

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1584  
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Education  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Special needs students who present disruptive behavior challenges in schools need to be redirected in a way that minimizes harm and leads to more positive behavior outcomes in the future. Positive Behavior Interventions and Supports (PBIS) is a research-based intervention framework that prevents or reduces the need for unproven, dangerous, and harmful interventions and disciplinary referrals. PBIS is based on positive reinforcement, prevention of misbehavior, and corrective feedback, rather than punishment as a reaction to misbehavior. Unfortunately, many teachers are not trained in the use of the PBIS framework, and instead use unhelpful and often harmful discipline techniques, such as physical restraint and time-out. Research shows that using these negative techniques without reflection on their effectiveness does little to improve students' behavior. On the contrary, some of these current disciplinary practices can stigmatize and harm special needs students who are subject to them.

S.B. 1584 provides guidance and training for developing and implementing PBIS plans, to be used by teachers, districts, and others statutorily involved in the education of special needs students. The bill as filed provides for the use of behavior assessments to be used in the development of behavior plans for disruptive special needs students. At the same time, however, S.B. 1584 maintains the flexibility to tailor individualized behavior plans to each unique child. It also clarifies the rare circumstances when a school may use negative disciplinary measures (i.e., restraint or time-out), and requires that the use of such punishments be recorded as part of a student's behavior assessments. Most importantly, S.B. 1584 adds PBIS training to required educational staff development sessions to ensure that all educators and related personnel are properly equipped to implement these behavior plans.

The Committee Substitute to S.B. 1584 ensures that schools are able to use their staff resources in the most efficient way possible to meet the behavior needs of their students receiving special education services. It includes special education teachers in the definition of "behavior specialist professional" to allow schools to use trained staff they already have on hand in developing behavior plans. It reduces burdensome training requirements and unnecessary meetings of a student's behavior committee. Finally, it clarifies reporting requirements for instances of restraint.

C.S.S.B. 1584 amends current law relating to positive behavioral interventions and supports for students enrolled in public school who receive special education services.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 1 (Section 21.451, Education Code) and SECTION 3 (37.0021, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 21.451(d), Education Code, as follows:

(d) Provides that the staff development:

(1) may include training in:

(A) and (B) Makes no change to these paragraphs;

(C) discipline strategies, including positive behavioral intervention and supports strategies, classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 (Student Code of Conduct) and Chapter 37 (Discipline; Law and Order); and

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

(2) subject to Subsection (e) (requiring a school district to provide the training described by Subsection (d)(2) to an educator who works primarily outside the area of special education only under certain circumstances) and to Section 21.3541 (Appraisal and Professional Development System for Principals) and rules adopted under that section, must include training based on scientifically based research, as defined by Section 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801), that:

(A) Makes no change to this paragraph; and

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

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

SECTION 2. Amends Subchapter A, Chapter 29, Education Code, by adding Section 29.021, as follows:

Sec. 29.021. POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.

(a) Defines “behavior specialist professional,” “licensed specialist in school psychology,” “restraint,” “seclusion,” and “time-out.”

(b) Provides that it is the policy of this state that each school district to the maximum extent possible should provide functional behavioral assessments to a student whose behavior interferes with the ability of that student or of another student to learn. Requires that the result of student assessments be used to develop and provide positive behavioral interventions and supports and other strategies to enhance academic and social behavioral outcomes for students by:

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

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

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

(c) Requires that training in the use of restraint provided as required under Subsection (b)(3) must:

(1) ensure that a core team of personnel at each campus, including a campus administrator or the administrator’s designee and any general or

special education personnel likely to use restraint, are trained in the use of restraint;

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

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

(4) include training in:

(A) prevention techniques;

(B) de-escalation techniques; and

(C) alternatives to the use of restraint; and

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

(d) Requires a school district to provide positive behavioral interventions and supports and related strategies under this section in a manner that:

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

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

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

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

(f) Prohibits a school district from using restraint as a substitute for or as part of a behavioral intervention plan developed under Section 29.005(g) (authorizing a certain committee to determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student).

(g) Requires each behavioral emergency restraint report prepared as provided by Section 37.0021(d)(3) be reviewed by the principal of the school or the principal's designee and the district administrator designated for that purpose as provided by Section 37.0021(d)(4)(A) to:

(1) determine whether:

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

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

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

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

(B) conduct an updated functional behavioral assessment; or

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

(h) Requires the student's admission, review, and dismissal committee to review any behavioral emergency restraint report prepared under Section 37.0021(d)(3) concerning the student and:

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

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

(i) Requires the committee, if the student's admission, review, and dismissal committee determines that the creation or revision of a behavioral intervention plan is necessary, to create or revise the plan and determine the need for school district personnel who will implement the plan to participate in training by a behavior specialist professional. Requires the committee to monitor the implementation and results of the plan and determine the need for any revision to the plan or any additional training for school personnel.

SECTION 3. Amends Section 37.0021, Education Code, by amending Subsection (d) and adding Subsections (d-1), (d-2), (d-3), and (d-4), and (d-5), as follows:

(d) Provides that restraint may be used in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29, only in circumstances involving imminent serious physical harm to the student or another person. Requires that a procedure adopted under this subsection:

(1) be consistent with:

(A) Makes no change to this paragraph; and

(B) Makes a nonsubstantive change to this paragraph;

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

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

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

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

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

(5) require that the report prepared under Subdivision (3) include:

- (A) the name, age, gender, race or ethnicity, and grade level of the student;
- (B) the date and the beginning and ending time of the restraint;
- (C) the location and setting of the restraint;
- (D) the name of district personnel or any other person who was involved in or administered the restraint;
- (E) a description of the incident and the precipitating factors, including the activity in which the student was engaged immediately preceding the use of restraint and the behavior that prompted the restraint;
- (F) the specific nature or type of restraint used;
- (G) a statement indicating whether the student currently has a behavioral intervention plan and identifying any efforts made to de-escalate the situation and any alternatives to the use of restraint that were attempted;
- (H) details of any injury sustained by the student or another person as a result of the incident and any medical care provided; and
- (I) information documenting parent contact and notification;

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

- (A) not later than the end of the school day on which the school used restraint, notify the parent or person standing in parental relation to the student regarding the use of the restraint; and
- (B) not later than the third school day after the date on which the school used restraint, provide a copy of the report prepared under Subdivision (3) to the parent or person standing in parental relation to the student;

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

- (A) collect information regarding the use of time-out in connection with the student's individualized education program; and
- (B) evaluate the information to determine:
  - (i) the effectiveness of the use of time-out; and
  - (ii) whether the use of time-out should be continued; and

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

(d-1) Requires the commissioner, in adopting procedures under Subsection (d), to include a procedure relating to the administration of restraint that immobilizes a student on the floor. Requires that the procedure require a school district employee or volunteer or an independent contractor of a school district who administers authorized restraint to a student who becomes prone or supine during the restraint to immediately transition the student to an appropriate position.

(d-2) Provides that the behavioral emergency restraint report required under Subsection (d)(3) may not duplicate existing reporting requirements imposed by commissioner rule

or required to be submitted through the Public Education Information Management Systems (PEIMS).

(d-3) Prohibits a school district or a school district employee or volunteer or an independent contractor of a school district from authorizing, ordering, consenting to, or paying for any of the following:

- (1) an intervention that is designed to or likely to cause physical pain, including electric shock or any procedure that involves the use of pressure points or joint locks;
- (2) an intervention that involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;
- (3) an intervention that denies adequate sleep, air, food, water, shelter, bedding, physical comfort, or access to a restroom facility;
- (4) an intervention that involves subjecting the student to verbal abuse, ridicule, or humiliation or that can be expected to cause the student emotional trauma;
- (5) a restrictive intervention that employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;
- (6) an intervention that impairs the student's breathing, including any procedure that involves:
  - (A) applying pressure to the student's torso or neck; or
  - (B) obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;
- (7) an intervention that restricts the student's circulation;
- (8) an intervention that secures the student to a stationary object while the student is in a sitting or standing position;
- (9) an intervention that inhibits, reduces, or hinders the student's ability to communicate;
- (10) an intervention that involves the use of a chemical restraint;
- (11) an intervention that prevents observation by a direct line of sight or otherwise precludes adequate supervision of the student, including isolating the student in a classroom by the use of physical barriers; or
- (12) an intervention that deprives the student of the use of one or more of the student's senses.

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

(d-5) Requires the commissioner, in adopting procedures under this section, to provide guidance to school district employees, volunteers, and independent contractors of school districts in avoiding a violating of Subsection (d-3).

SECTION 4. Provides that this Act applies beginning with the 2015-2016 school year.

SECTION 5. Effective date: upon passage or September 1, 2015.