

By: Whitmire

S.B. No. 107

A BILL TO BE ENTITLED

AN ACT

relating to the removal, discipline, or transfer of a public school student.

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

SECTION 1. Section 25.0341(b), Education Code, is amended to read as follows:

(b) On the request of a parent or other person with authority to act on behalf of a student who is a victim to whom Subsection (a)(2) applies:

(1) the board of trustees of the school district shall transfer the student to:

(A) a district campus other than:

(i) the campus to which the student was assigned at the time the conduct occurred; or

(ii) the campus to which the student who engaged in the conduct is assigned, if the student who engaged in the conduct has been assigned to a different campus since the conduct occurred; or

(B) a neighboring school district, if there is only one campus in the district serving the grade level in which the student is enrolled; or

(2) if the student does not wish to transfer to another campus or district, the board of trustees may [~~shall~~] transfer the student who engaged in the conduct to:

1 (A) a district campus other than the campus to
2 which the student who is the victim of the conduct is assigned; or

3 (B) the district's disciplinary alternative
4 education program or juvenile justice alternative education
5 program, if there is only one campus in the district serving the
6 grade level in which the student who engaged in the conduct is
7 enrolled.

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

10 (d) A teacher may [~~shall~~] remove from class and send to the
11 principal for placement in a disciplinary alternative education
12 program or for expulsion, as appropriate, a student who engages in
13 conduct described under Section 37.006 or 37.007. If the student
14 has been removed from class, the [~~The~~] student may not be returned
15 to that teacher's class without the teacher's consent unless the
16 committee established under Section 37.003 determines that such
17 placement is the best or only alternative available. If the teacher
18 removed the student from class because the student has engaged in
19 the elements of any offense listed in Section 37.006(a)(2)(B) or
20 Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the
21 student may not be returned to the teacher's class without the
22 teacher's consent. The teacher may not be coerced to consent.

23 SECTION 3. Section 37.0051(a), Education Code, is amended
24 to read as follows:

25 (a) As provided by Section 25.0341(b)(2), a student may
26 [~~shall~~] be removed from class and placed in a disciplinary
27 alternative education program under Section 37.008 or a juvenile

1 justice alternative education program under Section 37.011.

2 SECTION 4. Sections 37.006(a), (b), (c), and (f), Education
3 Code, are amended to read as follows:

4 (a) A student may [~~shall~~] be removed from class and placed
5 in a disciplinary alternative education program as provided by
6 Section 37.008 if the student:

7 (1) engages in conduct involving a public school that
8 contains the elements of the offense of false alarm or report under
9 Section 42.06, Penal Code, or terroristic threat under Section
10 22.07, Penal Code; or

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

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

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

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

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

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

25 (D) sells, gives, or delivers to another person
26 an alcoholic beverage, as defined by Section 1.04, Alcoholic
27 Beverage Code, commits a serious act or offense while under the

1 influence of alcohol, or possesses, uses, or is under the influence
2 of an alcoholic beverage;

3 (E) engages in conduct that contains the elements
4 of an offense relating to an abusable volatile chemical under
5 Sections 485.031 through 485.034, Health and Safety Code; or

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

9 (b) A [~~Except as provided by Section 37.007(d), a~~] student
10 may [~~shall~~] be removed from class and placed in a disciplinary
11 alternative education program under Section 37.008 if the student
12 engages in conduct on or off of school property that contains the
13 elements of the offense of retaliation under Section 36.06, Penal
14 Code, against any school employee.

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

20 (1) the student receives deferred prosecution under
21 Section 53.03, Family Code, for conduct defined as:

22 (A) a felony offense in Title 5, Penal Code; or

23 (B) the felony offense of aggravated robbery
24 under Section 29.03, Penal Code;

25 (2) a court or jury finds that the student has engaged
26 in delinquent conduct under Section 54.03, Family Code, for conduct
27 defined as:

1 (A) a felony offense in Title 5, Penal Code; or
2 (B) the felony offense of aggravated robbery
3 under Section 29.03, Penal Code; or

4 (3) the superintendent or the superintendent's
5 designee has a reasonable belief that the student has engaged in a
6 conduct defined as:

7 (A) a felony offense in Title 5, Penal Code; or
8 (B) the felony offense of aggravated robbery
9 under Section 29.03, Penal Code.

10 (f) Subject to Section 37.007(e), a student who is younger
11 than 10 years of age may ~~shall~~ be removed from class and placed in
12 a disciplinary alternative education program under Section 37.008
13 if the student engages in conduct described by Section 37.007. An
14 elementary school student may not be placed in a disciplinary
15 alternative education program with any other student who is not an
16 elementary school student.

17 SECTION 5. Sections 37.007(a) and (d), Education Code, are
18 amended to read as follows:

19 (a) Except as provided by Subsection (k), a student may
20 ~~shall~~ be expelled from a school if the student, on school property
21 or while attending a school-sponsored or school-related activity on
22 or off of school property:

23 (1) uses, exhibits, or possesses:

24 (A) ~~[a firearm as defined by Section 46.01(3),~~
25 ~~Penal Code,~~

26 ~~[(B)]~~ an illegal knife as defined by Section
27 46.01(6), Penal Code, or by local policy;

1 (B) [~~(C)~~] a club as defined by Section 46.01(1),
2 Penal Code; or

3 (C) [~~(D)~~] a weapon listed as a prohibited weapon
4 under Section 46.05, Penal Code;

5 (2) engages in conduct that contains the elements of
6 the offense of:

7 (A) aggravated assault under Section 22.02,
8 Penal Code, sexual assault under Section 22.011, Penal Code, or
9 aggravated sexual assault under Section 22.021, Penal Code;

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

11 (C) murder under Section 19.02, Penal Code,
12 capital murder under Section 19.03, Penal Code, or criminal
13 attempt, under Section 15.01, Penal Code, to commit murder or
14 capital murder;

15 (D) indecency with a child under Section 21.11,
16 Penal Code;

17 (E) aggravated kidnapping under Section 20.04,
18 Penal Code;

19 (F) aggravated robbery under Section 29.03,
20 Penal Code;

21 (G) manslaughter under Section 19.04, Penal
22 Code;

23 (H) criminally negligent homicide under Section
24 19.05, Penal Code; or

25 (I) continuous sexual abuse of young child or
26 children under Section 21.02, Penal Code; or

27 (3) engages in conduct specified by Section

1 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

2 (d) A student may [~~shall~~] be expelled if the student engages
3 in conduct that contains the elements of any offense listed in
4 Subsection (a), or [~~and may be expelled~~] if the student engages in
5 conduct that contains the elements of any offense listed in
6 Subsection (b)(2)(C), against any employee or volunteer in
7 retaliation for or as a result of the person's employment or
8 association with a school district, without regard to whether the
9 conduct occurs on or off of school property or while attending a
10 school-sponsored or school-related activity on or off of school
11 property.

12 SECTION 6. Sections 37.009(a) and (f), Education Code, are
13 amended to read as follows:

14 (a) Not later than the third class day after the day on which
15 a student is removed from class by the teacher under Section
16 37.002(b) or (d) or is removed or disciplined by the school
17 principal or other appropriate administrator under Section
18 37.001(a)(2), 37.005, 37.0051, [~~or~~] 37.006, or 37.0081, the
19 principal or other appropriate administrator shall schedule a
20 conference among the principal or other appropriate administrator,
21 a parent or guardian of the student, the teacher removing the
22 student from class, if any, and the student. At the conference, the
23 student is entitled to written or oral notice of the reasons for the
24 removal or discipline, an explanation of the basis for the removal
25 or discipline, and an opportunity to respond to the reasons for the
26 removal or discipline. If removed from class, the [~~The~~] student may
27 not be returned to the regular classroom pending the conference.

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

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

16 (2) extended placement is in the best interest of the
17 student.

18 (f) Before a student may be expelled under Section 37.007 or
19 Section 37.0081, the board or the board's designee must provide the
20 student a hearing at which the student is afforded appropriate due
21 process as required by the federal constitution and which the
22 student's parent or guardian is invited, in writing, to attend. At
23 the hearing, the student is entitled to be represented by the
24 student's parent or guardian or another adult who can provide
25 guidance to the student and who is not an employee of the school
26 district. If the school district makes a good-faith effort to
27 inform the student and the student's parent or guardian of the time

1 and place of the hearing, the district may hold the hearing
2 regardless of whether the student, the student's parent or
3 guardian, or another adult representing the student attends. If
4 the decision to expel a student is made by the board's designee, the
5 decision may be appealed to the board. The decision of the board
6 may be appealed by trial de novo to a district court of the county in
7 which the school district's central administrative office is
8 located.

9 SECTION 7. Section 37.011(b), Education Code, is amended to
10 read as follows:

11 (b) If a student admitted into the public schools of a
12 school district under Section 25.001(b) is expelled from school for
13 conduct [~~for which expulsion is required~~] under Section 37.007(a),
14 (d), or (e), the juvenile court, the juvenile board, or the juvenile
15 board's designee, as appropriate, shall:

16 (1) if the student is placed on probation under
17 Section 54.04, Family Code, order the student to attend the
18 juvenile justice alternative education program in the county in
19 which the student resides from the date of disposition as a
20 condition of probation, unless the child is placed in a
21 post-adjudication treatment facility;

22 (2) if the student is placed on deferred prosecution
23 under Section 53.03, Family Code, by the court, prosecutor, or
24 probation department, require the student to immediately attend the
25 juvenile justice alternative education program in the county in
26 which the student resides for a period not to exceed six months as a
27 condition of the deferred prosecution;

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

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

8 SECTION 8. Section 37.303, Education Code, is amended to
9 read as follows:

10 Sec. 37.303. REMOVAL OF REGISTERED SEX OFFENDER FROM
11 REGULAR CLASSROOM. Notwithstanding any provision of Subchapter A,
12 on receiving notice under Article 15.27, Code of Criminal
13 Procedure, or Chapter 62, Code of Criminal Procedure, that a
14 student is required to register as a sex offender under that
15 chapter, a school district may [~~shall~~] remove the student from the
16 regular classroom and determine the appropriate placement of the
17 student in the manner provided by this subchapter.

18 SECTION 9. Section 37.304(a), Education Code, is amended to
19 read as follows:

20 (a) A school district may [~~shall~~] place a student to whom
21 this subchapter applies and who is under any form of court
22 supervision, including probation, community supervision, or
23 parole, in the appropriate alternative education program as
24 provided by Section 37.309 for at least one semester.

25 SECTION 10. This Act applies beginning with the 2015-2016
26 school year.

27 SECTION 11. This Act takes effect immediately if it

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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, 2015.