



When There is No Other Alternative: Using Chapter 37 to Remove the Disruptive Student

The primary responsibility of a classroom teacher is to provide a safe and orderly environment for learning. Without a safe and orderly environment, learning will be impeded and, in all probability, will not take place. There may be times, however, when a student engages in behavior that is so egregious it disrupts the teacher's ability to teach and/or the ability of the other student to learn. **Chapter 37** of the **Texas Education Code (TEC)** gives teachers the authority to remove disruptive students from their classrooms. The law, adopted by the **Texas legislature** in 2005, allows teachers two types of removals: a discretionary removal and a mandatory removal.

A mandatory removal requires the removal of a student who exhibits serious types of behavior as identified in **TEC 37.006** and **37.007** that require removal from the campus to either a district alternative education placement (DAEP) program or expulsion. It is important to note that these are not your "garden-type" misbehaviors; rather, they are offenses that threaten or cause egregious harm to a person or property. When a student engages in this type of behavior, they need to be removed from your classroom immediately.

The discretionary removals may be a little more problematic because they rely on the teacher's discretion and this will vary from teacher-to-teacher since tolerance levels for inappropriate behavior is different. So, there is no one way or right way to handle a discretionary removal other than to make sure you have your documentation in place to support this kind of removal. This removal is about getting the disruptive student out of your classroom so that you can teach and the other students in your classroom can learn.

Under **Chapter 37.002(b)**, a teacher may remove a student:

- 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
- Whose behavior is so unruly, disruptive or abusive 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.

An example of the behavior indicated under the first bullet would be the student who engages in persistent misbehavior that, over time, the teacher has repeatedly corrected yet the behavior continues to occur and disrupt instruction and learning. This could be a student who periodically yells out once in class. The teacher has dealt with the behavior on more than one occasion yet it persists. After a while, with appropriate documentation, the teacher can exercise a Chapter 37 removal.

An example of the second bullet would be the student who throws a tantrum in the classroom. Although this is a single event, it is more intense than just a periodical yell and consumes more time away from instruction and learning for the teacher and the other students. In this instance, a single occurrence warrants a Chapter 37 removal.

Again, since these are discretionary removals, one teacher may remove a disruptive teacher after two occurrences while another may wait until the fourth or fifth occurrence. It's important to note that a Chapter 37 removal should be your last resort. Students engage in disruptive behavior for all sorts of **reasons** and it's important for the teacher to try to identify the causes of the misbehavior.

For the persistently disruptive student, you may want to use the **Motivation Assessment Scale** in this survival guide to identify motivating factors for misbehavior.

Now What?

Once you remove a student pursuant to **Chapter 37**, i. e. you have sent a memorandum of understanding (MOU) along with support documentation to your principal or campus behavior coordinator (if the campus has one), the student is:

- Placed in another classroom
- Assigned in-school suspension
- Sent to a Discipline Alternative Education Placement (DAEP)
- Expelled from school.

Do not allow your administrator to coerce you into taking the student back in your class, especially if your documentation supports removal. Coercion includes threatening or intimidating adverse actions (including impacting ratings on your appraisal) to compel you to take the student back and it also includes "velvet touch" actions such as telling you how much this student will miss out by not being in your class. If your documentation is solid, stick to it. This is why it is absolutely critical that you have your documentation completed and ready when you do the Chapter 37 removal.

Under a discretionary removal, the student may only be returned to your class ***IF*** the duly-constituted **Placement Review Committee (PRC)** meets and determines that your classroom is the best or only available alternative for this student. The PRC committee consists of three members. Two members are ELECTED by the teachers and the third member is appointed by the principal. If you have to do a Chapter 37 removal, ask how the committee is determined and if they tell you something contrary to what is in the law, let them know.

The Student With Disabilities

You may be told that a student with disabilities may not be removed from your classroom pursuant to IDEA; however, this is not the case. Under the disciplinary provisions of the Individuals with Disabilities Act, a student with disabilities may be removed for not more than

ten consecutive or cumulative days; however, the student is still entitled to the same services during the removal a child without disabilities would receive. Under certain circumstances, a student with disabilities may be unilaterally removed (without triggering an ARD meeting) for up to 45 days for an offense involving a weapon, drugs, or injury to self or others.

Any removal after the tenth consecutive or cumulative day does trigger a change in placement. When this happens the ARD committee must ensure that the child is receiving a free appropriate public education (FAPE). It may also request a Functional Behavioral Analysis (FBA) and then, using that information, implement appropriate behavioral interventions.

The ARD Committee must also determine if the behavior is a manifestation of the child's disability. In other words, the misbehavior in question was caused (or had direct and substantial relationship to) the child's disability; or it is a direct result of the failure by the school and the district to implement the IEP and provide FAPE.

If the ARD Committee determines that the misbehavior is a manifestation of the student's disability, a Functional Behavioral Analysis must be completed, a Behavior Intervention Plan (BIP) is developed and implemented, and the child is returned to the appropriate placement, which may be your classroom.

The Power of Documentation

Chapter 37 removals require documentation. So long as you are able to demonstrate (1) the child's behavior disrupted teaching and learning; (2) your efforts to address the behavior and the outcome of those efforts) and (3) the behavior persists, then you should be able to sustain a Chapter 37 removal. TSTA has developed a set of interactive documentation forms for students without disabilities and for students with disabilities. The forms also address discretionary and mandatory removal. These interactive forms are available immediately following this section.

To:

From:

Date:

Re: **Discretionary Removal of Student From My Class Pursuant to TEC 37.002**

Statutory Citation:

Texas Education Code

Title 2: Public Education

Subtitle G: Safe Schools

Chapter 37 : Discipline: Law and Order

Subchapter A: Alternative Settings for Behavior Management

TEC §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.

Pursuant to the provisions of Chapter 37 of the Texas Education Code cited above, I am exercising my right to remove the following student from my classroom:

NAME:

Please find attached my documentation of this student's behavior(s) that:

has (have) repeatedly interfered with my ability to communicate effectively with the students in my class and/or with their ability to to learn; or

is (are) so unruly disruptive, or abusive that it (they) seriously interfere(s) with my ability to communicate effectively with the students in my class or with their ability to learn.

I understand that:

- TEC §37.002(c) prohibits this student from returning to my class without my consent, unless the duly constituted Place Review Committee, operating pursuant to TEC §37.003, determines that my classroom is the best or only alternative available.
- TEC 37.009(a) requires the campus behavior coordinator or principal to schedule a conference within three class days of this removal with the appropriate administrator, the parent(s) or guardian(s), the student, and me.
- Pursuant to TEC 37.009(a), the student cannot be returned to my class while this conference pursuant is pending.

"It goes without saying that a teacher, which includes a coach, is the cornerstone of education. Without teaching, there can be little, if any, learning. Without learning, there can be little, if any, education. Without education, there can be little, if any civilization.

It equally goes without saying that threatening, harassing, and intimidating a teacher impedes, if not destroys, the ability to teach; it impedes, if not destroys, the ability to educate. It disrupts, if not destroys, the discipline necessary for an environment in which education can take place. In addition, it encourages and incites other students to engage in similar disruptive conduct. Moreover, it can even cause a teacher to leave that profession. In sum, it disrupts, if not destroys, the very mission for which schools exist – to educate."

The Honorable Rhesa Hawkins Barksdale, 5th U. S. Circuit Court of Appeals, Bell v. Itawamba, 20 August 2015

Student Discipline Record
Confidential

Name: _____ Teacher: _____

From: _____ To: _____ School: _____

Grade Level/Content Area: _____

Type of Behavior*	Specific Action(s) or Words	Date/Time	Disciplinary Action Taken
Repeated			
Disruptive			
Abusive			
Unruly			
Repeated			
Disruptive			
Abusive			
Unruly			
Repeated			
Disruptive			
Abusive			
Unruly			
Repeated			
Disruptive			
Abusive			
Unruly			
Repeated			
Disruptive			
Abusive			
Unruly			

**Disruptive, abusive, or unruly behavior may constitute sufficient to remove a student at the first offense. Repeated misbehavior must indicate several offenses before a removal.*

Pursuant to the provisions of Chapter 37 of the Texas Education Code, I am submitting my documentation in support of my decision to remove the above-named student from my classroom.

Signature

Date

To:

From:

Date:

Re: **Discretionary Removal of Student From My Class Pursuant to TEC 37.002**

<p><u>Statutory Citation:</u></p> <p>Texas Education Code</p> <p>Title 2: <i>Public Education</i></p> <p>Subtitle G: <i>Safe Schools</i></p> <p>Chapter 37 : <i>Discipline: Law and Order</i></p> <p>Subchapter A: <i>Alternative Settings for Behavior Management</i></p>	<p>TEC §37.002(b) A teacher may remove from class a student:</p> <p>(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</p> <p>(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.</p>
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NAME:

Please find attached my documentation of this student's behavior(s) that:

has (have) repeatedly interfered with my ability to communicate effectively with the students in my class and/or with their ability to to learn; or

is (are) so unruly disruptive, or abusive that it (they) seriously interfere(s) with my ability to communicate effectively with the students in my class or with their ability to learn.

I understand that :

- TEC §37.002(c) prohibits this student from returning to my class without my consent, unless the duly constituted Place Review Committee, operating pursuant to TEC §37.003, determines that my classroom is the best or only alternative available.
- TEC 37.009(a) requires the campus behavior coordinator or principal to schedule a conference within three class days of this removal with the appropriate administrator, the parent(s) or guardian(s), the student, and me.
- Pursuant to TEC 37.009(a), the student cannot be returned to my class while this conference pursuant is pending.

I also understand that:

- Pursuant to §300.530(b)(1), this student can be removed because of violations to the Student Code of Conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive days (the the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten cumulative school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
- For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 34 CFR 300.530(e), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 34 CFR 300.530(d) (services).

"It goes without saying that a teacher, which includes a coach, is the cornerstone of education. Without teaching, there can be little, if any, learning. Without learning, there can be little, if any, education. Without education, there can be little, if any civilization.

It equally goes without saying that threatening, harassing, and intimidating a teacher impedes, if not destroys, the ability to teach; it impedes, if not destroys, the ability to educate. It disrupts, if not destroys, the discipline necessary for an environment in which education can take place. In addition, it encourages and incites other students to engage in similar disruptive conduct. Moreover, it can even cause a teacher to leave that profession. In sum, it disrupts, if not destroys, the very mission for which schools exist – to educate."

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**Disruptive, abusive, or unruly behavior may constitute sufficient to remove a student at the first offense. Repeated misbehavior must indicate several offenses before a removal.*

Pursuant to the provisions of Chapter 37 of the Texas Education Code, I am submitting my documentation in support of my decision to remove the above-named student from my classroom.

Signature

Date

To:

From:

Date:

Re: Mandatory Removal of Student From My Class Pursuant to TEC 37.002

Statutory Citation:

Texas Education Code

Title 2: Public Education

Subtitle G: Safe Schools

Chapter 37 : Discipline: Law and Order

Subchapter A: Alternative Settings for Behavior Management

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. 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.

In order to comply with the Texas Education Code (TEC), Section 37.002(d), I have removed the following student from my class:

NAME:

This student has engaged in one or more of the conducts described under TEC 37.006 and/or 37.007. Please see the attached documentation.

I understand that:

- The principal may not return the student to my classroom without my consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.
- If this removal is for conduct listed in TEC Sections 37.006(a)(2)(B), 37.007(a)(2)(A), or 37.007(b)(2)(C), no authority, including the Placement Review Committee, may return this student to my classroom without my consent.
- TEC 37.009(a) requires the campus behavior coordinator or principal to schedule a conference within three class days of this removal with the appropriate administrator, the parent(s) or guardian(s), the student, and me.
- Pursuant to TEC 37.009(a), the student cannot be returned to my class while this conference pursuant is pending.
- The student may not be returned to my class following a placement in a disciplinary alternative education program without my consent.
- I may not be coerced into taking this student back in my classroom.

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It equally goes without saying that threatening, harassing, and intimidating a teacher impedes, if not destroys, the ability to teach; it impedes, if not destroys, the ability to educate. It disrupts, if not destroys, the discipline necessary for an environment in which education can take place. In addition, it encourages and incites other students to engage in similar disruptive conduct. Moreover, it can even cause a teacher to leave that profession. In sum, it disrupts, if not destroys, the very mission for which schools exist – to educate.”

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Documentation of Conduct Causing a Mandatory Removal From Class

Confidential

Name:

Teacher:

School:

Grade Level/Content Area:

This student has engaged in the behavior(s) checked below. This conduct is described in the Texas Education Code, Sections 37.006 and 37.007 as conduct that requires me, pursuant to TEC 37.002(d), to remove this student from my class and send him/her to the principal or campus behavior coordinator for placement in an alternative education program or expulsion, as appropriate.

Conduct Requiring Placement in an Alternative Education Program (AEP)		Date and Time	Conduct Requiring Expulsion		Date and Time
	Assault			Unlawfully carrying a weapon (gun, illegal knife, club)	
	Terroristic Threat			Aggravated Assault	
	Sells, gives, or delivers to another person or possesses or uses or is under the influence of (a) marijuana, (b) a controlled substance, (c) a dangerous drug, or (d) an alcoholic beverage			Felony possession or distribution of an alcoholic beverage, or marijuana, or a controlled substance, or a dangerous drug	
	Abuse of (a) glue, (b) aerosol paint, or (c) volatile chemicals			Aggravated Sexual Assault	
	Public Lewdness			Arson	
	Indecent Exposure			Abuse of (a) glue, (b) aerosol paint, or (c) volatile chemicals	
	Retaliation Against Any School Employee			Murder or Capital Murder	
	False Alarm			Criminal Attempt to Commit Murder or Capital Murder	
				Indecency with a Child	
				Aggravated Kidnapping	
				Sexual Assault	
				Deadly Conduct	
				Continual Sexual Abuse of a Child or Children	
				Manslaughter	
				Criminally Negligent Homicide	
				Aggravated Robbery	
				Retaliation Against Any School Employee	

Pursuant to the provisions of Chapter 37 of the Texas Education Code, I am submitting my documentation in support of the removal of the above-named student from my classroom.

Signature

Date

To:

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Re: **Mandatory Removal of Student From My Class Pursuant to TEC 37.002**

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<p>Texas Education Code Title 2: Public Education Subtitle G: Safe Schools Chapter 37: Discipline: Law and Order Subchapter A: Alternative Settings for Behavior Management</p>	<p>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. 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.</p>
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- The student may not be returned to my class following a placement in a disciplinary alternative education program without my consent and I may not be coerced into taking this student back in my classroom.
- Pursuant to §300.530(b)(1), this student can be removed because of violations to the Student Code of Conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive days (the the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten cumulative school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
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Documentation of Conduct Causing a Mandatory Removal From Class

Confidential

Name:

Teacher:

School:

Grade Level/Content Area:

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	Terroristic Threat			Aggravated Assault	
	Sells, gives, or delivers to another person or possesses or uses or is under the influence of (a) marijuana, (b) a controlled substance, (c) a dangerous drug, or (d) an alcoholic beverage			Felony possession or distribution of an alcoholic beverage, or marijuana, or a controlled substance, or a dangerous drug	
	Abuse of (a) glue, (b) aerosol paint, or (c) volatile chemicals			Aggravated Sexual Assault	
	Public Lewdness			Arson	
	Indecent Exposure			Abuse of (a) glue, (b) aerosol paint, or (c) volatile chemicals	
	Retaliation Against Any school Employee			Murder or Capital Murder	
	False Alarm			Criminal Attempt to Commit Murder or Capital Murder	
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				Continual Sexual Abuse of a Child or Children	
				Manslaughter	
				Criminally Negligent Homicide	
				Aggravated Robbery	
				Retaliation against any school employee	

Pursuant to the provisions of Chapter 37 of the Texas Education Code, I am submitting my documentation in support of the removal of the above-named student from my classroom.

Signature

Date