

By: Dawson

H.B. No. 2707

A BILL TO BE ENTITLED

AN ACT

relating to alternative education programs and juvenile justice
alternative education programs for public school students.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 37.001(a), Education Code, is amended to
read as follows:

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Section 11.251, 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 alternative education program;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to an alternative education program; and

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007.

SECTION 2. The heading to Section 37.0021, Education Code,

1 is amended to read as follows:

2 Sec. 37.0021. USE OF CONFINEMENT, RESTRAINT, SECLUSION, AND
3 TIME-OUT FOR STUDENT WITH DISABILITY.

4 SECTION 3. Section 37.0021, Education Code, is amended by
5 amending Subsections (a)-(d) and adding Subsections (d-1) and (g)
6 to read as follows:

7 (a) It is the policy of this state to treat with dignity and
8 respect all students with disabilities who receive special
9 education services [~~with dignity and respect~~]. A student with a
10 disability who receives special education services may not be
11 confined in a locked box, locked closet, or other specially
12 designed locked space as either a discipline management practice or
13 a behavior management technique.

14 (b) In this section:

15 (1) "Restraint" means the use of physical force or a
16 mechanical device to restrict the free movement of all or a portion
17 of a student's body.

18 (2) "Seclusion" means a behavior management technique
19 in which a student is confined in a locked box, locked closet, or
20 locked room that:

21 (A) is designed solely to seclude a person; and

22 (B) contains less than 50 square feet of space.

23 (3) "Time-out" means a behavior management technique
24 in which, to provide a student with an opportunity to regain
25 self-control, the student is separated from other students for a
26 limited period in a setting[+]

27 [~~(A)~~] that is not locked[~~, and~~

1 [~~(B) from which the student is not physically~~
2 ~~prevented from leaving~~].

3 (c) A school district employee or volunteer or an
4 independent contractor of a district may not place [~~a student~~] in
5 seclusion a student with a disability who receives special
6 education services. This subsection does not apply to the use of
7 seclusion in a court-ordered placement or in a placement or
8 facility to which the following law, rules, or regulations apply:

9 (1) the Children's Health Act of 2000, Pub. L. No.
10 106-310, any subsequent amendments to that Act, any regulations
11 adopted under that Act, or any subsequent amendments to those
12 regulations;

13 (2) 40 T.A.C. Sections 720.1001-720.1013; or

14 (3) 25 T.A.C. Section 412.308(e).

15 (d) The commissioner by rule shall adopt procedures for the
16 use of restraint and time-out by a school district employee or
17 volunteer or an independent contractor of a district in the case of
18 a student with a disability receiving special education services
19 [~~under Subchapter A, Chapter 29~~]. The procedures must impose
20 reasonable documentation and reporting requirements regarding use
21 of restraint and time-out and must allow a parent or guardian to
22 waive in writing any reporting requirement that otherwise entitles
23 the parent or guardian to notice of the use of restraint or
24 time-out. Additionally, each [A] procedure adopted under this
25 subsection must:

26 (1) be consistent with:

27 (A) professionally accepted practices and

1 standards of student discipline and techniques for behavior
2 management; and

3 (B) relevant health and safety standards; and

4 (2) identify any discipline management practice or
5 behavior management technique that requires a district employee or
6 volunteer or an independent contractor of a district to be trained
7 before using that practice or technique.

8 (d-1) Subsection (d) and any rules or procedures adopted
9 under that subsection do not:

10 (1) preclude a school district employee, volunteer, or
11 other agent or an independent contractor of a district from using
12 reasonable force in self-defense or to protect students or other
13 persons from assault or other imminent, serious physical harm; or

14 (2) apply to restraint or time-out administered in
15 accordance with a student's individualized education program
16 developed under Section 29.005 if the student's parent or guardian
17 agrees to the provisions in the individualized education program
18 that address the role, manner, and use of restraint and time-out.

19 (g) This section and any rules or procedures adopted under
20 this section do not apply to:

21 (1) law enforcement personnel;

22 (2) school security personnel; or

23 (3) an educational services provider with whom a
24 student is placed by a judicial authority.

25 SECTION 4. Section 37.003, Education Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) The committee's placement determination regarding a

1 student with a disability who receives special education services
2 is subject to the requirements of the Individuals with Disabilities
3 Education Act (20 U.S.C. Section 1400 et seq.) and federal
4 regulations, state statutes, and agency requirements necessary to
5 carry out federal law or regulations or state law relating to
6 special education.

7 SECTION 5. Section 37.005(a), Education Code, is amended to
8 read as follows:

9 (a) The principal or other appropriate administrator may
10 suspend a student for any ~~[who engages in]~~ conduct identified in the
11 student code of conduct adopted under Section 37.001 as conduct for
12 which a student may be suspended ~~[for which the student may be~~
13 ~~placed in an alternative education program under this subchapter].~~

14 SECTION 6. Sections 37.006(a)-(d) and (l), Education Code,
15 are amended to read as follows:

16 (a) Except as provided by Section 37.007(a)(3) or (b), a
17 student shall be removed from class and placed in an alternative
18 education program as provided by Section 37.008 if the student:

19 (1) engages in conduct involving a public school that
20 contains the elements of the offense of false alarm or report under
21 Section 42.06, Penal Code, or terroristic threat under Section
22 22.07, Penal Code; or

23 (2) commits the following on or within 300 feet of
24 school property, as measured from any point on the school's real
25 property boundary line, or while at a school bus stop or while
26 attending a school-sponsored or school-related activity on or off
27 of school property:

1 (A) engages in conduct punishable as a felony;

2 (B) engages in conduct that contains the elements
3 of the offense of assault under Section 22.01(a)(1), Penal Code;

4 (C) sells, gives, or delivers to another person
5 or possesses or uses or is under the influence of:

6 (i) marihuana or a controlled substance, as
7 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
8 Section 801 et seq.; or

9 (ii) a dangerous drug, as defined by
10 Chapter 483, Health and Safety Code;

11 (D) sells, gives, or delivers to another person
12 an alcoholic beverage, as defined by Section 1.04, Alcoholic
13 Beverage Code, commits a serious act or offense while under the
14 influence of alcohol, or possesses, uses, or is under the influence
15 of an alcoholic beverage;

16 (E) engages in conduct that contains the elements
17 of an offense relating to an abusable volatile chemical [~~glue or~~
18 ~~aerosol paint~~] under Sections 485.031 through 485.034 [~~485.035~~],
19 Health and Safety Code [~~, or relating to volatile chemicals under~~
20 ~~Chapter 484, Health and Safety Code~~]; or

21 (F) engages in conduct that contains the elements
22 of the offense of public lewdness under Section 21.07, Penal Code,
23 or indecent exposure under Section 21.08, Penal Code.

24 (b) Except as provided by Section 37.007(d), a student shall
25 be removed from class and placed in an alternative education
26 program under Section 37.008 if the student engages in conduct on or
27 off of school property that contains the elements of the offense of

1 retaliation under Section 36.06, Penal Code, against any school
2 employee.

3 (c) In addition to Subsections [~~Subsection~~] (a) and (b), a
4 student shall be removed from class and placed in an alternative
5 education program under Section 37.008 based on conduct occurring
6 off campus and while the student is not in attendance at a
7 school-sponsored or school-related activity if:

8 (1) the student receives deferred prosecution under
9 Section 53.03, Family Code, for conduct defined as a felony offense
10 in Title 5, Penal Code;

11 (2) a court or jury finds that the student has engaged
12 in delinquent conduct under Section 54.03, Family Code, for conduct
13 defined as a felony offense in Title 5, Penal Code; or

14 (3) the superintendent or the superintendent's
15 designee has a reasonable belief that the student has engaged in a
16 conduct defined as a felony offense in Title 5, Penal Code.

17 (d) In addition to Subsections [~~Subsection~~] (a), (b), and
18 (c), a student may be removed from class and placed in an
19 alternative education program under Section 37.008 based on conduct
20 occurring off campus and while the student is not in attendance at a
21 school-sponsored or school-related activity if:

22 (1) the superintendent or the superintendent's
23 designee has a reasonable belief that the student has engaged in
24 conduct defined as a felony offense other than those defined in
25 Title 5, Penal Code; and

26 (2) the continued presence of the student in the
27 regular classroom threatens the safety of other students or

1 teachers or will be detrimental to the educational process.

2 (1) Notwithstanding any other provision of this code, other
3 than Section 37.007(e)(2), a student who is younger than six years
4 of age may not be removed from class and placed in an alternative
5 education program.

6 SECTION 7. Sections 37.007(a), (b), and (g), Education
7 Code, are amended to read as follows:

8 (a) A student shall be expelled from a school if the
9 student, on or within 300 feet of school property, as measured from
10 any point on the school's real property boundary line, or while at a
11 school bus stop or while attending a school-sponsored or
12 school-related activity on or off of school property:

13 (1) uses, exhibits, or possesses:

14 (A) a firearm as defined by Section 46.01(3),
15 Penal Code;

16 (B) an illegal knife as defined by Section
17 46.01(6), Penal Code, or by local policy;

18 (C) a club as defined by Section 46.01(1), Penal
19 Code; or

20 (D) a weapon listed as a prohibited weapon under
21 Section 46.05, Penal Code;

22 (2) engages in conduct that contains the elements of
23 the offense of:

24 (A) aggravated assault under Section 22.02,
25 Penal Code, sexual assault under Section 22.011, Penal Code, or
26 aggravated sexual assault under Section 22.021, Penal Code;

27 (B) arson under Section 28.02, Penal Code;

1 (C) murder under Section 19.02, Penal Code,
2 capital murder under Section 19.03, Penal Code, or criminal
3 attempt, under Section 15.01, Penal Code, to commit murder or
4 capital murder;

5 (D) indecency with a child under Section 21.11,
6 Penal Code; [~~or~~]

7 (E) aggravated kidnapping under Section 20.04,
8 Penal Code;

9 (F) manslaughter under Section 19.04, Penal
10 Code; or

11 (G) criminally negligent homicide under Section
12 19.05, Penal Code; or

13 (3) engages in conduct specified by Section
14 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

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

16 (1) engages in conduct involving a public school that
17 contains the elements of the offense of false alarm or report under
18 Section 42.06, Penal Code, or terroristic threat under Section
19 22.07, Penal Code; or

20 (2) while on or within 300 feet of school property, as
21 measured from any point on the school's real property boundary
22 line, or while at a school bus stop or while attending a
23 school-sponsored or school-related activity on or off of school
24 property:

25 (A) sells, gives, or delivers to another person
26 or possesses, uses, or is under the influence of any amount of:

27 (i) marihuana or a controlled substance, as

1 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
2 Section 801 et seq.;

3 (ii) a dangerous drug, as defined by
4 Chapter 483, Health and Safety Code; or

5 (iii) an alcoholic beverage, as defined by
6 Section 1.04, Alcoholic Beverage Code;

7 (B) engages in conduct that contains the elements
8 of an offense relating to an abusable volatile chemical [~~glue or~~
9 ~~aerosol paint~~] under Sections 485.031 through 485.034 [~~485.035~~],
10 Health and Safety Code[~~, or relating to volatile chemicals under~~
11 ~~Chapter 484, Health and Safety Code~~]; [~~or~~]

12 (C) engages in conduct that contains the elements
13 of an offense under Section 22.01(a)(1), Penal Code, against a
14 school district employee or a volunteer as defined by Section
15 22.053; or

16 (D) engages in conduct that contains the elements
17 of the offense of deadly conduct under Section 22.05, Penal Code.

18 (g) A school district shall inform each teacher who has
19 regular contact with a student through a classroom assignment of
20 the conduct of a student who has engaged in any violation listed in
21 this section. A teacher shall keep the information received in this
22 subsection confidential. The State Board for Educator
23 Certification may revoke or suspend the certification of a teacher
24 who intentionally violates this subsection.

25 SECTION 8. Section 37.009(a), Education Code, is amended to
26 read as follows:

27 (a) Not later than the third class day after the day on which

1 a student is removed from class by the teacher under Section
2 37.002(b) or (d) or by the school principal or other appropriate
3 administrator under Section 37.006, the principal or other
4 appropriate administrator shall schedule a conference among the
5 principal or other appropriate administrator, a parent or guardian
6 of the student, the teacher removing the student from class, if any,
7 and the student. At the conference, the student is entitled to
8 written or oral notice of the reasons for the removal, an
9 explanation of the basis for the removal, and an opportunity to
10 respond to the reasons for the removal. The student may not be
11 returned to the regular classroom pending the conference.
12 Following the conference, and whether or not each requested person
13 is in attendance after valid attempts to require the person's
14 attendance, the principal shall order the placement of the student
15 as provided by Section 37.002 or 37.006, as applicable, for a period
16 consistent with the student code of conduct. If school district
17 policy allows a student to appeal to the board of trustees or the
18 board's designee a decision of the principal or other appropriate
19 administrator, other than an expulsion under Section 37.007, the
20 decision of the board or the board's designee is final and may not
21 be appealed.

22 SECTION 9. Section 37.011, Education Code, is amended by
23 amending Subsection (b) and adding Subsection (b-1) to read as
24 follows:

25 (b) If a student admitted into the public schools of a
26 school district under Section 25.001(b) is expelled from school
27 under Section 37.007(a), (d), or (e), the juvenile court, the

1 juvenile board, or the juvenile board's designee, as appropriate,
2 shall:

3 (1) if the student is placed on probation under
4 Section 54.04, Family Code, order the student to attend the
5 juvenile justice alternative education program in the county in
6 which the student resides from the date of disposition as a
7 condition of probation, unless the child is placed in a
8 post-adjudication treatment facility;

9 (2) if the student is placed on deferred prosecution
10 under Section 53.03, Family Code, by the court, prosecutor, or
11 probation department, require the student to immediately attend the
12 juvenile justice alternative education program in the county in
13 which the student resides for a period not to exceed six months as a
14 condition of the deferred prosecution; ~~and~~

15 (3) in determining the conditions of the deferred
16 prosecution or court-ordered probation, consider the length of the
17 school district's expulsion order for the student; and

18 (4) provide educational services to the student in the
19 juvenile justice alternative education program in the county in
20 which the student resides.

21 (b-1) For purposes of this chapter, a juvenile court or
22 juvenile board, as appropriate, has jurisdiction and authority over
23 each student, regardless of age, who is placed in a juvenile justice
24 alternative education program.

25 SECTION 10. Section 37.001(b), Education Code, is repealed.

26 SECTION 11. This Act applies beginning with the 2003-2004
27 school year.

1 SECTION 12. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2003.