



## Firearms on School District Property

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

### Federal Gun-Free School Zones

**Federal Gun-Free School Zones Act:** Originally enacted in 1990, the Gun-Free School Zones Act (GFSZA) is a federal law that requires states to restrict firearms on school property.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

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

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

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

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

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

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

18 U.S.C. § 922(q)(2)(B).

### **Texas Penal Code Prohibitions**

**School premises, activities, and transportation:** Absent written regulations or written authorization from the school district, the Texas Penal Code prohibits citizens, including handgun license holders, from carrying firearms (or other prohibited weapons) on the physical premises of a school or educational institution, any grounds or building where a school activity is taking place, or on a bus or other passenger vehicle of a school.

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

Tex. Penal Code § 46.03(a)(1).

**Active polling places:** Similarly, a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm or other prohibited weapon “on the premises of a polling place on the day of an election or while early voting is in progress.” Tex. Penal Code § 46.03(a)(2).

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

It is, however, a defense to prosecution under Section 46.03 that the actor: (1) carries a handgun on a premises or other property on which the carrying of a weapon is prohibited under that section; (2) personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property, as applicable, was prohibited; and (3) promptly departed from the premises or other property. This defense does not apply if: (1) a sign described by law (see below at *Firearm Warning Signs*) was posted prominently at each

entrance to the premises or other property, as applicable; or (2) at the time of the offense, the actor knew that carrying a firearm or other weapon on the premises or other property was prohibited. Tex. Penal Code § 46.15 (m), (n).

**Definition of *firearm*:** Under Texas law, *firearm* means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Tex. Penal Code § 46.01(3). The state definition overlaps with, but is slightly different from, the federal GFSZA definition.

**Definition of *premises*:** For purposes of Section 46.03, *premises* means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. Tex. Penal Code § 46.03(c)(4). *Entry* is defined elsewhere in the Penal Code to mean going inside with a person's entire body. Tex. Penal Code § 30.05(b)(1).

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

**Prohibited weapons:** The Texas Penal Code provides that a person commits an offense if he or she intentionally or knowingly possesses, manufactures, transports, repairs or sells a weapon prohibited by state law, at any location including school district property. Weapons prohibited by state law include, with some exceptions, explosive weapons, machine guns, short-barrel firearms, armor-piercing ammunition, zip guns, and improvised explosive devices as those items are defined by law. Tex. Penal Code § 46.05.

### **Individuals Authorized by State Law**

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

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

- **Armed forces and guards:** It is a defense to prosecution under Texas Penal Code subsections (a)(1)-(4) (which includes the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, a passenger transportation vehicle of a school or educational institution, and the premises of a polling place on the day of an election or while early voting is in progress) that the actor possessed a firearm while in

the actual discharge of the actor's official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court. Tex. Penal Code § 46.03(b).

- **Peace officers and special investigators:** Texas Penal Code sections 46.02 and 46.03 do not apply to peace officers or special investigators under Texas Code of Criminal Procedure Article 2.122, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon. Tex. Penal Code § 46.15(a)(1).
- **Parole officers:** Texas Penal Code sections 46.02 and 46.03 do not prohibit a parole officer from carrying a weapon while on duty and in compliance with policies and procedures adopted by the Texas Department of Criminal Justice. Tex. Penal Code § 46.15(a)(2).
- **Corrections officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to community supervision and corrections department officers appointed or employed under Texas Government Code section 76.004 while on duty and authorized to carry a firearm. Tex. Penal Code § 46.15(a)(3).
- **Judicial officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to an active judicial officer, as defined by Texas Government Code section 411.201, who is licensed to carry a handgun. Tex. Penal Code § 46.15(a)(4).
- **Retired officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to an honorably retired peace officer or other qualified retired law enforcement officer, as defined by 18 U.S.C. section 926C, who holds a certificate of proficiency and a government-issued identification card verifying the officer's qualifications. Tex. Penal Code § 46.15(a)(5).
- **Attorneys general and related personnel:** Texas Penal Code sections 46.02 and 46.03 do not apply to the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun. Tex. Penal Code § 46.15(a)(6). Further, Sections 46.02 and 46.03 do not apply to an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun. Tex. Penal Code § 46.15(a)(7).
- **Bailiffs:** Texas Penal Code sections 46.02 and 46.03 do not apply to a bailiff designated by an active judicial officer, as defined by Texas Government Code section 411.201, who is escorting a judicial officer and licensed to carry a handgun. Tex. Penal Code § 46.15(a)(8).
- **Probation officers:** Texas Penal Code sections 46.02 and 46.03 do not apply to a juvenile probation officer who is authorized to carry a firearm under Texas Human Resources Code section 142.006. Tex. Penal Code § 46.15(a)(9).
- **Volunteer emergency services:** Texas Penal Code sections 46.02 and 46.03 do not apply to a person who is volunteer emergency services personnel if the person is engaged in providing emergency services and licensed to carry a handgun. Tex. Penal Code § 46.15(a)(10).

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

- **First responders:** Texas Penal Code sections 46.02, 46.03, and 46.035(b) and (c) do not apply to a first responder who: (1) was carrying a handgun in a concealed manner or in a holster; (2) holds an unexpired certificate of completion under Texas Government Code section 411.184 at the time of engaging in the applicable conduct; (3) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and (4) was employed or supervised by a municipality or county subject to Texas Local Government Code chapter 179. Tex. Penal Code § 46.15(m).
- **Emergency shelter evacuees:** Texas Penal Code sections 46.02 and 46.03(a)(1), (a)(2), (a)(3), and (a)(4) do not apply to a person who carries a handgun if: (1) the person carries the handgun on the premises, as defined by the statute providing the applicable offense, of a location operating as an emergency shelter during a state of disaster declared under Texas Government Code section 418.014 or a local state of disaster declared under Texas Government Code section 418.108; (2) the owner, controller, or operator of the premises or a person acting with the apparent authority of the owner, controller, or operator, authorized the carrying of the handgun; (3) the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises; and (4) the person is not prohibited by state or federal law from possessing a firearm. Tex. Penal Code § 46.15(l).

### **Firearm Possession at School-Sponsored Activities**

- Texas law prohibits the unauthorized possession of weapons, including firearms, at school-sponsored activities regardless of the location of the event. Subject to required notice (which may be accomplished through a sign, as described below at *Firearm Warning Signs*), an unauthorized person commits an offense (third-degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon, as defined by state law, on any grounds or building on which a school-sponsored activity is being conducted. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f).

This prohibition applies to all school-sponsored events, regardless of whether the events happen on or off school property. For example, a school-sponsored middle school softball game may take place on school property, but in an outdoor facility that would not meet the statutory definition of *premises*. Nevertheless, this law would prohibit all

firearms at the softball game. Similarly, a high school theater performance may take place in a city auditorium not owned or leased by the school district. However, this law would still prohibit firearms at the performance.

**What counts as a school-sponsored activity?** In Texas Attorney General Opinion number KP-0050, the attorney general opined that whether and where on school grounds an activity is taking place is a factual inquiry that must be determined on a case-by-case basis. He offered one example of the use of school grounds for a school-sponsored activity: If a high school marching band uses a parking lot for rehearsal, the parking lot is an area where the district may restrict firearms during the time of rehearsal. Other determinations about when and where school activities are happening are left to local school officials; however, if an aggrieved individual files a legal challenge to how a school district interprets the law, the district's choices will be subject to judicial review.

Because when and whether a school activity is taking place is a factual determination, school districts may want to begin by assessing, campus by campus, the use of the exterior portions of each school district building for school sponsored activities. Consider band practices, athletics, and other extracurricular uses; classroom uses (like outdoor science experiments); recess and physical education; lunch breaks; and so forth. Perhaps the most important judgment the district will have to make is whether to deem school pick-up and drop-off periods school-sponsored activities. Certainly, there are good faith arguments that these activities are school-sponsored, as the district is operating school transportation and providing staff to oversee the safety and security of the students, grounds, and vehicles during these times.

Once a district has assessed its use of school grounds for school-sponsored activities, the district may consider options for clarifying and communicating with staff, parents, and the public when and where firearms are prohibited on school property.

Because notice is now required before an individual may be prosecuted for unauthorized possession of a firearm at a school-sponsored activity, school districts may want to post temporary outdoor signage that complies with Texas Penal Code section 46.15(o) during school-sponsored events. See below at *Firearm Warning Signs*.

**Sporting events and interscholastic events:** In addition, a person commits an offense (class A misdemeanor) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon listed in Texas Penal Code section 46.05 on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) is used in the event. Tex. Penal Code § 46.03(a)(8), (g-2).

### **Firearm Possession at School Board Meetings**

Subject to required notice (which may be accomplished through a sign, as described below at *Firearm Warning Signs*), a school board meeting is an activity sponsored by a school or educational institution; as such, an unauthorized person commits a third-degree felony if he or she possesses a firearm or other prohibited weapon at a board meeting. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f). Moreover, most school board meetings take place in school district buildings, where handguns are not permitted.

Individuals who are specifically authorized by state law may carry a firearm at school-sponsored activities or government meetings. (See list above.) In addition, a school district may give written permission through a regulation or other authorization for an individual to carry a firearm at school board meetings. For example, the Texas attorney general has concluded that school board members who lawfully possess a handgun license may carry a firearm at school board meetings as long as the board has issued written authorization for this action. Tex. Att’y Gen. Op. No. GA-1051 (2014).

Note, however, that if a school board participates in a meeting called by another entity (like a city council) on government property that is not the premises of a school or educational institution, the law will differ. A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon listed in Texas Penal Code section 46.05(a) in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the Texas Open Meetings Act and if the entity provided notice as required by that chapter. Tex. Penal Code § 46.03(a)(14).

This section, however, is subject to a long list of exceptions, including, most notably, that the individual is carrying a license issued under Texas Government Code chapter 411 and a handgun in a concealed manner or a holster. Tex. Penal Code § 46.15(b)(6).

### **Firearm Possession at Active Polling Places**

Subject to required notice (which may be accomplished through a sign, as described below at *Firearm Warning Signs*), an unauthorized person commits an offense (third-degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or other prohibited weapon, as defined by state law, on the premises of a polling place on the day of an election or while early voting is in progress. Tex. Penal Code § 46.03(a)(2), (g). It is not a defense to prosecution that the person holds a license to carry a handgun. Tex. Penal Code § 46.03(f).

The attorney general has opined that a presiding election judge who is licensed to carry a handgun is exempt from this prohibition while performing the presiding election judge's duties under the Texas Election Code. Tex. Att'y Gen. Op. No. KP-0212 (2018). Notwithstanding the attorney general's opinion, the Texas Education Code creates an offense if a person exhibits or uses (or threatens to exhibit or use) a firearm on school property in a manner intended to cause alarm, personal injury, or damage to school property. Tex. Educ. Code § 37.125. To avoid conflict with this provision as well as allegations of voter intimidation, the secretary of state's office recommends that, to the extent a presiding judge determines that it is appropriate to carry a handgun at a polling place on school property, the presiding judge should consider concealed rather than open carry.

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

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

### **Firearm Possession on Outdoor School Property**

Questions frequently arise about the legality of transporting or carrying a handgun or other firearm in school district parking lots, driveways, sidewalks, and other outdoor areas.

- **Locked, unloaded firearms:** If federal law applies because the firearm has moved in or has affected interstate or foreign commerce, any individual possessing a firearm on school grounds (including driveways and parking lots), must meet an exception to the federal GFSZA. If the individual is not law enforcement, licensed by state law, or carrying pursuant to a school district program or contract, the individual must have the firearm unloaded and in a locked container or in a locked firearms rack on a vehicle. 18 U.S.C. § 922(q)(2)(B)(iii).
- **Permitless carry:** Even though Texas law allows unlicensed individuals to carry handguns and other firearms, under the federal GFSZA, an individual who is not law enforcement, licensed by state law, or carrying pursuant to a school district program or contract is not permitted to carry a handgun or other firearm on his or her person on school grounds, including outdoor spaces.
- **Concealed handguns:** A handgun license holder may transport a handgun in a private vehicle or concealed on the license holder's person only in accordance with the license. Absent written permission from the school district, and subject to required notice which may be accomplished through a sign, as described below at *Firearm Warning Signs*, handguns may not be carried inside of school district buildings, vehicles, or on the grounds where a school activity is taking place. Tex. Penal Code § 46.03(f).



- **Open carry:** A handgun license holder in Texas may choose to wear a firearm in a holster rather than concealing the handgun. Absent written permission from the school district, and subject to required notice which may be accomplished through a sign, as described below at *Firearm Warning Signs*, handguns may not be carried inside of school district buildings, vehicles, or on the grounds where a school activity is taking place. Tex. Penal Code § 46.03(f).

**Who may ask a visitor who is openly carrying a handgun whether the visitor is properly licensed to do so?**

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

A peace officer acting in the lawful discharge of the officer's official duties may disarm a person at any time the officer reasonably believes it is necessary for the protection of the person, officer, or another individual. The peace officer must return the handgun to the person before discharging the person from the scene if the officer determines that the person is not a threat to the officer, person, or another individual and if the person has not committed a violation that results in arrest. Tex. Code Crim. Pro. Art. 14.03(h)(1).

Other school officials are not specifically authorized to inquire about a visitor's handgun license. A better practice whenever possible is for school staff who are monitoring outdoor areas to approach all unfamiliar visitors, regardless of whether they are armed, to greet them and ascertain the purpose of their visit. If an individual is behaving in an unusual manner or reacts strangely to the school official's greeting, the school official should alert law enforcement.

**If a visitor is not subject to the prohibition on carrying a firearm on school premises, does the individual have an obligation to tell anyone about a firearm that the individual is carrying upon entering the premises?**

Texas law provides that several office holders, including off-duty peace officers, are not subject to the prohibition on carrying a firearm on school premises found in Texas Penal Code section 46.03. Tex. Penal Code § 46.15. State law is silent as to whether these individuals are required to disclose to school officials that they are carrying a firearm inside a school district building. For practical reasons, an individual who is openly carrying a handgun inside a school district building should be expected to inform school officials upon arrival. Otherwise, the presence of a visible firearm inside a school building, especially on an individual who is not in uniform, is likely to cause alarm. Even if the individual has lawful authority to carry the firearm, an unidentified

individual carrying a firearm inside a school building may be viewed as a threat that could trigger the school's lockdown procedures or even cause a reaction by an official or volunteer agency organized to deal with emergencies. Campus officials may want to discuss these issues with parents or other visitors who are authorized to openly carry firearms in schools.

### **Firearm Warning Signs**

School districts have a delicate obligation to place firearm warning signs in precise locations if they want to protect their premises from unauthorized individuals carrying firearms while avoiding liability for unlawfully excluding firearms under state law. On the one hand, notice, typically through a sign, is required in order to prosecute an individual for the felony offense of possessing a firearm in a place where weapons are prohibited. On the other hand, school districts may not post trespass warning signs in locations that suggest visitors may not carry firearms in places not restricted by state law.

#### **What signs are *required*?**

Proper signage is essential for school districts that want to enforce the prohibition of firearms on school premises and other places. It is a defense to prosecution under Texas Penal Code section 46.03 (which makes it a felony to possess a firearm on the premises of a school or educational institution, on the grounds of an activity sponsored by a school or educational institution, on a passenger vehicle of a school or educational institution, or on the premises of an active polling place), that the actor: (1) carried a handgun on a premises or other property on which the carrying of a weapon is prohibited under that section; (2) personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property, as applicable, was prohibited; and (3) promptly departed from the premises or other property. Tex. Penal Code § 46.15(m).

Because school officials are not advised to confront and eject armed visitors without assistance from law enforcement, this defense would greatly undermine the ability of a school district to protect its premises from unauthorized individuals carrying firearms on school district property. This defense does not apply, however, if: (1) a proper sign was posted prominently at each entrance to the premises or other property, as applicable; or (2) at the time of the offense, the actor knew that carrying a firearm or other weapon on the premises or other property was prohibited. Tex. Penal Code § 46.15(n).

A person may provide notice that firearms and other weapons are prohibited under Section 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that: (1) includes language that is identical to or substantially similar to the following: "Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property"; (2) includes the language described by Subdivision (1) in both English and Spanish; (3) appears in contrasting colors with block letters at least one inch in height; and (4) is displayed in a conspicuous manner clearly visible to the public. Tex. Penal Code § 46.15(o).

*Entrance* is not defined. The determination of what constitutes an entrance to school district property is inherently a local decision. Every exterior door is not necessarily an entrance to the premises, especially if the school district has taken specific steps, as many have, to limit access through exterior doors and direct all visitors to a single secure entrance. If a school district has made it clear, through whatever means, that visitors are not allowed to come in through a particular exterior door, a sign regarding openly carried handguns may not be required at that location.

Before state law changed in 2021, no sign was needed to enforce Section 46.03's prohibition of weapons on school premises. Now, without proper signs, local law enforcement and prosecutors may fail to respond to school district requests to enforce the law.

### **What signs are *prohibited*?**

Since 2015, the Texas legislature has imposed a civil penalty for school districts and other political subdivisions that provide notice (including by posting signs) stating that a license holder carrying under the authority of Texas Government Code chapter 411 is prohibited from entering or remaining on the property of the political subdivision, except in locations where firearms are prohibited by Texas Penal Code section 46.03 or other law. In 2017, the law was expanded to prohibit improper signage referring to openly carried handguns, and in 2019, the law was expanded to prohibit political subdivisions from taking "any action" that "states or implies" that the license holder is not permitted to enter or remain. Tex. Gov't Code § 411.209.

A school district or other political subdivision that violates this provision is liable for a civil penalty of not less than \$1,000 and not more than \$1,500 for the first violation and not less than \$10,000 and not more than \$10,500 for a second or subsequent violation. Each day an impermissible sign is displayed is a separate violation. A resident of this state or a person licensed to carry a handgun must notify the political subdivision in writing of the alleged violation, and the political subdivision has three business days to cure the violation. If not, the resident or license holder may file a complaint with the attorney general with evidence of the violation and a copy of the written notice to the political subdivision. After an investigation and an opportunity to cure the violation, the attorney general may file a lawsuit against the political subdivision, and sovereign immunity is abolished for this purpose. Tex. Gov't Code § 411.209. In light of this potential penalty, school districts should exercise care and consult with a school attorney regarding the appropriate location for criminal trespass signs under Sections 30.06 and 30.07, as well as any other warning signs about firearms.

Type of Sign	Purpose	Location	Language	Specifications
<p>TPC 46.03</p> <p>Felony Possession of a Weapon</p>	<p>Negates a defense to prosecution to TPC 46.03 that the actor received notice that carrying a handgun was prohibited and promptly departed.</p> <p>TPC 46.15(m), (n)</p> <p>It is not a defense to prosecution under this section that the actor was licensed to carry a handgun. TPC 46.03(f)</p>	<p>The physical premises of a school or educational institution</p> <p>Any grounds or building on which an activity sponsored by a school or educational institution is being conducted</p> <p>A passenger transportation vehicle of a school or educational institution</p> <p>The premises of a polling place on the day of an election or while early voting is in progress</p> <p>TPC 46.03(a)</p>	<p>Identical or substantially similar to: “Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property”</p> <p>TPC 46.15(o)</p>	<p>Displayed in a conspicuous manner clearly visible to the public</p> <p>Prominently at each entrance to the premises or other property</p> <p>In both English and Spanish</p> <p>In contrasting colors with block letters at least one inch in height</p> <p>TPC 46.15(m), (n), (o)</p>
<p>TPC 30.06</p> <p>Misdemeanor Trespass by License Holder with a Concealed Handgun</p>	<p>Required for enforcement of misdemeanor offense</p>	<p>Premises or other place owned or leased by a governmental entity where the license holder is prohibited from carrying a handgun under TPC 46.03</p>	<p>Identical to: “Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law),</p>	<p>Displayed in a conspicuous manner clearly visible to the public</p> <p>In both English and Spanish</p> <p>In contrasting colors with block letters at least one inch in height</p>

Type of Sign	Purpose	Location	Language	Specifications
			may not enter this property with a concealed handgun”	
TPC 30.07  Misdemeanor Trespass by License Holder with an Openly Carried Handgun	Required for enforcement of misdemeanor offense	Premises or other place owned or leased by a governmental entity where the license holder is prohibited from carrying a handgun under TPC 46.03	Identical to: ”Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly”	At each entrance to the property  Displayed in a conspicuous manner clearly visible to the public  In both English and Spanish  In contrasting colors with block letters at least one inch in height
TPC 30.05(c)  Misdemeanor Trespass by Unlicensed Individual	Optional warning  Subject to defense for license holder carrying a concealed or holstered handgun		Identical or substantially similar to: ”Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm”	At each entrance to the property  Displayed in a conspicuous manner clearly visible to the public  In both English and Spanish  In contrasting colors with block letters at least one inch in height

### **What signs are *allowed*?**

If school districts want to enforce the felony offense of possessing a firearm in prohibited places (including school premises), a warning sign about Texas Penal Code section 46.03 is essential. However, several other possible misdemeanor offenses are also available if proper signs are posted. Unfortunately, each offense requires a separate sign for enforcement. No one comprehensive sign can serve for all school district purposes.

**Trespass with a Firearm:** A person may provide notice that firearms are prohibited on the property by posting a sign at each entrance to the property that:

- (1) includes language that is identical to or substantially similar to the following: “Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm”;
- (2) includes the language described by Subdivision (1) in both English and Spanish;
- (3) appears in contrasting colors with block letters at least one inch in height; and
- (4) is displayed in a conspicuous manner clearly visible to the public.

Tex. Penal Code § 30.05.

Arguably, this sign is unnecessary for school districts. Posting it at the entrance to school premises will be redundant of the warning sign for Texas Penal Code section 46.03, which is enforced as a felony (not a mere misdemeanor, like this offense). Posting it on the property perimeter is not advisable because it will risk a violation of Texas Government Code section 411.209. Moreover, entry by an unlicensed individual carrying a firearm is already prohibited by federal law, unless the firearm is unloaded and locked in a box or rack. Nevertheless, the Texas Penal Code 30.05 sign is available for a “belt and suspenders” approach.

**Trespass by License Holder with a Concealed Handgun:** A license holder commits a Class C misdemeanor offense by carrying a concealed handgun, under the authority of the license and without effective consent, onto school district property where firearms are prohibited by Section 46.03, if the license holder received notice by written communication that entry with a concealed handgun is forbidden. In addition, if the license holder receives oral notice that handguns are prohibited and fails to depart, the offense is a Class A misdemeanor. It is a defense to prosecution under this section that the license holder was personally given notice by oral communication from someone with apparent authority to act for the school district and promptly departed from the property. Tex. Penal Code § 30.06.

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

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

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

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

**Trespass by License Holder with an Openly Carried Handgun:** A license holder commits a Class C misdemeanor offense by openly carrying a handgun, under the authority of the license and without effective consent, onto school district property where firearms are prohibited by Section 46.03, if the license holder received notice by written communication that entry with an openly carried handgun is forbidden. In addition, if the license holder receives oral notice that openly carried handguns are prohibited and fails to depart, the offense is a Class A misdemeanor. It is a defense to prosecution under this section that the license holder was personally given notice by oral communication from someone with apparent authority to act for the school district and promptly departed from the property. Tex. Penal Code § 30.07.

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

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

If a school district chooses to provide notice through signs, Section 30.07 for openly carried handguns requires a second sign, with slightly different wording from Section 30.06 on concealed handguns, to be posted at every entrance. Once again, *entrance* is not defined.

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

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

For school districts, temporary signs may be useful if the district conducts school board meetings, athletic contests, or other school-sponsored events in locations not owned and operated by the school district, such as a civic center or municipal stadium. Temporary signs may also be important now that notice is required to enforce Section 46.03(a)(1) (felony possession of a weapon on school premises, at school-sponsored activities, and on school passenger transportation) and 46.03(a)(2) (active polling places), to the extent these locations are transitory.

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

School districts should be cautious about posting or failing to remove signs at the perimeter of school district property that could violate Texas Government Code section 411.209. *See, e.g.,* Tex. Att’y Gen. Op. No. KP-0049 (2015) (opining that a sign on county property stating “Weapons Free Zone” could violate Section 411.209).

Moreover, in order to seek prosecution under the various provisions of the Texas Penal Code, each individual sign must be displayed as prescribed by law.

A district that nevertheless wants to place warning signs at the perimeter of school property should consult its school attorney to determine the wording. One option could be to restate the felony prohibition in Texas Penal Code section 46.03, rather than the criminal trespass notice language in Texas Penal Code sections 30.06 and 30.07. A locally developed sign would not constitute adequate notice for purposes of prosecuting criminal trespass, but it might serve to warn the public about application of the federal Gun Free School Zones Act to unlicensed individuals, as well as the felony offense of entering parts of school property with a firearm.



### **District-Approved Activities Involving Firearms**

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

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

EXCEPTION	No violation of this policy occurs when the use, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities.
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Texas school districts often authorize the possession of firearms or other weapons on campus for approved activities such as gun safety or hunter training, historical reenactments, and JROTC. School districts have also authorized bringing firearms on campus for special events such as guest speakers or theatrical performances. If the firearm is used in a program approved by the school or in accordance with a contract entered into between the school and the user or user's employer, the federal GFSZA does not apply. 18 U.S.C. § 922(q)(2)(B)(iv), (v). The GFSZA also does not apply if the person carrying the firearm is on school property for the purpose of gaining access to hunting lands, the firearm is unloaded, and school authorities authorize the person's entry onto school property. 18 U.S.C. § 922(q)(2)(B)(vii).

### **Employee Possession of Firearms**

**Storage in locked cars:** Texas Education Code section 37.0815 provides that a school district or open-enrollment charter school may not prohibit a person, including a school employee, who holds a license to carry a handgun under Texas Government Code chapter 411 from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district or charter school and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view. See TASB Policy DH(LOCAL). In light of the fact that school employees may have access to firearms in their personal vehicles, a district may wish to clarify that any action an employee takes with regard to his or her firearm is not taken at the district's direction and is outside the course and scope of employment.

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

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

### **Limits on Transportation or Display of Firearms on School Property**

Of course, handgun license holders may display and use their handguns only within the scope of their licenses. Other than open carry in a holster, a license holder is permitted to display a gun in public only when the use of force would be justified under Texas Penal Code chapter 9. Tex. Penal Code § 46.02(a-5). A person who carries a handgun in a vehicle or on the person's body must not be engaged in a criminal activity, prohibited from possessing a firearm, or a member of a street gang. Tex. Penal Code § 46.04(a-1). Moreover, a license holder may not carry a handgun while intoxicated. Tex. Penal Code § 46.02(a-6).

In addition, a person commits an offense if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally exhibits, uses, or threatens to use a firearm in or on any school property, including parking areas, or on a school bus. The offense is a third-degree felony if the individual was in possession of or had immediate access to a firearm at the time. The offense is a Class A misdemeanor if the individual made such a threat but did not in fact possess a firearm at the time. Tex. Educ. Code § 37.125.

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

### **Firearms on School Property Leased to Another Person or Entity**

It is a defense to prosecution under Texas Penal Code sections 30.05 (criminal trespass), 30.06 (trespass by a license holder with concealed handgun), and 30.07 (trespass by a license holder with an openly carried handgun) that a tenant of the leased premises or the tenant's guest carries or stores a firearm or firearm ammunition in the tenant's rental unit or carries the firearm or ammunition directly en route to or from the actor's vehicle, and the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition. This exception is not a defense to Texas Penal Code section 46.03, so it would not apply to school district premises. Conceivably, the defense might apply to other school-district owned property like a teacherage.

To the extent school district property is leased for use as a house of worship, note that the Texas Penal Code no longer lists "a church, synagogue, or other established place of religious worship" as a location where a license holder cannot enter with a handgun. Section 46.03 still applies, however, making it a felony for most individuals to enter the premises of a school or educational institution when the building is being used as a place for religious worship.

## **Student Possession of Firearms**

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

**Federal Gun-Free Schools Act:** Originally enacted in 1994 and reauthorized as part of the Every Student Succeeds Act in 2015, the Gun-Free Schools Act (GFSA) is a federal law that requires states receiving federal funds under the Elementary and Secondary Education Act to restrict firearms on school property. The GFSA requires schools to expel, for not less than one year, a student who brings a weapon to school or possesses a weapon at school. 20 U.S.C. § 7961(b)(1).

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

The GFSA contains exceptions to the federal mandatory expulsion requirement. Since the Act's reauthorization, the GFSA has included an exception for firearms that are lawfully stored inside locked vehicles on school property. The Act also includes an exception for activities approved and authorized by the school district, such as gun safety classes, so long as the school district has appropriate safeguards to ensure student safety. 20 U.S.C. § 7961(g).

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

In accordance with 20 U.S.C. Section 7151 [now 7691], a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

- (1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;
- (2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
- (3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.

Tex. Educ. Code § 37.007(e).

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

**Texas law—permissive expulsion:** A student may be expelled if, while within 300 feet of school property, the student possesses a firearm. Tex. Educ. Code § 37.007(b)(3)(B).

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

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

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

At times, state law requires that an expelled student be placed in an alternative education setting. For example, students in districts located in counties with a population over 125,000 must provide services to expelled students in a Juvenile Justice Alternative Education Program (JJAEP). Tex. Educ. Code §§ 37.010(a), 011(a). In all districts, if the expelled student is younger than ten years of age, the district must provide educational services in a Disciplinary Alternative Education Program (DAEP). If an expelled student is ten years of age or older, the district *may* provide educational services in a DAEP. 20 U.S.C. 7961(h); Tex. Educ. Code § 37.007(e)(2)-(e)(3).

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

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

## Reporting Firearm Offenses

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

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

This document is continually updated at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/firearms\\_on\\_dist\\_property.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/firearms_on_dist_property.pdf). For more information on school law topics, visit TASB School Law eSource at [schollawesource.tasb.org](https://schollawesource.tasb.org).

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