On June 20, 2015, Gov. Greg Abbott signed into law Senate Bill 107, which requires a school administrator to provide effective support for teachers who request help in managing student behavior. SB 107, which was drafted by TCTA, requires districts to designate a “campus behavior coordinator” whose duties include responding effectively when teachers send students to the office for behavior support.

In the spring of 2015, TCTA posted on tcta.org the TCTA guide “Removing Disruptive Students from Class” to explain the rights of teachers to remove students and the duties of school districts when teachers send students to the office. This updated Guide adds information about the new law, while preserving most of the original guide. We hope that TCTA members continue to find this guide helpful.

This document does not constitute legal advice. TCTA members can contact the Legal Department at 888-879-8282 to discuss the law, individual fact circumstances, and options with their TCTA attorneys. Members can also call to discuss laws related to students protected by IDEA and Section 504, a topic not covered in this document.
I. Teacher Discretion in Removing Students From Class

A. Enlisting Administrator Support for Behavior Management.

1. Senate Bill 107 (Selected Provisions.)

   a. The New Campus Behavior Coordinator.

   A person at each campus must be designated to serve as the campus behavior coordinator. The person designated may be the principal of the campus or any other campus administrator selected by the principal. Texas Education Code § 37.0012(a) (new in 2015-2016.)

   b. Responsibility of a Campus Behavior Coordinator.

   The campus behavior coordinator is primarily responsible for maintaining student discipline and the implementation of this subchapter. Texas Education Code § 37.0012(b) (new in 2015-2016.)

   c. Reports to Parents.

   The campus behavior coordinator shall promptly notify a student's parent or guardian… if under this subchapter the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. Texas Education Code § 37.0012(d) (new in 2015-2016.)

2. Texas Education Code § 37.002(a), Amended by SB 107.

   A teacher may send a student to the campus behavior coordinator's office to maintain effective discipline in the classroom. The campus behavior coordinator shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the campus behavior coordinator in the student code of conduct.

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. Texas Education Code § 37.002(a) allows a teacher to send a student to the office and expect an administrator, now referred to as the “campus behavior coordinator” (“CBC”), to take action reasonably expected to improve a student's behavior before returning the student to the teacher's class.

2. Texas Education Code § 37.002(b) gives a teacher discretion to remove a student from class. This removal provision does not allow a principal to unilaterally return the student to class if the teacher objects. (More on that later.)

3. Texas Education Code § 37.002(b)(1) 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 before removing students. 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. Neither the student code of conduct nor the campus discipline plan can supersede a teacher's right under Chapter 37 to refer a student to the campus behavior coordinator for discipline support or remove a repeatedly or seriously disruptive student from class.

Q&A on Senate Bill 107
At TCTA’s Annual Convention in July 2015, TCTA members asked several good questions about SB 107. We have answered the questions in this guide to illustrate TCTA’s understanding of how districts should implement the new law.

Question 1: Are there a certain limited number of days that the CBC can send a student to ISS and back to class repeatedly before applying a more progressive intervention?

Answer: SB 107 states:
“If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions....”

That language does not dictate a schedule of interventions, but the law creates an expectation that a CBC's efforts “can reasonably be expected to improve the student's behavior.” In other words, the law requires a CBC to take action reasonably expected to improve a student's behavior and not simply ignore the problem, delay taking action, or do the same thing repeatedly that has no substantive effect on improved behavior.
Q&A on Senate Bill 107 continued

Question 2: Are CBC’s required to inform teachers in writing of the progressive or alternative techniques they have used?

Answer: SB 107 does not answer that question. TCTA believes that a best practice approach requires communication from the CBC describing the techniques used and communication from teachers about the student’s behavior and any noticeable changes or lack thereof.

Question 3: How many times can a CBC use the same technique before moving on to a new one? In our district we have to talk to a student multiple times before an assistant principal will even talk to the student. After the assistant principal talks to the student, students generally continue to misbehave, and we have to go through the same process. Students learn that they can disrupt class and misbehave if they “put up” with a couple of teacher conferences and a brief lecture from the assistant principal.

Answer: The person designated as the CBC at the beginning of the 2015-2016 school year will have a duty to take steps reasonably expected to improve a student’s behavior. If repetitive actions by the CBC produce no change in a student’s behavior, the CBC should try something new that can reasonably be expected to improve behavior. The situation described in this question suggests that the teacher has documented repeated disruptions by a student(s). If so, the teacher can remove the student from class.

Question 4: Does this include special education students who don’t have behavior plans?

Answer: The simple answer, “yes,” is based on the assumption that if the special education student had a behavior plan, school administrators would have given that plan to the teacher as required by law. If a student has a behavior plan, the teacher should have received a copy of the plan when the teacher started teaching the student. TCTA members should contact the TCTA Legal Department (888-879-8282) to ask questions related to the behavior of special education students, teacher options, and potential changes in accommodations to which a student may be entitled.

Question 5: Can a principal delegate the responsibilities of the campus behavior coordinator to the counselor?

Answer: Counselors rarely serve as campus administrators in charge of student discipline and have full time jobs; it makes little sense for principals who routinely handle discipline to delegate to a counselor the very important role of CBC.

Question 6: Does the behavior coordinator take over responsibility for classroom discipline?

Answer: Teachers continue to manage behavior in the classroom and remove students according to the law. The law does not entitle districts to adopt policies that limit those rights. Although teachers will continue to have responsibility for in-classroom behavior management systems, implementing the requirement that the CBC employ effective alternative measures that improve classroom behavior may require more dialogue among administrators and teachers.

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II. Principal Options After Teacher Removes Student From Class

A. Removal Options in Sections 37.002(a) and .002(b)

Section 37.002(a) allows a teacher to send a student to a campus behavior coordinator who should take action reasonably designed to improve a student’s behavior before sending the student back to the teacher’s class. Section 37.002(b) allows a teacher to remove from class and send to a principal (campus behavior coordinator) a student whom the teacher has documented to have repeatedly interfered with the teacher’s ability to teach or whom the teacher determined to have behaved in conduct that seriously interfered with the teacher’s ability to teach. Removal under Section 37.002(b) begins a chain of events and does not allow a principal (campus behavior coordinator) to simply return the student to the teacher’s classroom.

B. Principal Options After Removal

Texas Education Code § 37.002(c):
If a teacher removes a [repeatedly or seriously disruptive] student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program.
II. Principal Options After Teacher Removes Student From Class

C. Suspension.

Texas Education Code § 37.005:

(a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended.

(b) A suspension under this section may not exceed three school days.

Key Points:
Principal Options After Teacher Removes Student From Class

1. SB 107 states that a CBC shall perform the duties assigned to a principal in this subchapter of Chapter 37.

2. If a teacher removes a student from class for disruptive behavior, a principal’s (CBC’s) options do not include sending the student immediately back to class. (See Sections III and V.)

(Again, this refers to the formal removal of a student from class based on the disruptive conduct described in Sections 37.002(b)(1) and (b)(2). Under Section 37.002(a), teachers can send students to the office and expect the CBC to take steps reasonably expected to improve a student’s behavior before returning the student to class.)

III. Removal Conference

Texas Education Code § 37.009(a), as amended by SB 107:

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 campus behavior coordinator or other appropriate administrator shall schedule a conference among the campus behavior coordinator 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.
Key Points: Removal Conference

1. After a teacher removes a repeatedly disruptive or seriously disruptive student from class by sending the student to the principal (CBC), a removal conference must take place. Before SB 107, the law required the principal or designee to participate in that conference. Now, the campus behavior coordinator or designee participates.

2. A removal conference must take place within three school days after a teacher removes a student from class.

3. After a teacher removes a student under Sections 37.002(b)(1) or (b)(2), a principal’s (CBC’s) options do not include immediately returning the student to class. The student cannot return to the teacher’s class until after the conference.

4. A teacher can remove a student from class, intending to have the student return to class after a removal conference.

5. After removing a student, a teacher can withhold consent for the student’s return to class (see Sections V and VI); a removal conference must still take place.

6. The conference gives a teacher and a CBC a chance to work as a team to deal with a student’s conduct and the needs of the student and the classroom. The law neither limits the scope of the conference nor prevents other professionals from participating.
   a. The conference could be a brief and positive discussion among a teacher, parent, CBC, and student about expectations, conduct, and rules.
   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 contract with clear expectations and consequences. (See Section IV.)
   c. A teacher could ask that the conference include a behavioral specialist or counselor to talk to students or to work with parents on behavior management techniques.
   d. State law says that a teacher cannot discuss (recommend) medication or diagnose a student. A nurse can discuss medication and participate in a removal conference. A member of a 504 committee or special education personnel could participate in a removal conference. For special education questions, TCTA members may call the TCTA Legal Department (888-879-8282) to speak with one of their attorneys.
   e. The conference does not have to take place at the campus; it could take place in the central office.
   f. After a conference and “[b]efore ordering the suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider:
      whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action.” Texas Education Code § 37.009, as amended by SB 107.
IV. Removal and School Activities

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 can affect 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 After Teacher Removes a Student

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. A teacher can remove a student for repeatedly or seriously disruptive behavior and withhold consent for the student's return to class. If a principal (CBC) believes the student should return to class, the principal (CBC) cannot unilaterally return the student to the teacher's class. The CBC can convene a meeting of the placement review committee, and the committee determines whether the teacher's class is the best or only alternative placement for the student. (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.

3. A principal cannot select teachers to serve on a “placement review committee.”

4. The committee members, not campus administrators, determine whether placement in the teacher's class is the best or only alternative for the student.

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 student shall (or may) 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].

   Continued page 10

Before ordering the suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider:

whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of the behavior coordinator concerns a mandatory or discretionary action.” Texas Education Code § 37.009, as amended by SB 107.

B. Criminal Conduct.

1. Types of Crimes.

The crimes listed in Sections 37.006 and .007 range from misdemeanors to 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. For example, 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.

As to some crimes, the location does not matter. For example, “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 of the offense of retaliation under Section 36.06, Penal Code, against any school employee.” Section 37.006(b): Continued page 11
c. The Crime of Retaliation.

Texas Penal Code § 36.06(a):

(a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act:

(1) in retaliation for or on account of the service or status of another as a:

(A) public servant...

Retaliation, a felony offense, occurs when a student (or a parent) harms or threatens to harm a teacher (a public servant) for doing the teacher’s job.

Key Points: Mandatory Removals

1. TCTA members can consult the TCTA Survival Guide or tcta.org/student_removal for more information about Chapter 37 and the list of violations included in Section 37.006 that require removal to a DAEP, as well as the list of violations included in Section 37.007 that may require expulsion.

2. A student younger than six years old cannot be removed from class and placed in a DAEP. Texas Education Code § 37.006(l). A student younger than six can be removed from class and placed in ISS or in another teacher’s class.

3. An elementary student cannot be placed in a DAEP with secondary students. Texas Education Code § 37.006(f). A district should have an elementary DAEP.

4. A student younger than 10 cannot be expelled for the serious crimes listed in Section 37.007, but should be placed in a DAEP. Texas Education Code § 37.006(f).

5. The statutory criteria a CBC must consider (Texas Education Code § 37.009(a)) prior to ordering a removal to a DAEP may limit the length of time a student spends in a DAEP or, in some cases, prevent the removal altogether.
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.

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 kneed 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.
Key Points: Mandatory Removals for Assaulting Others and Causing Harm

1. If, in class, within 300 feet of school property, or at a school-sponsored event, a student assaults a student or another person and causes bodily harm, the district must remove the student from class and put the student in a DAEP. Removal remains subject to the criteria specified in Texas Education Code § 37.009(a).

2. The phrase “bodily harm” excludes touches or offensive contacts, but does not require that the physical contact cause a serious injury.

3. If a student assaults a teacher and causes bodily harm, the “student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.” Texas Education Code § 37.002(d).

4. For an act to constitute an assault, a student need not make direct physical contact with another person. Throwing something that strikes a person can constitute an assault. Intentionally pushing something or someone where that intentional act then results in the object or person making contact with another person not the intended target can constitute an assault.

Key Points: Leave If a Student Assaults a Teacher and Causes Harm

If a student assaults a teacher and the assault causes physical harm to the extent that the teacher cannot work, the teacher has the right to request leave to recuperate from the physical injuries that prevent the teacher from working.

Texas Education Code § 22.003:

(b) In addition to all other days of leave provided by this section or by the school district, an employee of a school district who is physically assaulted during the performance of the employee's regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault. At the request of an employee, the school district must immediately assign an employee to assault leave and, on investigation of the claim, may change the assault leave status and charge the leave against the employee's accrued personal leave or against an employee's pay if insufficient accrued personal leave is available.

(c) For purposes of Subsection (b), an employee of a school district is physically assaulted if the person engaging in the conduct causing injury to the employee:

(1) could be prosecuted for assault; or

(2) could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.
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 behavior.

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 2015-2016 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.