



THE NEW REQUIREMENTS FOR TIME-OUT, FBAS, BIPS AND RESTRAINT

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HOUSE BILL 785

House Bill 785 was passed during the 87th Legislative Session and amends three existing state statutes regarding procedures for discipline, restraint, or time out in the case of a student receiving special education services. While several of the procedures are already in place for districts, this legislation requires additional procedures to be put into place.



TEXAS EDUCATION CODE §29.005

The bill amends Texas Education Code §29.005 to require an annual review of a student's behavioral intervention plan (BIP). If a student's IEP includes a BIP, it must be reviewed by the ARD annually. The review must be occur more frequently if certain circumstances have occurred.



TEXAS EDUCATION CODE §29.005

The circumstances to be considered include:

- Changes of placement
- An increase or persistence in disciplinary actions taken for similar behaviors
- A pattern of unexcused absences
- An unauthorized departure from the school
- The safety of the student or others



TEXAS EDUCATION CODE §37.004

SB 785 also amended Texas Education Code §37.004, regarding disciplinary placement of a student with a disability who receives special education services. Under the new law, if a district takes disciplinary action that constitutes a change of placement for a student with a disability (a removal of 10 or more days), the district shall, no later than 10 school days after the change in placement is made:

1. Seek consent from the parent to conduct a functional behavioral assessment (FBA) if the student has never had an FBA or the existing FBA is more than one year old.
2. Review any previous FBAs and/or BIPs.
3. Develop a BIP or revise the existing one, as necessary.

WHAT IS A FUNCTIONAL BEHAVIORAL ASSESSMENT (FBA)?

An FBA is a process that identifies specific target behavior, the function of the behavior, and what factors maintain the behavior that is interfering with the student's educational progress.

WHAT ARE THE FUNCTIONS OF BEHAVIOR?

All behavior tells you something. The four primary functions of behavior are the following:

- **Sensory:** The student behaves in a specific way because it feels pleasing to them.
- **Attention Seeking:** The student behaves to get attention from others.
- **Escape:** The student behaves in a manner to get out of doing something the student does not want to do.
- **Tangibles:** The student behaves in order to get a preferred item or participate in an enjoyable activity.

WHEN SHOULD AN FBA BE COMPLETED?

Most student behavior can be addressed through the regular classroom management procedures. However, when a student's behavior persists, even when using the classroom behavior management strategies, then the committee should consider an FBA. FBAs are conducted when the student's behavior is impeding the student's ability to access instruction.

WHO CONDUCTS THE FBA?

The FBA is conducted by a professional that has expertise in behavior.



DOES AN FBA NEED TO BE CONDUCTED BY A BCBA?

No. The FBA needs to be conducted by someone that has experience working with behavior and determining the function of behavior. While a BCBA is capable of conducting an FBA, so are many other professionals, including teachers who are experienced working with students that exhibit behavior problems.



IS CONSENT REQUIRED BEFORE AN FBA CAN BE COMPLETED?

Yes. Anytime a student is assessed different from the general population, written consent must be received.



WHAT SHOULD BE DONE IF THE PARENT DOES NOT GIVE CONSENT FOR AN FBA?

The school still has an obligation to address the behavior. While the school cannot conduct an FBA, the staff can analyze the data that exists regarding the student's behavior and draft a BIP. Note in the deliberations that the parent refused to give consent.



SHOULD PARENT INFORMATION BE OBTAINED AS PART OF THE FBA?

It is helpful to get as much information from a variety of sources as to the student's behavior. A parent is a good source for how the student is behaving when the student is out of school.



WHAT IF THE PARENT INFORMATION REQUESTED BY THE SCHOOL IS NOT RETURNED?

If the parent has not returned the parent information after repeated attempts, note the efforts made to get the information and indicate that it does not affect the results of the assessment.



CAN THE FBA BE CONDUCTED AT THE ARD MEETING?

No. A “drive by” FBA is not effective in determining what is the function of the behavior.



WHAT KIND OF INFORMATION IS COLLECTED AS PART OF THE FBA?

The FBA collects data on the “ABC”s of behavior; Antecedent, Behavior and Consequence. The evaluator analyzes what happened prior to the behavior, what behavior occurred and what was the consequence of the behavior. An FBA collects data to determine the possible function of problem behaviors and to identify strategies to address the behaviors. A person who is completing an FBA may use different methods and strategies, such as interviews with the child and his or her parents, observing the child in different environments, gathering information from teachers, parents, and other professionals and reviewing records.



WHAT IS THE PURPOSE OF A BEHAVIOR INTERVENTION PLAN (BIP)?

A BIP is used to address behavior that is interfering with the learning of the student or others. A BIP is considered when the classroom management strategies or behavioral accommodations are insufficient to address the behavior.



WHAT DOES AN EFFECTIVE BIP NEED TO INCLUDE?

The BIP contains the strategies that should be used to teach replacement behaviors. The BIP describes the problem behavior, the reasons the behavior occurs and the intervention strategies that will address the behavior. A BIP includes positive behavioral interventions, strategies and supports. Behavior Intervention Plans are developed based upon the determination of what is the purpose of the behavior and teaching an alternative behavior that meets the student's need in a more acceptable way. This includes making instructional and environmental changes, providing reinforcement, reactive strategies and effective communication.



HOW LONG DOES IT TAKE TO SHAPE BEHAVIOR?

How long it will take to shape behavior is very individualistic and impacted by the individual's motivation to change a behavior. A study by the University College of London showed on average that it takes 66 days to change a behavior with individual times varying greatly.



HOW IMPORTANT IS THE IMPLEMENTATION OF THE BIP?

In order for a BIP to be effective, it must be consistently implemented. Consequently, the staff charged with implementing the BIP should be trained on the BIP to ensure that they know the importance of being consistent.



DOES THE BIP TAKE THE PLACE OF THE STUDENT CODE OF CONDUCT?

In most cases, the answer is no. The BIP is normally a supplement to the student code of conduct. When the student code of conduct and the BIP conflict, the BIP overrides the student code of conduct.



IF THE STUDENT HAS A BIP AND ENGAGES IN CRIMINAL CONDUCT, IS THE SCHOOL PRECLUDED FROM CALLING THE POLICE?

No. Even if a student has a BIP, it does not preclude the police from being called when the student engages in criminal activity.



WHAT TYPES OF STRATEGIES SHOULD BE CONTAINED IN THE BIP?

The first step for creating an effective BIP is to identify an appropriate replacement behavior for the undesired behavior that will serve the same function for the student. If the replacement behavior requires too much effort or does not result in the same desired outcome with the same level of dependability, the student may not be motivated to make any behavioral change.



WHAT TYPES OF STRATEGIES SHOULD BE CONTAINED IN THE BIP?

The systematic use of reinforcement is the most powerful tool in strengthening or teaching new behavior. A key to the effectiveness of any reinforcement strategy as part of a BIP is to identify what is potentially reinforcing for the student, but also how much it is provided. Reinforcers must be individualized and age appropriate for the student.



WHO IS RESPONSIBLE FOR IMPLEMENTING A BIP?

The staff that will be working with the student should be trained on the BIP and be responsible for ensuring that it is implemented with fidelity.



TEXAS EDUCATION CODE §37.0021

This bill also amends Texas Education Code Section 37.002. Under existing law, verbal or written notice needs to be provided to the parent on the date that the restraint occurs and written parental notice is required within 24 hours of the restraint.

This bill requires the notice to include whether the student's BIP should be revised and information on how to request a BIP.

For a student with a BIP, this bill requires documentation of each use of time out prompted by a behavior specified in the student's plan, including a description of the behavior that prompted the time out.



USE OF RESTRAINTS

- Texas law applies to special education students.
- “Restraint” means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.
- Restraint can be used when the child’s behavior poses a threat of imminent and serious physical harm to the child or others, or property destruction.



USE OF RESTRAINTS (CONT'D)

The use of restraint must:

- Be limited to such force as is reasonable to address the emergency
- Be discontinued when an emergency no longer exists
- Be mindful of the requirements in Section 37.0023 regarding the use of “aversive techniques”.



SPECIAL NEEDS STUDENTS AND ELOPEMENT

Limited physical contact with the child to promote safety, prevent a potentially harmful action, teach a skill, or to provide comfort does not constitute a restraint.

Likewise, seat belts and other safety equipment used to secure children during transportation are not considered restraints.



RESTRAINT PROCEDURAL ISSUES

- Written notice must state date and length of restraint
- Notice must provide a description of the activity the child was engaged in immediately before the restraint, and the behavior that prompted the restraint
- The notice must also describe the efforts made to de-escalate the situation and alternatives to restraint that were attempted



TRAINING AND POLICE OFFICER USE OF RESTRAINT

A core team of personnel must be trained, including a campus administrator or designee and any general or special education personnel likely to use restraint. The training must include instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

Restraint laws apply to peace officers employed or commissioned by the district or who provide a police presence as a resource officer through an MOU.



USE OF TIME-OUT

- Used for a student to regain self-control
- The student is separated from other students for a limited period in a setting that is not locked and from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object
- The room must be at least 50 square feet



SPRING BRANCH ISD v. O.W. (5TH CIR. 2019)

Recent Fifth Circuit case addressing time-out and restraint in special education.

FACTS:

- O.W. was in fifth grade and eventually was determined to qualify as ED.
- When he engaged in inappropriate behavior, the student was directed to a desk in the classroom for 5 or 10 minute intervals.
- During those times, the student could engage in replacement behaviors, such as drawing.
- The student was placed in the desk for the 5 or 10 minute intervals during 16 of his 40 days on the campus.

SPRING BRANCH ISD v. O.W. (5TH CIR. 2019)

ADDITIONAL FACTS AND ARGUMENTS:

- Texas law allows time-outs in conjunction with positive behavioral supports.
- The parties agreed that time-out was not included as part of the student's IEP or BIP.
- The parties also agreed that the methods were used on a recurrent basis.
- The district argued that the methods were not time-outs since the desk was in the classroom, the student was not separated from the other students, and he was given an opportunity to do "preferred" activities.

SPRING BRANCH ISD v. O.W. (5TH CIR. 2019)

COURT'S DETERMINATIONS REGARDING TIME-OUT:

- If utilized on a recurring basis under Texas law, time-out must be included in the IEP or BIP.
- The court focused on the student's separation from the other students, even for a limited period of time.
- The court determined that it was irrelevant whether the time-out was in the same classroom or the student could pursue preferred activities.
- "An IEP or BIP which does not authorize the recurrent use of time outs effectively prohibits such use."

SPRING BRANCH ISD v. O.W. (5TH CIR. 2019)

COURT'S DETERMINATIONS REGARDING THE USE OF RESTRAINTS:

During his time at the campus, O.W. was restrained a total of 8 times. The court determined that under Texas law, physical restraints are specifically authorized only in "emergency" situations. The court further stated that "[u]nlike the use of time-outs, the law contains no provision requiring that the use of physical restraints be expressly authorized by a student's IEP."

QUESTION AND ANSWER SESSION



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