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S.B. No. 1584

A BILL TO BE ENTITLED

AN ACT

1
2 relating to positive behavioral interventions and supports for
3 students enrolled in public school who receive special education
4 services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 21.451(d), Education Code, is amended to
7 read as follows:

8 (d) The staff development:

9 (1) may include training in:

10 (A) technology;

11 (B) conflict resolution;

12 (C) discipline strategies, including positive
13 behavioral intervention and supports strategies, classroom
14 management, district discipline policies, and the student code of
15 conduct adopted under Section 37.001 and Chapter 37; and

16 (D) protecting students from bullying, including
17 preventing, identifying, responding to, and reporting incidents of
18 bullying; ~~and~~

19 (2) subject to Subsection (e) and to Section 21.3541
20 and rules adopted under that section, must include training based
21 on scientifically based research, as defined by Section 9101, No
22 Child Left Behind Act of 2001 (20 U.S.C. Section 7801), that:

23 (A) relates to instruction of students with
24 disabilities; and

1 (B) is designed for educators who work primarily
2 outside the area of special education; and

3 (3) must include training to ensure that adequately
4 trained school district personnel are available to work effectively
5 with the positive behavioral intervention and support needs of
6 students eligible for the district special education program.

7 SECTION 2. Subchapter A, Chapter 29, Education Code, is
8 amended by adding Section 29.021 to read as follows:

9 Sec. 29.021. POSITIVE BEHAVIORAL INTERVENTIONS AND
10 SUPPORTS. (a) In this section:

11 (1) "Behavior specialist professional" includes:

12 (A) a behavior analyst certified by the Behavior
13 Analyst Certification Board;

14 (B) a clinical psychologist;

15 (C) a licensed specialist in school psychology;

16 or

17 (D) any other special education professional,
18 appropriately certified as determined by the commissioner, with
19 experience, knowledge, and training in conducting a functional
20 behavioral assessment and developing a positive behavioral
21 intervention plan for a student whose behavior interferes with the
22 ability of that student or another student to learn.

23 (2) "Licensed specialist in school psychology" has the
24 meaning assigned by Section 501.002, Occupations Code.

25 (3) "Restraint," "seclusion," and "time-out" have the
26 meanings assigned by Section 37.0021.

27 (b) It is the policy of this state that each school district

1 to the maximum extent possible should provide functional behavioral
2 assessments to a student whose behavior interferes with the ability
3 of that student or of another student to learn. The result of
4 student assessments shall be used to develop and provide positive
5 behavioral interventions and supports and other strategies to
6 enhance academic and social behavioral outcomes for students by:

7 (1) emphasizing the use of data to inform decisions
8 regarding selecting, implementing, and monitoring the progress of
9 evidence-based behavioral practices;

10 (2) organizing resources and systems to improve the
11 faithful implementation and sustainability of positive behavioral
12 interventions and supports strategies; and

13 (3) providing training in the use of restraint in
14 accordance with Subsection (c).

15 (c) Training in the use of restraint provided as required
16 under Subsection (b)(3) must:

17 (1) ensure that a core team of personnel at each
18 campus, including a campus administrator or the administrator's
19 designee and any general or special education personnel likely to
20 use restraint, are trained in the use of restraint;

21 (2) ensure that any other personnel called on to use
22 restraint are trained in the use of restraint;

23 (3) ensure that any personnel called on to use
24 restraint in an emergency situation that have not been previously
25 trained receive training not later than the 30th day after the date
26 restraint was used;

27 (4) include training in:

1 (A) prevention techniques;

2 (B) de-escalation techniques; and

3 (C) alternatives to the use of restraint; and

4 (5) include instruction in current professionally
5 accepted practices and standards regarding behavior management and
6 the use of restraint.

7 (d) A school district shall provide positive behavioral
8 interventions and supports and related strategies under this
9 section in a manner that:

10 (1) ensures a student's freedom from restraint and
11 seclusion except as provided by Section 37.0021 and rules adopted
12 by the commissioner under that section;

13 (2) respects human dignity and personal privacy and
14 does not cause pain or trauma to a student; and

15 (3) ensures a student's right to placement in the least
16 restrictive educational environment.

17 (e) In the case of a student enrolled in a special education
18 program under this subchapter, a school district may use restraint
19 and time-out only as provided by Section 37.0021 and rules adopted
20 by the commissioner under that section.

21 (f) A school district may not use restraint as a substitute
22 for or as part of a behavioral intervention plan developed under
23 Section 29.005(g).

24 (g) Each behavioral emergency restraint report prepared as
25 provided by Section 37.0021(d)(3) shall be reviewed by the
26 principal of the school or the principal's designee and the
27 district administrator designated for that purpose as provided by

1 Section 37.0021(d)(4)(A) to:

2 (1) determine whether:

3 (A) restraint was repeatedly used for an
4 individual student; or

5 (B) restraint was used multiple times in the same
6 classroom or by the same individual; and

7 (2) recommend a meeting of a student's admission,
8 review, and dismissal committee to, as appropriate:

9 (A) revise strategies to enhance academic and
10 social behavioral outcomes for a student;

11 (B) conduct an updated functional behavioral
12 assessment; or

13 (C) revise a behavioral intervention plan to
14 address behavior that poses imminent danger of serious physical
15 harm to a student or another person in accordance with the
16 requirements of 34 C.F.R. Section 300.324 relating to the revision
17 of the individualized education program to address a lack of
18 expected progress.

19 (h) The student's admission, review, and dismissal
20 committee shall review any behavioral emergency restraint report
21 prepared under Section 37.0021(d)(3) concerning the student and:

22 (1) consider the impact of the student's behavior on
23 the ability of that student or another student to learn; and

24 (2) determine the need to create or revise a
25 behavioral intervention plan.

26 (i) If the student's admission, review, and dismissal
27 committee determines that the creation or revision of a behavioral

1 intervention plan is necessary, the committee shall create or
2 revise the plan and determine the need for school district
3 personnel who will implement the plan to participate in training by
4 a behavior specialist professional. The committee shall monitor
5 the implementation and results of the plan and determine the need
6 for any revision of the plan or any additional training for school
7 personnel.

8 SECTION 3. Section 37.0021, Education Code, is amended by
9 amending Subsection (d) and adding Subsections (d-1), (d-2), (d-3),
10 (d-4), and (d-5) to read as follows:

11 (d) Restraint may be used in the case of a student with a
12 disability receiving special education services under Subchapter
13 A, Chapter 29, only in circumstances involving imminent serious
14 physical harm to the student or another person. The commissioner by
15 rule shall adopt procedures for the use of restraint and time-out by
16 a school district employee or volunteer or an independent
17 contractor of a district in the case of a student with a disability
18 receiving special education services under Subchapter A, Chapter
19 29. A procedure adopted under this subsection must:

20 (1) be consistent with:

21 (A) professionally accepted practices and
22 standards of student discipline and techniques for behavior
23 management; and

24 (B) relevant health and safety standards; ~~and~~

25 (2) identify any discipline management practice or
26 behavior management technique that requires a district employee or
27 volunteer or an independent contractor of a district to be trained

1 before using that practice or technique;

2 (3) require a school that has used restraint for a
3 student to prepare a behavioral emergency restraint report
4 concerning the use of restraint not later than the third school day
5 after the date of the incident;

6 (4) require the principal of a school that has used
7 restraint for a student to:

8 (A) submit a copy of the report prepared under
9 Subdivision (3) for review to a district administrator designated
10 by the district superintendent as the responsible official for that
11 purpose; and

12 (B) maintain a copy of the report in the
13 student's eligibility folder;

14 (5) require the report prepared under Subdivision (3)
15 to include:

16 (A) the name, age, gender, race or ethnicity, and
17 grade level of the student;

18 (B) the date and the beginning and ending time of
19 the restraint;

20 (C) the location and setting of the restraint;

21 (D) the name of district personnel or any other
22 person who was involved in or administered the restraint;

23 (E) a description of the incident and the
24 precipitating factors, including the activity in which the student
25 was engaged immediately preceding the use of restraint and the
26 behavior that prompted the restraint;

27 (F) the specific nature or type of restraint

1 used;

2 (G) a statement indicating whether the student
3 currently has a behavioral intervention plan and identifying any
4 efforts made to de-escalate the situation and any alternatives to
5 the use of restraint that were attempted;

6 (H) details of any injury sustained by the
7 student or another person as a result of the incident and any
8 medical care provided; and

9 (I) information documenting parent contact and
10 notification;

11 (6) require the school that has used restraint for a
12 student to:

13 (A) not later than the end of the school day on
14 which the school used restraint, notify the parent or person
15 standing in parental relation to the student regarding the use of
16 the restraint; and

17 (B) not later than the third school day after the
18 date on which the school used restraint, provide a copy of the
19 report prepared under Subdivision (3) to the parent or person
20 standing in parental relation to the student;

21 (7) require the student's admission, review, and
22 dismissal committee to:

23 (A) collect information regarding the use of
24 time-out in connection with the student's individualized education
25 program; and

26 (B) evaluate the information to determine:

27 (i) the effectiveness of the use of

1 time-out; and

2 (ii) whether the use of time-out should be
3 continued; and

4 (8) if the student is subjected to an intervention
5 described by Subsection (d-3), require the district to provide
6 notice to the parent or person standing in parental relation to the
7 student regarding that intervention not later than the end of the
8 school day on which the student was subjected to the intervention.

9 (d-1) In adopting procedures under Subsection (d), the
10 commissioner shall include a procedure relating to the
11 administration of restraint that immobilizes a student on the
12 floor. The procedure shall require a school district employee or
13 volunteer or an independent contractor of a school district who
14 administers an authorized restraint to a student who becomes prone
15 or supine during the restraint to immediately transition the
16 student to an appropriate position.

17 (d-2) The behavioral emergency restraint report required
18 under Subsection (d)(3) may not duplicate existing reporting
19 requirements imposed by commissioner rule or required to be
20 submitted through the Public Education Information Management
21 System (PEIMS).

22 (d-3) A school district or a school district employee or
23 volunteer or an independent contractor of a school district may not
24 authorize, order, consent to, or pay for any of the following:

25 (1) an intervention that is designed to or likely to
26 cause physical pain, including electric shock or any procedure that
27 involves the use of pressure points or joint locks;

1 (2) an intervention that involves the directed release
2 of a noxious, toxic, or otherwise unpleasant spray, mist, or
3 substance near the student's face;

4 (3) an intervention that denies adequate sleep, air,
5 food, water, shelter, bedding, physical comfort, or access to a
6 restroom facility;

7 (4) an intervention that involves subjecting the
8 student to verbal abuse, ridicule, or humiliation or that can be
9 expected to cause the student emotional trauma;

10 (5) a restrictive intervention that employs a device,
11 material, or object that simultaneously immobilizes all four
12 extremities, including any procedure that results in such
13 immobilization known as prone or supine floor restraint;

14 (6) an intervention that impairs the student's
15 breathing, including any procedure that involves:

16 (A) applying pressure to the student's torso or
17 neck; or

18 (B) obstructing the student's airway, including
19 placing an object in, on, or over the student's mouth or nose or
20 placing a bag, cover, or mask over the student's face;

21 (7) an intervention that restricts the student's
22 circulation;

23 (8) an intervention that secures the student to a
24 stationary object while the student is in a sitting or standing
25 position;

26 (9) an intervention that inhibits, reduces, or hinders
27 the student's ability to communicate;

1 (10) an intervention that involves the use of a
2 chemical restraint;

3 (11) an intervention that prevents observation by a
4 direct line of sight or otherwise precludes adequate supervision of
5 the student, including isolating the student in a classroom by the
6 use of physical barriers; or

7 (12) an intervention that deprives the student of the
8 use of one or more of the student's senses.

9 (d-4) For purposes of Subsection (d-3)(11), an intervention
10 that denies the student academic instruction by a certified
11 educator constitutes an intervention that precludes adequate
12 supervision.

13 (d-5) In adopting procedures under this section, the
14 commissioner shall provide guidance to school district employees,
15 volunteers, and independent contractors of school districts in
16 avoiding a violation of Subsection (d-3).

17 SECTION 4. This Act applies beginning with the 2015-2016
18 school year.

19 SECTION 5. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2015.