

The Texas Education Agency (TEA) proposes amendments to §§103.1201, 103.1203, and 103.1205, concerning disciplinary alternative education programs (DAEPs). The proposed amendments would update statutory authority and clarify current program practices and requirements in accordance with House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 103.1201 establishes requirements for the operation of DAEPs. The proposed amendment would clarify due process protections for students assigned to DAEPs to align with HB 6, 89th Texas Legislature, Regular Session, 2025, and make additional clarifying and conforming updates related to Section 504 services, staff training requirements related to student safety and mental health, and student supervision and separation requirements.

Section 103.1203 establishes criteria for the assessment of academic growth for students assigned to DAEPs. The proposed amendment would clarify permissible assessment instruments; address the provision of accommodations and modifications for students receiving special education or Section 504 services; and clarify requirements to support consistent implementation of existing statutory requirements for students placed in DAEPs.

Section 103.1205 defines violent conduct for purposes of DAEP placement when a program is at capacity. The proposed amendment would add an appropriate administrator, in addition to the campus behavior coordinator, to make determinations regarding violent conduct for purposes of DAEP placement and would reorganize the violent conduct provisions to conform with the repeal of TEC, §37.007(d), by HB 6. The proposed changes would improve clarity to support consistent disciplinary placement decisions when DAEP capacity is limited.

FISCAL IMPACT: Jennifer Alexander, associate commissioner for special populations and student supports, 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 expand existing regulations by clarifying DAEP operations and assessment requirements and addressing placement considerations when a program is at capacity to align with HB 114, 88th Texas Legislature, Regular Session, 2023 and HB 6, 89th Texas Legislature, Regular Session, 2025.

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 create a new regulation; would not 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: Ms. Alexander 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 update standards for the operation of DAEPs and due process considerations to align with current statutory requirements;

update requirements related to the assessment of academic growth for students placed in DAEPs; and revise the definition of violent conduct for purposes of DAEP placement when a program is at capacity to ensure consistency with statute. 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: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins June 26, 2026, and ends July 27, 2026. 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 June 26, 2026. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/laws-and-rules/commissioner-rules-tac/proposed-commissioner-education-rules>.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §37.006, as amended by House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for when a student must be removed from class and placed in a disciplinary alternative education program (DAEP) for specified misconduct; TEC, §37.007, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025, which establishes the criteria and procedures for expelling a student for serious offenses and distinguishes between mandatory and discretionary expulsion; TEC, §37.008, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes the requirement for school districts to provide DAEPs and sets the core standards for how those programs must operate; TEC, §37.0082, which establishes requirements for assessing the academic growth of students placed in a DAEP; and TEC, §37.009, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025, which establishes procedures for conference, hearing, and review related to student disciplinary removals.

CROSS REFERENCE TO STATUTE. The amendments implement TEC, §37.006, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025; §37.007, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025; §37.008, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023; §37.0082; and §37.009, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, and HB 6, 89th Texas Legislature, Regular Session, 2025.

<rule>

§103.1201. Standards for the Operation of School District Disciplinary Alternative Education Programs.

- (a) A disciplinary alternative education program (DAEP) established in conformance with the Texas Education Code (TEC), §37.008, and this section is defined as an educational and self-discipline alternative instructional program, adopted by local policy, for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP.
- (b) Each school district participating in a shared services arrangement (SSA) for DAEP services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus required by the TEC, §11.251 and §11.252, include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

- (1) student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, with a disability who receive special education services, or receiving limited English proficiency/English learner services;
 - (2) attendance rates;
 - (3) pre- and post-assessment results;
 - (4) dropout rates;
 - (5) graduation rates; and
 - (6) recidivism rates.
- (c) A DAEP may be located on-campus or off-campus in adherence with requirements specified in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). For reporting purposes, the DAEP shall use the county-district-campus number of the student's locally assigned campus (the campus the student would be attending if the student was not attending the DAEP).
- (d) An individual school district or an SSA may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider.
- (e) The campus of accountability for student performance must be the student's locally assigned campus, including when the individual school district or SSA contracts with a third party for DAEP services.
- (f) Each school district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education and Section 504 services.
- (1) A student's high school personal graduation plan required under TEC, §28.02121, may not be altered when the student is assigned to a DAEP. A student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year, including correspondence or distance learning opportunities or summer school. A district may not charge for a course required under this section.
 - (2) The school day for a DAEP shall be at least 240 minutes in length each day, including intermissions and recesses as required under the TEC, §25.081.
 - (3) Notwithstanding the TEC, §37.008(a)(3), summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.
- (g) A DAEP program serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program established by a duly-constituted admission, review, and dismissal committee, in accordance with the TEC, §37.004, and federal requirements.
- (h) Each school district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in the TEC, §22.0511, shall not be impacted.
- (1) The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. Elementary grade students assigned to the DAEP shall be separated from secondary grade students assigned to the DAEP. The designation of elementary and secondary will be determined by adopted local policy.
 - (2) The DAEP staff shall be prepared and trained to respond to health issues and emergencies.
 - (3) Students in the DAEP shall be separated from students in a juvenile justice alternative education program or in-school suspension and students who are not assigned to the DAEP.
 - (4) Each district shall establish a board-approved policy for discipline and intervention measures in the DAEP to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity. A student assigned to a DAEP shall be afforded due process in accordance with

TEC, Chapter 37, if the student engages in conduct that results in an additional disciplinary removal.

- (i) Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:
 - (1) training on the education and discipline of students with disabilities who receive special education or Section 504 services;
 - (2) instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, bullying, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; [~~and~~]
 - (3) annual training about suicide prevention and on the established procedures for reporting abuse, neglect, or exploitation of students ; and [~~g~~]
 - (4) any other training the district staff is required to take on the local, state, or federal level.
- (j) Procedures for each DAEP shall be developed and implemented for newly-entering students and their parents or guardians on the expectations of the DAEP, including written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success.
- (k) The transition procedures established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented as required by TEC, §37.023.

§103.1203. Assessment of Academic Growth of Students in Disciplinary Alternative Education Programs.

- (a) Each school district shall be responsible for administering a pre- and post-assessment for each student assigned to the district's disciplinary alternative education program (DAEP) for a period of 90 school days or longer as required by the Texas Education Code (TEC), §37.0082. Released state assessments for reading and mathematics for the appropriate grade may be used , as well as a district's end-of-course (EOC) exams . A school district may apply for approval of an assessment that includes the Texas Essential Knowledge and Skills for reading and mathematics for the student's assigned grade. The commissioner of education will publish on the Texas Education Agency (TEA) website a list of assessments approved for use in each school year. A school district may contact TEA to obtain accommodated versions of particular assessments.
- (b) The grade level of an assessment shall be based upon the academic grade completed prior to the student being assigned to a DAEP if placement occurs in the fall or first semester of the academic school year. If placement occurs in the spring or second semester of the academic school year, the student shall be administered an assessment based on the current grade level.
- (c) Each school district shall provide an academic report to the student's locally assigned campus, which shall include the pre- and post-assessment results of the student's basic skills in reading and mathematics, within 10 school days of the student completing the post-assessment.
- (d) Procedures for administering the pre- and post-assessment, including required appropriate accommodations and modifications for students receiving special education services or Section 504 services as needed, shall be developed and implemented in accordance with local school district policy and applicable state and federal laws and regulations .
- (e) A student in the district's DAEP must also be assessed under the requirements of the TEC, Chapter 39.

§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 marijuana, e-cigarettes, alcoholic beverages, and abusible 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 or appropriate administrator may determine whether a specific instance of conduct listed in paragraphs (1)-(9) [~~(4)-(6)~~] of this subsection rises to the level of violent conduct for purposes of determining placement in a DAEP. Violent conduct includes certain conduct for which a student may be required or permitted to be removed under TEC, §37.007, including: [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) unlawfully carrying weapons under Texas Penal Code, §46.02, or elements of an offense relating to prohibited weapons under Texas Penal Code, §46.05; exhibiting, using, or threatening to exhibit or use a firearm under TEC, §37.125; or disorderly conduct involving a firearm under Texas Penal Code, §42.01(a)(7) or (8);
 - (2) assault under Texas Penal Code, §22.01(a)(1); aggravated assault under Texas Penal Code, §22.02; sexual assault under Texas Penal Code, §22.011; or aggravated sexual assault under Texas Penal Code, §22.021;
 - (3) murder under Texas Penal Code, §19.02; capital murder under Texas Penal Code, §19.03; criminal attempt, under Texas Penal Code, §15.01, to commit murder or capital murder; manslaughter under Texas Penal Code, §19.04; or criminally negligent homicide under Texas Penal Code, §19.05;
 - (4) indecency with a child under Texas Penal Code, §21.11, or continuous sexual abuse of a young child or disabled individual under Texas Penal Code, §21.02;
 - (5) kidnapping under Texas Penal Code, §20.03, or aggravated kidnapping under Texas Penal Code, §20.04;
 - (6) burglary under Texas Penal Code, §30.02; robbery under Texas Penal Code, §29.02; or aggravated robbery under Texas Penal Code, §29.03;
 - (7) terroristic threat under Texas Penal Code, §22.07;
 - (8) deadly conduct under Texas Penal Code, §22.05; or
 - (9) a felony offense under Texas Penal Code, Title 5.
- ~~[(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) — indecency 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) (1) While placed in a DAEP and on the program campus, the student engages in documented serious misbehavior despite documented behavioral interventions.]~~