

1-1 By: Lindsay S.B. No. 126
1-2 (In the Senate - Filed December 21, 2004; February 1, 2005,
1-3 read first time and referred to Committee on Education;
1-4 March 29, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 29, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 126 By: West

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the discipline of public school students.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 37.001, Education Code, is amended by
1-13 amending Subsection (a) and adding Subsections (b) and (e) to read
1-14 as follows:

1-15 (a) The board of trustees of an independent school district
1-16 shall, with the advice of its district-level committee established
1-17 under Subchapter F, Chapter 11, adopt a student code of conduct for
1-18 the district. The student code of conduct must be posted and
1-19 prominently displayed at each school campus or made available for
1-20 review at the office of the campus principal. In addition to
1-21 establishing standards for student conduct, the student code of
1-22 conduct must:

1-23 (1) specify the circumstances, in accordance with this
1-24 subchapter, under which a student may be removed from a classroom,
1-25 campus, or disciplinary alternative education program;

1-26 (2) specify conditions that authorize or require a
1-27 principal or other appropriate administrator to transfer a student
1-28 to a disciplinary alternative education program;

1-29 (3) outline conditions under which a student may be
1-30 suspended as provided by Section 37.005 or expelled as provided by
1-31 Section 37.007;

1-32 (4) specify whether consideration is given to
1-33 self-defense as a factor in a decision to order suspension, removal
1-34 to a disciplinary alternative education program, or expulsion;

1-35 (5) provide guidelines for setting the length of a
1-36 term of:

1-37 (A) a removal under Section 37.006; and

1-38 (B) an expulsion under Section 37.007; ~~and~~

1-39 (6) permit a principal or other appropriate
1-40 administrator to reduce the term of a disciplinary alternative
1-41 education program placement otherwise prescribed by district
1-42 policy or to suspend a student as provided by Section 37.005 rather
1-43 than placing the student in a disciplinary alternative education
1-44 program for conduct described by Section 37.006(a)(2)(B), (C), (D),
1-45 or (E) unless the conduct described by Section 37.006(a)(2)(C) or
1-46 (D) is punishable as a felony;

1-47 (7) permit the board of trustees or a person
1-48 designated by the board to reduce the term of any expulsion
1-49 otherwise prescribed by district policy or to place a student in a
1-50 disciplinary alternative education program rather than expelling
1-51 the student for conduct specified by Section 37.007(a)(1);

1-52 (8) require a principal or other appropriate
1-53 administrator or the board of trustees or the board's designee, in
1-54 making a determination under Subdivision (6) or (7), to consider a
1-55 student's disciplinary history and the student's intent or lack of
1-56 intent at the time the student engaged in the conduct; and

1-57 (9) address the notification of a student's parent or
1-58 guardian of a violation of the student code of conduct committed by
1-59 the student that results in suspension, removal to a disciplinary
1-60 alternative education program, or expulsion.

1-61 (b) The student code of conduct may include additional
1-62 factors, as determined appropriate by the board of trustees, for a
1-63 principal or other appropriate administrator to consider in making

2-1 a determination under Subsection (a)(6) or the board or a person
2-2 designated by the board to consider in making a determination under
2-3 Subsection (a)(7).

2-4 (e) Except as provided by Section 37.007(e), this
2-5 subchapter does not require the student code of conduct to specify a
2-6 minimum term of a removal under Section 37.006 or an expulsion under
2-7 Section 37.007.

2-8 SECTION 2. Subsection (d), Section 37.002, Education Code,
2-9 is amended to read as follows:

2-10 (d) A teacher shall remove from class and send to the
2-11 principal for appropriate [placement in a] disciplinary action
2-12 [alternative education program or for expulsion, as appropriate,] a
2-13 student who engages in conduct described under Section 37.006 or
2-14 37.007. The student may not be returned to that teacher's class
2-15 without the teacher's consent unless the committee established
2-16 under Section 37.003 determines that such placement is the best or
2-17 only alternative available.

2-18 SECTION 3. Subsections (a) through (d) and (f), Section
2-19 37.006, Education Code, are amended to read as follows:

2-20 (a) Except as provided by Section 37.001(a)(6), a [A]
2-21 student shall be removed from class and placed in a disciplinary
2-22 alternative education program as provided by Section 37.008 if the
2-23 student:

2-24 (1) engages in conduct involving a public school that
2-25 contains the elements of the offense of false alarm or report under
2-26 Section 42.06, Penal Code, or terroristic threat under Section
2-27 22.07, Penal Code; or

2-28 (2) commits the following on or within 300 feet of
2-29 school property, as measured from any point on the school's real
2-30 property boundary line, or while attending a school-sponsored or
2-31 school-related activity on or off of school property:

2-32 (A) engages in conduct punishable as a felony;

2-33 (B) engages in conduct that contains the elements
2-34 of the offense of assault under Section 22.01(a)(1), Penal Code;

2-35 (C) sells, gives, or delivers to another person
2-36 or possesses or uses or is under the influence of:

2-37 (i) marihuana or a controlled substance, as
2-38 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
2-39 Section 801 et seq.; or

2-40 (ii) a dangerous drug, as defined by
2-41 Chapter 483, Health and Safety Code;

2-42 (D) sells, gives, or delivers to another person
2-43 an alcoholic beverage, as defined by Section 1.04, Alcoholic
2-44 Beverage Code, commits a serious act or offense while under the
2-45 influence of alcohol, or possesses, uses, or is under the influence
2-46 of an alcoholic beverage;

2-47 (E) engages in conduct that contains the elements
2-48 of an offense relating to an abusable volatile chemical under
2-49 Sections 485.031 through 485.034, Health and Safety Code; or

2-50 (F) engages in conduct that contains the elements
2-51 of the offense of public lewdness under Section 21.07, Penal Code,
2-52 or indecent exposure under Section 21.08, Penal Code.

2-53 (b) Except as provided by Section 37.001(a)(6) or
2-54 37.007(d), a student shall be removed from class and placed in a
2-55 disciplinary alternative education program under Section 37.008 if
2-56 the student engages in conduct on or off of school property that
2-57 contains the elements of the offense of retaliation under Section
2-58 36.06, Penal Code, against any school employee.

2-59 (c) In addition to Subsections (a) and (b) and except as
2-60 provided by Section 37.001(a)(6), a student shall be removed from
2-61 class and placed in a disciplinary alternative education program
2-62 under Section 37.008 based on conduct occurring off campus and
2-63 while the student is not in attendance at a school-sponsored or
2-64 school-related activity if:

2-65 (1) the student receives deferred prosecution under
2-66 Section 53.03, Family Code, for conduct defined as a felony offense
2-67 in Title 5, Penal Code;

2-68 (2) a court or jury finds that the student has engaged
2-69 in delinquent conduct under Section 54.03, Family Code, for conduct

3-1 defined as a felony offense in Title 5, Penal Code; or

3-2 (3) the superintendent or the superintendent's
3-3 designee has a reasonable belief that the student has engaged in a
3-4 conduct defined as a felony offense in Title 5, Penal Code.

3-5 (d) In addition to Subsections (a), (b), and (c) and except
3-6 as provided by Section 37.001(a)(6), a student may be removed from
3-7 class and placed in a disciplinary alternative education program
3-8 under Section 37.008 based on conduct occurring off campus and
3-9 while the student is not in attendance at a school-sponsored or
3-10 school-related activity if:

3-11 (1) the superintendent or the superintendent's
3-12 designee has a reasonable belief that the student has engaged in
3-13 conduct defined as a felony offense other than those defined in
3-14 Title 5, Penal Code; and

3-15 (2) the continued presence of the student in the
3-16 regular classroom threatens the safety of other students or
3-17 teachers or will be detrimental to the educational process.

3-18 (f) Subject to Section 37.007(e) and except as provided by
3-19 Section 37.001(a)(6), a student who is younger than 10 years of age
3-20 shall be removed from class and placed in a disciplinary
3-21 alternative education program under Section 37.008 if the student
3-22 engages in conduct described by Section 37.007. An elementary
3-23 school student may not be placed in a disciplinary alternative
3-24 education program with any other student who is not an elementary
3-25 school student.

3-26 SECTION 4. Section 37.007, Education Code, is amended by
3-27 amending Subsection (a) and adding Subsection (j) to read as
3-28 follows:

3-29 (a) Except as provided by Section 37.001(a)(7), a [A]
3-30 student shall be expelled from a school if the student, on school
3-31 property or while attending a school-sponsored or school-related
3-32 activity on or off of school property:

3-33 (1) uses, exhibits, or possesses:

3-34 (A) a firearm as defined by Section 46.01(3),
3-35 Penal Code;

3-36 (B) an illegal knife as defined by Section
3-37 46.01(6), Penal Code, or by local policy;

3-38 (C) a club as defined by Section 46.01(1), Penal
3-39 Code; or

3-40 (D) a weapon listed as a prohibited weapon under
3-41 Section 46.05, Penal Code;

3-42 (2) engages in conduct that contains the elements of
3-43 the offense of:

3-44 (A) aggravated assault under Section 22.02,
3-45 Penal Code, sexual assault under Section 22.011, Penal Code, or
3-46 aggravated sexual assault under Section 22.021, Penal Code;

3-47 (B) arson under Section 28.02, Penal Code;

3-48 (C) murder under Section 19.02, Penal Code,
3-49 capital murder under Section 19.03, Penal Code, or criminal
3-50 attempt, under Section 15.01, Penal Code, to commit murder or
3-51 capital murder;

3-52 (D) indecency with a child under Section 21.11,
3-53 Penal Code;

3-54 (E) aggravated kidnapping under Section 20.04,
3-55 Penal Code;

3-56 (F) aggravated robbery under Section 29.03,
3-57 Penal Code;

3-58 (G) manslaughter under Section 19.04, Penal
3-59 Code; or

3-60 (H) criminally negligent homicide under Section
3-61 19.05, Penal Code; or

3-62 (3) engages in conduct specified by Section
3-63 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

3-64 (j) The superintendent may modify the length of expulsion
3-65 for any expelled student and may provide services in a disciplinary
3-66 alternative education program as provided by Section 37.008 to an
3-67 expelled student who is 10 years of age or older. To the extent of
3-68 any conflict between this subsection and Section 37.011, this
3-69 subsection prevails.

4-1 SECTION 5. This Act takes effect immediately if it receives
4-2 a vote of two-thirds of all the members elected to each house, as
4-3 provided by Section 39, Article III, Texas Constitution. If this
4-4 Act does not receive the vote necessary for immediate effect, this
4-5 Act takes effect September 1, 2005.

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