



TEXAS EDUCATION AGENCY

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Jim Nelson
Commissioner of Education

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OPINION COMMITTEE

Hon. John Cornyn
Texas Attorney General
Price Daniel Building
P.O. Box 12548
Austin, Texas 78711

FILE # ML-42102-D1
I.D. # 42102

Dear General Cornyn:

This letter is to ask your opinion regarding the effect of a 1997 amendment of Section 37.006 of the Texas Education Code, if any, on the meaning of Section 37.007(a)(3) of that code.

Chapter 37 of the Texas Education Code deals with school safety and student discipline and was enacted in its current form as part of the code's 1995 general revision¹. Section 37.006 deals generally with "removals" of a student to an alternative education program ("AEP") operated by a school district, while Section 37.007 deals generally with expulsions². Section 37.006(a) lists certain conduct that requires a school district to remove a student, while Section 37.007(a) lists certain conduct that requires a school district to expel a student.

When Chapter 37 was first enacted, the specified conduct requiring removal under Section 37.006(a) or expulsion under Section 37.007(a) was limited to conduct "on school property or while attending a school-sponsored or school-related activity on or off school property". In 1999, Section 37.006(a) was amended to require removal for conduct "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 school property"³. No corresponding amendment was made to extend the ambit of Section 37.007 expulsion offenses to 300 feet from the school property.

Section 37.007(a)(3) has since 1995 contained an internal reference to Section 37.006(a)(3)⁴. That subsection requires a student to be expelled if the student "engages in conduct specified by Section 37.006(a)(3) or (4), if the conduct is punishable as a felony."⁵ My question involves

¹ Acts, 1995, 74th Leg., ch 260, Section 1.

² In counties with populations over 125,000, most expelled students are served by a "juvenile justice alternative education program" operated by the county juvenile board. Some expelled students continue to be served by the school district.

³ Acts 1997, 75th Leg., ch. 1015, Section 3.

⁴ The 1997 amendment renumbered the relevant subsections of section 37.006(a).

⁵ Sections 36.006(a)(3) and (4) require removal if a student:

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

whether the 1997 amendment to extend the ambit of removable offenses under Section 37.006 also operated to extend the geographic ambit of expellable offenses under Section 37.007(a)(3).

After the 1997 amendment, it appears unclear as to whether offenses requiring expulsion under Section 37.007(a) must be committed "on school property or while attending a school-sponsored or school-related activity on or off school property" or whether the phrase "conduct described in Section 37.006(a)(3) or (4)" incorporates by reference the 300 foot proximity to school property added in 37.006(a). We are unaware of any expression of legislative intent as to this issue. It may be relevant that Section 37.007(b)(1) allows expulsion for essentially the same (but non-felonious) conduct, yet is clearly limited to school property or events.

My question is, does Section 37.007(a)(3) require a school district to expel a student whose conduct:

1. Constitutes a felony;
2. Would require removal under Section 37.006(3) or (4);
3. Does not occur on school property or while attending a school-sponsored or school-related activity on or off school property; and
4. Does occur within 300 feet of school property as defined under Section 37.006(a)?

Thank you for your attention to this request. Should you need any further information, please contact David Anderson, General Counsel, at (512) 463-9720.

Sincerely yours,



Jim Nelson
Commissioner of Education

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- (A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or
 - (B) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
- (4) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;