

1-1 By: Janek S.B. No. 1548  
1-2 (In the Senate - Filed March 14, 2003; March 20, 2003, read  
1-3 first time and referred to Committee on Education; April 25, 2003,  
1-4 reported adversely, with favorable Committee Substitute by the  
1-5 following vote: Yeas 8, Nays 0; April 25, 2003, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1548 By: Janek

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to public school student discipline.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 37.001, Education Code,  
1-12 is amended to read as follows:

1-13 (a) The board of trustees of an independent school district  
1-14 shall, with the advice of its district-level committee established  
1-15 under Section 11.251, adopt a student code of conduct for the  
1-16 district. The student code of conduct must be posted and  
1-17 prominently displayed at each school campus or made available for  
1-18 review at the office of the campus principal. In addition to  
1-19 establishing standards for student conduct, the student code of  
1-20 conduct must:

1-21 (1) specify the circumstances, in accordance with this  
1-22 subchapter, under which a student may be removed from a classroom,  
1-23 campus, or alternative education program;

1-24 (2) specify conditions that authorize or require a  
1-25 principal or other appropriate administrator to transfer a student  
1-26 to an alternative education program; and

1-27 (3) outline conditions under which a student may be  
1-28 suspended as provided by Section 37.005 or expelled as provided by  
1-29 Section 37.007.

1-30 SECTION 2. Section 37.0021, Education Code, is amended by  
1-31 amending Subsections (a) through (d) and adding Subsection (g) to  
1-32 read as follows:

1-33 (a) It is the policy of this state to treat with dignity and  
1-34 respect all students, including students with disabilities who  
1-35 receive special education services under Subchapter A, Chapter 29  
1-36 [with dignity and respect]. A student with a disability who  
1-37 receives special education services under Subchapter A, Chapter 29,  
1-38 may not be confined in a locked box, locked closet, or other  
1-39 specially designed locked space as either a discipline management  
1-40 practice or a behavior management technique.

1-41 (b) In this section:

1-42 (1) "Restraint" means the use of physical force or a  
1-43 mechanical device to significantly restrict the free movement of  
1-44 all or a portion of a student's body.

1-45 (2) "Seclusion" means a behavior management technique  
1-46 in which a student is confined in a locked box, locked closet, or  
1-47 locked room that:

1-48 (A) is designed solely to seclude a person; and

1-49 (B) contains less than 50 square feet of space.

1-50 (3) "Time-out" means a behavior management technique  
1-51 in which, to provide a student with an opportunity to regain  
1-52 self-control, the student is separated from other students for a  
1-53 limited period in a setting:

1-54 (A) that is not locked; and

1-55 (B) from which the exit [~~student~~] is not  
1-56 physically blocked by furniture, a closed door held shut from the  
1-57 outside, or another inanimate object [~~prevented from leaving~~].

1-58 (c) A school district employee or volunteer or an  
1-59 independent contractor of a district may not place a student in  
1-60 seclusion. This subsection does not apply to the use of seclusion  
1-61 in a court-ordered placement, other than a placement in an  
1-62 educational program of a school district, or in a placement or  
1-63 facility to which the following law, rules, or regulations apply:

2-1 (1) the Children's Health Act of 2000, Pub. L. No.  
2-2 106-310, any subsequent amendments to that Act, any regulations  
2-3 adopted under that Act, or any subsequent amendments to those  
2-4 regulations;

2-5 (2) 40 T.A.C. Sections 720.1001-720.1013; or  
2-6 (3) 25 T.A.C. Section 412.308(e).

2-7 (d) The commissioner by rule shall adopt procedures for the  
2-8 use of restraint and time-out by a school district employee or  
2-9 volunteer or an independent contractor of a district in the case of  
2-10 a student with a disability receiving special education services  
2-11 under Subchapter A, Chapter 29. A procedure adopted under this  
2-12 subsection must:

2-13 (1) be consistent with:  
2-14 (A) professionally accepted practices and  
2-15 standards of student discipline and techniques for behavior  
2-16 management; and

2-17 (B) relevant health and safety standards; and  
2-18 (2) identify any discipline management practice or  
2-19 behavior management technique that requires a district employee or  
2-20 volunteer or an independent contractor of a district to be trained  
2-21 before using that practice or technique.

2-22 (g) This section and any rules or procedures adopted under  
2-23 this section do not apply to:

2-24 (1) a peace officer while performing law enforcement  
2-25 duties;

2-26 (2) juvenile probation, detention, or corrections  
2-27 personnel; or

2-28 (3) an educational services provider with whom a  
2-29 student is placed by a judicial authority, unless the services are  
2-30 provided in an educational program of a school district.

2-31 SECTION 3. Section 37.003, Education Code, is amended by  
2-32 adding Subsection (c) to read as follows:

2-33 (c) The committee's placement determination regarding a  
2-34 student with a disability who receives special education services  
2-35 under Subchapter A, Chapter 29, is subject to the requirements of  
2-36 the Individuals with Disabilities Education Act (20 U.S.C. Section  
2-37 1400 et seq.) and federal regulations, state statutes, and agency  
2-38 requirements necessary to carry out federal law or regulations or  
2-39 state law relating to special education.

2-40 SECTION 4. Subsection (a), Section 37.005, Education Code,  
2-41 is amended to read as follows:

2-42 (a) The principal or other appropriate administrator may  
2-43 suspend a student who engages in conduct identified in the student  
2-44 code of conduct adopted under Section 37.001 as conduct for which a  
2-45 student may be suspended [~~for which the student may be placed in an~~  
2-46 ~~alternative education program under this subchapter~~].

2-47 SECTION 5. Subsections (b), (c), (d), and (l), Section  
2-48 37.006, Education Code, are amended to read as follows:

2-49 (b) Except as provided by Section 37.007(d), a student shall  
2-50 be removed from class and placed in an alternative education  
2-51 program under Section 37.008 if the student engages in conduct on or  
2-52 off of school property that contains the elements of the offense of  
2-53 retaliation under Section 36.06, Penal Code, against any school  
2-54 employee.

2-55 (c) In addition to Subsections [~~Subsection~~] (a) and (b), a  
2-56 student shall be removed from class and placed in an alternative  
2-57 education program under Section 37.008 based on conduct occurring  
2-58 off campus and while the student is not in attendance at a  
2-59 school-sponsored or school-related activity if:

2-60 (1) the student receives deferred prosecution under  
2-61 Section 53.03, Family Code, for conduct defined as a felony offense  
2-62 in Title 5, Penal Code;

2-63 (2) a court or jury finds that the student has engaged  
2-64 in delinquent conduct under Section 54.03, Family Code, for conduct  
2-65 defined as a felony offense in Title 5, Penal Code; or

2-66 (3) the superintendent or the superintendent's  
2-67 designee has a reasonable belief that the student has engaged in a  
2-68 conduct defined as a felony offense in Title 5, Penal Code.

2-69 (d) In addition to Subsections [~~Subsection~~] (a), (b), and

3-1 (c), a student may be removed from class and placed in an  
 3-2 alternative education program under Section 37.008 based on conduct  
 3-3 occurring off campus and while the student is not in attendance at a  
 3-4 school-sponsored or school-related activity if:

3-5 (1) the superintendent or the superintendent's  
 3-6 designee has a reasonable belief that the student has engaged in  
 3-7 conduct defined as a felony offense other than those defined in  
 3-8 Title 5, Penal Code; and

3-9 (2) the continued presence of the student in the  
 3-10 regular classroom threatens the safety of other students or  
 3-11 teachers or will be detrimental to the educational process.

3-12 (1) Notwithstanding any other provision of this code, other  
 3-13 than Section 37.007(e)(2), a student who is younger than six years  
 3-14 of age may not be removed from class and placed in an alternative  
 3-15 education program.

3-16 SECTION 6. Subsections (a), (b), and (g), Section 37.007,  
 3-17 Education Code, are amended to read as follows:

3-18 (a) A student shall be expelled from a school if the  
 3-19 student, on school property or while attending a school-sponsored  
 3-20 or school-related activity on or off of school property:

3-21 (1) uses, exhibits, or possesses:

3-22 (A) a firearm as defined by Section 46.01(3),  
 3-23 Penal Code;

3-24 (B) an illegal knife as defined by Section  
 3-25 46.01(6), Penal Code, or by local policy;

3-26 (C) a club as defined by Section 46.01(1), Penal  
 3-27 Code; or

3-28 (D) a weapon listed as a prohibited weapon under  
 3-29 Section 46.05, Penal Code;

3-30 (2) engages in conduct that contains the elements of  
 3-31 the offense of:

3-32 (A) aggravated assault under Section 22.02,  
 3-33 Penal Code, sexual assault under Section 22.011, Penal Code, or  
 3-34 aggravated sexual assault under Section 22.021, Penal Code;

3-35 (B) arson under Section 28.02, Penal Code;

3-36 (C) murder under Section 19.02, Penal Code,  
 3-37 capital murder under Section 19.03, Penal Code, or criminal  
 3-38 attempt, under Section 15.01, Penal Code, to commit murder or  
 3-39 capital murder;

3-40 (D) indecency with a child under Section 21.11,  
 3-41 Penal Code; ~~or~~

3-42 (E) aggravated kidnapping under Section 20.04,  
 3-43 Penal Code;

3-44 (F) aggravated robbery under Section 29.03,  
 3-45 Penal Code;

3-46 (G) manslaughter under Section 19.04, Penal  
 3-47 Code; or

3-48 (H) criminally negligent homicide under Section  
 3-49 19.05, Penal Code; or

3-50 (3) engages in conduct specified by Section  
 3-51 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

3-52 (b) A student may be expelled if the student:

3-53 (1) engages in conduct involving a public school that  
 3-54 contains the elements of the offense of false alarm or report under  
 3-55 Section 42.06, Penal Code, or terroristic threat under Section  
 3-56 22.07, Penal Code; ~~or~~

3-57 (2) while on or within 300 feet of school property, as  
 3-58 measured from any point on the school's real property boundary  
 3-59 line, or while attending a school-sponsored or school-related  
 3-60 activity on or off of school property:

3-61 (A) sells, gives, or delivers to another person  
 3-62 or possesses, uses, or is under the influence of any amount of:

3-63 (i) marihuana or a controlled substance, as  
 3-64 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.  
 3-65 Section 801 et seq.;

3-66 (ii) a dangerous drug, as defined by  
 3-67 Chapter 483, Health and Safety Code; or

3-68 (iii) an alcoholic beverage, as defined by  
 3-69 Section 1.04, Alcoholic Beverage Code;

4-1 (B) engages in conduct that contains the elements  
4-2 of an offense relating to an abusable volatile chemical [~~glue or~~  
4-3 ~~aerosol paint~~] under Sections 485.031 through 485.034 [~~485.035~~],  
4-4 Health and Safety Code[, ~~or relating to volatile chemicals under~~  
4-5 ~~Chapter 484, Health and Safety Code~~]; [~~or~~]

4-6 (C) engages in conduct that contains the elements  
4-7 of an offense under Section 22.01(a)(1), Penal Code, against a  
4-8 school district employee or a volunteer as defined by Section  
4-9 22.053; or

4-10 (D) engages in conduct that contains the elements  
4-11 of the offense of deadly conduct under Section 22.05, Penal Code; or

4-12 (3) subject to Subsection (d), while within 300 feet  
4-13 of school property, as measured from any point on the school's real  
4-14 property boundary line:

4-15 (A) engages in conduct specified by Subsection  
4-16 (a); or

4-17 (B) possesses a firearm, as defined by 18 U.S.C.  
4-18 Section 921.

4-19 (g) A school district shall inform each teacher who has  
4-20 regular contact with a student through a classroom assignment of  
4-21 the conduct of a student who has engaged in any violation listed in  
4-22 this section. A teacher shall keep the information received in this  
4-23 subsection confidential. The State Board for Educator  
4-24 Certification may revoke or suspend the certification of a teacher  
4-25 who intentionally violates this subsection.

4-26 SECTION 7. Subsection (a), Section 37.009, Education Code,  
4-27 is amended to read as follows:

4-28 (a) Not later than the third class day after the day on which  
4-29 a student is removed from class by the teacher under Section  
4-30 37.002(b) or (d) or by the school principal or other appropriate  
4-31 administrator under Section 37.006, the principal or other  
4-32 appropriate administrator shall schedule a conference among the  
4-33 principal or other appropriate administrator, a parent or guardian  
4-34 of the student, the teacher removing the student from class, if any,  
4-35 and the student. At the conference, the student is entitled to  
4-36 written or oral notice of the reasons for the removal, an  
4-37 explanation of the basis for the removal, and an opportunity to  
4-38 respond to the reasons for the removal. The student may not be  
4-39 returned to the regular classroom pending the conference.  
4-40 Following the conference, and whether or not each requested person  
4-41 is in attendance after valid attempts to require the person's  
4-42 attendance, the principal shall order the placement of the student  
4-43 as provided by Section 37.002 or 37.006, as applicable, for a period  
4-44 consistent with the student code of conduct. If school district  
4-45 policy allows a student to appeal to the board of trustees or the  
4-46 board's designee a decision of the principal or other appropriate  
4-47 administrator, other than an expulsion under Section 37.007, the  
4-48 decision of the board or the board's designee is final and may not  
4-49 be appealed.

4-50 SECTION 8. Subchapter A, Chapter 37, Education Code, is  
4-51 amended by adding Section 37.0091 to read as follows:

4-52 Sec. 37.0091. NOTICE TO NONCUSTODIAL PARENT. (a) A  
4-53 noncustodial parent may request in writing that a school district  
4-54 or school, for the remainder of the school year in which the request  
4-55 is received, provide that parent with a copy of any written  
4-56 notification relating to student misconduct under Section 37.006 or  
4-57 37.007 that is generally provided by the district or school to a  
4-58 student's parent or guardian.

4-59 (b) A school district or school may not unreasonably deny a  
4-60 request authorized by Subsection (a).

4-61 (c) Notwithstanding any other provision of this section, a  
4-62 school district or school shall comply with any applicable court  
4-63 order of which the district or school has knowledge.

4-64 SECTION 9. Section 37.011, Education Code, is amended by  
4-65 amending Subsection (b) and adding Subsection (b-1) to read as  
4-66 follows:

4-67 (b) If a student admitted into the public schools of a  
4-68 school district under Section 25.001(b) is expelled from school  
4-69 under Section 37.007(a), (d), or (e), the juvenile court, the

5-1 juvenile board, or the juvenile board's designee, as appropriate,  
5-2 shall:

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

5-9 (2) if the student is placed on deferred prosecution  
5-10 under Section 53.03, Family Code, by the court, prosecutor, or  
5-11 probation department, require the student to immediately attend the  
5-12 juvenile justice alternative education program in the county in  
5-13 which the student resides for a period not to exceed six months as a  
5-14 condition of the deferred prosecution; ~~and~~

5-15 (3) in determining the conditions of the deferred  
5-16 prosecution or court-ordered probation, consider the length of the  
5-17 school district's expulsion order for the student; and

5-18 (4) provide timely educational services to the student  
5-19 in the juvenile justice alternative education program in the county  
5-20 in which the student resides, regardless of the student's age or  
5-21 whether the juvenile court has jurisdiction over the student.

5-22 (b-1) Subsection (b)(4) does not require that educational  
5-23 services be provided to a student who is not entitled to admission  
5-24 into the public schools of a school district under Section  
5-25 25.001(b).

5-26 SECTION 10. Subsection (a), Section 37.015, Education Code,  
5-27 is amended to read as follows:

5-28 (a) The principal of a public or private primary or  
5-29 secondary school, or a person designated by the principal under  
5-30 Subsection (d), shall notify any school district police department  
5-31 and the police department of the municipality in which the school is  
5-32 located or, if the school is not in a municipality, the sheriff of  
5-33 the county in which the school is located if the principal has  
5-34 reasonable grounds to believe that any of the following activities  
5-35 occur in school, on school property, or at a school-sponsored or  
5-36 school-related activity on or off school property, whether or not  
5-37 the activity is investigated by school security officers:

5-38 (1) conduct that may constitute an offense listed  
5-39 under Section 508.149, Government Code;

5-40 (2) deadly conduct under Section 22.05, Penal Code;

5-41 (3) a terroristic threat under Section 22.07, Penal  
5-42 Code;

5-43 (4) the use, sale, or possession of a controlled  
5-44 substance, drug paraphernalia, or marihuana under Chapter 481,  
5-45 Health and Safety Code;

5-46 (5) the possession of any of the weapons or devices  
5-47 listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal  
5-48 Code; ~~or~~

5-49 (6) conduct that may constitute a criminal offense  
5-50 under Section 71.02, Penal Code; or

5-51 (7) conduct that may constitute a criminal offense for  
5-52 which a student may be expelled under Section 37.007(a), (d), or  
5-53 (e).

5-54 SECTION 11. Subsection (b), Section 37.001, Education Code,  
5-55 is repealed.

5-56 SECTION 12. This Act applies beginning with the 2003-2004  
5-57 school year.

5-58 SECTION 13. This Act takes effect immediately if it  
5-59 receives a vote of two-thirds of all the members elected to each  
5-60 house, as provided by Section 39, Article III, Texas Constitution.  
5-61 If this Act does not receive the vote necessary for immediate  
5-62 effect, this Act takes effect September 1, 2003.

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