

The Texas Education Agency (TEA) proposes new §103.1205, concerning safe schools. The proposed new rule would implement House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, by defining violent conduct for the purpose of disciplinary alternative education program (DAEP) placement when the program is at capacity.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §37.009(a-2), as added by HB 114, 88th Texas Legislature, Regular Session, 2023, states that if a DAEP is at capacity at the time the campus behavior coordinator is determining placement of a student who engaged in an expellable offense under TEC, §37.007, for violent conduct, as defined by commissioner of education rule, a student who is currently placed at the DAEP for a marihuana, e-cigarette, alcohol, or abusable, volatile chemical offense could be removed from the DAEP and placed in in-school suspension (ISS) to make a position available for the student who engaged in violent conduct. The student moved to ISS would be returned to the DAEP if a position became available before the end of their assigned placement.

Proposed new §103.1205 would define violent conduct as required by statute.

**FISCAL IMPACT:** Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation establishing criteria for determining the placement of a student who engaged in violent conduct if a DAEP is at capacity. The new rule is necessary to align with HB 114, 88th Texas Legislature, Regular Session, 2023.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to define behavior that may be considered violent as well as criteria for determining the placement of a student engaged in violent conduct if a DAEP is at capacity. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins July 19, 2024, and ends August 19, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on July 19, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §37.006, as amended by House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the removal of a student to a DAEP for certain conduct; TEC, §37.007, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the expulsion of a student for serious offenses; and TEC, §37.009, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the conference, hearing, and review process for a student who has been removed.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code §§37.006, 37.007, and 37.009, as amended by House Bill 114, 88th Texas Legislature, Regular Session, 2023.

<rule>

§103.1205. Violent Conduct for Purposes of Placement in a Disciplinary Alternative Education Program When Program is at Capacity.

- (a) As authorized under Texas Education Code (TEC), §37.009(a-2), a student who has been placed in a disciplinary alternative education program (DAEP) for conduct described under TEC, §37.006(a)(2)(C-1), (C-2), (D), or (E), relating to offenses involving marihuana, e-cigarettes, alcoholic beverages, and abusable volatile chemicals, may be removed from the DAEP and placed in in-school suspension to make a position available at the DAEP for a student who has engaged in one or more acts of violent conduct, as defined in this section.
- (b) Violent conduct means an act by a student against another person that is intended to result in physical harm, bodily injury, or assault or a threat that reasonably places the other person in fear of imminent physical harm, bodily injury, or assault.
- (c) A campus behavior coordinator may determine whether a specific instance of conduct listed in paragraphs (1)-(6) of this subsection rises to the level of violent conduct for purposes of determining placement in a DAEP. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under TEC, §37.007, the decision of the board or the board's designee is final and may not be appealed.
- (1) TEC, §37.007(b)(1)--The student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Texas Penal Code, §42.06, or terroristic threat under Texas Penal Code, §22.07.
- (2) TEC, §37.007(b)(2)(C)--While on or within 300 feet of school property, or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of assault under Texas Penal Code, §22.01(a)(1), including when committed as an act of retaliation against an employee or volunteer, as described in TEC, §37.007(d).
- (3) TEC, §37.007(b)(2)(D)--While on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of deadly conduct under Texas Penal Code, §22.05.
- (4) TEC, §37.007(b)(3)(A) and (B)--While within 300 feet of school property, or when committed as an act of retaliation against an employee or volunteer, whether the conduct occurs on or off school

property or while attending a school-sponsored or school-related activity on or off school property, the student engages in:

- (A) conduct that contains the elements of the offense of unlawful carrying of weapons under Texas Penal Code, §46.02;
  - (B) an offense relating to prohibited weapons under Texas Penal Code, §46.05;
  - (C) aggravated assault under Texas Penal Code, §22.02;
  - (D) sexual assault under Texas Penal Code, §22.011;
  - (E) aggravated sexual assault under Texas Penal Code, §22.021;
  - (F) arson under Texas Penal Code, §28.02;
  - (G) murder under Texas Penal Code, §19.02;
  - (H) capital murder under Texas Penal Code, §19.03;
  - (I) criminal attempt to commit murder or capital murder under Texas Penal Code, §15.01;
  - (J) indecent with a child under Texas Penal Code, §21.11;
  - (K) aggravated kidnapping under Texas Penal Code, §20.04;
  - (L) aggravated robbery under Texas Penal Code, §29.03;
  - (M) manslaughter under Texas Penal Code, §19.04;
  - (N) criminally negligent homicide under Texas Penal Code, §19.05;
  - (O) continuous sexual abuse of a young child or an individual with disabilities under Texas Penal Code, §21.02;
  - (P) selling, giving, delivering to another person, possessing, using, or being under the influence of a controlled substance or dangerous drug, excluding marihuana or tetrahydrocannabinol; or
  - (Q) possessing a firearm, as defined by 18 U.S.C. §921.
- (5) TEC, §37.007(b)(4)--The student engages in conduct against another student, without regard to whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, that contains the elements of:
- (A) the offense of aggravated assault under Texas Penal Code, §22.02;
  - (B) sexual assault under Texas Penal Code, §22.011;
  - (C) aggravated sexual assault under Texas Penal Code, §22.021;
  - (D) murder under Texas Penal Code, §19.02;
  - (E) capital murder under Texas Penal Code, §19.03; or
  - (F) criminal attempt to commit murder or capital murder under Texas Penal Code, §15.01.
- (6) TEC, §37.007(c)(1)-(4)--While placed in a DAEP and on the program campus, the student engages in documented serious misbehavior despite documented behavioral interventions.