

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

1 any service at a public school, regardless of whether the person
2 provides the service as an employee of the school, as a school
3 volunteer, or under a contract or other agreement with the school.

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

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

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

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

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

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

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

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

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

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

2 (1) a mechanical restraint; or

3 (2) a restraint that:

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

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

9 (C) restricts the student's circulation;

10 (D) secures a student to a stationary object;

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

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

16 (G) transmits an electrical charge;

17 (H) uses a chemical agent; or

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

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

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

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

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

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

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

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

6 (B) 15 minutes; and

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

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

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

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

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

26 Sec. 37.354. CONTACT NOT CONSIDERED RESTRAINT. (a) Unless
27 the student verbally or physically resists, the following contact

1 is not considered restraint for purposes of this subchapter:

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

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

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

9 (2) limited physical contact to:

10 (A) promote safety;

11 (B) prevent harm;

12 (C) teach an academic or athletic skill;

13 (D) redirect attention;

14 (E) provide directions; or

15 (F) provide comfort;

16 (3) time-out; or

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

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

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

27 (b) The agency shall only approve a training program under

1 Subsection (a) that:

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

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

6 (3) includes instruction on:

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

10 (B) communication and collaboration techniques;

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

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

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

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

23 (i) age;

24 (ii) weight;

25 (iii) intellectual and developmental
26 ability;

27 (iv) gender;

1 (v) cultural background;
2 (vi) race and ethnicity;
3 (vii) experience with trauma; and
4 (viii) history of physical contact or abuse
5 and the use of restraint, seclusion, or time-out;

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

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

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

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

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

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

25 (b) The board of trustees of a school district shall provide
26 written notice to each student's parent or person standing in
27 parental relation to the student of the district's policy regarding

1 the use of restraint and time-out.

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

9 (b) The notice must include:

10 (1) the student's name;

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

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

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

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

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

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

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

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

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

7 (1) the notice provided under this section;

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

9 (3) the method of notification;

10 (4) the date and time of the notification;

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (D) accelerated instruction under Section
19 28.0211;

20 (E) high school graduation requirements under
21 Section 28.025;

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

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

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

- 1 (I) extracurricular activities under Section
2 [33.081](#);
- 3 (J) discipline management practices or behavior
4 management techniques under Subchapter J, Chapter 37 [~~Section~~
5 ~~37.0021~~];
- 6 (K) health and safety under Chapter [38](#);
- 7 (L) public school accountability under
8 Subchapters B, C, D, F, G, and J, Chapter [39](#), and Chapter [39A](#);
- 9 (M) the requirement under Section [21.006](#) to
10 report an educator's misconduct;
- 11 (N) intensive programs of instruction under
12 Section [28.0213](#);
- 13 (O) the right of a school employee to report a
14 crime, as provided by Section [37.148](#); [~~and~~]
- 15 (P) bullying prevention policies and procedures
16 under Section [37.0832](#);
- 17 (Q) the right of a school under Section [37.0052](#)
18 to place a student who has engaged in certain bullying behavior in a
19 disciplinary alternative education program or to expel the student;
20 [~~and~~]
- 21 (R) the right under Section [37.0151](#) to report to
22 local law enforcement certain conduct constituting assault or
23 harassment; and
- 24 (S) [~~(P)~~] a parent's right to information
25 regarding the provision of assistance for learning difficulties to
26 the parent's child as provided by Sections [26.004](#)(b)(11) and
27 [26.0081](#)(c) and (d).

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

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

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

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

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

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

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

24 (4) developing procedures to ensure that a new school
25 relies on decisions made by the previous school regarding placement
26 in courses or educational programs of a student who is homeless or
27 in substitute care and places the student in comparable courses or

1 educational programs at the new school, if those courses or
2 programs are available;

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

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

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

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

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

27 (10) requiring school districts, campuses, and

1 open-enrollment charter schools to provide notice to the child's
2 educational decision-maker and caseworker regarding events that
3 may significantly impact the education of a child, including:

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

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

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

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

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

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

18 [~~(C) use of corporal punishment as provided by~~
19 ~~Section 37.0011~~];

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

25 (12) ensuring that a student who is homeless or in
26 substitute care who is not likely to receive a high school diploma
27 before the fifth school year following the student's enrollment in

1 grade nine, as determined by the district, has the student's course
2 credit accrual and personal graduation plan reviewed;

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

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

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

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

16 (u) In this section:

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

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

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

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

1 (5) "Time-out" has the meaning assigned by Section
2 37.351 [~~37.0021~~].

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

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

9 SECTION 7. The following provisions are repealed:

- 10 (1) Section 37.0011, Education Code;
11 (2) Section 37.0021, Education Code; and
12 (3) Section 9.62, Penal Code.

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

18 SECTION 9. As soon as practicable after the effective date
19 of this Act, but not later than September 1, 2020, the commissioner
20 of education shall adopt rules as necessary to implement Section
21 37.355, Education Code, as added by this Act.

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

27 SECTION 11. To the extent of any conflict, this Act prevails

1 over another Act of the 86th Legislature, Regular Session, 2019,
2 relating to nonsubstantive additions to and corrections in enacted
3 codes.

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

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