

**EDUCATION CODE**  
**SUBTITLE G. SAFE SCHOOLS**  
**CHAPTER 37. DISCIPLINE; LAW AND ORDER**

*SUBCHAPTER A. ALTERNATIVE SETTINGS FOR BEHAVIOR MANAGEMENT*

**§ Sec. 37.001. Student Code of Conduct**

- (a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:
- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
  - (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
  - (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
  - (4) specify whether consideration is given, as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion, to:
    - (A) self-defense;
    - (B) intent or lack of intent at the time the student engaged in the conduct;
    - (C) a student's disciplinary history; or
    - (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
  - (5) provide guidelines for setting the length of a term of:
    - (A) a removal under Section 37.006; and
    - (B) an expulsion under Section 37.007;
  - (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
  - (7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and

## Education Code Chapter 37

- (8) provide, as appropriate for students at each grade level, methods, including options, for:
  - (A) managing students in the classroom and on school grounds;
  - (B) disciplining students; and
  - (C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

(b) In this section:

- (1) “Harassment” means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student’s physical or emotional health and safety.
- (2) “Hit list” means a list of people targeted to be harmed, using:
  - (A) a firearm, as defined by Section 46.01(3), Penal Code;
  - (B) a knife, as defined by Section 46.01(7), Penal Code; or
  - (C) any other object to be used with intent to cause bodily harm.

(b-1) The methods adopted under Subsection (a)(8) must provide that a student who is enrolled in a special education program under Subchapter A, Chapter 29, may not be disciplined for conduct prohibited in accordance with Subsection (a)(7) until an admission, review, and dismissal committee meeting has been held to review the conduct.

- (c) Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.
- (d) Each school year, a school district shall provide parents notice of and information regarding the student code of conduct.
- (e) Except as provided by Section 37.007(e), this subchapter does not require the student code of conduct to specify a minimum term of a removal under Section 37.006 or an expulsion under Section 37.007.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 2, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 4, 30, eff. June 20, 2003. [Amended by HB 283 and HB 603, 79th Leg., 2005.]

### **§ Sec. 37.002. Removal by Teacher**

- (a) A teacher may send a student to the principal’s office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.
- (b) A teacher may remove from class a student:

## Education Code Chapter 37

- (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.
- (c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.
- (d) 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 conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 5, eff. June 20, 2003. [Amended by HB 603, 79th Leg., 2005.]

### **§ Sec. 37.0021. Use of Confinement, Restraint, Seclusion, and Time-Out**

- (a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.
- (b) In this section:
- (1) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.
  - (2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

## Education Code Chapter 37

- (A) is designed solely to seclude a person; and
  - (B) contains less than 50 square feet of space.
- (3) “Time-out” means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
  - (A) that is not locked; and
  - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:
  - (1) the Children’s Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;
  - (2) 40 T.A.C. Sections 720.1001-720.1013; or
  - (3) 25 T.A.C. Section 412.308(e).
- (d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:
  - (1) be consistent with:
    - (A) professionally accepted practices and standards of student discipline and techniques for behavior management; and
    - (B) relevant health and safety standards; and
  - (2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.
- (e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.
- (f) For purposes of this subsection, “weapon” includes any weapon described under Section 37.007(a)(1). This section does not prevent a student’s locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:
  - (1) the student possesses a weapon; and

## Education Code Chapter 37

- (2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.
- (g) This section and any rules or procedures adopted under this section do not apply to:
- (1) a peace officer while performing law enforcement duties;
  - (2) juvenile probation, detention, or corrections personnel; or
  - (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Added by Acts 2001, 77th Leg., ch. 212, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 6, eff. June 20, 2003.

### **§ Sec. 37.003. Placement Review Committee**

- (a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:
- (1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
  - (2) the principal shall choose one member from the professional staff of a campus.
- (b) The teacher refusing to readmit the student may not serve on the committee.
- (c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 7, eff. June 20, 2003.

### **§ Sec. 37.004. Placement of Students with Disabilities**

- (a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.
- (b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action

## Education Code Chapter 37

regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

- (1) functional behavioral assessments;
  - (2) positive behavioral interventions, strategies, and supports;
  - (3) behavioral intervention plans; and
  - (4) the manifestation determination review.
- (c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.
- (d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

Text of subsection (e) effective until September 1, 2005

- (e) Notwithstanding any other provision of this subchapter, in a county with a juvenile justice alternative education program established under Section 37.011, the expulsion under a provision of Section 37.007 described by this subsection of a student with a disability who receives special education services must occur in accordance with this subsection and Subsection (f). The school district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the juvenile justice alternative education program or the administrator's designee with reasonable notice of the meeting of the student's admission, review, and dismissal committee to discuss the student's expulsion. A representative of the juvenile justice alternative education program may participate in the meeting to the extent that the meeting relates to the student's placement in the program. This subsection applies only to an expulsion under:
- (1) Section 37.007(b), (c), or (f); or
  - (2) Section 37.007(d) as a result of conduct that contains the elements of any offense listed in Section 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

Text of subsection (f) effective until September 1, 2005

- (f) If, after placement of a student in a juvenile justice alternative education program under Subsection (e), the administrator of the program or the administrator's designee has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the school district from which the student was expelled. The student's admission, review, and dismissal committee shall meet to reconsider the placement of the student in the program. The district shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program.

## Education Code Chapter 37

Text of subsection (g) effective until September 1, 2005

- (g) Subsections (e) and (f) and this subsection expire September 1, 2005.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 6, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1225, Sec. 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 435, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 6.006, eff. Sept. 1, 2003.

### **§ Sec. 37.005. Suspension**

- (a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended.
- (b) A suspension under this section may not exceed three school days.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 8, eff. June 20, 2003.

### **§ Sec. 37.0051. Placement of Students Committing Sexual Assault Against Another Student**

- (a) As provided by Section 25.0341(b)(2), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 or a juvenile justice alternative education program under Section 37.011.
- (b) A limitation imposed by this subchapter on the length of a placement in a disciplinary alternative education program or a juvenile justice alternative education program does not apply to a placement under this section.

### **§ Sec. 37.006. Removal for Certain Conduct**

- (a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:
- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or
  - (2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
    - (A) engages in conduct punishable as a felony;
    - (B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;
    - (C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

## Education Code Chapter 37

- (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or
    - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
  - (D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;
  - (E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; or
  - (F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.
- (b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.
- (c) In addition to Subsections (a) and (b), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:
- (1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
  - (2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or
  - (3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.
- (d) In addition to Subsections (a), (b), and (c), a student may be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:
- (1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and
  - (2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

## Education Code Chapter 37

- (e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.
- (f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.
- (g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.
- (h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.
- (i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).
- (j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.
- (k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).

- (l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.
- (m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.
- (n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.
- (o) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a principal or a principal's designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 3, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.15, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 486, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 9, eff. June 20, 2003. [Amended by HB 603, 79th Leg., 2005.]

**§ Sec. 37.0061. Funding for Alternative Education Services in Juvenile Residential Facilities**

A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a wealth per student greater than the guaranteed wealth level but less than the equalized wealth level, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

Added by Acts 1997, 75th Leg., ch. 1015, Sec. 4, eff. June 19, 1997.

**§ Sec. 37.007. Expulsion for Serious Offenses**

- (a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:
- (1) uses, exhibits, or possesses:
    - (A) a firearm as defined by Section 46.01(3), Penal Code;
    - (B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;
    - (C) a club as defined by Section 46.01(1), Penal Code; or
    - (D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;
  - (2) engages in conduct that contains the elements of the offense of:
    - (A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
    - (B) arson under Section 28.02, Penal Code;
    - (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
    - (D) indecency with a child under Section 21.11, Penal Code;
    - (E) aggravated kidnapping under Section 20.04, Penal Code;
    - (F) aggravated robbery under Section 29.03, Penal Code;
    - (G) manslaughter under Section 19.04, Penal Code;
    - (H) criminally negligent homicide under Section 19.05, Penal Code; or
    - (I) continuous sexual abuse of young child or children under Section 21.02, Penal Code; or
  - (3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 443, Sec. 1

- (b) A student may be expelled if the student:
- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;
  - (2) while on school property or while attending a school-sponsored or school-related activity on or off of school property:
    - (A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

Education Code Chapter 37

- (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
  - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
  - (iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;
- (B) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or
- (C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or
- (3) engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 1055, Sec. 10

(b) A student may be expelled if the student:

- (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;
- (2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
  - (A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:
    - (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
    - (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
    - (iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;
  - (B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;
  - (C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or

## Education Code Chapter 37

- (D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code; or
- (3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:
  - (A) engages in conduct specified by Subsection (a); or
  - (B) possesses a firearm, as defined by 18 U.S.C. Section 921.
- (c) A student may be expelled if the student, while placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.
- (d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.
- (e) In accordance with 20 U.S.C. Section 7151, 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.
- (f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.
- (g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation

listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

- (h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.
- (i) A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:
  - (1) on school property of another district in this state; or
  - (2) while attending a school-sponsored or school-related activity of a school in another district in this state.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 5, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 542, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 486, Sec. 2, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 225, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 443, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1055, Sec. 10, eff. June 20, 2003. [Amended by HB 603, 79th Leg., 2005.]

### **§ Sec. 37.008. Disciplinary Alternative Education Programs**

- (a) Each school district shall provide a disciplinary alternative education program that:
  - (1) is provided in a setting other than a student's regular classroom;
  - (2) is located on or off of a regular school campus;
  - (3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;
  - (4) focuses on English language arts, mathematics, science, history, and self-discipline;
  - (5) provides for students' educational and behavioral needs;
  - (6) provides supervision and counseling;
  - (7) employs only teachers who meet all certification requirements established under Subchapter B, Chapter 21; and
  - (8) provides not less than the minimum amount of instructional time per day required by Section 25.082(a).

## Education Code Chapter 37

- (a-1) The agency shall adopt minimum standards for the operation of disciplinary alternative education programs, including standards relating to:
  - (1) student/teacher ratios;
  - (2) student health and safety;
  - (3) reporting of abuse, neglect, or exploitation of students;
  - (4) training for teachers in behavior management and safety procedures; and
  - (5) planning for a student's transition from a disciplinary alternative education program to a regular campus.
- (a-2) Not later than December 15, 2008, the agency shall deliver a report to the legislature that provides the estimated costs to the agency of enforcing the standards adopted under Subsection (a-1), including the estimated cost of:
  - (1) on-site monitoring to enforce the standards; and
  - (2) alternative methods of monitoring compliance with the standards.
- (a-3) Subsection (a-2) and this subsection expire January 15, 2009.
- (b) A disciplinary alternative education program may provide for a student's transfer to:
  - (1) a different campus;
  - (2) a school-community guidance center; or
  - (3) a community-based alternative school.
- (c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.
- (d) A school district may provide a disciplinary alternative education program jointly with one or more other districts.
- (e) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary alternative education program.
- (f) A student removed to a disciplinary alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.
- (g) A school district shall allocate to a disciplinary alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.
- (h) A school district may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary alternative education program.

## Education Code Chapter 37

- (i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.
- (j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:
  - (1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or
  - (2) the student was placed in a disciplinary alternative education program by a school district in another state and:
    - (A) the out-of-state district provides to the district a copy of the placement order; and
    - (B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.
- (j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:
  - (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007. A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

- (l) A school district is required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. A school district shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The school district may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.
- (m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.
- (m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 6, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.16, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1112, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 631, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1055, Sec. 11, eff. June 20, 2003. [Amended by HB 603, 79th Leg., 2005.]

**§ Sec. 37.0081. Expulsion and Placement of Certain Students in Alternative Settings**

- (a) Subject to Subsection (h), but notwithstanding any other provision of this subchapter, the board of trustees of a school district, or the board's designee,

## Education Code Chapter 37

after an opportunity for a hearing may expel a student and elect to place the student in an alternative setting as provided by Subsection (a-1) if:

- (1) the student:
    - (A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
    - (B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
    - (C) is charged with engaging in conduct defined as a felony offense in Title 5, Penal Code;
    - (D) has been referred to a juvenile court for allegedly engaging in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
    - (E) has received probation or deferred adjudication for a felony offense under Title 5, Penal Code;
    - (F) has been convicted of a felony offense under Title 5, Penal Code; or
    - (G) has been arrested for or charged with a felony offense under Title 5, Penal Code; and
  - (2) the board or the board's designee determines that the student's presence in the regular classroom:
    - (A) threatens the safety of other students or teachers;
    - (B) will be detrimental to the educational process; or
    - (C) is not in the best interests of the district's students.
- (a-1) The student must be placed in:
- (1) a juvenile justice alternative education program, if the school district is located in a county that operates a juvenile justice alternative education program or the school district contracts with the juvenile board of another county for the provision of a juvenile justice alternative education program; or
  - (2) a disciplinary alternative education program.
- (b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.
- (c) The board of trustees or the board's designee may expel the student and order placement in accordance with this section regardless of:
- (1) the date on which the student's conduct occurred;
  - (2) the location at which the conduct occurred;

- (3) whether the conduct occurred while the student was enrolled in the district; or
  - (4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.
- (d) Notwithstanding Section 37.009(c) or (d) or any other provision of this subchapter, a student expelled and ordered placed in an alternative setting by the board of trustees or the board's designee is subject to that placement until:
- (1) the student graduates from high school;
  - (2) the charges described by Subsection (a)(1) are dismissed or reduced to a misdemeanor offense; or
  - (3) the student completes the term of the placement or is assigned to another program.
- (e) A student placed in an alternative setting in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).
- (f) Subsection (d) continues to apply to the student if the student transfers to another school district in the state.
- (g) The board of trustees shall reimburse a juvenile justice alternative education program in which a student is placed under this section for the actual cost incurred each day for the student while the student is enrolled in the program. For purposes of this subsection:
- (1) the actual cost incurred each day for the student is determined by the juvenile board of the county operating the program; and
  - (2) the juvenile board shall determine the actual cost each day of the program based on the board's annual audit.
- (h) To the extent of a conflict between this section and Section 37.007, Section 37.007 prevails.

**§ Sec. 37.0082. Assessment of Academic Growth of Students in Disciplinary Alternative Education Programs**

- (a) To assess a student's academic growth during placement in a disciplinary alternative education program, a school district shall administer to a student placed in a program for a period of 90 school days or longer an assessment instrument approved by the commissioner for that purpose. The instrument shall be administered:
- (1) initially on placement of the student in the program; and
  - (2) subsequently on the date of the student's departure from the program, or as near that date as possible.
- (b) The assessment instrument required by this section:
- (1) must be designed to assess at least a student's basic skills in reading and mathematics;

## Education Code Chapter 37

- (2) may be:
    - (A) comparable to any assessment instrument generally administered to students placed in juvenile justice alternative education programs for a similar purpose; or
    - (B) based on an appropriate alternative assessment instrument developed by the agency to measure student academic growth; and
  - (3) is in addition to the assessment instruments required to be administered under Chapter 39.
- (c) The commissioner shall adopt rules necessary to implement this section.

### **§ Sec. 37.009. Conference; Hearing; Review**

- (a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student for a period consistent with the student code of conduct. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the principal or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:
- (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (b) If a student's placement in a disciplinary alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

## Education Code Chapter 37

- (c) Before it may place a student in a disciplinary alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:
- (1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or
  - (2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.
- (d) The board or the board's designee shall set a term for a student's placement in a disciplinary alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:
- (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (e) A student placed in a disciplinary alternative education program shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(l). At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.
- (f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the school district. If the school district makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located.

## Education Code Chapter 37

- (g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary alternative education program under Section 37.001, 37.002, or 37.006 or expelling the student under Section 37.007.
- (h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001 (a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:
  - (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student. After a school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.
- (i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.
- (j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 7, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 13, eff. June 20, 2003.

### **§ Sec. 37.0091. Notice to Noncustodial Parent**

- (a) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the district or school to a student's parent or guardian.
- (b) A school district or school may not unreasonably deny a request authorized by Subsection (a).

- (c) Notwithstanding any other provision of this section, a school district or school shall comply with any applicable court order of which the district or school has knowledge.

Added by Acts 2003, 78th Leg., ch. 1055, Sec. 14, eff. June 20, 2003.

**§ Sec. 37.010. Court Involvement**

- (a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in a disciplinary alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion, except that in a county with a population greater than 125,000, every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program.
- (b) If a student is expelled under Section 37.007(c), the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.
- (c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in disciplinary alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district disciplinary alternative education program as a condition of probation.
- (d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend a disciplinary alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend a disciplinary alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.
- (e) Any placement in a disciplinary alternative education program by a court under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.
- (f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition

requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to admit the student, but the district may place the student in the disciplinary alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

- (g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a disciplinary alternative education program for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion. A district may take any action permitted by this subsection if the student was expelled by a school district in another state if:
  - (1) the out-of-state district provides to the district a copy of the expulsion order; and
  - (2) the grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.
- (g-1) If a student was expelled by a school district in another state for a period that exceeds one year and a school district in this state continues the expulsion or places the student in a disciplinary alternative education program under Subsection (g), the district shall reduce the period of the expulsion or placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:
  - (1) the student is a threat to the safety of other students or to district employees; or
  - (2) extended placement is in the best interest of the student.
- (h) A person is not liable in civil damages for a referral to juvenile court as required by this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 8, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 15, eff. June 20, 2003.

**§ Sec. 37.011. Juvenile Justice Alternative Education Program**

- (a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county

## Education Code Chapter 37

with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

- (1) is not required to be approved by the Texas Juvenile Probation Commission; and
  - (2) is not subject to Subsection (c), (d), (f), or (g).
- (b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:
- (1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;
  - (2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;
  - (3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and
  - (4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.
- (b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).
- (c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.
- (d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, social studies, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program. The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the

## Education Code Chapter 37

board or the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.

- (e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.
- (f) A juvenile justice alternative education program must operate at least seven hours per day and 180 days per year, except that a program may apply to the Texas Juvenile Probation Commission for a waiver of the 180-day requirement. The commission may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.
- (g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment. A juvenile justice alternative education program is not subject to a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39.
- (h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.
- (i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer

## Education Code Chapter 37

under this section that exceeds the term of any probation ordered by the juvenile court.

- (j) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.
- (k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:
  - (1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;
  - (2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a), (d), or (e);
  - (3) identifies those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which a student may be placed in the juvenile justice alternative education program;
  - (4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;
  - (5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;
  - (6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;
  - (7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and
  - (8) establishes a plan to address special education services required by law.
- (l) The school district shall be responsible for providing an immediate educational program to students who engage in behavior resulting in expulsion under Section 37.007(b), (c), and (f) but who are not eligible for admission into the juvenile justice alternative education program in accordance with the memorandum of understanding required under this section. The school district may provide the program or the school district may contract with a county

## Education Code Chapter 37

juvenile board, a private provider, or one or more other school districts to provide the program. The memorandum of understanding shall address the circumstances under which such students who continue to engage in serious or persistent misbehavior shall be admitted into the juvenile justice alternative education program.

- (m) Each school district in a county with a population greater than 125,000 and the county juvenile board shall adopt a joint memorandum of understanding as required by this section not later than September 1 of each school year.
- (n) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county.
- (o) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.
- (p) If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b), (c), and (f) and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:
  - (1) the actual average total per student expenditure in the district's alternative education setting;
  - (2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and
  - (3) the costs necessary to achieve the accountability goals under this chapter.

- (q) In accordance with rules adopted by the board of trustees for the Teacher Retirement System of Texas, a certified educator employed by a juvenile board in a juvenile justice alternative education program shall be eligible for membership and participation in the system to the same extent that an employee of a public school district is eligible. The juvenile board shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 9, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1282, Sec. 1, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.17, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1225, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 16, eff. June 20, 2003.

**§ Sec. 37.012. Funding of Juvenile Justice Alternative Education Programs**

- (a) Subject to Section 37.011(n), the school district in which a student is enrolled on the date the student is expelled for conduct for which expulsion is permitted but not required under Section 37.007 shall, if the student is served by the juvenile justice alternative education program, provide funding to the juvenile board for the portion of the school year for which the juvenile justice alternative education program provides educational services in an amount determined by the memorandum of understanding under Section 37.011(k)(2).
- (b) Funds received under this section must be expended on juvenile justice alternative education programs.
- (c) The Office of State-Federal Relations shall assist a local juvenile probation department in identifying additional state or federal funds to assist local juvenile probation departments conducting educational or job training programs within juvenile justice alternative education programs.
- (d) A school district is not required to provide funding to a juvenile board for a student who is assigned by a court to a juvenile justice alternative education program but who has not been expelled.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, Sec. 10, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 17, eff. June 20, 2003.

**§ Sec. 37.013. Coordination Between School Districts and Juvenile Boards**

The board of trustees of the school district or the board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located or the juvenile board's designee concerning supervision and rehabilitative services appropriate for expelled students and students assigned to disciplinary

alternative education programs. Matters for discussion shall include service by probation officers at the disciplinary alternative education program site, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 18, eff. June 20, 2003.

**§ Sec. 37.014. Court-Related Children—Liaison Officers**

Each school district shall appoint at least one educator to act as liaison officer for court-related children who are enrolled in the district. The liaison officer shall provide counselling and services for each court-related child and the child's parents to establish or reestablish normal attendance and progress of the child in the school.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**§ Sec. 37.015. Reports to Local Law Enforcement; Liability**

- (a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:
- (1) conduct that may constitute an offense listed under Section 508.149, Government Code;
  - (2) deadly conduct under Section 22.05, Penal Code;
  - (3) a terroristic threat under Section 22.07, Penal Code;
  - (4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;
  - (5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code;
  - (6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or
  - (7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a), (d), or (e).
- (b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.
- (c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.

- (d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.
- (e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.
- (f) A person is not liable in civil damages for reporting in good faith as required by this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 12.05, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1055, Sec. 19, eff. June 20, 2003.

**§ Sec. 37.016. Report of Drug Offenses; Liability**

A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

- (1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;
- (2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
- (3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or
- (4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**§ Sec. 37.017. Destruction of Certain Records**

Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**§ Sec. 37.018. Information for Educators**

Each school district shall provide each teacher and administrator with a copy of this subchapter and with a copy of the local policy relating to this subchapter.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**§ Sec. 37.019. Emergency Placement or Expulsion**

- (a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the 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 the student's classmates to learn, or with the operation of school or a school-sponsored activity.
- (b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.
- (c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.
- (d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 7, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 1055, Sec. 20, eff. June 20, 2003.

**§ Sec. 37.020. Reports Relating to Expulsions and Disciplinary Alternative Education Program Placements**

- (a) In the manner required by the commissioner, each school district shall annually report to the commissioner the information required by this section.
- (b) For each placement in a disciplinary alternative education program established under Section 37.008, the district shall report:
  - (1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;
  - (2) information indicating whether the placement was based on:
    - (A) conduct violating the student code of conduct adopted under Section 37.001;

## Education Code Chapter 37

- (B) conduct for which a student may be removed from class under Section 37.002(b);
  - (C) conduct for which placement in a disciplinary alternative education program is required by Section 37.006; or
  - (D) conduct occurring while a student was enrolled in another district and for which placement in a disciplinary alternative education program is permitted by Section 37.008(j);
- (3) the number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program; and
  - (4) the number of placements that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).
- (c) For each expulsion under Section 37.007, the district shall report:
- (1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;
  - (2) information indicating whether the expulsion was based on:
    - (A) conduct for which expulsion is required under Section 37.007, including information specifically indicating whether a student was expelled on the basis of Section 37.007(e); or
    - (B) conduct for which expulsion is permitted under Section 37.007;
  - (3) the number of full or partial days the student was expelled;
  - (4) information indicating whether:
    - (A) the student was placed in a juvenile justice alternative education program under Section 37.011;
    - (B) the student was placed in a disciplinary alternative education program; or
    - (C) the student was not placed in a juvenile justice or other disciplinary alternative education program; and
  - (5) the number of expulsions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

Added by Acts 1997, 75th Leg., ch. 1015, Sec. 11, eff. June 19, 1997. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 21, eff. June 20, 2003.

### **§ Sec. 37.021. Opportunity to Complete Courses During In-school and Certain Other Placements**

Text of section as added by Acts 2003, 78th Leg., ch. 1055, Sec.22

- (a) If a school district removes a student from the regular classroom and places the student in in-school suspension or another setting other than a disciplinary

alternative education program, the district shall offer the student the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of the removal.

- (b) The district may provide the opportunity to complete courses by any method available, including a correspondence course, distance learning, or summer school.

Added by Acts 2003, 78th Leg., ch. 1055, Sec. 22, eff. June 20, 2003.

For text of section as added by Acts 2003, 78th Leg., ch. 631, Sec. 1, see Sec. 37.021, ante.

**§ Sec. 37.022. Notice of Disciplinary Action**

Text of section as added by Acts 2003, 78th Leg., ch. 631, Sec. 1

- (a) In this section:

- (1) “Disciplinary action” means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.
- (2) “District or school” includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

- (b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.

- (c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.

Added by Acts 2003, 78th Leg., ch. 631, Sec. 1, eff. June 20, 2003.

For text of section as added by Acts 2003, 78th Leg., ch. 1055, Sec. 22, see Sec. 37.021, post.