

By: Janek

S.B. No. 1548

A BILL TO BE ENTITLED

AN ACT

relating to public school student discipline.

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

SECTION 1. Subsection (a), Section 37.001, 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. Section 37.0021, Education Code, is amended by amending Subsections (a) through (d) and adding Subsection (g) to

1 read as follows:

2 (a) It is the policy of this state to treat with dignity and
3 respect all students, including students with disabilities who
4 receive special education services under Subchapter A, Chapter 29
5 [with dignity and respect]. A student with a disability who
6 receives special education services under Subchapter A, Chapter 29,
7 may not be confined in a locked box, locked closet, or other
8 specially designed locked space as either a discipline management
9 practice or a behavior management technique.

10 (b) In this section:

11 (1) "Restraint" means the use of physical force or a
12 mechanical device to significantly restrict the free movement of
13 all or a portion of a student's body.

14 (2) "Seclusion" means a behavior management technique
15 in which a student is confined in a locked box, locked closet, or
16 locked room that:

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

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

19 (3) "Time-out" means a behavior management technique
20 in which, to provide a student with an opportunity to regain
21 self-control, the student is separated from other students for a
22 limited period in a setting:

23 (A) that is not locked; and

24 (B) from which the exit ~~[student]~~ is not
25 physically blocked by furniture, a closed door held shut from the
26 outside, or another inanimate object ~~[prevented from leaving]~~.

27 (c) A school district employee or volunteer or an

1 independent contractor of a district may not place a student in
2 seclusion. This subsection does not apply to the use of seclusion
3 in a court-ordered placement, other than a placement in an
4 educational program of a school district, or in a placement or
5 facility to which the following law, rules, or regulations apply:

6 (1) the Children's Health Act of 2000, Pub. L. No.
7 106-310, any subsequent amendments to that Act, any regulations
8 adopted under that Act, or any subsequent amendments to those
9 regulations;

10 (2) 40 T.A.C. Sections 720.1001-720.1013; or

11 (3) 25 T.A.C. Section 412.308(e).

12 (d) The commissioner by rule shall adopt procedures for the
13 use of restraint and time-out by a school district employee or
14 volunteer or an independent contractor of a district in the case of
15 a student with a disability receiving special education services
16 under Subchapter A, Chapter 29. A procedure adopted under this
17 subsection must:

18 (1) be consistent with:

19 (A) professionally accepted practices and
20 standards of student discipline and techniques for behavior
21 management; and

22 (B) relevant health and safety standards; and

23 (2) identify any discipline management practice or
24 behavior management technique that requires a district employee or
25 volunteer or an independent contractor of a district to be trained
26 before using that practice or technique.

27 (g) This section and any rules or procedures adopted under

1 this section do not apply to:

2 (1) a peace officer while performing law enforcement
3 duties;

4 (2) juvenile probation, detention, or corrections
5 personnel; or

6 (3) an educational services provider with whom a
7 student is placed by a judicial authority, unless the services are
8 provided in an educational program of a school district.

9 SECTION 3. Section 37.003, Education Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) The committee's placement determination regarding a
12 student with a disability who receives special education services
13 under Subchapter A, Chapter 29, is subject to the requirements of
14 the Individuals with Disabilities Education Act (20 U.S.C. Section
15 1400 et seq.) and federal regulations, state statutes, and agency
16 requirements necessary to carry out federal law or regulations or
17 state law relating to special education.

18 SECTION 4. Subsection (a), Section 37.005, Education Code,
19 is amended to read as follows:

20 (a) The principal or other appropriate administrator may
21 suspend a student who engages in conduct identified in the student
22 code of conduct adopted under Section 37.001 as conduct for which a
23 student may be suspended [~~for which the student may be placed in an~~
24 ~~alternative education program under this subchapter~~].

25 SECTION 5. Subsections (b), (c), (d), and (l), Section
26 37.006, Education Code, are amended to read as follows:

27 (b) Except as provided by Section 37.007(d), a student shall

1 be removed from class and placed in an alternative education
2 program under Section 37.008 if the student engages in conduct on or
3 off of school property that contains the elements of the offense of
4 retaliation under Section 36.06, Penal Code, against any school
5 employee.

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

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

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

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

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

25 (1) the superintendent or the superintendent's
26 designee has a reasonable belief that the student has engaged in
27 conduct defined as a felony offense other than those defined in

1 Title 5, Penal Code; and

2 (2) the continued presence of the student in the
3 regular classroom threatens the safety of other students or
4 teachers or will be detrimental to the educational process.

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

9 SECTION 6. Subsections (a), (b), and (g), Section 37.007,
10 Education Code, are amended to read as follows:

11 (a) A student shall be expelled from a school if the
12 student, on school property or while attending a school-sponsored
13 or school-related activity on or off of school property:

14 (1) uses, exhibits, or possesses:

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

17 (B) an illegal knife as defined by Section
18 46.01(6), Penal Code, or by local policy;

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

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

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

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

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

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

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

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

10 (F) aggravated robbery under Section 29.03,
11 Penal Code;

12 (G) manslaughter under Section 19.04, Penal
13 Code; or

14 (H) criminally negligent homicide under Section
15 19.05, Penal Code; or

16 (3) engages in conduct specified by Section
17 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

18 (b) A student may be expelled 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) while on or within 300 feet of school property, as
24 measured from any point on the school's real property boundary
25 line, or while attending a school-sponsored or school-related
26 activity on or off of school property:

27 (A) sells, gives, or delivers to another person

1 or possesses, uses, or is under the influence of any amount of:

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

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

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

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

14 (C) engages in conduct that contains the elements
15 of an offense under Section 22.01(a)(1), Penal Code, against a
16 school district employee or a volunteer as defined by Section
17 22.053; or

18 (D) engages in conduct that contains the elements
19 of the offense of deadly conduct under Section 22.05, Penal Code; or

20 (3) subject to Subsection (d), while within 300 feet
21 of school property, as measured from any point on the school's real
22 property boundary line:

23 (A) engages in conduct specified by Subsection
24 (a); or

25 (B) possesses a firearm, as defined by 18 U.S.C.
26 Section 921.

27 (g) A school district shall inform each teacher who has

1 regular contact with a student through a classroom assignment of
2 the conduct of a student who has engaged in any violation listed in
3 this section. A teacher shall keep the information received in this
4 subsection confidential. The State Board for Educator
5 Certification may revoke or suspend the certification of a teacher
6 who intentionally violates this subsection.

7 SECTION 7. Subsection (a), Section 37.009, Education Code,
8 is amended to read as follows:

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

1 administrator, other than an expulsion under Section 37.007, the
2 decision of the board or the board's designee is final and may not
3 be appealed.

4 SECTION 8. Subchapter A, Chapter 37, Education Code, is
5 amended by adding Section 37.0091 to read as follows:

6 Sec. 37.0091. NOTICE TO NONCUSTODIAL PARENT. (a) A
7 noncustodial parent may request in writing that a school district
8 or school, for the remainder of the school year in which the request
9 is received, provide that parent with a copy of any written
10 notification relating to student misconduct under Section 37.006 or
11 37.007 that is generally provided by the district or school to a
12 student's parent or guardian.

13 (b) A school district or school may not unreasonably deny a
14 request authorized by Subsection (a).

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

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

21 (b) If a student admitted into the public schools of a
22 school district under Section 25.001(b) is expelled from school
23 under Section 37.007(a), (d), or (e), the juvenile court, the
24 juvenile board, or the juvenile board's designee, as appropriate,
25 shall:

26 (1) if the student is placed on probation under
27 Section 54.04, Family Code, order the student to attend the

1 juvenile justice alternative education program in the county in
2 which the student resides from the date of disposition as a
3 condition of probation, unless the child is placed in a
4 post-adjudication treatment facility;

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

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

14 (4) provide timely educational services to the student
15 in the juvenile justice alternative education program in the county
16 in which the student resides, regardless of the student's age or
17 whether the juvenile court has jurisdiction over the student.

18 (b-1) Subsection (b)(4) does not require that educational
19 services be provided to a student who is not entitled to admission
20 into the public schools of a school district under Section
21 25.001(b).

22 SECTION 10. Subsection (a), Section 37.015, Education Code,
23 is amended to read as follows:

24 (a) The principal of a public or private primary or
25 secondary school, or a person designated by the principal under
26 Subsection (d), shall notify any school district police department
27 and the police department of the municipality in which the school is

1 located or, if the school is not in a municipality, the sheriff of
2 the county in which the school is located if the principal has
3 reasonable grounds to believe that any of the following activities
4 occur in school, on school property, or at a school-sponsored or
5 school-related activity on or off school property, whether or not
6 the activity is investigated by school security officers:

7 (1) conduct that may constitute an offense listed
8 under Section 508.149, Government Code;

9 (2) deadly conduct under Section 22.05, Penal Code;

10 (3) a terroristic threat under Section 22.07, Penal
11 Code;

12 (4) the use, sale, or possession of a controlled
13 substance, drug paraphernalia, or marihuana under Chapter 481,
14 Health and Safety Code;

15 (5) the possession of any of the weapons or devices
16 listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal
17 Code; ~~or~~

18 (6) conduct that may constitute a criminal offense
19 under Section 71.02, Penal Code; or

20 (7) conduct that may constitute a criminal offense for
21 which a student may be expelled under Section 37.007(a), (d), or
22 (e).

23 SECTION 11. Subsection (b), Section 37.001, Education Code,
24 is repealed.

25 SECTION 12. This Act applies beginning with the 2003-2004
26 school year.

27 SECTION 13. This Act takes effect immediately if it

S.B. No. 1548

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