



Ensuring successful learning environments for all children

More than 20 years ago, Texas AFT launched its campaign to give educators key tools to respond to students who are violent, abusive, or chronically disruptive in the classroom.

The Texas Legislature responded in 1995 with the Safe Schools Act,¹ part of the Education Code. This law endows teachers (and bus drivers) with significant authority to help make our schools safe and orderly.

Appropriate use of this authority helps ensure that all students, including those who engage in misconduct, receive educational services in a safe and orderly setting that meets their needs.

However, the law is not self-enforcing. You must take steps to use it and ensure that administrators follow it.

This guide will help you navigate the key provisions of the law and help you determine what part of the statute may be applicable to your situation. To make effective use of the law, be sure to document thoroughly the student misconduct that calls for disciplinary action, and consult your union representative for assistance.

Remember: Documentation is the key to successful use of this law. Remember also that you are responsible for safeguarding confidential information about students' discipline issues, and you put your certificate at risk if you do not maintain confidentiality.

Basic Information

How does state law shape local district discipline policy?

The law² requires your local school district to adopt a student code of conduct that complies with state standards for disciplinary removal of a student from a classroom; transfer of a student to a disciplinary alternative education program; and suspension or expulsion.

In case of any conflict between the state law and the local code of conduct, the state law prevails. For example, the local code of conduct cannot reduce the authority granted to

teachers by state law to remove disruptive students.

What removal options are included in the Safe Schools Act?

The law does more than just affirm your authority to send a student to the office for appropriate discretionary discipline. It gives teachers the power to initiate the formal removal of a student from the classroom, triggering important legal consequences and requirements.

The three options are:

◆ **Discretionary Removal**

The state allows a teacher to remove a student from her classroom for repeatedly or seriously interfering with instruction.

◆ **Mandatory Removal and Placement in a Disciplinary Alternative Educational Program**

The state mandates removal of a student and placement in a disciplinary alternative education program (DAEP) for more serious misconduct like assault causing bodily injury.

◆ **Mandatory Removal and Expulsion**

The state mandates removal, expulsion, and referral to the juvenile justice system for the gravest offenses—including aggravated assault and bringing a gun to school.

Grounds for Removal

Discretionary Removal

It allows a teacher to remove a student:

- (1) "who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn;" or
- (2) "whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn."³

Mandatory Removal to Disciplinary Alternative Education Program

The law requires that a teacher "shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate," a student who engages in various types of serious misconduct:⁴

Placement in a DAEP is required for any student who commits:

- Any of the following acts committed on or within 300 feet

of school property or at a school-related event—

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

Expulsion to Juvenile-Justice Alternative Education Program (JJAEP)

The law mandates expulsion and referral to the juvenile-justice system for certain actions committed on school property or at a school event.⁵ These actions are:

- (1) unlawfully carrying weapons and actions involving prohibited weapons;
- (2) aggravated assault, sexual assault, arson, murder, attempted murder, indecency with a child, aggravated kidnapping, aggravated robbery, manslaughter, criminally negligent homicide, continuous sexual abuse of a young child; or
- (3) felony offenses involving alcoholic beverages or illegal drugs.

In addition, expulsion is mandatory regardless of where the misconduct occurred if any of the foregoing types of offenses is committed in retaliation against a school employee.

The law also allows school districts to expel a student for:

- (1) documented serious misbehavior while on a DAEP campus despite documented behavioral interventions (serious misbehavior means deliberate violent behavior posing a direct threat to others’ health or safety; extortion; coercion; public lewdness; indecent exposure; criminal mischief; harassment; or personal hazing).⁶
- (2) felony criminal mischief;
- (3) misdemeanor drug and alcohol offenses at school;
- (4) assault on a school employee or volunteer causing bodily injury;

- (5) false report (for example, a bomb threat) or terroristic threat;
- (6) deadly conduct;
- (7) conduct occurring within 300 feet of school property that would trigger automatic expulsion if it occurred on campus or that involved possession of a firearm;
- (8) aggravated assault, sexual assault, murder, attempted murder of another student wherever it occurs;
- (9) breach of computer security; or
- (10) conduct occurring on school property or at a school-related event in another school district that would trigger expulsion if it occurred in the student’s district.

The Removal Process

How do I initiate discretionary removal from my classroom?

- (1) Gather all documentation detailing incidents that show repeated interference or behavior so unruly, disruptive, or abusive that you have determined it seriously interferes with teaching and learning (keep a detailed and organized log).
- (2) Draft a letter to your administration stating you are using your authority under Education Code Section 37.002 to remove a student from your class immediately.

It is suggested you use the sample letter for discretionary removal found on page 11. It can also be found, along with a sample reporting form, at www.texasaft.org/safeschools.

- (3) Consult your local union representative to make sure you are meeting all requirements of the law.
- (4) Deliver to your campus behavior coordinator the written statement that you are using your discretionary removal authority, along with a copy of your documentation.
- (5) If the campus behavior coordinator does not comply by removing the student immediately, contact your union representative for assistance in securing compliance with the law.

What happens when you initiate a student’s formal removal under the discretionary provision?

The student must be immediately removed from the teacher’s class. The campus behavior coordinator has the following options for deciding where that student will be placed:

- (1) another regular classroom
- (2) in-school suspension
- (3) DAEP
- (4) three-day suspension from school.

How do I initiate mandatory removal from my classroom?

Follow the same steps as for discretionary removal, but use the separate sample letter for initiating a mandatory removal. See page 11.

What happens when a student is removed under the mandatory DAEP placement provision?

Each school district must place such students in a DAEP outside the regular classroom and separate from students in the regular program. The alternative program may be on or off of a regular campus.

What happens when a student is removed under the mandatory expulsion provision?

The student must be placed in a JJAEP or equivalent setting, unless under 10, in which case DAEP is the destination.

When can a student return to the removing teacher's class?

Discretionary Removal: The student cannot be returned to the removing teacher's class without the teacher's consent—unless the teacher is overruled by a placement review committee (see next Q&A) that determines such placement is the best or only alternative available.

Mandatory Removal/DAEP

Placement: The law bars the student's return to the classroom of the teacher who removed the student, unless that teacher consents. The teacher's consent may not be coerced.⁷

A student who assaults a teacher cannot be returned to that teacher's classroom without consent, even if no DAEP placement occurred.⁸

Mandatory Removal/ Expulsion:

A student who is expelled may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent, and the teacher may not be coerced to consent. The placement review committee cannot override the teacher's refusal of consent.⁹

What is the Placement Review Committee?

Following the formal exercise of removal authority by the teacher, the principal cannot return the student to the teacher's classroom unless the teacher consents or a placement review committee determines that the return is necessary because the teacher's classroom is the best or only alternative available.¹⁰

Each school must establish a three-member committee with two teachers (and one alternate) chosen by the campus faculty to serve as members. One member is chosen by the principal from the professional staff of the campus.¹¹

Due Process

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

The principal must schedule a conference no later than the third class day after the day of removal. The student may not be returned to the regular classroom before the conference.

The student is entitled to notice of the reasons for removal and an opportunity to respond. In addition to the student, those entitled to attend are: the student's parent or guardian; the teacher who removed the student; and the campus behavior coordinator.

Whether these individuals attend or not, the campus behavior coordinator must then order the student's placement for a period consistent with the local code of conduct.

To expel a student, the board or its designee must provide the student a hearing with constitutional due process. The student's parent or guardian must be invited, in writing, to attend. The board's decision can be appealed to district court.¹²

Bus Drivers

Removal Authority

The law requires every school district to specify the circumstances under which a student may be removed from a school bus.

It grants the school bus driver explicit authority to remove a student by sending that student to the principal's office to maintain effective discipline on the school bus.

And it requires the principal to respond by employing appropriate discipline management techniques consistent with the student code of conduct.¹³

This authority provides a mechanism to compel administrative attention and action regarding misconduct that jeopardizes student safety on school buses.

Special Cases

Students with Disabilities

A student who receives special education services is subject to the same state standards triggering removal from class, but long-term (more than ten days) placement of such a student can only be made by an Admission, Review, and Dismissal (ARD) committee.¹⁴

Emergencies

The law allows a principal to order emergency alternative

placement in a DAEP or expulsion without prior due process. In either case, the principal must give the student the same due process as in other removals, not later than ten days after taking the action.¹⁵

Access to Information Regarding Student Misconduct

Misconduct Notice

A teacher responsible for a student's instruction and that teacher's instructional aide are entitled to be notified by the principal or the principal's designee of any misconduct by a student that is listed as grounds for mandatory removal from the classroom of the teacher.¹⁶

Arrest/Conviction Reports

What notice must school personnel receive when a law enforcement agency arrests or refers a student to juvenile jurisdiction for a felony?

- (1) The superintendent must be notified of the arrest or juvenile referral before the next school day, or within 24 hours, whichever is less.
- (2) The superintendent must "immediately notify all instructional and support personnel who have responsibility for supervision of the student."¹⁷
- (3) The superintendent also must be notified before the next school day, or within 24 hours, whichever is less, when a student has been convicted or adjudicated delinquent for a felony or certain other offenses, and the notice must indicate whether the student is required to register as a sex offender.¹⁸
- (4) The superintendent must, "within 24 hours of receiving notification from the office of the prosecuting attorney, or before the next school day, whichever is earlier, notify all instructional and support personnel who have regular contact with the student."
- (5) The superintendent must send the full written information received, including details of violent behavior or weapons used, to all district employees with direct supervisory responsibility over the student.
- (6) These notice requirements apply to all felonies and to specified misdemeanor offenses: unlawful restraint; indecent exposure; assault; deadly conduct; terroristic threat; gang-related offenses; drug offenses; or weapon offenses.

Confidentiality

Personnel who receive confidential information may not disclose the information to unauthorized persons.¹⁹

Unauthorized, intentional disclosure is a misdemeanor, punishable by a fine. Unauthorized disclosure also is a potential ethics violation subject to certificate sanctions.²⁰

Resources

Trainings

Texas AFT offers trainings on use of the Safe Schools Act and removal authority for teachers and bus drivers.

Also available are guidance documents for districts on the steps needed to implement bus driver removal authority.

Contact your local union or the state office at 512-448-0130 to schedule a training in your district.

Note: This booklet was created in August of 2016. Because the Legislature often makes changes in the law, we encourage you to check the Texas AFT website for possible updates if you're reading this after the 2017 legislative session

1 Chapter 37, Subchapter A, Section 37.001 et seq.

2 Section 37.001(a)

3 Section 37.002(b)

4 Section 37.002(d)

5 Section 37.007(a)

6 Section 37.007(c)

7 Section 37.009(e)

8 Section 37.002(d)

9 Section 37.010(f)

10 Section 37.002

11 Section 37.003. Also the teacher who petitioned for the removal cannot be a member of the committee

12 Section 37.009.

13 Sections 37.001 and 37.0022

14 Section 37.004(a)

15 Section 37.019

16 Section 37.006(o)

17 Article 15.27(a), Texas Code of Criminal Procedure

18 Article 15.27(b), Texas Code of Criminal Procedure

19 Article 15.27 (a), Texas Code of Criminal Procedure

20 Article 15.27, Texas Code of Criminal Procedure



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Sample Letters for Discretionary and Mandatory Removal

Discretionary

To: Campus Behavior Coordinator

From:

Date:

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

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

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

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

(AND/OR)

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

Mandatory

To: Campus Behavior Coordinator

From:

Date:

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

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

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

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