86R12684 TSS-F

By:  Zaffirini S.B. No. 1989

A BILL TO BE ENTITLED

AN ACT

relating to the use of restraint, seclusion, and time-out in public schools.

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

SECTION 1.  Chapter 37, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. USE OF RESTRAINT, SECLUSION, AND TIME-OUT

Sec. 37.351.  DEFINITIONS. In this subchapter:

(1)  "Mechanical restraint" means a device used for the restraint of a student.

(2)  "Restraint" means the use of physical force or a mechanical restraint to significantly restrict the free movement of all or a portion of a student's body.

(3)  "Seclusion" means a behavior management technique in which a student is separated from other students and confined in a box, closet, room, or other area from which the student may not exit.

(4)  "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in the same classroom in a location where the student can continue to hear and observe instruction.

Sec. 37.352.  APPLICABILITY. (a) Except as provided by Subsection (b), this subchapter applies to a person who provides any service at a public school, regardless of whether the person provides the service as an employee of the school, as a school volunteer, or under a contract or other agreement with the school.

(b)  This subchapter and any rules or procedures adopted under this subchapter do not apply to:

(1)  a peace officer, other than a school district peace officer or school resource officer, performing law enforcement duties;

(2)  juvenile probation, detention, or corrections personnel; or

(3)  an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Sec. 37.353.  USE OF RESTRAINT, SECLUSION, OR TIME-OUT. (a) A person may not use restraint or time-out:

(1)  to discipline, punish, coerce, or retaliate against a student;

(2)  for the purpose of convenience, including to ease the performance of a person's duties; or

(3)  to manage a physical, intellectual, or developmental disability as a replacement for effective treatment for the disability.

(b)  Except as provided by Subsection (f), a person may not seclude a student, including a student with a disability who receives special education services under Subchapter A, Chapter 29, or who is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(c)  A person may not use on a student:

(1)  a mechanical restraint; or

(2)  a restraint that:

(A)  obstructs a student's airway, including a procedure that places anything in, on, or over the student's mouth or nose;

(B)  impairs the student's breathing by putting pressure on the torso;

(C)  restricts the student's circulation;

(D)  secures a student to a stationary object;

(E)  restricts a student's movement by causing pain, including restraint using a pressure point or joint lock;

(F)  interferes with the student's ability to communicate, including by restraining the hands of a person who uses American Sign Language;

(G)  transmits an electrical charge;

(H)  uses a chemical agent; or

(I)  causes the student to become prone or supine.

(d)  A student who is restrained may not be placed in time-out.

(e)  Except as provided by Subsection (f), a person may only restrain a student if:

(1)  the restraint is immediately necessary to prevent the student from causing serious bodily harm to any person;

(2)  the person has not been able to reduce the potential for imminent harm through preventative de-escalatory or redirection techniques;

(3)  the force used to restrain the student is limited to the amount of force immediately necessary to prevent the harm;

(4)  the restraint lasts no longer than the shorter of:

(A)  the duration of the threat of harm to any person; or

(B)  15 minutes; and

(5)  the health and safety of the student and others are protected.

(f)  For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). A student in the possession of a weapon may be restrained or secluded in an emergency situation while awaiting the arrival of law enforcement personnel if the restraint or seclusion is necessary to prevent the student from causing serious bodily harm to any person.

(g)  If a student is released from restraint, as required under Subsection (e)(4), but still poses an immediate threat, the student may be restrained again in accordance with Subsection (e).

(h)  If a student experiences a medical emergency while restrained or in time-out, the person responsible for the restraint or time-out shall release the student and administer appropriate medical care or contact emergency personnel.

(i)  A student in a restraint or time-out shall be immediately released and evacuated in the case of a mandatory emergency drill or other event requiring the evacuation of students.

Sec. 37.354.  CONTACT NOT CONSIDERED RESTRAINT. (a) Unless the student verbally or physically resists, the following contact is not considered restraint for purposes of this subchapter:

(1)  a device prescribed or provided by a medical professional that may be included in the student's individualized education program under Section 29.005 or physical contact that:

(A)  assists a student's normal body position or body movements; or

(B)  prevents the student from engaging in repetitive behavior harmful to the student;

(2)  limited physical contact to:

(A)  promote safety;

(B)  prevent harm;

(C)  teach an academic or athletic skill;

(D)  redirect attention;

(E)  provide directions; or

(F)  provide comfort;

(3)  time-out; or

(4)  a seat belt or other safety equipment used to secure a student during transportation.

(b)  It is considered a restraint under this subchapter to coerce or force a student into time-out or prevent the student from leaving time-out.

Sec. 37.355.  TRAINING. (a) The commissioner shall adopt rules requiring each person who has direct contact with students to complete competency-based training approved by the agency on the proper use of restraint and time-out before being permitted to restrain a student or place a student in time-out.

(b)  The agency shall only approve a training program under Subsection (a) that:

(1)  is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 U.S.C. Section 7801);

(2)  promotes the prevention and minimization of the use of restraint; and

(3)  includes instruction on:

(A)  positive strategies for behavioral management, other than the use of restraint or seclusion, including through trauma-informed practices;

(B)  communication and collaboration techniques;

(C)  identifying the potential causes of aggressive or threatening behaviors, including recognizing physical, intellectual, and developmental disabilities and a need for physical, mental, or emotional health care;

(D)  early recognition and mitigation of situations that may lead to an imminent threat of serious bodily harm, including through the use of a range of techniques for early intervention, de-escalation, mediation, and problem-solving;

(E)  common medications used by school-aged children and their potential effects;

(F)  the effects on a student's behavior and responses to restraint or time-out of the student's:

(i)  age;

(ii)  weight;

(iii)  intellectual and developmental ability;

(iv)  gender;

(v)  cultural background;

(vi)  race and ethnicity;

(vii)  experience with trauma; and

(viii)  history of physical contact or abuse and the use of restraint, seclusion, or time-out;

(G)  the psychological consequences of restraint and time-out and the effect the consequences can have on behavior;

(H)  identifying the symptoms of a medical emergency during the use of restraint and appropriate responses; and

(I)  permitted and prohibited forms of restraint and strategies for minimizing physical contact when restraining a student.

(c)  The agency shall review approved training programs annually to ensure each training program is in compliance with this subchapter.

(d)  Rules adopted under this section must require a person to complete initial and continuing training programs as determined by the agency.

Sec. 37.356.  POLICY ON USE OF RESTRAINT OR TIME-OUT. (a) The board of trustees of a school district shall adopt a policy regarding the appropriate use of restraint, seclusion, and time-out. The policy may minimize the use of restraint or time-out further than required under this subchapter.

(b)  The board of trustees of a school district shall provide written notice to each student's parent or person standing in parental relation to the student of the district's policy regarding the use of restraint and time-out.

Sec. 37.357.  NOTICE OF USE OF RESTRAINT OR TIME-OUT. (a) As soon as practicable but not later than the end of the same day an incident involving the use of restraint or time-out occurs, the principal or another appropriate administrator shall notify verbally and in writing the parent or the person standing in parental relation to the student who was restrained or placed in time-out of the incident.

(b)  The notice must include:

(1)  the student's name;

(2)  the name, position, and qualifications of the person who restrained the student or placed the student in time-out, including the training program under Section 37.355 completed by the person and the date of completion;

(3)  the date and time of the restraint or time-out and its duration;

(4)  the location of the restraint or time-out, including address and room number, as applicable;

(5)  the specific type of restraint or time-out used;

(6)  the student's description of the reasons for the restraint or time-out;

(7)  if a restraint was used, a description of the emergency situation, including the specific imminent threat of serious bodily harm posed by the student;

(8)  the strategies and de-escalation efforts used to avoid restraint or time-out and the student's response to those strategies and efforts; and

(9)  information on the procedure for the parent or person to arrange a meeting with the principal, administrator, or other district employee regarding the use of restraint or time-out.

(c)  The principal or administrator shall electronically submit a report to the agency describing each instance of the use of restraint or time-out. The report shall include:

(1)  the notice provided under this section;

(2)  the name of the parent or person who was notified;

(3)  the method of notification;

(4)  the date and time of the notification;

(5)  if the parent of or person standing in parental relation to the student attended a meeting regarding the incident; and

(6)  the date, time, and content of any meeting held.

(d)  The principal or administrator shall keep a copy of the report sent to the agency as part of the student's permanent record.

Sec. 37.358.  REPORT. The agency shall collect and analyze the information submitted by school districts under Section 37.357 and, not later than December 1 of each even-numbered year, submit a report to the members of the legislature summarizing the use of restraint and time-out in public schools in the state.

Sec. 37.359.  RETALIATION PROHIBITED. A school district may not retaliate against a student, employee, or other person who in good faith makes a complaint to the agency or another organization regarding the use of restraint, seclusion, or time-out in a school.

Sec. 37.360.  RULES. The commissioner shall adopt rules to implement this subchapter.

SECTION 2.  Section 12.104(b), Education Code, as amended by Chapters 324 (S.B. 1488), 522 (S.B. 179), and 735 (S.B. 1153), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(b)  An open-enrollment charter school is subject to:

(1)  a provision of this title establishing a criminal offense; and

(2)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  reading instruments and accelerated reading instruction programs under Section 28.006;

(D)  accelerated instruction under Section 28.0211;

(E)  high school graduation requirements under Section 28.025;

(F)  special education programs under Subchapter A, Chapter 29;

(G)  bilingual education under Subchapter B, Chapter 29;

(H)  prekindergarten programs under Subchapter E or E-1, Chapter 29;

(I)  extracurricular activities under Section 33.081;

(J)  discipline management practices or behavior management techniques under Subchapter J, Chapter 37 [~~Section 37.0021~~];

(K)  health and safety under Chapter 38;

(L)  public school accountability under Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A;

(M)  the requirement under Section 21.006 to report an educator's misconduct;

(N)  intensive programs of instruction under Section 28.0213;

(O)  the right of a school employee to report a crime, as provided by Section 37.148; [~~and~~]

(P)  bullying prevention policies and procedures under Section 37.0832;

(Q)  the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student; [~~and~~]

(R)  the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment; and

(S) [~~(P)~~]  a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d).

SECTION 3.  Section 22.0512(a), Education Code, is amended to read as follows:

(a)  A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Subchapter J, Chapter 37 [~~Section 9.62, Penal Code~~].

SECTION 4.  Section 25.007(b), Education Code, is amended to read as follows:

(b)  In recognition of the challenges faced by students who are homeless or in substitute care, the agency shall assist the transition of students who are homeless or in substitute care from one school to another by:

(1)  ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2)  developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3)  developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is homeless or in substitute care while enrolled at another school;

(4)  developing procedures to ensure that a new school relies on decisions made by the previous school regarding placement in courses or educational programs of a student who is homeless or in substitute care and places the student in comparable courses or educational programs at the new school, if those courses or programs are available;

(5)  promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(6)  establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(7)  entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(8)  encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(9)  requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school previously attended by the student, and to provide comparable services to the student during the referral process or until the new school develops an individualized education program for the student;

(10)  requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A)  requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B)  admission, review, and dismissal committee meetings;

(C)  manifestation determination reviews required by Section 37.004(b);

(D)  any disciplinary actions under Chapter 37 for which parental notice is required;

(E)  citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities; and

(F)  reports of restraint and time-out [~~and seclusion~~] required by Subchapter J, Chapter 37 [~~Section 37.0021; and~~

[~~(G) use of corporal punishment as provided by Section 37.0011~~];

(11)  developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(12)  ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed;

(13)  ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit;

(14)  designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(15)  providing other assistance as identified by the agency.

SECTION 5.  Section 29.022(u), Education Code, is amended to read as follows:

(u)  In this section:

(1)  "Parent" includes a guardian or other person standing in parental relation to a student.

(2)  "School business day" means a day that campus or school district administrative offices are open.

(3)  "Self-contained classroom" does not include a classroom that is a resource room instructional arrangement under Section 42.151.

(4)  "Staff member" means a teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a self-contained classroom or other special education setting.

(5)  "Time-out" has the meaning assigned by Section 37.351 [~~37.0021~~].

SECTION 6.  Section 29.454(a), Education Code, is amended to read as follows:

(a)  The discipline of an alleged offender resident by a school district is subject to Section [~~Sections 37.0021 and~~] 37.004 and Subchapter J, Chapter 37, and to federal law governing the discipline of students with disabilities.

SECTION 7.  The following provisions are repealed:

(1)  Section 37.0011, Education Code;

(2)  Section 37.0021, Education Code; and

(3)  Section 9.62, Penal Code.

SECTION 8.  As soon as practicable after the effective date of this Act, the board of trustees of each school district and the governing body of each open-enrollment charter school shall adopt a policy as required by Section 37.356, Education Code, as added by this Act.

SECTION 9.  As soon as practicable after the effective date of this Act, but not later than September 1, 2020, the commissioner of education shall adopt rules as necessary to implement Section 37.355, Education Code, as added by this Act.

SECTION 10.  Notwithstanding Section 37.355, Education Code, as added by this Act, a person authorized to use restraint or time-out on a student must complete the training required by Section 37.355, Education Code, as added by this Act, not later than September 1, 2021.

SECTION 11.  To the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 12.  This Act applies beginning with the 2019-2020 school year.

SECTION 13.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.