

"Since When Does Mandatory Mean Maybe?": How Chapter 37 (Discipline) Interacts with Special Education

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In Chapter 37 of the Texas Education Code, offenses are labeled as mandatory and discretionary.

Behavior		Discipline	
Code and Translation		Mandatory DAEP Placement	Mandatory Expulsion
01	Conduct punishable as a felony-TEC §37.006(a)(2)(A)	Yes	
02	Possessed, sold, used, or was under the influence of an alcoholic beverage – TEC 37.006 (a)(2)(D) and 37.007 (b)(2)(A)	Yes	
03	Abuse of a volatile chemical, TEC 37.006 (a)(2)(E) and 37.007(b)(2)(B)	Yes	
04	Public lewdness or indecent exposure TEX 37.006(a)(2)(F)	Yes	
05	Retaliation against school employee TEX 37.006(b) and 37.007 (d)	Yes	
06	Based on conduct occurring off campus and while the student is not in attendance at a school sponsored or school related activity for felony offenses in Title 5 Penal Code 37.006 (c) 37.007 (b)(4) and 37.0081	Yes	
07	Brought a firearm to school, 37.007 (e) or Unlawful Carrying of a Handgun under penal code 6.02 37.007 (a)(1)		Yes

Behavior		Discipline	
Code and Translation		Mandatory DAEP Placement	Mandatory Expulsion
08	Unlawful Carrying of a Location-restricted Knife under Penal Code 46.02 37.007 (a)(1) (Location-restricted knife blade longer than 5.5 in.)		Yes
09	Elements of Offense relating to Prohibited Weapons Under Penal Code 46.05 37.007 (a)(1)		Yes
10	Arson 37.007 (a)(2)(B)		Yes
11	Murder, capital murder, criminal attempt to murder, or capital murder 37.007 (a)(2)(C)		Yes
12	Indecency with a child 37.007 (a)(2)(D)		Yes
13	Aggravated kidnapping 37.007 (a)(2)(E)		Yes
14	Terroristic Threat 37.006 (a)(1) or 37.007 (b)(1)	Yes	

Behavior		Discipline	
Code and Translation		Mandatory DAEP Placement	Mandatory Expulsion
15	Assault under Penal Code Section 22.01 against a school district employee or volunteer 36.006 (a)(2)(b) and or 37.007 (b)(2)(C)	Yes	
16	Assault under Penal Code Sec. 22.01 (a)(1) against a non-school district employee or volunteer	Yes	
17	Aggravated assault under Penal Code Sec. 22.02 against a school district employee or volunteer 37.007 (d)		Yes
18	Aggravated assault under Penal Code Sec. 22.02 against non-school district employee or volunteer 37.007 (a)(2)(A)		Yes
19	Sexual Assault under Penal Code Sec. 22.011 or aggravated sexual assault under 22.021 against a school district employee or volunteer		Yes
20	Sexual Assault under Penal Code Sec. 22.044 or aggravated sexual assault under 22.021 against non school district employee or volunteer 37.007 (a)(2)(A)		Yes
21	False Alarm/False Report 37.006(a)(1) and 37.007 (b)(1)	Yes	

Behavior		Discipline	
Code and Translation		Mandatory DAEP Placement	Mandatory Expulsion
22	Felony Controlled Substance Violation 37.007(a)(3)		Yes
23	Aggravated Robbery 37.007 (a)(2)(F) 37.006 (C)-(D)		Yes
24	Manslaughter 37.007(a)(2)(G)		Yes
25	Criminally Negligent Homicide 37.007 (a)(2)(H)		Yes
26	Student Is Required to Register as a Sex Offender Under Chapter 62 of The Code of Criminal Procedure and is Under Court Supervision 37.304	Yes	
27	Continuous Sexual Abuse of Young Child or Disabled Individual Under Penal Code 21.02 TEX 37.007 (a)(2)(I)		Yes
28	Harassment Against an Employee of the School District under Texas Penal Code 42.07 (a)(1)(2)(3) or (7) 37.006 (a)(2)(G)	Yes	

Behavior		Discipline	
Code and Translation		Mandatory DAEP Placement	Mandatory Expulsion
29	Possessed, Sold, Gave, Used, Delivered, or Under the Influence of Marihuana or THC 37.006(a)(2)(C-1) and 37.007 (b)(2)(A)(i)	Yes	
30	Possessed, Sold, Gave, Delivered, or Used E-Cigarette 37.006(a)(2)(C-2) and 37.007 (b)(2)(A)	Yes	
31	Possessed, Sold, Gave, Used, Delivered, or Under the Influence of Other Controlled Substance 37.006(a)(2)(C)(i) and 37.007 (b)(2)(A)(i)	Yes	

When the offense is committed by a general education student, mandatory means mandatory.

However, when the student that committed the offense is special needs, the waters get much murkier. The meaning of the disciplinary use of the word “mandatory” becomes “maybe” and thus our journey into the alternate world of special education begins!

1. Jerry Jonesy, who is ED, gave his teacher a wedgie when she asked him to return to his chair. Since this is a mandatory DAEP offense, can he be placed even if it is determined that the behavior is a manifestation of the disability?

When a removal is mandatory, the school still needs to hold a MDR. If the behavior is related, the school can only remove if the behavior is a special circumstance.

2. Sally Bob, the sister of Billy Bob and Jim Bob, qualifies for services under the eligibility of ID and speech. She receives services in the functional life skills classroom. Sally Bob is caught in the act of carnal knowledge in the bathroom. The principal wants to send her to the DAEP. The DAEP does not have comparable services of the functional life skills classroom. Can she be sent to the DAEP?

In addition to determining whether the behavior is a manifestation of the disability, the ARD committee must determine whether the disciplinary placement can implement the student's IEP. If it cannot, it is not an appropriate placement.

3. At the MDR, the special education teacher, parent and LSSP believe that the behavior is related to Elan Musky's disability of autism, while the general education teacher abstained, and the principal believes it is not related. Can the student be sent to the DAEP?

When the behavior is related, the district can only remove the student to the DAEP if a special circumstance exists.

4. Aaron Rodgerette's BIP provides that when Aaron is agitated, do not engage in a discussion of what he is doing wrong and to wait until he has de-escalated. When Aaron becomes agitated in PE and will not participate, Coach gets in his face and reprimands him for his behavior. Aaron pushes Coach. Coach files assault charges. Can Aaron be sent to the DAEP?

Everyone that works with the student needs to be trained on the BIP. In this instance, the Coach did not follow the BIP and therefore, the student cannot be removed to the DAEP.

5. Goat Brady headbutts Dak for making passes at his ex Giselle. The ARD committee determines that the behavior is related to his disability. Can Goat still be removed for serious bodily injury?

The term serious bodily injury means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. Therefore, Goat cannot be removed for the headbutt to the DAEP. It does not mean, however, that Goat is immune from a consequence.

6. Timmy is ID with an IQ of 39. When his teacher was out due to the flu, the substitute tried to take the iPad back after his break and Timmy whacked her in the head with the iPad. Can Timmy be expelled?

When a student does not have the cognitive ability to understand right from wrong, the student code of conduct does not apply. Always make sure that the substitutes have the student's BIP.

7. Armie Hammer told 4 students at lunch that he was going to shoot up the school and drink the blood of his victims. Armie is ED. It was determined that his actions were related to his disability. Can he be removed to the DAEP?

When there is a genuine concern for safety, the ARD committee can still place the student in the DAEP when maintaining the student in the current placement poses a substantial likelihood of harm to himself or others.

8. Sean Combs qualifies for services as OHI for ADHD. He has engaged in continuous behavior for the last two years. He has a BIP, but the teachers have no data that they have implemented it. Yesterday, he showed a nude pic of himself to the teacher. Can he be sent to the DAEP if the BIP was not implemented?

One of the two questions of an MDR is did the district's failure to implement the IEP cause the behavior? Phrased in a more positive way, did the district implement the IEP? If the district did not implement the IEP, it is prudent to change the consequence from a change of placement and not have the MDR.

9. Goober, who is ID, brings a knife to school. He said it was for protection against those kids that are mean to him. What actions does the school need to take?

While the student did bring a weapon to school, the student also stated that he is being harassed by other students. An investigation should be conducted. However, an MDR can be held as well.

10. Billy Bob shares his Adderall with his friends who need to focus on the STAAR. How is this addressed in the MDR?

This constitutes a special circumstance which would allow the student to be removed for 45 school days even if the behavior was a manifestation.

Scenario One:

At the MDR, the LSSP determines that the behavior is related to the disability. The principal states, "I don't care if it's related, nobody gets to stay on this campus if they assault someone on my campus". Is there a problem?

Scenario One Response:

Remember, what you say can and will come back to bite you! By making that statement, the principal violated IDEA.

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