

By: Dutton

H.B. No. 1689

A BILL TO BE ENTITLED

AN ACT

relating to the burden of proof required to remove or expel a student from public school.

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

SECTION 1. Sections 37.006(c), (d), and (e), Education Code, are amended to read as follows:

(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 probable cause to believe [~~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

1 off campus and while the student is not in attendance at a
2 school-sponsored or school-related activity if:

3 (1) the superintendent or the superintendent's
4 designee has probable cause to believe [~~a reasonable belief~~] that
5 the student has engaged in conduct defined as a felony offense other
6 than those defined in Title 5, Penal Code; and

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

10 (e) In determining whether there is probable cause to
11 believe [~~a reasonable belief~~] that a student has engaged in conduct
12 defined as a felony offense by the Penal Code, the superintendent or
13 the superintendent's designee may consider all available
14 information, including the information furnished under Article
15 15.27, Code of Criminal Procedure.

16 SECTION 2. Sections 37.009(a), (c), (f), and (g), Education
17 Code, are amended to read as follows:

18 (a) Not later than the third class day after the day on which
19 a student is removed from class by the teacher under Section
20 37.002(b) or (d) or by the school principal or other appropriate
21 administrator under Section 37.001(a)(2) or 37.006, the principal
22 or other appropriate administrator shall schedule a conference
23 among the principal or other appropriate administrator, a parent or
24 guardian of the student, the teacher removing the student from
25 class, if any, and the student. At the conference, the student is
26 entitled to written or oral notice of the reasons for the removal,
27 an explanation of the basis for the removal, including specific

1 findings establishing the basis for probable cause to believe that
2 the student engaged in the conduct that is the basis for the
3 removal, and an opportunity to respond to the reasons for the
4 removal. The student may not be returned to the regular classroom
5 pending the conference. Following the conference, and whether or
6 not each requested person is in attendance after valid attempts to
7 require the person's attendance, the principal shall order the
8 placement of the student for a period consistent with the student
9 code of conduct. If school district policy allows a student to
10 appeal to the board of trustees or the board's designee a decision
11 of the principal or other appropriate administrator, other than an
12 expulsion under Section 37.007, the decision of the board or the
13 board's designee is final and may not be appealed. If the period of
14 the placement is inconsistent with the guidelines included in the
15 student code of conduct under Section 37.001(a)(5), the order must
16 give notice of the inconsistency. The period of the placement may
17 not exceed one year unless, after a review, the district determines
18 that:

19 (1) the student is a threat to the safety of other
20 students or to district employees; or

21 (2) extended placement is in the best interest of the
22 student.

23 (c) Before it may place a student in a disciplinary
24 alternative education program for a period that extends beyond the
25 end of the school year, the board or the board's designee must
26 determine that:

27 (1) the student's presence in the regular classroom

1 program or at the student's regular campus presents a danger of
2 physical harm to the student or to another individual; or

3 (2) probable cause exists to believe that the student
4 has engaged in serious or persistent misbehavior that violates the
5 district's student code of conduct.

6 (f) Before a student may be expelled under Section 37.007,
7 the board or the board's designee must provide the student a hearing
8 at which the student is afforded appropriate due process as
9 required by the federal constitution and which the student's parent
10 or guardian is invited, in writing, to attend. At the hearing, the
11 student is entitled to be represented by the student's parent or
12 guardian or another adult who can provide guidance to the student
13 and who is not an employee of the school district. If the school
14 district makes a good-faith effort to inform the student and the
15 student's parent or guardian of the time and place of the hearing,
16 the district may hold the hearing regardless of whether the
17 student, the student's parent or guardian, or another adult
18 representing the student attends. The board may expel the student
19 if the board finds that probable cause exists to believe that the
20 student engaged in the conduct described by Section 37.007. If the
21 decision to expel a student is made by the board's designee, the
22 decision may be appealed to the board. The decision of the board
23 may be appealed by trial de novo to a district court of the county in
24 which the school district's central administrative office is
25 located.

26 (g) The board or the board's designee shall deliver to the
27 student and the student's parent or guardian a copy of the order

1 placing the student in a disciplinary alternative education program
2 under Section 37.001, 37.002, or 37.006 or expelling the student
3 under Section 37.007. An order under this subsection must include
4 specific findings establishing the basis for probable cause to
5 believe that the student engaged in the conduct described by
6 Section 37.006 or 37.007.

7 SECTION 3. This Act applies beginning with the 2005-2006
8 school year.

9 SECTION 4. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2005.