explore opportunities to provide anger management, peer mediation and conflict resolution programs to foster better peer relations among students and provide tools for peacefully resolving conflict. Fear thrives in an environment where intimidating behavior and violence go unaddressed. Violence often begins subtly, with behaviors such as bullying.

Bullying

Since 2005, every public school Student Code of Conduct has been required to prohibit bullying, harassment and the making of “hit lists” as now defined by the Texas Education Code.⁸⁷ “Bullying” is legally defined as engaging in written or verbal expression or physical conduct that a school district board of trustees determines:

- will have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage to the student’s property; or
- is sufficiently severe, persistent or pervasive enough that the action or threat creates an intimidating, threatening or abusive educational environment for a student.⁸⁸

Bullying is a destructive and harmful behavior that takes many forms. Harassment is another recently defined behavior that is simply another form of bullying.

Harassment

Harassment is defined in the Education Code as threatening to cause harm or bodily injury to another student; engaging in sexually intimidating conduct; causing physical damage to the property of another student; subjecting another student to physical confinement or restraint or maliciously taking any action that substantially harms another student's physical or emotional health or safety.⁸⁹

Parents have the right to request their child be transferred to another classroom away from the bully or to another campus in the school district away from the bully. If the board of trustees verifies that a student has been a victim of bullying, there is no time limit to the transfer and no transportation is provided.⁹⁰ Schools and parents should encourage students to report incidents of bullying so school personnel can intervene as early as possible.

In addition to being a Code of Conduct violation, bullying may be an offense. Types of offenses that are consistent with bullying behaviors include the following:

Hazing

Hazing is a form of bullying that is committed in the name of an organization or club. It is legally defined as any intentional, knowing or reckless act, occurring on or off the campus of a high school, by one person alone or acting with others, directed against a student, that endangers the mental or physical health or safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in or maintaining membership in an organization.⁹¹

It is an offense for a person to:

- engage in hazing;
- solicit, encourage, direct, aid or attempt to aid another person in engaging in hazing;
- recklessly permit hazing to occur;
- have firsthand knowledge of the planning of a hazing incident involving a high-school student; or
- have firsthand knowledge that a specific hazing incident has occurred and knowingly fail to report that knowledge in writing to appropriate school officials.⁹²

The penalties for personal hazing are increased if it causes serious bodily injury or the death of another person.

Cyber-Bullying

Today's youth frequently participate in text messaging, blogging, chat rooms and surfing the Internet, as well as using wireless devices such as cell phones, iPods, etc.

Cyber-bullying occurs when a student is threatened, harassed, humiliated, embarrassed or otherwise singled out via an e-mail or post on the Internet (blogs or other Web sites), text message from a cell phone or other wireless device. In addition to being mean, cyber-bullying may be illegal. One way harassment is legally defined is "sending repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass or offend another."⁹³ Students should be encouraged to report all messages that are

threatening or hurtful. Reporting such behavior and threats is heroic and may save someone from being hurt physically or emotionally.

While most cases of cyber-bullying occur off school grounds and outside of school hours, it affects the safety and well-being of a student while in school. It is important to talk to students about cyber-bullying and other online dangers. Schools can assist in keeping students safe by providing awareness about the online “dos and don’ts” of text messaging, blogging, chat rooms, surfing the Internet, etc. The Texas School Safety Center (TxSSC) is required to develop an educational program for public schools to educate students about online safety and cyber-bullying.⁹⁴

Terroristic Threats

Bullying behavior that goes beyond harassment may amount to a threat. Most threats of violence are illegal and all are prohibited on school campuses.

A person commits an offense if he/she threatens to commit any offense involving violence to any person or property with intent to:

- cause a reaction of any type to his/her threat by an official or volunteer agency organized to deal with emergencies;
- place any person in fear of imminent serious bodily injury;
- prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile or other form of conveyance, or other public place;
- cause impairment or interruption of public communications, public transportation, public water, gas or power supply, or other public service;
- place the public or a substantial group of the public in fear of serious bodily injury; or
- influence the conduct or activities of a branch or agency of the federal government, the state or a political subdivision of the state.⁹⁵

False Alarm or Bomb Threat

Simply put, a false alarm is a terroristic threat that is false. A person commits an offense if he or she knowingly initiates, communicates or circulates a report of a present, past or future bombing, fire, offense or other emergency that he or she 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.⁹⁶

A false alarm or report that involves a school is a higher degree offense and is mandatory removal conduct.⁹⁷

Dating Violence

Schools must also adopt policies to address dating violence. Dating violence includes the intentional use of physical, sexual, verbal or emotional abuse to harm, threaten, intimidate or control another in a dating relationship.⁹⁸ The TxSSC offers training for educators that include dating violence issues.

Assault

Assault is the broad name for physical violence or threats of physical violence. The penalty range for assault offenses is determined by the degree of injury or threatened injury or whether a weapon is used. Generally speaking, all forms of assault are prohibited on school campuses.

A person commits an assault when he or she:

- intentionally, knowingly or recklessly causes bodily injury to another person;
- intentionally or knowingly threatens another person with bodily harm; or
- intentionally or knowingly causes physical contact with another person knowing that the contact will be offensive or provocative to that person.⁹⁹

Although the Education Code does not require expulsion for assault, a school district is free to make assault an expellable offense. If it chooses to do so, the school district must include the policy in its Student Code of Conduct. Regardless of the presence or absence of a specific policy on assault, a principal may order the immediate removal of a student if such action is necessary to protect persons or property from imminent harm.¹⁰⁰

An employee of a school district is “physically assaulted” if the person engaging in the conduct causing injury to the employee:

- could be prosecuted for assault; or
- could not be prosecuted for assault only because of the person’s age or mental capacity.¹⁰¹

Aggravated assault involves an assault with a deadly weapon or an assault that resulted in serious bodily injury. Threats with a deadly weapon are also classified as an aggravated assault.¹⁰² Aggravated assault is mandatory removal conduct.¹⁰³

A victim of bodily injury that is a result of a student’s conduct has certain rights under Chapter 57 of the Texas Family Code, including: the right to receive information regarding compensation for victims of crimes; the costs that may be compensated; and the amount of, eligibility for and procedures for applying for compensation. A victim who suffers serious bodily injury as a result of an adult offender’s conduct has similar rights under Chapter 56 of the Code of Criminal Procedure.

To obtain more information about crime victims’ compensation, please contact the Office of the Attorney General’s Crime Victim Services Division at (800) 983-9933 or online at www.oag.state.tx.us.

Keeping Schools Safe and Secure: Removing Contraband

What is Contraband?

Contraband is defined as “any property which is unlawful to produce or possess.”¹⁰⁴ All banned items possessed in a school zone are contraband, but contraband on school campuses does not just include illegal items. School districts are allowed to ban items that are likely to disrupt the learning atmosphere. Some items prohibited on campus would otherwise be legal to possess. For instance, Student Codes of Conduct commonly prohibit all knives, even pocket knives.

Paging Devices

A paging device is defined as “a telecommunications device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor.”¹⁰⁵ Paging devices are useful and convenient communications tools, but in the school context their presence may be both distracting and disruptive. Before 1995, the Education Code provided for an absolute ban on paging devices in schools and authorized schools to confiscate such devices. Under current law, a school board may adopt a policy that prohibits students from possessing paging devices while on school property or while attending school-related activities on or off of school property.

The school board’s policy on prohibiting paging devices may:

- establish disciplinary measures for a violation;
- provide for the confiscation of paging devices;
- provide for the disposal of a confiscated paging device after the student’s parent and the company whose name and address or telephone number appear on the paging device have been given 30 days’ prior oral or written notice of the school board’s intent to dispose of the paging device; and
- allow the school district to charge the owner of the paging device or the student’s parent an administrative fee of not more than \$15 before the school board releases the paging device.¹⁰⁶

To ensure due process and to encourage compliance with its policy, it may be advisable for a school board to provide a written copy of its policy regarding paging devices to students and their parents or guardians, teachers and administrators. The school board may also want to include the paging device policy in its Student Code of Conduct.

Cell Phones

Most schools prohibit use of cell phones during school hours under the 1995 “paging device” prohibition. Clearly, if a cell phone is used in the commission of an offense or school violation, it is contraband. Cyber-bullying, harassment, threats and cheating are violations that justify classification as contraband. However, the Education Code and the relevant Attorney General Opinion JM-1225 only address the disturbance of class by the ringing of the “car phone” and do not specifically address text messaging or camera features.

Searches for Contraband in Schools

The increasing number of weapon-related and drug-related incidents in schools has increased the need for school officials to conduct searches of students and their property. Searches and seizures of property involve constitutional issues that are governed largely by case law rather than by statute.

What Does the U.S. Supreme Court Allow?

The U.S. Supreme Court has held that “[a]lthough the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context in which the search takes place.”¹⁰⁷ The Supreme Court acknowledges that students have certain privacy interests in the school environment and that they have a Fourth Amendment right to be free from unreasonable searches and seizures while at school. However, the Supreme Court has also recognized the “substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds” and that “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.”¹⁰⁸ School officials are not required to get a warrant before searching a student who is under their authority.

The Reasonable Search

To be a reasonable search, a search must be:

- justified at its inception; and
- reasonably related in scope to the circumstances that justify the initial intrusion into the student’s privacy rights.¹⁰⁹

In other words, there must be reasonable grounds for conducting the search and the search must be conducted in a reasonable manner. Before proceeding with a search, school officials should always consider whether there are other ways of discovering the information they seek or whether other less intrusive means of searching are available. If school officials decide that a search is necessary, they should use the least intrusive means of conducting the search.

In deciding upon the reasonableness of a search, a court will look at all of the circumstances surrounding the search. Since no two situations are exactly alike, the determination of whether a search is reasonable will be made on a case-by-case basis.

Who Is Conducting the Search?

There are two different standards that govern the legality of student searches, depending on who actually conducts the search. Law enforcement officials generally must have probable cause to believe that a student has violated or is violating a law before conducting a search.

On the other hand, the legality of a search conducted by a school official depends on whether the search was reasonable. This reasonableness standard is not as restrictive as the probable cause standard and reflects the Supreme Court’s recognition of the need to accord some degree of flexibility to school officials in maintaining order and discipline.¹¹⁰

Is a Search Justified at Its Inception?

A search is justified at its inception if a school official “has reasonable grounds to suspect that a search will turn up evidence that the student has violated or is violating either the law or the rules of the school.”¹¹¹ This is often referred to as the “reasonable suspicion” standard.

The more specific the information is, the more reliable it may be. A student’s past and present behavior may also be taken into account. For example:

- Does the student have a history of being violent?

- Does the student pose an immediate danger to himself or herself or to others?
- What is the student’s reaction to questioning by school authorities?
- Does the student appear to be hiding something or is the student lying?

These are among the many factors that may be taken into consideration by school officials in determining whether there were reasonable grounds for searching a student.

How Extensive May a Search Be?

Even if a school official has reasonable grounds for searching a student, the search is not reasonable unless the official acts reasonably in conducting the search. The scope of the search and the manner in which it is conducted must be reasonable. The search must not be excessive in scope, and it must be no more intrusive than necessary. A search is permissible in scope “when the measures adopted and used are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”¹¹²

If an initial search based on reasonable suspicion does not reveal anything that gives rise to a reasonable suspicion, another search cannot be conducted without additional grounds. Searches based on a mere hunch are not permissible.

Searching an Entire Class

School administrators do not have the authority to conduct mass searches, such as a search of an entire class, based on suspicion that someone in the class has violated or is violating a law or school rule.¹¹³ School officials must have a reasonable “individualized suspicion” that a search of specific students will reveal evidence that they have violated or are violating a law or a school rule. For example, school officials who believe that money was stolen from a child’s coat but do not have any reasonable suspicion as to who stole the money (individualized suspicion) may not search every child in the class.¹¹⁴

What Are the Consequences for Conducting an Illegal Search?

If a school official conducts an unreasonable search, any evidence illegally seized or obtained may not be used against the student in court.¹¹⁵ In addition, the school official may incur civil liability for wrongfully searching a student in violation of the student’s Fourth Amendment rights.¹¹⁶

What If a Student Consents to a Search?

Consent is valid only if it is given freely and voluntarily.¹¹⁷ Students must feel free to refuse to consent to a search when asked to do so by authority figures. If not, it is not a voluntary consent. If consent is obtained by trickery or coercion, the consent is not valid. For example, a school official’s threat to call a student’s parents or to get a warrant if the student refuses to consent to a search constitutes coercion that may invalidate a student’s consent.¹¹⁸ In a California case, two fifth-grade students were considered too young to give proper consent.¹¹⁹ These are factors school officials should consider before seeking a student’s consent to conduct a search.

What Searches Are Commonly Used to Keep Schools Safe?

Locker Searches

School districts may adopt a written policy establishing that lockers belong to the district, are subject to random searches, and are not the private property of students. Such “locker policies” essentially do away with students’ expectation of privacy in their lockers. A locker search that conforms to the school’s policy does not violate the Fourth Amendment. This procedure was approved in a recent Texas case.¹²⁰ However, if a school district does not have such a policy, then students do have a reasonable expectation of privacy, which may not be violated without reasonable suspicion.

Metal Detectors

While the use of metal detectors in airports and courthouses is well established, their use in schools is still relatively new and little case law exists on the subject. However, metal detector searches are relatively unintrusive and are considered to be “administrative” in nature.¹²¹ Additionally, the use of metal detectors may prevent or deter students from bringing weapons or contraband to school.

School officials should follow the reasonableness standards set forth by the Supreme Court for conducting searches in schools.¹²² It is also a good idea for school officials to inform students and parents at the beginning of the school year that metal detectors may be used or to post such notices in school hallways.

Contraband-Detecting Dogs

Schools may use drug- or weapon-detecting dogs to sniff lockers in hallways and vehicles parked on school property. These sniffs of lockers and cars by contraband dogs are not searches because the dog is merely sniffing the air surrounding these objects. In other words, it constitutes a “public smell” in which persons do not have any privacy interests. Consequently, the Fourth Amendment does not apply to the use of contraband-detecting dogs in these limited circumstances.¹²³

If a contraband dog alerts to the presence of drugs in a vehicle or locker, the dog’s alert may give rise to a reasonable suspicion to search those objects. If the reasonableness of the search is later challenged, it may be necessary to show the dog’s reliability.¹²⁴

Using a contraband-detecting dog to sniff the air around a student can rise to the level of a search, especially in situations where the dog is allowed to touch the student. Such searches are more intrusive of a student’s privacy rights and are subject to the Fourth Amendment requirement of reasonableness. Searches conducted pursuant to a dog’s alert must be based on a reasonable suspicion and must be reasonable in manner and scope in light of all the circumstances of the search.¹²⁵

Vehicle Searches

School officials may search a student’s vehicle that is parked on school property if they have a reasonable suspicion that a search of the vehicle will turn up evidence that the student has violated or is violating a law or a school rule. The scope of the search and the way it is conducted must be reasonable in light of all the circumstances that gave rise to the reasonable suspicion for the search.¹²⁶

Backpacks and Purses

Backpacks and purses can present problems for school officials. Both can be large enough not only to carry books and school supplies, but also to carry weapons and other illegal items. Because students have a privacy interest in items they carry on their person, the Fourth Amendment requirement of reasonableness must be met.¹²⁷

Pat-Downs and Pocket Searches

In deciding whether to search a student's pockets, school officials must balance the school's interest in providing a safe educational environment against the student's constitutionally protected privacy interest. A report that a student has carried a gun to school may justify a pat-down search for weapons, even if it is conducted during the next school day.¹²⁸ Similarly, a case in which a student was observed to be "messing" with one of the pockets of his baggy shorts justified a pat-down search by a school resource officer based on reasonable grounds.¹²⁹ The fact that a search does not produce a weapon or contraband does not necessarily mean that it was unreasonable.

Strip Searches

Because of their highly intrusive nature, strip searches in school should be discouraged and they may not be permissible if school officials do not adhere closely to the reasonableness requirement imposed by the Fourth Amendment. Before undertaking a strip search, a school official must have a reasonable suspicion that the search will turn up evidence that the student is violating or has violated a law or a school rule specifically related to health and safety concerns, like drug-related or weapons-related violations.¹³⁰ Strip searches for missing property or money is not allowed.

If less intrusive, but equally effective, methods are available, a strip search should not be conducted. If a strip search is necessary, school officials are also well advised to consider the gender of the student being searched in relation to the gender of the person conducting the search, as well as the number and necessity of persons present during the search.

Special Needs Searches

Random Drug Tests

The U.S. Supreme Court has noted that a search can be constitutional, even if the search is unsupported by probable cause, "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."¹³¹ Such "special needs" are more likely to exist in the context of public schools.

In 1995, the Supreme Court upheld a school district's policy of conducting random, suspicion-less urinalysis of its student athletes.¹³² The Court noted that students have fewer expectations of privacy in the public school context because schoolchildren are committed to the temporary custody of school officials during the school day. Consequently, school officials are accorded a "degree of supervision and control that could not be exercised over free adults."¹³³ Given this decreased expectation of privacy; the relative unobtrusiveness of the method by which urine samples were obtained; and the severity of the need served by the search (the need to prevent drug abuse, to protect student athletes from injury, and to provide treatment for

athletes with drug problems); the school district's policy was reasonable and therefore constitutional.¹³⁴

In 2002, the Supreme Court extended that ruling to hold that the suspicion-less drug testing by an Oklahoma school district of students who participate in any type of extracurricular activity was reasonable.¹³⁵ The Court held that testing students who participate in extracurricular activities is a reasonably effective way to address the school district's legitimate concern in preventing, deterring and detecting drug use. The drug-testing policy effectively serves the district's interest in protecting the safety and health of its students.¹³⁶ The Texas Legislature specifically endorsed random drug testing for legal steroids if a high school student wants to participate in UIL competition.¹³⁷

JJAEP Student Searches

Students who are placed in a JJAEP have typically committed serious school-related or criminal violations, or have been found to persistently misbehave in school. The Texas Administrative Code outlines the rules and regulations governing JJAEPs, including student searches. All students entering a JJAEP must, at a minimum, be subjected to a pat-down search or a metal detector screening on a daily basis. Parents and students should be advised of search procedures upon placement. JJAEP staff may not conduct strip searches.¹³⁸

Student Probationer Searches

A student's status as a juvenile probationer or parolee may lessen his or her expectation of privacy under the Fourth Amendment. A Texas court has held that school checks, including searches, of juvenile probationers at school are reasonable because of the "special need" to protect other students while accommodating the juvenile probation system.¹³⁹ Similarly, students assigned to a disciplinary school facility may be required to empty their pockets, pass through a metal detector, and remove their shoes for security purposes. Such administrative searches are justified as part of a daily routine for disciplinary students and "as a method of furthering the state's interest in maintaining a safe and disciplined learning environment in a setting at high risk for drugs and violence."¹⁴⁰

Appendix A: Articulating Reasonable Suspicion

Reasonable suspicion that a student is violating a school rule or law is required for a search of a student or a student's property at school. Answering the four questions below may assist in articulating reasonable suspicion for a search of a student or a student's property.

1. What law or school rule has been violated?

2. What student (or group of known students) has committed the violation?

3) Is the violation one that is likely to involve contraband or physical evidence?

4. Is the contraband or evidence likely to be found in a particular place associated with the suspected student(s) or what needs to be searched?

Appendix B: Checklist: Characteristics of Youth Who Have Caused School-Associated Violent Deaths

The National School Safety Center offers the following checklist derived from tracking school-associated violent deaths in the United States from July 1992 to the present. After studying common characteristics of youngsters who have caused such deaths, NSSC has identified the following behaviors, which could indicate a youth's potential for harming him/herself or others.

Accounts of these tragic incidents repeatedly indicate that in most cases, a troubled youth has demonstrated or has talked to others about problems with bullying and feelings of isolation, anger, depression and frustration. While there is no foolproof system for identifying potentially dangerous students who may harm themselves and/or others, this checklist provides a starting point.

These characteristics should serve to alert school administrators, teachers and support staff to address needs of troubled students through meetings with parents, provision of school counseling, guidance and mentoring services, as well as referrals to appropriate community health/social services and law enforcement personnel. Further, such behavior should also provide an early-warning signal that safe school plans and crisis prevention/intervention procedures must be in place to protect the health and safety of all school students and staff members so that schools remain safe havens for learning.

The student:

- Has a history of tantrums and uncontrollable angry outbursts.
- Characteristically resorts to name calling, cursing or abusive language.
- Habitually makes violent threats when angry.
- Has previously brought a weapon to school.
- Has a background of serious disciplinary problems at school and in the community.
- Has a background of drug, alcohol or other substance abuse or dependency.
- Is on the fringe of his/her peer group with few or no close friends.
- Is preoccupied with weapons, explosives or other incendiary devices.
- Has previously been truant, suspended or expelled from school.
- Displays cruelty to animals.
- Has little or no supervision and support from parents or a caring adult.
- Has witnessed or been a victim of abuse or neglect in the home.
- Has been bullied and/or bullies or intimidates peers or younger children.
- Tends to blame others for difficulties and problems s/he causes her/himself.
- Consistently prefers TV shows, movies or music expressing violent themes and acts.

- _____ Prefers reading materials dealing with violent themes, rituals and abuse.
- _____ Reflects anger, frustration and the dark side of life in school essays or writing projects.
- _____ Is involved with a gang or an antisocial group on the fringe of peer acceptance.
- _____ Is often depressed and/or has significant mood swings.
- _____ Has threatened or attempted suicide.

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Appendix C: Ten Steps to Developing Safer Schools

Security for students and staff begins with planning.

Include safety in your district's mission statement.

A sound mission statement supporting the goal of safe and drug-free schools provides the legal basis for school board policies that work toward meeting that goal.

Craft individual safe-school plans.

The safety needs of an elementary campus are quite different from the safety needs of an alternative high school for teenagers with behavior problems. Rural and urban area schools would have vastly different needs as well.

Discipline codes must be prepared and publicized.

In Texas, a school's board of trustees is required to adopt a Student Code of Conduct. The code must be prominently posted and displayed at each school campus or made available in the principal's office.

Develop written agreements with other youth-serving agencies.

It is virtually impossible for school board members and administrators alone to keep schools safe, so it is important to create alliances with law enforcement officials; the district attorney and prosecutor; the probation department; the presiding juvenile court judge; and social, health, and welfare agencies.

Establish crisis-management policies that include staff training.

Each school and district needs a workable crisis-management plan that involves all school personnel, students, parents, law enforcement officials, community emergency services, and the media.

Conduct annual school-safety site assessments.

Safety audits and regular campus inspections should be conducted at least annually.

Exercise full custodial responsibility.

School boards have a keen fiduciary and custodial interest in ensuring that the assets of schools remain intact for future children coming through the system. This interest should be used as the basis for developing policies about what is and is not allowed on school property.

Share information among schools and staff members about dangerous conditions or people.

Texas law requires that school officials be informed when students with a history of violence are enrolled in their schools.

Screen new employees.

Background checks and record-screening of all school personnel employees, regular visitors or volunteers should be conducted.

Evaluate employees, and remove those who are incompetent or pose a risk to children.

School boards should develop a system for recognizing and dealing with employees who are arrested for criminal offenses.

Source: National School Safety Center
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Appendix D: Requirements for Removal and Notifications

Students involved in any of the listed behaviors are subject to either a discretionary or mandatory removal from class, along with the respective notification requirements. Due process procedures must always be followed.

	Notification to Schools	Report to Police	DAEP	Expulsion / JJAEP
Bullying	Must, If designated offense	Must, If designated offense	May	Local Control
Harassment	No	Must, If designated offense	May	Local Control
Hazing	Must, If felony	Mandatory	May	May
Cyber-Bullying	No	No	May	May
Terroristic Threat	Mandatory	Mandatory	Mandatory	May
False Alarm	Must, if felony	Mandatory	Mandatory	May
Assault	Mandatory	Mandatory	Mandatory	Must, If victim is employee
Gang-Involved	No	May	Mandatory	May
Alcohol	No	Must, if felony	Mandatory	Must, if felony
Drugs	Mandatory	Mandatory	Mandatory	Must, if felony
Weapon	Mandatory	Mandatory	Mandatory	Mandatory, if illegal
*Homicide	Mandatory	Mandatory	Mandatory	Mandatory
*Aggravated Kidnapping	Mandatory	Mandatory	Mandatory	Mandatory
*Indecency	Mandatory	Mandatory	Mandatory	Mandatory
*Sexual	Mandatory	Mandatory	Mandatory	Mandatory
*Aggravated Assault	Mandatory	Mandatory	Mandatory	Mandatory
*Injury	Mandatory	Mandatory	Mandatory	Mandatory
Arson	Mandatory	Mandatory	Mandatory	Mandatory
Robbery	Mandatory	Mandatory	Mandatory	Must, if aggravated
Burglary	Must, if felony	Mandatory	Mandatory	May
*Deadly	Mandatory	Mandatory	May	May
Engaging in Organized Crime	Mandatory	Mandatory	Must, if felony	May
Retaliation	Mandatory	Mandatory	Must, if victim is employee	Must, if victim is employee
Indecent Exposure	Mandatory	Mandatory	Mandatory	May
Unlawful Restraint	Mandatory	May	Mandatory	May
Public Lewdness	May	Mandatory	Mandatory	May
Any Felony	Mandatory	Mandatory	Mandatory	May

* Title 5 Felonies

Appendix E: Law Enforcement Reports to School Officials

Law enforcement must report the arrest or referral of anyone known to be (or believed to be) enrolled as a student in a public primary or secondary school, for the following offenses:

Any felony offense - Art. 15.27(h), C.C.P.

The following misdemeanors - Art. 15.27(h), C.C.P.

- ▶ Unlawful Restraint (False Imprisonment) - §20.02, P.C.
- ▶ Indecent Exposure - §21.08, P.C.
- ▶ Assault - §22.01, P.C.
- ▶ Deadly Conduct - §22.05, P.C.
- ▶ Terroristic Threat - §22.07, P.C.
- ▶ Engaging in Organized Criminal Activity - §71.02, P.C.
- ▶ Misdemeanor controlled substance, drug paraphernalia, or marijuana offenses - Ch. 481, H.S.C.
- ▶ Possession of weapons or devices - §§46.01(1)-(14) or (16), P.C.
- ▶ Possession of any prohibited weapon - §46.05, P.C.

The 24/7 Notice Rule: Oral notice of the arrest or referral must be given within 24 hours after the arrest or referral is made, or on the next school day; written notice must be given within seven days after the date the oral notice is given. Electronic notification is valid and qualifies as both notifications if sent within the initial 24-hour period - Art. 15.27(a) and (I), C.C.P.

Content of Notice: Both the oral and written notice must contain sufficient details of the arrest or referral and the act allegedly committed by the student to enable school officials to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony - Art. 15.27(a), C.C.P.

Penalties: A person who receives information under Art. 15.27 may not disclose the information except as specifically authorized. A person who intentionally violates this law commits a Class C misdemeanor - Art. 15.27(f), C.C.P.

Prosecution Notice: Upon conviction, deferred prosecution or deferred adjudication, or an adjudication of delinquent conduct of a student enrolled in a public or private primary or secondary school, the prosecuting attorney must notify the superintendent (or the principal of a private school) under the 24/7 notice rule. A prosecutor must also notify if the student must register as a sex offender - Art. 15.27(b), (e)(2), C.C.P.

Notice for Non-Adjudication: The prosecuting attorney shall, within two working days, notify the school district that removed a student to a disciplinary alternative education program if:

- ▶ Prosecution was refused for lack of prosecutorial merit or insufficient evidence, and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or
- ▶ The court or jury found the student not guilty, or found the child did not engage in delinquent conduct or conduct indicating a need for supervision, and the case was dismissed with prejudice - Art. 15.27(g), C.C.P.

Appendix F: Schools Report to Law Enforcement

School officials must notify law enforcement of certain offenses committed “in school, on school property, or at a school-sponsored or school-related activity on or off school property or at a school-related activity” under §37.015(a), E.C., including:

The following felony offenses:

- ▶ Murder and Capital Murder - §§19.02, 19.03, P.C.
- ▶ Aggravated Kidnapping - §20.04, P.C.
- ▶ Indecency with a Child by Contact - §21.11, P.C.
- ▶ Sexual Assault and Aggravated Assault - §§22.011, 22.02, P.C.
- ▶ Aggravated Sexual Assault - §22.021, P.C.
- ▶ Injury to a Child, Elderly Individual, or Disabled Individual - §22.04, P.C.
- ▶ Arson with Bodily Injury - §28.02(d), P.C.
- ▶ Robbery and Aggravated Robbery - §§29.02, 29.03, P.C.
- ▶ Burglary - §30.02(d), P.C.

The following misdemeanors:

- ▶ Deadly Conduct - §22.05, P.C.
- ▶ Terroristic Threat - §22.07, P.C.
- ▶ Misdemeanor controlled substance, drug paraphernalia, or marijuana offenses. Ch. 481, H.S.C.
- ▶ Misdemeanor weapon-related offenses under §46.01(1)-(14) or (16), P.C.
- ▶ Engaging in Organized Criminal Activity - §71.02, P.C.
- ▶ Conduct that may constitute a criminal offense for which a student may be expelled - §37.007(a), (d) or (e), E.C.

Who Must Notify: The duty to notify is placed on the principal (or the principal’s designee) of any public or private primary or secondary school - §37.015(a), E.C.

Content of Notice: The notification must include the name and address of each student the person believes may have participated in the activity - §37.015(b), E.C.

Notification Not Required: If the person reasonably believes the activity does not constitute a criminal offense - §37.015(c), E.C.

Who Else Must Be Notified: The person making the notification must also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice - §37.015(e), E.C.

Confidentiality: All school personnel must keep confidential the information they receive. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this law - Art. 15.27(a), C.C.P.

Liability: A person is not liable in civil damages for reporting in good faith as required by law - §37.015(f), E.C.

Endnotes

1. Tex. Code of Crim. Proc. Ann. Art. 15.27(a).
2. H.B. 2532 and S.B. 6, enacted by the 80th Texas Legislature, both added subsection (a-1) which authorizes the superintendent to send the notification received from law enforcement to a school district employee with direct supervisory responsibility over the student, if necessary for educational purposes or for the protection of others. H.B. 2532 and S.B. 6 also modified subsection (b) to specify the time frame for this notification to occur within 24 hours of the receipt of notification. In addition to notifying schools when a student's case is disposed, both H.B. 2532 and S.B. 6 require a prosecutor to notify schools if a student is required to register as a sex offender. H.B. 2532 is effective immediately from the date of signing or June 15, 2007. S.B. 6 is effective Sept. 1, 2007.
3. Tex. Educ. Code Ann. §37.015.
4. *See* Tex. Educ. Code Ann. §§ 37.005, 37.006, 37.007.
5. Tex. Educ. Code Ann. §37.009(a).
6. *Id.* at § 25.091(b); (*See also*, Tex. Educ. Code Ann. § 25.085 (b), (c) and (f), which requires mandatory school attendance for children younger than six who have previously been enrolled in first grade. A child must also attend school upon enrollment in pre-kindergarten or kindergarten. The 80th Texas Legislature enacted H.B. 566 which added subsection (f) allowing districts to extend compulsory attendance to those students voluntarily enrolling or attending after 18).
7. Tex. Educ. Code Ann. § 37.101.
8. *Id.* at §37.081.
9. Tex. Educ. Code Ann. § 37.081 (f).
10. *Id.* at § 37.081 (a).
11. *Id.* at § 37.081 (d).
12. Tex. Code Crim. Proc. Ann. art. 2.13.
13. Tex. Educ. Code Ann. § 37.014.
14. *Id.* at §§ 37.205, § 37.2051 and § 37.208.
15. *Id.* at §37.001.
16. *Id.* at §37.002.
17. *Id.* at §37.002 (c).
18. *Alabama and Coushatta Tribes of Texas v. Big Sandy Independent School District*, 817 F.Supp. 1319, 1336 (E.D. Tex. 1993), holding that in-school suspensions lasting four to

six weeks, which afforded students at least some opportunity to pursue their regular course work and receive assistance from teachers and teachers' aides, did not constitute unreasonable punishment.

19. *Goss v. Lopez*, 419 U.S. 565, 581 (1975).
20. Tex. Educ. Code Ann. §37.005.
21. Id. at § 37.008. *See also* H.B. 1137 enacted by the 80th Texas Legislature which prohibits the placement of any student over the age of 21 in an alternative setting for committing a removable offense. If a student over the age of 21 commits a removable offense, the district is required to revoke the student's admission. Effective on or after September 1, 2007.
22. Id. at § 37.002 (b).
23. Id. at § 37.006 (d).
24. Id. at § 37.006 (c).
25. Id. at § 37.006 (a) - (c).
26. Id. at § 37.009.
27. Id. at § 37.010.
28. Id. at § 37.008 (i).
29. Id. at § 37.001.
30. Id. at § 37.007 (c).
31. Id. at § 37.007 (b), (f) and (i).
32. Id. at § 37.007 (a), (d) and (e); *see also* H.B. 8 enacted by the 80th Texas Legislature. It adds "Continuous Sexual Abuse of a Child" under Texas Penal Code §21.02, to the list of offenses requiring expulsion if committed on school property or at a school-related event. Effective Sept. 1, 2007.
33. Id. at § 37.009 (f).
34. Id. at § 37.009 (g).
35. Id. at § 37.009 (h); *see also* §37.0081 (d) as amended by H.B. 2532 and S.B. 6 of the 80th Texas Legislature; it specifically applies to students who are required to register as a sex offender. H.B. 2532 is effective immediately from the date of signing or June 15, 2007. S.B. 6 is effective Sept. 1, 2007.
36. Id.
37. Id. at § 37.019 (c).

38. Id. at § 37.011.
39. Id. at § 37.011 (I).
40. Id. at § 37.011 (j).
41. Tex. Code Crim. Proc. Ann. Art. 15.27.
42. 20 U.S.C. § 1232g; 34 CFR Part 99.
43. Id. at 34 CFR § 99.31.
44. Tex. Code Crim. Proc. Ann. at art. 15.27 (b) and (I).
45. Id. at art. 15.27 (c).
46. Id. at art. 15.27 (a) and (I).
47. Id. at art. 15.27(e).
48. Id. at art. 15.27(a).
49. Tex. Educ. Code Ann. § 37.007 (g).
50. Id. at § 37.015.
51. Tex. Educ. Code Ann. § 37.007 (g).
52. Id. at § 37.015 (f).
53. Id. at § 22.051 and § 22.053.
54. Tex. Family Code Ann. § 58.0051; (See also, Tex. Educ. Code Ann. § 37.084, a corollary statute authorizing interagency sharing of records).
55. Tex. Educ. Code Ann. § 37.105; *see also* S.B. 9 of the 80th Texas Legislature, which added Tex. Educ. Code Ann. §38.022 specifically authorizing schools to require all visitors to show a government-issued photo identification and to establish a database to store visitor information; schools are required to adopt policies requiring action if a visitor is a registered sex offender. Effective on or after June 15, 2007.
56. Tex. Educ. Code Ann. § 37.107 and Tex. Penal Code Ann. § 30.05.
57. Tex. Educ. Code Ann. § 37.121.
58. Id. at § 37.121(b).
59. Id. at § 11.162 (a).
60. Id. at § 25.085 (b) and (f); (See § 25.086 for exemptions and § 25.087 for excuses as amended by H.B. 2455 of the 80th Texas Legislature, effective June 15, 2007).

61. Id. at § 25.088.
62. Id. at § 25.090.
63. Id. at § 25.094 (a).
64. Tex. Fam. Code Ann. § 51.03 (b)(2).
65. Tex. Educ. Code Ann. § 25.0951; *see also* S.B. 1161 of the 80th Texas Legislature changed the deadline to file a compulsory attendance complaint of Tex. Educ. Code Ann. § 25.0951 from seven to 10 school days from the student's *last* absence. In H.B. 2884, Section 31, the 80th Texas Legislature changed "last" to "10th". When read together, the amendments will extend the deadline to file a school attendance complaint to 10 school days from the student's 10th absence. Effective on or after Sept. 1, 2007.
66. Tex. Educ. Code Ann. § 25.095.
67. Id. at §38.006.
68. Tex. Health & Safety Code Ann. § 161.252 (a)(1).
69. Tex. Educ. Code Ann. §38.007.
70. Id. at §37.122.
71. Tex. Alc. Bev. Code Ann. §101.75 (a).
72. Id. at § 109.33 (a)(1).
73. Tex. Educ. Code Ann. § 37.122 (b).
74. Id. at § 37.016 (4).
75. Id. at § 37.006 (2).
76. Id. at § 37.007.
77. Id. at § 37.008 (k).
78. Tex. Penal Code Ann. § 46.03 (a)(1).
79. Tex. Penal Code Ann. § 46.11 (a). (Note that the punishment for possessing a prohibited weapon on the physical premises of a school, as described in §46.03 (a)(1), is not subject to this provision.
80. Id. at § 37.007 (e).
81. Tex. Educ. Code Ann. § 37.125; *see also* H.B. 2112 enacted by the 80th Texas Legislature, which specifically adds parking areas of schools to the Exhibition of Firearms offense. Effective on or after Sept. 1, 2007.
82. Tex. Penal Code Ann. § 46.01 (6) and (11).

83. Id. at §46.01 (8).
84. Id. at §46.01 (1).
85. Id. at § 46.09.
86. Id at § 46.08.
87. Tex. Educ. Code Ann. §37.001 (7).
88. Id. at §25.0341 (a).
89. Tex. Educ. Code Ann. §37.001 (b)(1).
90. Id. at §25.0341.
91. Id. at §§ 37.151-37.157.
92. Id. at §37.152.
93. Tex. Penal Code §42.07 (7).
94. S.B. 136, enacted by the 80th Texas Legislature, requires the Texas School Safety Center to develop an educational program for public school students regarding online safety procedures and cyber-bullying or threats. Effective on or after Sept. 1, 2007.
95. Tex. Penal Code §22.07.
96. Tex. Penal Code §42.06.
97. Id. at §42.06(b) and Tex. Educ. Code Ann. §37.006 (a)(1).
98. H.B. 121, enacted by the 80th Texas Legislature, created Tex. Educ. Code Ann. §37.0831 which requires schools to adopt policy about dating violence, including safety planning, protective orders, training for teachers and counseling/awareness for students and parents. Effective immediately.
99. Tex. Penal Code §22.01.
100. Tex. Educ. Code Ann. §37.019 (b).
101. Id. at § 22.003 (c).
102. Tex. Penal Code §22.02.
103. Tex. Educ. Code Ann. §37.006.
104. *Black's Law Dictionary* 322 (6th Ed. 1991).
105. Tex. Educ. Code Ann. § 37.082 (c).
106. Id. at § 37.082 (a) and (b).

107. *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985).
108. *Id.* at 339-340.
109. *Id.* at 341 - 342, quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968).
110. *T.L.O.*, at 339.
111. *Id.* at 341 -342. (*See also*, *Shoemaker v. State*, 971 S.W.2d 178 (Tex.App.-Beaumont, 1998, reh'g over-ruled).
112. *Id.* At 342.
113. *Id.* at 481, citing *Bellnier v. Lund*, 438 F.Supp. 47 (N.D.N.Y. 1977); (*See also*, *Jones v. Latexco Indep. School Dist.*, at 236).
114. *Id.* at 482.
115. Tex. Fam. Code Ann. § 54.03 (e). *See also*, Tex. Code Crim. Proc. Ann. art. 38.23 (note that if a law enforcement official obtained the evidence in objective good faith reliance on a warrant issued by a neutral magistrate based on probable cause, the evidence is admissible); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court).
116. *See*, 42 U.S.C. A. § 1983.
117. *See*, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), quoting *Bumper v. N. Carolina*, 391 U.S. 543, 548 (1968).
118. *Jones v. Latexco Indep. School Dist.*, 499 F.Supp. 223, 237 (E.D.Tex.1980).
119. *Bilbrey v. Brown*, 738 F.2d 1462 (9th Cir.1984).
120. *Shoemaker v. State*, 971 S.W.2d 178 (Tex.Crim.App.1998).
121. *Gibson v. State*, 921 S.W.2d 747 (Tex.App.-El Paso 1996, pet. denied).
122. *T.L.O.*, 469 U.S. at 342.
123. *Horton v. Goose Creek Indep. School Dist.*, 690 F.2d 470, 477 (5th Cir. 1982, motion for reh'g denied) (*Horton I*).
124. *Horton II*, 693 F.2d at 525.
125. *Horton I*, 690 F.2d at 479-481.
126. *T.L.O.*, 469 U.S. at 342-343. 338. *Id.*
127. *T.L.O.*, 469 U.S. at 337-338.
128. *Wilcher v. State*, 876 S.W.2d 466 (Tex.App.-El Paso 1994).

129. *Russell v. State*, 74 S.W.3d 887 (Tex.App.-Waco 2002).
130. *See, e.g., Widener v. Frye*, 809 F.Supp. 35 (S.D.Ohio 1992) and *Cornfield v. CHSD*, 991 F.2d 1316 (7th Cir. 1993).
131. *Vernonia School Dist. v. Acton*, 115 S.Ct. 2386, 2391 (1995), quoting, *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987).
132. *Id.* at 2396.
133. *Id.* at 2392.
134. *Id.* at 2396.
135. *Board of Education v. Earls*, 122 S.Ct. 2386 (2002).
136. *Id.*
137. S.B. 8, enacted by the 80th Texas Legislature, adds random testing for illegal steroids if a high school student wishes to participate in UIL-sponsored competitions. Tex. Educ. Code Ann. § 33.091, the effective date begins with the 2007 - 2008 school year.
138. Tex. Admin. Code Ann., Title 37, Part II, Ch. 348, Subch. A, § 348.110 (g).
139. *See, In the Matter of D.D.B.*, UNPUBLISHED, No. 03-99-00030-CV (Tex.App.-Austin 2000).
140. *See, In the Matter of O.E.*, UNPUBLISHED, NO. 03-02-00516-CV (Tex.App.-Austin 2003).