

By: Bucy

H.B. No. 3148

A BILL TO BE ENTITLED

AN ACT

relating to the behavioral management of a student enrolled in a special education program of a school district.

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

SECTION 1. Section 7.028(a), Education Code, is amended to read as follows:

(a) Except as provided by Section 21.006(k), 22.093(l), 22.096, 28.006, 29.001(5), 29.005(j), 29.010(a), 38.003, or 39.057, the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, or Subchapter A, Chapter 37, only as necessary to ensure:

- (1) compliance with federal law and regulations;
- (2) financial accountability, including compliance with grant requirements;
- (3) data integrity for purposes of:
  - (A) the Public Education Information Management System (PEIMS); and
  - (B) accountability under Chapters 39 and 39A; and
- (4) qualification for funding under Chapter 48.

SECTION 2. Section 29.005, Education Code, is amended by amending Subsection (g) and adding Subsections (h), (i), and (j) to

1 read as follows:

2 (g) The commissioner by rule shall require the committee to  
3 develop [~~may determine that~~] a behavior improvement plan or a  
4 behavioral intervention plan [~~is~~] under Section 29.0052 if  
5 appropriate for a student for whom the committee has developed an  
6 individualized education program. If the committee develops a  
7 [~~makes that determination, the~~] behavior improvement plan or [~~the~~]  
8 behavioral intervention plan, the plan must [~~shall~~] be included as  
9 part of the student's individualized education program and provided  
10 to each employee of the school district [~~teacher~~] with  
11 responsibility for educating or monitoring the student.

12 (h) To the extent permitted by federal law, the rules  
13 adopted by the commissioner under Subsection (g) shall require the  
14 committee, when developing or determining the appropriateness of a  
15 behavior improvement plan or behavioral intervention plan, to  
16 include, in addition to the persons under Subsection (a):

17 (1) a licensed assistant behavior analyst or licensed  
18 behavior analyst, as defined by Section 506.002, Occupations Code;

19 (2) a licensed specialist in school psychology, as  
20 defined by Section 501.002, Occupations Code; or

21 (3) a mental health professional, as defined by  
22 Section 61.601, or a teacher certified in special education who has  
23 been trained in functional behavior assessment by a licensed  
24 behavior analyst, as defined by Section 506.002, Occupations Code.

25 (i) Before an educator who is a member of the committee  
26 participates in conducting a functional behavioral assessment for  
27 purposes of developing a behavior improvement plan or behavioral

1 intervention plan for the student, the member must attend training  
2 approved by the agency and provided by a licensed assistant  
3 behavior analyst or licensed behavior analyst, as defined by  
4 Section 506.002, Occupations Code, on appropriate behavioral  
5 interventions.

6 (j) The commissioner by rule shall develop procedures  
7 designed to allow the agency to:

8 (1) audit and monitor school districts to ensure that  
9 districts are complying with this section, rules adopted under this  
10 section, and Section 29.0052;

11 (2) identify any difficulties school districts  
12 experience in complying with this section and Section 29.0052; and

13 (3) develop reasonable and appropriate remedial  
14 strategies to address noncompliance by school districts and to  
15 ensure the purposes of this section, the rules adopted under this  
16 section, and Section 29.0052 are accomplished.

17 SECTION 3. Subchapter A, Chapter 29, Education Code, is  
18 amended by adding Section 29.0052 to read as follows:

19 Sec. 29.0052. BEHAVIOR IMPROVEMENT PLAN OR BEHAVIORAL  
20 INTERVENTION PLAN. (a) A behavior improvement plan or behavioral  
21 intervention plan may only be developed for a student who has  
22 exhibited consistent and persistent maladaptive behavior and for  
23 whom an individualized education program is developed under Section  
24 29.005.

25 (b) The admission, review, and dismissal committee shall  
26 conduct a functional behavior assessment over a period of 45  
27 calendar days for a student before developing a behavior

1 improvement plan or behavioral intervention plan. The functional  
2 behavior assessment must include:

3 (1) a review of any medical, academic, and  
4 disciplinary records for the student;

5 (2) interviews with and surveys of the student, the  
6 student's parents or legal guardians, the student's teachers, and  
7 any other educators with knowledge of the student on relevant  
8 subjects, including the motivations and preferences of the student;

9 (3) an analysis of direct observations of the student  
10 in multiple school environments performed by multiple members of  
11 the committee no less frequently than once a week and at different  
12 times throughout the school day;

13 (4) a detailed functional analysis of the student's  
14 behavior, including a description of the causes and consequences of  
15 the behavior;

16 (5) a summary of the methods used to collect data, the  
17 data collected, and the manner in which the data was reviewed;

18 (6) a description of which of the student's  
19 maladaptive behaviors relate to the student's disability or  
20 impairment; and

21 (7) recommendations for the behavior improvement plan  
22 or behavioral intervention plan, including possible alternative  
23 behaviors, proactive and research-based strategies to address  
24 behavior, and any changes to the student's individual education  
25 plan that may be required.

26 (c) A behavior improvement plan or behavioral intervention  
27 plan must include specific instruction on the levels of behavioral

1 intervention appropriate for the student, including an explanation  
2 of the behaviors constituting a behavioral crisis for the student.

3 (d) A behavior improvement plan or behavioral intervention  
4 plan may not be significantly amended without an updated functional  
5 behavior assessment.

6 (e) A behavior improvement plan or behavioral intervention  
7 plan must provide appropriate consequences if the student violates  
8 the student code of conduct adopted under Section 37.001.

9 (f) A behavior improvement plan or behavioral intervention  
10 plan must designate members of the student's admission, review, and  
11 dismissal committee as a response team for the student to be  
12 contacted when the student experiences a behavioral crisis. The  
13 response team must respond in an appropriate amount of time to each  
14 instance of behavioral crisis for the student.

15 (g) After responding to a behavioral crisis under  
16 Subsection (f), a response team shall document the crisis and  
17 notify the student's parent or legal guardian in writing of any  
18 force or restraint, as defined by Section 37.0021, used against the  
19 student.

20 SECTION 4. Section 37.0021, Education Code, is amended by  
21 amending Subsection (d) and adding Subsection (j) to read as  
22 follows:

23 (d) The commissioner by rule shall adopt procedures for the  
24 use of restraint and time-out by a school district employee or  
25 volunteer or an independent contractor of a district in the case of  
26 a student with a disability receiving special education services  
27 under Subchapter A, Chapter 29. A procedure adopted under this

1 subsection must:

2 (1) be consistent with:

3 (A) professionally accepted practices and  
4 standards of student discipline and techniques for behavior  
5 management; and

6 (B) relevant health and safety standards; and

7 (2) provide that:

8 (A) under this section, only members of an  
9 admission, review, and dismissal committee designated as a response  
10 team to a student under Section 29.0052(f) may restrain that  
11 student; and

12 (B) a peace officer may not be involved in the  
13 behavioral management of a student under this section unless:

14 (i) requested by a member of an admission,  
15 review, and dismissal committee; or

16 (ii) the student poses an imminent threat  
17 of serious bodily injury to any person [~~identify any discipline~~  
18 ~~management practice or behavior management technique that requires~~  
19 ~~a district employee or volunteer or an independent contractor of a~~  
20 ~~district to be trained before using that practice or technique].~~

21 (j) The commissioner shall adopt rules requiring each  
22 educator and school employee whose primary duty involves regular,  
23 direct contact with students to receive training on the behavior  
24 improvement plan or behavioral intervention plan for each student  
25 the educator or employee has regular, direct contact with and the  
26 use of positive behavioral intervention and appropriate behavioral  
27 management.

1           SECTION 5. (a) Not later than December 1, 2021, the  
2 commissioner of education shall adopt rules under Sections 29.005  
3 and 37.0021, Education Code, as amended by this Act.

4           (b) Notwithstanding Section 29.005(i), Education Code, as  
5 added by this Act, an educator who is a member of an admission,  
6 review, and dismissal committee must complete the training required  
7 by Section 29.005(i), Education Code, as added by this Act, not  
8 later than September 1, 2022.

9           (c) Notwithstanding Section 37.0021(j), Education Code, as  
10 added by this Act, educators and school employees whose primary  
11 duty involves regular, direct contact with students must complete  
12 the training required by Section 37.0021(j), Education Code, as  
13 added by this Act, not later than September 1, 2022.

14           SECTION 6. This Act applies beginning with the 2021-2022  
15 school year.

16           SECTION 7. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2021.