



Removing Disruptive Students From Class

Chapter 37 has become a verb, as in: “I want to chapter 37 a student.” However, the provisions of Chapter 37 — the portion of the Texas Education Code that addresses the removal of disruptive students from class — include too many variables and too much nuance to function as a verb. Some of the removal laws can actually help teachers keep students in class. TCTA has compiled this outline of key provisions of Chapter 37 as a resource for TCTA members. This document does not constitute legal advice. TCTA members can contact the Legal Department at 888-879-8282 to discuss with an attorney the law, their individual circumstances, and their options. Members can also call to discuss the law related to IDEA and Section 504 students, a topic not covered in this document.

I. Teacher Discretion in Removing Students From Class

A. Enlisting Administrator Support for Behavior Management.

Texas Education Code § 37.002(a):

A teacher may send a student to the principal's office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001. (Emphasis added.)

B. Removing Disruptive Students.

Texas Education Code § 37.002(b):

A teacher may remove from class a student:

- (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or
- (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn. (Emphasis added.)

Key Points:

Teacher Discretion in Removing Students From Class

1. Subsection (a) allows teachers to send students to the office and expect administrators to apply consequences from the code of conduct before returning the students to class.
2. Subsection (b) gives a teacher discretion to remove a student from class. This removal provision does not allow a principal to unilaterally overturn a teacher's decision and send a student back to class. (More on that later.)
3. The law does not define "documented" or "repeatedly;" i.e., teachers need not produce elaborate documentation and need not document an arbitrary (six or 10) number of disruptive events. TCTA members can find simple removal forms at tcta.org/student_removal_forms.
4. A single very serious act gives a teacher the discretion to remove a student.
5. A district's student code of conduct and campus discipline plan should work in conjunction with Chapter 37; they cannot supersede any provision of Chapter 37.

III. Removal Conference

A. Conference Required Upon Removal.

Texas Education Code § 37.009(a):

Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b)..., the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. (Emphasis added.)

Key Points: Removal Conference

1. A removal conference must take place after a teacher decides to remove a student from class.
2. The conference must take place within three school days.
3. A principal's options after a teacher removes a student under Sections 37.002(b)(1) and (b)(2) do not include the immediate return of the student to class; the student cannot return to the teacher's class until after a conference that includes the principal, parent, teacher, and student (if appropriate).
4. After removing a student, a teacher can withhold consent for the student's return to class, (see Sections V and VI), but a removal conference must still take place.
5. The conference gives a teacher and a principal/district a chance to work as a team to deal with a student's misconduct and the student's needs. The law neither limits the scope of the conference nor prevents other professionals from participating.
 - a. The conference could be a brief discussion among a teacher, parent, principal, and student about expectations, conduct, and rules. A first (positive) conference can set the stage for subsequent conferences.
 - b. A teacher could set conditions for a student's return to class. A teacher can request that a student (and parent) agree to a behavior agreement with clear expectations and consequences. (See Section IV.)
 - c. The law says that a teacher cannot discuss (recommend) medication or diagnose a student. A nurse can discuss medication and participate in a removal conference.



Key Points:
Removal Conference (cont.)

- d. A counselor could participate in a conference to discuss home/school behavior management strategies.
- e. The conference does not have to take place at the campus; it could take place in the central office.

IV. Removal and School Activities

Terms of Removal.

Texas Education Code § 37.002(c):

The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.



Key Points:
Terms of Removal

1. The law allows districts to determine whether removal from class affects a student's ability to participate in school-related activities.
2. School-sponsored and school-related activities include social events, field trips, and extra-curricular activities.

V. Placement Review Committee

A. Teacher Consent to Student's Return to Class.

Texas Education Code § 37.002(c):

The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

B. Placement Review Committee.

Texas Education Code § 37.003:

- (a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:
 - (1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
 - (2) the principal shall choose one member from the professional staff of a campus.
- (b) The teacher refusing to readmit the student may not serve on the committee.
- (c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

Key Points:

Placement Review Committee

1. If a teacher withholds consent to a student's return to class after removal under Sections 37.002(b)(1) and (b)(2) and a principal believes the student should return to class, the principal can convene a meeting of the placement review committee to determine whether the teacher's class is the best or only alternative placement. (See Section VII involving student assaults that cause bodily injury to a teacher.)
2. If a placement review committee returns a student to a teacher's classroom and the student continues to disrupt (teacher documents disruptions), the teacher can remove the student again.

VI. Mandatory Removals

A. Required Removal When Student Commits a Crime.

1. Texas Education Code § 37.002(d):

A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

2. Texas Education Code § 37.006(a):

A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student [commits certain enumerated crimes].

3. Texas Education Code § 37.007(a):

Except as provided by Subsection (k), a student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property [commits certain very serious crimes].

B. Criminal Conduct.

1. Types of Crimes.

The crimes listed in Sections 37.006 and .007 range from misdemeanors to very serious, violent felonies. TCTA members can call the TCTA Legal Department with questions about the enumerated crimes and can find them enumerated at tcta.org/removal_reasons_list.

2. Where Crimes Committed.

a. On School Property.

Section 37.006 (less serious crimes) provides that some crimes must occur on school grounds before removal to a disciplinary alternative education program (DAEP) is required. If a student possesses a misdemeanor quantity of marijuana on campus or within 300 feet of school property, the district should place the student in a DAEP. Texas Education Code § 37.006(a)(2)(C)(i). Similar conduct at a mall does not require removal to a DAEP under the education code.

b. Location Irrelevant.

Section 37.006(b):

Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements

VII. Mandatory Removals for Assaulting Others and Causing Harm

A. Removal for Assault.

Texas Education Code § 37.006(a):

- (a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:
 - (2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
 - (B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code...

B. Assault Causing Bodily Injury.

Texas Penal Code § 22.01(a)(1):

- (a) A person commits an offense if the person:
 - (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

C. Bodily Injury – Language from Texas Judicial Opinions.

A jury may infer that a victim actually felt or suffered physical pain, for purposes of determining whether there was bodily injury required to sustain assault charge, because people of common intelligence understand pain and some of the natural causes of it. *Wingfield v. State* (App. 2 Dist. 2009) 282 S.W.3d 102.

Statutory definition of “bodily injury” for purposes of assault is purposefully broad and seems to encompass even relatively minor physical contacts so long as they constitute more than mere offensive touching. *York v. State* (App. 2 Dist. 1992) 833 S.W.2d 734.

Evidence that behavioral orientation instructor grabbed juvenile in attempt to prevent continuation of a fight between the juvenile and another and that the juvenile kned the counselor in the face in an effort to get away so that he could continue the fight was sufficient to show an assault. *Matter of M.M.R.* (App. 8 Dist. 1996) 932 S.W.2d 112.

D. Assault Causing Bodily Injury to Teacher.

Texas Education Code § 37.002(d):

If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

Summary

The law gives teachers the right to remove students from class and creates a process that teachers (and administrators) can use to secure student compliance with the rules of conduct. A student who does not comply with classroom behavior expectations could spend time in out-of-school suspension, an ISS, a DAEP, or another teacher's class.

The removal laws give teachers the discretion to remove students from class to get disciplinary support from administrators, to get some temporary breathing room, to get parents to come to school to discuss a student's behavior, or to effectively remove students from the teacher's class subject to a review by the placement review committee.

The removal provisions and the removal conference give teachers an opportunity to work with students and parents to keep students in class and protect the learning environment.

The removal laws also protect administrators when they deal with parents whom they believe will not handle removals well: a principal can defend a teacher's removal decision by pointing to the law, to the documentation, and to both the parent's and the student's opportunity to comply with the district's expectations regarding appropriate classroom conduct.

The removal laws exist in large part to give teachers the ability to teach all students in an environment conducive to learning. An administrator may resist removal to a DAEP of a seriously disruptive student, asserting that removal could hurt the campus because STAAR test scores for students assigned to a DAEP remain tied to the home campus. The argument quickly runs into problems: (1) to leave a seriously disruptive student in class causes a substantial loss of instruction for 20 or more students who all take the STAAR (at one time or another); and (2) a student who may have little opportunity to learn in a setting in which a teacher has to focus on 20 or 25 students may have a better chance to learn in a more structured environment where a teacher has fewer students and has more time to teach and redirect disruptive students.

The laws quoted in this document, which also describe protections for teachers assaulted or threatened by students and others, are not intended to serve as a comprehensive guide to Chapter 37. For additional information, TCTA members can refer to TCTA's 2014-15 Survival Guide. TCTA members can also call the TCTA Legal Department at 888-879-8282 to speak with an attorney about these and other employment issues.



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