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Rights of the Teacher and Obligations of the District as Employer

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Introduction

We wanted to discuss this topic because it is so important to teachers across the State. Unfortunately, too often I have been contacted by teachers that have been threatened or assaulted by their students. Sadly, many of those teachers call because they want to exit their contract and leave teaching altogether. National Surveys show teachers have higher rates of frequent job-related stress and burnout than the average worker.[1] Research looking at long term trends finds that the state of teaching (considering interest in the profession, the prestige of the position, and job satisfaction) is at or near the lowest levels in the last 50 years.[2]

Anecdotally, from the perspective of an attorney representing teachers, a disproportionate number of clients that are frustrated and contemplate leaving the profession work with special needs students, and many of them call because of experiencing violence and violent outbursts in their classes. These situations are pushing too many teachers to leave the field, and the ramifications of those decisions may be long-lasting. Teachers don't magically appear; they are made by other teachers. Many teachers choose their career because they were inspired by a teacher, possibly their parent. It is hard to imagine a child choosing to teach when they have seen a parent or mentor leave the profession after being battered and disillusioned. We aren't just losing the teachers today, but we may also be witnessing the disintegration of the pipeline of future teachers that we will all depend on.

While the law does provide some protections and rights for teachers, even when the law is silent, or lacking, it is imperative that districts and administrators keep in mind how traumatic a workplace assault is to a teacher. If the administration is supportive and willing to help the teacher, that may help keep a teacher in the classroom. When districts and administrators are dismissive or reluctant to help, they may unwittingly be doing serious harm to the supply of teachers now and in the future. In many cases, the information in this portion of the paper may be well known to attorneys in the field, but administrators often seem unaware of the law and so I hope it will be helpful to highlight some of the areas as a reminder for the administrators and practitioners new to the field.

Expectations of the Teacher

Teachers have a reasonable expectation that they will be safe at their school. While teachers that work extensively with students that have special needs may be more accustomed to difficult situations, they still expect to be safe and for their fears and concerns to be respected. The position that being assaulted is just part of the job is not reasonable and not based in law. That being said, the law does have a strong focus on the student's right to continue to receive education on their campus. Teachers that have been assaulted are sometimes surprised and disappointed to learn how the law limits expulsion to very specific and extreme cases. However, the district does have broader discretion to enact other changes that can provide protection and reassurances to the teacher that has been assaulted. When a teacher has been assaulted, the Education Code does give the district permission to remove students to a disciplinary alternative education program. CODE. While a special needs students Individual Education Plan (IEP) must be

[1] Doan, Sy, Elizabeth D. Steiner, and Rakesh Pandey, "Teacher Well-Being and Intentions to Leave in 2024: Findings from the 2024 State of the American Teacher Survey," Rand Institute Published June 18, 2024

[2] Kraft, Matthew A., and Melissa Arnold Lyon, "The Rise and Fall of the Teaching Profession: Prestige, Interest, Preparation, and Satisfaction over the Last Half Century," Annenberg Institute at Brown University, EdWorkingPaper No. 22-679, 2024.

considered and the district has obligations to the student, they can consider their options and conduct an ARD to review what options may be available that are consistent with the student's needs.

While the district should consider the nature and condition of the student and the impact of any issues on the student's behavior, if the behavior is not rooted in the student's condition, then the student can and should face discipline as any other student would. Failing to take any steps may have drastic consequences with regards to teacher retention.

Rights of the Teacher

While the law is often focused on the rights and needs of the student, especially one with special needs, there are still rights that the teacher can invoke when facing a violent or threatening student.

Removal

Section 37.002(b) of the Education Code gives a teacher the right to request a student be permanently removed from their classroom. While administrators are often reluctant to consider a removal when a child has an IEP, it should be noted that Section 37.002(d) states that the teacher *must* make such a request when the student has made a terroristic threat or committed an assault. Once a teacher makes the request the student should be moved to another placement and should not be returned to the teacher's classroom without the teacher's consent unless and until the placement review committee described in Section 37.003 has reviewed the situation and determined that the teacher's classroom is the "best or only alternative available." Tex. Ed. Code Sec. 37.002(c). If the request was made because the student committed an assault, the student should not be returned without the teacher's consent, and the administration should not coerce the teacher into consenting to the student's return. Tex. Ed. Code 37.002(d).

While the district must be respectful of the student's needs and their IEP, the code does not give an exception to the right to request removal. As a result, the district is obligated to act quickly to review the situation and work on a solution. The condition or needs of the student don't permit a district to simply ignore the request or the requirements of Section 37 of the Education Code. If anything, the totality of the statute means the district must act with more urgency as they are responsible for determining the best placement that is consistent with the law and the IEP of the student while honoring the teacher's request.

Assault Leave

Unfortunately, we have seen many teachers suffer serious injuries, including a number of concussions, when a student becomes violent. When a district employee is unable to work as a result of a physical injury suffered in an assault, the employee is entitled to what leave is needed for recuperation for up to 2 years from the date of the assault.

In the context of special needs students, there still seems to be some confusion or outdated thinking on the part of some administrators. We often hear from teachers that have been told that because of the student's capacity, their violent actions that injured the teacher were not an assault and therefore the teacher is not eligible for assault leave. After a decision against a teacher, the legislature specifically addressed this issue, adding the language, "could not be prosecuted for assault only because the person's age or mental capacity makes the person a non-responsible person for purposes of criminal liability" to the statute to make it clear that a teacher is still entitled to assault leave even if the student would not be criminally

Also available as part of the eCourse
Obligations in Tension: The Challenges and Considerations When a Teacher is Harmed by a Student

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