

TEXAS SAFE SCHOOLS ACT

Your Rights and
Responsibilities



2007-2009
UPDATE

Texas AFT
www.texasaft.org



July 2009

Dear Colleague,

Seventeen years ago, Texas AFT launched its campaign for a Safe Schools Act to put a stop to violence on campus. The Texas Legislature responded in 1995 by enacting laws that gave educators new tools for responding to students who are violent, abusive, or chronically disruptive. These laws give us a chance to make our schools safe and orderly, but laws must be enforced.

This brochure gives you information you need to enforce the law. With this information, you should be able to deal with most of the situations you will encounter if you remove a violent or disruptive student from your class.

This law has had a major, positive impact. Since enactment in 1995, the core provisions of the law have been upheld by the courts and kept intact by the legislature. The updated information in this brochure reflects various changes made by lawmakers since 1995 that have not altered the fundamentals of the law.

Enforcement of the Safe Schools Act will never be easy. We must all work to ensure that our schools are safe and orderly. TFTA will continue to campaign for safe schools, and we will support our members when they act to enforce the rules.

Sincerely,

Linda Bridges, President
Texas AFT

Helpful Tip:

You can find the information from this brochure, including the sample letters and discipline form, on our Web site at www.texasaft.org.

Introduction to the Safe Schools Act

The Safe Schools Act is contained in Chapter 37, Sections 37.001-37.022 of the Education Code.

Documentation is the key to successful use of this law. We encourage you to use the sample forms included here and recommend that you discuss the law with a union representative before applying it.

THE LAW IS NOT SELF-ENFORCING. YOU MUST TAKE STEPS TO USE THE LAW AND INSIST THAT YOUR ADMINISTRATORS FOLLOW IT.

Terms to Know: A DAEP is a “disciplinary alternative education program.”

Basic Questions and Answers

1. Question: *How does this state law affect local policy on student conduct?*

Answer: Section 37.001(a) of the Education Code requires your local school district to adopt a student code of conduct. This **local code cannot reduce teachers’ authority granted by state law to remove disruptive students. In case of any conflict between your local code of conduct and the provisions of this state law, the state law controls.** The local code of conduct must comply with the state law concerning disciplinary removal of a student from a classroom, campus, or a disciplinary alternative education program; transfer of a student to a disciplinary alternative education program; and suspension or expulsion.

The law says consideration must be given in disciplinary decisions to these factors: student’s intent, disciplinary history impaired mental capacity due to mental disability, and self-defense. It does not mandate that these factors be given any specific weight.

2. Question: *What discipline tools are provided?*

Answer: The state law **allows** a student’s removal from the regular classroom for repeated or serious interference with instruction. It **mandates** removal of a student and placement in a disciplinary alternative education program (DAEP) for more serious offenses like assault causing bodily injury. For the gravest offenses—including aggravated assault and bringing guns and illegal knives to school—it **mandates** removal, expulsion, and referral to the juvenile justice system. (**NOTE:** Students under six cannot be placed in a disciplinary alternative education program, and students under ten cannot be expelled.)

The teacher who removes the student has a right to refuse that student’s return to the classroom. In certain cases (see questions 5 and 6) the teacher’s refusal can be overruled, but in some of the most serious cases, the teacher’s refusal cannot be overruled.

Discretionary Removal

3. Question: *The law empowers teachers to remove a student from class for certain misconduct. What does this mean?*

Answer: This section in the law we call the “discretionary removal” provision, because it allows a teacher to remove a student:

(1) “who has been documented by the teacher to repeatedly interfere with the teacher’s ability to communicate effectively with the students in the class or with the ability of the student’s classmates to learn;” OR,
(2) “whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher’s ability to communicate effectively with the students in the class or with the ability of the student’s

classmates to learn.”

(**NOTE:** To avoid misunderstanding when you remove a student from class under this authority, you should specifically mention you are using your authority under

Education Code Section 37.002 to **remove** a student immediately. Otherwise, a principal may treat your action as a less serious form of discipline, allowing the principal

wide discretion to “respond by employing appropriate discipline management techniques.” Use the sample letter for discretionary removal and the reporting form printed at the end of this brochure. Documentation of multiple incidents *must* be provided by the teacher to show repeated interference under option (1) above. The prudent practice is to provide full documentation of the incidents under option (1) or the incident under option (2) prompting you to initiate removal.)

4. Question: *What happens when the teacher invokes this law and removes a student who engages in the specified types of misconduct under this discretionary provision?*

Answer: The student is immediately and automatically removed from the teacher’s class. The principal has the following options for deciding where that student will be placed:

- another regular classroom;
- in-school suspension;
- an alternative education program for student violators of discipline rules—on or off campus;
- three-day suspension from school.

5. Question: *In cases involving discretionary removal, can the principal return the student to the classroom of the teacher who removed that student?*

Answer: Not without the teacher’s consent—unless the teacher is overruled by a placement-review committee that determines such placement is the best or only alternative available. See questions 9, 13, & 17.

Placement-Review Committee

6. Question: *What is a placement-review committee?*

Answer: The law says each school must establish a three-member committee with two teachers (and one alternate) chosen by the campus faculty to serve as members and one member chosen by the principal from the professional staff of the campus. TEA recommends making this a standing committee.

This committee can override a teacher’s refusal to accept the return to the regular classroom of a student the teacher has removed under the discretionary removal provision. To override the teacher’s decision, the committee must determine that such placement is the best or only placement available.

Mandatory Removal

7. Question: *When is removal of a student mandatory?*

Answer: The law says, “A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate,” a student who engages in various types of serious misconduct.

Section 37.006 lists the kinds of misconduct that require placement in a DAEP. Section 37.007 lists the kinds of misconduct that trigger expulsion.

8. Question: *When is placement in a DAEP mandatory?*

Answer: The law says a student “shall be removed from class and placed in a disciplinary alternative education program” for:

• any of the following acts committed on or within 300 feet of school property or at a school-related event:

- (1) any conduct punishable as a felony;
 - (2) conduct that meets the Penal Code definition of an assault causing bodily injury;
 - (3) use, possession, sale, or delivery of alcoholic beverages or illegal drugs;
 - (4) abuse of a volatile chemical as defined by the Health and Safety Code;
 - (5) conduct that meets the Penal Code definition of public lewdness or indecent exposure.
- off-campus violent felony conduct, as found by a court or jury, or as determined by the superintendent based on “reasonable belief.”
- conduct that meets the Penal Code definition of retaliation against any school employee, regardless of where the conduct occurs.
- conduct that meets the Penal Code definition of “false report” (for example, a bomb threat) or “terroristic threat.”
- expellable misconduct by a student under age 10.

Teachers and paraprofessionals must be notified by their principal if a student under their supervision has engaged in any of these types of misconduct. The information is confidential, and unauthorized disclosure can trigger certification suspension or revocation.

9. Question: *May a teacher refuse a student's return to the regular classroom after mandatory placement in an alternative education program for these types of misconduct?*

Answer: Yes. In these cases the law bars the student's return to the classroom of the teacher who removed the student, unless that teacher consents. Section 37.009(e) also says that the teacher's consent may not be coerced. A student who assaults a teacher cannot be returned without consent to that teacher's classroom even if no DAEP placement ever occurred, according to Section 37.002(d).

10. Question: *Where do students go after mandatory removal for these types of misconduct?*

Answer: Each school district must provide an alternative education program outside the regular classroom and separate from students in the regular program. The alternative program may be on or off of a regular campus.

Expulsion

11. Question: *When must a student be expelled, instead of being placed in an alternative education program within the public school system?*

Answer: For offenses listed in Section 37.007, the law **mandates** expulsion and referral to the juvenile-justice system. Offenses that trigger expulsion if committed on school property or at a school event are:

- (1) use, exhibition, or possession of a firearm, illegal knife, club, or prohibited weapon, as these terms are defined in the Penal Code;
- (2) conduct that meets the definition of aggravated assault, sexual assault, arson, murder, attempted murder, indecency with a child, aggravated kidnapping, aggravated robbery, aggravated kidnapping, aggravated robbery, aggravated kidnapping, criminally negligent homicide, continuous sexual abuse of a young child; or

- (3) felony offenses involving alcoholic beverages or illegal drugs.

Expulsion also is mandatory if any one of these offenses is committed in retaliation against a school employee, regardless of where the offense occurs.

Section 37.007 requires a school district to inform each teacher who has regular contact with a student through a classroom assignment if that student has engaged in any of the above violations. The teacher is required to keep this information confidential and may have his/her certificate sanctioned if the information is released.

This section of the law also **allows** school districts to expel a student for:

- (1) serious or persistent misbehavior—while in a DAEP—that violates the district's student code of conduct;
- (2) felony criminal mischief;
- (3) misdemeanor drug and alcohol offenses at school;
- (4) assault on a school employee or volunteer causing bodily injury;
- (5) false report (for example, a bomb threat) or terroristic threat as defined in the Penal Code;
- (6) deadly conduct as defined in the Penal Code;
- (7) conduct occurring within 300 feet of school property that would trigger automatic expulsion if it occurred on campus or that involved possession of a firearm;
- (8) aggravated assault, sexual assault, murder, attempted murder of another student wherever it occurs;
- (9) conduct occurring on school property or at a school-related event in another school district that would trigger expulsion if it occurred in the student's district.

Students with Disabilities

12. Question: *Do all of the provisions of Chapter 37 apply to students with disabilities?*

Answer: Some, but not all. A student with a disability who receives special education services comes under the same state standards triggering removal from class. But long-term (more than ten days) placement of such a student must be made only by a duly constituted Admission, Review, and Dismissal (ARD) committee. Any decision by a placement-review committee regarding a student with disabilities receiving special education services also must comply with federal and state laws on special education.

(NOTE: Section 37.0021, though not related to removal from class, sets ground rules on confinement, restraint, seclusion, and time-out for students with disabilities.)

Due Process

13. Question: *What process must be followed after a student is removed—under either the discretionary or mandatory removal provisions?*

Answer: The principal must schedule a conference no later than the third class day after the day of the removal. The student may not be returned to the regular classroom before the conference. The student is entitled to notice of the reasons for removal and an opportunity to respond. In addition to the student, those entitled to attend are: the student's parent or guardian; the teacher who removed the student; and the principal or the principal's designee. Whether these individuals attend or not, the principal must then order the student's placement for a period consistent with the local code of conduct.

(NOTE: The teacher should document and describe the student's misconduct carefully and precisely at this post-removal conference. When a teacher has initiated the removal, the principal cannot compel the teacher to take back the student after this conference—unless and until a properly constituted placement-review committee determines that teacher's class to be the best or only placement available.)

If the student's alternative placement will extend beyond the end of the next grading period, the student's parent or guardian can request a hearing before the school board. The board's decision in such a case is final and cannot be appealed. A student is entitled to a status review at 120-day intervals while in a DAEP.

In order to expel a student, the board or its designee must provide the student a hearing with constitutional due process. The student's parent or guardian must be invited, in writing, to attend. The board's decision can be appealed to district court.

Emergency and Other Procedures

14. Question: *Can a student be placed in a DAEP or expelled without a prior due process conference or hearing?*

Answer: Yes. The law (Section 37.019) allows emergency alternative placement if the principal "reasonably believes" that a student's behavior is "so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of a student's classmates to learn, or with the operation of school or a school-sponsored activity."

The law likewise allows emergency expulsion if the principal "reasonably believes that action is necessary to protect persons or property from imminent harm." In either case, the principal must give the student the same due process as in other removals not later than ten days after taking the action. The emergency placement must be for a reason that would support a non-emergency placement under Section 37.006 or 37.007.

15. Question: *Can a student be expelled or placed in a DAEP for other reasons that would not necessarily trigger DAEP placement under Section 37.006 or expulsion under Section 37.007?*

Answer: Yes. Section 37.0081 allows a school district to expel or send a student to a DAEP: (a) if the student has been charged with or convicted of a violent felony in the juvenile or adult court system or has received deferred adjudication/prosecution for such conduct; and (b) the district has determined that the student's presence in the regular classroom threatens the safety of other students, will be detrimental to the educational process, or is not in the best interests of the district's students. This authority exists no matter when or where the offense occurred.

A student expelled to the juvenile-justice system or placed in a DAEP under this section can be kept in that placement until the student graduates from high school, the charges against the student are dismissed or reduced to a misdemeanor, or the student completes the term of the placement or is assigned to another program.

In addition, as of September 1, 2007, new Sections 37.301-313 (Subchapter I) govern placement of students required to register as sex offenders. On receiving notice that a student is required to register as a sex offender, the school district must remove the student from the regular classroom and determine the student's appropriate placement.

For students under court supervision, that placement must be in a DAEP for at least one semester and may be longer. For students not under court supervision, the placement may be in a DAEP for one semester or in the regular classroom.

Placement in the regular classroom is precluded if the district determines that the student's presence in the regular classroom would threaten others, be detrimental to the educational process, or would not be in the best interests of the district's students. However, for students with disabilities, federal requirements govern placement, including the requirement that admission, review, and dismissal committees make placement decisions.

Role of Courts

16. Question: *Can a student who has been expelled from school and who has been placed under court supervision come back to the regular classroom?*

Answer: A district may readmit a student who has been expelled while that student is completing court-ordered requirements. After the student has met court-ordered requirements, the district must readmit the student, but the student can be placed in a DAEP.

17. Question: *Suppose a teacher initiates removal of a student who is then expelled and placed under court supervision. What rights does the teacher have if that student is readmitted by the district?*

Answer: Without the teacher's consent, the student may never be returned to the classroom of the teacher under whose supervision the offense occurred. The law says the teacher's consent may not be coerced. Section 37.010(f) further specifies that the teacher has an absolute right to refuse the student's return in this type of case, "notwithstanding" the section of the law that says a placement-review committee may override such a refusal.

Arrest/Conviction Reports

18. Question: *What notice must school personnel receive when a law enforcement agency arrests or refers a student to juvenile jurisdiction for a felony or certain other offenses?*

Answer: First, the superintendent must be notified orally or in writing within 24 hours of the arrest or juvenile referral. Then, according to Article 15.27(a) of the Texas Code of Criminal Procedure, the superintendent must "promptly notify all instructional and support personnel who have responsibility for supervision of the student."

In addition, Article 15.27(b) says the superintendent must be notified within 24 hours when a student has been convicted or adjudicated delinquent for a felony or certain other offenses, and the notice must indicate whether the student is required to register as a sex offender. The superintendent then must, "within 24 hours of receiving notification from the office of the prosecuting attorney, notify all instructional and support personnel who have regular contact with the student."

These notice requirements apply to all felonies and to specified misdemeanor offenses: unlawful restraint; indecent exposure; assault; deadly conduct; terroristic threat; gang-related offenses; drug offenses; or weapon offenses.

Sample Letter for Mandatory Removal

To: (Principal's name), Principal

From:

Date:

Re: Removal of student under Section 37.002(d), Texas Education Code

Under the provisions of Texas Education Code Section 37.002(d), I am exercising my authority to remove _____ immediately from my classroom. Under Section 37.009(a), please note that this student may not be returned to my classroom pending a conference held with you, the student, the student's parent or guardian, and me.

Please notify me as to the date and time of this conference. Please note also that this student, if placed in an alternative education program under Section 37.006 for the conduct reported here, may not be returned to my classroom without my uncoerced consent, according to Section 37.009(e) of the Texas Education Code.

Please note further that this student, if expelled under Section 37.007 for the conduct reported here and eventually readmitted by the district during or after court disposition, may not be returned to my classroom without my uncoerced consent, notwithstanding any determination by the school's placement-review committee, according to Section 37.010(f) of the Texas Education Code.

Sample Letter for Discretionary Removal

To: (Principal's name), Principal

From:

Date:

Re: Removal of student under Section 37.002(b), Texas Education Code

Under the provisions of Texas Education Code Section 37.002(b), I am exercising my authority to remove _____ immediately from my classroom. Please note that under Section 37.009(a), this student may not be returned to my classroom pending a conference held with you, the student, the student's parent or guardian, and me.

Please notify me as to the date and time of this conference. Please note also that this student may not be returned to my classroom without my consent unless the placement-review committee duly established under Section 37.003 of the Texas Education Code determines that such placement is the best or only alternative available.

Attached is a cumulative discipline record documenting the repeated interference by _____ with my ability to communicate effectively with the students in my class or with the ability of this student's classmates to learn.

(AND/OR)

Attached is a discipline record documenting behavior by _____ that is so unruly, disruptive, or abusive that it seriously interferes with my ability to communicate effectively with the students in my class or with the ability of this student's classmates to learn.